

New Forms of Ageism as a Challenge for a UN Convention on the Rights of Older Persons

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Abstract: This article contributes to the ongoing debate around the need for a new United Nations convention on the human rights of older persons. It explores new forms of ageism that have so far been overlooked in the discussion and explores the value of a new treaty from a symbolic point of view. Analyzing the instrumentalization of older persons by ageing policies, and the devaluation of older age as part of age imperialism, we argue that a new treaty can valorize older people's social status and address them as autonomous subjects. This can be achieved by emphasizing the individual dignity of older persons and by expressing their equal legal recognition. This exploration of the conceptual challenges posed by new forms of ageism provides arguments that may prove useful for reframing the debate around a new convention.

Keywords: ageism, United Nations, older persons, human rights, symbolic function

Introduction

Various scholars have argued that a United Nations convention on the human rights of older persons could help to combat and reduce ageism (De Pauw et al. 184; Doron and Apter 589).

However, some commentators also raise concerns, stating that a treaty specific to old age could contribute to the reproduction of age-based differences, which can become the source for marginalization, paternalism, and disadvantage for older persons (see, for an overview, Doron and Apter; Poffé). This article aims to contribute to the discussion on the efficacy of a new UN

convention to challenge ageism. Traditionally, ageism refers to stereotypes, prejudices, and discrimination on the basis of age (Bytheway and Johnson; Snellman). Since we are interested in widening the debate around the value of a new UN convention, for the purpose of this article, we will only discuss how so-called new forms of ageism (see Part 2 below), which so far have hardly been considered in the context of human rights law, can be addressed by the symbolic function of an international convention.

Our discussion is divided into three parts. Part 1 provides the conceptual framework of human rights used and an overview of the political debate around a convention on the rights of older persons and the relevance of age discrimination and ageism as a problem within this discussion. In Part 2, we address ageism and age discrimination as human rights violations, focusing on those new forms of ageism that have received limited or no attention in the UN debate. Part 3 discusses the symbolic function of a new UN instrument as a means to tackle these new forms of ageism.

Part 1: Human Rights of Older Persons and the Debate around a New UN Treaty

There are diverse definitions of human rights (Dembour). For the purposes of this article, human rights are understood as a set of basic rights and freedoms that everyone is entitled to on the basis of international human rights law. From this perspective, considering something a human right means recognizing that all individuals have rightful claims vis-à-vis their governments and that states can be held accountable by the international community regarding their acts or omissions (Sepúlveda and Nyst 18). In contrast to welfare approaches, which see older people in terms of needs and deficits and are often applied in laws and policies, the human rights framework that is now gradually integrated in the ageing discourse is based on the premises of dignity, autonomy, and

participation (EU FRA). Human rights are not given on the basis of needs, because they depend only on being human. They derive from the inherent dignity and equal worth of all human beings. They are universal and inalienable (UN *Universal Declaration*). In this sense, claiming rights does not presuppose putting individuals in an inferior position by asking others to meet their needs. Human rights are about how the state should treat people no matter who they are. Insofar as human rights are based on individual dignity, the ultimate objective of human rights law is to have dignity protected “by proclaiming and enforcing specific norms that prohibit derogations from or outrages upon human dignity” (Waldron 200).

Attention to the human rights of older persons increased exponentially since the beginning of the 21st century. The Brasilia Declaration (UN ECLAC) was issued in 2007 at a UN conference for Latin America and the Caribbean. The Declaration called for the development of an international convention for older persons.¹ In 2009, the first-ever international expert group meeting to identify gaps in the protection of older persons’ rights convened in Bonn. The group concluded that a new convention would create binding legal obligations to protect the rights of older persons and bring about a paradigm shift in the way older persons are viewed as a social group (UN DESA). In 2014, Ms. Rosa Kornfeld-Matte was appointed as the first UN Independent Expert on the Enjoyment of all Human Rights by Older Persons (UN GA, *Human Rights*). Ms. Kornfeld-Matte acknowledged ageism as an infringement of human rights and called on member states to consider adopting a new UN treaty to offer comprehensive protection of older people’s rights (UN HRC, *Report 21*).

Perhaps the most influential milestone in the consolidation of a rights-based approach to ageing was the establishment of the UN Open-Ended Working Group on Ageing (OEWG) in 2010. The

¹ It must be noted that this is not the first time the idea of an “ageing treaty” came to the UN. The first attempt dates back to 1948, when Argentina presented a “Declaration of the Rights of Older Persons.” Relevant initiatives have been reiterated also more recently (see Doron and Mewhinney).

group's primary task involves identifying gaps in international human rights law and evaluating the need and feasibility of additional instruments, such as an international convention on the human rights of older persons (UN GA, *Follow-Up*). Even though it has been argued that the protection offered to the rights of older persons in human rights treaties is insufficient (Chung), to date no consensus has been made among UN Member States regarding the need for a new UN treaty. Several arguments in favour and against a new treaty have been made (see Fredvang and Biggs; Doron and Apter). For the purposes of this article, we focus on arguments related to experiences of ageism in later life; namely, the lack of prohibition of age discrimination and the definition of older persons as rights holders.

The absence of prohibition of discrimination on the basis of age is one of the chief arguments in favour of a dedicated older persons' convention. Age discrimination is explicitly prohibited in only one international human rights treaty: the International Convention on the Rights of Migrant Workers and Their Families (UN GA *International Convention*). A new UN treaty would therefore, according to its supporters, fill the extant normative gap by providing clear and comprehensive legal standards against age discrimination. On the other hand, skeptics of a new convention have repeatedly stressed that existing universal human rights instruments apply by definition to everyone, and general equality provisions could be extended to cover experiences of older age. Opponents therefore argue that challenges faced by older people are the result of implementation gaps, meaning a failure to take necessary action at the domestic level; hence, they do not see the need for enhancing the international legal framework.

The definition of older people as rights holders presents a key normative challenge and constitutes one of the main concerns for those opposing the idea of a new treaty (Poffé 10). Older people rarely speak of old age as a distinct period of life (Kaufman). Furthermore, older age is not a binary characteristic and lacks a clear threshold. At the heart of the complex definitions of older

people's disadvantage is the question whether they are vulnerable due to their age or other factors. One essential part of this complexity is what Megret calls the "power/vulnerability paradox" (45). This idea highlights the two extremes against which older persons are depicted. On the one hand, they are increasingly portrayed as independent, active, and even privileged, occupying all the leadership positions and detaining a great share of the financial power, compared with other and younger groups. On the other hand, the public is also familiar with the image of older people as dependent, frail, and a burden that is exhausting the national budget with pension and health care expense (Lloyd-Sherlock 6; Georgantzi).

While it has been recognized and addressed within the broader debate on a new treaty that the use of age as a proxy for loss, vulnerability, deficit, and burden can lead to inequality and reinforce ageism (Fredvang and Biggs 6), the possible risks associated with imposing an image of older age as being active, autonomous, and independent has not been adequately reflected in the ongoing debate. It is necessary, however, to consider the challenges and potential of all the different understandings of old age, since the selected framing will define the extent to which a new convention will have an anti-ageist or an unintended ageist effect.

Part 2: Traditional and New Forms of Ageism

Since the coining of the term "ageism" by Robert Butler ("Age-ism" 244), the concept has evolved and researchers cite various definitions (Iversen et al.; Snellman). For the purposes of this article, we consider ageism to comprise (1) prejudicial attitudes toward older age, older persons, and ageing; (2) discriminatory practices; and (3) institutional practices and policies "which, often without malice, perpetuate stereotypic beliefs about older persons, reduce the opportunity for a satisfactory life and undermine personal *dignity*" (Butler, "Ageism" 8; emphasis added).

In the ongoing discussion about a new convention, the OEWG only marginally addressed ageism, although it is both a human rights violation and a key driver of human rights abuses (De Pauw et al. 187). None of the state reports to the eight OEWG sessions that focused on aspects of equality and non-discrimination referred explicitly to ageism, stereotypes, or prejudice on the basis of age.² This shows that age discrimination is narrowly understood by governments. Civil society, on the other hand, has increasingly referred to ageism as a major barrier to equal access to services and benefits for older persons and to the need to eliminate policies and practices that use age barriers.³ Previous studies that analyzed the connection between ageism and human rights law have focused on these aspects and how common forms of ageism discriminate against older persons and foster their exclusion (e.g., from services; De Pauw et al. 178). In contrast, so-called new ageism(s) – to the best of our knowledge – have not yet been discussed in connection with the debate on the human rights of older persons.

The term “new ageism” has been used in relation to a variety of problems. Alan Walker (“The New Ageism”) and McVittie and colleagues (“‘New Ageism’ and the Older Worker”) adopted it in their studies of ageism within the discourse on social or employment policies, while Simon Biggs used the term to frame his concept of age imperialism (“New Ageism”). Martha Holstein and Meredith Minkler referred to it in relation to the replacement of a “generalized dread of aging with a more specific fear of aging with a disability” (793). These are just a few proponents. What all these different approaches have in common is that they no longer perceive ageism only in traditional

² <https://social.un.org/ageing-working-group/eighthsession-govts.shtml>

³ <https://social.un.org/ageing-working-group/eighthsession-inputngos.shtml>. See Submission to 8th working sessions of the OEWG by “A-Status” National Human Rights Institutions (NHRIs) (<https://social.un.org/ageing-working-group/eighthsession-inputnhris.shtml>) and Accredited Non-Governmental Organizations (NGOs) (<https://social.un.org/ageing-working-group/eighthsession-inputngos.shtml>), <https://social.un.org/ageing-working-group/eighthsession-inputngos.shtml>, <https://social.un.org/ageing-working-group/eighthsession-inputngos.shtml>.

forms of discrimination, exclusion, and disregard of older people, but also as an aspect of the societal negotiation about ageing and “older age.” In this sense, new ageism can be understood as the discursive devaluation of certain aspects of what is commonly perceived as older age and ageing that contrast modern ideas and expectations of performance, health, productivity, and activity. Subsequently, two of these new forms of ageism will be briefly introduced: (1) the *instrumentalization of older people* through ageing policies, which refers to the political perception of older people as a group and a societal resource that can be used as an instrument to achieve political goals (see, e.g., Backes 62; Kesby 388); and (2) *age imperialism*, which describes the process of imposing “the goals, aims, priorities and agendas of one age group onto and into the lives of other age groups” (Biggs, “New Ageism” 103). Afterwards, we will examine how a new convention could help to challenge these two new forms of ageism.

New Ageism in Policy: The Instrumentalization of Older Age

According to Walker, already in the 1980s ageism started to be interlinked with national economic and political policy visions, especially in the light of growing neoliberal tendencies (“The New Ageism” 812). Starting from the 1980s, the media, echoing the political discourses, began disseminating apocalyptic scenarios connected to population ageing: with the increased longevity of the population, the national expenses for pension and health treatment will drastically increase, and Western societies will experience major social and economic difficulties. According to the critics, this burden will be faced by shrinking younger generations. This political narrative is still very common in policy. Hence, the idea that demographic ageing is an economic problem has repeatedly informed the development and implementation of policies encouraging older people to remain in the workforce and actively contribute to society (Walker, “A Strategy for Active Ageing”; WHO; Walker,

“The New Ageism”). The push to prolong working life and the dream of a forever productive citizen are thus part of a contemporary instrumentalization of older persons, which is operated, consciously or not, by national governments and international organizations.

Illustrative examples of such policies are the models of successful (Rowe and Kahn), productive (Moody), and active ageing (WHO), which since the late '90s have been influential in the construction of a new narrative of old age (Biggs, “Toward Critical Narrativity” 312–14; Walker, “Public Policy” 306). On the one hand, such policy paradigms contribute to the rejection of traditional stereotypes of dependency, decline, and disengagement of older age. On the other hand, they can also become a source of ageism. For example, they promote the norm of a “non-frail ‘new elderly’” person who has the potential to be an “active and productive citizen” (van Dyk, “The Appraisal of Difference” 93). This subject position was created to challenge the economic consequences of demographic ageing using perpetual efficiency as a core argument and promoting the neoliberal avoidance of old age as role-less. This is the core process of the instrumentalization of older people as a group in policy development (Kesby 388). However, it is not the promotion of meaningful engagement of older people according to individual wishes and capacities that is problematic. The danger stems from the accompanying measures that could lead to the exploitation of individual resources and to a reduction in social benefits for older people who cannot live up to the standards of successful, productive, or active ageing. Ultimately, successful and active ageing policies are based on the discourse about older people as a social and economic burden (van Dyk, “Das Alter” 607) and thus as a problem to be solved. In this sense, it is not so much the activation of the individual older person that is worrisome but the instrumentalization of older people in their perceived capacity or incapacity as a group.

The assignment of a person to a group is the operational aspect of the instrumentalization of older people within ageing policies, and this neglects individual dignity. Older people are not

addressed in their capacity as legal subjects or with regard to certain logical characteristics such as economic, social, or cultural capital, which would necessarily lead to differentiation between older people but only with regard to their (chronological) age – a characteristic that, in itself, is largely without significance. Consequently, the individual – with his or her specific living conditions, personal strengths and weaknesses, social resources, and limitations – is neglected. Treating the capacities of older people as a “great reservoir of resources, which so far has been insufficiently recognised and mobilised,” is seen as one measure to overcome the challenges faced by underfunded public fiscal systems (European Commission 21). Hence, the purpose and result of this homogenization is to substantiate different arguments within the political or economic discourse with scary or promising rhetoric: older people as a burden to society or, if activated and mobilized, its saviours. In connection with the reduction of welfare state measures, in particular pension benefits (i.e., by raising the statutory retirement age or the slow shift to privately financed pensions), corresponding policy measures such as the extension of working lives can be understood as the neoliberal answer to actual (i.e., financial crisis) and claimed (i.e., demographic ageing) crisis (Macnicol 18–20). In addition, this perspective of the unaffordability of the ageing population – which is ageist in itself (Walker, “The New Ageism” 812) – being mitigated by extending working lives is discriminatory, because it fails to acknowledge the diversity of the ageing process and the impact of social and personal factors on the life course. Ultimately, “extending working life” and thus entrusting the individual with taking care of financial security in old age “is probably only realistic [...] for a select number of groups” and therefore no general solution (Phillipson and Smith 62). The corresponding calls for more autonomy, independence, and self-determination, which are in principle all to be welcomed, are thus accompanied by an increase in personal responsibility. The problem is that the increased individualization and flexibility of the life course, and in particular of older age, which is promoted by greater autonomy and independence, can become problematic

when the differences in economic, cultural, and physical resources of the older population are not taken into account (van Dyk et al. 99). Moreover, in line with the rhetoric of self-responsibility, social benefits tend to be simultaneously reduced, hence flexibility and responsibility can turn into economic insecurity and more intragenerational inequality (Hamblin 35), leaving behind those older people who lack the opportunities and resources to meet these expectations. This problem is deeply interwoven with the prevailing power relations. Should such an ideal drive the framing of a new UN convention, presumably its provisions would be narrowed down to achieving increased economic participation and avoiding dependency; therefore, it would not include sufficient protection for those who cannot fulfill these objectives, such as people in care settings. To the extent that individualization is promoted, states' human rights obligations are likely to be limited to negative duties; that is, not interfering with individual rights but excluding a duty to actively address structural problems and intersecting inequalities, such as to provide social protection for those in most vulnerable situations.

Age Imperialism and the Devaluation of Older Age

The characteristics by which groups are distinguished have changed in the course of history. What remains unchanged, however, is that because of the different distribution of power, the norms, values, and lifestyles of the more powerful groups are associated with greater prestige and recognition, while affiliation with or assignment to other groups is accompanied by a perceived lower social status. Today, the norms, ideals, and goals of middle age are – also as part of the promotion of ageing policies – set as desirable across all life phases (van Dyk, “The Appraisal of Difference” 94), at least in most Western societies. This is the core aspect of what Biggs termed age imperialism (“New Ageism”). Existing power relations between different age groups thus impose

norms and values derived from the ideal/typical image of middle age, such as activity, productivity, success, and so forth on the life course and link these with prestige and recognition. At the same time, social structures often offer the possibility of fulfilling these normative expectations only in a certain way (employment) and under certain conditions (good health, certain chronological age, specific formal education), which correspond with these dominant norms. Because of these unequal power relations and opportunities, older age is negatively labelled and, when compared with other age groups, associated with a reduced social status. This is true for many Western countries (Garstka et al.; Swift et al.). On an individual level, the negative connotation of older age is illustrated by the fact that, compared with their chronological age, people tend to feel younger (Kleinspehn-Ammerlahn et al.; Schafer and Shippee); they tend to reject the label “old,” and the subjective feeling of “agelessness” is a typical motive in the construction of personal age identities (Kaufman; Rozario and Derienzis 549). On the societal level, the status decline of older age is related to a high risk of poverty (Kwan and Walsh), social exclusion (Walsh et al.), and age discrimination (Rippon et al.; van den Heuvel and van Santvoort), which are common experiences among older persons. Thus, age imperialism is a new form of ageism: the existing power structures devalue older age and force (older) individuals to adapt to middle age norms and ideals if they want to avoid a decrease in status. As a corollary, the specific needs, interests, and goals of different life situations are not recognized as having equal value.

While many of the norm-setting dynamics are probably implicit, this trend can also be promoted consciously by prioritizing a specific political agenda such as active, successful, or productive ageing policies. As they are closely aligned with modern performance and productivity norms, their embeddedness in the prevailing power structures becomes manifest (Moulaert and Biggs 30). Although the aspiration of these policies is to reduce negative stereotypes toward older age and ageing at the individual and societal levels, they often fail to recognize many aspects of

ageing and the life course that are not valued with regard to the implementation of the activity paradigm. Gender, race, migration status, economic situation, educational background, disability, psychosocial situation, health status, class affiliation, occupational history, and social network (to name just some aspects) increasingly result in entirely different potentials and possibilities in older age and need to be considered as equally important. Policies that do not recognize these differences contribute to age imperialism, applying comparatively homogeneous life patterns as a reference and norm to older age and negatively labelling older persons who cannot keep up with these expectations as those who are “really old.” The resulting ageless portrait of the modern life course, in which persons are expected to be productive from the cradle to the grave, shifts the overall narrative. From a normative perspective, individuals now either adapt to the values of middle age by staying active, being productive, and ageing successfully, or they enter the fourth age, a “state of ‘unbecoming,’” where they are “stripped of those forms of agency most valued by contemporary consumer society, namely choice, autonomy, self-expression and pleasure” (Higgs and Gillear 13). Under these considerations, should age imperialism be integrated in the conceptual basis of a new treaty, there is a risk that the systemic devaluation of older age will be normalized in international law and that experiences of people in the fourth age and of those who face multiple discrimination will either be neglected or addressed in a paternalistic way.

Part 3: Challenging New Forms of Ageism: The Symbolic Potential of a New Convention

From a traditional point of view, law can be perceived to have five central functions: the solution of conflict, behaviour regulation, legitimation and organization of social order, regulation of living conditions, and administration of justice (Llewellyn). In addition to these instrumental functions, the expressive or symbolic function of law (Sunstein; van der Burg) is increasingly

emphasized. There are two central aspects of this symbolic function. First, law can be expressed through symbols: for example, logos and labels are trademarks, and a police uniform symbolizes a comprehensive package of legal measures, legitimation, and authority. Second, law itself, that is legal texts (e.g., judgements and contracts) express certain meanings (e.g., whether same-sex couples have access to legal marriage or only to another form of legally recognized partnership containing a bundle of social meanings), and putting something in law legitimizes and values the respective phenomenon in a certain way.

The question of the symbolic function of human rights has accompanied the discussion and institutionalization of human rights since the adoption of the Universal Declaration of Human Rights (von Bernstorff). However, particularly with regard to human rights, and probably due to the lack of coercive and sanctioning measures in the classical sense, the symbolic function is often overemphasized (Röhl 283). Nevertheless, the effectiveness of human rights treaties cannot be fully understood without considering their symbolic function (Hathaway 1959). Compared with the instrumental aspects, the advantage of the symbolic dimension is that it is not dependent on the ratification of states or governments but is already developed in the conception and the corresponding negotiation. At the moment, there is no consensus about the underlying principle of a new treaty (Megret; Kesby), but we would like to suggest some of the ways in which a new treaty could have an anti-ageist function, focusing on how a new convention could symbolically counteract the new forms of ageism described above.

Addressing New Ageism in Policy: The Instrumentalization of Older Age

How could a new convention on the human rights of older persons address the objectifying and instrumentalizing character of some current ageing policies, such as the exploitation of older

age for the purpose of political and/or economic goals? (Kesby 388; van Dyk, “The Appraisal of Difference” 96). Summarizing important research on active ageing policies, we tried to illustrate that the theoretically pursued holistic approach to “active ageing” (Foster and Walker 85), has been outweighed by the productivist aspects (Moulaert and Biggs 29). This is a bias that has even been noted and critiqued by its academic advocates (Walker, “Commentary”). A new convention needs to challenge this form of instrumentalization of older persons. Here, we do not want to deny the positive aspects of ageing policies, such as the portrayal of older age as a life phase full of potential, but we argue that it is necessary to critically reflect on its pitfalls.

We discuss two main arguments in order to address new ageism in policy-making. First, it is crucial that the new convention itself does not have any instrumentalizing effects or is based or justified on corresponding interests, and therefore should recognize the limits of the different perspectives (i.e., vulnerability versus the power of older age) and create a balance between these positions. Second, a new treaty needs to establish a legal basis that counteracts any instrumentalization of older people, as a group, using as a core argument the dignity of each individual. Both these requirements can be achieved by placing older people as bearers of individual rights at the centre of a convention.

By highlighting human rights as individual rights, the treaty expresses that those rights entitle individuals to act in accordance with their own objectives and not to fulfill a societal demand, thus avoiding the reproduction of dynamics that potentially reinforce instrumentalizations. A convention must therefore seek to ascribe equal value to those life situations of older persons that are characterized by increased vulnerability and those that are oriented toward politically postulated activity and productivity, while at the same time acknowledging the many nuances that exist between these poles in lived reality. Furthermore, it must not be seen merely as a means of political struggle for equality, nor must it neglect its political and civic society potentials in order to ensure

pragmatically implementable minimum standards (Ignatieff). Hence, the fundamental aspect is how the new convention can reframe the concept of older age and older persons. Therefore, it is necessary to avoid reference to ageist discourses based on economic and social needs or any one-sided justifications for the creation of a treaty on the rights of older persons. Consequently, a paradigmatic shift of the conceptualization of older age, based on the respect for the human dignity of every individual, can be introduced.

Despite the ambiguity of the concept “human dignity,” it is commonly agreed that it is an inherent characteristic of being human (Jacelon et al. 82). While conceptually, dignity is often seen as “inalienable” (in German, *unverlierbar*; this conception can be traced back to the work of Kant [*Doctrine of Virtue*]; see Sensen 179), the experience of World War II and the later efforts to strengthen the protection of human dignity in international and national law clearly demonstrate that, while people cannot lose their dignity, it can be violated and therefore needs protection (Weinrib). The strengthening and protection of human rights and thus of human dignity is a universal undertaking, hence it concerns all people. Consequently, we believe that a new UN convention should not be about introducing new or special rights, but about adapting or tailoring human rights to the life situation of older people in order to protect their dignity. This is necessary not because older age is a vulnerable life phase per se – especially in comparison to other life situations – but because limitations and vulnerabilities that are enduring aspects of the human condition can manifest themselves in different forms in older age (Fineman 8), and these currently lack sufficient protection.

It is necessary to point out that, at least in Western cultures, human dignity not only encompasses a legal-normative component, because it is seen as the justification for rights, but also an individual-subjective one, since dignity is also dependent upon the individual experience (Mattson and Clark 305). Strengthening this individual-subjective component could contribute to

counteracting the instrumentalizing effects of ageing policies, which we described earlier. The individual component of dignity requires the *recognition* of the uniqueness of the individual, that is the abilities and qualities he or she acquired over the life course (Honneth, “Integrity and Disrespect” 195). Ageing policies, however, tend to deny the individual person their social *recognition* by grouping people into a single reductive category with the purpose of normatively prescribing a constricted lifestyle (active ageing) to achieve a certain goal (e.g., reducing public health care costs) and thereby ignore differences in potential, abilities, and qualifications. By putting the dignity of the individual at the centre of its conception, a new treaty would tackle this tendency in two ways. First, it would symbolically express the refusal of the instrumentalization of older persons, because the inviolability of human dignity goes hand in hand with the prohibition of instrumentalizing human beings (Dürig). Second, as the aim is to foreground individual dignity, that is to *recognize* precisely those traits and abilities that are related to a person’s self-esteem (Nordenfelt 35–36; Honneth, “Integrity and Disrespect” 191), the emphasis is no longer placed on the shared attribute of “chronological age” but rather on the diverse potentials and circumstances of older people. Hence, a new convention sets the stage for a change in perspective: in order to avoid instrumentalizing older people and thereby violating the dignity of the individual person, policies that encourage activity, a healthy lifestyle, or the prolongation of working life need to seek a differentiating rather than a homogenizing approach that is responsive to different lifestyles and life courses.

Promoting diversity and individual dignity should not be equated with an overall and general increase in the individualization of responsibility, as such an approach would not take the diversity of older people into account. Hence, a convention should shift the responsibility in the struggle for recognition and redistribution (Fraser and Honneth) from the individual to the state. To this end, the state is assigned the responsibility of ensuring that people of all ages enjoy the same rights. In this

way, as in the case of gender relations, it is the duty of public authorities to reflect on the social structures that potentially create inequalities in relation to age (especially in the case of chronological age limits) and to take measures to create equal opportunities and equal rights.

Age Imperialism: Challenging the Hegemonic Claim of Middle Age

The question of what constitutes older age is important for analyzing the mechanism of age imperialism (van Dyk, “Das Alter” 609–10). However, for the purposes of this article, we want to focus on the dynamics of age imperialism. We want to show how the hegemonic position of middle age that normatively structures the life course contributes to the status decrease of life situations that do not correspond to this ideal model, at least in societal perception. Hence, the aim is to identify which specific aspects related to the “group status” of older people need to be challenged by a new convention to counteract age imperialism. In our opinion these aspects are (1) the prevailing negative status associated with older age and (2) the underlying power structures perpetuating these status inequalities. The analysis of these will inform us on how a new convention can challenge the social values and norms that are oriented toward the ideal/typical image of middle age (therefore discriminating other life phases) by elevating the status of older age.

As a first step toward valorizing the status of *older age*, a new convention, on the one hand, needs to acknowledge and highlight certain opportunities that are associated with older age, like the so-called late freedom, which refers to the “potential [of older people] to [increasingly] self-determined activity and chances to interact with this world instead of just allowing themselves to be influenced by dominating social and political forces” (Rosenmayr, “On Freedom and Aging” 300; see also Rosenmayr, *Die späte Freiheit*). On the other hand, a new convention must address the challenges, like increased risk of loneliness or restrictions in participation (e.g., mandatory

retirement age), which can accompany older age. Hence, it must enshrine rights corresponding with both opportunities and challenges. It is necessary to highlight older age as a part of life that involves continuities (e.g., in personal development through further education) and discontinuities with earlier life phases (e.g., transition into retirement or care homes) and to tailor fundamental human rights toward these. A new convention needs to outline and legally formalize these continuities and discontinuities. Explicitly stipulating the rights of older persons within a dedicated human rights treaty is a further step to (re)constructing older age and elevating its status. This reflects the fact that older age is neither a mere prolongation of middle age – hence it cannot be treated the same, otherwise there would be no need for tailored protection – nor something substantially different; after all, it is only about adequately tailoring existing human rights. To the extent that human rights are universal, treaties do not create rights; they merely recognize them (Casla 13). In this sense, a new convention reaffirms that older persons need to be treated equally and thus challenges the prevailing negative status associated with older age.

The fact that a new convention enshrines tailored rights and not different rights also addresses a specific concern raised by sceptics, who argue that specialized legal treatment could contribute to the “othering” of older age (Westwood 486). In our opinion, a new treaty would symbolize the unification more than the demarcation of the different age groups. Since human rights apply to all in principle, they are inclusive, universal, and in this respect do not account for any distinction between people. They symbolize the equality of all people in terms of rights and thus represent something that primarily unites humanity. If group-related human rights are not seen as the rights of a specific group but rather as individual rights of the members of a group (Van Dyke 728), then the human rights of older persons are human rights open to all. In principle, they address everyone, since in modern times most people reach older age, and they represent the intrinsic desire of most people to live a life free of discrimination also in older age. In this regard, a new

convention would function as “a baseline for establishing the underlying values” and could narrow existing gaps between different groups “by linking older persons’ concerns with the other segments of society” (Morgan and David 436).

As a second step to challenging age imperialism, it is necessary to promote older age as a life phase with equal rights and thereby recognize it as being of equal value and status. One of the ways in which the unequal status of older age is maintained is by the lack of prohibition of age discrimination in international law, and thus the lack of *legal recognition* (Honneth, *The Struggle for Recognition*). Following the consideration of Thomas H. Marshall (1963), Axel Honneth points out that the struggle for legal recognition manifests itself in the material extension of the law on the one hand, and in the social extension on the other hand, that is the increasing legal inclusion of different social groups (*The Struggle for Recognition* 117–19). Hence, the explicit inclusion of the rights of older persons in the body of human rights treaties would express the legal recognition of older persons. Moreover, legal recognition is a major aspect of modern societies and a central resource of what Honneth calls “moral self-respect” (*The Struggle for Recognition* 133). Given that discrimination and ageism, as specific forms of disrespect, are ways of denying this recognition because they exclude or deny people certain rights, a new convention prohibiting these violations would strengthen the societal status of older age. This legal recognition of older persons challenges the hegemonic claim of middle age to be the phase of life with the highest social status, because it stipulates status equality across the whole life course. Challenging this hegemonic claim is also one step toward tackling the existing power relations between the different age groups. Additionally, the shift from individual to state responsibility, described in the previous section, emphasizes that the diminishing opportunities for maintaining social status and recognition are not a problem of older age itself but a problem of the societal structures. This would further question the idea that older age is seemingly an ontologically deficient phase of life, and would thus contribute to an increased

status by moving away from portrayals of older people as individuals with deficits or needs (Huenchuan and Rodríguez-Piñero).

Furthermore, a new treaty could generate additional attention for ageing and older people at a global level, which is increasingly important given the changing age profiles worldwide. Such a heightened focus would also raise awareness of the many forms of discrimination experienced by older persons, which is necessary given the fact that ageism is often invisible due to its implicit character (Iversen et al. 15). Uncovering and highlighting these forms of ageism is thus an important step toward reducing ageism overall. Moreover, the fact that age is subsumed under the prohibition of discrimination on “other status” renders discrimination on the basis of age less visible and allows for age distinctions to be justified (Chung 9). On the contrary, a new convention enshrining an explicit prohibition of age discrimination would render ageism more likely to be accepted as an unlawful and severe form of prejudice. Consequently, if we accept the idea that human rights also fulfill a moral function, because they indicate what is globally perceived as right or wrong, a new convention would create such an additional stigma of prohibited ageist offences.

Conclusion

International human rights law can legitimize demands for equality and justice. Whereas a political consensus on the need for a new UN convention has not yet been reached, our discussion aims to contribute to future iterations of an old age-specific treaty so that it can be formulated in a way that avoids both positive and negative stereotypes while positioning older persons as strong, autonomous legal subjects. Analyzing the ways in which an international legal instrument can symbolically address new forms of ageism and addressing some of the key concerns, we propose additional arguments about a treaty’s potential that can help resolve some of the current tensions.

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