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Introduction

Wonderful news! People in the UK are living longer. We have more people older now than we have ever had. Life expectancy is on a relentless increase.

Yet this is rarely seen as wonderful news in the media. Instead, the headlines we read are: ‘How Bad is the UK’s Pension Crisis?’;¹ ‘Lib-Dem Leader “too old”’;² or ‘Older Care a Stain on Country’.³ The European Commission has produced mountains of paperwork seeking to meet the ‘challenges’ of an ageing population.⁴ The changing age demographic is one of those great ‘dilemmas’ politicians love to talk about, but seem to prefer not to do anything about until after the next election. The repercussions of having an ageing society are complex and only the brave will predict with confidence the economic, political, and social ramifications.⁵

Age Concern has declared that ‘Britain is going through an extraordinary demographic transition’.⁶ In 2008 for the first time there were more people over 60 than children under the age of 18.⁷ In 2008 a quarter more people will turn 60 than did so just four years previously.⁸ In 2005 there were 20.3 million people over the age of 50. That is an increase of 2.5 per cent since 2002. Over a third of the population is now aged over 50.⁹ In 2008 there were 2.7 million people over the age of 80, some 4.5 per cent of the population.¹⁰ And all the signs are that the growth in the numbers of older people will continue, with it being predicted that there will be a quarter more people aged over 80 in 10 years time than there are currently. The number of people aged over 65 is expected to rise by over

¹ BBC News Online, ‘How Bad is the UK’s Pensions Crisis?’, 23 September 2006.

² BBC News Online, ‘Lib-Dem Leader Too Old, says Owen’, 6 February 2007.

³ BBC News Online, ‘Elderly Care Stain on Country’, 29 April 2008.

⁴ eg European Commission, *European Social Models: The Challenge of an Ageing Population* (European Commission, 2006).

⁵ eg Her Majesty’s Government, *Opportunity Age* (Stationery Office, 2005); Department of Health, *A New Ambition For Old Age: Next Steps In Implementing the National Service Framework for Older People* (Department of Health, 2006); and Department of Health, *Independence, Well-being and Choice* (Department of Health, 2005).

⁶ Age Concern, *The Age Agenda* (Age Concern, 2008), at 1.

⁷ National Statistics, *Ageing* (National Statistics, 2008).

⁸ Age Concern, *The Age Agenda* (Age Concern, 2008), at 1.

⁹ Age Concern, *Older People in the UK* (Age Concern, 2008), at 1.

¹⁰ Age Concern, *The Age Agenda* (Age Concern, 2008), at 1.

60 per cent in the next 25 years.¹¹ Life expectancy will grow by at least one year for every decade. Many philosophers, but fewer doctors, are discussing the possibility of immortality.¹² That may be a bit premature, but the discussions on how to 'age well' and enjoy an 'active retirement' are not. And they are concepts which not many decades ago would have been the privilege of only a few.¹³

These demographic changes will impact on society in profound ways. We now have a significant number of healthy older people and yet their place in society is marginalized. Society's social, economic, and community structures reflect the now old-fashioned model of a life of work, followed by a short retirement characterized by ill health and then death.¹⁴ The result is that older people are often isolated from society and in poverty, in particular our older women: 1.8 million pensioners are in poverty and two-thirds of these are women.¹⁵ Women from ethnic minority groups are particularly badly hit. Forty-two per cent of pensioners from the Pakistani/Bangladeshi communities live in poverty.¹⁶ We see here how the disadvantages of old age intersect with patriarchy and racial discrimination to create extensive disadvantage. The disadvantages faced by old people are not just financial, but extend to a variety of forms of social exclusion, as will be discussed in chapter 2.¹⁷

What is old age?

There is much dispute over how to define old age. One way of doing so is to state that all those over a particular age are 'older people'. The World Health Organization uses the age of 60.¹⁸ Opponents of such an approach object that setting a particular age at which a person becomes old would be arbitrary. Among people of any given age there will be a huge variation in health, lifestyle, appearance, etc. It would be difficult to say anything that would be true for all those of a particular age, except something about their birthdays. Furthermore, use of a particular age as the boundary of old age would lead to people asking why, on a particular moment in time, they suddenly become 'old' when the day before they were not. There is, perhaps, a more important objection. As Helen Small notes: 'The age we feel is not necessarily the same as our calendrical age, nor is it the same as how we are perceived, or how we register ourselves being perceived by

¹¹ Age Concern, *Older People in the UK* (Age Concern, 2008), at 1.

¹² J Harris, 'Imitations of Immortality' (2000) 288 *Science* 59.

¹³ Successful ageing is addressed in J Hendricks and L Russell Hatch, 'Lifestyle Aging' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006).

¹⁴ K Land and Y Yang, 'Morbidity, Disability and Mortality' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006).

¹⁵ Age Concern, *The Age Agenda* (Age Concern, 2008), at 15.

¹⁶ *Ibid.*

¹⁷ Social Exclusion Unit, *A Sure Start to Later Life* (SEU, 2006).

¹⁸ B Brandl and T Meurer, 'Domestic Abuse In Later Life' (2001) 8 *Elder Law Journal* 298.

others'.¹⁹ So our chronological age is only one aspect of what it is to experience age personally and in our society.

Supporters of an age-based definition of old age might reply that inevitably the law has to use generalizations, even if that means that some people are unfairly categorized. We do this with children for example. Children under the age of 17 are not allowed to drive, even though there may well be some under-17s who can.²⁰ But this raises the issue of why it is that we want to use the category of older people in the law. Is it to mark out a category of people who are particularly vulnerable, or upon whom it is justifiable to place certain obligations? While generally speaking those under the age of 16 are not able to make complex competent decisions, it is not clear whether we could make any generalization of any kind about older people.²¹ But returning to the issue of why 'older people' should be a category of interest might lead us to a different way of defining old age.²²

One alternative would be to define 'older people' as those who have reached the age when a state pension becomes payable. This would be the age at which the state would have indicated that they could be expected to stop work and undertake retirement. The benefits of this approach would be that there would be a clear definition of the category. Furthermore, it would link the definition of old age to being a pensioner, which itself is linked with the problems of poverty, vulnerability, and social exclusion. These are the very reasons why the category of older people might be of interest to politicians, lawyers, and academics. The difficulty with this definition is that it is increasingly outdated. As we shall see in chapter 6 the notion of retirement is undergoing a major rethink. Indeed, it is becoming increasingly rare for there to be a particular point in time when a person stops full-time work and starts retirement. The chapter also discusses the changes in employment law which are starting to protect an employee's right to choose their own date of retirement.

A third approach, and one I would advocate, is that an older person is one who is treated as an 'older person' by society. Research suggests that people rarely define themselves as 'old'. However, others start to refer to a person as 'old' and there are certain things that are recognized by the person themselves as characteristics of 'being old'.²³ The benefit of this approach is that it acknowledges that there are no particular disadvantages of being old per se, but there are disadvantages that flow from being regarded as 'old' by society. It is these disadvantages which the law should, and does to a limited extent, address. The disadvantage is that it means that the definition of older people is less clear cut. But that does not

¹⁹ H Small, *The Long Life* (Oxford University Press, 2007), at 3.

²⁰ For further discussion see J Herring, 'Children's Rights for Grown-Ups' in S Fredman and S Spencer, *Age as an Equality Issue* (Hart, 2003).

²¹ J Fries, 'Aging, Natural Death and Compression of Morbidity' (1980) 303 *New England Journal of Medicine* 134.

²² See the discussion in M Kapp, 'Aging and Law' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006).

²³ J Vincent, *Old Age* (Routledge, 2003), ch 1.

mean that it is of no use to the law. The Employment Equality (Age) Regulations 2006 protect people from being discriminated against on the basis of their age or 'apparent age'.²⁴

Law and older people

Much has been written on ageing from the point of view of science,²⁵ philosophy,²⁶ politics,²⁷ literature,²⁸ psychology,²⁹ and particularly sociology.³⁰ Gerontology has become well established as a field of study in its own right.³¹ Yet lawyers appear to have been particularly (and unusually) reticent in writing on this topic.³² In the United States, 'elder law' is a popular option at many universities and a wealth of journal articles and even books can be found on the subject, such as: *Law and Aging: The Essentials of Elder Law*;³³ *Elder Law: Cases and Materials*;³⁴ *Elder Law: Statutes and Regulations*;³⁵ and (with surely the ultimate sign that the subject has entered the academy) *Elder Law in a Nutshell*.³⁶ In England, by comparison, although there are a few practitioner-orientated books,³⁷ there is very little that is written on the law from an academic perspective and the topic appears in few, if any, law courses.

The lack of a developed 'elder law' in England may be explained by legal culture.³⁸ In the United States, practitioners specialize in elder law, which is, no doubt, a lucrative market to exploit. It seems that in the United Kingdom fewer lawyers seek to market themselves as specialist lawyers for older people.³⁹ The

²⁴ See ch 2 for further discussion.

²⁵ T Kirkwood, 'The Science of Ageing' (2005) 120 *Cell* 437.

²⁶ V Bengston, M Silverstein, N Putney, and D Gans (eds), *Handbook of Theories of Aging* (Springer, 2008).

²⁷ R Hudson (ed), *The New Politics of Old Age Policy* (John Hopkins University Press, 2005).

²⁸ H Small, *The Long Life* (Oxford University Press, 2007).

²⁹ R Settersten, 'Ageing and the Life Course' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006).

³⁰ R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006); J Vincent, *Old Age* (Routledge, 2003); H-W Wahl, C Tesch-Romer, and A Hoff (eds), *New Dynamics in Old Age: Individual, Environmental and Societal Perspectives* (Baywood, 2007); and J Powell, *Social Theory and Aging* (Routledge, 2006).

³¹ eg the work of the Oxford Institute of Ageing (<<http://www.ageing.ox.ac.uk/>>).

³² G Zenz, 'Old Age and Family Law' [2003] *Family Law* 291.

³³ R Schwartz, *Law and Aging* (Prentice Hall, 2004).

³⁴ L Frolik and A Barnes, *Elder Law: Cases and Materials* (LexisNexis, 2003).

³⁵ T Gallanis, A Dayton, and M Wood, *Elder Law: Statutes and Regulations* (Anderson Publishing, 1999).

³⁶ L Frolik and R Kaplan, *Elder Law in a Nutshell* (Thompson/West, 2006).

³⁷ eg A McDonald and M Taylor, *Older People and the Law* (Policy Press, 2006).

³⁸ H Meenan and G Braodbent, 'Ageing and Policy in the United Kingdom' (2007) 2 *Journal of International Aging, Law and Policy* 67.

³⁹ Although there is an organization known as Solicitors for the Elderly (<<http://www.solicitorsfortheelderly.com/>>).

lack of academic interest may alternatively be a wariness of ‘yet another Law and ...’ area of study. As one experienced colleague said when I was working on this area: ‘Whatever next? The law and people with blond hair?’ That is, perhaps, revealing in itself. The absence of legal academic attention to issues surrounding law and older people may, however, reflect wider issues concerning the invisibility of older people within society and the sidelining of their interests.⁴⁰ Apart from the ‘pensions crisis’, issues relating to older people rarely surface in the media. In early 2007 the *Guardian* decided to devote a supplement to issues surrounding older people with special editors all over the age of 65 brought in especially.⁴¹ The very fact that such a supplement was thought necessary, or appropriate, indicates the poor visibility of older people generally in the media.

Some commentators have been critical of gerontology and the more general study of older people. Stephen Katz,⁴² for example, sees gerontology as part of a complex game of knowledge and power, which involves ‘creating the elderly’⁴³ as a distinct body of people who constitute a social problem. His argument raises some important points. First, it has become natural to regard ‘the elderly’ as a group worthy of study in a way we would not regard ‘blond haired’ people as a group worthy of general sociological study. Secondly, the tendency in social science to group people together by characteristics can easily cause us to lose sight of the diversity of individuals who make up the group. What, however, I suggest Katz has insufficiently acknowledged is that it is society which has created the category of ‘the elderly’ rather than gerontologists. He gives academics far too much power! In chapter 2 I will look at the many ways in which ageist attitudes, with their assumptions about people based on their age, are prevalent in society. It is these which create the significance of old age. One survey on health issues affecting older people found few health issues specifically related to old age, except that older people suffered higher rates of depression and higher rates of suicide.⁴⁴ As this suggests, Katz may be right to say that age itself is of little significance, but the way society treats older people certainly is. It is the way society treats older people, rather than old age, which makes poverty, isolation, and exclusion such features of their lives.⁴⁵ As Peter Townsend explains, society creates:

the framework of institutions and rules within which the general problem of the elderly emerge or, indeed, are ‘manufactured’. In the everyday management of the economy and the administration and development of social institutions the position of the elderly

⁴⁰ For an excellent history of approaches to age discrimination, see J Macnicol, *Age Discrimination* (Cambridge University Press, 2006).

⁴¹ *The Guardian, Over 70s Special*, 12 January 2007.

⁴² S Katz, *Disciplining Old Age: The Formation of Gerontological Knowledge* (University Press of Virginia, 1996).

⁴³ At p 40.

⁴⁴ P Higgs, ‘Older People Health Care and Society’ in G Scambler (ed), *Sociology as Applied to Medicine* (Saunders, 2003).

⁴⁵ R Lynott and P Lynott, ‘Tracing the Course of Theoretical Development in the Sociology of Aging’ (1996) 36 *The Gerontologist* 749, at 750.

is subtly shaped and changed. The policies which determine the conditions and welfare of the elderly are not just the reactive policies represented by the statutory social services but the much more generalised and institutionalised policies of the state which maintain or change social structure.⁴⁶

The case against elder law

Given the lack of attention afforded to old people by lawyers it must be asked whether the law and older people is an appropriate area of study. Indeed, it is a common view that seeking to address the interaction of the law and older people is misguided and will perpetuate rather than redress ageism.⁴⁷ There should be nothing different about the law as it deals with a person aged 80 or 30. Elder lawyers with their focus on topics such as elder abuse, wills, and the regulation of nursing homes merely perpetuate the link between old age and vulnerability or incapacity.⁴⁸ Age, it is said, is an utterly arbitrary factor to use as a category of legal study.⁴⁹ It is no more than 'a number derived from a birth certificate'.⁵⁰ Indeed, it would be far more appropriate to view age as a life course: one long journey, rather than a series of shifts from one category of age to another. Mike Brogdon and Preeti Nijhar argue that: 'There are few collective characteristics that clearly mark out elderly people from younger people'.⁵¹ Indeed, it might be thought that there are greater differences among those over 70 than any other age group.⁵² It would make far more sense to consider the law and people lacking in competence, or the law and those living in institutional settings, rather than the law and older people.

The justification for elder law

The objections to elder law just mentioned, of course, have substance. However, it is argued there are very good reasons why the study of the law and older people is necessary and appropriate. I will emphasize three.

First, it is true that age is an arbitrary construct which should have no relevance to a person's legal rights, but the same can be said of sex or race. The sad

⁴⁶ P Townsend, 'Ageism and Social Policy' in C Phillipson and A Walker (eds), *Ageing and Social Policy* (Gower, 1986), at 2. See further C Phillipson, *Reconstructing Old Age* (Sage, 1998).

⁴⁷ M Kapp, 'Aging and the Law' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2005).

⁴⁸ eg R Hudson, 'Contemporary Challenges to Age-Based Public Policy' in R Hudson (ed), *The New Politics of Old Age Policy* (John Hopkins Press, 2006).

⁴⁹ B Brandl and T Meuer, 'Domestic Abuse in Later Life' (2001) 8 *Elder Law Journal* 298.

⁵⁰ J Grimely Evans, 'Age Discrimination: Implication of the Ageing Process' in S Fredman and S Spencer, *Age as an Equality Issue* (Hart, 2003), at 19.

⁵¹ M Brogdon and P Nijhar, *Crime, Abuse and the Elderly* (Willan, 2000), at 151.

⁵² R Settersten, 'Aging and the Life Course' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2005), at 8.

truth is that we do live in a society in which there is deeply ingrained prejudice concerning old age. Ageism leads to an extensive list of disadvantages. The law both reflects and reinforces ageist prejudices. So there is a need to ensure that the law treats older people justly, and legal intervention may be needed to ensure there is no unfair disadvantage caused by ageism.⁵³ To seek to ignore the vulnerabilities that affect those of old age as a group, and claim they suffer none, does nothing to advance their cause.⁵⁴ Robert Butler claims that ageism is manifested in:

stereotypes and myths, outright disdain and dislike, or simply subtle avoidance of contact; discriminatory practices in housing, employment and services of all kinds; epithets, cartoons and jokes. At times ageism becomes an expedient method by which society promotes viewpoints about the aged in order to relieve itself from the responsibility towards them, and at other times ageism serves a highly personal objective, protecting younger (usually middle-aged) individuals—often at high emotional cost—from thinking about things they fear (aging, illness and death).⁵⁵

We will discuss further the evidence for, and manifestation of, ageism in chapter 2. But I will mention one example here, which may appear trivial, but is important. That is the provision of public toilets. Julia Neuberger writes:

Public toilets are important for everyone, but they are particularly important for older people, who may have more limited mobility and may also need to use the toilet with more frequency or with greater urgency than younger people. Those that remain open have usually also lost their traditional on-site attendant, which make them less safe—or at least they seem so—which in turn allows the remaining toilets to be ruined by poor hygiene, vandalism, drug abuse and people using them as places to have sex.⁵⁶

Councils are willing to provide emergency toilet facilities for drunk young people leaving nightclubs, but not so that older people can visit public places with confidence.⁵⁷ This says a lot about the invisibility of older people in our society.

When considering age discrimination it is important to appreciate the intersection of old age with sex and race. The assumptions and impact of age will depend, in part, on your race and sex. It is often reported, for example, that a woman's attractiveness is judged against an extremely youthful ideal.⁵⁸ While men are commonly said to be attractive even while showing signs of ageing, a

⁵³ M Kohli, 'Ageing and Justice' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2005), at 427.

⁵⁴ M Holstein, 'A Normative Defence of Age-Based Public Policy' in R Hudson (ed), *The New Politics of Old Age Policy* (John Hopkins Press, 2005), at 35.

⁵⁵ R Butler, 'Ageism' in G Maddox (ed), *The Encyclopaedia of Aging* (Springer, 1995).

⁵⁶ J Neuberger, *Not Dead Yet* (Harper Collins, 2008), at 106.

⁵⁷ London Borough of Lambeth press release, 'Space-Age "Pop Up" Loos to be in place in Lambeth Next Year', 29 November 2007.

⁵⁸ S Sontag, 'The Double Standard of Ageing' in V Carver and P Liddiard (eds), *An Ageing Population* (Open University Press, 1978).

woman's attractiveness requires removal of visible signs of ageing.⁵⁹ As Martha Holstein argues:

If we older women fail to care for our bodies so that we can meet normative expectations to age 'successfully,' we may be viewed askance—at the simplest level for 'letting ourselves go' when 'control' is putatively within our grasp—and, more problematically, as moral failures for being complicit in our own aging. We lose our cultural relevance. The belief in the possibility for, and moral obligation to, control and also contribute to delegitimizing old age as the foundation for policy responses. If old age can be just like middle age—if only we had behaved differently—why should public policy single out the old for political attention?⁶⁰

The impact of ageing on masculinity raises interesting issues too:

The men pictured in the anti-aging advertisements drive themselves into expensive and strenuous fun, translating the achievement orientation of the labor market into those of recreational consumption. Banned from the competition for salaries and promotions, they struggle for status by spending the wealth and strength they have to play as young men do in their attempts to appear as vigorous as possible.⁶¹

Those, then, interested in issues of race, sex, and the law should therefore also be interested in the issues raised by age. Among the over 50s there are 100 women for every 85 men. Poverty and disadvantage among older people therefore especially impacts on women. Feminists should be continuing to raise issues relating to age.

An alternative justification for elder law is to challenge the view that age is simply an arbitrary criterion to which the law should pay no attention. The argument here, then, is that although there are prejudices about old age and unfair assumptions that are made; that should not be used to disguise the fact that for most people old age is different from other stages in life. These differences must be recognized and treasured.

Richard Brooks⁶² argues that it is better to see oneself not as a set of timeless desires, but a character subjected to the stages in life. The life stages form the milestones of life. Hence people's 18th, 21st or 60th birthdays are often celebrated as special events. They provide a structure to the story of a person's life. That is so even if the story involves rebelling against the stage of life a person is meant to be at. The different stages of life play an important part in the social and personal journeys of our lives. The law should therefore properly acknowledge their importance. Most significantly, as Brooks suggests, the law may require

⁵⁹ R Binstock, J Fishman, and T Johnson, 'Anti-Aging, Medicine and Science' in R Binstock and L George (eds), *Handbook of Aging and the Social Sciences* (Academic Press, 2006).

⁶⁰ M Holstein, 'On Being an Aging Woman' in T Calasanti and K Slevin (eds), *Age Matters* (Routledge, 2006), at 317.

⁶¹ T Calasanti and K Slevin (eds), *Age Matters* (Routledge, 2006), at 4.

⁶² R Brooks, "'The Refurbishing': Reflections upon Law and Justice among the Stages of Life' (2006) 54 *Buffalo Law Review* 619.

individuals to make sacrifices at one stage of their lives in order to prepare for another stage of their life. For example, it might be said, requiring children to receive education is, in part at least, done in order to benefit them later in their life. A country might opt for a system of taxation or benefits which requires an individual to pay during their years of employment in order to finance benefits paid during their retirement. Brooks argues:

the stages of life defined by the law are partly defined by the rights and duties which the stages have to each other. If the concept of stages is accepted, the role of law is not only to set the boundaries of stages, help allocate goods, and express the meanings of the stages, but also to define what the rights and duties of the stages of life are. In the process of fixing these rights and duties, the law further defines the stages themselves and the justice among them. We have seen above that there are profound questions within the law pertaining to the justice between the generations. Insofar as we envisage law as an instrument of justice, we might examine the role of law in promoting or impeding the justice of the allocation of goods among the stages of life.⁶³

It is therefore submitted that a strong case can be made for studying the law and older people. While there is a danger that by regarding it as a topic worthy of analysis this may simply perpetuate the myths and assumptions surrounding old age, it need not do that. Older people suffer from prejudice in ageism and the law can quite properly seek to intervene to prevent disadvantages flowing from that. The law can be used to ensure there is recognition of the value of the work and benefits provided by older people.

Structure of the book

This book will examine a variety of issues involving the law and older people. It will draw extensively on the gerontological, philosophical, sociological, and medical literature surrounding the subject. This is because to understand how the law works it must be understood in the context within which it operates. Looking at what the law says will not necessarily tell us what it does. Further, law has a role in communicating values and educating the public.⁶⁴ This role can only be understood if the broader social meanings attached to old age are appreciated. I have attempted to avoid too much legal jargon or analysis to make the book as accessible as possible. The book does not purport to present a comprehensive guide to all legal issues relating to older people, but rather discuss the key legal issues facing older people and the theoretical issues surrounding the legal treatment of older people.

Chapter 2 will consider the legal protection offered against age discrimination. It will consider the nature and impact of ageism. Simone de Beauvoir was, no

⁶³ Ibid, at 692.

⁶⁴ M van Hoecke, *Law as Communication* (Hart, 2002).

doubt, exaggerating when she mooted the possibility that everyone had an innate drive to cull older people to make room for the young.⁶⁵ But it will be argued that there is a pervasive and insidious ageism throughout society. The chapter will look at the current limited laws on age discrimination and consider whether they need to be extended.

Chapter 3 will consider issues surrounding mental capacity. Of course, for many older people there is no difficulty in establishing legal capacity, but old age can bring with it capacity issues. The chapter will seek to analyse the legal material defining capacity and treatment of those who lack capacity. In particular it will consider whether the interests of those lacking capacity are inadequately protected, even under the new Mental Capacity Act 2005. It will also examine the more difficult issues surrounding those who are on the borderline of lacking capacity.

Chapter 4 will look at the rights and responsibilities of those involved in caring. Many older people are carers and some are cared for, so this is an important issue for this book. The chapter will explain the ways in which the law has ignored the interests of carers and that there is inadequate legal or social recognition for care work. It will consider the range of benefits and other services available for carers and discuss how effective these are. At a broader level the chapter will consider how the law can better recognize care work and respect the values it involves.

There is increasing awareness of the issue of elder abuse. This will be considered in chapter 5. It will consider the different definitions of elder abuse and seek to estimate its extent. An analysis will be undertaken of the current legal approaches to the problem: both through the private law remedies; the response of the criminal law; and the inspection regime for care homes. The chapter will emphasize the lack of a scheme of public law protection of the kind that is available in respect of children who are suffering abuse. The chapter will look at the causes of elder abuse in institutional and private settings. It will also consider the difficult issues that can arise where the older person does not want protective legal intervention.

The financial issues surrounding old age will be examined in chapter 6. This will include how the care of older people is, and should be, funded. The current position with regard to local authorities charging for the care of older people will be examined. The distinction between health and social care, which is at the heart of the current system, will be addressed. One of the main issues in this chapter will be the 'great pension debate'. I will outline the problems with the current pensions system and consider the government's proposals for reform.

In chapter 7, the position of grandparents will be considered. An increasing amount of child care is undertaken by grandparents. Sociological data discussing the role played by grandparents will be examined. The current legal status of grandparents will be summarized and there will be an analysis of the arguments over whether there should be a more formal legal status given to them. Particular

⁶⁵ S de Beauvoir, *La Vieillesse* (Penguin, 1977).

attention will be paid to the position of grandparents who undertake care of children who otherwise would be taken into care or adopted.

Chapter 8 will undertake a consideration of the health care services offered to the elderly. It will analyse in particular claims that ‘age-based rationing’ takes place within the NHS and address the debate as to whether age should be a factor in making rationing decisions. The many other ways in which older people suffer ageism in the provision of health care services will be exposed. The chapter will also briefly discuss issues surrounding palliative care.

The ability of people to dispose of their property on their death is an important issue for many older people. Chapter 9 will consider the legal issues surrounding wills. In particular it will look at how property is distributed when an older person has not made a will and how a will may be challenged. It will also examine data on how, in fact, older people view their family obligations in relation to property and what influences their decisions in relation to wills.

Chapter 10 will bring together some of the issues which have run through the book: the difficulty the law has in dealing with older people who are both vulnerable to exploitation and yet so easily treated paternalistically. It will emphasize the importance to many older people of their relationships with their family members and carers. It will suggest that the legal tools of rights, particularly rights of dignity and non-discrimination, are important for many older people. However, for more vulnerable people who are dependent on the care of others, rights can work in too individualistic a way, and a legal system of protection that upholds just, caring relationships is necessary.

Henry Fairlie has written of the state support offered to older people:⁶⁶ ‘something is wrong with a society that is willing to drain itself to foster such an unproductive section of its population, one that does not even promise (as children do) one day to be productive.’

While rarely put so bluntly, his words reflect a common perception: older people are a waste of space, no more than a drain on society. Deborah Moggach’s novel *These Foolish Things*⁶⁷ provides a powerful satire of the way older people are treated. In it she imagines the care of British older people being outsourced to Bangalore. A central theme in this book is that older people contribute to society in many rich and complex ways. Be it through provision of child care, caring for those unable to look after themselves, volunteering time or donating money to charities, or simply being a source of wisdom and knowledge, their role is invaluable. We need to find ways of treasuring old age. It need not be a ‘hideous inverted childhood’ as Philip Larkin so memorably called it.⁶⁸ But that depends on us all changing our attitudes towards old age.

⁶⁶ Quoted by R Butler, ‘Dispelling Ageism: The Cross Cutting Intervention’ (1989) 141 *Annals of the American Academy of Political and Social Science* 503, at 503.

⁶⁷ D Moggach, *These Foolish Things* (Chatto and Windus, 2004).

⁶⁸ P Larkin, ‘The Old Fools’ in *High Windows* (Faber and Faber, 1974).