

## Shades of Gray: The Impact of World-Wide Aging on Elder Abuse and Neglect in the United States and France

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*Everyone treats me as an old man. I laugh about it. Why? Because an old man never feels like an old man. I understand from others what old age implies for those who see it from without, but I do not feel my old age. Thus my old age is not a thing that in itself teaches me something. What teaches me something is the attitude of others toward me. To put it another way, the fact that I am old for others is to be profoundly old. Old age is for me a reality that others feel . . . it is other people who are my old age.*

Jean-Paul Sartre<sup>1</sup>

*For so many to live to be old is one of the most remarkable achievements of the twentieth century. To be old and live in dignity free from all forms of abuse and violence must be a common goal for all societies of the twenty-first century.*

World Health Organization, Missing Voices<sup>2</sup>

### A. Introduction

“A demographic iceberg looms in the future of the largest and most affluent economies of the world: the challenge of global ageing.”<sup>3</sup> In both developed and underdeveloped countries alike, the percentage of the population that is elderly is skyrocketing.<sup>4</sup> In the United States, Florida is often thought of in association with large numbers of elderly retirees.<sup>5</sup> The percentage of the population of

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<sup>1</sup> D.G. Troyansky, *Old Age in the Old Regime: Image and Experience in Eighteenth-Century France* (1989).

<sup>2</sup> WHO/INPEA, *Missing Voices: Views of Older Persons on Elder Abuse* (2002) [hereinafter *Missing Voices*].

<sup>3</sup> P.G. Peterson, *The New Century's Great Challenge*, 15 U. Tenn. F. for Applied Res. & Pub. Pol'y 42 (2000).

<sup>4</sup> See generally UN Department of Economic and Social Affairs, *Madrid International Plan of Action on Ageing*, UN Doc. A/CONF.197/9 (2002) available at <http://www.un.org/esa/socdev/ageing/waa/a-conf-197-9b.htm> (last visited 31 Oct. 2003) [hereinafter *Madrid Plan*].

<sup>5</sup> *Id.*

Florida that is over the age of sixty-five is nineteen percent.<sup>6</sup> What is alarming is that most developed nations are on track to pass this statistic.<sup>7</sup> Based on estimates of population, France will bypass the nineteen percent mark in 2016 and the entire United States will follow in 2021.<sup>8</sup>

With an increase in the number of elderly and a decrease in the number of working-age people, many governments are already facing problems funding retirement, health care, and other services for the elderly.<sup>9</sup> More frequently, younger family members are being asked to step in and care for the elderly.<sup>10</sup> This breakdown in funding for old age services is placing pressure on families in both the “form of direct financial pressure, such as not being able to afford to provide medical care to older family members, as well as overall stress and a sense of the older person being a burden on the family.”<sup>11</sup>

In addition, nursing home facilities are understaffed and overcrowded, which is often cited as a “root cause of the maltreatment” of elderly in skilled nursing facilities.<sup>12</sup> A report by the US General Accounting Office revealed that thirty percent of nursing homes in California “potentially could cause serious harm or death to their residents.”<sup>13</sup> The study indicated that this figure could be “extrapolated to the entire nation.”<sup>14</sup> Another study of 600 nursing home workers “revealed that almost forty percent of those surveyed admitted committing at least one psychologically abusive act in the last year, with ten percent admitting to physical abuse to a patient.”<sup>15</sup> That translates into 240 cases of psychological abuse and at least sixty physically abusive actions in a relatively small sample.<sup>16</sup> In 1999, a survey of US states revealed gross deficiencies in one quarter of the nursing homes in the nation.<sup>17</sup>

The European heat wave of the summer of 2003 has also exposed major flaws in many countries’ systems of caring for the elderly, especially in France.<sup>18</sup> Approximately 11,435 people died during the heat wave, a majority of whom were “elderly and died alone in overheated Paris apartments while their

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See generally Peterson, *supra* note 3.

<sup>10</sup> J.C. Skabronski, *Elder Abuse: Washington’s Response to a Growing Epidemic*, 31 Gonz. L. Rev. 627 (1995/1996).

<sup>11</sup> *Missing Voices*, *supra* note 2.

<sup>12</sup> S. Moskowitz, *Symposia: Golden Age in the Golden State: Contemporary Legal Developments in Elder Abuse and Neglect*, 36 Loy. L.A. L. Rev. 589, at 661 (2003).

<sup>13</sup> Senator John B. Breaux & Senator Orrin G. Hatch, *Confronting Elder Abuse, Neglect, and Exploitation: The Need for Elder Justice and Legislation*, 11 Elder L.J. 207, at 217 (2003).

<sup>14</sup> *Id.*, at 217.

<sup>15</sup> *National Experts Address Abuse and Neglect at Conference on Elder Abuse*, 4 Nursing Home Litig. Rep. 9 (2002).

<sup>16</sup> See *id.*

<sup>17</sup> Moskowitz, *supra* note 12, at 594.

<sup>18</sup> See generally *Officials Blamed for Heat Death*, CNN.com/world, 8 Sept. 2003, at <http://www.cnn.com/2003/WORLD/europe/09/08/France.report/index.html> (last visited 31 Oct. 2003).

families were away on summer vacation.”<sup>19</sup> It has been said that “support for the elderly tends to be related to the overall development of the welfare state.”<sup>20</sup> If that is the case then many nations, developed and otherwise, need to take a hard look at the systems in place and where they are lacking in order to better care for the elderly worldwide.<sup>21</sup>

This article explores the issue of elder abuse in the context of the rapid growth of this segment of the population. As life spans increase in both industrialized and developing nations, these countries will be called upon to shift their focus and policies so as to cope with a population that is older than ever before.

The article will examine historical treatment and perceptions of the elderly and the influences that societal changes have had on the relationship between the elderly and the rest of society, especially within the family context. After analyzing the changing dynamics of family and community structures, the emergence of elder abuse in the public eye will be chronicled.

Finally, this article will focus on two countries, the United States and France, their policies and approaches to care for the elderly. This article will show that even though elder abuse is now a recognized form of abuse, and world attention has been drawn to the plight of the elderly by the United Nations and others, leading industrialized nations (United States and France) have not been able to effectuate change and protect seniors. Current legislation and policies of both countries will be examined, as will recommendations and new strategies for preserving dignity in old age.

## B. Global Ageing — An Overview

### I. Statistics on Population Demographics

Worldwide life expectancy is increasing while at the same time birth rates are declining.<sup>22</sup> It has been projected that by 2050 the percentage of people globally who are over age sixty will double, while the percentage of children will drop by one-third.<sup>23</sup> According to the United Nations, this “remarkable demographic transition under way will result in the old and the young representing an equal share of the world’s population by mid-century.”<sup>24</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> D.G. Gill & S. R. Ingman, *Eldercare, Distributive Justice, and the Welfare State: Retranchment or Expansion 2* (1994).

<sup>21</sup> See generally Peterson, *supra* note 3.

<sup>22</sup> *Madrid Plan*, *supra* note 4, “Average life expectancy at birth has increased by 20 years since 1950 to 66 years and is expected to extend a further 10 years by 2050.”

<sup>23</sup> *Id.* para 3 “Globally the proportion of persons aged 60 years and older is expected to double between 2000 and 2050, from 10 to 21 per cent, where as the proportion of children is projected to drop by a third, from 30 to 21 per cent.”

<sup>24</sup> *Id.*

## 1. United States

In the coming years, the percentage of the United States population that is comprised of individuals over the age of sixty-five will increase dramatically.<sup>25</sup> It is estimated that by the year 2020, persons over sixty-five will account for 17.7 percent of the total US population, and that by 2050 they will be twenty-five percent of the population.<sup>26</sup> That means that by 2050 there will be approximately sixty-five million people over age sixty-five in the United States.<sup>27</sup>

## 2. France

France will also see a surge in the segment of the population that is over the age of sixty-five.<sup>28</sup> From a historical perspective, it took one-hundred and forty years for the elderly population to increase from nine to fourteen percent.<sup>29</sup> More recent predictions had estimated that in the year 2020, 17.5 percent of the total French population would be over the age of sixty-five – some 9.7 million people.<sup>30</sup> It is noteworthy that France has already surpassed that benchmark in 2002 when there were 9.9 million people over the age of sixty-five.<sup>31</sup>

# II. Problems Associated with the Graying of the World

## 1. Financial Ramifications

Developed countries have seen a much larger increase in the percentage of people living into old age.<sup>32</sup> This is indicative of the overall ‘well-being’ of these societies.<sup>33</sup> At the same time, birth rates are declining in these industrialized countries as women begin to “concentrate their childbearing activities into a more circumscribed time frame.”<sup>34</sup> Families in developed countries are not only waiting until later in life to have children, they are having fewer children.<sup>35</sup> This results in fewer young people entering the work force to generate tax dollars to be spent on caring for the elderly.<sup>36</sup> It also results in fewer family members to

<sup>25</sup> See generally Population pyramid at <http://www.seniorweb.nl/un/memberstates/countryprofilepyram.asp?CountryCode=840> (last visited 31 Oct. 2003).

<sup>26</sup> S. Moskowitz, *Saving Granny from the Wolf: Elder Abuse and Neglect—The Legal Framework*, 31 Conn. L. Rev. 77 (1998).

<sup>27</sup> Skabronski, *supra* note 10, at 628.

<sup>28</sup> See generally Population pyramid at <http://www.seniorweb.nl/un/memberstates/countryprofilepyram.asp?CountryCode=> (last visited 31 Oct. 2003).

<sup>29</sup> B. Bond, *How the Over-60s are Taking Over the World*, Daily Mail, 9 Apr 2002.

<sup>30</sup> A.-M. Guillemard, *Aging and the Welfare-State Crisis* 285 (2000).

<sup>31</sup> See Population of France statistics available at <http://www.ined.fr/englishversion/figures/france/population/francentiere/popfrancecentiere> (last visited 31 Oct. 2003).

<sup>32</sup> J. Babiak, *Health-care access for the Elderly of Industrialized Nations: Fallen and Can't get up?*, 4 ILSA J Int'l & Comp L. 221 (1997).

<sup>33</sup> *Id.*, at 223.

<sup>34</sup> *Id.*, at 226.

<sup>35</sup> *Id.*

<sup>36</sup> See Peterson, *supra* note 3.

provide care, which increases the need for the government and outside resources to care for the elderly.<sup>37</sup>

In order to maintain a fixed population between generations (and support current retirement and elderly care schemes), each woman needs to have 2.1 children.<sup>38</sup> Globally, in the year 2000, women gave birth to on average only 1.6 children.<sup>39</sup> In many industrialized nations, the number of the elderly has already surpassed the number of children and birth rates are still declining.<sup>40</sup> Predictions are that in some countries the percentage of the elderly will be double that of young people.<sup>41</sup> “In the face of a shrinking labor pool and increasing numbers of retirees, the monumental objective of obtaining sufficient cash flow” cannot be fulfilled, and government sponsored programs suffer.<sup>42</sup> As of 2000, the industrialized nations of the world had “accumulated unfunded liabilities for pension and healthcare benefits that are roughly three times larger than their collective [annual] gross domestic product (GDP).”<sup>43</sup>

The United Nations reports that labor shortages are occurring due to a decline in young people entering the job market, the overall ageing of the workforce, and the widespread practice of early retirement.<sup>44</sup> In France, the government had scaled back the workweek to thirty-five hours but is now faced with the prospect of asking workers to stay on the job for more years to fund public retirement plans.<sup>45</sup> Over the last twenty-five years, the percentage of employed men between the ages of sixty and sixty-four has dropped from sixty-seven percent to twenty-two percent.<sup>46</sup> This is a result of France lowering the retirement age in an attempt to decrease overall unemployment.<sup>47</sup>

In other countries, the introduction of a mandatory retirement age has “reinforced the notion of the elderly as a distinct social category.”<sup>48</sup> “Miserly state pensions” have reinforced and perpetuated the situation of the elderly, victimizing them and making it hard for them to remain financially independent in old age.<sup>49</sup> Strangely enough, it was really the emergence of the concept of retirement that signalled entry into the elderly segment of the population.<sup>50</sup>

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<sup>37</sup> Babiak, *supra* note 32, at 226.

<sup>38</sup> Peterson, *supra* note 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Madrid Plan*, *supra* note 4, para 3.

<sup>41</sup> Peterson, *supra* note 3.

<sup>42</sup> Babiak, *supra* note 32, at 222.

<sup>43</sup> Peterson, *supra* note 3.

<sup>44</sup> *Madrid Plan*, *supra* note 4, para 24.

<sup>45</sup> Peterson, *supra* note 3.

<sup>46</sup> *Id.*

<sup>47</sup> I. Wallimann, *Coping with Unemployment and Poverty While Increasing Capital Accumulation: Social Policy in France during the 1980s*, in D.G. Gill & S.R. Ingman (Eds.), *Eldercare, Distributive Justice, and the Welfare State* 70 (1994).

<sup>48</sup> M. Brogden & P. Nijhar, *Crime, Abuse and the Elderly* 30 (2000).

<sup>49</sup> *Id.*, at 30.

<sup>50</sup> Guillemand, *supra* note 30, at 29.

## 2. Resource Depletion

The last century has seen the emergence of more powerful, centralized state governments, which could “compensate for family neglect – in the provision of retirement benefits.”<sup>51</sup> Unfortunately, recent economic downturns have created budget crunches and as state supported programs are financially depleted, “the promise of the state to replace that family is becoming increasingly hollow.”<sup>52</sup> Once again, family members are forced to become caregivers for the elderly.<sup>53</sup>

Another factor affecting the overall availability of resources is the number of elderly who have reached advanced ages.<sup>54</sup> “The proportion of those over eighty-five years old is growing faster than the number of elderly in general.”<sup>55</sup> Additionally, the group over eighty in age is the fastest growing in the world.<sup>56</sup> The United Nations reports that in the year 2000, the ‘oldest old,’ those over eighty, numbered seventy million around the globe and that this number will likely increase five fold by 2050.<sup>57</sup> This is what is known as the “ageing of the aged.”<sup>58</sup> It is estimated that by 2050, those over eighty-five years of age will constitute five percent of the general population.<sup>59</sup>

This trend results in a greater number of elderly who need proportionately more services – which will also likely increase cases of elder abuse and neglect.<sup>60</sup> Already, this age group is “abused and neglected at two to three times their proportion in the elderly population.”<sup>61</sup> One-half of all neglect cases are perpetrated against this ‘oldest-old’ group.<sup>62</sup>

## III. Traditional/Historical Means of Caring for the Aged

### 1. Historical Treatment of the Elderly — Overview

History reveals that while recognition and examination of elder abuse is a recent development, mistreatment and hostility towards the elderly has existed since the beginning of time.<sup>63</sup> Throughout time, attitudes towards the poor and desti-

<sup>51</sup> Brogden *et al.*, *supra* note 48, at 31.

<sup>52</sup> *Id.*, at 31.

<sup>53</sup> Skabronski, *supra* note 10, at 627.

<sup>54</sup> Guillemard, *supra* note 30, at 285. Number of French elderly over age seventy-five in 1993 was 3.3 million, or 6.3 percent of the total population of 57.5 million. *Id.*

<sup>55</sup> Moskowitz, *supra* note 26, at 83.

<sup>56</sup> Moskowitz, *supra* note 12, at 593.

<sup>57</sup> Madrid Plan, *supra* note 4, para 7.

<sup>58</sup> Peterson, *supra* note 3.

<sup>59</sup> Moskowitz, *supra* note 26, at 83.

<sup>60</sup> *Id.*

<sup>61</sup> Moskowitz, *supra* note 12, at 601.

<sup>62</sup> *Id.*

<sup>63</sup> See Brogden *et al.*, *supra* note 48, at 26. “Contrary to public opinion, ‘elder abuse’ is not a new problem that has emerged because of the proportion of elderly people in the population ... economic uncertainty, or the loss of neighbourliness and the community. Rather, elder abuse represents an unbroken saga in the relations between adults and their elders.” (quoting S. Reinharz, *Loving and Hating One’s Elders: Twin Themes in Legend and Literature*, in K. Pillemer & R.

tute have fluctuated, from periods of “scapegoating of the destitute in periods of economic hardship, to the provision of almshouses and other forms of charitable giving” in prosperous times, and treatment of the elderly has always been closely linked to treatment of the poor.<sup>64</sup> Documented history reveals that it was not uncommon for societies to kill the elderly or simply abandon them to die.<sup>65</sup>

A contributing factor to the long history of elder abuse is the tenuous relationship between the elderly and their younger (typically familial) counterparts.<sup>66</sup> There is ample evidence of “persistent intergenerational cruelty.”<sup>67</sup> Societies have traditionally placed emphasis on youth, strength, and authority – qualities the elderly usually do not possess.<sup>68</sup>

In addition, there is a historically noted “hostility towards those who opted out of the economic process and a reluctance to devote much of society’s resources to their maintenance.”<sup>69</sup> As economic prosperity ebbed and flowed throughout history, the care of the indigent, including the elderly, was a low priority and such groups often were “bitterly resented” by fellow villagers and their own families.<sup>70</sup> The characterization of the aged as a burden is reflected in history and continues today.<sup>71</sup>

#### *a. Historical Treatment in the US*

As with many developed countries, care for the aged is provided to some extent by the government in the form of entitlement programs in the United States.<sup>72</sup> In the US, this is in the form of Social Security, a program that was developed in the 1930s in the face of high rates of unemployment.<sup>73</sup> The program was billed as social insurance, not a form of welfare, and its goal was to provide the elderly with money which they would spend in the marketplace.<sup>74</sup>

Social Security was not originally conceived with the notion that it would provide the sole source of income for the elderly; rather it would supplement other savings and income amassed during a lifetime of working.<sup>75</sup> Very simi-

Wolff (Eds.) *Helping Elderly Victims* (1986). *Id.*

<sup>64</sup> S. Biggs, C. Phillipson & P. Kingston, *Elder Abuse in Perspective* 9 (1995).

<sup>65</sup> Moskowitz, *supra* note 26, at 81.

<sup>66</sup> Biggs *et al.*, *supra* note 64, at 8. “Intergenerational conflict over ‘the elders’ control over property and the resulting frustrations of younger kin [...]; the pressures faced by [those] . . . left to care for [their] parents; or the crisis generated through economic recession . . . and meeting the care needs of both older and younger generations.” *Id.*

<sup>67</sup> Brogden *et al.*, *supra* note 48, at 26 (quoting Reinhartz, *supra* note 63).

<sup>68</sup> See generally Brogden *et al.*, *supra* note 48.

<sup>69</sup> *Id.*, at 9 (quoting K. Thomas, *Age and Authority in Early Modern England*, *Proceedings of the British Academy* 205-248 (1976), referring to the aged, the poor, and the disabled). *Id.*

<sup>70</sup> See generally Brogden *et al.*, *supra* note 48.

<sup>71</sup> *Id.* (discussing the ‘burden’ of the old in the historical context of the witch hunts of the sixteenth and seventeenth centuries and its impact on groups of elderly women). *Id.*

<sup>72</sup> J. Hendricks, *Adequacy or Dependency for the USA Aged*, in *Eldercare, Distributive Justice, and the Welfare State*, in Gill *et al.* (Eds.), *supra* note 47, at 259.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

larly to the situation in France, Social Security allowed a reclassification of people, moving them from the category of unemployed worker to retiree.<sup>76</sup> Following the aftermath of the Great Depression,<sup>77</sup> this gave the impression that the 'economy was back on track' and quelled societal unrest.<sup>78</sup>

In 1972, Amendments to Social Security indexed benefits to the Consumer Price Index,<sup>79</sup> which resulted in "enhancing the economic adequacy of those whose working lives had been marked by dependable wages."<sup>80</sup> In 1974, for the first time, poverty among the elderly declined.<sup>81</sup> That said, poverty rates among both the elderly and children in the United States are some of the highest in the industrialized world.<sup>82</sup>

A 1991 study found that eighty percent of those receiving Social Security have no other income.<sup>83</sup> Of the forty million people who were receiving Social Security in 1991, sixty-two percent were over the age of sixty-five.<sup>84</sup> Earnings caps within the Social Security system make it impossible for many over the age of sixty-five to continue any kind of employment if they wish to continue receiving benefits.<sup>85</sup>

#### *b. Historical Treatment in France*

France has a much longer history than the United States, and social class differences have always played a role, even in this state that prides itself in recent years on social solidarity.<sup>86</sup> "The seamstresses, laundresses, and servants of the town ... worked long hours for a pittance which could only maintain them as long as they were childless or did not have to maintain an aged relative," is an observation of the eighteenth-century residents of Bayeux, France.<sup>87</sup> An age old

<sup>76</sup> *Id.*

<sup>77</sup> See generally [www.amatecon.com/gd/gdoverview.htm](http://www.amatecon.com/gd/gdoverview.htm) (last viewed 26 Jan. 2004). The period known as the Great Depression in the United States followed the stock market crash in 1929 and lasted through 1941. *Id.*

<sup>78</sup> Hendricks, *supra* note 72, at 260.

<sup>79</sup> United States Department of Labor-Bureau of Labor Statistics available at [http://www.bls.gov/dolfaq/bls\\_ques28.htm](http://www.bls.gov/dolfaq/bls_ques28.htm) (last viewed 25 Jan. 2004). The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. *Id.* The CPI is used to measure inflation and is an indicator of the effectiveness of government economic policy. United States Department of Labor-Bureau of Labor Statistics available at [http://www.bls.gov/dolfaq/bls\\_ques1.htm](http://www.bls.gov/dolfaq/bls_ques1.htm) (last viewed 26 Jan. 2004).

<sup>80</sup> *Id.*, at 261.

<sup>81</sup> See *id.* Unfortunately, children took the honor of being the most impoverished segment in society. *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*, at 263.

<sup>84</sup> Hendricks, *supra* note 72, at 263. Average payments were \$602 per month. Recipients between the ages of sixty-five and sixty-nine were limited to an earned income of \$10,440 annually. *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See generally Biggs *et al.*, *supra* note 64 (discussing historical background information). See also Walliman, *supra* note 47 (also discussing historical background information).

<sup>87</sup> Biggs *et al.*, *supra* note 64, at 9.

sign of neglect amongst the elderly is begging.<sup>88</sup> In eighteenth century France the elderly were granted the ‘privilege’ to beg respectably and the prime spots in the town such as the church steps were reserved for them.<sup>89</sup>

At the turn of the nineteenth century, France passed pension legislation which “redefined the place of old age in society and the system of exchanges of which it formed a part.”<sup>90</sup> It was not until later that old age began to be associated with destitution in France as a result of the ravages of World War II, the creation in France of a welfare state, and a social policy that promoted increasing the number of births.<sup>91</sup> The public assistance model dominated the elderly and directed where and how their lives were lived.<sup>92</sup> Increasingly, more elderly were forced into nursing homes and hospitals as a solution to curb increasing poverty due to decreasing social security payments.<sup>93</sup> This relegation to an institutional life was a “formal acknowledgment of the long-term destitution that the elderly were experiencing ... [which] continued to have a repressive and moralizing effect.”<sup>94</sup>

In the 1960s, the French government re-evaluated its strategies for dealing with the aged, and developed policies whose aims were to keep the elderly from being isolated.<sup>95</sup> Their new policies were aimed not only at the segment of the elderly who were destitute but at all elderly persons.<sup>96</sup> The new policy put its emphasis on prevention, from both a physical and mental standpoint, to help the elderly stay healthy longer and thereby empower them to stay in their own homes and communities.<sup>97</sup>

Today’s French social system is supported by three pillars of benefits: old age, illness, and family.<sup>98</sup> The majority of benefits for old age consist of retirement benefits for all citizens, even for certain women who have never entered the work force due to child raising responsibilities.<sup>99</sup> The French social security system is admittedly complex.<sup>100</sup> Workers are required to pay into the system,

<sup>88</sup> See generally *id.*

<sup>89</sup> See *id.*, at 10 citing O. Hufton, *The Poor in Eighteenth Century France, 1750-1789* (1974). “They might, with dignity, beg in the churches, and they had a kind of monopoly of the privilege to sit in the porch or on the steps of churches and to make their requests ... the aged beggar was the only one ... [who] remained to beg all the year round.” *Id.*

<sup>90</sup> Guillemard, *supra* note 30, at 29.

<sup>91</sup> See *id.*, at 90.

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*, at 90-91. In 1956, the average state pension provided the elderly with 860 francs per year. During the same year the minimum wage (provided for younger people who were working) was 4,200 francs per year. This disparity resulted in “public assistance play[ing] no more than a complementary role” in providing for the day to day care of the elderly during retirement. *Id.*

<sup>94</sup> See *id.*, at 94.

<sup>95</sup> Guillemard, *supra* note 30, at 100-103.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Walliman, *supra* note 47, at 61.

<sup>99</sup> *Id.* Women who have never worked in a wage labor job but have raised five children below the age of sixteen for at least nine years are granted retirement benefits. *Id.*

<sup>100</sup> See *id.*

but the amount paid varies depending on occupation, and each occupational group has its own insurance system.<sup>101</sup> Correspondingly, the amount received as benefits in retirement varies across occupations.<sup>102</sup> This disparity violates the principle of national solidarity, an idea that has played an important role in the historical development of France as a welfare state.<sup>103</sup>

This system is extremely vulnerable to the rapidly changing occupational and demographic structure of the state.<sup>104</sup> As the number of younger people entering the workforce has decreased, so has the number of contributors paying into the system in certain occupational groups.<sup>105</sup> The integrity of the system is further eroded by the increasing number of beneficiaries (retired people) and the advanced age of a proportionately high number within the beneficiary group.<sup>106</sup> While the government has attempted to smooth out these disparities by compensating groups who are losing paying members, these additional funds have caused political conflict.<sup>107</sup> Also in an economy that has been hit hard in recent years with an increasing number of unemployed, the total amount taken in by insurance systems is in decline, which makes redistribution nearly impossible.<sup>108</sup>

## C. What Has Changed?

### I. The Emergence of Elder Abuse (Definitions and Types) and its Underlying Causes

Generally accepted definitions of elder abuse include “physical abuse, financial abuse, psychological abuse, self abuse, and neglect.”<sup>109</sup> Elder abuse was not recognized as a phenomenon until some time in the 1970s.<sup>110</sup> The British referred to it as ‘granny battering’ and there, as in most other countries, professionals and governments were slow to react for various reasons.<sup>111</sup> One of the main reasons for the slow recognition stemmed from the fact that only a few decades earlier, child abuse and domestic violence had emerged in professional circles, and in light of these other forms of grave abuse, neglect or mistreatment of the elderly did not seem to be very important.<sup>112</sup> Also, geriatrics was not always a developed field and there were few professionals (outside of the nursing

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Walliman, *supra* note 47, at 64.

<sup>104</sup> *See id.*

<sup>105</sup> *Id.*, at 65.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*, at 65.

<sup>108</sup> *See* Walliman, *supra* note 47.

<sup>109</sup> Skabronski, *supra* note 10, at 630.

<sup>110</sup> Biggs *et al.*, *supra* note 64, at 7.

<sup>111</sup> *See id.*

<sup>112</sup> *See id.*

home setting) specializing in elder care.<sup>113</sup>

Perhaps the most important theory for why elder abuse was not taken seriously initially in Britain, which seems to fit the paradigms in the United States and France, is the ‘welfarization’ of the elderly in the period after World War II.<sup>114</sup> When the elderly are welfarized they lose their “human stature: they are not quite whole people, not people like us. They are only one step removed from the ‘poor dears’ in nursing homes whom other elderly people are said to patronize in the subtle stratification system of the disadvantaged.”<sup>115</sup>

### 1. Generally Accepted Themes of Abuse – United States and France

Sociologists offer three explanations for elder abuse within the household: dysfunctional families,<sup>116</sup> victim-precipitation,<sup>117</sup> and offender dependency.<sup>118</sup> These forms of elder abuse are very likely to not be reported because many elderly peoples’ “worst fear is to be warehoused into a nursing home ... so they’re willing to tolerate almost anything.”<sup>119</sup> Additionally, as society has moved away from the traditional nuclear family, strain is being placed on certain age groups,<sup>120</sup> a phenomenon that has been termed “generational inversion.”<sup>121</sup> Middle-aged family members often find themselves caring for an elderly parent, helping raise a young grandchild, and increasingly providing financial support for an adult child.<sup>122</sup>

It is estimated that one third of abusers are financially dependent on their victim, and it is often the abuser who has a substance abuse problem or psychological impairment.<sup>123</sup> Many abusers blame a buildup of stress from caring for the aged victim, which results in a caregiver who has “reached the end of her tether and who lashes out at a victim.”<sup>124</sup> Experts find that “anyone is capable of becoming an abuser when under unrelenting and persistent stress.”<sup>125</sup>

<sup>113</sup> See *id.*

<sup>114</sup> See *id.*, at 7 quoting Fennell, Phillipson & Evers, *The Sociology of Old Age* (1988). “Welfarization” involves a “mixture of diminution and patronage.”

<sup>115</sup> Biggs *et al.*, *supra* note 64, at 7-8 (quoting Fennell *et al.*).

<sup>116</sup> Brogden *et al.*, *supra* note 48, at 76. “Dysfunctional families – some families because of their internal failings damage all members.” *Id.*

<sup>117</sup> *Id.*, at 76. “Victim-precipitation – the frail older person naturally attracts offences.” *Id.*

<sup>118</sup> *Id.*, at 76. “Offender dependency – elder persons may expect too much of their carers, who sometimes take advantage or revenge because of their own problems.” *Id.*

<sup>119</sup> *Id.*, at 49.

<sup>120</sup> See generally *id.*

<sup>121</sup> Brogden *et al.*, *supra* note 48, at 78.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*, at 81.

<sup>124</sup> *Id.*, at 81. “Caregiver’s inability to deal with the elder’s dependency needs was frequently cited as the cause of the abuse.” *Id.*, at 82.

<sup>125</sup> *Id.*, at 82. Quoting L. Phillips, *Abuse and Neglect of the Frail Elderly at Home*, 8 J. Advanced Nursing 379-392 (1983). Several examples are given highlighting the feelings of caregivers who have reached the end of the rope and have crossed over into being abusers. Brogden *et al.*, *supra* note 48, at 78. These feelings as relayed suggest a correlation between stress, dependency, and elder abuse. *Id.* S. Steinmetz, *Duty Bound: Family Care and Elder Abuse* 20 (1988): “You don’t

## 2. US

No formal studies on the subject of elder abuse were done in the United States until the late 1970s.<sup>126</sup> The Select Committee on Ageing of the United States House of Representatives issued a report in 1981 which estimated that four percent of the elderly were victims of abuse.<sup>127</sup> The report concluded that such “mistreatment was a ‘hidden problem’ ... widespread and largely unreported.”<sup>128</sup>

In 1998, the National Elder Abuse Incidence Study (NEAIS) was released.<sup>129</sup> This study addressed domestic elder abuse, or elder abuse in the home and found that “in 1996 ... 449,924 persons aged sixty and over [had] experienced abuse and/or neglect in domestic settings.”<sup>130</sup> Of this number, only sixteen percent were reported, while eighty-four percent went unreported.<sup>131</sup> The NEAIS “estimated that new unreported incidents of abuse and neglect were five times more prevalent than reported and substantiated incidents.”<sup>132</sup> This is what is known as the “iceberg theory of elder abuse” which refers to the vast number of abuse cases below the surface that are never reported.<sup>133</sup>

The United States House Select Committee on Aging defined elder abuse as “physical, sexual, psychological or financial abuse of the elderly or otherwise causing the deprivation of their human rights by their relatives or caretakers.”<sup>134</sup> Many factors contribute to elder abuse, including “caregiver stress, dependence of the abuser, mental or physical impairment of the elder, domestic violence learned in the home, increased life expectancy, societal attitudes toward the elderly, and external stress.”<sup>135</sup>

The United States House Select Committee on Ageing has found that there are three categories of elder abuse which are the most prevalent in the United States. They are “(i) abuse and neglect in homes and domestic settings; (ii) abuse and neglect in institutions and other types of residential care; and (iii) fi-

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know what I went through! She got on my nerves so bad that my niece came and got her . . . she kept her for a while and got on her nerves so bad that I had to go down south and get Mamma and bring her back . . . I put her in a foster home and had to go and get her . . . she didn’t fit in. If I said ‘mamma, here’s your dinner’ she’d say ‘I don’t want it’. She broke her hip and told the doctor that I threw her down and broke [it].”

<sup>126</sup> Moskowitz, *supra* note 26, at 83.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*, at 83.

<sup>129</sup> See Breaux *et al.*, *supra* note 13, at 218: “The NEAIS gathered data on domestic elder abuse ... through a nationally representative sample of twenty counties in fifteen states. For each county sampled, the study collected data from two sources: reports from the local APS agency and ... from approximately 1,100 sentinels, who are trained individuals in ... agencies which have frequent contact with the elderly.”

<sup>130</sup> *Id.*, at 218.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*, at 218.

<sup>133</sup> *Id.*, at 218.

<sup>134</sup> Skabronski, *supra* note 10, at 630.

<sup>135</sup> *Id.*, at 631-632.

nancial fraud and exploitation.”<sup>136</sup> Elder abuse in general is most commonly perpetrated by “a somewhat distant relative or acquaintance . . . who is acting as [a] caregiver.”<sup>137</sup> Elder abuse in the domestic setting is committed ninety percent of the time by a relative or spouse of the victim.<sup>138</sup> There is little data on financial abuse of the elderly but when reported it is usually reported in association with other forms of abuse.<sup>139</sup>

### 3. France

The recognition of elder abuse in France has been a slow process, much like the response of Europe in general.<sup>140</sup> Only one study to date has studied the prevalence of abuse of the elderly, and this focused on a very small group.<sup>141</sup> It uncovered fifty-five cases of elder abuse fitting into the parameters of the definition of elder mistreatment set forth by the American Medical Association.<sup>142</sup>

In the study, the majority of victims were male, and all victims were around the same age of about eighty years.<sup>143</sup> All but three of the victims lived with children in the child’s home or lived in their own home with a family member or child living with them.<sup>144</sup> The reason given for joint living arrangements of family members was economic, and in most cases the shared living had been going on for more than a year.<sup>145</sup> Most of the abuse began approximately ten months after the abuser and the victim began living together.<sup>146</sup>

Victims related a myriad of reasons for why their family members abused them, the majority citing a “perception by a carer of a behavioural problem of the elderly person.”<sup>147</sup> Other reasons for abuse included alcohol-related problems of the carer,<sup>148</sup> and financial difficulties.<sup>149</sup>

Researchers of elder abuse in France indicate that as the French economy has waned and tax revenues have decreased, there has been a movement towards maintaining older people in their homes rather than in state run facilities.<sup>150</sup> Unfortunately, the state failed to take into account the increasing number

<sup>136</sup> Breaux *et al.*, *supra* note 13, at 208.

<sup>137</sup> Skabronski, *supra* note 10, at 632.

<sup>138</sup> Breaux *et al.*, *supra* note 13, at 219.

<sup>139</sup> *Id.*, at 222.

<sup>140</sup> G. Bennett, P. Kingston, & B. Penhale, *The Dimensions of Elder Abuse: Perspectives for Practitioners* 192 (1997).

<sup>141</sup> *Id.* The study was conducted in the Lille region of northern France. The study was conducted by a questionnaire and responses came from people living at home and the questionnaires were administered by two hospitals and the home nursing services around Lille.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* Forty-three victims were male, twelve were female.

<sup>144</sup> Bennett *et al.*, *supra* note 139, at 192.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 192. Twenty-three cases cited this reason.

<sup>148</sup> *Id.* Nineteen victims gave this reason. Bennett *et al.*, *supra* note 139, at 192.

<sup>149</sup> *Id.* Eighteen victims cited this reason. The remaining victims said their abuse was precipitated by factors that were “interactional and temperamental.” *Id.*, at 192.

<sup>150</sup> See Bennett *et al.*, *supra* note 140, at 193.

of the elderly, especially those living into old age that are more dependent on their caregivers.<sup>151</sup> Additionally, elderly individuals who are physically and mentally impaired are more at risk for the most severe abuse and mistreatment.<sup>152</sup> Researchers also found that French adult children tend to be “least accepting of the caring role ... [and have] the lowest threshold of tolerance compared with other family members.”<sup>153</sup>

## D. Changes Aimed at Preventing Elder Abuse/Neglect

### I. United Nations Recommendations

In 2002, the United Nations issued at Madrid, the International Plan of Action on Ageing.<sup>154</sup> The Madrid Plan “calls for changes in attitudes, policies, and practices at all levels in all sectors so that the enormous potential of ageing in the twenty-first century may be fulfilled.”<sup>155</sup> “The aim of the International Plan of Action is to ensure that persons everywhere are able to age with security and dignity,” while participating in the society to the fullest.<sup>156</sup> It is crucial that the elderly benefit from the “protection of all human rights ... in order to achieve a society for all ages,” which will be fulfilled by the nurturing of the relations between generations.<sup>157</sup>

To achieve this objective, the Madrid Plan calls for intergenerational solidarity not only in family units but throughout communities and nations.<sup>158</sup> In the face of rapidly changing demographics there is a need for a restructuring of social security systems to enable them to “sustain economic growth ... and to ensure adequate ... income maintenance.”<sup>159</sup>

Ties between families and communities are important for all age groups, and the Madrid Plan encourages governments to help strengthen those ties.<sup>160</sup> Older people can contribute by both participating in the economy, and more often by raising, educating, and otherwise supporting their grandchildren and the future generation.<sup>161</sup> Ways the United Nations recommends that governments strengthen family and community solidarity include education about ageing, focusing on the elderly as a resource and not a drain on resources, avoiding

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*, at 193. The study revealed that in thirty-one of fifty-five cases of abuse the child was the abuser. *Id.* Other relatives who became abusers were grandchildren, nieces or nephews, and children-in-law. *Id.*

<sup>154</sup> See generally *Madrid Plan*, *supra* note 4.

<sup>155</sup> See *id.*, at para. 10.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*, at para. 13.

<sup>158</sup> *Id.*, at para. 42.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*, at para. 43.

<sup>161</sup> *Id.*

generational segregation, and initiating research on various living arrangements for seniors.<sup>162</sup>

More directly, the Madrid Plan addresses elder abuse and neglect both from the standpoint of the elderly and their caregivers.<sup>163</sup> There is recognition of the role of the caregiver and their need for support within both the family and the larger community.<sup>164</sup> Many countries had developed dual systems in which the care of the elderly was shared by the state and the family.<sup>165</sup> As financial resources have depleted, however, the state has scaled back its care for the elderly, which has overburdened families because there is no state sponsored compensation for informal care.<sup>166</sup>

Additionally, many familial caregivers are women, who may have to cut back on hours at work or quit jobs altogether.<sup>167</sup> This creates an additional financial penalty for caregivers and perpetuates the system of dependence in old age.<sup>168</sup> If women do not work, they are not contributing to pensions or retirement plans, they miss opportunities for promotions, and the corresponding higher salaries.<sup>169</sup> Couple this with the situation that many women face – caring for both the elderly and children, and the emotional and physical tolls on their well-being; it is clear why women are among the most destitute in old age.<sup>170</sup>

To remedy this problem, it is recommended that nations develop a continuum of care that combines community-based care and family care.<sup>171</sup> Support is needed to enable families to care for the elderly without suffering from economic ramifications that impact other generations.<sup>172</sup> As has been noted, stress and exhaustion from caring for the elderly is one major excuse for abuse.<sup>173</sup> The Madrid Plan recognizes that abuse of the elderly can take on many forms and that it “occurs in every social, economic, ethnic, and geographic sphere.”<sup>174</sup> It calls for communities to unite to prevent abuse and for professionals to educate themselves so they can recognize signs of neglect, abuse, and violence by caregivers.<sup>175</sup> The Plan also makes special reference to the plight of women, who are at greater risk worldwide for abuse, often because of discriminatory attitudes.<sup>176</sup>

Not only does the plan call for services to aid victims of elder abuse, but it

<sup>162</sup> *Madrid Plan*, *supra* note 5, at para. 44.

<sup>163</sup> *Id.*, at paras. 101, 102, 107, 108, 110, 111, 112.

<sup>164</sup> *Id.*, at paras. 101, 102.

<sup>165</sup> *Id.*, at para. 104.

<sup>166</sup> *See id.*, at paras. 102, 104.

<sup>167</sup> *See id.*, at para. 102.

<sup>168</sup> *Madrid Plan*, *supra* note 4.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*, at para. 105.

<sup>172</sup> *Id.*

<sup>173</sup> Brogden *et al.*, *supra* note 48, at 78.

<sup>174</sup> *Madrid Plan*, *supra* note 4, para 107.

<sup>175</sup> *See id.*

<sup>176</sup> *Id.*, at paras. 108, 109. Many countries continue to fail to recognize the human rights of women and engage in traditional practices that direct violence at older women, especially widows. *Id.*

encourages the development of rehabilitation programs for abusers.<sup>177</sup> The plan recognizes that in many cases, there is co-dependency between the abuser and the victim.<sup>178</sup> In many instances, the elderly victim has to choose between remaining in an “abusive situation with the people he or she knows and often loves, or an institution with strangers.”<sup>179</sup> The plan encourages providers of services to the elderly to inform victims about services available to them and to report suspected abuse to the authorities.<sup>180</sup>

The Madrid Plan also recognizes that many individuals harbor resentment towards the elderly, which is fueled by negative views of the elderly as “a drain on the economy, with their escalating need for health and support services.”<sup>181</sup> “Misleading and negative stereotypes” result in the elderly not being portrayed as possessing the “authority, wisdom, dignity, and restraint that comes with a lifetime of experience.”<sup>182</sup> Characterizations of the elderly as weak and dependent ‘reinforces exclusionary practices’ at both community and national levels.<sup>183</sup>

The Madrid Plan outlines many issues facing the elderly, from discrimination in the workplace, to adequate housing, to prevention of abuse, and recommends actions to be taken to effectuate change.<sup>184</sup> However, since this is a United Nations initiative, it will be the responsibility of the governments of the participating nations to implement the recommendations put forward.<sup>185</sup> It will require “sustained action at all levels” to ‘mobilize the skills and energy of older persons.’<sup>186</sup> Similarly, the Madrid Plan “requires ... a political, economic, ethical and spiritual vision ... based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation.”<sup>187</sup>

## II. United States Legislation

While there is no federal legislation in the United States aimed specifically at elder abuse, there are statutes in place that deal generally with the public health and welfare and within that title, specifically with programs for older Americans.<sup>188</sup> Congress declared in enacting these sections that their goal was to keep “with the traditional American concept of the inherent dignity of the individual in our democratic society,” and to preserve this dignity for the ‘older people of our Nation.’<sup>189</sup> 42 U.S.C. § 3001 states that the government will assist older

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<sup>177</sup> *Id.*, at para. 111.

<sup>178</sup> Moskowitz, *supra* note 12, at 646.

<sup>179</sup> *Id.*, at 646.

<sup>180</sup> *Madrid Plan*, *supra* note 4, para. 111.

<sup>181</sup> *Id.*, at para. 112.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *See generally id.*

<sup>185</sup> *Madrid Plan*, *supra* note 4, para. 116.

<sup>186</sup> *Id.*, at para. 114.

<sup>187</sup> *Id.*, at para. 115.

<sup>188</sup> *See generally* 42 U.S.C. §§ 3001, 3002, 3003, 3012 (2003).

<sup>189</sup> 42 U.S.C. § 3001.

people in (among other things) enjoying an “adequate income in retirement,”<sup>190</sup> suitable housing,<sup>191</sup> and “protection against abuse, neglect, and exploitation.”<sup>192</sup>

While it is clear that Congress recognizes the problems facing the elderly, it remains unclear from the language of the legislation that they have grasped the severity and complexity of the problem.<sup>193</sup> For instance, their definition of “elder abuse” is “abuse of an older individual,”<sup>194</sup> and they define “neglect” as the neglect of an older individual.<sup>195</sup> Senators John B. Breaux (Democrat-Louisiana, USA) and Orrin G. Hatch (Republican-Utah, USA) lament the problem of no concrete definition of elder abuse<sup>196</sup> in a legal framework.<sup>197</sup>

Congress has also established a National Center on Elder Abuse,<sup>198</sup> whose function is to compile and disseminate research on elder abuse and neglect,<sup>199</sup> provide training materials to those “who are engaged or intend to engage in the prevention, identification, and treatment of elder abuse,”<sup>200</sup> furnish assistance to the States in their efforts to curb abuse,<sup>201</sup> and finally to conduct research on the “causes, prevention, identification, and treatment of elder abuse.”<sup>202</sup>

The federal government in the United States has taken a supporting role in elder legislation, leaving most of the responsibility to the individual states.<sup>203</sup> Forty-six states had established an agency responsible for compiling reports of abuse and had developed adult protective services as early as 1985.<sup>204</sup>

### III. French legislation

France is a social welfare state that provides generous benefits such as free education, social security payments, and pensions.<sup>205</sup> France does not have a law which specifically criminalizes neglect or financial abuse of elderly parents by their children, “suggesting that such an act is inconceivable.”<sup>206</sup> In fact there are no specific laws relating to the elderly. The Civil Code contains two articles,

<sup>190</sup> 42 U.S.C. § 3001 (1).

<sup>191</sup> 42 U.S.C. § 3001 (3).

<sup>192</sup> 42 U.S.C. § 3001 (10).

<sup>193</sup> See generally Breaux *et al.*, *supra* note 13.

<sup>194</sup> 42 U.S.C. § 3002 (22).

<sup>195</sup> 42 U.S.C. § 3002 (23).

<sup>196</sup> See generally R.J. Bonnie & R.B. Wallace (Eds.), National Research Council, Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America 36-38 (2003) for summaries of current statutory definitions of elder abuse, neglect, and financial exploitation. *Id.* These charts highlight the many variations on a common theme in defining these acts. *Id.*

<sup>197</sup> See Breaux *et al.*, *supra* note 13.

<sup>198</sup> 42 U.S.C. § 3012 (d)(1).

<sup>199</sup> 42 U.S.C. § 3012 (d)(2)(A).

<sup>200</sup> 42 U.S.C. § 3012 (d)(2)(C).

<sup>201</sup> 42 U.S.C. § 3012 (d)(2)(D).

<sup>202</sup> 42 U.S.C. § 3012 (d)(2)(E).

<sup>203</sup> Bonnie *et al.*, *supra* note 196, at 14.

<sup>204</sup> *Id.*

<sup>205</sup> E. Sciolino, *Expendable holiday? France takes a look*, N.Y. Times, 9 Sept. 2003.

<sup>206</sup> Bennett *et al.*, *supra* note 140, at 188.

which “impose an obligation on children to feed their parents and parents-in-law.”<sup>207</sup> The Penal Code has one article that pertains to assaults on older people, but it does not specify a relationship between the victim and abuser.<sup>208</sup>

## E. What Went Wrong?

### I. Continuing Elder Abuse Worldwide — Views of the Elderly on Abuse

The World Health Organization (WHO) conducted a study which interviewed elderly people and primary health care workers to “establish components of elder abuse as identified by older people themselves.”<sup>209</sup> In addition, the study explored what, in the view of the aged and health care professionals, needs to be done to develop a “global strategy against the abuse of older people.”<sup>210</sup> According to the study, the elderly perceive that there are three areas of abuse: neglect,<sup>211</sup> violation,<sup>212</sup> and deprivation.<sup>213</sup> This study revealed that the types of abuse that the elderly place the most importance on are not necessarily the same concerns that professionals deem the most important.<sup>214</sup> Within the three areas of abuse, the elderly identify six key categories of abuse: structural and societal abuse; neglect and abandonment; disrespect and ageist attitudes; psychological, emotional, and verbal abuse; physical abuse; and legal and financial abuse.<sup>215</sup>

The study found that elder abuse occurs in and as a result of retirement and changing social roles for the elderly and the exodus of the aged to nursing homes.<sup>216</sup> These situations are compounded by the low socio-economic status of many of the elderly, especially elderly women.<sup>217</sup> Participants from all countries agreed that the two subgroups of the elderly that are most often victimized are women<sup>218</sup> and the poor.<sup>219</sup>

<sup>207</sup> *Id.*, at 193.

<sup>208</sup> *Id.*

<sup>209</sup> *Missing Voices*, *supra* note 2. The survey included participants from eight countries: Argentina, Austria, Brazil, Canada, India, Kenya, Lebanon, and Sweden.

<sup>210</sup> *Id.*, at 1.

<sup>211</sup> *Id.* Neglect is defined as “isolation, abandonment and social exclusion.” *Id.*

<sup>212</sup> *Id.* A violation “of human, legal, and medical rights.” *Id.*

<sup>213</sup> *Missing Voices*, *supra* note 2, at 1. Referring to deprivation of “choices, decisions, status, finances, and respect.” *Id.*

<sup>214</sup> *Id.*, at 2.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*, at 9. In addition culture-specific influences affected the abuse rate, and participants in the group reported that health care providers not only abuse patients, but the providers are often victimized as well. *Id.*

<sup>217</sup> *Missing Voices*, *supra* note 2, at 9.

<sup>218</sup> *Id.* Women, especially widows and those who are childless are perceived to be more at risk. In the United States, women account for fifty-eight percent of those of sixty years of age, yet comprise more than seventy-six percent of elderly subjected to abuse and mistreatment. Moskowitz, *supra* note 12, at 601.

Changing social roles and low socio-economic status have resulted in many of the elderly depending on family for support.<sup>220</sup> This results in high stress levels on middle generations, who may respond by lashing out at their elderly family members.<sup>221</sup> While participants in the study recognized that this was ‘abuse’ they did not begrudge their caretakers because they realize the stress they are under.<sup>222</sup> Instead they placed blame on their government for failing to adequately support the elderly through social and economic policies.<sup>223</sup>

Perhaps most interesting was the elderly participants’ recognition of disrespect and ageist attitudes as not only a cause of abuse but as a form of abuse itself.<sup>224</sup> Participants in all the countries described disrespect as “the most painful form of mistreatment” and related an overall societal attitude of disrespect towards the elderly.<sup>225</sup> Several potential reasons for an increase in disrespect were proffered by the participants including media influence<sup>226</sup> and Westernization.<sup>227</sup>

## II. Continuing Elder Abuse in the United States

While elder abuse has now been recognized by the government, social agencies, and health care providers, there is still a lack of funding for research in the area.<sup>228</sup> Not a single foundation has targeted research or funding at the issue, and federal investment has been modest.<sup>229</sup> Not only is research funding scarce but to compound matters there is a grave lack of funding allocated to adult protective services.<sup>230</sup> In the year 1989, “\$45.03 per child was spent for protective services, as compared to \$3.80 per elderly resident for protective services.”<sup>231</sup>

Studies have estimated that “anywhere between 500,000 and 5,000,000 older

<sup>219</sup> *Missing Voices*, *supra* note 2, at 9. Participants realized that while abuse affects all social classes, they agreed that those who were poorest suffered the most. *Id.*

<sup>220</sup> *Id.*, at 11.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* The study relayed an example of financial abuse in Canada in which the elderly participant justified the behavior with the statement “He must have needed the money.” *Id.*

<sup>223</sup> *Missing Voices*, *supra* note 2, at 11.

<sup>224</sup> *Id.*, at 13.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* Participants and researchers feel that the media promotes “ageist attitudes and negative stereotypes about older people” and that this media blitz strongly influences young people who are more vulnerable to media portrayals. *Id.*

<sup>227</sup> *Id.* The Lebanese participants made particularly succinct reports concerning Westernization, relating that the “reason behind neglecting old people is the modernization of the society by trying to imitate the Western culture.” *Missing Voices*, *supra* note 2, at 13. These participants felt that as Western culture, including the media, became more prevalent in their society young people began to lose their respect for older people. In addition family ties were being broken and authority was shifting from the elders in the communities to their younger counterparts. *Id.*

<sup>228</sup> Bonnie *et al.*, *supra* note 196, at 11.

<sup>229</sup> *Id.*

<sup>230</sup> See generally Breaux *et al.*, *supra* note 13.

<sup>231</sup> *Id.*, at 214.

Americans are abused every year.”<sup>232</sup> It is estimated that eighty-four percent of cases involving elder abuse go unreported.<sup>233</sup> Elder abuse is difficult to detect because of the social isolation of many of the elderly.<sup>234</sup> Isolation “increase[s] both the risk of abuse and neglect while decreasing the possibility of detection by outsiders.”<sup>235</sup> Abuse often occurs at the hands of family members and the victim is often “embarrassed by the abuse, fearful of future mistreatment, and paradoxically, protective of the abuser.”<sup>236</sup>

Senators John B. Breaux and Orrin G. Hatch theorize that the “greatest barrier to addressing elder abuse is the relatively low profile of this issue among the general public ... compared to other issues such as child abuse and domestic violence.”<sup>237</sup> In addition, there is no federal legislation aimed at protecting the elderly from abuse.<sup>238</sup> Lack of federal legislation has resulted in roadblocks to developing a nationwide plan for protecting the elderly.<sup>239</sup> Factors that are impediments include differences in “structure and administration [between states] ... differences in age of eligibility for services, and program reporting requirements ... problems of detection or recognition, issues of reporting, proof of abuse, and resolution issues.”<sup>240</sup>

The definition and recognition of elder abuse is not well established enough that health care professionals or family and friends of the elderly can adequately identify and report abuse.<sup>241</sup> In many circumstances, signs of abuse such as “(bruising, dehydration, [and] unexplained injuries) ... [are seen as nothing] more than the normal results of the ageing process.”<sup>242</sup> In many cases when reports are actually made, many officials do not notify law enforcement officials.<sup>243</sup> In addition, many agencies have policies in place which require that a perpetrator be named in order to investigate allegations of abuse.<sup>244</sup> Some agencies go even further and require that there be witnesses to the alleged abuse other than the victim.<sup>245</sup> These obstacles place the burden of proof on the elderly to “convince society that they, in fact, suffered abuse rather than injuries and declining function[s] related to the ‘natural’ ageing process.”<sup>246</sup>

It is still hard to determine the actual number of elder mistreatment cases because of the hidden problems and stigma associated with abuse, but a 1990 congressional study found that the number of abuse cases could be as high as

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<sup>232</sup> *Id.*, at 212.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*, at 219.

<sup>235</sup> Breaux *et al.*, *supra* note 13, at 219.

<sup>236</sup> Moskowitz, *supra* note 26, at 78.

<sup>237</sup> Breaux *et al.*, *supra* note 13, at 222.

<sup>238</sup> *Id.*, at 223.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*, at 224.

<sup>242</sup> Breaux *et al.*, *supra* note 13, at 224.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*, at 225.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*, at 225.

1.5 million.<sup>247</sup> Ninety percent of US states reported to the Committee on Aging that occurrences of elder mistreatment were on the rise, estimates that have been confirmed by scholarly studies and government agencies.<sup>248</sup> Reporting, too, is on the rise; between 1996 and 2000, there was a sixty-two percent increase in the number of reports of elder abuse.<sup>249</sup>

### III. Continuing Elder Abuse in France

Perhaps no event has showcased the plight of the French elderly as poignantly as the heat-related deaths of the summer of 2003, which has left many “wondering whether neglect of the elderly has become the new French sickness.”<sup>250</sup> After the August heat wave, the ten hottest days of the past one hundred years in France,<sup>251</sup> over 11,000 people were dead, most of them elderly people who died while their families and doctors were on vacation,<sup>252</sup> a situation the union leader of the Paris emergency room doctors referred to as a “wholesale slaughterhouse.”<sup>253</sup>

The situation was made most dire for the elderly because on average more aged people live alone in France, due to poor nursing home conditions, which the elderly seek to avoid.<sup>254</sup> The majority of France’s twelve million citizens over age sixty live in their homes.<sup>255</sup> Early estimates found that up to seventy percent of those elderly who perished, died at home or in nursing homes without ever receiving any medical care.<sup>256</sup> Still, nearly one thousand elderly people were admitted to emergency rooms daily during the ten day long heat crisis, many at death’s door due to severe dehydration or heat exhaustion.<sup>257</sup>

By their own admission, the French are ‘leaders in the practice of abandoning elderly relatives in holiday time’ because they view summer holiday as sacred.<sup>258</sup> Since the state is responsible for most services, many French “treat the health service as a baby sitter,” checking their elderly relatives into hospitals at the start of summer vacation.<sup>259</sup> While citizens are blaming the government, the government (and many former officials) is pointing right back at the general

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<sup>247</sup> Moskowitz, *supra* note 12, at 592.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*, at 603. The National Center on Elder Abuse began collecting data on reported abuse in 1986. In that year only 117,000 cases were reported nationwide to the Center. By 1996 states reported 293,000 cases of elder abuse and by 1999-2000 that number jumped to 470,709. *Id.*

<sup>250</sup> C. Bremner, *Too Hot for a Nation to Handle?*, Times (London), 20 Aug. 2003.

<sup>251</sup> J. Perchet & P. Schwartz, *Heatwave: A Season in Hell*, available at [http://www.french-news.com/archive/172\\_nws1.htm](http://www.french-news.com/archive/172_nws1.htm) (last visited 31 Oct. 2003).

<sup>252</sup> See *Officials Blamed for Heat Deaths*, *supra* note 19.

<sup>253</sup> Bremner, *supra* note 250.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> Perchet *et al.*, *supra* note 251.

<sup>258</sup> Bremner, *supra* note 250.

<sup>259</sup> *Id.*

population, saying that the “deaths reflect an erosion of family values,”<sup>260</sup> which led to many elderly dying alone.<sup>261</sup> The president of the French Red Cross admonished, “We are all responsible as citizens for what has happened. When you get rid of old people for the holidays by leaving them alone with a full refrigerator and a telephone as an alibi, you can’t be surprised when they die alone, unable to manage.”<sup>262</sup>

French Prime Minister Jean-Pierre Raffarin’s government is still trying to recover from the scandal and discover where the breakdown in communication and emergency alert systems occurred.<sup>263</sup> After spending time visiting recovering elderly heat victims, he related that he was struck most by the human drama, “the solitude, isolation and sometimes abandonment in which old people are living today.”<sup>264</sup>

Still, many French feel that the government was too slow to act in the face of an unprecedented heat crisis, failing to mobilize people to check in on the elderly living alone and making sure that drinking water was available to all citizens.<sup>265</sup> The French, like many Europeans, shun air conditioning and few private or public buildings are air conditioned.<sup>266</sup> An organization of emergency room doctors has criticized the administration’s failure to set up cooling stations to alleviate the onset of heat related illnesses.<sup>267</sup>

## F. What Can Be Done?

### I. New Proposals in the United States

In the United States there is still no nationwide federally enacted statute to protect the elderly, and according to members of the Committee on Aging “not one single federal employee works full-time on elder abuse, neglect, and exploitation issues.”<sup>268</sup> In addition, the lack of uniform systems to report abuse makes it impossible to develop truly meaningful national statistics about the prevalence and incidence of elder abuse and neglect.<sup>269</sup>

“Congressional action remains elusive,” and states are left to their own devices to pass legislation.<sup>270</sup> As with other types of abuse, legislation and manda-

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<sup>260</sup> Sciolino, *supra* note 205.

<sup>261</sup> Bremner, *supra* note 250.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Heat Deaths: Chirac Pledges Action*, CNN (21 Aug. 2003) available at <http://www.cnn.com/2003/WORLD/europe/08/21/france.heatwave/index.html> (last visited 31 Oct. 2003).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> See Breaux *et al.*, *supra* note 13, at 208.

<sup>269</sup> See Moskowitz, *supra* note 12, at 603.

<sup>270</sup> See Breaux *et al.*, *supra* note 13, at 208.

tory reporting laws are needed to “sensitize professionals to the issue.”<sup>271</sup> The Connecticut Elderly Protective Service Law is an example of one state’s approach to defining elder abuse, its characteristics, and establishing a mechanism for reporting such abuse.<sup>272</sup> Three months after its enactment, there was a ninety-one percent increase in reports of neglect cases, a 107 percent increase in reports of physical abuse, a ninety-five percent increase in exploitation reports, and a 300 percent increase in reported cases of abandonment.<sup>273</sup>

While state action is definitely an integral part of the battle, Senators Breaux and Hatch have set forth a proposal confronting the need for elder abuse legislation on a nationwide scale.<sup>274</sup> They advocate the creation of dual Offices of Elder Justice at the Department of Health and Human Services and at the Department of Justice.<sup>275</sup> These offices will ‘serve programmatic, grant-making, policy development, and technical assistance functions’ in order to address elder abuse.<sup>276</sup> In addition, a resource center will provide information for consumers, law enforcement officials, care providers, etc. to aid recognition, reporting, and prevention of elder abuse.<sup>277</sup>

Other programs will be implemented under the Breaux-Hatch plan to create ‘safe-havens’ within the community for the elderly.<sup>278</sup> Law enforcement officers will receive funding to develop training to help officers recognize and investigate allegations of elder abuse, and assist victims of abuse.<sup>279</sup> Finally, state practices, such as the Connecticut Elderly Protective Service Law, will be reviewed to determine which states are successful and which policies and procedures could be integrated into future legislation.<sup>280</sup>

The American Bar Association (ABA) has also publicly endorsed the legislation proposed by Senators Breaux and Hatch.<sup>281</sup> The ABA has established a Commission on Law and Aging which has developed recommendations for action to prevent elder abuse.<sup>282</sup> These proposals include “specialized training about elder abuse for all components of the justice system”<sup>283</sup> and “assur[ing]

<sup>271</sup> Brogden *et al.*, *supra* note 48, at 51.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> See generally Breaux *et al.*, *supra* note 13.

<sup>275</sup> *Id.*, at 208.

<sup>276</sup> *Id.*, at 209.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*, at 210. “Legal advocates, volunteers, faith-based organizations, and not-for-profit entities will support at-risk seniors in the fight against elder abuse.” *Id.*

<sup>279</sup> Breaux *et al.*, *supra* note 13, at 209.

<sup>280</sup> *Id.*, at 210-211. “A study will review state practices and laws regarding: (1) definitions of elder abuse, neglect, and exploitation; (2) mandatory reporting laws; (3) evidentiary rules . . . (4) law requiring immediate reporting of all nursing home deaths to the county; (5) guardianship; and (6) banking practices.” *Id.*

<sup>281</sup> R. McMillion, *Stand Up For The Elderly: ABA Joins in Call for Congress to Address Elder Abuse Issues*, 89 A.B.A.J. 62 (2003). In addition, the ABA is a partner of the National Center on Elder Abuse. *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*, at 62.

that legal and other services are available to meet the immediate and crisis needs of victims.”<sup>284</sup> Other ABA proposals mirror those of Breaux and Hatch, namely establishing federal leadership and standards, task forces to address intervention, expansion of resources, and a campaign to raise awareness amongst the general population.<sup>285</sup>

“The battle against elder abuse is in its infancy,” states Laura Mosqueda, M.D., a clinical professor for family medicine, during the first annual Conference on Elder Abuse.<sup>286</sup> At the conference, professionals from the medical, legal, and social services professions encouraged their colleagues to “unite to curb the epidemic.”<sup>287</sup> The collaboration of medical, legal, and social service professionals that work with the elderly is essential to raising awareness and preventative strategies.<sup>288</sup>

On the legal front, many US legal professionals advocate the use of private litigation instead of the administrative, governmental process.<sup>289</sup> “Private litigants do in America much of what is done in other industrial states by public officers working within an administrative bureaucracy.”<sup>290</sup> Civil suits are becoming an important means of addressing problems within society, especially in the context of elder abuse and mistreatment.<sup>291</sup>

In addition, many advocate restructuring of existing federal legislation to provide payments to caregivers and allowing tax deductions for families that are supporting elderly family members.<sup>292</sup>

## II. New Proposals in France

In the face of the heat wave crisis, the French Prime Minister stated that “[o]ur relations with our elders are made up of too much individualism and selfishness. They must be conceived in a different way.”<sup>293</sup>

To pump more money into social programs, the government has suggested reducing the number of national holidays from eleven to ten and using the taxes from the additional work day specifically for care for the elderly.<sup>294</sup> By eliminating Pentecost<sup>295</sup> as a national holiday, the government estimates that they can

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<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> National Experts Address Abuse and Neglect at Conference on Elder Abuse, *supra* note 15.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> Moskowitz, *supra* note 12, at 595.

<sup>290</sup> *Id.* Quoting P.D. Carrington, *Renovating Discovery*, 49 Ala. L. Rev. 51, at 54 (1997).

<sup>291</sup> Moskowitz, *supra* note 12.

<sup>292</sup> *See id.*, at 665.

<sup>293</sup> Bremner, *supra* note 250.

<sup>294</sup> *Officials Blamed for Heat Deaths*, *supra* note 19.

<sup>295</sup> Pentecost commemorates the Descent of the Holy Ghost upon the Apostles fifty days after the Resurrection of Christ. *See* The Catholic Encyclopedia available at <http://www.newadvent.org/cathen/15614b.htm>. Traditionally it is considered in the Catholic faith to be as important as Easter Sunday. *Id.*

raise almost two billion a year.<sup>296</sup> A survey revealed that seventy-one percent of respondents supported the extra work day if it would benefit the elderly.<sup>297</sup>

The Associated Press reported in October 2003 that the French government was proposing a six billion Euro increase (6.8 billion dollars) in overall health care spending in the next five years.<sup>298</sup> That said, early reports indicate that the government will cut state spending on health care across the board.<sup>299</sup> The deficit of France's social security budget is projected to reach 9.7 billion Euro at the end of 2003.<sup>300</sup>

Thus far, the government's response to the heat crisis has been to increase the budget for emergency medical services, not care for the elderly.<sup>301</sup> In October 2003, France announced plans to spend 489 million Euro (\$570 million) during the next five years on these emergency services.<sup>302</sup>

## G. Conclusion

"Ultimately the challenge for us all is not only to listen to what has been said, but to believe and act upon it."<sup>303</sup> While societies world-wide have recognized and expended resources on issues related to child abuse and domestic violence, they have been sluggish in responding to similar issues involving elderly victims.<sup>304</sup> Part of this may be attributed to a negative view of the elderly, a myth that many are trying to shatter.<sup>305</sup> Former United Nations Secretary General Kofi Annan put emphasis on the positive opportunities that the elderly can bring to their communities at the United Nations World Assembly on Aging.<sup>306</sup> He was joined in this plea by the then European Union Council President Jose Maria Aznar who urged "making good use of the potential of older people ... to help meet the rising costs deriving from the new population structure."<sup>307</sup>

While it is evident that more cases of elder abuse are coming to light, it is important to note that the vast majority of the elderly are not abused or mis-

<sup>296</sup> Sciolino, *supra* note 205.

<sup>297</sup> *Id.* Results are from a telephone poll of 810 people conducted by the organization Conseil, Sondage, Analyse in August, 2003. *Id.*

<sup>298</sup> *French Government Announces US \$570m Financial Injection for Emergency Services*, WRMC Daily Analysis, (1 Oct. 2003), available at [www.lawschool.westlaw.com](http://www.lawschool.westlaw.com). (on file with author).

<sup>299</sup> *Major Works Ahead: Back to School and Turmoil Looms*, available at [http://www.french-news.com/archive/172\\_nws1.htm](http://www.french-news.com/archive/172_nws1.htm) (last visited 31 Oct. 2003).

<sup>300</sup> *Id.*

<sup>301</sup> *See* French Government Announces US \$570m Financial Injection for Emergency Services, *supra* note 298.

<sup>302</sup> *Id.*

<sup>303</sup> *Missing Voices*, *supra* note 2, at 1.

<sup>304</sup> Moskowitz, *supra* note 12, at 591.

<sup>305</sup> *See Missing Voices*, *supra* note 2.

<sup>306</sup> Bond, *supra* note 29.

<sup>307</sup> *Id.*

treated.<sup>308</sup> Many older persons are cared for in a loving and dignified way, both by their families and in institutional settings, often with great sacrifice on the part of family or society as a whole.<sup>309</sup> Each situation is unique, and the elderly can not be herded into an overbroad category replete with generalizations that perpetuate negative and discriminatory perceptions.<sup>310</sup>

The law can “be a catalyst for creating change”<sup>311</sup> and should evolve to “provide remedies where wrongs are perpetrated.”<sup>312</sup> However, this type of pervasive systematic and societal problem is not well suited to a legal solution.<sup>313</sup> Society must become educated and be made aware of the problems that the elderly face.<sup>314</sup> In addition, governments must provide legislation to not only provide benefits for the elderly, but to protect them and criminalize mistreatment of the elderly.<sup>315</sup>

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<sup>308</sup> Moskowitz, *supra* note 12, at 595.

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> Moskowitz, *supra* note 12, at 665.

<sup>312</sup> Bond, *supra* note 29.

<sup>313</sup> See Moskowitz, *supra* note 12, at 665.

<sup>314</sup> See generally Madrid Plan, *supra* note 4.

<sup>315</sup> See Bennett *et al.*, *supra* note 140. See also Moskowitz, *supra* note 12. See also Moskowitz, *supra* note 26.