The Guardianship Account of Animal Justice: Rethinking the Abolitionist Debate

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This thesis is dedicated to Lollybomb
De te fabula narratur

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CHAPTER 1: INTRODUCTION

> Our treatment of animals is the last moral frontier, the ultimate test of our humanity, the mirror by which we can see most deeply into our own souls. (Rollin 1983, 118)

1(i) THE ABOLITIONIST DEBATE

Consider this, "If animals have rights, should we own them?" "If not, why not?"

A key debate within the animal ethics literature concerns 'abolitionism', centred on the claim that nonhuman animals should be liberated from their legal status as the property of human beings. Historically, nonhuman animals (henceforth 'animals') were some of the very first items to be classified as part of a human's possessions (Petrinovich 2006), and property law continues to play a considerable role in marginalising animal interests within contemporary economies around the world (McMullen 2016). Unsurprisingly, the topic of 'animal liberation' has become a central focus for both those within the animal ethics literature and among those campaigning for animal rights. However, whether animal rights require the abolition of all human ownership of fellow species remains contested.

On one side are the 'abolitionists' who argue that animal ownership is necessarily unjust (for example, Regan 1983; Wise 2000; Dunayer 2004; and Francione 2010, among others).[1] Let's take the example of my brother and his black cat Lollybomb. As her legal owner, my brother has the power to restrict Lollybomb's movements, use her for companionship, and even sell her to another person should he so desire. To abolitionists, there is something morally wrong with the fact that my brother has these powers and can interfere with Lollybomb's actions to suit his own interests. As a sentient being with moral rights, Lollybomb has interests of her own and, according to these thinkers, she should not be classified as a means for advancing my brother's ends. Like with human slavery, abolitionists argue that the problem is essentially rooted in my brother's ownership of Lollybomb: we cannot simply reform our institutions of animal ownership to make them morally permissible. Slavery itself is unjust, and no amount of welfare protections for the slaves will change that. If so, then institutions of animal ownership must be abolished in order for animals like Lollybomb to live in a just world.

'Non-abolitionists', however, take a different stance (see Cochrane 2009b, 2012; Garner 2010; Favre 2017).[2] Instead these authors argue that the mere ownership of an animal is not, in itself, unjust.

[1] Henceforth the terms 'animal ownership' and 'animal property' will refer to *human* ownership of animals as property, rather than an animal's ownership of something. I use these terms in the same way that 'car ownership' means ownership of a car and not your car's potential status as a property-holder itself.

[2] I will use the strict terms 'abolitionist' and 'non-abolitionist' as the clearest way to describe the divide accurately. Francione and Garner (2010) and also Schmidt (2018) prefer 'regulationists' to describe non-abolitionists. However, this misleadingly suggests that regulations cannot be part of the abolitionist agenda, either as a political strategy to achieve abolition or as necessary to ensure animal justice post-abolition.

Continuing with the example of Lollybomb the cat, non-abolitionists could point out that under French and EU law she is recognised as a sentient being with strong interests against hunger, distress, and injury (among others). These welfare protections limit what my brother can do with Lollybomb, effectively serving as legal rights she has against potential mistreatment. If my brother were to violate these welfare protections, his ownership of Lollybomb could be revoked. Adding to this, non-abolitionists might point out that my brother takes a great deal of care for Lollybomb in his apartment, attending to her daily needs in being well-fed, exercised, and entertained. Despite being his property, Lollybomb seemingly lives a good standard of life for a companion animal (i.e. a 'pet'). Her interests in a continued life free from suffering are already well-attended to and protected under the law. Abolishing her status as my brother's property, therefore, seems like an unnecessary measure for achieving meaningful justice for Lollybomb. If so, then reforming our institutions of ownership to guarantee animal welfare is enough: humans do not have to rescind all forms of animal property to respect animal rights.

Perhaps the most explicit non-abolitionist account is that of Alasdair Cochrane (2009b, 2012, 2017), who goes as far as arguing that animal rights are compatible with humans owning, using, and even exploiting nonhuman animals. Cochrane, it should be noted, recognises that animals have rights in things like continued life and freedom from suffering, precisely because they have interests in these welfare benefits that are sufficient to hold humans under a duty to protect them. Consequently, his account prohibits any practice involving the slaughter, pain, or general mistreatment of animals around the world; the practical differences between his views and those of the abolitionists should not be exaggerated (Ebert 2015). Indeed, all contributors to this debate – including myself – take for granted that humans have duties towards animals, and that animals have moral rights that constrain how we interact with them. Moreover, those within the debate agree that many animals are sentient, which I take as equivalent to the capacity for phenomenal consciousness and possessing interests (see section 2(ii)). Where Cochrane's account differs, however, is in his claim that liberating animals from their status as our property is *not* an essential component in achieving justice for them. Justice for Lollybomb, for example, does not entail abolishing her status as my brother's property because her rights can be respected without liberation.

1(ii) MOTIVATION FOR THIS PROJECT

So, abolitionists or non-abolitionists: who is right? Lollybomb is owed justice, but does that justice include liberating her from being my brother's property?

The primary aim of my thesis is to answer this question in the affirmative: human ownership of animals should be abolished. In other words, it is morally illegitimate for my brother to own Lollybomb. With this claim, I ultimately side with the abolitionists. However, my argument for this conclusion does not appeal to the 'standard' abolitionist account often evoked. Instead, I appeal to

Cochrane's theory and assumptions to reject his own non-abolitionist claims. By doing so, my thesis outlines an alternative account that straddles the abolitionist/non-abolitionist divide by incorporating the strongest arguments from either stance. Like the abolitionists, I reject human ownership of animals as necessarily unjust; like Cochrane and the non-abolitionists, however, I suggest that human control, use, and even profiting from animals could be permitted, nevertheless. For these powers to be legitimate, however, they must be exercised through an effective system of guardianship.

Following this point, the secondary aim of my thesis is to outline a plausible account for human guardianship of animals. To do so, I will not only build on Cochrane's interest-based theory of sentient rights (see 2(iii)), but also on the 'sentientist cosmopolitan' approach to animal ethics which he outlines in his later work, most notably *Sentientist Politics*. While traditional cosmopolitans believe that all humans are (or should be) members of a single community regardless of their political affiliation, national identity, and so on, Cochrane extends this to encompass all sentient individuals. What this means is that political institutions are made legitimate by referencing all the sentient beings affected by them, and that it is impermissible to protect the interests of some animals (say, domesticated ones) but deny these protections to others (say, wild animals). By connecting Cochrane's interest-based theory and sentientist cosmopolitan approach to political institutions, my thesis lays the groundwork for advancing a coherent account of just human-animal relations in a post-abolition world. This justice, I argue, should involve an expansion of guardianship to cover all sentient 'nonpersons', which includes children, elderly individuals with degenerative conditions like dementia, those with Severe Intellectual Disability (SID), and all sentient animals. Not only does the concept of 'guardianship' remain underexplored within the animal ethics literature, but legal scholars lack a coherent theory to unite all existing institutions of guardianship for human nonpersons. Thus, by proposing a coherent theory of guardianship that is compatible with Cochrane's existing interest-based theory of sentient rights, I hope that these ideas will be part of a broader and meaningful contribution to both the literatures on animal ethics *and* jurisprudence.

In service of these two goals, I present my case across the remaining chapters of this thesis. I will begin in Chapter 2 by outlining the standard abolitionist account and the challenges it has faced in the literature, including Cochrane's own objections. This will lead me to outline Cochrane's interest-based theory of sentient rights and his non-abolitionist argument for animal property. In Chapter 3, I build on Cochrane's interest-based theory to present my argument against his non-abolitionist stance. Instead of ownership, I argue that we should favour guardianship of animals because this signals the meaningful distinction between sentient beings, who have rights and are owed duties, and non-sentient entities lacking moral status. In Chapter 4, I then develop my account of guardianship by appealing to Cochrane's interest-based theory and sentientist cosmopolitanism. In doing so, I argue that guardianship should apply to all sentient nonpersons, including domesticated and undomesticated species of animals, alongside guardianship for human nonpersons. I then follow these claims in Chapter 5 by distinguishing my guardianship account from the standard abolitionist position within the literature. Not only can

guardians permissibly interfere in the lives of their (animal) wards even when this does not benefit that ward's interests, but such interference could benefit the guardians themselves. Consequently, my account does not prohibit human use of animals as necessarily unjust. I conclude my thesis in Chapter 6 by exploring what meaningful differences this creates between the implications of Cochrane's account and my own, before finally reflecting on the state of the abolitionist debate as a whole. Animal *liberation*, I suggest, is not as relevant as animal *justice*.

CHAPTER 2: COCHRANE'S THEORY

This chapter sets the stage for later arguments by doing three things. In the first section, I outline the 'standard' abolitionist account as well as the challenges raised against it: specifically that its vision of post-abolition justice incorrectly pre-supposes a natural world free from human interference, and that its understanding of rights draws a false equivalence between property status and being used as a mere means. In the following two sections, I explain what I mean by the terms 'sentience' and 'interests', before then outlining Cochrane's interest-based theory of sentient rights. According to this theory, an individual has a right when they have an interest that is sufficient for holding someone else under a duty. In the final section I then present Cochrane's non-abolitionist argument that animal rights are compatible with their status as property.

2(i) REJECTING THE STANDARD ABOLITIONIST ACCOUNT

Before we focus on Cochrane's theory, we should first understand the type of abolitionist position he rejects. Several authors within the literature have either self-identified or been reasonably described as 'abolitionists'. Notable examples include Regan (1983, 1989a), Wise (2000), Dunayer (2004), Wyckoff (2014), Giroux and Saucier-Bouffard (2018), and – most importantly – Francione (2004, 2010). While differences can inevitably be found between the claims of these authors, each agrees that animal ownership is necessarily unjust and that animal rights require the abolition of animal property. Gary Francione's views are generally identified as the standard and most defended abolitionist account among these authors (Milligan 2016), including by Cochrane himself (see Cochrane 2009b, 2012, 2017). For that reason, I take Francione's views as representative of the 'standard' abolitionist position. This position can be distinguished by (1) its account of rights and ownership, and (2) its vision of post-abolition justice for animals.

Regarding the former, Francione argues that rights are inescapably tied to an individual's status as a person, and this status is necessarily incompatible with being the property of another (see Francione 1996, 2004, 2006, 2007, 2010, 2020; Francione and Charlton 2015). According to this view, there is a strict moral and legal dichotomy between being categorised as a 'person' or as a 'thing'. The former designates individuals to whom we owe duties directly, whereas the latter designates something that can be permissibly used for the benefit of a person (Francione 2004, 41). Because animals are sentient beings to whom we owe duties, standard abolitionists argue that it is morally impermissible for humans to treat animals as means to our ends. For Francione (2010), this means that no animal should be morally or legally categorised as a 'thing' that can be owned. Instead, animals should be granted equal status as

non-ownable persons. If animals have one right that grounds all others, then it is this right not to be treated as property because it serves as "the precondition for the possession of morally significant interests" (Francione 2006, 87). This is because, according to Francione (2004), ownership of animals necessarily entails that animal interests will always be subordinate to those of their human owners whenever they clash. Consequently, advocates for animal rights must be committed to ending all animal exploitation through a paradigm shift away from their status as the property of human beings.

Building on this, standard abolitionists defend a particular vision of what justice for animals should look like in a post-abolition world. In addition to human ownership, Francione (2010) rejects any position that permits the use of animals for human purposes by claiming that it is rooted in the same morally impermissible speciesism that dominates our everyday mistreatment of animals. 'Speciesism' here means an (unjustified) discrimination concerning moral duties according to the biological category of species membership – a definition that will be maintained throughout this thesis. Animals, it should be noted, cannot vocally consent to how we use them, nor can they robustly oppose their exploitation as human property. Building on this, standard abolitionists like Francione (2010) claim that once we use an animal for human profit, we stop perceiving that creature as anything but a commodity to be exploited. Consequently, standard abolitionists assert that the only ethical position is the full-scale rejection of using, controlling, and profiting from animals. Abolishing the institution of animal property is a necessary and prominent element towards this goal, but we must also reject *any* form of human-animal interaction that allows humans to control animals for the sake of advancing their own ends or making profit. Thus, according to this stance, post-abolition justice requires us to phase out domesticated species of animals who are dependent on humans for their wellbeing (Francione 2007, 1–5). Domesticated animals have been wrongly bred into servitude for humans, preventing them from leading dignified lives on their own (2007, 4). As for wild animals, we should leave them alone without interference as best as possible (Francione 2010). In doing so, we should keep the human and animal worlds separate, minimising any crossovers in order to protect animals from human mistreatment. In sum, post-abolition justice for these thinkers means creating a world where there are no domesticated species of animals, and our interaction with wild animal species is minimised.[3]

Both sides of this standard abolitionist account have been challenged from a number of angles. Perhaps the most extensive set of challenges are provided by Donaldson and Kymlicka in their 2011 book *Zoopolis*, where they offer strong objections to the vision of post-abolition justice that Francione and the other standard abolitionists advance. As pointed out by Donaldson and Kymlicka, the past wrongness of domesticating animal species does not require us to phase out those species within contemporary society. Analogously, the transatlantic slave trade was a historic wrong, but we rightly continue to allow African Americans to live in the US. Some domesticated animals (like Lollybomb the cat) can live good lives, and their dependency on humans is not a barrier to dignified existence.

[3] This entails an apartheid between humans and animals (Korsgaard 2018).

Indignity, as Donaldson and Kymlicka rightly argue, is not a product of one's dependency on another *in itself* but arises when one's needs are belittled, exploited, or neglected within that dependency. The wrongness of human slavery, for example, is due to the type of dependency it involves – namely domination. Thus, Donaldson and Kymlicka state that dependency itself is not objectionable: humans can live a dignified life despite coming from a self-domesticated species and being greatly reliant on fellow humans for their wellbeing. In fact, not only is independence from human society irrelevant for determining the goodness of an animal's life: it is also impossible in many cases because animals are not sealed off in a separate world to humans. As they plausibly argue, the romanticised ideal of a natural world in which animals can live free from human interference is largely imaginary: all animals are now dependent on humans for their wellbeing in some sense. Finally, Donaldson and Kymlicka point out that the sterilization required to prevent new domesticated animals from being born is likely to involve an undesirable level of coercion and confinement for many species, which potentially overrides an animal's own interests in having offspring and forming new emotional bonds. If so, then it appears the standard abolitionist position harms the very animals it claims to protect.

Turning to the standard abolitionist's account of rights and ownership, Cochrane (2009b, 2012, 2017) presses a further set of plausible objections. As evidenced by the example of Lollybomb the cat, my brother's title as 'owner' does not prevent him from recognising her equal moral status as a sentient being (Cochrane 2009b). While it would be clearly wrong to treat Lollybomb as a *mere* means for his use, it does not follow that all uses necessarily harm her. Some might even benefit her, as evidenced by the good life she lives as his companion. As Cochrane points out, being property does not entail that one's interests are always subordinate to human interests, contrary to what Francione claims. Nor does it entail a strict *moral* dichotomy whereby my brother can only see Lollybomb as a 'thing' to be exploited for his own benefit. Adding to this, Cochrane (2009b) correctly points out that the strict *legal* dichotomy that Francione draws between persons who can own property and things that are owned is likewise false: corporations are recognised as legal entities that have rights but are also owned. Nor do animal rights entail that animals have the freedom to determine their own actions; similarly, human infants have rights yet adults retain the power to possess them and make choices on their behalf (Cochrane 2012). Thus, the central claims advanced by the standard abolitionists – that there are strict moral and legal dichotomies between 'things' and 'persons' – are therefore false. As such, I conclude that the standard abolitionist account is not plausible.

Having said this, it is only fair to note that a considerable part of this disagreement is more terminological than substantive. As a legal scholar, Francione evokes a specific (and US-centred) legal understanding of personhood that differs markedly from a philosophical meaning of the term 'person'. In its legal context, personhood is a category that identifies an entity with rights and authority to own property. In contrast, the philosophical use specifies a set of rational, mental capacities like autonomous decision-making or self-consciousness (Gruen 2017; Archard 2023). When used in this way, some philosophers claim that not all humans fully qualify as persons: infants or those with SID, for example,

technically qualify as human 'nonpersons'. Asserting this in no way denies their equal entitlement to a set of basic rights, nor rejects constitutional rights for them within a particular legal system – a position that Cochrane (2020) himself adopts for animals in a later work. Once we bear this terminological context in mind, Francione's position makes a great deal more sense than his critics may suggest, even if the standard abolitionist account remains philosophically untenable overall. For clarity, henceforth I will adopt this philosophical meaning of 'personhood'.

2(ii) SENTIENCE AND INTERESTS

Tied to his critique of the standard abolitionist account, Cochrane outlines an interest-based theory of sentient rights in his 2012 book *Animal Rights without Liberation*. Before I can explain this further, however, I should begin by outlining the central concepts to his theory: namely, 'sentience', 'interests', and how the two are connected.

Let's start with sentience. Similar to the standard abolitionists, Cochrane (2012) assumes that sentient animals have 'moral status', a concept which specifies those entities to whom we owe direct duties (Warren 1997). In other words, individuals with moral status should be factored into our ethical consideration as entities in themselves. What this means is that not only do humans have indirect duties *regarding* animals, but we have direct duties *to* animals. As Cochrane (2012, 21) notes, this claim relies on two assumptions: (i) that there are animals with sentience; and (ii) that sentient animals have the relevant characteristics for moral status.

In defence of assumption (i), we should return to our earlier definition of sentience as the capacity for conscious experience. This refers to the qualitative, subjective, experiential, or phenomenal aspects of consciousness (Allen and Trestman 2016). This is to say that sentient beings "have a sense of 'self' on the basis that they can experience the world and their place in it" (Cochrane 2018, 15). By this definition, sentient individuals must also be able to *feel* and *experience* the world. For this reason, sentience has a close relationship with the ability to feel pain and pleasure: any animal who plausibly experiences pleasure and pain can be classified as 'sentient'.[4] As Cochrane (2012) rightly notes, many animals behave as if they are sentient. Not only do they share neural mechanisms similar to humans, but animal sentience makes sense from an evolutionary perspective given its vital role for survival and successful reproduction. While there is some disagreement within the literature regarding which animals are sentient, most experts on the topic distinguish between vertebrates (who possess complex central nervous systems) and invertebrates who do not (see The Cambridge Declaration on Consciousness 2012; The New York Declaration on Consciousness 2024). The physiological structure and behaviour of mammals, birds, reptiles, amphibians, and fish strongly suggests that these species

[4] Note, this is not to say that sentience is nothing but the ability to feel pleasure and pain.

have the capacity for conscious experience, whereas insects, molluscs, crustaceans, arachnids, and so on do not (Cochrane 2012, 22).[5] Given the scientific consensus that there are many species of sentient animals, Cochrane's first assumption seems plausible.

Turning to his second assumption (ii), Cochrane also defends the claim that sentience is linked to moral status because it entails that an individual has interests. Sentience, for Cochrane (2012, 24), "signifies that an entity has the capacity for wellbeing", which means being able to consciously experience goodness. Sentient creatures are 'conscious selves' with a stake in how their lives go, meaning they possess a moral worth of their own which cannot be reduced to their usefulness for others (Cochrane 2018). In other words, there are states of affairs that improve a sentient being's life, and that do so *for their own benefit*. Given the centrality of wellbeing within ethics and normative reasoning, having a life that goes well or badly for oneself is sufficient to qualify an entity for moral status and possessing interests. As such, sentience is a plausible grounds for distinguishing moral status.[6]

What type of 'interests' are relevant for moral consideration? To answer this, we should distinguish between what are called 'preference-interests' and 'welfare-interests' (Regan 1983, 87–88). Preference-interests are those things that an individual is intentionally interested in. For example, I am preferentially interested in having another scoop of mango sorbet, whether or not eating this eight scoop is good for my stomach. Welfare-interests, in contrast, are whatever enhances the wellbeing of a particular individual. For example, I have a welfare interest in my bodily health and daily nourishment, even though I might not recognise such an interest as I reach again for the sorbet. Cochrane (2012) favours the welfare account to determine the interests of a sentient being: we have interests in things that make our lives go better, even if we do not happen to consciously desire those interests being fulfilled. For example, human infants have interests in being vaccinated and medieval villagers had interests in water sanitation, even though neither group could conceive of having such an interest themselves. What's important is that both groups will *experience* the benefits from either, even if the individuals in question are not consciously aware of those benefits (Cochrane 2018).

This raises a question: 'Are sentient beings the only entities with interests?' As claimed by several authors, plants or inanimate objects might similarly have interests in things that improve their condition.[7] Contrary to these authors, however, Cochrane (2012) argues against the view that entities like rocks, soil, trees, and chairs have moral status. As he rightly notes, there are indeed things that can improve the condition of non-sentient entities: plants benefit from being watered, bikes when repaired, and so on. However, it is not enough for there to be states of affairs that improve the condition of the interest-holder, but the satisfaction of interests should make one's experience of life better for the

[5] Exceptions among invertebrates includes animals like octopuses and squids.
[6] In this thesis, I restrict myself to defending the claim that sentience is a *plausible* distinction for determining moral status on account of space constraints. For a full defence of this position contrary to rival claims, see Cochrane (2012, 19–50).
[7] For example, see Goodpaster (1978), Attfield (1981), Taylor (1986), Johnson (1991), Varner (1998), Kramer (2001), and Kagan (2016).

individual themselves.[8] As Cochrane asserts, "it is one thing to say that a good promotes biological flourishing, but quite another to say that the good makes life go better *for the individual whose life it is*" (2018, 17; emphasis in original). It is of no benefit to my bike itself to have fully inflated tyres because bikes lack the capacity for wellbeing. Likewise, being well-watered does not actually make things better for the plant itself because plants lack consciousness. Only those individuals with their own wellbeing should classify as having interests, which excludes plants and inanimate objects from the domain of entities with moral status. Consequently, I accept Cochrane's second assumption that all and only sentient beings have interests.[9]

Clearly interests will vary in numerous ways according to their type, number, strength, and complexity. Nevertheless, it is impossible for individuals to be more or less in possession of interests: an individual either has them or does not (Cochrane 2018). This brings us to a fundamental aspect of Cochrane's theory: all sentient individuals have an equal moral worth based on their possession of interests. Resultantly, our moral principles should reflect this equality in worth across all sentient individuals.

When it comes to distinguishing between interests, the most helpful comparison to make is according to their strength. The more something contributes to an individual's wellbeing, the stronger their respective interest. For example, I have an interest in being free from torture and I have an interest in having my surname spelt correctly by my thesis examiners. However, satisfying the former interest is clearly more conducive to my wellbeing than satisfying the latter (assuming, of course, that nominal misspellings do not classify as a form of torture themselves). To determine the strength of an individual's interest we must examine the unique situation of that individual (Cochrane 2012), a stance which noticeably contrasts with alternative accounts that focus on more general determinants of wellbeing. For example, Nussbaum (2023, 52–53) takes a different approach by identifying a list of 'Central Capabilities' for what she claims should objectively determine a human's wellbeing:

1. Life
2. Bodily health
3. Bodily integrity
4. Senses, imagination, and thought
5. Emotions
6. Practical reason
7. Affiliation
8. Other species

[8] As Cochrane (2012, 37–38) notes, wellbeing is a 'prudential value' because it concerns what is good for the individual whose life it is. This contrasts with 'perfectionist value' of what makes an individual a good example of its kind.

[9] This is not to say that we have no obligations whatsoever to non-sentient entities. When we do have duties, these duties are indirect.

9. Play
10. Control over one's environment

According to Nussbaum, the items on this list are qualitatively distinct and not replaceable with one another: you cannot make up for ones bodily health through an excess of play, and vice versa. In this sense, these items can be seen as essential components of the good life, and thus might determine which interests are stronger. Furthermore, Nussbaum (2023) appeals to an Aristotelian conception of flourishment when defending her list, which ties an individual's wellbeing to living "a characteristic form of life" (56).[10] Building on this, Nussbaum claims that many of the items on this list will apply to nonhuman animals as well. Animals, like humans, clearly have strong interests in retaining their body's integrity and living a healthy life, for example. Consequently, we might plausibly argue that there are indeed some things that objectively have a greater impact on a sentient being's welfare, and that an interest is stronger according to the extent that it contributes to one of these objective components of wellbeing.

In response, Cochrane (2009a) agrees with Nussbaum that there are some things that do improve an individual's wellbeing, even when that individual happens not to desire that benefit. Where he disagrees, however, is that these welfare benefits are strictly determined by the individual's 'characteristic form of life'. In other words, a good life for a sentient individual is not the same as living according to the norms of their species. We can give two reasons for this view.

Firstly, there are some natural activities that are detrimental to an individual's wellbeing. In the case of humans, some mothers give birth via caesarean delivery due to the threat a natural birth poses to their life. Clearly it is not in the interests of these mothers to die from childbirth, even if giving birth through vaginal delivery is considered natural. A similar point can be made for animals too. As Cochrane (2009a, 2012) rightly notes, it is not in an individual stag's interests to battle to the death with a rival over a potential mate. Such combat is a 'characteristic form of life' for stags, yet this clearly differs from what improves an individual stag's wellbeing. It is for this reason that Nussbaum (2023) clarifies her view by claiming that 'naturalness' is not *sufficient* to determine whether a particular behaviour enhances an individual's wellbeing. However, she maintains the stance that it is a *necessary* condition, nevertheless. Yet this can be doubted too.

The second problem with equating an animal's interests with their 'characteristic form of life' is that it overlooks the beneficial impact of some behaviours that cannot be considered normal for the species. In the case of humans, it is difficult to demonstrate this point precisely because it is heavily disputed what sort of behaviour should be considered 'natural' for human beings.[11] However, we can plausibly argue that living under a world system of perpetual peace is in all our interests, even if such a

[10] For similar accounts, see Taylor (1986), Rollin (1992), and Delon (2021).
[11] As put by Sedlacek (2011, 324), "man is naturally unnatural and unnaturally natural".

system did not come naturally to us. If it did, then why does global warfare still occur? The same likewise applies for animals. If my aunt's dog Daisy developed a strong emotional bond with a local goat, for example, then it is in Daisy's interests to continue socialising with that goat – even if no other dog currently has, has had, or ever will have a similar interest towards goats.[12] Thus, species norms and characteristic forms of life are neither necessary nor sufficient to determine an individual's interests. What makes me a more natural or perfect example of my kind is separate to what makes my life go well (Browning and Veit 2021).

As specified earlier, interests are connected to what has experiential value for an individual themselves. This requires a conception of wellbeing and flourishment that is more sensitive to intra-species variations than permitted by Nussbaum's natural functionings approach (Donaldson and Kymlicka 2011). Thus, as specified by Cochrane (2018), it is the actual characteristics of sentient individuals that determine their interests, and not those of the group to which they belong, nor the traits they once had, will have, or could possibly have had. To determine interests, this means we must examine circumstances from that individual's perspective and wellbeing rather than our own or by strict reference to species norms.[13]

Of course, appealing to Nussbaum's list will likely play a heuristic role when determining the type and strength of another sentient being's interests. But because interests are unique for the individual in question, we should refine our understanding as we acquire more precise information about this sentient being. As an example, suppose I suddenly become responsible for a child with severe cognitive disabilities. When determining what is in this particular child's interests, it would be sensible for me to start from basic assumptions about what is in the interests of other children with similar conditions, or even human beings more generally. As I spend more time with this child, my understanding of his specific needs will become more developed. If I discover he has an intolerance for gluten, say, then I would realise that consuming the same quantity of bread as I do would not be in his interest. Through greater interaction and observation, my ability to discern this individual's interests and make choices that enhance his wellbeing improves (see Wasserman et al. 2017). A similar approach, I assume, applies for animal interests too.

2(iii) COCHRANE'S INTEREST-BASED THEORY OF SENTIENT RIGHTS

[12] While Nussbaum (2023) does acknowledge the importance of 'Other species' within her list of central capabilities for humans, she restricts this to human-animal interactions rather than cross-species relationships between nonhuman animals like dogs and goats.

[13] Nussbaum (2023, 61) seems to accept this point by moving away from a natural functionings approach in order to recognise the non-natural but beneficial relationships that can form across species boundaries. She does this by arguing that it is always possible to change the list to include individual needs.

With the central concepts outlined, I now turn to Cochrane's interest-based theory of sentient rights, under which all sentient animals are entitled to moral rights just like humans. Prior to Cochrane, a number of authors have already defended this position within the literature by reference to animal interests: most notably Feinberg (1980), Rachels (1989, 1990), and Rollin (2006, 2010). However, what distinguishes Cochrane's approach is that his interest-based theory is more developed in the sense that it also determines the *content* of animal rights. That is to say, Cochrane's theory not only shows that animals have moral rights, but identifies which specific rights they do and do not have (Cochrane 2012, 2017).

For starters, Cochrane rejects will-based approaches to understanding moral rights. According to will-theorists, the purpose of a right is to guarantee an agent's autonomous sphere of choice. Asserting "I have a right to be paid" as a seller is to say that one controls the buyer's duty to provide compensation. The buyer is obligated to pay me as the seller unless I use my power to waver my claim to payment (say, by forgiving the debt). In other words, rights establish domains of jurisdiction where the right-holder is free to demand or waver the duties of others. While plausible for some, however, will-based theories struggle to explain the idea of an 'inalienable' right which cannot be wavered (Wenar 2020). My right against enslavement is one of the most important rights I have, yet I lack the power to forsake this right: I cannot plausibly consent to becoming another's slave. Second to this, will-theorists struggle to explain how sentient nonpersons can have rights (Cochrane 2009b, 2012; Wenar 2020). Non-autonomous individuals – infants, SIDs, or animals, for example – are incapable of exercising their rights and wavering claims against others. But this clashes with our common intuitions that babies and disabled adults *do* have moral rights, let alone animals.

In response to these concerns, we should favour an interest-based approach to understanding rights. According to this view, rights protect an individual's interests and wellbeing from harm: an individual has a right when that individual has an interest that is sufficient to hold someone else under a duty (Raz 1986, 166; Cochrane 2012, 9). Thus, to determine rights we must first identify an interest, and then evaluate whether that interest is sufficient to impose a duty on another.

Following Raz (1986, 1989), interests do not automatically generate rights, nor do rights act as trumps in all scenarios. I have an interest in possessing a car, but that does not mean I have a right that forces you to buy me one. When the interests of two or more individuals clash, we must weight their respective interests according to each interest's strength. Whoever has the strongest interest prevails, regardless of to whom it belongs. This means that a human's trivial interest in eating a pig, for example, is outweighed by the pig's stronger interest in continued life. Harming an individual's interests is permissible only when it prevents harm to a stronger interest, whether that stronger interest is held by another sentient being or by the same individual. Thus, we must account for both the strength of the interest and the context in which it can be realised against conflicting claims.

As specified in 2(ii), some interests seem integral to living a good life. Because of their importance for our wellbeing, these interests are so basic and strong that they create *prima facie* rights:

abstract rights that exist outside of specific circumstances. However, these prima facie rights only become concrete ('all things considered') rights in specific situations when they ground an actual and observable duty for another. What this means is that concrete rights have *peremptory force* because they indicate which action is morally required. For example, you and I both have a prima facie right to healthcare, even if I only have a mild skin condition and you need life-support. Should it be impossible to realise both interests together, then clearly you have the concrete right to healthcare between the two of us.

Legal rights, for Cochrane, should track the moral rights that protect our core interests. Each right must be justified by assessing the interest it protects: 'Is that interest strong enough to establish a duty in another when balanced against competing interests, other values, and the burdens it might place?' Importantly, there will be some instances when animal interests are strong enough to ground legally enforced human obligations towards them. The most important of these are the interests in not being made to suffer and in continued life (Regan 1989b; Cochrane 2012, 2017). These interests create prima facie rights that prevent humans from hurting or killing animals. Hence why Cochrane (2012) rejects those institutions that require the suffering or death of our fellow species, including many existing practices involved in animal agriculture, experimentation, religious or ritual slaughter, circus entertainment, population culling, and so on. Not only must these practices end, but we are obligated to transform our political and legal institutions to benefit the interests of all sentient beings – a stance which Cochrane defends across his later works.[14]

2(iv) COCHRANE'S NON-ABOLITIONIST ARGUMENT

Having outlined the interest-based framework underlying Cochrane's arguments, we now turn to his well-known (but not well-received) defence of animal property. Importantly, Cochrane's non-abolitionist argument should be distinguished from those defences that reject animal rights entirely.[15] Instead, his argument is that some incidents of ownership are compatible with respecting animal rights because animals do not have moral rights to liberty. Consequently, animals can be permissibly owned, used, and exploited by humans: abolishing their status as human property is unnecessary for achieving animal justice (Cochrane 2009b, 2012, 2017).

To justify these claims, Cochrane appeals to the bundle of rights view of ownership defended by Honoré (1961, 1999).[16] Contrary to the established claims of some like Blackstone ([1763] 2001),

[14] See Cochrane (2018, 2020), Milburn and Cochrane (2021), and Cochrane and Cojocaru (2023).
[15] See Fox (1978), Jadeja (2006), and Lowder (2006).
[16] While the bundle of rights view is disputed on a number of grounds (see Waldron 2020), I focus on it for two reasons. Firstly, because it is the account Cochrane himself adopts. Secondly, because it offers the strongest basis for objecting to my argument in the following chapter by claiming that guardianship is really a form of qualified ownership.

ownership does not grant owners a right to absolute control of one's property: owning something never means that one can do *anything* one likes with it. Instead, it is a more general and qualified concept that conveys different rights of access and control according to context (Gaus 2012; Waldron 2020). According to Honoré (1961), we can identify eleven 'standard incidents' of ownership, meaning those legal rights, duties, and other powers which ordinarily apply to the designated owner of a thing. These incidents constitute neither necessary nor sufficient conditions in each case of ownership. Instead, they are the general and qualified features of property that legal systems as a whole generally respect. These incidents are as follows:

1) The right to possess – to have exclusive physical control of a thing.
2) The right to use – to treat the thing as a means to the owner's personal ends and enjoyment.
3) The right to manage – to decide how and by whom the thing shall be used.
4) The right to the income of the thing – to the fruits, rents, and profits of the thing.
5) The right to the capital – the power to alienate the thing and the liberty to consume, waste, or destroy the whole or part of it.
6) The right to security – to remain owner indefinitely, as long as one so chooses and remains solvent.
7) The incident of transmissibility – the property is transmitted to the holder's successors and so on, ad infinitum.
8) The incident of absence of term – there are specified terms for when the property must be transferred.
9) The prohibition of harmful use – the owner is prevented from exercising their powers in a way harmful to other members of society.
10) Liability to execution – for property to be transferable if the owner becomes insolvent.
11) The incident of residuarity – the owner is the ultimate residuary when all outstanding claims have been settled.

In other words, ownership represents a bundle of rights and powers, not all of which must be present in every instance of ownership. Some of these incidents may be compatible with animal rights, and Cochrane identifies three such incidents: authority of possession, use, and transfer. If animals do not have rights that block humans from exercising these powers over them, then abolishing animal ownership is superfluous to justice.

Regarding possession, Cochrane (2009b) argues that animals do not have moral rights to liberty, meaning the authority to make choices for oneself without interference. According to Cochrane (2009a), only sentient beings with an *intrinsic* interest in their own freedom can have a moral right to liberty. Of course, an intrinsic interest in liberty differs from an *instrumental* interest in liberty, which sentient animals clearly have; the freedom to make their own choices often provides animals with other

important goods for their wellbeing. However, it is not obvious that making choices for their own lives is itself a good for an animal's wellbeing in the same way that it is for most humans. If so, liberty in itself offers no benefit to animals beyond the instrumental increases in welfare it provides in the form of other goods.

To explain this, Cochrane (2009a) argues that only autonomous agents can have intrinsic interests in liberty. Here, he adopts a Rawlsian notion of autonomy as an ability to 'frame, revise, and pursue one's own conception of the good' (Rawls 1999; Cochrane 2012). Adult humans have a clear intrinsic interest in liberty, even when all their other interests are respected. Truman Burbank from 'The Truman Show', for example, is harmed when he is prevented from freely choosing how he lives his own life, even though he is protected from many other harms within the life that is chosen for him. Choosing to gain independence at the film's end is symbolic of his interest in exercising autonomy to pursue his own conception of the good, rather than the one set for him. Hence why human choices regarding families, employment, religious beliefs, and the like are so integral to our wellbeing as autonomous persons. Thus, a human's freedom to make choices concerning their own life has a value separate to whatever goods those choices instrumentally provide them.

With the exception of some species like the great apes and cetaceans, there is little evidence that animals are autonomous agents able to frame, revise, and pursue their own conception of the good (Cochrane 2009a, 2016). Making decisions on behalf of animals that improve their wellbeing, therefore, does not necessarily harm those individuals, just as it does not harm human infants to be managed by their parents. So long as their other interests in avoiding pain, death, and so on are respected, interfering in the lives of non-autonomous agents does not constitute a harm in itself that we are obligated to avoid (Cochrane 2012). And if animals do not have intrinsic interests in liberty that can be harmed, they cannot have moral rights to liberty, he claims.

Consequently, Cochrane (2009b) argues that some incidents of ownership do not *necessarily* harm animals: owning and using an animal can be compatible with respecting their equal moral status as a sentient being. So long as we properly respect their interests, then the possession, use, and transfer of an animal is permissible. Given that these powers are central to the institution of ownership, animal rights are compatible with assigning them the status of property (2009b). If so, then families can own pets, dogs can be trained to serve blind people, and sheep can be farmed for their wool.[17] Merely reforming these practices is sufficient to guarantee equal respect of their interests: abolition is neither necessary nor sufficient to achieve justice for animals (Cochrane 2009a, 2009b, 2012, 2014, 2016, 2017).

[17] Cochrane (2016) defends a set of legal rights for these animal workers.

To summarise this chapter, the standard abolitionist account is philosophically untenable for a host of reasons, most notably because it assumes a false dichotomy between possessing rights and being used as a mere means. Building on his interest-based theory of sentient rights, Cochrane defends a non-abolitionist stance by arguing that humans can own, use, and transfer animals without harming their interests because most animals lack intrinsic interests in autonomously self-determined freedom.

CHAPTER 3: AN ABOLITIONIST RESPONSE

This chapter advances a new abolitionist challenge to Cochrane's defence of animal property. My argument is that the status of property does not adequately signal that animals are sentient beings to whom we owe direct duties, and that respecting their interests are central to any legitimate human-animal interaction. Instead of ownership, I argue that we should actually favour the institution of guardianship because this recognises the inalienable duty of care we owe to all sentient nonpersons. I conclude this chapter by arguing that this inalienable duty is what distinguishes guardianship from merely qualified forms of ownership.

3(i) RESPONDING TO COCHRANE

Naturally, this is not the first time Cochrane's arguments have come under scrutiny. His non-abolitionist conclusion that animal ownership could be permissible has sparked controversy needless to say, and a number of authors have already voiced disagreement to his claims. However, a great many of these challenges are unpersuasive because they ultimately misunderstand the nuances of Cochrane's argument, presenting his claims in an unfair light. The most common of these misunderstandings is that Cochrane intends to justify our existing treatment of animals: Garner (2011), for example, makes such an assumption when he criticises Cochrane's account as actually requiring the radical abolition of most practices tied to animal use and ownership. Yet this is a point that Cochrane (2009b, 2012, 2017) himself has made repeatedly. Nor does Cochrane claim that humans *should* retain ownership of animals: strictly speaking he might also accept that, in practice, an outright ban on animal ownership is politically appropriate given the empirically strong correlation with their mistreatment. Such a view is compatible with his claim that animal ownership is permissible in theory, nevertheless.

Instead, his core argument is that having the legal status of property does not *necessarily* harm animals, so an institution of animal ownership could be permissible. Properly respecting animal rights entails radically transforming how we currently relate to animals – a non-abolitionist like Cochrane accepts – but it does not entail abolishing their ownership by humans in its entirety. In order to be persuasive, meaningful objections to this non-abolitionist account must challenge this core argument.

In light of this, my argument will focus on what the legal status of property signifies. As suggested by a number of authors, Cochrane's argument avoids some of the central elements of what 'property' represents within our legal systems and social discourse (see Wyckoff 2014; Schmitz 2016; Giroux and Saucier-Bouffard 2018). Because of this, he fails to prove that an institution of animal ownership is permissible. In this chapter I offer my own contribution to this strand of criticism by

outlining what I call 'the institutional signalling objection' to animal ownership, grounded in the claim that the institution of ownership does not signal the meaningful ethical difference that exists between sentient and non-sentient entities. However, unlike previous authors I develop this objection using Cochrane's own interest-based theory of sentient rights. By doing so, my argument is more compelling for the non-abolitionist who accepts Cochrane's prior commitments, allowing me to advance a more plausible abolitionist account that justifies guardianship of animals rather than ownership.

3(ii) INSTITUTIONAL SIGNALLING

My objection to Cochrane's non-abolitionist argument hinges on what I call 'institutional signalling'. In this section I explain what I mean by this term, and how it can be justified in reference to Cochrane's own interest-based theory. In short, my argument is that the institution of ownership does not signal the meaningful ethical difference in moral status that exists between sentient and non-sentient entities (see 2(ii)), and therefore is morally impermissible when applied to animals. I develop this objection by claiming that signalling is an extension of Cochrane's theory, which is plausible given the arguments he raises in later works (most notably *Sentientist Politics*).

Returning to Cochrane's interest-based theory, we can identify several different duties that we owe to fellow sentient beings, whether they are human or animal. Following previous authors (like Feinberg 1980; Raz 1986; Griffen 2008), a standard distinction often made is between negative duties not to harm another's interests and positive duties to promote another's wellbeing. The former covers all those duties that we must observe within our immediate interaction with animals. My brother has a duty not to poke Lollybomb with a sharp stick, for example, because this clearly harms her interests in avoiding pain, just as he has a duty not to kill her should he so desire. Negative duties like these encompass one's responsibility as a moral agent to observe the interests of another and avoid harming their wellbeing. In addition to this, my brother also has positive duties to look after Lollybomb and provide for her wellbeing, underlying his duty of care towards her. As noted by Donaldson and Kymlicka (2011), our positive duties towards animals include the need to respect their habitats, design our infrastructure and neighbourhoods to take into account animal needs, to rescue animals unintentionally harmed by human activities, and to take care for animals who have become dependent on us. Both types of duties, positive and negative, ground certain rights for interest-based theorists.

These positive and negative duties, it should be noted, are directed straight to the animal in question. However, we can also distinguish additional duties to protect and promote animal interests that are relevant for our interaction with fellow humans. Even if I am not threatening another's interests myself, I still have a duty to protect their interests from other sources of harm. Trying to drown one's child in a pool of water, for example, is a clear violation of our duties to protect them. But it would also be impermissible for me to do nothing as I watch someone else drown their child, despite the fact that

I could easily intervene to save their life. Because of this, our duties to all sentient beings include a set of derived obligations to protect them from harm inflicted by others. Two of these derived duties are particularly relevant for my argument here.[18]

On the one hand, we have duties to operate political and legal institutions that recognise and successfully enforce the moral rights of all sentient beings. That is, we are obligated to work with fellow moral agents to construct, transform, and preserve formal institutions that ensure justice for all sentient beings. These duties are a plausible extension from Cochrane's theory, given that Cochrane himself recognises them within his sentientist cosmopolitan arguments for transforming political institutions to serve the interests of all sentient beings (Cochrane 2018, 2020; Cochrane and Cojocaru 2021). Indeed, this point is very much central to his later book *Sentientist Politics*. As such, a non-abolitionist like Cochrane should accept these types of duty given his later arguments, even if he does not do so when strictly defending the institution of animal property.

On the other hand, we also have duties that affect our social interactions and contributions to culture. These duties include obligations to *signal* an adequate respect for another's interests via informal institutions and practices. Continuing with the example of Lollybomb the cat, I should not encourage my brother to poke her with a sharp stick. I may have no desire to poke her myself, yet encouraging my brother would clearly ignore Lollybomb's own interests against being hurt. As a sentient being, she has interests to be free from pain which must be respected. By encouraging my brother to poke her with a stick, I signal that those interests are not worth respecting, putting Lollybomb at needless risk of physical harm.[19] As such, my ethical duties to Lollybomb and my brother include correctly signalling the basic requirement to respect the interests of all sentient beings, a duty which extends to my interaction with other humans regarding human-animal relations. For example, we have a duty against signalling dismissive or cruel attitudes towards either humans or animals. This is because all sentient beings have an interest in being represented as entitled to a basic level of respect, even when these individuals are not aware they have such an interest themselves.[20] To offer an extreme example, it would be clearly wrong for King Charles III to imitate Herod by advocating mass infanticide, even if doing so would not offend any babies themselves. Instead, moral agents have a duty to shape their interactions and communication to embody the ethical importance of everyone's interests and our duties to respect them. This is one of the reasons why we have duties against issuing hate speech targeted at a social group, for example, because this signals to others that members of that particular group are not entitled to a basic respect for their key interests (Waldron 2012; Milburn and Cochrane 2021). This, too, seems a plausible extension of Cochrane's theory given that he claims our duties extend to promoting

[18] These duties can plausibly be framed as either derived negative or positive duties: negative duties to prevent harm to another, or positive duties to intervene to prevent harm from occurring.
[19] Arguably, I also disregard my brother's interest in being correctly informed about Lollybomb's moral status as a sentient being with interests worth respecting.
[20] In the context of humans, see Anderson's (1999) account of relational egalitarianism.

inter-species solidarity through our social interactions, in the hope of establishing a culture that shows justice and care towards all sentient beings (Cochrane 2018).

In short, we have duties to operate political and legal institutions that protect and promote animal interests, and we have duties to signal respect for the interests of all sentient beings. It seems plausible to now combine these two duties by claiming that we are obligated to shape our political and legal institutions so that they signal appropriate respect for the interests of animals. To claim that our culture should embody just attitudes towards animals is to say that our informal institutions and practices should signal justice. If *informal* institutions must signal respect for animals, then it seems plausible to claim that our *formal* institutions should do so too. This idea is captured by the Rawlsian notion that, when designing our institutions, we should consider the type of conduct encouraged by the system of rules overall: good institutions have sound constitutive rules *and* encourage (i.e. 'signal') conduct that promotes the same ends for which that institution was conceived (Rawls 1999; Ronzoni 2015). For example, a democratic institution should be designed in a way that educates citizens on the importance of democracy, avoiding rules and practices that discourage democratic participation and equality among its citizens. Thus, we should consider the type of relationships that an institution signifies when selecting our political and legal systems.[21]

If so, then this premise is relevant for Cochrane's non-abolitionist claim that institutions of animal ownership are permissible. As per his sentientist commitments, just institutions must signal the basic equality that exists among all sentient beings and which distinguishes them from non-sentient entities. For his non-abolitionist argument to stand, therefore, it must be shown that categorising animals as the property of humans is compatible with signalling equal respect for their interests as sentient beings. It is not enough to show that a permissible *instance* can emerge from within a system of animal ownership, as Cochrane's argument does. For example, pointing out that my brother's legal ownership of Lollybomb causes her no harm does not, in itself, justify the *institution* of ownership that regulates their interaction. This is because my brother's respectful treatment might occur *despite* the institution of ownership and not by virtue of it, perhaps because he instead sees himself as Lollybomb's guardian rather than her owner. In the following sections I take up this line of argument by claiming that the status of property fails to signal the necessary moral respect owed to animals. Instead, I claim that an institution of guardianship towards animals would correctly signal their status as sentient beings to whom we owe direct duties.

[21] The 'institutional signalling' objection can be understood in both a consequentialist and a semiotic sense. The former would argue that labelling animals as 'property' increases the probability that owners harm the interests of their animals. In contrast, the semiotic approach argues that categorising an animal as property in itself is wrong because this misrepresents our relationship to them, regardless of whether it actually causes owners to harm the other interests of their animals. While I advance the semiotic version in this thesis, I could also advance the consequentialist one to further strengthen my case.

3(iii) WHAT OWNERSHIP SIGNALS

There is something wrong in Cochrane's account with favouring an institution of ownership to regulate the lives of animals but not for certain humans. Human nonpersons, such as infants or SIDs, have interests and are generally not recognised as the property of other humans. Even if they cannot be classified as philosophical persons, it is widely accepted today that all humans should not be treated as the property of another. Hence why parents do not 'own' their children, even when they respect all the moral rights of their offspring. Similar to animals, Cochrane (2009b, 2012) recognises humans with diminished capacities as dependents to whom we owe obligations. However, claiming that some interest-holding nonpersons (i.e. sentient animals) should be treated differently from others (e.g. children) falsely signals that the biological category of species membership is itself morally relevant (Wyckoff 2014). Yet drawing such lines between sentient beings would undermine the prior commitments of Cochrane's theory. Applying the status of 'property' to sentient animals but not to human nonpersons would *signal* an impermissibly speciesist inequality within Cochrane's interest-based theory. This would contradict his stance that it is sentience, and not the biological category of species membership, that determines our moral responsibilities.

However, this challenge is not necessarily a problem for Cochrane. Perhaps he could argue that human nonpersons could permissibly be treated as our property alongside animals, albeit under the same strict conditions of protecting their moral rights. Like most animals, human nonpersons might lack interests in having the liberty to frame, revise, and pursue their own conception of the good because they are not autonomous agents. As such, it would be permissible to possess, use, and transfer them according to the interests of persons. As long as we respect their sentient rights, human nonpersons could be legitimately owned too. If so, then the ownership of nonpersons would not signal a speciesist inequality after all.[22]

In response, I argue that the very concept of property is inappropriate for *both* animals and human nonpersons. Why so? Because the legal institution of property cannot adequately signal the duties we owe to the sentient beings we can control. For now, let's bracket Honoré's particular understanding of property until section 3(v).[23] Institutions of property are usually understood to characterise the set of rules governing access to and control of certain entities; a system of property distributes objects and powers to owners in a way that grants the owner authority to determine what is done with their property, most likely in the service of the owner's interests. Any justification for how

[22] It is ambiguous whether Cochrane would actually extend property status to human nonpersons. It seems to follow from his argument yet he does not defend this explicitly, perhaps given his general approach of appealing to common-sense to justify his views. As such, I do not assume that this is necessarily Cochrane's actual argument, even if it follows from his earlier claims.

[23] Arguably the conception of property I offer here is compatible with the Honoré's approach, as preferred by Cochrane. For now, however, I will focus on the main conceptions of property as given in the literature. I do so to show that my approach does not require one to agree with the bundle of rights conception of property.

that property is used must be issued to the owner and not others (Favre 2017; Waldron 2020). Suppose I own a beautiful painting. If you want to hang my painting up in your house, you either purchase it from me or gain my consent to borrow it. You are not permitted to steal my painting because I have the authority to exclude you from taking it should I so desire. Of course, property rights (as with any rights) do not grant me the absolute power to use my property in *any* way I like. I cannot use my painting to harm another's rights (say, by hitting them over the head with its frame). These duties, however, are owed to fellow property holders and not to my property itself. In other words, when it comes to how I use my property, I owe others a justification only in so far as it affects their rights and property: we do not owe duties to our property itself.

To this, one might object by pointing out that we do, in fact, have duties to some of the items we consider 'property'. Take, for example, listed buildings like Shakespeare's house or famous paintings like the Mona Lisa. With the latter, the Louvre has a cultural obligation to preserve the Mona Lisa for future generations by protecting it from damage in, say, a fiery explosion. If so, then we clearly can have duties affecting how we use our property.

In answer to this, let us put aside the important question of whether our 'ownership' of listed buildings, famous paintings, and the like can or should be conceived as an alternative legal relationship to property.[24] Instead, I argue that these duties are only indirect. Under Cochrane's interest-based theory, the Louvre's duties are owed to civilisational culture and not to the Mona Lisa painting itself. Paintings are not sentient, so cannot be owed duties directly. Yet the same does not apply for animals under Cochrane's theory: because they are sentient, animals are owed duties in themselves. If you mistreat your dog, then others (perhaps through the state) can legitimately rescind your rights over the dog *for the dog's own benefit*. This is a unique duty we owe to interest-holders, separating sentient beings like cats, dogs, and frogs from non-sentient entities like paintings, cars, and jars. As long as I do not use my car in ways that harm other owners, then my property rights over the vehicle are secure. However, this does not make sense with animals because I owe them duties directly, even when my fulfilment of these duties has no effect on the interests of fellow property owners.

So, there is a meaningful difference to signal between sentient and non-sentient beings: namely that we owe sentient beings direct duties. To signal this correctly, we need an institutional arrangement that correctly expresses this difference. Even if we do have duties that restrict how we use items of property, these duties only exist in so far as they track the duties we owe to fellow property-holders. Yet animals are owed direct duties because of their moral status as sentient beings, meaning that the power

[24] Under French law the Mona Lisa is categorised as public property, which prevents the Louvre from selling it to another museum. I am open to the claim that our legal relationship to special cultural objects and non-sentient living entities (e.g. trees, ecosystems) should be transformed into something akin to stewardship. Like guardianship, stewardship signals responsibility towards the entities one manages. However, stewardship does not (necessarily) recognise the moral status of the stewarded entity itself, unlike guardianship. In other words, stewardship captures our indirect duties concerning the entities under our control, whereas guardianship signals the direct duties we owe to individual wards.

we exert over them must respect their own interests and not just the interests of property-holders. Categorising animals and human nonpersons under the same legal classification of property as paintings and cars, therefore, ignores this meaningful difference in moral status. As put by Simon (2006), cats are not chairs, and there is something wrong about equivocating them under the same legal rubric. Of course, this does not make it inevitable that animal owners fail to treat their animal property with justice and care. As suggested previously, some people might not see themselves as owners but instead as the guardians with obligations to care for animals, and for the animals' own sake (Carlisle-Frank and Frank 2006). Nevertheless, it is morally impermissible to institutionally signal an equivalence between sentient beings and non-sentient entities like chairs, laptops, and pencils. Animals have interests to be respected, pencils do not.

In short, an animal's status as property fails to signal the moral significance of their sentience vis-à-vis non-sentient entities. To justify the power we exert over animals, our decisions must respect their own interests and not simply the interests of fellow property-holders. Thus, maintaining animals as property ignores the moral significance of sentience as delineating moral status within Cochrane's theory: that is, which entities are owed obligations, and which are not.

3(iv) WHAT GUARDIANSHIP SIGNALS

Instead of ownership, we need a moral/legal relationship that signals two features: (1) the equality that exists between all sentient beings as interest-holders, whether they are persons or nonpersons; and (2), the inequality that exists between persons who can access moral, political, and legal structures to secure their interests, and nonpersons who cannot. Nonpersons like animals are unable to adequately understand and defend the moral rights they possess, which makes them particularly vulnerable to the actions of persons (see 4(ii)). Thus, we require an institution that curtails the ability of persons to exclude the interests of nonpersons from their decisions, forcing them to wield power in a way that respects the interests of all sentient beings. This, as I have argued contrary to Cochrane, is not captured by the institution of property because property status does not adequately signal the direct duties we owe to sentient beings. It is now time I introduced the next stage of my argument: a more plausible alternative to ownership exists that correctly signals these two features, and that is the institution of guardianship.[25]

Guardianship refers to a moral and legal institution in which the guardian is assigned responsibility for protecting and promoting the interests of a specified individual called the 'ward' (Langen 1978; Wright 2010; Appelbaum 2023). While a more detailed account of guardianship will be offered in the following chapters, for now I will outline the central features relevant for understanding

[25] 'Guardianship' is from the situation of the guardian, whereas 'wardship' is from the situation of the wards – in this case animals. Henceforth I will stick with 'guardianship' for simplicity.

its signalling. Guardians are not only responsible for protecting the ward's rights, but their duties include protecting and promoting the ward's full set of interests more generally, so long as doing so does not harm a stronger interest held by another sentient being. This is because guardians have fiduciary duties to safeguard the ward's interests and make occasional decisions on their behalf. Because a guardian owes their ward adequate care, any action that affects the ward must be justifiable by appealing to the ward's own interests.[26] Thus, guardianship connects the power exercised over sentient nonpersons with a responsibility to wield that power in a way that respects their interests (Frolik 2007).

To ensure that guardians act responsibly, we require a set of further checks and balances to protect wards from mistreatment at the hands of their assigned guardians, including the power to re-assign wards to different guardians in extreme cases of mistreatment (Langen 1978; Frolik 1990). This means that the guardian is situated between society and the ward, with non-reciprocal relations to either party: a protective, often custodial relationship to their ward, and a trustee relationship to larger society (Frolik 2007; Brake and Millum 2021). Social and political institutions are responsible for ensuring that guardians adhere to their duties concerning their wards, even when doing so does not affect other citizens. As it happens, many legal systems already operate institutions of guardianship towards specified groups of human nonpersons, in particular children, SIDs, and older adults with degenerative conditions like dementia.

Guardianship, I argue, correctly signals the direct duties humans owe to fellow animals. As per Cochrane's interest-based theory, our interaction with animals is permissible when we equally respect their interests as sentient beings. If an institution centralises respect for these interests as an inalienable feature of what makes that institution permissible, then it correctly signals the type of duties owed to animals. As evidenced by its existing role in managing groups of human nonpersons, the institution of guardianship not only recognises that we owe direct duties to these groups – it makes these duties central to justifying the power wielded over them. Given their equal status as sentient nonpersons, guardianship for animals follows from the interest-based theory: we should favour an institution of guardianship towards animals and not ownership.

3(v) DISTINGUISHING GUARDIANSHIP FROM QUALIFIED OWNERSHIP

Before I finish this chapter, however, I should address one final objection that the non-abolitionist could offer to my proposal. Even though many legal systems do categorise guardianship and ownership as different institutions, Cochrane could make the case that guardianship is, strictly speaking, a type of qualified ownership. If ownership is composed of separable powers, then perhaps exercising some of

[26] This does not mean that all interference must advance the ward's interests. See 5(i) and Appendix.

these powers does not signal that sentient nonpersons are morally equivalent to those entities lacking sentience.

As a theoretical concept, 'ownership' is notoriously difficult to define (Gaus 2012). As outlined by Honoré's (1961) bundle of rights approach to ownership – which Cochrane favours – the standard incidents are neither necessary nor sufficient in each case of ownership. This means we cannot identify a single incident (for example, the right to exclude others) which is either essential or more central than all other ownership powers. If property rights identify domains or jurisdictions for powers that one can wield, then a clear similarity can be drawn between the powers granted to a guardian and those held by an owner. Both guardians and owners have authority to possess and manage their ward/property, in the sense that they can block others from interfering with their decisions. We allow parental guardians, for example, to determine who the child socialises with and which entities they interact with, excluding others from making such decisions (Gheaus 2018; Brake and Millum 2021). Given that only some of Honoré's incidents must be present in order for children to technically qualify as the property of their parents, this suggests that guardianship and ownership are actually similar in nature. If so, I could not reject the non-abolitionist's claim that a form of qualified ownership is compatible with respecting animal interests. This would mean relegating my objection to one about the terminology Cochrane uses: my argument becomes the claim that he should defend guardianship forms of ownership rather than ownership in general.[27]

So, is guardianship just a special type of ownership? While this is a complicated matter to answer, I believe that we have good grounds to claim that guardianship *is* a distinct legal institution from ownership, nevertheless. Conceptually the two are different entities, and this distinction is already captured in how guardianship and ownership operate in many legal systems.

To support this view, one might argue that some of the central powers of ownership appear to be *necessarily* absent from guardianship. Concerning Honoré's list of standard incidents outlined in 2(iv), some powers are not just coincidentally absent from guardianship: they are opposed to its very nature! Take rights to the capital from one's property, under which Honoré includes powers to alienate (i.e. sell, bequeath) and the liberty to "consume, waste or destroy the whole or part of it" (1999, 698). Obviously guardians do not have the right to destroy their wards whenever it pleases them. While there might be some special cases when guardians are permitted to terminate the lives of their ward – in self-defence, perhaps – they lack the general power to do so under guardianship. Regarding the powers of alienation, guardians are also prevented from selling their wards to the highest bidder. Moreover, with transmissibility – meaning how property can be inherited from one generation to the next – the role of guardian does not automatically pass to one's next of kin. If my father was a care worker for adults with

[27] This point is further complicated by the historical fact that many existing institutions of parental guardianship emerged from those of ownership (LaFollette 2010; Brake and Millum 2021; Nussbaum 2023). In the course of history we went from parents being identified as the legal owners of their children to a system of children's rights encompassed within the institution of guardianship we operate today. At no point was there a sudden and dramatic shift in legal understanding.

severe dementia, for example, it is not my responsibility to step in as his replacement if he suddenly died. All these ownership powers, it might be argued, are necessarily absent from guardianship and this is where we draw the distinction.

However, this argument is not enough. If there really are no essential features of ownership, then the absence of these powers under guardianship fails to actually distinguish the two as intended. Thus, the argument does not challenge Cochrane's minimal claim that *some* incidents of ownership are compatible with respecting animal rights: namely the powers of possession, use, and transfer. Instead, I accept that these powers are both held by owners and guardians. But what is unique for guardianship is the essential feature that these powers *must* be exercised in respect of the ward's own interests. While Cochrane is correct that such powers could be exercised in respect of the ward's interests under ownership, there is no condition that makes this an inalienable requirement for ownership. This, I contend, is really the key feature that distinguishes guardianship from merely qualified ownership.

When it comes to possession, custody of the ward must be justified in reference to the ward's own welfare (Brake and Millum 2021). Guardians are (partly) appointed to protect the interests of their wards, and they are responsible for how they fulfil these duties. If a parent's custody of their child puts that child at severe risk of abuse or neglect, for example, then the parent's powers of guardianship can be revoked.[28] Conversely, the ownership of my bike is not annulled simply because I have failed to look after its wheels properly. As a non-sentient entity, my bike has no rights that need to be protected.

Moreover, a guardian's use of a ward must likewise respect the ward's own interests (as argued further in Chapter 5), and the same can be said with transfers under guardianship. If I give you my bike, you either owe me compensation as part of a sale or nothing if a gift. But when wards are transferred from one guardian to another, it makes more sense to say that the previous guardian owes the ward and/or the new guardian compensation for the transfer. Hence why parents without custody are obliged to pay their former spouse for managing the children upon divorce. All transfers of guardianship must track the interests of the wards themselves, preventing guardians from relocating their wards by appealing to their own interests alone.

Because of this, guardianship cannot respect the owner's rights to security of status, meaning their power to retain possession indefinitely if they so choose. If the state were to transfer ownership powers against the consent of the owner then this expropriation should be compensated, assuming such possession was not initially unjust in itself (Nozick 1974; Holroyd 2024). Yet such a power makes no sense under guardianship. Irresponsible guardians who abuse or neglect their wards can have their guardianship revoked *without compensation*, regardless of whether they like it or not. And, because guardianship necessitates society-appointed agents to monitor the actions of guardians, it entails a more

[28] Guardianship re-assignment, I assume, can only occur on appeal to rights. I do not expect that wards are reassigned when the guardian does not attend to all of the general interests of the ward (which can be too numerous to address anyway), or when there exists another guardian who can potentially maximise the ward's interests. In these lesser cases, other forms of intervention might be appropriate, like education.

intrusive institution without guaranteeing that the guardian's powers will persist indefinitely. For as long as someone remains a guardian, they are required to consider the ward's interests in any decision affecting the ward.

Of course, this is not to say that the ward's interests are the *only* thing that matters: guardians should also account for their own interests and those of others too (see 4(ii), 5(i), and Appendix). In cases of divorce, for example, custody rights might be distributed according to which parent has a stronger interest in looking after their children, assuming that both adults would equally respect their children's rights.

That said, the affirmative duties that guardians have towards their wards is best characterised as *an inalienable direct duty of care* – a duty that is explicitly absent from ownership (Schmitz 2016). This duty of care is both unwaivable and so strong as to underlie the legitimate exercise of all other guardianship powers. If a child forms an emotionally significant friendship with their nanny, for example, their parent subsequently gains a duty against arbitrarily restricting the child's interaction with this nanny. Some restrictions might be appropriate depending on the circumstance, of course, but the decision to apply them must now accommodate for the child's interests in their relationship with the nanny (Gheaus 2021). Not only is this basic duty of care necessary for guardianships, but it is so central that it justifies the other powers vested in the guardian. In other words, the guardian's moral and legal powers extend directly from the interests of their wards: hence why being a guardian is a *privilege*, and not a *right* (Dryden 2001).

Another way to explain this difference is through the concept of justifiability. Under ownership, I generally do not have to justify to others how I use my property, and certainly not to my property itself. Yet under guardianship, any action that affects my ward must be justifiable in respect of the ward's interests, by which I mean that it must either be in the ward's own interests or it must protect some even greater interest from harm. Because wards are unable to accept such explanations themselves, these justifications are owed to the institutional and social entities responsible for monitoring guardianship. Thus, guardianship is distinguished from ownership by the permanent duty for guardians to exercise their powers in ways that respect their ward's interests. That is, the guardian's actions must respect the ward's status as a sentient being entitled to equal consideration of their interests, and this duty is inalienable.

Thus, I argue that guardianship and ownership are indeed distinct legal and moral categories: guardians are not just owners under a different name. Even if the institution of guardianship emerged from ownership, it has since become its own legal classification of powers that stands apart from this ancestry. This is because guardianship involves an inalienable direct duty of care. With this, I conclude this chapter by asserting that we should favour institutions of guardianship for sentient nonpersons

rather than ownership.[29] Consequently, we arrive at a new interest-based abolitionist position, henceforth 'the guardianship account'.

To recap, in this chapter I advanced my abolitionist challenge to Cochrane's argument. Ownership, I argued, does not signal the meaningful difference between sentient beings to whom we owe direct duties and non-sentient entities. We should instead favour guardianship for sentient nonpersons because this signals that our powers to possess, use, and transfer wards must be constrained by the ward's interests, precisely because these powers derive from the ward's status as a vulnerable sentient being.

[29] Even if guardianship was not distinct from qualified ownership, it would not change my central argument that we should *favour* guardianship over non-guardianship, nevertheless. The consequentialist version of the institutional signalling objection applies regardless of one's conclusion here.

CHAPTER 4: MAKING SENSE OF GUARDIANSHIP

Building on prior arguments, this chapter outlines an account of guardianship that is compatible with Cochrane's interest-based theory and sentientist cosmopolitanism. Guardianship, I argue, is rooted in a sentient nonperson's status as a moral patient and not their supposed inability to make 'good' choices for themselves. In addition to different groups of human nonpersons, guardianship should cover both domesticated and undomesticated species of animals. Since all animals remain somewhat dependent on human institutions and actions for their wellbeing, they need the protection of multiple guardians to prevent their interests being ignored or abused. In doing so, I distinguish my account from the existing literature, most notably the views of Donaldson and Kymlicka (2011) and Nussbaum (2023).

4(i) THE LITERATURE ON GUARDIANSHIP

Before we begin, I should address a serious problem within both the literatures in animal ethics and jurisprudence. Firstly, a number of authors have already evoked the concept of 'guardianship' to describe the ideal relationship that humans should have with animals (for example, Rollin 1983, 2006; Favre 2000, 2004, 2009; Hadley 2005; Schmitz 2016; and Nussbaum 2023).[30] However, these brief references almost exclusively focus on the parent-child relationship, ignoring the other forms of guardianship involving groups of human nonpersons – in particular individuals with SID or degenerative cognitive conditions like dementia. Consequently, the animal ethics literature lacks a developed account to explain how guardianship for animals would compare with *all* existing guardianship institutions.

Second to this (and perhaps more concerning), there appears to be no comprehensive account of guardianship available within the discipline of jurisprudence, or at least one that covers all groups traditionally subsumed under the institutions of guardianship. Most defences focus on cases where the state must appoint guardians when family members are unable to occupy that role, rather than explicate the underlying reason why these individuals need some form of protection in the first place (for example, Langen 1978; Frolik 1990, 2007; Wright 2010). Despite forms of guardianship being traceable to the Roman era, we lack a theory to unify the different institutions that manage all groups of human nonpersons – let alone one that can be expanded to include animals! This remains a worrying gap in the literature.

What we need is an original and coherent philosophical foundation for justifying guardianship. While I may draw inspiration from existing legal regimes and practical examples of guardianship

[30] Also compare with Burgess-Jackson (1998), Sunstein (2004b), and Paez (2019).

relations, the account I defend in this thesis is offered as a new foundation that covers all sentient nonpersons and, I hope, would apply to all legal systems in principle.

4(ii) THE MORAL STATUS OF WARDS

On the few occasions when guardianships have been defended in the literature, they are sometimes justified by the need to protect wards from harming their own interests (see Wright 2010; Appelbaum 2023). The idea here is that wards are incapacitated in some sense, either due to inexperience or disability. Because of this incapacity, the ward is unable to fully participate in society and make sensible choices that advance their own interests, it is argued. This predicament is resolved by recognising a guardian as responsible for making decisions for the ward's own betterment, sometimes against the ward's actual desires. Children, for example, benefit from parental interference that protects them from dangers they might not properly understand, like playing in the middle of a busy street or in being unvaccinated against measles. By adopting a paternalistic role vis-à-vis the ward, the guardian is able to protect them from making poor decisions that undermine their own interests, existing authors have claimed.

If true, then guardianship would be inappropriate for animals because animals do not need human interference to pursue their own interests effectively. Donaldson and Kymlicka (2011), for example, reject wardship on the grounds that it incorrectly equates animals with defenceless children incapable of flourishing without human interference.[31] Most animals can clearly pursue their own interests without harming themselves; they are fully capable of making basic choices regarding what to eat, where to move, and with whom to socialise. Consequently, they do not need self-appointed human guardians to step in and make 'better' decisions for their wellbeing. If so, then classifying animals alongside inexperienced children or cognitively impaired adults would incorrectly signal an inability to live good lives without human paternalism.

While this objection might seem plausible to some, I argue that it is based on a common misunderstanding of why we have guardianships. The role of the parent or the adult care home is not solely (or even mainly) to prevent wards from harming themselves. Instead, the guardian's role is to protect the ward's interests and those of others from harm because of the ward's status as a *moral patient*. This status, I propose, explains why sentient nonpersons require guardians for two reasons, neither of which assumes that wards make poor decisions that harm themselves. Because of this, I reject Donaldson and Kymlicka's claim that guardianship signals that animals (and human nonpersons too) are incapable of making good decisions for themselves without interference.

[31] A second reason they offer is that wardship incorrectly treats animals as passive political agents unable to participate in mixed human societies. For a critique of this position, see Pepper (2021).

To explain this further, I will build on a common distinction within the literature between 'moral agents' and 'moral patients', first developed by Regan (1983, 151–153). Moral agents refer to those individuals capable of bringing impartial moral principles to bear on the determination of what ought to be done. This is to say that they can act in line with morality, and do so according to correct moral reasoning. This means that moral agents can be held morally accountable for their actions because they can potentially issue justifications to legitimise their decisions. Regular adult humans (i.e. persons) are the paradigm case of moral agents.

Moral patients, in contrast, refer to those individuals who have moral status but lack the capability to choose right or wrong themselves. Despite being recipients of moral actions, these individuals cannot control their own behaviour in ways that make them morally accountable for what they do. This means they lack the ability to either formulate, or cause right or wrong through the realisation of, moral principles. Due to their lack of autonomous decision-making, all sentient nonpersons classify as moral patients in this sense.

In the context of Cochrane's interest-based theory, moral patients have interests that entitle them to our moral consideration, but are themselves unable to morally consider the interests of other sentient beings in their actions. Of course, moral patients can still harm the interests of others, intentionally or otherwise. For example, a dog harms my interests when she bites me. Despite this, she is a moral patient because she cannot act according to ethical principles that prohibit her from harming my interests. Nor can she advocate for my interests or her own within moral discourse. What this means is that moral patients can neither give nor receive justifications when interests are harmed. This grounds two reasons for why moral patients need guardians.

The first reason I offer for guardianship is that sentient nonpersons lack what Paez and Magaña (2023) call 'robust political agency'. Guardianship classifies a normative relationship that, like ownership, should be enforced through a system of political and legal institutions. It arises within a 'moral domain' composed of sentient creatures.[32] All sentient beings have moral status within this domain, meaning their interests should be considered equally within social and political institutions according to their weight regardless of species membership (Cochrane 2009b, 2018). However, not all sentient beings can exercise the type of political agency necessary to effectively protect their interests within these institutions (Pepper 2021; Paez and Magaña 2023). Only autonomous moral agents – by which I mean philosophical persons – can do so effectively. Despite their dependency on social, political, and legal institutions for their wellbeing, sentient nonpersons are unable to advance their interests through shared institutions and prevent their exclusion by persons. Neither animals nor human infants, for example, can sue adults themselves when their rights are violated (Sunstein 2004a). As such,

[32] I avoid the standard term 'moral community' because some authors claim that a community requires reciprocity through contributions from all its members (see Anderson 2004; Tomb 2006; and Landemore 2006). While Cochrane does not use the term 'moral domain' himself, I believe it accurately captures his cosmopolitan stance that political institutions should be shaped by the interests of all affected by them, not just by those who we traditionally see as forming a shared political community.

nonpersons reside in a state of vulnerability as moral patients, a status which is inescapable for as long as they remain a nonperson. They are asymmetrically dependent on persons to construct rules and institutions that constrain their power to arbitrarily affect the wellbeing of nonpersons – a power which some call 'domination' (Giroux 2016; Nussbaum 2023).[33]

Consequently, within this moral domain we require an effective system of political, legal, and social institutions that prevent persons – whether individually or collectively – from *mistreating* the interests of nonpersons, by which I mean abusing or neglecting them. Persons must collaborate with nonpersons in order to prevent the latter's mistreatment. Guardianship, I contend, involves such a collaboration that recognises (1) the ward's status as a sentient being with interests worth protecting, and (2) their vulnerability due to a lack of robust moral and political agency, which prevents them from holding others accountable when their interests are harmed. Under guardianship, a person or group of persons are appointed as the protector of a nonperson's interests, with responsibility to familiarise themselves with the beneficiary's interests and values (Weissman 1964; Nussbaum 2023). In other words, the guardian has a duty to *guard* the ward from harm by protecting and promoting his interests within political, legal, and social institutions, given that he cannot do so himself as a moral patient.

The second reason for guardianship is that nonpersons lack the self-restraint necessary for intentional moral conduct. Often overlooked in the literature, another role for the guardian is to protect other sentient beings from the ward's actions. Because the ward is not a moral agent, they lack the ability to morally restrain themselves from causing avoidable harm to other sentient beings, either persons or fellow nonpersons. Suppose a young child is about to stand on a kitten. Such a harm is avoidable, yet most infants lack the moral understanding necessary to intentionally refrain from causing harm like this. Consequently, guardians have responsibility to step in and interfere in the ward's decisions to prevent them from avoidably harming another agent, and we hold guardians accountable for their failure to interfere in relevant circumstances. If someone's dog bites my hand, for example, I will address my grievance to her guardian and not the dog herself. If said guardian is culpable for inadequately preventing their dog from biting me, their powers may even be revoked. Thus, the guardian's responsibilities are not just to protect the ward's interests from everyone else, but to protect the interests of everyone from avoidable harm at the hands (or paws) of the ward.[34] Hence why we grant parents general custody powers to restrict their children's movement even when doing so does not necessarily benefit the child themselves. The role of guardian is to use this power in a way that respects

[33] I avoid the term 'domination' in this thesis for three reasons: (1) Cochrane does not use this term within his interest-based theory; (2) there is considerable disagreement within political theory about how to define 'domination', especially in regard to nonpersons; and (3) domination-centred accounts struggle to explain what positive duties we owe to vulnerable individuals like children.
For relevant literature on the domination of children, see Pettit (1996), Arnold and Harris (2017), McCammon (2018), Gheaus (2021), and Lovett (2022). For a discussion of republican approaches to animal ethics, see Schmidt (2018); Giroux and Saucier-Bouffard (2018), and Paez (2022).
[34] Requiring guardians to protect others from *all* harm is not feasible. Instead, this responsibility is limited to those harms that are 'reasonably' avoidable.

the interests of the ward *alongside* those of all relevant, sentient beings. As a moral patient, wards do not consider the full set of interests they affect, which justifies a guardian interfering to prevent unnecessary harm to another sentient being.

Returning to Donaldson and Kymlicka's objection, if guardianship is grounded in the 'incapacity' of wards then it is strictly in their incapacity to act *as moral agents* who can robustly protect their own interests and avoid harming others. Sentient nonpersons require guardians because they cannot prevent their interests from being excluded within social and political institutions, nor can they restrain their own behaviour to prevent avoidable harm to other sentient beings. These two reasons combined, I argue, are not only plausible explanations for the powers we invest in guardians (that is, the trustee role and the custodial role). They also demonstrate that guardianship in itself does not signal that wards are incapable of living free lives without harming their own interests. Consequently, extending guardianship to animals does not imply that animals require the paternalistic intervention of humans for their own good, just as it does not imply the same for human nonpersons.[35] Instead, guardianship signals that animals – like other groups of sentient nonpersons – are vulnerable within the moral domain due to their status as moral patients.

4(iii) WARDSHIP ELIGIBILITY

With respect to humans, I will identify three groups as clearly eligible wards:

(a) children.

(b) adults with degenerative cognitive conditions like dementia.

(c) individuals with Severe Intellectual Disability (SID).

While this is not an exhaustive list, I will restrict my account here to those humans who are traditionally identified as moral patients by philosophers *and* who are protected under guardianships in many countries. Of course, there are important differences between each group: children, for example, will eventually become persons without the need for guardians; adults with dementia, in contrast, loose their autonomy as their condition worsens. Moreover, guardianships for children are temporary until the child has matured, whereas they are permanent for those with SID. Yet despite these differences, each group is appropriate for guardianship due to their current status as moral patients unable to robustly protect their interests through society's institutions and morally restrain themselves from harming others. Thus, they are distinguishable from adult humans who can exercise autonomy to defend their interests and recognise moral principles of conduct. Even if an adult human lacks understanding of legal and political processes themselves, I assume they have sufficient comprehension of their core moral rights, and can

[35] Threatening one's own interests does not distinguish persons from human nonpersons anyway: adult humans harm their own interests too, and arguably to a greater extent if they have 'adaptive preferences' towards certain forms of self-harm. Instead, adult humans are unique because of their special ability to consider the interests of all others when acting, and to hold each other accountable for their behaviour.

seek the help of other humans to protect their interests. Unlike nonpersons, their vulnerability is not inescapable. Moreover, I assume that most adult humans are moral agents who can reform their behaviour without the need of political institutions assigning them a specific guardian.[36]

With respect to animals, however, should guardianship cover domesticated *and* undomesticated species? While it is clearly plausible to include those animal species that have evolved to live in the company of humans, the same cannot be said of wild and some liminal[37] species that are not members of shared communities with humans. As some might argue, it is not always obvious what is in a wild animal's interests, and our moral obligations might be restricted to just those animals within our communities. If so, then these thinkers would rule out many undomesticated species from being eligible wards. Guardianships would be restricted to those animals who are already members of our communities, and wild animals would need a different status – perhaps as 'sovereign individuals' (Donaldson and Kymlicka 2011). This does not mean wild animals should be unprotected, of course. Alternatively, we could rely on animal activists to voluntarily defend wild and liminal animal rights in court when necessary. As suggested by Sunstein (2004a), wild animals could live under legal protection if all private citizens and organisations were allowed to bring lawsuits on their behalf. This could potentially offer blanket protections for undomesticated species without the need to designate them legal protections through specified guardians.

In contrast to this proposal, I argue that guardianship should be extended to all sentient animal species, regardless of whether we treat them as members of our communities. As I have argued in 4(ii), guardianship is necessary for all sentient individuals who (1) are members of the moral domain and (2) have the status of moral patients (i.e. they cannot protect their own interests and those of others from harm). Both conditions, it seems, apply to all species of nonhuman animals.

Regarding the first condition, membership of the moral domain is derived from an individual's sentience and thus does not require one to be an existing member of a mixed community with humans. True, I might not think of myself as being in a shared community with a bat (and nor might the bat, for that matter). But this is irrelevant for determining whether the bat has interests worthy of moral consideration under the interest-based theory: moral status derives from a being's sentience and not their membership of a shared community (Cochrane 2018). It does not seem plausible to argue that a bat lacks an interest in being included under guardianship, because guardianship entails that their full interests are given legal protection.

Regarding the second condition, both wild and liminal animals qualify as moral patients vulnerable to humans harming their interests. Due to technological development, globalisation, and the

[36] While the state does partially embody the role of guardian to all citizens, it is not – strictly speaking – their guardian. Assuming a global system of state sovereignty, we lack an adequate oversight body to monitor each state's power and offer a replacement guardian when states seriously fail in their duties. Outlining this further, however, is a task for elsewhere.

[37] Liminal species refer to those undomesticated animals who survive among and off communities of humans, for example pigeons, rats, and racoons.

growth of human populations, all animals are now somewhat dependent on human beings for their livelihood (Gruen 2017; Delon 2021). The habitats and sustenance of almost all wild animal species are heavily dependent on human activity: there is no separate world of nature in which animals can permanently retreat to live free from potential human interference (Nussbaum 2004, 2023; Donaldson and Kymlicka 2011).[38] Even if they do not do so already, humans have the capacity to affect the wellbeing of all animals through their actions; just as Cochrane (2014, 2018) argues, animals from undomesticated species need their interests protected within our institutions just as much as domesticated ones. Thus, we should not arbitrarily exclude wild and liminal species from the institutions we offer to domesticated animals. Even if they are not dependent on specific humans for their wellbeing, they remain dependent on human society as a whole: trying to 'let them be' fails to address the considerable problems caused by human expansion, habitat loss, and pollution.

Adding to this, the proposal to rely on private citizens to voluntarily protect animal rights is inadequate for a number of reasons. For starters, the time and resources required to check whether animal interests are violated and issue lawsuits would be considerable. Many animals might not be covered by such protection, and most lawsuits would only be issued *after* the animal's rights have already been violated. We require a more orderly and systematic approach to prevent harms from occurring in the first place, which means legally recognised guardians who are held responsible for protecting animal interests. Aside from the negative duties to prevent animal rights being violated, we also have positive duties towards wild animal populations to support their efforts in living good lives. This includes a responsibility to manage shared environments to promote the interests of all sentient beings affected. Animal interests must be integrated within all levels of our decision-making whenever relevant, and guardians should have the power to sometimes interfere in natural environments to prevent easily avoidable harms – like involving large-scale and avertable natural disasters (Donaldson and Kymlicka 2011, 206). Finally, it should be noted that Sunstein (2004a) himself limits his proposal to what should apply for *existing* legislation on animal welfare. His suggestion of allowing private citizens to voluntarily defend animal interests could easily be incorporated within a system of guardianship by allowing anyone to report the mistreatment of wards, in a similar way that all adults can report child abuse to social services.

For these reasons, all sentient species of animals should be included within the institutions of guardianship. With this claim, I reject Donaldson and Kymlicka's approach of distinguishing between domesticated, liminal, and wild animal species within our institutional protections. How guardianship institutions should function, however, will vary by the type of ward and guardian(s) involved.

[38] While some animals happen to live free from *actual* human interference, my argument is that almost no animal can live without *potential* human interference. Even if there were some sentient species living in environments currently inaccessible to humans (e.g. deep-sea octopuses), near-future technology will likely chance this.

4(iv) TYPES OF GUARDIAN

What, then, of the guardians? As stated in 4(ii), a guardian could be either a person or a group of persons working together. While my brother would probably be a poor guardian to a bat, we have zoological experts who have a much better understanding of what is in a bat's interests. It would be plausible to combine their skills with animal rights lawyers as part of larger organisations who act as guardians for wild and liminal species within a defined jurisdiction. There is nothing radical with the idea that guardians can be collective agents composed of multiple persons: care homes and orphanages provide good examples of how groups of humans can work together to act as guardians (Langen 1978).

And just as guardians can have multiple wards, wards can have multiple guardians. The responsibilities and powers of guardianship can be split between different agents able to protect specific aspects of a ward's interests. For example, an adult with dementia might have her daily needs managed by a personal carer, her financial assets protected by a court official, and her political interests represented by a trustee in the legislature. Some guardians will have custody powers, whereas others would be responsible for managing the ward's economic or political interests.[39] A similar division of powers seems sensible for most animals given the diversity of their interests.

While some domesticated species require human companions with responsibility to provide housing and daily sustenance, guardianship for liminal and wild species would probably take a more restricted form involving much fewer interventions, resulting in something akin to Nussbaum's 'stewardship' (Nussbaum 2023). As she suggests, those responsible for animals have a pro tanto duty to acquire information regarding the unique characteristics and interests of these individuals. What this means is that human guardians should invest in greater research of animal behaviours in order to ensure a more individualised justice that attends to actual animal interests. However, this duty is pro tanto because it can be over-ridden by the interests of the ward themselves: for example, scientific experiments to understand animal behaviour are impermissible when they violate the rights of these animals. Likewise, gathering information about the lives of wild animals should minimise any harms caused by monitoring their livelihoods: in practice, guardianship for wild animals should be as unintrusive as possible.

That said, the main distinction with Nussbaum's account is that I explicitly use the term 'guardianship' to refer to the institutional protections covering both domesticated and undomesticated species of animals. As before, this encapsulates Cochrane's (2018) claim that undomesticated animals should not be denied protections under the same systems we offer to domesticated species – a central tenant of the sentientist cosmopolitan approach he defends. Adding to this, Nussbaum (2023) does not draw a clear distinction between the institutional differences of guardianship and stewardship, unlike

[39] For more discussion of separating guardian responsibilities regarding the ward's biological, political, and economic interests, see Weissman (1964), Langen (1978), Hadley (2005), and Appelbaum (2023).

what I discussed in Chapter 3.[40] Moreover, as noted in 2(ii), Nussbaum's focus on what is characteristic to a species should be rejected in favour of respecting the interest of individual animals themselves.[41]

Thus, I argue that guardianship for liminal and wild animal species is entirely plausible. As it happens, a number of city councils in several countries already care for stray cats and dogs in their localities, which includes the funding of animal ambulances and neutering services. It seems reasonable to expand these services to include most, if not all, liminal species. When it comes to wild animals, however, we might prefer our guardians to be specialised organisations composed of relevant zoological, environmental, and legal experts able to competently represent the animals' interests in court and, if necessary, propose suitable interventions for the good of all (Hadley 2005). Even if granted custodial powers over their wards, it does not require these powers to be exercised. If a ward's interest in being free from captivity are great – as they are likely to be for many animals – then guardians should only exercise custodial powers in clear cases of protecting an even greater interest at stake.

When the interests of animal wards clash, disputes should be managed in a similar way as they are within the legal system when the interests of human wards clash. Of course, the clash of animal interests may seem more serious than those between human wards: the interests dividing sheep and wolves concern life and death, whereas those between one's children generally do not. However, as defended by Nussbaum (2023), our legal systems already have experience with managing such disputes based on the strength of each party's interest, and guardians should look for Hegelian solutions that creatively 'sublate' away the problem by avoiding the initial clash of interests – feeding wolves with the bodies of sheep who have died naturally, perhaps.[42]

Finally, whether the guardian for a domesticated animal should be an individual or an organisation will depend on the animal's interests and the context in which they reside. There could be a single organisation that acts as the primary guardian for all domesticated animals within a defined territory, or there could be many individual guardians operating through a licensing system. Most likely it will be a mix that varies by the robustness of the legal and cultural checks against irresponsible guardianship, as will be discussed in the next chapter.

In summary, this chapter offers an account of guardianship that appeals to the status of sentient nonpersons as moral patients. Guardianship should cover both domesticated and undomesticated animal species, and a guardian's responsibilities can be divided across different individual or group agents.

[40] See footnote 24 for my distinction.
[41] A further reason why I defend 'guardianship' for animals is to motivate persons to care for all sentient beings by explicitly linking the guardianship of children with those of animals (and other sentient nonpersons). Since we were once vulnerable children ourselves, we can empathise with the predicament of children and recognise our duty to care for them. Extending the same framework of guardianship, I hope, would expand this motivating empathy to cover all sentient nonpersons.
[42] For more discussion, see Langen (1978), Hadley (2005), and Nussbaum (2023).

This account is not only compatible with Cochrane's interest-based theory and sentientist cosmopolitanism, but offers plausible grounds to justify many of our existing institutions of guardianship for human nonpersons as well. As a result, the approach I defend here can be distinguished from existing accounts within the literature that follow Donaldson and Kymlicka or Nussbaum.

CHAPTER 5: GUARDIAN INTERFERENCE

In this penultimate chapter, I defend my guardianship account as separate to the standard abolitionist position outlined in Chapter 2. Contrary to other abolitionists, I argue that human guardians can permissibly interfere in the lives of animals even when this does not benefit those animals themselves. Furthermore, animals may have moral rights to liberty through their non-specific instrumental interests in freedom, but these interests can easily be accounted for under guardianship. Finally, I argue that just guardianship does not prohibit humans from using animals, albeit under strict conditions. In itself, profiting from an animal does not necessarily signal that they are merely a commodity, especially within an effective system of guardianship.

5(i) WHEN SHOULD GUARDIANS INTERFERE?

Having outlined an account of guardianship that is compatible with Cochrane's interest-based theory, I now return to consider the standard abolitionist account of animal justice. As outlined in 2(i), abolitionists like Francione (2010) argue that it is impermissible for animals to be used and exploited for human ends because they have a value in themselves, separate to the value they can provide for humans. Because of this, the standard abolitionist account favours non-interference towards animals as much as possible: if humans must interfere in an animal's choice, then it is only permissible if doing so benefits that animal themselves (Wilcox 2021). If we apply this to guardianship, the abolitionist would argue that no human – whether the guardian themselves or with the guardian's approval – should benefit from using animals for their own ends.

In contrast to this stance, I defend the claim that interfering in the lives of (animal) wards is permissible even when doing so does not benefit that individual's interests. To explain this point, we can distinguish three types of interference that do not benefit the ward:

1) Interferences that violate the ward's rights
2) Interferences that harm the ward's interests but do not violate their rights
3) Interferences that do not harm any of the ward's interests

Under specific circumstances, each type of interference is permissible. As was outlined in Chapter 2, we can violate the prima facie right of one individual only if doing so protects the stronger right of another. A human teenager's right to free movement, for example, can be interfered with if this freedom

would result in them stepping on a kitten. As a general rule, the rights of a ward can be violated but only as a necessary measure to prevent a greater right being violated (whoever holds this right).

Regarding the second type of interference, we can likewise harm a ward if doing so prevents the stronger interests of another from being violated in circumstances where they inevitably clash. For example, my brother can temporarily restrict Lollybomb's ability to leap onto the balcony to kill an injured bird because doing so protects that bird's interests in continued life. Interference in these cases may even be *mandatory* if doing so protects the moral rights of others.

The third set of cases– where intervention does not harm any of the ward's interests – also seems permissible, if doing so advances the interests of another. For example, using human babies in some behavioural studies does not harm the babies' interests, while greatly benefitting scientists who want to study human behaviour. Likewise, a farmer can open up a second field in the hope that some sheep will eat the long grass that has grown there. Pareto improving interferences like these do not harm the wards' interests, and are permissible under the interest-based theory (although this is not to say that they are *mandatory*).

Because of this, guardianship does not require the guardian to ensure that every single decision affecting the ward necessarily advances the ward's own interests. Nor does it block guardians from intentionally harming their ward's interests. Whether an interference is permissible, impermissible, or mandatory is determined by an assessment of all relevant interests at stake and not strictly those of the ward (see Appendix for diagram). If a child has a mild interest in buying the latest, expensive toy on the market, for example, this does not oblige his parents to empty their pension savings to afford it. Guardianships do not force guardians to abandon their own interests and those of others in order to advance the wellbeing of their wards, clearly. As defended in the previous chapter, the central justification for guardianship is the need to accommodate all interests, and excluding the guardian's own interests would undermine this goal.

Instead, a guardian's moral responsibility is to protect and promote the ward's interests *in addition to* their own and those of all other sentient beings. When interests clash, action must be determined according to the strength of everyone's relevant interests, which means that sometimes the interests of the guardian will come before those of the ward. So long as interference *respects* the interests of the ward – by which I mean that the ward's interests are included within the decision-making process, and included equally to the interests of other sentient beings – then such interference is permissible. And in some cases, it is mandatory. Again, another way of putting this is to say that legitimate interference should be justifiable to the ward were they to be a person.[43] Since they are not a person, this justification is owed to those individuals responsible for overseeing guardianships.

[43] 'Justifiable' in the sense used by Scanlon (1998).

This brings me to the necessary measures needed to ensure justice: guardianships require an additional layer of supervision to ensure a guardian's power is not abused.[44] This oversight body has responsibility to screen, train, and monitor guardians in their work, and ideally would be staffed by professionals who can identify signs of mistreatment (Hansen, Diamond, and Ludwig 1989; Frolik 1990). Care workers, for example, should have adequate training to meet the needs of their elderly wards, and governments undertake regular checks of care homes to make sure they operate effectively (Langen 1978). The role of this oversight body is to ensure guardians are responsible in their role – literally in the sense of being *able* to offer legitimate *responses* to justify their treatment of the ward. Because wards cannot accept such justifications themselves, reasons for interference are instead owed to the oversight body. When guardians use their powers irresponsibly, this oversight body has authority to intervene by educating guardians about their responsibility and issue penalties to deter careless behaviour (Frolik 1990; Wright 2010). In cases of severe mistreatment, it can (and likely *should*) re-assign the ward to a different guardian.[45] To ensure re-assignment benefits a ward, there is an additional duty to provide default guardians (whether temporary or permanent) when no suitable alternative is available: for example, orphanages when relatives cannot take custody of an abused child. Finally, the rules governing guardianships must be enforceable, accessible, and understandable to all citizens – not just the guardians – because this enables anyone to report cases of mistreatment when detected (Mnookin 1973). From this, we derive an additional duty to promote a culture of responsible guardianship (Wright 2010), with the aim of achieving an effective system of accountability across formal and informal institutions of society.

With this in place, I argue that guardians can permissibly interfere in the lives of their wards to benefit another, including the guardian themselves. In the case of parenting, for example, we allow parents to pursue their interests in developing emotional connection with their children. This extends to permitting shared ventures with their child to strengthen this emotional bond, even if the child would be perfectly happy if left alone. There is nothing *necessarily* wrong with the idea of guardians benefitting from their guardianship. In some cases, it might even be desirable. Thus, when applied to the case of animals, it can be permissible for humans to use animals for their own betterment so long as this use does not harm a stronger interest held by the animal.[46]

[44] I leave aside the question of how these bodies should be funded. See Frolik (1990) for some discussion.

[45] Context matters for any intervention. Decisions to re-assign wards should be made with full consideration of all interests at stake, including the emotional connection that may exist between wards and their guardians (see Mnookin 1973).

[46] By 'use', I refer to any relation whereby one individual is treated as a means to the end or enjoyment of another. This is a general understanding of the term, and includes collaborative endeavours where two individuals cooperate to achieve a mutual goal. This differs from a more normatively loaded understanding where an individual is used as a *mere* means, which implies wrong-doing (for example, "*You used me!*").

5(ii) ANIMAL INTERESTS IN LIBERTY

In response to this point, a standard abolitionist could claim that my guardianship account has thus far failed to acknowledge an animal's interest in liberty. As argued by a number of authors (for example, Regan 1983; Giroux 2016; Gruen 2018), freedom is intrinsically valuable for many animals, and this means that interfering in an animal's life to benefit human interests is necessarily impermissible. Wilcox (2021) offers a contemporary account in which liberty is valuable to any agent able to make choices for themselves, even if those choices concern ends determined by nature. Even though animals are not architects of their own life goals in the sense of having Rawlsian autonomy, they still act as builders of their own lives by making daily choices of where to go, what to eat, and with whom to spend time. As argued by these authors, non-autonomous agency itself is enough to ground an intrinsic interest in freedom.

Yet despite the frequency of these claims, it remains unclear why liberty is itself part of an animal's interests. To return to Cochrane's example of Truman Burbank from 2(iv), it is obviously in Truman's interests to ultimately determine his own life goals rather than have them decided for him precisely because he is an autonomous agent capable of revising his conception of the good. If we swap out Truman with an animal like an alpaca, however, it seems far less obviously a wrong given that freedom for an alpaca really means behaviour determined by nature's ends. Granting animals the potential freedom to determine their own conception of the good just seems irrelevant. If so, most animals lack *intrinsic* interests in liberty, as Cochrane (2009a) rightly claims.

However, this does not mean that an animal's *instrumental* interests in liberty cannot ground moral rights to freedom. As argued by Schmidt (2015, 2018), the instrumental value of liberty for animals is non-specific and is therefore of a greater importance than Cochrane realises.

Building on Carter (1999), Schmidt distinguishes between specific and non-specific instrumental value. If something has *specific* instrumental value, then its value can be wholly described in terms of the instances it causes. For example, the instrumental value of brushing my teeth can easily be described in terms of maintaining dental hygiene. However, *non-specific* instrumental value cannot be so easily summarised: that is to say, x has non-specific value if the value of x cannot be described wholly in terms of the goods brought about by a specific instance of x. Money, for example, has a non-specific value to humans because of its potential to purchase a number of alternative goods. If I had to choose between £50 in cash and a £50 token that could only be spent at my favourite holiday resort, I would prefer the former because I am able to spend this £50 in any way I liked – even if I intended to use that same money at the holiday resort. This is because the value of money cannot be solely described in terms of the actual things we use our money to purchase: its instrumental value to us is non-specific.

In a similar way, liberty is also non-specifically valuable because we cannot always identify in advance what goods that freedom will provide (for either humans or animals). Schmidt (2015) offers

three reasons for why. Firstly, because an individual's interests can change over their lifetime, meaning that we cannot be certain that another's interests will remain the same in the future.[47] Second, because there will always be an element of uncertainty in determining the current interests of another individual, and whether interference actually benefits the ward's interests. Thirdly, because a lack of freedom can exacerbate a feeling of helplessness, which has been observed in human nonpersons and a number of animal species too (Wright 2010; Browning and Veit 2021). A sense of control over one's own action can be integral to the welfare of both humans and animals.[48] In light of all three reasons, we have good grounds to provide animals with a larger set of options to choose for themselves rather than always impose decisions on them. Thus, an animal's instrumental interest in liberty may be sufficient to establish a firm interest in freedom that restricts how frequently humans should interfere in their lives, perhaps even to the extent of granting them a moral right to freedom.

This point, it should be noted, does not undermine the institution of guardianship for animals. An animal's interest in liberty can easily be included as one of the central interests that guardians have a duty to respect, and for which they will be held accountable. As was outlined in Chapter 4, guardianship is justified by a sentient being's status as a moral patient. Being a moral patient means that one lacks the relevant characteristics to act as a moral and political agent: it does not rule out having an interest in liberty. Because of this, incorporating a ward's moral right to liberty does not threaten the underlying theory of guardianship I defend. Guardians can factor in the ward's interests in choosing for themselves within the set of all the interests they must consider.[49] Yes, this would rightly result in less interference in the ward's actions than initially permitted by Cochrane. But it does not entail rejecting guardianship itself.

To emphasise this point, Schmidt (2015, 2018) himself recognises that the value of liberty does not override all other considerations. Even though animals have special interests in liberty, that liberty can be permissibly overridden in order to protect a greater or more pressing interest at stake. What matters is the context and the interests of all relevant individuals (Browning and Veit 2021). Remember Lollybomb the cat? As the daughter of a stray, her FIV from birth makes her immune system considerably vulnerable to potential illness and disease. Because of this, my brother may permissibly restrict her movements to his apartment. Not only does this arguably protect Lollybomb's stronger interests in a continued existence free from pain, but it also benefits the interests of other animals who might be threatened if Lollybomb were set loose on the streets of Lyon. Her non-specific interests in

[47] See Paul (2014) and the literature on transformative experiences.
[48] Loss of freedom can sometimes be *more* stressful for animals than for humans because animals cannot always understand the purpose and context of what humans have decided for them.
[49] One might claim that animals lack the ability to conceptualise the value of their freedom. However, this is only required for preference-interests, not the welfare-interests that determine whether a sentient individual can experience good.

liberty do not override all other interests to consider, which is why we can trade off her (initial) freedom in some cases in order to protect a greater interest at stake.[50]

Fortunately for us, incorporating a ward's interest in making decisions for themselves is not alien to existing institutions of guardianship. Like other animals, liberty is non-specifically valuable for human nonpersons like children, SIDs, and those with dementia. Despite this, we still allow parental guardians to prevent their children from playing in the middle of highways, for example. A concern for ward freedom does not necessarily imply leaving these sentient nonpersons alone, without guardians. Additionally, our existing institutions of guardianship allow for different levels of intervention depending on the strength of a human ward's interest in liberty. This is because a nonperson's interest in liberty is not static: for a child it would likely increase over time whereas it might wane for an adult with dementia. Hence why we retain guardianships for teenagers despite the fact that they clearly have much stronger interests in liberty than infants do.

Rather than non-interference, a sensible approach would be to favour a pro tanto duty to empower sentient nonpersons (and persons, for that matter) to make choices for themselves whenever possible. This duty provides a good standard for ideal guardianship and, importantly, is compatible with a nonperson's status as a ward. With the example of Lollybomb, even though my brother restricts her movements to his apartment, he should empower her whenever possible by increasing Lollybomb's ability to choose for herself from a wide range of options on where she sleeps, when she eats, and what she plays with, nevertheless. Analogously, a parent can take their child on holiday with them but should allow the child to determine some of the activities they do during that time. Wards can have interests in liberty, that is true, and respecting those interests is fully compatible with exercising guardianship powers over their choices.

5(iii) CAN GUARDIANSHIP BE PROFITABLE?

If we combine my conclusions in 5(i) and 5(ii), a ward's interest in liberty restricts the number of cases where their guardian can permissibly interfere in their choices for human benefit. However, it does not rule out all uses of wards: we allow parents to use their children for companionship even though this means restricting some of the child's freedom, and the same applies with several domesticated species of animals. Moreover, some uses of a ward do not even harm their interests in liberty, like filming wild species for a nature documentary. So long as a ward's interests are respected, using them for the benefit of others is permissible.

[50] This greater interest can include the same individual's freedom in the future. Schmidt (2017, 2022) makes this point by arguing that interference in an individual's freedom can be justified by a concern for their own future freedom. For example, we can permissibly restrict a teenager's freedom to drop out of school or smoke cigarettes in order to protect the liberty of their future selves.

What, then, about financial interests in profiting from a ward: might these be permissible as well? Again, I see no reason to claim that using a ward for profit *necessarily* harms them. Suppose a sanctuary is set up for alpacas, and those running the sanctuary make a profit by selling the alpaca manure. Alpacas produce manure naturally, and have no clear interests that block humans from taking their manure and selling it to garden centres.[51] Economists might even consider it wasteful not to do so, given that this would be Pareto-improving. In other words, human-animal interactions can be profitable for humans.

Despite this, cases like these are strictly prohibited under the standard abolitionist account. As claimed by Francione (2004, 2010), once we start profiting from an animal we lose the potential to see them as anything else but a mere means to human ends. This view – which we can refer to as the 'Domino Theory' – is that any use of an animal for profit results in a totalising instrumental conception of our relationship to them (Mack 1989). Once we attach a price to an animal, this hypothesis goes, we impose an instrumental value on that animal which crowds out our ability to perceive that creature as anything but a commodity to be exploited on the market. This would undermine our requirement to give equal weight to animal interests, resulting in unjustifiable harm. Phrased in the language of institutional signalling, the standard abolitionists might claim that incorporating an element of profit-making into our relationship with animals fails to signal their status as sentient individuals who are more than mere means to human ends. Animals have a value separate to whatever economic benefit they provide to humans, and our institutions should signal this by prohibiting any use of them for profit, they might argue. Given the historical exploitation of animals for profit, they might even claim that our only hope in achieving interspecies justice would be to ban all forms of commodification within human-animal interactions.[52]

[51] We might plausibly add a condition that the alpacas should benefit from the profits too (see footnote 52 for further detail).

[52] To clarify, there are two adjacent debates regarding injustice and profitable human-animal interactions. The first, which I address in this section, is whether profitable human-animal interaction necessarily treats animals as means for ends to which they do not consent. In this thesis I focus on this particular concern because it is central to the standard abolitionist critique of profitable human-animal relations.

However, this debate should not be confused with a second one on whether humans can permissibly appropriate an animal's labour even if profitable guardianship does not entail treating animals as mere means. This latter debate has been heavily inspired by Marxist accounts of exploitation, and can be resolved by turning to Marx's own claims within *Critique of the Gotha Programme* ([1875] 1996). As White (1996) correctly argues, Marx rejected the claims of fellow German socialist Lassalle that each worker is entitled to the exact value of their labour contribution because this ignores societal differences in need: someone with severe physical disability would be unable to survive without disproportionately benefitting off the labour of others. For Marx, what makes capitalism unjust is that the capitalists do not contribute to the production process, yet undemocratically determine how the profits are distributed (and often to suit their own interests). Hence Marx's endorsement of the principle "from each according to his abilities, to each according to his needs!" (Marx [1875] 1996, 215): in other words, so long as someone has fairly contributed to a joint endeavour then the total profits should be distributed democratically according to everyone's interests. The same, I would argue, should apply for profitable human-animal interaction: animal workers are entitled to the profits from any human-animal collaboration according to the strength of their interests, and not necessarily according to their labour contribution.

Is this objection plausible? A number of authors within the animal ethics literature have already voiced doubt towards this 'Domino Theory' (for example, Cochrane 2009b; Donaldson and Kymlicka 2011; Korsgaard 2018; Nussbaum 2023). As argued by Mack (1989), humans are capable of appreciating the non-monetarised aspects of their activities and relations even when they put a price on those aspects: money does not exert a totalising effect on our ability to evaluate the importance of things. Using another sentient being for profit does not automatically blind us to the fact that this individual retains a value separate to their economic uses; treating someone as a means is not the same as treating them as a *mere* means where we ignore their value as an end in themselves. Thus, putting a price on alpaca manure does not inevitably signal that alpacas are nothing but manure-making entities.

Moreover, we should distinguish between the commodification of an animal and the commodification of what that animal creates. By selling the alpaca manure I am commodifying the faeces of the alpaca, which is not the same as putting a price on alpaca themselves. Analogously, raising my bid on a child's drawing at a charity auction is not the same thing as me putting a price on the child themselves. Profiting from what someone produces is simply not the same thing as commodifying that individual as a whole – especially given that wards cannot be bought or sold under guardianship (see 3(iv)). Economically benefiting from a ward, therefore, is not an inevitable obstacle to achieving justice for them. Hence why we allow film companies to profit from the performance of child actors, for example, despite children being protected under guardianship: the mere existence of guardianship does not rule out profitability.

That said, we might have special reason to worry about the profitability of animal guardianship compared to the guardianship of other sentient nonpersons like children. Firstly, while children will mature into persons who can subsequently hold their guardians accountable for past wrongs, animals do not. Secondly, it is generally harder to correctly identify an animal's interests compared to those of a human given that we cannot talk to them. Thirdly, the historical use of animals has warped our perception of what is really in their interests, whereby a 'happy' cow has been defined as one who produces lots of milk that humans drink and not one who can develop emotional bonds with her calves. Because of this, we should exercise a great deal of caution with cases of profitable guardianship in practice. As put by Donaldson and Kymlicka (2011), profit-motives generate responsibilities for carefulness and oversight to protect the vulnerable from exploitation, and this is especially relevant in the case of animals who can never fully consent to how we treat them. Deferring judgement to impartial judges who stand to gain nothing might be a wise precaution, therefore.

As such, if institutions of profitable guardianship are exercised then perhaps we should insist on at least two strict conditions: (i) there exists a robust legal framework to oversee guardianship; and (ii) there is a robust culture of guardianship among the relevant persons.[53] These conditions ensure that

[53] We might insist on a third condition that responsibility for managing the ward's daily needs and for managing the financial assets and profits the ward creates should be separate roles to avoid conflicts of interest. Conflicts of interest are to be avoided because experience suggestions that our ability to determine another's interests will be

guardianships are embedded within a system of robust formal and informal institutions that protect wards from mistreatment and hold all persons accountable for their behaviour. Of course, it may turn out that these two conditions are so strict that, in practice, no existing form of profitable guardianship should be exercised. I am open to such a conclusion. Determining this, however, is an empirical matter beyond the remit of this thesis. Instead, I restrict myself to the claim that, in theory, profitable guardianship of animals is not *necessarily* impermissible.

To summarise this chapter, I have argued that guardians can permissibly interfere in the lives of their wards if doing so protects a stronger interest at stake. Despite animals having non-specific interests in liberty, humans can still use animal wards to advance their own interests. Merely profiting from a ward does not entail treating them as a mere means, so profitable guardianships are not necessarily unjust either.

affected when we have a stake in how those interests are determined. If so, then this would block the guardians themselves from profiting off their wards, although it does not prevent other humans from profiting off them through mutually beneficial human-animal collaborations.

CHAPTER 6: RESOLVING THE ABOLITIONIST DEBATE

I begin this last chapter by summarising my arguments, before exploring the broader differences these create with Cochrane's non-abolitionist account, then finally returning to consider the abolitionist debate as a whole. I conclude my thesis by arguing that the guardianship account straddles the existing divide, suggesting that the literature should focus on 'animal justice' rather than the strict topic of 'animal liberation'.

6(i) SUMMARY OF THESIS ARGUMENT

In Chapter 1, I identified the central debate within the animal ethics literature that my thesis addresses: specifically, the disagreement between abolitionists and non-abolitionists on whether humans can permissibly own animals. The standard abolitionist account claims that the property status of animals is necessarily unjust because animals must be freed from control, use, and exploitation for human purposes. Conversely, non-abolitionists like Cochrane argue that animal rights are compatible with maintaining human ownership of them.

Chapter 2 then challenged this standard abolitionist account. Not only is its vision of post-abolition justice rooted in the myth of a natural world free from potential human interference, but it advances a false equivalence between property status and being used as a 'thing'. This critique led me to outline Cochrane's interest-based theory of sentient rights, whereby a sentient individual has a moral right when they have a sufficiently strong interest that imposes a duty on others. For Cochrane, sentience determines moral status because sentient individuals have a stake in how their own lives go, and for this reason they also have interests. Using this theory, Cochrane advances a non-abolitionist argument that an animal's status as property does not necessarily undermine their moral rights. If so, then animal justice would not require us to liberate animals from human ownership, use, and control.

Responding to this claim, Chapter 3 rejected Cochrane's non-abolitionist defence by advancing an institutional signalling objection to animal ownership. I argued that our selection of legal and political institutions should account for the type of ethical duties they signal through the relationships and interactions they create. Under Cochrane's interest-based theory, there is an important distinction between sentient and non-sentient beings because we owe duties directly to the former but not the latter. Ownership, I claim, muddles this important distinction because property status does not necessarily entail that I owe anything to my property itself. Instead, I argued that we should favour an institution of

guardianship for animals because it correctly captures the inalienable duties of justice and care we owe to sentient beings.

Chapter 4 then built on these claims by outlining an account of guardianship that is compatible with Cochrane's interest-based theory of rights and sentientist cosmopolitanism. Guardianship, I argued, was justified according to a sentient nonperson's status as a moral patient, and not their supposed incapacity to make good decisions for themselves. Consequently, not only should human nonpersons like children, SIDs, and those with dementia be eligible for wardship, but all animals – domesticated or undomesticated – should be included. To account for this, the responsibilities of animal guardians can be split between different agents, some of whom can be organisations composed of relevant zoological experts and legal professionals.

In Chapter 5, I then distinguished guardianship from the standard abolitionist account by defending the powers of a guardian to interfere in the livelihood of their ward. Not only are there cases of permissible interference, but some interventions are mandatory. Even if animal wards have non-specific interests in liberty, these interests can easily be included within the set of interests that guardians should account for – as already occurs with human wards. So long as there are robust formal and informal protections against mistreatment, profitable guardianship is also permissible in theory.

6(ii) USE, OWNERSHIP, AND EXPLOITATION REVISITED

With this in mind, what differences can we draw between my guardianship account and that of Cochrane's? Most of my arguments are rooted in his interest-based theory and sentientist cosmopolitanism, yet I instead defend an abolitionist position. What practical changes does this alternative conclusion entail? A good starting place would be with Cochrane's (2017, 491) seminal claim that animal rights are compatible with humans "using, owning, and exploiting animals".

Let's start with ownership, given that I addressed this first in Chapter 3. As argued in that chapter, my abolitionist account rejects the legal status of animals as property, which means ruling out Cochrane's defence of animal ownership. While humans can still permissibly control and transfer animals, these actions are only permissible when exercised under guardianship. Because guardianship is a privilege and not a right, it is not permissible for a guardian to sell their ward whenever it pleases them. Instead, ward transfers must respect the interests of the ward themselves, and former guardians may be liable to pay compensation when their wards are transferred to another agent.

Regarding 'use', in Chapter 5 I argued that using animals can be compatible with respecting their interests and moral rights. Of course, guardianships clearly rule out some institutional uses of animals like scientific testing that causes pain or death, but these are already impermissible under Cochrane's theory. Some uses of animals either hardly affect their interests, like documentary crews studying animal behaviour in the wild, and some might even benefit the animals themselves, like

adopting a rescued cat as a companion (à la Lollybomb). Consequently, it is still permissible to use animals for human benefits, albeit within a stricter system of guardianship.

'Exploitation', however, is harder to assess. As Cochrane (2017) himself notes, there is ambiguity over what the term 'exploitation' actually means. Some animal ethicists use the term with strongly negative connotations to mean unjust practices of causing suffering or other forms of harm – practices which are already prohibited by the interest-based theory. Instead, Cochrane favours a Marxist sense of exploitation as 'unpaid labour', although this understanding merges into the Marxist-inspired debate on appropriating animal labour. This debate should not be conflated with the claims made by the standard abolitionists: specifically their claim that no form of human-animal interaction should be profitable for humans (see footnote 52). Because I limited my arguments to addressing the abolitionist debate, I will not focus on the term 'exploit' here. Instead, I shall focus on a different idea that captures my argument from Chapter 5: 'taking advantage of', or more simply 'profiting from', animals.

With this in mind, in Chapter 5 I argued that humans could potentially profit from animals under guardianship. Profitable guardianship is not *necessarily* unjust, so long as the relevant institutions are embedded within a system of robust formal and informal protections against the mistreatment of wards. This condition points to the main difference between my account and that of Cochrane: it is permissible to use, control, and profit from animals but this must be done within a background of effective institutions of guardianship and a culture of responsibility.

Across his works, Cochrane (2009a, 2012, 2016) identifies several practices involving animals that could continue. Of course, he prohibits all practices and institutions that necessarily involve harming animal interests in continued life, freedom from pain, and so on. This includes the vast majority of animal experimentation, the meat industry, pet keeping without guaranteeing the wellbeing of animals and their offspring, zoos and circuses as we know them, routine deforestation and destruction of animal habitats, therapeutic hunting, and cultural practices like bullfighting, whaling, or religious slaughter. However, he still permits practices such as the use of guide or therapy dogs, the production of wool and manure, and exhibiting animals for human curiosity. For Cochrane, we can use animals for food, entertainment, science, sport, profit, and our cultural traditions so long as we do not violate their rights: such practices are not impermissible in themselves. At the least, my revision adds a further strict condition that such practices could only be permissible within an effective *system* of guardianship, formed of two components.

The first is that of robust *formal* institutions of guardianship. As outlined in 5(i), guardianship requires a supervisory body to monitor guardians and protect against irresponsible behaviour, with power to intervene, penalise, and even re-assign wards to alternative guardians. Assuming that political institutions are responsible for creating and managing these bodies, the state must support the provision of shelters for abused, neglected, or guardian-less animals, perhaps similar to how orphanages operate in many countries. Intervention in guardian-ward relationships must be according to clear and appropriate rules, and all individuals within the society should be able to report mistreatment when

identified. Cochrane (2012) goes some way towards these measures with a number of suggestions: for example a licensing and insurance system for companion animals. However, it needs to be explicit that the distribution of these licenses should be determined by the interests of the animal wards themselves. Respecting the interests of animals is central to what makes human interactions with them permissible, and our political and legal institutions must be structured around this obligation.

The second component of the system of guardianship is that of robust *informal* institutions, by which I mean a culture embodying the virtues of justice, compassion, and responsibility to all animal wards. Just institutions require just individuals to manage them; the ethical duty to respect all sentient beings must percolate across cultural, economic, and personal spheres of human society. Not only should private individuals and organisations hold guardians responsible when mistreatment is detected, but they must be receptive to transforming human practices and institutions in light of what we, as moral agents, owe to our fellow animals. I would argue this includes shaping one's culture in favour of sentientist values that respect animal interests, a notable addition to Cochrane's primary focus on transforming political institutions to achieve animal justice. This culture would be an essential element in establishing justice for all sentient beings by re-framing our technological, social, and political development as necessarily implying responsibilities towards fellow sentient beings on this earth. All power – not just the power exercised within political institutions – should respect the interests of every sentient being affected by it, whether human or animal.

6(iii) ANIMAL LIBERATION OR ANIMAL JUSTICE?

To conclude this thesis, I will return one final time to consider the abolitionist debate in which this work is situated. As noted in Chapter 1, the debate is often framed around the concept of animal *liberation*: according to the standard abolitionist account, animals should not be property because using and profiting from them undermines their liberty to live free from human interference. Through this thesis, I hope to have demonstrated that an alternative abolitionist position is feasible. Despite sharing the abolitionist's conclusion, my guardianship account recognises that some uses of animals are morally permissible, nevertheless.

Because of this, one's response to the abolitionist debate greatly depends on what type of institutions and practices one intends to *abolish*. If we strictly focus on the institution of owning animals and nothing more, than guardianship for animals favours their liberation. But if we expand our focus to the practices of using, controlling, and profiting from animals – as the standard abolitionist account does – then guardianship does not favour their liberation, it seems. Nor, I should add, would it favour the liberation of human nonpersons either. Some guardianship practices are compatible with respecting the interests of wards. Thus, guardianship for animals straddles the traditional divide between standard abolitionists and non-abolitionists like Cochrane.

Where does this leave us? I will end my thesis with the suggestion that the debate's strict focus on *liberation* is, it turns out, not that helpful after all. The topic of 'animal liberation' – arguably the central cause dominating both campaigners and academics in animal ethics since Singer's 1975 seminal book with the same title – requires a clear account of what animals need to be liberated *from* exactly. As demonstrated by this thesis, one's support for animal liberation varies if we focus on the institutions of property or those of use and profit. As such, 'liberation' is not a helpful goal to capture what unites those who value animals and wish to respect their interests equally.

In conclusion, I suggest that the animal ethics literature – and perhaps animal rights campaigners as well – should move away from the narrow topic of animal *liberation*. In contrast, focus should be expanded to the broader and more significant matter of animal *justice*. This includes the abolitionist debate over animal ownership, of course, but also covers the positive duties we owe to animals and our obligations to transform institutions for their betterment. Justice for animals requires more than liberating them from the legal status of property: we also owe them duties of care and consideration in a post-abolition world. Fortunately for us – and for animals like Lollybomb too – it appears that much of the literature has already moved in this direction (Cochrane, Garner, and O'Sullivan 2018). Through a guardianship account for animals, it is my hope and intention to cement this shift so that animal justice stands as the defining focus for the contemporary animal ethics literature.

APPENDIX

This Appendix offers a diagram to complement the discussion in Chapter 5 regarding potential interference in the actions of a ward. In this diagram:

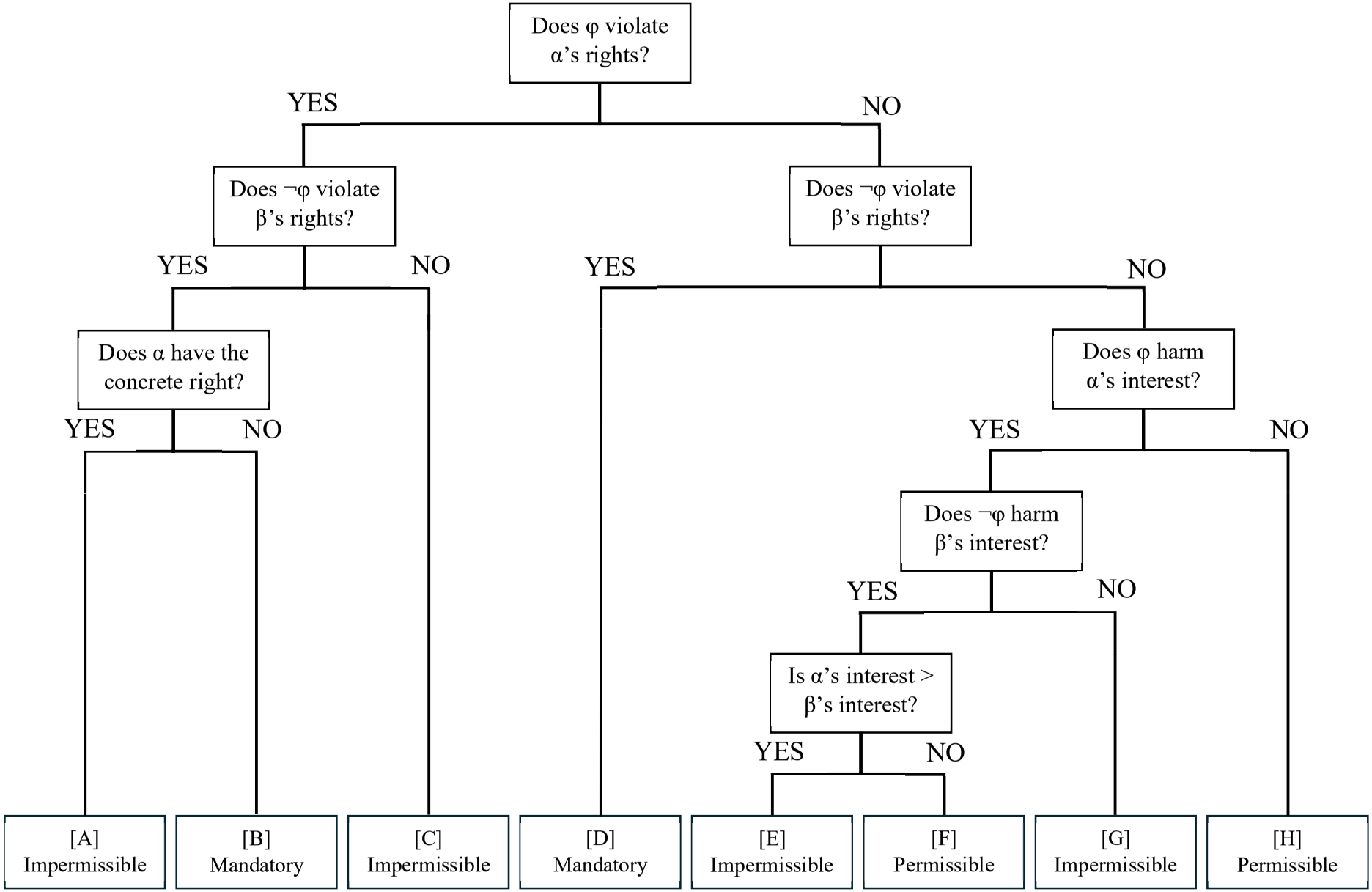
- 'φ' is a potential interference
- '¬φ' is the negation of that interference, i.e. not interfering in this particular way
- 'α' is the ward
- 'β' is any individual other than the ward: either the guardian themselves or a third party.

For the sake of simplicity, we can abstract from all interests beyond the strongest interest held by α and β respectively. These can include any sort of interest, not just those that ground prima facie rights. We can also ignore cases where the interests of α and β are equal, and the further questions that can be asked regarding Pareto-improving interferences where neither α nor β's interests are harmed [H]. In cases like these, φ can be welfare-enhancing for at least one party.

Any interference, I assume, is either permissible, impermissible, or mandatory. Whenever an individual's moral rights are affected, φ will either be mandatory [B, D] or impermissible [A, C]. This captures Raz's (1986) claim that prima facie rights exist when an individual's interest is sufficiently strong as to hold someone else under a duty to protect that interest. When moral rights are not affected, however, φ can only be at most permissible [F, H] because the interests affected are not strong enough to ground duties in others to observe them.

I assume that whenever α has the stronger claim against interference, then φ is impermissible [A, C, E, G]. This reflects the guardian's duty to protect the ward from harm due to the ward's status as a moral patient who is unable to do so themselves. When α does not have the stronger claim, then φ is mandatory if β's claim is that their rights will be violated under ¬φ [B, D]. When the rights of both α and β are affected [A, B], then the question becomes which right protects the stronger interest. This is because concrete rights have peremptory force in the sense that they indicate which actions should be performed.

Cases where φ is permissible but not mandatory are either those where niether α nor β's interests are harmed [H] or those where the harm to β's interests may be greater than the harm to α's interests [F]. With the former, these include Pareto-improving interferences or those that merely prevent harm to β. With the latter, α's guardian is responsible for deciding whether the difference in strength between α's interest and β's interest is sufficient to justify φ. Here, I assume a deontological approach in order to be ecumenical; a consequentialist theory, in contrast, could mandate the guardian to interfere in these cases in order to maximise the good (i.e. the satisfaction of interests).


Does φ violate α's rights?
YES
NO
Does ¬φ violate β's rights?
Does ¬φ violate β's rights?
YES
NO
YES
NO
Does α have the concrete right?
Does φ harm α's interest?
YES
NO
YES
NO
Does ¬φ harm β's interest?
YES
NO
Is α's interest > β's interest?
YES
NO
[A] Impermissible
[B] Mandatory
[C] Impermissible
[D] Mandatory
[E] Impermissible
[F] Permissible
[G] Impermissible
[H] Permissible

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