

OLD AGE AS A “NEW FRONTIER” OF (SPATIAL) JUSTICE

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Abstract: Due to ongoing demographic changes, old age is receiving increasing attention, to the extent that it is considered a “new frontier” of justice, with spatial justice being one of the more recent areas of interest within the legal sphere. The article aims to explore the relationships among the elderly, rights, and space, particularly concerning the urban dimension of the latter. The analysis is preceded by a brief account of the historical significance assumed by old age in philosophy and law, at the intersection of which legal philosophy is situated.

Keywords: Elderly, Old age, Spatial justice, Urban space, Independent living, Human rights.

SUMMARY: 1. INTRODUCTION. 2. OLD AGE BETWEEN PHILOSOPHY AND LAW. 3. SPATIAL JUSTICE FOR THE ELDERLY: SPACES OF (MIS)RECOGNITION. 3.1. Confinement, ‘expulsion’ and ambiguous recognition. 3.2. Toward age-friendly (urban) spaces. 4. WAYS FORWARD.

1. INTRODUCTION

In *De Senectute and altri scritti autobiografici*, Norberto Bobbio clearly affirmed that “[o]ld age is not an academic subject” (Bobbio, 1996: 17). At that time, Bobbio’s position – which later changed as a consequence of his “affective turn” (Greco, 2022: 167) – was not so strange: for a long time, old age has not been considered a relevant theme in legal philosophy, and in cases where it has been taken into consideration, the perspective adopted has been mostly autobiographical (see, e.g., Waldron, 2017). Yet, as Martha Nussbaum recently observed (Nussbaum, Levmore, 2017: 61), after disability, nationality and species membership, nowadays old age may be considered a new “frontier of justice”, and its relevance (also) within legal philosophy cannot longer be denied. Indeed, the enormous changes in human longevity and population demographics, which has for some time been a distinctive feature of the contemporary world, are widely recognised as one of the most insidious ‘challenges’ we have to confront,¹ both theoretically and in relation to public policies. One need only consider the concept of *active* and *healthy* aging, in relation to which supranational institutions – the United Nations and World Health Organization first and foremost – are committed to legal instruments aimed at addressing the challenges posed by the population ageing.²

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¹ In this regard, see United Nations Department of Economic and Social Affairs, Population Division (2024). *World Population Prospects. The 2024 revision*, <https://population.un.org/wpp/> and UNDP, Human Development Report, *Human Development Report 2023-2024 [original data]*, <https://ourworldindata.org/grapher/life-expectancy-undp>.

² *Healthy ageing* replaces the World Health Organization’s previous focus on *active ageing*, a policy framework developed in 2002, thus becoming the object of its attention on ageing in relation to the years 2015-2030. Like *active ageing*, *healthy ageing* emphasizes the need for action across multiple sectors, directed at enabling the elderly to be a resource to their families, communities, and economies. Amongst the most relevant documents on the issue, see United Nations, *World social report 2023. Leaving no one behind in an ageing world*; World Health Organization, *Global report on ageism*, 2021 and the UN *decade of healthy ageing 2020–2030: Plan of action*.

Amongst them is the adoption of an international Convention on the elderly’s human rights.³ In addition to constituting a further step on the road to the “age of rights” (Bobbio 1990), it would have a significant symbolic effect: the times are not far off when it has been (provocatively) asked what human rights have to do with the elderly (Georgantzi, 2018), given the condition of marginalization and oppression to which they – above all where not self-sufficient – are relegated in contemporary societies, often expressed through references to *ageism*.⁴ Indeed, issues related to intergenerational financial justice and welfare systems,⁵ as well as those concerning the symbolic and spatial ‘confinement’ and segregation of elderly individuals,⁶ raise questions about the equal recognition of older adults as (human) rights holders.

This context supports Nussbaum's assertion that old age represents a new frontier of justice: even though a visible transition of old age is occurring – “from the margins to the center” (Hooks, 1984) of the legal reflection and, within it, the philosophy of law –, these issues remain pressing.⁷

Below, through the adoption of a critical theoretical approach,⁸ I focus on the field of the so called “spatial justice,”⁹ developing some considerations on the relationships among elderly, rights, and space, particularly in reference to the urban dimension of the latter. The present introductory reflections aim at identifying a series of issues that, in my opinion, have not yet received adequate attention within legal philosophy, and therefore require a more in-depth analysis and discussion. The analysis, which is developed in para. 3, is preceded by a brief account of the relevance historically assumed by old age in philosophy and law, at the crossroads of which legal philosophy is situated (para. 2). In

³ In this respect, it is noteworthy that in May 2024, the 14th Open-Ended Working Group on Ageing, aimed at strengthening the protection of the human rights of older persons, officially recognized that the international human rights system does not fully protect older people’s rights and recommended the establishment of a new human rights treaty to help address this failure.

⁴ On this concept, see Robert Butler (1969), who later (1989: 139) defined ageism as “a systematic stereotyping of and discrimination against people because they are old [...]. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills [...].” Ageism can be defined as a form of structural discrimination that occurs when age is used to classify and divide people, creating harm, disadvantages, and injustices that ultimately erode solidarity between generations; in this perspective, the phenomenon does not solely affect older people, but all those who do not fit the parameter of the adult subject, to which liberal tradition refers.

⁵ On intergenerational justice, see Menga, 2016; Gossieres, 2023; with specific attention to the ageing process, cf. Gossieres, 2022.

⁶ Emmer de Albuquerque Green, Tinker, & Manthorpe, 2021; Tarantino, 2024.

⁷ Doron & Soden, 2012.

⁸ On the approach adopted, please refer to Bernardini & Giolo, 2017 and 2021.

⁹ The expression ‘spatial justice’, that has been in use for fifty years in the social sciences, can be interpreted as a shortened expression to identify social justice issues related to space. The rethinking of the relationships between law, space, and the urban environment, as well as the redefinition of the concept of spatial justice from a legal perspective, began instead in 2010. Among the prominent figures in this field is the legal theorist Andreas Philippopoulos-Mihalopoulos (2010, 2015). On the topic, see also Marcuse, 2010; Pirie, 1983; Soja, 2010; Warf & Arias, 2008.

this way, I aim to support my assertion regarding the marginalization of the elderly in legal philosophy and illuminate its various representations, which significantly impact legal policies and the ‘spatial management’ of the elderly and their rights.

2. OLD AGE BETWEEN PHILOSOPHY AND LAW

The idea of viewing old age as a new frontier of justice, as recently argued by Martha Nussbaum, highlights the cultural frameworks that have historically shaped our understanding of aging and influenced the (mis)recognition of the elderly and their rights. Clearly, such paradigms have also had repercussions on spatial justice – which is premised on the idea that justice has a consequential geography to its formulation (Soja, 2010: 1) – and on the presence of the elderly in the urban context.

Without claiming to be exhaustive, a brief foray into the path taken in philosophy and law – areas of undeniable importance for reflection within legal philosophy – may be useful to understand why the relationship between law and urban space currently seems to unfold along very different directions, as it will be clear hereafter.

As for the first area, old age is often addressed throughout the course of Western philosophy, even though not in a systematic way. The distinction between Platonists and Aristotelians – who, according to Coleridge, represent the two fundamental ways of seeing the world – also defines the two main lines along which reflections on old age developed starting from classical culture: as wisdom (Plato) or as decline (Aristotle).¹⁰

Old age begins to be a specific subject of philosophical reflection only in the 20th century, when issues related to the ontological, ethical, anthropological, historical, and social aspects of ageing emerge in the phenomenological and existential philosophy. In this perspective, old age takes on a negative connotation: it is the time of remembrance and regret, with the individual perceived and considered to be ‘behind the times’.¹¹

In those years, Simone de Beauvoir provides a decisive contribution to the reflections on this subject: she denounces the multifaced systemic exclusion of the elderly, along the contradictions in its representations. Indeed, in 1970 she observes with rare clarity and radicalism:

The tragedy of old age is a radical indictment of an entire, mutilating system: a system that, for an enormous majority of the people within it, provides no reason to live. Work and exhaustion mask this gaping absence: people find out about it when they retire. It is much more serious than boredom. Once old, the worker no longer has a place on earth because in truth he never had

¹⁰ See more widely Pinna, 2011.

¹¹ Similarly, in his *De Senectute* Bobbio (1996) observes that the present belongs to the young, whereas the old, who have lost their social role and appear unfit to live in a rapidly changing society, can only cling to the past, as preserved in their recollections and memory.

one: he simply did not have time to notice. When he realises, he falls into a kind of dazed despair. [...] Are old people really people? From the way that society treats them, it is not clear. Society admits that they do not have the same needs or the same rights as other members of the community, as it refuses to give them the minimum that these deem necessary. To soothe its conscience, its ideologues have forged contradictory myths, which lead adults not to see old people as their counterparts, but as ‘Others’. He is the venerable sage who sits above the worldly plane. He is the old madman who rambles and raves. Whether we situate him above or below our species, we still exile him. But instead of disguising reality, we judge it preferable to radically ignore it: old age is a shameful secret, a taboo. [...] This is precisely why I wrote these pages. I wanted to truthfully describe the condition of these pariahs and how they experience it. I wanted to make their voices heard: we will be forced to recognise that they are human voices. We will then understand that their unhappy lot betrays the failure of our entire civilisation: it is *impossible* to reconcile it with the humanist moralising of the ruling classes. [...] We need to start over: our mutilating system must be radically overturned. This is why we so carefully avoid approaching the question of advanced age. That is why we need to shatter the conspiracy of silence. (de Beauvoir, 1970¹²)

Thus, in Beauvoir’s view old age is a complex cultural construction, where biology, social status, existential condition, and ideology each play their part in the devaluation, marginalisation and discrimination of the elderly.¹³ In what can be considered one of the first systematic analyses of old age, the French philosopher highlights the elderly’s social inferiority, which she considers a consequence of the modern emphasis on profit and on the tendency to marginalise unproductive individuals, to be traced back to the rise of the liberal thought.

In the legal field, attention to old age is more recent, to the point that nowadays the elderly are often presented as ‘new’ legal subjects.¹⁴ Although some notable changes are taking place in this regard, the focus of law on old age is still largely ‘casuistic’ (i.e. linked to specific profiles) and ‘sectoral’ (i.e. mainly related to some branches of law), reflecting the limited legal significance long accorded to old age in the framework of multi-level rights protection.¹⁵

¹² Translation of Lucie Elven, founded on “Le Monde diplomatique”, June 2013 at <https://mondediplo.com/2013/06/14age>.

¹³ Similarly, about twenty years later, the scholar in gerontology and social demography Peter Laslett (1989) identified five dimensions of old age (chronological, biological, social, personal, and subjective) which interact and give rise to plurality of ‘ways’ in which people live their lives, thus remarking that age is a complex multidimensional interweaving of factors where biological, biographical, and social aspects interact.

¹⁴ A partial exception is represented by the United States, where since the 1980s a specific branch of law dedicated to them was established, called *Elder Law*. See Doron, 2020.

¹⁵ For an overview, see Solidoro, 2023.

This approach may be explained by the very characteristics of age, which is a problematic legal ‘object’: thanks to its fluid character, it escapes many of the rigid conceptual categories on which the law is hinged. While law has a dichotomous logic, age – besides being a multidimensional category – is a *continuum* which cannot be considered a fixed characteristic of the person and cannot be categorized within a binary framework.¹⁶

However, this limited recognition may also be due to the influence of liberal thought – with its emphasis on the productive dimension – in law. Indeed, it is easy to notice how, until recently, the norms regarding the elderly which are present within various legal systems have primarily focused on specific areas: retirement, social care, healthcare. For the most part, it has been about recognizing “rights to a residual sociality, or one that can be reconstructed through practices of resocialization outside of work, and also rights to everything that can lengthen, or at least ease, the downward path along those steps destined to come to an end.” (Ferrari, 2022: IX)

Such a trend allows us to glimpse a parallel with what was observed by de Beauvoir: just as in the realm of philosophy, the image of old age as a condition of physical and cognitive decline has long prevailed also in the legal sphere, accompanied by a necessary unproductivity and the perception of the elderly as an economic and social cost.¹⁷

As is well known, in recent years other cultural paradigms of old age have been proposed and have influenced the approach of multi-level institutions: in a context marked by the presence of structural inequality and misrecognition, there is an ongoing effort to promote equal recognition and respect for these individuals by deconstructing stereotypes ascribed to old age. To this aim, *successful, healthy* and *active aging* are associated with a positive image of aging, in order to promote the recognition of the elderly’s dignity and autonomy. Within this latter cultural framework, the active role played by the elderly in almost every area of life is emphasised, thereby expanding the range of legally relevant issues for the elderly and overcoming the barriers of ‘sectoralism’.¹⁸

Such an operation has undoubtedly beneficial effects, as it aligns with the socially desired ‘radical overturn’ advocated by de Beauvoir. At the same time, it is possible to identify a significant side effect of this approach: the risk of reinforcing the myth of the ‘perpetual efficiency’ of the elderly, which can expose those who are unable to live according to the standards of *successful*,

¹⁶ Emblematic of this difficulty is anti-discrimination law, where age does not appear as a standalone factor of discrimination, to the point that age is unanimously considered the Cinderella of anti-discrimination law. Furthermore, up to now it has been difficult to identify a group of individuals who could be regarded as historically and *systematically disadvantaged* due to age. There has rather been a prevailing tendency to refer to specific ‘times of life’ in which people are subject to forms of systemic discrimination and/or oppression, and membership in the age groups concerned is *in some way* linked to the concept of vulnerability (of the children, of the elderly, or of the young). In this regard, see Bello, 2021; Bernardini, 2022.

¹⁷ Such a representation is an expression of a medicalized approach to aging, which is now being overcome, but has long prevailed in gerontology. It is primarily related to disengagement theory, now outdated, and associates old age precisely with inevitable decline. Cf. Cumming & Henry, 1961.

¹⁸ On the differences concerning the elderly’s social participation across the European welfare regimes, see Lakomy, 2021.

active, and healthy aging to a greater risk of discrimination and exclusion, particularly among those classified as non-self-sufficient and residing in social care homes.

This risk is evident also when considering the complex relationships between older adults and urban space, where one can identify ideological patterns that reveal the cultural codes underlying society, which in turn influence – positively or negatively – the recognition of individuals and the protection of their rights. After a brief general introduction on the concept of spatial justice, the next paragraph will identify the key elements of these relationships.

3. SPATIAL JUSTICE FOR THE ELDERLY: SPACES OF (MIS)RECOGNITION

Having developed outside the realm of legal knowledge, the concept of spatial justice still presents numerous theoretical and practical challenges to the law (Dussart & Lerique, 2023: 58).¹⁹ However, referencing it is essential, as it reveals aspects that remain hidden in an understanding of social justice that is not spatial, and it also allows for reflection on the (spatial) relationships of injustice that exist in society (Madanipour et al., 2022: 810). This last aspect is relevant in relation to the recognition of individuals and the validation of the needs and identities of those who are in a condition of vulnerability²⁰: access to space can be considered a tool for recognizing legal subjectivities, granting access to goods, services, and resources, as well as exercising related rights.

For the elderly, the convergence of two processes that have taken on particular significance in the 21st century – population aging and urbanization – has given this issue increasing and, so far, unprecedented importance. The urban context is becoming the subject of a “complex and diversified social, political, and economic demand, which looks at the city as its privileged interlocutor” (Carrera, 2020: 205). Thus, the city demand translates into a claim to the universal access to rights, to the extent that the right to live in the city constitutes an aspect of the broader right to a more just city, which is located at the intersection point of multiple paths, spaces, policies, and rights.

The very existence of this claim suggests that urban spaces are, for the most part, inaccessible to the elderly: despite cities currently being inhabited by an aging population and this scenario also characterizing future projections,²¹ the urban context does not seem really age-friendly. In this regard, while it has been noted that “Cities are, for the most part, spaces that are imagined and structured with a younger, working age demographic in mind,”²² it has also been pointed out that the Cartesian subject has long served as

¹⁹ Cf. also Nitrato Izzo, 2023. A preliminary phase of this emergence is represented by the works on legal geography in the 1990s, in Anglo-Saxon academic contexts.

²⁰ Cf. *Benchmarking Spatial Justice in Policymaking, Planning & Design*, 30 nov. -5 dic. 2023, <https://just-city.org/conferences/practice/>.

²¹ Cfr. *World Urbanization Prospects. The 2018 Revision*, released by the United Nations Department of Economic and Social Affairs (2019).

²² See Handler (2014, p. 12), who further observed: “Older people are not, typically, incorporated into the mainstream of thinking and planning around urban environments”. For the same perspective, see also Buffel & Phillipson, 2024.

the implicit reference for the design of urban spaces.²³ In short, it was presumed that urban space users naturally possessed certain characteristics, such as the ability to move independently within the physical space and the one to be, free from mobility aids and other supports. Here, one can glimpse the operation of that liberal paradigm which has long influenced the representation of old age in a medical key. Indeed, within this approach it was not the city that excluded the elderly, but rather they were unable to adapt to its rhythms and have access to its spaces, along with all the resulting implications in terms of isolation and exclusion.

It is true, however, that the one just offered is not the only reading currently applicable to the relationship between the elderly and urban space, which on the contrary is characterized by significant internal dynamism, with opposing dynamics coexisting. I will briefly consider them below.

3.1. Confinement, 'expulsion' and ambiguous recognition

In line with the medical paradigm I have outlined, the first dynamic consists of a series of techniques that, through the management of space, lead to the misrecognition of the elderly. The most well-known examples pertain to those elderly who are considered non-autonomous, particularly the residents of social care homes, who in common thinking embody the inevitable dependence which is associated with the medical conception of old age.

Social care homes are residential solutions designed to address the loss of autonomy, cognitive decline, and the potential conditions of social isolation and related loneliness. As such, they currently play an important role in the care of elderly individuals classified as non-autonomous, to the extent that are considered an essential pillar of contemporary welfare systems.

These places are also the subject of multiple criticisms, ranging from their being part of the 'care market' and its neoliberal logics,²⁴ to their placement in urban space. Regarding the latter aspect, there are at least two reasons for caution. The first one relates to the symbolic level. Although they are located in the cities – typically on the outskirts –, these structures function as spaces of separation from the norm: as such, they ultimately conceal the subjectivity of those housed within them, hindering their recognition and inclusion, both socially and within the urban fabric.

The second one concerns the protection of rights. The issue at stake is not only the distinction between public space and these particular "private spaces."²⁵ Rather, attention to space reveals that the architecture of these structures and their internal organization can transform such places into modern 'total institutions' with a segregating effect, almost as if they were the contemporary 'heirs' of the total institutions that Foucault,

²³ Cf. Imrie, 2003.

²⁴ In this respect, see e.g. Desroches, Poland, 2021; Corlet Walker, Druckman & Jackson, 2022.

²⁵ On the political dimension of this traditional distinction, cf. Tronto, 1993.

Goffman, and Basaglia have reflected upon so extensively (Series, 2022). Adopting this perspective, which is also supported by the supranational institutions,²⁶ *under certain arrangements* social care homes can indeed be considered places of systematic violation of human rights.²⁷

The second technique of exclusion and denial involves the ‘expulsion’ from the urban context, which arises from a misalignment between the demands of the elderly for urban spaces and the offerings that cater to a different demographic group. The factors contributing to this process are many. First, gentrification pushes low-income elderly individuals to choose more peripheral and less expensive areas.²⁸ The increase in prices and the rise of the middle-class conflict with the low purchasing power of these elderly individuals, who are compelled to leave their homes and choose, in fact, the outskirts. In turn, this choice exposes them to a high risk of ineffectiveness of their rights, as in the outskirts the availability of services and infrastructure is lower, also in the face of high demand coming precisely from the elderly.

Furthermore, even if they manage to find affordable housing solutions within city centres, these individuals face additional barriers. The needs and practices of the ‘new urban population’ – primarily composed of young people – are often incompatible with the rhythms and needs of the elderly. Often, the ‘youthification’ of the city center leads public administrations to prioritize the needs and practices of the new urban population, thus designing the timings and spaces of the city with respect to population segments that are ‘other’ than the elderly.²⁹ Moreover, even apart from this trend, architectural and urban planning still seems to be mostly associated with the idea of a young and growing city (Simpson, 2015: 14), so that the ageing of the population is leading to a real crisis already

²⁶ In the context of the Council of Europe, for example, such facilities are subject to ongoing monitoring by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), while there is a significant body of case law from the European Court of Human Rights related to these places (for a more in-depth analysis, please refer to Series, 2022).

²⁷ The institution is not a specific place, but a process. A recent document by the Committee on the Rights of Persons with Disabilities helps to define its qualifying elements: “There are certain defining elements of an institution, such as obligatory sharing of assistants with others and no or limited influence as to who provides the assistance; isolation and segregation from independent life in the community; lack of control over day-to-day decisions; lack of choice for the individuals concerned over with whom they live; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of individuals under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and a disproportionate number of persons with disabilities in the same environment.” (Cf. UN Committee on the Rights of Persons with Disabilities, *Guidelines on deinstitutionalization, including in emergencies*, 9 September 2022, point 14).

²⁸ The term gentrification refers to a complex process, or a set of processes, that involves the physical improvement of real estate, the shift from rental to ownership housing management, rising prices, and the displacement or replacement of existing working-class population by middle-class individuals. This process involves two connected but distinct phenomena: the redevelopment of a neighborhood's real estate and urban planning, and the radical transformation of its social composition through the replacement of the elderly residents.

²⁹ On the process of youthification in relation to the urban context, see Moos, 2016.

at the planning level. In addition, the weakening of neighbourhood networks and the presence of mostly mononuclear families contribute to the loneliness of the elderly, thus hindering them from living in urban centres. Finally, the presence of urban planning and architectural barriers may also make it difficult for older persons access the urban space.

To remedy what seems an inevitable exclusion, residential communities specifically dedicated to the elderly have also been built. ‘Age-segregated retirement communities’ are one of the most well-known urban products of the “longevity revolution” (Butler 2008). These gated residential communities, originally widespread in the United States³⁰ and now also in Europe³¹, consist in living solutions chosen independently by seniors (*rectius*: by a specific cohort, that of the active and wealthy ones). They are presented as more accessible, equipped with services and cultural and leisure activities, and capable of fostering the social relations of the elderly, thereby countering their isolation. As such, they are considered to promote the recognition of the elderly and their needs and inclusion. Nevertheless, these places seem rather to give rise to an ‘ambiguous recognition’: the choice toward these such closed communities is made, in fact, to leave an inhospitable and non-age-friendly urban space; furthermore, it is directed to a context in which recognition takes place only ‘among peers’, that is, among the elderly. This process, far from being inclusive, seems rather a sort of self-ghettoisation: these housing solutions simply appear to *shift* the problem of misrecognition and lack of rights’ protection, placing it in a prestigious ‘elsewhere’, a kind of ‘golden cage’ that risks reproducing a ‘confinement logic’, instead of an inclusive one. Finally, this living solution, affordable only for the wealthier classes, ends up accentuating the class division within the elderly as a social group.

3.2. Towards age-friendly (urban) spaces

The crisis of the medical paradigm of aging – which is in the process of being overcome but has not yet faded – and the emergence of ‘new’ aging paradigms, among which the *active* and *healthy aging* models stand out, have led to the recognition of the need to create environments (also³²) suited for older adults, to ensure accessibility and usability for a broader audience. Regarding the living contexts, the design solutions proposed so far – predominantly experimental in nature and aimed at promoting elderly’s recognition and ensuring their rights – exhibit some recurring characteristics. They include being located in safe areas, designed to encourage dynamic interactions with the surrounding environment and intergenerational dialogue. Furthermore, housing solutions are located close to primary services and are within walking distance, while transport and infrastructure provide access to essential healthcare services and are connected to opportunities for social, economic,

³⁰ These housing solutions were actually developed in the mid-20th century in Arizona as alternatives to residential structures for elderly people; the first city to feature such characteristics, created by Ben Schleifer, is Youngstown.

³¹ Consider, in this regard, the *Europe retirement homes* (King et al., 2000; Huber, O'Reilly, 2004). In the same perspective, there are also chains of small residential towns for elderly people, like the ones which are widespread in Southern Italy.

³² The inclusive city encompasses a plurality of ‘forms’ (such as the ‘safe’, ‘friendly’, ‘sustainable’ or ‘smart’ ones), each of which also expresses the desires that emanate from the various excluded subjects.

and civic participation. In this way, the aim is to promote in individuals the maintenance of autonomy, interpersonal relations and social participation.

On a legal level, these changes to domestic and urban space can be brought under the umbrella of the ‘right to independent living’, a multidimensional concept that can be seen as the essential junction and point of convergence between the person’s right to health, dignity, autonomy and social participation.

Foreseen in the international context by Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD) and widely regarded as applicable also to the elderly,³³ the right to independent living consists of the right to live in the community, with the same freedom of choice as other individuals.

To this end, State Parties must ensure that these people can choose where to live and with whom, without being forced to spend their lives in a particular living accommodation. Indeed, Art. 19 CRPD provides as a necessary guarantee the access to home-based, residential, or community support services, including personal assistance, in order to combat isolation and segregation and to prevent institutionalization from becoming a necessary choice: “[t]he historical and logical core of independent living is in the critique of segregationism.” (Tarantino 2021, 27).

Art. 19 CRPD is therefore significant both with reference to institutionalization and to the changes in welfare systems that can contribute to include the elderly. Indeed, to be effective, the guarantee of the right to independent living requires both the improvement of the relationship between the social care homes and the urban context – aimed at contrasting the disempowerment of individuals – and the creation of the conditions which allow the elderly for living outside the social care homes. In short, to prevent institutionalization and promote de-institutionalization, as required by Article 19 of the CRPD, it is necessary to make urban space ‘suitable’ for the elderly, thereby expanding the range of choice options regarding where to live. In addition to a different distribution of services within urban space, this expansion of choice options requires the provision of housing types that better meet the needs of the elderly, such as supportive home cohabitation, intergenerational cohabitation, or independent living facilities, all aimed at acknowledging the ‘spaces of presence’ for the elderly and safeguarding their dignity and autonomy.

4. WAYS FORWARD

In light of what has been observed, the implementation of Art. 19 CRPD can be considered a tool for promoting the full cultural, social, and legal recognition of the

³³ There are several reasons for this hermeneutic operation. First, the current lack of an international convention specifically protecting the human rights of the elderly has led to the CRPD also being considered applicable to them, given the presence of similar needs, especially with regard to the dependent elderly. Furthermore, the concept of independence is also found related to the elderly condition in other supranational normative sources, starting with Art. 25 of the Charter of Fundamental Rights of the European Union.

elderly. Its implementation requires abandoning the cultural conception that sees the old person as a passive receiver of assistance and care, an individual in need to be helped with a welfarist approach aimed primarily at coping with health-related needs, and recognising her as the protagonist of her own life choices. In the presence of enabling conditions, also the elderly can lead a 'flourishing' life.

It is precisely to this aspect that is linked the 'active' character of ageing, which today is often reductively interpreted according to a productive and performance logic, linked primarily to the labour market. When correctly understood, the term 'active' in fact takes on a meaning that can be related to 'inclusion' and 'participation', both in society and in urban life.³⁴ In turn, ensuring this participation may require decisive welfare transformations,³⁵ aligning with contemporary demands for a community-based and proximity-based welfare system that guarantees effective access to health services, mobility and relationships.

On closer inspection, the importance of these aspects has long since emerged, especially within studies that focus on the relational and vulnerable anthropology of the human beings (The Care Collective, 2020; Urban, Ward, 2020), but requires further discussion and more regulatory and public policy efforts directed towards its realisation. In this perspective, old age represents a – paradoxically – *new* situated viewpoint to reconsider modern cultural, legal, and political categories and promote a real cultural, social, and institutional transformation. For this reason, old age can be considered the latest and challenging frontier of justice in the critical project aimed at achieving a 'radical' equality where simply being human guarantees full recognition and enjoyment of human rights.

"Are old people really people?" de Beauvoir asked in 1970. Answering this question raises, today as it did in the Seventies, very complex ethical, legal, and political issues. And the human right to independent living reveals how the path to the actual recognition of the elderly is only just beginning.

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³⁴ From the outset, active ageing in international public policy was precisely aimed at overcoming the idea that 'activity' meant mere participation in the labour market (cf. UN Year of Older People 1999, and World Health Organization, *Active ageing: A policy framework*, 2002). By following this thread, in 2006 the World Health Organisation launched the Global Age-Friendly Cities project, which concluded with the identification of action points to make the urban context, in the reciprocal integration between the natural and the built environment, 'friendly' to all ages, without the need for ex-post adaptations, due to the lack of correspondence to the model of the 'young' urban user (World Health Organization, *Global age-friendly cities: A guide*, 2007: 72). More recently, see World Health Organization, *National programmes for age-friendly cities and communities: A guide*, 2023.

³⁵ For example, in the Italian legal system the familistic welfare model is still the most widespread.

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REFERENCES

BELLO, B.G. (2021). *Dal margine al centro? I giovani tra diritto e pratiche sociali*. Modena: Mucchi.

BERNARDINI, M.G. (2022). *¿No tengo (aún o ya) la edad? (In)visibilidad, vulnerabilidad y violencia de las personas menores y ancianas*, “Derechos Y Libertades”, 46(2), pp. 273-295.

BERNARDINI, M.G. & GIOLO, O. (eds.) (2017). *Le teorie critiche del diritto*. Pisa: Pacini.

BERNARDINI, M.G. & GIOLO, O. (eds.) (2021). *Abitare i diritti. Per una critica del rapporto tra giustizia e spazi urbani*. Pisa: Pacini.

BOBBIO, N. (1990). *L'età dei diritti*. Torino: Einaudi.

BOBBIO, N. (1996). *De Senectute e altri scritti autobiografici*. Torino: Einaudi. English version (2001): *Old age and other essays*. Cambridge: Polity.

BUFFEL, T., PHILLIPSON, C. (2024). *Ageing in place and urban environments. Critical perspectives*. New York: Routledge.

BUTLER, R.N. (1969). “Age-ism: another form of bigotry”, *Gerontologist*, 9, pp. 243-246.

BUTLER, R.N. (1989). “Dispelling ageism: The cross-cutting intervention”, *The Annals of the American Academy of Political and Social Science*, 503, pp. 138-147.

BUTLER, R.N. (2008). *The Longevity Revolution*. New York: Public Affairs.

CARRERA, L. (2020). “Gli anziani e la domanda di città”, *Società Mutamento Politica*, 11(21), pp. 203-211.

CORLET WALKER, C., DRUCKMAN, A., JACKSON, T. (2022). “A critique of the marketisation of long-term residential and nursing home care.” *The Lancet Healthy Longevity*, 3(4), pp. e298-e306, [https://doi.org/10.1016/S2666-7568\(22\)00040-X](https://doi.org/10.1016/S2666-7568(22)00040-X).

CUMMING, G., HENRY, W.E. (1961). *Growing old: The process of disengagement*. New York: Basic Books.

DE BEAUVIOR, S. (1970). *La Vieillesse*. Paris: Gallimard.

DESROCHES, M.-È., POLAND, B. (2021). “The place of care in social housing in a neoliberal era.” *International Journal of Housing Policy*, 23, pp. 1-22. [10.1080/19491247.2021.2002657](https://doi.org/10.1080/19491247.2021.2002657).

DORON, I. (2020). “25 years of elder law: An integrative and historical account of the field of law and aging”. *Theoretical Inquiries in Law* 21 <https://doi.org/10.1515/til-2020-0002>

DORON, I., & SODEN A.M. (eds.) (2012). *Beyond Elder Law. New Directions in Law and Ageing*. Springer: Dordrecht.

DUSSART, V., LERIQUE, F. (cur.) (2023). *Justice spatiale et politiques publiques territoriales*. Mare&Martin: Le Kremlin-Bicêtre.

EMMER DE ALBUQUERQUE GREEN, C., TINKER, A., & MANTHORPE, J. (2021). “Human rights and care homes for older people: a typology of approaches from academic literature as a starting point for activist scholarship in human rights and institutional care”, *The International Journal of Human Rights*, 26(4), pp. 717-739, <https://doi.org/10.1080/13642987.2021.1961753>

FERRARI, V. (2022). “Prefazione.” In Velo Dalbrenta, D. (ed.), *Invecchiamento della popolazione e passaggi generazionali. I: Questioni critiche*. Napoli: Edizioni Scientifiche Italiane, pp. VII-XIII.

GEORGANTZI, N. (2018). “What’s That Got to Do with Older People”, *Human Rights Defender*, 27(1), pp. 36-39.

GOSSIERES, A. (2022), “Ageing, unequal longevities and intergenerational justice.” in Wareham C.S. (ed.), *The Cambridge Handbook of the ethics of ageing*. Cambridge University Press: Cambridge, pp. 212-217.

GOSSIERES, A. (2023), *What is intergenerational justice?*. Cambridge: Polity Press.

GRECO, T. (2022). “I bisogni degli anziani tra vulnerabilità e radicamento. Sulla ‘svolta affettiva’ di Norberto Bobbio.” In Velo Dalbrenta, D. (ed.), *Invecchiamento della popolazione e passaggi generazionali. I: Questioni critiche*. Edizioni Scientifiche Italiane: Napoli, pp. 167-178.

HANDLER, S. 2014. *An alternative age-friendly handbook*. University of Manchester Library: Manchester.

HOOKS, B. (1984), *Feminist theory: From margin to center*. South End Press: Boston (Ma).

HUBER, A., O’REILLY, K. (2004), “The construction of heimat under conditions of individualized modernity: Swiss and British elderly migrants in Spain”. *Aging and Society*, 24, pp. 327-351.

KING, R., WARNES, T., WILLIAMS, A. (2000), *Sunset lives: British retirement migration to the mediterranean*, Oxford: Berg Publishers.

IMRIE, R. (2003). “Architects’ conceptions of the human body.” *Environment and Planning D: Society and Space*, 21, pp. 47-65.

LAKOMY, M. (2021). “Differences in social participation of older adults across European welfare regimes: Fourteen years of SHARE data collection”, *International Sociology*, 36(6), pp. 906-925. <http://dx.doi.org/10.1177/0268580921993326>

LASLETT, P. (1989). *A fresh map of life: The emergence of the third age*. London: Weidenfeld and Nicolson.

MADANIPOUR, A., SHUCKSMITH, M., BROOKS, E. (2022) “The concept of spatial justice and the European Union’s territorial cohesion”. *European Planning Studies*, 30(5), pp. 807-824.

MARCUSE, P. (2010). “Spatial justice: derivative but causal of social injustice.” in BRET B., GERVAIS-LAMBONY P., HANCOCK C., LANDY F. (eds.), *Justices et injustices spatiales*. Paris: PUF, pp. 76-92.

MENGA, F. (2016), *Lo scandalo del futuro. Per una giustizia intergenerazionale*. Roma: Edizioni di Storia e Letteratura.

MOOS, M. (2016). “From gentrification to youthification? The increasing importance of young age in delineating high-density living.” *Urban Studies*, 53(14), 2903–2920. <https://www.jstor.org/stable/26151253>

NITRATO IZZO, V. (2023). “Dimensioni giuridiche della giustizia spaziale: problemi teorici e opportunità applicative”. *Istituzioni di Federalismo*, special issue, pp. 19-38.

NUSSBAUM, M., LEVMORE, S. (2017). *Aging thoughtfully: Conversations about retirement, romance, wrinkles, and regret*. Oxford: Oxford University Press.

PHILIPPOPOULOS-MIHALOPOULOS, A. (2010). “Spatial justice: law and the geography of withdrawal.” *International Journal of Law in Context*, 6(3), pp. 201-216.

PHILIPPOPOULOS-MIHALOPOULOS, A. (2015). *Spatial Justice. Body, Lawscape, Atmosphere*. London: Routledge.

PINNA, G. & POTT H.-G., eds. (2011). *Senilità. Immagini della vecchiaia nella cultura occidentale*. Alessandria: Edizioni Dell’Orso.

PIRIE G.H. (1983). “On spatial justice.” *Environment and Planning A*, 15(4), pp. 465-473.

SERIES, L. (2022). *Deprivation of liberty in the shadows of the institution*. Bristol: Bristol University Press.

SIMPSON, D. (2015), *Young-Old: Urban Utopias of an Aging Society*. Zürich, Lars Muller Publisher.

SOJA, E.W. (2010). *Seeking Spatial Justice*. Minneapolis: University of Minnesota Press.

SOLIDORO S. (2023). “La tutela degli anziani nel diritto internazionale: ultimi sviluppi nella prassi dei sistemi europeo e interamericano di protezione dei diritti umani.” In LORUBBIO V., BERNARDINI M.G. (eds.), *Diritti umani e condizioni di vulnerabilità*. Trento: Erickson, pp. 113-134.

WALDRON, J. (2017), *The Dignity of Old Age*. NYU School of Law, Public Law Research Paper No. 17-41, Available at SSRN: <https://ssrn.com/abstract=3048041> or <http://dx.doi.org/10.2139/ssrn.3048041>

TARANTINO, C. (2021). "Il sintagma incompiuto. Dialettica tra vita indipendente e segregazione di fatto delle persone con disabilità in Italia". in *Disabilità e Società. Inclusione, autonomia, aspirazioni*. Milano: Franco Angeli, pp. 15-35.

TARANTINO, C. (ed.) (2024). *Il soggiorno obbligato*. Bologna: Il Mulino.

THE CARE COLLECTIVE (2020). *The care manifesto*. New York: Verso.

TRONTO, J. (1993). *Moral boundaries. A political argument for an ethics of care*. New York: Routledge.

URBAN, P., WARD, L. (2020). Care ethics, democratic citizenship and the State. Basingstoke: Palgrave Macmillan.

WARF, B., ARIAS, S. (eds.) (2008). *The spatial turn: Interdisciplinary perspectives*. London: Routledge.

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