

# 25 Years of Elder Law: An Integrative and Historical Account of the Field of Law and Aging

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*Twenty-five years have passed since my first exposure to the field of “elder law.” From a “young” master’s student I have become a law professor and a gerontologist who specializes in law and aging. The journey I have personally experienced in the last quarter-century provided me with some perspective regarding the field of elder law (or, as I prefer to call it, law and aging).*

*In this Article, I try to summarize my experience and share some personal insights on the field. This is naturally a very personal and subjective experience. However, it may be constructive to others in shaping the next twenty-five years of the field. Hence, the goal of this Article is to provide both an integrative description of the developments in the field and some propositions for possible future directions.*

## INTRODUCTION

Around January 1993 I set foot for the first time in the offices of Nancy Coleman, at the time the director of the American Bar Association’s Commission on Legal Problems of the Elderly.<sup>1</sup> I was seeking an internship as part of my

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1 The name at the time for what is now known as the A.B.A. Commission on Law and Aging (COLA). For more information about COLA, see *Commission on Law and Aging*, A.B.A., [https://www.americanbar.org/groups/law\\_aging.html](https://www.americanbar.org/groups/law_aging.html) (last visited Aug. 11, 2019).

LL.M. studies at Washington College of Law. Nancy was very nice to me, but after explaining that unfortunately there was no internship available, she recommended that I try the Legal Counsel for the Elderly (LCE).<sup>2</sup> As a result, I ended up spending about three enriching and challenging months of my life interning under the supervision of an outstanding person and lawyer, Faith Mullen, a staff attorney at LCE. Twenty-five years have passed since that day, and from a “young” master’s student I have become a law professor and a gerontologist who specializes in law and aging. My personal journey over the last quarter-century has given me some perspective regarding the field of elder law.

This is naturally a very personal and subjective experience. However, it may be constructive to others in shaping the next twenty-five years of the field. Hence, the goal of this Article is to provide both an integrative description of the developments in the field and some proposals for future directions. In trying to meet this goal, I’ve divided the article into three parts. Part One describes what were for me the formative years, the 1990s, especially my personal introduction to American elder law, which I view as the foundation of the field. Part Two describes the developments in the field during the early 2000s up until this writing. Part Three provides some insights and points to current and future developments in the field.

## **I. THE EXCITING FORMATIVE YEARS — SETTING THE AGENDA IN THE 1990s**

Within the field of law, and compared to other, more specific fields of “law and society,” the field of elder law is relatively young. Until the early 1980s, elder law as such was unknown, and legal issues of older persons were addressed anecdotally within other fields of law (e.g., old age pensions — as part of social security law; Medicare/Medicaid — as part of healthcare law; or age discrimination — as part of labor law). Its origins can be traced within the American legal system, and more specifically in three arenas: the field of poverty law lawyers and academics; the professional legal interest both in estate planning (and later on — broader in advance legal planning) and in Medicaid planning; and the legal academia that developed a new generation of scholars who positioned themselves as researchers in this

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2 LCE is part of the AARP and provides legal aid to older persons in Washington, DC. For more information about LCE, see *Legal Counsel for the Elderly*, in AARP, <https://www.aarp.org/legal-counsel-for-elderly/> (last visited Aug. 11, 2019).

field. This combination drove the original development of elder law in the U.S.<sup>3</sup> This successful conjuncture occurred while a significant demographic change was transforming American society: America was aging. The rise in the number of older persons and the growth of the legal challenges that accompanied it were the social force that brought together different lawyers and scholars, both public and private, from diverse backgrounds to establish a new field. This development of a totally new field of law was not simple, easy, or without challenges or opposition. As I describe below, the creation of this new professional and academic field had some distinct characteristics.

### A. The American Foundations of “Elder Law”

Elder law, as a unique and distinct field of legal expertise and practice, was founded originally in the late 1970s-early 1980s in the U.S. For the most part, outside the U.S. there were very few references to this field prior to the 2000s. It was a fascinating and promising legal development that emerged from joint action by private, public, and social actors.

No doubt in those early years the private sector, especially private American lawyers and not-for-profit professional initiatives, were instrumental in establishing and pushing forward elder law professionalization and academization.<sup>4</sup> These organizations not only represented older persons or organized the lawyers who fought the day-to-day legal battles in courts, but also developed excellent original educational materials in the field. One can mention in this context some key examples:

- **NAELA — The National Academy of Elder Law Attorneys.**<sup>5</sup> NAELA was founded in San Francisco in 1987. This organization, through its various activities, headed the professionalization of the field of elder law and was the home for lawyers and private practitioners who specialized in the field.
- **COLA — The American Bar Association Commission on Law and Aging.**<sup>6</sup> The commission, which was founded in 1979, was headed for many years by Nancy Coleman (until 2002) and by Charlie Sabatino (2002–present).

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3 For a historical analysis of the development of elder law in the United States, see Lawrence Frolik, *The Developing Field of Elder Law: A Historical Perspective*, 1 ELDER L.J. 1 (1993). See also A.D. Bogutz, *Elder Law: A Personal Perspective*, in THEORIES ON LAW AND AGING 1-9 (Israel Doron ed., 2009).

4 For a historical analysis of the role that private and professional organizations played in founding the field of elder law in the United States, see Bogutz, *supra* note 3.

5 For more information about NAELA’s history and activities, see NATIONAL ACADEMY OF ELDER LAW ATTORNEYS, <https://www.naela.org/>.

6 For COLA’s history and activities, see *supra* note 1.

Both Nancy and Charlie were key figures and leaders, and both are still considered leading experts in the field.

- **LCE — Legal Counsel for the Elderly, the legal arm of the AARP (American Association of Retired Persons), in Washington, DC.**<sup>7</sup> As one of the leading lobby organizations, the AARP is the leading representative of the authentic voice of older persons in the U.S. It is not surprising, then, that in the late 1970s it established a powerful and effective section that provides legal information, aid, and even representation for older poor clients.
- **NSCLC — National Senior Citizens Law Center/Justice in Aging.**<sup>8</sup> The NSCLC was established in 1972 and headed for many years by Paul Nathanson. Its mission was to protect the rights of low-income older adults. As most of its advocacy work centered on issues of Medicaid, Medicare, and Social Security, this not-for-profit organization became an expert in these fields.

Alongside these professional and private initiatives, scholarly and academic researchers internalized the need to teach, train, and study this field from within the law schools. Various academic leaders in the field were very visible — at least from my perspective — during the 1990s: Prof. Lawrence (Larry) Frolik,<sup>9</sup> Prof. Marshall Kapp,<sup>10</sup> Prof. Edward (Ned) Spurgeon,<sup>11</sup> Prof. Rebecca (Becky) Morgan,<sup>12</sup>

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7 For LCE's history and activities, see *supra* note 2.

8 For more information about the NSCLC's history and activities, see NATIONAL SENIOR CITIZEN LAW CENTER, <http://nslcarchives.org/>. A few years ago, the NSCLC changed its name to Justice in Aging, see *About Us*, in JUSTICE IN AGING, <http://www.justiceinaging.org/about-us/>.

9 Prof. Frolik wrote some of the most basic textbooks in elder law. See, e.g., LAWRENCE A. FROLIK & RICHARD L. KAPLAN, *ELDER LAW IN A NUTSHELL* (West Nutshell Series, 1st ed. 1995); LAWRENCE A. FROLIK, *AGING AND THE LAW: AN INTERDISCIPLINARY READER* (1999); LAWRENCE A. FROLIK & ALISON BARNES, *ELDER LAW: CASES AND MATERIALS* (3d ed. 2003).

10 Prof. Marshall B. Kapp is a Professor of Law and Professor of Medicine that always brought an interdisciplinary aspect of medico-legal perspectives to elder law as well as a therapeutic jurisprudence approach. He wrote extensively in the field. For example, see MARSHALL B. KAPP, *THE LAW AND OLDER PERSONS: IS GERIATRIC JURISPRUDENCE THERAPEUTIC?* (2003).

11 Among the many important contributions of Prof. Spurgeon was his leadership as the President of the Albert and Elaine Borchard Foundation and as the founder of the Borchard Foundation Center on Law and Aging — the only law-related foundation whose central mission is focused on the rights of older persons. See ALBERT AND ELAIN BORCHARD FOUNDATION, <https://borchardfoundation.org/>.

12 Prof. Rebecca C. Morgan is a unique scholar and leader in the field of elder law. Among other things, she is the past President of NAELA, past President of the Board of Directors of NSCLC, and at the same time an active academic. She is

Prof. Kimberly Dayton,<sup>13</sup> Prof. Robert (Dick) Kaplan,<sup>14</sup> Frank Johns,<sup>15</sup> and many others.<sup>16</sup> These scholars wrote classic textbooks in the field, built its scientific foundations, and taught thousands of students and elder law attorneys; and their writings still serve today as the starting point for many who begin their journey in this field.

Finally, the academic growth and expansion of the field was mirrored by the establishment of legal clinics that specialized in it. Elder law clinics were established in various law schools, and the lawyers and clinical professors who headed them became leading figures in the field. One excellent example is Prof. Kate Mewhinney, who not only established and headed (and still heads) the elder law clinic at Wake Forest University, but also became an expert in comparative elder law and was a significant leader in bringing

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the Boston Asset Management Chair in Elder Law at the Center for Excellence in Elder Law at Stetson University. Of her many publications, see, for example, her recent book, REBECCA C. MORGAN ET AL., *ELDER LAW IN CONTEXT* (2017).

- 13 Prof. Kim Dayton not only wrote the key legal textbooks in the field of elder law (see, e.g., KIMBERLEY A. DAYTON, *ELDER LAW: READINGS, CASES, AND MATERIALS* (2d ed. 2003)), but also founded the first and most extensive internet-based database in the field of elder law, which was known at the time as “KELN — Kansas Elder Law Network.” For many years this was the first “one-stop shop” for every elder law study I conducted. Unfortunately, KELN was purchased, and eventually the database was discontinued.
- 14 Prof. Richard L. Kaplan developed one of the first law school courses on elder law and was one of the founders of *The Elder Law Journal* in 1992. Many of his writings touch upon legal aspects of the economics of aging. See, e.g., Richard L. Kaplan, *Reforming the Taxation of Retirement Income*, 32 VA. TAX REV. 327 (2012).
- 15 Frank Johns was the past President of NAELA and for many years was one of the most visible and active advocates for the rights of older persons. See, e.g., A. Frank Johns, *Guardianship Folly: The Misgovernment of Parens Patria and the Forecast of its Crumbling Linkage to Unprotected Older Americans in the Twenty-First Century — A March of Folly? Or Just a Mask of Virtual Reality?*, 27 STETSON L. REV. 1 (1997).
- 16 One naturally cannot cover all active scholars in the field of elder law, and I must admit that there were many other important scholars in this field. I refer only to those who influenced my personal research, and who I believe were very visible on the national American level, and that in itself testifies to the rich and diverse academic activities and involvement during those years by so many legal scholars. I do apologize, however, to those important elder law scholars who are not mentioned but who also contributed to the field during those years.

external perspectives from Europe, Asia, Australia, and the Middle East into American elder law.<sup>17</sup>

My personal experience in those years was one of great excitement and enthusiasm: a sense of being part of a large intellectual and professional movement that was building new structures, institutions, and fields, all previously unheard of and unchallenged. I remember well the Joint Elder Law Conferences held in Washington, DC, during the early 1990s, which brought together everyone in the field.<sup>18</sup> I was fortunate to meet in person, as a student and as an early-stage scholar, most of the people mentioned above. In general, what united them all was not only their kindness and willingness to share their knowledge, but also a true and sincere dedication to promoting the rights of older persons — which was “infectious” in a good way.

## B. The “Topical” Approach to Elder Law

It was common in the “foundational” years of elder law to view and organize it in a “topical” manner. Certain “classic” legal topics were usually discussed, debated, and studied in most if not all elder law conferences and legal articles at the time. Here are some examples of classic legal topics:

- *Guardianship and its alternatives.* In the early days of elder law, elder guardianship was a key topic. What began as critical legal analysis of the existing law transformed into a legal reform process that swept through all the states of the U.S. This reform moved to limit traditional guardianship while adopting new legal alternatives (e.g., durable powers of attorney or in advance directives). It was naturally followed by much writing, research, and action both in the field and in academia, and has always been seen as a core issue of the field of law and aging.<sup>19</sup>

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17 For more information regarding the Wake Forest Elder Law Clinic, see ELDER LAW CLINIC, <http://elder-clinic.law.wfu.edu/> (last visited Aug. 11, 2019). For examples of the writing of Prof. Kate Mewhinney, see Kate Mewhinney, *The Human Touch: The Clinical Teaching of Elder Law*, 40 STETSON L. REV. 151 (2010).

18 During the early 1990s, AARP, COLA, and NSCR held a joint annual conference in Washington, DC. Although this “joint partnership” has ended, this tradition of annual elder law conferences continues today and is headed by COLA.

19 There is a wealth of writings on elder guardianship. See, e.g., Lawrence A. Frolik, *Plenary Guardianship: An Analysis, a Critique, and a Proposal for Reform*, 23 ARIZ. L. REV. 599 (1981). Moreover, no fewer than three national summits were held in this field in the United States (e.g. Frank A. Johns and Charles P. Sabatino, *Wingspan — The Second National Guardianship Conference*. 31

- *Age discrimination.* The U.S. was one of the first countries to abolish mandatory retirement and to enact a specific law prohibiting age discrimination in employment.<sup>20</sup> This led to a unique body of scholarly writings and legal activity, which served as the basis for broadening the claims for equality for older persons beyond the field of employment law.<sup>21</sup>
- *Estate and in advance legal planning.* Within the unique American tax system (especially in the context of probate, inheritance, and estate), in advance legal planning to preserve property and to minimize taxes has become a legal specialty, forming one of the core fields of knowledge in American elder law.<sup>22</sup>
- *Medicaid planning.* Health insurance and benefits are a key legal concern for older persons in the U.S. However, in most European countries, as well as non-European countries with national universal health insurance, this is a relatively simple legal issue. The American legal system in this field is very different; while there is no “universal” healthcare in the U.S., the older population is covered by a unique, elder-specific national healthcare system (Medicare). Nevertheless, at least in its Medicaid part, the system is legally complicated, varies from state to state, is constantly changing, and requires planning and legal expertise to navigate to one’s best advantage. Hence, for many years, this area was one of the “core” fields of expertise within elder law, and even after some legislative changes that occurred in the last fifteen years, it is still a significant legal issue.<sup>23</sup>

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STETSON L. REV. 573 (2002)). It is not surprising, then, that my personal PhD study was on elder guardianship.

- 20 See Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621-634 (1967). The prohibition of age discrimination under the ADEA is not unlimited and it has various exceptions (e.g., it applies only to persons who are 40 years of age or older; it does not apply to private employers with less than 20 employees; and there are additional exceptions).
- 21 One of the leading scholars in the field, Prof. Howard Eglit, developed his early leadership through his writings on the ADEA. See, e.g., Howard C. Eglit, *The Age Discrimination in Employment Act at Thirty: Where it’s Been, Where it is Today, Where it’s Going*, 31 U. RICHMOND L. REV. 579 (1997).
- 22 See, e.g., Katherine C. Pearson, *Capacity, Conflict, and Change: Elder Law and Estate Planning Themes in an Aging World*, 117 PA. ST. L. REV. 979 (2013).
- 23 See one of many examples of writings in this field, Alison Barnes, *An Assessment of Medicaid Planning*, 3 HOUS. J.L. & POL’Y 265 (2003).

### **C. The Lack of Theory, Empiricism, and Interdisciplinary Work**

While the picture described above involved much excitement and even intellectual “hype,” it was also clear that some important elements were missing from the field. There was relatively little interdisciplinary work, and most of the developments in the field were driven by lawyers, legal scholars, and within the discipline of law.<sup>24</sup> There was almost no activity — certainly not academic or scientific — in the field of elder law outside the U.S. or outside the discipline of law. There was very little empirical, quantitatively based research in the field. Finally, very few scholars provided a broad, integrative, or holistic theoretical platform for the field as a whole.<sup>25</sup> This set the stage, at least in my personal experience, for the next phase of development of elder law.

## **II. THE KEY DEVELOPMENTS — ATTEMPTING TO CARRY OUT MY PERSONAL AGENDA**

Having realized the key elements described above, and become aware of the need to advance these missing aspects, in the early 2000s I tried to sketch for myself and for the broader community the new directions in which elder law should develop in order to advance and continue to grow. In one of my first articles in this field, I pointed out three key areas for future development: the theoretical challenge, the rise of international and comparative elder law, and municipal elder law.<sup>26</sup> I next describe how these three key dimensions — and one more — have developed since.

### **A. The Theoretical Challenge**

Every field of knowledge needs theory. Without theory there is no scientific justification for the existence of a unique field of law. Moreover, knowledge can develop only if there is a theoretical framework that describes and explains its content. The absence of a holistic and theoretical foundation for elder law needed to be rectified. To address this challenge, and through the joint effort

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24 Note that some interdisciplinary cooperation did take place, especially between geriatricians and elder law attorneys. *See, e.g.,* KAPP, *supra* note 10.

25 Most of the general textbooks in the field of elder law at the time were quite extensive. However, usually they were a “collection” of specific “elder law” topics (age discrimination, guardianship, etc.) without an integrative conceptual, theoretical, or ideological framework.

26 *See* I. Doron, *Elder Law: Current Issues and Future Frontiers*, 3 EUR. J. ON AGEING 60, 60–66 (2006).



of leading scholars in the field, the first edited book of its kind was published in 2009, titled *Theories on Law and Aging*.<sup>27</sup> The book included no less than eight different theoretical perspectives on elder law:

(1) A later-life perspective (by Lawrence Frolik), arguing that the essence of elder law is about legally planning for later life in light of inevitable physical and mental decline;

(2) The therapeutic approach (by Marshall Kapp), focusing elder law on the legal consequences of law for the wellbeing (i.e., psychological, physical, financial, and other) of older persons;

(3) A feminist approach (by Kimberley Dayton), employing well established feminist jurisprudence to explain and understand existing elder law rules and legal institutions;

(4) A multidimensional model (by the author), which introduced a “five-dimension” model (legal principles; protection; support; prevention; and planning) in order to conceptualize the field;

(5) A law and economics approach (by Robert Kaplan), which analyzed various laws and regulations concerning older persons via laws of economy;

(6) A disability studies approach (by Doug Surtees), which examines elder law via the lens of disability law and from a disability rights perspective;

(7) An equity theory (by Margaret Hall), which draws on the reality of vulnerability in old age while applying known legal doctrines of undue influence and unconscionability as an overarching framework for elder law;

(8) A mental health theory (by Winsor Schmidt), which locates the core of elder law within mental health issues of mental capacity, personhood, and free will, while proposing a critical examination of these concepts.

This rich and diverse spectrum of theoretical approaches to the field opened the way — in my view — for new and promising studies and scientific collaborations.<sup>28</sup> At the same time, it was a call for further discussions and debate about how other theories might be better suited as a general framework for the field. Indeed, very recent publications have provided new theoretical possibilities (e.g., vulnerability/interdependence-based theories)<sup>29</sup> and only amplify the manifold possibilities in this realm while continuing to build new theoretical frameworks for the field.

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27 See THEORIES ON LAW AND AGEING (Israel Doron ed., 2008).

28 For example, a follow-up book was published, presenting more theoretical approaches. See BEYOND ELDER LAW: NEW DIRECTIONS IN LAW AND AGING (Israel Doron & Ann Soden eds., 2012).

29 See, e.g., Rosie Harding, *Legal Construction of Dementia: Discourses of Autonomy at the Margins of Capacity*, 34 J. SOC. WELFARE & FAM. L. 425 (2012).

## B. The Rise of International and Comparative Law and Aging

As described in Part One, elder law was originally an American “invention.” However, as the aging of societies became a global concern, and as more countries started to deal with the growing policy challenges of the demographic shift, issues of laws and human rights began to appear outside the U.S. as well. Slowly and gradually, elder law expanded beyond the U.S., becoming visible not only on the national level in different countries but also on the international legal level as well.

On the international level, in 2002 the UN held its second global meeting on aging, which produced the leading international soft-law policy instrument known as the MIPAA — the Madrid International Plan of Action on Ageing.<sup>30</sup> However, this important and well-thought-out policy document had a significant drawback: it was not legally binding. During the initial evaluation and appraisal of its impact, it was clear that there were challenges in transforming this policy document into a reality that would change the lives of older people. This resulted in the first UN-led expert group meeting on the rights of older persons, held in Bonn in 2009.<sup>31</sup> This development fit well with new scholarly studies and writing in the field, which had already pointed to the invisibility of the rights of older persons at the international level as well as the need to establish a new international convention for the rights of older persons.<sup>32</sup>

Mention need be made of two key academic reference points in this context: the first was the 2001 article by Prof. Rodríguez-Pinzón and Prof. Martín,<sup>33</sup> the first to provide a thorough analysis of the position of older persons in the international human rights arena. The article was groundbreaking in its powerful conclusion, which pointed out that older persons were mostly invisible and their human rights were inappropriately protected on the level of international

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30 For the MIPAA and its implementation process, see UNITED NATIONS — AGEING: DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <https://www.un.org/development/desa/ageing/madrid-plan-of-action-and-its-implementation.html> (last visited Aug. 11, 2019).

31 See U.N. Dep’t of Econ. & Soc. Affairs, Div. for Soc. Pol’y & Dev. Programme on Ageing, Rep. of the Expert Group Meeting “Rights of Older Persons” (May 5-7, 2009).

32 See, e.g., Israel Doron & Itai Apter, *The Debate Around the Need for an International Convention on the Rights of Older Persons*, 50 GERONTOLOGIST 586, 586–93 (2010). See also Israel (Issi) Doron & Benny Spanier, *International Convention on Rights of Older Persons: Where We Were, Where We Are and Where We are Going?*, 8 GLOBAL AGEING 7, 7–16 (2012).

33 See Diego Rodríguez-Pinzón & Claudia Martín, *The International Human Rights Status of Elderly Persons*, 18 AM. U. INT’L L. REV. 915 (2003).

human-rights law. The second was the first international conference held in 2006 at Stetson Law School and the establishment of the new journal in the field, *The Journal of International Law, Aging and Policy*.<sup>34</sup>

This rich and dynamic activity culminated on the international level in two dramatic developments. The first was the UN General Assembly decision to establish the Open-Ended Working Group on Ageing (OEWGA). The OEWGA began its work in 2011 and will hold its eleventh meeting in 2020.<sup>35</sup> The meetings and activities of the OEWGA triggered actions and interactions in the field of law and aging around the world, as countries were asked to provide information and respond to questions raised during the discussions. The second key international development was the nomination of an Independent Expert on the enjoyment of all human rights by older persons by the UN High Commissioner of Human Rights in 2014. The Independent Expert has submitted various reports and conducted several country visits, in order to contribute to international awareness of the human rights of older persons.<sup>36</sup> As of this writing, both international initiatives are in full force and will continue to advance in the coming years.

Finally, since the 2000s, and as part of the “expansion” of elder law beyond the U.S., a growing body of international comparative elder law studies has been exploring how different jurisdictions address similar legal challenges. Such studies can be found in the field of guardianship,<sup>37</sup> the regulation of long-term care,<sup>38</sup> elder abuse,<sup>39</sup> and others. As more and more countries around the world are becoming exposed to the field of law and aging, and as more international scholars enter the field, this trend of comparing different legal cultures and traditions will only increase (a trend which is already reflected in

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34 See Israel Doron, *From National to International Elder Law*, 1 J. INT’L AGING, L. & POL’Y 43, 45–72 (2005).

35 For general information regarding the activities of the OEWGA, see OPEN-ENDED WORKING GROUP ON AGEING, <https://social.un.org/ageing-working-group/> (last visited May 7, 2019).

36 For information regarding the activity of the Independent Expert, see U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/IEOlderPersons.aspx> (last visited Aug. 11, 2019).

37 E.g., Israel Doron, *Elder Guardianship Kaleidoscope: A Comparative Legal Perspective*, 16 INT’L J.L., POL’Y & FAM. 368 (2002); COMPARATIVE PERSPECTIVES ON ADULT GUARDIANSHIP (A. Kimberley Dayton ed., 2014).

38 E.g., TOWARDS HUMAN RIGHTS IN RESIDENTIAL CARE FOR OLDER PERSONS: INTERNATIONAL PERSPECTIVES (Helen Meenan et al. eds., 2015).

39 E.g., Johanna Gomez, *A Comparative Analysis of International Laws that Protect the Elderly from Abuse* (2014) (unpublished S.J.D. thesis, Golden State University School of Law) (on file with author).

the establishment of a cross-cultural CRN — Collaborative Research Network — within the Law and Society Association, as well as the establishment of ELAN — the European Law and Ageing Network).

### **C. The Rise of Regional, National, and Local Law and Aging: Europe, Africa, Latin America**

Exciting new developments in the field of elder law have occurred not only on the global level but, even more so, on the regional and national levels. To begin with, the first regional, binding, international document with regard to the human rights of older persons entered into force in 2017. This was the Organization of American States' Inter-American Convention on Protecting the Human Rights of Older Persons.<sup>40</sup> Yet another promising regional development is the action of the African Union, which enacted in 2015 its own unique Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons.<sup>41</sup> Even the European region, which has been quite opposed to the new convention, has adopted new policies and resolutions emphasizing the need to address the human rights of older persons.<sup>42</sup>

These regional developments have been accompanied by impressive national and local developments. Here are a few examples of what appears to be a broader trend of national developments in the field of elder law:

- In the province of British Columbia, Canada, the Canadian Centre for Elder Law was established in 2003, and was headed at first by Laura Watts, as part of the BC Law Institute. The center holds annual conferences and publishes research and policy papers.<sup>43</sup> At the same time, the Canadian lawyer and scholar Ann Soden has published the first Canadian textbook

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40 See Organization of American States, Inter-American Convention on Protecting the Human Rights of Older Persons, A-70, (June 15, 2015), [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_a-70\\_human\\_rights\\_older\\_persons.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp).

41 See African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Jan. 31, 2016), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples%E2%80%99-rights-rights-older-persons>.

42 See EUR. CONSULT. ASS., *Steering Committee for Human Rights (CDDH), Recommendation (2014)2* (Feb. 19, 2014), <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/work-completed/human-rights-older-persons> (The adoption of Recommendation (2014)2 of the Council of Europe on the promotion of human rights of older persons by the Committee of Ministers).

43 See CANADIAN CENTRE FOR ELDER LAW, <http://www.bcli.org/ccel> (last visited Aug. 11, 2019) (CCEL Website). It should be noted that the Advocacy Centre for the Elderly (ACE) had existed in Toronto prior to the CCEL but was mostly

- on elder law and has established the National Institute of Law, Policy and Aging, based in Montreal, along with an elder law clinic.<sup>44</sup>
- In Australia, the Center for Elder Law was established in the early 2000s, as part of the University of Western Sydney. The center, through the leadership of Prof. Sue Fields and Prof. Carolyn Sappideen, has promoted Australian research in the field and also established a new law journal in the field, *The Elder Law Review*.<sup>45</sup>
  - In Sweden, a group of legal scholars from Lund University, headed by Prof. Ann Numhauser-Henning and Prof. Titti Mattsson, have established the NORMA Elder Law Research Environment. This group has been engaged in various legal studies in the field of law and aging, specifically within the Scandinavian legal context.<sup>46</sup>
  - In Belgium, a group of scholars headed by Prof. Paul De-Hert at Vrije University have been engaged in groundbreaking studies regarding technology, law, and aging, e.g., in the context of ICT — Information and Communication Technology.<sup>47</sup>
  - In the UK,<sup>48</sup> a wealth of new reports, legislative reforms, and academic publications in the field of law and aging have appeared, and a new wave of elder law scholars such as Prof. Jonathan Herring,<sup>49</sup> Prof. Rosie Harding,<sup>50</sup> and Prof. Helen Meenan<sup>51</sup> have taken on this field as part of their core academic activity.

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focused on providing legal aid to individuals. See ADVOCACY CENTRE FOR THE ELDERLY, <http://www.advocacycentreelderly.org/> (last visited Aug. 11, 2019).

44 See ANN SODEN, *ADVISING THE OLDER CLIENT* (Ann Soden ed., 2005).

45 For the journal's website, see WESTERN SYDNEY UNIVERSITY ELDER LAW REVIEW, [https://www.westernsydney.edu.au/elr/elder\\_law/elder\\_law\\_review\\_elr](https://www.westernsydney.edu.au/elr/elder_law/elder_law_review_elr) (last visited Aug. 11, 2019).

46 See NORMA ELDER LAW RESEARCH ENVIRONMENT, <http://www.law.lu.se/#!elderlaw> (last visited June 05, 2019).

47 See, e.g., Emilio Mordini et al., *Senior Citizens and the Ethics of E-inclusion*, 11 ETHICS & INFO. TECH. 203 (2009).

48 It should be acknowledged that books on law and aging did appear in the UK prior to the 2000s, e.g., GORDON R. ASHTON, *ELDERLY PEOPLE AND THE LAW* (1995); and the British SFE — Solicitors for the Elderly — commenced activities in the mid-1990s. However, at that stage these activities were in general anecdotal and did not reflect a broad interest in the field.

49 See, e.g., JONATHAN HERRING, *OLDER PEOPLE IN LAW AND SOCIETY* (2009).

50 See, e.g., ROSIE HARDING, *DUTIES TO CARE: DEMENTIA, RELATIONALITY AND LAW* (2017).

51 See, e.g., *supra* note 38.

Many other individual scholars are leading the way in their countries.<sup>52</sup> These are naturally only anecdotal and very limited examples.<sup>53</sup> However, in my view they reflect a real and recent growth of national legal interest, research, and publications in the field of rights of older persons all around the world — none of which existed before the early 2000s.

#### D. The Rise of Law and Society and Empirical Elder Law

“Traditional” or common legal scholarship is usually “normative.” It is based on textual analysis and founded on moral, value-based, or ideological argumentation. Even case law analysis is usually based on a descriptive analysis of a single case and the law, and then moves on to issues of what “ought” to have been the decision or what “should” have been decided. These kinds of “philosophical” and legalistic rhetoric are commonly not framed within any “methodology” (in the common “methodology” tradition of the social sciences) and most often do not engage in any quantitative, statistical analysis of the issue.

For quite some time now, there have been calls within the legal discipline to engage more in what is known as ELS — Empirical Legal Studies — and to adopt more rigorous empirical methods as part of a better understanding of the interrelationships between law and reality.<sup>54</sup> This call joins another recent call, which has become part of the mainstream in the social sciences, for evidence-based practice or policy, to ensure that these are not implemented based purely on intuitive assumptions or without proper evaluation.<sup>55</sup>

As described in Part One, during the foundational years there were very few empirical articles on elder law. Most of the legal writing in this field was non-empirical and within the “traditional” normative style of writing. In recent

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52 E.g., in Poland, Prof. Barbara Mikolajczyk, has been leading the development of the field in her country, e.g., Barbara Mikolajczyk, *Is the ECHR Ready for Global Ageing?*, 17 INT’L J. HUM. RTS. 511 (2013). In France, Prof. Albert Evrard has been leading the field, e.g., Albert Evrard & Florence Fresnel, *Droits des personnes âgées, Le retard de la France [Rights of Elderly People, the Delay of France]*, 11 ÉTUDES 41 (2016).

53 E.g., over the years I have met with various Japanese legal scholars, who have written about the unique developments in Japanese elder law. I am aware of a rising interest in this field in demographic “giants” such as China, India, and Brazil. It is only my personal linguistic limitations that probably prevent me from presenting a much richer picture of the dynamic reality in the field.

54 See, e.g., Theodore Eisenberg, *The Origins, Nature and Promise of Empirical Legal Studies and a Response to Concerns*, 2011 U. ILL. L. REV. 1713 (2011).

55 See, e.g., EVIDENCE-BASED PRACTICES (Bryan G. Cook et al. eds., 2013).

years, however, there have been some signs of change. More and more good examples of ELS in the field of law and aging have been appearing, basing their legal arguments not only on moral or theoretical grounds but rather on empirically analyzed data. Some studies have quantitatively examined courts' rulings;<sup>56</sup> some quantitative studies have explored broader social datasets and examined the statistical interactions between legal elements and social elements;<sup>57</sup> and some studies have used qualitative, phenomenological approaches to examine the subjective and authentic meanings that older persons have in their engagements with the legal system.<sup>58</sup>

As more legal scholars are educated and trained in the ELS approach, and as courts, policymakers, and research funders increase their demand for evidence-based legal argumentation, it is only reasonable to assume that this trend will continue to develop within the field of elder law. Moreover, as detailed below, I would argue that the field of law and aging should proactively strive to create integrative and holistic academic platforms, through collaborative research centers and the encouragement of interdisciplinary partnerships.

### III. CONFLICTING POTENTIALS: AN ATTEMPT AT INTEGRATION

As described in Parts One and Two, the field of law and aging has transformed significantly since the 1990s. I was fortunate to be both a witness and an active contributor to these significant changes and developments. So, where do we go from here? What is the future of the field of law and aging in light of both its unique American historical roots and its current rich crop of international, empirical, and theoretical developments? In this last Part, I sketch some ideas for and personal thoughts about the new directions in which our field should develop in the coming years.

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56 See, e.g., Benny Spanier et al., *Older Persons and the European Court of Human Rights*, 28 J. CROSS-CULTURAL GERONTOLOGY 407 (2013); Israel Doron, *Older Europeans and the European Court of Justice*, 42 AGE & AGEING 604 (2013).

57 For examples of using the American HRS — Health and Retirement Study dataset — to learn about elder law issues, see RUDOLPH G. PENNER ET AL., *LEGAL AND INSTITUTIONAL IMPEDIMENTS TO PARTIAL RETIREMENT AND PART-TIME WORK BY OLDER WORKERS* (2002).

58 See, e.g., P. Werner & I. Doron, *The Legal System and Alzheimer's Disease: Social Workers' and Lawyers' Perceptions and Experiences*, 59 J. GERONTOLOGICAL SOC. WORK 478 (2016).

## A. The Rise of Gerontological Jurisprudence

Gerontology (i.e., the social science of aging) by nature is a multi- and interdisciplinary field. One cannot be a “gerontologist” without having some knowledge in sociology, psychology, medicine, economy, law, (and more) — as they relate to the lives of older persons.<sup>59</sup> This is specifically true for gerontological theories such as the life-course, intergenerational ambivalence, disability, or vulnerability approaches. Yet for many years, within the rich interdisciplinary development of gerontology, law was missing altogether or received little attention. This “disconnect” between the disciplines and the call for more interaction and mutual discussion had been observed as early as the 1970s,<sup>60</sup> and was argued yet again during the 1980s<sup>61</sup> and the 2000s.<sup>62</sup> In recent years this has culminated in a direct call for establishing a new body of knowledge known as “jurisprudential geriatrics” (or geriatric jurisprudence),<sup>63</sup> and in a recent Borchard Foundation study that focused on how to “connect” lawyers and gerontologists.<sup>64</sup> This is certainly a field in which, although awareness of the need for action has existed for decades, real action has yet to be taken. I would like to believe that this will change in coming years.

## B. Ageism and Elder Law

Ageism is not new to gerontology. As early as the late 1960s, Dr. Robert Butler coined the term and presented its first conceptualization. Since then there has been a flourishing of definitions, methodological operationalization in various ways, and empirical studies of why and how ageism operates in real life.<sup>65</sup>

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59 See, e.g., John H. Skinner, *Transitioning from Multidisciplinary to Interdisciplinary Education in Gerontology and Geriatrics*, 21 GERONTOLOGY & GERIATRICS EDUC. 73 (2001).

60 See Elias S. Cohen, *Editorial: Law and Aging, Lawyers and Gerontologists*, 18 GERONTOLOGIST 229 (1978).

61 See Martin Levine, *Research in Law and Aging*, 20 GERONTOLOGIST 163 (1980).

62 See Israel Doron, *Bringing Law to the Gerontological Stage*, 62 INT’L J. AGING & HUM. DEV. 237 (2006).

63 See, e.g., Israel Doron & Helen Meenan, *Time for Geriatric Jurisprudence*, 58 GERONTOLOGY 193 (2012).

64 See N. Kohn et al., *Identifying Connections Between Elder Law and Gerontology: Implications for Teaching, Research and Practice*, 25 ELDER L.J. 69 (2017).

65 See, e.g., AGEISM: STEREOTYPING AND PREJUDICE AGAINST OLDER PERSONS (Todd D. Nelson ed., 2002).



Ageism is also not new to elder law. In 1996 Prof. Linda Whitton published her article “Ageism: Paternalism and Prejudice,”<sup>66</sup> following it up in 1998 with “Re-examining Elder Law Practices: Reflections on Ageism.”<sup>67</sup> These two articles provided a detailed perspective on the interaction between ageism and law. However, when one examines the rich and diverse developments in studies of ageism in the social and medical sciences and compares them with the amount of attention, research, and development that it has received in the field of elder law, it is quite clear that elder law lags significantly behind.

Recent activities in the field show that there remains significant potential for research and growth. For example, a recent European COST Action (a European-funded collaborative research network), Ageism — A Multi-National, Interdisciplinary Perspective, which has focused on the international and comparative aspects of ageism, has established a subgroup dedicated to the legal aspects of ageism.<sup>68</sup> Looking to the future, ageism should continue to be studied and researched within the framework of its legal implications.

### C. International Elder Law: Human Rights of Older Persons

International elder law raises two different challenges: the first is to anchor the human rights of older persons in a binding instrument. In this legal context some significant developments have occurred in the last few years: the OAS’s Inter-American Convention on Protecting the Human Rights of Older Persons is in force, and the African Union’s Additional Protocol in this field, while not yet in force, eventually will be. Moreover, in almost every existing human rights instrument, there are already explanatory notes and advisory documents that provide guidance on their interpretation for and application to older persons.<sup>69</sup> However, the main challenge in this context, i.e., the establishment of a new international convention for the rights of

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66 Linda S. Whitton, *Ageism: Paternalism and Prejudice*, 46 DEPAUL L. REV. 453 (1997).

67 Linda S. Whitton, *Re-examining Elder Law Practices: Reflections on Ageism*, 12 PROB. & PROP. 8 (1998).

68 For more information regarding the COST action and the subgroup on law and ageism, see EUROPEAN COOPERATION IN SCIENCE & TECHNOLOGY, [http://www.cost.eu/COST\\_Actions/isch/IS1402](http://www.cost.eu/COST_Actions/isch/IS1402) (last visited May 16, 2019). See also AGEING, AGEISM AND THE LAW: EUROPEAN PERSPECTIVES ON THE RIGHTS OF OLDER PERSONS (Israel Doron & Nena Georgantzi eds., 2018).

69 See, e.g., O.H.C.H.R. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 27* (Oct. 28, 2010) <http://www.ohchr.org/EN/Issues/OlderPersons/Pages/CEDAW.aspx> (on older women and protection of their human rights).

older persons at the UN level, is still extant, and the struggle to overcome the present inability to reach an agreement is probably one of the most urgent.

The second challenge, which is not unique to the international level but extends to the national and local levels as well, concerns the actual use and implementation of these new international instruments. The use of these legal tools remains infrequent, it seems, and current empirical studies suggest that there is yet great potential for their implementation.<sup>70</sup> Moreover, the challenge in the international arena is not only to implement but also to operationalize — i.e. define measurable outcomes — these new human rights instruments. How does one measure or quantify the existence and enforcement of human rights in old age, such as the right to long-term care? Or the right to housing? Or even the right to independence and autonomy? Initial attempts to address these issues can be found, for example, in the effort to construct an “IOPHRI — International Older Persons Human Rights Index”<sup>71</sup> — and in the ruling of the European Social Commission on the reports under the European Social Charter.<sup>72</sup> In my view this is certainly an important future direction.

#### **D. The Rise of Intersectional Law and Aging**

More and more legal debates in the field of the human rights of older persons address people who are not only “old” but also “something else”: for example, “older woman,” “older immigrant,” “older disabled,” or, even more complicated,

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*See also* CESCR U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 6* (Dec. 08, 1995) <http://www.refworld.org/docid/4538838f11.html> (on the economic, social and cultural rights of older persons).

70 Existing research into both the African HR system and the European system suggests that there is still little use of these instruments — either the binding elements or the “soft law” abilities. *See, e.g.*, Benny Spanier et al., *In Course of Change? Soft Law, Elder Rights, and the European Court of Human Rights*, 34 *LAW & INEQ.* 55 (2016); *see also* Israel Doron et al., *The Rights of Older Persons Within the African Union*, 10 *ELDER L. REV.* 1 (2016).

71 *See* Benny Spanier et al., *From Well-Being to Rights: Creating an International Older Persons’ Human Rights Index (IOPHRI)*, 24 *ELDER L.J.* 245 (2017). *See also* Israel Doron et al., *Comparing Older Persons’ Human Rights: Exploratory Study of the International Older Human Rights Index (IOPHRI)*, 59 *GERONTOLOGIST* 625 (2019).

72 *See* ISRAEL DORON & BENNY SPANIER, *the European Social Charter and the Rights of Older Persons*, in *AGEING, AGEISM AND THE LAW: EUROPEAN PERSPECTIVES ON THE RIGHTS OF OLDER PERSONS* (Israel Doron & Nena Georgantzi eds., 2018).

“older Afro-American lesbian.”<sup>73</sup> These unique human experiences cannot be reduced to the notion of “multiple discrimination” or “add-on” social stigmas. They require the development of a jurisprudence, of the law and framing of aging, which can provide a better path for the legal analysis and treatment of those older persons who age with other sociocultural elements that challenge their ability to enjoy dignity and human rights in later life.<sup>74</sup>

Some examples of this important direction can be found in the recent study of the human rights of aging members of the LGBTQ+ community. Various writings and studies in this field have shown not only the unique legal issues and challenges faced by aging members of the LGBTQ+ community,<sup>75</sup> but also the unique intersectionality of aging and ageism within this community.<sup>76</sup>

### **E. The Stagnation of American Elder Law and the Need for New Leadership?**

As someone who started his way in the field of elder law within the American context, I look with some concern at the current state and foreseeable future of the field — at least from an academic perspective. Many members of the elder law leadership I knew in the 1990s (and mentioned in Part One of this Article) have either retired or are nearing retirement. Declining enrollments and financial pressures on some law schools have resulted in the closing of some elder law clinics<sup>77</sup> and, at least from my personal impression, in a

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73 An example of one such topic is aging prisoners and their legal rights. *See, e.g.*, Israel Doron & Helene Love, *Aging Prisoners: A Brief Report of Key Legal and Policy Dilemmas*, 2 INT’L J. CRIMINOLOGY & SOC. 322 (2013).

74 Quite a unique example of such a case was only recently debated in the European Court of Human Rights, regarding the social construction of the rights of an “older” woman (age 52) to sexual life. The court had to decide whether to focus on “gender-based” discrimination or instead on “age-based” discrimination. *See* Eugenio Montovani et al., *Ageism, Human Rights, and the European Court of Human Rights: A Critical Analysis of the Carvalho v. Portugal Case (2017)*, 11 DEPAUL J. SOC. JUST. (2018).

75 *See, e.g.*, Sue Westwood, “*I May Be Older but I Ain’t No ‘Elder’*”: A Critique of “Elder Law”, 21 TEMP. POL. & C.R. L. REV. 485 (2012); *See also* Nancy J. Knauer, *Legal Consciousness and LGBT Research: The Role of the Law in the Everyday Lives of LGBT Individuals*, 59 J. HOMOSEXUALITY 748 (2012).

76 *See, e.g.*, Orna Meri-Esh & Israel Doron, *Aging with Pride in Israel: An Israeli Perspective on the Meaning of Homosexuality in Old Age*, 34 AGEING INT’L 42 (2009).

77 For example, the merger of William-Mitchell Law School with Hamline University School of Law, or the John Marshall Law School becoming part of the University

decrease in tenured law professors who define themselves as “elder law” experts, as this appears to be too narrow a niche field.

Although there are several rising new leaders in the field of elder law in the U.S. (e.g., Prof. Nina Kohn, from Syracuse University, and Prof. Alex Boni-Saenz, from the Chicago-Kent College of Law), even they find it hard to dedicate their full energies to the field, as they are required both to teach various other courses and to publish beyond “elder-law-specific” journals. Usually, when promotion time arrives, they need to show that they can contribute to the law school beyond their narrow expertise in elder law.

These concerns are not only based on my subjective impressions but — at least in part — also supported by the findings of a recent study by Kohn and Spurgeon,<sup>78</sup> which showed that although the number of elder law courses has more than doubled in the past fifteen years, nonetheless the field remains marginalized for various reasons. For example — and in accord with my personal impression — they found a growing trend in law schools of hiring adjunct professors (and not full tenure-track professors) to teach elder law courses. As Kohn and Spurgeon correctly point out, this trend has significant implications for the future scholarly development of the field, as adjunct faculty tend to publish less, and the rest of the tenure-track faculty tend to be less involved in issues of law and aging and to integrate them less in their own courses. Looking to the future, it is my view that American legal scholars in the field of law and aging face a challenge in developing and securing the future leadership in the field.

## **F. New Issues and Underestimated Potentials**

Returning to the “topical” approach to elder law, I believe that there are some specific topics that the field of law and aging has neglected and should pay more attention to as we look to the future.

### *1. Dementia*

Everyone who works in the field of aging is aware of the centrality of dementia (or, in its new clinical name, major neurocognitive disorder) to this field. From a simple demographic perspective, the numbers and percentages of older persons (and family members) that are experiencing and facing dementia are

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of Illinois.

78 See Nina A. Kohn & Edward D. Spurgeon, *Elder Law Teaching and Scholarship: An Empirical Analysis of an Evolving Field*, 59 J. LEGAL EDUC. 414 (2010).

nothing less than dramatic.<sup>79</sup> More importantly, however, dementia raises new and challenging ethical and legal questions that remain unanswered. These issues are not only about “traditional” legal questions regarding “capacity” or “legal decision making”; they also go deeper into issues of personality, supportive/shared decision making, legal rights of informal caregivers, and much more.<sup>80</sup> It is a necessity in my view that much more socio-legal research be conducted in this field.

### 2. *The Legal Challenges of Economics*

Few scholars of elder law have focused on the interaction between law, economics, and aging, from the traditional rational and behavioral economic approach. One of these few is Judge Richard Posner, who has written on various elements of law and economics, and wrote a seminal book in the field.<sup>81</sup> But this was a one-time project for him in this area. Prof. Richard Kaplan has been writing for many years on economics and legal issues around retirement and the finance of long-term care,<sup>82</sup> healthcare,<sup>83</sup> and estate tax.<sup>84</sup> Overall, however, the amount of research and writing on the intersection of finance, economics, and elder law is relatively low, and true interdisciplinary scholarship in this field is still missing.

### 3. *New Directions in Labor Law and Corporate Social Responsibility*

Beyond the traditional law and economics approach describe above, new legal directions can also be found in the context of corporate and labor law as well. Not only is there a well-established awareness of the importance and centrality of big global corporations vis-à-vis human rights in general; there are also some new developments more specifically related to corporations and the rights of older persons. Two examples can be given in this field. The first

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79 For a review of current global trends, see Israel (Issi) Doron, *The Demographics of Dementia*, in *THE LAW AND ETHICS OF DEMENTIA* 15 (Charles Foster et al. eds., 2014).

80 The first signs of the growing legal interest in this field can already be found. See, e.g., *THE LAW AND ETHICS OF DEMENTIA* (Charles Foster et al. eds., 2014); ROSIE HARDING, *DUTIES TO CARE: DEMENTIA, RELATIONALITY AND LAW* (2017).

81 RICHARD A. POSNER, *AGING AND OLD AGE* (1995).

82 See, e.g., Richard L. Kaplan, *Retirement Planning's Greatest Gap: Funding Long-Term Care*, 11 *LEWIS & CLARK L. REV.* 407 (2007).

83 See, e.g., Richard L. Kaplan, *Analyzing the Impact of the New Health Care Reform Legislation on Older Americans*, 18 *ELDER L.J.* 213 (2011).

84 See, e.g., Richard L. Kaplan, *Crowding Out: Estate Tax Reform and the Elder Law Policy Agenda*, 10 *ELDER L.J.* 15 (2002).

concerns what is known as the age-friendly workplace. The extent to which large corporations adopt policies, contractual commitments, and agreements with labor unions that reflect their core business values with regard to their older workers can immediately affect this population.<sup>85</sup> A second example is the field known as CSR — corporate social responsibility. In this context, corporations can be examined with regard to their actions not only toward the community at large but more specifically toward the older population.<sup>86</sup>

#### *4. The Time for Municipal Law and Aging: Age and Legally Friendly Cities*

One specific field of elder law that needs to be better developed, so I've argued for many years, is municipal elder law — the use of local regulatory powers to advance the rights of older residents. Not only did I identify this field in my general article in 2005, but with the support of the Borchard Foundation, and with the cooperation of Prof. Kim Dayton, I published a series of articles that provided both empirical evidence for the need to develop this field and a conceptual framework for future local legislation in the field.<sup>87</sup>

With the growing interest in “age-friendly cities”<sup>88</sup> and the continuing expansion of big cities, I am quite sure that it is only a matter of time until local municipalities as well as local grassroots organizations begin to pick up and develop this field of elder law.

#### *5. The Legal Challenges of Technology and Aging*

Like so many other fields of science and law, one cannot look to the future without accounting for the technological developments that are on their way. While stereotypically related to younger persons, technology in recent years has shown a significant shift in its relevance to older persons. This has been the outcome not only of older persons “connecting” to modern technology, but also of the recognition by business and government of the technology's

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85 See, e.g., Arti Appannah & Simon Biggs, *Age-Friendly Organizations: The Role of Organizational Culture and the Participation of Older Workers*, 29 J. SOC. WORK PRAC. 37 (2015).

86 See more on CSR — Corporate Social Responsibility; See Dirk Matten & Jeremy Moon, *Corporate Social Responsibility Education in Europe*, 54 J. BUS. ETHICS 323 (2004).

87 See Kim Dayton & Israel (Issi) Doron, *Municipal Elder Law: A Minnesota Perspective*, 20 ELDER L.J. 33 (2012). See also Israel (Issi) Doron & Kim Dayton, “Thinking Locally” Law, *Aging and Municipal Government Findings from a National Survey*, 21 TEMP. POL. & C.R. L. REV. 365 (2012).

88 See, e.g., Tine Buffel et al., *Ageing in Urban Environments: Developing ‘Age-Friendly’ Cities*, 32 CRITICAL SOC. POL’Y 597 (2012).

potential to accommodate future social needs of the older population. The use of robots, smart-homes, computerized assistive devices, tele-medicine, artificial intelligence, and many others is beginning to boom in the context of providing solutions for various needs of older persons and their family members.

Yet each of these technologies raises novel questions and challenges regarding their ethics, their legal regulation, and the rights of older persons as they consume and use them. What can elder law contribute to this field? How can elder law scholars participate in this technological drive? Legal writings in this field have already begun to appear, for example in the context of using GPS tracking technology for persons with dementia<sup>89</sup> or placing surveillance cameras in nursing homes.<sup>90</sup> In sum, it seems that the vast and dynamic changes in modern technology, and their huge implications for older populations, will certainly demand specific attention and new legal solutions.

#### 6. Ageivism: Time for Ideology

Lastly, I believe that if law and aging is (or should be) part of a broader social movement that promotes the human rights of older persons, it needs an ideology to back it up. Prof. Nina Kohn has written both on how elder rights are the next civil rights movement<sup>91</sup> and on how lawyers can play an important role in fostering an elder rights movement.<sup>92</sup> However, these writings fail to introduce the ideological foundations for such a social movement.

In recent years I have proposed developing a new ideology in this field: ageivism.<sup>93</sup> As described elsewhere, “‘ageivism’ refers to an ideology which serves as the basis for calls for social action (echoing similar ‘isms,’ e.g. feminism, or socialism) on the protection and promotion of the rights of older persons based on the grounds of political, social and economic principles of identity, dignity and social justice.”<sup>94</sup> This ideology builds both on notions

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89 For example, Karen Eltis, *Predicating Dignity on Autonomy? The Need for Further Inquiry into the Ethics of Tagging and Tracking Dementia Patients with GPS Technology*, 13 ELDER L.J. 387 (2005).

90 For example, Selket Nicole Cottle, “*Big Brother*” and *Grandma: An Argument for Video Surveillance in Nursing Homes*, 12 ELDER L.J. 119 (2004).

91 Nina A. Kohn, *Elder Rights: The Next Civil Rights Movement*, 21 TEMP. POL. & C.R. L. REV. 321 (2012).

92 Nina A. Kohn, *The Lawyer’s Role in Fostering an Elder Rights Movement*, 37 WILLIAM MITCHELL L. REV. 49 (2011).

93 Israel Doron, *Re-thinking Old Age: Time for Ageivism*, 27 HUM. RTS. DEFENDER 33 (2018). See also THE AGEIVISM WEBSITE, [www.ageivism.org](http://www.ageivism.org) (last visited Sept. 4, 2019).

94 Doron, *supra* note 93, at 35.

of politics of identity and on more sophisticated concepts of social power relationships. A key challenge in the field of law and aging is to engage older people with this new ideology while transforming this social elder rights movement into an ideological movement.

## CONCLUSION

From a personal perspective, the last twenty-five years in the field of elder law have been very exciting. I was lucky and honored to have the opportunity to personally contribute to and participate in key meetings and activities that drove various developments in the field. I was also fortunate to meet and work together with some of the founding fathers and mothers of the field of elder law and to have the opportunity to teach and mentor rising new leaders in the field. Elder law today looks very different from what it was twenty-five years ago, and in many respects it is a much more mature, established, and globally appreciated field of expertise — both within law and beyond.

However, this development did not occur on its own. How the field of law and aging will eventually develop is not just a matter of luck. We, the community of scholars, activists, and researchers in the field, have — some — ability to influence and shape future trends. Therefore, it is our responsibility to continue to work hard, train and educate new students, improve and advance our research, and advocate for and promote the field of law and aging. I am already looking forward to my next article, celebrating fifty years of law and aging.