

Article

Public Choices and Housing Opportunities for Senior Citizens: Different Scenarios in the United States of America and Spain

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Ana is 68 years old and she can hardly walk. She lives on the 12th floor. There are no elevators or ramps. The simplest things, like going shopping or for a walk, are big issues for her. She is a prisoner in her own home.¹

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¹ *See* DEFENSOR DEL PUEBLO ANDALUZ, PERSONAS PRISIONERAS EN SUS VIVIENDAS (2003) (noting that a high percentage of seniors living in Spain are prisoners of their own homes).

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Introduction

Around the world, people are becoming increasingly aware that national populations are aging. This phenomenon, which was not recognized until the latter part of the twentieth century, is sweeping the world at different rates and for a variety of reasons. By itself, the aging of a particular country's population would be of little consequence, but since it is a global trend, policymakers and governments have taken notice.

In 2006, the European Parliament issued a report on the challenges of demographic change, which states: "Europe today is facing unprecedented demographic change. People are living longer and fewer children are being born."² This report reveals three emerging trends behind demographic changes: a continuing increase in life span; a progressive growth in the number of workers over sixty; and persistent low birth rates.³ The same report, with regard to the Lisbon Agenda and its aim of increasing economic growth, notes that "demographic change has to be taken seriously."⁴ The Commission also noted that "never in history has there been economic growth without population growth."⁵ Although demographic change demands adequate political measures, it "should not just be treated as a problem, it also represents a positive challenge to societies to engage those in all age groups and to offer opportunities which previously did not exist."⁶

The European Parliament claims that the issue of aging populations cannot be addressed by the European Union but must be

² *Commission Green Paper, Confronting Demographic Change: A New Solidarity between the Generations*, COM (2005) 94 final (not published in the Official Journal).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

individually addressed by each of its member states.⁷ However, awareness of this trend is within the political interest of each state as well as the larger European community because the aging population poses future socioeconomic and demographic challenges.

The duration of the baby boom varied from country to country, but by the mid-1960's the phenomenon had run its course within developed nations. The baby boom generation, larger than subsequent generations, is about to become the "elder boom" of the twenty-first century.

For instance, in the United States, people over sixty-five represented 12.4% of the population in the year 2000, or about one in every eight Americans.⁸ This number is expected to increase 20% by 2030, at which point there will be about 72.1 million seniors, more than twice the number of seniors in the United States in 2000.⁹

Spain has a comparable percentage of elderly citizens in its population.¹⁰ According to data from the National Institute of Statistics (Instituto Nacional de Estadística, "INE"), based on the 2005 Municipal Register of Inhabitants, there were 7,332,267 people aged 65 and older registered in Spain.¹¹ The elderly represented 16.6% of the total population.¹²

In both countries, the increase in the senior population suggests that political measures must be taken. Several studies, such as those on the welfare, healthcare, and pension systems, reveal significant economic effects from this increase.¹³ These topics are all deeply intertwined with housing policies and are further discussed in this article. This paper addresses elder needs with a "needs based approach."

This paper also compares the Spanish and American legal systems by looking at the origins of housing needs, the similarities in the aging process, and the different levels of state decentralization.

⁷ *Id.*

⁸ ADMINISTRATION ON AGING, http://www.aoa.gov/aoaroot/aging_statistics/index.aspx (last visited Aug. 17, 2012).

⁹ *Id.*

¹⁰ INSTITUTO NACIONAL DE ESTADÍSTICA, MUNICIPAL REGISTER OF INHABITANTS, 2005.

¹¹ *Id.*

¹² *Id.* In 2002, the older population was calculated to be 7.1 million of 41,837,894, and the projection says that by 2030 the number of seniors would increase to represent a significant part of the Spanish population.

¹³ See Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism*, 73 (Princeton University Press 1990).

Spain is a decentralized state that emphasizes public intervention in social affairs, while the United States focuses on the interplay of the private and non-profit sectors to address the same issues.

While the demographic trends and the age distribution of the population in both countries are almost the same, the contrasts between the two systems are worth noting. This article will focus on the tools, data, projections, and especially the solutions needed to address senior housing needs.

This paper begins by analyzing data concerning housing opportunities for senior citizens, followed by an examination of the main legal differences in the way elder housing problems are solved, with an emphasis on the role of the executive branch of government.

However, to properly understand the issue of housing for seniors, it is necessary to establish the interconnections among housing policy, senior and healthcare policy, and the current lack of coordination between government agencies and programs.

I. Building the Bridge: Seniors, Housing and Healthcare Policy

A. *The Disconnect Between Different Policies That Address Senior Problems*

The phenomenon of aging is connected to the needs and social services of the population.¹⁴ The connection implies that to implement a proper housing policy for seniors, we need to focus not just on the number of seniors, but also on the inter-connection between housing policy and others, such as healthcare and senior citizen policies.

This article focuses on the interaction of three different policies and the response the legal system gives to senior needs, bearing in mind the importance of seniors in society. The comparison between American and Spanish laws emphasizes the idea that both legal systems face the same problems. Both countries fail to connect housing policy, senior policy, and healthcare policy.

¹⁴ MARIA LUISA GOMEZ JIMENEZ, LA INTERVENCION ADMINISTRATIVA EN LA VIVIENDA EN ESPAÑA 1938-2005 401 (2006).

Health, senior, and housing policies should be analyzed together as these three different fields are interrelated. These fields can be distinctly defined in the different sets of laws through different policies that have more elements in common than expected.

*B. A Diversity of Approaches and a “Common Sense” Approach
Toward a Trichotomy*

As a group, senior citizens need more than just a decent living space; they also need social services and additional care when disabilities arise. As people age, personal health expenses increase. Therefore, healthcare policy is connected not just to the quality of life of seniors, but also to the conditions in which they live, and even to housing conditions. Kathryn Lawler has expressed this relationship with a graphic statement:

Issues of senior housing and senior health cannot be dealt with in isolation. In fact, they cannot easily be separated. A housing problem can create a health problem and a health problem can create a housing problem.¹⁵

Consequently, to properly protect seniors' needs, healthcare needs for seniors must be considered in combination with health and housing policies. As the Commission on Affordable Housing and Health Facility Needs for Seniors in the Twenty-First Century points out in its report, *A Quiet Crisis in America*:

In the face of unprecedented growth in the proportion of the population who are seniors, we believe that this Nation has both a moral obligation and a financial imperative to establish a more rational long-term care system. A system that drives seniors to needless, premature institutionalization and expensive, preventable medical intervention will burden both seniors and those who must bear the costs for their care. Senior individuals who are able to remain in the community should receive the

¹⁵ Kathryn Lawler, *Aging in Place: Coordinating Housing and Health Care Provision for America's Growing Elderly Population*, Joint Center for Housing Studies, Harvard University (2001) http://www.jchs.harvard.edu/publications/seniors/lawler_w01-13.pdf.

services they need to be as independent as possible. Those who must move from their preferred setting should have viable and affordable alternatives that ensure their well-being. Neither institutionalization nor neglect should be the only alternatives they must accept.¹⁶

A graphical representation shows the overlap between these policies.

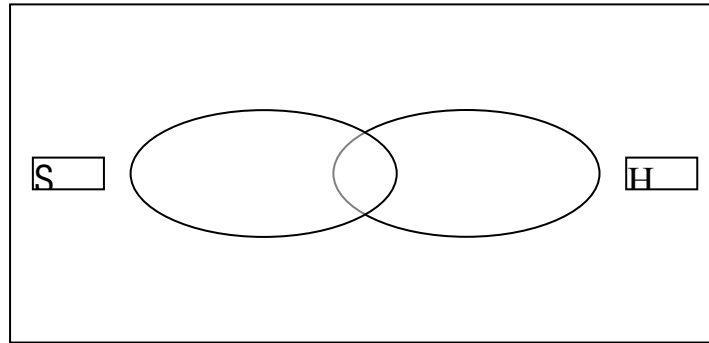


Figure 1: S: Seniors; H: Health Policy & Housing Policy

Despite the close and necessary relationship between the three policies, they are built separately by design. For example, the Spanish Constitution refers to the policies in different sections.¹⁷ Section 50 refers to seniors, Section 47 refers to housing and Section 43 refers to healthcare.¹⁸ Section 50 is the only section which the Constitution dedicates to seniors and it requires that all enacted legislative measures take into account this declaration.¹⁹

Section 50 of the Spanish Constitution declares:

The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise,

¹⁶ COMMISSION ON AFFORDABLE HOUSING AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY, *A QUIET CRISIS IN AMERICA* 4 (2002).

¹⁷ CONSTITUCIÓN ESPAÑOLA art. 2 (declaring: “Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.”).

¹⁸ *Id.* at art. 43, 47, 50.

¹⁹ *Id.* at art. 53.

and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure . . .²⁰

The Spanish government provides all social services because Spain is a Social Democratic State. These services are referred to as specialized services for seniors. In order to receive these services, the person must be at least sixty-five years old, or have a significant disability that allows the person to join the program. However, the public social services systems are designed to be disconnected from housing legislation.

Section 47 of the Spanish Constitution addresses housing policy and points out:

All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies.²¹

Similarly, the Spanish Constitution guarantees healthcare rights in
Section 43:

1. The right to health protection is recognized. It is incumbent upon the public authorities to organize and watch over public health by means of preventive measures and the necessary benefits and services. The law shall establish the rights and duties of all in this respect.
2. The public authorities shall foster health education, physical education, and sports. Likewise, they shall encourage the proper use of leisure time.²²

²⁰ *Id.* at art. 50.

²¹ C.E. art. 47.

²² *Id.* art. 43.

Moreover, public social services and healthcare are more thorough and more widely available in Spain than in the United States.²³ From a social services perspective, the introduction of a sphere of policies able to support the elderly can be represented through the following diagram:

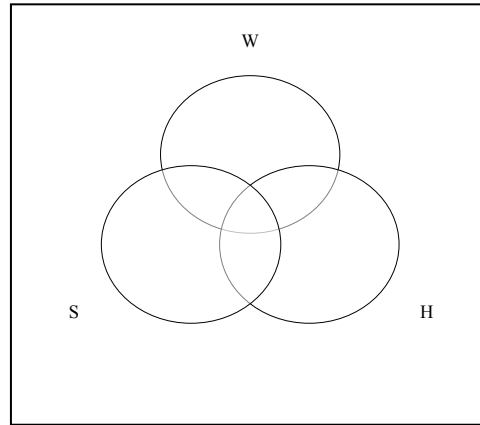


Figure 2: W: Welfare State Policies; S: Social Policies; H: Housing Policies

Because of the background of the two countries and the different organization of government power, they need different approaches for managing housing policy for the elderly. However, in both countries, senior policy has become independent from housing policy as a whole.

Policymakers may be responsible to different constituencies, based on whether they are discussing housing or senior policy. Therefore, to approach the main aspects of the problem, we must study a duality of policies present in both American and Spanish legislation. Sometimes, especially in Spain, legislation connects the senior population and the disabled population because they have similar needs in dealing with the activities of daily living (“ADLs”)²⁴

²³ See Esping-Anderson, *supra* note 13.

²⁴ ADLs refer to the basic tasks of everyday life: eating, bathing, dressing, using the toilet, taking medications, and moving.

and in removing architectural barriers.²⁵ Sometimes the differences between the two approaches are significant, suggesting that a lack of coordination exists among them. Furthermore, the idea of connecting these policies with the welfare policy adds a new element to convert this into a trichotomy rather than a duality of policies. In the United States, the Cranston-Gonzalez National Affordable Housing Act also attempts to connect these three policy considerations.²⁶

II. Public Housing Choices for Senior Citizens

A. *Housing for Seniors is Housing for the Poor?*

In Europe and in the United States, senior populations generally are healthier and live longer than in other areas of the world.²⁷ Furthermore, the quality of life of seniors is related to their income level. For wealthy seniors, purchasing services solves housing problems²⁸ Wealthy seniors do not worry about housing adaptations because they can afford to renovate their houses, when needed, or to purchase an adequate unit. Most senior needs may be solved through the purchase of housing services and by adaptations to housing units.

In general, the United States government offers support to only the poorest seniors, such as through Medicaid or Medicare programs. Conversely, in Spain, the universality of healthcare and social services gives all citizens some support from the Public Administration (Administración Pública), regardless of income.²⁹ Nevertheless, Spanish authorities direct policies on housing affordability and access to services towards the seniors who most need assistance, while the general declaration of rights protects poor and rich alike.

²⁵ LEY 15/1995 SOBRE LÍMITES DEL DOMINIO SOBRE INMUEBLES PARA ELIMINAR BARRERAS ARQUITECTÓNICAS A LAS PERSONAS CON DISCAPACIDAD (B.O.E. 1995, 129) (Spain).

²⁶ Cranston-Gonzalez National Affordable Housing Act § 201, 42 U.S.C. § 12701 (1990).

²⁷ U.N. Dept. of Econ. and Soc. Affairs, Population Division, *World Population Prospects: The 2006 Revision, Highlights*, U.N. Doc. ESA/P/WP.202 (2007).

²⁸ Padrica Kenna, *Housing Rights- The New Benchmark for Housing Policy in Europe?*, 37 URB. LAW. 87, 87 (2005).

²⁹ *See*, C.E. art. 43.

Some authors have also written that in Spain, there is a correlation between aging and the likelihood of decreasing economic status.³⁰ One of the reasons for this is that Spain is a country of homeowners, not renters. Thus, senior tenancy choices weigh heavily on policymakers' decisions regarding living accommodations.

B. Houses as the Most Valuable Asset for Seniors: Rent or Home Ownership?

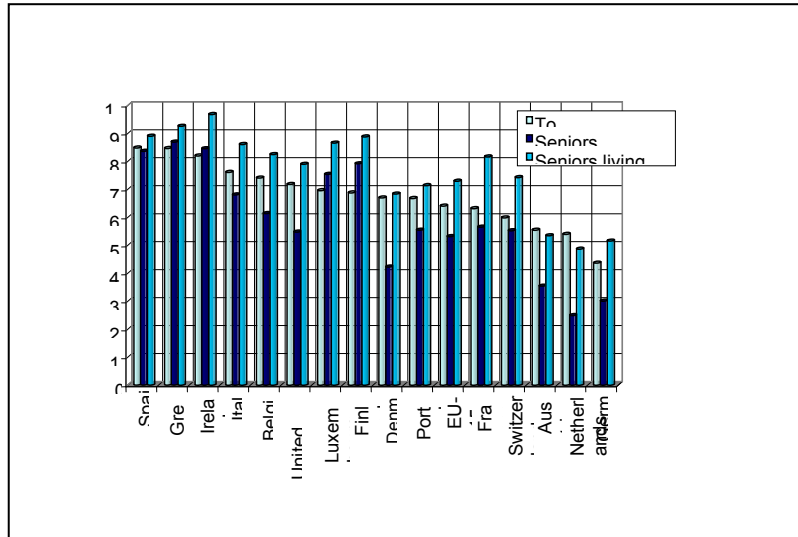
1. Background

High rates of home ownership distinguish the Spanish market from other European countries. Furthermore, home ownership rates are even higher among senior citizens (82%), although there is a considerable difference between males (84.7%) and females (77.6%).³¹ Additionally, according to the latest census, the number of people who live alone has increased, especially for seniors over eighty-five years old.

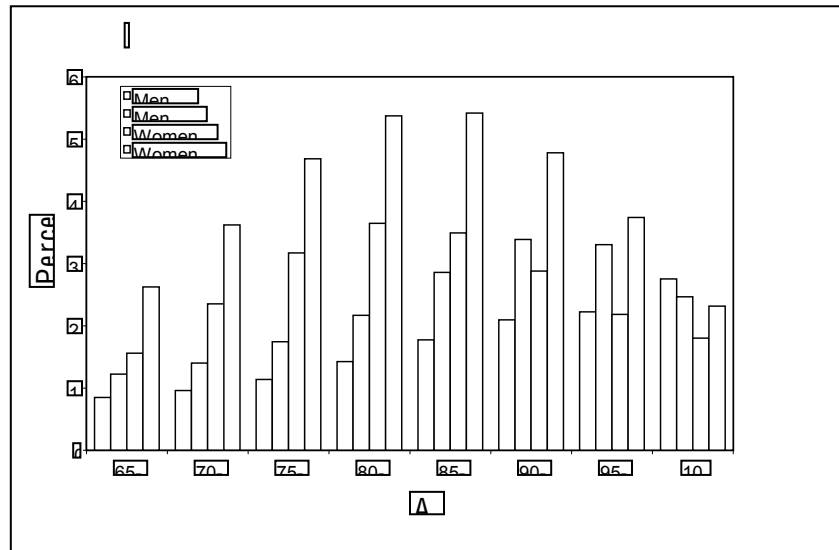
³⁰ JULIO PÉREZ DÍAZ, *LA SITUACIÓN SOCIAL DE LA VEJEZ EN ESPAÑA A PARTIR DE UNA PERSPECTIVA DEMOGRÁFICA* (1996).

³¹ INSTITUTE OF MIGRATIONS AND SOCIAL SERVICES (IMERSO), *AGEING IN SPAIN: SECOND WORLD ASSEMBLY ON AGEING*, APRIL 2002 49 (2002), *available at* <http://www.imersomayores.csic.es/estadisticas/informemayores/envejecerenespana/ageingspain.html>.

Figure 3: Percentage of Households owning their accommodation in Spain and in the European Union (seniors living alone or with another senior partner) 2001³²



³² EUROSTAT, INCOME AND LIVING CONDITIONS (2001), EUROSTAT - Database. Population and Social Conditions, Living Conditions and Welfare.

Figure 4: Senior Citizens Living Alone³³

Senior citizens must receive necessary attention, especially when ADLs are difficult to carry out without assistance.³⁴ Many seniors over eighty-five years old cannot manage the ADLs by themselves. Consequently, one of the main tasks that any government needs to address pertains to the lack of autonomy that seniors have, whether they are living alone or with a partner.

Sociologists term the “age of the aged ones”³⁵ as those people over eighty-five years old. In Spain, elderly people who live alone and own their residence are fewer (76%) than those who live with their spouse (83%). These statistics are comparable to those from the United States.³⁶

³³ EUROSTAT, NATIONAL LEVEL CENSUS 2001 ROUND (2001), EUROSTAT - Database, Population and social conditions.

³⁴ See generally GEORGE E. VAILLANT, AGING WELL: SURPRISING GUIDEPOST TO A HAPPIER LIFE FROM THE LANDMARK HARVARD STUDY OF ADULT DEVELOPMENT (Little Brown 2000); STEVEN M. ALBERT, PUBLIC HEALTH AND AGING AND INTRODUCTION TO MAXIMIZING FUNCTION AND WELL-BEING (Springer Publ'g Co. 2004).

³⁵ Vera P. Sanchez, *Tercera y Cuarta Edad en España desde la perspectiva de los hogares*, 73 REVISTA ESPAÑOLA DE INVESTIGACIONES SOCIOLOGICAS [R.E.I.S.] (61) (1996).

³⁶ WILLIAM C. APGAR & ZHU XIAO DI, HOUSING WEALTH AND RETIREMENT SAVINGS: ENHANCING FINANCIAL SECURITY FOR OLDER AMERICANS (Joint Ctr. for Hous. Stud., Harv. U., Working Paper No. W05-8, 2005), available at <http://www.jchs.harvard.edu/publications/finance/w05-8.pdf>.

High rates of home ownership are the exception in Europe. Spain is the European country with the highest level of home ownership. For a majority of citizens, a house is the major asset in retirement. Due to Spain's home ownership rate, the problem for seniors is generally not one of having inadequate access to affordable homes, but rather the difficulty in keeping their existing homes.

Table 1: Rate of Ownership/Rate of Renters for Spanish Seniors before going to a Residence or Home, 2004³⁷

	Rent	Ownership	Usufruct	N.A.	# of persons surveyed
Both Genders					
Total	22.2	74.1	2.7	1.0	583
Under 85 years old	22.2	75.6	2.1	0.0	300
85 Years and over	21.7	73.0	3.3	2.0	278
Men					
Total	19.4	79.1	1.6	0.0	174
Under 85 years old	23.2	74.4	2.4	0.0	115
85 years and over	13.0	87.0	0.0	0.0	58
Women					
Total	23.2	72.3	3.1	1.4	409
Under 85 years old	21.7	76.3	2.0	0.0	185
85 years and over	23.7	69.7	4.0	2.5	220

Table 2: United States - Percentage of Households Owning their Accommodation, 1995-2006³⁸

	1995	1996	1997	1998	1999	2001	2000	2002	2003	2004	2005	2006
All Households	64.7	65.4	65.7	66.3	66.8	67.8	67.4	67.9	68.3	69.0	68.9	68.8
Age												
Under 35	38.6	39.1	38.7	39.3	39.7	41.2	40.8	41.3	42.2	43.1	43.0	42.6
35-44	65.2	65.5	66.1	66.9	67.2	68.2	67.9	68.6	68.3	69.2	69.3	68.9
45-54	75.2	75.6	75.8	75.7	76.0	76.7	76.5	76.3	76.6	77.2	76.6	76.2
55-64	79.5	80.0	80.1	80.9	81.0	81.3	80.3	81.1	81.4	81.7	81.2	80.9

³⁷ Lourdes Pérez Ortiz, *Mayores en Residencias*, in LAS PERSONAS MAYORES EN ESPAÑA: INFORME 2004 833 (2004).

³⁸ JOINT CTR. FOR HOUS. STUD. HARV. U., THE STATE OF THE NATION'S HOUSING 2007 36 (Marcia Fernald ed., 2007).

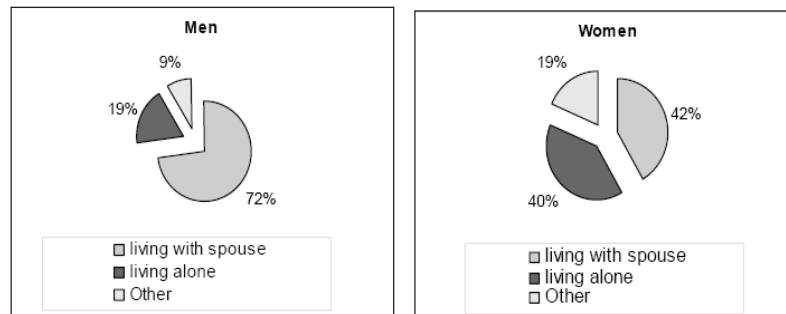
65-74	80.9	81.9	82.0	82.1	82.9	82.5	82.8	82.7	82.3	83.3	82.8	82.7
75 or Over	74.6	75.3	75.8	76.2	77.1	78.1	77.7	78.4	78.7	78.8	78.4	79.1

Table 3: Homeownership Rates by Age, Race/Ethnicity and Region: 1994-2007³⁹

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
All Households	64.0	64.7	65.4	65.7	66.3	66.6	67.4	67.8	67.9	68.3	69.0	68.9	68.8	68.1
Age														
Under 35	37.3	38.6	39.1	38.7	39.3	39.7	40.8	41.2	41.3	42.2	43.1	43.0	42.6	41.7
35 to 44	64.5	65.2	65.5	66.1	66.9	67.2	67.9	68.2	68.6	68.3	69.2	69.3	69.9	67.8
45 to 54	75.2	75.2	75.6	75.8	75.7	76.0	76.5	76.7	76.3	76.6	77.2	76.6	76.2	75.4
55 to 64	79.3	79.5	80.0	80.1	80.9	81.0	80.3	81.3	81.1	81.4	81.7	81.2	80.9	80.6
65 to 74	80.4	80.9	81.9	82.0	82.1	82.9	82.8	82.5	82.7	82.3	83.3	82.8	82.7	82.0
75 and Over	73.5	74.6	75.3	75.8	76.2	77.1	77.7	78.1	78.4	78.7	78.8	78.4	78.1	78.7
Race/Ethnicity														
White	70.0	70.9	71.7	72.0	72.6	73.2	73.8	74.3	74.7	75.4	76.0	75.8	75.8	75.2
Hispanic	41.2	42.1	42.8	43.3	44.7	45.5	46.3	47.3	47.0	46.7	48.1	49.5	49.7	49.7
Black	42.5	42.9	44.5	45.4	46.1	46.7	47.6	48.4	48.2	48.8	49.7	48.8	48.4	47.8
Asian/Other	50.8	51.5	51.5	53.3	53.7	54.1	53.9	54.7	55.0	56.9	59.7	60.3	60.8	60.1
All Minority	43.2	43.7	44.9	45.8	46.8	47.4	48.1	49.0	48.9	49.5	51.0	51.3	51.3	50.9
Region														
Northeast	61.5	62.0	62.2	62.4	62.6	63.1	63.4	63.7	64.3	64.4	65.0	65.2	65.2	65.0
Midwest	67.7	69.2	70.6	70.5	71.1	71.7	72.6	73.1	73.1	73.2	73.8	73.1	72.7	71.9
South	65.6	66.7	67.5	68.0	68.6	69.1	69.6	69.8	69.7	70.1	70.9	70.8	70.5	70.1
West	59.4	59.2	59.2	59.6	60.5	60.9	61.7	62.6	62.5	63.4	64.2	64.4	64.7	63.5
Notes: White, black and Asian/other are non-Hispanic. Hispanic householders may be of any race. After 2002, Asian/other also includes householders of more than one race. Caution should be used in interpreting changes before and after 2002 because of rebenchmarking														

³⁹ JOINT CTR. FOR HOUS. STUD. HARV. U., THE STATE OF THE NATION'S HOUSING 2008 38 (Marcia Fernald ed., 2008).

Figure 5: Living Arrangements for Persons over 65 Years Old in the United States⁴⁰



(Based on data from U.S. Bureau of the Census including the 2004 Current Population Survey and the 2003 American Community Survey. See: March 2004 Current Population Survey Internet releases, Detailed Tables, and "The 65 Years and Over Population: 2000, Census 2000 Brief, October, 2001" as well as other Census 2000 data and unpublished data from the Centers for Medicare and Medicaid Services.)

2. A Historical Explanation for the Home Ownership Rates in Spain and its Similarities With the Home Ownership Rates in the United States.

Since 1938, Spanish housing legislation has promoted home ownership instead of renting.⁴¹ This is linked to Francisco Franco's political regime, which entrenched the Spanish preference toward the comfort of being a homeowner.

Leasing legislation in Spain was first enacted on July 24, 1889 by the Spanish Civil Code.⁴² The rule is still valid if no regulations are stipulated in the modern rent law. The first important modern rent law was enacted during Franco's time, in 1964, and was called the *Ley de Arrendamientos Urbanos* ("LAU").⁴³ It was

⁴⁰ U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY (2004); U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, THE 65 YEARS AND OVER POPULATION: 2000 (2001); ADMINISTRATION ON AGING, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, A PROFILE OF OLDER AMERICANS: 2005 (2005).

⁴¹ See María Luisa Gómez Jiménez, Administrative Intervention in Housing Policy in Spain, 1938-2005 (2006).

⁴² MINISTER OF PRESIDENCY, TAXES AND REAL ESTATE LAW IN SPAIN, 123-125 (Interconsult S. A 2005).

⁴³ LEY DE ARRENDAMIENTOS URBANOS (B.O.E. 1964, 311) (Spain).

characterized by an exaggerated breadth of social protection. Paradoxically, Franco's radical right-wing State produced extreme, left-wing legislation in matters concerning rent control.⁴⁴ Under Franco's regime, a tenant who moved into commercial premises did not have to worry about a rent increase or termination of the contract thereafter.⁴⁵

When Spain was preparing to join the European Union, the government enacted Royal Decree 2/85, also known as *Decreto Boyer*. This Royal Decree came into being on April 30, 1985, bringing about a revolutionary liberalization of the rent law.⁴⁶ However, the *Decreto Boyer* did not apply retroactively; it was not valid for leases that had been signed before the new law came into effect. Furthermore, it did nothing to relieve the huge number of lease subrogations. Through these legal subrogations, a tenancy was practically inheritable. In 1994, a decisive rent act was passed, which went into effect on January 1, 1995.⁴⁷ This new LAU created incentives for voluntary agreements favoring the tenant.⁴⁸

For example, the new LAU introduced an automatic extension of a lease for a five-year period.⁴⁹ The lengthened rental period resulted in the rental market suffering a slow-down. This, in turn, negatively impacted the rental market. Moreover, the Act did not specifically address seniors. There was no special provision for this group, despite the fact that a large number of seniors resided as tenants in run-down buildings under the 1964 Rental Act.⁵⁰ Therefore, with low rents that were insufficient to cover operating costs, such as necessary repairs to facilities, like elevators or ramps, seniors fell victim to strong mobbing from owners attempting to apply market rates and make a profit.

Subsidized housing in Spain has been targeted at homeowners more than at tenants, which has contributed to the high level of home ownership in Spain. In addition, housing represents more than three-fourths of the personal wealth of homeowners in

⁴⁴ *Id.* § 57.

⁴⁵ *Id.* § 57, 63.

⁴⁶ REAL DECRETO LEY 2/85 § 9 (B.O.E. 1985, 164) (Spain).

⁴⁷ LEY 29/94 DE ARRENDAMIENTOS URBANOS (B.O.E. 1994, 282) (Spain).

⁴⁸ *Id.* § 9.

⁴⁹ *Id.* § 10.

⁵⁰ L.A.U. (B.O.E. 1964, 311) (Spain).

Spain, but only 47% of the personal wealth of homeowners in the United States.⁵¹

In the United States, of the 21.6 million senior citizen households in 2003, 80% were owners and 20% were tenants.⁵² The median family income of senior homeowners was \$25,353.⁵³ The median family income of senior tenants was \$13,540.⁵⁴ In 2003, 42% of seniors spent more than a quarter of their income on housing costs – 35% for owners and 76% for renters – as compared to 41% of all residents.⁵⁵ For homes occupied by older residents in 2003, the average year of construction was 1965, whereas the average year of construction for all U.S. residents was 1971. Of these buildings occupied by seniors, 5.2% had structural problems.⁵⁶ In 2003, the median value of homes owned by older persons was \$122,790 (with a median purchase price of \$32,905) compared to a median home value of \$140,201 for all homeowners.⁵⁷ About 72% of older homeowners in 2003 owned their homes free and clear.⁵⁸ The State of the Nation's Housing 2007 Report showed no real increase in the rate of home ownership for people over age sixty-five, with the rate moving from 82.8% in 2005 to 82.7% in 2006.⁵⁹

In America, the rate of home ownership ranges from 40.8% in Washington D.C. to 75.2% in West Virginia, with an average rate of home ownership across the country of 66.2%.⁶⁰ But when focusing on senior citizen housing, the trend is even stronger; the home ownership rate for individuals between the age of sixty-two and seventy-four is 81.2% and for individuals between the ages of seventy-five and eighty-four, it is 76.9%.⁶¹

Nevertheless, there are some important differences between the situations in these two countries, even if the data seems to be

⁵¹ BANCO DE ESPAÑA, ANNUAL REPORT 30 (2003).

⁵² U.S. Census Bureau, *American Housing Survey for the United States: 2003*, CURRENT HOUSING REPORTS, SERIES H150/03 (2004).

⁵³ ADMINISTRATION ON AGING, *supra* note 40, at 11.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ U.S. Census Bureau, *supra* note 52.

⁵⁹ JOINT CTR. FOR HOUS. STUD. HARV. U., *supra* note 38, at 36.

⁶⁰ DataPlace by KnowledgePlex, *Rank of Each State Within the USA by Total Population in 2000*, DATAPLACE BETA, <http://www.dataplace.org/rankings/> (last visited Feb. 16, 2009).

⁶¹ Lawler, *supra* note 15, at 4.

quite similar. The first arises when we consider the level of indebtedness for seniors. William C. Apgar and Zhu Xiao Di pointed out in a study that “[w]hile acquiring a home can boost wealth accumulation, many retired people face unmanageable housing payment burdens. Many own their home ‘free and clear,’ but a growing number are burdened by the increasing amount of debt they carry into later life.”⁶² Until recently, the idea of carrying debt into retirement was rare in Spain. However, it seems likely to become a more common phenomenon in Spain if the level of debt continues to increase.

On the other hand, the increase in the number of second homes should continue to increase as baby boomers mature. In 2006, the American State of the Nation Housing Report declared: “The movement of the baby boomers into their 50s and 60s—the ages when households are the most likely to own additional homes—helps to ensure healthy growth in second-home ownership between now and 2015.”⁶³

While the number of American seniors with a mortgage on their house is high,⁶⁴ the number of Spanish senior citizens with a mortgage is just 5.4%.⁶⁵ In Spain, the number of senior citizens who own homes without a mortgage is high; the home is their main asset. Because of this, new options have entered the mortgage market, such as the reverse mortgage.

Other important data to consider in evaluating the housing stock for seniors is the age of the home. According to the Spanish 2001 Census, one-tenth of senior citizens (11.8% of the population) live in a building built before 1961.⁶⁶ Therefore, regardless of the form of possession, elderly people generally reside in large, old homes that have structural and operating defects. Looking at the American situation, similarities are present. For homes occupied by senior residents in 2003, the median year of construction was six

⁶² APGAR & ZHU, *supra* note 36, at 2.

⁶³ JOINT CTR. FOR HOUS. STUD. HARV. U., THE STATE OF THE NATION’S HOUSING 2006 16 (Marcia Fernald ed., 2006).

⁶⁴ OBSERVATORIO DE PERSONAS MAYORES, LAS PERSONAS MAYORES EN ESPAÑA: INFORME 2004 (2004).

⁶⁵ *Id.*

⁶⁶ INSTITUTO NACIONAL DE ESTADISTICA, CENSOS DE POBLACION Y VIVIENDAS 2001 (2001).

years older than the median for all residents and 5.2% of those had structural problems.⁶⁷

This data has two implications. First, the types of housing where senior citizens usually "age in place" require important maintenance measures that cost more money than is available. Second, because elder housing often has a favorable location, investors are attracted to the property. Generally located downtown and close to financial centers, these homes become speculative opportunities for those investors who want to redevelop the land. Therefore, one must take into account land use policies and the importance of sound land use regulations.⁶⁸

C. The Interrelationship Between Housing and Urban Development: The Location of Adequate Retirement Projects for Senior Citizens

Providing housing is one of the most important tasks of any government. Providing housing is considered a social task because housing is a product, a process,⁶⁹ and an object of consumption.⁷⁰ The trichotomy this article has identified must incorporate another important element - the interrelationship between housing and urban planning. The differences between the European and the American legal systems are very clear. To understand the differences, the role of cities and localities should be considered.⁷¹

In this context, it is very important to determine the level of authority that cities and towns hold in the Spanish and American systems. Particularly, there is a lack of coordination in both countries between urban development decisions, environmental policies, and housing policies. Currently, governmental agencies are working to take into account the urban design of cities, but there is no effective and formal interrelationship between the authorities or agencies responsible for developing land policy. This means that the

⁶⁷ ADMINISTRATION ON AGING, *supra* note 40.

⁶⁸ C.E. art. 47.

⁶⁹ DANIEL R. MANDELKER & R. MONTGOMERY, HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES (The Bobbs-Merrill Company, Inc. 1980).

⁷⁰ Martín Bassols Coma, *La Vivienda como Producto Finalista de las Ordenaciones Territorial y Urbanística*, 80 CIUDAD Y TERRITORIO 21, 1 (1989).

⁷¹ Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1062 (1980).

parties seeking solutions must do so in an informal manner.⁷² The existence of many plans in Spain has not helped to improve the coordination between land policy and housing policy.⁷³

Embarking on a specific retirement project for senior citizens involves developing suitable services for them. This goal can be achieved through urban planning policies that provide for better connected and more “walkable” cities and that set higher standards for services to fulfill the needs of the increasing senior citizen population.

Urban planning can be constrained due to the cost of bureaucracy. However, the existence of urban plans can help Spain understand the future design of a city and thus provide more confidence for future investments. In contrast, the lack of land planning gives a city tremendous flexibility. Projects help to create a concrete idea of what is needed for an area, while at the same time contributing to an increasing level of participation by the population. Thus, one can get a more defined image of a city through the knowledge of plans approved for that city. However, in the United States, the land policy is developed by each state, and cities follow these policies while managing their own resources and approving their own zoning. Meanwhile, housing agencies at the local level are in charge of managing their stock of public housing, and the U.S. Department of Housing and Urban Development (“HUD”) has the power to fund the specific programs throughout the United States.⁷⁴

This power dispersal makes the integration of land planning in housing policy more complicated, and allows it to remain isolated, but with a powerful effect on the development of new facilities for seniors. The focus must not only be on the different jurisdictions of housing for senior citizens in both countries, but also the economic capacity of senior citizens.

⁷² JOSÉ GONZALEZ-BERENGUER URRUTIA, *GESTIÓN, FINANCIACIÓN Y CONTROL DEL URBANISMO* 24 (Madrid: Instituto de Estudios de la Administración Local, eds., 1979).

⁷³ MARIA LUISA GOMEZ JIMENEZ, *LA INTERVENCION ADMINISTRATIVE EN LA VIVIENDA EN ESPAÑA 1938-2005* (Montecorvo eds., 2006).

⁷⁴ A. F. SCHWARTZ, *HOUSING POLICY IN THE UNITED STATES* 125 (2010).

Conclusion

Thus, even though a right to adequate housing exists under international law,⁷⁵ the realization of that right through domestic housing policies in countries like Spain and the United States falls short, despite efforts to improve affordability, among other measures. For example, in the case of senior citizens in Spain, the allocation of scarce public units to senior citizens is not a priority because there is no senior citizen-specific public housing policy.

In Spain, a challenge in recent housing policy concerned the promotion of public rental housing.⁷⁶ As Balchin pointed out:

One of the other features differentiating Spain from other European countries has been the almost total absence of public-rented accommodation. Historically, public-rented accommodation has been promoted, with public help, by private initiative and after a certain period, usually 25 years, it [would take] on the status of privately-leased housing. Investment in private-rented accommodation and the promotion of public-rented accommodation progressively disappeared, given its scant appeal to owners. A survey on rented accommodation carried out in the late 1980s (Ministerio de Obras Públicas, 1989) showed that public-rented accommodation in public property accounted for only 1 percent of main residences.⁷⁷

The challenge will be to reverse the Spanish national trend towards home ownership to rental housing instead. This implies that Spanish public housing targeted to seniors should be mainly rental

⁷⁵ Bret Thiele, *The Human Right to Adequate Housing: A Tool for Promoting and Protecting Individual and Community Health*, 92 AM J PUB. HEALTH 712 (May 2002).

⁷⁶ Spanish Housing Project 2005-2008 Preamble (R.C.L. 2006, 1616) (Spain).

⁷⁷ BARALIDES ALBERDÍ & GUSTAVO LEVENFELD, HOUSING POLICY IN EUROPE 170, 173 (Paul Balchin ed., 1996).

housing. However, in Spain, the rental market is not as aggressive as the rental market has proven to be the United States.⁷⁸

Furthermore, the increasing number of seniors carrying a mortgage worsens the situation. The recent global financial crisis will face another chapter once young people who borrowed during the housing bubble begin to age and must make mortgage payments with decreasing economic resources.

Furthermore, financial products like the reverse mortgage will become more attractive and will hinder the reallocation of seniors in new publicly subsidized retirement projects or facilities, no matter how well connected seniors might be to their previous homes or neighborhoods. To enter these facilities, seniors will need to sell their homes to obtain the payments needed to become the recipients of services (social services plus healthcare) connected with housing.

As the situation worsens, the Spanish housing sector could learn lessons from the United States regarding the promotion of public rental housing for seniors and the allocation of resources for promoting aging in place, although the United States still needs an effective coordination of health care provision and social services.

As the 2011 State of the Nation Housing Report reminds us: “The baby boomers have dominated housing market trends at each stage of their lives.”⁷⁹ This certainly identifies a primary challenge that both countries will face in the coming years. Are our policymakers ready for them?

⁷⁸ WILLIAM AGPAR, RETHINKING RENTAL HOUSING: EXPANDING THE ABILITY OF RENTAL HOUSING TO SERVE AS A PATHWAY TO ECONOMIC AND SOCIAL OPPORTUNITY 2 (J. Ctr. for Hous. Stud., Harv. U., Working Paper No. W04-11, 2004), *available at* <http://www.jchs.harvard.edu/publications/markets/w04-11.pdf>.

⁷⁹ JOINT CTR. FOR HOUS. STUD. HARV. U., THE STATE OF THE NATION’S HOUSING 2011 13 (Marcia Fernald ed., 2007).

