Elder abuse: the latest "crisis"

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In 1979, the House Select Committee on Aging held hearings on abuse of the elderly by their families, which it titled, "The Hidden Problem." Several of the witnesses observed that while child abuse was "discovered" in the 1960s and spouse abuse in the 1970s, elder abuse would be discovered in the 1980s. They turned out to be largely correct. During the early 1980s, while few reliable data on the subject were generated, political and professional attention to elder abuse was substantial, with new legislation enacted in a majority of states.

In 1985, the Aging Committee's Subcommittee on Health and Long-Term Care, chaired by Rep. Claude Pepper, issued a follow-up report titled "A National Disgrace." Elder abuse was described as "a full-scale national problem which existed with a frequency few have dared to imagine possible. In fact, abuse of the elderly by their loved ones and caretakers existed with a frequency and rate only slightly less than child abuse. There was no question that the problem was increasing dramatically from year to year." The subcommittee's report asserted that 4 percent of the elderly—one million older Americans!—are victims of such abuse each year, and found that: "The horrifying conclusion was that elder abuse . . . was everywhere. The obvious question was what could the federal government do to provide safety to seniors in their own homes."
Proposed answers to this question have drawn heavily from the field of child abuse. By the late 1970s, encouraged in large part by financial incentives incorporated in the federal Child Abuse Prevention and Treatment Act of 1974, state laws mandating reporting of child abuse that has come to the attention of professionals or others to state social service authorities became virtually universal. These statutes and increased public sensitivity to the issue brought child abuse cases “out of the closet,” with sharp increases in the volume of child abuse reports and the concomitant investigations. Some professionals, however, have recently begun to note a downside to the decreased threshold for investigation and intervention in this area of family life, with the accompanying propensity to call in the authorities where there is any suspicion of child abuse. In addition to the direct costs of child protective programs and foster care placements resulting from such intervention—now exceeding $3.5 billion per year—some professionals worry that increasing numbers of unfounded reports are overwhelming their capacity to respond to truly abusive situations. Douglas Besharov, former director of the National Center for Child Abuse and Neglect, reported in 1986 that while the number of children reported to the authorities as being abused or neglected increased dramatically since the mid-1970s—to more than 1.5 million in 1984—the proportion of reports found to be substantiated declined over that period from 65 to 35 percent. The level of suspicion has become especially elevated in connection with the possibility of child sexual abuse or incest, with such accusations becoming increasingly frequent weapons in child custody cases, and in a few unfortunate cases crusading prosecutors have found this fertile ground for inquisitions and accusations based on scanty or nonexistent evidence. In Southern California one couple found that an innocent kiss on their baby’s bottom on the beach landed them in the hands of the police on a bystander’s complaint of child sexual abuse.

The application of the child abuse model to elder abuse meant, among other things, reliance on mandatory reporting statutes—laws that require physicians and others to report any suspected case of elder abuse to the state authorities. Based on such reports, the state initiates a rigorous investigation of those allegedly involved in an elder abuse incident. While legislation supported by the Subcommittee on Health and Long-Term Care—which it described in its 1985 report as “identical to the Child Abuse Prevention and Control Act”—has not yet been enacted, the mandatory reporting concept has been widely adopted by states. While prior to 1980, only sixteen
states had statutes with such provisions, by 1987 they had become law in forty-four states, with legislation under active consideration in several of the remaining six. Federal legislation to mandate such requirements is also being advocated, with the U.S. Surgeon General, C. Everett Koop, among its promoters.

This apparent political and professional consensus on ranking elder abuse high in severity and importance among the nation's unmet social needs has apparently been reflected to some extent in public opinion as well. Thus, in a 1981 Harris poll, 79 percent of the public rated elder abuse as "a serious issue" in the country, and 72 percent evaluated it as "a major responsibility" to be assumed by government.

The implication of legislative pronouncements and enactments on elder abuse has been that it is a problem whose scope is well-established and that the remedies are apparent. Both scope and remedies, however, are problematic.

What is elder abuse?

Imprecise definitions plague policy discussions of elder abuse. The term clearly suggests some type of direct physical harm or exploitation, and this is what is visualized in the public concern over the issue. Mandatory reporting and other state laws on elder abuse, however, typically cover a much wider spectrum, as do the statistics commonly cited as demonstrating the extent of the problem. "Elder abuse" is almost always used as a shorthand for "elder abuse and neglect." Typically included under the rubric, and required to be reported, are such conditions as "psychological abuse," "exploitation," and "self-neglect," and these types of cases predominate in the incidence figures reported by most of the available studies. In addition, most available data are based on small samples of questionable representativeness. For example, the above-mentioned estimate that one million elderly are abused in a given year, an incidence rate of 4 percent, has been widely cited, taking on by repetition what Max Singer has called "the vitality of mythical numbers." This estimate, it turns out, is based on a community sample of residents in the Washington, D.C. area. A questionnaire was mailed to 433 elderly residents. Categories of abuse on the questionnaire included physical abuse; psychological abuse (including such subcategories as "fear" and "isolation"); material abuse (including "misuse of money or property"); and medical abuse (including "no medication purchased when prescribed," "no false teeth when needed," and "no hearing aid when needed"). Of the 433 persons sampled, seventy-three people or 16 percent of those questioned responded. Of these
seventy-three, three people, or 4.1 percent, indicated that they had been the victim of one of the specified forms of abuse. Thus, in the projection to one million elderly victims of abuse, each of the three victims identified in the sample represented 333,333 persons. This obviously unreliable 4 percent figure might be described as falling in the class of "factoids"—numbers that appear to be facts but are not. Peter Reuter has commented that such "mythical numbers" are generated by the demand that the government appear to know a great deal more than it actually does, and by the existence of a strong interest on the part of those involved in keeping the number high and none in keeping it correct (or in admitting lack of knowledge).

The suggestion that abuse of the elderly by their children or other family caretakers is increasing with epidemic proportions is particularly striking since fewer and fewer of the elderly are living with family at all and therefore exposed to this risk. Among widows seventy-five years old and over, for example, the majority—60 percent—lived with their children or other family members in 1960, but by 1980 only 33 percent did so. The available evidence suggests that lack of a caretaker is a far more widespread problem than abuse by a caretaker.

Unlike the general population-based study mentioned above, most research on elder abuse has been based on cases referred to social services agencies. While unsuitable for determining the incidence of elder abuse, such samples do provide information on the circumstances typically associated with elder abuse. What they tend to show is that where physical abuse (typically a minority of "abuse and neglect" cases) does occur, the situation is often not a clear-cut aggressor-versus-victim problem. Frequently it involves multiple problems in the household. A mentally ill or retarded adult living with an elderly parent, for example, may have become abusive and increasingly difficult to handle. Such cases, while representing a real social-services need, are not necessarily amenable to an enforcement-oriented approach, and involve complex and difficult social-service problems that lack simple solutions.

The child abuse analogy

The favorite response of state legislatures wishing to "do something" visible about elder abuse in recent years has been the enactment of laws, centered around mandatory reporting, which borrow directly from child abuse statutes. Yet the differences between the two situations are fundamental. A child is assumed to require a guardian with custodial authority, while an adult is assumed to be
competent to make basic life decisions on his or her own. Parents have both the responsibility to care for a child and the authority to make decisions for that child; in investigating the possibility of child abuse or neglect, the state acts as a substitute parent (*parens patriae*), exercising its traditional responsibilities to look after the welfare of legal incompetents and minors.

Mandatory reporting statutes—applying, for example, to physicians treating elderly patients—override the provider's professional confidentiality privilege as well as the patient's right to determine what is done with information they choose to share. Thus, if the statute is taken at face value, when Mrs. Smith complains to her doctor about her son's or husband's abuse or neglect, the physician must then report the matter to the state, triggering an investigation—notwithstanding his professional judgment about the situation or Mrs. Smith's own views about the matter. In law (if not necessarily in practice), sixty-six-year-old Mrs. Smith is thus treated quite differently from forty-six-year-old Mrs. Jones who is the victim of abuse by her spouse. The implication is that because Mrs. Smith is officially "elderly," she is by definition unable to choose to request, or not to request, outside involvement.

In overruling the professional confidentiality privilege, and taking the decision out of the hands of the victim, mandatory reporting statutes place the state in the position of substitute parent. The appropriateness of this transfer of responsibility in many cases of elder abuse or neglect is dubious. Children are, usually with good reason, assumed to be incapable of deciding when to exercise the privilege and when to give a doctor permission to set it aside. In this situation when the state acts as a parent, it is substituting its authority for that of the child's own parent rather than abrogating the autonomy of an otherwise independent adult, as with mandatory reporting of elder abuse.

Child protective services, while seeking to utilize counseling and supportive assistance where possible, ultimately revolve around custodial decisions. Where neglect or abuse is substantiated and serious, the typical outcome is temporary or longer-term foster care placement. This aspect of the analogy between child abuse and elder abuse services is, potentially, alarming. Nursing home or other institutional placement would seldom be an appropriate solution to a case of elder abuse, yet such fears on the part of the elderly may not be unfounded. According to one analysis of data from Connecticut, 60 percent of those elderly individuals receiving short-term medical care, as a result of mandated reporting, do not return to their homes.
The dilemma of definitions

Virtually all these new statutes treat elder neglect similarly to actual abuse (some define the term abuse to include neglect), and they generally define both abuse and neglect, particularly the latter, in vague and sweeping terms. And while some merely require reporting while leaving penalties for the abuse or neglect to existing statutes, many others create new crimes of “elder abuse” and “elder neglect.” Utah, for example, defines “neglect” as “failure by a caretaker to provide habilitation, care, nutrition, clothing, shelter, supervision, medical care, or failure by the disabled adult to provide the above services for himself.” Any person who abuses, neglects, or exploits a disabled adult is guilty of a third-degree felony. (It is not clear whether the “self-neglecting” adult is also guilty of this felony. While such an interpretation was probably not intended, one can imagine such a statute being applied, for example, to a troublesome homeless person who refuses services pressed on him by social services authorities.)

Nebraska defines “abuse and neglect” to include “causing or permitting a minor child or an incompetent or disabled person to be . . . placed in a situation that endangers his or her life or physical or mental health . . . cruelly confined or cruelly punished” or “deprived of necessary food, clothing, shelter or care.” Abuse is a Class I misdemeanor if the offense is committed negligently, and a Class IV felony if the offense is committed knowingly and intentionally. Wyoming adds to the categories of prohibited conduct “abandonment,” which means leaving a disabled adult without financial support or the means or ability to obtain food, clothing, shelter or medical care. Abuse, neglect, exploitation or abandonment is a misdemeanor punishable by a fine or by confinement in the county jail for not more than one year on a first offense, or not more than five years for a second or subsequent offense. In Mississippi, neglect means “either the inability of any vulnerable adult who is living alone to provide for himself the food, clothing, shelter, health care, or other services which are necessary to maintain his mental and physical health, or failure by a caretaker to supply the vulnerable adult with the food, clothing, shelter, health care, supervision, or other services which are necessary to maintain his mental and physical health.” Any “caretaker or other person who willfully commits an act or omits the performance of any duty, which act or omission contributes to, tends to contribute or results in the abuse, neglect or exploitation of any vulnerable adult shall be guilty of a misdemeanor” punishable by up to one year in the county jail. In Kentucky,
“abuse or neglect,” again defined as a single entity, includes the "deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult" as well as "a situation in which a person . . . deprives a spouse of reasonable services necessary to maintain the health and welfare of his spouse." Abuse or neglect in Kentucky is a felony or misdemeanor, depending on whether the physical or mental injuries resulting are minor or major. (Elder abuse or neglect can be a felony in nine states.)

Statutes vary as to the categories of persons "protected." Some concern conduct towards "older persons" or "elders," often defined as age sixty or over. Others apply to persons unable to meet their own needs because of such factors as (to use Utah as an example) "mental illness, mental deficiency, physical illness or disability, chronic intoxication, the infirmities of aging, or other cause."

One important area in which the statutes are remarkably vague concerns the relationship of the perpetrator of neglect to the victim of neglect. The concept of neglect implies disregard of a duty of care. Under what circumstances, and in what relationships, that duty is assumed would seem to be crucial, since, in general, the law does not elsewhere impose such duties on family members of adults (except, to some extent, for spouses). Among states with criminal penalties for neglect, some simply ignore this issue; thus, Georgia makes it a misdemeanor for "any person" to neglect a physically or mentally incapacitated person, and in Montana it is a misdemeanor punishable by six months in jail for "any person" to neglect an "older person." Other states—Kentucky and Utah, for example—only penalize "neglect by a caretaker," without defining the term. Mississippi makes it a misdemeanor punishable by up to a year in jail for "any caretaker or other person" to abuse or neglect a "vulnerable adult." This new law, effective since October 1986, penalizes any act or omission that "contributes to, tends to contribute or results in the abuse, neglect or exploitation of any vulnerable adult."

Nevada has attempted in its statute to define to some extent the responsibilities in question. "Neglect" in this statute refers to "the failure of (a) a person who has assumed legal responsibility or a contractual obligation for caring for an older person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person; or (b) an older person to provide for his own needs because of inability to do so." (Older person is defined as age 60 or older.) Neglect is a gross misdemeanor unless a more severe penalty is prescribed by law for the act or omission.
Curiously, the section goes on to state that "A person may be convicted of neglecting older persons only if he voluntarily assumed responsibility for the older person." Both direct acts or omissions and "caus[ing] or permit[t[ing] an older person to be placed in a situation where the person may suffer unjustifiable physical pain or mental suffering" are covered. The law further states that "if a person violates any provision of the above section, if substantial bodily or mental harm results to the older person, he will be punished by imprisonment in the state prison for not less than one year nor more than six years."

The perils of legislation

It should be noted that criminal prosecutions under these statutes have thus far been almost nonexistent. (Thus, their dubious constitutionality has not been tested.) This seems a poor defense, however, for filling statute books with Draconian penalties for failing to meet vaguely defined or undefined duties. If nothing else, this approach breeds a general lack of respect for law, and creates the potential for selective prosecution involving unpopular individuals or highly publicized cases.

Mandatory reporting of abuse and neglect to state authorities is now law in all but a few states. (New York and, except for incidents in institutions, New Jersey, which both commit more resources than most states to community services for the frail elderly, are thus far among the few holdouts.) While the arguments put forward for mandatory reporting typically center on the need for case finding, the limited data available do not tend to support the argument that elder abuse is a "hidden problem." Such data as are available suggest that most cases are already known to social agencies or other authorities. In a Maryland study, for example, 95 percent of reported cases were already known to social agencies. In states where only certain categories of persons, such as physicians, are required to report, many or even most reports are found to come from nonmandated sources; indeed, whether or not mandatory reporting exists in a state, few reports come from physicians.

It could be argued that whatever the negative effects of mandatory reporting on physician-patient confidentiality may be, they are meliorated by the fact that these statutes are simply not taken seriously. Indeed, there is reason to believe that most physicians are not yet even aware of these laws. In one recent study in two mandatory reporting states (Michigan and North Carolina), 71 percent of physicians surveyed did not know whether their state required the report-
ing of elder abuse, and an additional 12 percent believed that their state did not require reporting. As with criminal penalties for the substantive crime of elder abuse and neglect, it seems a rather weak defense of a law to argue that potential ill effects do not happen because those it affects are unaware of it or do not take it seriously. While seldom enforced, some fairly substantial penalties are on the books for failure to report. In eighteen states, it constitutes a misdemeanor, and in six states one can be penalized by a term of imprisonment (up to six months in four of the six states).

Most of the recently enacted elder abuse statutes, while mandating new reporting and investigative activities, do not appropriate new funds either for these activities themselves or for services to address the needs—of “victim,” “aggressor” or commonly both—that are usually turned up when an investigation does find some form of abuse or neglect. Implementing plans to assist these individuals without institutionalizing them often requires costly services such as home care or guardianship. At best, such legislative responses constitute tokenism, while at worst they raise the prospect of a “cure” that may be worse than the “disease.”

Determining the risk

If we assume that elder abuse, of whatever degree and however defined, is a problem of unique importance and priority, then perhaps it makes sense to concentrate efforts on locating every possible incident of elder abuse and conducting exhaustive investigations. But there are other critical problems that the elderly face, such as the nonavailability of care urgently needed for safety or well-being. It thus seems illogical to concentrate on tracking down every potential victim of elder abuse, since in most communities there are more isolated and at-risk elderly clients already known to social agencies than there are funds available to assist them.

Elder abuse investigations and interventions can break up what is often a complex social and economic set of adjustments surrounding an individual who is thought to be a potential victim of abuse. One result can be separating an elderly and dependent person from a much-needed caretaker because the caretaker is suspected of being possibly abusive. In such cases, intervention is justified only where the state has the capacity to offer something better. To resolve the problems often presented by these cases without institutionalization, an array of services may be necessary, ranging from financial management to home care for the elderly. Adequate levels of such services are often absent in the community; in their absence—or in
the absence of a healthy respect for the client's preferences, even where they involve some element of risk or an eccentric style of life—institutional care may in fact be the outcome. In one classic study familiar to gerontologists, vulnerable elderly people in Cleveland were either randomly assigned to an intensive protective services case-management program or left to existing community services. The major, most significant long-term outcome was a higher rate of mortality among those receiving the special intervention. (The rate of nursing home placement in this group was much higher; apparently, social service intervention often led to the conclusion that the client needed institutional care for his own protection, and once placed in institutions, the beneficiaries of the program tended not to live as long.) Thus, the suspicions of often mistrustful and "paranoid" elders who fear involvement of the authorities in their affairs are not altogether unjustified.

A further problem with elder abuse laws is that they frequently fail to distinguish between an individual's capacity for good judgment and simply being old. The implication is that age itself is a form of disability. Florida's elder abuse statute, for example, defines an aged person as one "suffering from the infirmities of aging as manifested by organic brain damage, advanced age, or other physical, mental, or emotional dysfunctioning."

The assumption that the elderly, simply by virtue of being over 60 or 65, are typically feeble, poor, and sick tends to persist in our thinking about social policy for the aged, despite abundant evidence to the contrary. Separate legislation for protecting the elderly by, in effect, infantilizing them without any individual determination of incompetence, smacks of such stereotyping. Use of "elder abuse" as the central concept for organizing services for the elderly at risk creates an artificial split in the remedies and systems available to meet similar needs.

Why, given the lack of evidence either on the scope of the elder abuse problem or on the effectiveness of available services, has there been such a wave of state legislation for mandatory reporting of elder abuse, and strong pressure for federal legislation? There is, unfortunately, little correlation between the drama and media appeal of a social-services problem and the actual incidence of the problem. "Discovering" a "new" social problem has more appeal than devising more effective solutions to boring old problems. Mandatory reporting laws offer politicians an opportunity to go on the record in opposition to beating elderly grandmothers, while spending relatively token sums. The need to develop a comprehensive set
of services to address a range of different types of endangerment lacks appeal by comparison. Topics such as financial-management services and public guardianship are complicated and dull, while the problems of those who simply need a caretaker lack novelty and threaten to involve expensive and open-ended service demands. The appearance of strong elder abuse enforcement serves to substitute for a more costly commitment to such services. It seems more than coincidence that the states with the strictest, enforcement-oriented statutes tend to have relatively low levels of financial commitment to supportive services such as home care. Elder abuse statutes also serve the interests of what gerontologist Carroll Estes has referred to as "the aging establishment," which she describes as "the congeries of programs, organizations, bureaucracies . . . providers, industries, and professionals that serve the aged in one capacity or another." The emergence of new professional opportunities for experts, social workers, administrators, and other specialists creates a constituency which benefits from defining the aged as dependent. As sociologist Lewis Coser has commented in another context, "Social workers [and] administrators . . . seek out the poor in order to help them, yet, paradoxically, they are the very agents of their degradation. Subjective intentions and institutional consequences diverge here. The help rendered may be given from the purest and most benevolent of motives, yet the very fact of being helped degrades." And as another observer, Edna Wasser, has commented on intervention with the elderly, "It is possible that even trained practitioners are unable to tolerate taking the risks involved in leaving alone many elderly people who prefer to continue in their unwholesome, marginal way of life . . . yet interventions, especially institutionalization, may be felt deeply by an aged person to be contravenious of his will and his most cherished desires rather than care and protection."

The rush to enact mandatory reporting statutes creates an illusory sense of progress on these complex and difficult problems. Enactment of new, enforcement-oriented programs for regulating the intrafamily relationships of the elderly, often at times when social services of more general application for the frail elderly are being cut back, is thus more a symbolic token of concern for the aged than a useful response to their needs.