



Theories on Law and Ageing: The Jurisprudence of Elder Law

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This book is about trying to answer questions. These questions were well introduced by Prof. Margaret Hall in the opening of her chapter in this book: “The fundamental idea of ‘law and aging’ as a discrete category of legal principle and theory is controversial: how and why are ‘older adults’ or ‘seniors’ or ‘elders’ (the very terminology is controversial and fraught with difficulties) a discrete and distinct group for whom ‘special’ legal thought and treatment is justified? For some, a category of law and aging is inherently paternalistic, suggesting that older persons are, like children, especially in need of the protection of the law. In this sense, the argument continues, the category itself internalizes ageist presumptions about older adults and is therefore inherently flawed and even harmful. If certain older adults are, because of physical or mental infirmities, genuinely in need of an enhanced level of legal protection, this entitlement should be conceptualized in terms of their disability; older adults are not a distinct group but an arbitrarily delineated demographic category which contains within it any number of groups that are legitimately distinct for the purposes of legal theory (the disabled; women; persons of colour; Aboriginal persons; rich and poor; etc.) Indeed, the artificial category of “older adults” may be seen as obfuscating, submerging these more meaningful distinctions.

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