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## AGING: A NEW HUMAN RIGHTS CONCERN—A POLICY-ORIENTED PERSPECTIVE

by *Lung-chu Chen\**

"I'm proud to be here. And at my age I'm proud to be anywhere." That's not my line, that's the line of an old lady.

The concept of human dignity covers the entire span of life. The deprivations with which we are concerned here are those imposed upon individuals because of advanced chronological age. Although the plight of the elderly differs from community to community and from culture to culture, the deprivations consciously or unconsciously imposed upon the elderly have become increasingly apparent as aged segments in the community continue to show significant expansion, especially in highly industrialized societies.

The deprivations of the aged extend to wealth, well-being, power, respect and other value processes and take various forms. The most notable deprivation is of course compulsory retirement from active work life, as enforced by a blanket age limitation, regardless of a person's actual mental and physical capacities. The deprivation may also take the form of denying employment opportunity to individuals over a specified age that may vary according to occupation.

Age-based compulsory retirement tends to precipitate or accentuate the syndromes of aging, generating many value deprivations that otherwise could be avoided or mitigated.

The shock of the sudden loss of accustomed roles may be so overwhelming as to generate a lasting state of anxiety and even depression. In a work-oriented society, compulsory retirement usually means drastic reduction in income, perhaps resulting in near poverty, even where there is provision for some sort of social security. Formerly useful skills are consigned to the scrap heap overnight. Access to the accustomed flow of information and other sources of enlightenment are lost or substantially reduced. While the power to vote may continue unaffected, eligibility for officeholding, with minor exceptions, is denied. This implies a concomitant decline in influence upon the making of effective community decisions and a sharpening sense of powerlessness. Condemning the elderly to "an idleness that hastens their decline," age-based involuntary retirement tends to affect all personal relations and to evoke "the sorrow of parting, the feeling of abandonment, solitude, and uselessness."

Thus, from an active and useful member of society, overnight an aged person is relegated to the club of senior citizens under a thoughtless, inconsiderate system of compulsory retirement and becomes a target of condescension, neglect, and contempt. Instead of embarking upon a new life of enjoyable leisure in the "golden years," people who are forced to retire, except for a fortunate few, are thrust into an agonizing path of doubt, insecurity, emptiness, and futility. They are bluntly redefined as "old and obsolete." As one writer put it, the norms applied to them change quickly from achievement to ascription, from criteria of performance to those of sheer age regardless of personal accomplishment. People who were formerly judged as individuals are then bewilderingly treated as members of an invidious category.

In addition to compulsory retirement, the aged are faced with a number of special hardships, infirmities, and deprivations, ranging from inadequate provision of health, safety, and income to loneliness and helplessness.

For a quick inventory:

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In relation to wealth: income insecurity, lower standards of living, unemployment, denial of credit, precarious economic conditions.

In relation to well-being: inadequate provision for safety, health, and comfort; lack or inadequacy in health care; disasters caused by sudden catastrophic illness; poor housing; loss of stable home environment; loneliness caused by housing segregation and isolation; loss of mobility due to inadequate transportation facilities or fear of crime; denial of freedom to accept or reject medical treatment; deprivation of freedom to depart or continue life.

In terms of enlightenment: general ignorance of the aging process, as accentuated by lack of adequate intergenerational interaction; slighting of opinions and ideas of the aged in a "youth culture;" lack of access to media of mass communication; lack of opportunity for continuing education.

In relation to skills: rapid obsolescence of skills; lack of opportunity for training and retraining appropriate to a culture of science and technology.

In relation to power: loss or drastic reduction of influence in the political process; fragmentation in the articulation and promotion of interests for the aged.

In terms of affection: disintegration of traditional family system; loss of old ties; loss of intergenerational interaction; abuse of the elderly and domestic violence; abuse in guardianship and conservatorship proceedings.

In relation to rectitude: confusion about norms of responsible conduct in a society afflicted by an inordinate emphasis on youth culture and torn by generational gaps.

In terms of respect: deprivation of a sense of community; loss of privacy; loss of basic sense of self-worth and self-respect.

Thus, aging as a new human rights concern involves not only the problem of mandatory retirement and its attendant trauma, but also a wide range of legal problems that require serious attention. Though these problems may differ in their manifestation, magnitude, and severity from community to community, as exemplified by the contrast between developed and developing countries, aging is indeed a shared human experience. Humankind would be better served the sooner the world community and individual national communities come to grips with these problems.

For a community aspiring toward the goal of human dignity, the critical policies of honoring freedom of individual choice and of fostering the utmost contribution by individuals to the common interest should protect the aged as well as other members of a community. To deny or restrict a person's opportunity to work and to participate in other value processes, purely on the basis of an arbitrary chronological age limit, is not compatible with the overriding policy of human dignity.

Age-based compulsory retirement commonly has been justified on several grounds. First, the elderly on reaching a certain specified age are regarded as inefficient workers because of conspicuous deterioration both in intellectual and physical capabilities. Second, it is impractical to effect retirement ("to weed out deadwood") on a selective, individualized basis. Third, mandatory retirement guided by chronological age serves the common interest by opening up avenues of advancement and job opportunity for the young. Fourth, mandatory retirement on the basis of a specified age enables "the prospective retiree to plan ahead with certainty," instead of being shocked by a sudden retirement that is dictated by haphazard, ad hoc criteria.

These justifications, however, can hardly withstand rigorous scrutiny.

First, underlying the defense of age-based compulsory retirement there is a blanket assumption, allegedly based upon statistics, about the stereotyped disabilities of people reaching a certain age. As gerontological studies accelerate and deepen, such an as-

sumption encounters growing challenge; no blanket assumption about the incapacity of people over a fixed age can be accepted until it is factually demonstrated.

It is no more difficult to make decisions concerning retirement on an individualized basis than to make day-to-day decisions concerning hiring, discipline, or promotion of individual employees. The appropriate criterion should be whether a person is currently capable of performing the task required, not when he or she was born.

While it is important to create job opportunities for the young, the policy of making room for the young at the expense of active older bread earners—in complete disregard of actual capacity and fitness—is nothing more than “the shifting of the problem of insufficient jobs from one age group to another.” Blatant waste of enormously useful talents and skills, seasoned by years of practical experience, is scarcely the way to augment the common interest.

Moreover, the knowledge that a person is about to receive a declaration of instant obsolescence and uselessness on the authority imputed to the calendar is no key to a smooth, anxiety-free transition from one role or status to another. If anything, a keen sense of deprivation and injustice may become so overwhelming as to engulf the involuntary retiree in a sea of nameless emptiness and chronic trauma.

Human beings should be treated as persons rather than by category. Human dignity is best achieved by treating each person according to his or her unique capability and potential. Chronological age is but one of multiple indices of individual capacity and potentiality. Discrimination on the basis of advanced chronological age has keen personal implications for every member of the community because aging is a process common to everyone who leads a normal span of life.

Too often people are conditioned to view old age as a disease and disability. Perhaps in part this is a natural defense reaction, but the fact is that aging is the fate of us all, and in the process we lose none of our rights to dignity and respect. The concept of old age as a “second childhood” must be avoided, and the right of the elderly to continue to make their own decisions concerning the full spectrum of life’s choices must be maintained. Capacity, and not incapacity, must be the presumption unless and until the reverse is proven. Otherwise the public policy of protecting the elderly from abuse will itself become a source of abuse. Protective services and related strategies for caring for the aged always must be tailored to maintain and protect the individual’s integrity and personal autonomy.

As is the problem in any situation that involves allocation of finite resources, the problems of affording special assistance to the aged must be balanced against other needs of society in determining priorities and plans of action. It may be noted, however, that aiding the elderly does not necessarily mean that resources must be diverted from other causes. As is so often the case, what is needed is the application of creative thinking to develop feasible alternatives that have the desired effects. For example, very often an elderly person is hospitalized for reasons that do not call for such drastic and highly expensive measures—and he or she may remain hospitalized for extended periods of time. Yet, given thought and planning, home health care alternatives can be designed that will be both more cost effective and more fulfilling to the very people sought to be helped.

How, then, has the world community responded to the challenge of aging as a new human rights concern?

The U.N. Charter and its ancillary human rights instruments have developed a general norm of nondiscrimination on such invidious grounds as race, sex and religion, but have not specifically included “advanced age” among the impermissible ground of differentiation. It is to be noted, however, that the general norms of nondis-

crimination are designed to be illustrative rather than exhaustive. The transnational prescriptions barring discrimination are broad and far reaching. Further, the U.N. Charter, the Universal Declaration of Human Rights, the two International Covenants on Human Rights, and other related human rights instruments are worded explicitly to protect "everyone," presumably including every human being regardless of chronological age.

Although the relevant human rights instruments are silent on the question of age-based mandatory retirement, it would appear that the more general norm of nondiscrimination, conjoined with the protected right to work, must outlaw such an invidious practice and policy. The right to work is well protected under transnational prescriptions. The Universal Declaration of Human Rights enunciates in article 23(1) that "[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." The International Covenant on Economic, Social, and Cultural Rights in article 6 fortifies the right to work in these affirmative terms:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The contracting states not only recognize the right to work but also pledge to "take appropriate steps to safeguard" this right. Similarly, the Declaration on Social Progress and Development of 1969 underscores that "[s]ocial progress and development require the participation of all members of society in productive and socially useful labour."

Prevention of discrimination is only one aspect of the protection of persons of advanced age. They may have special infirmities and hardships requiring special measures of assistance. This critical need is well recognized in various transnational prescriptions. For instance, the Universal Declaration of Human Rights states in article 25(1):

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control.

Similarly, this concern is evident in the resolution on the "Question of the Elderly and the Aged" adopted on December 14, 1973, by the General Assembly of the United Nations. The General Assembly urged member states to "enhance the contribution of the elderly to social and economic development" and to "discourage, wherever and whenever the overall situation allows, discriminatory attitudes, policies and measures in employment practices based exclusively on age." More specifically, in its separate resolution on "Social Security for the Aged" adopted on the same date, the General Assembly urged member governments to provide the aged "adequate social security payments," "sufficient institutions for the care of aged persons requiring medical treatment," and adequate "architectural facilities" and "housing." These resolutions grew out of a timely study on the "Question of the Elderly and the Aged" undertaken by the United Nations.

The growing worldwide concern for the protection and fulfillment of the aged was greatly fortified thanks to the World Assembly on Aging held in the summer of 1982 in Vienna under the auspices of the United Nations. It spotlighted the problems of aging from a comprehensive global perspective and set forth a long agenda of action for both international and national communities.

A central theme of the Vienna Conference was that the experience of aging is a cross-cultural one in which similarities outweigh differences. A major goal projected by the Assembly was to encourage nation-states to take the special needs of the elderly into account in all aspects of policy development and implementation and to facilitate participation by the aged in society to the greatest possible extent. Among the major specific recommendations made in the Assembly's Plan of Action are the following:

- The segregation of the elderly is to be avoided. In particular, housing arrangements for the aged must "assist in securing their social integration."
- Home care for elderly persons with health problems must be made available whenever feasible. More drastic and isolative measures such as hospitalization are to be avoided as much as possible. Health care alternatives must be developed that will enable the elderly to live as independently as possible.
- Steps should be taken to smooth the way for transition from a full working life to retirement.
- Government policies should reject stereotypical concepts concerning the capabilities and needs of the aged, especially the notion that advanced age equals incapacity.
- The recognition of aging as a shared human experience must be reaffirmed, as must be general awareness of the aging process.
- Finally, recognition of the value of old age in its own right as a time for reflection must be increased. "The reinterpretation of life-stories by the aged should help us all to achieve the urgently needed reorientation of history."

Meanwhile, the question of protecting the aged is receiving increased attention within many national communities whose principal efforts relate to special assistance in terms of income, social security, housing, transportation, and medical care. In addition, efforts increasingly have been directed to challenge the policy and practice of age-based mandatory retirement.

Recent developments within the United States signify this new endeavor. The efforts to challenge the practice of mandatory retirement through the equal protection clause of the 14th Amendment, as exemplified by *Massachusetts Board of Retirement v. Murgia* (1976) and *Vance v. Bradley* (1979), have thus far been less than successful. In both cases, the Supreme Court of the United States refused to characterize age-based distinction as a suspect classification and applied the rationality test to sustain, respectively, a Massachusetts law requiring the retirement of uniformed state police officers at age 50 and a federal statute mandating foreign service officers to retire at age 60. On the legislative front, however, special legislation for the protection of the aged has been remarkable. There are four major statutes in this field: the Age Discrimination Act of 1975, as amended; the State and Local Fiscal Assistance Act of 1972, as amended; the Equal Credit Opportunity Act, as amended; and the Age Discrimination in Employment Act of 1967, as amended.

In this country, increasing attention is directed to a wide range of subject matters, especially in the following areas:

- Retirement: How to implement phased retirement in lieu of a blanket, compulsory retirement;
- Housing: How to enable the elderly to remain in their homes and communities;

- Health care: How to provide the resources for coping with catastrophic illness and alternatives to hospitalization;
- Protective Services: How to ensure that "proactive services" designed to protect the elderly do not through lack of vigilance become themselves sources of elderly abuse.

These of course would involve how to allocate the available resources and to set priorities amid competing demands, in order to identify and secure the common interest from both short-term and long-term perspectives.

Among the policy questions that should receive greater attention in the coming years are the questions that relate to treatment of the aged.

The policy of excluding the aged from significant social roles is open to so much adverse criticism that categorical declarations of obsolescence are not likely to survive. Our world is accustomed to mobilizing scientific knowledge and creative ingenuity, and it appears certain that these assets will be increasingly directed to problems connected with aging. Hence, the most fundamental challenge is to devise social institutions that would optimize the opportunities open to human beings at all levels of chronological aging.

In dealing with the problems of the aged and those of society amid a greatly expanding elderly population, there is of course much to be done. The specifics must be left to other forums, but fundamentally, the task must begin with the enlightenment of the general public as to the realities of the aging process. The segregation and congregation of the elderly as the express and implied result of public policy has diminished understanding of the aged and intergenerational interaction. The result is not only the loss by many elderly of the feeling of community, of being part of the scheme of things, but also the lack of understanding of the natural course of human life by the young that only association on a day-to-day basis can bring. A result is that old age will increasingly catch us unaware and unable to cope. The segregation of the elderly lends to old age a sense of mystery, as if the elderly somehow "don't belong." Only by keeping the elderly as much in the mainstream of society as possible can both the young and the old reap the rewards of understanding between the generations.

The quality of society and the degree to which human dignity values are fulfilled may be measured by the treatment accorded to the aged members of the population. The treatment of the elderly concerns not only the elderly; it involves the identity system of the self and of the whole society of which the self is a part. In primitive societies the elderly were highly prized largely because of their rarity. In the contemporary world, because of advances in science and technology, the life expectancy of humankind continues to grow, and this planet is endowed with ever increasing numbers of people living well beyond the years that were formerly thought possible. As the life sciences continue to flourish, especially in gerontology, there is every indication that this trend will continue, barring unforeseeable catastrophes. Whether the longevity made possible by the cumulative heritage of humankind will become an advantage or a curse in disguise presents a critical test for modern civilization. As David Finkelstein, Vice Chairman of the Board of Trustees of New York Law School, told me at the banquet in honor of Judge Stephen Schwebel's visit to the school the day before yesterday: "A long life may not be good enough, but a good life is long enough."

The important community task is that of devising criteria and procedures appropriate for appraising individual capacities and potentialities at every chronological age. To maximize the self-fulfillment of individual persons and their contributions to the