

Bright Lines: Status, Recognition and the Elusive Nature

The labels young and old only make sense relative to one other. Indeed, what we understand by these terms is determined as much by what they do not represent as by what they do—for example, we may define old age as the opposite of youth, and vice versa. Oppositional and hierarchical relationships dominate language, in part because comparison and categorization are analytical tools central to human understanding. Without the tools to distinguish between apparently different groups, qualities, or circumstances, we would be less able to make sense of our world.

The fundamental problem with such a compartmentalized way of thinking, however, is that our lived experiences do not normally accommodate us with tidy natural categories. Distinctions that make sense based on one set of criteria seem indefensible or even absurd when the same data is sliced along different analytical or temporal lines. Our world is simply too complex to be packaged and labelled with any authority; thus, the distinctions we make are informed by, for example, our own limited perceptions, the context of the decision, and the purposes we are hoping to serve. More

often than not, the bright lines we draw exist largely in our minds and are not the product of any real distinction or objective difference. In each context, of course, some ways of dividing up our world make more intuitive sense to us than others. But it bears remembering that we always operate with some degree of uncertainty. By drawing these lines we are engaging in a creative, culturally specific and world-defining process.

In the context of youth and ageing, the slippery and socially constructed nature of our categories becomes especially clear. The human life span is a continuum. Yet for many purposes, society describes the ageing process in terms of a series of near-watertight compartments: federally-defined childhood ends and adulthood begins at exactly 18 years of age, and adulthood gives way to old age at 65. There may be defensible physical, psychological or developmental reasons for setting these general boundaries. More importantly, they are socially, legally and politically meaningful. As a society we cannot take these boundaries for granted, given the bundles of rights, roles and responsibilities that we have attached to each status. But there is an element of arbitrariness

Cristie Ford received her Bachelor of Arts in History from the University of Alberta, in Edmonton, where she was raised.

A recent graduate of the University of Victoria Faculty of Law, she is currently articling with Guild, Yule & Company in Vancouver.

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in our line-drawing. Not all 18-year-olds are willing or able to assume the social responsibilities attached to adult status, for example, while others seem ready to do so at that age, or even earlier. Similarly, the ageing process is both an individual and a gradual one: we will not all be equally situated physically, mentally, or even financially when we reach 65. Nor will we wake up old one morning, simply because we have received our first pension cheque.

Indeed, it does not seem possible to pin down with certainty even the beginnings and endings of our lives. The abortion debate has highlighted the extent to which the very moment that one first comes to exist as a person is socially defined. It is society, not nature, that determines whether life begins at the moment of conception, at birth, or at any precise point in between. And it is not a value-neutral choice.

Another striking example of a socially created life cycle, and an important manifestation of the way in which age relates to status and legal recognition, has emerged in British Columbia's new *Representation Agreement Act*.¹ This statute, which is likely to come into force later this year, will change significantly the options available to ageing individuals seeking to order their affairs: it repeals the province's current enduring power of attorney provisions and replaces them with vastly expanded avenues for pre-planned personal, property and health care representation. The Act will allow adults, while they are

legally capable, to make advance directives and appoint their own substitute decision-makers to carry out their wishes and make decisions for them should they become incapable in the future.

This is the other end of the ageing spectrum: in creating a vehicle for substitute decision-making, the legislation defines a death of sorts—the death of an autonomous political and legal self. The *Representation Agreement Act* is progressive in its emphasis on maximizing the self-determination of the individual. In a sense, it is an attempt to push the endpoints of autonomous political and legal life beyond those events that would otherwise limit it. But the actual activation of a representation agreement marks the point at which, for reasons of perceived incapacity, a previously autonomous person can no longer exercise his or her rights independently. From that moment onwards, rights are carried forth by proxy only. As a fully autonomous political actor, the rights holder ceases to exist.

In defining this crucial moment of activation, the statute is faced with the difficulties common to all attempts to partition the human life cycle. Specifically, substitute decision-making powers under the Act may become effective immediately on the occurrence of a so-called triggering event, which is undefined in the legislation but may be described in advance by the parties to the agreement.² The legislation clearly contemplates a discrete point in time when the individual sudden-

1 SBC 1993, chapter 67. The Act is one component of an extensive new legislative scheme that also includes the *Adult Guardianship Act*, SBC 1993, chapter 35; the *Health Care (Consent) and Care Facility (Admission) Act*, SBC 1993, chapter 48; and the *Public Guardian and Trustee Act*, SBC 1993, chapter 64. Taken together, these statutes represent a significant revision and consolidation of the laws of informed consent and adult guardianship in British Columbia.

2 *Representation Agreement Act*, see note 1 at section 15 (1) (b).

ly becomes incapable: an abrupt and traumatic loss of capacity arising from, for example, head injury, irreversible coma or stroke. After that point, the substitute decision-maker's choices override the individual's own present wishes (though not the individual's past wishes, as set out in the agreement) in the case of conflict between them.

But how do these provisions affect those elderly individuals who slowly and incrementally lose the ability to look after their own needs? Potentially, the Act will fail to accommodate the majority of elders, who are more likely to move along a continuum of capacity than to experience its sudden loss while they are alive. At what precise moment is their legal death triggered?

Ultimately, because a precise line between capacity and incapacity cannot be drawn in advance with any certainty, this decision will have to be made by people other than the individual in question. In seeking to maximize individual autonomy and self-determination, the *Representation Agreement Act* has employed a device, the triggering event, that cannot accomplish this goal because it fails to reflect the complex, evolutionary nature of capacity in the ageing context. The problem is not that the goal of the Act is unattainable, but that the mechanism it provides for attaining that goal is inflexible and overly simplistic. As a result, actors other than the individual are left to impose their own socially constructed and potentially illegitimate definitions of incapacity upon the individ-

ual in a way that may not accord with that person's own experience.

Youth and ageing – and perhaps even life and death – are as much about legal, political and social recognition as they are about biology. The lines we draw are necessarily arbitrary and limited in their ability to describe the complex human experience. Thus, the act of drawing these bright lines is a creative one, and very much informed by the cultural and political narratives within which we operate. We do not so much find meaningful categories as we assign them. The young and the old are differently situated in our society, largely because of the choices that those of us in the middle have made in attaching distinct and dissimilar packages of status, recognition and rights to those labels. Meaningful discussions of youth and ageing cannot take place in a legal, social or political vacuum; we must contemplate not only the human life cycle, but our own discourse as well.

The Youth and Ageing Edition

The articles that follow in the Youth and Ageing Edition of *Appeal* demonstrate the ways in which the human life cycle intersects with and is informed by social status and recognition. In *Maps, Knowledge and Territory: Intergenerational Gaps*, author Kelly Gallagher-Mackay, the recipient of this year's Guild, Yule & Company essay prize, discusses how, in the process of drafting a native land claim, knowledge gaps

between young and old correspond to the potential shortfalls in the extent of their territory. The ways in which the colonial context can change fundamentally the forms of knowledge that are transmitted and valued between generations, resulting in a displacement of traditional knowledge, are evaluated as they affect the highly political map-making process. In *User Fees and the Elderly: Medicare Solution or Dissolution?* Blair Curtis conducts a legal and economic analysis of the options available in addressing the disproportionate toll that elders place on our health care system. The applicability of Japanese-style user fees to the Canadian context is discussed in light of the federal/provincial division of powers, the Charter's equality provisions, and the position of the elderly in Canadian society. Similar statistics are employed to a markedly different end in *Pensions, Policy and Power*. Here, in the context of increasing pension privatization, Francesca Marzari analyses the influence of societal power structures in constraining the choices available to different populations

in planning for their seniority.

Filial responsibility, entitlement and obligation between generations are discussed by Wendy Bernt in *Lines of Dependence: The Rebirth of Parental Support Legislation in Canada*. Her discussion of the recent judgement in *Godwin v. Bolcso* highlights the legal position of children *vis vis* their elders. Finally, author Tanya Scharbach discusses the shifting balance between ideals of free expression and the need to restrict hateful and pornographic material within the new context of cyberspace. In *Child Pornography in Cyberspace*, she evaluates the possible impact of new legislative and common law attempts to strike a balance between these conflicting interests, particularly as they affect the availability and distribution of child pornography on the internet.

The social implications of ageing are myriad and complex, and the topic is an increasingly timely and important one. It is our hope that this edition of *Appeal* will be an exciting addition to the general and critical discourse on rights, recognition, status, and the law. ■

FARRIS, VAUGHAN, WILLS & MURPHY

P. O. BOX 10026, PACIFIC CENTRE
26TH FLOOR, 700 WEST GEORGIA STREET
VANCOUVER, B. C. V7Y 1B3
(604) 684-9151