

**BRITNEY SPEARS AND SYSTEMIC REFORM: EMBRACING VULNERABILITY
IN CONSERVATORSHIP LAWS**

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This article critically examines the complexities surrounding the conservatorship of Britney Spears as a focal point to explore broader systemic issues within the U.S. guardianship system, guided by the principles of vulnerability theory. Spears’ high-profile case exposes fundamental flaws in a framework that prioritizes autonomy over the recognition of inherent human vulnerabilities. By situating her legal battles within the context of vulnerability theory, this paper challenges the prevailing legal myths of autonomy and advocates for reforms that create a more just, adaptive, and humane system. The analysis extends beyond Spears’ case, proposing a series of detailed reforms to integrate the principles of vulnerability theory into U.S. conservatorship laws. This discourse not only emphasizes the limitations of current legal practices but also emphasizes the universal applicability of vulnerability as a fundamental aspect of the human experience, suggesting that legal systems worldwide could benefit from similar reforms. By selecting Britney Spears—a figure emblematically associated with autonomy, independence, and defiance of societal expectations—this paper broadens the discourse surrounding legal conservatorship, arguing for legal frameworks that better reflect the dependence and vulnerabilities inherent in the human condition.

I. INTRODUCTION.....356

II. BRITNEY SPEARS: A CASE STUDY IN CONSERVATORSHIP359

III. VULNERABILITY THEORY368

IV. LIBERAL AND VULNERABLE LEGAL SUBJECT369

 A. *The Myth of Autonomy and the Liberal Legal Subject*..... 369

 B. *The Vulnerable Legal Subject: A New Legal Perspective*.....372

V. THE CONSERVATORSHIP374

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VI. VULNERABILITY AND CONSERVATORSHIP	385
VII. INTERNATIONAL AND COMPARATIVE PERSPECTIVE ON CONSERVATORSHIP	386
A. <i>Global Variations- Comprehensive Lifelong Support Systems in European Countries</i>	386
B. <i>Supported Decision-Making Alternatives Around The World</i>	392
C. <i>Lessons for the U.S.: Adapting International Practices to Reform U.S. Conservatorship Laws</i>	398
VIII. VULNERABILITY THEORY-INFORMED CONSERVATORSHIP/ GUARDIANSHIP:	399
A. <i>Reframed Definition</i>	399
B. <i>Inevitable Inequality</i>	400
C. <i>Proposed Reforms for the U.S.: Integrating Vulnerability Theory into Conservatorship Laws</i>	401
1. <i>Reforms and Detailed Recommendations</i>	401
IX. CONCLUSION	404

I. INTRODUCTION

As authors who fall within the Millennial generation, we recall the proliferation of memes and tabloid headlines surrounding Britney Spears' most publicized period—none more iconic than the images of her shaving her head in 2007. These images became a viral spectacle, embedding themselves into our collective understanding of autonomy. At the time, they served not only as countless jokes and memes but also subtly reinforced a prevailing narrative of autonomy. Here was Britney Spears, a successful, famous woman seemingly in full control of her life, making a public declaration of that autonomy in the most dramatic fashion. Or so it appeared to a culture steeped in the myth of the liberal legal subject, where autonomy is both an expectation and a mandate.¹

1. Thomas Hobbes and John Locke, seminal figures in the tradition of social contract theory, offer foundational yet divergent perspectives on the state's role in managing individual liberty versus societal order. Hobbes, in *Leviathan* (1651), argues for a sovereign authority to avert the brutal "state of nature" he describes, recommending a powerful government essential to ensure peace and prevent civil conflict. See generally THOMAS HOBBS, *LEVIATHAN* 121–24 (Edward White & David Widger eds., Project Gutenberg 2002) (1651), <https://www.gutenberg.org/files/3207/3207-h/3207-h.htm> [<https://perma.cc/3UZT-TLJ9>]. Conversely, John Locke in *Two Treatises of Government* (1689), posits that government should serve primarily to protect the natural rights of individuals—life, liberty, and property—suggesting that the state's authority

This moment, and the public's reaction to it, captures society's tendency to view individuals—particularly those as visible and “privileged” as Spears—as possessing complete autonomy. This viewpoint assumes that individuals are entirely free to shape their destinies, uninhibited by underlying vulnerabilities or systemic structures that might dictate otherwise.² It's a perspective that, while superficially empowering, grossly simplifies the relationship between mythical autonomy, vulnerability, and dependency that shapes the human condition.³

The choice of Britney Spears as our case study may initially seem unconventional. Traditionally, discussions around conservatorship have centered on elderly individuals, who are typically perceived as the primary subjects of such legal arrangements due to their age-related vulnerabilities. However, by selecting Britney Spears—a figure symbolically associated with autonomy, independence, and defiance of societal expectations—we aim to challenge and expand the discourse surrounding legal conservatorship.

Britney Spears, depicted in the media as the epitome of the liberal legal subject—autonomous, capable, and unbound by societal constraints—stands in contrast to the typical conservatee. This choice reveals the pervasive myth of the liberal legal subject; an ideal that masks the vulnerabilities experienced by all individuals, regardless of their status, public persona, or personal capabilities. The binary view of guardianship and conservatorship not only reinforces this illusion but also fails to acknowledge the wide range of capability and dependence present in society. Many of the tasks that individuals under conservatorships require assistance with are, paradoxically, tasks that those considered legally capable also struggle with, such as managing complex contracts and making substantial financial decisions.

Thus, the Spears case serves not merely as a challenge to a single legal arrangement but as a deeper commentary on the broader systemic issues within U.S. guardianship laws. It invites a reflection of the standards used to define legal capacity and incapacity, requiring a legal framework that more accurately recognizes the shared and varied vulnerabilities of all individuals.

is justified only to the extent that it upholds these rights. *See generally* JOHN LOCKE, TWO TREATISES OF GOVERNMENT 163 (Rod Hay ed., McMaster Univ. Archive of the Hist. of Econ. Thought 1999) (1690), <https://www.yorku.ca/comminel/courses/3025pdf/Locke.pdf> [<https://perma.cc/F3FQ-3898>]. These contrasting views underline the philosophical debate on the balance between autonomy and authority, which continues to influence contemporary legal frameworks including those pertaining to conservatorship and guardianship.

2. *See* MARINA OSHANA, PERSONAL AUTONOMY IN SOCIETY 3 (Taylor & Francis 2016) (2006).

3. *See generally* Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, in TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY 161, 161 (Martha Albertson Fineman ed. 2010) [hereinafter “Fineman, *Anchoring Equality*”] (arguing that vulnerability is inherent in the human condition).

Using vulnerability theory,⁴ we're prompted to move beyond these simplistic narratives. Vulnerability theory articulates that vulnerability is a universal and intrinsic part of human experience.⁵ In vulnerability theory, the concepts of being “embedded” and “embodied” are crucial to interpreting the comprehensive impacts of social and institutional structures on individual resilience.⁶ Being “embedded” implies that individuals are always situated within, and influenced by, a network of relationships and societal norms that shape their experiences and vulnerabilities.⁷ Simultaneously, being “embodied” refers to the physical and psychological aspects of human existence that interact with these external factors.⁸ This dual perspective reinforces the notion that both social environments and individual physical conditions significantly determine how vulnerability and resilience are experienced and managed.

This article aims to dissect the conservatorship of Britney Spears not merely as a tabloid curiosity, but as a key case study revealing flaws within the U.S approach to a guardianship system. The application of these concepts within legal reforms advocates for a system that recognizes the deep interconnections between individuals’ physical states and their social contexts. Laws need to be sensitive to these dynamics, adapting to the ever-changing human conditions that they aim to regulate. By applying vulnerability theory, we argue for fundamental reforms that address the inherent inequalities, dependencies and systemic oversights that Spears’ case has brought to light.

The article begins by reflecting on Britney Spears’ public breakdown in 2007, a moment that became emblematic of autonomy in the public eye. Part 1 details Spears’ conservatorship experience, highlighting systemic failures within the guardianship system. Part 2 introduces and defines vulnerability theory, explaining its relevance in rethinking legal frameworks to better accommodate the complexities of human vulnerabilities that Spears’ case exemplifies. Part 3 transitions from foundational theories to practical implications, critiquing traditional legal views on autonomy and demanding a transformation towards recognizing the vulnerable legal subject. Part 4

4. See generally *id.* (discussing Fineman’s approach to vulnerability, which focuses on the role of current social structures and institutions in managing the population’s common vulnerabilities).

5. Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 *YALE J.L. & FEMINISM* 1, 11 (2014).

6. See generally Saru M. Matambanadzo, *Embodying Vulnerability: A Feminist Theory of the Person*, 20 *DUKE J. GENDER L. & POL’Y* 45, 71 (2012) (using embeddedness and embodiment as criteria to determine legal personhood).

7. See Laura Tarvainen, *Embodied and Embedded Vulnerable Subject: Asylum Seekers and Vulnerability Theory*, 17 *NO FOUNDS.: AN INTERDISC. J.L. & JUST.*, 183, 184 (2019).

8. See *id.* at 188.

examines the paradoxes within the conservatorship system and argues for reforms that prioritize resilience. Part 5 broadens the discussion by comparing U.S. conservatorship laws with international practices, suggesting that the U.S. could benefit from adopting the more progressive approaches to guardianship implemented in other countries. Part 6 proposes a redefined operational framework for conservatorship, grounded in vulnerability theory, and outlines specific reforms designed to transform the U.S. system. In conclusion, we summarize the key points discussed, reiterating the importance of reforms informed by vulnerability theory.

II. BRITNEY SPEARS: A CASE STUDY IN CONSERVATORSHIP

The conservatorship⁹ of Britney Spears, a legal framework designed to protect her well-being and financial assets, has inadvertently revealed significant contradictions within American legal doctrine regarding “autonomy,”¹⁰ vulnerability, and the state’s intervention in the structured lives of individuals. While Spears’ case has drawn international attention through the #FreeBritney movement,¹¹ it is but a single manifestation of a systemic

9. According to the National Guardianship Association, “[g]uardianship, also, referred to as conservatorship, is a legal process, utilized when a person can no longer make or communicate safe or sound decisions about his/her person and/or property or has become susceptible to fraud or undue influence. Because establishing a guardianship may remove considerable rights from an individual, it should only be considered after alternatives to guardianship have proven ineffective or are unavailable.” *What Is Guardianship?*, NAT’L GUARDIANSHIP ASS’N, <https://www.guardianship.org/what-is-guardianship/> [<https://perma.cc/5QT4-EZUP>].

10. The term “autonomy” is used in this article within quotation marks to emphasize its problematic nature from the perspective of the analysis presented. In the framework applied here, “autonomy” is regarded as a liberal construct that simplistically characterizes individuals as wholly self-sufficient, neglecting the profound impact of societal, economic, and institutional conditions on individual capabilities and freedoms. This usage aims to challenge traditional interpretations of autonomy and prompt a re-evaluation of how legal frameworks might more accurately reflect and respond to the inherent dependencies and vulnerabilities of the human condition.

11. The #FreeBritney movement, which garnered widespread public and media attention, reflects the complex interplay between celebrity advocacy, legal battles, and public perception in Britney Spears’ case. For more on Spears’ movement, public statements, conservatorship, and the burgeoning of the #FreeBritney movement, see Nicole C. Palas, *#FreeBritney: A Social Media Movement Shining a Light on Guardianship Abuse and Oversight*, 50 HOFSTRA L. REV. 895, 895–97 (2021); Susan Hopkins, *Free Britney, B**ch!: Femininity, Fandom and #FreeBritney Activism*, 13 CELEBRITY STUD. 475 (2022); Akhil R. Vaidya, *Fan-Powered Digital Activism in the #FreeBritney Movement*, CONSOLE-ING PASSIONS (June 6, 2022, 12:00 AM), <https://stars.library.ucf.edu/cp2022/program/pink/4/> [<https://perma.cc/68E6-QJXE>]; Mehera Bonner & Adrianna Freedman, *Here’s What You Need to Know About the #FreeBritney Movement*, COSMOPOLITAN (June 23, 2021, 6:28 PM), <https://www.cosmopolitan.com/entertainment/celebs/a33371286/free-britney-spearsmovement-conservatorship-explained/>

crisis¹² in the guardianship system.¹³ Different searches reveal that this extends far beyond individual cases of malpractice, uncovering a “vast, lucrative, and poorly regulated industry.”¹⁴ Designed as a safeguard for those incapacitated by disability, the guardianship system has instead subsumed over a million people, many of whom assert their capacity for “self-governance.”¹⁵ This overgrown system controls assets totaling tens of billions of dollars, yet operates largely in the shadows, leaving those subject to its governance at risk of abuse, neglect, and even death under its watch.¹⁶

[<https://perma.cc/TD5C-S7KF>]; Megan McCluskey, *#FreeBritney Activists Were Dismissed for Years. The Star’s Explosive Testimony Changed Everything*, TIME (June 25, 2021, 4:01 PM), <https://time.com/6075563/britney-spears-free-britney-fans-testimony/> [<https://perma.cc/P3C7-RMFR>]; Emily Yahr, *Why Is Britney Spears Back in the News? A Guide to the Upheaval Surrounding the Pop Star.*, WASH. POST (Aug. 26, 2020, 6:00 AM), <https://www.washingtonpost.com/arts-entertainment/2020/08/26/britney-spears-conservatorship-free-britney/> [<https://perma.cc/FMM6-BLH4>]; Laura Newberry, *Britney Spears Hasn’t Fully Controlled Her Life for Years. Fans Insist it’s Time to #FreeBritney*, L.A. TIMES (Sept. 18, 2019, 10:00 AM), <https://www.latimes.com/california/story/2019-09-17/britney-spears-conservatorship-free-britney> [<https://perma.cc/NP8L-CAAL>].

12. The systematic issues within the guardianship system often mask deeper societal and legal deficiencies. See generally MARTHA A. FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* 174 (1991) [hereinafter “FINEMAN, THE ILLUSION OF EQUALITY”] (critiquing legal systems for not adequately addressing inherent human vulnerability and arguing that these systems often perpetuate inequality and dependency under the guise of autonomy and freedom).

13. Due to the state-level determination of guardianship and conservatorship laws, there is no consistent terminology across jurisdictions for what this article refers to as guardianships and conservatorships. While some states distinguish between guardianships and conservatorships as separate legal arrangements, others use the terms to describe guardianship of the person and guardianship of the property, respectively. Given this lack of uniformity, the terms will be used interchangeably throughout this article without differentiation.

14. Heidi Blake & Katie J.M. Baker, *Beyond Britney: Abuse, Exploitation, and Death Inside America’s Guardianship Industry*, BUZZFEED NEWS (Sept. 17, 2021, 1:02 PM), <https://www.buzzfeednews.com/article/heidiblake/conservatorship-investigation-free-britney-spears> [<https://perma.cc/5G5A-BB3P>].

15. See Abigail Abrams, *How Britney Spears’ Case Could Change the Future of Conservatorship*, TIME (June 25, 2021, 2:30 PM), <https://time.com/6075859/britney-spears-conservatorship-disability/> [<https://perma.cc/K6YH-N5LF>]; U.S. GOV’T ACCOUNTABILITY OFF., GAO-10-1046, *GUARDIANSHIPS: CASES OF FINANCIAL EXPLOITATION, NEGLECT, AND ABUSE OF SENIORS* 1–2 (2010). Joel Feinberg’s work is central in discussing how autonomy can be overly idealized in legal contexts, which can lead to neglecting the necessary protective measures. See generally JOEL FEINBERG, *THE MORAL LIMITS OF THE CRIMINAL LAW: HARM TO SELF* (vol. 3, 1989) (showing the theoretical conflict between perceived “self-governance” and the realities of legal incapacitation).

16. See Blake & Baker, *supra* note 14.

Britney Spears' conservatorship came to an end in November 2021,¹⁷ representing a significant victory for Spears and a moment of reckoning for the guardianship system at large.¹⁸ This case, highlighted by the international attention garnered through the #FreeBritney movement, exemplifies the significant role of civil society working alongside with institutional mechanisms in addressing systemic injustices.¹⁹ The #FreeBritney movement, initiated by Spears' fans and bolstered by widespread media coverage, evolved into a powerful force and transcended mere fandom to become a significant socio-legal phenomenon.²⁰ The #FreeBritney movement,²¹ particularly following the podcast Britney's Gram²² revelations,²³ *New York*

17. Ashley Fetters Maloy & Sonia Rao, *Britney Spears's Conservatorship Is Terminated After 13 Years*, WASH. POST, <https://www.washingtonpost.com/arts-entertainment/2021/11/12/britney-spears-conservatorship-hearing/> [<https://perma.cc/HU3Q-E3N2>] (Nov. 12, 2021, 7:23 PM).

18. See Anastasia Tsioulcas, *Britney Spears' Conservatorship Has Finally Ended*, NAT'L PUB. RADIO (Nov. 12, 2021, 5:16 PM), <https://www.npr.org/2021/11/12/1054860726/britney-spears-conservatorship-ended> [<https://perma.cc/WYR9-E2W6>].

19. For a deeper exploration of how civil movements have historically influenced legal reforms, see DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (Dedi Felman & Helen Mules eds., 2004).

20. For an insightful analysis of the role of media in shaping and propelling social movements, see HENRY JENKINS, *CONVERGENCE CULTURE: WHERE OLD AND NEW MEDIA COLLIDE* (2008). Jenkins' comprehensive framework elucidates how media coverage, particularly the dynamics of social media in modern advocacy movements, is instrumental in mobilizing public opinion and impacting legal and social outcomes.

21. See Bianca Betancourt, *Why Longtime Britney Spears Fans Are Demanding to #FreeBritney*, HARPER'S BAZAAR (Nov. 12, 2021, 5:39 PM), <https://www.harpersbazaar.com/celebrity/latest/a34113034/why-longtime-britney-spears-fans-are-demanding-to-freebritney/> [<https://perma.cc/B2ZS-S5RS>].

22. See Brittany Spanos, *#FreeBritney: Understanding the Fan-led Britney Spears Movement*, ROLLING STONE (Feb. 8, 2021), <https://www.rollingstone.com/#freebritney-understanding-the-fan-led-britney-spears-movement> [<https://perma.cc/7JY4-Q6UT>].

23. See generally Liz Day et al., *Britney Spears Quietly Pushed for Years to End Her Conservatorship*, N.Y. TIMES, <https://www.nytimes.com/2021/06/22/arts/music/britney-spears-conservatorship.html> [<https://perma.cc/9XWS-LG3Y>] (Nov. 2, 2021) (describing the many details revealed through Spears's attempt to end her conservatorship).

Times documentary,²⁴ and Spears' own public statements, raises questions about the fairness and effectiveness of the conservatorship system.²⁵

Despite her successful career—characterized by successful albums, tours, and business ventures—Spears' life under conservatorship painted a complex picture of a public figure battling against legal, familial, and institutional constraints.²⁶ These constraints are not merely personal or legal in nature but are also deeply rooted in the broader socio-legal frameworks that regulate individual conduct, illustrating how individual experiences are shaped by extensive institutional structures.²⁷ The momentum generated by the #FreeBritney movement not only amplified Spears' individual struggle but also exposed the systemic flaws within the guardianship system, catalyzing

24. See Brandy Hadden, *The New York Times Presents: Framing Britney Spears (2021)*, 40 AM. JOURNALISM 395, 395–96 (2023) [<https://perma.cc/JR9W-MJZQ>]; 'Framing Britney Spears', N.Y. TIMES, (Nov. 2, 2021), <https://www.nytimes.com/article/framing-britney-spears.html> [<https://perma.cc/TLM3-TUUL>]; Julia Jacobs, 'Sorry, Britney': Media Is Criticized for Past Coverage, and Some Own Up, N.Y. TIMES, <https://www.nytimes.com/2021/02/12/arts/music/britney-spears-documentary-media.html> [<https://perma.cc/9Z97-77BP>] (June 24, 2021); Lucy Mangan, *Framing Britney Spears Review – A Sobering Look at Sexism and Celebrity*, THE GUARDIAN (Feb. 16, 2021, 5:30 PM), <https://www.theguardian.com/tv-and-radio/2021/feb/16/framing-britney-spears-review-a-sobering-look-at-sexism-and-celebrity-sky-now> [<https://perma.cc/B5ZR-DG3U>].

25. See Andie Judson, *How the Free Britney Movement Changed Life for Her, and the Conservatorship System*, ABC10, <https://www.abc10.com/article/news/investigations/britney-spears-conservatorship-is-terminated-how-the-movement-changed-life-for-her-and-the-system/103-1b414850-d6c2-4465-892f-e02f01090c39> [<https://perma.cc/6XMF-7AXY>] (Nov. 12, 2021, 3:02 PM).

26. The legal terminology "guardianship" and "conservatorship" have nuanced historical roots, each denoting a slightly different scope of legal authority and care. "Guardianship" originates from the ancient Greek term "κυριότης" (kyriotēs), meaning lordship or mastery, which through the Latin "curator" found its use in Roman law to describe the role of an overseer for those deemed incapable of managing their own affairs. *Strong's G2963 – kyriotēs*, BLUE LETTER BIBLE, <https://www.blueletterbible.org/lexicon/g2963/nkjv/mgmt/0-1/> [<https://perma.cc/H8X4-MGCJ>]; *Tutors and Curators (IV): Cura*, ROMAN L. (Apr. 1, 2016), <https://inforomanlaw.blogspot.com/2016/04/tutors-curators-cura.html> [<https://perma.cc/ML7L-YQ3M>]. Over centuries, this concept was refined within European medieval law, aligning with evolving societal and legal frameworks that emphasized protection and oversight of the vulnerable. See *Wardship and Marriage*, ENCYCLOPEDIA BRITANNICA (Apr. 25, 2016), <https://www.britannica.com/topic/wardship> [<https://perma.cc/7LMV-57F8>]. In contemporary legal contexts, especially under U.S. law, "conservatorship" and "guardianship" are differentiated primarily by the scope and nature of the responsibilities assigned to the conservator or guardian. See *Conservatorship vs. Guardianship: What's the Difference?*, ROCHFORD L. & REAL EST. TITLE (Mar. 7, 2024), <https://info.rochfordlawyers.com/resources/conservatorship-vs.-guardianship-whats-the-difference> [<https://perma.cc/HY35-AGKD>]. Both roles, however, fundamentally aim to balance the individual's need for assistance with their rights to autonomy and dignity, reflecting a sophisticated legacy of protective jurisprudence that emphasizes both care and control. See *id.*

27. See Fineman, *Anchoring Equality*, *supra* note 3, at 161–62.

public discourse and fostering a dialogue on the necessity for reform.²⁸ This grassroots campaign demonstrates the impact of collective action and the role of societal engagement in confronting and addressing legal and ethical issues of social justice.²⁹ It also emphasizes the importance for institutional responses that are framed within vulnerability theory, which argues for an understanding that legal frameworks must not only be challenged by public action but also restructured by institutions themselves.³⁰ These institutions must develop policies and practices that are attuned to the vulnerabilities experienced through such institutional measures, ensuring that their responses are not merely crisis-responsive but create a system that proactively prevents injustices and supports all individuals effectively before crises emerge.³¹ In addition, adopting a lifespan perspective requires that policies recognize *the legal subject in adulthood* with greater complexity.³² This perspective asserts that adults cannot simply be viewed as a distinct group; instead, it requires understanding the continuous vulnerabilities that characterize different stages within the entire lifespan.³³ The movement influenced by Spears' case ignited

28. See Deja Kemp-Salliey, *The Effect of the #FreeBritney Movement on Bipartisanship Legislation: How a Pop Star's Battle for Freedom Exposed Corruption in the American Conservatorship System 1* (May 2022) (Honors College Thesis, Pace University), https://digitalcommons.pace.edu/honorscollege_theses/365/ [<https://perma.cc/M2KW-Y46X>].

29. See Dani Anguiano, *The #FreeBritney Movement Finds its Moment: 'All the Hard Work Was Worth It'*, *The Guardian* (Nov. 14, 2021, 4:00 PM), <https://www.theguardian.com/music/2021/nov/14/freebritney-movement-britney-spears-conservatorship> [<https://perma.cc/9J9M-4ZNW>]. The term "Social justice" encompasses the cultural norms, societal behaviors, collective identities, and institutional arrangements that interact with legal frameworks. Emphasizing a collective endeavor, this term suggests more than implementing laws; it necessitates a critical examination of the social bases affecting legal outcomes. See *Legal Frameworks of Social Justice: A Comprehensive Overview*, L. LEARNED (Aug. 8, 2024), <https://lawslearned.com/legal-frameworks-of-social-justice/> [<https://perma.cc/6S2P-FG2S>]. Socio-legal studies must consider how power dynamics, values, and community practices mediate justice's effectiveness, urging legal scholarship to explore how social relationships and institutional arrangements either perpetuate inequity or promote resilience. Thus, advocating for social justice in law demands an interdisciplinary approach that not only addresses evident legal inequalities but also aims to transform the underlying social conditions.

30. See generally Fineman, *Anchoring Equality*, *supra* note 3, at 164–66 (arguing that societal institutions are tied to the state, and vulnerability can be a powerful tool to define obligations of equality for the state).

31. Indeed, the assessment encompasses not only the responsiveness of a state but also the manner and extent of its responsiveness. See Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 *EMORY L.J.* 251, 273–74 (2010) [hereinafter "Fineman, *Responsive State*"].

32. LAURA E. BERK, *DEVELOPMENT THROUGH THE LIFESPAN* 7–8 (4th ed. 2007).

33. See *id.* at 8.

discussions on the broader implications of conservatorships and their potential for abuse,³⁴ thus stressing the need for systemic change.³⁵

On November 12, 2021, Los Angeles Superior Court Judge Brenda Penny declared, “the conservatorship of the person and estate of Britney Jean Spears is no longer required,”³⁶ bringing a definitive end to the thirteen-year conservatorship that had controlled Spears’ personal, financial, and medical affairs.³⁷ The termination of the conservatorship restored Spears’ legal status, notably the ability to marry her fiancé without a conservator signing the marriage license—a strong contrast to the previous control that precluded her from remarrying.³⁸ Spears’ case reflects not just a personal tragedy but a systemic failure.³⁹

34. See generally Rebekah Diller & Leslie Salzman, *Stripped of Funds, Stripped of Rights: A Critique of Guardianship as a Remedy for Elder Financial Harm*, 24 UNIV. PA. J.L. & SOC. CHANGE 149, 149 (2021) (displaying a critical examination of adult guardianship as a legal response to elder financial exploitation and the systemic issues surrounding the rights and autonomy of older adults).

35. This underscores the necessity for institutional responses, as framed by vulnerability theory. See Fineman, *Anchoring Equality*, *supra* note 3, at 164. These institutions must not only address the immediate issues exposed by such cases but also undertake comprehensive reforms to prevent future abuses. See *id.* at 165. By implementing policies that recognize and mitigate inherent vulnerabilities within the conservatorship system, institutions can foster a more just and equitable legal framework that truly supports those it intends to protect.

36. Joe Coscarelli & Julia Jacobs, *Judge Ends Conservatorship Overseeing Britney Spears’s Life and Finances*, N.Y. TIMES, <https://www.nytimes.com/2021/11/12/arts/music/britney-spears-conservatorship-ends.html> [<https://perma.cc/4YZT-CNVN>] (Nov. 15, 2021).

37. *Britney Spears’ Conservatorship is Over: The Full Legal Timeline and the #FreeBritney Movement, Explained*, WOMEN’S HEALTH MAG., <https://www.womenshealthmag.com/life/a33336398/britney-spears-conservatorshiptimeline/> [<https://perma.cc/2XA9-3NLH>] (Nov. 12, 2021, 5:57 PM).

38. See Elizabeth Wagmeister, *Britney Spears Is Engaged, but Can Her Conservatorship Prevent Her From Getting Married?*, VARIETY (Sept. 14, 2021, 8:10 AM), <https://variety.com/2021/music/news/britney-spears-engaged-conservatorship-marriage-restrictions-prenup-1235063670/> [<https://perma.cc/J7AP-HW7N>].

39. The legislative interest in Britney Spears’ conservatorship underscores the case’s broader legal and societal implications. See Barbara Sprunt, *From Ted Cruz to Elizabeth Warren, There’s A Bipartisan Push to #FreeBritney*, NAT’L PUB. RADIO (July 14, 2021, 4:03 AM), <https://www.kpbs.org/news/2021/jul/14/theres-a-bipartisan-push-to-freebritney/> [<https://perma.cc/92Z2-QFEK>]; Veronica Stracqualursi, *Lawmakers Unveil Bipartisan Bill to ‘Free Britney,’ Targeting Conservatorships’ Abuse*, CNN, <https://www.cnn.com/2021/07/20/politics/free-act-conservatorships-britney-spears/index> [<https://perma.cc/2JYX-N7KF>] (July 20, 2021, 12:40 PM); Judy Kurtz, *Lawmakers Introduce Bipartisan Free Britney Act*, THE HILL (July 20, 2021, 11:09 AM), <https://thehill.com/blogs/in-the-know/in-the-know/563865-lawmakers-introduce-bipartisan-free-britney-act/> [<https://perma.cc/F54A-HMCR>]; Chloe Melas, *Britney Spears’ Father Defends Himself as Republicans Call for Congressional Hearing Over Her Conservatorship*, CNN ENT. (Mar. 10, 2021, 1:40 PM), <https://www.cnn.com/2021/03/10/entertainment/britney-spears-conservatorship-republican-congressional-hearing/index.html> [<https://perma.cc/37P9-XWAE>].

The familial dynamics often central to conservatorship and guardianship arrangements⁴⁰ deserve closer scrutiny for their appropriateness and potential for abuse. This is relevant in the case of Britney Spears, where her father's role in facilitating her conservatorship raises concerns about the suitability of intimate familial relationships in such legal frameworks. From a vulnerability perspective, relying solely on family members for such roles may unintentionally foster conditions ripe for exploitation and abuse.⁴¹ The structural issues of the current system suggest a need to broaden the scope of responsibility beyond individual guardians to include diverse stakeholders such as financial institutions, legal experts, and medical professionals. Such a redistribution of conservatorship duties would not only mitigate risks associated with concentrated power but also align with the ethos of shared responsibility. A multi-disciplinary and institutional approach can better safeguard the well-being of conservatees, addressing the limitations of the traditional, relationship-based model.

Initiated in 2008 amid concerns over her mental health, this conservatorship was meant as a temporary measure but spanned over thirteen years.⁴² Conservatorships are traditionally employed to protect individuals unable to manage their affairs due to cognitive decline or similar incapacities, contrasting to Britney Spears' situation—who was relatively young and functionally capable at the time her conservatorship was enacted.⁴³

40. See Patrick J. Kiger, *A Caregiver's Guide to Conservatorship: What It Is and How to Get One*, AARP, <https://www.aarp.org/caregiving/financial-legal/info-2024/what-is-conservatorship.html?msockid=1c496ebab0a2626806a67d17b1d0638e> [https://perma.cc/9RXC-PL8J] (May 10, 2024).

41. See Fineman, *Responsive State*, *supra* note 31, at 266.

42. See generally Hillary Hoffower & Eve Crosbie, *A Complete Timeline of Britney Spears' Conservatorship*, BUS. INSIDER, <https://www.businessinsider.com/inside-britney-spears-conservatorship-freebritney-movement-2020-12> [https://perma.cc/3DQL-RZQL] (Oct. 23, 2023, 12:25 PM) (displaying a detailed timeline of Britney Spears' conservatorship and its significant milestones).

43. Courtney Majocha, *Free Britney?*, HARV. L. TODAY (Aug. 13, 2021), <https://today.law.harvard.edu/free-britney/> [https://perma.cc/J9XW-KDGN]. Despite being under a conservatorship since February 2008, Britney Spears has maintained an active professional life. During her "Piece of Me" Las Vegas residency (2013–2017), Spears performed 248 shows, attracting 916,184 attendees, and generating \$137,700,000 in box office revenue. Bob Allen, *Britney Spears' Piece of Me Vegas Residency Final Figures: 248 Shows, 916,184 Tickets Sold, \$137.7M Earned*, BILLBOARD PRO (Jan. 23, 2018), <https://www.billboard.com/pro/britney-spears-piece-of-me-residency-final-figures/> [https://perma.cc/2CUX-F9YV]. Additionally, in the following year, her "Piece of Me" tour saw her performing across nine countries, selling 260,531 tickets and earning \$54,300,000 in box office sales. *Year End Top 100 Worldwide Tours*, POLLSTAR, https://data.pollstar.com/chart/2018/12/2018YearEndTop100WorldwideTours_697.pdf [https://perma.cc/6QZE-57KR]. These achievements raise questions given her demonstrated capability to successfully manage high-stakes, lucrative projects. See Laurel Wamsley, *Britney Spears Is Under Conservatorship. Here's How That's*

At its core, Spears' conservatorship exemplifies the dichotomy between the legal system's valorization of autonomy and its simultaneous capacity to disenfranchise individuals deemed incapable of self-governance. Her case exposes a legal apparatus rooted in the myth of the liberal legal subject: an idealized figure, sovereign and self-determining, unfettered by relational ties or societal pressures.⁴⁴ Yet, this myth collapses under the weight of Spears' lived reality, where her autonomy was not a granted state of being but a contested legal battlefield, evident in her testimony in 2021 about the conservatorship's constraints and abuses.⁴⁵

The conservatorship, framed as a protective measure for Spears, arguably evolved into a mechanism of control.⁴⁶ Spears described this arrangement as exploitative and abusive, preventing her from making basic personal and financial decisions, controlling her reproductive rights,⁴⁷ and subjecting her to involuntary medical treatment and workplace exploitation.⁴⁸ This transformation reveals the inadequacy of a binary legal framework that categorizes individuals as either fully autonomous or wholly dependent, ignoring the complex range of human capability and the inherent vulnerabilities that punctuate the human condition.

Supposed to Work, NAT'L PUB. RADIO, <https://www.npr.org/2021/06/24/1009726455/britney-spears-conservatorship-how-thats-supposed-to-work> [<https://perma.cc/9PGW-UK3J>] (June 24, 2021, 5:36 PM).

44. See *Concepts for the Vulnerability and the Human Condition Initiative*, EMORY UNIV., <https://web.gs.emory.edu/vulnerability/about/concepts.html> [<https://perma.cc/FQ83-PBR3>].

45. See Julia Jacobs & Sarah Bahr, *The Britney Spears Transcript, Annotated: 'Hear What I Have to Say'*, N.Y. TIMES (June 24, 2021), <https://www.nytimes.com/2021/06/24/arts/music/britney-spears-transcript.html> [<https://perma.cc/LJ2X-DT3G>].

46. See Ronan Farrow & Jia Tolentino, *Britney Spears's Conservatorship Nightmare*, NEW YORKER (July 3, 2021), <https://www.newyorker.com/news/american-chronicles/britney-spears-conservatorship-nightmare> [<https://perma.cc/7FYZ-XJ3J>].

47. See Kaitlynn Milvert, *How Adult Guardianship Law Fails to Protect Contraceptive Decision-Making Rights*, BILL OF HEALTH, HARV. L. (Oct. 7, 2021), <https://blog.petrieflom.law.harvard.edu/2021/10/07/guardianship-reproductive-rights/> [<https://perma.cc/2NJB-C75M>]. Milvert highlights gaps in state guardianship statutes regarding the contraceptive decision-making rights of adults under guardianship, emphasizing the necessity of legal reform. *Id.* Current laws often lack clarity and fail to provide adequate protections for reproductive rights, particularly outside the context of sterilization. *Id.* Milvert argues for statutory reforms to explicitly address and safeguard the broader contraceptive decision-making rights of those under guardianship. *Id.*; see also Elinor Cleghorn, *The History of Coercion Dressed Up as Care Is a Long One*, VOGUE (June 25, 2021), <https://www.vogue.com/article/history-of-reproductive-coercion-britney-spears-conservatorship> [<https://perma.cc/9SKS-J8U2>]; Emma Specter, *Britney Spears's Forced IUD Is a Chilling Example of the Threats to Reproductive Freedom*, VOGUE (June 24, 2021), <https://www.vogue.com/article/britney-spears-forced-iud> [<https://perma.cc/2PVP-KKCL>].

48. See Sean O'Neill, *Britney Spears is Being Exploited for Profit*, JACOBIN (July 8, 2021), <https://jacobin.com/2021/07/free-britney-spears-conservatorship-exploitation> [<https://perma.cc/2J9L-CPCU>].

Rather than an aberration to be corrected, Spears' case demonstrates that vulnerability emerges as a constant, demanding a legal and institutional framework that prioritizes resilience over the illusion of complete autonomy. The conservatorship's media spectacle and public discourse further shows the cultural and legal narratives that shape our understanding of autonomy, success, and vulnerability. Spears' public image,⁴⁹ oscillating between a pop icon of self-determination and a figure of pity captured by legal and personal crises, reflects society's discomfort with vulnerability, particularly in those deemed to have risen above ordinary societal constraints through fame or fortune.⁵⁰

This dissonance between public perception and legal reality raises important questions about the role of conservatorships within the legal system. Originally conceived as protective measures, these legal arrangements often perpetuate the very vulnerabilities they aim to address, entrapping individuals in a legal regime that privileges control.⁵¹ A responsive state must aim to enhance resilience, equipping individuals with the necessary tools and support to increase their capacity to cope with vulnerabilities, achieved in part through institutions that are attuned to the needs of those they serve.⁵²

Lessons from Spears' conservatorship highlight the need for reform.⁵³ Her case underscores the importance of applying vulnerability theory. This approach ensures that frameworks are not static but evolve in a manner that aligns with the realities of human dependency and the interactions of social,

49. See generally Otávio Daros, *Deconstructing Britney Spears: Stardom, Meltdown and Conservatorship*, 25 J. FOR CULTURAL RSCH. 377, 379–82 (2021) (describing Spears's rise to fame, several public appearances, and eventual determination as a teen idol).

50. See Eric Sentell, *Why the Britney Spears Conservatorship Fascinates Us*, MEDIUM (Oct. 5, 2021), <https://medium.com/age-of-awareness/why-the-brittany-spears-conservatorship-fascinates-us-54f36fb786d2> [<https://perma.cc/HL83-6SZ5>].

51. See Margaret Bushko, *Toxic: A Feminist Legal Theory Approach to Guardianship Law Reform*, 81 MD. L. REV. ONLINE 141, 142–43 (2022).

52. See Eva Lopez, *How Conservatorship Threatens Britney Spears' Civil Rights*, AM. CIV. LIBERTIES UNION (Aug. 20, 2020), <https://www.aclu.org/news/disability-rights/how-conservatorship-threatens-britney-spears-civil-rights/> [<https://perma.cc/H5K7-W2AM>]; Fineman, *Anchoring Equality*, *supra* note 3, at 169. For an in-depth analysis of the role of responsive institutions in enhancing individual resilience, see MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* 55–141 (2004) [hereinafter "FINEMAN, AUTONOMY MYTH"].

53. According to the United States Government Accountability Office report, investigations identified hundreds of allegations of abuse, neglect, and financial exploitation by guardians across forty-five states and the District of Columbia from 1990 to 2010, revealing significant shortcomings in the guardianship system, including inadequate screening and oversight of guardians, as well as poor communication between courts and federal agencies, which allowed guardians to mismanage or steal millions. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 15, at 5.

economic, and institutional arrangements that significantly shape individual and collective well-being.⁵⁴

III. VULNERABILITY THEORY

In contemporary legal theory, vulnerability theory emerges as a critique of the dominant legal ideals of autonomy and independence.⁵⁵ Vulnerability theory contends that not all inequalities are inherently detrimental; some, dictated by structural or relational necessities, may even be crucial for societal function.⁵⁶ Pioneered by Martha Fineman, the vulnerability theory has addressed the shortcomings of equality theory and anti-discrimination legislation, which Fineman argues fail to adequately address the inherent human condition of vulnerability.⁵⁷ This theory challenges the traditional notion of the “liberal legal subject”—the fully autonomous, rational individual, unencumbered by dependencies or societal constraints.⁵⁸

It argues that this image of the liberal legal subject is not only unrealistic but also dangerously misleading, as it conceals the fundamental dependencies that characterize the human condition.⁵⁹ This notion is deeply ingrained in Western philosophical traditions and continues to shape legislative endeavors; however, its unquestioned acceptance persists, despite its considerable divergence from actual human experiences.⁶⁰ Fineman’s analysis extends to societal and philosophical conceptions of personhood, critiquing the neoliberal emphasis on individual responsibility and self-sufficiency, which can obscure structural inequalities and the central role of collective provisions and protections.⁶¹

At its core, vulnerability theory posits that vulnerability is a universal, inevitable aspect of the human condition, arising from our corporeality and

54. See Fineman, *Responsive State*, *supra* note 31, at 251; Fineman, *Anchoring Equality*, *supra* note 3, at 174.

55. See Fineman, *Anchoring Equality*, *supra* note 3.

56. See *id.* at 162.

57. See Fineman, *Responsive State*, *supra* note 31, at 251.

58. See FINEMAN, *AUTONOMY MYTH*, *supra* note 52, at xv–xvi.

59. See Martha Albertson Fineman, *Vulnerability and Inevitable Inequality*, 4 OSLO L. REV. 133, 134 (2017) [hereinafter “Fineman, *Inevitable Inequality*”]; Fineman, *Anchoring Equality*, *supra* note 3, at 167.

60. See Fineman, *Inevitable Inequality*, *supra* note 59, at 133.

61. See generally WENDY BROWN, *UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION* 17 (Zone Books ed., 2015) (explaining the concept of neoliberalism and its effect on democracy); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 2–4 (Oxford Univ. Press 2007) (2005) (analyzing the tension between neoliberal emphasis on individualism and the collective responsibility).

dependence on societal institutions and relationships.⁶² This inherent vulnerability exists independently of individual characteristics or identities, such as race, gender, or disability, which have traditionally dominated legal discourse.⁶³ Fineman redefines the legal subject from the liberal subject to the vulnerable subject—one that is universally and inherently vulnerable, perpetually bound to an embodied and embedded existence. This embodied existence includes the challenges of aging, the possibility of injury or illness, and results to a life-long “dependency” on various social, legal, and political institutions.⁶⁴

Vulnerability theory provides a framework for rethinking legal and institutional structures in a way that aligns more closely with the realities of the human condition.⁶⁵ By redirecting the focus from a mythical ideal of autonomy to a more grounded recognition of vulnerability and dependence, the law can better promote social justice, equity, and resilience.⁶⁶ The following chapters will examine how traditional legal approaches fall short of addressing the complexities and fluidity of real-life vulnerabilities.⁶⁷

IV. LIBERAL AND VULNERABLE LEGAL SUBJECT

A. *The Myth of Autonomy and the Liberal Legal Subject*

At the core of liberal legalism lies the myth of autonomy, an ideological construct that envisions individuals as wholly independent entities, endowed

62. Martha Albertson Fineman, *Universality, Vulnerability, and Collective Responsibility*, 16 LES ATELIERS DE L'ÉTHIQUE/THE ETHICS F. 103, 103 (2021) [hereinafter “Fineman, *Collective Responsibility*”]; see Fineman, *Inevitable Inequality*, *supra* note 59; Fineman, *Anchoring Equality*, *supra* note 3.

63. See Fineman, *Anchoring Equality*, *supra* note 3, at 171–72.

64. See *id.* at 166–67. For an examination of traditional social contract theories obscuring the reality of dependency and marginalizing women’s contributions, see CAROLE PATEMAN, *THE SEXUAL CONTRACT* 11 (1988). Pateman’s work complements Fineman’s vulnerability theory by highlighting how legal and political frameworks often neglect inherent dependencies and systemic inequalities. *Id.*

65. See Fineman, *Responsive State*, *supra* note 31, at 255–56; Fineman, *Anchoring Equality*, *supra* note 3.

66. See Martha Albertson Fineman, *Vulnerability and Social Justice*, 53 VAL. UNIV. L. REV. 341, 342 (2019) [hereinafter “Fineman, *Social Justice*”]. In her application of vulnerability theory to “social justice,” Fineman redefines the term by emphasizing the importance of establishing and maintaining just social institutions and relationships, grounded in the realities of human dependency and vulnerability. *Id.* She demands a structural approach to social justice, where societal systems are responsible for the welfare of inherently vulnerable individuals. *Id.* This perspective requires for a long-term, intergenerational commitment to developing legal and social frameworks that support human well-being and flourishing, highlighting the need for a pragmatic understanding of human conditions in legal and policy decisions. See *id.* at 359–60.

67. See Fineman, *Collective Responsibility*, *supra* note 62, at 112.

with the capacity for self-governance and solely accountable for their life trajectories.⁶⁸ This myth assumes universal capacity for independence.⁶⁹ It champions the self-sufficient individual as the archetype of legal consideration, pushing the realities of interdependence and vulnerability to the margins of legal discourse and practice.⁷⁰ In American legal and political culture,⁷¹ this deeply rooted perception mirrors the broader societal illusion of autonomy as both an achievable and desirable state for the individual.⁷²

In challenging the foundational myths underpinning the liberal legal subject, Michael J. Sandel argues that the liberal notion of the self as prior to its ends, “unencumbered” by social ties or communal identities, overlooks the

68. See WILL KYMLICKA, *CONTEMPORARY POLITICAL PHILOSOPHY: AN INTRODUCTION* 116–18 (2d ed. 2002), for a comprehensive overview of the principles underpinning this ideological construct and its implications for individual rights and community.

69. FINEMAN, *AUTONOMY MYTH*, *supra* note 52, at 32.

70. Waldron’s examination of rights offers a lens through which to view these assumptions about autonomy and legal subjectivity. See JEREMY WALDRON, *THEORIES OF RIGHTS* 1–2 (1984). His analysis underscores the complexity of rights as both enabling and constraining individual autonomy, highlighting the intricate balance legal systems must strike between respecting individual autonomy and acknowledging our interconnectedness. *Id.* Michael J. Sandel challenges the liberal theory’s “unencumbered self,” arguing that it neglects the crucial roles of community and relational ties in shaping identity and autonomy. See MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 11–13 (1982).

71. Nedelsky interrogates the American tradition of constitutionalism, where property rights have historically symbolized the boundaries of individual autonomy against government intrusion. See Jennifer Nedelsky, *Law, Boundaries, and the Bounded Self*, 30 *REPRESENTATIONS (SPECIAL ISSUE)* 162–63 (1990). This conceptualization of rights as limits reflects a broader societal and legal obsession with boundaries that delineate the self from the other, the individual from the collective. *Id.* It is this focus on boundaries that obscures the interconnectedness and interdependence inherent in the human condition. *Id.*

72. Nozick’s work is a cornerstone in libertarian political philosophy, arguing for a minimal state limited to protecting individuals’ rights to life, liberty, and property. See ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA*, at ix (1974). Hayek promotes the primacy of individual freedom and autonomy within a free-market economy, criticizing government intervention as a threat to liberty. See Ronald Hamowy, *Introduction* to F.A. HAYEK, *THE CONSTITUTION OF LIBERTY* 1–2 (Ronald Hamowy ed., 2011). Epstein is known for his work on legal theory and libertarianism. He argues for broad principles of liberty that include strong protection for individual property rights and small government including minimal government interference. See RICHARD A. EPSTEIN, *PRINCIPLES FOR A FREE SOCIETY: RECONCILING INDIVIDUAL LIBERTY WITH THE COMMON GOOD* 1–2 (1998); RICHARD A. EPSTEIN, *BARGAINING WITH THE STATE* 75–76 (1995); RICHARD A. EPSTEIN, *HOW PROGRESSIVES REWROTE THE CONSTITUTION* 14–15 (2006); RICHARD A. EPSTEIN, *THE CLASSICAL LIBERAL CONSTITUTION: THE UNCERTAIN QUEST FOR LIMITED GOVERNMENT* 303 (2014). Radin’s analysis elucidates the limitations of legal doctrines that champion autonomy, revealing their failure to account for the interconnectedness of individuals within community networks. See MARGARET JANE RADIN, *REINTERPRETING PROPERTY* 22–24 (1993). Her work is instrumental in illustrating how these doctrines often neglect the societal and relational dimensions that carefully influence personal autonomy, thereby challenging the adequacy of autonomy as a foundational legal principle. *Id.*

embeddedness of individuals within networks of relationships and mutual obligations.⁷³ His analysis exposes the inadequacy of a legal and political framework that prioritizes isolated autonomy over the lived realities of dependence, interconnection, and communal belonging.⁷⁴ The autonomy myth shapes legal theories and informs systems that prioritize autonomy as the foundation for legal capacity and responsibility.

Vulnerability theory argues that individuals are both “embedded” and “embodied” within their social and institutional contexts, which crucially shapes their capacity for resilience and their exposure to vulnerabilities.⁷⁵ Liberal legal subject constructs a framework within which individuals are viewed as isolated agents of choice and action, detached from the web of relationships and societal structures that fundamentally define human existence.⁷⁶ As such, the liberal legal subject is an abstraction—a sanitized version of humanity, stripped of its complexities, dependencies, and inherent vulnerability.⁷⁷

Britney Spears’ conservatorship exposes the disconnect between this mythological construct of autonomy and the reality of human existence.⁷⁸ Spears, despite her global fame and considerable resources, found herself trapped within a legal mechanism that contradicts the principles of liberal legalism. Her case reveals the illusion of the autonomous legal subject, demonstrating how legal, institutional, and familial structures can simultaneously support and restrict us, challenging the very essence of autonomy as it is traditionally understood.⁷⁹

73. See SANDEL, *supra* note 70.

74. See *id.* at 173–74. By illustrating the interconnected nature of human existence, Sandel envisions a legal system that not only acknowledges but actively incorporates the relational dimensions of the self. See *id.* It is within this broader critique of autonomy that the case for recognizing and accommodating vulnerability within legal frameworks gains its force.

75. See generally Matambanadzo, *supra* note 6 (arguing that, for legal purposes, personhood should be defined as those who are embedded and embodied in their social and institutional contexts).

76. See Fineman, *Collective Responsibility*, *supra* note 62, at 110. Barnett’s work argues for a legal system that protects individual liberty as its core function. See RANDY E. BARNETT, *RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY* 4 (2014). Tomasi’s work in political theory bridges classical liberal thought and contemporary libertarianism, emphasizing economic freedoms and individual rights. See JOHN TOMASI, *FREE MARKET FAIRNESS* 90 (2012). Tomasi’s focus on market democracy and personal autonomy prioritizes the capacities and rights of the individual in a manner that contrasts with the vulnerability-focused approach. *Id.*

77. See *Concepts for the Vulnerability and the Human Condition Initiative*, *supra* note 44.

78. See Fineman, *Anchoring Equality*, *supra* note 3, at 173.

79. See generally TOM G. PALMER, *REALIZING FREEDOM: LIBERTARIAN THEORY, HISTORY, AND PRACTICE* 24–25 (2014) (arguing for a society based on individual freedom and

The tension between the myth of autonomy and the realities of Spears' conservatorship highlights the need to fundamentally reassess our legal frameworks. This disconnect not only undermines the objectives of legal protections like conservatorships but also uncovers the systemic inadequacies in addressing the complexities of human vulnerability.⁸⁰ Spears' case critiques the liberal legal subject and challenges us to envision a legal system that reflects the intricacies of human existence.⁸¹

The emphasis on autonomy and individual responsibility manifests in various legal mechanisms, including conservatorships, which are designed to protect individuals deemed incapable of managing their own affairs.⁸² However, the implementation of these mechanisms often reinforces the myth of autonomy by establishing a binary of capable versus incapable.⁸³

Britney Spears' conservatorship highlights the limitations of this binary framework and the need to move beyond simplistic binaries of independence versus dependence, adopting more flexible and humane approaches to addressing the complexities of human capacity and agency.⁸⁴

B. *The Vulnerable Legal Subject: A New Legal Perspective*

The vulnerability theory demands a change in legal thought, sharply contrasting with the established notions of the liberal legal subject.⁸⁵ However, it is essential to understand the broader philosophical context that

rights, voluntary cooperation, and limited government grounded in the belief in the autonomy of the individual—the quintessential liberal legal subject). *See also* TIMOTHY SANDEFUR, CONSCIENCE OF THE CONSTITUTION: THE DECLARATION OF INDEPENDENCE AND THE RIGHT TO LIBERTY 7–9 (2013) (critiquing legal theories that prioritize democracy and collective rights over individual liberty and advocating for a return to the original understanding of the Constitution as a charter of liberty). For further discussion on the shortcomings of legal representations of mental disability and autonomy, see Michael L. Perlin, “*Half-Wracked Prejudice Leaped Forth: Sanism, Pretextuality, and Why and How Mental Disability Law Developed as it Did*,” 10 J. CONTEMP. LEGAL ISSUES 3, 28–29 (1999) (examining how legal frameworks often perpetuate misconceptions and inadequate representations of mental disability, complicating the application of autonomy in legal contexts).

80. See JOSPEH RAZ, *THE MORALITY OF FREEDOM* (1988), for a discussion on autonomy within the framework of liberalism offering insightful perspectives on the limitations of current legal paradigms in accommodating the complexities of human existence.

81. See Fineman, *Anchoring Equality*, *supra* note 3, at 173; Fineman, *Responsive State*, *supra* note 31, at 255–56.

82. See *Conservatorship*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/conservatorship> [<https://perma.cc/S7SY-ES7C>] (Nov. 2021).

83. See generally MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 76–77 (First Free Press Paperback ed. 1993) (1991) (critiquing the dominance of autonomy in legal and political discourse, arguing for a more nuanced understanding of rights and responsibilities).

84. See Fineman, *Collective Responsibility*, *supra* note 62, at 107.

85. See Fineman, *Inevitable Inequality*, *supra* note 59, at 133.

has supported the traditional notion of the liberal legal subject. Charles Taylor's work on modern social imaginaries reveals the construction of societal conceptions of self and autonomy, demonstrating how our understanding of autonomy is deeply embedded in cultural and historical contexts.⁸⁶ Drawing upon Taylor's insights, traditional conceptions of legal subjectivity can be challenged.⁸⁷ His analysis of social imaginaries prompts us to question the assumptions underlying the idea of the isolated, self-sufficient individual in legal thought.⁸⁸ This perspective encourages a philosophical reevaluation aligned with recognizing the complexity of vulnerability in legal identities,⁸⁹ as reflected in Fineman's critique of autonomy-focused frameworks and her emphasis on the relational and embedded nature of human existence.⁹⁰

Vulnerability is not a temporary state but a constant presence, arising from our embodiment, which subjects us to the change of circumstances of life, including illness, age, and changing social circumstances.⁹¹ Rather than upholding an illusory independence, the legal framework should facilitate resilience, providing the means to address vulnerability through responsive and supportive structures.⁹²

The state, in this reframed context, emerges not merely as a regulator of rights but as a guarantor of the social structure necessary for individuals to address their vulnerability.⁹³ This entails a comprehensive network of social support and legal protections that recognize and adapt to the fluid dynamics of human needs and capacities.⁹⁴ The application of vulnerability theory within legal discourse frames the need to utilize law not merely as a set of

86. See generally Charles Taylor, *Modern Social Imaginaries*, 14 PUB. CULTURE 91, 92 (2002) (showcasing certain social forms characterizing Western identity and culture).

87. See *id.*

88. See *id.* at 96.

89. Taylor's exploration serves as a philosophical foundation for analyzing the myths of autonomy that have long informed legal theories, suggesting a more nuanced approach that acknowledges the intricate interplay between individual autonomy and societal embeddedness. See *id.* Taylor's work complements Fineman's vulnerability theory. Where Fineman argues for acknowledging inherent human vulnerability and dependency, Taylor's work can help explain why societies have historically favored narratives of individualism and autonomy, and how these narratives are sustained through social imaginaries.

90. See Fineman, *Inevitable Inequality*, *supra* note 59; Fineman, *Anchoring Equality*, *supra* note 3. Fineman introduces the concept of the "vulnerable subject" as a basis for rethinking equality and autonomy within legal frameworks. See Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1 (2008) [hereinafter "Fineman, *The Vulnerable Subject*"].

91. See Fineman, *Anchoring Equality*, *supra* note 3, at 166–67.

92. See Fineman, *Collective Responsibility*, *supra* note 62, at 110.

93. See Fineman, *Social Justice*, *supra* note 66.

94. See Fineman, *Inevitable Inequality*, *supra* note 59.

rules but as a dynamic tool to restructure institutions in a manner that prioritizes fairness and equity.⁹⁵

Britney Spears' conservatorship case exemplifies the failure of contemporary legal systems to embrace the principles outlined by vulnerability theory. Rather than recognizing Spears' inherent vulnerability, the conservatorship framework subjected her to a regime that reveals the systemic inadequacies in addressing the complexities of human dependence and vulnerability.

Spears' situation, examined from the perspective of vulnerable legal subject, illustrates the defining shortcomings of a legal system rooted in the myth of autonomy.⁹⁶ By reconceptualizing the legal subject as vulnerable, the law can move beyond the limitations of autonomy-centric paradigms, toward a more just and equitable system that upholds the lived reality of all individuals.⁹⁷

V. THE CONSERVATORSHIP

The conservatorship system,⁹⁸ despite its protective intentions, often oscillates between care and harm, exposing a significant tension within our legal and societal frameworks.⁹⁹ At the heart of this system lies the concept of guardianship, a legal arrangement where a court appoints a guardian to make

95. See Martha Albertson Fineman, *Equality, Autonomy, and the Vulnerable Subject in Law and Politics*, in *VULNERABILITY: REFLECTIONS ON A NEW ETHICAL FOUND. FOR L. & POL.* 13, 13 (Martha Albertson Fineman & Anna Grear eds., Taylor & Francis 2016) (2013) [hereinafter "Fineman, *Equality*"].

96. Sen emphasizes that autonomy extends beyond the confines of legal rights into the realms of economic and social freedoms. See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 3–4 (1999). His perspective challenges the narrow conceptualization of the liberal legal subject by emphasizing that true autonomy encompasses the freedom to pursue one's well-being, fundamentally tied to economic opportunities and social supports. See *id.* This broader view of autonomy emphasizes the necessity for a legal system that not only protects rights but also actively contributes to creating conditions where individuals can thrive free from economic and social constraints. See *id.*

97. See Fineman, *Responsive State*, *supra* note 31, at 256–57. Fineman contends that there exists a moral necessity of an ethics of care and dependency to guide the ordering of human relationships and endeavors through law and governance, and thereby advancing social justice. See Fineman, *Collective Responsibility*, *supra* note 62, at 108.

98. The distinction between the terms "conservatorship" and "guardianship" varies by state, with some using them interchangeably and others, such as California, defining them separately to denote different arrangements. See Lisa Zammiello, *Don't You Know That Your Law Is Toxic? Britney Spears and Abusive Guardianship: A Revisionary Approach to the Uniform Probate Code, California Probate Code, and Texas Estates Code to Ensure Equitable Outcomes*, 13 *TEX. TECH. EST. PLAN. & CMTY. PROP. L.J.* 587, 594, 611 (2021). This variance in terminology, within the scope of our discussion, does not impact the fundamental issues at hand.

99. See *id.* at 589, 592.

decisions for another person, known as the ward/conservatee, who is deemed incapable of managing their personal and financial affairs.¹⁰⁰ This incapacity may result from various conditions, including developmental disabilities, mental illness, or age-related impairments.¹⁰¹ This legal arrangement grants the guardian extensive authority over vital aspects of the individual's life, including decisions about living arrangements, medical care, and financial management.¹⁰² While guardianship aims to protect the ward's well-being and best interests, it varies widely in scope—from total control over financial and healthcare decisions to limitations specific to the ward's needs.¹⁰³ Guardianship laws and procedures, which differ by jurisdiction,¹⁰⁴ typically

100. Lawrence M. Friedman et al., *Guardians: A Research Note*, 40 AM. J. LEGAL HIST. 146, 146 (1996). Despite guardianship's long history in American law since the 1600s, there is a notable lack of comprehensive analysis on its application and evolution over different periods, with existing literature largely doctrinal. *Id.* at 147. See Andrea Seielstad, *The Disturbing History of How Conservatorships Were Used to Exploit, Swindle Native Americans*, THE CONVERSATION (Aug. 13, 2021, 9:58 AM), <https://theconversation.com/the-disturbing-history-of-how-conservatorships-were-used-to-exploitswindle-native-americans-165140> [https://perm a.cc/NN8B-R9X2] (discussing the exploitation and swindling of Native Americans through conservatorships in the early 1900s, highlighting how guardianships, intended to protect, became tools for widespread theft of Native American estates and lands under the guise of protecting individuals deemed incompetent, largely facilitated by local probate courts and unscrupulous conservators). See generally A. Frank Johns, *Guardianship Folly: The Misgovernment of Parens Patriae and the Forecast of Its Crumbling Linkage to Unprotected Older Americans in the Twenty-First Century – A March of Folly? Or Just a Mask of Virtual Reality?*, 27 STETSON L. REV. 1 (1997) (describing the mismanagement of guardianships and their basis in the *parens patriae* doctrine).

101. See Friedman, *supra* note 100. Some authors argue that the distinction between older adults and persons with disabilities under guardianship is largely artificial. In reality, many older adults who are subject to guardianship also experience physical or psychosocial disabilities. See 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. STATE UNIV. L. REV. 527, 528 (2009).

102. See Leslie Salzman, *Using Domestic Law to Move Toward a Recognition of Universal Legal Capacity for Persons with Disabilities*, 39 CARDOZO L. REV. 522, 525 (2017) [hereinafter “Salzman, *Using Domestic Law*”]. Salzman examines the traditional use of guardianship, which often limits the rights and freedoms of people with disabilities, suggesting that it contradicts the principles of integration mandated by the Americans with Disabilities Act (ADA) and substantive due process. See *id.* at 524–25; Leslie Salzman, *Rethinking Guardianship (Again): Substituted Decision Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act*, 81 UNIV. COLO. L. REV. 157, 157 (2010) [hereinafter “Salzman, *Rethinking Guardianship*”].

103. See Salzman, *Rethinking Guardianship*, *supra* note 102, at 174–75.

104. See 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, 479 (2020). In the United States, the oversight and regulation of guardianships are determined at the state level, with no overarching federal laws or directives guiding the process. See *id.* at 457. Consequently, each state operates its own guardianship system under a unique set

involve formal court proceedings where evidence of the individual's incapacity is reviewed.¹⁰⁵ Despite its intention for protection, the system has been questioned for potential overreach and the risk of abuse or exploitation.¹⁰⁶

The process for altering or terminating a guardianship is complex, indicating a system reluctant to recognize recovery or adapt to changing circumstances.¹⁰⁷ The variability in guardianship laws across states, as noted by the Uniform Law Commission¹⁰⁸ (drafted the Uniform Guardianship,

of laws. *See id.* at 479. This model assumes an ideal of independence and rational self-governance that does not reflect the inherent vulnerability and interdependence of all individuals, as articulated by vulnerability theory. This framework challenges the adequacy of legal responses that fail to recognize the universal and nature of vulnerability, pressing instead for a legal paradigm that acknowledges the vulnerable legal subject—a concept that necessitates a more responsive, empathetic, and holistic approach to legal care and protection.

105. For specifics related to California, see JUD. COUNCIL OF CAL., HANDBOOK FOR CONSERVATORS (rev. ed. 2016).

106. *See* Erica F. Wood, *The Paradox of Adult Guardianship: A Solution to—and a Source for—Elder Abuse*, 36 J. AM. SOC'Y ON AGING, 79, 79 (2012); *Guardianship and Elder Mistreatment*, NAT'L CTR. ON ELDER ABUSE, <https://ncea.acl.gov/guardianshipandelermistreatment#gsc.tab=0> [<https://perma.cc/TA46-6NNY>] (Feb. 28, 2024). The prevalence of such abuse is challenging to ascertain due to limited data. Efforts have been made to collect meaningful statistics and improve oversight, such as the Minnesota Judicial Branch's Conservator Account Auditing Program and the National Center for State Courts' guidance on consistent data collection. *See Guardianship and Elder Mistreatment*, *supra* note 106. Despite these efforts, comprehensive and consistent data on guardianship practices and abuse remains elusive. *See id.* Senators Elizabeth Warren and Bob Casey Jr., partly inspired by the issues surrounding Britney Spears' conservatorship, have called on the U.S. Department of Health and Human Services and the Department of Justice to enhance federal oversight and data collection on conservatorships and guardianships. *See Warren, Casey Urge HHS, DOJ to Provide More Data on Conservatorships and Guardianships Authorized by States*, ELIZABETH WARREN (July 1, 2021), <https://www.warren.senate.gov/oversight/letters/warren-casey-urge-hhs-doj-to-provide-more-data-on-conservatorships-and-guardianships-authorized-by-states> [<https://perma.cc/Y3ZA-WHKZ>]. The senators emphasized the imperative for a unified national strategy to gather comprehensive demographic data on guardianships. *See id.*

107. *See* Emily DiMatteo et al., *Rethinking Guardianship to Protect Disabled People's Reproductive Rights*, CTR. FOR AM. PROGRESS (Aug. 11, 2022), <https://www.americanprogress.org/article/rethinking-guardianship-to-protect-disabled-peoples-reproductive-rights/> [<https://perma.cc/7R9V-7CAM>] (“Guardianship proceedings often treat capacity as a static concept, meaning that ‘if one doesn’t have capacity for everything, then one doesn’t have capacity for anything.’”).

108. For further context on guardianship and conservatorship reforms, see *Guardianship, Conservatorship, and Other Protective Arrangements Act*, UNIF. L. COMM'N (2017), <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c> [<https://perma.cc/MPH3-G2JJ>]. The Uniform Law Commission seeks to enhance protections and incorporate person-centered planning in guardianship arrangements, advocating for the least-restrictive alternatives necessary to support individuals unable to fully care for themselves. *Id.*

Conservatorship, and Other Protective Arrangements Act)¹⁰⁹ creates a fragmented legal climate.¹¹⁰ This inconsistency complicates efforts to ensure that protective measures genuinely serve the conservatee's best interests, as evidenced in the case of Britney Spears.¹¹¹ Addressing the inconsistencies in guardianship laws¹¹² requires enhancing social well-being and bolstering resilience through institutions and social relationships that are responding to the vulnerabilities of all individuals.¹¹³

Jennifer Moye, Professor of Psychology at Harvard Medical School, stresses the complexity of determining an individual's competence, often necessitating an evaluation that includes legal, clinical, and functional assessments.¹¹⁴ Central to Moye's argument is the recognition that the competence to manage one's affairs is not solely a medical determination but a legal one, involving an understanding of the individual's capabilities within their specific environment.¹¹⁵ This perspective resonates with vulnerability

109. *See id.* The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) emphasizes "person-centered planning," integrating the individual's preferences into the guardianship order and mandating the least restrictive measures for their protection. *Id.* The Act also stipulates that guardians and conservators must submit a detailed plan for the individual's care to the court, which reviews and monitors its execution. *Id.* Additionally, it requires courts to establish procedures for ongoing monitoring of guardians and conservators and involves interested parties as additional oversight to safeguard the individual's welfare. *Id.* Despite its comprehensive framework, as of its drafting in 2017, only a handful of states have adopted the Act. *Id.*

110. *See Guardianship: Key Concepts and Resources*, U.S. DEP'T OF JUST., <https://www.justice.gov/elderjustice/guardianship-key-concepts-and-resources> [<https://perma.cc/B8K3-MKH7>] (Oct. 31, 2023).

111. In the context of California, where Britney Spears' conservatorship case unfolded, the process to establish a conservatorship requires a judicious assessment, ensuring it is the "least restrictive alternative needed for the protection of the conservatee." *See CAL. PROB. CODE* § 1800.3(b) (West 2023). California law allows for the appointment of conservators over persons or estates to manage the personal care, living arrangements, health care, and finances of adults who are unable to do so themselves due to incapacity. § 1801(a).

112. *See* Leslie Salzman, *Guardianship for Persons with Mental Illness — A Legal and Appropriate Alternative?*, 4 ST. LOUIS UNIV. J. HEALTH L. & POL'Y 279, 290 (2011). There is a growing trend against guardianships. *See* 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, 563 (2017). Criticisms of guardianship laws reveal several concerns: moral objections to classifying individuals based on disability or age, human rights violations by stripping autonomy and legal capacity, practical issues including abuse and exploitation by guardians, exclusion and marginalization from community life, psychological impacts such as diminished self-esteem and increased dependence, ineffectiveness in providing genuine protection, and systemic flaws such as lack of transparency and inadequate monitoring. *See id.* at 563–67.

113. *See* Fineman, *Collective Responsibility*, *supra* note 62, at 108, 111.

114. *See* Jennifer Moye, *Guardianship and Conservatorship*, in 16 EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS & INSTRUMENTS 309 (Thomas Grisso et al. eds., 2nd ed. 2003).

115. *See id.* at 310–11.

theory, emphasizing that legal frameworks should adapt to recognize the dynamic nature of competence. Moreover, Moye's emphasis on the interactive nature of competence, where personal capabilities interact with environmental demands, offers an important perspective through which to view the conservatorship system.¹¹⁶ It suggests that legal frameworks must evolve to consider not just the individual's current capabilities but also their potential to function within their specific contexts.¹¹⁷ This approach complements vulnerability theory's argument for a responsive and flexible legal system that prioritizes the well-being of those it aims to protect.¹¹⁸

Vulnerability theory further stresses the importance of acknowledging institutional and social relationships that significantly influence an individual's ability to manage their affairs, especially as they navigate the vulnerabilities associated with adulthood.¹¹⁹ This life-span perspective recognizes that vulnerability is not static but evolves with age, life circumstances, and societal changes. Legal frameworks must therefore adapt to support individuals throughout their lives, addressing the interplay of individual capabilities, institutional arrangements, and material reality to enhance resilience.¹²⁰

The conservatorship system is predicated on the notion of incapacity,¹²¹ positioned in direct opposition to capacity and autonomy. This binary approach does not adequately reflect the reality experienced by individuals, as it simplistically categorizes them based on an idealized notion of full capacity, mirroring the liberal legal subject. The reality is that this archetype is rarely met, and the farther an individual diverges from this ideal, the less responsive and accommodating the institutional arrangements tend to be.¹²²

Conservatorship in the United States originated from a well-intentioned concern for the elderly and mentally incapacitated.¹²³ Over time, the system has evolved alongside our expanding understanding of the human mind and societal values.¹²⁴ Notably, the cultural and psychological awakening of the 1960s, propelled in particular by the human rights discourse and

116. *See id.* at 322–25.

117. *See id.*

118. *See* Fineman, *Anchoring Equality*, *supra* note 3.

119. *See* Fineman, *Responsive State*, *supra* note 31, at 267–69.

120. *See id.* at 273.

121. *See Conservator*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/conservator> [<https://perma.cc/QXY6-NNDV>] (defining “conservator” as “an individual who handles the financial or daily life affairs of a conservatee, or a party deemed incompetent by a court”).

122. *See* Ashleigh M. Zurek, *Beyond #FreeBritney: A Legal Analysis of the Conservatorship System in the United States*, 43 N. ILL. UNIV. L. REV. 21, 24–25 (2022).

123. *See id.* at 23.

124. *See* Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 COLUM. HUM. RTS. L. REV. 93, 95 (2012).

advancements in psychology, drove an important shift.¹²⁵ This era not only amplified discussions around autonomy and rights but also led states to sculpt more protective statutes in response to the burgeoning disability rights movement.¹²⁶

Today, conservatorship proceedings require a careful court evaluation of incapacity, weighing heavily on the individual's ability to make personal, medical, and financial decisions.¹²⁷ This judicial process, ideally, tailors conservatorship to the unique circumstances of each case, recognizing that conservatorships should be as limited as possible to meet the specific needs of the individual.¹²⁸ However, the application of vulnerability theory suggests a different approach. Rather than narrowly focusing conservatorship to be as limited as possible, vulnerability theory requires strong institutional arrangements and responses focused on rehabilitation and resilience.¹²⁹ This perspective asserts that true responsiveness and protection arise not from minimizing state and institutional involvement under the guise of promoting freedom but through enhancing their role in supporting individuals' capabilities.¹³⁰ By prioritizing resilience and rehabilitation, the conservatorship as an institution can more effectively assist individuals in managing their vulnerabilities, thereby cultivating a more comprehensive support mechanism that not only respects but actively enhances the quality of life for those under conservatorship.¹³¹

However, the conservatorship system's efficacy is marred by its heavy reliance on the discretion of individual judges,¹³² leading to a situation where

125. *See id.* at 128.

126. *See id.* at 128–29.

127. *See* Annemarie M. Kelly et al., *A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning*, 75 J. FIN. SERV. PROS. 59, 63–67 tbl.1 (2021).

128. State laws require courts to review guardianships when circumstances change, to determine if they're still needed or if alternatives exist. *Id.* However, guardianships often become permanent, making it challenging for individuals to challenge guardians' decisions. *See id.*; Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L.J. 83, 85 (2015); Palas, *supra* note 11, at 905.

129. *See generally* Fineman, *Responsive State*, *supra* note 31, at 269 (discussing vulnerability theory's focus on institutions providing resilience relating to human vulnerability); Fineman, *Anchoring Equality*, *supra* note 3, at 170 (describing the need for systems that encourage resilience in relation to vulnerability).

130. *See* Fineman, *Responsive State*, *supra* note 31, at 274.

131. *See generally* Fineman, *Anchoring Equality*, *supra* note 3 (discussing the impact of social institutions on vulnerable populations).

132. Recognizing the challenges inherent in integrating diverse sources of evidence—including court investigator reports, expert clinical evaluations, and testimonies—the Elder Justice Initiative facilitated the development of a Guardianship Evaluation Worksheet by the University of Southern California. *See Help for Judges Hearing Guardianship Cases*, U.S. DEP'T OF JUST., <https://www.justice.gov/elderjustice/help-judges-hearing-guardianship-cases>

decisions can be unpredictably inconsistent.¹³³ In essence, the concept of incapacity is shaped more by societal and legal frameworks than by clear-cut scientific evidence or consensus amongst professionals.¹³⁴ In most states, guardianship cases are adjudicated within probate courts, where the outcomes largely depend on the presiding judge’s discretion.¹³⁵ Alexandra Wallin argues that this reliance on judicial discretion can lead to unpredictable and inconsistent results, raising concerns about the reliability of the system.¹³⁶ Conversely, implementing a strict bright-line rule to determine mental capacity is not feasible due to the integral complexity of human mental functions.¹³⁷ Thus, both extremes—total reliance on judicial discretion and the use of a rigid bright-line rule—pose significant challenges, often resulting in the inappropriate or excessively broad application of guardianship.¹³⁸ However, there’s no straightforward guideline for judges to apply in making these assessments.¹³⁹

State guardianship laws primarily decide if an individual is “incapacitated” and requires a guardian, or if they retain sufficient capacity to warrant the dismissal of the guardianship petition.¹⁴⁰ By categorizing all cases into two distinct groups—those who are incapacitated and those who are not—current guardianship practices fail to acknowledge vulnerability as the inherent human condition.¹⁴¹

Vulnerability theory challenges this judicial-centric approach, arguing that the focus should not predominantly rest on the adjudicative outcomes of individual judges but rather on how legislative actions and institutional

[<https://perma.cc/84GM-7PNZ>] (Oct. 31, 2023). This tool aims to provide a structured framework for judges to assess evidence of capacity systematically and identify potential risks of abuse within guardianships, emphasizing a comprehensive approach to decision-making in guardianship appointments. *See id.*

133. *See* Lawrence A. Frolik, *Promoting Judicial Acceptance and Use of Limited Guardianship*, 31 STETSON L. REV. 735, 735 (2002). In guardianship cases, judges hold exclusive authority to determine incapacity and the necessity for a guardian, including the scope of the guardian’s powers. *Id.*

134. *See* Zurek, *supra* note 122, at 27.

135. *See* Edie L. Greene, *Deciding to Let Others Decide: Judging the Need for Guardianship and Conservatorship*, 22 PROB. & PROP. 47, 49 (2008).

136. Wallin, *supra* note 104, at 478.

137. *Id.*

138. *Id.* at 478–79.

139. Zurek, *supra* note 122, at 27.

140. *See, e.g.*, S.C. BAR, GUARDIANSHIP AD LITEM MANUAL, ch. 3 at 8, 12.

141. *Cf.* JOHN L. SAXON, NORTH CAROLINA GUARDIANSHIP MANUAL 75 (2008) (explaining that, historically, in guardianship proceedings, one was either considered incapacitated or not incapacitated, but not agreeing that this is currently reflected in modern proceedings).

arrangements are structured to routinely address vulnerability.¹⁴² The theory advocates for preemptive institutional responses that are designed to support individuals effectively before crises necessitate judicial intervention.¹⁴³ By reorienting the focus from rescue responses by individual judges, who operate within an ideological framework that often upholds the values of the liberal legal subject, to routine institutional supports, vulnerability theory emphasizes creating environments that anticipate and accommodate the varied needs of all individuals as a standard practice.¹⁴⁴

In the guardianship process, the court, vested with considerable discretion, frequently appoints the guardian from among the petitioners or based on their recommendation.¹⁴⁵ However, the court also retains the freedom to appoint professional guardians—either individuals or organizations engaged in guardianship as their vocation.¹⁴⁶ These professional guardians, who may manage the affairs of multiple wards simultaneously, are compensated for their services, introducing a professional layer to what is often a deeply personal role.¹⁴⁷ While this system aims to match wards with guardians best suited to their needs, it also raises questions about the personalization of care and oversight given the professional guardians' responsibility for multiple individuals simultaneously.¹⁴⁸

The need for enhanced training, preparation, and knowledge among professional guardians or conservators is critical, given their significant impact on the lives of those they serve.¹⁴⁹ The current model often lacks sufficient regulatory oversight and educational requirements for these roles, leading to disparities in the quality of care and protection provided.¹⁵⁰ Standardized, rigorous training and continuous education for guardians is essential to establishing a more consistent and reliable framework of support that meets the complex needs of wards.

142. See generally Fineman, *Anchoring Equality*, *supra* note 3 (demonstrating how vulnerability theory focuses on developing social institutions, social policy, and law that acknowledge vulnerability to improve society as a whole).

143. See Kohn, *supra* note 5, at 25.

144. See Fineman, *Social Justice*, *supra* note 66.

145. See U.S. DEP'T OF JUST., *supra* note 110.

146. *Professional Guardian*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/professional_guardian [<https://perma.cc/F3ZB-HS9B>].

147. See NAT'L GUARDIANSHIP ASS'N, STANDARDS OF PRACTICE 32 (5th ed. 2022) (2000) (defining "corporate guardian" and "individual professional guardian").

148. See generally Samantha Alexandra Crane, *Is Guardianship Reform Enough? Next Steps in Policy Reform to Promote Self-Determination Among People with Disabilities*, 8 J. INT'L AGING L. & POL'Y 177, 182 (2015) (describing a court's discretion to appoint a professional guardian if it believes this will best protect the interests of the person subject to the guardianship).

149. Zurek, *supra* note 122, at 43.

150. See *id.* at 34.

Additionally, institutional arrangements must prioritize proactive support systems to enhance the resilience of individuals through routine support before guardianship becomes necessary.¹⁵¹ This approach moves away from the ad hoc and often crisis-driven nature of current guardianship practices to systematic, routine responses that address vulnerabilities through well-prepared institutional and legislative frameworks.¹⁵²

This inconsistency is particularly evident where an accurate assessment of guardianship case outcomes is hindered by the lack of aggregated guardianship information.¹⁵³ Such variability not only questions the fairness of the system but also demands for a review of how guardianship cases are adjudicated and reported.¹⁵⁴ Standardizing guardianship practices through routine institutional responses is integral to addressing the disparities and inefficiencies within the current system. By establishing uniform procedures and criteria for evaluating and monitoring guardianships, institutions can ensure that guardianship is applied consistently across various jurisdictions.¹⁵⁵

Enhancing the transparency and accessibility of guardianship data would facilitate ongoing oversight and improve the system's ability to adapt and respond to the evolving needs of those under guardianship.¹⁵⁶ These measures would not only improve the quality of care provided but also bolster the integrity and accountability of the guardianship system.¹⁵⁷

Moreover, in examining the effectiveness of conservatorship systems, it's important to acknowledge significant oversight challenges that compromise

151. See Fineman, *Collective Responsibility*, *supra* note 62, at 112.

152. See generally Fineman, *Responsive State*, *supra* note 31 (explaining that the establishment of societal institutions that are understanding of vulnerability must be attempted).

153. See Meta S. David, *Legal Guardianship of Individuals Incapacitated by Mental Illness: Where Do We Draw the Line?*, 45 SUFFOLK UNIV. L. REV. 465, 482 (2012).

154. See DiMatteo et al., *supra* note 107. In discussing the challenges posed by the discretionary nature of judicial decisions in conservatorship cases, it becomes imperative to consider established standards and recommendations aimed at enhancing consistency and fairness in these proceedings. Hannaford and Hafemeister highlight the need for standardized procedures and judicial oversight to address the potential for variability and inconsistency in decisions. See Paula L. Hannaford & Thomas L. Hafemeister, *The National Probate Court Standards: The Role of the Courts in Guardianship and Conservatorship Proceedings*, 2 ELDER L.J. 147, 147 (1994). Their insights reinforce the importance of systemic reforms to safeguard the well-being of those subject to conservatorship, demanding a legal framework that prioritizes equitable and just outcomes. See *id.* at 153.

155. See Naomi Karp & Erica F. Wood, *Guardianship Monitoring: A National Survey of Court Practices*, 37 STETSON L. REV. 143, 149 (2008).

156. See NAT'L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION 24 (2018) [<https://perma.cc/SZS8-6XEX>].

157. See *id.* at 161.

the protection of individuals under guardianship.¹⁵⁸ A reliance on guardianship reports without independent verification, the problematic compensation structure for court examiners, and the lack of requisite expertise among these examiners in key areas such as rehabilitation services, appropriate medication, and community inclusion, present deficiencies in ensuring the well-being of those under guardianship.¹⁵⁹ Despite these issues being identified over two decades ago, substantial reforms remain elusive.¹⁶⁰

A particularly troubling aspect of the conservatorship system is its openness to exploitation, facilitated not just by individuals with harmful intentions, but also by a sector that profits from the maintenance of conservatorships.¹⁶¹ This system's flaws were laid bare in Spears' case, revealing an industry that, driven by financial incentives, often prioritizes profit over the well-being of those it's meant to protect.¹⁶²

In response, a framework emphasizing ethics of care and advocating for a holistic, interconnected approach is crucial.¹⁶³ By implementing practices that are grounded in ethical care and accountability, and by fostering environments that support the collective welfare of all involved, we can begin to address these systemic issues. This approach not only aims to shield individuals from potential harm but also ensures that their well-being is at the forefront of conservatorship practices, promoting a culture of care that transcends mere legal obligation and becomes embedded within the operational norms of institutions overseeing these arrangements.¹⁶⁴

Spears' case reveals the difficulties in challenging or ending a conservatorship, even when evidence suggests the individual has regained legal capacity. The barriers she faced signal a system reluctant to acknowledge recovery, failing in its duty to protect those it was designed to serve.¹⁶⁵

158. See U.S. SEN. SPECIAL COMM. ON AGING, ENSURING TRUST: STRENGTHENING STATE EFFORTS TO OVERHAUL THE GUARDIANSHIP PROCESS AND PROTECT OLDER AMERICANS 6 (2018).

159. See Karen Andreasian et al., *Revisiting S.C.P.A. 17-A: Guardianship for People with Intellectual and Developmental Disabilities*, 18 CUNY L. REV. 287, 333 (2015).

160. See *id.*

161. See Stacy Francis, *Lessons Learned from Britney Spears' Financial Conservatorship*, KIPLINGER (Mar. 27, 2024), <https://www.kiplinger.com/personal-finance/conservatorship-lessons-learned-from-britney-spears-ordeal> [<https://perma.cc/AJ4X-UK3K>].

162. See *id.*

163. See generally Fineman, *Equality*, *supra* note 95, at 166 (showing how a court created a holistic picture of one's suffering by relying on vulnerability and its relation to human dignity).

164. See generally Fineman, *Collective Responsibility*, *supra* note 62 (presenting the theory of the "vulnerable subject," which recognizes inherent human vulnerability, its dependence on social institutions and relationships, and the state's responsibility to operate these social institutions and relationships).

165. See KAREN CAMPBELL ET AL., FLA. DEVELOPMENTAL DISABILITIES COUNCIL INC., *DEVELOPING ABILITIES AND RESTORING RIGHTS: A GUIDE FOR SUPPORTING PERSONS WITH DISABILITIES* 26 (2016).

“Restoring rights” under guardianship is exceptionally rare, compounded by the lack of comprehensive data on how many individuals seek to terminate their conservatorships.¹⁶⁶ This gap makes it challenging to assess the frequency of such attempts and whether conservatees are informed of the possibility to seek termination.¹⁶⁷

The procedural disparity between initiating and terminating conservatorships represents a critical misalignment with the principles of universal social justice.¹⁶⁸ The current conservatorship system, characterized by its ease of initiation and the substantial obstacles to termination, exemplifies a legal structure that is rigid, often focusing narrowly on specific cases without adequately addressing the broader structures and institutional arrangements needed to support resilience.¹⁶⁹ This evaluation highlights the importance towards guardianship laws that reflect and accommodate the complexities of human vulnerability, moving beyond the narrow confines of individual autonomy to embrace a more collective responsibility for care and resilience.¹⁷⁰

Reframing the conservatorship system,¹⁷¹ informed by vulnerability theory, would recognize the inherent vulnerability of all individuals while prioritizing their resilience through robust oversight mechanisms, transparent

166. See NAT'L COUNCIL DISABILITY, *supra* note 156, at 87–88.

167. *Id.* at 24; see also ERICA WOOD ET AL., A.B.A. COMM'N L. & AGING, RESTORATION OF RIGHTS IN ADULT GUARDIANSHIP: RESEARCH AND RECOMMENDATIONS 37 (2017) [<https://perma.cc/6UNF-RMAF>]. Available information suggests that conservatorships usually only conclude with the death of the conservatee. NAT'L COUNCIL DISABILITY, *supra* note 156, at 89. “Data and research are scant to nonexistent. Many courts and states do not know the number of adults under guardianship in their jurisdiction . . .” *Id.* at 65.

168. See generally Fineman, *Social Justice*, *supra* note 66 (examining social justice in its relation to human vulnerability).

169. See generally *id.* at 362 (showing resilience is the result of social institutions).

170. Stephens analytically examines Britney Spears's conservatorship to emphasize broader issues within conservatorship law, emphasizing the system's potential for abuse and the difficulty in terminating conservatorships. See Anna-Drake Stephens, *Don't You Know That You're Toxic? A Look at Conservatorships Through the #FreeBritney Movement*, 45 L. & PSYCH. REV. 223, 231–32 (2020).

171. Wright's analysis emphasizes the urgency of a comprehensive redesign of the guardianship system. See Jennifer L. Wright, *Guardianship for Your Own Good: Improving the Well-Being of Respondents and Wards in the USA*, 33 INT'L J.L. & PSYCHIATRY 350, 350 (2010), <https://www.sciencedirect.com/science/article/pii/S0160252710000798?via%3Dihub> [<https://perma.cc/J34H-R7MW>]. She highlights that despite legislative efforts to refine guardianship processes, empirical studies have consistently raised concerns about its actual impact on wards' mental and physical health. See *id.* These concerns challenge the conventional belief that guardianship, when correctly administered, serves the best interests of incapacitated adults. See *id.*

operations, and responsive institutions that accommodate the dynamic experience of human vulnerability.¹⁷²

VI. VULNERABILITY AND CONSERVATORSHIP

In the context of conservatorship, vulnerability theory exposes the system's fundamental paradox: it is a legal mechanism that both (supposedly) acknowledges "vulnerability" and, paradoxically, can exacerbate the experience of it through its potential for harm.¹⁷³ This paradox illustrates that while some inequalities in legal capacities are unavoidable, the focus should not solely be on striving for equality but on how these legal frameworks can be restructured or adapted to ensure they operate more equitably, reflecting the needs and vulnerabilities of all individuals involved.

This duality is shown in the conservatorship of Britney Spears, where the legal apparatus intended to safeguard her well-being instead became a source of profound personal and professional constraint.¹⁷⁴ Spears' case, emblematic of broader systemic failings, highlights the necessity for a legal framework that genuinely accommodates human vulnerability—not by curtailing "autonomy" but by cultivating resilience and strong institutional responses.¹⁷⁵

Vulnerability theory prompts an inquiry of conservatorship laws, challenging the entrenched notions of autonomy that dominate legal thought.¹⁷⁶ Emphasizing legal framework that is attuned to the actual conditions of human vulnerability, it shifts the focus from an idealized notion of independence to practical, supportive measures that enhance individual and

172. See generally Fineman, *Collective Responsibility*, *supra* note 62, at 113 (discussing the need for structures responsive to social implications of vulnerability).

173. See generally *id.* (explaining vulnerability theory and its relation to responsibilities of the state).

174. In the conservatorship system's paradox, vulnerability is both recognized and exacerbated, presenting a fundamental challenge to the prevailing legal understanding of protection and autonomy. See Fineman, *Anchoring Equality*, *supra* note 3, for further reading on the complexities of legal systems that are meant to protect yet often restrict, where Fineman discusses how legal systems can fail to address true human vulnerability by adhering to rigid notions of autonomy and independence.

175. See *id.* at 173.

176. See generally ROBERTO MANGABEIRA UNGER, *WHAT SHOULD LEGAL ANALYSIS BECOME?* 63 (1996) (discussing legal reasoning that allows people to stay secure in their entitlements while also restraining power under law). The necessity for legal frameworks that genuinely reflect human vulnerability necessitates a departure from traditional legal paradigms that prioritize independence. See *id.* This shift involves rethinking the very foundation upon which laws are constructed and implemented to ensure they are sufficiently responsive and adaptive to the diverse conditions of human life. See generally *id.* (detailing different forms of legal analysis and how they affect the resulting laws). Unger's call for transformative legal analysis supports this view requiring legal structures that dynamically respond to human life's actual conditions. See *id.*

collective resilience.¹⁷⁷ This demands legal mechanisms and institutional responses that are responsive and adaptable, enhancing the resilience while safeguarding against potential abuses and harm.¹⁷⁸

Such an approach is essential to reflect and respond adequately to the material realities of human conditions, ensuring that legal structures provide not only protection but also meaningful support and adaptability to the diverse needs of individuals, i.e., resilience-building.¹⁷⁹ Through this perspective, the conservatorship system can evolve to more authentically address the inherent vulnerabilities that punctuate the human experience.¹⁸⁰ Vulnerability theory advocates for a legal system grounded in an ethics of care, contrasting with the prevailing binary legal framework that oscillates between notions of total autonomy and exceptional dependency¹⁸¹ and argues for the development of legal structures that are supportive and responding to the varied needs and circumstances of individuals as well as the social body.¹⁸²

VII. INTERNATIONAL AND COMPARATIVE PERSPECTIVE ON CONSERVATORSHIP

This part examines how conservatorship—or its equivalents—are conceptualized and administered across various states worldwide. Integrating these global perspectives challenges entrenched legal doctrines in the United States and informs reforms that are not only informed by domestic pressures but are also aligned with broader, more humane, and effective international practices.¹⁸³

A. *Global Variations: Comprehensive Lifelong Support Systems in European Countries*

Some countries have implemented policies and legal frameworks that align more closely with this universal approach to vulnerability. These

177. See Fineman, *Social Justice*, *supra* note 66, at 342, 355–57.

178. See *id.* at 362–63.

179. See Fineman, *Anchoring Equality*, *supra* note 3, at 167.

180. See *id.*

181. See Fineman, *Equality*, *supra* note 95, at 17.

182. See Fineman, *Anchoring Equality*, *supra* note 3, at 167. It's important to distinguish this discussion on the empirical reality of human conditions from debates on human nature, which lie outside the scope of vulnerability theory. Vulnerability theory instead explores the lived experiences and societal contexts shaping human interactions and dependencies, thus cultivating more inclusive and empathetic legal, social, and institutional frameworks. See Martha Albertson Fineman, *What Vulnerability Theory Is and Is Not*, SCHOLARBLOGS, EMORY UNIV. (Feb. 1, 2021), <https://scholarblogs.emory.edu/vulnerability/2021/02/01/is-and-is-not/> [<https://perma.cc/5AQA-T5JY>].

183. See Fineman, *Collective Responsibility*, *supra* note 62, at 104–05.

systems tend to emphasize comprehensive social protection, inclusive welfare, and proactive support mechanisms that are not exclusively triggered by disability or incapacity but are available to all as part of the social contract.

The Netherlands employs a universalist welfare model that includes a wide range of social security benefits designed to ensure that all citizens have access to healthcare, education, and social services.¹⁸⁴ Dutch law also includes provisions for “supportive administration,” a form of guardianship which is less restrictive and focuses on supporting individuals in decision-making rather than replacing their decision-making capabilities.¹⁸⁵ Until 1982, conservatorship was the only protective measure that was a traditional all-or-nothing approach predominantly.¹⁸⁶ However, social changes prompted the Netherlands to adopt additional protective measures and legal alternatives.¹⁸⁷

In the Netherlands, three primary adult guardianship measures are codified in the Dutch Civil Code: guardianship (*curatele*), protective trust-administration (*beschermingsbewind*), and personal guardianship-mentoring (*mentorschap*).¹⁸⁸ Full guardianship is the most comprehensive, handling both financial and personal interests of the individual.¹⁸⁹ Protective trust focuses on financial interests, while personal guardianship, introduced more recently, addresses non-financial personal care aspects.¹⁹⁰ The Dutch model emphasizes the importance of aligning guardianship with the individual’s specific needs and conditions, ensuring measures like protective trust and personal guardianship adapt over time.¹⁹¹ This flexibility is crucial as it allows for guardianship to reflect the dynamic nature of individual circumstances and life stages.¹⁹² Notably, personal guardianship permits involved professionals to assess decision-making capacity continually.¹⁹³ These guardianship measures are designed as last-resort options, with a strong preference for supported decision-making where possible.¹⁹⁴ The system also sets stringent

184. See *Benefits & Allowances in the Netherlands*, I AM EXPAT, <https://www.iamexpat.nl/expat-info/allowances-benefits-netherlands> [<https://perma.cc/3DFJ-Z9GY>].

185. See RICHARD FRIMSTON ET AL., *THE INTERNATIONAL PROTECTION OF ADULTS* 571 (Richard Frimston et al. eds., 2015).

186. See Kees Blankman, *The Development of Protection Measures in the Netherlands*, ZELF MAG. (Dec. 19, 2019), <https://www.zelfmagazine.nl/artikelen/the-development-of-protection-measures-in-the-netherlands/> [<https://perma.cc/DB87-UUHD>].

187. See *id.*

188. See Kees Blankman, *Guardianship Legislation in the Netherlands*, in *COMPAR. PERSPS. ON ADULT GUARDIANSHIP* 181, 183 (A. Kimberley Dayton ed., 2014); FRIMSTON ET AL., *supra* note 185, at 569–70.

189. See FRIMSTON ET AL., *supra* note 185, at 569.

190. See *id.* at 569–70.

191. See *id.* at 570.

192. See *id.*

193. See *id.*

194. See *id.* at 571.

safeguards against conflicts of interest and undue influence, with strict requirements for guardian suitability and judicial oversight.¹⁹⁵

Sweden and Finland exemplify resilient social welfare systems that are designed to support individuals throughout their lives, featuring extensive services such as universal healthcare, state-supported childcare, and comprehensive elderly care programs.¹⁹⁶ These systems are predicated on the understanding that all individuals at some point in their lives will be dependent on societal support, thus embodying a form of the universal approach.¹⁹⁷ They acknowledge and manage the inherent vulnerabilities of all citizens by reducing stigma and recognizing dependency and vulnerability as inherent and expected aspects of life.¹⁹⁸

In 1989, Sweden reformed its approach to adult guardianship by abolishing the traditional concept and instead introduced a dual system of legal representation to adults needing support due to disability or illness, ensuring they receive the appropriate level of support tailored to their specific

195. See H.N. Stelma-Roorda et al., *A Changing Paradigm of Protection of Vulnerable Adults and Its Implications for the Netherlands*, FAM. & L. (2019) (Neth.), <https://doi.org/10.5553/FenR/000037> [<https://perma.cc/K3U6-LWA5>].

196. See DELOITTE INSIGHTS, *THE NORDIC SOCIAL WELFARE MODEL: LESSONS FOR REFORM 11–12* (Sarah Sikora ed. 2020), https://www2.deloitte.com/content/dam/insights/us/articles/43149-the-nordic-social-welfare-model/DI_The-Nordic-social-welfare-model.pdf [<https://perma.cc/YE84-QMMW>].

197. See Margunn Bjørnholt, *Vulnerability as a Basis for Justice and Equality in the Nordic Countries. Introduction*, RETFÆRD: NORDIC J.L. & JUST., Jan. 2013, at 1, 4, https://web.gs.emory.edu/vulnerability/_includes/documents/Retfaerd-03-142-2013_samlet.pdf [<https://perma.cc/N3HC-BFGV>].

198. See *id.* at 6.

needs.¹⁹⁹ The Swedish system opts for a “god man”²⁰⁰ (good or fair man), a consensual and voluntary arrangement that requires the individual’s agreement to both the appointment and the appointee, primarily acting as an assistant rather than a substitute decision-maker.²⁰¹ This arrangement necessitates the individual’s consent for most legal actions, barring routine matters like bill payments.²⁰² The court strictly defines the scope of each appointment, ensuring that they reflect the individual’s specific needs, such as managing substantial inheritances in specially managed accounts under an administrator’s sole control.²⁰³ For example, suppose an individual suffers from a particular disorder or illness and receives a substantial inheritance. In that case, the court might restrict their access by placing the funds in a specially managed bank account. The appointed administrator would then have the exclusive authority to manage this account, distributing limited

199. See THERÉSE FRIDSTRÖM MONTOYA, SUPPORTED DECISION-MAKING IN SWEDISH LAW – IS THE » GOOD MAN « A GOOD OR BAD GUY IN LIGHT OF THE CRPD? 3 (Martin Zinkler et al. eds., 1st ed. 2019); see also Tova Bennet & Susanna Radovic, *On the Abolition and Reintroduction of Legal Insanity in Sweden*, in LEGAL INSANITY AND THE BRAIN: SCIENCE, LAW AND EUROPEAN COURTS 169, 175 (Sofia Moratti & Dennis Patterson eds., 2016). The purpose of guardianship law is not explicitly stated, but can be inferred from, among other sources. See Föräldrabalk [FB] [Children and Parents Code], 11:4 (Swed.) (“If someone, due to illness, mental disorder, weakened state of health or similar condition needs help in guarding his or her rights, managing his or her property or providing for his or her person, the court shall, if necessary, decide to arrange guardianship for him or her.”). However, the prerequisites for appointing a guardian in Swedish law include circumstances outlined in Sections 11:1–3 of the Swedish Children and Parents Code for temporary situations, or illness, mental disorder, weakened health condition, or similar circumstances per Section 11:4. See *id.* at 11:1–3. Section 11:1 discusses situations where a guardian is temporarily unable to fulfill their duties due to illness or other reasons, requiring the appointment of a guardian (“god man”) to manage the affairs of the minor in their place. See *id.* at 11:1. Section 11:2 addresses the need to appoint a guardian where there is a conflict of interest or when the guardian cannot represent the minor in legal actions. See *id.* at 11:2. Section 11:3 details various temporary situations where a guardian may be appointed, such as when an heir is unknown or residing far away. See *id.* at 11:3. These conditions are intended to be the causes of the emerging needs that guardianship aims to satisfy. The appointment of a guardian requires three elements: (1) the existence of one of the aforementioned grounds (e.g., illness, mental disorder), (2) the person’s need for assistance (e.g., to manage affairs), and (3) a causal relationship between the ground and the need. See, e.g., *id.* at 11:4.

200. Today, there are over 100,000 guardians and conservators in Sweden. Överförmyndarstatistik [Chief Guardian Statistics], Länsstyrelserna, <https://overformyndarstatistik.lansstyrelsen.se/#> [https://perma.cc/8ESB-AUMF]; Montoya, *supra* note 199.

201. See Lottie Giertz, *Guardianship for Adults with Intellectual Disabilities: Accountant, Advocate or ‘Family’ Member?*, 20 SCANDINAVIAN J. DISABILITY RSCH. 256, 263 (2018).

202. Torbjörn Odlöw, Senior Lecturer, Dep’t of L., Sch. of Bus., Econs. & L., Univ. of Gothenburg, Swedish Guardianship Legislation at the National Guardianship Network’s World Congress on Adult Guardianship (May 28, 2014), https://www.guardianship.org/IRL/Resources/Handouts/Guardianship%20and%20Human%20Rights_Supplement.pdf [https://perma.cc/W994-9TM2].

203. *Id.*

amounts regularly (e.g., weekly or monthly) to an account the individual can use freely.²⁰⁴

The unique aspect of the Chief Guardian system in Sweden is that it is administered at the municipal (local) level, differing from the systems in place in other countries.²⁰⁵ In Sweden, there are 290 municipalities, each with a Chief Guardian or a Chief Guardian Board serving as the local authority.²⁰⁶ Given the complexity of many cases, several municipalities collaborate by sharing a single office equipped with a legal support team.²⁰⁷

These tailored appointments ensure unaffected areas of life remain unaffected, and Sweden provides additional non-judicial support like the Personal Ombudsman (PO), who aids individuals with disabilities without court involvement, emphasizing informed decision-making in daily life.²⁰⁸ The PO focuses on building a relationship with the individual by spending significant time reaching out and meeting with them.²⁰⁹ Importantly, a PO does not make decisions for the person but supports them in making their own informed choices.²¹⁰ The cost for this assistant is covered by the government, ensuring accessible support for those who need it.²¹¹

In Sweden, the municipal chief guardians play a crucial role in the guardianship system's success, actively overseeing guardianship management within their municipalities.²¹² Their duties extend from vetting potential guardians and ensuring compliance with legal and ethical standards to intervening in problematic guardianships.²¹³ This comprehensive oversight mechanism enhances guardianship quality and accountability, maintaining direct communication with guardians to address issues swiftly and prevent

204. *See id.* Similarly, for someone with a compulsive shopping disorder, an administrator could be appointed with the exclusive power to handle credit agreements. *Id.* This prevents financial mismanagement from excessive online or TV shopping while allowing the individual to make cash transactions independently. *See id.*

205. *See* EUR. UNION AGENCY FOR FUNDAMENTAL RTS., LEGAL CAPACITY OF PERSONS WITH INTELLECTUAL DISABILITIES AND PERSONS WITH MENTAL HEALTH PROBLEMS 33–34 (2013), <https://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health> [<https://perma.cc/7R3P-FFT3>].

206. A. Frank Johns, *Person-Centered Guardianship and Supported Decision Making: An Assessment of Progress Made in Three Countries*, 9 J. INT'L AGING L. & POL'Y 1, 4 (2016).

207. *Id.*

208. *See* EUR. UNION AGENCY FOR FUNDAMENTAL RTS., *supra* note 205, at 52.

209. *See id.* at 31.

210. *Id.*

211. *See The Right to Make Choices: International Laws and Decision-Making by People with Disabilities, Part 5: Guardianship and Supported Decision-Making Law, Easy Read Edition*, AUTISTIC SELF-ADVOC. NETWORK 32, <https://autisticadvocacy.org/wp-content/uploads/2016/02/Easy-Read-OSF-5-Guardianship-and-SDM-Laws-v3.pdf> [<https://perma.cc/42N5-TX4P>].

212. *See* Johns, *supra* note 206, at 3–4.

213. *See id.* at 6–7.

neglect or harm.²¹⁴ Furthermore, these officials coordinate with other social services and legal entities, ensuring holistic support for individuals under guardianship.²¹⁵ This inter-agency collaboration is crucial in complex cases, and is supported by a broad consensus among professionals involved.²¹⁶

Training and continuous education for guardians are also integral, encompassing legal, ethical, and practical aspects of guardianship.²¹⁷ Sweden's approach includes regular updates to training programs, reflecting new laws and best practices, ensuring guardians are equipped for both typical and unforeseen challenges.²¹⁸ The collaborative approach in Sweden's guardianship system includes various stakeholders—social workers, healthcare providers, family members, and financial advisors—in the guardianship process.²¹⁹ This multidisciplinary involvement ensures that decisions are informed, balanced, and adaptive to the wards' changing needs, providing a comprehensive and responsive guardianship system.²²⁰ Research studies demonstrate that this system proves to be an essential support in daily life.²²¹ It hinges on mutual understanding and trust, and the assistant's experience is vital.²²² However, flexibility is paramount, as the arrangements

214. *See generally id.* at 8 (discussing Sweden's use of supported decision-making by the Chief Guardian).

215. *See id.* at 8–9.

216. *See generally* Swedish Refuge L. Ctr., *Legal Representation of Unaccompanied Children*, ASYLUM INFO. DATABASE, https://asylumineurope.org/reports/country/sweden/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/#_ftn2 [<https://perma.cc/MK8Q-7YHU>] (Oct. 7, 2024) (stating guardians are offered basic training courses by the Migration Agency in child asylum cases).

217. *See* STATENS OFFENTLIGA UTREDNINGAR [STATE PUBLIC INQUIRIES], FRÅGOR OM FÖRMYNDARE OCH STÄLLFÖRETRÄDARE FÖR VUXNA [QUESTIONS ABOUT GUARDIANS AND SUBSTITUTES FOR ADULTS PART 1] 299–300 (2004) (Swed.). The objective of the guardianship regime is therefore, inter alia, to forestall negligent or inappropriate management of the individual's assets. Consequently, the requirements for precise and thorough administration on the part of the guardian must be substantial, given that, in numerous instances, they represent the individual's sole recourse for protection. Concerns have, nonetheless, been voiced both by the Parliamentary Ombudsman (JO) and from other quarters regarding the insufficiency of expertise among guardians and the necessity for enhanced education. *See id.*

218. *See generally* Swedish Refuge L. Ctr., *supra* note 216 (stating guardians should receive mandatory introductory training and in-depth training prior to working with child asylum seekers).

219. *See* AUTISTIC SELF-ADVOC. NETWORK, *supra* note 211, at 27.

220. *See generally id.* at 31–32 (describing the responsibilities of Personal Ombudsmen and the relationships formed between these individuals and those they are responsible for).

221. *See id.*

222. *See* Lill Hultman et al., 'A Limited Guardian Should First and Foremost Get to Know the Person He Helps' – Experiences of Having a Limited Guardian from the Perspective of Adults with Intellectual Disability, 24 SCANDINAVIAN J. DISABILITY RSCH. 289, 290 (2022).

need to adapt to the evolving needs of clients across various stages of life.²²³ Finland mirrors this model.²²⁴

Exploring how the Netherlands, Sweden, and Finland implement their welfare systems reveals a universal approach to addressing vulnerability that aligns well with the principles of vulnerability theory. Each of these countries provides systemic, comprehensive support that acknowledges and manages the inherent vulnerabilities of all citizens, thereby normalizing dependency and reducing the need for restrictive legal interventions, such as conservatorship. These examples offer valuable insights for nations seeking to reform their conservatorship frameworks, shifting the focus from control to support.

B. Supported Decision-Making Alternatives Around The World

International legislation on guardianships has been significantly influenced by the Convention on the Rights of Persons with Disabilities (CRPD).²²⁵ This convention has contributed to a global evolution in guardianship law reform,²²⁶ promoting approaches such as Supported Decision-Making (SDM).²²⁷ Supported decision-making is an alternative to guardianship.

Unlike guardianship, supported decision-making allows individuals to make their own choices with the aid of a support network, rather than having decisions made for them after a court proceeding.²²⁸ In particular, Article 12

223. *See id.* at 291.

224. *See generally* LAKI HOLHOUSTOIMESTA [GUARDIANSHIP SERVICES ACT] (Lag om förmyndarverksamhet [Oikeusministeriö] 442/1999) ch. 1, § 1 (Fin.), https://www.finlex.fi/en/laki/kaannokset/1999/en19990442_20220637.pdf [<https://perma.cc/BK8E-CE2L>] (stating Finland operates a court-appointed guardianship system that meets the needs of the individual under the guardianship).

225. *See* 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, 429 (2007); *see, e.g.*, Gerard Quinn & Anna Arstein-Kerslake, *Restoring the 'Human' in 'Human Rights': Personhood and Doctrinal Innovation in the UN Disability Convention*, in THE CAMBRIDGE COMPANION TO HUMAN RIGHTS LAW 36, 52–54 (Conor Gearty & Costas Douzinas eds., 2012). *See generally* G.A. Res. 61/106 (Jan. 24, 2007), <https://www.refworld.org/legal/resolution/unga/2007/en/49751> [<https://perma.cc/U4AK-CF6P>] (displaying how the Convention on the Rights of Persons with Disabilities came to fruition through a United Nations resolution).

226. *See* Eilionóir Flynn & Anna Arstein-Kerslake, *The Support Model of Legal Capacity: Fact, Fiction, or Fantasy?*, 32 BERKLEY J. INT'L L. 124, 136–37 (2014). *See id.* for an examination of the transition in legal frameworks from substituted decision-making to supported decision-making (SDM) under the influence of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which discusses how various countries (particularly Ireland) are aligning their legal frameworks with the CRPD, particularly in transitioning to SDM.

227. *See* Wallin, *supra* note 104, at 448–50.

228. *See* Eliana J. Theodorou, *Supported Decision-Making in the Lone-Star State*, 93 N.Y.U. L. REV. 973, 975 (2018).

of the CRPD²²⁹ affirms the equal right of individuals with disabilities to legal capacity, paralleling it with that of others.²³⁰ This provision challenges the traditional frameworks of substituted decision-making prevalent in many guardianship laws, suggesting instead for the cessation of such systems.²³¹ The Yokohama Declaration on Adult Guardianship is another notable international development in guardianship trends which, unlike formal agreements between nations, serves as a guideline hoping to influence individual countries to adopt its principles.²³² It aligns with the Convention on the Rights of Persons with Disabilities by promoting modernized approaches to guardianship.²³³

Germany's guardianship system is part of a broader adult protection law that balances individual autonomy with the need for protection.²³⁴ German law provides for various forms of guardianship, from full guardianship (Vollbetreuung) to more limited forms such as financial or health care guardianship, depending on the individual's needs.²³⁵ Germany has been a pioneer in promoting assisted decision-making, where the guardian facilitates the individual in making their own decisions rather than replacing their

229. Article 12 of the CRPD is particularly important in the context of conservatorship because it advocates for a shift from decision-making models that remove or limit legal capacity towards those that enhance the autonomy and independence of persons with disabilities, including older adults who might otherwise be placed under conservatorship. *See* Dhanda, *supra* note 225, at 460–61.

230. *See* Salzman, *supra* note 112, at 280–81.

231. *See* ARLENE S. KANTER, *THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS* 265 (2015). While debates persist about whether Article 12 explicitly mandates the elimination of all guardianship laws, a widespread consensus has emerged around its intention to phase out conventional guardianship regimes. *See id.* Consequently, Article 12 calls for the adoption of supported decision-making models that assist individuals with disabilities in making and executing their decisions, marking a significant transition towards autonomy and support over substitution. *See id.*

232. *See* World Cong. on Adult Guardianship L. [WCAG], *Yokohama Declaration*, at 1 (adopted Oct. 4, 2010) (revised and amended Sept. 16, 2016), <https://www.international-guardianship.com/pdf/Draft%20Yokohama%202016%20International%20Part-1.pdf> [<https://perma.cc/BZW4-L9M9>].

233. Dinerstein et al., *Emerging International Trends and Practices in Guardianship Law for People with Disabilities*, 22 *ILSA J. INT'L & COMPAR. L.* 435, 440 (2016). The Declaration supports the use of “substituted proxy decision-making” and “supported decision-making,” legislation that respects an adult's wishes, values, and beliefs without causing harm. *Id.* It calls for ongoing dialogue and person-centered, situation-specific application of guardianship laws. *Id.*

234. *See* *Guardianship by Country: Resource for Second World Congress on Adult Guardianship*, INT'L GUARDIANSHIP NETWORK 2, https://www.international-guardianship.com/pdf/GBC/GBC_Germany.pdf [<https://perma.cc/WFB8-MZ6M>].

235. *See* INSTITUT FÜR TRANSKULTURELLE BETREUUNG [INSTITUTE FOR TRANSCULTURAL LEGAL SUPPORT], *LEGAL GUARDIANSHIP* 7 (n.d.), https://lsjv.rlp.de/filadmin/lsvj/Themen/Pflege/Pflegebedarf/rechtliche_Betreuung/rechtliche_Betreuung_englisch.pdf [<https://perma.cc/ZXV4-FQMR>].

decision-making authority.²³⁶ Guardianship arrangements are subject to regular judicial review.²³⁷ Germany's approach provides a flexible system under guardianship, ensuring tailored support that minimizes restrictions.²³⁸

Historically, German guardianship law aligned with the typical European model, where a court or public authority would deem an adult legally incapable and appoint a guardian to manage their affairs.²³⁹ Criticized for violating human rights and disregarding the individual's abilities, Germany undertook significant reforms in the early 1990s.²⁴⁰ The traditional system was abolished, replaced by "gesetzliche Betreuung," (custodianship) a modernized approach that eschews complete incapacitation.²⁴¹ Under the reformed system, there is no longer any court-ordered incapacitation and there is no provision for full (or plenary) guardianship, with an emphasis instead on supported decision-making.²⁴²

Instead of a guardian controlling all life aspects, a court-appointed legal representative ("gesetzlicher Betreuer") manages only specific matters as determined by the court, respecting the adult's wishes and preferences.²⁴³ The role of the legal representative is primarily to assist and protect the adult within the scope defined by the court, guided by principles of necessity.²⁴⁴ The representative is authorized to act only when necessary and must always consider the adult's expressed wishes unless they are detrimental and not based on free will.²⁴⁵ Furthermore, the court maintains strict oversight over the legal representative, requiring annual reports on the management of the adult's affairs.²⁴⁶ Significant decisions still require court approval.²⁴⁷ Such decisions include major healthcare directives, financial transactions, and matters involving restrictive measures like institutionalization or forced treatments.²⁴⁸

236. *See id.* at 10.

237. *Id.* at 7.

238. *See id.*

239. *See* VOLKER LIPP, GA. AUGUSTA UNIV. OF GÖTTINGEN, GER., THE GERMAN "VORSORGEVOLLMACHT" AS AN ALTERNATIVE TO LEGAL GUARDIANSHIP I (2014).

240. *See id.*

241. *Id.*

242. *See* INT'L GUARDIANSHIP NETWORK, *supra* note 224, at 1.

243. *See* LIPP, *supra* note 239.

244. *See id.*

245. *See* INT'L GUARDIANSHIP NETWORK, *supra* note 234.

246. *See id.*

247. *See id.*

248. *See* Volker Lipp, Professor, Ga. Augusta Univ. Göttingen, Ger., Lecture at the Tokyo Bar Association: Legal Protection of Adults in Germany – An Overview, at 10 (Nov. 1, 2016), https://www.bgt-ev.de/fileadmin/Mediendatenbank/Themen/Einzelbeitraege/Lipp/Lipp_Legal_Protection_Adults.pdf [<https://perma.cc/7WCH-UYH6>].

Countries like Canada, Australia, and several in Europe are leading the charge in implementing SDM principles into their legal systems, offering models for others considering similar reforms.²⁴⁹ Scholars argue that alternatives to guardianship, such as SDM, offer less restrictive means for assisting adults with disabilities.²⁵⁰ SDM supports individuals in making their own life choices, including decisions about living arrangements, health care, social relationships, and employment,²⁵¹ and some authors have argued that the U.S. should follow this path.²⁵² Canada has been at the forefront of incorporating supported decision-making into its legal framework for adults with disabilities.²⁵³ Assistance or support for an adult by another person can manifest in various ways, such as facilitating access to information, conveying details in an understandable way, offering advice, communicating decisions, or aiding in the implementation of decisions.²⁵⁴ The implementation of assisted decision-making in Canada is influenced by Scandinavian advances in adult guardianship, which have significantly shaped the initiatives pursued by Canadian associations for community living.²⁵⁵ Legislation typically prioritizes less intrusive, stigmatizing options, and before resorting to guardianship, supported decision-making is considered through legal relationships established via written agreements among adults, their families, and support networks.²⁵⁶ Modern legislation that acknowledges or

249. Soumitra Pathare & Laura S. Shields, *Supported Decision-Making for Persons with Mental Illness: A Review*, 34 PUB. HEALTH REVS., no. 2, 2012, at 1, 28.

250. See *About Supported Decision-Making*, CTR. FOR PUB. REPRESENTATION, SUPPORTED DECISION-MAKING, <https://supporteddecisions.org/about-supported-decision-making/> [<https://perma.cc/F4AT-EMUE>]. This model involves creating a formal agreement that outlines a dedicated support network to assist the individual in understanding and making informed decisions without compromising their self-determination. See *id.*

251. See 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).

252. See, e.g., Kristin Booth Glen, *Introducing a “New” Human Right: Learning from Others, Bringing Legal Capacity Home*, 49 COLUM. HUM. RTS. L. REV., no. 3, 2018, at 1, 27–28.

253. KRISTA JAMES & LAURA WATTS, LAW COMM’N OF ONTARIO, UNDERSTANDING THE LIVED EXPERIENCES OF SUPPORTED DECISION-MAKING IN CANADA 14 (2014).

254. See Robert M. Gordon, *The Emergence of Assisted (Supported) Decision-Making in the Canadian Law of Adult Guardianship and Substitute Decision-Making*, 23 INT’L J.L. & PSYCHIATRY 61, 70 (2000).

255. *Id.* at 63.

256. See Johns, *supra* note 206, at 11–12; Michelle Jennett Browning, *Developing an Understanding of Supported Decision-Making Practice in Canada: The Experiences of People with Intellectual Disabilities and Their Supporters* (Feb. 2018) (Ph.D. thesis, La Trobe University) (on file with La Trobe University); Rebekah Diller, *Legal Capacity for All: Including Older Persons in the Shift from Adult Guardianship to Supported Decision-Making*, 43 FORDHAM URB. L.J. 495, 517 (2016); Sarah Burningham, *Developments in Canadian Adult Guardianship and Co-Decision-Making Law*, 18 DALHOUSIE J. LEGAL STUD. 119, 123 (2009).

incorporates this concept is still confined to a few, albeit increasing, international jurisdictions.²⁵⁷ At its core, SDM allows individuals to rely on chosen supporters to assist in decision-making.²⁵⁸

Similarly, Australia has also been implementing SDM across several states, each with its regulations and guidelines.²⁵⁹ Japan's new laws also encourage the use of "supportive decision-making aides"²⁶⁰ and there is a growing trend towards adopting "supported decision-making"²⁶¹ in the context of increasing awareness that guardianship legislation is becoming obsolete.²⁶²

This trend has also emerged in several U.S. states.²⁶³ Many state-level protection and advocacy agencies have started to explore and pilot SDM as an

257. See Shih-Ning Then, *Evolution and Innovation in Guardianship Laws: Assisted Decision-Making*, 35 SYDNEY L. REV. 133, 134 (2013).

258. See Dinerstein et al., *supra* note 233, at 447.

259. See Christine Bigby et al., *Delivering Decision Making Support to People with Cognitive Disability – What Has Been Learned from Pilot Programs in Australia from 2010 to 2015*, 52 AUSTL. J. SOC. ISSUES 222, 222 (2017); Bruce Alston, *Towards Supported Decision-Making: Article 12 of the Convention on the Rights of Persons with Disabilities and Guardianship Law Reform*, 35 LAW CONTEXT SOCIO-LEGAL J. no. 2, 2017, at 21, 34–35; Terry Carney, *Supported Decision-Making in Australia: Meeting the Challenge of Moving from Capacity to Capacity-Building?*, 35 LAW CONTEXT SOCIO-LEGAL J. no. 2, 2017, at 44, 50–51; Renata Kokanović et al., *Supported Decision-Making from the Perspectives of Mental Health Service Users, Family Members Supporting Them and Mental Health Practitioners*, 52 AUSTRALIAN & N.Z. J. PSYCHIATRY 826, 827 (2018).

260. See Yukio Sakurai, *The Idea of Adult Support and Protection Legislation in Japan: Multiple Options for Vulnerable Adults to Make Their Own Choices*, 12 J. AGING & SOC. CHANGE 31, 37 (2021); Yukio Sakurai, *Supported Decision-Making in the Japanese Context: Developments and Challenges*, 13 J. AGING & SOC. CHANGE 151, 158 (2023).

261. See Nina A. Kohn et al., *Supported Decision-Making: A Viable Alternative to Guardianship*, 117 PENN STATE L. REV. 1111, 1134 (2013); Piers Gooding, *Supported Decision-Making: A Rights-Based Disability Concept and Its Implications for Mental Health Law*, 20 PSYCHIATRY, PHISC. & L. 431, 442–43 (2013).

262. See Michelle Browning et al., *Supported Decision Making: Understanding How Its Conceptual Link to Legal Capacity is Influencing the Development of Practice*, 1 RSCH. & PRAC. INTELL. & DEVELOPMENTAL DISABILITIES 34, 35 (2014).

263. Jenny Hatch, a Virginia woman with Down syndrome, gained national attention due to her guardianship case. See Theresa Vargas, *Virginia Woman with Down Syndrome Becomes Hero to the Disabled*, WASH. POST (Aug. 17, 2013, 7:41 PM), https://www.washingtonpost.com/local/virginia-woman-with-down-syndrome-becomes-hero-to-the-disabled/2013/08/17/0da21766-062e-11e3-a07f-49ddc7417125_story.html [https://perma.cc/D95F-XGR4]. Contesting permanent guardianship, her lawyers argued for her ability to manage her life via supported decision-making. *See id.* The judge limited her guardianship to one year, covering only medical and safety decisions, and allowed her to choose her guardians. *See id.* This decision also enabled Hatch to leave the group home and live in the community. *See id.*; see also Cathy Free & Nicole Weisensee Egan, *Woman with Down Syndrome Fights for Her Freedom – and Wins*, PEOPLE MAG. (Mar. 7, 2014, 12:15 PM), <https://people.com/humaninterest/woman-with-down-syndrome-fights-for-her-freedom-and-wins> [https://perma.cc/74N8-WKZU].

alternative to guardianship.²⁶⁴ Despite this widespread consideration, only a few states have passed legislation to legally recognize SDM. In 2015, Texas became the first state to enact a Supported Decision-Making (SDM) statute.²⁶⁵ The adoption of supported decision-making laws in conservative Texas was not influenced by international trends, but rather local factors, including among others economic and efficiency concerns²⁶⁶ (as SDM can be seen as a cost-effective alternative to guardianship) as well as conservative support²⁶⁷ for less government intervention.²⁶⁸ Following Texas,²⁶⁹ Delaware,²⁷⁰ Wisconsin,²⁷¹ and others²⁷² passed similar SDM statutes.²⁷³ There is a growing discussion about the importance of reform in American adult guardianship.²⁷⁴ Some argue that despite its flaws, guardianship can still serve as a beneficial legal tool to address problems like mass incapacity and

264. See Wallin, *supra* note 104, at 456–57; see, e.g., Desiree C. Hensley, *Due Process is Not Optional: Mississippi Conservatorship Proceedings Fall Short on Basic Due Process Protections for Elderly and Disabled Adults*, 86 MISS. L.J. 715, 767 (2017).

265. Wallin, *supra* note 104, at 457.

266. By potentially reducing the number of full guardianship cases, states can save resources associated with court proceedings and oversight.

267. The approach appeals to conservative values which favor less government intervention and more reliance on personal and community support. By enabling support through personal relationships rather than through state-appointed guardians, supported decision-making resonates with conservative principles of individual liberty and responsibility.

268. See Theodorou, *supra* note 228, at 979–81.

269. However, for an in-depth commentary focused on the need for judicial review of commitment orders for individuals with intellectual and developmental disabilities who are placed in State Supported Living Centers (SSLCs) in Texas, see Jeryn Crabb, *Texas Can't Hold 'Em Anymore: Why Individuals with Intellectual and Developmental Disabilities Committed to State Supported Living Centers Need Judicial Review of Their Commitment Orders*, 48 TEX. TECH L. REV. 931 (2016). Crabb argues that these individuals are often committed to SSLCs without sufficient review of whether such placement is the most appropriate and least restrictive setting for them. See *id.* at 969.

270. Andrew Peterson et al., *Supported Decision Making with People at the Margins of Autonomy*, 21 AM. J. BIOETHICS, no. 11, 2020, at 4, 8–9.

271. Megan S. Wright, *Dementia, Autonomy, and Supported Healthcare Decisionmaking*, 79 MD. L. REV. 257, 286 (2020).

272. See *id.*

273. See Kristin Booth Glen, *Piloting Personhood: Reflections from the First Year of a Supported Decision-Making Project*, 39 CARDOZO L. REV. 495, 502 (2017).

274. See *The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability*, SYRACUSE UNIV. COLL. L., <https://law.syracuse.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-maximizing-autonomy-and-ensuring-accountability/> [<https://perma.cc/G73Q-NMV7>]; Crane, *supra* note 148, at 178–79; Sean Burke, *Person-Centered Guardianship: How the Rise of Supported Decision-Making and Person-Centered Services Can Help Olmstead's Promise Get Here Faster*, 42 MITCHELL HAMLIN L. REV. 873, 883 (2016); Eleanor Crosby Lanier, *Understanding the Gap Between Law and Practice: Barriers and Alternatives to Tailoring Adult Guardianship Orders*, 36-37 BUFF. PUB. INT. L.J. 155, 170–71 (2017-2019).

loneliness, particularly for friendless and incapacitated individuals in long-term care settings.²⁷⁵

C. Lessons for the U.S.: Adapting International Practices to Reform U.S. Conservatorship Laws

Drawing from international models, the United States can gain systemic understanding to reform its conservatorship system. A rigorous assessment of global practices reveals several actionable strategies that could reshape U.S. approaches to guardianship. Implementing a graduated response to conservatorship, regular review and oversight, promoting participation, transparency, and public accountability are some of the practices that could be applied to the U.S.

Germany's differentiated levels of guardianship²⁷⁶ offer a persuasive model. Tailored to meet the needs and capabilities of each individual, this approach contrasts with the inflexible, one-size-fits-all strategy prevalent in the U.S.²⁷⁷ The Irish Assisted Decision-Making (Capacity) Act mandates regular assessments of guardianship arrangements to ensure they remain in the individual's best interest and represent the least restrictive option available.²⁷⁸ In the Netherlands, the focus on supportive administration enhances individuals' ability to participate fully in societal activities.²⁷⁹ Sweden's transparent management of guardianship cases promotes public trust and accountability, setting a high standard for openness.²⁸⁰ By adopting these practices, the U.S. can create system that is both more humane and effective, respecting the fundamental vulnerability of all individuals.

275. Patrick Hecker, *Legally Alone: The Redeemability of Guardianship and Recommendations Toward Equitable Access*, 18 NW. J.L. & SOC. POL'Y 74, 74 (2023). Hecker suggests reforms that are designed to address financial barriers, provide alternative legal tools, and enhance guardianship quality through a volunteer-driven, relationship-centered approach, ensuring better support for the friendless and incapacitated. *See id.*

276. *See* LIPP, *supra* note 239.

277. *See* Wright, *supra* note 271, at 271–72.

278. *See* Assisted Decision-Making (Capacity) Act 2015 (Act No. 64/2015) (Ir.), <https://www.irishstatutebook.ie/eli/2015/act/64/section/8/enacted/en/html#sec8> [<https://perma.cc/9R9J-5P3S>].

279. *See* FRIMSTON ET AL., *supra* note 185.

280. *See generally* EUR. UNION AGENCY FOR FUNDAMENTAL RTS., *supra* note 205, at 31 (describing Sweden's Personal Ombudsmen system as the result of guardianship reform in 1995).

VIII. VULNERABILITY THEORY-INFORMED CONSERVATORSHIP/
GUARDIANSHIP

To address the identified shortcomings in U.S. conservatorship laws and better align with the principles of vulnerability theory, we propose a revised operational framework grounded in the recognition of universal vulnerability as an inherent human condition. These reforms drew on comparative analyses of international guardianship models that exemplify dynamic and responsive frameworks.²⁸¹

Policy recommendations informed by high-profile cases like Britney Spears' highlight systemic issues. Key reforms include establishing tiered guardianship models, mandatory reassessments, and enhanced transparency measures. Expanding responsibility beyond family members to include financial institutions, legal experts, and medical professionals can help distribute the risks of concentrated power. These measures will create a more balanced framework, ensuring that the system is responsive to the varied and universal vulnerabilities of all individuals.

Grounded in vulnerability theory's acknowledgment of inevitable inequalities, this framework seeks to transform the conservatorship system into one that is flexible, humane, and robust—capable of addressing the complexities of human dependency and resilience.

A. Reframed Definition

Conservatorship/guardianship should be conceptualized as a supportive framework designed to assist/support individuals experiencing reduced resilience in face of their inherent vulnerability due to various factors, including age, illness, disability, or significant life changes.²⁸² This redefinition acknowledges vulnerability as a universal, inherent condition, affecting all individuals at different points in their lives. Therefore, conservatorship or guardianship is not about controlling or limiting individuals, but about providing a responsive system tailored to enhance their decision-making capacity and societal participation through dynamic social support systems and responsive institutions.²⁸³

Key elements of this definition include universal vulnerability not as a deviation, but as a normal aspect of the human condition; dynamic support

281. See Bjørnholt, *supra* note 197, at 3.

282. See Fineman, *Inevitable Inequality*, *supra* note 59, at 145. See generally JOAN C. TRONTO, *CARING DEMOCRACY: MARKETS, EQUALITY, AND JUSTICE* 35 (2013) (stating vulnerability are qualities that must be considered for caring in a democratic society).

283. See generally Fineman, *Collective Responsibility*, *supra* note 62, at 114 (explaining that to achieve justice, society must recognize its dependence on social arrangement throughout citizens' lives).

that emphasizes that the level and nature of support provided under conservatorship or guardianship should be dynamic, adapting as the individual's circumstances and capacities evolve; responsive institutions; and integrated social support systems that require robust social support systems that work in tandem with legal measures and should facilitate access to healthcare, education, employment, and social activities.²⁸⁴

We argue that this operational definition commits to a more humane and just approach that aligns with vulnerability theory. Furthermore, it aligns with our inevitable reliance on a spectrum of societal structures—from familial to governmental—throughout our lives and challenges the notion that vulnerability is a transient or unusual state and demands a legal system that recognizes these vulnerabilities, adapting with strong societal support and responsive structures.²⁸⁵ Current U.S. conservatorship laws often overlook the universal nature of vulnerability. These laws typically enforce rigid, one-size-fits-all guardianships that fail to accommodate individuals' diverse and changing needs throughout the life span.²⁸⁶

B. *Inevitable Inequality*

Within U.S. conservatorship laws, the application of vulnerability theory reveals the systemic issues at the foundation of what can be seen as “inevitable inequality” in legal treatments of adults under guardianship.²⁸⁷ Vulnerability theory argues that some inequalities, such as those inherent in social relationships like parent/child or employer/employee, are necessary and at times even desirable for societal functioning.²⁸⁸ These inequalities, while structurally ingrained, necessitate a legal framework that doesn't aim for absolute equality but strives for fairness. Therefore, vulnerability theory advocates for the establishment of legal and societal structures that are flexible and responsive enough to mitigate undue disadvantages while acknowledging the necessary ones.

The critique of the liberal legal subject—the notion of an autonomous, self-sufficient individual—is particularly salient in this context. Conservatorship laws often reinforce a static view of capacity and dependence, leading to overly restrictive arrangements that do not reflect actual capabilities or support potential for autonomy. Conservatorship and guardianship formalize an unequal relationship. The law recognizes these inequalities and establishes different levels of responsibility and authority

284. See Fineman, *Inevitable Inequality*, *supra* note 59.

285. See Fineman, *Responsive State*, *supra* note 31, at 256.

286. See Fineman, *Inevitable Inequality*, *supra* note 59, at 135.

287. See *id.* at 134.

288. See Fineman, *Anchoring Equality*, *supra* note 3, at 167.

within these relationships. In the context of conservatorship/guardianship, this legal arrangement acknowledges an inequality in capability and authority: the guardian has significant control and decision-making power over the life of the conservatee, who is placed in a dependent, and therefore unequal, position.

Vulnerability theory emphasizes the need for these legal structures to be carefully regulated to ensure they do not perpetuate unnecessary inequalities or abuse of power. The state has a responsibility to monitor and adjust these relationships, ensuring they are structured to genuinely support the acquisition of resilience.²⁸⁹ In this light, conservatorship and guardianship are not just about managing the affairs of someone deemed incapable; they are about how society recognizes and institutionalizes the care.

Vulnerability analysis suggests that these forms of legal care, while necessary, must be continually scrutinized and reformed to align with a deeper understanding of vulnerability as a universal condition that does not merely affect those under guardianship but is a common human experience. This requires a transition from viewing conservatorship/guardianship merely as protective measures to seeing them as part of broader societal obligations and corresponding institutional arrangements.

C. Proposed Reforms for the U.S.: Integrating Vulnerability Theory into Conservatorship Laws

1. Reforms and Detailed Recommendations

a. Reform 1: Implement Tiered Guardianship Models

This reform aims to transition from a binary approach to guardianship to a more nuanced, tiered model that recognizes and adjusts to the fluctuating levels of individual capabilities and needs over time. This would allow for varying degrees of support and a more personalized and responsive form of guardianship, promoting participation in decision-making to the extent possible.

Recommendation 1.1: Establish statutory criteria for tiered guardianship, specifying levels of support tailored to the individual's current capabilities and needs, ensuring flexibility in legal responses. 1.1.1: Include a requirement for regular, mandatory reassessments of the conservatee's needs and capabilities, conducted at minimum on an annual basis or more frequently if significant life changes occur. These assessments should be carried out by multidisciplinary teams including medical professionals, social workers, and,

289. *See id.* at 169.

importantly, input from the individuals under guardianship themselves, to ensure that the support provided continues to be relevant and adequate.

Recommendation 1.2: Develop legal provisions that facilitate dynamic adjustments to guardianship levels as the circumstances of the individual evolve, promoting gradual transitions wherever possible. 1.2.1: Create mechanisms for “stepped-down” approaches, where conservatees/individuals can move to less restrictive forms of guardianship as their situations improve, or adjust to more supportive measures if needed. This would encourage a more fluid movement between different levels of support, mirroring the natural changes in individual circumstances. 1.2.2: Implement a clear and accessible appeal process that allows individuals under guardianship to request reviews of their current status if they believe it no longer reflects their capabilities or if their needs have changed. This process should be straightforward and supported by legal aid provisions to ensure it is accessible to all, regardless of economic status.

b. Reform 2: Mandatory and Periodic Reassessments of Guardianship (to Prevent Static and Overly Restrictive Guardianship Arrangements, it is Critical to Legislate Mandatory, Regular Reviews of all Guardianship Cases)

Recommendation 2.1: Enact legislation requiring bi-annual reviews of guardianship arrangements to assess their necessity and the degree of restriction involved. These reviews should seek to confirm that each arrangement remains the least restrictive option available.

Recommendation 2.2: Introduce and expand the scope for independent evaluations to include not only multidisciplinary teams that include medical, psychological, and social work professionals, but also legal experts, to ensure a comprehensive assessment of each individual’s situation during reviews.

c. Reform 3: Promotion of Social Participation / Integration of Community and Societal Support Systems

Recommendation 3.1: Allocate federal and state funds to develop and sustain community integration programs that enable individuals under guardianship to access educational opportunities, employment, and participate fully in community life.

Recommendation 3.2: Include evaluations of the available community and societal support systems as part of the guardianship review process. This ensures that decisions about the necessity and level of guardianship take into account the broader support available to the individual, which can reduce unnecessary dependency on guardianship.

Recommendation 3.3: Establish partnerships with local organizations and service providers to facilitate seamless access to support and resources, enhancing the efficacy of community integration programs.

d. Reform 4: Enhanced Transparency and Public Accountability (Establish Stringent Standards for Transparency in Guardianship Proceedings to Build Trust and Ensure Accountability)

Recommendation 4.1: Create transparency measures that allow public access to guardianship proceedings and records, while protecting individual privacy through secure, anonymized public reporting systems.

Recommendation 4.2: Require regular and detailed public reporting on the performance and outcomes of guardianship cases, with evaluations conducted by independent bodies to ensure compliance and accountability.

Recommendation 4.3: Strengthen mechanisms for public and transparent reporting of the outcomes of these periodic reviews, including the ways in which conservatee feedback has influenced guardianship arrangements. Establishing robust accountability measures ensures that these reviews do not just become procedural, but are genuinely responsive to the needs of conservatees.

e. Reform 5: Educational Initiatives and Training Programs / and Regular Update of Legal Standards and Training

Recommendation 5.1: Develop comprehensive education and training programs for guardians, judicial officers, and legal practitioners focused on the principles of vulnerability theory.

Recommendation 5.2: Mandate ongoing professional development and certification for those involved in the guardianship system.

Recommendation 5.3: Require ongoing training for all professionals involved in guardianship assessments on the latest developments in vulnerability theory. This training should aim to sensitize professionals to the nuances of dependency and the importance of fostering resilience, even within a guardianship context.

f. Reform 6: Pilot Projects to Test and Refine Reforms

Recommendation 6.1: Initiate state-level pilot projects to evaluate the effectiveness of these reforms in diverse settings. These projects should aim to gather empirical data on outcomes, stakeholder satisfaction, and systemic impacts.

Recommendation 6.2: Use insights gained from pilot projects to refine policies and practices prior to widespread implementation, ensuring that reforms are responsive to real-world challenges and effectively enhance the well-being of individuals under guardianship.

g. Additional Incremental Reforms: Adapting to the U.S. Healthcare and Welfare Context

Recommendation 7.1: Advocate for the expansion of healthcare access through existing frameworks, such as Medicaid, to ensure comprehensive health coverage for individuals under guardianship.

Recommendation 7.2: Promote the enhancement of community-based programs to provide necessary support services, thereby reducing the reliance on legal guardianship as a primary solution for care and decision-making.

Recommendation 7.3: Implement comprehensive campaigns to raise public and policymaker awareness about the limitations of the current guardianship system and the transformative potential of incremental reforms.

IX. CONCLUSION

This article has progressed from the specific circumstances of Britney Spears' conservatorship to the broader critiques and necessary reforms within the legal framework guided by vulnerability theory. Spears' case illustrates how our legal and societal systems often misconstrue and mishandle the inherent vulnerabilities that all individuals face. It exposed the systemic flaws of a framework that prioritizes autonomy at the expense of addressing human dependence and resilience.

The proposed reforms are not just about rectifying a single celebrity's plight but are about transforming the environment into one that is more just and equitable for all.²⁹⁰ By integrating the principles of vulnerability theory, legal frameworks can become more responsive, dynamic, and supportive of the human condition.

To move forward, we must ask ourselves: how can we continue to ignore the evident disparities that traditional legal frameworks impose on those they are meant to protect? The time has come to develop structures that not only recognize but embrace our shared vulnerabilities, fostering resilience and equity across society.

290. See Fineman, *Collective Responsibility*, *supra* note 62, at 105.