

CONTENTS

Series Foreword	vii
<i>Monica K. Miller</i>	
Preface: Purpose and Background of This Book	ix
Introduction: Aging and the Law: Theoretical Foundations	3
I. ROLES OF OLDER ADULTS IN THE CRIMINAL LEGAL SYSTEM	21
1. Issues in Aging and the Criminal Legal System	23
2. Older Adults as Legal Decision Makers	39
3. Older Adults as Victims of Crime	55
4. Older Adults as Eyewitnesses	75
5. Older Adults as Perpetrators of Crime	93
II. AGING AND CRIMINAL LEGAL SYSTEM STAGES	113
6. Involvement With Law Enforcement and the Courts	115
7. Forensic Evaluation of Older Adults in Criminal Cases	137
8. Older Adults in the Correctional System: "Aging in Prison"	153
9. Reduce, Resentence, Release, and Prepare for Reentry: Legal Responses to Aging in Prison	175
10. Next Steps: Expanding Legal Responses to Older Adults	199
Epilogue	211
Suggested Further Reading	213
References	215
Index	273
About the Authors	283

Introduction

Aging and the Law: Theoretical Foundations

Think about an older person. Do you think of your grandmother or grandfather, who is kind and wise but at times slightly forgetful? Or your retired neighbor, who is distant and spends hours each week manicuring their lawn? Or are you like Bernard Baruch (1870–1965), American financier and elder statesman, who famously said that “old age is always fifteen years older than I am” (Baruch, n.d.). Maybe you even thought about yourself. After thinking of this older person, what are your feelings toward this person and how might it influence your interactions with them?

Although several factors influence how people think, feel, and behave toward older adults, psychological theory and research show that in modern industrialized countries, especially in the United States, individuals hold both positive and negative thoughts and attitudes toward older adults. According to social psychologists, these mixed perceptions explain why some older adults are viewed as “doddering, but dear” (Cuddy & Fiske, 2002, p. 4), and others are viewed as admirable, but aloof. More specifically, studies have documented that when people have stereotypical beliefs that older adults are less competent, are less competitive of resources, and have poor physical and cognitive health, it prompts feelings of pity and protective behavior toward the older adult. However, this generalization shifts when older adults are in high-status positions. Instead, research finds that when people hold stereotypical beliefs that older adults are highly competent and competitive of resources, this prompts feelings of envy and adversarial behavior toward the older adult

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Aging and the Criminal Legal System: Community Services, Courts, Corrections, and Policy,
by L. E. Wylie and E. M. Brank

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(Cuddy et al., 2005; Fiske et al., 2002; Löckenhoff et al., 2009). These mixed perceptions help to explain the muddled role older adults have in contemporary society.

Now, think about an older person in the context of the criminal legal system. What is their role? Do you think about a judge, a victim of financial abuse, or a person engaging in criminal behavior? Are there any societal assumptions about an older adult who is in this role? Older adults interact across several points—as legal professionals, such as police officers or judges, and as non-professionals, such as an older victim of a crime, an older eyewitness to a crime, or an older perpetrator of a crime. As discussed within the forthcoming chapters of this book, how an older person experiences the legal system is dependent on their intersectional role (e.g., judge, parolee). The field of elder law is remarkably diverse, encompassing a wide range of legal topics. Its scope is defined not by restrictions on subject matter but rather by its focus on serving the needs of older adults. In other words, any legal issue that affects seniors falls within the purview of elder law (Kohn, 2020a).

Although older adults have countless interactions as they navigate legal systems, traditionally, research and practice have considered only civil issues within the scope of legal aging scholarship (i.e., guardianship and alternatives, estate and advance legal planning, and Medicare planning). Recently, legal scholars recognized this deficit and called for an expansion into other areas of the law and the development of multidisciplinary research and theory (Doron, 2020; Kohn, 2020b). As a response to their call, this book bridges research and theory from behavioral sciences and law to criminal legal issues relevant to older adults. Although theory in legal scholarship seeks to explain normative legal responses and their exceptions under a rational actor model, legal theories typically do not account for the role of human behavior in legal responses. As such, theory and research from behavioral sciences can inform legal theories by further accounting for human experiences and behavior, and employing statistical techniques to predict deviations from normative legal responses (Monahan & Loftus, 1982).

AGING IN AMERICA

In some sectors of society, older adults have been displaced from places of authority and autonomy (Butler, 2009), making old age something to be feared (Brank, 2011) and fought (T. D. Nelson, 2002). However, this was not always the case historically. A notable example, Sparta, was an ancient Greek city-state and exemplar of a true formalized gerontocracy—a society led by sexagenarians. Although not a democracy, the Spartan government had something similar to the U.S. Constitution and a governing body akin to a supreme court and legislature called the Gerousia, which was composed of 30 members—28 men over 60 years old and two kings, who could be under 60 (Kingman, 2017). Although the media has commented that the United States is governed

by the “exceptionally old” (D. Smith, 2023), a true gerontocracy requires leaders to be substantially older than the population median age. Likely, Spartan society revered elders because military requirements and related physical hazards meant reaching 60 years old was not common (Kingman, 2017), and surviving into older age indicated that a person was capable of fierce leadership.

Unlike in Sparta, where older adults were chosen as that society’s primary decision makers, the United States was established with much younger leaders in mind. The U.S. Constitution minimally requires the president to be 35 years old (U.S. Const. art. II, § 1), Senate members to be 30 years old (U.S. Const. art. I, § 3), and House members to be 25 years old (U.S. Const. art. I, § 2), with no minimum age to be a Supreme Court justice. Nonetheless, at the time we wrote this book, older adults hold some of the most powerful decision-making positions in government and have significant political power. The two most recent U.S. presidents are in their 70s (Trump and Biden), the median ages of the 118th Congress House of Representatives and Senate are 58 years old and 65 years old, respectively (Blazina & Desilver, 2023), and the average age of the presiding U.S. Supreme Court justices is 63 years old (Supreme Court of the United States, 2024).

Even as powerful decision makers in the United States, individuals in political positions still face societal assumptions about chronological age and abilities. For instance, in his 80s, President Joe Biden “drew attention to his status as the oldest person ever to occupy the Oval Office, with opinion polls showing Americans worried he [was] too old” (S. Holland, 2023, para. 1) for the presidential reelection in 2024. In response to those “who worry he is too old for the rigors of the White House,” (S. Holland, 2023, para. 3) President Biden deflected with “humor” (para. 3) about his age and attempted to “convince voters that his age and experience over a half-century in public life [was] an asset in tackling America’s problems” (para. 3). President Biden later withdrew from his reelection campaign following increased concerns regarding his health. As Chapter 2 (this volume) explores in greater depth, the age of political candidates often becomes a focal point during elections, potentially diminishing support for the older population. Indeed, individuals who live long enough will likely experience such instances of stereotyping, prejudice, and discrimination based on age (Palmore, 2015).

CULTURAL HISTORY OF OLDER AGE

All known societies have a named social category for old age and associated beliefs about older age. However, societies for most of recorded history have wavered in how to conceptualize old age. Some historical periods have considered people in their 40s to be in old age, with other periods considering much later ages (Thane, 2003) or suggesting separate definitions for men and women (Covey, 1992). Categorizations such as these provide efficiency—a sort of shorthand—for determining how a person should behave and what rights

and responsibilities they should have (Eglit, 2004). For example, the ancient Greek philosopher Hippocrates divided old age into stages, with the first beginning at 56 years of age and the final stage beginning at 90 years of age (Covey, 1992). The Old Testament of the Bible describes very old figures who reached 900 years of age, yet also describes old age as around 70 to 80 years old (Covey, 1992, referring to stories in Genesis and Psalm 90:10).

Some believe the reason older adults are less valued today than they were in centuries past is due to economic shifts from agrarian societies (e.g., growing their own food) to industrialized ones focused on manufacturing (Löckenhoff et al., 2009) to the present digital economy. For example, geriatrician William Thomas (2004) detailed how early hunter-gatherer lifestyles necessitated a lack of care for the old or infirm. As Thomas noted, if a child struggled to keep up with the speed at which the tribe was moving, the child could be carried, but an older person had to be left behind. Even in societies that were not nomadic yet still relied on a subsistence (i.e., survival) economy, members who were considered weaker were believed to be burdensome. Contrast this to the United States in the 18th century, which held admiration for aging. During this time, the United States was a developing agricultural society with bountiful food storage and fewer survival needs, which allowed for more resources to care for others. By the mid-1700s, men powdered their hair gray or wore wigs to appear older (Eglit, 2004) as they shaped a new country (W. Achenbaum, 1978). Reaching older age in the colonial era was rare given high mortality rates (Fleming et al., 2003) not solely explained by higher rates of infant and child deaths (Covey, 1992).

As historians have explained, as industrialized factory work became more prevalent between 1865 and 1914, the perceived worth of older adults was again questioned by society because the work most valued was physically challenging for aging bodies (Hareven, 1976). Common stereotypes persisted that older adults were “ugly and disease-ridden” (W. Achenbaum, 1978, p. 39) and unable to contribute to the workforce, generating discrimination in the form of social and physical distance (M. S. North & Fiske, 2012). Following industrialization, the workforce became more sedentary in nature, and physical differences between older and younger workers were less relevant when jobs no longer required physical labor to perform them. As jobs have become more cognitively demanding than physically demanding in the modern digital era, common stereotypes around older workers have shifted from physical limitations to assumptions about cognitive limitations and ability to learn new technology.

Although cultural history may explain how the majority population experienced aging through shifts in the U.S. economic system, some scholars dispute the modernization theory as overly simplified and devoid of attention to cultural differences (Hendricks, 1982). For example, modernization theory does not account for unequal aging and intersectionality with other group membership, such as race, ethnicity, and gender (Holman & Walker, 2021); the impact of ageism (De Tavernier et al., 2019); or individualized experiences

of aging based on social and biological factors (Hall, 2014). Acknowledging the diverse theories of aging, the following sections summarize various perspectives on how older Americans experience the aging process. The first section describes biological processes in aging, including normative (i.e., typical) processes in physical aging and cognitive aging. This is followed by some examples of pathological and diseased (i.e., atypical) aging processes most relevant to the criminal legal system, including physical limitations, mental health and substance use disorders, and dementia-related disorders.

BIOLOGICAL PROCESSES IN AGING

The aging process is a riddle, “one of the central mysteries of biology” (Rando & Chang, 2012, p. 46), because of the boundless environmental and genetic factors that contribute to the process. Physical aging is a complicated phenomenon influenced by genetics, the environment, epigenetics (i.e., how behaviors and environment influence genetics), and other factors determined by chance (Rodríguez-Rodero et al., 2011). Still, biological and cognitive research is clear that some developmental changes are inevitable in aging, although changes are not consistent across individuals (Jylhävä et al., 2017), and there is a wide range of functional abilities among older adults as they age (Mast et al., 2022). Some older adults function similarly to or better than their younger counterparts, but as a group, older adults proportionally face greater deficits in physical and mental capabilities (Frolik & Barnes, 2015). Everyone’s aging process involves some normative, age-related changes, but worsened aging patterns are represented by pathological disease, dysfunction, and decline (Wilson et al., 2020).

Normative or Typical Aging

Physical and sensory changes common in the typical aging process may be easily visible and nonpathological. For example, these changes can include decreased skin elasticity, graying hair, stooping posture, loss of muscle tone (sarcopenia), and increased adiposity (Boss & Seegmiller, 1981; Schoenborn et al., 2006). As many readers may have already experienced, eyesight generally weakens with age (National Institute on Aging, 2021), as does hearing (Schoenborn et al., 2006). Other typical aging processes may lead to increased risks of injury, illness, and death (Boss & Seegmiller, 1981; R. A. Miller, 1999). For instance, bone mass generally decreases with older age, which weakens bones and makes them more susceptible to breaking (Demontiero et al., 2012). Older populations are also more vulnerable to infection due to depressed immune function (Oh et al., 2019). Furthermore, because older adults experience normative reductions in most body systems, if pathological diseases are present, these can exacerbate normal aging processes. For instance, aging can contribute to issues in cardiovascular health (B. J. North & Sinclair, 2012);

lung, kidney, and other organ performance; and cognitive functioning (da Costa et al., 2016). Liver and kidney systems work less effectively with advancing age, which means they metabolize and excrete drugs (both legal and illegal) less efficiently (Bhutto & Morley, 2008; Boss & Seegmiller, 1981).

Intelligence and Cognition

Despite developmental changes that do occur, intelligence does not decline with age. One helpful way to differentiate age-based intelligence is to consider the distinction between fluid and crystallized intelligence. Although the ability to solve novel or complex problems (i.e., fluid intelligence) generally declines with age, the accumulated knowledge a person has (i.e., crystallized intelligence) improves or at least remains stable (Zaval et al., 2015). Cognitively, normative aging is associated with minor declines in processing speed (Wilson et al., 2020). In the absence of disease, older adults can compensate for these small deficits so they generally do not contribute to impairment. Researchers indicate that older adults are highly adaptable compared with younger adults (Lowe et al., 2022), and they benefit from their life experiences in a way that younger people cannot (Glück & Scherpf, 2022).

Mental Health and Substance Use

Whereas declines in physical and cognitive health are more widely discussed and understood, less attention has been paid to older adults and concerns associated with mental health and substance use. In 2012, Congress recognized a hidden problem affecting older adults: mental health disorders and substance use disorders (SUDs). To address this issue, they commissioned a report from the Institute of Medicine (IOM; Edens et al., 2012). The report's objectives were to document the prevalence of these conditions among older adults and to project the behavioral health workforce needs for this population. The report acknowledged data were not available for definitive percentages but estimated approximately 14% to 20% of older adults had a mental health disorder or SUD. Furthermore, the IOM reported poorer outcomes, such as higher hospitalization rates and emergency department visits, for older adults with physical illness and mental health disorders than for those with a physical illness alone.

Historically, mental health services accounted for only 1% of Medicare expenditures (Edens et al., 2012), in part because the older generation during the study period was unlikely to seek professional services (Mackenzie et al., 2008). In more recent decades, Americans have become more willing to seek treatment for mental health (Mojtabai, 2007) as perceptions of mental illness have become less stigmatizing (Baral et al., 2022). The American Association for Geriatric Psychiatry (n.d.) has an estimated membership of approximately 2,000 but professionals in the field warn the supply of providers may fall short of the demand for services (Bartels & Naslund, 2013).

Per the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed., text rev.; American Psychiatric Association, 2022), SUDs are diagnosed along a severity continuum based on the number of symptoms experienced from substance use. A systematic literature review (M. H. Taylor & Grossberg, 2012) spanning the years 1960 to 2011 ($n = 26$) found that contrary to society's expectations, drug use among older adults had increased from previous decades. Identifying that older adults who use substances have a unique profile compared with younger adults, the review also noted that most of the research focused on illegal drug use and not legal alcohol or prescribed drug use. Alcohol remains the most common substance that older adults use. Longitudinal data from the National Survey on Drug Use and Health indicated that approximately 20% of adults aged 60 to 64 and approximately 11% over age 65 reported current binge drinking (Ghantous et al., 2022). Data also presented an increase in the use of heroin and cocaine and the misuse of stimulants among those aged 50 and older. Studies suggest that SUDs among older adults are underdiagnosed because treatment seeking is lower in this group (Mackenzie et al., 2008), and medical professionals are more likely to address physical or cognitive issues first (B. Han et al., 2009). Both underutilization of treatment and lack of attention from health care providers perpetuate misconceptions that older adults do not have SUD needs (Kuerbis et al., 2014). Several factors could account for substance use trends within the older adult subpopulation: physical vulnerabilities to substances, unknown prescribed medication interactions, prescription misuse, chronic pain and opiate use, and increased acceptance of medical marijuana (National Institute on Drug Abuse, 2020).

Dementia-Related Disorders

Although 30% to 40% of adults over age 85 display symptoms of dementia, dementia-related disorders are not part of typical aging (Alzheimer's Association, 2024). Rather, dementia is caused by an underlying pathology, such as Alzheimer's disease or other cognitive-related disorders. With data from the U.S. Census Bureau and Medicaid/Medicare, the IOM (Eden et al., 2012) reported approximately 5.1 million people aged 65 and older presented with dementia, or 12.7% of the population aged 65 and older. To date, there has been little research examining dementia and the criminal legal system (Arias & Flicker, 2020; Cipriani et al., 2016), with most studies conducted in non-forensic settings such as hospitals or nursing homes (e.g., Eastley et al., 1993; M. O'Connor, 1987). As described in Chapter 5 (this volume), the criminal legal system is experiencing the impact of deteriorating cognitive disorders, and the American Bar Association (ABA) advocates for systematic screening across all system points in the criminal legal system (ABA Commission on Law and Aging, 2022). Although data are not yet available in the United States as to the number of individuals who are system involved with dementia, some preliminary figures outlined in Chapter 5 indicated a noteworthy overlap (21%)

of dementia-related disorders in a sample of first-time arrestees (65 and older) in Israel (Barak et al., 1995). Utilizing a unique and valuable data system that compares South Carolina's dementia-related disorders database with the prison database, researchers found a 1% overlap of individuals who appeared in both databases over a 24-year period. Importantly, though, these data cannot determine whether dementia symptoms were present before or after incarceration (ABA Commission on Law and Aging, 2022).

SOCIAL DETERMINANTS OF AGING

The longer a group of people live, the more diverse that group becomes. Social factors play a significant role in the aging process, making each person's aging process idiosyncratic. Aging is natural and lifelong and, though universal, is not uniform. How people age is shaped by their social and physical environments, including personal experiences within the family into which they were born and their community. Research on the social determinants of aging have found that aging patterns are predicted by factors such as sex, race, education, social activity and networks, and lifestyle (Brinkley-Rubinstein, 2013; Dannefer, 2003; Kelly et al., 2017; Merkt et al., 2020; Rodríguez-Rodero et al., 2011). Socioeconomic status also plays a role; a person's zip code is a strong predictor of their life expectancy (Petrow, 2019). As proposed by the weathering hypothesis (Geronimus, 1992), a lifetime of social and economic disadvantage can lead to accelerated declines in physical health (Forde et al., 2019).

Intersectional Group Membership

The individualized aging process is further characterized by the intersectionality of aging and membership in another population subgroup. Intersectionality focuses on how discrimination explains inequality as it is concerned with social differences and relationships of power, privilege, and oppression (Holman & Walker, 2021). Intersectionality, a concept introduced by Crenshaw (1989), was initially formulated to elucidate the experiences of Black women in the criminal legal system. This framework helps explain subgroup inequalities that might otherwise be overlooked. By focusing on membership in more than one group as a distinct subpopulation, intersectionality seeks to direct social justice attention toward subgroups who face disadvantages that may otherwise be invisible (Crenshaw, 2016). Intersectionality research has focused mostly on sex and race. For example, studies on stereotypes found that Black Americans were perceived as lazy and unintelligent (Krieger, 2014). However, when these stereotypes were examined by subgroups, Black women were specifically viewed as "mammies, matriarchs, and welfare recipients," (Krieger, 2014, p. 651) whereas Black men were seen as criminals and rapists. Gerontologists have considered the interaction between ageism and other forms of discrimination, most often sexism. Compared with the breadth of research on individual

and structural ageism, however, there are far fewer studies on the interplay between ageism and other forms of discrimination, making it an important area of future research (Chang et al., 2020).

Generational Factors

Sociostructural age dynamics are quickly changing in the United States. The characteristics of those considered older will also ultimately change, and demographic shifts are important to consider for policy and practice. For example, most older adults in the current era have been married, which may not be true in future generations of older adults (A. W. Roberts et al., 2018). Furthermore, with each generation, the United States becomes more racially and ethnically diverse. Unfortunately, research has not addressed the intergenerational consequences of ageism and seldom attributes generational differences to discrimination. Nonetheless, the rapid growth of the older population and a potential “new old age” adds ambiguity to the traditional pattern and dynamics of intergenerational interdependence (M. S. North & Fiske, 2012).

EXPLANATIONS FOR LEGAL RESPONSES TO AGING IN LAW AND PSYCHOLOGY

As stated by elder law legal scholar Nina A. Kohn (2020b),

age discrimination is so central to the law that rules which treat people differently on the basis of their age—even when the rules prejudice certain people based on their age—are often not even regarded as notable, let alone concerning. (p. 202)

Even the concept of elder law as a separate area of law, some argue, may be controversial because of paternalistic and perpetrating ageist assumptions that older adults need protection (Hall, 2009). As we discuss throughout this book, the legal system typically uses categorical distinctions for older age, which are based on chronological age and regard older adults as a discrete category. To illustrate, the following are some laws and policies that distinguish older adults from others as a separate class: being required to retire from public service, being a vulnerable adult in abuse and neglect crimes, being exempt from jury service, being eligible for compassionate release from prison, or receiving more frequent parole hearings.

Legal Theories in Aging and the Law

The study of elder law has grown rapidly in the past few decades, especially since the first issue of the *Elder Law Journal* in 1993. Scholarship within elder law historically focused narrowly on issues relevant to the clinical legal practice of elder law, which limited elder law's contribution to multidisciplinary research and development of legal theory ripe for empirical research (Doron, 2020; Kohn, 2020a). To complement the practice of elder law, prominent legal

scholars called for robust multidisciplinary and theoretically informed research at the intersection of law and aging (Brank, 2007; Doron, 2020; Kohn, 2020a). Written by international experts, a collaborative landmark text *Theories on Law and Ageing* edited by Israel Doron (2009b) discussed several legal theories broadly defined as “any construction of explicit explanation that accounts for [legal] reality” (p. vi). These models focused mostly on legal realities within civil legal systems; however, aging issues also often intersect with criminal legal systems. Furthering theory and research on aging and criminal law issues can similarly assist policymakers in addressing current and incoming challenges to prioritize goals in the U.S. criminal legal system.

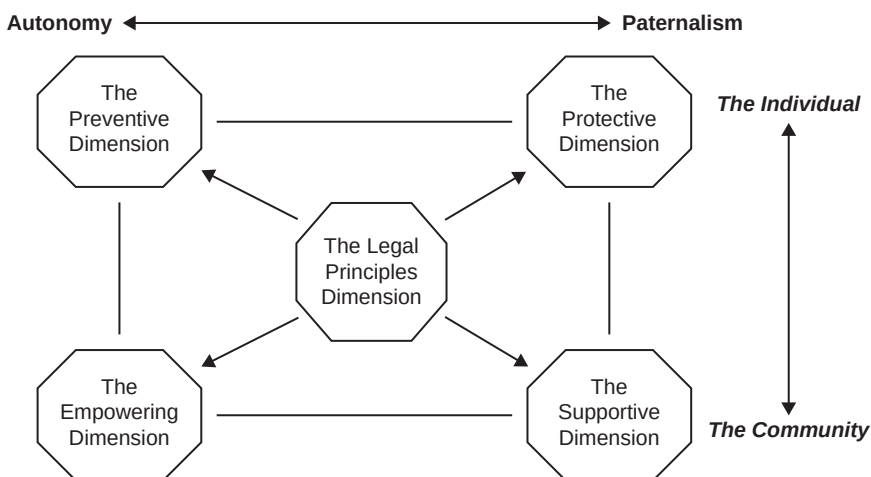
Most of the legal theories presented in Doron’s (2020) text describe a singular theoretical perspective to systematize the “how” and “why” behind the legal system’s response to the “what”—termed by Doron as “legal realities”—including court rulings, legislation, administrative law, and policies older adults experience. As described by Doron, during the first rise of elder law in the 1990s, legal scholarship focused on civil practice issues common with older adults, such as advance planning, through preeminent elder law scholar Lawrence Frolik’s later-in-life perspective (Doron, 2020; Frolik, 2009). In light of the significant contributions that aging and the law has made within state guardianship laws, a therapeutic jurisprudence model was also presented to explain the legal system’s realities as a means to protect the rights and psychological, physical, and financial well-being of older adults (Kapp, 2009). Commenting that therapeutic jurisprudence within aging and the law is paternalistic, a scholar offered a mental health law perspective that presented aging as a “social deviance” (Schmidt, 2009, p. 124) from the norm of having capacity and free will, and legal systems as a means for socially controlling those who are aging. A disability law perspective identified similarities because both fields span multiple domains of substantive law and focus on assessing the law’s impact on members of the specialized group (Surtees, 2009). An equity theory acknowledged the social (exclusion and ageism) and personal (one’s own aging process) vulnerabilities of aging individuals as a legal justification for legal protections, as opposed to a per se categorization by chronological age, such as children. Having a distinct category in law, the theory states that elder law is “inherently paternalistic” (Hall, 2009, p. 107) and contributes to the internalization of ageism.

A central question in elder law is consistently asked: Should the field “revive and reenergize the classic [elder law] debate over what role—if any—chronological age should play in establishing rights or benefits” (Kohn, 2020b, p. 195) or whether socially constructed determinants are more appropriate? Although chronological age can be necessary for determining cutoff points for categorization, theorists propose that age is a social construct and should not be based on chronology (Giles & Reid, 2005; Hall, 2014; S. R. Levy & Macdonald, 2016). Professor of Applied Legal Studies Margaret Hall (2014) expanded on her equity theory to describe a critical theory of aging and the law, which views old age as a complex construct in which “social identity is iteratively entwined with embodied experience” (p. 2). Hall reasoned that, like other

theories based on socially constructed identities, as seen through a critical lens (e.g., race, gender), being old impacts those whose identity is defined by their older age. Different from other identities, however, social identity based on oldness is both biologically and socially created through the “physiological experience of aging, and the special vulnerabilities attendant on that experience” (p. 2). The embodied experience of aging and becoming an “old person” is individualized by “material, social, and relationship contexts” (p. 11), which are “intimately experienced and seen/responded to by others” (p. 13).

Nevertheless, as argued by Doron’s (2009a) own pluralistic model in *Theories on Law and Ageing*, “the only way to fully grasp the richness and diversity of elder law is through a multidimensional model, which connects different functions and targets that law wishes to achieve” (p. 59). Doron’s multidimensional model of aging and the law represents five types of legal responses to older adults, and the model explains the varied, sometimes seemingly inconsistent legal responses to older adults (see Figure 1). At the center of the multidimensional model of aging and the law are the core legal principles (the “juristic core”), which are the primary procedural and substantive legal responses. In the United States, which is governed by the Constitution, many core legal responses are based on constitutional protections, such as due process and equal protection (see Chapter 1, this volume). Core legal responses can also come from statutory, regulatory, and common law court rules. The core legal principles are intended to be universal—applicable across events and responding to a range of legal issues. Importantly, a core legal response has its advantages and its disadvantages when it comes to the legal rights of older

FIGURE 1. A Multidimensional Model of Elder Law



Note. From “A Multi-Dimensional Model of Elder Law,” by I. Doron, in I. Doron (Ed.), *Theories on Law and Ageing: The Jurisprudence of Elder Law* (p. 60), 2009, Springer (https://doi.org/10.1007/978-3-540-78954-3_5). Copyright 2009 by Springer. Reprinted with permission.

adults. Although universal legal responses protect older adults along with the entire population, normalize aging as integral in society, and promote equality values among citizens, such responses fail to recognize any individualized biological and social needs specific to each person (Doron, 2009a). From Doron and Kohn's (2011) perspective, "the juristic core is a blunt tool for protecting the rights of older persons" (p. 4), and laws developed under core legal principles may be insufficient to address problems that arise for special sectors of the population, such as older adults.

As modifications to core legal principles, the other four dimensions reflect other types of legal responses (the "what") to explain variations in how the legal systems respond to older adults. The multidimensional model of aging and the law proposes that legal responses may be classified into four categories: (a) preventive responses, (b) protective responses, (c) supportive responses, and (d) empowering responses (Doron, 2009a). When classified to one of the five dimensions, each response can be explained according to where it falls on the two axes: its underlying philosophical approach on the x-axis (the "why"), labeled autonomy and paternalism, and its underlying policy objective on the y-axis (the "how"), labeled as individualized and community/societal. More specifically, Doron and Kohn (2011) provided examples that fall within each legal response type within civil law issues impacting older adults. For instance, preventive legal responses consist of tools and systems for older adults to plan for an independent future (autonomy and individualized), such as incapacity planning (e.g., power of attorney), government-incentivized individual retirement accounts, and reverse mortgages. Responses within the protective dimension include legal responses aimed at protecting older adults as a vulnerable population (paternalism and individual), such as elder maltreatment laws and guardianship. Supportive legal responses focus on the social context, including policies that provide formal and informal support networks of individuals who provide care or services to older adults (paternalism and community), such as the federal Family and Medical Leave Act of 1993 and filial responsibility laws requiring certain family members to support relatives if the older person is indigent (Wylie & Brank, 2009). Last, empowering responses are designed to promote older adults realizing their rights and entitlements for improving the status of older adults (autonomy and community), such as the federal Supporting Older Americans Act (2020; a reauthorization of the Older Americans Act of 1965) that provides states with financial resources so that older adults have access to legal resources or advocates such as *guardian ad litem*s in guardianship hearings.

Although well-meaning and usually necessary, responses outside of the juristic core carry assumptions about the needs and wants of older adults and may further aging biases and discrimination (Doron & Kohn, 2011). With use of the multidimensional model of aging and the law, legal system responses can be mapped to each dimension to describe and understand how systems are addressing issues for older adults. This mapping exercise can reveal whether law and policies specific to older adults are disproportionately focused on

autonomy, paternalism, individual responsibilities, or external support systems. As a model formulated only to explain legal responses, Doron's (2009a) multidimensional model does not account for the influence of human behavior in the underlying philosophies and objectives of laws and policies, nor does it account for how human behavior is influenced by legal responses to aging (i.e., Do they foster ageism?).

To wholly conceptualize how older adults interrelate with legal systems, psychology theory and research can augment existing aging and the law theory to include explanations about human behavior. Theory and research on self- and intergroup perception can explain legal responses toward older adults in the United States by the older person's role in the legal system (the "who"), the context of the legal system response (the "where"), and any environmental cues to explain why a legal response may deviate from what is expected based on its hypothesized underlying philosophy and objective (the "when"). Moreover, whereas Doron's (2009a) multidimensional model was formulated to explain legal responses within elder civil elder law, the model is also intended to be applicable to other areas of law and can be extended to map criminal legal system responses in the United States (the "what").

Psychological Theories in Perceptions and Experiences of Aging

Social psychology theory and research in self- and intergroup perception focuses on understanding how individuals perceive themselves and others in social contexts to understand complex human social behavior. This area of psychology explores how people form impressions of themselves, including their self-concept and self-esteem, and how these perceptions influence their behavior, attitudes, and interactions with others. Additionally, researchers study how individuals perceive and categorize members of different social groups based on group membership (e.g., race, ethnicity, gender, age). Research in this area examines biases, stereotypes, and prejudice that may arise from intergroup comparisons as well as the processes underlying self-identity and social identity formation.

Biases Toward Older Adults

Specifically, theories in social psychology seek to explain commonly held stereotypical beliefs and how people internalize those beliefs into prejudicial attitudes to explain institutional, interpersonal, and internalized discrimination (S. R. Levy et al., 2022). Overall, research indicates that older adults are described with both positive and negative stereotypes (Barrett & Cantwell, 2007; Cuddy et al., 2005), with endorsements of negative stereotypes being more prevalent (Chasteen et al., 2002; Hummert, 1993; Kite & Wagner, 2002; Nelson, 2002). Whether positive or negative stereotypes are elicited in a given situation is dependent on many factors, including the person's perceived appearance (Chonody & Teater, 2016) as well as environmental cues and context (e.g., Hummert, 2011). For instance, terror management theory (Greenberg et al., 2002) explains that younger people engage in ageist behaviors because

older adults provoke cues about death, which produces a younger person's own fear of mortality. Furthermore, studies show that collectively, research participants indicate preferences for older adults who exhibit stereotype-consistent behaviors rather than for older adults who exhibit stereotype-inconsistent behaviors (Cuddy et al., 2005).

Variations in how older adults are perceived are also conditional on contextual factors (Castelli et al., 2004; Schaller et al., 2003) that facilitate either desirable or undesirable stereotypes. According to the role congruity theory, biased responses develop from the interaction of stereotypic beliefs about the target and the context in which the target is evaluated (Diekmann & Hirnisey, 2007; Eagly & Karau, 2002). When a group's stereotype is mismatched to valued social roles, then individual perceivers have emotional responses that generate prejudicial feeling and subsequent discriminatory behavior—or ageism. Much like Hall's (2014) critical theory of aging and the law, intergroup perception theory explains the embodied experience of aging based on one's perceived social identity (Tajfel & Turner, 1979, 2004) and whether one sees oneself in the outgroup or the ingroup (Chonody & Teater, 2016).

As depicted in Figure 2, if someone perceives an older adult as an "other" from the outgroup, then the stereotype content model (SCM) further explains whether the older adult will be perceived according to positive or negative stereotypes. The SCM of intergroup relations, first conceptualized by Susan

FIGURE 2. The Stereotype Content Model

		Competence	
		Low	High
Warmth	High	Paternalistic stereotype low status, not competitive (e.g., housewives, elderly people, disabled people)	Admiration high status, not competitive (e.g., ingroup, close allies)
	Low	Contemptuous stereotype low status, competitive (e.g., welfare recipients, poor people)	Envious stereotype high status, competitive (e.g., Asians, Jews, rich people, feminists)

Note. Adapted from "A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow From Perceived Status and Competition," by S. T. Fiske, A. J. C. Cuddy, P. Glick, and J. Xu, 2002, *Journal of Personality and Social Psychology*, 82(6), 0881 (<https://doi.org/10.1037/0022-3514.82.6.878>). Copyright 2002 by the American Psychological Association.

Fiske, suggests that discriminatory behavior is rooted in power relations, justifying the status quo, and assigning desirable traits to others who do not have competing goals (Fiske, 1993; Glick & Fiske, 2001). These complex attitudes and emotions explain inconsistent discriminatory behaviors that can be benevolent, indifferent, or actively harmful (Cuddy & Fiske, 2002). Similar to Doron's (2009a) multidimensional model of elder law, the SCM asserts that people are perceived according to two dimensions that help to explain discrimination: warmth/likability (e.g., are they trustworthy?) and competence/ability (e.g., do they have the capacity or skill to compete?). Where a target group falls along each dimension determines the content of the stereotypical beliefs and attitudes toward the group. The SCM predicts that individuals perceived as having powerful status will generate assumptions that they have high competence, but individuals perceived as lacking status and therefore a low competition of resources will generate assumptions that they are warm (Fiske et al., 2002).

Studies in this area have demonstrated that "elderly people" are typically perceived as low status and low competition, warm, but incompetent, which elicits emotions of pity (Cuddy et al., 2005, p. 881). When associated with these mixed warm-incompetent stereotypes, older adults can be targets of the most common form of ageist behavior, benevolent ageism, which results in overhelping and other protective behaviors (Bugental & Hehman, 2007; Cuddy et al., 2005). Take, for example, senior discounts at stores and restaurants. These special practices stem from the belief that older adults are in need of protection because they are not in the workforce, yet today, on average, older adults have more wealth than do younger adults (A. Achenbaum, 2015). On the other hand, when older adults are perceived as high status and competitive of resources, categorized as low warmth and high competence, this instead brings about feelings of envy and dislike. Instead of leading to protective behavior, interactions with older adults perceived as high status result in hostile and isolating behaviors toward them.

Age Discrimination

Similar to racism and sexism, ageism refers to stereotyping, prejudice, and discrimination based on age (Palmore, 2015), but unlike other forms of bias, ageism presents a distinctive issue in that most of the ingroup (the young) will eventually become part of the outgroup (the old), or at least hope to be one day. That is, if you do not die young, you will be old. In contemporary American society, it is socially accepted to hold biased views against older adults (Weir, 2023). Indeed, antiaging is a billion-dollar industry (Perls, 2004) that draws from these biases. Within government and legal decisions, although legal policies based on race and gender have become less legally acceptable in contemporary law, age is still a commonly accepted factor in policies that affect legal rights, legal responsibilities (Eglit, 2004; Kohn, 2020a), and segregation of groups (Hareven, 1976).

Such complicated perceptions contribute to assumptions people have about the character, behavior, and abilities of older adults—perceptions that bear

on the law's response to aging and, correspondingly, how the law bears on the experience of aging—in the forms of institutional, interpersonal, and internalized ageism (World Health Organization, 2021). Institutional ageism occurs through systems or institutions via policies and actions, such as a company policy that unfairly privileges younger adults over older adults. Interpersonal ageism takes place in social interactions such as when an older adult is treated as unimportant or out of touch because of their age. Finally, ageism can be directed inward as internalized ageism, wherein an older adult internalizes ageist beliefs about themselves and harbors negative feelings about their abilities because of their age (B. Levy, 2009). For example, an older adult may believe that because older adults are generally not good with technology, they cannot learn a new computer program.

Throughout this book, ageism is described as a social determinant of chronic disease (J. O. Allen, 2016; World Health Organization, 2021). Recurrent experiences with negative stereotypes combined with discrimination may make ageism a chronic stressor in the lives of many older adults. Although ageism is not experienced over the lifespan, repeated exposure to chronic stressors associated with aging stereotypes and discrimination may increase chronic disease risks, mortality, and adverse health outcomes (J. O. Allen & Sikora, 2023). In an important emerging area, experiences of ageism also depend on the intersectionality in membership in any other groups (Holman & Walker, 2021). Factors including sex, race, education, social activity and networks, and lifestyle contribute to cumulative (dis)advantage, are highly predictive of aging patterns (Brinkley-Rubinstein, 2013; Dannefer, 2003; Kelly et al., 2017; Merkt et al., 2020; Rodríguez-Rodero et al., 2011), and lead to accelerated decline in physical health (Forde et al., 2019).

STRUCTURE OF THE BOOK

Building from scholarship on the biological and social determinants of aging, this book bridges theory and research from psychology and law to the study of aging and the law. As part of the American Psychology-Law Society (AP-LS; American Psychological Association Division 41) book series, this book aims to educate the psychology and legal professions and the public on important and emerging topics in psychology and law. The mission of AP-LS is to “enhance well-being, justice, and human rights through the science and practice of psychology in legal contexts” (AP-LS, n.d., para. 2). We hope this book serves as a primary resource and catalyst for students, researchers, clinicians, service providers, lawyers, and other legal professionals to innovate new areas of inquiry and practice within aging and the law. In the time since the second author published *Elder Research: Filling an Important Gap in Psychology and Law* (Brank, 2007), scholarship focused on older adult legal issues has evolved and grown—even rebranding from “elder law” to “aging and the law.”

Although research and practice have advanced the understanding of older adult legal issues, as this book describes, there is still so much to do. Therefore, in the spirit of aging stereotypes, this book aims to “jog your memory” and “speak louder” to the readers: Now is the time to expand scholarship to emergent older adult issues in traditional and innovative areas of research and practice in law-psychology.

Aging and the Criminal Legal System presents a multidisciplinary perspective that is divided into 10 chapters to explain and describe the legal responses to older adults interacting within the criminal legal system. The chapters summarize theory and research from our areas of social psychology and law but importantly also include scholarship from law, gerontology, geriatric psychiatry, social work, nursing, clinical psychology, medicine, and public health. The chapters in Part 1 discuss legal responses to older adults under various criminal legal system roles: Chapter 1 introduces key psychology and legal issues relevant to older adults. Chapter 2 examines legal decision makers (e.g., attorneys, judges, elected officials, jurors); Chapter 3, older victims of crime; Chapter 4, eyewitnesses to crime; and Chapter 5, perpetrators of criminal behavior. Next, the chapters in Part 2 discuss the criminal legal system stages and processes that generate legal responses for older adults who are involved in the criminal legal system, with Chapter 6 describing legal responses from law enforcement, community agencies, and the courts; Chapter 7 describing forensic evaluation; Chapter 8 describing issues relevant to older adults who are incarcerated; and Chapter 9 describing legal responses to the increase in older prison population and corresponding expenses. The concluding chapter calls to the reader—the future researcher (and future older adult)—to extend practice and research with older adults in the criminal legal system. We hope this book stimulates interest in the topic and energizes scholarship within the field of law-psychology to direct legal responses within aging and criminal law.