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Law and Intergenerational Relationships: Comparing Labor Case Law in the United States, Canada, and Israel

Israel Doron[1], Ariela Lowenstein[1], and Simon Biggs[2]

Abstract

Background: In any aging society, the sociolegal construction of intergenerational relationships is of great importance. This study conducts an international comparison of a specific judicial issue: whether active labor unions have the legal right to strike for the purpose of improving the benefits given to nonactive workers (specifically, pensioners). **Method:** A comparative case law methodology was used. The texts of three different Supreme Court cases—in the United States, Canada, and Israel—were analyzed and compared. **Findings:** Despite the different legal outcomes, all three court rulings reflect a disregard of known and relevant social gerontology theories of intergenerational relationships. **Conclusion:** Social gerontological theories can play an important role in both understanding and shaping judicial policies and assisting the courts in choosing their sociojudicial narratives.

Keywords

intergenerational justice, elder law, labor law, jurisprudential gerontology, geriatric jurisprudence

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[1]University of Haifa, Israel
[2]University of Melbourne, Victoria, Australia

Corresponding Author:
Israel (Issi) Doron, University of Haifa, Mount Carmel, Haifa 31905, Israel.
Email: idoron@univ.haifa.ac.il

Introduction

Generally, law has not played a significant role in the scientific development of social gerontology (Achenbaum, 1995; Cohen, 1978; Doron, 2006a, 2006b; Doron & Hoffman, 2005). With the possible exception of debates on legal competence and on abuse and neglect of the aged (e.g., Kosberg, Lowenstein, & Biggs, 2006; Brammer & Biggs, 1998), there has been scant interaction between law and gerontology, each field generally staying within its traditional boundary. Nevertheless, a rich "elder law" literature has developed within the legal sphere (e.g., Frolik, 1993; Herring, 2009; Kapp, 2003); however, the theoretical and empirical study of a joint field of law and aging (otherwise termed jurisprudential gerontology) was largely neglected within mainstream gerontology or geriatrics until recent years (Doron & Hoffman, 2005; Doron & Meenan, 2012). A growing amount of research and writing have now brought together lawyers and gerontologists to better develop the field of jurisprudential gerontology (Doron, 2006a; Doron & Meenan, 2012; Kapp, 2000, 2003; Stern, & Wolford, 2001). As a consequence, there is, on one hand, a growing awareness of the need to better educate gerontologists about the legal dimension of adult aging and, on the other hand, there is greater recognition of the need for lawyers to integrate gerontological knowledge into their daily practice (Arnason, Fish, & Rosenzweig, 2001; Bassuk & Lessem, 2001; Bruce, 2001).

The judicial policy narrative presented in this article will try to provide an example of the interconnectedness of law and gerontology through the comparative study of a very narrow legal issue: the extent to which labor unions have the legal right to take strike action to improve benefits for their pensioner members. The legal comparison will be based on three Supreme Court cases from the United States, Canada, and Israel. As will be shown, what may seem a local, legally specific question not only impinges on an important international and demographic question but it also involves key theories regarding intergenerational relationships that lie at the heart of social gerontology.

Background: Pensioners and Workers

To understand why the legal issue of the right of labor unions to resort to strikes to protect or improve the benefits enjoyed by their pensioner members is significant, one needs to be aware of two interrelated social developments: one is the demographic aging of the world and the second is the importance of pensioners to labor unions. The combination of these two important developments provides the basis for understanding the relevance of the legal question that will be presented later.

Much has been written in recent years about the demographic aging of the world (e.g., Auer & Fortuny, 2000; Bloom & Canning, 2008). There is broad consensus that the phenomenon of aging will be one of the most important social variables that, in the long run, will influence mankind's socioeconomic development (e.g., Arza & Kohli, 2008; Kinsella & Philips, 2005; Kinsella & He, 2009). An important social institution that has been affected by the "aging transition" is organized labor. Since the 1980s, many labor unions in developed countries have experienced a significant change in their "demographic structure," brought about, on one hand, by a decline in the rate of new members joining labor organizations and, on the other hand, by an increase in the number of pensioner members (Feltinius, 2002).

One example of this trend can be found in the case of Italy, where the percentage of pensioners who are members of the labor organizations rose from 7.4% in 1950 to 20.3% in 1980, and it continued to rise to 47.6% in 1996, when it constituted almost half the total membership of all the country's labor organizations (Chiarini, 1999). The disparate pensioner organizations in Italy reorganized themselves into independent federations and became active, independent, and strong entities that influence everything that has to do with the rights of pensioners, not least producing a collective labor agreement in the field of pensions. Moreover, the increase in the number of Italian pensioners who are members of labor organizations, in turn, gave the pensioners' organizations the economic and political power to conduct their struggles. Pensioners' organizations now actually supply a broad spectrum of information services, support, and essential political aid far beyond the range of services that the state provides to all its citizens, all of which greatly strengthens their social status and role when aging. These organizations are most active at the political level in Italy when there are calls for reforms or attempts to lower the level of the country's universal social pensions.

A slightly different example can be found in Germany (Kohli, Kunemund, & Wolf, 1997). At the end of 1994, the German Trade Union Confederation (DGB) had 1.7 million pensioner members, who constituted about 17% of the total membership of all labor organizations. Although to a lesser extent than in Italy, in Germany, too, the decline in the percentage of young members in labor organizations, together with the rise in life expectancy and the increase in the number of pensioners, resulted in a significant increase in the percentage of labor organization members who were pensioners.

Here, again, the pensioner members in Germany provide the labor organizations with political and economic power. However, these changes are beginning to give rise to dilemmas concerning the appropriate "balance" between protecting and improving pensioners' rights, on one hand, and safeguarding and improving the interests of younger generations, who are still

working employees, on the other. Unlike the situation in Italy, pensioners in Germany are not organized in separate organizations but are incorporated into the "ordinary" representative labor organizations although with slightly different and diminished rights, at least in matters concerning voting and passing resolutions.

The significance of the changing demographic reality lies in the manner in which pensioners are incorporated in labor organizations and in the critical issue of whether they become active members. This was aptly described by Kohli and colleagues (1997):

> The power of the unions is not least a function of the number of their members. Considering the organizational demography, the integration and participation of retirees could become a key issue in the modernization of the unions. The unions have the potential to strengthen solidarity-oriented intergenerational politics, and the representation of elderly people could become "a crucial factor in shaping the unions" stands on new welfare issues (Alber, 1993, p. 22). The most obvious danger consists in a narrow predominance of workers' interests (Kohli et al., 1997, p. 187)

In light of these changes, it is clear that the general policy questions of the role of pensioners in labor unions and whether unions can strike to improve pensioners' benefits cross borders and have broad global relevance (Chiarini, 1999; Feltinius, 2002; Kohli et al., 1997). These questions, though, have not been investigated up to now from a comparative legal perspective. This study will try, in part, to not only provide the comparative legal perspective but also analyze that perspective within a broader social gerontology theoretical framework.

The Study: United States, Canada, and Israel

Not surprisingly, these policy questions have been brought before the courts. In at least three different cases, Supreme Courts have addressed the issue of the interrelationship of active workers and pensioners within the context of labor unions. These three cases, one each from the United States, Canada, and Israel, form a legal case study and the basis of the present analysis (Hammersley, 2004).

The choice of these three legal jurisdictions for the comparison was based on historical grounds (all three countries are historically "common-law"–based jurisdictions), on the accessibility of English language, open-access legal databases, and on the "Israeli" connection, Israel's modern jurisprudence being uniquely and heavily influenced by both American and Canadian jurisprudence and case law (Barak, 1997; Dotan, 2005; Hirschl, 2000;

Sandberg, 2010). It is not surprising that other comparative studies have been based on these jurisdictions (e.g., Clarfield, Bergman, & Kane, 2001; Doron, 2002; Munro, Stein, & Ward, 2005), which, as will be seen, present opposing judicial narratives with regard to the social construct of intergenerational relationships.

The selection of the actual cases involved a two-stage process: First, a computerized search was made of leading Supreme Court case law search engines (WestLaw—for the United States, QuickLaw—for Canada, and Nevo—for Israel), using relevant keywords (e.g., pensioners, right-to-strike, pension rights, labor unions). Second, from the cases found, the case in each country that historically and directly set a precedent on the specific legal issue was chosen. A specific legal review was then conducted in all three jurisdictions to verify that the cases chosen were still in force and had not been overruled or significantly changed by later rulings. An analysis of each of the three cases selected was based on the judicial texts of the case as published in the different official Supreme Court websites.

United States

The first case is that of *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co*. (1971). Although the decision was handed down more than 40 years ago and despite criticism and more recent cases in the field, *Allied Chemical & Alkali Workers* is still the leading precedent in its field and serves as a reference for current case law (Bates, 1988; Beck & Keith, 2007; Gladstone, 1991; Mathiason, 1971; McElligott, 2005).

The facts of the case were as follows: The Allied Chemical & Alkali Workers Organization represented the hourly paid employees of the Pittsburgh Plate Glass Company. Both the active (i.e., still employed) workers and the pensioners of the company enjoyed a health insurance program. In 1965, the U.S. Medicare program came into force, and in view of this new Federal social insurance program, which aimed at older persons, the company informed its pensioners that it intended to cease its participation in their health insurance program and to replace it with an insurance program that complemented Medicare. The labor union opposed the company's unilateral change and demanded negotiations on the matter. The company refused, arguing that it was not obligated to conduct negotiations with the workers organization regarding the rights of pensioners.

After moving through various administrative tribunals, the case reached the U.S. Supreme Court, which stipulated that a labor union had neither the ability nor the legal authority to represent pensioners in the framework of a collective labor dispute over that issue. From the viewpoint of historical

interpretation, the Court held, the intent of the law was to regularize the links between active employees and their employers, not those between pensioners and their past employers. In the words of the Court,

> The Act, after all, as §1 makes clear, is concerned with the disruption to commerce that arises from interference with the organization and collective bargaining rights of "workers"—not those who have retired from the workforce. The inequality of bargaining power that Congress sought to remedy was that of the "working" man, and the labor disputes that it ordered to be subjected to collective bargaining were those of employers and their active employees. Nowhere in the history of the National Labor Relations Act is there any evidence that retired workers are to be considered as within the ambit of the collective bargaining obligations of the statute. (p. 166)

The Court based its stand on both the conflict of interests and the dispute that, in its opinion, existed between active employees and pensioners, and therefore it justified the distinction between the two:

> Here, even if, as the Board found, active and retired employees have a common concern in assuring that the latter's benefits remain adequate, they plainly do not share a community of interests broad enough to justify inclusion of the retirees in the bargaining unit. Pensioners' interests extend only to retirement benefits, to the exclusion of wage rates, hours, working conditions, and all other terms of active employment. Incorporation of such a limited purpose constituency in the bargaining unit would create the potential for severe internal conflicts that would impair the unit's ability to function and would disrupt the processes of collective bargaining. Moreover, the risk cannot be overlooked that union representatives on occasion might see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees' benefits. (p. 173)

Finally, the Court rejected additional claims and alternative arguments. One was that there was an "established industrial practice" of employers and employee organizations conducting negotiations over pensioners' rights. Another was that the economic benefits given to pensioners were in every instance part and parcel of the "conditions of work of the active employees" in that these benefits influenced the rights of the workers (thus, for example, the very existence of a large group of pensioners who were paying members of a pension program could lower the cost of the active employees' participation).

The bottom line, according to the U.S. Supreme Court, was that pensioners were not "employees" or "working men" under the law; hence, labor unions had no legal right to mandate employers to bargain with regard to the

rights of their pensioners. This was a matter not only of the black letter of the law but also of the broader theoretical construction of generational relationships:

> Under the Board's theory, active employees undertake to represent pensioners in order to protect their own retirement benefits, just as if they were bargaining for, say, a cost of living escalation clause. But there is a crucial difference. Having once found it advantageous to bargain for improvements in pensioners' benefits, active workers are not forever thereafter bound to that view or obliged to negotiate in behalf of retirees again. To the contrary, they are free to decide, for example, that current income is preferable to greater certainty in their own retirement benefits or, indeed, to their retirement benefits altogether. By advancing pensioners' interests now, active employees, therefore, have no assurance that they will be the beneficiaries of similar representation when they retire. (p. 181)

Canada

The Canadian case, known as *Dayco v. CAW-Canada* (1993), is named for the petitioner in this instance, the Canadian Dayco Company. Once again, despite the passage of time, this is still the leading precedent and has become the undisputed bench mark in its field in Canadian labor law (Ferrere, 2012). The basic facts of the case were these: Following the transfer of its activities to Mexico, *Dayco* closed its plant in Hamilton, Ontario, in 1985. The company informed its pensioners that all their additional insurance benefits (over and above the pension that each of them had accumulated as a pensioner) would cease when the benefits of all the "active" employees were terminated. The union initiated arbitration proceedings, in which the employee argued that there was no obligation under the terms of the collective labor agreement toward employees who had already retired.

The case eventually reached the Supreme Court of Canada, whose ruling highlighted the differences between Canadian and American labor law: Under American law, pensioners can personally sue their past employers for prejudicing their rights but cannot demand of the employees committee to take up the cudgels on their behalf; the picture under Canadian Law, however, is far less clear-cut. In Canada, the individual pensioner may not be able to obtain redress by personally suing, because the authority to sue is granted exclusively to the representative organization, namely, the representative employees committee.

The Canadian High Court cited opposing decisions, some of which held that pensioners were not "employees" for the purpose of labor disputes, whereas others emphasized the fact that under Canadian law, the nonrecognition of an employees' organization to represent its pensioners

would result in their rights becoming a mere illusion. It referred to the Canadian Arbitrators' decision in the Coulter case:

> Clearly, the retired employees are not employees within the strict meaning of that term. The same may of course be said of employees who are laid off for any substantial period of time. In each case, however, the question is not whether or not such a person is an employee within the strict meaning of the term (obviously he is not), but rather what are the rights which such person may have pursuant to the collective agreement. . . .
>
> While it may be that a question might arise as to the entitlement of a person who is no longer in the employ of the company in the strict sense of the term to avail himself of the grievance and arbitration provisions of the collective agreement . . . the trade union party to the collective agreement may certainly seek to enforce such rights on behalf of the persons entitled thereto. . . .
>
> If this were not so, then the benefits won by the union in negotiation and agreed to by the company would be illusory. (pp. 428-429)

In light of the Coulter precedent, the Canadian Supreme Court finalized its stand as follows:

> The term "employee" in the Act may well encompass retired workers in some contexts, thereby allowing retirees to take advantage of the Act's fair representation provisions. (p. 84)

The Canadian Supreme Court adopted a doctrinaire approach, but clearly different from that of the U.S. High Court, to the matter of collective negotiations over the rights of pensioners. Its specific stand in the field of collective activity was that active employees, as part of organized labor, were allowed (and even required) to defend and further the rights of their pensioner members. The colloquium is a "collective colloquium," in its view, and consequently the preferred pattern of legal activity is collective, not individual. The Canadian Court based its approach not only on the legislative difference between Canada and the United States but also on a completely different construction of the manner in which the rights of pensioners should be safeguarded, namely, that collective activity is the effective field on which to safeguard and advance the rights of pensioners. Without collective action, their rights would be merely an illusion.

Israel

The Israeli case is the most recent case (and so far has been the only case in the field in Israeli case law). It is of interest because the Israeli legal system

has been influenced by both American and Canadian jurisprudence. Moreover, as will be described below, one or the other of those approaches was adopted by the different courts that dealt with the case, the essentials of which follow.

Bar-Ilan University, a well-established Israeli higher education institution, employs hundreds of lecturers who are members of the Bar-Ilan University Senior Academic Staff Union (hereinafter, the BIU Academic Staff Union). By virtue of a 1959 Pension Agreement, all members of the BIU Academic Staff Union are insured by a Comprehensive Contributory Pension Fund. This agreement was unique, as the academic staffs of other universities in Israel at the time enjoyed noncontributory, pay-as-you-go pension plans (and not a budgetary pension).

According to the regulations of this contributory pension plan, the pension value was linked to the salaries paid to the active members of the university staff. Thus, its real value was protected; whenever the active academic staff obtained a salary raise, the pensioners received a similar raise in their pensions. In 1988, however, the regulations were changed, and pensions would henceforth be linked to the consumer price index. The change had the consent of the BIU Union, as it seemed to benefit the pensioners.

In 1993, the academic staffs of all the universities in Israel were involved in a long labor struggle, the outcome of which was a substantial salary increase for the lecturers. The academic pensioners of most of these universities enjoyed, as a result, a raise in their pensions (which were linked to the salaries of the active academic staff). However, because of the fact that the BIU pensioners were linked to the Consumer Price Index, they did not share in this benefit.

The BIU Senior Staff Union demanded that the university compensate lecturers who were on pension in accordance with the salary raise given to the active union members. This meant a 14% increase in pensions over and above the Consumer Price Index (CPI) linkage. In spite of protracted negotiations, the parties failed in their attempts to reach agreement on a solution. As a result, a collective labor dispute was declared in October 1999.

The Israeli District Labor Court ruling. In an attempt to prevent a strike, the Bar-Ilan University administration resorted to the District Labor Court on October 25, 1999, requesting temporary relief and also a permanent injunction forbidding the BIU Academic Staff Union from holding a strike. The university asserted that a strike was not legitimate in dealing with the rights of pensioners, especially when it involved an attempt to change an already agreed pension system.

The District Labor Court accepted the BIU administration's argument. The court stated that the basic rule was that when a worker retired, the

employer–employee relationship terminated. The rights of the pensioner after retirement were based on the regulations of the pension fund of which he or she was a member. Moreover, pensioners were not employees, and therefore a dispute over financial gains that would improve their pensions did not fall within the frame of "Labor Conditions" or "Labor Relations"; they were not subjects that constituted legitimate grounds for a strike under the law.

Interestingly, the District Court decided to elaborate why it believed that such a ruling was not only lawful but also just. The court asserted that it would not be appropriate to recognize a labor union's right to strike over the economic rights of its pensioners, as this would potentially infringe on their vested rights. Granting pensioners the right to take organizational measures to "improve conditions" after their retirement, it continued, would make it mandatory to grant a similar legal right to employers to negotiate reducing rights that had been bestowed on pensioners. In the long run, such a policy would prejudice the protected vested rights of the pensioners themselves and, therefore, would be unjust.

The National Labor Court ruling. On December 10, 2000, the BIU Senior Academic Staff Union appealed to the National Labor Court against the decision of the District Labor Court. In reversing the District Court's ruling, the National Court based its decision on the following considerations. First, the legal question of the right of a labor organization to strike for the rights of its pensioners concerned the "organized sector," that is, workers in the economy where organized labor relations existed. That sector has special characteristics: for example, employees generally remained at their place of work for many years. Among other special characteristics were those that directly concerned relations with pensioners. This was an ongoing relationship manifested not only in places where the pension is budgetary and retirees receive their pension directly from their former place of work, it also found expression, inter alia, in the fact that collective agreements include diversified arrangements regarding pension rights and that the representation of the employees by the labor organization continues after their retirement.

Even though the main task of a labor organization is to represent the active employees, the National Labor Court continued, many of its members are pensioners. In fact, the considerable increase in the number of pensioners with the passing of time creates a bond and dependence between them and the active employees: They share common interests, they are prepared to help each other, and, in many respects, they can be defined as a "single community." In the absence of any link with labor organizations, pensioners' organizations on their own would not have any bargaining power vis-à-vis their past employers.

Finally, the Israel National Labor Court explained that it was the rule to interpret the Collective Agreements Law in a way that served its purpose in today's industrial reality. Given the background detailed above, the term *labor relations* can and should be interpreted as applying to pensioners, too. Furthermore, the term *employees' welfare* can be interpreted as including their welfare after retirement. In that sense, a pensioner can be considered an "employee" for the purpose of general representation. This approach, in the Court's view, squared with the requirements of the modern era.

Once again, the Israeli National Labor Court decided to go beyond the legal lines and elaborated why its verdict was not only legally sound but also socially just. The court stated that the interpretation that made it possible to recognize the use of the right to strike as a means of defending pensioners' rights was in line with Israel's present social reality. On one hand, the pensioner population was growing continuously; on the other, its voice otherwise went unheard and its ability to protect pensioners' rights was limited. Therefore, the appropriate policy was to interpret the legislation in a way that enabled a labor organization to defend its pensioners by all legal means, including declaring a strike. Labor unions were organizations whose purpose was to further their members' interests, one of which was to ensure a decent living for pensioners.

The Israeli Supreme Court of Justice ruling. The legal battle did not end at the National Labor Court level. The social policy implications of the decision were viewed as being so important that strong socioeconomic actors joined the parties and appealed to the Supreme Court of Justice. On one hand, the Israeli national workers union, the *Histadrut*, backed the BIU union, and on the other hand, the Israeli National Business Association sided with the BIU administration. It was clear that the ruling would have significant impact on labor relations in Israel.

The Supreme Court of Justice handed down its decision after a long period of deliberation. In a unanimous verdict, it reaffirmed the National Labor Court's ruling, that the BIU union had the legal right to strike in the context of a labor struggle to improve the benefits of its pensioners. Once again, the Israeli Supreme Court's decision combined "narrow" legal justifications with "broad" social justice considerations.

Interestingly, the Court decided to begin its ruling with the broader social justice considerations, asserting that

> [i]n the framework of socio-demographic change, there is the development of a social perception that strives toward inter-generational and mutual-support between different cohorts and generations. This is done in recognition of the

> need for mutual responsibility between different generations on the assumption that each age-layer of the society is expected to eventually grow old. . . .
>
> The aging of the population and the significant increase in life expectancy present new challenges to law and society. Principles of mutual and inter-generational solidarity, which are built upon the respect and the dignity of older persons, require the adjustment of the existing socio-legal institution to the changing reality. (Bar Ilan University v. National Labor Court, pp. 20-21).

After providing the general social context, the Court moved on to the more specific context of the role of labor unions with respect to their pensioners:

> It is only natural that a labor union that represented the employee during his or her active working years, and cared for the formulation of future pension plans, would continue and provide protection when the employee retires, and will be in charge of the realization of rights and status even after his or her leaving the working force. (p. 25)

With these two insights as background, the policy outcome that the Israeli Supreme Court reached is not surprising:

> The public perception of active employees and retired pensioners as two joints connected together in an inter-generational relationship, both of which have direct linkage to the working place from which their pension rights stemmed, justifies a broad legal construction of labor laws as including not only active employees but also those who have become pensioners. (p. 36)

Discussion

We precede our discussion with a word of warning and acknowledgment of the limits of our argument. One of the accepted ways of examining juridical decisions is from the viewpoint of comparative law (Tushnet, 1999). Comparative examinations can sometimes be very problematic because of legal, legislative, and cultural differences that make such a comparison impossible or legally irrelevant (De Cruz, 1999). This is particularly true in the sphere of labor law, which is characterized by unique and variegated arrangements (Locke & Thelen, 1995). Hence, an attempt to compare American, Canadian, and Israeli cases without in-depth cultural, historical, and legal contexts is inherently problematic. Future research in this field of labor law and gerontology should try to address these limitations by, for example, broadening the comparison beyond the Supreme Court level to include cases and decisions from lower judicial and administrative bodies.

Nevertheless, and keeping in mind these limitations, it seems that the unique circumstances of the Israeli case presented above actually embraced both the American and the Canadian experiences. On one hand, the Israeli Regional Labor Court adopted the U.S. Supreme Court's policy position and ruled that negating the legal rights of labor unions to hold strikes on behalf of their pensioners would better serve and protect the retired employees; on the other hand, the National Labor Court and the Supreme Court of Justice adopted the Canadian construction of law, ruling not only that the term "employee" should be viewed as including employees who have already retired but also that this construction would better serve intergenerational justice.

This leads us to explain the different legal outcomes in the three cases described. One could have argued that the respective outcomes in the three cases can be understood and justified by the unique, country-specific legislative language of the respective acts or by local differences in the respective court's role in labor relations (see, for example, Wright, 2002). However, we argue that a review of the three courts' rhetoric and narratives reveals similar (albeit opposing) justifications that go beyond the legislative language or formal jurisprudence.

Our case study shows that legal cases in the context of the rights of pensioners are not resolved purely or simply on the grounds of the "text" of specific legislation. Even though the legislative language may differ from country to country and the respective courts can limit their reasoning to the text alone, they elect to go beyond and to justify their rulings. This step emphasizes the fact that regardless of the country and the specific legislative language, High Court judges deem it important to "connect" their rulings to a broader, coherent social narrative and to policies that lie within what is known as "narrative justice" (Almog, 2001; Yovel, 2004).

If, indeed, the basis of understanding the different outcomes does not stem from the unique statutory language, but from a narrative justice approach, what is the explanation for the different legal "narratives" in each of the three countries compared in the present study? At this point, it is worth inserting social gerontology insights into the legal discussion. This is not only called for because of the absence of such insights in the court rulings reported above but also, in our view, it is justified as part of a broader understanding that, as described in the introduction, law has not played a significant part in the scientific development of gerontology and the two disciplines still generally remain unconnected. As we will try to show, however, law and gerontology can and should interact.

For social gerontologists, the contrasting legal perspectives on the relationships between generations, manifested here in pensioners (the older

generation) and active workers (the younger generation)—as detailed in our case study—are not new or unfamiliar. Indeed, they echo well-known gerontological theories (Biggs, 1993; Katz & Lowenstein, 2010; Lowenstein, Katz, Prilutzky, & Mehlhausen-Hassoen, 2001). Two contrasting social paradigms stand out in light of the legal discourses that were presented in all three cases described, namely, the Intergenerational Conflict Paradigm and the Intergenerational Solidarity Paradigm. These two theories do not necessarily contradict each other, but their basic points of departure for understanding the position of older persons in society differ completely.

The Intergenerational Solidarity Paradigm is based on sociological and physiological theories that emphasize positive components of family integration and intergenerational interaction, as well as bonds of love, affection, and understanding between the different generations (McChesney & Bengtson, 1988). The paradigm refers to a broad multiplicity of connections and variables that include, inter alia, functional components (assistance and changes in the sources of support), both normative (legal obligations and intergenerational support) and structuralized (housing and employment).

This paradigm claims that empirical connections exist between societal norms and structures and also between the degree of solidarity and the awareness of intergenerational obligations. Furthermore, the degree of intergenerational solidarity has a direct influence on the ability of older adults to age decently, actively, and successfully. When the level of intergenerational solidarity is low, the society's level of support and the self-image of older persons are both affected adversely, and the quality of life of pensioners deteriorates (Silverstein & Bengtson, 1997). In other words, the term *Social Solidarity* is, in essence, a positive (though complex) conceptual anchor, by means of which the lives of the older population in modern society may be understood and shaped.

Within the framework presented in this study, it could be argued that both the Canadian Supreme Court and Israel's Supreme Court of Justice adopted in practice the social gerontology paradigm of intergenerational solidarity. Their narratives of the interrelationship of active workers and pensioners mirror the essence of the intergenerational solidarity theory. Although not acknowledging this theory as such and probably unaware of the rich gerontological literature in the field, the judges "constructed" the meaning of "justice" between the generations along lines that fit a social perception supporting interconnectedness and mutual responsibility.

In contrast, the Intergenerational Conflict Paradigm, which is also one of the first and important social gerontology theories, centers on "conflict" as the basic concept in understanding the set of intergenerational connections and relationships. The conflicts on which the paradigm concentrates are

intergenerational conflicts of interests, differences in strength, and the absence of consensus regarding values and the order of priorities (Clarke, Preston, Raksin, & Bengtson, 1999; Turner, 1999). It explains the place of older adults in society as part of the intergenerational confrontation over limited economic resources, access to sources of employment and consumer markets, and social status; this last issue bound up with prestige and strength. Intergenerational competition is part of the social superstructure of the capitalist economy, characterized by every individual, family, and generation having a different agenda and different interests, in accordance with which they have to "display hostility" toward their rivals. Understanding the conflict, exposing it, and presenting its various components form, according to this paradigm, the basis of the ability to change the place of older adults in modern society.

Once again, it is quite clear that the judgments of both the U.S. Supreme Court and Israel's Regional Labor Court echo the core rationales of the Intergenerational Conflict Paradigm. Their decisions voice the concern that labor unions, by representing younger people, the active workers, inherently find themselves in a "conflict of interests" with regard to their pensioners, who are of a different generation. It is much easier to understand and to justify the legal construction of "narrative justice" given by these two judicial bodies once the social reality is understood in the framework of incompatible concerns and contradictory wishes and abilities.

Taken together, all three cases presented in this article tap into a deep global and cultural unease about demographic change, which Moody, talking about the United States, has identified as the "boomer wars" (Moody, 2008). This social unease cannot be resolved on formal legalistic grounds alone. It necessitates a social mandate that will "connect" our empirical, theoretical, and gerontological knowledge with the worlds of law and legal rulings. Such sociolegal integration can become part of what Biggs and Lowenstein (2011) called "Generational Intelligence," meaning sensitivity to and empathic understanding of age diversity as key elements in an enduring "peace settlement" between generational groups.

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Author Biographies

Israel Doron is head of the Department of Gerontology at the University of Haifa, Haifa, Israel. He has specialized in the field of elder law, international rights of older persons, and aging and social policy. He was past president of the Israeli Gerontological Society and is the chair of the Israeli association of Law in the Service of the Elderly.

Ariela Lowenstein is president Yezreel Valley College and professor in the Department of Gerontology at the University of Haifa, Haifa, Israel. She is regarded as one of the leading national and international experts in aging. She is past chair of the International Association of Gerontology and Geriatrics (IAGG)—European region, an honorary fellow of the Gerontological Society of America (GSA), and is European representative of the International Network for the Prevention of Elder Abuse (INPEA) from whom she received the Rosali Wolf Award.

Simon Biggs is professor of gerontology and social policy in the School of Social and Political Science at the University of Melbourne, Victoria, Australia. Prior to his present position, he was professor of gerontology and director of the Institute of Gerontology at the King's College London, UK. He has participated in EU, Australian, and Canadian Government briefings on population aging, dignity in later life, and on elder protection.