

A Multidimensional Reinterpretation of the Concept of the Rights of the Elderly:

—A Jurisprudential Reflection on the Definition of Age Division

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Abstract: *The concept of the elderly defined by age division and their rights argument have fallen into a theoretical predicament due to limited interpretative power and the suspicion of bias. This dilemma can be resolved through a holistic understanding of age. As a cognitive tool for human lifespan, age encompasses three meanings: duration of time, sequence of time, and dynamism of time. A holistic understanding of age allows us to reinterpret the image of the elderly as subjects and their claims to rights. In terms of subjectivity, the elderly represent the temporal characteristics of human individuals pursuing lifelong development in the dynamic life course of aging. Their proactive and active subject status is demonstrated through autonomous life planning, participation in social cooperation, and promotion of social development. Based on this subject construction, the content of elderly rights can be elaborated into a three-tiered structure from the inside out: the right to lifelong development under autonomous life planning, the right to equal implementation of life planning, and the right to receive assistance in cases of planning failure.*

Keywords: age ♦ rule of law for the elderly ♦ rights of the elderly ♦ active aging ♦ life course

I. Interpretive Dilemma of Elderly Rights and Approaches to Its Resolution

The *Human Rights Action Plan of China (2021-2025)* explicitly calls for “ensuring equal rights for ethnic minority groups, women, children, the elderly, persons with disabilities, and other disadvantaged groups and improving special protection for them. It will introduce a mechanism to this end, for both everyday work and special occasions, to provide for the well-rounded development of all.” The protection of the rights and interests of particular groups is one of the main themes in contemporary Chinese legal practice concerning the elderly, and it has also given rise to a legal research approach aimed at safeguarding elderly rights. Its research paradigm can be summarized as follows: based on human rights and fundamental rights norms, it identifies and generalizes the dilemmas in the realization of rights arising or potentially arising from physiological aging and related changes in roles and social status, and establishes as certain rights the needs and claims to overcome these dilemmas, thereby constructing a legal safeguard system for rights that combines general and special protections.¹ Legal research focused on the rule of law practice in

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¹ For example, Chinese scholars, addressing the “elderly care dilemma” in society, such as the lack of economic security and daily life care support for the elderly, have drawn on the constitutional norm of “right to material assistance” to conceptualize “the right to elderly care” or “citizens’ right to elderly care,” and used this to construct a legal system centered on the realization of rights. See Liu Lingzhi, *A Study on Chinese Citizens’ Right*

addressing an aging society similarly emphasizes that population development and social governance in the context of aging must be guided by the values of human dignity and substantive equality, as well as constitutional fundamental rights, with the protection of elderly rights as an important, if not primary, goal of the rule of law.²

Discussions on elderly rights follow a dialectic law of “universal” and “particular,” similar to that for the rights of children, women, and persons with disabilities. First, human rights norms and their related practical activities define the specific human rights subject identity of the “elderly” from the general “human” subject based on certain criteria. From the observations in this paper, the primary criterion for “elderly” is “chronological age” (hereinafter referred to as “age”), i.e., the number of years an individual has lived since birth. For example, China’s *Law on the Protection of the Rights and Interests of the Elderly* explicitly defines the elderly as “citizens aged 60 or above”; the *Older Americans Act of 1965* defines “older individual” as “aged 60 or older” in its definitions section, while the *Inter-American Convention on Protecting the Human Rights of Older Persons* similarly uses this to define the concept of “older person.”³ Second, various facts related to “age” reflect the shared characteristics of capabilities or social situations among human individuals who meet the criteria for being elderly, leading to a non-negligible gap between the realistic possibility of realizing human rights and the ideal state promised by human rights standards. This gap serves as both the legitimate basis for the rights claims of the elderly and defines the content system of their derived rights or special legal safeguards. In current theoretical narratives, the rights dilemmas caused by “age” can be divided into two aspects. On one hand, a specific and advanced age represents physiological states such as vulnerability and incapacity resulting from senescence. At the medical level, senescence refers to a universal, ongoing, cumulative, intrinsic, and harmful change in the functions and structures accompanying the activities of human life.⁴ The negative effects of senescence naturally accumulate over time and make human individuals prone to capability dilemmas in realizing their rights after reaching a specific age range. From this perspective, the situation of the elderly is highly similar to that of persons with disabilities, and it can be described as “facing obstacles due to special capability circumstances caused by senescence.” On the other hand, age is also a universal standard for classification in human society. If attitudes, viewpoints, behaviors, habits, and systems based on age constitute a one-sided evaluation and improper treatment of an individual’s characteristics, capabilities, and intentions, they may also violate human dignity, equal rights, or other protected rights and interests. In other words, the focus of protecting elderly rights lies in “relational regulation,” i.e., adjusting social

to *Elderly Care* (Shenyang: Liaoning University Press, 2010); Yang Fuwei, *The State’s Obligation in Respect of Citizens’ Right to Old-Age Security* (Shanghai: Shanghai People’s Publishing House, 2023).

² Scholars such as Guo Chunzhen and Fan Jinxue have proposed that the rule of law for the elderly in actively responding to population aging should be guided by the values or basic principles of “human dignity,” “autonomy of the elderly,” and “substantive equality and non-discrimination.” See Fan Jinxue and Li Ziqi, “On the Rule of Law Path with Chinese Characteristics for Actively Responding to Population Aging,” *Journal of Nantong University (Social Sciences Edition)* 3 (2024); Guo Chunzhen, “The Rule of Law Approach to Actively Responding to Population Aging,” *Legal Forum* 1 (2023); Fan Jinxue and Zhang Lingling, “On the Construction of Principles and Improvement of Systems in China’s Elderly Rule of Law System,” *Journal of Nantong University (Social Sciences Edition)* 2 (2022).

³ Article 2 of this Convention states that an older person is “a person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years.”

⁴ Robert Arking, *The Biology of Aging: Observations and Principles* (New York: Oxford University Press, 2006), 9-10.

relations related to “age” and “old age” to align with the basic principles of human rights and the rule of law, as well as the cultural concepts and ethical requirements of specific societies.⁵ This stance is reflected in recent elderly law theory and practice in Europe and North America through the conceptualization and legal regulation of “age discrimination.” A United Nations independent expert on the enjoyment of all human rights by older persons has also pointed out that states should review “laws, regulations, customs, and practices” involving age classification “in the same standard of scrutiny as other forms of discrimination” and establish effective “remedies and redress” to protect them from “discrimination in old age.”⁶

It is evident that age is a key element in the conceptualization of elderly rights. On one hand, it defines the scope of the elderly population as subjects; on the other hand, it abstracts and generalizes the abilities, status, needs, and circumstances arising from human physiological aging and social age norms into rights claims specific to “particular age groups.” However, the theoretical flaw in the age-centric logic of justifying elderly rights lies in the fact that the human condition represented by age itself is a product of analysis within specific sociocultural contexts and perspectives. This contextual and perspectival sensitivity creates an unresolved tension with the goals of human rights protection. Specifically, the current definition of the elderly based on the standard of age 60 originates from the “lower age limit for the elderly” established in discussions addressing population aging.⁷ Population governance focuses on the collective “population” as its object, emphasizing macro-level population structure, overall quality, and developmental trends. Although attention to individual needs is not entirely absent, the theoretical perspective and primary concerns differ from those of human rights protection. Within the context of population governance, the primary determinants for setting the age standard for the “elderly” are macro-level predictions of life expectancy and general assessments of individual labor capacity.⁸ In other words, whether based on “60 years of age” or “65 years of age,” such age standards essentially distinguish “those without labor capacity or those unsuitable for labor,” i.e., members of the “non-working-age population.” From the perspective of human rights protection, this definition faces criticism and challenges on two fronts.

On the one hand, defining the elderly solely by age can only capture certain aspects or situational needs for rights protection, failing to comprehensively reflect the human rights significance of “old age.” From theoretical frameworks such as the dependency ratio, the elderly from a population development perspective are essentially defined as “non-working-age population.” While the decline in labor capacity and changes in labor status represented by age can provide necessary justification for rights such as pension claims, they may not sufficiently justify

⁵ Zou Mimi, “China’s Law on the Elderly: Exploring ‘Relational Regulation’ in International and Domestic Context,” in *International Cooperation in the Field of Human Rights: Perspectives from China*, Yan Yuting trans., Chen Zexian ed. (Beijing: China University of Political Science and Law Press, 2017), 148-152.

⁶ Claudia Mahler, *Independent Expert on the Enjoyment of All Human Rights by Older Persons*, UN. DOC. A/HRC/48/53.

⁷ National People’s Congress Internal and Judicial Affairs Committee et al. ed., *Collected Essays on the Publicity and Implementation of the Law on the Protection of the Rights and Interests of the Elderly* (Beijing: Metallurgical Industry Press, 1997), 15 and 21.

⁸ Yang Shenghui, Zhao Yong, and Lin Jie, “Some Reflections on the Criteria for Defining the Elderly Population in China,” *Northwest Population Journal* 3 (2017). Zhai Zhenwu and Li Long, “A Further Discussion on the Standards and Definition of the Elderly,” *Population Research* 6 (2014).

other rights claims that hold practical importance. For example, the right to access social elderly care services is explicitly stipulated in China's *Law on the Protection of the Rights and Interests of the Elderly* and is a key focus of the *Human Rights Action Plan of China*. It is generally understood that claims to social elderly care services and family support rights stem from the objective reality of elderly individuals facing "difficulties in self-care" or "having care needs." Because of insufficient capacity for independent living, elderly people face risks that they cannot overcome on their own in realizing the right to an adequate standard of living and the right to the highest attainable standard of health. Special institutional arrangements are therefore needed to ensure access to support and care from others. There is no stable logical connection between changes in labor capacity or labor status and care needs. Simultaneously, the current binary subject framework based on "retirement age" is inadequate to accommodate the progressive evolution of care needs among individuals. The possible consequence is that individuals in need of care may fall outside the legal definition of the elderly, so that age-based measures for the protection of the rights of older persons could exclude groups with genuine needs; or that rights-protection measures serving essentially the same purpose may be placed under different institutional frameworks, thereby creating unnecessary risks of institutional misalignment and a waste of resources. On the other hand, the relationship between age and capacities or needs is established through empirical observations based on large-scale data collection and calculations. Although it is highly scientific, the individuality of the "person" remains subject to significant reduction and abstraction, which may result in evaluative distortions or even prejudice. Taking labor capacity as an example, while a specific age may serve as a scientific standard for determining an individual's suitability for labor in general circumstances, factors such as inherent job requirements, improvements in working environments, and advancements in science and technology significantly influence outcomes in specific cases. For instance, Posner points out that older judges appear more competent than their younger counterparts in handling judicial tasks within common law systems.⁹ It is for this reason that some scholars criticize current legal systems purportedly aimed at protecting the dignity and rights of the elderly, arguing that they often make one-sided or even erroneous evaluations of individuals' capacities, needs, and wishes in a "paternalistic" manner, thereby "internalizing assumptions of age discrimination."¹⁰

Reflections on the age-based definition of the elderly have thus become a significant theoretical trend in contemporary legal research related to the rights and interests of the elderly. The theoretical response to this issue can be termed the "de-aging" of the conceptual construction of the elderly. This involves reducing the weight of the age factor in defining the elderly person or bypassing age altogether by introducing multi-dimensional standards such as capacity assessments and social identity markers. This approach aims to enhance the explanatory power of the concept of the elderly in capturing the realities of aging. For example, some scholars have proposed multi-dimensional subject definition schemes incorporating "biological age," "psychological age," and "social age."¹¹ Other scholars suggest maintaining the dominant role of age while incorporating multiple factors such as individual wishes and occupation types to construct a flexible and elastic

⁹ Richard A. Posner, *Aging and Old Age*, Zhou Yun trans. (Beijing: China University of Political Science and Law Press, 2002), 216-239.

¹⁰ Margaret Hall, "Equity Theory: Responding to the Material Exploitation of the Vulnerable but Capable," *Theories on Law and Ageing*, Israel Doron ed. (Dordrecht: Springer, 2009), 107-119.

¹¹ He Yanhua, *A Rational Construction of the Convention on the Rights of Older Persons* (Beijing: Law Press • China, 2017), 23-26.

phased concept of the elderly.¹² This approach is also reflected in the practical protection of the rights and interests of the elderly. For instance, Japan's *Act on Social Welfare for the Elderly* stipulates that both "person who is 65 years of age or older" and "person who is under 65 years of age but who is found to have special needs" are entitled to welfare benefits for the elderly. In China, the construction of a basic elderly care service system emphasizes the classification of service programs based on assessments of individual self-care capacity, economic status, and multi-tiered age standards, aiming to precisely meet the needs of individuals with varying capacities and living situations.¹³

However, this theoretical strategy may dilute the significance of older persons as a distinct category of rights holders, reducing their rights to a mere aggregation of complex claims beneath the veneer of a unified discursive expression. In discussions within the United Nations framework regarding the *Convention on the Rights of Older Persons*, it has been argued that "the rights and freedoms of the elderly are already adequately protected by existing UN human rights treaties."¹⁴ The physiological vulnerabilities and impairments associated with aging correspond to "persons with disabilities," changes in work capacity correspond to "workers," and the inability to afford health and living services correspond to "the poor," while rights in family life correspond to "parents." Claims framed as the rights of the elderly are not only already covered by existing human rights norms, but the underlying rationales, standards, and mechanisms of protection among them are also largely incommensurable. The right to retirement stems from the social labor order constrained by economic rationality and social justice; claims to rights as parents in family life primarily derive from family ethical norms in specific sociocultural contexts; and claims to eliminate obstacles caused by aging correspond to the rule of law principle of substantive equality. Consequently, the "elderly" merely serve as a meaningless "footnote" to identities such as retired workers, family members, and persons with disabilities. The various so-called rights of the elderly and their corresponding legal schemes, based on these different identities, cannot form a comprehensive and coherent system.

Margaret Hall, in discussing how the legal definition of old age may lead to age discrimination, emphasizes that the legal "invisibility" of old age can also result in injustice.¹⁵ The theoretical narrative on elderly rights must avoid obscuring the diverse life experiences of human individuals with one-dimensional subject portrayals such as "physically vulnerable group," "lacking rationality," or "retired persons," while simultaneously reflecting the shared experience of human existence and aging within the passage of time. From a pragmatic perspective, the concept of "old"

¹² Liu Fengjing and Rao Zhengqi, "The Legal Fiction and Response Strategies for the Concept of the Elderly," *Journal of Nantong University (Social Sciences Edition)* 3 (2024).

¹³ In 2023, the *Opinions on Promoting the Construction of the Basic Elderly Care Service System* issued by the General Office of the Communist Party of China Central Committee and the General Office of the State Council outlined a list of basic elderly care services. All services in this list target beneficiaries defined by both "elderly individuals and eligibility criteria." This means that in addition to meeting the legal standard for elderly status, individuals must also satisfy corresponding economic, family status, or additional age-related conditions.

¹⁴ Representatives of relevant countries have repeatedly expressed similar views on numerous occasions during the UN negotiations for the *Convention on the Rights of the Elderly*, opposing the formulation of a new convention. See Zhang Wanhong, "The Drafting of the Convention on the Rights of Older Persons: Process and Prospects," *Human Rights* 3 (2022).

¹⁵ Margaret Hall, "'Old Age' (Or Do We Need a Critical Theory of Law and Aging?)," *Windsor Review of Legal and Social* 1 (2014): 1-21.

not only serves to distinguish the capacities and statuses of members in society at a given moment but also carries connotations of expressing “dynamism of time.” The term “old” is used to encapsulate the life stage from “after adulthood” to “before death,” inherently embodying the time of being “toward death.” The emotions, needs, and claims expressed in the name of “old age” are essentially perceptions of and responses to the “time of human life.” In this sense, the theoretical construction of the elderly as subjects and their rights must incorporate a temporal narrative. For now, age, by virtue of its inherent dynamism of time and ease of measurement and calculation, remains a crucial indicator and cognitive tool for observing, describing, and analyzing the time of human life. Simultaneously, age grading is one of the most fundamental organizational forms in modern society. Social norms surrounding age changes are not only factors that cannot be ignored when examining the experiences and social circumstances of individuals in the later stages of life but also reliable and practical governance tools for allocating social resources and advancing rights protection.

Therefore, this paper argues that the concept of the elderly should, ultimately, remain age-centered. The interpretation of age serves as a bridge between the individual and society, between static time points and dynamic temporal passage, making it the optimal tool for examining and defining claims and interests related to “old age.” The current dilemmas faced by the legal concept of the elderly and the theoretical narrative of their rights arise because age is unilaterally understood merely as a measure of time duration. In reality, individual aging is a dynamic process encompassing multiple physiological and social dimensions, with both positive and negative aspects. Thus, this paper advocates for reinterpreting the temporal significance of age to develop an interpretive framework for elderly rights that accommodates heterogeneous circumstances, reflects positive imagery, and can be integrated into the existing human rights theoretical framework. Specifically, age and its changes represent the temporal dynamics of the human life course, and this measure of time can be interpreted through three dimensions: duration of time, sequence of time, and dynamism of time. Consequently, the age characteristics of an individual not only represent the cumulative state of their lifelong development in the general sense but also reveal their position in social intergenerational relationships and the significance of approaching the end of the life course.

II. Three Dimensions of Age as a Representation of Human Lifespan

Age is a unit of time measurement and an important marker of humanity’s spatiotemporal position in the universe. Human self-development, social interactions, and the pursuit of life values are inherently constrained by the dynamism of time and structural characteristics represented by age. Specifically, the dimension of time duration makes age a general benchmark for evaluating individual development levels, while the unidirectional structural feature of age measurement reveals the “cumulative” nature of human lifelong development. The dimension of time sequence, combined with the social structure of generational succession, makes age a key marker for constructing social intergenerational relationships, representing the fundamental way in which “humans in society” pursue lifelong development. Finally, the measurement of age, functioning as a unidirectional and finite scale of the human life course, endows greater age with the significance of an approaching “end of life,” a fact that serves as a key trigger for claims and emotional needs related to death and finality.

A. Duration of time: benchmark for evaluating capacity development

Duration of time is the most intuitive meaning of age as a unit of time measurement and is the primary focus of current narratives on elderly rights and practices of legal protection. Just as the

value of labor must be measured in terms of “labor time,”¹⁶ all human practical activities occur within the passage of time, and capacities, as stage-specific outcomes of developmental practices, exhibit dynamic trends that change over time. Therefore, age, representing the duration of time since birth, also serves as a crucial basis for measuring, assessing, and interpreting an individual’s capacity situation. In modern legal practice, age measurement, combined with general patterns of natural physiological development, educational learning, and other developmental activities, forms the basis for legal presumptions regarding the capacities of rights holders.¹⁷ Legal systems and jurisprudential narratives related to “old age” also, to varying degrees, involve legal presumptions about capacity status and capacity development needs.¹⁸ For example, increasing age implies more severe negative impacts from senescence, leading to capacity disadvantages in perception, mobility, and other areas. This general perception reinforces the stereotype of the elderly as a “vulnerable group.” The “vulnerability” of the elderly can be understood from a “horizontal” social structure perspective, similar to other vulnerable groups, emphasizing that the elderly have weaker capacities compared to “relatively younger individuals,” making them susceptible to infringement and deprivation in interactions and thus requiring preferential legal protection. The “vulnerability” of the elderly can also be understood from a “vertical” temporal perspective, emphasizing that the declining trend in capacities necessitates adjustments in how subjects realize rights or fulfill obligations. For instance, the jurisprudential justification for the right to retirement can be found directly in constitutional norms and is also based on the factual argument that “individuals, due to old age, cannot or should not continue to work.”¹⁹ In other words, the essence of the retirement system lies in requiring workers to withdraw from competitive labor environments where risks increase for aging workers, based on the general assessment that aging workers may struggle to meet work demands as effectively as before or suffer disproportionate negative consequences, while providing means to maintain personal income levels or avenues for non-competitive social participation. The value goals and institutional logic of the retirement system itself do not inherently include age discrimination or deprivation of labor rights. The reason it faces questioning is that the age standard, as the core category of institutional design, may not be scientific, or rather, the “one-size-fits-all” age assessment fails to adequately respect workers’ autonomy and individual diversity.

Similar to the situation in the retirement system, legal narratives linking age and capacity are often questioned and criticized due to their unstable scientific foundations and inaccurate individual assessments. Multidisciplinary research progress on aging and health reveals that the process of senescence is a continuous temporal dynamic without specific, fixed time points. Moreover, the rate, trajectory, and specific manifestations of aging in individual humans are far more complex and

¹⁶ Karl Marx, *Capital*, vol. 1 (Beijing: People’s Publishing House, 2004), 52.

¹⁷ It is generally believed that the legitimacy of the age of criminal responsibility lies in the fact that, under current social living conditions, every human individual requires a certain number of years of physical development and social experience to gradually develop the brain functions, moral discernment, and cognitive capacities necessary for committing blameworthy criminal acts. See Han Kang and Cai Xu, “Advocating a Flexible Legislative Model for the Age of Criminal Responsibility: An Argument Based on the Standard of Legal Presumption Accuracy,” *Chinese Criminology Review* 5 (2020).

¹⁸ Liu Fengjing and Rao Zhengqi, “The Legal Fiction and Response Strategies for the Concept of the Elderly,” *Journal of Nantong University (Social Sciences Edition)* 3 (2024).

¹⁹ Xia Zhenglin, “On the Constitutional Protection of the Right to Retirement,” *Law Science* 12 (2006).

unstable.²⁰ The World Health Organization's *World Report on Aging and Health* points out that while the intrinsic capacity of an individual — defined as the “composite of physical and mental capacities” — inevitably tends to decline with advancing age, the “functional ability” to use these capacities to achieve specific goals depends more on environmental factors such as facilities, goods, services, and conditions.²¹ Furthermore, although the physiological functions of humans generally exhibit a declining trend with age, the rate of change and even the direction of change over certain periods can vary due to modifications in environmental factors. Therefore, the WHO's concept of healthy aging emphasizes a comprehensive framework of “healthcare, support, and environment,” aiming to maintain “good physical, mental, and social adaptive functioning” by “providing material foundations and guarantees.”²²

The conceptual and narrative framework of human capacity development and aging in the context of healthy aging will transform traditional evaluations of elderly capacity and the rights-based arguments built upon them in three key aspects: First, there is no scientifically definitive temporal boundary for the pattern and requirements of capacity development in the later stages of human life. Reaching a specific age is insufficient on its own to provide adequate justification for capacity-based rights arguments. As previously noted, whether an elderly individual is suitable to continue in a particular job depends not only on the general health level of people in that age group under current social and health support conditions but also on the demands imposed by the specific tasks and working conditions of the occupation. Purely age-based capacity assessments and schemes for allocating opportunities and resources appear inconsistent with the requirements of equal rights and human dignity. This does not, of course, deny the legitimacy of all social divisions of labor and resource allocation orders that incorporate age elements. Rather, it emphasizes the need to extend and enrich the argumentative chain from “age” to “claims of elderly rights,” analyzing the rights and obligations of all parties, including the elderly, from the perspective of addressing the universal human condition of aging.

Second, the relationship between the aging process and increasing age adds the dimension of addressing senescence to the practice of rights development. Due to the universal nature of aging, any practice of rights must inherently include aspects that address the negative impacts of aging. From the framework of healthy aging, rights practices in response to aging operate on two levels: On the one hand, establishing and improving a life-cycle health support system to slow the rate of decline in health capacity due to aging through regular health monitoring services, lifestyle improvements, and early medical intervention; and on the other hand, constructing supportive environments to adapt to changing capacities, providing all individuals with the conditions and opportunities to participate in social life and realize their potential freely in the later stages of life when capacities diminish. The *Decision on Gradually Raising the Statutory Retirement Age* issued in 2024 explicitly states: “Employers hiring workers who have exceeded the legal retirement age

²⁰ For example, research in psychology demonstrates significant differences in cognitive abilities among members of different generations at similar age stages. These differences can be explained by factors such as years of education and nutritional levels during their growth processes. See Hanna Falk Erhag, Ulrika Lagerlif Nilsson, Therese Rydberg Sterner, and Ingmar Skoog, eds., *A Multidisciplinary Approach to Capability in Age and Ageing* (Cham: Springer, 2022), 67.

²¹ World Health Organization, *World Report on Ageing and Health* (Geneva: World Health Organization, 2016), 28.

²² Song Quancheng and Cui Ruining, “Theoretical Responses to Rapid Population Aging: From Healthy Aging to Active Aging,” *Shandong Social Sciences* 4 (2013): 38.

shall safeguard workers' basic rights and interests, including remuneration for labor, rest and leave, labor safety and health, and work-related injury protection." Among these, the protection of basic rights such as "rest and leave, labor safety and health" can be interpreted as requiring employers to make adjustments and special arrangements regarding working hours and environments based on the physical and mental conditions and capacity situations of over-age workers. From this perspective, public discussions and legal practices related to the elderly need to shift their narrative focus from merely having the elderly "withdraw" or "rest" to legally safeguarding their rights to lifelong development. This involves enabling all members of society to participate in social development through political, economic, social, cultural, and other forms throughout their lifespan and supporting them in realizing their life value through environmental adjustments and service support.

Finally, aging has the mathematical characteristic of unidirectional numerical increase, which implies that individual capacity development is a unidirectional and continuous "cumulative" process. "The process of any life course evolution is one of continuous accumulation and differentiation over time. The sequence of cumulative factors is of great significance for differentiation among individuals."²³ In this sense, rights practices in the early stages of human life not only directly shape the capacity and resources available for rights practices in later stages, but also influence the forms of risks to which rights may be exposed, as well as the scope of individual agency in pursuing and realizing those rights. For example, workers exposed to unsafe and undignified labor environments during their careers or residents living permanently in heavily polluted areas often face higher risks of health impairment or even disability as they enter old age, requiring more health resources to achieve "the highest attainable standard of health." Policies and legal measures dedicated to achieving healthy aging and lifelong development must move beyond a narrow focus on old age as an isolated stage and instead develop rights protection schemes from a "whole life course" perspective. Safeguarding elderly rights requires focusing on the circumstances of the pre-old age period to analyze resources and needs, maximizing the effectiveness of rights protection measures through personalized approaches. Similarly, safeguarding the rights of non-elderly individuals must recognize the universal inevitability of aging, pay attention to trends and cumulative outcomes in personal capacity, status, and resources as age increases, and attempt to improve individuals' capacity situations in old age through early intervention.

B. Sequence of time: node for analyzing intergenerational relationships

As a tool for measuring time, age exhibits a fixed, unidirectional, and uniform rate of change, giving rise to temporal sequences such as "before," "after," "simultaneous," "already," and "not yet." These sequences, in turn, delineate the vertical temporal dimension of social relationships. The meaning of time duration represented by age measurement, when combined with human developmental activities, generates horizontal social distinctions based on the strength of capacities and the extent of needs. Meanwhile, the temporal sequence represented by age measurement, when integrated with the intergenerational succession of social development, produces vertical social distinctions. A typical manifestation of this is the "generational hierarchy" within family structures. From a broader perspective, generations or cohorts — composed of individuals born in the same or similar years — serve as crucial conceptual tools for exploring the organizational structure of

²³ Hu Wei, "Cumulative Heterogeneity: Differentiation of Older Adults from the Life-Course Perspective," *Chinese Journal of Sociology* 2 (2009): 126.

human society and individual life courses.²⁴ Specifically, generational distinctions extend into the realms of generational differences and intergenerational relationships. This has become an essential perspective for understanding the modes of interaction and ethical norms among individuals, members of family/intimate relationships, and members of different generations in society. It also significantly shapes how individuals assert and pursue their rights in practice.²⁵

Generational differences refer to the fact that older members of society, on the one hand, face changes in their own capacities due to aging, and on the other hand, have experienced social environments and historical events that younger members have not. As a result, individuals of different age groups in the same temporal environment possess distinct life experiences, resource endowments, value orientations, and role expectations, typically manifested as the “generation gap” in sociocultural studies. In terms of rights protection, this phenomenon implies that members of the same or similar generations encounter comparable social environments in the process of pursuing and realizing their rights, thereby generating rights claims and practices with generational commonalities. It is generally acknowledged that older age groups often face rights threats due to the digital divide, lacking the necessary devices, digital literacy, and other things necessary to equally access and benefit from digital technology.²⁶ The lack of accessible devices may be partially explained by the physiological impacts of aging, but the deficiency in digital literacy must be understood through the lens of intergenerational disparities in social resource allocation. Since the commercial application of internet technology only gradually expanded in the 21st century, current older generations typically had limited access to systematic computer skills training and practice during their education and career development stages (generally spanning the 1970s to the 1990s). Consequently, they must independently bear additional costs to acquire the learning required. Even the current “digital native” middle-aged generation may become “AI technology migrants” in the future digital-intelligent era as they too lack systematic learning and mastery of artificial intelligence technologies. Therefore, strategies to bridge the digital divide or digital-intelligence divide should focus on redistributing devices and learning resources to elderly people through public services and encouraging support from younger family members, thereby compensating for their disadvantages in accessing digital literacy cultivation resources. Another similar example is the *Guiding Opinions on Providing Home Visit and Care Services for the Elderly with Special Difficulties* issued by the Ministry of Civil Affairs in 2022, which explicitly mentions developing special visit and care service plans for elderly individuals who are living alone, empty-nesters, left-behind, disabled, severely disabled, or from special family planning families. Among these, the difficulties faced by “empty-nesters,” “left-behind elderly,” and “special family planning families” are closely linked to specific historical backgrounds. In this sense, many rights claims based on old

²⁴ For example, Wu Kaize points out that the privatization of housing adopted a reform strategy of “new rules for new entrants, old rules for existing residents,” resulting in vastly different institutional environments for each generation. The continuous rise in housing prices further created disparate market conditions for different generations, thereby shaping distinct generational opportunities. See Wu Kaize, “Research on Urban Resident’s Second Set of Housing Acquisition from Life Course Perspective,” *Chinese Journal of Sociology* 1 (2016).

²⁵ Jenny Julén Votinius and Mia Rinnmar, “Intergenerational Aspects of Elder Law: Conflict, Solidarity or Ambivalence,” *Elder Law: Evolving European Perspectives*, Ann Numhauser-Henning ed. (Cheltenham: Edward Elgar Publishing, 2017), 144-148.

²⁶ For studies on the digital divide among the elderly and its impact on rights protection, see Liu Weiyong, “The Digital Benefit Right of the Elderly and the Protection of Rule of Law under the Perspective of People’s Livelihood,” *Theory Monthly* 10 (2021); Zhu Jun, “Theoretical Justification of Older Persons’ Digital Life Rights under the ‘Digital Divide’,” *Southeast Law Review* 1 (2022).

age are not merely responses to aging but rather reflections of the impact of historical events and developmental environments specific to particular generations.

In a continuously developing society, there exists a natural sequential relationship of “presence,” “entry,” and “exit” among its members. This sequential succession and the coexistence of multiple generations within the social structure and its organizational forms serve as a critical entry point for understanding and constructing rights and obligations among members in legal studies. Furthermore, it constitutes a significant driving force behind the advancement of practices aimed at protecting the rights and interests of the elderly. Human development across the lifespan exhibits a cumulative temporal pattern. From a “whole life course” perspective, the protection of rights ultimately depends on the cooperation among successive generations across various dimensions. For instance, the family plays a pivotal role in the narratives and practices of elderly rights protection across nations. The *United Nations Principles for Older Persons* explicitly state that “older persons should be able to reside at home for as long as possible,” and Article 13 of China’s *Law on the Protection of the Rights and Interests of the Elderly* stipulates that “elderly care shall be primarily home-based.” The fulfillment of the family’s elderly care function manifests as cooperation among family members of different generations. Within this context, the realization of the rights and well-being of the older generation depends not only on the willingness of their children but also on the practical ability of family members to provide care and emotional support. It is for this reason that contemporary family sociology, when describing micro-level intergenerational solidarity within families, examines not only functional aspects such as support and assistance but also multidimensional facets including living arrangements, frequency of interaction, and value consensus among family members.²⁷ Consequently, legal norms designed to protect the rights and interests of the elderly inevitably encompass extensive content related to the interests of generational groups and their cooperative order. For example, China’s *Law on the Protection of the Rights and Interests of the Elderly* and the *Civil Code* explicitly stipulate that elderly persons have the right to receive support, assistance, and protection from their adult children. Deviant behaviors that violate intergenerational norms, such as refusing to support one’s parents, not only harm the legitimate interests of elderly parents but also threaten the benevolent order of the family as an intergenerational cooperative organization. In other words, the relationship between elderly rights and the family should be understood from the perspective of the “right to family life” within the context of aging. This includes both the right to be treated appropriately by family members and the right to establish and maintain a family. To this end, the law, on the one hand, upholds the order of family life through rights and obligations of support and maintenance, based on traditional virtues and cultural conceptions of ideal family relationships and a harmonious family atmosphere. On the other hand, it supports the aspects of family life involving childbirth, parenting, care, and companionship through measures such as tax reductions, exemptions, and public services, thereby sustaining and promoting the development of the family unit. Understood in this way, the culturally significant concept of “filial piety” and the legal practice of support possess universal significance for human rights as well.

²⁷ Vern L. Bengtson and Petrice S. Oyama, “Intergenerational Solidarity and Conflict: What Does It Mean and What Are the Big Issues?” in *Intergenerational Solidarity: Strengthening Economic and Social Ties*, Maria Amparo Cruz-Saco and Sergei Zelenev ed. (London: Palgrave Macmillan, 2011), 42.

Intergenerational relationships are inherently social constructs shaped by the passage of time, yet they are also in a constant state of flux due to broader changes in the social environment. Specifically, the legal governance of these relationships must not only recognize, regulate, and adjust contemporary intergenerational dynamics but also guide them to adapt to macro-level changes such as demographic shifts, evolving lifestyles, economic development, and technological progress. This ensures the sustainable development of intergenerational cooperation. Social pension systems are a manifestation of macro-level intergenerational cooperation in modern society. Apart from fully funded models that rely solely on “individual account accumulation,” both social pooling contribution models and tax-financed non-contributory models depend, to varying degrees, on cooperative contributions and risk-sharing between the retired generation and the working-age generation.²⁸ Changes in the age structure of the population have led to financial sustainability crises in pension systems, which have become a focal point of public discussion on the challenges of population aging. In response, many countries significantly affected by population aging have adopted various policies to adjust the conditions, methods, and levels of pension benefits. These adjustments aim to balance the pension benefits received by the current elderly generation with the expected future benefits for those still in the working-age population.²⁹ Regardless of how one evaluates the reforms to pensions and retirement systems in the context of population aging, their changes reveal the intergenerational dimension of elderly rights. That is, individuals derive their eligibility, status, and derivative rights claims within the intergenerational cooperative order based on their generational identity. Members of the same generation agree on shared interests rooted in this common identity. Through democratic political processes between generations, they reach a legal intergenerational cooperative agreement that coordinates the needs and interests of different generations and strives to address intergenerational challenges³⁰. Institutions vital to protecting elderly rights — such as family support and maintenance, pay-as-you-go (PAYG) pension systems, and long-term care insurance — are all expressions of intergenerational cooperation. The state’s obligation to respect, protect, and fulfill human rights is primarily demonstrated through the recognition, regulation, and guidance of such cooperation, ensuring it operates and develops in a manner consistent with values such as equality, justice, and dignity. In this sense, the so-called crisis of elderly rights brought about by population aging does not mean that aging itself makes the elderly more vulnerable. Rather, it means that demographic shifts may impair or distort the intergenerational cooperation mechanisms upon which everyone relies to cope with the inevitability of aging and achieve lifelong development, thereby threatening the rights of social members across all age groups. It is precisely for this reason that strategies to address population aging must be grounded in the entire population and society. This requires comprehensive strategic guidelines and

²⁸ In the context of pension security, society is divided into the “working-age” generation and the “retired generation” that receives pensions. Therefore, the social pooling of pension funds can be understood as contributions from the working-age population supporting the pension claims of the retired population — a “pay-as-you-go” system. Furthermore, considering the proportion of income tax and consumption tax borne by different age groups, tax-supported pension security can also be inaccurately described as primarily sustained by the working-age population.

²⁹ Eri Kasagi, “Solidarity Across Generations from the Perspective of Comparative Law: Reconfiguration of Different Types of Solidarity in the Context of an Aging Society,” in *Solidarity Across Generations: Comparative Law Perspectives*, Eri Kasagi ed. (Cham: Springer, 2020), 13.

³⁰ Jenny Julén Votinius and Mia Rinnmar, “Intergenerational Aspects of Elder Law: Conflict, Solidarity or Ambivalence,” in *Elder Law: Evolving European Perspectives*, Ann Numhauser-Henning ed. (Cheltenham: Edward Elgar Publishing, 2017), 144.

rule-of-law solutions to adjust the intergenerational cooperative order, strengthen the bonds of intergenerational solidarity, and consolidate the continuity and sustainable development of intergenerational cooperation mechanisms.

C. Dynamism of time: metric for life course planning

The human life course is often described as a “journey” from “birth” to “death” or an “unceasingly flowing river.” Age has, since ancient times, served as a crucial, if not the only, tool for perceiving the temporal dynamics of life. With a deepening understanding of the human life course, it has become possible to relatively accurately estimate metrics such as “life expectancy” and “healthy life expectancy” — which represent the “length of the life process under average social conditions” — and even the biological lifespan limit of the human organism. Age signifies not only the factual duration of time elapsed since birth but also pinpoints the “coordinates” and “markers” within the complete life course at any given moment. It even, to some extent, implies a countdown to the end of life. Precisely because of this significance, individuals are able to form self-perceptions and adjust their behaviors based on their age. In social interactions, it also shapes expectations about the behavior of others. “Life is no longer seen merely as a concept opposed to death but as a temporal span... Based on birthdays, an individual’s life can be structured into a sequential time frame through age, thereby allowing life to be quantitatively placed within specific social systems.”³¹ The unidirectional, finite temporal structure of human life and its continuously advancing dynamic nature will inevitably influence and even shape how people claim, pursue, and enjoy their rights in practice.

Recognizing the finitude of one’s life and rationally and freely planning one’s life journey within this constraint constitutes the fundamental backdrop for the exercise of personal rights and is a crucial manifestation of individual agency. However, due to insufficient information and the inherent limits of human rationality, individuals may not be able to foresee their circumstances in old age during their early life stages and make appropriate judgments accordingly. When viewed from a whole-life-course perspective, age norms in areas such as labor, education, and family life may superficially limit choices at specific points in time. Yet, they also provide, based on societal values and scientific knowledge, an appropriate or safe framework for lifelong development, supporting individuals in actively and freely planning their life course and developmental practices. For instance, receiving an education is a universal human right and a vital prerequisite for appropriately engaging in developmental practices such as employment and participation in public affairs within a specific social context. Current norms in the education system related to “age,” “duration of study,” and “educational structure” define three main sectors — degree-granting education, vocational education, and education for the elderly — based on the scientific principles of human learning and fundamental requirements for social participation. These norms guide the goals, content, methods, and pace of learning at specific age stages. China’s *Education Law* and *Compulsory Education Law* stipulate provisions regarding “appropriate age” and “educational structure,” establishing the important role of compulsory education and school life in the growth and development of school-age children, as well as the content, duration, and quality of education. This, in turn, defines the form and standards for realizing the right to education for minors. Similarly, the vocational education system established by the *Labor Law* and the *Employment*

³¹ Zheng Zuoyu, *Society Time: Genesis, Changes, and Problems* (Beijing: Social Sciences Academic Press, 2018), 72.

Promotion Law, along with the system for education for the elderly and lifelong learning outlined in the *Law on the Protection of the Rights and Interests of the Elderly*, designs teaching content, organizational forms, and educational objectives according to the structural positioning of different life stages.³² Consequently, everyone can receive an education based on the experiences of previous generations early in life and apply the acquired learning outcomes to plan for later life stages, including employment, family life, and even survival and development in late life.

Regarding the focus of this paper, “old age,” due to its position near the end of the life course, carries connotations of “death” distinct from other age stages. Human life manifests overall as a unidirectional “journey toward death,” so the increasing age also signifies the gradual approach of the inevitability of death. It is for this reason that old age often evokes shared imagery of an “endpoint” — such as autumn, winter, dusk, and night — in related philosophical reflections or artistic expressions.³³ Although new concepts such as healthy aging and active aging have seriously challenged age-graded social roles and behavioral norms,³⁴ the extension of human lifespan and improvements in health levels have not eliminated the existence of life’s endpoint. On the one hand, the content and practice of many rights, including the right to life, the right to health, and the right to social participation, are constrained by the fact of life’s finitude, thereby giving rise to the unique significance of a “dignified death.” The Committee on Economic, Social and Cultural Rights, in its general comment on the right to the highest attainable standard of health, emphasized that the realization of the health rights of the elderly should focus on “sparing them avoidable pain and enabling them to die with dignity.”³⁵ Consequently, whether palliative care services, aimed at “controlling symptoms of pain and discomfort,” constitute part of the “public health and health care facilities, goods, and services” required for the realization of the right to health has become a significant issue in contemporary rights practice. The primary function of palliative care is to alleviate the pain, fatigue, and negative psychological states of patients while they are still alive in the terminal phase of life.³⁶ For instance, the *Inter-American Convention on Protecting the Human Rights of Older Persons* requires states parties to take steps to “appropriately manage problems related to the fear of death of the terminally ill and pain; and prevent unnecessary suffering, and futile and useless procedures.”³⁷ The Council of Europe’s recommendation on *Promotion of Human Rights of Older Persons* similarly states, regarding palliative care, that its aim is to “ensure their

³² For example, Article 26 of the *Shandong Provincial Regulations on Education for the Elderly* stipulates that courses and teaching content offered by institutions for the elderly should primarily aim to “promote the physical and mental health of the elderly, enrich their spiritual and cultural lives, and improve their quality of life,” with a focus on “elderly health, safety protection, prevention of financial and telecommunication network fraud,” and “smart technologies.”

³³ Simone de Beauvoir, *The Coming of Age*, Qiu Ruiluan trans. (Taipei: Azoth Books Co., Ltd., 2020), 224.

³⁴ Aske Juul Lassen and Tiago Moreira, “Unmaking Old Age: Political and Cognitive Formats of Active Ageing,” *Journal of Aging Studies* 30 (2014): 33.

³⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14: “The Right to the Highest Attainable Standard of Health,” Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.7, page 93.

³⁶ Sun Yelong, “On the Right to Palliative Care of the elderly and Its Legal Protection Principles,” *Journal of Nanjing University of Traditional Chinese Medicine* (Social Sciences Edition) 3 (2024).

³⁷ Organization of American States, *Inter-American Convention on Protecting the Human Rights of Older Persons*, Article 6, accessed March 14, 2025, https://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp.

well-being and allow them to live and die with dignity.”³⁸ Rights claims in the late stages of life encompass not only the quality of life and personal dignity “while still living” but also concern dignity at the moment of death — that is, the “right to die with dignity.”³⁹ A specific legal question arises: should medical institutions be permitted, on the basis of informed consent and advance directives, to terminate life-sustaining treatments — even when they could prolong life — to respect the personal will of terminally ill patients regarding the time, place, and circumstances of their death?

On the other hand, even the gradual approach of death under conditions of “painless and disease-free” can bring about suffering, anxiety, and threats to human dignity. The practical experience of hospice care reveals that the fear of death often stems more from a sense of abandonment and loneliness.⁴⁰ Death signifies the end of personal development and value realization, as well as the rupture of social bonds, inevitably evoking inner feelings of fear, anxiety, and emptiness, and shaking an individual’s expectations regarding self-fulfillment. In this sense, legal and rights issues such as hospice care, palliative care, living wills, and testaments concern not only whether an individual’s true and free will can be respected and protected by law but also emphasize how elderly individuals approaching life’s end can properly address social relationships, life’s work, value realization, and other life issues possessing “spiritual” and “transcendent” qualities under the shadow of death. “Human death is not merely the end of an individual life; it also signifies the suspension, reorganization, and continuation of a series of social connections associated with the individual.”⁴¹ Moreover, the way modern society deconstructs and constructs death in the realms of law, war, and social philosophy has led to its marginalization, medicalization, and privatization.⁴² The action space for collectively experiencing, understanding, and confronting death through forms such as family, religious communities, and public rituals in traditional contexts has not received sufficient attention. In other words, under the constraint of the objective finality of death, the characteristics of elderly individuals in pursuing spiritual interests such as happiness, dignity, and self-realization may not be adequately described or evaluated by the binary framework of “active/participation” and “disengagement/exclusion.”⁴³ Discussions on elderly rights are inseparable from the contemporary Chinese people’s imagination and pursuit of a “fulfilling end of life.” This imagery of a “fulfilling end of life” is rooted in the cultural traditions of the Chinese nation regarding views on life and death, while also being shaped by the values and sense of achievement formed by the masses through long-term socialist modernization. From the perspective

³⁸ Council of Europe, Recommendation CM/Rec(2014)2 to Member States on the Promotion of Human Rights of Older Persons, accessed March 14, 2025, <https://search.coe.int/cm?i=09000016805c649f>.

³⁹ Shen Deyong and Liu Jingkun, “Right Analysis on and Procedural Regulation of Dignified Death,” *Chinese Journal of Law* 3 (2021).

⁴⁰ Steve Paulson, Allan Kellehear, Jeffrey J. Kripal, and Lani Leary, “Confronting Mortality: Faith and Meaning across Cultures,” *Annals of the New York Academy of Sciences* 1330 (2014): 58-60.

⁴¹ Lu Jiehua and Zhang Yun, “Reflections on the Sociology of Death in Transitional China: Current Situation, Progress, and Prospects,” *Studies on Socialism with Chinese Characteristics* 6 (2015).

⁴² Tomasz Wierchowski, Bożena Iwanowska, Dawid Stadniczeńko, and Yan Kapranov, “The Deconstruction of Modern Mortality of Death: An Analysis Through Law, War, and Social Philosophy,” *Journal of Modern Science* 6 (2024): 928-949.

⁴³ Jeffrey A. Buchanan, Donald Ebel, Sandra Garcia, Felicia J. VandeNest, and Christina C. Omlie, “Age Differences in Perceptions of Gerotranscendence: An Examination of Cosmic Dimension Behaviors,” *Journal of Religion, Spirituality & Aging* 28 (2016): 239-254.

of rights protection, the perception and pursuit of a “fulfilling end of life” also rely on social support. The resulting rights demands are, in a sense, manifested as initiatives to promote death education and hospice care. The essence of hospice care lies not only in alleviating suffering and maintaining autonomy and personal dignity amid declining capacities but also in ensuring that “the virtuous elements of a good life should not be excluded from considerations of the quality of death.”⁴⁴ The human rights significance of hospice care can be further elaborated as resisting the dissolution of meaning brought by death through maintaining the emotional connections between the individual and communities, such as family and society, and by guiding people to understand and appropriately confront death to support personal development and value realization until the end of life. Simultaneously, hospice care and death education also serve all members of the dying individual’s social network. Death education is also life education. It guides the living to appropriately contemplate the departure of the deceased and rebuild social bonds fractured by death, while also “clarifying the essence of life” and “accepting the natural laws of life,” thereby encouraging them to cherish their own finite lives and learn to face their own death with dignity in their final moments.⁴⁵

III. Reinterpreting Elderly Rights Through a Holistic View of Age

Age is a critical legal requirement and organizational element of modern life and a cornerstone of the welfare state system.⁴⁶ It is an indispensable tool for legal systems to express and respond to the universal inevitability of human aging, as well as the conceptual foundation of current theories on elderly rights and related rule-of-law practices. A holistic view of age, fully encompassing the three dimensions (duration of time, sequence of time, and dynamism of time), provides us with a cognitive framework for examining the entire course of human life through the lens of life’s temporal structure. This perspective can accommodate traditional understandings of the relationship between old age and capacity disadvantages while also revealing the full picture of individuals, as active and autonomous rights holders, planning their lifelong development and practicing it within a sequentially evolving social structure. Constructing a theory of elderly rights based on this holistic view of age enables the subjecthood of the elderly and their rights claims to be interpreted in a manner that integrates the negative and the positive, the static and the dynamic, and the individual and the social — all without requiring a complete overhaul of the legal definition of the elderly or the existing institutional framework. It fully showcases the various possibilities for human individuals, as developing subjects and right holders, to confront the inevitability of aging. Accordingly, it facilitates an analysis of how humans pursue and achieve free and comprehensive development within the flow of time of individual lives and social temporality.

A. Lifelong development narrative of the elderly as subjects

The theoretical shortcomings of defining the elderly person based on age and the consequent conceptualization of their rights stem from a long-standing one-dimensional understanding of the meaning of age. Specifically, on the one hand, a singular focus on the dimension of time duration has led to the life experience of aging being inappropriately generalized as a pathological process of

⁴⁴ Zhang Rongnan, *Fearless of Aging: Concerns of Older Persons from a Philosophical and Ethical Perspective* (Guilin: Guangxi Normal University Press, 2024), 192.

⁴⁵ Wang Yunling, Zheng Linjuan, and Sun Hongyan, “Remark on Death Education from the Point of Medical Personal’s Duty,” *Chinese Medical Ethics* 5 (2004).

⁴⁶ Israel Issi Doron, “Chronological? Functional? or Subjective? The Legal Search for the Definition of Age,” in *Subjective Views of Aging: Theory, Research, and Practice*, Yuval Palgi, Amit Shrira, and Manfred Diehl ed. (Cham: Springer, 2022), 368.

capacity decline leading to death. While this perspective provides ample justification for resource redistribution and special protective measures under the framework of substantive equality, it consistently fails to escape the shadows of ableism and age-based prejudice.⁴⁷ On the other hand, the “one-dimensional theory of the autonomous subject,” which assumes that individuals become fully rational, autonomous, and independent upon adulthood, also obscures the potential for vulnerability and dependency brought about by aging.⁴⁸ Under the shadow of the perfectly rational subject, the declining trend in the rationality and capacity to realize rights among some elderly individuals is often overlooked. This results in the rights claims of the elderly receiving only “declaratory protection.”⁴⁹ Furthermore, narratives emphasizing subjecthood solely through the lens of capacity strength or weakness obscure the position and unique value of the elderly within both macro and micro intergenerational relationships. This easily leads to an excessive pursuit of a certain standard of “exemplary aging,” neglecting the real experiences and needs brought about by aging. It may even degrade the pursuit of active aging into discrimination and oppression against “passive elderly” or “failed elderly” individuals.⁵⁰

The theoretical construction of elderly rights must grasp the relativity of its subject within specific historical contexts. Generally, analyses and discourses on the relativity of human rights subjects focus on the conditions of a social cross-section, exploring the relationship between rights practices at a given moment and macro-social factors such as economic development and cultural traditions. However, the analysis of the concept of age presented earlier reveals the temporal dimension of this subjective relativity. Because human life is formally constrained to a dynamic process with a fixed direction and finite length, an individual’s specific life history unfolds in synchrony and becomes intertwined with the temporal dynamics of social development. “Social development is composed of individual development; individual changes are influenced by social development, while social transformation is also affected by individual development.”⁵¹ In the context of Chinese modernization, the macro-social situation of massive population aging and micro-dynamic life trajectories jointly shape the ideal subject image of the elderly under the concept of “active aging.” According to the World Health Organization’s preliminary definition, active aging aims to allow “people to realize their potential for physical, social, and mental well-being throughout the life course and to participate in society according to their needs, desires and capacities, while providing them with adequate protection, security and care when they require assistance.”⁵² Thus, the core of active aging lies in comprehensively showcasing the vulnerability

⁴⁷ Peng Ding, “A Postmodern Critique of the Metaphors of Aging, Illness, and Disability: Reflections Based on the Social Model of Disability,” *Disability Rights Studies*, vol. 4, no. 2, Zhang Wanhong ed. (Beijing: Social Sciences Academic Press, 2019), 15-25.

⁴⁸ Martha Albertson Farnham, “‘Elderly’ as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility,” Jiang Baoguo trans., *Journal of South China Agricultural University (Social Sciences Edition)* 4 (2018).

⁴⁹ Zhang Yujie, “Reconstruction of the Model for Protecting Elderly Rights: Based on the Reconsideration of the Conception of Subjects of Right,” *Law and Social Development* 1 (2025).

⁵⁰ Virpi Timonen, *Beyond Successful and Active Ageing: A Theory of Model Ageing* (Bristol: Bristol University Press, 2016).

⁵¹ Bao Leiping and Sang Biao, “Custom or Occurrence? Lifelong Development from the Perspective of Life-Course Theory,” *Journal of East China Normal University (Educational Sciences)* 1 (2006): 55.

⁵² World Health Organization, *Active Ageing: A Policy Framework*, China National Committee on Aging trans. (Beijing: Hualing Press, 2003), 9.

and resilience, special needs and potential contributions of the elderly, measured against the scale of “a human life.” A holistic view of age provides a feasible framework for constructing the legal subjecthood and portraying the image of the elderly in line with these requirements. This is further manifested in a description of the elderly life experience that combines static and dynamic elements, and a lifelong development framework that unifies the individual and society.

First, human beings as subjects exist within a constantly flowing temporal dynamic. Age-based distinctions such as childhood, youth, adulthood, and old age are the results of static observation and generalization of the human condition within specific time segments. Within a specific sociocultural context, “old age” or “advanced age” indeed carries significant negative connotations, such as capacity decline due to senescence and the gradual approach of the endpoint of death. However, when examined from the dynamic perspective of lifelong development, this life experience is an inevitable component of the complete human life course. The physical, mental, and emotional characteristics it brings forth are also manifestations of human nature. For example, most people currently do not need to claim the right to palliative care and hospice, but they will eventually develop this need within the scale of a complete life course. From a whole-life-course perspective, the right to development, as a primary fundamental right, can also be expressed as rights holders utilizing time-measuring tools such as age to perceive and understand the process of life development, examine their relationships with others and society, and then actively pursue and achieve free and comprehensive development at different stages of life, ultimately moving towards a fulfilling end of life. This form of the right to development gives rise to a series of rights claims mentioned earlier, such as life education, equal participation opportunities, age-friendly adaptations, and access to supportive services. On the other hand, personal development on a lifelong scale occurs within continuously evolving balanced social development. As a response to population aging, the concept of active aging requires the elderly to assume the role of “contributors to social development” while also being “welfare recipients.” That is, the elderly should, with societal support, improve their health conditions and maintain social participation to sustain their capacities as rational, independent, and equal rights holders. They should autonomously pursue and realize their due rights while also participating in and contributing to the process of social development. Social development, in essence, is the development of the people and the population within a society, meaning the birth and growth of social members “generation after generation.” To this end, members of different generations organize and engage in sustainable social cooperation based on value scales such as equality and dignity, claiming rights and assuming obligations according to this cooperative order. In such intergenerational cooperation, everyone, including the elderly, both claims and enjoys well-being and benefits, while also fulfilling obligations and making decisions about responsibilities throughout the course of life.

In summary, the narrative of the elderly person under a holistic view of age does not deny the legitimacy and necessity of age and age grading. Instead, it views them as tools for humans to observe and understand the life process and to practice life-course planning through various cooperative mechanisms such as the family and society. On the one hand, people use age as a clue and tool to examine their own developmental life process, grasping behavioral norms and developmental needs at different life stages through self-reflection, the experiences of others, and general societal conceptions. Based on such self-awareness, people establish an identity anchored in age, examine their position and surrounding relationships from the perspective of being a member of a certain generation, and engage in communication, negotiation, and cooperation regarding the social arrangement of various resources, opportunities, and benefits. They claim and pursue their

legitimate interests as developing subjects and members of intergenerational groups through democratic and legal processes, participating in and promoting social development as active agents and benefiting from it. On the other hand, the theoretical elaboration and practical safeguarding of elderly rights require examining, describing, and constructing the subject image from a holistic life course perspective. This respects the subject's shaping of and control over their own destiny and strives to avoid one-dimensional capacity assumptions based on age, particularly avoiding creating labels and oppositions such as "strong" vs. "weak" or "provider" vs. "dependent" among age groups. From this angle, the concept of active aging challenges precisely the construction logic that equates aging with weakness. Because the contrast between the "weak" and the "strong" will inevitably create divisions among social members who want to collectively face the inevitability of aging, damage intergenerational cooperation structured around age, and ultimately adversely affect everyone's pursuit of free and comprehensive development over the life course.

In fact, China's national strategy for actively responding to population aging already demonstrates a shift from a static view of rights holders as a "specific age group" to a more inclusive whole-life-course view aligned with "active aging." At the strategic level, the establishment of the national strategy marks a transformation in China's governance approach to population aging from focusing on the "individual" to the "nation as a whole."⁵³ The important strategic orientations of "holistic" and "active" emphasize, on the one hand, building a social environment and legal space conducive to the comprehensive development of social members throughout their entire life course through social reforms in various fields, rather than focusing solely on the interests and well-being of members in specific age groups. On the other hand, it emphasizes the solidarity and cooperation of all social members to jointly promote the realization of the ideal of active aging. This holistic strategic requirement is fully reflected in the current practice of developing population services focused on "the old and the young." The *National Medium- and Long-Term Plan for Responding Proactively to Population Aging* explicitly calls for efforts to "improve the quality of the birth population, enhance the quality of the new labor force, build a lifelong learning system where the old can learn, and improve the overall quality of China's human resources." The *Decision on Optimizing the Family Planning Policy to Promote Long-Term and Balanced Development of the Population* (2021) explicitly proposes to establish and improve a "population service system covering the whole life course" with a focus on "the old and the young." In the traditional context of age stratification, the pension rights of the elderly, the rights of children in their growth and development, and the reproductive rights of adults are treated as independent. However, "the old and the young," through the intrinsic connections between birth, growth, and aging from a life course perspective, link originally isolated social policies into a complete system of interconnected and mutually reinforcing elements. On the one hand, children and minors are future adults and the elderly. Their healthy growth and comprehensive development during childhood constitute a solid foundation for pursuing and realizing their rights in old age. On the other hand, policy practices promoting childbirth and child development can macroscopically increase labor reserves, improve the age structure of the population, support socioeconomic sustainable development against the backdrop of population aging, and also help consolidate the demographic foundation for social intergenerational cooperation. Simultaneously, the coordinated

⁵³ Hu Zhan and Sun Xin, "The What and the How of Strategy: The National Strategy of Actively Responding to Population Ageing in the Process of China's Modernization," *Population Research* 5 (2024).

construction practice of “the old and the young” often relies on the development of childcare and elderly care service systems. Such public services and support systems for families help strengthen the ability of families to fully perform their support and maintenance functions, consolidate the foundation of old-age security, and promote the sustainable development of the family organization.⁵⁴ As mentioned earlier, the family is not only a crucial source of old-age support in the current institutional environment but also an organizational vehicle for people to maintain daily life and achieve self-development. Enhancing the care capacity of family members through resource provision and promoting sound family values and perspectives on aging among them are also indispensable components of protecting elderly rights.⁵⁵ Thus, measures aimed at active aging and protecting elderly rights also cover various nodes of the human life course, such as childhood and adulthood. This is a vivid portrayal of advancing the protection of elderly rights based on the “individual within the aging life course” rather than the “elderly defined by age groups.”

B. Hierarchical construction of the rights content system

The current theoretical construction of the content system for elderly rights typically employs a horizontal and spatial method of normative doctrinal analysis. This approach integrates the various rights enjoyed by general subjects with the specific human circumstances corresponding to “old age,” enumerating the elderly’s concrete rights and their practical implementation in areas such as economic, social, cultural, and environmental life. For example, based on the constitutional fundamental norm of the right to material assistance and the human rights requirement of attaining an adequate standard of living, every individual enjoys the right to claim care from others when unable to sustain basic living independently due to reasons such as disability, illness, or old age. This fundamental right, in turn, gives rise to a series of rights based on the specific forms and legal frameworks of current elderly care practices in society. These include the right to receive daily care from family members, contractual rights in purchasing commercial elderly care services, and the right to access state-provided basic elderly care services, among others. The temporal significance represented by age allows us to examine and construct a hierarchical system of elderly rights from a vertical life-course perspective, clarifying the rationale and positioning of various claims made in the name of “rights of the elderly.” Since the elderly, from a life-course perspective, are planners of their right-to-development practices throughout their lives and also life planners who participate in social cooperation and development, the rights claims thus derived also form a three-layered structure from the internal to the external: the right to lifelong development through autonomous life course planning; the right to equally practice life course plans; the right to receive assistance in cases of planning failure.

The first tier of elderly rights is the right to autonomously plan one’s life course. This right originates from the elderly’s position in the later stages of the life course within the temporal structure. The protection of rights in the “old age” stage relies on the capacity status and resource endowment resulting from rights practices in the earlier life stages. The formation of this situation is itself the result of combining personal subjective initiative with objective rights protection measures. Through appropriate life education, individuals should recognize that they will eventually face the life experience of aging as time passes, and they should rationally and autonomously plan and

⁵⁴ Zhou Jianfang, “Collaborative Development of the ‘Senior and Junior’ Service System: Logic, Practical Basement, and Development Paths,” *Social Sciences of Beijing* 6 (2024).

⁵⁵ For example, some scholars have pointed out that China’s legal system for old-age protection should be improved through “optimized fertility welfare legislation” targeting both adults and infants. See Li Xiansen, “Improving China’s Legal System for Elderly Care in the Context of Population Aging,” *Human Rights* 6 (2023).

design their life course, participating equally in and benefiting from matters related to lifelong development. In this regard, the state's obligation to protect human rights can also be elaborated in terms of respect, protection, and fulfillment. In terms of respect and protection, the state respects the autonomous will of individuals to plan and design their lifelong development schemes and protects equal qualification and opportunity to participate in various social mechanisms for lifelong development practices from improper interference. Simultaneously, the state takes the lead in establishing and improving systems that serve as the foundation for lifelong development, such as social security, lifelong learning, labor and employment, voluntary service, and family life, creating conditions for the practice of individual rights. A typical example is that retirement represents not only the realization of the constitutional right to material assistance but also a vision of retirement life centered on withdrawing from competitive employment fields and focusing on hobbies, volunteer activities, and family life. Correspondingly, individuals should have the right to choose the path of "continued employment" in competitive positions in line with societal value standards, or to strengthen the financial foundation of their retirement life through mechanisms such as enterprise annuities and personal commercial pension insurance. The state respects individuals' preferences regarding their later-life arrangements and creates conditions for the realization of this right to autonomous choice by establishing and improving support systems such as pension insurance and safeguarding basic rights and interests, such as "rest and leave, labor safety and health" in cases of post-retirement re-employment. Furthermore, the state needs to take measures to protect individuals from being denied the opportunity and conditions for such late-life planning based on assumptions related to gender and disability, among others. On this issue, the rights claims of the elderly are closely linked to the equality claims of specific groups such as women and persons with disabilities. For instance, an independent United Nations expert on the enjoyment of all human rights by older persons specifically mentioned the intersectional vulnerability of elder women, pointing out that "the combination of ageism and sexism has a unique and aggravating effect on discrimination and inequality," preventing them from acquiring sufficient elderly care resources from career development.⁵⁶

As previously discussed, the realization of a pre-planned vision for aging life is founded upon close cooperation among successive generations of social members, and intergenerational cooperation within a specific social environment gives rise to the second tier of rights: the rights individuals enjoy based on their generational status and equal participation in intergenerational cooperation. Consequently, individuals can freely choose to participate in different intergenerational cooperation mechanisms to address the shared inevitability of aging. However, once a choice is made, they are bound by the corresponding social norms of such intergenerational cooperation. Specifically, an elderly individual's retirement life is based on pension payments under the social security system, which are derived from pension insurance contributions paid by the working-age population and employers, investment returns from the basic pension insurance fund, and state subsidies. The realization of the anticipated life course of retirement life requires individuals to actively participate in the pension insurance mechanism and fulfill contribution obligations during the early stages of their life course, while also relying on contributions from the next generation of workers. This logic of rights practice gives rise to two aspects of state obligations. First, the state

⁵⁶ United Nations, *Human Rights of Older Women: The Intersection Between Ageing and Gender*, UN Doc. A/76/157.

regulates the behavior of all cooperative participants through the rule of law, enabling elderly generation cooperators to obtain expected benefits and well-being, thereby fulfilling their life course planning. Second, the state adjusts intergenerational cooperation mechanisms through democratic and scientific legislation or supports the sustainable development of intergenerational cooperation with its resources to address challenges arising from changes in the social environment. For example, in response to the sustainability risks of the pension security system brought about by population aging, China has timely introduced a reform plan to gradually raise statutory age. Based on the principles of “small, incremental adjustment, flexible implementation, categorized approach, and overall planning,” and supported by scientific mathematical models, the plan carefully assesses and selects the values and pace of adjustments to retirement age to maintain the stable development of the pension system. This ensures that workers of different age groups can receive expected pension payments in the near or distant future, realizing their ideal retirement life vision.

Finally, in the face of social development trends such as population aging, changes in family structure, and societal digital transformation, intergenerational cooperation aimed at achieving an ideal elderly life may not always operate as expected. Moreover, human bounded rationality means that not everyone can appropriately plan their life and put it into practice. Thus, the third tier of elderly rights is the right to assistance in maintaining basic living conditions and personal dignity when life planning goes awry or social cooperation breaks down. According to relevant social consensus, the state should provide certain relief and assistance to elderly individuals in precarious situations such as extreme poverty or isolation. Compared to the first tier of rights, this right to assistance is not an expected trajectory of lifelong development but a contingency plan for individual planning failures. Compared to the second tier of rights, individuals assert claims based on human rights or fundamental civil rights without the prerequisite of participating in intergenerational cooperation and fulfilling related obligations. Such rights are generally supported by systems like basic public services and social assistance. For example, the *Opinions on Promoting the Construction of a Basic Eldercare Service System* (2023) explicitly propose providing specific material assistance and service support to elderly individuals in special needs, such as “economically disadvantaged elderly” and “homeless or begging elderly,” to meet their basic survival needs.

The hierarchical system of elderly rights does not contradict the traditional system of rights horizontally spread across various social life domains. In other words, the rights of the elderly reveal the practice patterns of human rights from the perspective of a complete life course, thereby forming a “vertical-horizontal” combined system architecture with the horizontal division of rights content for general subjects. On the one hand, everyone enjoys all human rights regardless of age. On the other hand, planning one’s life course until its end according to one’s own wishes and within social environmental constraints, and engaging in social cooperation, accordingly, is a universal pattern of human life and the life-course context for individual rights practice. For example, the “right to work” and the “right to just and favorable conditions of work” constitute an integral and vital component of the framework of human rights. However, the practice of such rights is constrained by multifaceted facts represented by aging, including ability decline due to cumulative effects of senescence and the generational structure of the labor force. This means that individuals reaching a specific age may be unable to continue performing certain jobs or may face disproportionately high physical and mental health risks by continuing to work. The general right to employment also manifests in the practical form of “elderly employment rights,” divided into two paths of rights protection based on the current social prospects of retirement life and continued

employment for the elderly. The right to employment in retirement life as a prospect may be termed the “right to retire,” meaning workers can set an appropriate upper age limit for their careers, allowing them to exit their careers without negative assessments of their labor capacity, sustain themselves with expected pension income, and participate and integrate into society through family life, volunteer services, and other channels, continuing to pursue personal development and life value. For workers willing and suitable to continue employment, they can also choose continued employment to earn a livelihood and achieve self-development, while being able to claim reasonable adjustments to working conditions and accessible modifications to the work environment based on the right to “fair and favorable working conditions.” In this sense, both the right to retire and elderly employment rights aim to provide socially widely accepted options for elderly life and ensure individuals can plan and practice life courses leading to such elderly lives.

Conclusion

The concept of a legal status for older persons — defined by age — and the corresponding guarantee of specific rights have emerged from discussions and practices focused on addressing population aging. Yet this concept now faces a dilemma due to new trends and evolving ideas in how to respond to an aging population. Age-based identity construction and rights expression have been criticized for their “vulnerability” presumption and welfare-centric logic. Such theoretical flaws can be attributed to a one-dimensional understanding of age. The elderly ultimately refer to human subjects in the passage of time, and a tool to describe time is still needed to understand and describe the situation of the elderly.

In this paper, we refer to this time-measuring tool as “age” and strive to comprehensively understand the life-dynamic significance of age-based measurement through a multidimensional framework of duration of time, sequence of time and dynamism of time. Based on this holistic view of age, the elderly as a specific type of human rights subject are not an abstract extraction or one-sided assumption of individual circumstances at a specific age stage. Instead, they are individuals pursuing lifelong development in the dynamic life course of “continually aging or growing older.” Elderly rights, as the practical human rights under the constraint of “aging” subjects, can be constructed and understood through an inward-outward hierarchical structure. The core of these rights is the individual’s right to autonomously plan for lifelong free and comprehensive development, including allocating survival and development resources and choosing methods and pathways for social participation across different life stages. To practice the right to autonomous planning of lifelong development, individuals need to participate in various forms of intergenerational cooperation to transform decades-long plans into specific rights and obligations with particular spatiotemporal contexts. Thus, participating in, promoting, and deriving expected benefits from intergenerational cooperation practices becomes the external manifestation of the right to lifelong free and comprehensive development. Finally, if individuals encounter hardships in later life due to flawed or failed lifelong development plans, they should be entitled to seek help and relief on grounds such as safeguarding basic living conditions and personal dignity. This age- or time-based interpretation of elderly rights helps resolve the limited perspectives and age biases in elderly law theory, placing the complex claims about aging in practice within the existing human rights system in a rational and empirical manner. Although the discussion in this paper is rooted in a specific institutional and cultural context, its conceptualization of the aging human subject and hierarchical system of elderly rights can support more abstract and generalized theoretical

refinement. In doing so, it contributes to the formulation of human rights norms, practical cooperation, and knowledge integration from a global perspective.

(Translated by *JIANG Yu*)