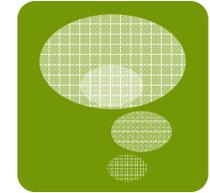


Reason, Aging and Dignity:

The challenge presented by
law's premium on reason to
developing an anti-ageist
approach to law

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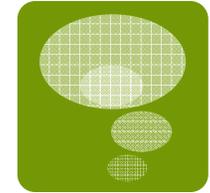
Introduction



- The law’s premium on reason defines who counts as human and who qualifies as a legal person
- The real or imagined absence of reason adversely affects the legal and ethical status of many, including children, those with mental disabilities, nonhuman animals, and older persons
- The focus on reason perpetuates the dominant cultural negativity toward aging and older persons, and is a challenge to an anti-ageist approach in law

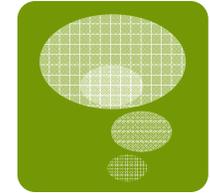
I will outline this challenge to the personhood of older persons and suggest steps legal reform may take to address it

Part I: Premium of Reason



- “Hard cases make bad law”
- Legal person is always a rational actor
- The law has subsumed reasonableness with ordinariness
- This standard forces marginalized groups outside the realm of “normalcy”

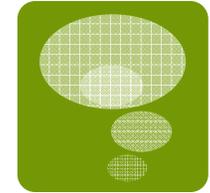
Part I: Premium of Reason cont.



- Why should the capacity to reason receive so much importance?
- Reason, morality and human vs. emotion, nature and the nonhuman
- Focusing on capacity to reason in order to increase consideration for the marginalized
- The more difficult way to seek recognition of personhood: a just society embraces difference



Part II: Impact of Premium on Adults



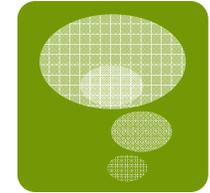
a) Non-Reasoners Marginalized

Although “the law does forgive certain failures to attain the standard of the reasonable person... it is not similarly generous to those who lack intelligence.”

---Mayo Moran’s study on negligence and the reasonable person in *Rethinking the Reasonable Person: An Egalitarian Reconstruction of the Objective Standard*



Part II: Impact of Premium on Adults cont.



b) Liberalism not helpful



Martha Nussbaum's *Frontiers of Justice: Disability, Nationality, Species Membership*

- The flaws of Rawlsian social contract theory
- 3 subject groups still waiting for justice from the legal order:
 - 1) those with mental disabilities
 - 2) those in the global South
 - 3) nonhuman animals
- A radical modification focusing on *core human capabilities* is required so that those with mental disabilities can achieve legal personhood

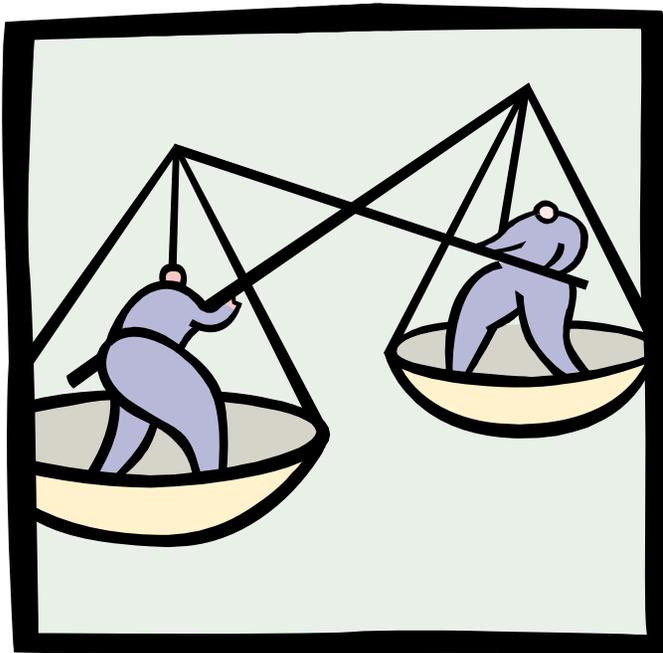
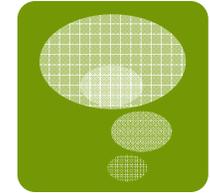
Part II: Impact of Premium on Adults cont.

c) Human Sanctity not helpful



- The “sanctity of human life” as a protector of dignity
- This discourse is dependent on a distinction between humans and nonhumans based on reason
- The law participates in this narrative, and reason serves both as the mark of legal personhood and humanness

Part III: Reason Levelled



- Reason as a basis for conferring dignity should be eliminated
- No particular trait should replace it as a measure of personhood
- The human/nonhuman boundary must, therefore, also be abolished
- The first step: a change in legal discourse

Conclusion

- What must be done
- The difficulties that the law presents
- The difficulties that dominant culture presents
- The way forward

