

We “Care” Too Much: Corruption in Guardianship

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By: Zainab Molumo

Netflix’s recently released original film, *I Care A Lot*, has received glowing reviews for its witty yet relevant commentary on Western notions of feminism and capitalism. But, perhaps more notable is the plot’s way of bringing to the forefront (and the mainstream) pressing questions about ethics and bureaucracy within the American legal guardianship industry. Created to protect those vulnerable to manipulation, the system seems to be enabling the abuse and exploitation of its largest constituents instead: the elderly and the disabled.

I Care A Lot follows a charming, yet cunning female lead, a

corrupt court-appointed guardian bent on building an empire founded upon the stolen independence and assets of unsuspecting seniors. Aiding her is a network of equally crooked authorities in the healthcare and legal sectors, including a primary care physician who exchanges confidential patient information for commission and a nursing facility coordinator who creates vacancies for new victims. A truly shocking portrayal, the situations depicted throughout the story are, unfortunately, not unlike some of the injustices to which victims of guardianship fraud and abuse are often subjected.[6]

The origins of guardianship date as far back as New World colonialism. American colonists were seen as wards of the Crown, deemed in need of its supervision and protection. Part of these protections included control over finances and other properties. Now falling under the jurisdiction of individual states, guardianship in the modern American legal system—sometimes referred to as conservatorship—still bears some of its early colonial undertones.[4]

Guardianship is defined as a legal relationship in which an individual deemed legally and/or medically unfit for self-governance or care is appointed a court-sanctioned guardian. Those qualified to become guardians are conventionally a family member or professional and those typically appointed ones are the elderly and/or persons with considerable intellectual, psychiatric, or physical disabilities.[1,8] Yet, advocates in both communities have argued that the stigmatizing presumptions of helplessness and incompetence of disabled and elderly individuals are a bigger threat to these groups than their presumed vulnerability.[3] The nature of the guardianship relationship is such that a ward's rights to independence and ownership are almost completely relinquished to the guardian.[1] Such a provision, along with the presumption of incompetence, creates a window for profit-driven opportunists to target and exploit members of both groups, which is unfortunately what transpires in many legal guardianships.



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A Google search of the terms 'guardianship' and 'fraud' generates pages of editorials and webpages, many discussing the stories of disabled and elderly individuals who have been slighted in some form by legal oversights or blatant fraudulence in the guardianship system. One that has received considerable coverage is that of the the Norths, a retired couple in Nevada who, in 2013, became the wards of a woman they had never met.[1,4,5]

The Norths' then guardian, April Parks, arrived at their home with a court order, stating that she was to serve as their legal guardian and that they would be relocated to a local residential home. The basis for the order: a note from a healthcare provider who had only cared for Mrs. North once, but declared *both* partners incapable of self-care because of rapidly progressing dementia. It was later found that the couple had not been cognitively evaluated before being institutionalized, nor were any of their relations notified of the court's decision or even invited to attend the proceedings that ultimately led up to the 'agreement.' [4] Parks and her associates were later indicted on racketeering and neglect charges in 2017, but not before pocketing hundreds of thousands of dollars in client assets by selling estates and other properties and keeping most of the profit for themselves.[5]

The Norths are not the first victims of ploys orchestrated by people like Parks, and Parks wouldn't be the first to orchestrate a scheme like this either. In fact, financial abuse of elderly and disabled persons is among the fastest-growing forms of abuse. [2] While under their guardian's care, there were thousands like the Norths and over a hundred guardians like Parks, in their county alone, and everywhere else in the country.

For example, Rebecca Fierle-Santonian, a Florida resident and former guardian of 450 in Tampa, was indicted for the same charges brought against Parks.[1] And, the owner of Kitsap Guardianship, a guardianship firm in Houston, Texas, was sued for stealing over \$280,000 from clients, both in the form of personal earnings and social security benefits.[7] Many more like these individuals and organizations exist within the institution, which leads one to wonder how the system came to be so rife with such people.[7] But perhaps an even more important question is how the system itself allows such individuals easy access to those it is meant to protect, and why care is being forced upon those who do not need it.

There are an estimated 1.5 million American adults in guardianships, which has resulted in over 270 billion dollars in redirected assets.[4,5] Yet, according to an anti-guardianship fraud program in Palm Beach County Florida, these figures may still grossly underestimate the sheer affluence and populousness of the system, as records are both sparse and difficult to access. Additionally, according to a study published by the American Bar Association in 2017, many in guardianships, may no longer need a guardian or were never in need of one. Yet, too many remain under guardian care, where they face more abuse and neglect than support.[5]

The reason would seem to go back to our earlier discussion of presumed incompetence and weakness of wards, but also to do with structural weaknesses within the system itself.

Presumptions about the capacity of wards present unique obstacles to petitioning for restoration of rights, i.e., appealing one's guardianship in court. Even when such requests are

granted, many are often rejected, especially when initiated by family members, who are seen as having a conflict of interest.
[8]



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Then there is the issue of hearings. Many of the hearings that often permanently seal the fate of wards, only last a matter of minutes, meaning that careful consideration and examination of presented evidence is rare. Norths' hearing lasted only ten minutes.[4] Yet, those ten minutes translated to over 17 months of isolation and their life's earnings being stolen from them in increments from their state-appointed protector. In those ten minutes, no second opinions were requested, nor were they or any legal defense asked to be present on their behalf.[4] These and other oversights in guardianship policy and legal practice are among the structural failings enabling rampant exploitation in the industry.

Given the abundant opportunities for abuse and neglect under full and even limited guardianship, and the difficulty of escaping both, disability and elder rights advocates call for careful consideration before entering into this type of legal relationship. But, being that many enter the system involuntarily, there have also been efforts in both communities to challenge the bureaucratic practices and structures that enable abuse. Among the proposed reforms are creating

policies that restrict guardian control over wards' finances, to prevent conflicts of interest, and to create less restrictive alternatives to guardianship, including supported decision-making, a method often used within the disability community. [3,8] Under such an alternative, adults who may be in need of assistance in personal decision-making receive just that without having to relinquish any rights or agency, a constructive alternative to presuming vulnerability and certainly one meant to oppose systemic and societal stigmas. [8]

As a society, we often pride ourselves on a culture that values autonomy and the preservation of rights, yet we are not always willing to extend these same courtesies and good faith to those we perceive as being vulnerable. Perhaps it is that our definition of individualism is narrow, or that our idea of care is flawed. In either case, our ideas of what it means to protect have evidently fallen short of intention, calling us, and especially our legal system, to reimagine the meanings of protection and control and to practice more care with the very thin line which exists between the two.



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