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# A JUST SOCIETY FOR THE ELDERLY: THE IMPORTANCE OF JUSTICE AS PARTICIPATION

SARAH MOSES\*

## INTRODUCTION

One of the functions of our traditions of ethical thought is to provide our everyday practical decision-making with a larger moral vision within which to deliberate and act. This essay seeks to contribute to the larger moral vision within which our contemporary American society reflects on policy and law in relation to aging and the elderly. My argument is that the “Aging America” of today needs in its moral vision the insights of social justice, with its emphasis on the social nature of the person and justice as participation, in order to shape legal and policy choices that truly contribute to a just society for the elderly. While this is not an essay focused on detailed policy discussions, I shall conclude by suggesting how the vision of social justice could provide an orientation for our public discussion of practical issues such as retirement, healthcare resource distribution, and long term care.

## I. AGING AND LONGEVITY TODAY

That aging and the elderly are a dramatic characteristic of our times is now broadly recognized by virtually all sectors of society. The enormous changes in human longevity and population demographics that developed during the twentieth century have literally placed us in a new moment in human history, which presents us with new social, economic, and cultural challenges.<sup>1</sup> Much more than a private issue of filial duty, the elderly are a social and common question for our time. As one U.N.

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1. While this essay is particularly focused on the United States context, I would note that aging societies and longevity are no longer confined to North America and Western Europe. Based on two different reports in 2002 and 2003, respectively, the United Nations projected that the trends of increased longevity and the aging of populations will also occur in many countries in Latin America, Africa, and Asia. *U.N. Offers Action Plan for a World Aging Rapidly*, N.Y.TIMES, Apr. 14, 2002, at A4 [hereinafter *U.N. Offers Action Plan*]; U.N. Dep't. of Econ. and Soc. Affairs, Population Division, Expert Meeting on World Population in 2300, *World Population in 2300*, at 23–26, U.N. Doc. ESA/P/WP.187/Rev.1 (Mar. 24, 2003) [hereinafter *World Population in 2300*], available at <http://www.un.org/esa/population/publications/longrange2/longrange2.htm>.

official at the Second World Assembly on Ageing in 2002 stated, "If the demographic focus of the 20th century was on education and employment for the young, then the theme for the 21st century will be the elderly."<sup>2</sup>

A few statistics will help us to put this change into perspective. First, there is the sheer fact of increased longevity. A recent report of the President's Council on Bioethics states that "[d]uring the last century, the average American life expectancy at birth rose from 47 years in 1900 to 77 years and climbing in 2000."<sup>3</sup> In fact, the U.S. Census Bureau reports that those aged eighty-five and older are the fastest growing segment of the elderly population. This group is expected to grow from two percent of the general population (in 2000) to almost five percent by 2050, or nineteen million people.<sup>4</sup>

In addition to increased longevity, the reality of contemporary aging includes the aging of populations. The aging of a population points to the dynamic whereby, due to various causes,<sup>5</sup> younger age groups account for less and less of the general population over time. In visual terms, "the age pyramid that existed less than half a century ago has literally been turned upside down."<sup>6</sup> While the United States still remains a "young" country relative to its European counterparts, it, too, has seen a marked increase in the proportion of older persons within the general population. In the U.S. in 1900, there were three million people age sixty-five or older, accounting for four percent of the population; in 2000, there were approximately thirty-five million people aged sixty-five or older, making up thirteen percent of the population; in 2030, those sixty-five and older will double to seventy million, representing twenty percent of the population.<sup>7</sup>

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2. *U.N. Offers Action Plan*, *supra* note 1.

3. PRESIDENT'S COUNCIL ON BIOETHICS, *TAKING CARE: ETHICAL CAREGIVING IN OUR AGING SOCIETY* 6 (2005).

4. FED. INTERAGENCY FORUM ON AGING-RELATED STATISTICS, *OLDER AMERICANS 2000: KEY INDICATORS OF WELL-BEING 2* (2000), *available at* <http://www.agingstats.gov/chartbook2000/OlderAmericans2000.pdf> [hereinafter *OLDER AMERICANS 2000*].

5. Causes include lower fertility rate, improved healthcare eliminating early death, and social programs that meet basic needs throughout the lifespan. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *AGING IN THE AMERICAS INTO THE XXI CENTURY* (1999), *available at* <http://www.census.gov/ipc/prod/ageame.pdf>.

6. PONTIFICAL COUNCIL FOR THE LAITY, *THE DIGNITY OF OLDER PEOPLE AND THEIR MISSION IN THE CHURCH AND IN THE WORLD* 5 (1999) [hereinafter *THE DIGNITY OF OLDER PEOPLE*].

7. *OLDER AMERICANS 2000*, *supra* note 4, at 2.

It is this development in human longevity and aging populations that implies major changes in the social and economic life of countries like the United States. For instance, a U.S. government report highlighted that the increasing proportion of elderly among the “dependent” population indicates a time period in which age distribution will “affect the need for distinct services, housing, and products.”<sup>8</sup> One must only think of the explosion of the retirement home industry in recent years to see these signs.<sup>9</sup> Of course, this type of shift in services is not particular to elderly people; as a contrasting illustration of the effect of changing demographics, we might think of the situation of exploding fertility after World War II, where the need was for increased construction of new schools. Thus, aging should not to be viewed as a social trend that needs “curbing,” but rather as a new social reality to which we must creatively respond. Commenting on the need for a social response to the dynamics of aging, the authors of a 2003 U.N. report stated:

[S]ociety has some time to adapt to the projected changes, especially as savings can be accrued because of the slow growth and eventual reduction of the number of children. However, in historical terms, the time available is short and successful adaptation requires that we embark early in the path of societal change.<sup>10</sup>

As noted at the outset, this essay is not primarily focused on the specific policy choices that must be made as a part of this societal change. Rather, as a Christian social ethicist, I first want to focus on whether the social vision guiding our public conversation is adequate. As Norman Daniels argues in his important work on distributive justice and aging, questions about social goods and resources “will be answered, either by principle or default.”<sup>11</sup> My concern is that in a climate often dominated by the language of the “aging crisis,” our vision for aging policies will lack solid moral principles that truly respect the aspirations and human dignity of older people today.

Particularly important to this moral conversation, then, is the statistical reality of human longevity, which today could be said to have created an enormously significant life stage at an age

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8. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *AGING IN THE UNITED STATES—PAST, PRESENT, AND FUTURE* (1997), available at <http://www.census.gov/ipc/prod/97agewc.pdf>.

9. For example, a recent article in *The Chronicle of Higher Education* noted the boom in university-related retirement communities. Audrey Williams June, *Getting Smarter With Age*, *CHRON. OF HIGHER EDUC.*, July 14, 2006, at A25.

10. *World Population in 2300*, *supra* note 1, at 25.

11. NORMAN DANIELS, *JUST HEALTH CARE* 88 (1988).

that used to be considered a “short epilogue” to one’s life. While it is certainly true that ancient literature and sources testify to the fact that old age in and of itself is not “new,” it is crucial to recognize that the *experience* of old age today in the United States is new. Noting that the experience of lengthy retirement years was extremely rare in the nineteenth century, Matilda Riley and her colleagues write: “Today, by contrast, survival into old age is commonplace and many years of vigorous postretirement life are a realistic expectation. We are the beneficiaries of great gains in economic productivity and public health as well as advances in science and education.”<sup>12</sup>

Thus, old age today does not merely present issues of material and physical survival. Increased human longevity means that old age now constitutes a distinct and lengthy life stage for which questions of purpose and one’s role in society must be answered. As one article states, “[t]he way old age is experienced today is quite different from yesteryear. The differences lie in the increased life and health expectancy, and in their [the elderly’s] higher educational achievement level. This has contributed a new segment of the life course—the third age.”<sup>13</sup> The intent of this essay is to suggest a moral vision that begins with the capacities and aspirations of those in the third age. Thus, the question that will occupy the rest of this essay is whether our society is prepared to welcome the third age in the fundamental moral sense of fostering a society in which the elderly are enabled to remain meaningful participants in the community.

## II. THE NEED FOR A NEW AGENDA

In order to appreciate the need for a moral vision that promotes the meaningful social participation of older persons, we must first look at some of the problems with the assumptions and approaches of current policy. Aging expert Harry R. Moody has been a pioneer in analyzing U.S. public policy regarding aging, particularly in elucidating the underlying social attitudes reflected in our policies and programs. A major part of Moody’s work has been to critique social policy and attitudes that are oriented toward the weaknesses and dependencies of old age rather than toward its capacities. In his work *Abundance of Life*, Moody offers an overview of public policy toward the elderly in the U.S.

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12. Matilda White Riley et al., *Introduction: The Mismatch between People and Structures*, in *AGE AND STRUCTURAL LAG* 1, 1–2 (Matilda White Riley et al. eds., 1994).

13. Ben Dickerson & Dertel R. Watkins, *The Caleb Affect: The Oldest-Old in Church and Society*, 15 *J. RELIGIOUS GERONTOLOGY* 201, 204 (Issue 1/2, 2003).

He writes, “[t]he elderly, like the blind, the disabled, the orphaned, and the widowed, were regarded as a legitimate object of public charity.”<sup>14</sup> Citing the two major age-based programs in the U.S., Moody argues: “American public policy in aging, from the Social Security Act (1935) through Medicare (1965) and beyond, started from the premise that the elderly were a needy population. . . . The policy goal for the aged was never understood as the development of the capacities of old people.”<sup>15</sup>

While Social Security began as a needed response to old age poverty during the Great Depression, Moody criticizes a public policy approach to the elderly that for too long saw *only* need and thus created programs within a limited framework. To illustrate this, he contrasts old age policy with programs directed toward young people: “Youth was seen as a time of development, old age as a time of decline.”<sup>16</sup> Such a view, according to Moody, led to a segregation in social services and programs by equating the young with contribution and the old with need, so that “[d]iscrete categorical programs—such as Medicare or Meals-on-Wheels—were based on meeting needs, not on developing capacities for self-sufficiency or self-help.”<sup>17</sup> As reflected in the title of his book, Moody’s purpose is to argue for a shift in policy and perspective that will recognize and release the possibilities of our aging society rather than seeing only problems. He writes,

One of the principal arguments here is that policies that address the deficits of old age without attending to opportunities are in fundamental error. . . . We offer old people help with their needs but do nothing to nurture the strengths that might allow people to solve their own problems.<sup>18</sup>

Unlike some current efforts to shift all the costs of old age to individual and private responsibility, it is important to note that Moody is not arguing for the elimination of public spending for the elderly. Rather, his concern is to adjust policy and spending so that older people are not marginalized and disempowered by the very programs meant to “help” them. In another work, *Ethics in an Aging Society*, Moody cites the rise of the nursing home industry as a clear example of the deficiencies in old age policy. Moody writes: “Nursing home residents are cast in a passive role, often infantilized, with few opportunities to make meaningful

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14. HARRY R. MOODY, *ABUNDANCE OF LIFE* 108 (1988).

15. *Id.* at 110.

16. *Id.*

17. *Id.* at 111.

18. *Id.* at 2.

decisions about their lives.”<sup>19</sup> Thus, while it is true that trends in longevity may require adjustments in the *funding* of old age policies and programs, Moody’s work highlights the important task of revising the *aim* of our policies and programs toward *enabling the capacities of the elderly* to meaningfully contribute to and participate in their society. In the language of the social sciences, what Moody is calling for is attention to the “structural lag” that exists between the new reality of contemporary aging and the structures and programs currently in place. As Riley and her colleagues explain, “[o]ur failure to match in social structures the rapid gains in longevity, health, and style of life has had the unintended consequence of creating a poor fit between social institutions and people’s capabilities and responsibilities at every age.”<sup>20</sup>

Similar to Harry Moody’s argument, Larry Polivka, in a special issue on “Ethics and Aging” in the journal *Generations*, argues for an adjustment in our attitudes toward the elderly based on learning from the recent transformation of social attitudes toward disabled adults.<sup>21</sup> Polivka’s article focuses on the “frail elderly,” particularly those in long-term care institutions. He argues that long term care policy for the elderly in the United States needs a directional change comparable to that which occurred in the system of care for disabled adults starting in the 1970s. As Polivka explains, the disabled adult community was able to change how we view “disability” so that resources and policies were aimed at making the social and economic environment less disabling, thus allowing for the empowerment of disabled adults’ capabilities. This change parallels Moody’s analysis of categories of public policy: we must shift from the exclusive category of “need” to inclusion of the category of “capacity.”

Polivka then contrasts the change of approach in the empowerment of non-elderly adults with the “perception of dependency imposed upon and acquiesced to by many disabled elderly . . . .”<sup>22</sup> Polivka demands recognition of the desire of the elderly, including the frail and disabled, to have their autonomy supported. Autonomy here is understood as “the power of an individual, however dependent, to interact and communicate freely with others, to give and receive affection, and to initiate actions that are consistent with the person’s sense of self.”<sup>23</sup> Jane

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19. HARRY MOODY, ETHICS IN AN AGING SOCIETY 180 (1992).

20. Riley et al., *supra* note 12, at 2.

21. Larry Polivka, *The Science and Ethics of Long-Term Care*, GENERATIONS 21 (Fall 1998).

22. *Id.* at 23.

23. *Id.* at 24.

A. Boyajian, an ombudsman for the elderly in Washington State, uses the parallel language of “self-determination” to suggest we approach the elderly with a “new agenda,” which respects their desire to make choices and direct their lives according to their value system and life experiences. Boyajian, like Polivka, points out the marginalization that can occur when policy is not oriented toward enabling capacity: “We need to see elders not as recipients of our programs, though they are, but rather as members of our community-in-the-present. We need to remember that they are separated from our community partly because of their infirmity or living situation but more because of our attitudes toward them.”<sup>24</sup>

In different forms, each of these authors appeals for a change in the vision that guides our social response to aging today and for adjusting policy so that it aims toward enabling the capacities of the elderly. The elderly should no longer be confined to the image of passive recipients of public aid but rather should be viewed as persons who continue to desire dignified inclusion in the community. This change is a practical recognition of both the new realities of aging as outlined above and the aspirations of older people today. As the Community of Sant’Egidio, an organization that works with the elderly internationally, explains, “Indeed, the elderly ask a question of integration, of company, that is not only a demand for solidarity and social services. It is a question of full participation in social life.”<sup>25</sup>

While the development of a true third age in the human life span produces a need for appropriate social inclusion, it is equally true that people face certain age-related challenges that complicate individuals’ abilities to achieve such inclusion. As the President’s Council on Bioethics explained in a recent report, “while people are living healthier into old age and doing so on a mass scale, there remain many difficulties, both psychic and physical, that eventually come with growing old.”<sup>26</sup> Herein lies one of the major challenges to our moral vision: we must develop a social commitment to enabling the capacities of older people while also addressing the limitations and losses—both physical

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24. Jane A. Boyajian, *On Reaching a New Agenda: Self-Determination and Aging*, in *ETHICS AND AGING* 17, 22 (James E. Thornton & Earl R. Winkler eds., 1990).

25. Community of Sant’Egidio, *The Aged: The Secret of an Alliance*, <http://www.santegidio.org/en/solidarieta/anziani/alleanza.htm> (last visited Apr. 14, 2007) (describing the Community of Sant’Egidio’s work with elderly people).

26. PRESIDENT’S COUNCIL ON BIOETHICS, *supra* note 3, at 6.



and relational—that often characterize the transition into old age. We move now to a consideration of the way in which a social justice vision can help us to prioritize enabling the capacities of the elderly through appropriate social supports that address such age-related difficulties.

### III. SOCIAL JUSTICE AND JUSTICE AS PARTICIPATION

As we have seen, “the structural lag” between the realities of aging today and our policies and structures not only produces a “poor fit” in economic terms, but also fails to recognize old age as a time of possibility and purpose. While older persons with good health and financial resources are often able to overcome this lag, those who begin to experience age-related limitations and loss are further disempowered by existing policies and social attitudes. This essay maintains that practical policy choices are limited when not informed by adequate moral imagination, and that our moral reflection on aging societies has been limited by a disproportionate emphasis on the dimensions of justice referred to as distributive and commutative.

Distributive justice aims at principles of fairness in the “distribution of goods”<sup>27</sup> within a society, particularly in situations in which there are “conflicting claims over possession in circumstances of moderate scarcity . . . .”<sup>28</sup> An excellent example of the dimension of distributive justice is the current debate concerning the fair distribution of medical resources in light of the enormous cost of healthcare for those sixty-five and older. The second dimension, commutative justice, focuses on principles of fairness in personal and private agreements and exchanges.<sup>29</sup> An example of this dimension of justice is bioethical literature that focuses on justice as fairness in the relationship between medical caregivers and elderly patients, such as treatment decisions and end of life care. Commutative justice is also reflected in debates concerning the moral duties of family members toward their elderly parents and relatives. Because current public discourse on aging in America is largely dominated by issues such as retirement funding, the Medicare and Medicaid systems, and the ethics of long-term caregiving, it is easy to limit our view of a just society for the elderly to principles of distributive and commutative justice as those govern fairness between the generations and the professional ethics of caregivers.

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27. KAREN LEBACQZ, SIX THEORIES OF JUSTICE 69 (1986).

28. *Id.* at 18.

29. *Id.* at 73.

This essay is not intended to suggest that such questions are not real challenges in our aging society or that distributive and commutative principles of justice are not needed. However, I would argue that a “moral lag” exists insofar as our conversations about such issues lack the larger dimension of social justice, and this is especially true for our conversation regarding a just society for the elderly. As our conversation in the previous section highlighted, human longevity today demands an understanding of justice that can help us to recognize and respond to the aspect of human dignity that is tied to social inclusion and participation.

My discussion of social justice and justice as participation is indebted to the understanding of social justice that has been developed by the tradition of modern Catholic social thought.<sup>30</sup> Social justice is the dimension of justice that focuses on the structures and processes that enable everyone to share cooperatively in the production and enjoyment of the basic political, material, and nonmaterial goods “necessary for the welfare of the whole community.”<sup>31</sup> It is a moral concept that arises out of the Catholic tradition’s emphasis on human beings as social creatures and thus, as persons whose dignity is inseparable from their relationship with and to the larger community. In fact, ethicist Karen Lebacqz argues that one of the three basic affirmations underlying modern Catholic social teaching is “the essentially social nature of human beings.”<sup>32</sup> In their 1986 document, *Economic Justice for All*, the U.S. Catholic Bishops reflected this perspective in their argument that “human beings achieve self-realization not in isolation, but in interaction with others.”<sup>33</sup> Thus, social justice is “a vision of justice based on the notion that human dignity is achieved only in community.”<sup>34</sup>

Because of the mutual interdependence of persons and community, social justice stresses the principle of participation, which is both a duty of persons and a responsibility of society. The U.S. Catholic Bishops provide a succinct articulation of this dimension of justice: “Social justice implies that persons have an

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30. Commentators note that the term “social justice” was first introduced into the official social teaching of the Roman Catholic Church by Pope Pius XI in his 1931 encyclical *Quadragesimo Anno*. See Christine Firer Hinze, *Commentary on Quadragesimo Anno (After Forty Years)*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS* 151, 167 (Kenneth R. Himes ed., 2005).

31. U.S. CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL* (1986), reprinted in *CATHOLIC SOCIAL THOUGHT*, 572, 595 (David J. O’Brien & Thomas A. Shannon eds., 1992) [hereinafter *ECONOMIC JUSTICE FOR ALL*].

32. LEBACQZ, *supra* note 27, at 67.

33. *ECONOMIC JUSTICE FOR ALL*, *supra* note 31, at 594.

34. LEBACQZ, *supra* note 27, at 117.

obligation to be active and productive participants in the life of society *and* that society has a duty to enable them to participate in this way.”<sup>35</sup> In fact, social justice is sometimes referred to as “contributive” justice because it entails the duty and desire of persons to contribute to the common good without which society cannot provide for the well-being of all members.<sup>36</sup> While understood as a personal obligation, participation is also viewed as the natural expression of human personality: “Such participation is an essential expression of the social nature of human beings and of their communitarian vocation.”<sup>37</sup> In other words, justice as participation is a rich moral concept which addresses the many ways in which persons contribute to and take responsibility for the shared social life of the community as an expression of their human dignity and personality.

Given my concern to shape a moral vision which directs us to the capacities of older people, I would like to focus on the concomitant responsibility of society which the principle of participation entails. For justice as participation means that one of the ways in which we measure the justice of a society is whether its social structures enable persons to express their “aspiration to participation” in society, which is a fundamental aspect of human dignity.<sup>38</sup> As Lebacqz explains in her discussion of *Economic Justice for All*, there has been a movement in modern Catholic social thought toward participation as “the root issue of justice.”<sup>39</sup> This emphasis is important for aging societies because it demands the recognition of marginalization as a grave form of the violation of human dignity. As the U.S. Catholic Bishops said in *Economic Justice for All*:

Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons. The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were nonmembers of the human race. To treat people this way is effectively to say that they simply do not count as human beings. This can take many forms, all of which can be described as varieties of marginalization, or exclusion from social life.<sup>40</sup>

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35. ECONOMIC JUSTICE FOR ALL, *supra* note 31, at 595 (emphasis added).

36. *Id.* at 595.

37. *Id.* at 597.

38. POPE PAUL VI, OCTOGESIMA ADVENIENS: A CALL TO ACTION, APOSTOLIC LETTER para. 24 (1971), *reprinted in* CATHOLIC SOCIAL THOUGHT, at 274 (David J. O'Brien & Thomas A. Shannon eds., 1992).

39. LEBACQZ, *supra* note 27, at 81.

40. ECONOMIC JUSTICE FOR ALL, *supra* note 31, at 596–97.

Relevant to the age-related limitations and disability faced by many elderly, social justice as participation means that it is more than a matter of "individual effort" as to whether older persons are fully included in society, but rather a matter of public responsibility. As ethicist David Hollenbach has argued, the principle of participation calls us to look at "the major institutions that enhance or impede people's participation in creating and benefiting from the common good."<sup>41</sup>

The significance of the principle of participation in Catholic social thought to our topic is clear when we recall Harry Moody's critique of public policies and programs which often blind us "to [later life's] unexplored possibilities."<sup>42</sup> Justice as participation emphasizes the moral responsibility to foster and enable social contribution and thus, inherently directs us to look for the existing capacities of persons. In fact, certain recent Catholic statements on contemporary aging have begun to reflect the potential contribution of this moral vision to questions about social structures and the elderly. Given the late Pope John Paul II's consistent emphasis on the dignity of the human person as rooted in participation in society,<sup>43</sup> it is not surprising that his writings on the elderly and aging reflect an orientation rooted in a social justice vision. For example, in a 1998 statement to a healthcare conference focused on the theme, "The Church and the Elderly," John Paul II stated: "Although often regarded as only the recipients of charitable aid, the elderly must also be called to participate in this work."<sup>44</sup> Furthermore, in highlighting the issue of capacity, he suggested a shift in thinking in the church's ministry: "It is clear that the elderly should not be considered merely an object of concern, closeness and service. They too have a valuable contribution to make to life."<sup>45</sup>

John Paul II also called for a change in vision in the larger society's approach to aging. In a letter to the Second World Assembly on Ageing convened by the United Nations, the Pope wrote:

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41. DAVID HOLLENBACH, S.J., *THE COMMON GOOD AND CHRISTIAN SOCIAL ETHICS* 201 (2002).

42. MOODY, *supra* note 14, at 2.

43. Elzbieta Wolicka, *Participation in Community: Wojtyla's Social Anthropology*, 8 *COMMUNIO* 108-18 (1981).

44. Pope John Paul II, Message to the Thirteenth International Conference on the Church and the Elderly, para. 5 (Oct. 1998), available at [http://www.healthpastoral.org/wordofpope/jpii07\\_en.html](http://www.healthpastoral.org/wordofpope/jpii07_en.html) [hereinafter International Conference on the Church and the Elderly].

45. *Id.*

The elderly must never be considered a burden on society, but a resource which can contribute to society's well-being . . . . In short, it is not just a question of doing something for older people, but also of accepting them in a realistic way as partners in shared projects—at the level of thought, dialogue and action.<sup>46</sup>

Furthermore, the Pope understood that this change in vision had concrete implications for policies and structures. For instance, in his Lenten Message of 2005, John Paul II called the Church “to raise the awareness in public opinion that the elderly represent, in any case, a resource to be valued. For this reason, economic support and legislative initiatives, which allow them not to be excluded from social life, must be strengthened.”<sup>47</sup>

Two other recent Catholic documents on aging reflect the emphasis in Catholic social thought on the principle of participation. The United Nations designated the year 1999 as the “International Year of the Older Person” and called for civil society and governments to reflect on the challenges of contemporary aging.<sup>48</sup> In response, the Pontifical Council for the Laity and the U.S. Catholic Bishops published pastoral reflections regarding the elderly. In their message, *The Dignity of Older People and Their Mission in the Church and in the World*, the Pontifical Council stated that a society which is truly just for all ages is one “committed to creating the conditions of life able to fulfill the great potential that older people still have.”<sup>49</sup> Furthermore, they recognized the connection between human dignity and community:

Older people experience a sense of impotence at being unable to change their own situation, due to their inability to participate in the decision-making processes that concern them both as persons and citizens. The net result is that they lose any sense of belonging to the community of which they are members.<sup>50</sup>

In the document, the Council suggested that participation is a moral principle which can help society to truly “defend” the dignity of older persons.<sup>51</sup>

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46. John Paul II, *Society Needs to Respect the Dignity of the Elderly: Letter of Pope John Paul II to the President of the Second World Assembly on Aging, in Madrid*, 47 THE POPE SPEAKS 352, 353 (2002).

47. John Paul II, *2005 Lenten Message: Deepening Awareness of the Elderly*, 34 ORIGINS 550 (2005) [hereinafter John Paul II, *2005 Lenten Message*].

48. G.A. Res. 47/5, U.N. Doc. A/RES/47/5 (Oct. 16, 1992).

49. THE DIGNITY OF OLDER PEOPLE, *supra* note 6, at 7.

50. *Id.* at 26.

51. *Id.* at 30.

In their own 1999 pastoral message, *Blessings of Age*, the U.S. Catholic Bishops also drew upon a social justice approach in the call for “new initiatives that encourage the participation of older persons in society and in the Church.”<sup>52</sup> Similar to John Paul II, the Bishops encouraged a change in perspective toward older persons away from an exclusive focus on need: “Former responses that saw older people solely as the recipients of care are not adequate.”<sup>53</sup> The Bishops thus also draw upon “the principle of participation” as the moral vision which allows older people to be approached as partners in decision-making and planning rather than the mere objects of the decisions of others.<sup>54</sup>

It is important to note that the insights of Catholic social thought presented here are not limited by religious confession. In fact, the potential of this moral tradition to contribute to our *public* vision is evidenced by the overlap with the insights of the contemporary human rights tradition. While not the dominant emphasis of the Western human rights tradition, the United Nations’ *Universal Declaration of Human Rights* does include the view of the human person as social. The *Declaration* states: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”<sup>55</sup> Furthermore, in affirming this view of the person, our human rights tradition recognizes that the community has a reciprocal responsibility to enable and to allow this social participation. This approach is reflected in the U.N.’s definition of “a society for all ages” in which “every individual, each with rights and responsibilities, has an active role to play.”<sup>56</sup> In their own contribution to the public discussion of justice in aging societies, the U.N. produced a document entitled “United Nations Principles for Older Persons,” which identifies “participation” as one of five principles needed to create a just society for the elderly.<sup>57</sup> Recognizing the dual responsibility between the person and society, the document states:

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52. U.S. CATHOLIC BISHOPS, *BLESSINGS OF AGE: A PASTORAL MESSAGE ON GROWING OLDER WITHIN THE FAITH COMMUNITY* 27 (1999) [hereinafter *BLESSINGS OF AGE*].

53. *Id.* at 4.

54. *Id.* at 22.

55. Universal Declaration of Human Rights, G.A. Res. 217A, at 75, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

56. G.A. Res. 51/240, ¶ 107, U.N. Doc. A/RES/51/240 (Oct. 15, 1997).

57. G.A. Res. 46/91, Annex 7–8, U.N. Doc. A/RES/46/91 (Dec. 16, 1991).

Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being . . . . Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.<sup>58</sup>

The principle of participation is thus seen to respond to the growing awareness of “the extraordinary range of abilities and interests of older persons.”<sup>59</sup>

To summarize, a social justice vision emphasizes the important moral category of participation as an expression of human dignity, which then attunes society to its concomitant violation that is marginalization. Thus, public policy choices are guided by the overall measure of whether they contribute to older people experiencing their third age as a period of purposeful involvement in the common life of society. As the U.S. Catholic Bishops state:

Recent Catholic social thought regards the task of overcoming patterns of exclusion and powerlessness as a most basic demand of justice. . . . The level of participation may legitimately be greater for some persons than for others, but there is a basic level of access that must be made available for all.<sup>60</sup>

Because the principle of participation helps to reorient society to older persons as actors with potential and capacity even within the limitations of age-related disability and loss, it warrants comprehensive application to the various challenges of an aging society. To conclude, I would like to offer some reflections on aging issues that have tended to be viewed primarily from the perspectives of distributive and commutative justice. In doing so, I hope to indicate some of the practical implications of considering aging policy within the horizon of social justice and justice as participation.

#### IV. JUSTICE AS PARTICIPATION AND PUBLIC POLICY

I shall focus my remarks on three general areas—retirement, healthcare resources, and long-term care—in which a social justice vision can help our society to create just conditions in an aging society by employing the categories of participation

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58. *Id.*

59. United Nations, Division for Social Policy and Development, Ageing—Implications of an Ageing Society, <http://www.un.org/esa/socdev/ageing/ageimpl.htm> (last visited Apr. 14, 2007).

60. ECONOMIC JUSTICE FOR ALL, *supra* note 31, at 597.

and marginalization in our policy deliberations. As suggested in the previous section, a social justice vision guards against assumptions that the limit of whether the elderly can remain participants in their communities is the limit of whether or not an elderly person has family resources adequate to enable this. I would point out that programs like Social Security and Medicare already reflect a social consensus that certain material aspects of life are a *public* responsibility, but we have too easily assumed that most other aspects of the dignity of an older person's life are a private "family matter." Thus, the social justice tradition presented here provides an important corrective by insisting that achieving justice in terms of participation is not a "private" or individual matter—it is also a matter of corporate responsibility. As the Pontifical Council states: "To accompany older people, to approach them and enter into relation with them, is the duty of us all."<sup>61</sup> In addition, from a purely practical standpoint, the changes in family structure today and the sheer length of the "third age" make it crucial that families and other private care networks receive public support.<sup>62</sup> The President's Council on Bioethics observed that "millions of American families, more each decade, already face the difficult task of caring for frail and incapacitated elders, often entirely on their own with very little social support."<sup>63</sup> I would argue that the social responsibility of participation does not replace familial responsibility and love; rather, it rightly expands responsibility for a just society for the elderly and thus, actually supports the family's own contribution.

First, our public discussion of retirement policies can be enriched by the social justice perspective presented in this essay. As was noted in the introduction to this essay, when Social Security was enacted in 1935, people aged sixty-five could expect to live five to seven more years; today, those who reach sixty-five can expect to live on average seventeen more years.<sup>64</sup> The economic implications of this change for our retirement and pension systems have been well documented, including its impact on private companies. In fact, in light of increased longevity, more attention is now being focused on the economic need for older persons to continue working beyond the traditional retirement age of sixty-five. Thus, some scholars are working with aging experts and with industry representatives to design realistic labor policies that could enable older workers to remain in the job market

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61. THE DIGNITY OF OLDER PEOPLE, *supra* note 6, at 49.

62. PRESIDENT'S COUNCIL ON BIOETHICS, *supra* note 3, at 2.

63. *Id.* at xviii.

64. See *supra* text accompanying note 4.



while responding both to the particular needs of older workers and to the needs of employers.<sup>65</sup>

While such efforts are clearly driven by very practical concerns about the economic viability of our public and private pension policies and individual financial conditions, a social justice vision also encourages us to look at access to labor as an important avenue for meaningful social participation and thus, human dignity. As the U.S. Catholic Bishops note in their document on economic justice, jobs represent a form of participation that is “vital to human development” and which provides a way for persons to “exercise their talents” and “have an opportunity to contribute to the larger community.”<sup>66</sup> This becomes a crucial recognition when we consider that one of the experiences marking old age is transition from the previous roles of middle adulthood in work and family. As Fahey and Holstein describe, one of the characteristics of the third age is often to experience “fewer socially expected roles.”<sup>67</sup> When considering aging and work, we must recognize that labor not only represents a means of survival but also an expression of social contribution. While there is nothing wrong with transitions in work and family life per se, social justice attunes us to the fact that such transitions mean the loss of avenues of participation that must be replaced if the full dignity of the person is to be guaranteed. The need for policies which increase appropriate work opportunities for older persons becomes more clear when we consider that, if those born in the 1960 birth cohort retire at the current average retirement age, life span demographics project that they will spend “an average of roughly one-third of their adult lives in retirement.”<sup>68</sup>

While practical economic implications are important, justice as participation also directs us to consider the questions of purpose and dignity that arise when one faces such an enormous length of time without one of the main avenues for the expression of participation, which is work life. Aging expert Mick Smyer recently noted that older persons often seek second careers or “bridge jobs” out of the desire for social networks, a

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65. An example is Boston College’s Center on Aging and Work/Workplace Flexibility, which focuses on research in the area of aging and work and in engagement with the business community about providing flexible work options for older adults. See The Center on Aging and Work/Workplace Flexibility at Boston College, [http://agingandwork.bc.edu/template\\_index](http://agingandwork.bc.edu/template_index) (last visited Apr. 14, 2007).

66. ECONOMIC JUSTICE FOR ALL, *supra* note 31, at 574.

67. Charles Fahey & Martha Holstein, *Toward a Philosophy of the Third Age*, in VOICES AND VISIONS OF AGING 244–45 (Thomas R. Cole et al. eds., 1993).

68. Henry J. Aaron, *Longer Life Spans: Boon or Burden?*, 135 DÆDALUS 9, 15 (2006).

sense of purpose, and interaction with people of all ages.<sup>69</sup> Moody points out that this desire is also related to the honor one feels in society. As Moody argues, “every society maintains role performance requirements. To fulfill a specific social role—student, parent, employee—is a basis for receiving honor (respect) from others. Conversely, to fail in those standards is a basis for humiliation and loss of dignity.”<sup>70</sup> It is not just a matter of eliminating discrimination against older workers via legal remedies, but of a real social commitment to creating the conditions and policies that allow older workers to continue making contributions despite limitations that may occur with age. This requires a partnership in which private industry not only refrains from discrimination but positively creates work conditions which fit the particular needs of older workers. Here Moody’s critique of public policies and moral vision that view the elderly only in terms of “deficit” and not in terms of capacity is particularly salient. As Moody pointed out, there is a problem when our social programs aim only at need and dependence and fail to see capacity: a division is created between programs for the young understood in terms of development and for the elderly in terms of dependence.

In the area of retirement policy, the tradition of Catholic social thought is also important in arguing that the common good of a society to which members are called to contribute does not consist only in the production of material goods. Rather, the common good is a broad concept which includes all goods, services, and “non-material or spiritual values” which society depends upon.<sup>71</sup> Examples of this would be the non-paid nurture and care of children or the contributions of persons to their communities through participation in civic and religious organizations. Set against the horizon of social participation, public discussion of retirement should be enlarged to include creation and support of volunteer opportunities through which older people can find continued ways to make a social contribution.

A concrete example of such opportunities is that of Elbert Cole’s “Shepherd’s Center” movement, founded in 1971 in Kansas City, Missouri. As the national organization states, Cole “recognized the need to redefine and restructure the way Americans

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69. Gary M. Stern, *Older Workers Taking Stock of ‘Bridge’ Jobs*, INVESTORS BUS. DAILY, Oct. 16, 2006, at A8.

70. Harry R. Moody, *Why Dignity in Old Age Matters*, 29 J. GERONTOLOGICAL SOC. WORK 13, 24 (1997).

71. ECONOMIC JUSTICE FOR ALL, *supra* note 31, at 595.

approach aging.”<sup>72</sup> Today, Shepherd’s Centers of America is a network of local, congregation-based centers with “a commonly understood mission to empower older adults to use their wisdom and skills for the good of their communities” and thus, to “provide meaning and purpose for adults throughout their mature years.”<sup>73</sup> In an article on volunteer ministries with older adults, Seeber describes Shepherd’s Centers as ministries aimed at “transitional elderly” to enable them to “maintain a life that has meaning and to receive support services they need to avoid premature institutionalization.”<sup>74</sup> Indeed, as Cole himself describes, the Shepherd’s Centers have always sought to include programs “designed to deal with the question ‘Why survive?’” by providing the elderly with the opportunity for lifelong learning and service to others.<sup>75</sup> Thus, a major component of these centers has been to encourage older persons to help other elderly to stay at home longer through volunteering in programs such as Meals on Wheels.

While concerns about the “financial crisis” generated by human longevity and retirement are creating a much-needed urgency for the United States to adjust its labor and pension policies, I would argue it is equally important for public policy to support such efforts as the Shepherd’s Centers, which provide older persons with an avenue for meaningful social participation and also for real contribution to the common good of society. In an article on positive examples of older worker programs, William McNaught observes the shift in thinking that our society and policies must still make:

Not only is the work effort of older persons generally unrecognized, but few appreciate the time and efforts spent by seniors in related productive activities: carrying out volunteer assignments, providing care to loved ones and neighbors, and educating themselves for improved performance in their tasks.<sup>76</sup>

More sustained efforts at the federal and state level aimed at coordinating and enabling elder volunteering would be a great

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72. Shepherd’s Centers of America, <http://www.shepherdcenters.org/aboutUs.aspx> (last visited Apr. 14, 2007).

73. *Id.*

74. James J. Seeber, *Volunteer Ministries with Older Adults*, in 2 AGING, SPIRITUALITY, AND RELIGION: A HANDBOOK 168, 172 (Melvin A. Kimble & Susan H. McFadden eds., 2003).

75. Elbert C. Cole, *Lay Ministries with Older Adults*, in MINISTRY WITH THE AGING 250, 261 (William M. Clements ed., 1981).

76. William McNaught, *Realizing the Potential: Some Examples*, in AGE AND STRUCTURAL LAG 219, 221 (Matilda White Riley et al. eds., 1994).

contribution. Why not imagine a branch of the AmeriCorps program specifically designed for older Americans, which also accommodates for some of the physical and cognitive challenges that can arise in old age?<sup>77</sup> The framework of social justice demands that we see these issues not merely in terms of the individual right not to be discriminated against, but as a social responsibility to maximize the possibilities and conditions in which older people can participate in society, and thus maintain social honor and dignity during the last one-third of their lives.

Private and religious organizations clearly provide many older Americans with avenues for social contribution, but they can do even more with the collaboration of government. And, as the previously mentioned United Nations document states, the principle of participation suggests that society has a responsibility to enable older persons to perform service to the community in positions appropriate to their needs.<sup>78</sup> An excellent example of government collaboration would be in the area of reliable transportation options. A recent article on the importance of public transportation in an aging society notes two important facts: that more than 21% of Americans sixty-five and older do not drive and that this age group is also twice as likely to have some form of disability than persons aged sixteen to sixty-five.<sup>79</sup> While the Americans with Disabilities Act requires public transportation systems to provide alternative service for those adults with disability, chronic conditions render many elderly unable to use traditional public transportation even when not labeled with an official disability.<sup>80</sup> As one expert on public transportation argues, current budget spending for public transportation does not meet the projected need: "The United States is currently ill-prepared to provide adequate transportation choices for our rapidly aging population. Alternatives to driving are sparse, particularly in some regions and in rural and small-town communities."<sup>81</sup> This has real social and economic implications: it can make the difference between an older person being able to make it to a job or visit and care for a sick relative or tutor a child. Justice as participation demands that we consider this as an issue of human dig-

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77. Information on this national volunteer corps program can be found at: <http://www.americorps.org>.

78. G.A. Res. 46/91, *supra* note 57, at Annex 7-8.

79. Patrick Tucker, *Mobility for Tomorrow's Seniors: Public Transportation Must Plan Now to Meet the Needs of an Aging Population*, *FUTURIST*, Nov.-Dec. 2005, at 10.

80. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq. (2000).

81. Tucker, *supra* note 79, at 10 (internal quotations omitted).

nity and view the elderly as persons with capacity and a desire to contribute.

The second area in which a social justice vision helps to inform how we approach “Aging America” is in the distribution of health care resources. For instance, genetic technologies to alleviate or even arrest the aging process are exciting areas of medical research, which attract great interest and promise further gains in human longevity.<sup>82</sup> As ethicist Lisa Sowle Cahill and I have written elsewhere: “The principle of participation demands that we place resource allocation for genetic research within the larger context of the family and community assistance and basic care needed to maximize social participation, to cope with losses, and to adjust goals to remaining strengths in one’s final years.”<sup>83</sup> From a social justice perspective, I would argue that our priority must remain responding to the elderly of today and the larger question of how our society can support the greater number of people living to and in old age, especially since disease and disability will never be completely eradicated. Furthermore, because challenges such as age-related chronic disability and pain have immediate and potential solutions that are relatively clear, while gene therapy is hypothetical and prospective, a social justice perspective demands that such needs not be compromised by resource allocation directed toward genetic technology. The question of participation would ask: what health care technologies and services not only prolong life in and of itself but also best help to support the participation of the elderly in society? As John Paul II stated in his address to a gathering of Catholic healthcare and pastoral workers, “[a]dvances in health-care technology prolong life, but do not necessarily improve its quality.”<sup>84</sup>

Another area of healthcare resource expenditure to consider is prescription drugs. Overall, it must be recognized that the discovery of drugs to help control chronic conditions such as diabetes and high blood pressure have contributed greatly to the experience of increased health in old age. As noted in a recent report: “Old age today is—for the most part and for most people—much better than it used to be: millions of Americans are staying healthy and active well into their seventies and eighties,

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82. See generally Jonathan Shaw, *The Aging Enigma: Scientists Probe the Genetic Basis of Longevity*, 108 HARV. MAG. Sept.–Oct. 2005, at 46.

83. Lisa Sowle Cahill & Sarah Moses, *Aging, Genetics and Social Justice*, in *AGING, BIOTECHNOLOGY, & THE FUTURE* (C.Y. Read et al., eds., forthcoming).

84. International Conference on the Church and the Elderly, *supra* note 44, at para. 6.

and some deep into their nineties.”<sup>85</sup> Increased health certainly enhances the ability of older persons to continue to make contributions to their society through active participation and thus, is a goal affirmed by a social justice perspective.

However, management of chronic disease cannot alone guarantee a meaningful old age without other forms of support in the areas of basic health care and activities of daily living. While it is true that many of the elderly today enjoy better health as they enter the sixty-five and over years, the President’s Council on Bioethics states: “Living longer also means suffering numerous chronic but not deadly conditions—such as arthritis, hearing and vision loss, dental decay, bowel problems, and urinary difficulties.”<sup>86</sup> Such conditions are particularly relevant to this essay because they complicate continued social involvement by their negative effects on mobility, driving ability, and social interaction. Thus, while prescription drug coverage is important for helping millions of seniors manage disease and chronic conditions, “keeping our promise to America’s seniors” must also include ensuring access to basic home care.<sup>87</sup> In addition, as noted by many critics of the Bush Administration’s Medicare prescription drug plan, our national healthcare policy for older persons must include a way to control the costs of prescription drugs as a matter of justice, so that resources for basic health and home care are not wasted in uncontrolled expenditures to the drug industry.<sup>88</sup>

An example of an organization that reflects a vision of social justice as applied to healthcare is the Catholic Health Association and its list of priorities in regard to elder care. The Catholic Health Association is a professional organization for Roman Catholic health care facilities, health care systems, community clinics, and nursing and rehabilitation facilities. As a part of its commitment to enabling older persons to remain in their community and in “the least restrictive setting practical,” the CHA prioritizes services such as primary care, medical and social elder “day care” facilities, home health and nursing services, and case

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85. PRESIDENT’S COUNCIL ON BIOETHICS, *supra* note 3, at xviii.

86. *Id.* at 12.

87. “Keeping our promise to America’s seniors” was the Bush Administration’s theme during the launching of the new Medicare prescription drug plan in 2003. See Press Release, White House, President Signs Medicare Legislation (Dec. 8, 2003), available at <http://www.whitehouse.gov/news/releases/2003/12/20031208-2.html>.

88. See Kenneth N. Gilpin, *Gauging the Winners in the Medicare Bill*, N.Y. TIMES, Dec. 14, 2003, § 3, at 8.

management.<sup>89</sup> The CHA has a long track record of enabling cooperation among health facilities, social services, and networks of community care for the elderly and their families. Especially for low and middle income elderly, social justice demands that such services remain a priority in our public debate concerning resource allocation directed toward the elderly. This is especially true concerning the medical and non-medical services currently available that can help to maintain participation even with the limitations of late life disease and disability. As Daniels notes:

These disabilities are, in general, not life-threatening, and people usually live for many years with them. Yet, partial disabilities can have a dramatic impact on an individual's opportunity to carry out otherwise reasonable parts of his life plan . . . that is, if there are no personal care and social support services that promote independent living.<sup>90</sup>

Such services are just as vital in our public policies as allocation for potential, future gains in areas like genetic technology.

Meanwhile, there are also new health care devices and technological developments that could greatly help the elderly to participate in society despite restricted physical mobility, such as devices in the home that help with the activities of daily living. In a special committee hearing of the U.S. Senate on assistive technologies for older persons, a leading researcher stated: "This [assistive] technology can increase the autonomy of our senior citizens, and in particular, enable them to 'age in place,' that is, remain living in their homes for longer periods of time."<sup>91</sup> However, the hearing noted that funding for such technologies can often be "patchwork." A concern for justice as participation would help to orient funding priorities so that scientific and medical research of technologies that address activities of daily living receive consistent financing.

A third area for which the vision of justice as participation is particularly relevant is the challenge of long-term care and housing for the elderly. This is a pressing issue when we consider that, according to the 2000 United States census, the fastest growing segment of the elderly population are those aged eighty-five or older. Currently, this segment accounts for about two percent

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89. CHAUSA: The Catholic Health Association of the United States, Elder Care and Continuing Care, <http://www.chausa.org/Pub/MainNav/whatwedo/ElderCare> (last visited Apr. 14, 2007).

90. Norman Daniels, *Family Responsibility Initiatives and Justice Between Age Groups*, 13 L. MED. & HEALTH CARE 153, 157 (1985).

91. *Assistive Technology for Aging Populations: Hearing Before the S. Spec. Comm. on Aging*, 108th Cong. (2004) (statement of Martha E. Pollack, Professor of Electrical Engineering and Computer Science, University of Michigan).

of the United States population, or four million people; by 2050, it is expected to constitute five percent, or nineteen million people.<sup>92</sup> As a Centers for Disease Control report noted, long-term care is particularly relevant to this demographic because elderly persons aged eighty-five years and over were six times as likely as adults aged sixty-five to seventy-four to need help with personal care needs.<sup>93</sup> The Presidential Bioethics Council also reported that “[a]fter age 85, only one person in twenty is still fully mobile; and roughly half the people over 85 will suffer major cognitive impairment or dementia as part of their final phase of life.”<sup>94</sup> Smyer and Qualls state that there is every reason to expect a significant increase in the nursing home population in coming years, particularly among those aged eighty-five and older.<sup>95</sup>

In anticipation of the likely increase of older persons who experience “functional disability,” it is paramount to consider how our long-term care system contributes to or undermines the dignity of such elderly as it relates to participation. As noted earlier, I would suggest that traditional moral principles of commutative fairness are inadequate as a measure of our responsibilities to older persons in long-term care facilities. While questions of patient autonomy and rights are still important, the vision of a just society for the elderly informed by participation emphasizes the problem of institutionalized marginalization from society. We are led to ask: are nursing homes run in such a way that they create conditions of life that allow the elderly to realize their full potential and participation? Echoing the theme of marginalization included in our discussion of Catholic social thought, Jane Boyajian powerfully argues:

Our joy in living comes from a sense of our participation in creation—in community. So separation from others—isolation by word, deed, illness, age, or dying—is the epitome of loneliness—aleness in its most fundamental sense . . . . [I]t seems that banishing them from our community, preventing them from participating to the degree

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92. OLDER AMERICANS 2000, *supra* note 4, at 2.

93. Nat'l Ctr. for Health Statistics, Ctrs. for Disease Control & Prevention, NCHS Data on Aging (2004), *available at* <http://www.cdc.gov/nchs/data/factsheets/agingfactsheet.pdf>. The CDC reports that in 1999, rates of nursing home placement according to age segment were as follows: aged sixty-five to seventy-four, persons per thousand; aged seventy-five to eighty-four, forty-three persons per thousand; aged eighty-five plus, 182 per thousand.

94. PRESIDENT'S COUNCIL ON BIOETHICS, *supra* note 3, at 8.

95. MICHAEL A. SMYER & SARA H. QUALLS, AGING AND MENTAL HEALTH 233 (1999).



their illnesses permit, is among the greatest transgressions.<sup>96</sup>

While the dimension of justice that addresses fairness between staff and residents is important, the principle of participation calls on the larger community to expand its assessment of long-term care facilities beyond the issue of preventing physical neglect. Instead, the measure of fairness in its relationship to older citizens must also be based on whether older persons' continued connection to the community is enabled. William May poignantly highlights the urgency of this moral responsibility for the quality of life experienced by older persons in institutions: "Ordinarily, people live in a number of different environments—home, workplace, streets, parks, gardens, and sidewalks . . . . But, for the immobile or the impaired, the world contracts to a single room."<sup>97</sup>

Furthermore, federal guidelines established to "grade" nursing homes should include greater concern for a facility's performance in increasing the capacities of the elderly. An example would be the degree to which physical therapy is provided, which can enable elderly persons to maintain mobility and the ability to perform activities of daily living for as long as possible, such as feeding themselves and going to the bathroom. Given the potential for contributing to the functional abilities of older persons, funding of physical therapy through Medicare and Medicaid policies should also be increased and made more accessible to persons in long-term care facilities. As of now, nursing homes are still judged largely from the perspective of preventing negative harm and physical neglect.<sup>98</sup> However, a moral vision shaped by attention to remaining capacities would prioritize access to physical therapy which allows older persons to maintain greater personal independence even in the midst of institutionalized living.

Within long-term care institutions, participation also demands that older persons be genuinely enabled to participate and contribute to the policies and structures that directly affect their lives. As the U.S. Catholic Bishops state, "[t]his is the principle of participation. Who knows better than older persons themselves what their needs are? Yet we marginalize older per-

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96. Boyajian, *supra* note 24, at 21.

97. William F. May, *The Virtues and Vices of the Elderly*, in *WHAT DOES IT MEAN TO GROW OLD? REFLECTIONS FROM THE HUMANITIES* 41, 46 (Thomas R. Cole & Sally A. Gadow eds., 1986).

98. See Alice Dembner & Bill Dedman, *Nursing Homes Show Uneven Gains*, *BOSTON GLOBE*, Dec. 13, 2004, at A1 (documenting federal scoring of nursing homes according to rate of neglect and physical harm such as bedsores).

sons when we make decisions *for* them rather than *with* them.”<sup>99</sup> This is an area that could be helped by elder law and state-issued nursing home policies and enforcement. We have certainly made advances in protecting the elderly from abuse and physical neglect in institutions thanks to legal efforts. However, our moral vision must expand beyond protection from physical harm to the positive promotion of participation and the overcoming of disempowerment. As the United Nations principles recognized, elderly persons have a right to shape the policies that directly affect their well-being.<sup>100</sup>

Our society must also recognize that even more “independent” forms of senior residences can have the consequence of marginalizing the elderly from a more diverse interaction with others. Participation asks the question: how do particular housing structures facilitate or undercut the access of elderly persons to their communities and families? It is not just a matter of whether or not an assisted living residence provides around the clock activities and entertainment for their residents within the facility, but also whether the facility helps to foster connections to the wider community. In a recent article describing life in an upscale assisted living facility in Connecticut, it is particularly striking to observe that several of the residents, while appreciative of the nice accommodations, expressed sadness about being surrounded only by people of their own age and being removed from many of the past activities that gave them a sense of usefulness.<sup>101</sup> Participation as justice helps prompt us to better use our imaginations in designing housing for the elderly that truly serves the expression of participation, such as mixed housing models that allow the elderly to live in more diverse environments while still receiving needed services. It also helps to reveal our corporate duty to find ways to overcome some of the inherent marginalization that occurs with any form of institutionalized living.

Finally, justice as participation implies shifting even more long-term care resources toward home-based support services which allow the elderly to remain in their own homes and communities. It is encouraging that age-based public policy has begun such a shift in concrete funding and practice, and we should move rapidly to expand such policies. One model is the “Cash and Counseling” program, which allows federal and state

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99. BLESSINGS OF AGE, *supra* note 52, at 22.

100. G.A. Res. 46/91, *supra* note 57, at Annex 7–8.

101. Jane Gross, *LIFE, ASSISTED: No Place Like Home; Under One Roof, Aging Together Yet Alone*, N.Y. TIMES, Jan. 30, 2005, §1, at 1.

money allocated for home services to be distributed in such a way that elderly and disabled adults who qualify for Medicaid have greater control over directing and choosing the services they need.<sup>102</sup> The program is important because it shows that, with proper support (“counseling”), persons with mild cognitive impairment can still direct their personal care in a way that respects independence and enhances quality of life. Models like this are crucial for enabling the elderly to remain at home even with mild forms of cognitive and physical disability.

Furthermore, a recent announcement by the U.S. Department of Health and Human Services concerning Medicaid spending seeks to increase the possibility of states to move toward more home-based, individually directed personal care.<sup>103</sup> The newly announced federal funding is intended to encourage states to provide older adults real alternatives to institutionalization when long-term care becomes necessary—alternatives that are not available under traditional Medicaid rules. As the press announcement states, “[t]he Medicaid program traditionally pays for care for persons who are elderly and those with disabilities living in institutions who needed [sic] help with activities of daily living, because institutional care was the norm when the Medicaid law was enacted forty years ago.”<sup>104</sup> The new federal funding provides grants to pay some of the costs states face in restructuring their Medicaid systems and policies to “rebalance” Medicaid coverage so that older persons will no longer be required to use institutional care in order to qualify for Medicaid benefits. Such policies should be seen in terms of increasing older persons’ ability to participate more directly in their own communities by remaining at home longer. Given the proven success of programs such as the Cash and Counseling initiative, the federal government should look for further opportunities to encourage states to adjust their policies toward more home-based elder care.

This section points toward some of the areas in which the principle of participation helps to reorient our policies and spending toward the capacities of older people and thus, to enable them to live the third age as a time of meaningful participation and contribution, even in the presence of age-related disa-

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102. Marie R. Squillace et al., *Personal Assistance Service Choice and Decision-Making Among Persons with Disabilities and Surrogate Representatives*, 8 J. MENTAL HEALTH & AGING 225 (2002).

103. Press Release, U.S. Dep’t Health & Human Servs., *HHS Provides Funding to States for Alternatives to Nursing Home Care in Medicaid*, (July 26, 2006), available at <http://www.hhs.gov/news/press/2006pres/20060726.html>.

104. *Id.*

bilities and illness. However, a word of caution is in order regarding the principle of participation. There is a certain danger that a stress on participation will be understood in terms of economic productivity and “usefulness.” If participation is interpreted primarily in these terms, it may further trap older people within a common societal view of the elderly as lacking value in our fast-paced, activity obsessed culture. In his Lenten message, the late John Paul II in fact warned against “a certain current mentality that considers [the elderly], our brothers and sisters, as almost useless when they are reduced in their capacities due to the difficulties of age or sickness . . . .”<sup>105</sup> An emphasis on enabling capacity should not be understood as a denial of the real challenges faced by older people today: “A very significant and growing number of people suffer (or will suffer) years of enfeeblement, disability, and dementia, eventually [becoming] incapable of caring for their own elementary needs.”<sup>106</sup>

With these concerns in mind, it is important to insist on the fact that participation is a notion richer than mere considerations of access to employment and economic contribution and includes other ways in which persons contribute to and take responsibility for the shared social life of a community, including nonmaterial and spiritual values. In an American society that takes great pride in the production of material goods and wealth, this comprehensive concept of participation insists on the value of non-material contributions, such as nurturing affection for grandchildren or the communication of spiritual and practical wisdom. This moral vision also insists that, even amidst late life disability and limitation, there remains an aspect of human dignity which is tied to the sense of being needed and feeling oneself needed by others.<sup>107</sup> This also returns us to Lebacqz’s interpretation of a main point in the Catholic social tradition, “[b]ecause human beings are social by their very nature, human dignity will be addressed in social relationships.”<sup>108</sup> While I have focused on the need for policies developed with the horizon of enabling participation, it is equally important to recognize that brief or long periods of disability are simply a part of aging today, and thus a just society also demands the responsibility of caregiving. And yet, even here a social justice vision reminds us that such caregiving is never merely attention to physical need, but should also include care that is given in a way which responds to

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105. John Paul II, *2005 Lenten Message*, *supra* note 47, at 551.

106. PRESIDENT’S COUNCIL ON BIOETHICS, *supra* note 3, at 6.

107. MOODY, *supra* note 14, at 170.

108. LEBACQZ, *supra* note 27, at 68.

the need of persons to feel connected to the human community even in illness and death.

#### CONCLUSION

That we find ourselves in a society with more elderly people living longer is an enormous accomplishment of human civilization and of the twentieth century. However, as Daniels has argued, the reality of a rapidly growing elderly population literally changes the nature of our society and demands adequate principles of justice to guide policy choices regarding the distribution of goods and resources.<sup>109</sup> The expertise of economists, health care experts, and legal scholars are surely needed for making the specific and practical recommendations for these policy choices. My purpose has been to demonstrate that a vision of social justice and the principle of participation are important because they place the elderly themselves at the center of our reflection as actors and contributors with enormous capacity. Harper rightly argues that "it is important that we recognize the full potential length of active adulthood and enable most individuals to contribute as long as they are able."<sup>110</sup> Justice as participation helps to highlight the fact that old age today is a significant stage of human life which demands more than basic material provisions and dutiful care of the sick. It reminds us that our overall goal is to foster a society in which the elderly can live lives of purpose and be concretely enabled to participate and contribute to the communities in which they live.

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109. NORMAN DANIELS, *AM I MY PARENTS' KEEPER?* 88 (1988).

110. Sarah Harper, *Mature Societies: Planning for Our Future Selves*, *DÆDALUS*, Winter 2006, at 30.