

A CRITIQUE OF GUARDIANSHIP THEORY FROM THE PERSPECTIVE OF CATHOLIC THOUGHT: THE TENSION BETWEEN THE DUTY TO PROTECT AND PRESERVATION OF LEGAL AUTONOMY

LUCIA A. SILECCHIA*

INTRODUCTION

In recent times, guardianship law has been gaining much public attention—for a variety of reasons.¹ With a steadily aging domestic and international demographic,² an increasing number of people contemplate how

* Professor of Law, The Catholic University of America, The Columbus School of Law. I am grateful to my research assistant, Ms. Kylee Kim, of The Columbus School of Law for her diligent help and to my administrative assistant, Ms. Barbara McCoy. I deeply appreciate the insights I received on this paper from participants at the Catholic Health Care Leadership Alliance’s 2023 Symposium for the Advancement of Catholic Health Care, for the feedback generously shared by my faculty colleague, Professor Elizabeth Kirk, and for the suggestions offered by Professor Elizabeth Schiltz. Finally, I am grateful to the Columbus School of Law for its research support.

1. See generally MARY JOY QUINN, GUARDIANSHIP OF ADULTS: ACHIEVING JUSTICE, AUTONOMY AND SAFETY 12–16 (2005) (explaining various reasons for increased attention paid to guardianships).

2. See *id.* at 12 (“Between . . . 2010 and 2030, the population over sixty-five will double. This growth will culminate in 2030 when the ‘baby boomers’ reach sixty-five.”); Naomi Cahn, Clare Huntington & Elizabeth Scott, *Family Law for the One-Hundred Year Life*, 132 YALE L.J. 1691, 1695 (2023) [hereinafter *One-Hundred-Year-Life*]:

The United States is experiencing a tectonic demographic shift: the number of adults aged [sixty-five] and older is on track to more than double in a single generation, and more than twenty percent of the population will soon be older adults. Longevity has also dramatically increased, with some experts predicting that half of all five-year-olds alive in the United States today will live at least one hundred years.

For a comprehensive review of the legal implications of this aging demographic profile, see Anne Alstott, *Law and the Hundred-Year Life*, 26 ELDER L.J. 131 (2018).

This observation is also reflected in Catholic thought. See Pope Francis, General Audience: The Family – 6 (Mar. 4, 2015), https://www.vatican.va/content/francesco/en/audiences/2015/documents/papa-francesco_20150304_udienza-generale.html [hereinafter *The Family – 6*] (“The number of elderly has multiplied, but our societies are not organized well enough to make room for them.”); *id.* (“[S]cientists present the current century as *the aging century*: children are diminishing, the elderly are increasing. This imbalance challenges us.”); Pope Francis, General Audience: Catechesis on Old Age – 1 (Feb. 23, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220223-udienza-generale.html> [hereinafter *Catechesis on Old Age – 1*] (saying of the elderly that “[t]here have never been so many of us in human history. The risk of being discarded is even more frequent: never as many as now, never as much a risk of being discarded as now.”); *id.* (“We all live in a present where children, young people, adults[,] and the

they and their loved ones will be cared for if they lose capacity. A new variety of alternatives to guardianship have been adopted by states to allow for “supported” decisionmaking in numerous ways,³ while various forms of limited guardianship have emerged as alternatives to the traditional “one size fits all” model of plenary guardianship prevalent in the past.

At the same time, others argue for the abolishment of guardianships entirely, believing them to be an affront to the human rights of persons with disabilities⁴ that “evokes a kind of ‘civil death’ for the individual, who is no longer permitted to participate in society without mediation through the actions of another if at all.”⁵ Many have written various critiques of guardianships from diverse perspectives, particularly after key provisions of both the 2017 Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (“UGCOPAA”)⁶ and the Convention on the Rights of Persons with Disabilities (“CRPD”)⁷ made significant changes to the parameters of traditional guardianship theory.⁸ Indeed, even in the popular press, custodial arrangements for young celebrity Britney Spears focused largely negative attention on guardianships and conservatorships.⁹

elderly coexist. But the proportion has changed: longevity has become a mass [phenomenon] and, in large parts of the world, childhood is distributed in small doses. We have talked about the winter demographic as well.”); Jamie L. Leary, *A Review of Two Recently Reformed Guardianship Statutes: Balancing the Need to Protect Individuals Who Cannot Protect Themselves Against the Need to Guard Individual Autonomy*, 5 VA. J. SOC. POL’Y & L. 245, 246 (1997) (“[G]rowth of the elderly population almost inevitably means increased use of guardianship.”).

3. For fuller discussions of supported decisionmaking regimes, see Kristin Booth Glen, *Piloting Personhood: Reflections from the First Year of a Supported Decision-Making Project*, 39 CARDOZO L. REV. 495 (2017); Cathy E. Costanzo, Kristin Booth Glen, & Anna M. Kreiger, *Supported Decision-Making: Lessons from Pilot Projects*, 72 SYRACUSE L. REV. 99 (2022); Nina A. Kohn, *Legislating Supported Decision-Making*, 58 HARV. J. ON LEGIS. 313 (2021); Eliana J. Theodorou, *Supported Decision-Making in the Lone-Star State*, 93 N.Y.U. L. REV. 973 (2018).

4. See Glen, *supra* note 3, at 498 (“If legal capacity is instrumental to personhood, then guardianship, which removes legal capacity in the name of ‘protection,’ is its antithesis.”); Leslie Salzman, *Using Domestic Law to Move Toward a Recognition of Universal Legal Capacity for Persons with Disabilities*, 39 CARDOZO L. REV. 521, 524 (2017) (“[G]uardianship, and particularly plenary guardianship, operates as a wholesale restriction on the exercise of many of the specific liberty interests that have been recognized by our courts.”); *id.* (“[G]uardianship is an exercise of State power that removes the individual’s ability to act on her own behalf to protect herself and her own interests.”); *id.* at 525 (“[G]uardianship is a mechanism that isolates the individual by making the guardian the conduit for many, or all, of the individual’s interactions with public and private actors . . .”).

5. Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 HUM. RTS. BRIEF 8, 9 (2012).

6. UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE ARRANGEMENTS ACT (UNIF. L. COMM’N 2017) [hereinafter UGCOPAA].

7. G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities (Dec. 12, 2006) [hereinafter CRPD].

8. See *infra* discussion accompanying notes 65–83.

9. For scholarly commentary on the Britney Spears proceedings, see Cecily D’Amore, *#Free Britney: The Importance of Public Access to the Guardianship System*, 40 CARDOZO ARTS & ENT.

This article will address guardianship theory through a different lens: the perspective of Catholic social thought on the dignity of the human person. In one sense, to appoint a guardian seems a routine matter. Probate and family courts conduct guardianship proceedings constantly.¹⁰ Yet, there is something morally profound in this routine matter as it dramatically curtails the legal rights of one in favor of expansive legal control by another.¹¹ As noted in an explosive 1987 Congressional hearing on guardianship abuse:

There is a powerful and unique abrogation of rights when a person's care is entrusted to another under a guardianship. . . . The typical ward has fewer rights than the typical convicted felon—they can no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get[,] and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.¹²

Even for those who do not share such a dim view of guardianships, the implications of allowing one person to act so fully in the stead of another demand deep reflection. As in other matters, Catholic teaching may be brought to bear on this issue since, “though the Church’s first care must be for souls, how she can sanctify them and make them share in the gifts of heaven, she concerns herself too with the exigencies of man’s daily life . . . and his general, temporal welfare and prosperity.”¹³ In a practical sense, as well, because so

L.J. 245 (2022); George J. Tzimirangas, “Gimme More” Freedom, Your Honor: How Guardianship and Conservatorship Laws Can Be Reformed Amid Britney Spears’ Controversial Conservatorship Coming to an End, 36 QUINN. PROB. L.J. 54 (2022); Stephany Rohleder, *Free Britney: How a Pop Culture Icon Brought to Light Guardianship and Conservatorship Inequities and How Kansas Statutes Can Better Protect Against Them*, 70 U. KAN. L. REV. 791 (2022).

10. According to a recent letter written by Senators Robert Casey, Jr. and Mike Braun who are the Chair and the Ranking Member, respectively, of the Senate Special Committee on Aging, there are 1.3 million people under guardianships in the United States. See Letter from Sen. Robert P. Casey, Jr., Chairman, Special Comm. on Aging, & Sen. Mike Braun, Ranking Member, Special Comm. on Aging, to Hon. Gene L. Dodaro, Comptroller Gen., U.S. Gov’t Accountability Off. (May 31, 2023), https://www.aging.senate.gov/imo/media/doc/casey-braun_letter_to_gao_re_guardianships.pdf. However, they indicate that there is uncertainty about this figure and a variety of conflicting terms that make it difficult to obtain accurate guardianship statistics.

11. See Nina A. Kohn, Jeremy A. Blumenthal & Amy T. Campbell, *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN STATE L. REV. 1111, 1117–18 (2013) (“[R]ather than being treated as the extraordinary proceedings that they are, guardianships are often treated as a routine part of permanency planning . . .”).

12. CLAUDE PEPPER, ABUSES IN GUARDIANSHIP OF THE ELDERLY AND INFIRM: A NATIONAL DISGRACE, H.R. REP. NO. 100-641, at 8 (1987). The impact of these hearings is discussed more fully in QUINN, *supra* note 1, at 24–26.

13. POPE JOHN XXIII, *MATER ET MAGISTRA* para. 3 (May 15, 1961), https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html [hereinafter *MATER ET MAGISTRA*]. See also POPE PIUS XI, *QUADRAGESIMO ANNO* para. 41 (May 15, 1931), https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadagesimo-anno.html [hereinafter

many institutions entrusted with the care of vulnerable people operate under Catholic auspices, the intricacies of the guardianship regime have concrete implications. This is particularly true in the heartbreaking cases of those without loved ones to care for them. This may place such institutions in the fraught position of initiating guardianship proceedings themselves.

A Catholic view of the dignity of the human person contributes two rich and potentially conflicting lines of thought on this question. The duty to protect a vulnerable person and his or her dignity is a sacred responsibility. A guardianship—if undertaken by the right person with the right motives—can accomplish this protection in a highly effective way. On the other hand, because guardianships bring with them a dramatic loss of human autonomy, they can also pose a potential threat to that very dignity, particularly when they are abused or unnecessary.

As legal debates rage both domestically and internationally, there is a profound moral question underlying guardianships that requires that serious attention be paid to more fundamental questions of human nature. The implications of allowing one person to act so fully in the stead of another demand deep reflection on the duty to protect, the obligations of protectors, the value of human autonomy, and the limits, *vel non*, of human independence. It

QUADRAGESIMO ANNO] (stating that the Church “can in no wise renounce the duty God entrusted to her to interpose her authority, not of course in matters of technique for which she is neither suitably equipped nor endowed by office, but in all things that are connected with the moral law.”); POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* para. 41 (Dec. 30, 1987), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html [hereinafter *SOLLICITUDO REI SOCIALIS*] (“But the Church is an ‘expert in humanity,’ and this leads her necessarily to extend her religious mission to the various fields in which men and women expend their efforts in search of the always relative happiness which is possible in this world, in line with their dignity as persons.”); POPE FRANCIS, *EVANGELII GAUDIUM* para. 182 (Nov. 24, 2013), https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium_en.pdf [hereinafter *EVANGELII GAUDIUM*] (“The Church’s pastors, taking into account the contributions of the different sciences, have the right to offer opinions on all that affects people’s lives.”); POPE LEO XIII, *RERUM NOVARUM* para. 28 (May 15, 1891), https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html [hereinafter *RERUM NOVARUM*] (“Neither must it be supposed that the solicitude of the Church is so preoccupied with the spiritual concerns of her children as to neglect their temporal and earthly interests.”). The value of Catholic social teaching, as a lens through which to view social issues is three-fold in “that in the social doctrine of the Church can be found the principles for reflection, the criteria for judgment[,] and the directives for action which are the starting point for the promotion of an integral and solidary humanism.” PONTIFICAL COUNCIL FOR JUST. & PEACE, *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH* para. 7 (2004), https://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html [hereinafter *COMPENDIUM*]. This concern is not a new one as its roots go back to the foundational Judeo-Christian teachings on concern for those who are, in any way, vulnerable. *See* U.S. CATH. BISHOPS, *ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* vii (1986) [hereinafter *ECONOMIC JUSTICE FOR ALL*]:

[W]e can best measure our life together by how the poor and the vulnerable are treated. This is not a new concern for us. It is as old as the Hebrew prophets, as compelling as the Sermon on the Mount, and as current as the powerful voice of Pope John Paul II defending the dignity of the human person.

forces contemplation about the reality of human vulnerability in all its forms. It also demands an appreciation of both a rightly ordered duty to care and the parameters of authentic freedom.

The paper will begin with a brief description of guardianships and their ramifications from domestic and international legal perspectives. Next, it will explore relevant Catholic social thought with respect to both the duty to protect vulnerable persons and the importance of human autonomy. Then, it will address what these principles may bring to bear on (1) the substance of guardianship laws and, more importantly, (2) the moral obligations of those who undertake the role of guardians. As guardianship law continues to develop, it must be grounded in a sound understanding of the human person. The Catholic tradition has much to contribute to this understanding.

I. THE MODERN LEGAL LANDSCAPE: AMERICAN GUARDIANSHIP LAW

Guardianship law in the United States is still largely a function of state law—although there is recent attention to federal initiatives in this area.¹⁴ While there is great disparity among various state laws, the 2017 UGCOPAA proposes a comprehensive framework as a new model.¹⁵ Although not yet widely adopted,¹⁶ this uniform law will be used as the basis for discussion since a number of innovations in the UGCOPAA advance a “person-centered philosophy”¹⁷ more directly than traditional guardianship law. Even if not adopted fully in great measure to date, this approach will, no doubt, have a significant impact on the future of American guardianship law. The UGCOPAA includes procedural safeguards “respecting and protecting the rights and interests of both individuals alleged to need a guardian or conservator and individuals subject to guardianship or conservatorship.”¹⁸ It emphasizes using “less restrictive alternatives, including supported decision[]making and single-issue court orders”¹⁹ as alternatives to traditional, comprehensive

14. On March 30, 2023, Sen. Robert P. Casey, Jr. introduced the Guardianship Bill of Rights Act, SB-1148, which would aim to curb abuses in the guardianship system. *See* S. 1148, 118th Cong. (as introduced by Sen. Casey, Mar. 30, 2023).

15. As with all uniform statutes, the UGCOPAA has no binding authority on its own. Rather, the Uniform Law Commission “draft[s] model legislation that a state may choose to enact, with the hope that all states enact the model legislation to streamline guardianship laws between jurisdictions. Though some states do not enact this model legislation in its entirety, states frequently use some of the model legislation in its revised or enacted provisions.” Alexandra Wallin, *Living in the Gray: Why Today’s Supported Decision-Making-Type Models Eliminate Binary Solutions to Court-Ordered Guardianships*, 57 SAN DIEGO L. REV. 433, 450 (2020).

16. *See Guardianship, Conservatorship, and Other Protective Arrangements Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c> (last visited Jan. 27, 2024) (tracking adoption of the UGCOPAA, indicating that, to date, only two states have adopted the 2017 UGCOPAA, one has introduced legislation to do so, and three have enacted a prior version.)

17. UGCOPAA, *supra* note 6, at 1.

18. *Id.* at 2.

19. *Id.*

guardianships. It also requires “enhanced monitoring”²⁰ of fiduciaries to prevent fraud and abuse and an emphasis on protecting rights to maintain meaningful relationships with third parties.²¹ These philosophies both drive and undergird the UGCOPAA reforms to the guardianship relationship—reforms that are already taking place in many states that have not embraced the UGCOPAA in its entirety.

At the heart of the UGCOPAA—and state statutes modeled on or inspired by it—is the desire to move away from the traditional “all or nothing” approach to guardianship and replace it with a menu of more limited guardianships that give guardians more narrowly crafted sets of responsibilities, based on specific needs.²² It supports “tailored” or limited guardianships, which represent the least restrictive means of protection, the promotion of greater autonomy for the incapacitated person, and robust procedural protection in the initial determination of incapacity and appointment of a guardian.²³

More specifically, when outlining standards for appointing a guardian for an adult, the UGCOPAA emphasizes that this is to be the last resort rather than the first option. The court may appoint a guardian only with “clear-and-convincing evidence”²⁴ of two key facts. First, the person in question must “lack[] the ability to meet essential requirements for physical health, safety[,] or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, *even with* appropriate supportive services, technological assistance, or supported decisionmaking.”²⁵ Second, it must be established that the individual’s “needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.”²⁶

These provisions recognize that there are occasions when the appointment of a guardian will be necessary and even unavoidable. However, the UGCOPAA mandates that all other options be pursued first. Hence, any order

20. *Id.* at 3.

21. *Id.* (supporting rights to “visitation and communication with third parties”).

22. See Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 COLUM. HUM. RTS. L. REV. 93, 94 (2012) [hereinafter *Changing Paradigms*] (“The earliest, binary model was one premised on status: incapacity as a defect that deprived an individual of the ability—and consequently the legal right—to make choices.”); Wallin, *supra* note 15, at 452 (observing that “[u]ntil recently, an individual’s ability to make decisions and guardianship status were binary conceptions”); Kevin McGovern, *The VLRC Report on Guardianship and Catholic Teaching*, 17 CHISHOLM HEALTH ETHICS BULL. 1, 2 (2012):

[T]here has been a major change in community attitudes towards persons with disabilities. . . . [T]he focus was on their protection from harm. Nowadays, the focus is on their participation. We seek to support people with disabilities to be active, participating members of society and also to participate as fully as possible in the decisions that affect their lives.

23. *Changing Paradigms*, *supra* note 22, at 98.

24. UGCOPAA, *supra* note 6, § 301(a)(1).

25. *Id.* § 301(a)(1)(A) (emphasis added).

26. *Id.* § 301(a)(1)(B). In the alternative, the court may “treat the petition [for guardianship] as one for a conservatorship . . . or protective arrangement . . . , [or] issue any appropriate order, or dismiss the proceeding.” *Id.* § 301(a)(2).

appointing a guardian must be explicit as to why clear and convincing evidence establishes that there is no less restrictive alternative.²⁷ This places a significant burden on those seeking to impose a guardianship to demonstrate why it is necessary.

Moreover, if a guardian is appointed, the UGCOPAA requires that the guardian's authority be strictly limited to include only those powers necessary to meet the "demonstrated needs and limitations"²⁸ of the individual under the guardianship. Furthermore, guardianship orders must provide for the "maximum self-determination and independence."²⁹ This is not discretionary. The statute unambiguously directs that "[t]he court *may not* establish a full guardianship"³⁰ if there is another less restrictive alternative.³¹

The UGCOPAA identifies two particular rights that require a "compelling reason"³² to be suspended: the right to vote³³ and the right to marry.³⁴ In the past, it was automatically assumed that these rights would be suspended upon the appointment of a guardian. However, that is not the necessary or automatic outcome under the UGCOPAA. Rather, the UGCOPAA requires that any order suspending either of these rights must be explicit as to the justification for doing so.³⁵

27. *Id.* § 310(a)(1) (requiring a showing that the individual's needs "cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative, including use of appropriate supportive services, technological assistance, or supported decision[.]making").

28. *Id.* § 301(b).

29. *Id.*

30. *Id.* (emphasis added).

31. As noted by the drafters of the UGCOPAA, this is "consistent with the act's philosophy that a guardian should be appointed only when necessary, only for as long as necessary, and with only the powers that are necessary." *Id.* § 301 cmt. at 71.

32. *Id.* § 310 cmt. at 97.

33. For a fuller discussion of this issue, see Elizabeth R. Schiltz, *The Ties That Bind Idiots and Infamous Criminals: Disenfranchisement of Persons with Cognitive Impairments*, 13 U. ST. THOMAS L.J. 100 (2016).

34. For a fuller discussion of this issue, see Edwin M. Boyer & Rebecca C. Morgan, *Maximizing Autonomy and Ensuring Accountability Rights-Based Post-Appointment Issues in the "New Normal"*, 72 SYRACUSE L. REV. 41 (2022); Jacob Quasius, *The Next Step in Marriage Equality: Indiana Restrictions on Marriage for Individuals Under Adult Guardianship*, 31 GEO. MASON U. C.R. L.J. 135 (2021).

35. UGCOPAA, *supra* note 6, § 310(a)(3)–(4). For a comparative perspective on the interplay between guardianships and the right to vote, see János Fiala-Butora, Michael Ashley Stein, & Janet E. Lord, *The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities*, 55 HARV. INT'L L.J. 71 (2014); Lily Verbeck, *A Class Left Behind: An Assessment of State Voter Competency Laws and the Disenfranchisement of People With Mental Disabilities*, 32 GEO. MASON U. C.R. L.J. 149 (2022); Melissa Deutschman, *Incapacity by Status Versus Functional Ability: Preserving the Right to Vote for Elderly Americans with Diminished Mental Capacity While Upholding the Integrity of Elections*, 24 ELDER L.J. 429 (2017); Tiffany Yates, *A First Amendment Analysis of Voting Rights of the Mentally Incapacitated: Why Are You Calling Me an Idiot, Why Can't I Vote?*, 15 FIRST AMEND. L. REV. 121 (2016); Jennifer A. Bindel, *Equal Protection Jurisprudence and the Voting Rights of Persons with Diminished Mental Capacities*, 65 N.Y.U. ANN. SURV. AM. L. 87 (2009); Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*,

The UGCOPAA includes significant procedural safeguards to protect individuals subject to guardianship both before and during the period of guardianship. For example, the individual subject to the guardianship must receive both a copy of the petition for guardianship and a notice of the hearing through personal service. This notice must include specific information informing the individual of all rights including the right to be present at the hearing and to be represented by counsel.³⁶ When a petition is made, the court is required to appoint a neutral “visitor” to conduct interviews with the individual and any would-be guardian, gather information about the individual’s dwelling, obtain medical information about the individual, and file a complete report before the guardianship decision is made.

This mandatory report does not merely ask the visitor’s opinion as to whether a guardian should be appointed or allow the visitor to “rubber stamp” a decision already made. Rather, the visitor’s report must also address such things as the necessity of legal counsel to represent the interests of the individual,³⁷ a summary of all the activities that the individual “could manage with the assistance of appropriate supportive services, technological assistance, or supported decision[]making,”³⁸ and whether there are alternatives to a guardianship that could be appropriate.³⁹ This allows the visitor’s insights and expertise to shape the least restrictive alternative with an explicit focus on the specific needs of the person who will live under the guardianship.

The UGCOPAA strives to ensure that the person ultimately appointed as guardian will be consistent with the presumed wishes of the individual who will be subject to the guardianship. Thus, priority for appointment goes to those nominated by the individual or appointed by them in another instrument, then to the individual’s spouse or domestic partner, followed by another family member or other individual “who has shown special care and concern.”⁴⁰ The presumption is that this will mean that anyone ultimately vested with such a great degree of control will be consistent with the discernable or presumed wishes of those in their care.

Alas, there will be situations in which an individual is truly alone. However, the goal of the UGCOPAA is to appoint guardians who will genuinely care for the individuals they will serve. To this end, the drafters noted that “courts should resist the temptation to appoint a professional guardian simply because it is difficult to choose among family members and friends. . . .

38 MCGEORGE L. REV. 931 (2007); Kingshuk K. Roy, *Sleeping Watchdogs of Personal Liberty: State Laws Disenfranchising the Elderly*, 11 ELDER L.J. 109 (2003).

36. UGCOPA, *supra* note 6, § 303(b). The statute goes on to say that “[i]f it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.” *Id.* § 307(a).

37. *Id.* § 304(d)(1).

38. *Id.* § 304(d)(2).

39. *See id.* § 304(d)(3).

40. *See id.* §§ 309(a)(1)–(5).

[A]ppointment of a professional is likely not to be consistent with the adult's wishes."⁴¹

In addition, any order appointing a guardian must also include a statement of all the rights that will be retained by the person subject to the guardianship. This order must be delivered to the person subject to the guardianship.⁴² It must be as extensive as possible and provide meaningful protection. These rights include rights to terminate or modify the guardianship, remove the chosen guardian, select an attorney, participate in decisionmaking with respect to health care and other matters, be notified in advance of a change in primary dwelling, and to object to that change. In addition, subject to several exceptions, there is also a robust right to “communicate, visit, or interact with others, including receiving visitors and making or receiving telephone calls, personal mail, or electronic communications, including through social media”⁴³ This not only preserves vital social interactions and relationships but can also be a valuable informal means of oversight of the guardian.

The UGCOPAA charges the guardian to “promote the self-determination of the adult and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf, and develop or regain the capacity to manage the adult's personal affairs.”⁴⁴ This is consistent with the philosophy of the UGCOPAA to encourage as much independence and as few restrictions as possible. In articulating the standard governing the guardian's conduct, the UGCOPAA requires that all decisions by the guardian should be those that “the guardian reasonably believes the adult would make . . . unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult.”⁴⁵ Ideally, the guardian would know, in advance, what those decisions would be. However, in the absence of that knowledge, the UGCOPAA directs guardians to discern and act in “the best interest of the adult.”⁴⁶ This is not a rule of substitute judgment. Rather, it envisions that the wishes of the person subject to the guardianship are given effect—not the wishes of the guardian.⁴⁷

41. See *id.* § 309 cmt. at 94. Indeed, in a heartbreaking expose, *The Washington Post* presented a case study of abuse by a court-appointed guardian. See Mary Jordan, *The Retired Pilot Went to the Hospital. Then His Life Went into a Tailspin*, WASH. POST. (Nov. 4, 2023), <https://www.washingtonpost.com/nation/2023/11/04/florida-guardianship-investigation-safeguards/>. Nevertheless, for a more positive commentary on the role that can be played by dedicated public guardians, see generally Charles Perez Golbert, *Justice for Children, Adults with Disabilities and the Elderly: Reflections from 15 Years as an Attorney with the Office of the Public Guardian of Cook County, Illinois*, 1 DEPAUL J. SOC. JUST. 51 (2007).

42. See UGCOPAA, *supra* note 6, § 311(b).

43. See *id.* § 311(b)(6).

44. *Id.* § 313(b).

45. *Id.* § 313(d).

46. *Id.* § 313(e). This is a decision to be made by weighing a broad range of information including “information the guardian believes the adult would have considered if the adult were able to act.” *Id.* §§ 313(e)(1)–(3).

47. For a comprehensive discussion of the complexity involved in decisionmaking of a guardian, see Lawrence A. Frolik, *Is a Guardian the Alter Ego of the Ward?*, 37 STETSON L. REV.

Even with these safeguards in place, the guardians' potential powers may be extensive. Unless the range of powers is limited by the order granting the guardianship, these may include powers to:

“apply for and receive funds and benefits for the support of the adult;”⁴⁸

“establish the adult’s place of dwelling;”⁴⁹ and

“consent to health or other care”⁵⁰

among other things. With a specific court order, a guardian may also undertake more profound decisionmaking, including life-changing decisions concerning the individual’s adoption,⁵¹ marriage,⁵² or the end of a marriage.⁵³ Such a broad range of powers is not intended to be the norm. However, the UGCOPAA allows it in necessary circumstances.

The UGCOPAA also requires that, within sixty days of appointment, the guardian submit a care plan to the court that specifies how the best interests and needs of the adult shall be pursued.⁵⁴ This responsibility was not included in prior iterations of the statute. This care plan must include expected factors such as residential arrangements and costs for services. However, it must also include such things as a plan for facilitating visits with those near and dear,⁵⁵ specifying how often the guardian will visit and communicate, and outlining “[g]oals . . . including any goal related to the restoration of the adult’s rights, and how the guardian anticipates achieving the goals.”⁵⁶ The latter is one of the most novel features of the statute in that it contemplates that the guardianship should be temporary whenever that is feasible.

With respect to monitoring guardians, the UGCOPAA allows the guardian to accept only “reasonable compensation” approved by the court or a separate conservator.⁵⁷ This can deter situations in which the guardian is motivated by financial reward in an exploitative way. In addition, the UGCOPAA allows both those subject to a guardianship and those interested in their welfare to “file a grievance in a record with the court.”⁵⁸ This is significant because it does not

53 (2007). Although written a decade before the revisions to the UGCOPAA, Prof. Frolik’s analysis points to many of the dilemmas faced by guardians as they make decisions for those they serve.

48. UGCOPAA, *supra* note 6, § 314(a)(1).

49. *Id.* § 314(a)(2).

50. *Id.* § 314(a)(3).

51. *Id.* § 314(b).

52. *Id.* § 314(c)(1).

53. *Id.* §§ 314(c)(2)–(3).

54. *Id.* § 314(a).

55. *Id.* § 316(a)(3).

56. *Id.* § 316(a)(5).

57. *Id.* § 120(a). Reasonableness shall be determined based on “the necessity and quality of the services provided,” “the experience, training, professional standing, and skills of the guardian or conservator,” “the difficulty of the services performed,” “the conditions and circumstances under which a service was performed,” “the effect of the services,” “the extent to which the services provided were or were not consistent with the guardian’s plan,” and “the fees customarily paid,” among other things. *Id.* §§ 120(c)(1)–(7).

58. *Id.* § 127(a).

require a petition, motion, or another formal document. Rather, allowing less formal grievances is intended to foster easier access to the courts.⁵⁹

Additionally, guardians must file an annual report with the Court as to the “condition of the adult and accounting for funds and other property in the guardian’s possession or subject to the guardian’s control.”⁶⁰ This is fairly typical, even in states with traditional guardianship statutes. While the usefulness of this will depend upon the care with which the relevant Court reviews the report, it is an additional effort to foster transparency and accountability.

In recent years, even jurisdictions that have not adopted the UGCOPAA have experimented with alternatives to the traditional guardianship model. Chief among these is the concept of supported decision[]making (“SDM”).⁶¹ This approach provides a mechanism through which those with certain disabilities can, in a formal way, designate a team of selected advisors to provide support and advice in making decisions while maintaining the ability of the person with the disability to make final decisions.⁶² This approach, like the UGCOPAA, attempts to avoid a binary guardianship regime. It replaces it with a more flexible advisory approach.

Changes such as these reflect the movement toward a more explicitly rights-based theory of guardianship⁶³ as opposed to one that is purely protective.⁶⁴ This is the case both in American domestic law and in the changing legal landscape of international law.

59. *See id.* § 127 cmt. at 41.

60. *Id.* § 317(a). *See also id.* §§ 317(b)(1)–(14) (outlining the information that must be included in the annual report to the court).

61. For a history of the SDM movement, see Glen, *supra* note 22, at 502–04. For full discussions of supported decisionmaking and its relationship to guardianship law more broadly, see Kohn, *supra* note 3; Wallin, *supra* note 15; Kohn, Blumenthal, & Campbell, *supra* note 11. *See also* NATIONAL RESOURCE CENTER FOR SUPPORTED DECISION-MAKING, <https://supporteddecisionmaking.org/> (last visited Jan. 27, 2024).

62. The United States is not the only nation taking this approach. For a discussion of a similar Australian experience, see McGovern, *supra* note 21, at 2–5. McGovern notes that Australia, too, recognizes that there is “a sharp line between those with capacity to make their own decisions and those who lack this capacity. . . . [S]ome people can still make many if not all decisions with only a small amount of assistance.” *Id.* at 2.

63. *See Changing Paradigms, supra* note 22, at 123 (“The shift from a view of persons under guardianship as limited rights-bearers, embodied in the current paradigm, to that of persons with full legal capacity, is not merely semantic or rhetorical; it is, rather, a paradigm shift brought about, in large part, by decades of activism by the disability community.”); Kohn, *supra* note 3, at 314 (opining that “supported decision[]making practices have the potential to transform individuals with disabilities from legal subjects into legal actors”).

64. *See* Wallin, *supra* note 15, at 469 (observing that, in practice, when “balancing . . . individuals’ protective needs and empowering basic rights, the scale is heavily skewed towards overprotecting the individual.”); *id.* at 471 (“[S]tate courts often order a plenary guardianship when a limited guardianship would be adequate.”); *id.* at 497 (observing that, in the past, American courts “have erred on the side of appointing a guardian as a way to ensure the individual is protected, but this general insistence upon granting guardianships has been at the expense of the individual’s rights”).

This approach is not without its critics, who argue that it “promotes a form of private family ordering that is antithetical to individual rights, consequently exposing individuals with disabilities to substantial risk of exploitation.”⁶⁵ As a relatively new approach, it will take time for reliable empirical evidence to become available. However, it reflects a growing movement away from the traditional plenary guardianship in American law.

II. THE MODERN LEGAL LANDSCAPE: INTERNATIONAL PERSPECTIVES ON GUARDIANSHIP LAW

The Convention on the Rights of Persons with Disabilities (“CRPD”)⁶⁶ also addresses guardianship principles in the international context, shaping the development of guardianship theory around the world. The CRPD was not the first international document to address questions of this type, nor is it the only document to do so. In a particular way, the 2000 Hague Convention on the

65. Kohn, *supra* note 3, at 315. The author goes on to call these statutes “fundamentally incompatible with the supported decision[making] model’s key principles: protecting and expanding the rights of individuals with disabilities.” *Id.* Much of this critique springs from the reality that the family may not always have the best interests of its vulnerable members at heart. In those circumstances, supported decisionmaking rather than a more formal guardianship may “insulate[] the family from governmental oversight (in part by minimizing the need for guardianship which involves court oversight.” *Id.* at 343. It also “challenge[s] the notion that family should be assumed to be a safe space for vulnerable individuals.” *Id.* at 344.

66. CRPD, *supra* note 7. For additional commentary on the status of guardianship under the CRPD and international law more broadly, see Michael L. Perlin, “*Striking for the Guardians and Protectors of the Mind*”: *The Convention on the Rights of Persons with Mental Disabilities and the Future of Guardianship Law*, 117 PENN. ST. L. REV. 1159 (2013); Glen, *supra* note 21, at 497; Arlene S. Kanter, *The United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People Under International Law*, 25 GA. ST. U. L. REV. 527 (2009); Lucy Series & Anna Nilsson, *Article 12 CRPD: Equal Recognition Before the Law*, in THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY (Ilias Bantekas, Michael Ashley Stein & Dimitris Anastasiou eds., 2018), <https://pubmed.ncbi.nlm.nih.gov/30933458/>; Anna Arstein-Kerslake & Eilionóir Flynn, *The Right to Legal Agency: Domination, Disability and the Protections of Article 12 of the Convention on the Rights of Persons with Disabilities*, 13 INT’L J.L. IN CONTEXT 22 (2017); Piers Gooding, *Supported Decision-Making: A Rights-Based Disability Concept and its Implications for Mental Health Law*, 20 PSYCHIATRY, PSYCHOL., & L. 431 (2013); Gerard Quinn, *Liberation, Cloaking Devices and the Law: Or a Personal Reflection on the Law and Theology of Article 12 of the UN CRPD* (Oct. 16, 2013) (unpublished manuscript) (available at <https://studylib.net/doc/14435705/%E2%80%98liberation—cloaking-devices-and-the-law.%E2%80%99>); Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?*, 34 SYRACUSE J. INT’L L. & COM. 429 (2007); Fiala-Butora, Stein, & Lord, *supra* note 35; Wallin, *supra* note 15, at 454–59; Dinerstein, *supra* note 5, at 8; Arlene S. Kanter & Yotam Tolub, *The Fight for Personhood, Legal Capacity, and Equal Recognition Under Law for People with Disabilities in Israel and Beyond*, 39 CARDOZO L. REV. 557 (2017).

International Protection of Adults⁶⁷ and the 2010 Yokohama Declaration⁶⁸ address these themes.

Nevertheless, the CRPD is the most important statement to date on this issue. The CRPD does not explicitly discuss the intricate details of guardianship law. Nevertheless, its statements on legal capacity and decisionmaking are relevant to this issue. It has been hailed as a document that “provides more robust protection for the decision[]making rights of people with disabilities than any other human rights instrument to date.”⁶⁹ Yet, its implications for guardianship law remain contested.

The Preamble establishes broad principles such as recognition of “the inherent dignity and worth and the equal and inalienable rights of all members of the human family,”⁷⁰ “the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,”⁷¹ and “the opportunity [for persons with disabilities] to be actively involved in decision[]making processes about policies and programs, including those directly concerning them.”⁷² These framework principles suggest that a guardianship that suspends an individual’s autonomy even slightly more than necessary is suspect.

In a particular way, Article 12 establishes that “persons with disabilities have the right to recognition everywhere as persons before the law”⁷³ and that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”⁷⁴ More importantly, with respect to decisions that may involve arrangements such as guardianships, the CRPD states that there must be safeguards to:

ensure that measures relating to the exercise of legal capacity respect the rights, will[,] and preferences of the person, are free of conflict of interest and undue influence, are *proportional and tailored to the person’s circumstances, apply for the shortest time possible*[,] and

67. *Convention of 13 January 2000 on the International Protection of Adults*, HAGUE CONF. ON PRIV. INT’L L. (Jan. 13, 2000), http://www.hcch.net/index_en.php?act=conventions.text&cid=71. For further discussion of the Hague Convention on the International Protection of Adults, see Robert Dinerstein, Esmé Grant Grewal & Jonathan Martinis, *Emerging International Trends and Practices in Guardianship Law for People with Disabilities*, 22 ILSA J. INT’L & COMP. L. 435 (2016).

68. *Yokohama Declaration*, INT’L GUARDIANSHIP NETWORK at 2 (Oct. 4, 2010), https://www.international-guardianship.com/pdf/IGN-Yokohama_Declaration_2010.pdf. For further discussion of the Yokohama Convention, see Dinerstein, Grewal & Martinis, *supra* note 67, at 437–38.

69. Arstein-Kerslake & Flynn, *supra* note 66, at 22. For a discussion of the CRPD as well as a comparative discussion of guardianship law in various nations, see Dinerstein, Grewal & Martinis, *supra* note 67, at 437–38.

70. CRPD, *supra* note 7, Preamble (a). A similar statement is found at Article 3, declaring the principle of “[r]espect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.” *Id.* at Art. 3 (a)

71. *Id.* at Preamble (n).

72. *Id.* at Preamble (o).

73. *Id.* at Art. 12 (1).

74. *Id.*

are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.⁷⁵

This approach—like that of the American UGCOPAA—replaces traditional guardianship with a more graduated, supportive paradigm.⁷⁶ It goes on to say that measures must be taken to protect persons with disabilities from being “arbitrarily deprived of their property.”⁷⁷

Part of the rationale for this less restrictive model mirrors the rationale behind the new paradigm of the UGCOPAA, and the desire to protect autonomy, independence, and self-determination to the extent possible. In addition, one commentator suggested that this new model would “encourage people who are considered incapacitated to seek assistance, which they often don't do for fear of being subjected to guardianship or worse—neglect, physical abuse[,] or institutionalization.”⁷⁸

More broadly, many argue that the CRPD should fully abolish guardianships as a violation of human rights.⁷⁹ Indeed, “for many . . . , ending guardianship and other forms of substitute decision[]making is central to wider advocacy goals”⁸⁰ Those taking this view fear that “[t]o allow even a small exception—to accept that someone might require guardianship—was to open

75. *Id.* at Art. 12 (4) (emphasis added). It should be noted, however, that while oversight is generally perceived to be in the best interest of those under a guardianship arrangement, this “can be experienced as an intrusion on the privacy of the individual and those supporting them,” and poses “risks of over-regulating the lives of those relying [on] support for the exercise of legal capacity” Series & Nilsson, *supra* note 66, at 33.

76. See Kanter, *supra* note 66, at 563 (observing that under CRPD Article 12, “the process by which a guardian's right to make decisions as a substitute for the individual . . . is replaced with an alternative to guardianship known as supportive decision[]making.”). However, there is debate as to whether this truly does prohibit guardianships. See discussion *infra* notes 78–83.

77. CRPD, *supra* note 7, at Art. 12 (5). This follows guidance that States Parties to the Convention must also take “all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs[,] and to have equal access to bank loans, mortgages[,] and other forms of financial credit.” *Id.*

78. Kanter, *supra* note 66, at 560. In addition, the author fears that “a guardianship also may result in a self-fulfilling prophecy. Once an individual is deemed incompetent, the person may begin to doubt himself or herself and believe that he or she is no longer able to make decisions and that the events of her life are beyond her control.” *Id.* at 561. See also Dhanda, *supra* note 66, at 460–61 (noting that while the CRPD's text “does not prohibit substituted decision[]making, and there is language which could even be used to justify substitution,” this would make the CRPD “a stranglehold of the past” and “a contention [that] can be made only if the universal reach of the capacity formulation is diluted or ignored and the article is read divorced from the process of advocacy and negotiation.”). *But see* Series & Nilsson, *supra* note 66, at 15 (“Some argue that guardianship and mental health laws are a critical means of protecting and upholding the rights of people with mental disabilities.”).

79. A broad discussion of human rights for older persons and persons with disabilities is beyond the scope of this paper and has been comprehensively addressed by others. For further general discussion, see Julie Childs, *Elder Rights are Not Nesting Dolls: An Argument for an International Elder Rights Convention*, 11 J. COMPAR. & INT'L AGING L. & POL'Y 141 (2020).

80. Series & Nilsson, *supra* note 66, at 1.

up a dangerously slippery slope—one that would ‘normalize’ the exception and reinforce deeply etched prejudices”⁸¹ In particular, NGOs such as Inclusion International⁸² advocate assiduously for this perspective as a matter of international human rights law.

There is debate as to whether the CRPD does, in fact, prohibit guardianship, as “[A]rticle 12, by its terms, does not necessarily eliminate guardianship as an option.”⁸³ Some have pointed out that a model of supported decisionmaking is inherently in conflict with a model of guardianship and, thus, the CRPD would have to reject one or the other.⁸⁴

III. CATHOLIC SOCIAL THOUGHT PRINCIPLES AND THEIR IMPLICATIONS FOR GUARDIANSHIP THEORY

The debates about guardianship law cannot be resolved by law alone, regardless of how narrowly or expansively one believes guardianships should be structured. In particular, they cannot be resolved by law that sees guardianship as a routine matter without profound moral questions at its core. The way in which these deep questions are answered should shape the contours of the law.⁸⁵ This begins with an understanding that law must always be oriented toward the good of the human person and that this orientation must be based on a proper understanding of that good.

Certainly, Catholic social teaching does not speak directly to the intricate procedural and substantive technicalities of guardianship law. However, this teaching on the dignity of vulnerable persons is well developed in the two areas in which guardianships are most likely to be sought: care for minor children and care of vulnerable adults.

81. Quinn, *supra* note 66, at 4.

82. *What We Do*, INCLUSION INT’L, <https://inclusion-international.org/what-we-do/> (last visited Mar. 29, 2024). See also Dhanda, *supra* note 66, at 439 (noting that in the negotiations on CRPD Article 12, Inclusion International “avowed its commitment to fight against the introduction of any reference to paternalistic guardianship laws in the Convention”).

83. See Dinerstein, Grewal & Martinis, *supra* note 67, at 444. For further commentary on the debate, see Series & Nilsson, *supra* note 66, at 3 (“[I]t was ambiguity about whether [A]rticle 12 permitted or prohibited substitute decision[]making that enabled states parties who could not envisage abolishing systems of guardianship or deprivation of legal capacity to sign up to the Convention.”); *id.* at 8 (“[A]mbiguity was necessary to achieve unity . . . , the final text of [A]rticle 12 CRPD remains silent on the pivotal question of whether the Convention permits or prohibits substitute decision[]making.”).

84. See Dhanda, *supra* note 66, at 448 (observing that “while supported decision[]making was premised on the competence of persons with disabilities, substituted decision[]making was based on their incompetence, and hence the two concepts could not subsist together”).

85. For a broader perspective on how Catholic social thought may influence various aspects of elder law beyond the narrow guardianship context, see Sarah Moses, *A Just Society for the Elderly: The Importance of Justice as Participation*, 21 NOTRE DAME J. L. ETHICS & PUB. POL’Y 335 (2007); Lucia A. Silecchia, *Integrating Catholic Social Thought in Elder Law and Estate Planning Courses: Reflections on Law, Age and Ethics*, 7 VILL. J. CATH. SOC. THOUGHT 353 (2010).

This Article will not address guardianship for children.⁸⁶ With respect to children, the assumption is that a child's parents will be his or her legal guardians.⁸⁷ The Church's teachings on the primary role of parents in the raising of their children and decisionmaking on their behalf frames the nature of that relationship.⁸⁸ Barring extraordinary circumstances where parents are absent or unfit, parents are presumed to have both the right and the obligation to make legally binding decisions on behalf of their minor children and to protect the interests of their children in all temporal, physical, and spiritual matters.⁸⁹

However, adults who may be unable to manage their own affairs temporarily or permanently, in part or entirely, are vulnerable in ways that are also a primary concern in the long tradition of Catholic social teaching. Some may be under a legal guardianship because of a condition that existed since birth or since childhood. Others may be under a guardianship because of a catastrophic, unforeseen illness or injury. In reality, while a guardianship may be sought for someone at any age, guardianship of vulnerable persons is concentrated significantly among older persons since, "[n]ot surprisingly, health challenges increase with advancing age."⁹⁰ In particular, the increased

86. For a comprehensive legal analysis of juvenile guardianships, see Deirdre M. Smith, *Keeping it in the Family: Minor Guardianship as Private Child Protection*, 18 CONN. PUB. INT. L.J. 269 (2019).

87. Concededly, in the absence of parents or the inability or unwillingness of parents to care for their children, guardians other than parents are appointed to care for minors. These children are vulnerable in a way that the typical child cared for by parents is not. In such circumstances, much of the discussion in this paper with respect to vulnerable persons will be applicable.

88. See ECONOMIC JUSTICE FOR ALL, *supra* note 13, at 20 ("Parents are called to guide their children to the maturity of Christian adulthood and responsible citizenship."); COMPENDIUM, *supra* note 13, para. 239 ("The family has a completely original and irreplaceable role in raising children."); *id.* para. 240 ("Parents have the right to choose the formative tools that respond to their convictions and to seek those means that will help them best to fulfill their duty as educators, in the spiritual and religious sphere also.").

89. As a result, when a child is a minor there will generally not be any formal guardianship proceeding. However, when a child with an intellectual or developmental disability reaches the age of majority, parents will often petition for guardianship once the legal age of adulthood is reached.

90. *One-Hundred-Year-Life*, *supra* note 2, at 9. See also *id.* at 19 ("Cognitive health . . . declines with age, and dementia becomes more common."); Pope John Paul II, Letter of Pope John Paul II to the President of the Second World Assembly on Ageing (Apr. 3, 2002), https://www.vatican.va/content/john-paul-ii/en/letters/2002/documents/hf_jp-ii LET_20020410_assembly-ageing.html ("[O]ld age is a season of life in which individuals are victims of human frailty, and so are especially vulnerable."); Pope Francis, Address of Pope Francis to Participants in the 28th International Conference Sponsored by the Pontifical Council for Health Care Workers (Nov. 23, 2013), https://www.vatican.va/content/francesco/en/speeches/2013/november/documents/papa-francesco_20131123_conferenza-operatori-sanitari.html [hereinafter 2013 Pontifical Council for Health Care Workers Address] ("The increased life expectancy which developed over the course of the twentieth century has entailed that a growing number of people are facing neurodegenerative diseases, which are often accompanied by a deterioration of the cognitive capacities.").

incidence of various forms of dementia among older persons accounts for more widespread use of guardianships at this stage of life.⁹¹

In exploring what Catholic social teaching may mean for the development of guardianship law and what the ideal contours of guardianship law may be, there are two distinct, well-developed lines of thought that initially appear to be in potential conflict: the duty to protect vulnerable people from harm and the duty to respect human autonomy. At first glance, this conflict seems to frame in religious and moral terms a close analogy to the tensions identified by secular critics as they have attempted to reform guardianship law in the ways explored above.⁹² In other words, Catholic social teaching contributes to a more nuanced perspective on what it means to care for those most in need of assistance. In the end, these two lines of thought need not be in conflict. Rather, they should contribute together to a rightly ordered view of the human person.

91. For a broad overview of the various aspects of legal representation in the context of dementia, see Patrick Emery Longan, *Middle-Class Lawyering in the Age of Alzheimer's: The Lawyer's Duties in Representing a Fiduciary*, 70 *FORDHAM. L. REV.* 901 (2001).

92. See e.g., QUINN, *supra* note 1, at 17 (discussing guardianships as “based on an inherent tension” because “it is protective yet oppressive, an instrument of beneficence that can at the same time, bring a dire loss of rights. . . . Without guardianship, vulnerable individuals may languish unnecessarily in institutions, suffer from a lack of appropriate health care, or be subject to abuse and exploitation. Yet, the very same institution of guardianship removes fundamental rights”); *id.* at 18 (observing that “guardianship can ‘empower’ and it can ‘unpower’”); Leary, *supra* note 2, at 246 (“Although meant to protect the elderly person, guardianship can substantially, and in some cases completely, interfere with the elderly person’s autonomy. . . . The struggle inherent in the guardianship process, then, is to achieve a balance between protecting the elderly person and preserving her autonomy.”); ERICA WOOD, PAMELA TEASTER & JENICA CASSIDY, *AM. BAR ASS’N, RESTORATION OF RIGHTS IN ADULT GUARDIANSHIP: RESEARCH AND RECOMMENDATIONS* 6 (2017):

Adult guardianship has been characterized as both a “gulag and a godsend” in which people with disabilities—including older individuals with dementia—lose their rights in the name of protection. Regardless of the good intentions of—and essential care provided by—many guardians who often step in at crisis points, guardianship is one of society’s most drastic interventions in which fundamental rights are transferred to a surrogate, leaving an individual without choice and self-determination.

See also *id.* at 19–20 (“[A] court appoints guardians as surrogates to make decisions that will protect individuals from risk of harm. But guardianship is a double-edged sword. In appointing a protective guardian, the court removes fundamental rights . . . and drastically reduc[es] the person’s legal status.”); *id.* at 20 (“[S]tate protection generally trumps individual autonomy. Because of the constant, inherent tension in guardianship between autonomy and beneficence, rights and needs, protection and self-determination, adult guardianship is a virtual minefield of ethical and practice dilemmas.”).

A. *Catholic Social Thought and the Protection of Vulnerable Persons*

*“We are responsible for the fragility of others.”*⁹³

The dignity of vulnerable persons and the obligation to protect them from exploitation of all kinds is a consistent theme in Catholic social teaching on the dignity of the human person. This is particularly true when the person is vulnerable and, sadly, “can be readily sacrificed for the sake of others considered worthy of a carefree existence.”⁹⁴

Catholic teaching on dignity consistently and urgently proclaims that there is a profound, uncompromisable dignity of each human person⁹⁵ because each

93. POPE FRANCIS, *FRATELLI TUTTI* para. 115 (Oct. 3, 2020), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html [hereinafter *FRATELLI TUTTI*]. See also Pope John Paul II, Letter of John Paul II to the President of the Second World Assembly on Ageing (Apr. 3, 2002), https://www.vatican.va/content/john-paul-ii/en/letters/2002/documents/hf_jp-ii_let_20020410_assembly-ageing.html [hereinafter Second World Assembly Letter] (“[A] society shows itself just to the extent that it meets the needs of all its members, and the quality of its civilization is determined by the way in which it protects its weakest members.”); Pope John Paul II, Address of the Holy Father Pope John Paul II to an International Conference on the Elderly Sponsored by the Pontifical Council for Pastoral Assistance to Health-Care Workers para.4 (Oct. 31, 1990), https://www.vatican.va/content/john-paul-ii/en/speeches/1998/october/documents/hf_jp-ii_spe_19981031_pon-cons-salute.html [hereinafter Pastoral Assistance to Health-Care Workers Letter] (“[C]ivilization is measured by the protection given to the weakest members of the social fabric.”).

94. *FRATELLI TUTTI*, *supra* note 93, para. 18. See also *The Family – 6*, *supra* note 2 (“There is something vile in this adherence to the throw-away culture. But we are accustomed to throwing people away. We want to remove our growing fear of weakness and vulnerability.”).

95. See, e.g., *FRATELLI TUTTI*, *supra* note 93, para. 106 (calling for “acknowledgement of the worth of every human person, always and everywhere”); *id.* para. 207 (“What is law without the conviction . . . that each human being is sacred and inviolable? If society is to have a future, it must respect the truth of our human dignity and submit to that truth.”); *id.* para. 213 (“The dignity of others is to be respected in all circumstances . . . because human beings possess an intrinsic worth . . .”); POPE BENEDICT XVI, *CARITAS IN VERITATE* para. 45 (June 29, 2009), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html [hereinafter *CARITAS IN VERITATE*] (noting the “inviolable dignity of the human person and the transcendent value of natural moral norms”); Pope Francis, Message of His Holiness Pope Francis for the Second World Day for Grandparents and the Elderly (July 24, 2022), <https://www.vatican.va/content/francesco/en/messages/nonni/documents/20220503-messaggio-nonni-anziani.html> (“[T]he mindset of the ‘throwaway culture’ . . . leads us to think that we are somehow different from the poor and vulnerable in our midst, untouched by their frailties and separated from ‘them’ and their troubles.”); Pope Benedict XVI, Words of His Holiness Benedict XVI (Nov. 12, 2012), https://www.vatican.va/content/benedict-xvi/en/speeches/2012/november/documents/hf_ben-xvi_spe_20121112_viva-anziani.html [hereinafter Sant ‘Egidio Visit] (“When life becomes frail . . . it never loses its value and its dignity.”); Pope Francis, General Audience: Catechesis on Old Age – 4 (Mar. 23, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220323-udienza-generale.html> (“[T]his new civilization has the idea that the old are waste material, the old should be discarded. This is brutal! No, it mustn’t be like that.”); COMPENDIUM, *supra* note 13, para. 108 (“God places the human creature at the cent[er] and summit of the created order.”); CATECHISM OF THE CATH. CHURCH para. 27 (Liberia Editrice Vaticana 1993), https://www.vatican.va/archive/ENG0015/_INDEX.HTM [hereinafter CATECHISM]

person is made in the image and likeness of God.⁹⁶ This is not affected or diminished by any type of limitations the person may be experiencing at any time:

Every human being has the right to live with dignity and to develop integrally. . . . People have this right even if they are unproductive, or were born with or developed limitations. This does not detract from their great dignity as human persons, a dignity based not on circumstances but on the intrinsic worth of their being. Unless this basic principle is upheld, there will be no future either for fraternity or for the survival of humanity.⁹⁷

(“[M]an is created by God and for God.”); *id.* para. 356 (“[Man] alone is called to share, by knowledge and love, in God’s own life. It was for this end that he was created, and this is the fundamental reason for his dignity.”); *SOLLICITUDO REI SOCIALIS*, *supra* note 13, para. 29 (“[M]an, being the image of God, has a true affinity with him too.”).

96. POPE FRANCIS, *LAUDATO SI’* para. 65 (May 24, 2015), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html [hereinafter *LAUDATO SI’*] (“[E]very man and woman is created out of love and made in God’s image and likeness. . . . This shows the immense dignity of each person.”); *ECONOMIC JUSTICE FOR ALL*, *supra* note 13, at viii (“[T]he person is sacred—the clearest reflection of God among us. Human dignity comes from God.”); POPE JOHN PAUL II, *LABOREM EXERCENS* (Sept. 14, 1981), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html [hereinafter *LABOREM EXERCENS*] (“Man is made to be in the visible universe an image and likeness of God himself.”); *COMPENDIUM*, *supra* note 13, para. 105 (“The Church sees in men and women, in every person, the living image of God himself.”) (emphasis omitted); *CATECHISM*, *supra* note 95, para. 357 (“Being in the image of God the human individual possesses the dignity of a person, who is not just something but someone.”); *id.* para. 362 (“The human person, created in the image of God, is a being at once corporeal and spiritual.”); *id.* para. 364 (“The human body shares in the dignity of ‘the image of God’: it is a human body precisely because it is animated by a spiritual soul, and it is the whole human person that is intended to become, in the body of Christ, a temple of the Spirit.”).

97. *FRATELLI TUTTI*, *supra* note 93, para. 107; *id.* para. 98 (condemning attitudes that make persons with disabilities “hidden exiles” in their communities); *id.* para. 215 (“No one is useless[,] and no one is expendable.”). *See also id.* para. 110:

A truly human and fraternal society will be capable of ensuring in an efficient and stable way that each of its members is accompanied at every stage of life. Not only by providing for their basic needs, but by enabling them to give the best of themselves, even though their performance may be less than optimum, their pace slow or their efficiency limited.

See also CARITAS IN VERITATE, *supra* note 95, para. 75 (decrying “a materialistic and mechanistic understanding of human life”); *LAUDATO SI’*, *supra* note 96, para. 90 (lamenting the way “we continue to tolerate that some consider themselves more human than others, as if they had been born with greater rights”); POPE JOHN PAUL II, *EVANGELIUM VITAE* para. 2 (Mar. 25, 1995), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html) [hereinafter *EVANGELIUM VITAE*] (“Man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God. The loftiness of this supernatural vocation reveals the greatness and the inestimable value of human life even in its temporal phase.”); *id.* para. 2 (praising “the sacred value of human life from its very beginning until its end”); Second World Assembly Letter, *supra* note 93 (“[T]he elderly must be considered in their dignity as persons, which does not diminish with the passing years nor with physical and mental deterioration. It is clear that such a positive view can flourish only in a culture capable of transcending social stereotypes which judge a person’s worth

This is in contrast to an attitude that “[p]ersonhood depends on the ability to make choices or decisions and to have those choices or decisions recognized by others.”⁹⁸ The Catholic perspective critiques this. Pope John Paul II cautioned against any attitude that places decisionmaking capacity at the heart of personhood. He warned:

Certain currents of modern thought have gone so far as to exalt freedom to such an extent that it becomes an absolute, which would then be the source of values. This is the direction taken by doctrines[,] which have lost the sense of the transcendent or which are explicitly atheist.⁹⁹

Unlike secular theories that focus exclusively on autonomy as the key element of human dignity, Catholic teaching has not done so. Instead, it notes consistently that the inability to be fully autonomous has no bearing on an individual’s dignity as one made in the image and likeness of God.¹⁰⁰

Because of this, those who are most vulnerable are in need of protection from those who would exploit them. Pope John Paul II discussed this explicitly in the context of those who experience cognitive impairments—impairments of

on the basis of youth, efficiency, physical vigor[,] or perfect health.”); Pope Francis, Message of Holy Father Francis for International Day of Persons with Disabilities (Dec. 3, 2019), https://www.vatican.va/content/francesco/en/messages/pont-messages/2019/documents/papa-francesco_20191203_messaggio-disabilita.html (noting that “the dignity of each person . . . does not depend on the functionality of the five senses”).

98. Glen, *supra* note 3, at 496. *See also* Pope John Paul II, Address of Pope John Paul II to Young, Elderly and Handicapped People para. 3 (Sept. 18, 1984), https://www.vatican.va/content/john-paul-ii/en/speeches/1984/september/documents/hf_jp-ii_spe_19840918_giovani-anziani.html [hereinafter John Paul II Address to Young, Elderly and Handicapped People].

99. POPE JOHN PAUL II, *VERITATIS SPLENDOR*, para. 32 (Aug. 6, 1993), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html [hereinafter *VERITATIS SPLENDOR*]. *See also LAUDATO SI'*, *supra* note 96, para. 136 (“[T]he inalienable worth of a human being transcends his or her degree of development.”).

100. *See VERITATIS SPLENDOR*, *supra* note 99, para. 48:

The person, by the light of reason and the support of virtue, discovers in the body the anticipatory signs, the expression[,] and the promise of the gift of self, in conformity with the wise plan of the Creator. It is in the light of the dignity of the human person—a dignity which must be affirmed for its own sake—that reason grasps the specific moral value of certain goods towards which the person is naturally inclined.

Id. para. 50 (“[T]he origin and the foundation of the duty of absolute respect for human life are to be found in the dignity proper to the person and not simply in the natural inclination to preserve one’s own physical life.”); *id.* para. 97 (“By protecting the inviolable personal dignity of every human being, [moral norms] help to preserve the human social fabric and its proper and fruitful development.”); *EVANGELII GAUDIUM*, *supra* note 13, para. 213 (“[A] human person is always sacred and inviolable, in any situation and at every stage of development.”); *LAUDATO SI'*, *supra* note 96, para. 65 (“Those who are committed to defending human dignity can find in the Christian faith the deepest reasons for this commitment. How wonderful is the certainty that each human life is not adrift in the midst of hopeless chaos, in a world ruled by pure chance or endlessly recurring cycles!”); *MATER ET MAGISTRA*, *supra* note 13, para. 192 (speaking of “the immense worth of each individual human life”).

the type that may be the grounds for a guardianship. He spoke of the value and dignity that demand protection:

The starting point for every reflection on disability is rooted in the fundamental convictions of Christian anthropology: even when disabled persons are mentally impaired or when their sensory or intellectual capacity is damaged, they are fully human beings and possess the sacred and inalienable rights that belong to every human creature. Indeed, human beings, independently of the conditions in which they live or what they are able to express, have a unique dignity and a special value.¹⁰¹

Unlike secular theories that focus on autonomy as the key element or touchstone of human dignity, Catholic teaching has not done so. It proclaims, consistently and unequivocally, that the inability to be fully autonomous has no bearing on an individual's dignity and worth. Those who are most vulnerable need protection from those who would exploit them. In light of this, a powerful strain of Catholic social thought would support the judicious use of guardianships arising from the notion that human life, particularly vulnerable human life, "must be protected with loving concern."¹⁰² There are many ways to protect vulnerable people, and the Catholic perspective does not address specific legal mechanisms to do so. Furthermore, what may be most effective will vary depending upon the specific circumstances of a particular person's vulnerabilities and the dangers against which protection is sought. However, a guardianship may be one of the panoply of tools to defend an individual from exploitation or from their own inability to manage affairs in a safe way. This is not to suggest that it should be the first or the only way to do so. However, a

101. Pope John Paul II, Message of John Paul II on the Occasion of the International Symposium on the Dignity and Rights of the Mentally Disabled Person para. 2 (Jan. 5, 2004), [https://www.vatican.va/content/john-paul-ii/en/speeches/2004/january/documents/hf_jp-ii_spe_20040108_handicap-mentale.html#:~:text=Only%20by%20recognizing%20the%20rights,of%20each%20one%20of%20us.\[hereinafter Dignity and Rights Message\]](https://www.vatican.va/content/john-paul-ii/en/speeches/2004/january/documents/hf_jp-ii_spe_20040108_handicap-mentale.html#:~:text=Only%20by%20recognizing%20the%20rights,of%20each%20one%20of%20us.[hereinafter%20Dignity%20and%20Rights%20Message].). See also John Paul II Address to Young, Elderly and Handicapped People, *supra* note 98, para. 4:

[T]he value and dignity of the human person does not arise from physical or mental qualities, from efficiency, productivity[,] or speed in one's actions. It comes rather from the fundamental fact that each individual is created by God and redeemed by the blood of his Son Jesus Christ. God calls each of you by name. He wishes you to make your individual contribution to the world and to live life to the full in the service of others. God's fatherly care embraces the healthy and the sick, the disabled, the handicapped[,] and the strong.

102. *EVANGELIUM VITAE*, *supra* note 97, para. 81. See also *CATECHISM*, *supra* note 95, para. 2276 ("Those whose lives are diminished or weakened deserve special respect."). Secular commentators as well have conceded that "guardianship law has in many circumstances played an important role in achieving its goal of protecting an individual's rights when that individual may not be fully aware of the consequences of a legal decision to be made." Dinerstein, Grewal & Martinis, *supra* note 67, at 436. Others have pointed out, with ambivalence, that theories of protection are deeply embedded in civil, secular theories of guardianship. See Salzman, *supra* note 4, at 526 ("The notion that the State should protect its vulnerable citizens by designating or appointing someone else to make decisions for them—that it has an obligation to do so—is one that is deeply rooted in our historic tradition.") (emphasis omitted).

guardianship could be one effective way to serve the goal of protecting vulnerable people—and, thus, safeguarding their dignity. In discerning whether care of this kind is needed, it is the good of the individual involved that must remain at the center of the planning.

Unfortunately, there are those who seek to take advantage of the vulnerable—particularly when they are abandoned.¹⁰³ Having a robust system of guardianships, which allows a strong defense of a vulnerable person, may be critical to prevent abuse.¹⁰⁴ While this may limit the ability of the vulnerable person to enjoy a full panoply of legal rights, it will offer enhanced protection for those unable to guard themselves. In this line of thought, movements to abolish guardianships in their entirety would not be consistent with the reality that, for some, it is essential to appoint another to guard and protect them even at the cost of autonomy.¹⁰⁵

This line of Catholic social thought focuses on the obligations to care for those who are most vulnerable and protect them from exploitation, neglect, and harm. In circumstances where an individual cannot effectively defend against such things, this strain of thought would support guardianships as a permissible way to entrust to one person the sacred privilege of caring for another in this profound, personal, and legally dramatic way. Although this comes with heightened dependency for the person subject to the guardianship, such dependence is, in fact, a natural part of life. Pope John Paul II observed, “As we grow older we become more dependent. We are blessed indeed if in our

103. See Pope Francis, Message of His Holiness Pope Francis for the Third World Day for Grandparents and the Elderly (July 23, 2023), <https://www.vatican.va/content/francesco/en/messages/nonni/documents/20230531-messaggio-nonni-anziani.html> (“[A]bove all, the Lord wants us not to abandon the elderly or to push them to the margins of life, as tragically happens all too often in our time.”); *id.* (“May we never allow the elderly to be cast aside!”).

104. See Pope Francis, General Audience: Catechesis on Old Age – 12 (June 1, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220601-udienza-generale.html> [hereinafter Catechesis on Old Age – 12]:

[T]here is no lack of those who take advantage of the age of the elderly, to cheat them and intimidate them in myriad ways. Often we read . . . or hear news of elderly people who are unscrupulously tricked out of their savings, or are left without protection or abandoned without care; or offended by forms of contempt Such cruelty also occurs within families—and this is serious.

105. As Pope John Paul II explained this reality:

A subtle form of discrimination is also present in politics and educational projects that seek to conceal or deny the deficiencies of disabled people by proposing lifestyles and objectives that do not correspond to their reality and turn out to be unjust and frustrating. Indeed, justice calls for continual and loving attention to the lives of others and a response to the special and different needs of every individual, taking into consideration his or her abilities and limitations.

Dignity and Rights Message, *supra* note 101, para. 3. See also *id.* para. 4 (noting that vulnerable persons “cannot be left alone, unarmed and defenseless, as it were, in the difficult task of facing life”).

later years, we find others to take an interest in us and help us. This is the beautiful and meritorious work carried out by so many”¹⁰⁶

B. Catholic Social Thought and Human Autonomy

“Human freedom belongs to us as creatures; it is a freedom which is given as a gift, one to be received like a seed and to be cultivated responsibly. It is an essential part of that creaturely image which is the basis of the dignity of the person.”¹⁰⁷

Yet, while guardianships can protect vulnerable persons and provide for their care, Catholic teaching also warns against depriving others of their autonomy.¹⁰⁸ This is particularly true when this is done to enhance the convenience or control of another without a primary focus on the needs of the person subject to the guardianship.

The Church has much to say about the importance of autonomy (or freedom, as properly defined)¹⁰⁹ for the dignity of the human person.¹¹⁰ As Pope John Paul II has stated, when it comes to the fundamental rights that autonomy represents, “rights cannot only be the prerogative of the healthy. People with disabilities must also be enabled to participate in social life as far as they can, and helped to fill all their physical, psychological[,] and spiritual potential.”¹¹¹ To the extent that a guardianship can suspend some critical aspects of social participation, this line of Catholic social teaching would caution against their

106. Pope John Paul II, Address of John Paul II to the Elderly (Nov. 30, 1986), https://www.vatican.va/content/john-paul-ii/en/speeches/1986/november/documents/hf_jp-ii_spe_19861130_anziani-perth-australia.html [hereinafter Perth Address].

107. *VERITATIS SPLENDOR*, *supra* note 99, para. 86. *See also id.* (“Within that freedom there is an echo of the primordial vocation whereby the Creator calls man to the true Good, and even more, through Christ’s Revelation, to become his friend and to share his own divine life.”); *MATER ET MAGISTRA*, *supra* note 13, para. 64 (noting that the human person is “free and autonomous by nature”).

108. *See discussion infra* notes 113–120.

109. *See CATECHISM*, *supra* note 95, para. 1731 (defining human freedom as “the power, rooted in reason and will, to act or not to act, to do this or that, and so to perform deliberate actions on one’s own responsibility”).

110. *See e.g.*, POPE JOHN PAUL II, *CENTESIMUS ANNUS* para. 25 (May 1, 1991), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html (“[H]uman nature . . . is made for freedom.”); *id.* (“[M]an . . . was created for freedom.”); *id.* para. 43 (“Man fulfills himself by using his intelligence and freedom.”); *ECONOMIC JUSTICE FOR ALL*, *supra* note 13, at 15 (“[H]uman beings are created in God’s image, and their dignity is manifest in the ability to reason and understand, in their freedom to shape their own lives and the life of their communities, and in the capacity for love and friendship.”); *COMPENDIUM*, *supra* note 13, para. 199 (“Freedom is the highest sign in man of his being made in the divine image and, consequently, is a sign of the sublime dignity of every human person.”) (emphasis omitted); *CATECHISM*, *supra* note 95, para. 1731 (“By free will one shapes one’s own life. Human freedom is a force for growth and maturity in truth and goodness; it attains its perfection when directed toward God, our beatitude.”).

111. Dignity and Rights Message, *supra* note 101, at 3. *See also id.* (“A society that made room only for its fully functional, completely autonomous and independent members, would be unworthy of the human being.”).

unnecessary—or overly expansive—use. Indeed, the CATECHISM OF THE CATHOLIC CHURCH posits:

Every human person, created in the image of God, has the natural right to be recognized as a free and responsible being. All owe to each other this duty of respect, the right of the exercise of freedom, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person. This right must be recognized and protected by civil authority within the limits of the common good and public order.¹¹²

Catholic teaching warns against conflating autonomy and dignity.¹¹³ It criticizes the all-too-frequent perspective that:

equate[s] personal dignity with the capacity for verbal and explicit, or at least perceptible, communication. . . . [O]n the basis of these presuppositions there is no place in the world for anyone who . . . is a weak element in the social structure, or for anyone who appears completely at the mercy of others and radically dependent on them.¹¹⁴

In doing so, it soundly rejects the misguided idea that autonomy is the measure of human dignity. In that event, “[t]he criterion of personal dignity—which demands respect, generosity[,] and service—is replaced by the criterion of efficiency, functionality[,] and usefulness: others are considered not for what they ‘are,’ but for what they ‘have, do[,] and produce.’ This is the supremacy of the strong over the weak.”¹¹⁵ In this scenario, when “promotion of the self is

112. CATECHISM, *supra* note 95, para. 1738.

113. See COMPENDIUM, *supra* note 13, para. 131, which addresses this paradox:

The human person is an intelligent and conscious being, capable of reflecting on himself and therefore of being aware of himself and his actions. However, it is not intellect, consciousness[,] and freedom that define the person, rather it is the person who is the basis of the acts of intellect, consciousness[,] and freedom. These acts can even be absent, for even without them man does not cease to be a person.

114. *EVANGELIUM VITAE*, *supra* note 97, para. 20. See also Pope John Paul II, Address of John Paul II to the Members of the Christian Office for the Disabled (Nov. 13, 2004), https://www.vatican.va/content/john-paul-ii/en/speeches/2004/november/documents/hf_jp-ii_spe_20041113_handicapped-paris.html; Pope Francis, Message of the Holy Father Francis for International Day of Persons with Disabilities (Dec. 3, 2019), https://www.vatican.va/content/francesco/en/messages/pont-messages/2019/documents/papa-francesco_20191203_messaggio-disabilita.html [hereinafter 2019 Day of Persons with Disabilities Message] (calling on the international community to respect “the dignity of each person, knowing that it does not depend on the functionality of the five senses”); Pope John Paul II, Letter of His Holiness Pope John Paul II to the Elderly para. 9 (Oct. 1, 1999), https://www.vatican.va/content/john-paul-ii/en/letters/1999/documents/hf_jp-ii_let_01101999_elderly.html [hereinafter 1999 Letter to the Elderly] (critiquing the “mentality which gives priority to immediate human usefulness and productivity”).

115. *EVANGELIUM VITAE*, *supra* note 97, para. 23. See also POPE JOHN PAUL II, *FAMILIARIS CONSORTIO*, para. 27 (Nov. 22, 1981), https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html [hereinafter *FAMILIARIS CONSORTIO*] (decriing circumstances that “set the elderly aside in unacceptable ways. This causes acute suffering to them and spiritually impoverishes many families.”); POPE PAUL VI, *GAUDIUM ET SPES* para. 35 (Dec. 7, 1965), https://www.vatican.va/archive/hist_councils/

understood in terms of absolute autonomy, people inevitably reach the point of rejecting one another. . . . Thus, society becomes a mass of individuals placed side by side, but without any mutual bonds.”¹¹⁶

Yet, despite such warnings about misguided views of autonomy and freedom, Catholic teaching still defends the value of properly ordered autonomy. It warns against carelessly suspending it or depriving others of it. In defending the importance of autonomy, the Church posits that “[t]he human person by nature is actively involved in his own development. The development in question is not simply the result of natural mechanisms, since as everybody knows, we are all capable of making free and responsible choices.”¹¹⁷ In another context, it was also explained:

Endowed with intellect and free will, each man is responsible for his self-fulfillment even as he is for his salvation. He is helped, and sometimes hindered, by his teachers and those around him; yet, whatever be the outside influences exerted on him, he is the chief architect of his own success or failure. Utilizing only his talent and

ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html [hereinafter *GAUDIUM ET SPES*] (“A man is more precious for what he is than for what he has.”); John Paul II, Address of John Paul II to the Members of the Christian Office for the Disabled (Nov. 13, 2004) para. 1, https://www.vatican.va/content/john-paul-ii/en/speeches/2004/november/documents/hf_jp-ii_spe_20041113_handicapped-paris.html (“[P]eople cannot be reduced to their aptitude or financial status, but are God’s creatures whom he loves for their own sake and not for what they do.”); Pope Francis, Message of Pope Francis to Participants in the General Assembly of the Pontifical Academy for Life on the Occasion of the 20th Anniversary of its Founding (Feb. 19, 2014), https://www.vatican.va/content/francesco/en/messages/pont-messages/2014/documents/papa-francesco_20140219_messaggio-20-pontificia-accademia-vita.html [hereinafter 20th Anniversary Message] (“[A]t the basis of discrimination and exclusion there lies an anthropological question: what is man’s worth and what is the basis of his worth? Health is certainly an important value, but it does not determine the value of a person.”); *id.* (“[P]oor health and disability are never a good reason for excluding or, worse, eliminating a person.”); Pope Francis, Greetings of His Holiness Pope Francis to Participants in Study Day on Siblings with Disabilities (Feb. 24, 2023), <https://www.vatican.va/content/francesco/en/speeches/2023/february/documents/20230218-convegno-siblings.html> (“We . . . when we love, do not do so because of what the other has or knows or can do, but because of what the other is. This is what love is: wanting the other to be; to be as he is, not the way we think he should be according to much too specific standards. Love does not produce throwaways.”). See also Moses, *supra* note 85 (warning against viewing people through the lens of “economic productivity and ‘usefulness’” because “[i]f participation is interpreted primarily in these terms, it may further trap older people within a common societal view of the elderly as lacking value in our fast-paced, activity obsessed culture.”).

116. *EVANGELIUM VITAE*, *supra* note 97, para. 20.

117. *CARITAS IN VERITATE*, *supra* note 95, para. 68. See also *VERITATIS SPLENDOR*, *supra* note 99, para. 40 (“[T]he moral life calls for that creativity and originality typical of the person, the source[,] and cause of his own deliberate acts.”); Pope John Paul II, Address of the Holy Father John Paul II para. 1 (Dec. 3, 2000), https://www.vatican.va/content/john-paul-ii/en/speeches/2000/oct-dec/documents/hf_jp-ii_spe_20001203_jubildisabled.html (noting “the right that every disabled man and woman has in any country of the world to a dignified life,” and noting that this “is not only a question of satisfying their specific needs, but even more of seeing their own desire for acceptance and autonomy recognized. Integration must be an attitude and a culture . . .”) (emphasis omitted).

willpower, each man can grow in humanity, enhance his personal worth, and perfect himself.¹¹⁸

This demands caution when taking that autonomy from anyone.¹¹⁹ Indeed, it has been observed that “[t]he theory of human rights is based precisely on the affirmation that the human person, unlike animals and things, cannot be subjected to domination by others.”¹²⁰

Particularly with respect to older persons, whose independence may be growing more limited due to diminished capacity, The Pontifical Council for the Laity poignantly observed:

[A]s their interpersonal and social contacts are diminished, so their lives are correspondingly impoverished; they are deprived of the intellectual and cultural stimulus and enrichment they need. Older people experience a sense of impotence at being unable to change their own situation, due to their inability to participate in the

118. POPE PAUL VI, *POPULORUM PROGRESSIO* para. 15 (Mar. 26, 1967), https://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_26031967_populorum.html [hereinafter *POPULORUM PROGRESSIO*]. See also POPE PAUL VI, DECLARATION ON RELIGIOUS FREEDOM *DIGNITATIS HUMANAЕ* para. 1 (Dec. 7, 1965), https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (“A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgement, enjoying[,] and making use of a responsible freedom.”); POPE JOHN XXIII, *PACEM IN TERRIS* para. 3 (Apr. 11, 1963), https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html [hereinafter *PACEM IN TERRIS*] (“God created man . . . [and] endowed him with intelligence and freedom”); *id.* para. 9 (“[E]ach individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature.”); *id.* para. 34 (“Man’s personal dignity requires besides that he enjoy freedom and be able to make up his own mind when he acts.”); *RERUM NOVARUM*, *supra* note 13, para. 7:

[M]an, fathoming by his faculty of reason matters without number, linking the future with the present, and being master of his own acts, guides his ways under the eternal law and the power of God, whose providence governs all things. Wherefore, it is in his power to exercise his choice not only as to matters that regard his present welfare, but also about those which he deems may be for his advantage in time yet to come.

119. See 2019 Day of Persons with Disabilities Message, *supra* note 114.

120. *EVANGELIUM VITAE*, *supra* note 97, para. 20. See also *GAUDIUM ET SPES*, *supra* note 115, para. 26 (“[T]here is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable.”); *id.* para. 29 (“[A]lthough rightful differences exist between men, the equal dignity of persons demands that a more humane and just condition of life be brought about.”); *A Commitment to All Generations: Social Security and the Common Good*, U.S. CONF. OF CATH. BISHOPS (Mar. 1999), <https://www.usccb.org/resources/commitment-all-generations-social-security-and-common-good-march-1999> [hereinafter *Commitment to All Generations*] (“The elderly and persons with disabilities do not forfeit their claim to basic human rights because they are old or disabled.”); Pope John Paul II, Address of the Holy Father to the Congress on Integration of Disabled Children para. 2 (Dec. 4, 1999), https://www.vatican.va/content/john-paul-ii/en/speeches/1999/december/documents/hf_jp-ii_spe_04121999_cong-pc-family.html (“[L]ife is always a gift from God, even when it is marked by suffering and illness. Every person is the object of basic rights which are inalienable, inviolable[,] and indivisible.”).

decision[.]making processes that concern them both as persons and as citizens.¹²¹

Relegating others to being unnecessarily passive participants in their own lives is an affront to the importance of autonomy. This is particularly true when that deprivation of autonomy also isolates vulnerable people from their communities, whether this is intentional or inadvertent.¹²² Pope John Paul II explained, when speaking of persons with disabilities:

They too are fully human subjects with corresponding innate, sacred[,] and inviolable rights, and, in spite of the limitations and sufferings affecting their bodies and faculties, they point up more clearly the dignity and greatness of man. Since disabled people are subjects with all their rights, they should be helped to participate in the life of society in all its aspects and at all the levels accessible to their capacities. The disabled person is one of us and participates fully in the same humanity that we possess. It would be radically unworthy of man, and a denial of our common humanity, to admit to the life of the community . . . only those who are fully functional. To do so would be to practice *a serious form of discrimination*, that of the strong and healthy against the weak and sick.¹²³

This is a profound recognition that autonomy is not absolute. Indeed, it is not truly absolute even for the strong and healthy.¹²⁴ The Church proposes that the better model is that of a mutual exchange between those of varying conditions.¹²⁵ It argues that this view, with roots in subsidiarity, “respects

121. Pontifical Council for the Laity, *The Dignity of Older People and their Mission in the Church and in the World*, (Oct. 1, 1998), https://www.vatican.va/roman_curia/pontifical_councils/laity/documents/rc_pc_laity_doc_05021999_older-people_en.html.

122. See ECONOMIC JUSTICE FOR ALL, *supra* note 13, at 18 (“Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons. The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were nonmembers of the human race.”) (emphasis omitted).

123. *LABOREM EXERCENS*, *supra* note 96, para. 22. See also Congregation for the Doctrine of the Faith, *Instruction Dignitatis Personae on Certain Bioethical Questions*, HOLY SEE (June 20, 2008), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html (“By virtue of the simple fact of existing, every human being must be fully respected. The introduction of discrimination with regard to human dignity based on biological, psychological, or educational development, or based on health-related criteria, must be excluded.”).

124. See COMPENDIUM, *supra* note 13, para. 125 (“The human person may never be thought of only as an absolute individual being, built up by himself and on himself, as if his characteristic traits depended on no one else but himself.”).

125. See Pope Francis, General Audience: Catechesis on Old Age – 2 (Mar. 2, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220302-udienza-generale.html> (“The covenant between the two poles of the generations of life—children and the elderly—also helps the other two—young people and adults—to bond with each other so as to make everyone’s existence richer in humanity.”); *id.* (“Dialogue between the generations is necessary.”); *id.* (“Let us think about building affectionate relationships between old age and youth that radiate onto the overall style of relationships. The overlapping of the generations would become a source of energy for a truly visible and livable humanism.”); *id.* (“Today there is greater longevity of human

personal dignity by recognizing in the person a subject who is always capable of giving something to others.”¹²⁶

This is particularly true within the family, a place “for reciprocal spiritual and material assistance”¹²⁷ This proposes a view of autonomy in which, as the United States’ Catholic bishops declared, “interdependence, not independence, is the true gospel value.”¹²⁸ This is not a model of complete dependence and complete control but, rather, one that respects the autonomy of all, even when realities of life often place one person in the care of another.

In another context, *Mater et Magistra* taught that “however extensive and far-reaching the influence of the State on the economy may be, it must never be exerted to the extent of depriving the individual citizen of his freedom of action.

life. This gives us the opportunity to make the covenant between all stages of life grow.”); Pope Francis, Message of His Holiness Pope Francis for the First World Day for Grandparents and the Elderly (July 25, 2021), <https://www.vatican.va/content/francesco/en/messages/nonni/documents/20210531-messaggio-nonni-anziani.html> (“The future of the world depends on this covenant between young and old.”); Pope Francis, Homily of His Holiness Pope Francis (July 25, 2021), <https://www.vatican.va/content/francesco/en/homilies/2021/documents/20210725-omelia-giornatanonni-anziani.html> (“Grandparents and the elderly are not leftovers from, life, scraps to be discarded. . . . They protected us as we grew, and now it is up to us to protect their lives, to alleviate their difficulties, to attend to their needs[,] and to ensure that they are helped in daily life and not feel alone.”); Catechesis on Old Age – 1, *supra* note 2 (“The alliance between generations, which restores all ages of life to the human, is our lost gift and we have to get it back.”); Pontifical Academy for Life, *Old Age: Our Future*, HOLY SEE (Feb. 2, 2021), https://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pont-acd_life_doc_20210202_vecchiaia-nostrofuturo_en.html (“[W]e need an alliance between generations that becomes a force in the time of weakness.”).

126. *CARITAS IN VERITATE*, *supra* note 95, para. 57. See also Pope Francis, General Audience: Catechesis on Old Age – 9 (May 11, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220511-udienza-generale.html> (“[T]he Lord does not entrust his talents only to the young and the strong. He has talents for everyone, made to fit each person, the elderly too.”). See also *EVANGELIUM VITAE*, *supra* note 97, para. 94:

The elderly are not only to be considered the object of our concern, closeness[,] and service. They themselves have a valuable contribution to make to the Gospel of life. Thanks to the rich treasury of experiences they have acquired through the years, the elderly can and must be sources of wisdom and witnesses of hope and love.

127. *FAMILIARIS CONSORTIO*, *supra* note 115, para. 6. This theme of mutual dependence was also addressed in Pope John Paul II, Letter of His Holiness Pope John Paul II to the Elderly para. 10 (Oct. 1, 1999), https://www.vatican.va/content/john-paul-ii/en/letters/1999/documents/hf_jp-ii LET_01101999_elderly.html (“[T]he signs of human frailty which are clearly connected with advanced age become a summons to the mutual dependence and indispensable solidarity which link the different generations, inasmuch as every person needs others and draws enrichment from the gifts and charisms of all.”).

128. *Blessings of Age: Pastoral Message on Growing Older within the Faith Community*, U.S. CONF. OF CATH. BISHOPS (Nov. 1999), <https://www.usccb.org/topics/marriage-and-family-life-ministries/blessings-age>. See also *id.* (“There is nothing wrong with being dependent on others Do not fear asking for and accepting help. Your dependency can be an occasion of grace both for yourself and for others.”); Pastoral Assistance for Health-Care Workers Letter, *supra* note 93, para. 5 (“The family-elderly relationship must be seen as a relationship of giving and receiving.”); *id.* para. 6 (“[S]ociety must have a renewed awareness of solidarity between generations”) (emphasis omitted).

It must rather augment his freedom while effectively guaranteeing the protection of his essential personal rights.”¹²⁹ This warns against using the instruments of the state—in this case, a court proceeding—to unnecessarily or carelessly deprive an individual of autonomy and rights.¹³⁰

The Church’s stress on the importance of respecting human autonomy is also grounded in recognition of the reality that “[w]e are all tempted to hide our vulnerability, to hide our illness, our age[,] and our seniority, because we fear that they are the precursor to our loss of dignity.”¹³¹ Indeed, it is precisely because autonomy is an important value that the Church recognizes the extent to which people will defend it—even if that defense means ignoring and masking vulnerabilities for which respectful assistance is required.¹³²

These teachings on autonomy are particularly relevant in the context in which a guardianship may be sought through an improper exercise of the duty to care. Sadly, this arises in efforts to curb the autonomy of another for one’s own personal gain or convenience. For example, in circumstances in which it takes additional time and effort to assist someone in understanding their affairs or when adult children want to control a parent’s assets to enhance their own inheritance, a guardianship would be an unacceptable deprivation of the autonomy of some for the benefit of others.

IV. A REVIEW OF GUARDIANSHIP LAW AND CATHOLIC SOCIAL THOUGHT

“[W]e need a society which measures its success on how the weak are cared for.”¹³³

There is an undeniable tension between Catholic teaching on the need to protect vulnerable persons through guardianships and the need to safeguard the autonomy that human persons hold dear. In attempting to reconcile these tensions, Catholic teaching can speak both to the principles that should shape

129. *MATER ET MAGISTRA*, *supra* note 13, para. 55.

130. See *COMPENDIUM*, *supra* note 13, para. 148 (“Persons with disabilities are fully human subjects, with rights and duties. . . . [T]hey are to be helped to participate in every dimension of family and social life at every level accessible to them and according to their possibilities.”).

131. Catechesis on Old Age – 12, *supra* note 104. See also *EVANGELIUM VITAE*, *supra* note 97, at para. 23 (critiquing the way in which “so-called ‘quality of life’ is interpreted primarily or exclusively as economic efficiency, inordinate consumerism, physical beauty[,] and pleasure, to the neglect of the more profound dimensions—interpersonal, spiritual and religious—of existence.”); *FAMILIARIS CONSORTIO*, *supra* note 115, para. 77 (speaking of “the humiliation of having to depend on others”); *GAUDIUM ET SPES*, *supra* note 115, para. 20 (warning against the view that “stretches the desire for human independence to such a point that it poses difficulties against any kind of dependence on God”).

132. See, e.g., Leary, *supra* note 2, at 252 (“The fear of losing their autonomy is so great for many elderly persons that they are willing to live in unsanitary or unsafe conditions rather than alert their children or protective services of their need for help.”).

133. Pope Francis, Address of Pope Francis (Sept. 28, 2014), https://www.vatican.va/content/francesco/en/speeches/2014/september/documents/papa-francesco_20140928_incontro-anziani.html. See also Sant ‘Egidio Visit, *supra* note 95 (“The quality of a society, . . . of a civilization, is also judged by how it treats elderly people and by the place it gives them in community life.”).

substantive guardianship law and, more profoundly, to the responsibilities of those who serve their sisters and brothers as guardians. Moreover, it can offer a perspective that suggests that, perhaps, this perceived conflict is a false dilemma. A proper perspective requires acknowledging that *both* protection and autonomy have their place, and holy discernment is needed to determine how both can serve the good of the human person.

A. Substantive Guardianship Law

The substance of guardianship law is important, and Catholic teaching on protection and autonomy leads to at least five critical points with respect to the general contours of guardianship law.

First, consistent with the trend in secular legal developments, Catholic teaching suggests that a guardianship should be as narrowly framed as possible to offer the protections needed against exploitation—but nothing more. This would include both making the initial guardianship as narrowly tailored as possible and doing everything practical to assist the vulnerable person in becoming as independent as possible, to the point, if feasible, of terminating the guardianship.¹³⁴ This protects autonomy as much as possible by avoiding the traditional pattern that would automatically suspend all rights with the appointment of a guardian. At the same time, it does not accept the critique that guardianships are always and everywhere impermissible—a position taken by some human rights and disability rights advocates. This is because the duty to protect is also critically important.

Second, Catholic teaching would favor that aggressively prioritize the appointment of family members as guardians whenever possible,¹³⁵ since there is a “right and duty to be primarily responsible for [one’s] own upkeep and that of his family.”¹³⁶ This is a consistent theme in Catholic social teaching which does not view the family with suspicion, but with the constant theme that this is the first and primary place where care is to be given and received in love.¹³⁷

134. See Salzman, *supra* note 4, at 546 (“[T]he State has an obligation to provide an individual subject to guardianship with training and skills development to enhance capabilities, reduce the restraints of guardianship, and enable the individual to regain legal capacity.”).

135. It has been noted that this is generally the case. See QUINN, *supra* note 1, at 10–11. (“Most state laws provide that family members have first priority. And, in fact, approximately seventy percent of guardians are family members.”).

136. *MATER ET MAGISTRA*, *supra* note 13, para. 55.

137. See, e.g., *GAUDIUM ET SPES*, *supra* note 115, para. 48 (expressing the hope that children “will respond to the kindness of their parents with sentiments of gratitude, with love and trust. They will stand by them as children should when hardships overtake their parents and old age brings its loneliness.”); *COMPENDIUM*, *supra* note 13, para. 211 (“[T]he Church considers the family as the first natural society, with underived rights that are proper to it, and places it at the cent[er] of social life.”) (emphasis omitted); *id.* para. 96 (“The obligations of [family] members . . . are not limited by the terms of a contract but derive from the very essence of the family, founded on the irrevocable marriage covenant[,] and given structure in the relationships that arise within it following the generation or adoption of children.”); *CATECHISM*, *supra* note 95, para. 2208 (“The family should live in such a way that its members learn to care and take responsibility for the young, the old, the sick, the handicapped, and the poor.”); *id.* para. 2218 (“The fourth commandment reminds grown children of their responsibilities toward their parents.”); 20th Anniversary Message, *supra* note 115

Certainly, in the most tragic of circumstances, it may be family members against whom the vulnerable person most needs protection.¹³⁸ However, where this is not the case, appointing a family member as a guardian is consistent with the perspective that:

[t]he relationships between members of the family community are inspired and guided by the law of “free giving.” By respecting and fostering personal dignity in each and every one as the only basis for value, this free giving takes the form of heartfelt acceptance, encounter and dialogue, disinterested availability, generous service[,] and deep solidarity.¹³⁹

Where family members are not available,¹⁴⁰ trusted friends may play this role. It has also been suggested that “non-profit organizations (including faith-based communities) could play an important role in making supporters available to individuals with disabilities who lack family or friends to serve.”¹⁴¹ In the spirit of subsidiarity, when families are “incapable of providing this help. . . . It

(“The family . . . is the teacher of acceptance and solidarity: it is within the family that education substantially draws on relationships of solidarity; in the family one learns that the loss of health is not a reason for discriminating against human life It is there that ‘taking care of one another’ becomes a foundation of human life and a moral attitude to foster, through the values of commitment and solidarity.”); *PACEM IN TERRIS*, *supra* note 118, para. 16 (“The family, founded upon marriage freely contracted, one and indissoluble, must be regarded as the natural, primary cell of human society.”).

138. See, e.g., Leary, *supra* note 2, at 250 (observing “adult children may seek guardianship for parents or grandparents whom they fear are threatening their inheritance . . . despite the fact that our society generally permits people to spend and waste their own money”); *id.* (“Even if the guardian is a family member, extra-legal sanctions may fail to restrain this self-interest or outright greed.”); QUINN, *supra* note 9, at 75 (“In most situations, the motives are benevolent. But motives can change over time and guardians can come to think of the assets they are handling as their own property. Sometimes motives . . . are malevolent from the beginning and are geared toward financially abusing the adult . . . by gaining greater access to her money or valuables. Perhaps it is an attempt to gain more favor . . . to influence the making of the will.”). Pope Francis has expressed fear about weakening familial bonds as he wrote, “The family is experiencing a profound cultural crisis, as are all communities and social bonds. In the case of the family, the weakening of these bonds is particularly serious because the family is the fundamental cell of society, where we learn to live with others despite our differences and to belong to one another” *EVANGELII GAUDIUM*, *supra* note 13, para. 66.

139. *FAMILIARIS CONSORTIO*, *supra* note 115, para. 43. Secular commentators have also noted the benefits of family guardians. See, e.g., QUINN, *supra* note 1, at 73–74:

Family members have many advantages as guardians: They know the likes and dislikes of the person involved, they know their family member’s history and can provide continuity, and they are better able to understand what the person wants in a given situation [T]here is usually a history of mutual caring, love, need, and reciprocal fulfillment of duty In many cases, the family member who is the guardian lives with the adult in guardianship and personally takes care of his physical needs. It is a societal expectation that family will take care of less capable family members.

140. Indeed, secular commentators have also noted that “[o]lder adults may not be able to rely upon filial piety to protect their rights and assist in caregiving” Childs, *supra* note 79, at 149.

141. Kohn, *supra* note 3, at 354.

devolves then on other persons, other families, and, in a subsidiary way, society to provide for their needs”¹⁴² Yet, the Church’s teaching on the centrality of the family would favor the appointment of family members to serve in this role with the expectation that bonds of marital, filial, and familial love would infuse the ways in which the daunting tasks of a guardian are undertaken.

Third, Catholic teaching would support procedural protections in the appointment of a guardian so that, to the extent possible, the person subject to the guardianship is always an active participant in this critically important process. Pope Francis has decried situations in which those who are vulnerable are “intimidated to renounce their rights.”¹⁴³ In the guardianship context, this would mean that procedures to ensure that the best interests of the vulnerable person are fully protected must be part of any guardianship proceeding. These procedures must accommodate the most extensive possible participation of the individual. There must also be an easily accessible process available to terminate guardianships once they are no longer needed.¹⁴⁴ This is a critical component to respecting the dignity of the person subject to the guardianship and enabling them, to the greatest extent possible, to be full participants in that process.

Fourth, the Catholic perspective on protecting vulnerable persons would also favor a stringent regime to supervise and support guardians, prevent them from committing abuse, and penalize them when they exploit vulnerable persons in their care.¹⁴⁵ In the strongest terms possible, church teaching declares that “shame should fall on those who take advantage of the weakness of illness and old age.”¹⁴⁶

142. CATECHISM, *supra* note 95, para. 2208. See also *RERUM NOVARUM*, *supra* note 13, para. 14:

True, if a family finds itself in exceeding distress, utterly deprived of the counsel of friends, and without any prospect of extricating itself, it is right that extreme necessity be met by public aid, since each family is a part of the commonwealth. In like manner, if within the precincts of the household there occur grave disturbance of mutual rights, public authority should intervene to force each party to yield to the other its proper due

143. Catechesis on Old Age – 12, *supra* note 104.

144. Others have commented on the difficulties and inconsistencies that exist in the procedures for restoring rights once the need for a guardian is over. See, e.g., Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 *ELDER L.J.* 83 (2015); Salzman, *supra* note 4, at 547 (“[P]eriodic review hearings in the involuntary commitment process are stacked against the individual seeking release and not very meaningful.”); Wood, Teaster & Cassidy, *supra* note 92.

145. Currently, the regime of supervision varies a good deal among states. See, e.g., Wood, Teaster & Cassidy, *supra* note 92, at 19 (“Following appointment of a guardian, the court is to have continuing oversight under state law and receive regular reports and accountings. However, in practice, judicial monitoring varies widely, and often guardians have little supervision.”).

146. Catechesis on Old Age – 12, *supra* note 104. See also *EVANGELIUM VITAE*, *supra* note 97, para. 94 (“Neglect of the elderly or their outright rejection are intolerable.”); *id.* para. 12:

[I]t is possible to speak in a certain sense of a war of the powerful against the weak: a life which would require greater acceptance, love[,] and care is considered useless, or held to be an intolerable burden, and is therefore rejected in one way or another. A person

Courts who appoint guardians should be required to offer training and guidance on the technical aspects of the guardian's role so that guardians do not inadvertently err in the exercise of their responsibilities. This is particularly true in the case of "lay" family members who take on this important legal responsibility and may not be familiar with the intricacies of guardianship law. Some of their responsibilities may not be intuitive.

In addition to ensuring an effective way for training and ongoing support, courts must also be equipped to exercise careful oversight of guardians, respond efficiently to complaints of wrongdoing, and impose penalties on those who would abuse their position of trust in bad faith. Again, because many guardians are, ideally, family members, the burdens should not be so onerous as to discourage them from taking on these responsibilities. They should also avoid penalizing the family members who step up and take on this responsibility. Rather, the courts' attention should be directed to cases of willful bad faith, neglect, or gross negligence.

Finally, the Catholic perspective on guardianship should also inform the way in which the marriages of those under a guardianship are approached. In the civil context, there has been a movement toward expanding the rights to marry of those who are under a guardianship. The right to marry and found a family is clearly articulated in Catholic social thought.¹⁴⁷ However, the Church also requires the full and free consent of the man and woman entering into the marriage for the marriage to be valid.¹⁴⁸ Thus, while the connection of capacity to marry and appointment of a guardian may not be one of complete overlap, the Church would seek to avoid situations in which a guardian was making decisions pertaining to marriage or when someone was seeking to marry without a sufficient and free understanding of what that entails.

who, because of illness, handicap[,] or, more simply, just by existing, compromises the well-being or life-style of those who are more favored tends to be looked upon as an enemy to be resisted or eliminated.

147. COMPENDIUM, *supra* note 13, para. 216 ("No power can abolish the natural right to marriage or modify its traits and purpose.") (emphasis omitted); CATECHISM, *supra* note 95, para. 2211 ("The political community has a duty to honor the family, to assist it, and to ensure especially: the freedom to establish a family, have children, and bring them up in keeping with the family's own moral and religious convictions . . ."); *PACEM IN TERRIS*, *supra* note 118, para. 15 ("Human beings have . . . the right to choose for themselves the kind of life which appeals to them: whether it is to found a family . . . or to embrace the priesthood or religious life."); *RERUM NOVARUM*, *supra* note 13, para. 12 ("No human law can abolish the natural and original right of marriage . . .").

148. CATECHISM, *supra* note 95, para. 1625 ("The parties to a marriage covenant are a baptized man and woman, free to contract marriage, who freely express their consent; 'to be free' means: not being under constraint; not impeded by any natural or ecclesiastical law."); *id.* para. 1626 ("The Church holds the exchange of consent between the spouses to be the indispensable element that 'makes the marriage.' If consent is lacking there is no marriage."); *id.* para. 1628 ("The consent must be an act of the will of each of the contracting parties, free of coercion or grave external fear. No human power can substitute for this consent. If this freedom is lacking the marriage is invalid."); *id.* para. 1640 ("This bond . . . results from the free human act of the spouses . . .").

B. Responsibilities of Guardians

*“To accept the ‘other’ who suffers, means that I take up his suffering in such a way that it becomes mine also.”*¹⁴⁹

Being a guardian is a sacred responsibility.¹⁵⁰ Perhaps civil law is poorly equipped to capture this perspective. However, Catholic social teaching does so in a rich and compelling way. Indeed, in the beautiful words of *Redemptoris Custos*, Pope John Paul II uses the term “guardian” in a very positive way to praise St. Joseph as “guardian of the mystery,”¹⁵¹ “the first guardian of this divine mystery,”¹⁵² and a “guardian of the mystery of God.”¹⁵³ He is praised as the one through which “the so-called ‘private’ or ‘hidden’ life of Jesus is entrusted to Joseph’s guardianship.”¹⁵⁴

Pope Francis continued this theme when he recalled:

Joseph appears as the guardian of Jesus and Mary. And for this reason, he is also ‘the Guardian of the Church’: but, if he was the guardian of Jesus and Mary, he works, now that he is in heaven, and continues to be a guardian, in this case of the Church Joseph seems to want to tell us that we are always called to feel that we are our brothers and sisters’ keepers, the guardians of those who are close to us, of those whom the Lord entrusts to us through many circumstances of life.¹⁵⁵

Thus, the Church’s teaching identifies something sacred and profoundly good in the role of a faithful guardian. This is one manifestation of “the

149. POPE BENEDICT XVI, *SPE SALVI* para. 38 (Nov. 30, 2007), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20071130_spe-salvi.html [hereinafter *SPE SALVI*].

150. See The Family – 6, *supra* note 2 (“In the tradition of the Church there is a wealth of wisdom that has always supported a culture of closeness to the elderly, a disposition of warm and supportive companionship in this final phase of life.”) (emphasis omitted); Perth Address, *supra* note 106 (“To all . . . who care for the elderly . . . Yours is not a service that is limited to physical and material things. You have the precious task of helping the older members of the community to turn their later years into a time of fulfillment and completion. . . . [Y]ou must always approach your task with love and respect.”); *id.* (“Your work . . . is an enterprise of human solidarity and of evangelical love.”); CATECHISM, *supra* note 95, paras. 1936–37 (“Differences appear tied to age, physical abilities, intellectual or moral aptitudes These differences belong to God’s plan, who wills that each receive what he needs from others These differences encourage and often oblige persons to practice generosity, kindness, and sharing of goods; they foster the mutual enrichment of cultures”).

151. POPE JOHN PAUL II, *REDEMPTORIS CUSTOS* para. 5 (Aug. 15, 1989), https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_15081989_redemptoris-custos.html.

152. *Id.*

153. *Id.* para. 15.

154. *Id.* para. 8. See also *FAMILIARIS CONSORTIO*, *supra* note 115, para. 86 (calling St. Joseph “the upright guardian of those entrusted to his care”).

155. Pope Francis, General Audience: Catechesis on Saint Joseph – 2 (Nov. 24, 2021), https://www.vatican.va/content/francesco/en/audiences/2021/documents/papa-francesco_20211124_udienza-generale.html.

responsibility which every person has towards others”¹⁵⁶—a stark contrast to “today’s tendency for people to refuse to accept responsibility for their brothers and sisters.”¹⁵⁷ Indeed, this should prompt further development of a sound theology of and theory for guardianship.

Guardians can vary greatly in the ways in which they view and exercise their roles.¹⁵⁸ Yet, what they have in common is that guardians must recognize that, in one way or another, the person who is guarded suffers. Sharing in this suffering is an important part of the role of guardian. Pope Benedict noted:

A society unable to accept its suffering member and incapable of helping to share their suffering and to bear it inwardly through “compassion” is a cruel and inhuman society. Yet society cannot accept its suffering members and support them in their trials unless individuals are capable of doing so themselves; moreover, the individual cannot accept another’s suffering unless he personally is able to find meaning in suffering¹⁵⁹

While love cannot be legally mandated,¹⁶⁰ the Catholic vision of the human person does indeed encompass a radical call to love.¹⁶¹ This radical call

156. *EVANGELIUM VITAE*, *supra* note 97, para. 8.

157. *Id.*

158. *See* QUINN, *supra* note 1, at 4.

Some guardians . . . become autocratic and dismissive of others who are involved with the disabled adult or elder. Other guardians perform heroically and beyond the call of duty. Still others are creative in extraordinary ways Sadly, some guardians become abusive or neglectful.

159. *SPE SALVI*, *supra* note 149, para. 38.

160. Unfortunately, “[t]he need for laws to protect the older population cannot be ignored and is too important to rely solely upon moral standards and cultural codes of conduct.” Childs, *supra* note 79, at 149.

161. *See, e.g.*, POPE BENEDICT XVI, *DEUS CARITAS EST* para. 6 (Dec. 25, 2005), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est.html (“Love . . . becomes concern and care for the other. No longer is it self-seeking, a sinking in the intoxication of happiness; instead it seeks the good of the beloved: it becomes renunciation and it is ready, and even willing, for sacrifice.”); *id.* para. 18 (“I can give to others much more than their outward necessities; I can give them the look of love which they crave.”); *id.* para. 28 (identifying “loving personal concern” as “the very thing which the suffering person—every person—needs”); *id.* para. 31 (“[H]uman beings always need something more than technically proper care. They need humanity. They need heartfelt concern.”); *FRATELLI TUTTI*, *supra* note 93, para. 94 (“Our love for others, for who they are, moves us to seek the best for their lives.”) (emphasis omitted); *CARITAS IN VERITATE*, *supra* note 95, para. 7 (“To love someone is to desire that person’s good and to take effective steps to secure it.”); *id.* para. 6 (“The earthly city is promoted not merely by relationships of rights and duties, but to an even greater and more fundamental extent by relationships of gratuitousness, mercy[,] and communion.”) (emphasis omitted); *id.* para. 30 (“[L]ove is rich in intelligence and intelligence is full of love.”) (emphasis omitted); *VERITATIS SPLENDOR*, *supra* note 99, para. 14 (“Both the Old and the New testaments explicitly affirm that without love of neighbor, made concrete in keeping the commandments, genuine love for God is not possible.”) (emphasis omitted); *id.* para. 15 (“Love of neighbor springs from a loving heart which, precisely because it loves, is ready to live out the loftiest challenges. Jesus shows that the commandments must not be understood as a minimum limit . . . but rather as a path involving a moral and spiritual journey towards perfection, at the heart of which is love.”); *LAUDATO SI*, *supra* note 96, para. 229 (“We must regain the conviction that we need one another”); *GAUDIUM ET*

to love must infuse all that a guardian undertakes on behalf of the one entrusted to his or her care or, as noted in *Evangelium Vitae*, “we must care for the other as a person for whom God has made us responsible.”¹⁶² This is particularly true when that responsibility is as profound as serving as a guardian. In particular concrete ways, this should lead a guardian to go beyond mere legal requirements and to fulfill the obligations of guardian as a sacred calling:

Human personhood must be respected with a reverence that is religious. When we deal with each other, we should do so with the sense of awe that arises in the presence of something holy and sacred. For that is what human beings are: we are created in the image of God.¹⁶³

What this may mean, in practical terms, may vary depending on the specific circumstances and guardians should approach their responsibilities after careful prayer and discernment. In general, from a Catholic perspective, a guardian should:

- Understand that the vulnerabilities of the person served increase, rather than decrease, the need for care because “[t]he word of God frequently repeats the call to show care and respect, above all where life is undermined by sickness and old age.”¹⁶⁴

SPES, *supra* note 115, para. 38 (“[C]harity is not something to be reserved for important matters, but must be pursued chiefly in the ordinary circumstances of life.”); *COMPENDIUM*, *supra* note 13, para. 4 (“Only love is capable of radically transforming the relationships that men maintain among themselves.”); *id.* para. 33 (“The commandment of mutual love, which represents the law of life for God’s people, must inspire, purify[,] and elevate all human relationships”) (emphasis omitted); *id.* para. 204 (“Love . . . must be reconsidered in its authentic value as the highest and universal criterion of the whole of social ethics.”) (emphasis omitted); *id.* para. 207 (“No legislation, no system of rules or negotiation will ever succeed in persuading men and peoples to live in unity, brotherhood[,] and peace; no line of reasoning will ever be able to surpass the appeal of love.”) (emphasis omitted); *id.* para. 222 (“If the elderly are in situations where they experience suffering and dependence, not only do they need health care services and appropriate assistance, but—and above all—they need to be treated with love.”); *id.* para. 581 (“Love must be present in and permeate every social relationship.”) (emphasis omitted); *id.* para. 583 (“Only love can completely transform the human person.”) (emphasis omitted); *CATECHISM*, *supra* note 95, para. 1931 (“No legislation could by itself do away with the fears, prejudices, and attitudes of pride and selfishness which obstruct the establishment of truly fraternal societies. Such behavior will cease only through the charity that finds in every man a ‘neighbor,’ a brother.”); Pope Francis, General Audience: Catechesis on Old Age – 6 (Apr. 20, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220420-udienza-generale.html> (“Honor is lacking when an excess of confidence, instead of being expressed as delicacy and affection, tenderness and respect, is transformed into roughness and abuse.”); *id.* (“In spite of all the material provisions that richer and more organized societies make available for old age . . . the struggle for restoration of that special form of love which is honor still seems fragile and immature.”); *QUADRAGESIMO ANNO*, *supra* note 13, para. 137 (“[J]ustice alone can, if faithfully observed, remove the causes of social conflict but can never bring about union of minds and hearts.”).

162. *EVANGELIUM VITAE*, *supra* note 97, para. 87.

163. *ECONOMIC JUSTICE FOR ALL*, *supra* note 13, at 8. *See also id.*, at 11 (“Every human person is created as an image of God, and the denial of dignity to a person is a blot on this image.”).

164. *EVANGELIUM VITAE*, *supra* note 97, para. 44.

- Strive to spend as much time as possible with the person whom they serve and to do all that is possible to ensure that others near and dear do the same.¹⁶⁵ Catholic social teaching stresses consistently that the human person is a social being with a “constitutive social nature.”¹⁶⁶ The isolation that can come when one is vulnerable is often deeply painful, and often a source of much silent suffering. While courts and the legal process often concern themselves with material and physical well-being, a guardian should understand that social and emotional well-being are also critically important.¹⁶⁷ Civil law is recognizing this to an ever greater extent. However, for a guardian guided by principles of Catholic social thought, preserving human relationships and community interactions must be a priority.
- In a similar vein, seek out opportunities for the spiritual support of the person for whom they are caring. Often, connections to a faith community and the chance to celebrate liturgy, meet with

165. See Pope Francis, General Audience: Catechesis on Old Age – 14 (June 15, 2022), <https://www.vatican.va/content/francesco/en/audiences/2022/documents/20220615-udienza-generale.html> (“Visiting the elderly must be done by many, together and often.”).

166. COMPENDIUM, *supra* note 13, para. 37. See also *id.* para. 61 (“Unique and unrepeatable in his individuality, every person is a being who is open to relationships with others in society. Life together in society, in the network of relationships linking individuals, families[,] and intermediate groups by encounter, communication[,] and exchange, ensures a higher quality of living.”) (emphasis omitted); *id.* para. 109 (“[M]an finds life and self-expression only in relationship”); *id.* para. 149 (“The human person is essentially a social being because God, who created humanity, willed it so.”) (emphasis omitted); *id.* para. 149 (“[C]ommunity life is a natural characteristic that distinguishes man from the rest of earthly creatures.”); POPE JOHN PAUL II, *FIDES ET RATIO* para. 31 (Sept. 14, 1998), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091998_fides-et-ratio.html [hereinafter *FIDES ET RATIO*] (“Human beings are not made to live alone. They are born into a family and in a family they grow”); CATECHISM, *supra* note 95, para. 1879 (“The human person needs to live in society. Society is not for him an extraneous addition but a requirement of his nature.”); *id.* para. 1913 (“It is necessary that all participate, each according to his position and role, in promoting the common good. This obligation is inherent in the dignity of the human person.”); *Commitment to All Generations*, *supra* note 120 (“The human person is essentially a social being. . . . We need others.”); *POPULORUM PROGRESSIO*, *supra* note 118, para. 17 (“Each man is a member of society; hence he belongs to the community of man.”); *PACEM IN TERRIS*, *supra* note 118, para. 23 (“Men are by nature social”).

167. Indeed, more broadly, the dimensions of the human person include the “personal and social, spiritual and corporeal, historical and transcendent” (emphasis omitted). COMPENDIUM, *supra* note 13 para. 38. See also Pope Francis, Address of His Holiness Pope Francis to a Group of Disabled People on the Occasion of International Day of People with Disabilities (Dec. 3, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/december/documents/20221203-giornata-int-disabilita.html> (“[I]t is not enough to defend people’s rights. It is also necessary to work to respond to their existential needs too, in their different dimensions, bodily, psychological, social[,] and spiritual.”); *id.* (“Every man and every woman . . . in whatever situation they find themselves, is the bearer not only of rights that must be recognized and guaranteed, but also even deeper demands, such as the need to belong, to relate to others[,] and to cultivate spiritual life to the point of experiencing its fullness”).

clergy, and experience sacramental life¹⁶⁸ remain deeply important to those who may have lost the capacity to manage their affairs in full. A good guardian will ensure that this aspect of the individual's life is fully respected and cared for in every way possible.¹⁶⁹ Indeed, "the importance of the religious and spiritual aspect . . . is a dimension that remains vital even when cognitive faculties have been reduced or lost."¹⁷⁰ Secular guardianship laws may not prioritize spiritual care if it is viewed as unimportant, intangible, or both. Yet, Catholic social teaching would give this its proper, prominent role.

- Appreciate the ways in which a guardianship may be difficult and stressful—particularly in the ideal situation in which the guardian cares deeply for the person for whom they are caring. A good guardian will seek out support, comfort, and help when needed.¹⁷¹ Often, when serving as guardian for a loved one, deep sorrow, mourning, pain and stress may fill the heart of the guardian as he or she tries to best serve the needs of the one entrusted to their care. This can sometimes be compounded by tension if the person serving as guardian is bearing a disproportionate share of care obligations within a family. To seek support and sustenance necessary to be a holy guardian is also critically important. Not only will this help the guardian better serve, but it will also support the guardian's own sanctification.
- Learn the ethical implications of various medical decisions that may be necessary. Depending upon the nature of the guardianship, the person serving as guardian may have the authority to make decisions about the medical care that will be provided, and the authority to make end of life decisions. When it comes to these decisions, the Church teaches that they "should

168. See generally POPE BENEDICT XVI, *SACRAMENTUM CARITATIS* (Feb. 22, 2007), https://www.vatican.va/content/benedict-xvi/en/apost_exhortations/documents/hf_ben-xvi_exh_20070222_sacramentum-caritatis.html (discussing the critical importance of the Holy Eucharist).

169. See Pope John Paul II, Address of John Paul II to the Sick, the Elderly and the Handicapped paras. 4–5 (Nov. 23, 1986), https://www.vatican.va/content/john-paul-ii/en/speeches/1986/november/documents/hf_jp-ii_spe_19861123_malati-wellington-nuova-zelanda.html (discussing the critical importance of the sacrament of the Anointing of the Sick and encouraging its reception both at the hour of death and in times of illness).

170. 2013 Pontifical Council for Health Care Workers Address, *supra* note 90. See also *EVANGELII GAUDIUM*, *supra* note 13, para. 200 ("[T]he worst discrimination which the poor suffer is the lack of spiritual care.").

171. See QUINN, *supra* note 1, at 74. ("[G]uardians . . . struggle with the same challenges as any family caregiver. . . . In addition to their own personal challenges and the concern about the person with diminished capacity and his finances, the relative who is guardian must deal with the pressure of fulfilling the legal mandate as a surrogate decision[.]maker. Usually the person has never served as a guardian before [and] . . . has little or no preparation."); *id.* ("Family members and other lay guardians need a good deal of education, guidance and support."); 2013 Pontifical Council for Health Care Workers Address, *supra* note 90 ("The provision of adequate assistance and services which respect the dignity, identity[,] and needs of patients is important, but the support of those who assist them, whether family members of healthcare professionals, is also important.").

be made by the patient if he is competent and able or, if not, by those legally entitled to act for the patient, whose reasonable will and legitimate interests must always be respected.”¹⁷² The Catholic Church’s teachings on the ethics of medical care are well developed, and a guardian should know and understand them. Ideally, these should be discussed with the person for whom the guardian has responsibility to ensure that the guardian is not placed in a position that raises moral dilemmas. *Evangelium Vitae* is clear that “[t]o concur with the intention of another person to commit suicide and to help in carrying it out through so-called ‘assisted suicide’ . . . [is to] cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested.”¹⁷³

- Make the decisions that would have been made by the person on whose behalf the decisions are being made. With the exception of actions that are immoral or dangerous, guardians should work with humility to see their role as carrying out the presumed wishes of the person whom they serve. There may be many circumstances in which those specific wishes are not known. However, if the guardian is a loved one, he or she will, hopefully, understand enough about the wishes and values of the person on whose behalf the decisions are being made so that they are consistent with what that person would have done. This requires humility if those would not be the decisions that the guardian would make for himself or herself. Yet, it is a way of respecting autonomy to approximate the decisions that would have been made by the person subject to the guardianship.
- Avoid acting in one’s own self-interest, and recognize the temptations that arise from having complete control over the management of another’s assets.¹⁷⁴ Sinful human nature, when faced with temptations, can all too easily give in to those temptations, particularly when the victim of such greed or deceit is a vulnerable person.¹⁷⁵ Resisting such temptations, seeking

172. CATECHISM, *supra* note 95, para. 2278.

173. *EVANGELIUM VITAE*, *supra* note 97, para. 66. See also CATECHISM, *supra* note 95, para. 2277 (“[A]n act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God, his Creator.”); 1999 Letter to the Elderly, *supra* note 114, para. 9 (“[M]oral law allows the rejection of ‘aggressive medical treatment’ But euthanasia, understood as directly causing death, is another thing entirely. Regardless of intentions and circumstances, euthanasia is always an intrinsically evil act, a violation of God’s law[,] and an offense against the dignity of the human person.”).

174. See CATECHISM, *supra* note 95, para. 2536 (“The tenth commandment forbids greed and the desire to amass earthly goods without limit. It forbids avarice arising from a passion for riches and their attendant power. It also forbids the desire to commit injustice by harming our neighbor in his temporal goods”).

175. See, e.g., *QUADRAGESIMO ANNO*, *supra* note 13, para. 132:

[O]riginal sin . . . has destroyed the wonderful harmony of man’s faculties that, easily led astray by his evil desires, he is strongly incited to prefer the passing goods of this

help in facing them, and making amends if trust is violated are all critical tasks for a guardian.

Some of these responsibilities cannot be easily imposed by civil law, beyond the basic rules on fiduciary responsibilities. But, perhaps, appointments of guardians may be accompanied by more expansive training and an increase in efforts to provide support for guardians. Guardianship associations might direct greater attention to offering resources and practical suggestions for the dilemmas that can arise in guardianships. Perhaps, too, faith-based organizations including diocese and parishes might do more outreach to those who take on this role by caring for their spiritual needs, responding to moral and ethical questions, and offering practical support.

world to the lasting goods of Heaven. Hence arises that unquenchable thirst for riches and temporal goods, which has at all times impelled men to break God's laws and trample upon the rights of their neighbors

See also id. para. 136 (identifying “sordid love of wealth” as “the shame and great sin of our age”).

CONCLUSION

*“Promoting the recognition of the dignity of every person is a constant responsibility of the Church. It is the mission of continuing over time the closeness of Jesus Christ to every man and woman, especially the most fragile and vulnerable.”*¹⁷⁶

There is a tension between protecting vulnerable people from exploitation and abuse and being overprotective in a way that dishonors human autonomy.¹⁷⁷ These tensions are apparent in the context of legal guardianships—a relationship often perceived as routine, yet imbued with profound moral implications. There is, perhaps, no way to fully reconcile these competing strains of thought with each other.

Catholic social thought on both of these theories can help deepen the ways in which the complex, often painful world of guardianships can be navigated. Indeed, “frailty is part of everyone’s life.”¹⁷⁸ In light of this, those charged with shaping guardianship law and policy and those with the responsibility of serving as guardians may do best to reflect on this tension, and recognize that in their own frailty they, too, may someday need a guardian.

176. Pope Francis, Address of His Holiness Pope Francis to a Group of Disabled People on the Occasion of International Day of People with Disabilities (Dec. 3, 2022) <https://www.vatican.va/content/francesco/en/speeches/2022/december/documents/20221203-giornata-int-disabilita.html>.

177. See, e.g., *Changing Paradigms*, *supra* note 22, at 164–65 (“[E]ven within the primacy of autonomy, there is always the possibility of exploitation and/or abuse . . .”).

178. Pope Francis, Message of the Holy Father Francis for the International Day of Persons with Disabilities para. 1 (Dec. 3, 2020), https://www.vatican.va/content/francesco/en/messages/pont-messages/2022/documents/20221203_messaggio-disabilita.html (emphasis omitted). See also John Paul II Address to Young, Elderly and Handicapped People, *supra* note 98, para. 4 (“[H]uman and Christian greatness does not consist in being stronger or more active than others.”); *GAUDIUM ET SPES*, *supra* note 115, para. 13 (observing that both “[t]he call to grandeur and the depths of misery . . . are . . . part of human experience”); Second World Assembly Letter, *supra* note 93 (“[O]ld age is a season of life in which individuals are victims of human frailty, and so are especially vulnerable. Very often, the onset of chronic illness incapacitates the old person . . . [T]he elderly not only need to be cared for with scientific and technical means but also to be looked after with efficiency and love . . .”); Pope Francis, Address of His Holiness Pope Francis to Participants in the International Congress “The Richness of Many Years of Life” (Jan. 31, 2020) https://www.vatican.va/content/francesco/en/speeches/2020/january/documents/papa-francesco_20200131_congresso-pastoraleanziani.html (“[L]ongevity is a blessing. It confronts us with our fragility, with our mutual dependence, with our family and community ties, and above all with our divine sonship.”); *FIDES ET RATIO*, *supra* note 166, para. 26 (“The daily experience of suffering—in one’s own life and in the lives of others—and the array of facts which seem inexplicable to reason are enough to ensure that a question as dramatic as the question of meaning cannot be evaded.”); Pope Francis, Jubilee for the Sick and Persons with Disabilities (June 12, 2016), https://www.vatican.va/content/francesco/en/homilies/2016/documents/papa-francesco_20160612_omelia-giubileo-ammalati-disabili.html (“Each of us, sooner or later, is called to face—at times painfully—frailty and illness, both our own and those of others. How many different faces do these common yet dramatically human experiences take!”).