

when guardians fail to guard

the role of the church in adult guardianship

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Introduction

Imagine, for a moment that tomorrow, every individual who is a member of the PC(USA) received a knock on their door and were told that their rights had been given to another individual who they do not even know on orders of a judge they had never met. Each member is given one ultimatum – be arrested or follow the person at the door to an institutional setting. Later, each of the member’s assets will be sold in order to support their care.

If this happened to the roughly 1.5 million members of the PC(USA), it would and outrage with calls for justice. Yet this is the story of approximately 1.3 million individuals who are currently under the care of a court-appointed guardian who have become “legal ghosts,” losing their rights – and their voice – because of varying decisions made without their full knowledge.¹ These better than a million people have had their assets taken, been forced from their homes, and thrown into a storm of chaos, not knowing where they will rest their head or see their family. The last time that any article from any religious journal took up the task of adult guardianship at all was in 1986, with no recent articles by any kind of trade publication.² In fact, it took a large *New Yorker* article published on October 9, 2017 in order to raise the specter of guardianship into public consciousness.

This paper will take on the issue of adult guardianship with particular attention to elder guardianship issues, providing background and fundamentally arguing that guardianship functions as it has is because of dominant narratives that diminish the value of the elderly and the incapacitated. The paper will then outline possible responses the church can take in order to

¹ “Who’s Guarding Against The Guardians?”

² AW Keyser’s Article “Legal Guardianship for the Elderly: A Volunteer Model” in *Journal of Religion and Aging*, Summer 1986.

assist elders both practically in changing the narratives about the elderly and incapacitated, as well as practical solutions in guardianship.

Background: What is Guardianship and How Does It Occur

The concept of guardianship is not new, stretching back from English statute in at least the 14th Century as the concept of *parens patriae*. The statute was brought over from England to the United States, as a responsibility delegated to the states with no federal oversight. Efforts have been made to provide uniformed guidance to states, and in 1982 the Uniform Law Commission released the Uniform Guardianship and Protective Proceedings Act. Most recently updated in 2007, as of the end of 2017, only five states had not implemented the updated Act.³ The law's primary purpose is to provide the process and standing for civil authorities in circumstances where an individual is no longer able to care for themselves to step in and provide care. As a result, a court may appoint a guardian as a surrogate to make decisions to protect the individual.

The legal process that requires someone to have a guardian is based on determining their capacity. A legal term, the American Bar Association and American Psychological Association recommend an assessment that explores six categories to determine an individual's capacity. The first is identifying a medical condition that produces a function disability – “being very old” is an insufficient diagnosis for determining capacity. The second is a cognitive functioning component. An individual who is incapacitated in cognitive functioning “is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with

³ Florida, Kansas, Michigan, Texas, Wisconsin

the appropriate technological assistance.”⁴ Third is evaluating everyday functioning. This has been vaguer in the past, but now includes consideration of “activities of daily living” or ADLs⁵ and “instrumental activities of daily living,” or IADLs⁶. Fourth includes determining patterns, values, and choices. Is there a long-term history of consistency in someone’s decision making, as that would demonstrate capacity on the part of an individual? Fifth, most statutes “require that the guardianship is necessary to provide for the essential needs of the individual, or that imposition of a guardianship is the least restrictive alternative for addressing the proven substantial risk of harm.”⁷ The risk to the individual should match the level of supervision. Finally, the judge should consider means to enhance capacity, as “the mere existence of a physical disability should not be a ground for guardianship, since most physical disabilities can be accommodated with appropriate medical, functional, and technological assistance directed by the individual.”⁸

While particular procedural steps may vary from state to state, ultimately, a court may decide if an individual is incapacitated and will subsequently require a guardian, who may be a family member, friend, or a separate an individual from a for-profit or non-profit agency. In doing so, the court “removes fundamental rights, transferring the individual’s voice and decision-making role to a substitute... [and] may affect a person’s right to make decisions about income or assets, health care and treatment, marriage, voting, sexual choices, participation in social

⁴ American Bar Association Commission of Law and Aging, American Psychological Association, and National College of Probate Judges, “Judicial Determination of Capacity of Older Adults In Guardianship Proceedings: A Handbook for Judges,” 4.

⁵ Grooming, toileting, eating, transferring, dressing.

⁶ Shopping, cooking, managing medications, using the phone and looking up numbers, doing housework and laundry, driving or using public transportation, and managing finances.

⁷ American Bar Association Commission of Law and Aging, American Psychological Association, and National College of Probate Judges, “Judicial Determination of Capacity of Older Adults In Guardianship Proceedings: A Handbook for Judges,” 5.

⁸ Ibid, 5.

networks, and routine lifestyle choices – and has been said to ‘unperson’ individuals.”⁹ This was the case for the Norths, the family highlighted in the *New Yorker* article, who received April Parks as their guardian after she had solicited documentation to prove neither individual could care for themselves. As a result of the guardianship, the Norths lost all of their assets in order to pay for care and consultation (including from Parks herself) and had no ability to determine where they could live.¹⁰ Once someone has received a guardian, it is very rare that guardianship is rescinded. When it is, it is even more rare to happen to the elderly – only 20% are over the age of 60 considered for rescinded guardianship.¹¹

The system itself has come under varying levels of scrutiny, often at a local or state level. The first major national report about the guardianship system was in 1987, when the Associated Press launched a six-part series outline which led to congressional hearings and some reforms throughout the country. However, many of the issues that were exposed by the 1987 report were again exposed in Government Accountability Reports in 2010 and 2016, as well as reporting by the *New Yorker* piece in 2017, indicating little progress. A significant part of the issue is that there is simply no good data collection. As Pamela Teaster, a gerontology researcher remarked, “It is unconscionable that we don’t have any data, when you think about the vast power given to a guardian. It is one of society’s most drastic interventions.”¹²

Narratives and Guardianship: Cheap Objects in Industry

The lack of data coupled with the level of intervention and its abuse may speak as much to the underlying assumptions and narratives at play in how the elderly and more generally

⁹ Wood, Teaster, and Cassidy, “Restoration of Rights in Adult Guardianship: Research and Recommendations,” 19.

¹⁰ Aviv, “How the Elderly Lose Their Rights.”

¹¹ Wood, Teaster, and Cassidy, “Restoration of Rights in Adult Guardianship: Research and Recommendations,” 27.

¹² Aviv, “How the Elderly Lose Their Rights,” 5.

“incapacitated” are viewed within dominant culture in America. In general, American culture believes the elderly “are bored, closed-minded, dependent, isolated, lonely, narrow-minded, neglected, old-fashioned, passive, poor, sedentary, sexually inactive, sick, unalert, unproductive, morbidly afraid of death, in constant fear of crime, living the worst years of their life – and spending a good deal their time sleeping, sitting and doing nothing, or nostalgically dwelling upon their past.”¹³ In fact, even elderly individuals themselves, when asked, believed the same stereotypes of aging individuals, even if they did not think it applied to them in particular.¹⁴

Jared Diamond argues that there are three sets of values that contribute to the elderly’s lower status in society. The first is an ingrained Weberian work ethic, tightly bound to identity and status. If one is not working, they’re not seeking the same social status.¹⁵ Secondly is its individualistic nature. Americans “sense of self-worth is measured by his/her own achievements, not by the collected achievements of the extended family to which he/she belongs. We are taught to be independent and to rely on ourselves... in fact, for Americans a dependent personality is a clinical diagnosis... requiring treatment, whose goal is to help the regrettably dependent individual achieve the American virtue of independence.”¹⁶ To have to care for someone who was at one point independent and now is no longer feels more like a failure on the part of the individual and not as matter of caring for an ailing loved one. Finally, Diamond argues, Americans have a cult of youth. While Diamond wonders tongue-in-cheek why clothing and soft drinks advertisements do not have pictures of elderly individuals who, unsurprisingly,

¹³ Diamond, *The World until Yesterday*, 226.

¹⁴ Levy et al., “Association Between Positive Age Stereotypes and Recovery From Disability in Older Persons.”

¹⁵ This in particular has overtones of Cowgill and Holmes’ Modernization Theory, which has been refined by other work since the 1970s, and still has some salience when considering the societal role of the elderly. While Cowgill and Holmes’ presumption that modernization would lead to a linear reduction in social status for the elderly has been refuted, there does still seem to be a reduction in status, but with a leveling off and rebound as a society continues to modernize.

¹⁶ Diamond, *The World until Yesterday*, 224.

purchase both clothing and soft-drinks, but recognizes that “they are merely one expression of American ageism: our cult of youth, and our negative view of aging... it is indeed serious that older job applications are routinely passed over for job interviews, and that older patients receive lower priority for limited resources of medical care.”¹⁷

The result is a group of individuals who have slipping social status and worth, and who begin to lose the social resources and professional and informal networks to care for themselves and must overcome difficult cultural norms in order to even request help, for fear of being labeled too dependent on someone else. This is reinforced by the concerns over the so-called “Sandwich Generation,” the members of which are often in their 30s and 40s and have children and parents who are dependent on them: the Wikipedia article on the subject spends concerning itself with the “financial status... personal time, health, and career development” of the caregiver, with far less thought about the issues that may beset the careseekers – children and elderly alike.¹⁸ As a result, the elderly continue to not seek or receive the care they need, and potentially find themselves in more dire circumstances than they may have otherwise, hastening physical and mental health declines, until the individual may require a guardian.

By the time a guardian is required for the elderly, they are even more overtly transgressing the American values of work, independence, and youth, diminishing their value and agency to almost nil. This was clear in the recounting of the initial move of the Norths as they were just grappling with their guardianship: “Rennie [the wife] was in a wheelchair beside the bed, and Rudy [the husband] was curled up on a love seat in the fetal position... ‘they were overwhelmed and humiliated, and they didn’t know what was going on.’ Belshe [the daughter]

¹⁷ Diamond, 225.

¹⁸ “Sandwich Generation.”

was struck by their passive acceptance. ‘It was like they had Stockholm syndrome or something.’”¹⁹ This kind of passivity and court-ordered silencing makes it far too easy within the dominant narrative of American society to consider the elderly with guardians not only of limited value, but also as owned objects. As a result, the guardian may choose to maximize the return on their object in order to enhance the value. This seems to be what April Parks did, as she had become an “industry” for guardianship.²⁰ Or, in a similar circumstance, what Columbus, Ohio lawyer Paul Kormanik did as he would charge \$1,600 in fees to clean a house, but then hire family in order to perform the cleaning.²¹ Kormanik, who had nearly 400 individuals under his care during his time as a guardian, would often relocate people into Nursing Facilities, and if they expressed a desire to transition back into community would deny the request, even if they were capable of doing so with appropriate supports.²² By keeping the wards “stable”, and unmoved, this ensures that a steady flow of income comes from the ward, even at the expense of their potential flourishing. It is also not surprising to consider that drugs like Risperdal, Depakote, Valium, Prozac, Temamzepam, Oxycodoe and Fentanyl are prescribed so readily to individual with guardians, as it ensures further stability, minimizing business risk while allowing the guardian to argue that the “ward seemed very tired and his eyes were glassy” as April Parks said of Rudy North.²³ This begs the question, as disturbing as it may be: are the wards worth more societally without their rights and only generating income for a guardian or as the person before they were placed into guardianship? Or, as Rachel Aviv puts it, “under the guise of

¹⁹ Aviv, “How the Elderly Lose Their Rights,” 5.

²⁰ Aviv, 9.

²¹ “Investigations Launched into Billing by Lawyers Appointed as Guardians.”

²² Anecdotally, I personally had to deal with Kormanik and another attorney guardian, John Mashburn, as part of requests from individuals who desired to return to community through the Money Follows the Person Demonstration Grant and cannot think of one time that I was able to successfully transition someone out of a Nursing Home into community if Kormanik or Mashburn were listed as guardians.

²³ Aviv, “How the Elderly Lose Their Rights,” 11.

benevolent paternalism, guardians seemed to be creating a kind of capitalist dystopia: people's quality of life was being destroyed in order to maximize their capital."²⁴

The failures of guardianship system are systematic because they do not address – and in fact emphasize – the devaluing of a human life that has aged and has reached a level of dependence. While it may feel like the final solution when guardians like Parks and Kormanik are indicted on felony charges related to their maximization, it ultimately does little if they are not spotlight cases of an underlying deficiency in the way Americans view individuals who have transgressed and failed the dominant narrative. Otherwise, the cycle will continue unabated as individuals will no doubt find way to maximize their profits even after laws have been changed to address the latest crimes and find new objects for industry.

The Role of the Church in Shaping Narrative: Care for Stories and Systems

If there is one institution that can stand against the dominant narrative, it should be the church. Yet the church itself is not immune from a cult of youth – it is very rare to hear how a church is reorienting their programming in order to attract more 70-year olds into Sunday Worship, and the PC(USA)'s *1001 Worshipping Communities* project is not replete with a myriad of new congregations filled with the elderly. So first, sadly, the church must recognize its own complicity in the devaluing of the elderly and those who have become incapacitated by preferring other dominant narratives.

If the church can do that, it may be able to see how the treatment of elders in general, but elders who are wards in particular carry strong parallels to “cut-dead” African American boys as discussed in Gregory Ellison's *Cut Dead but Still Alive*. Ellison defines cut dead as “a nineteenth-

²⁴ Aviv, 11.

century idiom meaning to be ignore deliberately or snubbed completely.”²⁵ This kind of dismissal carries with it significant consequence to how an individual is excluded from public discourse, but also silences internal discourse – no one hears the true voice of the invisible, even the one being made invisible. This type of invisibility forecloses access to four central needs: of belonging, of self-esteem, of control, and of meaningful existence. As individuals continue to be cut dead the affects follow them like a dark cloud (a “shadow of death” as Ellison puts it) in every possible setting the individual finds themselves.²⁶ This kind of dark cloud has been empirically proven to follow the elderly, as “older persons with positive age stereotypes were 44% more likely to fully recover from a severe disability than those with negative age stereotypes.”²⁷

Ellison’s exhortation is to *care with marginalized populations*, requiring that the caregiver acknowledge that they are on the outside looking in, request and earn the trust of the careseeker, and place the voiceless in the center in order to be seen, heard, and cared for at the center of the community. And so, the church must hear the elder’s story. The church must hear the story of one who has been deemed incapacitated and place it in the center of the church’s life just as the story of each member is center of the church’s life, interwoven with the Trinity as it operates in the world, in order to console and grieve death, to wonder about what is next in the in-between and to celebrate resurrection as new life may form. This is similar to Ganzevoort’s recommendation of “heremenutical” story modeling for the elderly, as “central... is the offer of notions, language, images and stories that may evoke a change in meaning... neither the personal nor the traditional story determines the outcome... the person is taken seriously as a unique

²⁵ Ellison, *Cut Dead but Still Alive*, 1.

²⁶ Ellison, 6.

²⁷ Levy et al., “Association Between Positive Age Stereotypes and Recovery From Disability in Older Persons.”

narrator with the right and capacity to find new meanings in old stories and with an audience that accepts, invites, and challenges.”²⁸

As the church becomes the repository of stories of the cut-dead, it can begin to tell those stories to those who live within the center of dominant – the young and capable. The stories of the members of the congregation are not just referenced to the young and capable, but also the old and incapable, with their value is not diminished because it is indexed to the same Trinity that dances with the young and the old. It is in that way that the narrative can slowly begin to change shape. Value is not equivalent with capacity, nor with maximization of property. Value is in belovedness.

The Role of the Church in Practical Application: Care for the Self

The reality is that some individuals, in order to live in the least restrictive environment that will lead to the greatest flourishing may require a guardian. However, the church can be an active participant along the way, finding practical ways to assist in delaying the need for guardianship, or when it is necessary ensuring that it is respectful of the ward. Many of the IADLs, for instance, can be wrapped into programming during the week at church. Individuals could be invited to balance checkbooks or pay bills together, learn new ways of caring for themselves, or have seminars on an Advance Directive. Additionally, churches (and pastors in particular) can work to expand the notion of pastoral visits by paying attention to individuals in their environment and building rapport in order to having careful conversation about ADLs. Does a pastor notice that a parishioner is having difficulty moving from her chair and has no assistance? Does another parishioner struggle to remember his children’s names repeatedly? If a

²⁸ Ganzevoort, “Minding the Wisdom of Ages,” 339.

pastor has been paving the way through thoughtful care of systems and stories, it might be less difficult to engage in a conversation about dependence, as the narrative has shifted away from dependence being a negative trait.

Finally, and most directly, members of churches can be trained to take on the responsibility of guardianship in a community. The threshold is relatively low to become a guardian, often requiring some simple background checks and training. A church could decide to make guardianship a primary ministry, especially if the community has had a history of subpar guardians. This would require a significant undertaking by individuals as well as needed support by the church itself, but the opportunity to reshape a narrative within the act of guardianship itself may be too valuable not to consider, as it gives the church one more opportunity to be stewards in Creation, acting with God to redeem a broken part of the world into even a small piece of *shalom*.

Works Cited

- American Bar Association Commission of Law and Aging, American Psychological Association, and National College of Probate Judges. "Judicial Determination of Capacity of Older Adults In Guardianship Proceedings: A Handbook for Judges," 2006.
- Aviv, Rachel. "How the Elderly Lose Their Rights." *The New Yorker*, October 2, 2017.
<https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.
- Diamond, Jared M. *The World until Yesterday: What Can We Learn from Traditional Societies?* New York: Viking, 2012.
- Ellison, Gregory C. *Cut Dead but Still Alive: Caring for African American Young Men*. Nashville: Abingdon Press, 2013.
- Ganzevoort, Reinder Ruard. "Minding the Wisdom of Ages: Narrative Approaches in Pastoral Care for the Elderly." *Practical Theology* 3, no. 3 (December 2010): 331–40.
<https://doi.org/10.1558/prth.v3i3.331>.
- "Investigations Launched into Billing by Lawyers Appointed as Guardians." The Columbus Dispatch. Accessed December 15, 2017.
<http://www.dispatch.com/article/20140518/NEWS/305189871>.
- Levy, Becca R., Martin D. Slade, Terrence E. Murphy, and Thomas M. Gill. "Association Between Positive Age Stereotypes and Recovery From Disability in Older Persons." *JAMA* 308, no. 19 (November 21, 2012): 1972–73.
<https://doi.org/10.1001/jama.2012.14541>.
- "Sandwich Generation." *Wikipedia*, October 4, 2017.
https://en.wikipedia.org/w/index.php?title=Sandwich_generation&oldid=803817701.
- "Who's Guarding Against The Guardians?" Accessed December 14, 2017.
<http://www.wbur.org/onpoint/2017/10/05/state-sanctioned-guardians>.
- Wood, Erica, Pamela Teaster, and Jenica Cassidy. "Restoration of Rights in Adult Guardianship: Research and Recommendations," n.d.