Age Discrimination and Working Life: Perspective and Contestations – A Review of the Contemporary Literature

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Abstract

This review highlights some of the principal issues and debates surrounding age discrimination at the workplace. Essentially, the existing research in this area can be divided into three broad, although somewhat overlapping, categories. The first encompasses empirical studies which document the *nature* and *extent* of age discrimination, based on the use of official statistics, and/or firm level survey evidence.

The second broad body of literature explores the underlying *causes* and *consequences* of age discrimination at the workplace from one or other theoretical tradition. The most common theoretical perspectives deployed in this area are neoliberalism and political economy, although post modern and ethical theories have also been used.

The third broad body explores the *effects* of various governmental initiatives to reduce the incidence of age discrimination and policy options in this area. Much of this literature is practitioner oriented, and focuses on the specific implications of changes in formal regulations. After critically appraising the most recent literature in all three areas, common themes are highlighted, and the relationship between theoretical insights and practical policy options in the area further explored.

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THEME 1: THE PREVALENCE OF AGE DISCRIMINATION

Common themes within this body of literature include the nature and widespread prevalence of age discrimination, and its relationship to broader social and demographic change.

The Nature and Prevalence of Age Discrimination

Age discrimination can affect people of any age: for example, middle aged workers may be condemned for failing to make career progress to a level deemed "appropriate" for their age (Arrowsmith and McGoldrick 1997: 277). However, in the developed world, older workers, and to a lesser extent new, labour market entrants, are disproportionately affected by such discrimination. In a study of the perceptions of different age groups, Garstka et al (2005: 324) found that both older and younger workers were strongly aware that they were discriminated against vis-à-vis other age cohorts.

As Sennett notes,

"(i)n the nineteenth century, the preference for youth was a matter of cheap labour; the "mill girls" of Lowell, Massachusetts, and "put boys" of northern England worked for wages well below those of adults. In today's capitalism that low-wage preference for youth still exists, most notably in factories and sweatshops of the less developed parts of the world. But other attributes of youth now seem to make it appealing in higher reaches of labour, and these lie more in the realm of social prejudice" (Sennett 1998: 98).

What constitutes an older worker varies greatly from sector to sector. In advertising and IT, a worker as young as 40 can be considered "too old" (Duncan and Loretto 2004:96). Furthermore, with age discrimination, everyone can be either an oppressor or victim, at least at some stage in the lifecycle (Duncan and Loretto 2004: 97). This lack of any readily identifiable and consistent group of victims makes age discrimination more difficult to combat through legislation (Duncan and Loretto 2004: 97). Age discrimination is also subtle, often with older workers discouraged from following job leads and told there are no suitable vacancies or that they are "over-qualified" or "over-experienced" (Shen and Kleiner 2001: 28).

Most research focuses on discrimination against older workers in redundancy situations (Walker 2005). In the postwar Golden Age, older workers were generally protected from redundancy through the last in, first out (LIFO) system (Snape and Redman 2003: 79). However, even in those years, prejudiced employers avoided hiring older, already unemployed workers in the often erroneous belief they were either prone to sickness or physically incapable. More recently, employers have increasingly predicated redundancies of older workers on flimsy, subjective perceptions of their supposedly inferior technical skills and abilities, especially with regard to computers (Bennington and Tharenou 1996; Lyon and Pollard 1997: 245).

Age discrimination can have far reaching consequences for an individual's economic and psychological well-being. The decision to prematurely retire can adversely affect a person's economic situation for the remainder of his/her life (Chou and Chow 2005: 234).

On leaving the workforce, older workers find it very much more difficult to re-enter it; this is especially true for those over 60 (Sargeant 2001: 149). Greater prospects of redundancy are likely to be stressful for older workers, particularly if the likelihood of obtaining meaningful work ever again appears bleak. Hence, as Neumark (2003: 305) notes, older workers who are laid off are more likely to exit the workforce permanently, and hence not even be recorded as unemployed.

Long term demographic changes in the advanced societies are likely to make the issue of age discrimination even more contentious in future. The large baby boom generation, those born after the Second World War, is now approaching "normal" retirement age. Populations in the advanced societies are ageing, and life expectancies are getting longer (Gunderson 2003: 318). By 2020, one third of the adult population will be over 65 in some countries (McDonald and Potton 1997: 294). This problem is exacerbated by declining pension provisions, with many organizations closing or completely abandoning defined benefit schemes (Neumark 2003: 305).

Chou and Chow (2005: 2345) argue that the recent anti-age discrimination agenda has been largely driven by labour shortages and the increasing costs of social welfare. Similarly, Garstka et al (2005: 321) note that calls for generational equity often simply reflect a desire to cut social spending rather than a genuine concern for the specific employment needs of older workers (see also Patrickson and Ranzijin, 2005). Again, Duncan and Loretto (2004: 96) note that concern over high labour force exit, and

relatively-low re-entry, rates of older workers are often prompted by rising costs of social security benefits, particularly public pension benefits.

There is a growing realization in the more critical literature that age discrimination is a particularly prevalent form of discrimination, and that older individuals often face an unenviable choice between poverty and workplace discrimination. This is in direct contrast to optimistic "third age" accounts that suggest that older individuals are now free to enjoy longer proportions of their lives outside the formal economy (Costa 1998), in leisure, reflection, personal development, or voluntary or flexible working arrangements.

Negative stereotypes that older workers are somehow less flexible or less receptive to new technologies or skills remain widespread (Sargeant 2001: 148; Taylor and Unwin 2001; c.f. Hawthorne 1997). There are many other stereotypes affecting older workers, including: they are less flexible, more resistant to change, less alert, and generally less productive (Taqi 2002:115; Patrickson and Ranzijin 2004: 425; Neumark 2003: 306; c.f. Hawthorne 1997). Older workers may also be perceived as less reliable for health reasons, and their knowledge undervalued (Austin and Droussitis 2004: 90). Managers are less likely to provide support for the career development of older workers (Neumark 2003: 306). Promotion opportunities for older workers are particularly less prevalent in jobs that require flexibility, creativity and higher motivation (ibid.: 306).

Age and Productivity

Contrary to common belief, there is a complex relationship between age and productivity (Guest and Shacklock 2005). There is no general evidence of an age-related decline, though attributes change with age. Deterioration in some functional areas (e.g. vision and speed of reactions) is offset by gains in others (e.g., caution, experience, wisdom and leadership skills) (Gunderson 2003: 325: Mueller and Ray 2001: 28; Lyon and Pollard 1997: 248; Shen and Kleiner 2001: 3). In fact, some evidence suggests that older workers are generally more productive, because of their higher levels of organizational commitment and loyalty (Brosi and Kleiner 1999: 101). Greater loyalty, and hence longer expected tenure, may help offset the perceived problems of amortizing training costs when compared to younger workers with longer periods of working life ahead of them. In any case, a complex range of factors at individual and organizational level affects an individual's ability to adjust to changes in job content throughout a career (Yeatts et al. 2000).

Serious illness and disease occupy only a small part of most individuals' lives, and intellectual decline, far from being automatic, usually occurs because of a lack of environmental stimulation (Branine and Glover 1997: 241). The evidence does not show that older workers are less receptive to learning new skills (Mueller and Ray 2001: 28). Considerable evidence suggests that employees over 50 are better able to retain training-related information (Brosi and Kleiner 1999: 102). Snape and Redman (2003: 87) also argue that there is no factual basis for believing that older workers are less motivated. Some older workers do need re-training to cope with technological changes (O'Boyle

2001: 960), which firms are frequently reluctant to provide because they can instead hire

already trained, younger workers from the labour market.

Cultural Issues: Beyond Stereotypes

Finally, there are cultural differences in attitudes to age. As Hampden-Turner and

Trompenaars (1994:90) observe:

"What seems to work well in Japanese and Pacific Rim economies is to increase

the status of employees as their experience and periods of service with the

company lengthen. As employees age, the expectation that they will be of greater

influence and value increases. Like most social expectations, this one tends to

fulfill itself. The employees to whom more respect is given achieve more. Such a

system is deemed fair because everyone ages".

Sometimes, such cultural differences do not reflect conventional stereotypes.

instance, Chinese societies, with their Confucian belief systems, are frequently

stereotyped in Western studies as being deferential to older people, and thus less

discriminatory on the basis of age. Yet, comparative surveys have revealed that negative

stereotypes towards older workers are stronger in Hong Kong than in the United States

9

(Chou et al 2001).

Constraints on Age Discrimination and Counter-Pressures

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Although employer fears of having their reputation tarnished may deter more overt discrimination, information asymmetries may enable many employers maintain more subtle forms of discrimination. For instance, employers can argue that complex changes to the firm's circumstances make job cuts necessary, citing evidence that employees cannot easily verify (Taylor and Walker 1997: 308). They can also justify their decisions to sack older workers by alluding to new skill requirements (Gunderson 2003: 324; Barry and Boland 2004). There is also the problem of negative externalities; if other firms systematically discriminate, employees may perceive that it is the norm, and be more likely to take discrimination for granted (ibid.: 309).

The increased emphasis on equal opportunities and rights, despite renewed conservative attacks on "political correctness", helps to mitigate discrimination (Gunderson 2003: 319). The baby boomer generation, whose greater demographic clout drove a considerable amount of the "flower child" discourse of the 1960s and 1970s, and the yuppie euphoria in the 1980s (c.f. Glover and Branine 1997: 280; Shen and Kleiner 2001), is now in a position to use its influence to shift the agenda towards the concerns of older workers (Shen and Kleiner 2001: 27). Understandably, expectations of a rewarding working life, a financially secure retirement, and good health remain high, particularly for a generation whose formative years occurred when living standards were improving (Naegele and Walker 2004). However, the commonplace nature of age discrimination, and the different categories deployed to define older workers, make it very much more difficult to mobilize opposition to ageism, particularly when it is justified as necessary to opening opportunities for younger people (Gunderson 2003: 319). Moreover, the younger

generations, who have to work longer for lower pension provisions, may challenge any redistribution of resources to the elderly, while governments may reduce spending by shifting the pension burden back onto individuals (ibid.). The financial crises of many private pension schemes, and the generally poor performance of annuities and similar financial products, may also worsen the social exclusion of older people and weaken social cohesion across generations (ibid.).

Recent Empirical Evidence

Alan Walker's pioneering Europe-wide survey in 1992 revealed that over 78%, 62%, and 67% of EU citizens believed that older workers were discriminated against in hiring, promotion, and training, respectively (Walker 1993: 26). A 1995 UK-based Institute of Management survey revealed that older workers were disproportionately affected in 87% of organizations that had implemented downsizing policies (Arrowsmith and McGoldrick 1997: 261). Subsequent survey evidence has revealed that 55% of employers used age as a decision-making criterion in hiring, and one third in redundancies (Sargeant 2001: 147). Sargeant (2001: 148) argues that the prevalence of early retirement policies underscores the extent to which age discrimination has become legitimized. Evidence from the UK Workplace Employment Relations Surveys suggests that older workers are likely to be seen as more reliable and organizationally committed. However, only 5% of firms encouraged job applications from older individuals, and one quarter still admitted to using age as a selection criterion (Urwin 2004). Recent surveys of UK personnel managers show that attitudes to older workers are mellowing. However, personnel

people are often powerless to resist ageist behaviour from other, more powerful managers (Lyon and Pollard 1997: 253).

Glover and Branine (1997: 283-5) point to a relationship between organizational size and propensity to engage in age discrimination. Very large firms, which have an HR department, and small firms are less likely to discriminate. In contrast, medium-sized enterprises are more likely to discriminate for perceived cost and HR planning reasons (ibid.). Although HR managers have identified potential benefits from reduced age discrimination, hiring often still depends on key decisions made by junior and middle managers. Hence, an age diversity policy need not be reflected in practice (McNair et al 2005, 7).

A 2005 CIPD survey (conducted in collaboration with the CMI) found that 22% of managers surveyed admitted that age impacted on their own selection decisions; 59% also claimed that they had been personally disadvantaged by age discrimination (Pinsent Masons 2005; c.f. Snape and Redman 2003). A 2005 nationwide survey by Cranfield academics revealed that nearly one third of respondents saw older workers as unreliable and resistant to change (Berry 2005).

These trends are echoed in similar international studies. In Australia, surveys have indicated a common employer preference for younger staff (Patrickson and Ranzijin (2004: 425; Bennington 2004 p11). Even when advertisements contain no explicit references to age, age targeting is still perceived (Bennington 2004, 11). In New

Zealand, Harcourt et al (2004) found that firms collect information about age on job application forms. Brooke and Taylor (2005: 425) note that, even among employers who believe that the strengths of different age groups are complementary, there is still a reluctance to promote equal treatment as an explicit policy.

The "Hidden" Nature of Age Discrimination

McVittie et al (2003: 596) note that age discrimination can be concealed in a range of ways. For instance, many employers may claim to be committed to equal opportunities, arguing that any age-based disparities reflect developments in the external labour market that are beyond their control, making it impossible to find "suitable" older workers (McVittie et al 2003: 603). Proving pay discrimination is often difficult, since many longer serving older workers are often well paid (Gunderson 2003: 324). Older workers are also less likely to be relegated to job ghettos than women, making discrimination less visible (ibid.:325). Indeed, there is evidence of a "new ageism", in which age discrimination is concealed by the language of equal opportunities. Specifically, marginal jobs may be upheld as "open" to older workers to deflect attention from better jobs within the same organizations which are not.

Recourse is also made to the nature of the sector to justify discriminatory practice. For example, rhetoric about "young" or dynamic workers" being the most appropriate for "young industries" frequently penetrates the recruitment discourse (McVittie et al. 2003:

609; Muller and Kleiner 2001: 101). Indeed, Mueller and Ray (2001: 28) found that age discrimination is "particularly rampant" in new industries like IT.

THEME 2: THEORETICAL PERSPECTIVES

Neo-Liberal Accounts

The neo-liberal literature on age discrimination can be divided into three broad categories. First, there are arguments that age discrimination simply reflects the higher pay of older workers, and so reducing this higher pay would resolve any employment difficulties. The second, related, viewpoint suggests that older workers often return to the labour market to gain employment in insecure and poorly paid occupations as a "lifestyle choice". The third viewpoint argues that employers' tendency to discriminate represents the effect of residual knowledge disparities, and can be redressed through the better availability of information on "good practice": in other words, a form of statistical discrimination.

Rational Choice and Labour Costs

Neo-liberals claim that older workers' higher pay simply makes them less attractive to employers, especially if younger workers are not perceived to be any less productive (ibid.: 960). As a result, older workers are more likely to be made redundant and experience difficulties in re-entering employment (ibid.960). Neo-liberals argue that the traditional linear approach to careers cannot accommodate current employer needs for

more flexibility and more responsive organizational structures (Arrowsmith and McGoldrick 1997: 259). Instead, employees need to be more "realistic" in their career planning and pay expectations (c.f. ibid.). In a more competitive environment, firms can no longer afford to advance employees automatically along pay scales or pay workers more if they have been around longer. Sourcing workers from the labour market makes business sense, if they are cheaper or more flexible that workers already employed by the firm (see Friedman 1997). Neo-liberal human capital theories suggest that it is possible that the human capital of older workers may be less valuable given potentially higher wage costs and pension liabilities (Arrowsmith and McGoldrick 1997: 260). Again, this suggests that older workers are "unrealistic" in pricing their labour. However, such views discount the loss of knowledge and corporate memory, experience, and skills associated with devaluing older employees, making for "a sub-optimal balance between youth and maturity" (Duncan and Loretto 2004: 96).

Conlin and Emerson (2006: 115) suggest that employers are more likely to discriminate during hiring than redundancy. In a redundancy situation, employers have more knowledge about the actual performance of the individuals concerned. It follows that, if firms were freer to eject newly hired poor performers, they would take more "chances" in hiring so-called "high risk", older workers (McDonald and Potton 1997: 298).

Older workers have a shorter working life to amortize the costs of relearning new technologies, making reskilling less attractive for either them or their employer (Neumark 2003: 319): this is likely to diminish both their internal and external career prospects.

Other issues include increased competition from other historically disadvantaged groups, and the lower status and pay often associated with bridging jobs prior to full retirement (ibid. 319). In addition, Lazear notes that employees tend to be relatively under-paid in their younger years and better paid when they are older, enabling employees to recoup the effects of under-payment through long service (Neumark 2003: 308). In such circumstances, employers may obtain a short-term, labour cost advantage by dispensing with long-service employees (Neumark 2003: 308). Neo-liberal human capital theory further suggests that individuals and firms only engage in training when the gains outweigh the perceived costs (Urwin 2006: 88). This suggests that, in such cases, firms could make use of "training contracts", binding workers to a predetermined length of service, giving the firm enough time to recoup costs (ibid.). However, this viewpoint does not take account of the possibility that a firm may become wedded to low cost and unskilled labour, and have little interest in training at all; in such cases, the availability of "training contracts" would have little affect on HR policies towards older workers.

Poor Security of Tenure and Low Wages as Lifestyle Choice

A second strand of neo-liberal thinking suggests that, if older workers are unable to find work again, this reflects poor "lifestyle choices". If older workers were more proactive in marketing themselves in a greater range of occupations, more opportunities would be available to them. Peng and Kleiner (1999: 74) argue that older workers need to "stay competitive in a youth dominated labor market". Older employees can help themselves through more effectively marketing their own "youthful qualities" (Shen and Kleiner 2001: 25; c.f. Schuman and Kleiner 2001: 51). Individuals need to take more

responsibility for upgrading their skills and be willing to abandon skills and occupations that are obsolete (Shen and Kleiner 2001: 30).

The declining participation of older workers also reflects other choices. The availability of generous pensions prompts many people to retire early (McVittie et al. 2003: 596). This echoes neo-liberal arguments that "too much" social security distorts the operation of labour markets. Such viewpoints represent an extension of the argument that poverty is a lifestyle choice and so readily avoidable. In reality, most workers 'retire' early because they have been laid off and cannot find work (Patrickson and Ranzijin (2004: 428). Early retirement may also be prompted, not so much by a desire to enjoy the "third age", but instead as a means to escape from systematic undervaluing, discrimination and ejection from an organization under less favourable circumstances (Branine and Glover 1997: 241).

Along similar lines, neo-liberals suggest that the increased availability of temporary and part-time employment is often beneficial to older workers (Arrowsmith and McGoldrick 1997: 258). The flexible work arrangements and variable working hours associated with insecure and/or part-time jobs are supposedly attractive to older workers, enabling them to combine leisure and income security with the chance to contribute to society (Chou and Chow 2005: 243). Labour market segmentation theories have been condemned for suggesting that atypical forms of employment necessarily involve marginal jobs (Arrowsmith and McGoldrick 1997: 260). In contrast, Arrowsmith and McGoldrick (1997: 260) argue there is a potential for a "win-win situation", with older workers

working for shorter periods and/or more flexible hours, and firms benefiting from such numerical flexibility.

However, survey evidence indicates that organizations are increasingly aware that older workers are a source of flexible labour (ibid.: 261). Older individuals may seek low paid work, not as a lifestyle choice, but because they desperately need the money for basic living expenses or major health-related expenses (Branine and Glover 1997: 240). Unskilled and semi-skilled service sector jobs, which are relatively open to older returnees to the labour market, are widely associated with poor working conditions, tight systems of control, and low pay. Flexible working time arrangements can be attractive to older workers, and many others as well, but such arrangements are only available in the low end service sector (Sargaent 2001: 114). Taylor (1994) argues that older workers in financial need are "doubly disadvantaged" in not having access to decent pensions, and in having to compete with younger labour market entrants for poorly paid jobs. Such individuals have little choice but to take demeaning and poorly paid jobs. In a survey of older, Swedish workers, Soidre (2005: 943) found that workers with rewarding jobs generally want to stay in the workforce when older, whereas those with poor pay and conditions or an instrumental approach to work are often keen to leave. Low skilled and low status jobs are therefore unlikely to be attractive to older workers, unless a last resort (see ibid.). In a UK-wide survey of employers, Taylor and Walker (1994: 569-591) found that older workers often face a stark choice between low-wage low-skill employment in the service sector and unemployment. Hence, numerical flexibility is more likely to be encountered in the later phases of an individual's working life when her/his bargaining position is weaker (Urwin 2004).

Statistical Discrimination - Imperfect Information

A third strand of neo-liberal thinking suggests that age discrimination reflects poor judgment of, and misinformation regarding, the skills and abilities of older workers (c.f. Glover and Branine 1997: 275). In other words, if markets operate properly, such discrimination should be "driven out". Thus, neo-liberal policy responses to age discrimination include the provision of better information to eliminate market imperfections (McDonald and Potton 1997: 298).

Political Economy Alternatives

Political economy accounts locate age discrimination in the wider context of industrial change, and focus on the relationships between culture, and particularly institutions, in reinforcing age-based inequality at the workplace.

Industrial Change and Age Discrimination

More critical accounts have pointed to the increased prevalence age discrimination, following the crisis of classical fordism in the 1970s. From a regulationist viewpoint, this crisis is part of a general trend towards the more flexible utilization of labour, and involves less job security and an increased incidence of temporary and part-time work, trends that have been most pronounced in liberal market economies (Jessop

2001). In Britain, from 1975 to 1994, the percentage of economically active males dropped from 84% to 79% for those aged 60 to 64 and 94% to 79% for those aged 55to 59 (McDonald and Potton 1997). This reflects the effects of technological change and recession (ibid.). Engleman and Kleiner (1998:5) suggest that age discrimination in the US worsened in the 1990s, despite evidence that individuals were increasingly aware of their rights under federal law. Although firms may potentially benefit from a high-wage, high-commitment, high-productivity paradigm, they may become wedded to low wages and numerical flexibility as mechanisms for attaining competitiveness (see ibid.: 297). An increased emphasis on flexibility and leaner organizations has had particularly negative consequences for older employees. The fragmentation of the employment relationship is particularly serious for those in a disadvantaged position in the external labour market (c.f. Arrowsmith and McGoldrick 1997: 258). Older workers may face greater discrimination because they are perceived to be compliant and thus willing to put up with more (Glover and Branine 1997: 285). Inevitably, some groups bear a disproportionate share of the costs of periodic structural changes under capitalism. In particular, it is more socially acceptable, even to the older workers themselves, for older workers to bear the brunt of job losses. Since older workers are nearer to 'normal' retirement age than other age cohorts, they are also more easily persuaded and pressured to take early retirement (Taylor and Walker 1997: 307-308).

The changing sectoral composition of liberal market economies, following the crisis of the Fordist paradigm, has had particularly negative implications for older workers. The dramatic decline in manufacturing in such economies has had particularly negative consequences on those generations who spent the bulk of their working lives in this sector (Taylor and Walker 1997: 308). Even within sectors, older workers are more likely to be concentrated in firms operating in mature and declining markets, and in more mature firms, and so are more likely to be made redundant (Urwin 2004).

Age and Culture: Institutions and the Making of Discrimination

Darity (2001: 980) argues that dominant groups may decry and undermine other, weaker groups to protect their own superior position. This may take the form of over-valuing of youth and devaluing the elderly. Generalized beliefs about the value of beauty, youth, innovation, fashion and progress both impinge on, and are reconstituted through, workplace practice (Branine and Glover 1997: 237). Economic growth for its own sake is rewarded, and conspicuous consumers are highly valued. In contrast, the poor and disadvantaged groups like the elderly are derided (ibid.: 237).

Brooke and Taylor (2005: 416) point to the complexity of the interfaces between age discrimination and a range of other organizational issues and practices. As noted earlier, tensions may arise between different segments of the workforce, with younger workers holding negative views of their older peers, particularly in a general climate of employment insecurity (ibid.). More advantaged age groups like those in their 30s and early 40s may defend their relatively privileged position by attacking 'political correctness' or claiming that pensions unacceptably burden the economically active (see Garstka et al 2005: 336). Consequently, divisions within the labour force may be used as a means of justifying both workplace inequality and/or reductions in the role of the state.

Disturbingly, Glover and Branine (1997: 275) note that writers in the medical literature have debated for some time about whether the treatment of younger people should be prioritised, given that older people are more expensive to treat and have supposedly "already lived full lives". Similar arguments could be advanced regarding employment policies.

Age and Social Exclusion

In most societies, older people are consistently among the poorest (Walker 2005: 825). In turn, poverty has the effect of reducing life chances, and worsening social exclusion, including employment prospects (ibid.). Indeed, the entire ideology of an "ageing crisis" should be seen in the context of persistent challenges to the welfare state, and a desire to shift responsibility for incomes in retirement back to individuals (Walker 2005: 833). Poor job status and/or a lack of employment opportunities can simply form one component of wider social exclusion, in which those who are unemployed are also more likely to have low skills, low incomes and/or live in poor quality housing (Barnes et al 2006). Workers in manual occupations are more likely to suffer ill-health in old age; they are also more likely to be made redundant (Boyes and McCormick 2005: 3). Older workers are generally more reliant on public transport (Brosi and Kleiner 1999: 103), which may further disadvantage them if such transport is unavailable or expensive.

Age and Other Forms of Discrimination

Early political economy approaches neglected race and gender, but these issues have been addressed in more recent critical social research on ageing (Walker 2005: 816). For example, Evandrou and Glaser (2004: 771) note that, having fulfilled child raising and other family social care obligations, older women are very much more likely to face poverty in their old age. Similarly, Schuman and Kleiner (2001: 48) argue that age discrimination can incorporate a gender dimension, with older women being particularly negatively stereotyped. Older female workers are further handicapped in the job market by having less education than their younger counterparts (Schuman and Kleiner 2001: 50). However, women older than the statutory, pension age are more likely to be found in employment than men, but this probably reflects less access to, and lower incomes from, pensions rather than a greater ability to overcome prejudice (Duncan and Loretto 2004: 100). Breaks for childbearing reduce the length of pension-qualifying service, and may make it harder for employers to come up with suitably attractive voluntary, redundancy schemes (Duncan and Loretto 2004: 101).

Rights and Distributive Justice Perspectives

Although the *rights-based* approach to ethics has most commonly been deployed to justify the relentless pursuit of profit, and the elimination of any regulations that interfere with the free operation of markets (c.f. Friedman 1987), Rawls (1984) argues that inequalities are only justifiable if they benefit the worst off in society. In other words, social inequalities are not simply the just desserts of lesser or greater competence, and so should be examined rather than ignored (Parekh 1982:179).

O'Boyle (2001: 962) argues that age discrimination is a *distributive injustice*: the benefits, burdens and risks of a particular job should be distributed equally rather than borne mainly or totally by older individuals. However, the literature in this area remains limited, and so there is considerable scope to develop new ethical theories of age discrimination. Branine and Glover (1997: 237) argue that the moral concern for the plight of older workers is often remarkable for its absence in the management discourse, and so there is a pressing need to redress this imbalance.

Postmodern Accounts

There is a limited postmodern literature on the nature and effects of age discrimination at work. Postmodernists argue that the rules of modernity have imploded, with the values of the past stripped of their previous meaning and the knowledge of older individuals devalued in the process (Glover and Branine 1997: 277). Older individuals acquiesce to this new reality, occasionally reacting through outbursts of extreme conservatism (ibid.: 277). Changes in the nature of discrimination are but one of the products of a dissolution of existing cultural frameworks and ever-shifting relations of power in society. Age related discrimination may reflect the product of breakdowns of individual social groups, rather than simply a variation of conflicts on class lines. However, postmodern accounts tend to discount the close relationship between patterns of discrimination and changes in the process of production, and the extent to which divisions in the workforce are conducive to accumulation.

THEME 3: AGE DISCRIMINATION AND THE LAW - FROM VOLUNTARISM TO REGULATION

The ageing population in many Western countries has raised concerns about future labour shortages and problems with financing pensions. A common policy response has been to promote greater older worker, labour force participation, achieved by raising the pension eligibility age or improving the labour market position of older workers (Taqi 2002: 107). Proposed solutions have also included: improving access to training, educating employers, introducing greater working flexibility, and/or enacting anti-discrimination legislation (ibid.). In reality, governments and private firms have been more likely to use subsidies to promote early retirement than equip older workers with new skills (ibid.: 113-4). In any case, training can lower morale if the employability of older workers is not enhanced by it (ibid.). UK evidence suggests that those who have entered higher education at a mature age have no better chances of securing employment than those who have not (Sargeant 2001: 141).

In the late 1970s and 1980s, government policy towards older workers centred on "removing them from the labour market" to make room for the increasing numbers of younger workers entering the labour market, and to help deal with high unemployment caused by recession (Taylor and Walker 1997: 309). Policy interventions included the 1977 Job Release scheme, which encouraged older workers to retire a year early, and provided greater income support for unemployed men aged 60 to 64 from 1981 onwards (ibid.).

Prior to the EU directive, the UK government preferred a voluntary approach to the age discrimination issue, perhaps best illustrated in 1999 with *The Code of Practice in Age Diversity in Employment*. This code sought to reduce the incidence of discrimination in hiring, redundancies, training and development, promotions and HR planning. However, a follow up survey by the Employers Forum on Ageing found that most employers were simply unaware of the Code. Research commissioned by the DfEE in 2001 found some improvement in employer awareness of the code, but very few had amended their practices accordingly (Snape and Redman 2003: 78; c.f. Thompson 2005). Overall, the Code was ineffective: better employers were already adhering to its key provisions, while those who tended to systematically discriminate against older workers were still largely ignoring it (Sargeant 2001: 150).

By 1998, 40% of British workplaces already had an equal opportunities policy that made explicit reference to age (Duncan and Loretto 2004:96). Yet, age discrimination remains widespread, probably because many employers have deeply entrenched prejudices about the business case for age discrimination (ibid.). McVittie et al (2003: 596) notes that equal opportunities policies seem to have had little effect in bringing about a fairer representation of older workers. Indeed, there is no evidence that a voluntary, educational approach to ending age discrimination has had any effect at all (Taylor and Walker 1997: 311). In contrast, anti-age discrimination legislation makes firms less likely to renege on their commitments, and hence strengthens long term relationships between employers and employees (Neumark 2003: 315).

According to article 13 of the 1997 Amsterdam Treaty, the European Commission has the right to take action against age-based discrimination. Non-discrimination has become effectively entrenched as a cornerstone of the EU's economic constitution (Schiek 2002: 293). However, it rests on two contradictory approaches to equality. The first construes equality as a mechanism for ensuring that all have equal access to markets (whether for goods or labour); broadening access to markets is likely to make for greater economic efficiency, which will be conducive to growth. The second is a human rights-based approach, in which anti-age discrimination is construed as a means for protecting the rights of individuals or groups against systemic discrimination (ibid.); in other words, discrimination should be outlawed, whether ending it contributes to greater economic prosperity or not.

The European Council Directive 2000/78/EC now requires member states to introduce legislation prohibiting age and several other forms of discrimination (Taqi 2002: 117). New legislation would limit the more blatant forms of discrimination, as, for example, with the explicit mention of age in job advertisements. Moreover, legislation would "send a powerful signal that age discrimination is wrong", discouraging systematic discrimination in other areas (ibid.: 120). Nonetheless, more covert and virulent forms of age discrimination may prove harder to eliminate. Indeed, enactment of anti-age discrimination laws in other nations has not raised older worker, force participation rates (Tariq 2002: 119).

The UK government has committed to enacting legislation to outlaw age discrimination by October 2006. Age discrimination in hiring, training and promotion will be prohibited, as will "unjustified" retirement ages below 65, while current upper age limits on accessing unfair dismissal and redundancy rights will be lifted (Berry 2006a). Existing arrangements may be allowed as evidence of ageism. Again, words and images used in recruitment campaigns must be non-ageist (Berry 2006b). It will no longer be acceptable to ask a job-seeker's age during the hiring process, and employers will no longer be able to exclude employees from benefits such as life insurance on the basis of age. Employers will have to monitor the age profiles of their workforces and educate staff about what the new rules mean (Employers Law 2006). Employers will be obliged to consider any requests to work on past retirement age. Employees will have to be informed of their retirement date 6 months in advance to better enable them to plan for it, and to ensure that retirement is not "used as a cover for unfair dismissal" (Berry 2006a).

A recent European Court of Justice decision suggests that age discrimination may be illegal already (Berry 2006c). The Court has ruled that any legislation that provides for unequal, age-related treatment in employment contract contravenes the *Equal Treatment Directive*, even prior to enactment.

Berry (2005) argues that it will take some time to raise awareness of the changes, and to accumulate a relevant body of case law. It remains unclear what effects the law will have on service-, or age-, related pay and benefits. Before the law comes into effect, less principled employers may engage in rounds of preemptive culling, pruning older

workers, and condemning them to poorly paid service sector work (Anonymous 2006). A 2005 survey by academics at Cranfield University found that only 20% of UK employers had taken account of the forthcoming legislation and a further 20% believed their executive board was not committed to ending age discrimination

The multi-faceted, complex nature of age discrimination may mean that any legislative interventions have only partial effects (Urwin 2004). The experience of the *Disability Discrimination Act* suggests that proscribing discrimination may not necessarily affect employment practice (Pope and Bambra 2005). Even if age discrimination is outlawed, job applicants may still provide age-related details, believing that this will either help them or prevent them from being disadvantaged (Bennington and Weir 2002: 13). Some evidence suggests that even having a name more associated with one generation than another may even be used as a proxy for age (Bennington and Weir 2002: 6).

Evidence from abroad highlights limitations in the efficacy of anti-age discrimination legislation. The United States prohibited age discrimination with the 1967 *Age Discrimination Act* (Ray and Kleiner 2001: 53). Yet, subsequent surveys have revealed that many older workers still fear they will be forced to retire before they are ready. A 1992 survey found that 1 in 7 were willing to work but could not find a job (ibid.). The growing tendency towards downsizing has had particularly adverse consequences for older workers (ibid.: 54). Harcourt et al (2004) found that many employers in New Zealand continue to breach the law through a continued emphasis on age in the hiring process: age-related information was directly or indirectly requested from a sizable

percentage of job applicants. However, employers were more likely to be deterred from discriminating by a union presence (Harcourt et al. 2004).

CONCLUSIONS

A number of key issues and debates emerge from the contemporary literature on age discrimination. Even though age discrimination is widely accepted to be prevalent, its causes are rather more contentious. Age discrimination has variously been ascribed to market imperfections, the product of rational choices, and the effects of long-term changes in the nature of the economy. Policy interventions may be prompted by economic pressure, demographic changes, or cultural shifts, and have involved voluntary codes as well as legislation. Although voluntary codes have generally proven ineffective, the literature indicates that more formal regulations may still have only limited efficacy, underscoring the deeply rooted nature of age discrimination in society.

Acknowledgement

The financial support of the Nuffield Foundation is gratefully acknowledged.

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