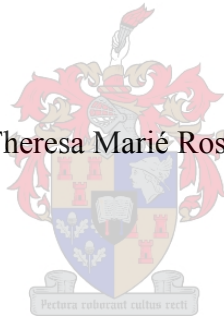# Identity, personhood and power: a critical analysis of the principle of respect for autonomy and the idea of informed consent, and their implementation in an androgynous and multicultural society

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March 2012

DECLARATION

By submitting this dissertation electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Signature: Date: March 2012

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Abstract

Autonomy and informed consent are two interrelated concepts given much prominence in contemporary biomedical discourse. The word *autonomy*, from the Greek *autos* (self) and *nomos* (rule), originally referred to the self-governance of independent Hellenic states, but was extended to individuals during the time of the Enlightenment, most notably through the work of Immanuel Kant and John Stuart Mill. In healthcare, the autonomy model is grounded in the idea of the dignity of persons and the claim people have on each other to privacy, self-direction, the establishment of their own values and life plans based on information and reasoning, and the freedom to act on the results of their contemplation. Autonomy thus finds expression in the ethical and legal requirement of informed consent. Feminists and multiculturalists have however argued that since autonomy rests on the Enlightenment ideals of rationality, objectivity and independence, unconstrained by emotional and spiritual qualities, it serves to isolate the individual and thus fails to rectify the dehumanisation and depersonalisation of modern scientific medical practice. It only serves to exacerbate the problematic power-differential between doctor and patient. Medicine is a unique profession since it operates in a space where religion, morality, metaphysics, science and culture come together. It is a privileged space because health care providers assume responsibility for the care of their patients outside the usual moral space defined by equality and autonomy. Patients necessarily relinquish some of their autonomy and power to experts and autonomy thus cannot account for the moral calling that epitomizes and defines medicine. Recognition of the dependence of patients need not be viewed negatively as a lack of autonomy or incompetence, but could rather reinforce the understanding of our shared human vulnerability and that we are all ultimately patients. There is however no need to abandon the concept of autonomy altogether. A world without autonomy is unconceivable. When we recognise how the concept functions in the modern world as a social construct, we can harness its positive properties to create a new form of identity. We can utilise the possibility of self-stylization embedded in autonomy to fashion ourselves into responsible moral agents that are responsive not only to ourselves, but also to others, whether in our own species or in that of another. Responsible agency depends on mature deliberators that are mindful of the necessary diversity of the moral life and the complex nature of the

moral subject. I thus argue that the development of modern individualism should not be rejected altogether, since we cannot return to some pre-modern sense of community, or transcend it altogether in some postmodern deconstruction of the self. We also do not need to search for a different word to supplant the concept of autonomy in moral life. What we rather need is a different attitude of being in the world; an attitude that strives for holism, not only of the self, but also of the moral community. We can only be whole if we acknowledge and embrace our interdependence as social and moral beings, as *Homo moralis*.

Opsomming

Outonomie en ingeligte toestemming is twee nou verwante konsepte wat beide prominensie in moderne bioetiese diskoers verwerf het. Die woord *outonomie*, van die Grieks *autos* (self) en *nomos* (reël), het oorspronklik verwys na die selfbestuur van onafhanklike Griekse state, maar is in die tyd van die Verligting uitgebrei om ook na individue te verwys, grotendeels deur die werk van Immanuel Kant en John Stuart Mill. In medisyne is die outonomie model gegrond op die idee van die waardigheid van die persoon en die beroep wat mense op mekaar het tot privaatheid, selfbepaling, die daarstelling van hulle eie waardesisteem en lewensplan, gebasseer op inligting en redenasie, en die vryheid om op die uitkoms van sulke redenasie te reageer. Outonomie word dus vergestalt in die etiese en wetlike bepaling van ingeligte toestemming. Feministe en multikulturele denkers beweer egter dat, siende outonomie gebasseer is op die Verligting ideale van rasionaliteit, objektiwiteit en onafhanklikheid, sonder die nodige begrensing deur emosionele en spirituele kwaliteite, dit die individu noodsaaklik isoleer en dus nie die dehumanisering en depersonalisering van moderne wetenskaplike mediese praktyk teenwerk nie. As sulks, vererger dit dus die problematiese magsverskil tussen die dokter en pasiënt. Die beroep van medisyne is 'n unieke professie aangesien dit werksaam is in die sfeer waar geloof, moraliteit, metafisika, wetenskap en kultuur bymekaar kom. Dit is 'n bevoorregde spasie aangesien gesondheidswerkers verantwoordelikheid vir die sorg van hulle pasiënte aanvaar buite die gewone morele spasie wat deur gelykheid en outonomie gedefinieer word. Pasiënte moet noodgedwonge van hulle outonomie en mag aan deskundiges afstaan en outonomie kan dus nie genoegsaam die morele roeping wat medisyne saamvat en definieer, vasvang nie. Bewustheid van die afhanklikheid van pasiënte hoef egter nie in 'n negatiewe lig, as gebrek aan outonomie of onbevoegtheid, beskou te word nie, maar moet eerder die begrip van ons gedeelde menslike kwesbaarheid en die wete dat ons almal uiteindelik pasiënte is, versterk. Dit is verder nie nodig om die konsep van outonomie heeltemal te verwerp nie. 'n Wêreld sonder outonomie is ondenkbaar. Wanneer ons bewus word van hoe die konsep in die moderne wêreld as 'n sosiale konstruk funksioneer, kan ons die positiewe aspekte daarvan inspan om 'n nuwe identiteit te bewerkstellig. Ons kan die moontlikheid van self-stilering, ingesluit in outonomie, gebruik om onsself in verantwoordelike morele

agente te omskep sodat ons nie slegs teenoor onsself verantwoordelik is nie, maar ook teenoor ander, hetsy in ons eie spesie of in 'n ander. Verantwoordelike agentskap is afhanklik van volwasse denkers wat gedagtig is aan die noodsaaklike diversiteit van die morele lewe en die komplekse aard van die morele subjek. Ek voer dus aan dat die ontwikkeling van moderne individualisme nie volstrek verwerp moet word nie, siende dat ons nie na 'n tipe premoderne vorm van gemeenskap kan terugkeer, of dit oortref deur 'n postmoderne dekonstruksie van die self nie. Ons het verder ook nie 'n nuwe woord nodig om die konsep van outonomie in die morele lewe mee te vervang nie. Ons het eerder 'n ander instelling van ons menswees in die wêreld nodig; 'n instelling wat streef na volkomendheid, nie net van onsself nie, maar ook van die morele gemeenskap. Ons kan slegs volkome wees wanneer ons ons interafhanklikheid as sosiale en morele entiteite, as *Homo moralis*, erken en aangryp.

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Introduction

"Anyone who has struggled with a philosophical problem knows what kind of enquiry this is. In philosophy typically we start off with a question, which we know to be badly formed at the outset. We hope that in struggling with it, we shall find that its terms are transformed, so that in the end we will answer a question which we couldn't properly conceive at the beginning. We are striving for conceptual innovation which will allow us to illuminate some matter, say an area of human experience, which would otherwise remain dark and confused" (Taylor, 1976:297).

Problem and focus

Autonomy and informed consent are two interrelated concepts given much prominence in contemporary biomedical discourse. The word *autonomy*, from the Greek *autos* (self) and *nomos* (rule), originally referred to the self-governance of independent Hellenic states, but was extended to individuals during the time of the Enlightenment, most notably through the work of Immanuel Kant and John Stuart Mill (Beauchamp & Childress, 1994:120). Kant, the main modern exponent of deontology, held that autonomy follows from the recognition that all persons have unconditional worth and should thus never be treated as merely a means to another's ends (Norman, 1998:76). Mill, the champion of utilitarianism, argued that respect for autonomy would maximise human welfare since mature people generally know what is in their best interests. He further argued that while it is inevitable that people will occasionally err, this is not sufficient reason to overrule their autonomous decisions, and people should thus be free to develop according to their personal convictions and pursue their own ends, provided they do not impede the similar pursuit of others (Schneewind, 1967:320). The concept of respect for individual autonomy thus arose out of two diverse – and often diametrically opposed – Western traditions and is today still far from a univocal concept. Virtually all theories of autonomy however agree that the conditions of *liberty* (independence from controlling influence) and *agency* (capacity for intentional action) are essential (Beauchamp & Childress, 1994:121).

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In healthcare, the autonomy model is grounded in the idea of the dignity of persons and the claim people have on each other to privacy, self-direction, the establishment of their own values and life plans based on information and reasoning, and the freedom to act on the results of their contemplation (Pellegrino & Thomasma, 1988:12). Robert Young (2001:441) describes an autonomous or self-determining person as "someone who chooses or devises a plan for her life, rather than having one imposed on her by others or allowing circumstances to dictate one, and proceeds to live in accordance with that plan." To respect an autonomous agent therefore means, at minimum, to acknowledge a person's right to hold views, to make choices and to act, based on personal values and beliefs (Beauchamp & Childress, 1994:125). The recognition of the principle of patient autonomy signifies the reaction against paternalism as an attempt to safeguard the freedom and dignity of human beings as persons, as people who have goals of their own. This translates into being informed of one's diagnosis, having access to one's medical records, and having the final say in one's treatment. The basic paragon of respect for autonomy in the health care context is therefore express and informed consent. This tenet, characterised by *autonomous authorisation* by an individual for a medical intervention or for involvement in research, though based on a moral foundation, is largely the creation of various court judgements pertaining to the health care provided in specific cases and the establishment of regulatory standards in medical experimentation (Young, 2001:441). Both autonomy and informed consent are thus fundamentally Western constructs that bio-ethicists have attempted to give universal application.

The universalization of the principle of respect for autonomy is however problematic. Environmentalists, feminists and multiculturalists have been particularly vocal in their criticism with the latter two launching the most comprehensive attacks. They raise, among others, the following concerns. Firstly, since the principle rests on the Enlightenment ideals of rationality, objectivity and independence, unconstrained by emotional and spiritual qualities, it serves to isolate the individual. This is particularly problematic in various African societies where more emphasis is placed on the individual's interconnectedness with the group and the importance of the integrity of the family and tribe. Secondly, because modernity made man the proprietor of his own

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person, in control of his own destiny, any principle adhering to the image of man as an independent "philosopher's abstraction" will fail to rectify the dehumanisation and depersonalisation of modern scientific medical practice (Van Zyl, 2000:37). Feminist thinkers have reacted to the male bias in the processes of modernity and extensively criticised the failure of modern ethical approaches to act as correctives for modernity's ensuing dehumanisation. Many have argued for the introduction of a more 'feminine' ethics of care, as described by Carol Gilligan (Crosthwaite, 2001:36).

Furthermore, the emphasis on rational decision-making serves to exacerbate the problematic power-differential between doctor and patient. A focus on and analysis of power is integral to any enquiry involving previously disadvantaged groups, specifically in the South African context. Van Zyl (1997:190) advances a corrective for this unilateral power relation by firstly acknowledging that the autonomy of the typical patient is necessarily reduced when compared with that of the doctor, as the patient lacks the medical knowledge and is suffering from the debilitating effects of her illness. She then argues that in medicine, the patient's dependency should not be viewed negatively as a lack of autonomy or incompetence, but rather as the result of our shared human vulnerability to illness, disease and injury. The compassionate physician should realise that the patient's suffering is undeserved, that the sufferer's losses are significant, and that similar misfortune might befall him/her too (Van Zyl, 1997:193). Godfrey Tangwa (2000:40) of Cameroon similarly argues in his analysis *The Traditional Perception of a Person* that Western ethical theory, by focusing on the *object* of morality – the patient – at neglect of the *subject* – the agent – shifts critical attention from themselves and their actions onto their "victims". Promoters of virtue-ethics have thus called for the rejection of 'objective' ethics based on reason in favour of a 'subjective' ethics based on personal traits and character.

The practice of informed consent has also been disparaged for being insensitive to different cultural milieus and individual needs within those milieus. Roux (2001:8) argues that the standard method of informed consent for HIV testing is inadequate in an African setting because it fails to acknowledge and incorporate the African role of the

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family and authority figures in decision-making. Furthermore, being informed of the relevant facts may not be sufficient for patients to make decisions that are in their best interests and correspond to their moral views and religious beliefs. The physician who relies solely on the consent of a patient would often fail to act according to the values of the patient, since he is unaware of the extent of that patient's dependency and vulnerability to fear, trauma, or ignorance. This is particularly true in a multi-cultural society like South Africa.

Autonomy and informed consent have thus especially been slated for being too individualistic and for marginalizing the importance of communities and traditions. But does the allegiance of autonomy to the ethos of Western liberal individualism preclude it from being utilised by non-Western societies? Segun Gbadegesin (2001:26) states: "[i]t is not that the concept of autonomy is totally alien to non-Western cultures; only that while the West emphasizes individual autonomy, the non-Western value-system is more likely to value cultural, communal or family autonomy." Chinese society, for instance, puts public interest before individual rights and highlights the individual's responsibility to the group. It is thus likely to suppress the concept of individual rights and autonomy, and therefore a 'beneficence-oriented' rather than 'autonomy-oriented' approach may be observed (Tsai, 1999:320).

The fundamental question that thus remains is whether the origin of autonomy and informed consent in Western mainstream ethics – or rather 'malestream' ethics, a term coined by O'Brien in her influential book *The Politics of Reproduction* (Sherwin, 1992:246) – precludes it from being adopted by non-Western cultures and male and female feminist thinkers.

Goal, theoretical reasoning and hypothesis

The overarching problem that I want to explore is whether the concept of autonomy, as developed and adapted from its Western philosophical origin, finds universal application and augments the ethical discourse in a gender-neutral and multicultural context. I

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purposefully use the term 'gender-neutral' since I want to avoid lapsing into a feminist mindset in opposition to a 'male-centred' approach. Even though I partially rely on a feminist critique of autonomy, I aim to explore the concept in a broader context than feminism and hope to find application for it in a context outside gender stereotypes. To this end I will explore the historic development and context of the word 'autonomy' and then mount a critique from a feminist and non-Western perspective. My hypothesis is that this concept is indeed universalisable and does add value to Western and non-Western ethical discourse.

I will engage the following specific questions:

1. What is the 'origin' of the word autonomy? With this question I wish to explore the different contexts in which the word 'autonomy' originated and developed. This is a general philosophical inquiry, augmented by a limited application of the methodology of archaeology introduced by Michel Foucault (2002:35-43). I incorporate an archaeological element since it conceives of history as a way of understanding the processes that have led to what we are today.

2. What is the historical character of the concept of autonomy? Who are the people who introduced the term in ethical discourse? What were their socio-cultural backgrounds and positions in society? In addressing this question I will once again rely to some extent on the methodology of genealogy used by Michel Foucault, in order to explore to what extent autonomy can be expressed as a "universal scientific truth about human nature" and to what degree it can be understood as merely the outcome of contingent historical forces, and hence the expression of ethical and political commitments of a particular society (Foucault, 2003b:53).

3. What are the underlying power differentials in modern-day ethical discourse and how are they maintained? For this analysis, I will refer to the work done in the area of feminist ethics, concentrating on gender bias in ethical theorizing and exploring to what extent bioethics acts as an instrument of gender oppression that helps to legitimate existing patterns of dominance and perhaps even introduces

dimensions of its own. I will specifically analyse the history relating to the establishment of informed consent as ethical and legal requirement. I will once again be influenced by Foucault in my analysis of the interplay between discourse, knowledge and power. Here I will specifically explore to what extent the concept of autonomy and the practice of informed consent can be understood as a technique to govern the conduct of individuals and populations.

4. I will then turn to the question of whether cultural diversity can be acknowledged without lapsing into empty relativism. I will analyse fundamental philosophical concepts found in literature from sub-Saharan Africa i.e. the perception of personhood. Although I do not subscribe to the idea of a peculiar African form or content of thought, I agree with Tangwa (2000:41) that "any identifiable group of people, sharing a common culture and world view, necessarily shares certain ideas, convictions, attitudes, and practices that can be attributed to it as a group, without any implication of exceptionlessness at the level of the individual." I will analyse the work of Thaddeus Metz on African moral theory and its implications for the concept of autonomy and informed consent.

5. The final problematic question that I will attempt to shed some light on is whether common foundational values that transcend cultures can be identified on a meta-cultural level, and if so, whether the methods of transculturalism and value reciprocity are practicable. On the point of value reciprocity, I will pay particular attention to the work of Timothy Reiss (2002:2) on *cultural instruments*: "forms of analysis and practice, normative ways of thinking and doing, apparently central to Western culture which in the course of a particular history then came to offer means of understanding and controlling other different cultures." The purpose will be to enquire to what extent these *instruments* have been applied outside Western culture to and by different cultures and places and to what ends and effects.

Methodology

This study is a purely philosophical study. The methodology entails extensive review of the literature, coupled with independent reflection on the material and stated problems.

The research topic that is addressed in this dissertation is the discourse around autonomy as it is found in Enlightenment ethical documents. The research question that is specifically addressed is the way in which the discourse is produced and ordered in these texts.

A discourse is "a continuous stretch of language containing more than one sentence: narratives, arguments, speeches" (Blackburn, 1996:107). Critical discourse analysis is primarily concerned with the social and linguistic basis that produce discourse with specific focus on the social and political factors – such as class, race or gender – that ultimately determine the form of discourse.

Contrary to first impressions, this work is not so much situated in the tradition of language philosophy, concerned with syntax, semantics and pragmatics, but rather in the tradition of discourse analysis. This distinction is important both to delineate what will not be addressed, as well as what will be addressed. Language philosophy mingles with the philosophy of mind – what is our understanding that enables us to use language? – and the metaphysics of truth (Blackburn, 1996:211). There will be no attempt to discuss logical form, the distinction between syntax and semantics, and the understanding of the number and nature of specific semantic relationships, or the theory of speech acts as is found in the exercise of pragmatics.

The theoretical underpinning of this analysis is a historical philosophical inquiry and this will be augmented by a limited application of the theory of discourse analysis as developed by Michel Foucault. Foucault defines discourse as the use of language in the social sphere, within specific contexts and in particular institutions (Crous, 2002:i). Foucault (1972:80) also expands the existing concept of discourse, and in his words: "I have in fact added to its meanings: treating it sometimes as the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a number of statements." The implication of Foucault's unique conceptualisation of discourse is that all words and texts contain some form of meaning, that some words and texts can be grouped together based on a common

cohesion and that not only the meaning, but also the structure of texts, should receive attention (Allen, 2000:211-2). Discourse analysis has the advantage that it enables the writer to juxtapose various texts out of different countries and different historical periods and disciplines, and combine them in one study object.

Foucault develops the concept of discourse so that it becomes a discipline in itself. This discipline not only refers to disciplines in the traditional sense of science or medicine, but also to disciplinary institutions capable of exerting social control, for instance the prison, the sanatorium and the hospital (McHoul & Grace, 1993:26). The essence of discourse for Foucault thus centres on the historical relation between disciplines and disciplinary practices in the form of social control. The components of the discourse can be roughly divided into: the objects that are described by the discourse, the way in which these objects are analyzed, the unique vocabulary of the discipline, and the theoretical possibilities within the discipline (Crous, 2002:4). What is important however is that the focus does not lie on the construction of the discourse, but rather on the conditions that enabled the discourse to develop within a specific historicity in a specific domain of knowledge.

Foucault perceives of discourse to have a specific internal order, and this leads him to the development of an archaeological approach through which this formation can be analyzed. Discourse furthermore has a regulatory function that defines meaning and also goes further to produce meaning. This can be analyzed through the genealogical approach. According to Foucault three domains of genealogy are possible, each concerned with the self and the various ways the self interacts with knowledge, power and others. "A historical ontology of ourselves in relation to truth through which we constitute ourselves as subjects of knowledge; second, a historical ontology of ourselves in relation to a field of power through which we constitute ourselves as subjects acting on others; third, a historical ontology in relation to ethics through which we constitute ourselves as moral agents" (Rabinow, 1984:351). I wish to utilize these three types of genealogical enquiries to analyze the discourse around individual autonomy that

originated in the eighteenth century and became a powerful ethical measure and principle in modern ethics.

The analysis of autonomy as discourse will centre on the concept of individual self-governance and personhood as developed in ancient Greece and later again in the eighteenth century. This discourse is produced through writings and texts about personhood, identity and personal identity and elucidate the following central oppositions: independence/ interconnectedness; individual/ community; rationality/ emotion; empowered/ disempowered; absolute truth/ relativity; universal/ contextual; good/ bad; man/ woman; Western/ non-Western.

Description of chapters

Chapter 1 consists of a brief introduction of the work of Michel Foucault. His use of concepts such as 'discourse', 'discursive formations', the 'subject', the 'author' and 'power' is discussed and then the four phases of his critical project, namely the Heideggerian, structuralist, archaeology-genealogy and the ethical phase, are described. Specific attention is paid to the phase of archaeology-genealogy that constitutes the theoretical basis of the following two chapters.

Chapter 2, titled "Discourse of Autonomy: The Relevance of Personhood", consists of a historical account of preceding concepts that greatly influenced the concept of autonomy. The specific histories of the preceding concepts that are explored as objects of the discourse are personhood, self, identity and personal identity. This discourse is primarily concerned with statements, power, authority, and the position of the subject. This analysis forms the foundation for an adequate and contextual understanding of the concept of autonomy that is attempted in the third chapter.

The discourse on autonomy is thus the focus of the third chapter and the main goal is to explore the different contexts in which the concept 'autonomy' originated and developed. Specific attention is paid to the time of the Enlightenment and the work of Immanuel

Kant, and also to the work of a contemporary philosopher of the twentieth century, Isaiah Berlin. Attention is focused on the power relations established through the concept of autonomy and the social structures that maintain these relations.

Chapter 4 is concerned with an analysis of the history of the establishment of the manifestation of autonomy in the form of informed consent as ethical and legal requirement. This analysis attempts to expose the power relations and gender imbalance in such an existing concept in favour of a 'male-oriented', individualistic societal construct.

Chapter 5 sees the launch of a critique of the concept of autonomy and informed consent as described in the preceding chapters. This critique is centred on feminist and non-Western criticism of the term autonomy and attempts to analyse the possibility of the conceptualisation of autonomy outside the framed male and Western boundaries. It embraces notions of multiculturalism, diversity and reciprocity.

Chapter 6 explores Foucault's concept of power by dissecting his view of how power operates through modern systems to create 'docile bodies'. The concept of autonomy and the idea of informed consent are then tested according to this conceptualisation of power in order to see if they can indeed be viewed as instruments of such power.

The final chapter concludes my thoughts on whether it is indeed possible to find an approach neutral between competing religious, political, cultural and philosophical theories that can be shared by everyone regardless of their background and belief of what constitutes a good life.

Chapter 1: Discourse Analysis: Foucault in Context

"Foucault is simply trying to stress that the main reason for conducting an analysis of structures of discourse is not to uncover the truth or the origin of a statement but rather to discover the support mechanisms which keep it in place" (Mills, 1997:49).

The theoretical foundation of this thesis is discourse analysis as formulated and practiced by the French philosopher Michel Foucault (1926 – 1984). The concepts of discourse and discourse analysis became increasingly topical within French philosophy in the 1960s and Michel Foucault is closely associated with this methodology. Even though it is rather controversial what exactly Foucault's definition of discourse was, at the most basic level, he used the term to refer to the material verbal traces left by history. Michel Foucault, variously described as philosopher, historian, psychoanalyst, linguist and critical theorist, was born in Ponteirs and educated at the *Ecole Normale Suprieure* in Paris. He taught in Germany, Sweden and Algiers and held chairs at Clermont-Ferrand and Vincennes before being appointed as professor of the History of Systems of Thought at the Collège de France (Blackburn, 1996:144). Foucault's influence in the areas of social and political theory has been so extra-ordinary that it has been suggested that we are living in the "century of Foucault" (West, 1996:169).

The dissertation will therefore commence with a brief introduction to the work of Foucault with specific attention paid to his unique methodology and his interpretation of the concepts 'discourse', 'discursive formations', the 'subject', the 'author' and 'power'. The four phases of Foucault's critical project will be briefly analyzed with specific focus of the archaeology-genealogy phase that will inform this discourse analysis of the concept of autonomy.

1.1 Foucault's unique methodology

The philosophy of Michel Foucault is not easily reducible to a pre-existing philosophical category. He is variously described as structuralist, poststructuralist and postmodernist,

but rejected all these labels. He preferred to classify his thought as a critical inquiry in the tradition of Kant (Foucault, 2003a:1-5) while at the same time admitting to a strong Nietzschean influence. Foucault can also not be described as a traditional historian and his methodological approach to analysing history can be distinguished from traditional forms in four important ways. Firstly, he objects to the use of totalizing assumptions in traditional forms of historical analysis. He argues that such analyses present a 'transcendental teleology' where events are inserted into a universal explanatory scheme and presented in a linear fashion, thereby conferring on them a false unity. This unifying totality deprives events of the importance of their own unique impact.

> "The world we know is not this ultimately simple configuration where events are reduced to accentuate their essential traits, their final meanings, or their initial and final value. On the contrary, it is a profusion of entangled events" (Foucault, 1984:89).

Foucault secondly opposes the privileged position afforded to the subject in traditional historical analysis. He argues that placing the subject at the centre of history emphasizes the so-called immutable elements of human nature. Historical development is thus interpreted as "the unfolding and affirming of essential human characteristics" (Foucault, 1984a:85). Foucault argues that many human traits that are believed to be natural and immutable are in fact the effects of an unexamined power that social and political institutions exert on individuals.

Thirdly, Foucault claims that history is traditionally presented as operating around a logic of identity; in other words, the past is interpreted in a way that is set up to confirm, rather than dispute, the beliefs and convictions of the present. In this way, the past is filtered through a lens that produces a "history that always encourages subjective recognitions and attributes a form of reconciliation to all the displacements of the past" (Foucault, 1984a:86). Foucault would rather underline the importance of disruption, displacement and discontinuity in the development of history.

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Finally, Foucault is critical of historical analysis that seeks to discover a point of origin as the source of specific historical processes, since this presupposes some form of original identity prior to the movement of history. This original identity is then interpreted as an indication of a primordial truth that remains unchanged throughout history. Foucault rather finds disparity and dissension at the historical beginning of things (Foucault, 1984a:78-9). Two quotes illustrate his reasoning:

> When Foucault examines the origin of the concept of liberty, he seeks to demonstrate that it is an "invention of the ruling classes" and not a quality "fundamental to man's nature or at the root of his attachment to being and truth" (Foucault, 1984a:78-9).

> "History is not the continuous development and working through of an ideal schema, rather it is based on a constant struggle between different power blocks which attempt to impose their own system of domination. These different systems of domination are always in the process of being displaced, overthrown, superceded. The task of the historian is to uncover the contingent and violent emergence of these regimes in order to shatter their aura of legitimacy (Foucault, 1984a:85).

Foucault's aechaeological approach provides an alternative method for analysing the history of ideas. The aim of this approach is to demonstrate the limits of the legitimacy of knowledge by showing that all systems of knowledge are in fact statements or discursive events. These events form part of a discursive formation that has deep-seated linguistic rules of formation (McNay, 1992:26). Foucault explains these rules of formation thus:

> "I have tried… to show that in a discourse…there were rules of formation for objects (which are not the rules of utilization for words), rules of formation for concepts (which are not the laws of syntax), rules of formation of theories (which are neither deductive nor rhetorical rules). These are the rules put into operation through a discursive practice at a given moment that explain why a certain thing is seen (or omitted); why it is envisaged under such an aspect and analyzed at such a

level; why such a word is employed with such a meaning and in such a sentence" (Foucault, 1989:52).

Foucault argues that discursive formations determine the production of knowledge in a given time period and that they are intrinsically connected to non-discursive factors, such as "an institutional field, a set of events, practices and political decisions, a sequence of economic processes that also involve demographic fluctuations, techniques of public assistance, manpower needs, different levels of employment, etc" (Foucault, 2002:174). Archaeological analysis allows him to examine the forms themselves, and genealogical analysis to analyze their formation out of the practices and the modifications undergone by the practices.

> "There was the problematization of madness and illness arising out of social and medical practices and defining a certain pattern of 'normalization'; a problematization of life, language, and labour in discursive practices that conformed to certain 'epistemic' rules; and a problematization of crime and criminal behaviour emerging from certain punitive practices conforming to a 'disciplinary' model. And now I would like to show how, in classical antiquity, sexual activity and pleasures were problematized through practices of the self, bringing into play the criteria of an 'aesthetics of existence'" (Foucault, 1985:11-12).

Foucault's method of analysis attempts to go beneath the consciousness and intentions of the author of a text, and sets out to demonstrate how statements are possible. He analyses the text as a discourse and thus transforms it into an objective field of statements. By locating a system of problematics that are outside, yet also within, the text, Foucault tries to reveal a new level of significance in the text (McNay, 1992:76). This method is to a great extent experimental, as Foucault himself admits:

> "Hence the cautious, stumbling manner of this text: at every turn, it stands back, measures up what is before it, gropes towards its limits, stumbles against what it does not mean and digs pits to mark out its own path. At every turn, it denounces

any possible confusion. It rejects its identity, without previously stating: I am neither this nor that. It is not critical, most of the time; it is not a way of saying that everyone else is wrong… I have tried to define this blank space from which I speak, and which is slowly taking shape in a discourse that I still feel to be so precarious and so unsure" (Foucault, 2002:18-9).

I will now expand on certain key concepts alluded to in the introductory explanation of Foucault's unique methodology. I will specifically focus on the concepts of 'discourse', 'discursive formations', the 'subject', the 'author' and 'power' and then discuss the four phases of Foucault's critical project.

1.2 Discourse and discourse analysis

The term 'discourse' is generally seen as "a conversation", or even "a dissertation on an academic subject" (The Oxford English Reference Dictionary, 1996). The interpretation of the exact meaning of the term discourse has been disputed, and an exact definition and application thereof remains problematic: "Finding a definition for discourse has been and still is a contentious issue that is not likely to be resolved in any immediate future" (Lightfoot, 1996:23). This is clear from the variety of definitions of discourse that abound (Lightfoot, 1996:24):

"A system of statements which construct an object."

"An ideological position from which a subject speaks/ acts/ interacts with the social order."

"An institutionalized use of language and language-like systems."

"Language in the contextual and conversational settings in which it is daily used and understood."

"One of the widest range of possible significations of any term in literary and cultural theory" (Mills, 1997:1).

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"All language units with a definable communicative function, whether spoken or written" (Crystal in Mills, 1997:3).

"A set of meanings, metaphors, representations, images, stories, statements, and so on that in some way together produce a particular version of events" (Burr in Carusi, 1992:38).

The familiar use of the word discourse refers back to the study of narratives, where the term refers to the description of events without paying much attention to the person who is making this description. In discourse theory however, the word discourse also makes reference to the narrator or author and the circumstances surrounding her when she speaks or writes. Discourse furthermore refers to language in her social and ideological contexts. It is assumed that a community is constituted by discrete discursive practices as found in the spheres of education, law or politics. Language can thus not be divorced from its specific social context with its accompanying specific codes, expectations, ideological pressures and presuppositions (Allen, 2000:211-2).

In Foucault, discourse analysis moves from the sole social and linguistic description of norms determining the production of conversations, narratives, arguments, speeches, and other forms of expression, to a focus on the social and political determinants that produce the actual form of discourse. It attempts to lay bare the hidden presuppositions embodied by the author or narrator, determined by her class, race, gender, etc. (Foucault, 2003b:46; Blackburn, 1996:107). Foucault develops the concept of discourse further to go beyond language and social context, and to encompass the historical relations between disciplines and disciplinary practices that exert social control. Foucault creates a discipline of discourse that does not only concern itself with the construction of discourse, but more specifically focuses on the conditions under which the discourse is allowed to develop around a specific subject within a specific historical period (McHoul & Grace, 1993:31). According to Foucault (2003:55-61), discourse is related to power as it operates by rules of exclusion and is therefore controlled by objects (what can be spoken of), ritual (where and how one may speak) and the privileged (who is allowed to speak).

Derrida argues for the recognition of the importance of the "unconscious rhetorical aspects of works" (Blackburn, 1996:100). He contends that the incidentals in a text often undermine the principal ideas of the text and that the process of deconstruction is therefore needed in order to show how the author's supposed message has been subverted. "…[T]he endless possibility of interpretation and reinterpretation opens a receding horizon within which meaning is endlessly deferred, although the reader as much as the author is a creator of any provisional significance that is eventually found (Blackburn, 1996:100).

Foucault (1981:57) is very sceptical of interpretation, or commentary, since each comment about a text warrants further comment. This leads to the problematic that the commentators see themselves as authorities and attempt to institutionalize their ideas in order to exert power over others (During, 1992). Foucault (1980a:133) is similarly critical of the idea of 'truth' and warns against the absolutization of ideas. The value of Foucault is that he enables the reader to expose the power game between those in the know and those that are not, and to expose the extent of the interaction between knowledge and power. Smith (1998:33) sees similar value in Foucault's insights since his sceptical outlook enables him to pose questions about the relationship between power and discourse. Accordingly, access to discourse depends on factors such as authority, legitimacy and the right to make judgments.

Foucault (2002:36) considers discourse a knowledge object and he expands the concept into a discipline. According to McHoul and Grace (1993:26), discipline not only refers to disciplines in the sense of science, medicine or psychology, but also to disciplinary institutions that exert social control, like the prison, the clinic and the hospital. Foucault's (1981:67) view of discourse can thus be seen as the historic relations between disciplines and disciplinary practices in the form of social control. The objects that are studied through discourse, the manner in which the objects are analyzed, the concepts that form part of the unique vocabulary of the discipline and the hypotheses of theoretical possibilities that exist within the discipline, form the components of any discourse.

It has been proposed that the essential elements of discourse are objects, operations, concepts and theoretical options such as hypotheses, theories and assumptions (McHoul & Grace, 1993:44). According to Foucault, however, the elements should rather be formation, transformation and correlation (Foucault, 2002:102,146). 'Formation' provides the conditions that enable objects and concepts to become part of a discourse. 'Transformation' criteria refer to the limitations that are imposed to continuously make new concepts part of the discourse. Finally, 'correlation' refers to the ensemble of relations between various discourses (McHoul & Grace, 1993:44). It flows from these elements that discourse can continuously change and that existing concepts can be redefined within a new context, as is evidently the case with the concept 'discourse' as well.

Foucault emphasizes that the focus should not so much be on the construction of the discourse, but rather on the conditions that enable the discourse to reflect on a certain knowledge object in a given historical period (Foucault, 2002:52; McHoul & Grace, 1993:31). Foucault's analyses can be seen as "specific histories of specific objects" that attempt to show how the uniqueness of a specific occurrence comes into being, for instance, the development of insanity as a knowledge object that can be studied (Foucault, 2002:52; Kendall & Wickham, 1999:119). When Foucault examined the history of insanity, he did not study 'insanity' as such, but rather the way in which it became part of the discourse. The object of discourse is thus not the linguistic reference or "the actual thing referred to by the verbal sign" (Sheridan, 1990:98). Foucault rather examines the questions of: How did insanity become part of the social discourse about the freedom of the individual? How did institutions originate? What was the procedure to make a diagnosis of insanity? Three aspects emerge in the discourse around insanity. Firstly, the social or cultural context in which the discourse developed. In the nineteenth century, the family, the work situation and the religious community exemplified this context. The second aspect is that of authority, here in the form of the medical profession as a body that possesses the medical knowledge and authority to classify someone as insane. Finally, the third aspect is specification: how one form of insanity is distinguished

from another within the discourse. These three aspects do not exist in isolation, but are characterized by mutual interaction that constructs the discourse (Crous, 2002:19).

"Foucault undertook to write a history of statements that claim the status of truth" (Davidson, 1986:221). In order to write such a history, it was first necessary to isolate certain kinds of discursive practices, which can be defined as practices for the production of statements (Foucault, 1981:48-51). Discursive practices rule what can be counted as a legitimate or plausible field of objects to study, what perspectives for an agent of knowledge are desirable, which concepts are acceptable, which theories are plausible and which explanations are satisfactory. The analysis of such a history exposes an order that produced statements of influence and legitimized their claim to truth.

1.3 Discursive formations

> "Lastly… discourse is constituted by a group of sequences of signs, in so far as they are statements, that is, in so far as they can be assigned particular modalities of existence. And if I succeed in showing, as I shall try to do shortly, that the law of such a series is precisely what I have so far called a *discursive formation*, if I succeed in showing that this discursive formation really is the principle of dispersion and redistribution, not of formations, not of sentences, not of propositions, but of statements (in the sense that I have used this word), the term discourse can be defined as the group of statements that belong to a single system of formation; thus I shall be able to speak of clinical discourse, economic discourse, the discourse of natural history, psychiatric discourse" (Foucault, 2002:121).

A discursive formation can thus be seen as the regulating order or correlation that exists when there is a dispersion of meaning between a series of objects, statements, concepts or thematic choices. John (1994:99) explains that a discursive formation fulfils a constituting and regulating role by creating objects as well as the rules according to which statements referring to the same object can be grouped. "Discursive formation

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appears both as a principle of division in the entangled mass of discourse and as a principle of vacuity in the field of language" (Foucault, 2002:134).

Foucault divides discursive formations into three central concepts: statement, event and discourse. "A statement belongs to a discursive formation as a sentence belongs to a text, and a proposition to a deductive whole" (Foucault, 2002:130). Statements are the elementary functions of discourse and form a unit when they refer to the same object. The underlying form and relation between objects are important aspects to take note of and when statements are regrouped, it is essential to describe the identity and continuity of the inherent themes.

The second concept, 'event', refers both to a specific moment in history, but also to a specific stance adopted at that time (Flynn, 1994:40). Foucault makes use of this concept to distinguish between two forms of historical analysis: an events-directed and a non-events-directed analysis of history. Foucault prefers to see history as characterized by the randomness of events and considers chance an essential component of historical discourse (Crous, 2002:21).

Rules of formation form the conditions of existence that make the objects and concepts of a discourse possible. 'Objects' refer to that which is studied or produced by a discourse (Foucault, 1989:38). These concepts can be better explained by means of an example, as can be found in Foucault's use of these concepts in his study of psychopathology. Objects such as hallucinations, nervous conditions and speech impediments form part of the discourse about psychopathology, but as the science develops, new objects are continually added. It should thus firstly be established when these objects were described for the first time and then added to the discourse. It is also a vital question when the medical profession attained so much power that its statements about psychopathology became authoritative. Then, different forms of insanity should be identified, analyzed, compared and classified (Crous, 2002:22).

Although there does seem to be an attempt to strive for unity of discourse, Foucault (1989:47) insists that the interpretation of discourse should not be viewed as a simple description of the history of an object. For instance, when Foucault conducts an analysis of insanity, he not only studies the history of insanity or when in history the insane were isolated for the first time; he also selects a specific moment and describes the discursive practices at that specific moment. This description essentially entails a process of production, circulation and interpretation of texts that focus on that specific moment (Sonderling, 1998:13).

Finally, discourse is not only the "intrication of a lexicon and an experience", but the enunciative modalities should also be considered (Foucault, 1989:49). For that reason, it should be determined who the author or speaker is and what his position is with regards to the other objects. It is equally important to determine who the subject is and to note that the subject can occupy various positions within the discourse – such as the speaking, the questioning and the reacting subject – and the subject can thus be considered as fragmented (Crous, 2002:23). Foucault thus emphasizes what position is allocated to the subject within the discourse. I will first describe Foucault's conception of 'the subject' and then move on to 'the author'.

1.4 The subject

The position and nature of the subject is a much-debated philosophical construct. In order to understand Foucault's position on the subject, it is first necessary to place his thought within a wider philosophical context. Foucault, along with some critical thinkers like Leotard and Derrida, has become the symbolic representative of the ideas of post-modernity[1]. His philosophy is essentially anti-humanistic and actively works toward decentring the subject. Foucault's anti-humanism is essentially political.

Modernity saw the individual becoming constituted as a subject, hence claiming a position of responsibility towards ethical and political conduct. Man is elevated to the

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[1] Foucault personally rejected the label of postmodernist philosopher, claiming that he did not understand what kinds of problems are shared by people labelled postmodern (Raulet, 1983:205).

status of the subject and is now no longer merely at the receiving end of processes accepted as his fate, as found in the pre-modern mindset. The individual therefore moves away from its reliance on a transcendental authority, be it God or nature, and in modernity becomes responsible for his own actions. Man becomes a moral and epistemic agent.

Immanuel Kant (1724 – 1804), the German philosopher and founder of critical philosophy, is famous for expressing this ideal by stating in his book *Critique of Practical Reason*: "[t]wo things fill the mind with ever new and increasing admiration and reverence, the more often and the more steadily one reflects on them: *the starry heavens above me and the moral law within me*" (Kant, 1997a:133). Kant views humans as their own moral legislators who have the capacity to know right and wrong through rational and universalizable thinking. Kant thus removes the subject from the uncertainties of nature and history and places it firmly at the epicentre of the universe as the absolute condition of all knowledge and action (West, 1996:169).

Modernity also saw the rise of humanism with its emphasis on human welfare and dignity and the embodied belief in the power of unaided human understanding. Humanism has at its focus the rediscovery of the unity of humanity and nature, and the renewed discovery of the pleasures of life, which were perceived to have been lost in the medieval world. In the twentieth century humanism came to embody the modernistic ideals of the "autonomous, self-conscious, rational, single self" (Blackburn, 1996:178).

This move towards liberal individualism with a promise of monopoly of power, gave rise to the post-modern condition or the attitude of 'reflexive modernity' where there is a growing mistrust in the modern ideal of a fully rational, autonomous and transparent subject. The ideas of post-modernity were thus created by an impetus to take stock of what humanity has become over the past four hundred years. This reflection is both positive and negative and attempts to create a clearer picture of the gains and losses of the modern period.

Nietzsche has been described as a watershed philosopher. According to the French philosopher, Ricoeur (1970:27), there were three masters of suspicion in the 19th century who prepared the way for post-modern thinking: Nietzsche, Marx and Freud. They started the critique of modernity by a process of decentring the subject, which can be juxtaposed with the central focus placed on the subject by the Enlightenment philosophers, Kant and Mill. During this time there was a process of subversion of the notion of autonomy, and a sceptical look was levelled at the inflated claim of autonomy made on behalf of man's reason. The concept of humanism became suspect.

Nietzsche, Marx and Freud were practitioners of the hermeneutics of suspicion. They no longer took texts at face value, but attempted to uncover the hidden meaning and motives of texts. They believed that it was impossible to identify the meaning of texts without first understanding the intentions of the author. The subject is never free-floating or vacuous, but always constituted, therefore necessitating the evaluation of other factors, like the social and cultural conditions of the time.

Much of Foucault's philosophy, most notably his concepts of genealogy and power, can be traced back to Nietzsche. Traces of Foucault's critique of the subject can however also be found in Hegel, Marx and Freud. Hegel argues that it is impossible to talk about the individual and the ideal of individual rationality without talking about history. Hegel argues for an appreciation of the fact that individuals are all contextually and historically situated. Hegel's thoughts thus give rise to the concept of historical consciousness. His student, Karl Marx (1818 – 1883), expanded and differed from Hegel through his theory of ideology in which he argues that autonomy is in fact impossible since we are all the products of class-consciousness and social conditions. Marx has been influential in exposing the social situatedness of man. Sigmund Freud (1856 – 1939) likewise unmasks the subject by means of his method of psychoanalysis, postulating that we are unable to act rationally since we are all the products of underlying psychological conditions. Marxism and psychoanalysis however still seem to entertain the hope that eventually the lost transparency of the subject might be recovered at some later stage or higher level (West, 1996:169). Here Foucault rather sides himself with radical hermeneutics and the

structuralists, giving up hope that any such possibility can ever exist. Foucault therefore radically breaks with the humanist conception of the subject. This announces the end of the era of meta-narratives and totalizing projects that claim to have the final answer. The focus is now rather on single item movements (West, 1996:190). Post-modernity finally rejects the possibility of the rationally autonomous subject and a unitary value system. This decentring of the subject thus stands in diametric opposition to the philosophy of Enlightenment philosophers like Immanuel Kant.

Post-modernism embraces plurality: the proliferation of contending perspectives that rebel against a fundamentalist stance. This gives a voice to those who have been silenced by modernity; it acknowledges the 'other' of Western rationality and opens the door to the socio-political developments that bring with them the appreciation of multi-culturalism. It further strives to remove the binary oppositions in modernist thinking and its fateful political, social and ethical consequences by deconstructing concepts such as good/bad, man/woman, truth/falsehood, etc. Even though Foucault refused to describe himself as a postmodernist, his ideas clearly helped prepare the ground for post-modernism (West, 1996:191).

Foucault's critical historiography sets out to create a "history of the different modes by which, in our culture, human beings are made subjects" (West, 1996:169). Foucault rejects the idea of a universal subject and emphasizes the variety of practices that constitute the subject:

> "I… believe that there is no sovereign, founding subject, a universal form of subject to be found everywhere. I am very skeptical of this view of subject…I believe, on the contrary, that the subject is constituted through practices of subjection, or, in a more autonomous way, through practices of liberation, of liberty, as in Antiquity" (Foucault, 1988a:50).

The term subject is thus used ambiguously: on the one hand it denotes authority in the form of a humanistic understanding of the individual; on the other, subjection to authority and power. In the word of Dreyfus and Rabinow (in West, 1996:170):

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> "Man, who was once himself a being among others, now is a subject among. But Man is not only a subject among objects, he soon realizes that what he is seeking to understand is not only the objects of the world but himself. Man becomes the subject and the object of his own understanding."

Importantly however, Foucault does not intend to dispose of the subject altogether, but rather sets out to create a historical account of its development, thereby gaining an alternative perspective. Even though the subject is therefore removed from its "privileged moral and epistemological status", it remains an important object of investigation and discussion (West, 1996:169). The subject is no longer taken for granted, but seen as something that is open to questioning.

1.5 The author

Foucault's concept of the author also seems to have developed in response to the ideas of the Enlightenment. The traditional concept of the author is a modern one, stemming from the time of the Enlightenment, where texts were primarily identified by the names of their authors. This is in contrast to the Middle Ages where no author names were given to texts. During the time of the English empiricism and French rationalism, the individual gained importance and the "prestige of the individual" became paramount (Barthes, 1977:143). The 'person' of the author became so important that texts were primarily structured around the biography of the author. In response, Mallermé argued that one had to "substitute language itself for the person who until then had been supposed to be its owner" (Barthes, 1977:143). He thus argues that it is language itself that speaks to the reader, and not the author.

Foucault follows Barthes (1977:142-148) in his view of the death of the author. Barthes considers the text to consist of more than one teleological meaning or message that is given by a single author as authority of the text. Rather, the text should be seen as a network of citations that cannot be linked to only one person. 'Text' is juxtaposed with 'work': a 'work' is concrete and completed, whereas a 'text' is a methodological field and not a defined object. 'Text' is thus an activity that is continually changing. The text is

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also pluralistic, not because it contains a plurality of meanings, but because a plurality of meanings emanate from it. The latter leads to the possibility of 'intertextuality', where every text is the intertext of the following text. The moment the text is given an author as regulating agent, it is accorded a final meaning and thus becomes limited and constrained.

For Barthes (1977:148), the reader becomes more important than the author in that "the reader is the space on which all the quotations that make up a writing are inscribed without any of them being lost: a text's unity lies not in its origin but in its destination". The birth of the reader signals the death of the author. The author becomes a textual strategy while the reader becomes involved in the process of writing the text. Foucault (in Miller, 1993:162) states that in his work, "a subject speaks in its pages, but it is not his own 'I'", and so illustrates his view of the death of the author. This criticism and wish for 'the death of the author' is ideological, as it seems impossible for any text to function in "an absolutely free state" (Earnshaw, 1996:31).

Foucault (1998:210) attempts to release the text from the author that confines it to a specific context, by means of the "author function" that essentially reduces the name of the author to an element in the discourse. Foucault (1998:216) identifies the four principal characteristics of the author function:

1. The author function is linked to the juridical and institutional system that encompasses, determines, and articulates the universe of discourse;
2. It does not affect all discourses in the same way at all times and in all types of civilization;
3. It is not defined by the spontaneous attribution of a discourse to its producer but, rather, by a series of specific and complex operations;
4. It does not refer purely and simply to a real individual, since it can give rise simultaneously to several selves, to several subjects – positions that can be occupied by different classes of individuals.

The purpose of the author function is to free the text from the socio-historical position of the author in order to allow the issues of discourse and power to emerge.

1.6 Power

The concept of power is ubiquitous in every branch of philosophy – metaphysics, epistemology, ethics, and politics – and there is at least one continental thinker who has formulated a theory of power that operates within that branch. Power can of course be conceived of in a myriad of ways, for instance: "the power of an individual or institution is the ability to achieve something, whether by right or by control or influence" (Blackburn, 1996:295). This definition demonstrates the tension between the two major conceptions of power: 'power-over' and 'power-to'. The conception of 'power-over' defines power as getting someone else to do what you want them to do and was first formulated by Max Weber (1978:53) as: "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance." The second conception, 'power-to', defines power as an ability or capacity to act, and was expressed by Thomas Hobbes (1985:150) as power is a person's "present means … to obtain some future apparent Good", and later by Hanna Pitkin (1972:276) as: "power is something – anything – which makes or renders somebody able to do, capable of doing something."

The concept of power and its manifestations in the social context is a major theme in Foucault's work. Foucault's conception of power does not conform neatly to the aforementioned conceptions but seems to presuppose that power is a kind of 'power-over' (Allen 2011). His formulation reads: "if we speak of the structures or the mechanisms of power, it is only insofar as we suppose that certain persons exercise power over others" (Foucault, 1983:217). Foucault followed in the footsteps of the Italian philosopher Niccolò Machiavelli (1469 – 1527) in conceiving of power as a complex strategic situation in a given society social setting (Nederman 2009). Accordingly, all social relations are inherently systems of power. Power is not something that can be owned since "power is not a thing but a mode of interaction" (West, 1996:172). Power is therefore not fundamentally exercised by individuals, but is rather a "dispersed,

impersonal aspect of society" (Blackburn, 1996:296). Power is most notably manifested in the modes of surveillance, regulation, or discipline that are used to conform human beings to the desired social structure. The exercise of power not only serves to prevent people from doing certain things, but also to control the self-definition and preferred way of living of the members of society (Blackburn, 1996:296). Power is thus not repression, but rather production, mainly in the form of truth and identity.

Foucault delineates four main points about a philosophy of power. Such a philosophy should firstly be concerned with power at its extremities, in its local forms and institutions, in its ultimate destinations. "Its primary focus should be on the point where power overtakes the rules that organize and delimit it and extends itself beyond them, invests itself in institutions, becomes embodied in techniques, and equips itself with instruments and eventually even violent means of material intervention" (Foucault, 1980a:96). Secondly, power should be studied at the point where it is in direct and immediate contact with its object or its target, there where it installs itself and produces its real effects (Foucault, 1980a:97). Thirdly, power must be studied as something that circulates, that is part of a chain, and should not be viewed as something that is localized, that exists in a specific person as a commodity. Power is employed through a net-like organization and individuals circulate between its threads, yet, simultaneously undergo and exercise this power. Individuals can thus be seen as the vehicles of power, not its points of application (Foucault, 1980a:98). Fourthly and finally, power should be examined in an ascending fashion, starting from its microscopic mechanisms up to evaluating how these mechanisms of power have been and continue to be invested, colonized, utilized, involuted, transformed, displaced, and extended by ever more general mechanisms and by forms of global domination (Foucault, 1980a:99).

Since Foucault views power as operating in a capillary fashion throughout the social body, permeating through to the individual, he does not focus on centralised sources of societal power, but rather on power operative on the micro level. Power is thus analysed as manifested in the most intimate experiences in the "institutions of marriage, motherhood and compulsory heterosexuality" (Sawicki, 1998:93). Fraser (1989:26)

believes that by so doing, Foucault's work gives new impetus to the "politics of everyday life" and provides a conceptual basis for treating phenomena such as sexuality, the school, medicine and the social sciences as political phenomena.

One of the objectives of Foucault's work is to describe the history of how power acted in different ways in Western culture to transform human beings into subjects. He attempts to explore the connection between the philosophical subject of modern epistemology and political individualism on the one hand and 'subjection' to authority or power on the other (West, 1996:169). Modern systems of power often centre on truth claims. By claiming to have arrived at the 'truth' of the individual, the individual is limited to a set of very specific patterns, which function to subject her to expected behaviour, determined by society.

> "This form of power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which other have to recognize in him. It is a form of power which makes individuals subjects. There are two meanings of the word *subject*: subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to" (Foucault, 1983:212).

Foucault shows how techniques and institutions, developed for different purposes, work together to create modern systems of disciplinary power. In these institutions, he identifies three primary techniques of control: hierarchical observation, normalizing judgment, and the examination (Foucault, 1979a:192-3). With the first technique, hierarchical observation, power is achieved over people by observing them, for instance, when security guards in a sport stadium or a prison observe people. Observers are hierarchically ordered and pass the observed data from the lowest to the highest level. The second technique, normalizing judgment, functions by correcting deviant behaviour. This is achieved by imposing precise norms that people can be judged by as 'normal' or 'abnormal'. This technique is pervasive in modern society and is operative for instance in

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national standards for medical practice. The last method, examination, is a combination of hierarchical observation and normalizing judgment. This is the prime example of what Foucault terms power/knowledge, since it not only determines the truth about those being examined – e.g. the patient – but also controls their behaviour – e.g. by directing them to take a certain course of treatment. The examination also places the individual in a field of documentation. The results of tests are recorded in documents, such as medical files, that not only give access to the details of the individuals examined, but also allow systems of power to control them. The individual is thus turned into a case that can be compared with others through the calculation of averages and norms. In medicine, caring is thus also an opportunity for control (Gutting, 2010).

Foucault believes that these techniques could produce effective instruments for the formulation and accumulation of knowledge-methods of observation, techniques of registration, procedures for investigation and research, and apparatuses of control (Foucault, 1980a:102). Much of Foucault's work is dedicated to demonstrating how domination is achieved by means of constituting a marginalised and inferior 'other' (McNay, 1992:79).

For Foucault, there exists an intricate relationship between power and knowledge. He argues that the goals of knowledge and the goals of power cannot be separated. So, instead of seeing knowledge as an instrument of power, the two become interdependent: in knowing we control and in controlling we know. The exercise of power requires knowledge; yet, the claim to valid knowledge requires the exercise of power. "Knowledge is not neutral or objective but rather is a product of power relations. In other words, knowledge is political in the sense that its conditions of existence or possibility include power relations" (West, 1996:171).

> "We should admit rather that power produces knowledge…; that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. These 'power-knowledge relations' are to be analysed, therefore, not on the basis of a subject of

knowledge who is or is not free in relation to the power system, but, on the contrary, the subject who knows, the objects to be known and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformation" (Foucault, 1979a:27-8).

Foucault's conception of power has however been criticized for reducing social agents to passive bodies. Specifically feminists, like McNay (1992:3), have argued that this conception does not explain how individuals might act in an autonomous and self-determined manner. Foucault does attempt to overcome some of the limitations of his earlier work, in his final book, *The Use of Pleasure, The Care of the Self,* through the expansion of the notion of the self. Here he develops the concept of power further to incorporate a positive and productive element. He compliments his earlier work on technologies of domination, with an analysis of technologies of subjectification. Foucault defines these technologies of the self as the practices individuals can utilise to actively create their own identities. This allows Foucault to show how individuals might assert their autonomy to escape the homogenizing tendencies enforced by power.

"I am referring to what might be called the 'arts of existence'. What I mean by the phrase are those intentional and voluntary actions by which men not only set themselves rules of conduct, but also seek to transform themselves, to change themselves in their singular being, and to make their life into an *oeuvre* that carries certain aesthetic values and meets certain stylistic criteria" (Foucault, 1985:10-11).

Foucault introduces another important concept linked to practices of the self: governmentality. He uses this term to explain that the modern state should not be viewed as the machinery of domination, but rather, as a network of institutions that use complex techniques of power, to control and order social relations. The aim of governmentality is not to impose laws, but rather to regulate society through different techniques, such as the improvement of the health of the population. Governmentality is thus linked to disciplinary power in that it uses disciplinary techniques to achieve the aim of the regulation of populations (McNay, 1992:67-8; Foucault, 1979b:18).

Foucault argues that power and freedom are inextricably linked: "[o]ne must observe also that there cannot be relations of power unless the subjects are free. If one or the other were completely at the disposition of the other and became his thing, an object on which he can exercise an infinite and unlimited violence, there would not be relations of power. In order to exercise a relation of power, there must be on both sides at least a certain form of liberty" (Foucault, 1988b:12). For Foucault, the pervasiveness of power in modern society does not equate to universal domination, but rather shows that power relations are preconditions for the establishment of social relations. Although domination does exist by virtue of asymmetrical and irreversible power relations, the nature of normal power relations is that they operate between free individuals and are thus unfixed, fluid and reversible (McNay, 1992:67).

1.7 Four phases of Foucault's critical project

The work of Foucault can be seen to be mainly concerned with three central concepts: discourse, power and knowledge (McHoul & Grace, 1993:1). Dreyfus and Rabinow (1984: xvii-xxi) identified four phases in Foucault's critical project: Heideggerian, structuralist, archaeology-genealogy, and the ethical phase. Each of these phases and the major texts associated with them will be briefly discussed.

The first phase, namely the Heideggerian phase, is evidenced in Foucault's introduction of the Heideggerian psychologist, Binswanger. Here Foucault is concerned with Heidegger's hermeneutic ontology that postulates that human subjects are formed by the historic cultural practices in which they develop. These cultural practices constitute a specific context that cannot be explained entirely in terms of the experience of the subject that always strives to give meaning. These practices do however have meaning by providing the means that enable the individual to interact with others.

Ontology refers to the theory and nature of being and existence (Olen & Barry, 1999). Heidegger is primarily concerned with how to gain access to those primordial experiences in which we can find the first and current ways of determining the nature of

being. For Heidegger this entails hermeneutical, interpretive work on ancient philosophical texts, with specific attention to "the role and effects of ordinary (in this case, ordinary Greek) language in determining the nature of being" (Owens, 1994). He was specifically interested in elucidating the words that contain implications or suggestions or connotations that reveal something about the source of the understanding and meaning of being in the historical and cultural milieu wherein it arose. Heidegger attempts to answer the following questions: What was the existential horizon of the word? What was the primordial experience from which this category or concept was drawn? What was the understanding of being that lurks behind and remains implicit in the word? What relation did the philosophical meaning of the word have to its pre-philosophical, ordinary meaning?" (Owens, 1994). Foucault was strongly influenced by Heidegger, especially in what he terms his "existential analysis" or "phenomenological psychiatry" (Foucault, 2000:257).

The second phase in Foucault's project, the structuralist phase, found expression in *Madness and Civilization* (1962) and *The Birth of the Clinic* (1963). These texts delineate the history of the establishment of the asylum, clinics and hospitals and Foucault pays particular attention to the statements of so-called 'experts' in the field of insanity as illness and its associated treatment.

Henceforth, three main domains of analysis can be found in Foucault's work, each corresponding to a specific phase: an analysis of systems of knowledge, corresponding to the phase of archaeology; an analysis of modalities of power, corresponding to the phase of genealogy; and an analysis of the self's relationship to itself, corresponding to the phase of ethics (Davidson, 1986:221). These three domains can be seen as three axes of analysis that compliment and reinforce one another although the relative importance of the three axes differ for different forms of experience (Rabinow, 1984:337).

The archaeological and genealogical domains can be seen as a combined third phase. Foucault first used the term 'archaeology' during the 1960s to describe his approach to writing history. This approach is primarily concerned with examining the discursive

traces left by the past in order to write a 'history of the present'. In other words, archaeology is about looking at history as a way of understanding the processes that have led to what we are today (O'Farrell, 2007). The archaeological phase is manifested in *The Order of Things* (1966) and *The Archaeology of Knowledge* (1969). These texts deal with the humanities and are seen as the culmination of Foucault's work on discourse analysis. Here Foucault no longer focuses on specific institutions but, in *The Order of Things*, rather gives commentary on the development of the economy, the natural sciences and linguistics in the eighteenth and nineteenth century. Similarly, in *The Archaeology of Knowledge,* he analyses the discursive production of the human sciences in order to determine the internal rules that form the foundation of the humanities. Archaeology is characterized by a rigorous description of systems of knowledge with the main modes of analysis being description and explanation.

During the archaeological phase, Foucault considers discourse to be part of the archive of the "systems of statements" (Foucault, 1972:131). This phase can be seen as an analysis of the relation between that what is said and that which can be seen, and the relation between one statement and another (Kendall & Wickham, 1999:26). It is furthermore a demonstration of the position between the human subject and his specific statements, for instance, between the psychiatrist and his diagnosis. Power is here a central concept and Foucault describes the institutions that have the power to delineate the boundaries of discursive objects.

Kendall and Wickham (1999:27) describe archaeology by means of a familiar situation, that of the school. Accordingly, the method of archaeology requires that we should not only focus on statements – such as the learning theory, discipline and school rules – but also on the visual – such as the school buildings, the size of the classrooms, the uniforms of the pupils, etc. We should further make the positions of the subjects explicit – such as the headmaster, the teachers and the pupils – and be aware of their positions of power and how this power is transferred to others. The classroom, for instance, forms a discursive unit in which factors such as the arrangement of the benches as well as the table of the

teacher play a role in determining and describing the position of the teacher and the pupils as subjects.

The implications and consequences of an archaeological analysis are manifold, but are probably best demonstrated by the following two examples. Archaeology clashes with standard forms of historical analysis by proposing time frames that differ from the traditional view of the linear time line. Archaeology further challenges traditional assumptions of continuity, firstly by exposing discontinuity between systems of knowledge, and secondly, by the discovery of new continuities. Foucault essentially challenges the existing boundaries by questioning standard ideas of causality and simultaneity.

Archaeology is an essential method for Foucault. It allows Foucault to develop a historiography that does not depend on the primacy of the perceptions of individual subjects. It permits the historian of thought to operate at an unconscious level that displaces the pre-eminence of the subject found in both phenomenology and in traditional historiography. However, archaeology's critical force is restricted to the comparison of the different discursive formations of different periods. Even though this comparison could suggest the contingency of a given way of thinking by demonstrating the different thought patterns from previous ages, mere archaeological analysis could say nothing about the causes of the transition from one way of thinking to another and so had to ignore perhaps the most forceful case for the contingency of entrenched contemporary positions. Genealogy, the new method deployed in *Discipline and Punish*, was intended to remedy this deficiency (Gutting, 2010).

In the nineteen-seventies, there is thus a shift in Foucault's work as he enters the genealogical phase. *Discipline and Punish* (1975) is his major work of this time, and in this text he is mainly concerned with the analysis of social practices that can be deemed restrictive. His main focus is on the historical beginnings of mechanisms of power, how they function and what their goals are in society. Foucault utilizes the concept of

genealogy, as found in Nietzsche, to develop a method that enables him to thematisize the relation between truth, theory and values, and the social practices and institutions through which they develop. Foucault understands truth as a "system of ordered procedures for the production, regulation, distribution, circulation and operation of statements" (Davidson, 1986:221). Truth is linked with systems of power in a circular relation. Power produces and sustains truth; the effects of power induce and extend truth. Here Foucault focuses specifically on power and the body and their role in the humanities. His main mode of analysis is now the narrative – he allows cases to tell their own stories.

The genealogist is sceptical about the idea of an historical origin or about historical continuity. "Genealogy does not pretend to go back in time to restore an unbroken continuity… and does not resemble the evolution of a species" (Rabinow, 1984:81). Foucault intended the term 'genealogy' to evoke Nietzsche's genealogy of morals, where he rejected any grand scheme of progressive history and rather suggested complex, dreary and even ignoble origins of history.

> "History also teaches how to laugh at the solemnities of the origin. The lofty origin is no more than 'a metaphysical extension which arises from the belief that things are most precious and essential at the moment of birth'. We tend to think that this is the moment of their greatest perfection, when they emerged dazzling from the hands of the creator or in the shadowless light of a first morning. We wished to awaken the feeling of a man's sovereignty by showing his divine birth: this path is now forbidden, since a monkey stands at its entrance" (Nietzsche in Rabinow, 1984:79).

"The point of a genealogical analysis is to show that a given system of thought (itself uncovered in its essential structures by archaeology, which therefore remains part of Foucault's historiography) was the result of contingent turns of history, not the outcome of rationally inevitable trends" (Gutting, 2010). The genealogist thus also pays attention to those aspects of history that are seen as marginal. It should now be obvious that genealogy not only augments archaeology, but also differs from it in the way that it

employs discourse. Whereas archaeology provides us with a "snapshot slice through the discursive nexus, genealogy pays attention to the prossesual aspects of the web of the discourse – its ongoing character" (Foucault in Carusi, 1992:131). Archaeology will thus analyze a system of thought by uncovering its essential structure, whereas genealogy will aim to discover the support mechanisms that keep this system of thought in place.

The two methods of archaeology and genealogy can furthermore be seen as completive. "Archaeology would be the appropriate methodology of the analysis of local discursivities, and genealogy would be the tactics whereby, on the basis of the descriptions of these local discursivities, the subjected knowledges which were thus released would be brought into play" (Foucault, 1980a:85). Genealogy is mainly concerned with the demonstration or rather exposure of power by means of histories of the present, and aims to depict how disreputable origins and unpalatable functions are part of history (Kendall & Wickham, 1999:34). The tools Foucault uses to practice both methods are for all intents and purposes the same. Archaeology addresses a level at which differences and similarities are determined, a level where things are simply organized to produce manageable forms of knowledge. Genealogy deals with exactly the same substrata of knowledge and culture, but Foucault now describes it at a level where the grounds of the true and the false come to be distinguished via mechanisms of power (O'Farrell, 2005).

Archaeology-genealogy is thus a methodology for interpreting the past, of describing a history. Foucault (1998:384-389) asserts that it is possible to identify three uses that historical sense gives rise to. The first use is what is called the parodic – "directed against reality, and opposes the theme of history as reminiscence or recognition" – that refers to the use of history where the historian offers the confused modern person the prospect of changing his identity through the presentation of historical figures as alternatives (Foucault, 1998:385). Although this approach respects past identities and past events, it never gives a new interpretation or an honest sense of transformation concerning someone's identity. The genealogist recognizes that this method is only a disguise that points to our 'unreality' and his response to the historian's charade will be to push this

masquerade of identities to the breaking point and "prepare the great carnival of time where masks are constantly reappearing" (Foucault, 1971:94). The purpose of this push is to create dissociation with the identities of the past with regards to our own fragile identity and create an "unrealization" through the myriad choices of possible identities from the past (Foucault, 1971:94).

The second use of history is dissociative – "directed against identity, and opposes history given as continuity or representative of a tradition" – with the aim of systematically dissociating and destabilizing identity (Foucault, 1998:385). It opposes any idea of a stable identity or the rediscovery of a forgotten identity by analyzing history. Genealogy "makes us question our so called native language, native land, and what governs us, to expose the heterogeneous systems that intersect us and inhibit any formation of an identity, though all the while masked by what we phenomenologically experience as the self" (Foucault, 1998:385).

The third use of history is sacrificial – "directed against truth, and opposes history as knowledge" – and is concerned with the sacrifice of the subject of knowledge (Foucault, 1998:385). It has been argued that, historically, the will to knowledge always requires some form of sacrifice. This sacrifice has changed over time from a religious sacrifice of bodies to that of knowledge, which requires the subject and humanity at large. The will to knowledge produces a will to truth. This reflects a limit, though its inherent function breaks apart all limits such as superstitions and illusions. There is thus a contradiction within the functionality and structure of the will to knowledge which re-installs new superstitions and illusions such as a truth or objectivity. Foucault (1971:96) says that the will to knowledge "creates a progressive enslavement to its instinctive violence."

With what Foucault sees as the end of the 'grand narratives' of modernity in the second half of the twentieth century, a space is opened up for the creation of a modern aesthetics of existence (Foucault, 1988a:49). This is developed in Foucault's fourth and final phase, the ethical phase, which was expressed in his three final texts: *The History of Sexuality*

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(1976), *The Use of Pleasure* (1984) and the *Care of the Self* (1984).[2] Here Foucault explores the origin of the confession and demonstrates how this can be traced to social practices of sexuality. Foucault's perception of ethics is not so much concerned with 'doing the right thing', as it is with the relationship of the self to the self. He focuses on the way in which 'truth' and power constitute the individual as a moral subject of her own actions. Truth claims are linked to power regimens that produce subjects. Foucault's interest is thus in exploring how the self is situated within power relations and within systems of knowledge. Foucault stands critical towards the inner workings of societal structures and institutions that pretend to be neutral and innocent, and wants to show how they impose on us identities and notions of the self that we come to believe. By exposing the inherent structures of institutions, Foucault wishes to illuminate how we can free ourselves from them.

> "Maybe the target nowadays is not to discover what we are, but to refuse who we are. We have to imagine and to build up what we could be to get rid of…the simultaneous individualization and totalization of modern power structures…We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us for several centuries" (Foucault, 1982:785).

Foucault's concept of ethics consists of four major aspects: ethical substance, mode of subjection, self-forming activity and *telos*. Ethical substance concerns the relevant domain of ethical judgment. Foucault argues that different ethical classes would have different ethical substances, such as feelings, intentions, desires and actions. The mode of subjection refers to the ways in which people are motivated to honour their ethical obligations. Foucault gives a few examples of how people might come to recognize moral obligations: as revealed by divine law, as imposed as a requirement of reason, as determined by tradition or convention, or as a consequence of a certain aesthetics of

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[2] Three volumes of *The History of Sexuality* were published before Foucault's death in 1984. The first and most referenced volume, *The Will to Knowledge* (previously known as *An Introduction* in English— *Histoire de la sexualité, 1: la volonté de savoir* in French) was published in France in 1976, and translated in 1977. The second two volumes, *The Use of Pleasure* (*Histoire de la sexualité, II: l'usage des plaisirs*) and *The Care of the Self* (*Histoire de la sexualité, III: le souci de soi*) were published in 1984, the second volume being translated in 1985, and the third in 1986.

being – "the attempt to give your existence the most beautiful form possible" (Rabinow, 1984:353). Foucault wanted to demonstrate that different people at different times in history might have been subjected to the same rules, but in different ways. The mode of subjection therefore provides the link between the moral code and the self in determining why and how this code is accepted and imposed by the self (Davidson, 1986:229).

The third aspect of ethics, self-forming activity, is concerned with the means by which we change ourselves to become ethical subjects. These means can be found in various practices such as self-examination, confession, asceticism, and self-help manuals. Lastly, the fourth aspect of *telos* refers to the kind of beings that we aspire to become when we behave morally. The aspiration can be for purity, self-mastery, freedom, or even immortality. Foucault argues that even though these four aspects are related, they are also independent. The second and fourth volumes of Foucault's history of sexuality explore the relations and the kind of dependence and independence that could exist between the four aspects in Greek and Roman society (Davidson, 1986:230).

It is important to realize that in Foucault, ethics and power are also inextricably linked. Even at the core of ethics we find notions of the self and categories of the self imbedded in power relations. The self we realize in morals and ethics is constituted by discursive practices imbedded in power relations. This is evident in practices such as those that persuade people to attend confession in the first place, those that instil a sense of guilt in people, and are manifested in micro-mechanisms in society. Normative systems, morals and ethics ultimately do not stand outside of power and discursive formations.

Foucault's practice of the methodology of ethics neither displaces archaeology and genealogy, nor makes them irrelevant. They can merely be seen as three axes of analyses: knowledge (archaeology), power (genealogy) and self (ethics). For example, Foucault's analysis of sex and sexuality can be divided according to these three axes. The archaeological perspective focuses on the discursive formation, in other words the system of knowledge, which makes it possible to speak about sexuality. The genealogical perspective looks on the micro-level for operations and actions that produce objects for investigation. And finally, the ethical perspective explores which part of the self is linked

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to sexuality, how people are motivated to recognize moral obligations with regards to sexuality, which self-forming activities people should engage in in order to become ethical subjects in the area of sexuality, and what kind of beings people aspire to become as moral subjects.

The implications of Foucault's work for ethics are enormous. Fundamentally, it underlines complexity and makes it difficult for us to think ahistorically and apolitically; it opens up domains of analysis that can uncover aspects of ourselves and society that would normally be inaccessible; it helps us make sense of change, continuity and discontinuity; it incorporates the relation of the self with the self in the moral domain and thus enables us to conceive of ethics in a completely new way; and finally provides useful tools for comparative analysis of moral systems and approaches.

1.8 Conclusion

In this thesis I will be using a Foucauldian concept of power and will attempt to provide a historical account augmented by an archaeological-genealogical methodology of the emergence of power in the ethical discourse concerning autonomy. I will explore the objects of personhood, self, identity and personal identity and attempt to establish when these objects were described for the first time and then added to the discourse. I will further set out to determine when the ethicists attained so much power that their statements about individual autonomy became authoritative. Finally, I will explore the enunciative modalities in the form of the position of the subject/s and his/their position with regards to the other objects.

Central to this analysis is an understanding of how we are historically determined, to a certain extent, by the concepts and ideas of the Enlightenment. My focus is specifically on a historical enquiry of how the constitution of the self as an autonomous subject is rooted in the Enlightenment. This enquiry is strongly influenced by the work of Kant but, in contrast to Kant, the aim is not to search for "formal structures with universal value, but rather to conduct a historical investigation into the events that have led us to constitute ourselves and to recognize ourselves as subjects of what we are doing, thinking, saying" (Rabinow, 1984:46). This analysis therefore does not have a

transcendental focus and the goal is not to create a metaphysical account of humanity. Rather, this analysis is influenced by an analysis of history that "is genealogical in its design and archaeological in its method" (Rabinow, 1984:46).

The following diametric oppositions will become obvious in the discourse and will be systematically addressed: independence/ interconnectedness; individual/ community; rationality/ emotion; empowered/ disempowered; absolute truth/ relativity; universal/ contextual; good/ bad; man/ woman; Western/ non-Western.

Chapter 2: Discourse of Autonomy: The Relevance of Personhood

> "Discourse in this sense is not an ideal, timeless form that also possesses a history; the problem is not therefore to ask oneself how and why it was able to emerge and become embodied at this point in time; it is, from beginning to end, historical – a fragment of history, a unity and discontinuity in history itself, posing the problem of its own limits, its divisions, its transformations, the specific modes of its temporality rather than its sudden irruption in the midst of the complicities of time" (Foucault, 2002:131).

The exploration of the question of whether the concept of autonomy, as developed and adapted from its Western philosophical origin, can be universally applied in gender-neutral and multi-cultural contexts, will be through the construction of a discourse analysis of autonomy, tracing the "origin" and historic context of the concept. This will be a historical philosophical inquiry, augmented by the methodology of archaeology, as exemplified by the work of Michel Foucault. I will start this discourse analysis through the exploration of the concept of personhood and the related objects of self, identity and personal identity and attempt to establish when these objects were described for the first time and then added to the discourse. In essence I will attempt to construct specific histories of these specific objects.

I view this analysis to be a prerequisite for an adequate and contextual understanding of the concept of autonomy and a necessary step before a critique of the latter concept can be attempted. With this analysis I attempt to explore the different contexts in which the concept 'autonomy' and its objects originated and developed and show the different discursive formations of different periods.

2.1 Autonomy and Personhood

The word 'autonomy' is derived from the ancient Greek word '*autonomos*' that can be divided into the concepts of '*autos*' – meaning 'self' – and '*nomos*' – meaning 'law' (Beauchamp & Childress, 1994:120). It can thus be translated as 'one who gives himself

his own law'; in other words, one who has the capacity for self-government. Autonomy is thus a form of self-rule, as explained by Faden, Beauchamp & King (1986:8): "personal rule of the self by adequate understanding while remaining free from controlling interferences by others and from personal limitations that prevent choice". The concept of autonomy in ethics is however a modern one and the term did not appear in moral philosophy until the time of the Enlightenment. The idea of self-mastery was however already prominent in ancient Greece.

Ethics is deeply concerned with the good life, or the life worth living. We constantly ask the question of what kind of being we aspire to become when we behave in a moral way. In other words, do we aspire to become pure, immortal, free, or masters of ourselves? According to Foucault, ancient Greeks were primarily concerned with an aesthetic of existence: the production of the most beautiful form of life possible, a self characterized by peace and harmony. The *telos* of Greek ethics was self-mastery and self-sufficiency (Foucault, 1985:70). The idea of mastery over the self was expressed as a personal choice with an aesthetic end: one could choose to follow this type of self-mastery in order to achieve a beautiful existence. Aristotle (1998:48-78) developed the idea of moral virtue as courage and temperance (self-mastery) in Book III of the *Nicomachean Ethics*. The Stoics[3] similarly developed a concept of self-mastery in ethics, according to which a virtuous life is attained through mastery of the self, control of the passions, or victory over one's disgraceful side (Campbell, 1985:327). The Stoics recognized themselves as universal beings and the obligation to mastery over oneself was not seen as a choice, but rather a requirement for all rational beings (Rabinow, 1984:356-358).

We find from about the third century B.C. until the second or third century A.D. the occurrence of a specific Greek word '*epimeleia heautou*' – which means taking care of the self (Rabinow, 1984:359). This is a very powerful word in Greek and implies an active involvement with e.g. working on something or being concerned with something.

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[3] The Stoics were a group of philosophers from the Hellenistic period. Stoicism was founded by the Greek, Zeno, who lived from 335-263 BC. Zeno lectured on the porch of a public building – the Agora at Athens - hence the name Stoic – from the Greek for porch "*stoa*". Zeno taught that people should aim to achieve inner peace by submission to destiny and the natural law and through practicing moderation in everything (Baltzly, 2010).

"The point at which the *hypomnemata*[4] and the culture of the self comes together in a remarkable fashion is the point at which the culture of the self takes as its goal the perfect government of the self" (Rabinow, 1984: 362).

According to Foucault, the ancient Greek concept of self-mastery is intimately connected with power. He argues that self-mastery can be viewed as consisting of two components: power over oneself, and, consequently, power over others. One first had to be able to achieve mastery over oneself in terms of becoming an ethical subject, before one could rule others[5]. The Greeks, for instance, viewed self-restraint in matters of sexual pleasure, such as abstinence, as the sign of a virtuous hero. "In some people, such extreme virtue was the visible mark of the mastery they brought to bear on themselves and hence the power they were worthy of exercising over others" (Foucault, 1985:20). The secondary aim of self-mastery is thus related to power over others. This intricate relationship between power and self-mastery is still expressed today in mantras such as: "he who controls others may be powerful, but he who has mastered himself is mightier still" (Johnson, 2011).

The concept of self-mastery has however mostly been replaced by 'autonomy' in modern ethical discourse. Autonomy is today generally understood to mean "the capacity for self-government" (Blackburn, 1996:31) and its application is a reflection of respecting the individual's right to self-determination (Brody, 1985:380). Individuals are therefore deemed autonomous if their actions are truly their own. The concept of autonomy first appears, in a philosophical context, in the writings of Immanuel Kant in the eighteenth century (Clements & Sider, 1983:2011). It however seems as if there is a preceding concept that has greatly influenced the concept of autonomy and that has become almost inextricably intertwined with it: the notion of a person. Boethius (c 480-524), the Roman philosopher and theologian, appears to have been the first to use the word 'person' in a philosophical context after having transposed the concept from the legal context found in Roman law (Vincent, 1989:700). Boethius defined person as "*persona est rationalis*

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[4] *Hypomnemata* is variously translated as a reminder, a note, a public record, a commentary, a draft, or a copy (Liddell & Scott, 1940).
[5] This idea is fully developed in Chapter 5.

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naturae individua substantia" – the person is the individual subsistence of a rational nature (Crosby, 1996:24).

Kant seems to have been the first philosopher to combine the two terms – autonomy and person – in his writing. He introduced the term 'person' in relation to autonomy in his second practical formulation of the moral law in the form of the categorical imperative as the Kingdom of Ends (Guyer, 1993:322, 344):

> "So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant, 2008:46)

According to the Kingdom of Ends, moral agents (persons) are by their nature self-governing and exist as ends in themselves. Persons decide for themselves which pursuits to follow and the forceful imposition of another's ideas on them is to disrespect their autonomy. Accordingly, persons wish for others to respect them as rational decision makers and self-determining agents: likewise, persons must respect the capacity for self-determination in others (Waymack, 2010). This "rational nature that exists as an end-in-itself" serves as a basic principle of all rational and moral thinking. We implicitly appeal to it when we distinguish between a *person* and a *thing*. Our personhood consists in "our status as a rational agent of worth" (Arrington, 1998:276). Kant forms a very clear philosophical conception of what it is to be a person and this conception provides the foundation and drive of his moral philosophy as a whole (Waymack, 2010).

The interconnectedness between autonomy and person is further evidenced by multiple texts about autonomy where the word 'person' uniformly appears:[6]

> "Respect for autonomy (a norm of respecting the decisionmaking capacities of autonomous persons)" (Beauchamp & Childress, 1994:38)

> Kant: "A person has "autonomy of the will" for Kant if and only if the person knowingly acts in accordance with the universally valid moral principles that pass

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[6] My emphasis throughout all the quotations.

the requirements of the categorical imperative" (Beauchamp & Childress, 1994:58).

Rawls: "Persons are autonomous in the original position because they choose and give themselves the moral law out of their nature as rational, independent, and mutually disinterested persons" (Beauchamp & Childress, 1994:59-60).

Young: "An autonomous or self-determining person is someone who chooses or devises a plan for her life, rather than having one imposed on her by others or allowing circumstances to dictate one. And proceeds to live in accordance with that plan" (Young, 2001:441).

Hull: "…conception of personhood under which to be a person means to be an individual with the capacity for autonomy, understood as either the ability to engage in rational self-control or at least the potential to develop that ability …" (Hull, 1978).

Despite its ubiquitous use, the concept of 'person' is probably both the most variable and contested in the literature around autonomy and debates still rage as to its appropriate place in moral theory. It seems to me, as has been suggested by others, that some of the disagreement in the moral discourse around autonomy, stem from disagreement about the nature and meaning of the concept 'person'. It is my contestation that an understanding of 'person' presupposes an understanding of 'autonomy' and I therefore find it imperative to explore the development and application of both concepts and attempt to elucidate how the one influences and determines the other. Starting with a historical account of the concept of person therefore seems prudent, if not critical, in establishing a satisfactory understanding of the concept of autonomy. In this assertion, I agree with Schwobel (1991:6):

"Questions concerning the character of personhood are not exclusively the domain of abstract academic debates, but lie at the heart of many burning public issues of our time from the ethics of genetic technology and medical research and practice to

debates about the character of legal responsibility and very practical issues of penal reform."

Common language does not differentiate between the terms 'human being' and 'person' and traditional thinking presupposes that all human beings – *Homo sapiens* – are persons. This is held as an indisputable, self-evident truth and is mostly based on Judeo-Christian beliefs that human beings, created in the image of God, are necessarily endowed with divine characteristics such as dignity, rights and personhood. Traditional conceptions of personhood have however been challenged by advances in biomedical technology, such as embryo experimentation, cloning, termination of pregnancy, ideas about animal rights, and the ability to keep people alive in persistent vegetative states. These modern-day dilemmas beg the question of whether all human beings, in all states and stages, should be regarded as persons and thus be afforded the same protections and rights. The necessity of dealing with these dilemmas on a moral level, have caused many philosophers to distinguish 'persons' from 'human beings' (Tsai, 2008:171).

The term 'person' therefore seems to be used in two distinct fashions: traditionally referring to the purely biological – to individuals belonging to the species *Homo sapiens* – but lately also referring to individuals who share comparable characteristics – akin to the mental life that is characteristic of normal adult human beings. The latter concept of a person has played a central role in biomedical ethics and is seen to be "crucial for the formulation of many *basic* moral principles" (Tooley, 2001:117) and nowhere is this more evident than in the understanding of the principle of autonomy. Tsai (2008:171) similarly asserts that:

> "After examining the moral justification for these ethical principles, one realizes
> that seeing patients as *persons,* who are rational, self-conscious beings capable of
> valuing their own lives and, hence, entitled to liberty and the right to make choices
> for themselves, constitutes the backbone of Western medical ethics."

Before the latter concept of person as reflective of the mental life of normal adult human beings is critically evaluated, the concept of person as a purely biological entity, a

member of *Homo sapiens*, a human being, will be briefly assessed. Two strands of thought can be identified from the time of ancient Greek philosophy, namely, a materialist, reductionist understanding of persons, and a theistic dualism that focuses on the 'soul' as the essence of humans as persons (Gillett & Peacocke, 1987:2). It therefore seems as if the first bifurcation in the trail that must be negotiated is addressing the question about whether human beings are merely atoms, driven by external forces, devoid of metaphysical meaning and purpose.

A strong proponent of the idea of science as the only pathway to fundamental knowledge, Peter Atkins (1987:18), states that: "[u]nless it can be explicitly demonstrated otherwise, we should adopt a view that all attributes of persons have grown in response to the pressures of survival, and that any rationalization of them in terms of *additional* hypothesis, such as that of a creating, rewarding, or admonishing god or a teleological sense of purpose, are unjustified, superfluous superimpositions." He forcefully rejects all claims of a metaphysical understanding of humanity and purpose. "God, an afterlife, the concept of purpose, are merely attempts to ameliorate the prospect of death, to unload the burden of guilt, and to soften the hardships of life." He ascribes all non-scientific attempts at explanation as being without justification, and characterises them as being mere "assertion, wishful thinking, and hallucination" (Atkins, 1987:18).

The success of science in providing an adequate, comprehensive and sufficient account of the human being as a person has been widely disputed. The most widespread criticism is levelled at the failure of science to account for certain phenomena of the mind. The central question is whether the states and processes of the mind (so-called mental states) are identical to the states and processes of the brain. According to the mind-brain theory, every mental state has an identical brain state; for example, when a human being experiences pain (a mental state), there is a simultaneous firing of the C-fibres in the brain (a brain state). This phenomenon, where mental events are associated with specific parts of the brain, is known as localisation and scientists have tried to use this to prove that mental activity is wholly localised within the brain, in other words, that the mind *is* the brain. The proof put forward comes from experiments and experiences where it has

been shown that inhibiting brain activity inhibits mental activity, and that localised brain damage results in localised damage to the mind (Smart, 2008). It has however been argued that scientific thought and language are unable to explain all mental phenomena. For instance, science seems to fail to account for and accommodate the phenomenon of data provided by introspection.

It has also been argued that science cannot explain the concept of intentionality (Lockwood in Atkins, 1987:24). Intentionality can be understood as the "directedness or 'aboutness' of many, if not all, conscious states"[7] (Blackburn, 1996:196). The concept of intentionality originated in the work of Jeremy Bentham and later Franz Brentano, who depicted it as the main characteristic of mental phenomena, by which they could be distinguished from physical phenomena. Edmund Husserl was principally concerned with the problematic of reconciling the subjective or psychological nature of mental life with its objective and logical content (Blackburn, 1996:181; Smith, 1944:1). He developed the concept of intentionality further in his phenomenology and saw it as expressing "the fundamental property of consciousness; all phenomenological problems…find their ordered place within it" (Husserl, 1962:373). Accordingly, there exists a problematic in understanding the relation between a mental state, or its expression, and the thing it is about, which science fails to explain. Since intentionality is thought to be both indispensable and a central feature of the mind, the failure of science to provide an adequate conceptual account of it, seems to deliver an ostensibly fatal blow to the exclusively scientific argument. It remains to be seen whether this is truly a fatal blow or whether it is just a temporary setback until science has expanded further into this complex terrain.

The appropriateness and adequacy of science in explaining human beings as persons has also been attacked from another angle: anti-positivism. It is claimed that expressions of personhood in terms of the complexity of human behaviour and social interaction cannot be explained by science alone. The anti-positivists reject the positivist paradigm, based

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[7] For example, the name John Black is about the human being John Black, or the black lines on the map are about the streets of Pretoria.

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on the work of August Comte, where social reality is understood within the scientific framework through the method of observation and reason. Anti-positivism argues that social reality is multi-layered and complex and subjectively interpreted by the individual according to an ideological framework. While positivism therefore advocates objectivity, measurability, predictability and aims to construct laws by which to explain human behaviour, anti-positivism embraces understanding, the creation of meaning and the interpretation of phenomena (Dash, 2005).

Jürgen Habermas (1996:1) argues in *On the Logic of the Social Sciences* (1967) that "the positivistic self-understanding prevalent among scientists has adopted the thesis of the unity of sciences" in which all the sciences are assimilated into a natural-scientific model. This model however fails because science cannot be divorced from history; both are based on a situation-specific understanding of meaning that can be explicated only hermeneutically (Habermas, 1996:43). "Access to a symbolically prestructured reality cannot be gained by observation alone" (Outhwaite, 1988:22). Trigg (in Atkins, 1987:27) further argues that science refuses to take seriously anything that is not a sensory experience, that cannot be measured and reproduced, such as aesthetics, emotions and motives, and science hence rejects the immeasurable as unreal.

The argument between the two strands of thought is far from settled and the brief discussion I have attempted fails to do justice to this complex and heated debate. It is however not the place of this dissertation to embark on a thorough analysis of the strength of argument of the opposing views. I merely raise the dilemma as one must in such a discussion, and having done so, choose a path based on subjective conviction. I therefore assert that I find the behaviouristic and anti-positivist criticism decisive and convincing and therefore argue, for the purpose of this dissertation, for the rejection of a purely scientific explanation of human beings as persons.

I thus turn from a purely scientific, biological interpretation of persons to one that values other characteristics such as the mental, emotional and psychological, and embraces teleological and metaphysical notions of being. Indeed, further analysis of the concept of

a person in a philosophical sense reveals that it has traditionally embraced a metaphysical dimension:

> "…'I am who I am', i.e. the claim of absolute metaphysical identity independent of qualities borrowed from other 'beings', is an assertion implied in the very question of personal identity. Personhood, in other words, has the claim of absolute being, that is, a metaphysical claim, built into it" (Zizioulas, 1991:33).

Such an expanded concept of 'person' has historically been variously expressed as identity/ personal identity/ or person/ personhood. Even though the meanings of these terms are strictly speaking distinct, they are closely related and often intertwined in common and philosophical language. It is hence rather challenging to dissect them apart and this distinction might sometimes appear artificial when authors use the words interchangeably in their work.

It has been argued that at least some of the current controversies about the criteria for 'person' are at an impasse because the disputing parties are each clinging to a distinct strand of the concept, ignoring the dramatic historical changes it has been subjected to, and each trying to advance his strand as the central continuous thread (Rorty, 1976:302). I therefore believe that it is essential to undertake this dissection, despite the challenges. I will start with an exploration of the terms 'identity', 'personal identity', 'person' and 'personhood' as they appear in philosophical texts. I attempt to mark a trail in search of an appropriate and sufficiently rich conception of the person, "mindful that this may lead to a growing sense of mystery regarding the nature of what is sought" (Gillett & Peacocke, 1987:11).

An historical exploration of the terms 'identity', 'personal identity', 'person' and 'personhood' have further attraction; firstly because it will assist in understanding the separate terms and their specific locality in history; but secondly, because it will help unearth the rich vocabulary available to us for describing persons and their integral powers, limitations and alliances. In the words of Amelie Rorty (1976:302) "by attending

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to the nuances of that vocabulary we can preserve the distinctions that are often lost in the excess of zeal that is philosophical lust in action: abducting a concept from its natural home…"

My exploration of each of these terms attempts to uncover their natural 'home' and 'origin'. Three provisos are however in order from the outset. It will be clear that these terms are not static and their definitions, according to necessary and sufficient conditions, are permanently in flux. Secondly, in keeping with Foucault, I reject the idea of a continuous progressive history of the concept and aim to expose the discontinuity of its histories. Finally, a neat classification as suggested in the title is not possible, since the occurrence and consequences of historical and social changes have added increasing layers of meaning that cannot easily be disentangled and grouped into a taxonomy.

2.2 Identity/ Personal Identity/ Person/ Personhood

A uniform definition of identity is hard to come by. The concept is described in lay language as the "quality or condition of being a specific person or thing" (Oxford English Reference Dictionary, 1995). It is also closely related to the concept of self. "The self is where our identity resides. It is the medium through which our actions are guided and our world is perceived" (Gaylin & Jennings, 2003:145). Dictionary definitions of the self similarly link it with the idea of identity, or with the concept of person: "the total, essential, or particular being of a person", or "the essential qualities distinguishing one person from another", or "one's consciousness of one's own being or identity; the ego" (The American Heritage Dictionary of the English Language, 1992).

In philosophical terms, identity is used to define that which makes an entity definable and recognizable in terms of a set of qualities or characteristics that distinguishes it from other entities. Specifically, the concept is used to answer a number of questions:

1. "What kind of being is the human?"
2. "In what ways is the human species like and unlike God?"

3. In what ways is the human species like and unlike other animals? (Gunton, 1991:61)

At the heart of the concept therefore lies the ontological question about what kind of entity the human is. This has traditionally been answered in terms of duality: matter and spirit, body and soul. Descartes (2008:27) famously proposed the most radical form of dualism in the form of an intellectual mind and mechanical body in *Discourse on Method*:

> "I think, hence I am, was so certain and of such evidence, that no ground of doubt, however extravagant, could be alleged by the sceptics capable of shaking it, I concluded that I might, without scruple, accept it as the first principle of the philosophy of which I was in search.
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> In the next place, I attentively examined what I was, and as I observed that I could suppose that I had no body, and that there was no world nor any place in which I might be; but that I could not therefore suppose that I was not; and that, on the contrary, from the very circumstances that I thought to doubt of the truth of other things; it most clearly and certainly followed that I was; while, on the other hand, if I had only ceased to think, although all the other objects which I had ever imagined had been in reality existent, I would have had no reason to believe that I existed; I thence concluded that I was a substance whose whole essence or nature consists only in thinking, and which, that it may exist, has need of no place, nor is dependent on any material thing; so that "I", that is to say, the mind by which I am what I am, is wholly distinct from the body, and is even more easily known than the latter, and is such, that although the latter were not, it would still continue to be all that it is."

In Cartesian language, human nature is thus a reflection of the dual structure of the universe as matter and divine idea. Humans therefore are like God, but unlike animals, since the human mind, as representation of God, is endowed with innate ideas and is therefore able to reason rationally (Gunton, 1991:47). Dennett (1991:29) notes that the "idea that a self (or a person, or for that matter, a soul) is distinct from a brain or a body" is entrenched in our way of talking and thinking.

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One of the most problematic aspects of Cartesian dualism is that of interactionist dualism. If mind and body are believed to be distinct substances, they still have to be able to interact, and the exact nature of this "intimate union" has been widely disputed (Kenny, 1997:121). One of Descartes' first critics was Princess Elisabeth of the Palatine (1618 – 1680), who questioned how the soul could move the body. She argued that motion involves contact, and contact involves extension; yet Descartes claimed that the soul was unextended. She wrote: "…I would find it easier to concede matter and extension to the soul than to concede that an immaterial thing could move and be moved by a body" (Bennett, 2006:4). Dennett (1991:35) similarly argued three centuries later that "anything that can move a physical thing is itself a physical thing" and disputed that the mind can both elude all physical measurement and control the body. Princess Elisabeth further asserted that Descartes unnaturally elevates the mind over the body and that this eliminates the passions so necessary for right conduct and devotion to God (Johnson, 2011).

Princess Elisabeth was an interesting figure and it has been suggested that she was the only critic that Descartes ever heeded (Johnson, 2011). In fact, Descartes dedicated his *Principia* to her. She however insisted that her correspondence with Descartes remains private and refused for their letters to be published in her lifetime. These letters were discovered 200 years later and only translated and published in 1999. Her reluctance to make their correspondence public might be a reflection of the societal norms at that time. Women's voices were for the most part silent, since the public sphere excluded both women and the lower classes (Van Horn Melton, 2001:224). Even though women could participate in public life to a limited extent, they did not have the same status and privileges as men. For instance, women were viewed to be the property of either their husbands or fathers, and could do nothing without their consent; not even publish a book. Men controlled the public participation of women well into the Enlightenment (Hesse, 2003:71).

The original discourse around personhood thus occurred in a male-dominated space that was occupied by intellectuals and academics from Europe. This does not imply that

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women had no influence at all, but rather that their influence was tacit and unacknowledged. Even though we are now aware of Princess Elisabeth's critique of and influence on Descartes, it never became part of the discourse of that time.

Gilbert Ryle (1949:297) probably launched the most memorable attack on Cartesian dualism. He argued that the classical theory makes a basic "category-mistake" because it attempts to analyze the relation between 'mind' and 'body' as if they were terms of the same logical category. Ryle (1949:15-16) called Descartes' theory the "dogma of the ghost in the machine". He categorically denied that there is a hidden entity – the 'mind' – in a mechanical system – the 'body' – and that the functions of the mind are independent and separate of the functions of the body; indeed, he argued that the actions of the mind might be better conceptualized as explaining the actions of the body.

There are many more debates raging about the value of a dualistic understanding of human beings. Proponents argue most notably from the point of physical indeterminism, as demonstrated in the area of quantum mechanics, where microscopic events are believed to be necessarily indeterminate (Popper & Eccles, 1977:540). Detractors argue from the point of biological development or simplicity. The former argument claims that human beings develop phylogenetically and ontogenetically from entirely physical entities and, since no non-physical entities are added in the course of development, they necessarily end up as complete physical beings. The latter argument, speaking from the point of view of the heuristic principle of simplicity, questions why it should be necessary to claim the existence of two, ontologically distinct, entities when it seems possible to explain the same properties in terms of one entity. Dualism thus fails the test of Ockham's razor – *pluralitas non est ponenda sine necessitate*[8] (Encyclopædia Britannica, 2011a). I elect to join the ranks of the detractors and reject dualism in favour of a monism in this regard.

The overarching question of identity seems to be one of human identity – how is the

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[8] This statement is translated as: "plurality should not be posited without necessity" or "entities are not to be multiplied beyond necessity" (Encyclopædia Britannica, 2011).

human identity different from the identity of other species. The two obvious imbedded questions seem to be: what differentiates the identity of different human beings, and how can the identity of one person be continuous through space and time despite changes in circumstances, physical and psychological attributes?

Four major debates can accordingly be identified in the literature. The themes of the debates, as identified by Rorty (1976:1-2), are the following:

1. Class differentiation: "what distinguishes the class of persons from their nearest neighbours, from baboons, robots, human corpses, corporations?"
2. Individual differentiation: "what are the criteria for the numerical distinctness of persons who have the same general description?"
3. Individual reidentification: "what are the criteria for reidentifying the same individual in different contexts, under different descriptions, or at different times?"
4. Individual identification: "what sorts of characteristics identify a person as *essentially* the person she is, such that if those characteristics were changed, she would be a significantly different person, though she might still be differentiated and reidentified as the same?"

I classify the first theme as a debate about 'identity' and the following three as debates about 'personal identity'. Blackburn (1996:283) similarly classifies 'personal identity' as the problem of "what makes the identity of the single person at a time or through time". I am for the purpose of this dissertation only concerned with the first and fourth themes of class differentiation and individual identification and will be guided in my analysis by thinkers such as Descartes and Locke.

In a sense Descartes once again started the debate about 'personal identity' with his famous Cartesian dualism, which argued for the separation of mind and matter (body) into two distinct but interacting substances. Descartes gives preference to the rational capacities over sense experience as is evidenced in his famous dictum: "*Cogito ergo sum*"

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– 'I think therefore I am'. The concept of consciousness, or rather self-consciousness – an awareness of ourselves as thinking – appears as a central theme and is carried through most texts addressing personal identity, self and personhood. As discussed, the causal connection between mind and body however remains problematic in Descartes' work and has been repeatedly criticised.

Locke is one of the best-known critics of Descartes and is believed to have developed the first comprehensive theory of personal identity in the history of philosophy in his work *An Essay Concerning Human Understanding* in the chapter '*Of Identity and Diversity*' (Uzgalis, 2010). His account of personal identity is embedded in a general account of identity. Locke defines the question of identity more broadly than the aforementioned definition, by distinguishing between the identity of atoms, masses of atoms and living things. Accordingly, individual atoms stay the same over time and hence have no problem of identity. Masses of atoms are constituted by individual atoms and hence similarly pose no problem of identity. Living things are however constituted by their functional organization and it is the continuation of this functional organization as the same life that is the criterion for identity. In this general account of identity, Locke does not distinguish between humans and other living species (Uzgalis, 2010).

Locke then develops an account of personal identity where the concept of 'man' – referring to a living body of a particular shape – is distinguished from 'person'. He refutes the popular claims of his time that a person is solely constituted and distinguished by the presence of either a soul or rational discourse. He claims that even though a soul could explain the sameness of a person from infancy to old age, it could not account for any doctrine of reincarnation. This is so since, in reincarnation, the soul is believed to move from one being to another, and one such soul can thus occupy different bodies over time. Soul can then not be the feature that identifies one person. Locke also disputes the adequacy of rational discourse as a necessary and sufficient distinguishing condition, through the thought experiment of a rational talking parrot and a creature in the shape of a man that cannot engage in rational discourse.

According to Locke then, 'man' is an animal of a certain shape, whereas 'person' is a "…conscious thinking thing (whatever substance made up of, whether spiritual or material, simple or compounded, it matters not) which is sensible, or conscious of pleasure and pain, capable of happiness or misery, and so is concerned for itself, as far as that consciousness extends" (Locke, 1847:62). Locke thus considers personal identity to be founded on <u>consciousness</u> and not on the substance of either the soul or the body, hence avoiding the dilemma of Cartesian dualism.

The great advantage that Locke gained by developing this theory of personal identity without making any suppositions about a dualistic or monistic human constitution, is however curtailed by the fact that this concept of personal identity is also without reference to any clear ontological foundation. The latter step was an attempt to move away from the metaphysical uncertainties of an ontological foundation, but conversely plunged the debate into a 'metaphysical vacuum'. It has been argued that, since Locke, no author has ever adequately cleared the concept from this vacuity. By exclusively focusing on the attributes of personal identity without answering important questions about the ontological structure of a person, implicit assumptions about this ontology remain hidden and unquestioned. These hidden assumptions are thought to unconsciously influence the selection of necessary and sufficient conditions of personal identity and hence confuse the debate around personal identity from the outset (Gordijn, 1999:352).

Locke's theory of personal identity has however been and remains influential. Two major themes emerge in his definition: thinking and consciousness. Locke interprets 'thinking' to refer to all sensations and perceptions, and 'consciousness' as the recognition of these sensations and perceptions as our own, hence a kind of self-consciousness. We are thus aware that we use our senses such as sight, hearing, smell, taste and feeling, and are further aware of our perceptions, such as meditation or willing actions, as our own. Consciousness thus always accompanies thinking, and this very consciousness "makes every one to be what he calls self, and thereby distinguishes himself from all other thinking things…" (Locke, 1847:210).

Having said this, it has been argued that Locke's concept of consciousness is not very clear and it has thus been subjected to variable interpretations and modifications. Locke also did not clarify whether he views consciousness as a necessary condition for personal identity or also as a sufficient condition, leading to much discussion and disagreement in the literature (Gordijn, 1999:353).

An important question that has to be raised is why Locke placed so much emphasis on the conception of consciousness through time. Locke argues that an individual has the same personal identity to the extent that he is conscious of his past and future thoughts and actions in the same manner as he is conscious of his present thoughts and actions. The essential concept here is the 'sameness' of a rational being. The identity of a person extends as far back as his awareness of any past action or thought extends. The self that now reflects on a past action is the same self that performed the action (Gordijn, 1999:351). It has been argued that the importance of such a conception of personal identity is that it holds the inherent possibility of justice, of punishment and reward. Locke argues that consciousness is essential for justice since fair punishment and reward can only occur when the recipient can identify himself as the same actor who performed the act that is now being punished or rewarded. Punishment or reward in the absence of such consciousness is unjust (Uzgalis, 2010).

A further ethical ramification of the concept of personal identity as consciousness is that, when a man can no longer remember or be conscious of a specific past action, he can no longer be the same person as the one who performed that action, although he still remains the same man (Locke, 1847:210). It is thus possible to conceive of human beings who are not persons: a human being who has lost consciousness can no longer be considered to be a person, even though he is considered to be the same man. This is a recurring theme in modern day philosophy and has found application in various debates on abortion, infanticide and euthanasia.

Conversely, it is conceptually possible to conceive of persons who are not human beings: members of non-human species who are capable of displaying consciousness can also be

regarded as persons. Ironically, even though most authors accept the conceptual possibility that non-human persons can exist, the very characteristics considered necessary conditions for personhood are typically and uniquely human characteristics (Gordijn, 1999:353). Cartesian philosophy, with its understanding of the self or person as identical to the soul, is much simpler in this regard. Accordingly, each human being possesses a soul and is hence a person, whereas non-humans possess no such soul and can thus not be considered persons.

It therefore seems as if Locke's insistence on remaining silent on the metaphysical foundations of the person, and his exclusive focus on the attributes of persons in his exploration of the meaning of 'personal identity', have led to enormous variability in the descriptions of personal identity, and the present confusion in bioethical debates can be deemed partly due to our Lockean heritage (Gordijn, 1999:354).

This has brought some authors, like Daniel Dennett (1976:175), to argue that the concepts of 'person' and 'human being' are "locally coextensive or almost coextensive" and that the concept of person at best, adds nothing to the ethical debate, and at worst, confuses more than it clarifies. Gordijn (1999:354) has also argued for relinquishing the concept since he believes it to be both superfluous and ambiguous.

Despite these arguments about the incoherence and obsoleteness of the concept, it has been argued that it seems self-contradictory to abandon the concept altogether, since it seems that it is only by virtue of being persons that we are able to consider abandoning the concept. Heidegger, who conceived in *Being and Time* a treatise on ontology by examining the being of Being, influences this idea. He started with the being of those entities that are able to ask the question what being is, namely ourselves (Heidegger, 1962: 436-437). According to the definition of a person given thus far – someone who is capable of thinking and reflective self-consciousness – persons are the only entities that can ask the question about the nature of persons. "The analysis of ourselves, insofar as we are able to ask what being is, is to result in a fundamental ontology" (Esfeld, 2001:47). Since persons are the only self-reflective subjects, they are the only beings that can elect

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not to call themselves persons.

The concept of 'person' has furthermore been used so ubiquitously in philosophical and ethical literature that a thorough exploration of its historical meaning appears compulsory. After having thus briefly discussed the historical development and meanings of the terms 'identity' and 'personal identity', having noted the frequent reference to the word 'person' or 'personhood' within these debates, I will now turn to a more thorough exploration of the development of the latter two terms.

The concept of 'person' is in a sense a culmination of all the aforementioned arguments that have been raised in the definition of identity and personal identity, and remains one of the central problems in metaphysics (Blackburn, 1996:283). The problem of defining the 'person' has received enormous attention since the late twentieth century when debates around human rights and abortion started gaining momentum. The central question is at what moment of biological development a human being becomes a person in a moral and legal sense. This is not only a philosophical debate, but also a biological, political, legal and religious one as evidenced by the discussions around the definition of the moral status of embryos and the ethical permissibility of abortion, in vitro fertilization (IVF), embryo research, organ transplantations and termination of the life of patients in a persistent vegetative state (PVS) (Aksoy, 1997:3).

From the outset I must make it clear that I will not attempt to give a comprehensive analysis of the various legal, scientific and religious debates, and may only refer to them in a cursory manner. I will concern myself mainly with addressing the ethical and philosophical debates. In that I concur with Mason and McCall Smith (1984:107) in believing that what constitutes the state of being of a person is a matter of moral decisions and is not one of scientific facts.

There are a myriad of diverse ways to describe and understand the word 'person' in modern language. At the heart of this inconsistency, seems to be a linguistic confusion about the concept (Gillet & Peacocke, 1987:3). An auspicious place to start with this

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analysis might thus be by exploring the linguistic history of the word 'person'. In the available ancient texts, the word seems to have first appeared in Latin in the context of the Roman theatre as *dramatis personae*. The actors wore masks that, if translated literally, were known as '*per sonae*' – that through which the sound comes. "The person thus comes to stand behind his roles, to select them and to be judged by his choices and his capacities to act out his *personae* in a total structure that is the unfolding of his drama" (Rorty, 1976:309). According to the theatrical paradigm, persons are actors who choose their roles (Rorty, 1976:311) and the word *persona* thus came to refer both to the actor and the role that the actor performed. This idea of agency of the person has become integral to the modern understanding of the word and many current debates seem to emanate from disagreements about the "function that the concept of a person plays in the social life as the unit of intentional, responsible agency" (Rorty, 1976:5).

Cicero adapted the word *personae* for use in a legal paradigm to refer to people performing specific roles, such as the plaintiff. In Roman law, a person was conceived as *persona est sui iuris et alteri incommunicabilis* – "a person is a being of its own and does not share its being with another" (Crosby, 1996:24-25). It is important to note that at its inception the word *persona* did not refer to a human being or even to the specific moral characteristics of a human being. The word in no way served to differentiate humans from other species, but only referred to the roles played by various actors (Vincent, 1989: 700). It is also crucial to understand that the legal notion of person is based on juridical right. Under early Roman law, women and slaves had no legal right, and thus were not 'juridical persons'. This changed slightly under late Roman law, and women and slaves were granted some rights, but these were fewer and different rights from those of so-called free men (Teichman, 1985:180). The idea that all men have natural rights can first be found in Hobbes, but as Mary Wollstonecraft (1796:x) rightly points out, these rights were still taken to refer to men and not to human beings as such.

A second logical step in this linguistic exposition is to look at the common definition of the term as found in The Oxford English Reference Dictionary (1995). In this approach I follow in the footsteps of Jenny Teichman (1985:176), thus inspired by J.L Austin that

recommended the dictionary as "good philosophy".

1. an individual human being (*a cheerful and forthright person*)

2. the living body of a human being (*hidden about your person*)

3. *Gram.* Any of three classes of personal pronouns, verb-forms, etc.: the person speaking (**first person**); the person spoken to (**second person**); the person spoken of (**third person**)

4. (in *comb.*) used to replace –*man* in offices open to either sex (*salesperson*)

5. (in Christianity) God as Father, son, or Holy Ghost (*three persons in one God*)

6. *euphem*. The genitals (*expose one's person*)

7. a character in a play or story

8. an individual characterized by a preference or liking for a specified thing (*not a party person*). Δ **in one's own person** oneself; as oneself. **in person** physically present. **person-to-person 1** between individuals. **2** (of a phone call) booked through the operator to a specified person. *[*ME f. OF *persone f.* L *persona* actor's mask, character in a play, human being]

It is clear that the distinction between 'human being' and 'person' was neither made in ancient Greece nor currently in common language. Why do we then make this distinction in philosophical language? One reason might be that the interest in persons follows the heritage of Locke and is thus moral and legal, arising from problems in locating liability (Rorty, 1976:310). It follows from the original use of the word 'person', that the idea of the person is one embodying a cohesive core of choice and action. "Having chosen, a person acts, and so is actionable, liable" (Rorty, 1976:309). Accordingly, a human being is not necessarily liable, but a person always is. Personhood is an all-or-none attribution. "One is either legally empowered or one isn't; one is either liable or not" (Rorty, 1976:310).

The distinction is also found in anthropology, but here not to designate liability, but rather to denote the social nature of human beings. La Fontaine (1985:124-126) argues: "orthodox anthropological usage has long distinguished the person from both the

individual and the self. The individual refers to a biologically distinct, socially discrete, indivisible being, a unity of body and mind; the person, to an ensemble of social roles and relations; the self, to a unique identity." He further argues that in the West, due to the ideological predominance of individualism, there has long since been a tendency to collapse the person into the individual, and both into the self.

Apart from the legal and social implications of the concept 'person', we must also focus on and distinguish between the metaphysical and moral debates around personhood at this time. These debates are often conflated in philosophical discussion and lead to much misunderstanding and misinterpretation. The metaphysical notion is that of an intelligent, conscious, feeling agent, whereas the moral notion is akin to the legal notion of an agent who is accountable and has rights and responsibilities.

Even though some authors, like Dennett (1976:193), contest the separateness and distinctness of the moral and metaphysical notions of a person and argue that they are "just two different and unstable resting points on the same continuum", I will start by treating these two notions as conceptually distinct, and will illustrate how the interpretation of the one influences the other. I will then turn to the criticism that has been levelled against such a distinction.

The earliest remnants of the metaphysical debate about personhood can be traced back to ancient Greece where there was a belief in the concept of 'ensoulment'. The moment of ensoulment was believed to mark the beginning of 'life'. Pythagoras said: "[t]he earthly soul is said to be a temporarily fallen divinity, immortal in character, and the most essential and enduring part of each person's identity" (Carrick, 1985:110). Ensoulment is the moment when the soul enters the human body and has been interpreted in two ways: firstly as the creation of a soul within a human being, or secondly, if one believes that the soul is pre-existing, the moment when the soul is inserted into the body. The latter concept is still popular in the religious beliefs of Christianity and Islam today.

There was and still is much controversy about the exact timing of ensoulment. This

timing is of the utmost importance not only for the metaphysical argument, but also for the moral argument, since it is believed that when the soul enters the body, this body becomes a human person, with all the ensuing rights of a person – especially the right to life. Different beliefs about this exact timing thus strongly influence the debates around ending life through termination of a pregnancy.

Whereas Plato (429-347 BC) and the Stoics believed ensoulment to take place at birth when the soul entered the body from without, possibly through the first breath, Aristotle (384-322 BC) viewed it to happen early in pregnancy. Aristotle viewed the soul as the 'cause and first principle of the living body'. This belief has been taken up by most monotheistic religions as diverse as Christianity, Islam and Eastern religions, and also by many philosophers and scientists spanning ancient and modern times. Aristotle defined different time points of ensoulment for the two sexes, based on their difference in 'quickening' or 'vigour for life', and accordingly, male embryos were ensouled at 40 days, and female embryos only at 90 days.

One of the most notable followers of Aristotelian thinking was Thomas Aquinas (c. 1225-74), whose synthesis of Aristotelian philosophy and Christian doctrine provided the main philosophical influence for the Catholic Church. The early Catholic Church hence believed that the moment a foetus was 'animated' or 'ensouled' was 40 days after conception, but the modern Catholic Church follows in the footsteps of Hippocrates and the Pythagoreans and believes that it occurs at conception. They have used this belief to strongly oppose abortion as a moral sin based on the fact that: "[he] is a man, who is to be a man; the fruit is always present in the seed" (Tertullian, 1998:49).

Peter Singer and Helga Kuhse have taken up this debate. They argue that it is often assumed that the answer to the question of when human life begins will also provide the answer to the question of how that life ought to be morally treated. They attempt to refute the claim that a particular human life begins at the moment of fertilisation. This claim rests on the arguments that, firstly, there is a genetic continuity between the zygote and the individual, and secondly, that there is a 'numerical continuity, since the zygote and

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the individual are the same single thing (Kuhse & Singer, 2002:189). Kuhse and Singer (2002:191-2) argue that recent scientific findings do not support the idea that fertilization marks the event when a particular, identifiable individual begins to exist, but rather that, since early embryonic cells have now been shown to be totipotent, they have the potential to become one or more underlined different individuals. Since this totipotent potentiality disappears at fourteen days, they argue that people objecting to embryo experimentation would be better to argue that individual life only starts at fourteen days.

Some writers, such as Tooley (1972:50-51), have rejected the traditional cut-off points denoting the beginning of life – namely conception, the attainment of human form, the ability to move about spontaneously, viability and birth – by arguing that none of these represent basic moral principles. He however fails to postulate an alternative hypothesis and leaves the question of the timing of personhood in a conceptual vacuum.

Some writers of philosophy prefer to use the term 'psyche' – from the Platonic term *psuché* – instead of the term 'soul' that is seen to have too strong a religious underpinning. According to one such author, Anthony Nuttall, psyche refers to the mind, intelligence and character of a person (Gillett & Peacocke, 1987:8). The psyche is not a mere physical fact, but an abstract universal that is important, even though it might not be timeless or immortal. This belief in the importance of the non-physical underscores the timeless need to supplement a mere physical account of human beings with a metaphysical one. The preference for the use of 'psyche' over that of 'soul' can also be interpreted as a manifestation of the desire to move the non-physical out of the religious domain – and thus out of the religious debate about the immortality of the soul – into a philosophical domain.

The theological sense of person has been highly influential in the development of the concept as known today. This is true not only for the concept of the 'soul', but also for that of 'reason', two fundamental components of our understanding of a person. The first trace of the theological assertion of reason as a godlike attribute of man seems to appear in St Augustine (354 – 430), where he uses the word *persona* when he discusses the Holy

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Trinity. Accordingly, man (human) is made in the image of God and God is understood to be not a physical being, but rather a rational, thinking being (or substance). The earliest concept of the metaphysical person therefore seems to be derived from the theological sense of a being whose shared nature with God consists of rationality.

The concept of reason has since been used extensively to define the nature of a person. Two notable proponents have been Boethius and Locke. The first use of the concept of person in a philosophical text seems to come from Boethius (c. 480 – 524), who most likely borrowed the concept from Cicero. Boethius, the Roman philosopher and theologian, who authored one of the most influential books of the Middle Ages, *De Consolatione Philosophiae* (On the Consolations of Philosophy), wrote: "…we have found the definition of Person, *viz*: 'the individual substance of a rational nature' " (Stewart, 1918:85). It is necessary to once again refer to Locke (1847:62) who similarly defined a person as "a thinking, intelligent being that has reason and reflection and can consider itself as itself". As was mentioned before, the theme of rationality features strongly in Locke's work. But in Locke we also see the emergence of a new theme, that of self-consciousness, that has proved to be highly influential until today.

Locke attempted to differentiate between the identity of three related and interlinked concepts: individual substance, human being, and person. He considered the concept of a person as primarily a forensic, legal one and therefore argued that the principle on which personal identity is founded, must necessarily reflect the conditions for responsible agency. What is interesting of Locke is that, since he was concerned with legal liability, and not so much with social responsibility, his main concern was in identifying the past actions of persons. Locke (1847:217) therefore understood the condition for forensic identity to be "continuity of reflective consciousness, established primarily by memory", as paraphrased by Rorty (1976:4). Locke therefore seemed most interested in the process of individual reidentification, in other words: "what are the criteria for reidentifying the same individual in different contexts, under different descriptions, or at different times?" (Rorty, 1976:1-2). This was crucial to his purpose, since, only when a person can be re-identified at a later time as the same person who committed a certain action, can he be

held liable for that action. This idea is also found in the work of Anscombe who argued that: "[i]f I am to be held responsible for an action, I must have been aware of that action under that description" (Dennett, 1976:191).

In Locke we thus find a fascinating union of the metaphysical notion of a person, as an intelligent, conscious, feeling agent, with that of the moral notion of an agent who is accountable and has rights and responsibilities.

The notion of consciousness, and later self-consciousness, recurs frequently in the philosophical analyses of the concept of a 'person'. The English philosopher, Strawson (1959:104), writes that persons are "individuals…of a certain unique type… such that to each individual of that type there must be ascribed, or ascribable, *both* states of consciousness *and* corporeal characteristics."

Tooley (1972:43), the influential writer adopted by the pro-choice activists, takes the concept 'person' to mean something that has a serious right to life. Tooley (1972:40) writes: "I shall treat the concept of a person as a purely moral concept…free from all descriptive content. Specifically, in my usage the sentence 'X is a person' will be synonymous with the sentence 'X has a (serious) moral right to life'".[9] Accordingly, he argues that "an organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity" (Tooley, 1972:44).

John Harris shares this view. He argues that the question is not when life begins, but rather, when life begins to matter morally (Harris, 1985:8). He defines a person as: "any being who has what it takes to be valuable in the sense described, whatever they are otherwise like" and he uses this term as a gender-neutral and species-neutral term (Harris, 1985:9). He bases his concept of a person on a being's capacity to value its own existence, and the features that can confer such a capacity are akin to Locke's view that the requirement of personhood lies in the possession of a combination of rationality and

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[9] It is however unclear how a moral right to life can ever not be 'serious'.

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self-consciousness (Harris, 1985:16). The type of self-consciousness that Harris envisages is based on the conception a person has of existing over time with a future he wishes to experience (Harris, 1985:20).

Both the concepts of rationality and self-consciousness have been instrumental in the arguments in both beginning-of-life and end-of-life debates. Those in favour of embryo experimentation, abortion and euthanasia argue that, since embryos, foetuses and people in PVS cannot display rationality and self-consciousness, they are not persons and thus cannot lay claim to the rights of persons, such as the right to life.

These arguments are specifically relevant in the work of Peter Singer and Helga Kuhse (2002:179-198) who argue that since the zygote (or very early embryo) does not have a nervous system and can thus not be conscious in any way, it is not morally objectionable to destroy it. They argue, in a similar manner as in the personhood debate, that there are two possible interpretations of the term 'human being': one denoting the biological aspect of belonging to the group *Homo sapiens*; the other a more restrictive definition of human beings possessing, at least at a minimum level, "…the capacities distinctive of our species which includes consciousness, the ability to be aware of one's surroundings, to be able to relate to others, perhaps even rationality and self-consciousness" (Kuhse & Singer, 2002:184). Only the latter interpretation can infer moral status since the mere membership of a species – like membership to a specific race – cannot be considered to be morally relevant. They further allege that these two interpretations are conflated in the traditional anti-abortion debate that goes as follows:

> "Every human being has a right to life
> A human embryo is a human being
> Therefore the human embryo has a right to life."

Kuhse and Singer (2002:192-4) argue that the first premise is based on the second interpretation of human being, namely the possession of certain human capacities. The second premise is however based on the first interpretation of human being, namely

membership of the species *Homo sapiens*. Since the argument is based on a slide between these two interpretations, that have clearly distinct meanings, this argument cannot be valid.

As clearly illustrated by Jenny Teichman (1985:181), the philosophical definition of a person as 'a rational or self-conscious being' is however open to interpretation. "It might mean that each individual person must be rational or self-conscious or both, or, alternatively, that each individual person must belong to a species typified by rationality or self-consciousness or both." The analogy of the bull, classified as a mammal, even though he himself is unable to suckle its young, supports the latter view. This thus allows us to say that even though an individual being might not display any signs of rationality or self-consciousness (such as an infant), it might yet be a person since it belongs to a species that is rational and self-conscious. This interpretation supports the premises of the traditional anti-abortion debate delineated above, and also finds support in the general use of the word 'person' in both common and legal language.

Crosby (1996) argues that some substance of personhood is independent of consciousness. He describes the characteristics of personhood as follows:

1. Persons belong to themselves; they cannot be owned by anyone else.
2. Persons are ends in themselves rather than means for others.
3. Persons have the power to transcend their environments. This gives them freedom.
4. Persons are autonomous; they act for themselves, using their own internal moral principles.
5. As individuals become more fully persons, they cannot be replaced as easily — as they can be as consumers, employees, or soldiers.
6. Persons are irreducibly subjective to themselves; they know themselves from the inside as no one else will ever know them.
7. We continue to exist as persons in sleep — as proven when we wake up as the same person as before. Thus personhood does not depend on continuous

consciousness.

The loss of consciousness while asleep has proved to be a stumbling block, albeit of a temporary nature, for many that espouse consciousness as a fundamental component of personhood. Joe Carter (2010) argues:

> "For instance, if these philosophers were to fall into a deep sleep they would cease to meet the very criteria that they have established for personhood. Using their own arguments, we should be able to kill them before they wake up."

This argument has been countered by contending that the loss of consciousness is only in the moment, and upon waking the person will return to being an entity with full awareness of the past and the future, thus meeting the criteria for personhood again. Theories of 'embodied subjectivity' support this contention, by allowing for the persistence of an intelligent physical system that both has been self-aware in the past and has the capacity to continue to be self-aware in the future (Webster's Online Dictionary, 2010). The importance of consciousness or self-consciousness therefore does not seem to have been diminished by this type of argument.

Harré however adds further criticism to the idea of self-consciousness and claims that it is not in itself an individualistic notion, but rather the 'learned ability to speak'. Self-consciousness is thus the ability of man to think of himself in ways that result from his interactions and encounters with other thinking beings. Harré (1986) contends that "the self is not some inner entity, but an intersubjective mode of being."

Many subsequent arguments around beginning- and end-of-life issues are however still based on the basic principle of consciousness, albeit indirectly. Feinberg (1984:125) for instance, defines a person according to the 'interest principle' that is in turn based on the concept of self-consciousness. He argues that "the sorts of beings who *can* have rights are precisely those who have (or can have) interests". Feinberg comes to this conclusion based on two premises about the right holder's capability to:

1. Be represented – it is impossible to represent a being that has no interests.
2. Be a beneficiary in his own person – a being without interests is a being that is incapable of being harmed or befitted and has no good of its own.

An interest is taken to be a function of present and future desires. The next step of the argument is then: how can continued existence be in the best interest of the being? Feinberg offers two possible answers:

1. The individual has a desire for continued existence.
2. Continued existence will make the satisfaction of some desires (of the same subject of consciousness) existing at other times possible.

The latter is based on the premise of the same subject of consciousness, meaning that "an individual cannot have the right to continued existence unless there is at least one time at which it possesses the concept of a continuing self or mental substance" – hence self-consciousness (Feinberg, 1984:130).

Feinberg (1980a:188-189) makes the requirement of 'consciousness' once again explicit in his common-sense definition of a person:

> "What makes me certain that my parents, siblings, and friends are people is that they give evidence of being conscious of the world and of themselves; they have inner emotional lives, just like me; they can understand things and reason about them, make plans, and act; they can communicate with me, argue, negotiate, express themselves, make agreements, honour commitments, and stand in relationships of mutual trust; they have tastes and values of their own; they can be frustrated or fulfilled, pleased or hurt.... In the commonsense way of thinking, persons are those beings who are conscious, have a concept and awareness of themselves, are capable of experiencing emotions, can reason and acquire understanding, can plan ahead, can act on their plans, and can feel pleasure and pain."

The concept of self-interest has been taken beyond the beginning- and end-of-life debates, and has been widely used in ethical discourse. It is mostly found in statements such as: a person is a human being capable of valuing his/her own existence, in other words, has an interest in his/her existence. The moral difference between a person and a non-person is thereby understood and defined as the "value that people give to their own life" (Aksoy, 1997:3). Harris (1985:17) similarly argues that it is the *capacity* to value one's own life that is crucial for determining personhood. Harris sees this requirement as so fundamental to morality that he argues that where people do not value their own lives and do not wish their lives to continue, there will be nothing morally wrong for them to kill themselves or for others to help them do so (Harris, 1985:17).

Frankfurt (1971:10) adds to the condition of a special form of consciousness through the notion of "second-order volitions". Accordingly, a person is known to have the capacity of wanting or choosing certain things, so called first-order desires. But, apart from this capacity, a person may also want to have (or do not want to have) certain desires and motives. Persons have the ability to want to be different from what they are, both in their preferences and purposes. Frankfurt argues that no animal other than man seems to have this capacity of "reflective self-evaluation" that finds expression in the formation of second-order desires (Frankfurt, 1971:7). Dennett (1976:193) believes that this "reflective self-evaluation" is genuine self-consciousness, "which is achieved only by adopting toward oneself the stance not simply of communicator but of Anscombian reason-asker and persuader."

Taylor (1976:281) attempts to distinguish between second-order desires (desires to want) and second-order volitions (a subclass of second-order desires). "Second-order desires: to want to be moved by certain desires. Second-order volitions: to want certain first-order desires to be the ones which move them to action." Frankfurt uses the word 'wanton' to describe those "who have first-order desires but… no second-order volitions" and applies this to all nonhuman animals, small children and some mentally defective adults (Dennett, 1976:192). What is thus essential to being a person is having second-order volitions.

Tooley (1972:44) conflates the concepts of self-consciousness and self-interest by delineating the following necessary properties of a person:

1. The capacity to envisage a future for oneself, and to have desires about one's future state.

2. The capacity to have a concept of a self.

3. Being a self.

4. Self-consciousness.

5. Capacity for self-consciousness.

These properties can be criticized for being overly exclusive on the one hand and overly inclusive on the other. It has been considered too exclusive by philosophers arguing for the recognition of the importance of a spiritual side of human beings, based on the theory of ensoulment discussed above. Much akin to the anti-positivist debate, the properties offered by Tooley seem to ignore morally relevant characteristics of persons that fall outside self-interest and self-consciousness. It furthermore begs the question of whether human beings can cease to be persons, for instance after sustaining brain injury, or even more controversially, when having a low IQ or being imprisoned.

Joseph Fletcher (1979:11-13), the founder of *Situation Ethics* and major thinker in contemporary Western biomedical ethics, is famous (or perhaps rather notorious) for arguing that humans with low IQs should not be classified as persons. Fletcher identifies fifteen – rather controversial – marks of a person:

1. Minimum intelligence: below IQ 40 individuals might not be persons; below IQ 20 they are definitely not persons.

2. Self-awareness: we note the emergence of self-awareness in babies; and we note when it is gone, for instance, due to brain damage.

3. Self-control: because a person understands cause and effect, he or she can effectively work toward fulfilling freely selected goals.

4. A sense of time: persons can allocate their time toward purposes; non-persons 'live' completely in the present moment, like animals.

5. A sense of futurity: persons are concerned about their futures; persons make plans and carry them out; they build their futures.

6. A sense of the past: persons have memories of their pasts; they can recall facts at will; they honour the past.

7. The capacity to relate to others: persons are social animals; they form bonds with others, both intimate and collective.

8. Concern for others: persons always reach out to others; non-persons draw into themselves, even pathologically.

9. Communication: persons communicate with other persons; if they become completely cut off, they become sub-personal.

10. Control of existence: persons take responsibility for their lives; those who do not guide their own behaviour are sub-personal.

11. Curiosity: persons naturally want to know. If they lose this desire to know, they are less human.

12. Change and changeability: persons can grow into new phases of life; if they resist change completely and totally, they are sub-personal.

13. Balance of rationality and feeling: persons have both reason and emotion; one who is distorted either way is not whole.

14. Idiosyncrasy: all persons are different from one another; the less individuality, the less personhood.

15. Neo-cortical function: personhood requires cerebration; if the higher brain is dead, there is no consciousness, no personhood.

The terms 'pre-people' – human bodies that never had awareness – and former or 'post-people' – human bodies that once had awareness but could never have awareness again due to irrecoverable brain damage – have been used to describe this concept of 'lesser persons' (Park, 2009:4). Engelhardt clearly believes that full persons should have higher status and more rights than pre-persons or former persons. He argues that the ability to make responsible decisions ("moral agency") is one of the most distinctive marks of personhood:

"What distinguishes persons is their capacity to be self-conscious, rational, and concerned with worthiness of blame and praise. The possibility of such entities grounds the possibility of the moral community. It offers us a way of reflecting on the rightness and wrongness of actions and the worthiness or unworthiness of actors. On the other hand, not all humans are persons. Not all humans are self-conscious, rational, and able to conceive of the possibility of blaming and praising. Foetuses, infants, the profoundly mentally retarded, and the hopelessly comatose provide examples of nonpersons. Such entities are members of the human species. They do not in and of themselves have standing in the moral community. They cannot blame or praise or be worthy of blame or praise. They are not prime participants in the moral endeavour. Only persons have that status… For this reason it is nonsensical to speak of respecting the autonomy of foetuses, infants, or profoundly retarded adults, who have never been rational. There is no autonomy to affront. Treating such entities without regard for that which they do not possess, and never have possessed, despoils them of nothing. They fall outside the inner sanctum of morality" (Engelhardt, 1986:107-108).

Treating this as an aside and returning to Tooley: his properties of personhood can conversely be considered overly inclusive. Accordingly, "being human is a sufficient but not a necessary condition of belonging to a rational natural species" (Teichman, 1985:183). This idea has been reproduced in the human exceptionalist debate that asks whether certain animals (Singer, 1993:87), groups, social constructs, artificial intelligence and beings, and cyborg should not also be considered to be persons.

In order to address the latter criticism, some have argued that further properties are needed for the definition of a person and have proposed attributes such as the capacity of communication or moral judgment. (Olen & Barry, 1999: 176-177). Peter Singer (1993:87) suggests the following qualities: self-awareness, self-control, a sense of the future, a sense of the past, the capacity to relate to others, concern for others, communication, and curiosity. Singer however still believes that 'rationality' and 'self-consciousness' are the crucial characteristics of persons.

Dennett (1976:177-178) similarly incorporates these characteristics and proposes the following criteria:

1. Rationality – this idea is found in Kant, Rawls, Aristotle and Hintikka.
2. Intentionality – found in Strawson – predicates ascribing both states of consciousness and corporeal characteristics.
3. Object of a certain stance – found in MacKay, Strawson, Amelie Rorty, Putnam, Thomas Nagel and Dennett among others. "…depends in some way on an attitude taken toward it, a stance adopted with respect to it… That our treating him or her or it in this certain way is somehow and to some extent constitutive of its being a person".
4. Reciprocity – found in Rawls, Strawson, Grice – "To be a person is to treat others as persons…"
5. Verbal communication.
6. A special form of consciousness, mostly interpreted as self-consciousness – found in Anscombe, Sartre, Harry Frankfurt.

According to these criteria, the first three are mutually interdependent and are necessary but not sufficient conditions for the last three. Dennett (1976:191) argues that the latter two concepts – the capacity for verbal communication and awareness of one's actions – are essential in the desired mode of personal interaction. Such interaction can only be optimal if one is open to argument or persuasion, and if such persuasion, viewed as a 'reciprocal adjustment of interests', is achieved by mutual exploitation of rationality. Anscombe similarly argues that "only those capable of participating in reason-giving can be argued into, or argued out of, courses of action or attitudes, and if one is 'incapable of listening to reason' in some manner, one cannot be held responsible for it" (Dennett, 1976:191).

Having said all this, Dennett argues that these conditions can only ever be necessary and never sufficient, since the concept of a person is "inescapably normative". "Human beings or other entities can only aspire to being approximations of the ideal, and there can

be no way to set a 'passing grade' that is not arbitrary". Were the six conditions considered sufficient they would not ensure that any actual entity was a person, for nothing would ever fulfil them (Dennett, 1976:193). Language may also not be an adequate criterion since the concept of 'pre-linguistic understanding' has been well described (Tooley, 1972:64).

The conceptualisation of personhood as the capacity for moral judgment has however found favour with many authors. It once again originated in Locke who further developed the legal idea of the person to incorporate the concepts of rights and autonomy. Rights are closely related to responsibilities, and some authors have argued that only when a human being has been bestowed legal rights and social responsibilities, and can be assigned moral responsibilities, can he be considered as a person (Olen & Barry, 1999: 176-177). Responsibility ties in with accountability and the latter rests on an assessment of wrong-doing, based on evidence, awareness and free will (Dennett, 1976:194). Once again, the strong influence of Locke on the idea of the modern person, defined in terms of the bearer of rights and autonomy, is clearly evident (Vincent, 1989:701).

The possession of free will is integral to the idea of accountability. As Rorty (1976:311-312) argues: "[b]ecause persons are primarily agents of principle, their integrity requires freedom; because they are judged liable, their powers must be autonomous. But when this criterion for personhood is carried to its logical extreme, the scope of agency moves inward, away from social dramas, to the choices of the soul, or to the operations of the mind. What, after all, is it that is ultimately responsible, but only the will? It is the will that chooses motives, that accepts or rejects desires, principles."

The enormous variability and disagreement in the understanding of the concept of personhood is hinted at in the aforementioned discussion; yet, is nowhere more evident than in following examples. Tooley attempts to sum up some of the more important necessary properties of personhood that have been proposed, either individually or in combination of others (Gordjin, 1999:353-354):

"The capacity to experience pleasure and/or pain; The capacity to have desires; The capacity to remember past events; The capacity to have expectations with respect to future events; An awareness of the passage of time; The property of being a continuous, conscious self, or subject of mental states, construed in a minimal way, as nothing more than a construct of appropriately related mental states; The property of being a continuous conscious self, construed as a pure ego, that is, as an entity that is distinct from the experiences and other mental states that it has; The capacity for self-consciousness, that is to be aware of the fact that one is a continuing, conscious subject of mental states; The property of having mental states that involve propositional attitudes, such as beliefs and desires; The capacity to have thought episodes, that is, states of consciousness involving intentionality; The capacity to reason; The capacity to solve problems; The property of being autonomous, that is of having the capacity to make decisions based upon an evaluation of relevant considerations; The capacity to use language; The ability to interact socially with others" (Tooley, 1983:90-1).

Amelie Rorty (1988:27-46) in turn identifies seven themes of personhood:

1. Beings worthy of respect by other persons as persons. Sometimes this has excluded 'barbarians' (foreigners) or slaves.

2. The person as defined by law: having continuity through time; being the same body through time; being responsible for its acts; having memory of its former stages of life. The insane and the senile do not qualify as persons under the law; or they are diminished persons, with fewer rights and responsibilities. The law can also define a corporation as a legal person, with many of the same rights and responsibilities as a natural person. But a corporation does not have all the rights of persons, for example, it has no right to marry.

3. Being an autonomous agent: capable of defining itself; capable of making plans; capable of carrying them out.

4. A being that takes part in social interactions. The interactions of persons are intentional, not merely accidental. The weather and animals also interact, but their interactions do not make them persons. Persons take others seriously. They can

enter into meaningful relationships.

5. A being with a shaped, structured life, a life-plan and life-history. Persons have histories in a deeper sense than countries or canyons. If a being cannot devise and follow a life-plan of its own, then it is a not a person.

6. Genetic individuation, having its own unique DNA. But this is not a satisfactory definition of a person, because plants and animals also have unique DNA.

7. A person experiences himself or herself as I. Persons are more than a disjointed series of experiences. They experience themselves as the object and subject of a continuing series of experiences, some simultaneous. The I constructs its world and its coherent place in that world. Entities not capable of self-conscious reflection are not persons.

Rorty (1988:43) then offers her own definition of a person:

"A person is a unit of agency, a unit that is (a) capable of being directed by its conception of its own identity and what is important to that identity, and (b) capable of acting with others, in a common world. A person is that interactive member of a community, reflexibly sensitive to the contexts of her activity, a critically reflective inventor of the story of her life."

If these lists of criteria for personhood are indeed the culmination of the debates around the criteria for personhood, I fear that we have come to an unwieldy and totally impractical solution. I would therefore like to turn to the criticism of the concept of personhood, and will concentrate on four arguments: economical thinking; lack of an ontological basis; the conflation of the metaphysical and moral conceptions of personhood; and finally, the abstracted nature of such a concept.

The first criticism is based on the argument that if the concept of personhood, and hence the attribution of moral status, can be totally reduced to merely a number of characteristics, such as the list above, it is unclear whether the concept itself has any use in ethical discourse. Applying Ockham's razor of economical thinking –- it would seem that the concept of personhood becomes unnecessary and superfluous if moral status can

be explained as a direct consequence of the possession of certain characteristics (Gordjin, 1999:354).

The second criticism is that the obvious lack of consensus amongst philosophers and ethicists about the exact definition of personhood seems to revolve around the lack of an ontological basis of the concept, as inherited from Locke. This raises further serious concerns, such as the lack of objectivity and pragmatism. There are no independent external criteria with which to judge the appropriateness of selected necessary characteristics of personhood, hence leading to the inability to decisively criticize subjective and arguably convenient choices. The ambiguous nature of the concept does not contribute to mutual understanding, and hence has no pragmatic use at all (Gordijn, 1999:354-355). The list of attributes of personhood, however agreed on, furthermore lends itself to a too simplistic dichotomy between persons and non-persons. It suggests a simplicity and clarity that is far from evident in the moral sphere. "Morality is too heterogeneous and varied to be fully grasped with the help of these simple dichotomies" (Gordijn, 1999:355).

Beauchamp (1999:310-311) levels the third criticism at such an understanding of personhood. He firstly argues that no cognitive property, such as self-consciousness, could confer moral standing, since cognitive theories fail to capture the "depth of commitments embedded" in the concept of a person. He secondly argues that metaphysical personhood is not sufficient for either moral personhood or moral standing since these cognitive properties have no moral implications.

Beauchamp argues that a clear distinction between metaphysical and moral personhood should be maintained, with the former being a set of psychological properties that distinguishes persons from non-persons, and the latter comprising properties that distinguishes moral persons from all non-moral entities. A set of criteria for moral personhood has not been explicitly defined, but Beauchamp (1999:315) suggests the following: the capacity for making moral judgments about the rightness and wrongness of actions, and the presence of motives that can be judged morally. He argues that in

principle, an entity could possess all the required properties for metaphysical personhood, yet lack all the properties for moral personhood. Metaphysical personhood therefore does not entail moral personhood. Beauchamp (1999:316) lastly contends that neither metaphysical nor moral personhood is the sole basis for moral standing, and that wholly non-cognitive and non-moral properties, such as the capacity for pain and suffering, and emotional deprivation, might qualify a creature for moral standing.

The last, and arguably the most significant, argument against the said definitions of personhood is the criticism that this notion of personhood is too highly individualistic, abstracted from its surroundings and context. A large number of developmental psychologists contend that: "the sense of being a 'person' is intimately linked with our interaction with other persons, especially during childhood" (Gillett & Peacocke, 1987:5). Macquarrie (Gillett & Peacocke, 1987:9) stresses that we are 'being-with-others', based on the biblical perspective that emphasizes our social, interpersonal being. Another proponent of this idea, in the form of "existence as encounter", is Martin Buber (2002:250-1). Buber argues that a person is at all times involved with the world by either engaging with other individuals, inanimate objects or all reality in general. What he described as the "Ich-Du" – I-Thou – relationship is concerned with the mutual, holistic existence of two beings, and this forms the basis for real living. "All real living is meeting" (Buber, 2002:xiv). This approach opens a new dimension of ethical consideration where dilemmas are faced in a shared world by beings with responsibility not only for themselves, but also for the world and each other. Hans Jonas (1984) excellently expanded on this idea in his book *The Imperative of Responsibility*.

A further expansion of the idea of person as interconnected being can be found in Thatcher (Gillett & Peacocke, 1987:9). He dismisses the idea of a Cartesian dualism and rejects the notion of an inner essence or mental substance as a necessary dimension of humanity. He believes that death finds its significance exactly in the bodily nature of human life. Rather, he sees human beings as persons by virtue of their "essential involvement in the world." These ideas and criticisms will be recurring in subsequent chapters where feminist ethics and moral theory from Africa and other non-Western

cultures will be used as a lens through which to view the concept of personhood and autonomy.

The concept of personhood seems to fulfil a dual function in modern moral discourse: (1) it protects those considered persons against suffering the hurts and indignities which the selfish tendencies of human psychology could inflict on them, and (2) it justifies treating those creatures not considered persons, selfishly (Sapontzis, 1981). By assigning moral rights, the concept of personhood protects some creatures from being treated merely as a means to human satisfaction. By denying moral rights, the concept of personhood justifies treating other creatures, for instance those considered property or creatures of nature, merely as means to human satisfaction. The question that one has to consider is of course whether it is morally acceptable and preferable to have a moral concept which functions in this manner.

It should be evident that the concepts of 'identity', 'personal identity', 'person' and 'personhood' are at best variable and contentious, and at worst obtuse and perplexing. General theories of personhood seem to create more disagreement than enlightenment. Each claims an alternative set of criteria for sufficient conditions for personhood. Perhaps, ultimately, the concept of person is simply too disorderly, imprecise, and unsystematic to form the philosophical basis of a moral theory of autonomy and to support one general philosophical theory in favour of another (Beauchamp, 1999:319).

2.3 Conclusion

In this chapter I argued that an understanding of the concept 'person' is essential for an adequate understanding of the complex and at times ambiguous nature of the concept of autonomy. This lack of agreement about the nature of autonomy has been widely acknowledged:

> "Respect for the autonomous choices of other persons runs as deep in common
> morality as any principle, but little agreement exists about its nature and strength or

about specific rights of autonomy. Many philosophers have held that morality presupposes autonomous actors, but they have emphasized different themes associated with autonomy" (Beauchamp & Childress, 1994:120).

I set out to show that the concepts of person and personhood are part of a modern ideology of individualism, and are historical developments, social constructs, not fixed and immutable, apart from time and circumstance. As Howe (1986:43) so articulately argues: "[t]he individual is a *creation* of mankind, and it is possible to suggest with fair precision when he first appeared. The moral, psychological, and social attributes of this individual vary sharply from place and moment to place and moment…" I demonstrated that neither the concept of personhood, nor the concept of autonomy, were used in the moral language of ancient Greece, and that the idea of self-mastery was prominent during that time. The notions of personhood and autonomy emerged for the first time in moral philosophy during the Enlightenment, most notably in the work of Immanuel Kant.

I then attempted to show that the concept of personhood is distinctive from the concept of human being, even though such a distinction is not made in common language. Personhood furthermore has distinct and diverse beginnings and ends in a variety of disciplines such as law, religion, anthropology and philosophy. In law, the notion of personhood is used to infer liability; in religion, personhood is seen as the basis of our shared nature with God through the attribute of rationality; in anthropology, it denotes the social nature of being; and in philosophy, personhood has both metaphysical and moral meanings and implications. Philosophical notions of personhood are principally influenced by Descartes' duality and Locke's criteria of rationality and consciousness, and remnants thereof are still present in the myriad definitions found about personhood today. I argued that the creation of the concept of personhood occurred in a male-dominated intellectual sphere that for all practical purposes excluded women and lower social classes. Personhood can therefore be viewed as a male construct, devoid of an ontological foundation, that was legitimised through academic and exclusivist debate.

In this chapter I described the discursive formations of the concept of personhood. In this

endeavour, I addressed four basic elements: 1) the objects about which statements are made – namely person, self, identity and personal identity; 2) the places from which statements are made – namely a privileged male position; 3) the concepts involved in the construction of the discourse – amongst others, rationality and consciousness; and 4) the themes and theories they develop – namely a metaphysical theory of being and a moral theory of accountability. I hope to have explained when and where the objects of the discourse were added to the debate around personhood and to have exposed the diversity and discontinuity of their historical development.

I alluded to the power inherent in the discourse, as it operates through rules of exclusion (Foucault, 2003:55-61). Accordingly, the objects that seemingly control the discourse are its objects (what can be spoken of – amongst others, personhood and rationality), ritual (where and how one may speak – predominantly through academic debate and treatises) and the privileged (who is allowed to speak – the male philosophers). By using Foucault's method of archaeology, I hope to have exposed some of the interaction between knowledge and power by arguing that those in the know, who could thus participate in the public debate, were all male, and that this male domination of the discourse effectively ignored the voices of women, non-Europeans, the illiterate and the underprivileged.

Finally, I hope to have laid the foundation for explaining the necessity of appreciating the contextuality of complex concepts such as autonomy and to have shed light on the multifarious reasons why disagreement exists on a uniform and ubiquitous application of such a concept. The following chapter will be concerned with tracing the historical development of the concept of autonomy and will follow a similar historical philosophical methodology as the analysis of the concept of 'person', with limited application of the Foucauldian method of archaeology-genealogy.

Chapter 3: Discourse of Autonomy

In chapter two, the historical development of the concept 'personhood' was explored and it was argued that this concept and its related objects, namely self, identity and personal identity, were instrumental in developing a contextual and holistic understanding of the concept of 'autonomy'. This chapter will now proceed with a historical philosophical analysis of the concept of 'autonomy' as found in the work of some of the major Enlightenment philosophers – most notably Immanuel Kant – and then also of one of the 20th century philosophers that in my opinion personifies a modern application of the concept of autonomy, Isaiah Berlin.

This chapter will specifically trace the historical development of the concept of autonomy in moral philosophy and this analysis will be influenced by a limited archaeological-genealogical exploration of the term. The archaeological exploration will be conducted in a similar fashion in which the concept of personhood was explored. It will specifically focus on the objects about which statements are made, the places from which statements are made, the concepts involved in the construction of the discourse, and the themes and theories they develop. The genealogical phase will be concerned with an exploration of the power differentials operative within the concept of autonomy in a healthcare setting.

3.1 Historical analysis of autonomy

The historical analysis of autonomy will consist of an evaluation of some distinct, yet interrelated, perspectives on the development of the concept. It will commence with tracing the linguistic basis of autonomy, proceed with perspectives from the Enlightenment and its influence on autonomy, and offer a brief description of the main philosophers that influenced the development of Kant's ideas. Kant's moral theory will then be explored, together with an assessment of the modern application of his theory, specifically the concept of autonomy.

Modern thinkers have expressed the concept of autonomy in many areas as diverse as

political science, education, psychology, and medical ethics (New World Encyclopaedia, 2008). In political ethics, the concept of personal autonomy is used to argue for certain inalienable political rights that should accrue to all citizens, unless they forfeit them by contravening the law. Such rights include personal liberty, freedom of speech and ownership of property. In this context, autonomy implies respect for the ability of individuals to make decisions about their own lives and is considered a necessary condition for political equity and a safeguard against paternalism.

The promotion of personal autonomy forms one of the principal aims of the philosophy of education. Accordingly, students are exposed to a wide array of choices together with the tools needed to evaluate such choices critically. This encouragement of autonomous learning is believed to stimulate active thought and exploration, and to discourage passive acceptance of knowledge – both critical components of creative thinking. Through this active process, students learn to take responsibility for their thoughts and contributions. Psychology places similar emphasis on autonomy and in this context, autonomous action refers to those actions that are directed by inner considerations, desires and conditions and characteristics that are deemed to be a part of one's "authentic self" (New World Encyclopaedia, 2008).

The concept of autonomy has however probably found the widest expression in the field of modern-day medical ethics where the idea of informed consent has become the cornerstone of the doctor-patient relationship. In the medical context, autonomy refers to a "patient's authority to make informed decisions about his or her medical treatment" (New World Encyclopaedia, 2008). According to the code of informed consent, doctors should provide patients with sufficient information to enable them to evaluate the possible outcomes and consequences of different treatment options. The concept not only embraces the conscious intention of acts but also the responsibility for the consequences of such actions.

There is an important distinction between personal autonomy and personal freedom, although these terms are often used interchangeably. The definition of freedom itself is

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far from uniform, but mostly implies "the ability to act without external or internal restraints", and often has an additional implication of sufficient power and resources to perform those acts. Autonomy on the other hand, is concerned with the "independence and authenticity of the desires that motivate a person to action". Another way in which to explain the difference is that freedom refers to specific actions, whereas autonomy refers to a person's state of being (New World Encyclopedia, 2008).

Autonomy has "acquired meanings as diverse as self-governance, liberty rights, privacy, individual choice, freedom of the will, causing one's behaviour, and being one's own person" (Beauchamp & Childress, 1994:121). Autonomy can thus not be understood as a univocal concept in either ordinary English language or contemporary philosophy. The concept is made up of several distinct ideas, creating a need to explore its historical development and modern applications.

3.1.1 Linguistic basis of autonomy

As briefly mentioned in chapter 2, the word 'autonomy' is derived from the ancient Greek word '*autonomos*' where '*autos*' equals 'self' and '*nomos*' equals 'law' (Beauchamp & Childress, 1994:120). It can thus be translated as 'one who gives himself his own law'; in other words, one who has the capacity for self-government. This idea is perhaps expressed most concisely, if not most grammatically correct, by the philosopher Joel Feinberg (1973:161): "I am autonomous if I rule me, and no one else rules I." The concept of autonomy is found in modern moral, political and bioethical philosophy where it denotes the capacity of a rational individual to make an informed, un-coerced decision. People are thus autonomous if their actions are truly their own (Blackburn, 1996:31) and autonomy thus refers to "personal rule of the self by adequate understanding while remaining free from controlling interferences by others and from personal limitations that prevent choice" (Faden *et al.*, 1986:8). Judgment of the autonomy of a person's actions is often used as the basis for determining culpability and moral responsibility.

The word autonomy, from the Greek '*autonomos*', was first used in a political context

and referred to the 'self-rule' or 'self-governance' of the independent city-states at the time of ancient Greece (Leino-Kilpi, Välimäli, Arndt, Dassen, Gasull, Lemonidou, Scott, Bansemir, Cabrera, Papaevangelou, & Mc Parland, 2000:56). In this context, a state was said to be autonomous if its government was not subjugated to external power structures and had absolute and sole control over its affairs. This political concept was instrumental in countering the authoritarianism of more powerful and domineering states and came to be seen as an essential component of nationalism and national pride (New World Encyclopaedia, 2008). It was not until the time of the Enlightenment that the concept of autonomy was however used to refer to individual human beings.

3.1.2 The Enlightenment and its influence on autonomy

The term Enlightenment – adapted from the German *Aufklärung* – embodies the spirit and system of Continental philosophers in the eighteenth century. The Enlightenment was not a single movement or school of thought, and it has been argued that it was not so much a set of ideas as a set of values, with its core being the critical questioning of traditional institutions, customs, and morals, and a strong belief in rationality and science (Hackett, 1992). Accordingly, the Enlightenment can be seen to represent man's optimism to master life through his understanding, and eighteenth century man thus becomes "the champion against prejudices and passions, against vice and hypocrisy, ignorance and superstition, intolerance, partiality and fanaticism" (Barth, 2002:19). Enlightenment man finds happiness in the fulfillment of duty and has as his supreme goal the attainment of personal and general welfare. His fundamental values are belief in God, freedom and immortality (Barth, 2002:19).

Man discovers his potential, his own powers and abilities, during the Enlightenment. Man furthermore comes to see this potential as humanity's absolute essence that can operate without limits and constraints. Thus operating with its own authority, this potential can be unleashed in all directions and for all purposes (Barth, 2002:22). Enlightenment man is powerful. Enlightenment man believes in the omnipotence of his power in an age of absolutism. This power is expressed in moral philosophy as the idea of autonomy. The

first person to have used the concept of autonomy in a moral context during the Enlightenment appears to be Immanuel Kant (1724 – 1804) and it has been argued that he "invented the conception of morality as autonomy" (Schneewind, 1998:3). He defined autonomy as the "capacity of a person to freely assess and endorse or reject moral principles in accordance with his own will" (New World Encyclopaedia, 2008). The philosophy of the Enlightenment insists on man's essential autonomy in which man is "responsible to himself, to his own rational interests, to his self-development, and, by an inescapable extension, to the welfare of his fellow man" (Online Etymology Dictionary).

It is important to understand the prevalent intellectual and social milieu of the Enlightenment in order to understand how the concept of autonomy could have changed from an ancient Greek concept, referring to the city-state, to a modern concept, referring to the individual. Up to the time of the Enlightenment, morality was mostly conceived of as obedience. This obedience was understood to form part of the greater obedience we owe to God, but also to the obedience we owe one another as moral beings. We are made aware of God's authority over us by reason, revelation, and the clergy, and since not all humans are capable of independently understanding what morality requires, some appropriate authority – such as the church – has to give instruction and ensure moral obedience by means of threats of punishment – i.e. eternal damnation – and offers of reward – i.e. eternal salvation or heaven (Schneewind, 1998:4).

During the seventeenth and eighteenth centuries this established concept of morality as obedience was increasingly questioned and contested. An emerging belief of prima facie moral competence – that all individuals have an equal ability to understand and act in accordance with the moral law, regardless of external threats or rewards – became popular and eventually widely accepted. This represented an entirely new way of conceptualizing humanity and reconstructed the proper relationship between the individual and society (Schneewind, 1998:4-5).

What could have been responsible for this fundamental change in thinking about the individual? It has been argued that the new social and political circumstances that arose

during the sixteenth century were the primary impetus for these intellectual changes. At the heart of these changes was religious strife, known as the Reformation and the Counter-Reformation. The Reformation was the religious revolution that took place in the Western Church during this time, led by Martin Luther, John Calvin, Ulrich Zwingli and John Knox. By the time of the Middle Ages, the Catholic Church – especially the office of the Pope – had become a powerful influence in Western European politics. The Church was however increasingly accused of political exploitation, corruption and abuses – such as selling spiritual privileges and relics. These accusations, together with the Church's escalating power and wealth, undermined the Church's spiritual authority (History World, 2007). In 1517, the German Augustinian friar, Martin Luther, posted a list of grievances, called the *Ninety-Five Theses*, against the Roman Catholic Church with the main aim of reforming the bureaucratic, powerful, and internally corrupt Catholic Church. This Reformation movement saw the birth of Protestantism – one of the three branches of Christianity – and had far-reaching political, economic and social consequences (Jackson).

The major spiritual and theological factor at play during the Reformation was the disillusionment with the Roman Catholic resources for church reform: neither the papacy and councils, nor the professional theologians, succeeded in effecting lasting change. This coincided with and found expression in the personal struggle of Martin Luther. He asked the question: "how do I obtain a God who is merciful to me?" and found no answer in the traditional medieval solution of becoming a monk and adhering to the rigorous demands of discipline and fasting. Luther found his answer in the doctrine of justification by faith, in other words, "the conviction that God was merciful not because of anything the sinner could do but because of a freely given grace that was received by faith alone" (History World, 2007). Luther's assertion was a direct threat to Catholic teaching where salvation could only be attained through the church. Luther denounced the entire system of medieval Christendom as an unwarranted human invention. Critics joined Luther in accusing the Catholic Church of corruption and immorality and likened it to the "abomination of desolation" spoken of by the prophet Daniel. There was a revolutionary call for a complete "reformation in head and members – *in capite et mebris*" (History

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World, 2007).

The Counter-reformation is known as the response of the Roman Catholic Church to the reformers' demands. It became a political power struggle that drew together support for Catholic doctrine, upheld papal authority and presented a united front against the Protestants. It brought about the end of the great reform and saw the Protestant movement split into a number of sectarian churches (Jackson).

Coinciding with this religious challenge was a dramatic change in the medieval class structure with the rise of the bourgeoisie throughout Western Europe. The term bourgeoisie emanates from medieval France and denotes "an inhabitant of a walled town" (Encyclopædia Britannica, 2011b). The term became important in a socio-political sense when the middle class – consisting mostly of professionals, manufacturers and their political and literary allies – started demanding political power matching their economic status. It thus represented a social order dominated by the middle class, as constructed influentially by Karl Marx (1818 – 1883) (Encyclopædia Britannica, 2011b).

A third factor that has been argued to have greatly influenced thinking around the time of the Enlightenment is the development in science. The work of prominent scientists, such as Nicolaus Copernicus (1473 – 1543), Galileo Galilei (1564 – 1642), and Isaac Newton (1642 – 1727), marked the belief that science held the answers to all life's central questions. Each of these scientists contributed to this belief in a unique manner. Copernicus invented the heliocentric model, which placed the sun in a stationary position at the center of the universe with the earth revolving around it (Rabin, 2010). Galileo pioneered the experimental scientific method and was the first to use a refracting telescope in astronomy (Lucidcafe Library). Newton has been described as "the single most important contributor to the development of modern science", and is most famous for his hypothesis of universal gravitation (Weisstein, 2007). Logic, observation and mathematics became the three decisive elements of this powerful science.

Barth (2002:23-4) argues that the significance of the consequences of the discoveries of

Copernicus and Galileo especially influenced the mood of the Enlightenment. Man, confronted with the heliocentric model, had to radically reconceptualize a universe where earth, and by extension, humanity, is no longer at the epicenter. Man responded, not with humility, but by placing himself at the center of all things once again for having discovered this revolutionary truth by means of his own resources. In a sense, an anthropocentric model thus replaced the geocentric model.

All these changes occurred against a backdrop of a changing European space. Barth (2002:25) postulates that Europe became both larger and smaller during this time: larger through the spread of information about other countries; smaller since expanding trade had brought nations and lands nearer one another. The spread of information was facilitated through travel, the cultural institution of the *salon*,[10] and the discovery of the printing press, with the establishment of newspapers and journals of philosophy, art and literature.

Enlightenment philosophers raised the issue of equality between men and women, especially with regards to access to education. Even though they advocated for the emancipation of mankind through knowledge, and extended this to the equal access to education for women, they did not however challenge the existing perception of women in society, which was ultimately subjugating and condescending. For instance, the type of education advised for women was typically constructed to match women's domestic roles, such as painting and singing. As famously stated by Rousseau (2007:342): "[a] woman's education must therefore be planned in relation to man. To be pleasing in his sight, to win his respect and love, to train him in childhood, to tend him in manhood, to counsel and console, to make his life pleasant and happy, these are the duties of woman for all time…" Women were also barred from attending universities, which makes one question whether women experienced "an Enlightenment" at all.

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[10] The institution of the *salon* originated in French literary and philosophical movements of the 17th and 18th centuries. It is a gathering of people under the roof of a fashionable host, held partly to amuse one another and partly to refine taste and increase the knowledge of participants through conversation (The Free Dictionary, 2011).

Mack (1984:2) gives a fascinating account of the development of gender roles based on physiological difference. She argues that, since a woman had a menstrual cycle, her nature was viewed as similar to that of the moon, which shared her monthly cycle. Since the moon only shone with the reflected light of the sun, so women too were passive. Men were identified with the sun's radiating, life-giving energy and were "hot" and "dry", reflecting clear-headedness and rationality, whereas women were "cold" and "moist", representing emotion and irrationality. Women could also be sinister, just like the moon, with a special affinity for the malevolent forces that live in darkness, and women were thus often linked to witchcraft. In the early modern period, women were thus seen as unfit for public citizenship or positions of intellectual eminence, but *could* be accepted as figures of authority in the arena of spirituality or religious culture. During the eighteenth century, women's bodies were still viewed as having greater influence over their minds than men's (Mack, 1984:4). Women were still described as emotional and passive, and linked to the life-giving forces of nature – in the notion of romantic motherhood – and conversely, to the forces of anarchy and disorder – depicting women as the temptresses of both sexual excess and the site of venereal infection, that lead to moral corruption, ruin men's health, and empty their pockets (Boswell, 1991:52-3).

During the Enlightenment, women did however gain limited access to the public space and the intellectual ideas of the time. Even though women were still excluded from scientific societies, universities and learned professions, they could attend public lectures aimed at demonstrating the principles of physics and encouraging wider public debate (Headrick, 2000:18). Women were however prohibited from accessing scientific instruments, such as microscopes, and the few that succeeded in actively participating in science, did so through an association with a male relative or spouse (Kors, 2003). Women were for the most part educated through self-study or tutors, and learned women were primarily only part of elite society. Some of the elite women, predominantly in France, established *salons*, where they could satisfy their educational needs (Goodman, 1994:77). Even here, women however played a subservient role by acting as 'governors' who "provided the ground for philosopher's serious work by shaping and controlling the discourse to which men of letters were dedicated and which constituted their project of

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Enlightenment" (Goodman, 1994:53).

Even though 1791 saw the launch of the Declaration of the Rights of Woman and the Female Citizen by Olympe de Gouges, calling for equal rights and liberty for women, it would not be until more than a century later that this vision was finally realized in the West. The Enlightenment values, even though revolutionary and progressive at the time, were still entrenched within a predominant male perspective and position of privilege. The 'man' spoken of in the Enlightenment is thus for the most part not man as representative of humanity, but rather man as male member of the species.

Casting gender roles aside for the moment, it should be evident that the three changes in the socio-political sphere – the religious Reformation movement, the rise of the bourgeoisie, and the eminence of science – stretching from the sixteenth to the eighteenth century, culminated in a fundamental shift in thinking about the place of the individual, most definitely then of man, in society. "Religious strife undermined the claims of the clergy to be sole authorities in morals; political strife led ever more people to demand recognition as fully competent to take an active part in affairs" (Schneewind, 1998:7); and the overarching belief in rationality and science came to stand in direct opposition to the teachings of the church. There was a need to find new justifications for authority and create new distributions of power. The stage was thus set for a new theory of morality, based not on authority, but rather on the ideas of equality and rationality, to enter the stage.

The religious and sectarian debates around this time opened up an interesting question concerning the origin of moral autonomy, specifically its relation to God. One line of thinkers used the concept of autonomy to liberate human beings from God. They argued that man had access to the moral law independent of God. The underlying belief is that God did not create morality, and His moral commandments merely reflect His knowledge of eternal standards. Theists, on the other hand, attributed autonomy to God, and argued that God created man in His image and gave autonomy to man as a divine gift. The more autonomous a human being becomes, the closer he comes to God. According to this view,

God is essential to morality since He created it and imposes it on us because His will authorizes it (Schneewind, 1998:8-9). This debate was very influential throughout the seventeenth and eighteenth centuries, as will be seen in the work of Leibniz.

Interestingly enough, Tauber (2011) places religion at the centre of the divergent application of autonomy in modern society. He argues that autonomy has a dual heritage: one derived from the notions of Puritan personal religious responsibility and conscience that need to be balanced against the obligations of the community designed to serve God; and the other from the natural law's endowment of persons with natural rights, self-governance and the freedom to pursue their own ends. This latter, individualistic notion, found favour in the American democracy and developed at the expense of communal values. The former, communal notion, found expression in European culture, and the commitment to balancing autonomy with community interests and responsibilities is evidenced, for instance, in the European socialized health care system. Consequently, in the US, individual rights, thus unconstrained, have been allowed to become sacrosanct, thereby subordinating communal responsibility to an atomistic individualistic expression of autonomy.

Against the background of the religious and socio-political changes, the effort to create a theory of morality as self-governance seems to have become a self-conscious effort only in the early eighteenth century. This theory was principally based on the moral philosophies of Reid, Bentham and Kant that founded their conception of morality on the normative belief of the dignity and worth of the individual (Schneewind, 1998:5-6).

Thomas Reid (1710 – 1796), a Scottish philosopher and one of the founders of the "common sense" school of philosophy, is probably best known for his epistemology of sensation and for his view of free will. His conception of free will is based on the thesis that human beings hold an active power that they can freely exercise in a manner independent of both prior causes and the laws of nature. Reid's conception of ethics can be summarized by this quotation in *The Works of Thomas Reid,* (Reid, 2005: 592):

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"That, by an original power of the mind, which we call conscience, or the moral faculty, we have the conceptions of right and wrong in human conduct, of merit and demerit, of duty and moral obligation, and our other moral conceptions; and that by the same faculty, we perceive some things in human conduct to be right, and others to be wrong; that the first principles of morals are the dictates of this faculty; and that we have the same reason to rely upon those dictates, as upon the determinations of our senses, or of our other natural faculties."

Reid bases his view of morality on the belief that the necessary moral principles are all self-evident to the ordinary person and that all mature humans have an inherent sense of morality.[11] His concept of morality thus embodies respect for the individual to freely choose and act (Cuneo, 2011). Jeremy Bentham (1748 – 1832), the British philosopher and father of utilitarian calculus, similarly developed a concept of morality founded on individual dignity. Bentham argues that the word 'independence' is united to the accessory ideas of dignity and virtue and that the word 'dependence' is united to the ideas of inferiority and corruption (Bentham, 1894:79-80). Bentham thinks that all human beings possess a sense of dignity, in one form or other, and that this embodies an essential part of human happiness (Cavalier, 2002).

It was however the work of Immanuel Kant (1724 – 1804) that became most influential and it has been argued that no other moral philosopher is as fully represented in the current philosophical ethical debate as Kant. Schneewind (1998:6) attributes this to the fact that Kant's explanation of the belief in the dignity of the individual was more comprehensive and radical than that of the philosophies of Reid and Bentham. Kant was also the first to argue for autonomy in the strong sense of people that accept the moral law because of the legislative action of their own will.

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[11] This idea is further explained by Yaffe G & Nichols R, 2009, in "Thomas Reid", The *Stanford Encyclopedia of Philosophy* (Winter 2009 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/win2009/entries/reid/. Accessed 21 February 2011.

3.1.3 The philosophers who influenced Kant

The German philosophers, Leibniz, Wolff, and Crusius, the British philosopher, Hume, and the French philosopher, Rousseau, are regarded as the principal thinkers that helped develop Kant's conception of morality (Schneewind, 1998:13). A brief discussion of these influential thinkers, in terms of their work as related to the ideas of Kant, will serve to ground the discourse analysis of the ethics of Kant and reflect the historical context of his ideas.

Leibniz (1646 – 1716) proposed a new system that he thought offered an "intelligible explanation of the union of body and soul" and revealed a new aspect of the "inner nature of things" (Leibniz, 1982:72). He associates his system with pre-modern thinkers in a counterrevolutionary[12] way and believes that the existing sociopolitical debates could only be satisfactorily addressed in a manner that reflects the insights of ancient and medieval thought (Schneewind, 1998:236). Leibniz rejects the philosophical positions of his contemporaries and major thinkers of the time, like Pufendorf, Descartes, Hobbes, Spinoza and Malebranche, in favor of the ancients and his system attempts to unite "Plato with Democritus, Aristotle with Descartes, the Scholastics with the moderns, theology and morality with reason". Leibniz (1982:72) says:

> "I now see what Plato had in mind when he took matter to be an imperfect and transitory being; what Aristotle meant by his 'entelechy'; in what sense even Democritus could promise another life, as Pliny says he did; how far the sceptics were right in decrying the senses; why Descartes thinks that animals are automata, and why they nevertheless have souls and sense, just as mankind thinks they do".

In his work, *Theodicy*, Leibniz develops a complex ethical theory about how God could be removed from the centre of morality yet remain essential to morality. This theory was to be instrumental in offering grounds for rejecting voluntarism, the notion that God created morality and imposes it on us through an arbitrary decree. Leibniz's defeat of

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[12] Leibniz is seen as counterrevolutionary given the prevailing movement of the time to disassociate with the pre-modern and embrace the modern.

voluntarism is grounded in his idea that the "cosmic order is rational and therefore has a normative claim on all alike" and that God belongs with us to the same moral community (Schneewind, 1998:238-239). Leibniz (1989:158) ultimately aims to reshape our conception of God, so that we no longer view Him as an imagined metaphysical entity, but rather as a real substance or person with whom we stand in a moral relationship of love and trust. Accordingly, God chooses acts in accordance with the good and brings about a state of affairs because it is good. If this were not so, God's will would be indifferent and his actions arbitrary, without reason, and this is not tenable since it would open the door to impiety and tyranny (Schneewind, 1998:242). God however remains central to morality and Leibniz envisions the universe as a Kingdom of Grace – ruled by God as monarch – that is built on a Kingdom of Nature – of which God is the architect (Schneewind, 1998:240).

Duty and reason appear as central concepts in Leibniz. In the *Theodicy* (2009:51-52) he explains that one carries out the orders of the "Supreme Reason" by doing one's duty and obeying reason. All attention should be directed towards the common good, and even if one does not achieve this, one should be resigned to the will of God since it is known that "what He wills is best". Ultimately, one should just do one's duty and be content with the consequences, since "you have to do with a good master" (Leibniz, 2009:55).

Leibniz strongly influenced the thought of Christian Wolff (1679 – 1754)[13], a famous German rationalist. Leibniz's influence is evident both in Wolff's rejection of voluntarism and in his belief in the worth of the individual. Echoing the belief of the Reformation, Wolff asserts that the reasonable man acts in a morally appropriate manner independent of external rewards or punishment. Like Leibniz, Wolff believes that man is like God in that he strives for the good because it is good. God has no superior that commands him to do what is good. God does what is good because of the perfection of his nature (Schneewind, 1998:439).

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[13] Only secondary sources were consulted for the work of Christian Wolff since no primary sources were available in English. Primary sources were only available in German and Latin.

The first traces of Kant's metaphysics can be found in Wolff's thoughts. Wolff believes that we need general rules – or "maxims" – to guide our actions, but he is silent on the method by which we are to discover these maxims (McCarty, 2006:65). He also emphasizes the fundamental role of duties in the moral life: to act morally is to act in accordance with duty. A duty is an act that is prescribed by law, which in turn hinges on obligation. Duties are therefore "acts that we are obliged to perform" (Schneewind, 1998:440). Wolff lists three categories of duties: duties owed to God, duties owed to others, and duties to ourselves. Duties to God are explained by means of the honour we owe to God. This honour is based on the love we have for God's perfection, and we hence perform all the duties required of us by the law of nature, which is of course God's law. Duties to others are founded on the basic law of nature that requires that we are bound to do for others what we must do for ourselves. We are thus beings united with others. Lastly, duties to the self are concerned with the perfection the individual can attain by caring for his soul as well as his body (Schneewind, 1998:441).

In stark contrast to Kant's later thought however, Wolff attempts to incorporate the view of morality based on happiness and consequences, dominant at the time, into his view of morality. Accordingly, he argues for a determinist principle that virtue compels us to comply with the law of nature that dictates that we should aim at perfection. Since it is evident from psychology that we feel more pleasure as we attain more perfection, Wolff attempts to demonstrate that happiness lies in virtue (Hettche, 2008). Wolff espouses a consequentialist theory whereby the sole consideration for moral decisions should be based on the total amount of good derived from an action.

Wolff's moral thought can thus be summarized as follows: we are obligated to do that which will make us and our condition, or that of others, more perfect, and this law of nature would be binding on us even if – although this is impossible – God did not exist. Wolff connects the ideals of virtue and happiness, and virtue and duty, through the ideal of perfection. Virtue and happiness are connected since both result directly from perfection, and virtue and duty are connected since a duty is simply an act in accordance with the law that prescribes the pursuit of perfection (Hare, 2010).

Christian August Crusius[14] (1715 – 1775) was Wolff's fiercest critic and opponent. Crusius was a Lutheran pastor and a pietist. He rejects the rationalism of Wolff and exposes the limits of reason. He places God firmly in the center of morality and rejects Wolff's claim that Confucius already knew (by reason) all that mattered about morality, even though he did not know anything about Christ (Hare, 2010). Apart from God, the concept of human freedom is central to Crusius' moral psychology and he places more emphasis on this element than any of his German predecessors. Crusius also allocates the psychology of will a central position in his writing and concepts such as pleasure, the good and desire are all explained in terms of will (Schneewind, 1998:446-447). Crusius (in Schneewind, 1998:449) explains the concepts of freedom and will as follows:

> "Whenever we freely will something, we decide to do something for which one or several desires already exist in us… Freedom consists in an inner prefect activity of will, which is capable of connecting its efficacy with one of the currently active drives of the will, or of omitting this connection and remaining inactive, or of connecting it with another drive instead of the first one."

Crusius accepts John Duns Scotus' double theory of motivation[15] and, in contrast with Wolff, holds that certain actions ought to be done regardless of any ends we have, even if these ends happen to be our own perfection and happiness. It has been argued that this principle is the origin of Kant's categorical imperative. Crusius also incorporated the idea of motivation, called "the drive of conscience", which is "the natural drive to recognize a divine moral law" (Schneewind, 2003:574). This motivation centers on the idea that humans have the separate capacity to recognize divine command and to be drawn towards it out of a sense of dependence on the God who prescribes the command, and who can mete out punishment if disobeyed. Crusius however did not hold that the motive should be to avoid punishment, but rather that the motivation should stem from our reverence for God (Hare, 2010).

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[14] As with Wolff, the work of Crusius is described from the perspectives of secondary sources since primary English sources could not be found.

[15] John Duns Scotus (literally John from Duns, the Scot, c.1266–1308) developed a double account of motivation from Anselm (1033–1109), who made the distinction between two affections of the will: the affection for advantage (an inclination towards one's own happiness and perfection) and the affection for justice (an inclination towards what is good in itself independent of advantage) (Hare, 2010).

It therefore seems that after Leibniz, German philosophy was embroiled in a battle between the rationalists and the pietists, personified by the battle between Wolff and Crusius. Kant can be understood as mediating between the two. It is imperative to once again ask the question: what made Kant's philosophy – in contrast to the thoughts of his predecessors Leibniz, Wolff and Crusius – so widely known and influential? It has been argued that one of the reasons might be that during the early eighteenth century, German metaphysics was mostly unread by the continental philosophers. Adam Smith (in Schneewind, 1998:431) alleges that although learned Germans had managed to think and write in a language other than their own, they could not do so with precision. Germany was widely thought of as an ill-organised conglomerate of states that contributed little or nothing in terms of independent or novel intellectual thought. Indeed, Wolff's 1703 doctoral thesis was the first methodological treatise produced by a German. For these reasons, the early German philosophers were hardly ever read outside of their country, unless they published in Latin or French. This slowly started to change by the end of the eighteenth century, when a concerted effort was made, through scholarship and language reform, to change the perception of the backwardness of German culture. The ability to speak clearly and precisely in one's native language about morality and politics became an essential component of the *Aufklärung* (Schneewind, 1998:431-432).

Wolff was instrumental in this process. He meticulously created a new German philosophical vocabulary to replace the existing Latin, and developed an entire philosophical system in both Latin and German, consisting of logic, methodology, ontology, practical philosophy and its applications in morality, politics, international law, economics, cosmology and teleology (Schneewind, 1998:432). After Wolff's efforts, it thus became much more common for German philosophers to be read outside of their own country and by the time Kant wrote his major works, the stage had been set for his philosophy to gain wider influence than that of his predecessors.

However, before I explore the metaphysics and moral philosophy of Kant, the last two major influences on Kant, the philosophy of the Briton, David Hume, and the Frenchman, Jean-Jacques Rousseau, will be briefly discussed.

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Kant credited David Hume (1711 – 1776) for waking him from his "dogmatic slumbers" – presumably referring to the dogmatic system of Wolffian metaphysics in which he intellectually developed. (Kenny, 1994:158). Hume also influenced other great thinkers, including Adam Smith, Jeremy Bentham – in whom Hume apparently caused the scales to fall off his eyes – and Charles Darwin. Hume is recognized today as a precursor of logical positivism and contemporary cognitive science, as well as a proponent of philosophical naturalism (Morris, 2010). Hume questions the validity of the concept of causality and claims that it is only a contingent, particular and subjective product of our sensations. All knowledge is built up from ideas in the form of sense impressions. Since we do not have a separate idea of causality, it is hence impossible to have any knowledge of objective causation or of the elemental connection of things. Kant realized that Hume's scepticism undermined all the prevalent metaphysical assumptions and set out to resolve the problem of the origin and extent of human knowledge, famously expressed as: "[w]hat can I know?" (Kant, 1891, preface).

Hume's influence on Kant stems from his empiricism, which in Kant's view led to idealism. In the *Critique of Pure Reason*, Kant argues for transcendental idealism that, while acknowledging the limits of the human mind, like Hume, claims that categories of spatial position, time and objectivity are imposed on our perceptions by the mind, so that we might make sense of them. Kant argues for cognitive constructs that necessitate the truth of empirical claims. Accordingly, the *à priori* forms of space and time are necessary and universally inherent on the faculty of sense (Kant, 1891, preface). As Denis (2009) explains: "because the category of 'space' is a cognitive construct, we can make claims about the spatial relations of objects with certainty because the relations we are describing are nothing more or less than our ideas of them".[16]

Kant relies heavily on the work of Newton in addressing the scepticism of Hume. Kant utilizes the same principles in metaphysics that Newton introduced in physical science. He attempts to show that pure reason could attain, as it did in mathematics and science,

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[16] A further exposition of this contrast is found at http://www.conservapedia.com/David_Hume and "Kant and Hume on Morality", *The Stanford Encyclopedia of Philosophy (Summer 2009 Edition)*, Edward N. Zalta (ed.).

similar real knowledge of its proper objects in the metaphysical sphere of thought. In doing so, Kant systematizes philosophical criticism as a form of science and lays the basis for a new metaphysics. As much as Kant relied on Newton for his metaphysics, he relied on Jean-Jacques Rousseau (1712 – 1778) for his ethics, as is clear from this quotation from his Notes (*Bemerkungen*) (Kant, 2005:9):

"Newton saw for the first time order and regularity combined with great simplicity, where before him was found disorder and barely paired multiplicity; and since then comets run in geometric courses. Rousseau discovered for the first time beneath the multiplicity of forms human beings have taken on their deeply buried nature and the hidden law by the observation of which providence is justified. Before that the objection of Alphonsus and Manes still held. After Newton and Rousseau, God is justified and Pope's theorem is true."[17]

The major influence of Rousseau on Kant is evident in his belief that it is imperative to honour the moral status of ordinary people and that all people are equal in their moral capacity. This is in contrast to the teachings of Wolff who claimed that the learned philosophers are tasked with educating ordinary people in morality, but similar to Crusius who believed that God endowed everyone equally with the capacity for moral knowledge (Schneewind, 1998:487-489).

Rousseau's ideas on autonomy, as it appears in his Social Contract theory, also helped shape Kant's own conception of autonomy. Rousseau identifies two central features of humanity: humans have equal capacity for and interest in freedom; and humans are motivated by self-love. With due cognisance of these properties, Rousseau argues that a system of social cooperation is possible by supposing the following: individuals each have basic needs and interests that they aim to satisfy; the satisfaction of these needs and interests depends on the actions of others; agents have the capacity to recognise their

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[17] Alphonsus was a king of Castile and astronomer who said that he could have given God good advice about how to make the heavens more orderly. Manes was the founder of dualistic Manichaean religion, a blend of Gnostic Christianity, Buddhism, Zoroastrianism, and other elements, that focused on doctrines of a cosmic conflict between forces of light and darkness. Pope's theorem in the *Essay on Man* is: "Whatever is, is good" (Schneewind, 1998:491).

dependence on the actions of others i.e. that mutually beneficial coordination is possible; and individuals have (often conflicting) views on the claims they can make on one another.

The fundamental component of the social contract is an acknowledgment of interdependence that aims to ensure the benefits of association within society while still protecting the necessary freedom of the individual. This social contract is however only possible if it represents a unanimous agreement between rational individuals who share a conception of the common good that the social order ought to advance. This shared conception enables the achievement of autonomy where all individuals recognise the communal principles as their own and act on them from obedience to the law they have prescribed for themselves (Cohen, 1986:275-279).

3.1.4 Kant's moral theory

All the aforementioned philosophers helped shape Kant's critical ideas and insights into morality. Although there are lots of unanswered questions about the exact path of the development of his thought, it is widely accepted that Kant's work can be broadly divided into a pre-critical and critical period. It is argued that the pre-critical period seems to be an expression of Kant's pietistic upbringing with the influence of Hume and Rousseau evident in this early view of morality, based on sentiment. The *Inaugural Dissertation*, written in 1770, is thought to represent a major shift in Kant's work, in which he radically breaks from his sentimentalist stance and now espouses a view of morality based not on experience, but on pure understanding. This radical shift has been attributed to Kant's epistemology that he developed in response to Hume's general scepticism (Schneeewind, 1998:484-485).

Recent critics have however questioned this clear shift and have argued for a more complex understanding of this process. It has been claimed, for instance, that Kant seems to have arrived at the essential notion of his later morality well before 1770. It has also been contended that the influence of Wolff and Crusius on the development of his moral

thought has been underestimated and not adequately explored. Lastly, not only the problem of Hume, but also the need to reconcile his conception of morality with his Newtonian understanding of the physical world, seems to have driven the shift in thought (Schneewind, 1998:485). The essential shift in his thought is manifested in the claim that morality is identified with objective necessity, which can neither rest on any advantages the act brings about, nor on the will of God (Kant, 2008:18,19).

Autonomy forms the cornerstone of Kant's ethical theory and he develops this concept further than any of his predecessors. He most notably expands the concept of autonomy in a moral sense and argues that the possession of autonomy of the will is a necessary condition for moral agency (Blackburn, 1996:31). Kant (2008:56) defines autonomy thus: "[a]utonomy of the will is that property of it by which it is a law to itself (independently of any property of the objects of volition)". Blackburn (1996:31) explains: "autonomy is the ability to know what morality requires of us, and functions not as freedom to pursue our ends, but as the power of an agent to act on objective and universally valid rules of conduct, certified by reason alone." Autonomy is thus demonstrated by a person who makes decisions based on respect for moral duty and therefore acts morally independent of other incentives and solely for the sake of doing good.

The idea of independence, or freedom, features strongly in Kant's moral theory of autonomy. His seminal moral philosophical work, *Groundwork of the Metaphysics of Morals*, appeared in 1785, shortly after the American Revolution (1776) and just before the French Revolution (1789) (Sandel, 2009:105) and could be read as part of the greater social struggle for freedom for the ordinary man. Kant (2008:62) presupposes freedom as a property of the will of all rational beings. He hence considers agents autonomous when they are "under the influence only of reason, when they can identify with the motivations prompting their action, or when they are capable of acting so as to change their motivations if they cannot identify with them" (Blackburn, 1996:31). Kant uses the concept of autonomy to construct an ethical definition of personhood. He argues for a concept of human dignity based on compliance with the moral law as manifested in autonomy.

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Kant sees man as divided between a higher and lower self, between reason and inclination, and conceives of freedom as the resistance to and control over the desires of one's lower self. One is free because, and to the extent that, one is autonomous. He views the moral law not as something imposed on man from without by any arbitrary will – divine or otherwise – but as the expression of pure reason.[18] In so far as this law involves a lawgiver, it is legislated by any rational being: I do obey laws, but only those that I prescribe to myself, and since no one can enslave himself, I am free. Kant argues that whenever behaviour is biologically determined or socially conditioned, it is not truly free. To act freely is to act autonomously, and to act autonomously is to act according to a law I give myself – not according to the dictates of nature or social convention (Sandel, 2009:109). According to Kant there is no value higher than the individual and his rational will is absolute.

Kant's conception of autonomy can perhaps be better explained by contrasting it with its opposite. Kant (2008:56) invents a word to describe this contrast – *heteronomy*. When man acts heteronymously, he is dependent on outside factors that are not under his control, thus leaving him vulnerable and enslaved. Let me give an example: when a leaf falls from a tree, it falls to the ground. As it falls, the leaf is not acting freely; the laws of nature – in this case, the law of gravity – govern its fall. If a person, for instance, falls out of a tree and accidentally falls onto, and kills, a dog, he similarly cannot be held morally responsible according to Kant, since he did not act freely. Since there is no autonomy in this action, there can also be no moral responsibility. This action is heteronymous, and when a man acts heteronymously, he acts for the sake of ends given outside him. He is an instrument, not an author, of the purposes he pursues. When a man acts autonomously, according to the law he gives himself, he does something for its own sake, as an end in itself. He is no longer an instrument of purposes given outside him. Kant proposes that it is this capacity to act autonomously that gives human life special dignity, and marks the difference between persons and things (Sandel, 2009:109-110).

This however raises a fundamental question about the nature of freedom. Is everything

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[18] In support of this statement, see also Norman (1998:74).

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we do not in some way motivated by desire or determined by outside influences? Kant (2008:30) argues that everything in nature works according to the laws of nature, and since we are natural beings, we cannot escape from these laws. To be capable of freedom however, we also have to be capable of acting according to another kind of law, a law other than the laws of nature (Sandel, 2009:117). As Berlin (1997:208) argues: since man cannot control the laws of nature, free activity has to be lifted above the world of causality.

Kant further argues that acting freely means choosing the end itself, for its own sake, and not choosing the best means to a given end. The moral worth of an action thus consists not in the consequences that result from it, but rather in the intention that motivates the act. What matters is the motive, and the motive must be of a certain kind. What matters is doing the right thing because it is right, not because it will achieve some ulterior motive.

> "A good will is not good because of what it performs or effects, not by its aptness for the attainment of some proposed end, but simply by virtue of its volition; that is, it is good in itself, and considered by itself is to be esteemed much higher than all that can be brought about it in favour of any inclination, nay even of the sum total of all inclinations. Even if it should happen that, owing to special disfavour of fortune, or the niggardly provision of a step-motherly nature, this will should wholly lack power to accomplish its purpose; if by this greatest effort it should yet achieve nothing…then, like a jewel, it would still shine by its own light, as a thing which has its whole value in itself" (Kant, 2008:13)

For an action to be morally good, "it is not enough that it conforms to the moral law, but it must also be done for the sake of the law" (Kant, 2008:8). And the motive that confers moral worth on an action is the motive of duty, by which Kant means doing the right thing for the right reasons. To be capable of freedom, we must be capable not of acting according to the laws of nature, but according to a law we give ourselves. According to Kant, such a law can only come from reason. This is so since we are not only natural beings, determined by the pleasure and pain arising from our senses, we are also rational beings, capable of reason. If reason governs my will, then the will becomes the power to

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choose independent of the demands of nature or desire. It is important to note that Kant does not claim that reason always determines the will. He only says that, if man is to act freely, according to a law he gives himself, then it by necessity means that reason can govern his will (Sandel, 2009:118).

This raises a further question of how reason is able to govern the will. Kant distinguishes two possible ways and calls them imperatives. The first imperative is a hypothetical imperative that relies on instrumental reason: if I want to achieve a certain outcome (X), I have to perform a certain action (Y) (Sandel, 2009:119). Hypothetical imperatives are thus always conditional. Kant contrasts this kind of imperative with one that is unconditional: a categorical imperative.

> "If now the action is good only as a means to something else, the imperative is hypothetical; if it is conceived as good in itself and consequently as being necessarily the principle of a will which of itself conforms to reason, then it is categorical" (Kant, 2008:32).

By categorical, Kant therefore means that an imperative is unconditional. Accordingly, only a categorical imperative can qualify as an imperative for morality (Sandel, 2009:119). The most famous formulation of the categorical imperative reads: "I am never to act otherwise than so that I could also will that my maxim should become a universal law" (Kant, 2008:20). The second categorical imperative reads: "[s]o act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant, 2008:46).

The fundamental link between freedom as autonomy and Kant's idea of morality should now be clear. Acting morally means acting out of duty – for the sake of the moral law. The moral law consists of a categorical imperative, a principle that requires us to universalize our maxims and to treat persons with respect, as ends in themselves. I only act freely when I act in accordance with the categorical imperative. When I act according to a hypothetical imperative, I act for the sake of some inclination or interest outside of

me. In that case, my will is not determined by me, but by outside forces, and I am thus not truly free (Sandel 2009:123-4). "Thus a free will and a will subject to moral laws are one and the same" (Kant, 2008:61).

The categorical imperative centres on the core concepts of *rationality* and *universality.* Norman (1998:78) argues that the requirement of universality can be derived from that of rationality i.e. "it is a necessary condition of my acting rationally that my actions should be universalizable." Universality implies both consistency – "the requirement that one's reason for performing a certain action in certain circumstances must be a reason for one to perform *the same* action again in relevantly similar circumstances" – and impersonality of reasons – "the requirement that one's reason for performing a certain action in certain circumstances must be a reason for *anyone* to perform the same action in relevantly similar circumstances" (Norman, 1998:86).

It is thus a mistake to think that the moral law is up to the individual. If we were to reason from our own particular interests, desires and ends, we will probably end up with any number of principles. These are however not moral principles. When we apply pure practical reason we abstract from our particular interests and everyone who so exercises pure practical reason will reach the same conclusion. Everyone will thus arrive at a single – universal – categorical imperative (Sandel, 2009:126).

Berlin (1997:210) describes Kant's work as "a form of secularised Protestant individualism, in which the place of God is taken by the conception of the rational life, and the place of the individual soul which strains towards union with him is replaced by the conception of the individual, endowed with reason, straining to be governed by reason and reason alone, and to depend on nothing that might deflect or delude him by engaging his irrational nature." It has been argued that the intellectual framework that Kant developed for the morality of self-governance provided the foundation for the shift from a morality of obedience to a morality of individual governance (Moshe, 2010:196).

Kant requires us to universalize our conception of ourselves as rational beings and to treat

all other human beings likewise as rational beings. He however distinguishes between rational beings, or persons, and things. *Things* are described as "beings whose existence depends not on our will but on nature's"; they are irrational beings and have only relative value as means. *Persons*, on the other hand, are rational beings and "their very nature points them out as ends in themselves". This implies that persons are objects of respect and should not be used merely as means to another's ends (Kant, 2008:45).

> "The foundation of this principle is: rational nature exists as an end in itself. Man necessarily conceives his own existence as being so: so far then this is a subjective principle of human actions. But every other rational being regards its existence similarly, just on the same rational principle that holds for me: so that it is at the same time an objective principle, from which as a supreme practical law all laws of the will must be capable of being deduced. Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant, 2008:46).

In other words, other humans have ends because they are free, rational and autonomous agents who act in accordance with purpose and principles. We can thus never use them solely for our own purposes and ideals; respect for persons essentially entails respect for their liberty and autonomy (Norman, 1998:90). Kant's principle that humanity – and generally every rational nature – is an end in itself, serves as the supreme limiting condition of every man's freedom of action.

Kant's categorical imperative has been much criticized for its empty formalism and abstract nature; still, it holds the essence of what has become known in medical ethics as the 'principle of respect for autonomy'. As Berlin (1997:208) explains:

> "For if the essence of men is that they are autonomous beings – authors of value, of ends in themselves, the ultimate authority of which consists precisely in the fact that they are willed freely – then nothing is worse than to treat them as if they were not autonomous, but natural objects, played on by causal influences, creatures at

the mercy of external stimuli, whose choices can be manipulated by their rulers, whether by threats of force or offers of reward. To treat men in this way is to treat them as if they were not self-determined."

Kant identifies autonomy as the basis for the dignity of humans and of all other rational nature and hence paternalism is "the greatest despotism imaginable" (Abbott, 1898:54). Paternalism allows for the treatment of humans as if they were not free, but merely material for someone else. Paternalism subjects the individual's will and purpose to that of another with more power. The powerful can take many forms ranging from the tyrannical despot to the "benevolent reformer" or wise benefactor. The principle is the same: the individual is subjected and molded in accordance with the will of another (Berlin, 1997:208-209). Berlin argues that to lie to or deceive others is to use them as means for my ends, even if those ends are benevolent and to the benefit of the other. By regarding the ends of another as less ultimate and sacred than my own, I treat that other as "subhuman" (Berlin, 1997:209).

Kant assumes that the fundamental principle of morality must be universal and necessary. Freedom, in the sense that Kant conceives of it, therefore incorporates not only individual interests and concerns, but also regard for the ends of other rational beings and respect for the universal. In a freestanding draft, entitled *On Practical Philosophy,* in (Guyer, 2000:102), Kant wrote:

> "He will therefore have as his foremost object himself as a freely acting being in accordance with this independence and self-mastery, so that his desires will harmonize among themselves with his concept of happiness and not with instincts, and in this form consists the conduct that is appropriate to the freedom of a rational being. His action must first be instituted in accord with the universal end of mankind in his own person, and therefore in accordance with concepts and not instincts, so that these may harmonize with each other, since they harmonize with what is universal, namely nature."

According to Kant's view, morality requires a rule of reason that originates not from

natural instinct, but from freedom. The aim of morality is not to realize an end different from happiness, but an end consisting of universal happiness. In this universal happiness, the achievement of individual desire is permitted only if this desire is compatible with the long-term happiness of the individual and of the larger group. One person's happiness can thus never be sacrificed for or subjected to that of another (Guyer, 2000:103). Kant thus systematizes and universalizes the concept of happiness and uses reason – and thus freedom – to regulate specific inclinations in order to achieve the larger, universal objective as the basis of moral value (Guyer, 2000:99).

3.1.5 Modern application of autonomy

"Like most of the other ideas central to our culture today, autonomy grew out of the four great transformations that produced the modern world: the Renaissance, the Reformation, the rise of capitalism, and the birth of liberal democracy" (Gaylin & Jennings, 2003:30).

The importance of the concept of autonomy in a cultural sense, most notably in the Western world, seems to have been greatly influenced by post-World War II societal structures. This era saw massive social realignment that reflected the increasing awareness of the importance of individual autonomy, manifested in renewed commitment to civil and human rights. Towards the end of the eighteenth century, the ideology of liberalism inspired the American and French Revolutions. Voting rights were however still restricted to a minority of the population – made up exclusively of men – and one could thus not yet speak of these post-revolution governments as liberal democracies. Throughout the nineteenth century, traditional monarchies were increasingly overthrown in favour of the ideals of democracy, and female suffrage was achieved to a limited extent as from the 1890s. The British colony of New Zealand was the first self-governing country to extend the right to vote to all women in 1893, followed by the colony of South Australia in 1895. The first European country to introduce voting rights for women was the Grand Principality of Finland (Elections). By the end of the nineteenth century, liberal democracy thus became more than just an ideal. It was however only after World War I, and especially after World War II, that liberal democracy, as an acceptable and desirable form of government, achieved a dominant position (Ahmed, 2011).

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Biomedical ethics has its roots in ancient Greece, specifically in the work of the Greek physician Hippocrates (5th century B.C.), for whom the medical arts epitomised a love of humanity. This ethic was thus based on moral precepts regarding competence and dedication to those in need of medical assistance, and the idea of trustworthy, dignified and respectable doctors, dedicated to the service of mankind, persevered in medical ethics up to the first part of the 20th century (Spagnolo). It has however been argued that medical ethics reached a turning point directly after World War II. This was due to the advances in medical science and the introduction of new medical technologies, such as antibiotics, organ transplants and genetic engineering, which brought new challenges and raised questions about the very definition of life and death. The ethical dilemmas posed by these technologies prompted the formation of ethical commissions charged with the development of new ethical guidelines and laws. This is postulated to have been the start of the "bioethical movement" that effected a drastic and profound revision of the professional ethics that governed the behaviour of medical professionals over many centuries (Spagnolo).

Since contemporary Western medical ethics can thus be seen as having its birth (or rebirth) (Gert, Culver & Clauser, 1997:1) during the post World War II era of liberal democracy, it is not surprising that the central preoccupation with individual autonomy also found its place in ethical discourse (Tauber, 2005:16). Concerns about paternalistic practices in medicine, inadequate protection of participants in research and medical malpractice, drove an in-depth reanalysis of the underlying ethical principles of medical practice (Abruzzi & McGandy, 2003). Many contemporary philosophers and ethicists were instrumental in these debates and helped shape the future direction of medical ethics. Although not all espoused a strong view of autonomy, they assisted in furthering the debates about the appropriate place of the concept of autonomy in ethical discourse. The influence of Kant's ideas is plainly evident throughout. I will briefly touch on the work of two of these early ethicists, namely Fletcher – since he is viewed by many as the early founder of American medical ethics – and Sandel – since he has been a major voice articulating modern ethical dilemmas – in order to roughly sketch the moral milieu of the time, before discussing the work of Isaiah Berlin in more detail.

Joseph Fletcher (1905 – 1991) was an American Episcopalian priest and professor who founded the consequentialist theory of situational ethics in the 1960s. He was a pioneer in the field of bioethics – to the extent of being called the "Patriarch of Bioethics" – and a leading academic in debates on abortion, infanticide, euthanasia, eugenics and cloning (Gale Encyclopaedia of Biography). Situational ethics does not claim to be a system of ethics, but is only a method for contextual decision-making. It holds love (*agape*) as the supreme moral principle and, although the exact nature and meaning of this love has been widely questioned and criticised, it is mostly taken to embody "universal, impartial beneficence" (Childress, 1966:9). Fletcher's methodology of situational ethics is concerned with an evaluation of the ends, means, motives and consequences of an action as they pertain to the attainment of *agape* in a specific situation – a type of "agapeic calculus" (Childress, 1966:6). Fletcher holds that individuals do not choose norms, since they form part of every person's moral heritage. Individuals do however decide in a situation whether or not to follow the norms.

Fletcher championed autonomy as a principle in concordance with his basic humanitarianism as a theologian. Even though Fletcher did not write about autonomy in a philosophical sense *per se*, he saw autonomy as integral to a humane medicine that respected the sanctity of life. Fletcher further followed Kant in believing that all people, not just theologians and philosophers, should participate in debates about the appropriate manner in which to make moral decisions. He attempted to "democratize" ethics and appealed to common human experience and reason, rather than to religion or tradition or grandiose theories of right and wrong (Childress, 1996:10). This approach found wide appeal and is still popular in ethics today.

Michael Sandel has been an instrumental voice in the debate around many contemporary ethical debates, such as the moral permissibility of suicide, assisted suicide, human cloning and genetic engineering. Sandel is seen as a communitarian, espousing a "thin" theory of autonomy (Moyn, 2009:1). Sandel (2005a:114) rejects the notion of autonomy that is held to include such freedom as "the right to define one's own concept of existence, of meaning, of the universe and of the mystery of human life" and that hence

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implies that life is the possession of the person who lives that life. Sandel argues for a purely Kantian conception of autonomy that views life as a gift and man as custodian with duties toward himself and to others, most notably the duty to treat humanity as an end in itself. Sandel thus sides with Kant in concluding that no person has the right to kill himself or another (Sandel, 2005a:115).

Sandel also wrote extensively about the moral status of the embryo, arguing against assigning personhood to embryos. He lays the conviction that an embryo is a person at the door of certain religious doctrines, but also holds Kant accountable for dividing the moral universe into a duality of either being a person – and hence worthy of respect – or a thing – open to use. Sandel claims that the personhood argument is probably not the most fitting to the debate, since one does not have to regard the embryo as a full human person in order to recognise that it warrants respect. The personhood debate furthermore fails to capture the importance of the need to revere the ultimate gift of life and Sandel once again argues that we would do better to turn away from the battle over personhood and rather cultivate a more expansive appreciation of life as a gift (Sandel, 2005b:245-6).

Sandel extends this argument in his work about the ethics of genetic engineering. Sandel argues that the pursuit of perfection is flawed for more reasons than just safety and fairness. He re-introduces religious terms into the ethical debate and argues against the "one-sided triumph of mastery over reverence" and urges for the reclamation of an appreciation of life as a gift. He however distinguishes between healing and enhancing, and proposes that the former is permissible, since it is constrained by the goals of restoring normal functioning, whereas the latter is objectionable, as it represents unrestricted arrogant pride or a bid for domination (Sandel, 2007:101).

It is however Isaiah Berlin (1909 – 1997) that in my opinion has been the most instructive philosopher about autonomy in modern times. Berlin lived through some of the most turbulent events of our time, witnessing both the horror of despotic tyranny and the promise of liberating revolution. Berlin was born a Russian Jew in Riga, Livonia (a province of the Tsarist empire), spent his childhood in voluntary exile in England and

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went on to excel as an eminent British political philosopher and historian, most famous as historian of the Russian intelligentsia, biographer of Karl Marx, scholar of the Romantic movement and defender of the liberal idea of freedom. As his bibliographer, Michael Ignatieff, notes: Isaiah Berlin was witness to a century. He was born under the Tsarist empire, saw the rise of the Bolshevik revolution, and eventually the collapse of the Soviet state; he was in Washington during World War II, in Moscow at the start of the Cold War, and in Israel as the new state was established. "In a dark century, he showed what a life of the mind should be: skeptical, ironical, dispassionate and free" (Ignatieff, 1998:301).

Berlin wrote eloquently about freedom, or liberty. The ideal of personal 'freedom' has been exulted in the modern world and enshrined in national constitutions; yet, it remains notoriously complex, controversial and protean in nature. Berlin attempts to define the nebulous idea of freedom and is strongly influenced by the Enlightenment philosopher, John Stuart Mill (1806 – 1873), but also by his predecessor, Immanuel Kant. Immanuel Kant (2008:620 presupposes freedom as a property of the will of all rational beings, and as such, as one of the fundamental properties of moral value and the ultimate object of moral endeavor; it is therefore both the driving force of moral action and the ultimate end of this action. In the *Lectures on Ethics* he writes: "[f]reedom… is the capacity which confers unlimited usefulness on all the others. It is the highest degree of life. It is the property that is a necessary condition underlying all perfections… But the inner worth of the world, the *summum bonum,* is freedom according to a choice that is not necessitated to act. Freedom is thus the inner worth of the world" (Kant, 1997b:125).[19]

Berlin (1997:203) wrote extensively about freedom, and the similarity of his concept of freedom to that of autonomy, as discussed thus far, is evident from the following passage:

> "I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious

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[19] See also Guyer (2000:96) for an alternative translation.

purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer – deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them. This is at least part of what I mean when I say that I am rational, and that it is my reason that distinguishes me as a human being from the rest of the world. I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for my choices and able to explain them by reference to my own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that it is not."

In this essay, *Two Concepts of Liberty,* Berlin distinguishes between two ideas of freedom: firstly, the negative sense of freedom that answers the question: "what is the area within which the subject – a person or a group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?" Secondly, the positive sense of freedom that answers the question: "what, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?" (Berlin, 1997:194).

Negative freedom entails the area within which a person can act unobstructed by others. A person is thus free only to the degree in which others do not interfere with his activities. This is the way in which the classical English political philosophers used the notion of freedom. Hobbes (1651:129) for instance, says: "…a freeman is he that, in those things which by his strength and wit he is able to do, is not hindered to do what he has a will to do"[20]. Libertarian philosophers disagree about how wide the area of non-interference should be, but all agree that it could not be unlimited. Three arguments have been advanced in support of limiting freedom: freedom should not be limitless firstly lest all men boundlessly interfere with all other men; secondly, lest this 'natural' freedom create social chaos in which men's minimum needs would not be satisfied; and thirdly, lest the liberties of the weak be suppressed by the strong (Berlin, 1958:3). These English

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[20] In support of this statement, see also Tuck (1991:146).

philosophers are thus content to curtail freedom in the interest of other values (and indeed of freedom itself) since they perceive that human purposes and actions are often not harmonious and that other goals such as justice, happiness, culture, security and equality are also valuable.

Whereas these thinkers thus support the idea that the area of man's free actions might be limited by law, libertarians, such as Locke and Mill, hold that there ought to exist a certain minimum area of personal freedom that must on no account be violated. If this were not so, they fear that individuals would find themselves too constrained for even the minimum development of their natural faculties which alone make it possible to conceive of and pursue the various ends that men hold good or right or sacred (Berlin, 1997:196). John Stuart Mill has been described as "the most eminent advocate of individual freedom" (Hamburger, 1992:4) and is famous for saying that "[t]he only freedom that deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it" (Mill, 1869, Ch I:13). Benjamin Constant (1767 – 1830), the European writer and politician, similarly argues that a minimum area of freedom needs to be preserved if we are not to corrupt or deny the very essence of our human nature. He motivates for the "protection of individual life and property; liberty of religion, speech and opinion; autonomy in all those aspects of life that could cause no harm to others or to society as a whole" (Constant, 1988:27).

Mill further argues that the only justification for an individual or a society to curb the liberty of action of any person in that community is self-protection. "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill, 1869, Ch I:9).[21] The only constructive social rules would therefore be those that proscribe certain forms of socially damaging behavior. These rules should not go much further, except perhaps to command society to help its members, individually and collectively, "in ways that are essential to the maintenance of a minimally decent social life" (Lyons, 1994: 62). Mill attempts to maximize individual liberty and reduce the power and authority of public opinion, society

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[21] For an in-depth analysis, see also Lyons (1994: 62-90).

and governments. He fights against the "tyranny of the prevailing opinion and feeling" and hopes to create a space wherein individuals could be free and self-directed (Mill, 1869, Ch I:5).[22] Mill thus seeks extensive liberty for the individual with minimal interference and constraint, and although he places some limits on individual liberty, these limits do not amount to control of any kind. In fact, for Mill, "intolerance, denial of choice, coercion, and encroachment on individuality are abhorrent" (Hamburger, 1992:4).

Mill's arguments can be best understood in the context of his utilitarian ethical grounding. According to utilitarian theory, as developed by Jeremy Bentham and refined by Mill, we are required to always 'maximize utility'; any other way of acting is deemed to be wrong. Mill is fundamentally committed to the end of happiness and therefore to whatever means best serve that end. He believes that individual freedom and hence the principles of limited interference and limited moral obligation would serve the ultimate end of happiness best in the long run, since free individuals are the best architects of their own happiness (Mill, 1869, Ch III:1).

Although Mill thus argues for a frontier to be drawn between the area of public life and that of public authority, the exact location of this frontier has been a matter of infinite debate. According to Hamburger (1992:8), Mill makes a strategic distinction between the part of individual human conduct that has consequences for the welfare of others and the part that comprises the inward domain of consciousness; he views the latter as the appropriate region for the most absolute human freedom. Accordingly, it is never right to interfere with actions that are purely self-regarding, but only with actions that are harmful and other-regarding. The freedom of a person endangering the lives of others, e.g. a drunk driver, can therefore be curtailed (for instance, by revoking his driver's license), but the liberty of a person endangering his own life, e.g. an extreme sports enthusiast or someone contemplating suicide, should be respected. But as Berlin (1997:198-199) aptly summarizes, it does not matter which principle is used to define the area of non-interference – whether it is natural law or natural rights, utility, a categorical imperative, or the social contract – "liberty in this sense means liberty *from*; absence of interference

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beyond the shifting, but always recognizable, frontier."

Integral to the libertarian theories are the twin ideals of total personal independence and equality, which also feature prominently in the philosophies of the eighteenth century Romantics and Idealists. Reality however challenges this ideology. In practice we are frequently (and sometimes forcefully) reminded that people are interdependent and hence that no person's activities are so private that they never obstruct the lives of others. As Richard Tawney (1964:164), leading advocate of Christian Socialism, remarks: "[f]reedom for the pike is death for the minnows." Liberty for some necessarily depends on the restraint of liberty for others. Western liberals have been troubled by the fact that throughout history, the minority that possess freedom have gained it by exploiting, or at least ignoring, the vast majority that do not. Surely, if individual liberty is the ultimate end for human beings, then all should be entitled to it? "Equality of liberty; not to treat others as I should not wish them to treat me; repayment of my debt to those who alone have made possible my liberty or prosperity or enlightenment; justice, in its simplest and most universal sense – these are the foundations of liberal morality" (Berlin, 1997:197).

Yet it remains inevitable that the freedom of some must at times be curtailed in order to secure the freedom of others. Mill views the protection of individual liberty as paramount, even if all other individuals had to be forcefully restrained. In his famous essay, *On Liberty*, he argues that, unless the individual is left to live as he wishes in "the part [of his conduct] which merely concerns himself", civilization cannot advance (Mill, 1869, Ch I:9-10). Mill (1869, Ch I:4) fears that the popular conception of a democratic republic is shifting the ideal of self-government from that of "the government of each by himself" to that of government "of each by all the rest." The majority and the most active in society thus gain the capacity to oppress those with a less powerful voice. Mill (1869, Ch I:4-5) argues that the individual must be safeguarded against this potential abuse of power and also against the tyranny of prevailing public opinion.

Berlin (1958:6) similarly argues that, unless individual freedom is safeguarded, there will be a paucity of "free market" ideas and this will hamper the truth, spontaneity, originality,

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genius, mental energy and moral courage. He fears that "collective mediocrity" will destroy society and that diversity will be crushed by men's tendency to conform to majority opinion. Berlin further argues that the evil of constraining people in doing what they deem right, far outweigh the damage done by the mistakes that might be made because of idiosyncratic action. For Berlin, the defense of liberty thus consists in the 'negative' goal of warding off interference. "To threaten a man with persecution unless he submits to a life in which he exercises no choices over his goals; to block before him every door but one, no matter how noble the prospect upon which it opens, or how benevolent the motives of those who arrange this, is to sin against the truth that he is a man, a being with a life of his own to live" Berlin (1958:6).

Mill's claims have been widely disputed. History has made it clear that individualism and the human ideals of love and integrity occur as often in severely restricted societies or under military rule for instance, than in more tolerant societies, and hence the argument that liberty is a necessary condition for the development of human genius seems to be flawed. The notion of individual rights was absent from the legal conceptions of the ancient Romans and Greeks, and also of the ancient Jewish and Chinese societies (Berlin, 1997:201); yet, these ancient societies left behind a legacy of genius and innovation. Liberal Individualism is thus a modern notion, having its roots in the Enlightenment, and few will argue that human excellence was unknown until this time.

It is however important to explore Mill's argument further, since it has been so influential in modern individualist thinking. A core concept in his theory is that of 'negative liberty', or the freedom to act and choose without interference. The extent of negative liberty is difficult to estimate in a specific case. It might, prima facie, seem to depend simply on the power to choose between two alternatives, but not all choices are equally free, or free at all. Berlin (1997:202) gives the following example: if I am in a totalitarian State and I betray my friend under threat of torture, I can reasonably say that I did not act freely. I did of course make a choice, and could (in theory) have chosen to be killed or tortured or imprisoned. This illustrates that the mere existence of alternatives is not enough to make an action free, although it may still be voluntary. According to Berlin, the extent of

freedom depends on the following calculation:

1. The number of possibilities. (It should however be obvious that the method of counting these is always going to be imprecise: "possibilities of action are not discrete entities like apples, which can be exhaustively enumerated").
2. The level of difficulty involved in achieving each of the possibilities.
3. The relative importance of each possibility when compared with the others (taking into account my character, circumstances and life plan).
4. To what extent these possibilities are closed and opened by intentional human action.
5. The value of each possibility; that is not merely the subjective value the agent ascribes to it, but the general sentiment of the greater society of which he is part.

All these values then have to be calculated so that a conclusion – inevitably imprecise and open to dispute – can be reached through this process. As attractive as this moral calculus appears, Berlin leaves the possibility open that there might well be so many incommensurable kinds and degrees of freedom, that they cannot be drawn up on any single scale of magnitude. Nevertheless, this calculation can still be useful to 'quantify' freedom since, provided we do not demand precise measurement, it is possible to give valid reasons for saying that a certain society or individuals are indeed freer than others.

Berlin (1997:201) further remarks that: "the desire not to be impinged upon, to be left to oneself, has been a mark of high civilisation on the part of both individuals and communities." And from the preceding argument it is clear that there are certain minimum social or economic conditions that have to be met before people can make use of their freedom. "It is true that to offer political rights, or safeguards against intervention by the State, to men who are half-naked, illiterate, underfed and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in freedom" (Berlin, 1997:196). This idea is being echoed in South Africa today where health care professionals have called for basic, minimum standards of living

before people can be free to make lifestyle choices important in the face of the HIV pandemic. Professor Hoosen Coovadia, Professor of HIV/AIDS Research at the Nelson Mandela Medical School of the University of KwaZulu-Natal (KZN), says that high unemployment rates, poverty and lack of access to basic services, such as electricity, running water and housing, had thrown South Africa into a "huge crisis". "If people's basic needs remained unfulfilled they could not mobilise the resources to fight HIV/AIDS" (Plusnews, 2005). If more than 17% of the country's adult population is currently living with this life-threatening disease, what use is it to them that we are living in one of the freest democracies in the world?

The positive sense of liberty is not any easier to define and demarcate than the negative sense of liberty. Most importantly and basically, it is more than just a positive affirmation of the negative sense of freedom. It stems from the wish of the individual to be his own master,[23] but extends to the driving force and determinant of this wish. Positive liberty allows the 'authentic self' to rule and allows the individual to transcend the rule of mere base or arbitrary desires. Positive freedom represents the capacity and desire to make one's own choices and achieve one's potential. Berlin follows Kant in making a distinction between a 'lower' and 'higher' self – the former driven by basic desires and hence mostly involved in negative forms of freedom; the latter driven by self-actualization and thus concerned with positive freedom (Barnfield, 2007). Even though Berlin never constructed an ethical theory as such, his insights into the idea of freedom have been influential and resonate in many modern ethical theories.

One such theory, *Principlism,* was developed at the turn of the 20th century by ethicists Tom Beauchamp and James Childress, and became the preeminent biomedical theory of the time. They wrote the first American textbook of bioethics. Principlism takes the principle of autonomy as one of its cornerstones and here autonomy embodies both liberty – independence from controlling influences – and agency – capacity for

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[23] Refer to Berlin's quote on page 127-8 of this dissertation.

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intentional action (Beauchamp & Childress, 1994:121)[24]. Autonomy is seen as an essential, but not the principal, component of this theory and needs to be weighed and balanced with three other competing principles namely beneficence, non-maleficence and justice. This approach is arguably the most common ethical theory taught in medical schools around the world today.

The Principlism approach has however been widely criticized. It is argued that even though the authors espouse four principles, only two principles – autonomy and non-maleficence – are given real importance (Holm, 1995:333). Indeed, autonomy has become the central principle that has affected the practice of Western medicine in recent years (Parker, 1995:305) and still dominates the contemporary debate over the moral foundations of medical practice and research. Autonomy is also the most significant value operative in the concept and practice of informed consent. Daniel Callahan (1984:40) however warns that we should stand still for a minute and reflect on "what it would be like to live in a community for which autonomy was the central value … [and] sole goal". Callahan (1984:41) argues that: "making autonomy *the* moral value rather than *a* moral value, weighing it to trump every other value, buys the luxury of autonomy at too high a price".

The reasons for the preferential emphasis on autonomy at expense of the other three principles are debatable but seem to stem from the loss of power and the increasing dehumanization individuals feel in the face of the dramatic expansion of technology and mass-market medicine. Autonomy is seen as a "powerful antidote to the threats to personhood that result from being ill, by offsetting the power of those who define identity by defining disease". Autonomy thus becomes a mechanism through which people can reclaim control and authority over decision-making in their lives in the face of the "medicalization of personal identity". It thus allows people to resist being reduced from persons to patients (Tauber, 2005:14-15).

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[24] Only the later editions of *Principles of Biomedical Ethics* will be cited throughout this dissertation, since Beauchamp and Childress have changed their theoretical account considerably so that versions as from the fourth edition in 1994 are substantially different from the earlier versions (Gert *et al*, 1997:72).

Principlism was developed as a common morality theory in order to make it more accessible in a non-philosophical sphere. It has however been contended that Principlism is in fact not a theory at all and that the principles are merely names and checklists that lack deep moral substance or the capacity to guide decisions. Gert *et al* (1997:64) argue that the principles are merely a rough classification of the duties of health care professionals without an underlying account or explanation that can ground them. The ordering of the principles is thus merely organizational and does not embody a unified moral system capable of providing useful guidance. This leads to the dilemma that the different principles often conflict, and since they do not rest on an underlying theory to appeal to, there is no agreed-upon method for resolving these conflicts (Gert *et al.*, 1997:87).

A further argument against Principlism is that it is mistaken about the nature of morality and is misleading about the foundations of ethics. Principlism appeals to features of a variety of standard ethical theories, but it lacks instruction on how to blend these features together into integrated parts of a single, adequate theory. It thus does not recognise the unified and systematic nature of morality (Gert *et al.,* 1997:89). Such a form of ethics thus elicits criticism of relativism and perpetuates a type of "anthology syndrome", as described by Gert *et al* (1997:75), where readers are offered a variety of theories and are expected to choose the theory, maxim, principle or rule that best suit them in a specific situation, without providing a reason or guideline for this choice. A further problem with common morality is that the basic premises are not as common as the authors would like us to believe, but are representative only of the specific society from which it originated, hence reflective of a proportion of North American culture. It is debatable whether such a specific perspective can be translated to other spheres and cultures (Holm, 1995:333).

Many ethicists have also questioned the centrality and importance of autonomy by claiming that it is a "fantasy that masks the social and personal springs of all thought and action" (Blackburn, 1996:31). The main criticism levelled against it is that our desires, choices and actions are all to some extent rooted in factors outside our control. True autonomy, the ability of a person to act independently and dispassionately, can easily be

seen to be a myth. Autonomy therefore does not seem to be absolute and can in addition be waived to or restricted by another authority. Accordingly, a person can choose to follow the governing rules of the country, or a court can sentence an offender to prison. Autonomy can furthermore be restricted through the inability to act – as with a newborn – or through the inability to decide – such as with a comatose patient.

It has also been claimed that autonomy fails to account for medicine's moral calling. This is so because power differentials in knowledge and health status between patients and healthcare providers necessitate patients to surrender their full autonomy to the healthcare provider and to rely on the competence and goodwill of such a provider (Tauber, 2001:300). Autonomy as a principle fails to embody the full ethical responsibility of the healthcare provider. In this realm of medical ethical responsibilities, values such as compassion, care, responsibility, commitment and professionalism are also instrumental in ensuring fair and appropriate treatment of the patient (Pellegrino & Thomasma, 1988:121).

In health care, a patient exercises autonomy when he is free to make a decision in the light of his particular values, concerns and goals. Autonomy can thus be evaluated in terms of three criteria: the absence of external constraint – whether this be manipulation, coercion or forceful 'persuasion' – competence and understanding, with the latter two representing the critical internal capacities integral to self-governance. It is generally assumed that adults are competent to make judgments about their health care in that they are able to make decisions that reflect their concern for their own wellbeing (Young, 2001:442). The seriousness of this assumption is however tested whenever a patient decides on a course of action that runs counter to the judgment of healthcare advisers about what would constitute the best *medical* outcome. When a patient thus embarks on a course of action that might have a deleterious effect on his health or wellbeing, the question arises whether the patient can rightly (and paternalistically) be prevented from pursuing this course. The effects of illness, injury and medication complicate the evaluation of competence in such cases.

The concept of autonomy, as influential and prevalent as it has become in modern ethical discourse, is therefore not unattested and uncontroversial. While it is plausible to accept that only agents that are capable of autonomous action can be held responsible for their actions and can thus be assigned moral responsibility, it is important to review what other properties apart from autonomy carry moral weight and have the possibility of assigning responsibility.

3.2. Limited archaeological and genealogical analysis of autonomy in healthcare

Having now traced the steps of the historical development of the concept of autonomy in moral discourse, I embark on a limited archaeological and genealogical analysis of this concept. The archaeological exploration will specifically focus on discourse analysis of the concept of autonomy. The genealogical analysis will be concerned with an exploration of the power differentials operative within the concept of autonomy in a healthcare setting, most notably by exploring the foundation of modern ethical theories, analysing the different concepts of freedom dominant in society, and exploring whether the concept of autonomy can have a homogenizing and controlling function in society.

3.2.1 Limited archaeological analysis

Archaeological analysis is concerned with tracing and exposing the discursive formations of discourse and the concepts operative within the discourse. There are four basic elements of such an analysis: the objects about which statements are made, the places from which statements are made, the concepts involved in the construction of the discourse, and the themes and theories they develop. Each of these will now be briefly discussed.

In the development of the discourse of autonomy, the first element, namely the objects about which statements are made, seems to be mostly concerned with the object of 'Enlightenment man' – the ideal, paradigmatic example of humanity that, endowed with power and reason, is the champion against ignorance, prejudice and passion. Enlightenment man rescues the world from darkness and places himself at the epicenter

of the universe. Enlightenment man is not hu(man) but rather he(man), representing and championing the male characteristics of impartiality and reason.

The second element, namely the places from which statements are made, has been alluded to in the text. The Enlightenment defined the space in which the moral concept of autonomy was invented. This space was however one of male domination and privilege that for all practical purposes excluded women, underprivileged classes and non-Western societies. Even though eighteenth century woman did have some access to the public space created by the Enlightenment ideas, she stayed on the periphery, as a passive observer, and not as an active participant in the debate. By controlling the kind of education and employment she could access, Enlightenment man made her subservient to his ideals and needs.

It should thus be evident that the main concepts involved in the construction of the discourse of autonomy consisted of the masculine properties of rationality, dispassionate observation, rigorous scientific method, and abstract reasoning. Logic, observation and mathematics are heralded as the acceptable language of science, so valued at the time of the Enlightenment (and even today) and as such, colour the language of the ethics that has its roots in the same time and space.

The final element of discourse analysis is concerned with describing the themes and theories developed by the discourse. In the case of autonomy, these can be viewed as theories of morality as duty, theories of morality as consequence, and theories of morality as principles. Morality as duty is primarily found in the work of Immanuel Kant who developed an account of morality defined by the categorical imperative, mandating the universalization of our maxims and the respect of people as ends in themselves. Morality as consequence is best articulated by John Stuart Mill, who conceptualised morality as leading to the greatest good for the majority, and argued that this can only be achieved through the respect of the freedom of the individual. The theory of morality as principles burst onto the ethical scene much later and was only developed into a systematic account in 1979 by Beauchamp and Childress. It rests on a common morality theory and

conceives of moral reasoning as the weighing and balancing of four principles: autonomy, beneficence, non-maleficence and justice. Ideas of morality as freedom permeate all these accounts – albeit as completely different manifestations of the idea of freedom – and strongly influenced the ideas of Berlin.

The historical analysis of the development of the concept of autonomy also illustrates the disjunction between the histories of autonomy, dispelling the notion that the concept developed in a predestined, harmonious fashion as determined by universal truth. By situating autonomy within a particular socio-political milieu, this illustration attempts to show that autonomy is in fact a social construct, an invention of modernity. Finally, the arbitrary nature of these histories is demonstrated, for instance, by showing that contingent events, such as the socio-political changes in Europe, informed the development of autonomy as we know it today, and that the fortuitous academic development of the German language, might have contributed to the fact that Kant's work became more influential than any of his predecessors.

3.2.2 Limited genealogical analysis

My limited genealogical analysis of the concept of autonomy is concerned with exposing the power differentials within the concept. Three main arguments are explored:

1. The specific concept of freedom inherent in a moral theory greatly influences and determines the way in which autonomy is understood, and as such is reflective of a specific power dynamic in society.
2. Mainstream (or rather male-stream) ethics is founded on a male-dominant conception of autonomy and hence reinforces stereotypic gender roles.
3. The modern notion of autonomy can have a homogenizing and controlling function in society.

For the first argument, it is imperative to develop a clear account of the diversity of views about freedom in a moral sense. Gaylin and Jennings (2003:11) give an excellent

summary of the many faces and diverse meanings of freedom in the Western cultural tradition:

> "For Pericles in ancient Athens, it meant self-confidence, vitality and being in charge of one's own affairs. This is a spirit that lets a person – or a whole society – be open to the world, to absorb it, without getting lost in it. For Saint Paul, perfect freedom was perfect servitude, albeit in the service of Christ. Aristotle thought that political freedom consisted in ruling and being ruled in turn. Otantes, another ancient Greek, found freedom in neither ruling nor being ruled. Abraham Lincoln shared this latter sentiment: as he would not be another man's slave, neither would he enslave another man. For the English political philosopher Thomas Hobbes, freedom meant the absence of external restraint necessary to impede even destructive passions of individual will, whereas for his successor in the development of liberal thought, John Locke, it meant security of person and possessions in a society of shared laws and reasonable expectations. Jean-Jacques Rousseau, by contrast, thought that selfishness actually enslaves us and that there is no contradiction in saying that sometimes people must be 'forced to be free'."

I will discuss two examples of opposing conceptualizations of freedom, as found in the form of positive and negative freedom in Berlin, and then as found in the views of Kant and Mill. As discussed in this chapter, Berlin conceives of two forms of freedom: the negative understanding of freedom entails the freedom from oppression or interference by others; and the positive understanding entails the freedom to take an active part in the processes that control one's life (Abruzzi & McGandy, 2003).

Berlin's conception of freedom is directly derived from the view of what constitutes a person. The salient features of a person, as extensively discussed in the second chapter, can be summarized as someone (or something?) who has "rationality, command of language, self-consciousness, control or agency and moral worth or title to respect" (Blackburn, 1996: 283). The ideas of rationality and control or agency have been described as fundamental and essential in differentiating a person from other forms of life. This, in combination with the idea of moral worth, brings together the concept of

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self-mastery which holds the suggestion of an underlying power dynamic of man divided against himself: self-mastery entails that I am a slave to no-one. But, as philosophers have argued, may I not be a slave to nature, or maybe to passion, thereby dividing my 'moral worth' from my 'baser self', creating an everlasting battle for control? The self is thus divided into a 'higher' self, identified with reason, that constitutes my 'real', 'ideal' or 'autonomous' self, and a 'lower' self, the 'empirical' self, swept away by irrational impulses, uncontrolled desires, always in pursuit of immediate pleasures. The two selves may even be presented as being divided by a larger gap: the real self may be conceived as something bigger than the individual; a social whole of which the individual is but an element, e.g. a class, a race, a State, a Church, the march of history, etc.

It is here that this positive concept of freedom, that of self-mastery, has fallen prey to abuse and exploitation, since thinkers and rulers have manipulated its meaning to serve their own purposes. Berlin argues that it is possible to extrapolate from the notion of a divided self to the point where it is possible to conceive that, at times, people are blind, ignorant or corrupt and cannot see the goals that they would have pursued if they were more enlightened, and that I, because I know what they truly need better than they do, may coerce them to attain these goals. This is still plausible and even acceptable under certain conditions. However, he further argues that they would not resist me if they were rational and as wise as I and understood their interests as I do, and that therefore, I am coercing them for their own sake. Even if these goals were rejected by the other, it is only the 'real' self – of which the empirical self in space and time may not know of – that deserves to have his wishes taken into account. This thus places one in the position to "ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf of, their 'real' selves, in the secure knowledge that whatever is the true goal of man (happiness, performance of duty, wisdom, a just society, self-fulfillment) must be identical with his freedom – the free choice of his 'true', albeit often submerged and inarticulate, self" (Berlin, 1997:205).

This of course does not deny that we are at times unaware of what would ultimately be in our best interests – be it because of ignorance or overwhelming passion – and that another

might have the insight to help us on the right path. It should however be clear that it is one thing to say that I know what is good for a specific person when he himself may not, and even to ignore his wishes for his own sake; yet quite another to claim that he had indeed chosen this, not consciously, but in his role as a rational self which his empirical self may not know – "the 'real' self which discerns the good, and cannot but help choosing it once it is revealed" (Berlin, 1997:205). We should thus be careful to extrapolate from the argument that I may be coerced on occasion for my own benefit, to claiming that because it is in my interest, I am not being coerced because I have willed it, whether I know this or not.

The desire to be self-directed has historically taken two forms: self-denial and self-realization. *Self-denial* rests on the acknowledgement that I conceive ends and desire to pursue them, but am often prevented from attaining them by uncontrollable forces – whether these be the laws of nature, accidents, human institutions, or the acts of other men. In order to avoid defeat, I therefore have to liberate myself from the desires that I know I cannot actualize. "It is as if I had performed a strategic retreat into an inner citadel – my reason, my soul, my 'noumenal' self – which, do what they may, neither external blind force, nor human malice, can touch" (Berlin, 1997:207). This has been the traditional route of self-emancipation taken by ascetics, quietists and Buddhist sages who have escaped the world by no longer caring for any of its values. Ascetic self-denial can undeniably be a source of serenity and spiritual strength, but it remains difficult to comprehend how it can be viewed an enlargement of liberty. It has been argued that the only logical conclusion of this process of destroying everything of worth that can possibly harm me, is suicide... "Total liberation in this sense is conferred only by death" (Berlin, 1997:211-212). Kant also prescribes to a form of *self-denial,* and identifies freedom not with the elimination of desires, but with resistance to and control over them.

The second form of self-direction, *self-realization*, is based on the Epicurean teaching that knowledge liberates the self by eliminating irrational fears and desires. Critical reason allows us to understand what is necessary and what is contingent, and to understand "why things must be as they must be is to will them to be so" (Berlin,

1997:215). I am thus free in the sense of self-direction: whatever I can rationally demonstrate to myself as being necessary, I cannot wish to be otherwise; I assimilate it into my being in the same way as I accept the necessary laws of logic or physics. According to this line of thinking, all truths can in theory be discovered by any rational thinker and can then be demonstrated so clearly that all rational men cannot but accept them. It would thus in principle be possible to establish a just order where every man could be given all the freedom to which a rational being was entitled, creating a harmonious 'Garden of Eden before the Fall of Man'.

As seductive as this idea might be, it once again sets the stage for coercion and manipulation. The argument is easily adapted to support the idea that "[t]o force empirical selves into the right pattern is no tyranny, but liberation" (Berlin, 1997:219). And as Jeremy Bentham (2010:542) said: "[t]he liberty of doing evil, is it not liberty? If it is not liberty, what is it then? …Do we not say that liberty should be taken away from fools, and wicked persons, because they abuse it?" Reason, if it is to triumph, has to suppress and eliminate my 'lower' instincts and passions that enslave me; similarly, "the higher elements in society – the better educated, the more rational, those who 'possess the highest insight of their time and people' – may exercise compulsion to rationalize the irrational section of society" (Berlin, 1997:221, paraphrasing Fichte). Accordingly, there is only one correct way of life and the wise lead it spontaneously. The wise must do for the 'unwise' what they cannot do for themselves; furthermore, he cannot ask their permission because they are in no condition to know what is best for them. Liberty thus changes into authority.

This is of course exactly what Kant vehemently protested against in the name of the free individual following his own inner light. "In this way the rationalist argument, with its assumptions of the single true solution, has led by steps which, if not logically valid, are historically and psychologically intelligible from an ethical doctrine of individual responsibility and individual self-perfection to an authoritarian State obedient to the directives of an elite of Platonic guardians" (Berlin, 1997:223).

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Both a positive and negative sense of freedom can thus, in Berlin's view, lead to unequal power dynamics in society that can be used to control the individual. If we now look at the views of Kant and Mill, it should be clear that one can distinguish two distinct strands of freedom, corresponding with a positive and negative view of liberty respectively, in their work. This consequently leads them to develop two distinct versions of autonomy (Allmark, 2006:3).

As discussed in detail, Kant argues that an individual is free in so far he subjects himself to the dictates of reason, rather than the arbitrary rule of outside interests or desires. Kant argues that autonomy is similarly defined by its accordance with the moral law. Autonomy is connected to universal principles that all rational creatures should share, and autonomy is thus a function of reason, rather than desire. It demands that we conduct our reasoning about action on principles that all other rational beings can use in the same manner and circumstance.

In contrast with Kant's view, Mill is of course a proponent of negative liberty and claims that the individual should be sovereign in all matters that regard only his own person. He argues that any interference from the government, religion, or prevailing opinion, to mold the character of the individual and curtail his liberty, will necessarily lead to the loss of individuality and societal progress. Mill's conception of autonomy is allied to his conception of freedom: the individual ought thus be free to develop his individual character. This means that the individual should be free to follow his own desires and impulses, and is autonomous in so far as his actions arise out of his own authentic choice. It does not matter for Mill how these choices are made and he does not insist on any requirement of justification of universalizability for such choices. The focus is here on the individual: his choice, his desires and his reasons.

Kant's conception of freedom and autonomy is open to the same power play as that of Berlin. By insisting that we only act autonomously when we act in accord with reason, it opens the possibility of justifying manipulation or coercion of people on the basis that their current behaviour is not autonomous since it is subject to irrational choice, such as

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addiction. The rationale is that, once informed, people will necessarily make the 'right' choice. Allmark (2006:3) argues that this can lead to paternalism, which can be seen in public health policies such as deceptive advertising[25] to stop 'bad habits', such as addiction.

Conversely, Mills's view of autonomy, since it is based on individual inclination and desire, is not necessarily universalizable. Individual desire may be too idiosyncratic to constitute a valid reason for others to make decisions. It however seems as if the Millian version of autonomy dominates in popular debates: "the test for autonomy is typically whether or not something is *my* choice" (Nieukamp, 2007:21). The manner in which the choice is made – whether it is based on adequate reasons or whether these will be acceptable reasons for other people in similar circumstances – does not feature in this debate. This fundamentally shifts the balance of power from society to the individual. In healthcare, such a strong expression of autonomy can lead healthcare workers to neglect their responsibility to act in the best interest of the patient, since this may conflict with the desire of the patient. A prime example is plastic surgery, where patients are repeatedly operated on by their request, well beyond the limits of medical and social acceptability.

The second argument of this limited genealogical analysis involves the adoption of male-dominated concepts of autonomy by mainstream ethical theories. The major ethical theories, such as Deontology and Principlism, since they either developed during the Enlightenment or were strongly influenced by Enlightenment values, rely on a 'strong' version of autonomy. As discussed in the archaeological analysis, this autonomy is based on rationality and thus emphasizes the rational nature of humanity at the expense of other human characteristics, such as the emotions and ideas of friendship and reciprocity. Rationality, impartiality and impassionate reasoning are paradigmatic characteristics of maleness, whereas emotions, interconnectedness and caring are traditionally associated with a female nature. In order to gain acceptance in the intellectual and public sphere,

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[25] One such technique is stating the relative, rather than the absolute, risk. For instance, stating that smoking increases your risk of a heart attack ten fold, says nothing about the original risk. Without knowing the absolute risk, it is virtually impossible to make a rational decision regarding risk (Allmark, 2006:4).

women have however been conditioned to distance themselves form their inherently female nature and embrace the quintessential male characteristics. What might the effect of such overreliance on rationality be?

Mack (1984:9) argues: "[i]nsofar as they internalized contemporary notions of the right boundaries for acceptable public behaviour, enlightened women acquired a new form of symbolic baggage that women today are only beginning to examine." Mack (1984:9-10) describes two opposing consequences that this excess baggage might lead to. Firstly, because women since the eighteenth century have internalized, and subsequently cultivated, the traits of restraint and rationality at the expense of the more 'feminine' qualities of enthusiasm and spiritual ardour, many modern feminists have started appealing to religion, searching for myths of a "matriarchal Eden" or of "God the Mother". They also seem to be seeking richer self-images for women, by assigning an exalted status to the mundane activities of nurturance. Conversely, the persistence of the Enlightenment value of rationality may also contribute to the difficulty experienced by many other feminist thinkers of taking traditionally feminine attributes as seriously as those traditionally assigned to men. "In our current preoccupation with bourgeois status and intellectual respectability, as well as our skittishness about the issues of motherhood and other 'natural' feminine impulses and activities, we are all of us, for better or worse, daughters of the Enlightenment" (Mack, 1984:10).

The third argument centers on the question of whether a modern notion of autonomy can have a homogenizing and controlling function in society. I argue that this can indeed be the case. Berlin postulates a few premises that could effect this possibility. First, that all men have one true purpose, and one only, that of rational self-direction; second, that the ends of all rational beings must of necessity fit into a single universal, harmonious pattern, which some men may be able to discern more clearly than others; third, that all conflict, and consequently all tragedy, is due solely to the clash of reason with the irrational or the insufficiently rational – the immature and undeveloped elements in life, whether individual or communal – and that such clashes are, in principle, avoidable, and for wholly rational beings impossible; finally, that when all men have been made rational,

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they will obey the rational laws of their own natures, which are one and the same in them all, and so be at once wholly law-abiding and wholly free (Berlin, 1997:225).

Such a dominant version of autonomy assigns rationality as the paramount and overarching principle in moral debate. Reason thus dictates what behaviour is acceptable and preferable, not only in the personal, but also in the public, space. There is no space for diversity and idiosyncrasy within this space, and the demand for rationality thus homogenizes and controls behaviour. In order to be taken seriously, to be viewed as a 'person' and not just a 'thing', human beings thus have to conform to the demands of rationality and autonomy. In the words of Barth (2002:21): "[d]id it (the Enlightenment) not seek freedom and, in the very search for what it understood by freedom, again and again re-create the old unfreedom (of the middle ages)?"

Medical ethics as practiced in most parts of the world today seems to have followed the pattern of a dominant autonomy. This seems to mostly be a reflection of the broad social values found in the United States of America. In light of the dominance of protection of individual rights within the North American legal and political culture, the philosophical principle of autonomy has been prioritized in medical ethics, mostly at the expense of beneficence and social justice (Abruzzi & McGandy, 2003). It therefore seems as if medical ethics is no longer an ethics dominated by religious and medical traditions, but rather an ethics that is increasingly shaped by legal concepts. The consequence has been a model of public discourse that emphasizes secular themes: universal rights, individual self-direction, procedural justice, and a systematic denial of either a common good or a transcendent individual good (Tauber, 2005:16-17).

While autonomy is thus primarily founded on a religious and philosophical belief-system, its modern application shows no memory of this. Autonomy's primary allegiance to the religious doctrine of the sanctity of life has been shorn off by secularised adaptations thereof and superimposed a legal interpretation of the right to be left alone on the old ethic of caring. In a sense, especially in the US, the law accompanies the patient to the hospital to 'protect' him and effectively translate the old duties of care and beneficence

into modern standards of care. Ethics now centres on maintaining patient's confidentiality, disclosing financial interests, and legal prohibition against the abandonment of patients (Tauber, 2011). Empathy has no legal basis whatsoever.

3.3 Conclusion

I introduced the concept of personhood and its implications for the concept of autonomy in Chapter 2. In this chapter, I then aimed to provide a historical perspective of the development of the concept of autonomy in moral discourse. I traced the development of the concept from ancient Greece to the Enlightenment and through to its modern application. I aimed to show that autonomy, like personhood, is a social construct that has acquired diverse meanings and applications in different times and social milieus. I showed that it changed from a concept applied to independent city-states in ancient Greece, to a characteristic applied to human beings in the Enlightenment, and that this change was mediated by three social transformations that culminated in a fundamental shift in thinking about the place of the individual: the religious Reformation movement, the rise of the bourgeoisie, and the eminence of science.

I then discussed the development of the modern notion of autonomy by means of an analysis of predominantly the work of Immanuel Kant and Isaiah Berlin, and discussed the positive and negative notions of freedom that are operative within this discourse. I explored the most notable philosophers that preceded and influenced Kant in order to contextualise his moral theory. I similarly positioned Berlin within his social context and explored the ideas that influenced him, and contrasted this with the ideas of his contemporaries.

I finally looked at the discourse through an archaeological-genealogical lens. My limited archaeological analysis was concerned with a discourse analysis of the concept of autonomy, and I specifically discussed the objects about which statements are made, the places from which statements are made, the concepts involved in the construction of the discourse, and the themes and theories they develop. I further aimed to expose the

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diversity and discontinuity of the historical development of the notion of autonomy.

The genealogical analysis was concerned with an exploration of the power differentials operative within the concept of autonomy, most notably by exploring the foundation of modern ethical theories, analysing the different concepts of freedom dominant in society, and exploring whether the concept of autonomy can have a homogenizing and controlling function in society. I alluded to the power inherent in the discourse, as it operates through rules of exclusion. Accordingly, the objects that seemingly control the discourse are its objects (what can be spoken of – amongst others, rationality and independence), ritual (where and how one may speak – through academic debate and treatises) and the privileged (who is allowed to speak – the male philosophers and ethicists).

Chapter 4 will now trace the historical development of the idea of informed consent in healthcare, and will likewise be supplemented by a limited archaeological and genealogical analysis of the concept. Informed consent is the expression of autonomy in healthcare and such an analysis is attractive for it can substantiate and practically illustrate some of the abstract concepts that were raised in this chapter. Subsequent chapters will then explore various responses to autonomy, most notably from non-Western and feminist opinions voiced in multiple contexts.

Chapter 4: Informed Consent

"Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault." Schloendorff v. Society of New York Hospitals, 1914 (Faden *et al.*, 1986:28).

Chapters 2 and 3 explored the historical development of the concept of autonomy and the interrelated concepts of personhood, identity and self, in moral discourse. Informed consent is the explicit manifestation of autonomy in a healthcare context and can as such serve to demonstrate the practical application of this concept. I will therefore trace the steps of the historical development of the idea of informed consent in a bio-ethical and legal context in this chapter. This will be a descriptive, historical account, supplemented with a limited archaeological-genealogical analysis.

As described in Chapter 1, an archaeological analysis follows in the footsteps of Michel Foucault. It is primarily concerned with examining the discursive traces left by the past in order to write a 'history of the present'. Archaeology is therefore a manner of looking at history as a way of understanding the processes that have led to our current reality. Genealogy is devoted to shed light on the inherent power dynamics active within this concept.

Acknowledging the twin perils of generalisation and abstraction, I will follow some influential writers in their analysis of the historical basis of informed consent. The danger of generalisation warns us not to be tempted to overeagerly extrapolate isolated case reports to established medical or legal practice at that time, and the hazard of abstraction reminds us that an isolated entity like informed consent cannot in its entirety be detached from its historical context, without losing much of its essence.

4.1 Historical analysis of informed consent

Autonomy, as described in the preceding chapter, emerged as an influential concept in philosophy and biomedical ethics during the Enlightenment. Autonomy is seen as the central premise and basis of the concept of informed consent. Informed consent is however a very recent idea in ethical discourse and only emerged after the revelation at the Nuremberg trials of the atrocities committed in the name of medical experimentation during the Second World War (Beauchamp & Childress, 1994:142). In the initial discussions, informed consent only found application in medical research, but it has subsequently been accepted in and integrated as an essential part of the conventional doctor-patient relationship as well. This chapter will not distinguish between informed consent in a research setting and informed consent in a treatment setting, as their foundations and elements are for all practical purposes identical.

The word 'consent' is derived from the Latin *cum sentire*, which means 'to feel with/together'. According to its etymological origins, consent can therefore be taken to mean an agreement (Maclean, 2006:323). In modern general English language, consent is still used in this context, either as a term denoting agreement – "by common consent: with the agreement of all" – or as a term denoting permission – "give permission for something to happen". Informed consent is then taken to mean: "permission granted in full knowledge of the possible consequences, typically that which is given by a patient to a doctor for treatment with knowledge of the possible risks and benefits" (Oxford Dictionaries, 2010). Legal application of the term consent similarly denotes a form of permission.

The history of informed consent can be traced back to multiple disciplines and social contexts: the health profession, law, social and behavioural sciences, and moral philosophy (Faden *et al*., 1986:3). Of these, law and moral philosophy have taken central stage in the debate currently surrounding the notion of informed consent that has become such an integral part of the practice of medicine. The Nuremberg Code of 1947 is the first document to specify the ethical regulations of human experimentation based on

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informed consent (Nuremberg Military Tribunal, 1947; Vollmann & Winau, 1996:1445) and the requirement of informed consent is now enshrined in all prominent national and international medical and research codes as well as in institutional rules and regulations, such as the Declaration of Helsinki (World Medical Association, 2000).

4.1.1 Ethical foundation of informed consent

There are a number of philosophical and ethical foundations of informed consent. The different ethical theories that prominently influenced the development of the notion of informed consent is principlism, utilitarianism, deontology, rights-based theory and communitarianism (Beauchamp & Childress, 1994:63,77,357,362). Of these, the theory of deontology, as developed by Immanuel Kant, and the theory of utilitarianism, as championed by Jeremy Bentham and John Stuart Mill, have been the most influential (Berg, Appelbaum, Parker & Lidz, 2001:22). Deontological ethics bases the requirement for informed consent on Kant's second formulation of the categorical imperative, which reads: "[s]o act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant, 2008:46). Informed consent can thus be viewed as an ethical doctrine rooted in modern society's cherished value of autonomy that provides patients and research participants with the right and responsibility to make their own decisions about their life. Utilitarian theory also influenced the development of informed consent. It holds that morally valuable actions are those actions that bring about the greatest good for the greatest number of people and Mill (1869, Ch III:1), argued that limited interference would serve the ultimate end of happiness best in the long run, since free individuals are the best architects of their own happiness.

The most influential approach to the understanding of the moral foundation of informed consent can arguably be found in the work of Tom Beauchamp and James Childress: *Principles of Biomedical Ethics.* In order to understand their argument, it is important to first delineate the foundations of their particular form of moral theorising. They developed a method called 'coherentism' that attempts to situate itself somewhere between the 'top-down' deductivist and 'bottom-up' inductivist approaches. The

deductivist approach to moral deliberation holds that moral judgements are inferred from a pre-existing theoretical structure of normative precepts that cover the judgement and give general norms preeminent status (Beauchamp & Childress, 2001:399). Accordingly, moral judgements involve the application of a general rule or principle to a clear case falling under the rule/ principle, which in turn is covered and warranted by an ethical theory. Since this approach lends itself to oversimplification, inductivist thinkers called for the recognition of an 'embedded moral tradition' where more emphasis is placed on the role of particular and contextual judgements. Moral rules then become "provisionally secure points in a cultural matrix of guidelines" (Beauchamp & Childress, 2001:392). In order to overcome the potential haziness and bias of this approach, Beauchamp and Childress (2001:397-401) developed a theory of 'coherentism', based on the work of John Rawls.

In coherence theory, considered judgements begin with the moral convictions in which one has the highest confidence and these judgements are provisionally accepted as fixed points. They are however liable to revision through the process of 'reflective equilibrium' where these considered judgements are made coherent with the premises of theory. Simply put, from the point of paradigm judgements of moral right- or wrongness, a more general moral theory is constructed that is consistent with these judgements; the resultant action guides are then continuously tested for incoherent results that renew the process. Theory is thus never assumed to be in a state of completely stable equilibrium and is continuously tested for adequacy by its practical implications. This approach has the perspicacity to accept that all moral systems present some level of indeterminateness and incoherence (Beauchamp & Childress, 2001:398-9).

Beauchamp and Childress stop short of developing a complete ethical theory but propose an analytical framework that they believe is comprehensive enough to evaluate and understand many moral problems surrounding informed consent in health care. Their approach centres on four principles: respect for autonomy, beneficence, non-maleficence and justice. Their analysis presupposes "a pluralism of moral principles equally weighted in abstraction from particular circumstances" (Faden *et al*., 1986:18). All four principles

have *prima facie* standing, meaning that a particular principle should always be acted upon unless it conflicts on a particular occasion with an equal or stronger principle. These general ethical principles then serve as the basis for critical analysis of moral codes, policies and regulations developed in health care in order to address problems of informed consent.

In any discussion about public policy, human rights play a pivotal role and Beauchamp and Childress incorporate the concept of rights within their wider ethical framework. They maintain that every duty has at least one correlative right, and that both duties and rights are grounded in principles. Therefore, a right always imposes a duty on another party either not to interfere (negative or first generation rights) or to provide something (positive or second generation rights), and both the right and the duty are substantiated by the same overarching principle. The right to make autonomous choices and to perform autonomous actions is thus correlative to the duty not to interfere with the autonomous choices of others; both this right and duty derive from the principle of respect for autonomy. Rights are however not trumps and need to be balanced in specific circumstances. The right to make autonomous decisions and the right to informed consent are legitimately exercisable and create actual duties on others if and only if the right has an overriding status in the situation (Faden *et al*., 1986:19).

No right exists in isolation and all rights have correlative responsibilities. A right is thus never a unidirectional exertion of power, but should always be exercised with due cognisance of the balance required between competing rights, responsibilities and duties. For instance, the South African Bill of Rights (1996) reads in section 3: "[e]very citizen is equal and has a right to the rights and privileges of being a citizen of South Africa. Everyone also has duties, obligations and responsibilities of being a citizen of South Africa" (Republic of South African, 1996a). These rights and responsibilities find expression in the National Patients' Charter where specific healthcare related rights and responsibilities are delineated. Accordingly, patients have the right to a healthy and safe environment, to participate in decision-making, have access to health care services, have knowledge of their own health insurance, have a choice of health services, and to be

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treated by a named health care provider. They further have a right to confidentiality and privacy, informed consent, the right to refuse treatment, to be referred for a second opinion, continuity of care and to complain about health services.

Patients have the following correlative responsibilities: to take care of their health, care for and protect the environment, respect the rights of other patients and health providers, utilise the health care system properly and not abuse it, know their local health services and what they offer, provide health care providers with the relevant and accurate information for diagnostic, treatment, rehabilitation or counselling purposes, advise the health care providers of their wishes with regards to their death, comply with the prescribed treatment or rehabilitation procedures, enquire about the related costs of the treatment and/ or rehabilitation and arrange for payment, and take care of health records in their possession (Health Professions Council of South Africa, 2008).

The four principles of the principlism approach – respect for autonomy, beneficence, non-maleficence and justice (Beauchamp & Childress, 2001:12) – will now be further explored in order to elucidate how they determine and influence the idea of informed consent.

Respect for autonomy

Contemporary interpretations of the principle of respect for autonomy can be traced back to the work of Immanuel Kant and John Stuart Mill, as discussed in chapter 3. According to Kant, respect for persons emanates from the recognition that all persons have unconditional moral worth and the inherent capacity to determine their own destiny. Autonomy is inextricably linked to the requirements of rationality and universalizability; hence, a person who acts autonomously does not act according to individual desire, but rather acts in accordance with rational choice that is valid for all other rational beings in similar circumstances. Violating persons' autonomy means treating them merely as a means to achieve other people's ends without paying due regard to their own goals (Arrington, 1998:278). Mill, on the other hand, argued that society should allow

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individuals to develop according to their own convictions as long as they do not interfere with the freedom of other people or unjustifiably harm others ((Mill, 1869, Ch I:13). For Mill then, autonomy is based on individual desire and belief systems without any requirement of being able to universalise such actions to other persons.

Regardless of the ethical foundation – whether Kantian or Millian – autonomy is seen as a principle derived from the liberal Western tradition and safeguards the freedom and choice of the individual. Respect for autonomy has found wide application in healthcare and makes it obligatory for healthcare workers and researchers to disclose information adequately, to probe for and ensure understanding and voluntariness, and to foster decision making capacity among patients and research participants (Lindegger & Richter, 2000:313). Express and informed consent has therefore become the basic paradigm of autonomy in health care (Beauchamp & Childress, 2001:77). Accordingly, to respect an autonomous agent is to appreciate "that person's capacities and perspective, including his or her right to hold certain views, to make certain choices, and to take certain actions based on personal values and beliefs" (Faden *et al.*, 1986:8). Beauchamp and Childress focus less on the autonomous *person* than on the autonomous *action*, since they argue that autonomous persons can make non-autonomous choices due to temporary constraints such as ignorance or coercion.

The application of the principle of respect for autonomy in the healthcare setting has been variable and many questions remain regarding its limits, demands and scope, as discussed in chapter 3. It is also critical to remember that the principle of autonomy is not a trump and should be carefully balanced with the other three principles of non-maleficence, beneficence and justice.

Non-maleficence and Beneficence

The two principles of non-maleficence – do not harm – and beneficence – do good – are closely related and interlinked. In fact, they can be seen as two sides of the same coin and will hence be discussed together. The fundamental principle in the Hippocratic

tradition of medicine is commonly viewed as the maxim *primum non nocere* – 'above all, do no harm'. Recent scholarship has however argued that the more precise formulation should rather read: "help, or at least do no harm", therefore demanding the provision of benefit beyond the mere avoidance of harm (Faden *et al*., 1986:10). Although the principles of non-maleficence and beneficence are often joined into a single principle in moral theory, Beauchamp and Childress (2001:114) believe that obligations not to harm others are conceptually distinct from obligations to help others and they attempt to distinguish non-maleficence from beneficence in the following manner, based on William Frankena's four general obligations:

Non-maleficence:	1. One ought not to inflict evil or harm.
Beneficence:	1. One ought to prevent evil or harm.
	2. One ought to remove evil or harm.
	3. One ought to do good or promote good.

Although Beauchamp and Childress maintain that in cases of conflict, non-maleficence typically overrides requirements for beneficence, they move away from a strict hierarchical ordering of these obligations and warn that in concrete cases, the conceptual distinctions between these four obligations tend to break down.[26] Furthermore, they query the extent to which the principle of beneficence generates moral duties. The fourth obligation – one ought to do good or promote good – potentially demands extreme sacrifice or generosity and some have argued that it should be seen as a moral ideal (supererogatory) rather than a duty (obligatory). Although the scope and range of acts required by a duty of beneficence are therefore still undecided, it remains undisputed that beneficent acts are demanded in fiduciary relationships such as those between health care professionals and patients. Concretely, the benefit a doctor is obliged to seek is the alleviation of disease and injury where a reasonable expectation of cure exists. The harms to be prevented, removed or at least minimised, are the pain, suffering and disability or injury and disease. The demand of non-maleficence entails that a doctor

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[26] For example: when a doctor prescribes morphine for a patient in extreme pain, is he providing a benefit, removing harm, or both? (Faden *et al*.,1986:11).

should not intentionally do harm, for instance perform interventions that inflict unnecessary pain and suffering on patients (Faden *et al*., 1986:12).

In therapeutic research, the benefits and harms to the subject parallel those in medicine: the cure, removal or prevention of pain, suffering, disability and disease. Therapeutic research may however hold a greater potential for harm if it is balanced by a corresponding possibility of benefit to the subject. In non-therapeutic research, the benefit sought is new scientific knowledge that is hoped to contribute to resolving important medical or social problems. The subject's interests therefore do not occupy centre stage, although an equally strong imperative to avoid harming the subject exists (Faden *et al*., 1986:12). This does not imply that the doctor is never expected to cause harm. The provisional status of knowledge, especially in medicine, and the idiosyncrasies of the human body and its response to illness and medical intervention, make the occurrence of harm at times inevitable. Rather, a doctor is expected to strive to create a positive balance of good over inflicted harm. This notion is embedded in the Nuremberg Code, which states: "[t]he degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment" (Nuremberg Military Tribunal, 1947).

One of the most vexing problems in informed consent cases is the issue of paternalism where application is made for a parental-like decision by a professional to override an autonomous decision by a patient in order to provide benefit. Who ought to fulfil the role of legitimate authority in such cases – the medical professional or the patient/ subject – can be argued from the position of what will maximize the patient/ subject's welfare. It was traditionally held that health care professionals are in the best position to judge benefit to a patient since they have a more complete and balanced knowledge of medical science. Lately, the right of the patient to decide on his or her own benefit has however been gaining influence (Schultz, 1985:221). The value of autonomous choice by patients has not only been justified by arguments from autonomy, but recently also by arguments from beneficence, contending that decisional autonomy enables patients to "survive, heal, or otherwise improve their own health" (Faden *et al*., 1986: 14). These arguments

propose that making one's own decisions promotes psychological wellbeing and that patients generally know themselves well enough to be the best judges of what decisions will benefit them most. Autonomous choice is thus not only valued of and in itself, but also extrinsically for the sake of health or welfare. This is especially true in light of our modern society that is characterised by value pluralism, factual indeterminacy and increasing healthcare options (Schultz, 1985:222).

Justice

It is the view of Beauchamp & Childress (2001:226) that the principle of justice does not play an important role in the major moral and conceptual problems surrounding informed consent, when justice is understood to denote "fair, equitable, and appropriate treatment in the light of what is due or owed to persons." There are however a few typical scenarios where distinctive appeals are made to this principle: questions about the allocation of scarce medical resources, questions about the validity of claims to possess a right in health care, and questions about the use of a captive population as subjects in research. The latter involves the issue of the just distribution of the burden of the risks of research participation in society and whether justice permits the creation of a ready pool of human volunteers out of people incarcerated by the state, especially when the same pool of persons might be repeatedly used (Faden *et al*., 1986:15). These complex issues surrounding societal justice, though important, will not be addressed further in the context of informed consent explored in this chapter. Attention will rather be paid to the application and meaning of informed consent for the individual patient or participant.

4.1.2 Elements of informed consent

The application of informed consent in practice is based on the aforementioned ethical principles. Beauchamp and Childress (2001:80) defined seven elements of informed consent that have been widely accepted as the gold standard: threshold elements, namely competence and voluntariness; information elements, namely disclosure, recommendation and understanding; and consent elements, namely decision and

authorization. Some of these elements will now be briefly discussed.

The prerequisite of informed consent is that the individual has to satisfy the requirements of the two threshold elements: competence and voluntariness (Beauchamp & Childress, 2001:80). A person must thus have adequate reasoning faculties and be adequately informed of the relevant facts pertaining to the treatment or procedure contemplated. Both elements are specific to a task and can vary between tasks. Both can be described as a continuum – from not competent or voluntary at all to completely competent or voluntary – and a specific threshold can be selected for each task. One can thus, for example, be competent to consent to minor surgery, but not to life-altering surgery such as sterilisation.

Competence

The element of competence is arguably the best explored element of the informed consent process. Competence is understood to denote whether patients or participants are capable, psychologically or legally, of adequate decision-making. Competence in decision-making is closely related to both autonomous decision-making and validity of consent ((Beauchamp & Childress, 2001:69). It encapsulates the moral requirement of autonomy and primarily serves a gatekeeper function. It has been argued that there is no single acceptable definition of competence and furthermore, no single acceptable standard of competence. Beauchamp and Childress (2001:70) however hold that competence indeed has a single meaning – "the ability to perform a task" (Roget's 21st Century Thesaurus) – but that the criteria for competence in particular situations vary from context to context. They thus view these criteria to be context-specific and related to specific tasks. Competence is therefore specific rather than global: it depends not only on a person's abilities but also on how that person's abilities match the particular decision-making task at hand.

If a person is deemed to be autonomous in a context in which consent is appropriate, it is a prima facie moral principle (derived from the basic principle of respect for autonomy)

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that informed consent should be sought. Conversely, if a person is non-autonomous in a similar context, the prima facie moral principle (derived from the principle of beneficence, rather than from respect for autonomy) requires that some mechanism for the authorization of procedures or decisions other than obtaining the person's consent should be instituted. One such accepted measure is proxy consent. Thus the element of competence can be seen as performing a gate keeping function by allowing competent persons to give informed consent and not allowing non-competent persons to give informed consent, based on the moral principle that autonomous persons are the rightful decision makers about their health (Faden *et al*., 1986:386).

Impairment of reasoning and judgment that may make it impossible to give informed consent includes basic intellectual or emotional immaturity, mental retardation, severe mental illness, intoxication and decreased levels of consciousness. In such cases another person can be authorised to give consent on behalf of the patient or participant, such as the legal guardian or medical superintendent of a hospital.

Voluntariness

Voluntariness can be understood as "a person's independence from others' manipulative and coercive influences" (Beauchamp & Childress, 1994:163). In the research setting, voluntariness is seen as the freedom from coercion and undue pressure in reaching a decision about participation in a research study (Stanley & Guido, 1996:105). It has also been more specifically defined as a situation-specific experience of willed action with the absence of control by others in decision-making (Barsdorf & Wassenaar, 2005:1087). It is of course contestable whether one is ever fully competent or completely voluntary and it is argued that voluntariness can never be complete since we are never able to act with complete independence and are ever subject to societal norms and the opinion of individuals around us. But voluntariness should be adequate. This means that, although all decisions are susceptible to multiple influences, voluntary decisions should reflect the will of the decision-maker rather than the will of another person. This further implies that influences exerted on a person by another are not always controlling and may not,

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therefore, necessarily render decisions involuntary. Those influences that do render decisions involuntary are external, intentional, illegitimate, and causally linked to the choice of the person participating in research (Appelbaum, Lidz & Klitzman, 2009:4). For a decision to be regarded as involuntary, all four aspects should be present.

Assessment and measurement of voluntariness is innately complex and its application is particularly problematic when research is conducted in vulnerable populations. Vulnerability can manifest in a multitude of ways such as when dealing with patients or participants who do not conform to the traditional standards of autonomy, such as children and patients with diminished cognitive and reasoning capacity induced by various forms of brain injury or substance abuse. This can also hold true for patients or participants who have diminished freedom of choice such as prisoners or in-hospital patients, especially when a distinctive power differential exists in the therapeutic relationship between the doctor or researcher and the patient (Kass, Maman & Atkinson, 2005:4).

Vulnerability can however also be subtler, such as in situations with limited treatment options where a research study might be the only way in which to access treatment (Pace, Talisuna, Wendler, Maiso, Wabwire-Mangen, Bakyaita, Okiria, Garrett-Mayer, Emanuel & Grady, 2005:1184). Other factors that can potentially compromise voluntariness include poverty, patterns of decision-making related to gender, socioeconomic status, or culture, and roles such as disease status in the case of the desperately ill, for whom enrolment in a research trial may represent their last hope for recovery (Benatar, 2002:1135). Despite its limitations and obvious caveats, the standard of informed consent offers much needed protection to patients and research participants, and has become the bedrock of biomedical research.

Disclosure

Disclosure is the process of delivering information to either a patient or a research participant and forms the basis for their decision. Health care workers are generally

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obligated to disclose the following minimum core set of information: (1) those facts or descriptions that patients or research participants usually consider material in deciding whether to refuse or consent to the proposed intervention or research; (2) information the professional believes to be material; (3) the professional's recommendation; (4) the purpose of seeking consent; and (5) the nature and limits of consent as an act of authorization (Braddock, Edwards, Hasenberg, Laidley & Levinson, 1999:2313). If research is involved, there are additional requirements and disclosure should then additionally cover the aims and methods, expected benefits and risks, anticipated inconvenience or discomfort, and the subject's right to withdraw from the research without penalty (Beauchamp & Childress, 2001:79-80).

There is an increasing tension between the need to give the patient and participant as much information as possible, as evidenced by informed consent documents used in pharmaceutical clinical trials that can easily encompass 30 pages, and the need not to overwhelm the patient or participant with too much information. The amount of information an individual will need to make an informed decision varies, thus making it difficult to implement a rigid standard. It however remains paramount that the aim of disclosure should be to enable the patient or participant to make an informed decision, rather than to comply with a legal requirement. Scott (1994:126) similarly warns against adhering to the mere procedural requirements of informed consent and believes that truly informed consent is an ongoing process and not merely the *pro forma* adherence to a checklist and the completion of forms.

A survey of empirical studies that focus on what patients want with respect to autonomy, informed consent and decision-making concluded that, while patients largely wish to be informed about their medical circumstances, a substantial number of them do not want to make their own medical decisions or even participate in those decisions in any very significant way. Studies do not explain fully just which kinds of patients want to make their own decisions. They do reveal, however, two telling patterns. Firstly, the elderly are less likely than the young to want to make medical decisions. Secondly, the graver the patient's illness, the less likely the patient is to want to make medical decisions (Berg *et*

al., 2001:27). While it is important to focus on the need for information, it is also important to understand that the need is not the same in all patients.

The Bristol Inquiry Report (Gallagher & McHale, 2001:32) gives practical advise on how to structure the disclosure of information to patients. It suggests that information about treatment and care should be provided in a variety of forms, be given in stages and be reinforced over time. Information should furthermore be tailored to the needs, circumstances and wishes of the individual patient, be based on the currently available evidence and include a summary of the evidence and data in a manner that is understandable to patients. The report encourages the use of various modes of conveying information, including leaflets, videos or CDs, which should be developed and piloted with the assistance of patients.

Recommendation

This element of the informed consent process is poorly explored in the literature. The element of recommendation entails that the health care provider should, after reviewing the facts of the case and attempting to determine what will be in the best interest of the patient, propose a course of action to the patient or participant (Veatch, 1995). The patient or participant is then expected to either concur with the plan or decide on an alternative course of action.

As discussed earlier, it is however increasingly questioned whether the health care worker is in the best position to make a judgement regarding the best interest of the patient. It has therefore been suggested that contemporary medicine needs to move beyond this traditional element of informed consent to a model where the health care worker rather offers a range of plausible treatment options to the patient. If the health care worker does make a recommendation, it should be understood that this is based on the health care worker's personal preference and personal value system and that it in no way represents a rational or professional basis for deciding the patient's best interest (Veatch, 1995).

<u>Understanding</u>

A patient or research participant's ability to understand information is a function of his or her intelligence, maturity and linguistic abilities (Nienaber, 2011: 183). Empirical data have indicated that patients and research participants exhibit a great degree of variability in their understanding and recall of information about various aspects of the treatment or research process such as the diagnosis, procedures, risks and prognosis (Bernhardt, Chase, Faden, Geller, Hofman, Tambor & Holtzman, 1996:336). Understanding can be limited by various factors. Among the most notable are illness, irrationality and immaturity. Understanding is therefore also viewed to be a continuum and complete understanding is not realistic in most (and possibly all) circumstances. Patients or participants should therefore be able to grasp situation-specific information and at least demonstrate understanding of the following key elements: the diagnosis, prognosis, nature and purpose of the intervention, alternatives, risks and benefits, and the professional's recommendation. Patients and participants are deemed to understand when they have acquired the pertinent information and have expressed justified, relevant beliefs about the nature and consequences of their decisions.

Mariner (1988:396) however argues that in order to satisfy the goal of achieving truly autonomous authorization of medical care, a patient should not only fully understand everything that he or she wants to know, but also understand everything deemed relevant by an objective observer. This requirement goes beyond the 'adequate' understanding recommended by Faden *et al*. There is however no standard for measuring understanding and no legal requirement that a patient should actually understand the information.

Bosk (2002:64) on the other hand, suggests that pertinent information is often poorly understood and that research participants often choose to enrol in research on the basis of feelings of hope and trust, thus bypassing the careful weighing of risks and benefits upon which the model of informed consent was built. Even though this is an real and significant risk, this suggestion is difficult to demonstrate in practice and most studies

have shown high levels of understanding, in excess of 75%, even in developing world contexts (Minnies, Hawkridge, Hanekom, Ehrlich, London & Hussey, 2008:15).

Decision and authorization

The final two elements of informed consent are the consent elements of decision and authorization. Decisions should reflect the patient's or participant's value system and reasoned deliberation. Various factors can influence this decision and three major influences that can substantially impact on decision-making have been identified: coercion, persuasion and manipulation. These three influences form part of a spectrum, with coercion representing the one end that is always controlling and persuasion the other end that is deemed never to be controlling. Coercion is the intentional and successful influence by another that compels or prevents an action by use of a credible and irresistible threat. Persuasion, on the other hand, is the intentional and successful inducement of another through appeals to reason, to freely accept "the beliefs, attitudes, values, intentions or action advocated by the persuader" (Faden *et al*., 1986:347). Manipulation represents the middle ground and ranges from being a controlling influence in some instances to not being controlling in others. Manipulation consists of offers of reward or threats of punishment and encompasses the manipulation of information, through lying or deception, and psychological manipulation in the form of seduction, inducement of guilt, or subliminal suggestion (Scherer, 1991:433).

Not all the elements of informed consent are weighted equally and Etchells (1999:1215) has argued that the elements of capacity, disclosure and voluntariness are supreme. These elements have also been incorporated into the legal doctrine of informed consent. However justified, ethical and legal fraternities are unanimous in believing that the "subject's consent is not a luxury; it is the ethical prerequisite to entering research. Without a valid and reliable methodology for ensuring that subjects' consent is voluntary, informed and that they have understood the information provided, it is impossible to obtain a truly informed consent" (Mariner, 2003:121).

4.1.3 Ethical basis of the modern application of informed consent

Even though the requirement of informed consent as we know it today only became established after the Nuremberg Code, there is evidence of disclosure and consent seeking in medical practice before this time. Vollmann and Winau (1996:1445) argue that ethical issues of informed consent were recognised in guidelines as early as the nineteenth century. They cite cases occurring as early as 1891 in Prussia that culminated in a ministerial directive to all hospitals and clinics, advising that "all medical interventions other than for diagnosis, healing and immunisation were excluded under all circumstances if the human subject was a minor or not competent for other reasons or if the subject had not given his or her unambiguous consent after a proper explanation of the possible negative consequences of the intervention" (Vollmann & Winau, 1996:1446).

Faden *et al* however argue that the justification for informed consent in these earlier times was based on the beneficence model rather than the autonomy model accepted in medicine today. They maintain that although there existed "an influential medical tradition that encourage[d] the doctor to *share information and decisionmaking with his patient*", "consent practices emerging from this context were *not meaningful exercises of autonomous decisionmaking,* despite bows in the direction of respectfulness and truthtelling found in a few codes, treatises, and practices" (Faden *et al.*, 1986:58,60). The sharing of information seems to have been motivated by practical or clinical necessity, medical reputation, and the demands of decency. Jay Katz (1984:49) in fact believes that informed consent, as we know it today, was a completely alien notion until 1957.

Katz (1984:60) claims that the influential writers in the history of medical ethics, specifically Hippocrates and Thomas Percival (1740 – 1804) – whose work served as the model for the American Medical Association's first Code of Medical Ethics in 1847 (Faden *et al.*, 1986:69) – appealed to the principle of beneficence almost exclusively and that a practice of respect for autonomy is a recent phenomenon. These writers advocated, for instance, that doctors should not harm their patients by revealing their condition too

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abruptly or too starkly. Beneficence always triumphed over veracity in cases of conflict. On this score, Percival (1803:166) wrote:

> "To a patient, therefore, perhaps the father of a numerous family, or one whose life is of the highest importance to the community, who makes inquiries which, if faithfully answered, might prove fatal to him, it would be a gross and unfeeling wrong to reveal the truth. His right to it is suspended, and even annihilated; because, its beneficial nature being reversed, it would be deeply injurious to himself, to his family, and to the public. And he has the strongest claim, from the trust reposed in his physician, as well as from the common principles of humanity, to be guarded against whatever would be detrimental to him…The only point at issue is, whether the practitioner shall sacrifice that delicate sense of veracity, which is so ornamental to, and indeed forms a characteristic excellence of the virtuous man, to this claim of professional justice and social duty."

The American Medical Association's first Code of Medical Ethics (1847:94) echoed these sentiments: "avoid all things which have a tendency to discourage the patient and to depress his spirits." It further advised against allowing patients to express their wishes and opinions in matters related to diagnosis and treatment: "[p]hysicians should …unite in tenderness with firmness, and condescension with authority, as to inspire the minds of their patients with gratitude, respect and confidence."

Even though these early consent practices might not have been based on respect for autonomous choice, Martin Pernick claims that they were indeed meaningful. He studied records from routine medical and surgical cases in nineteenth century American medicine and showed that patient's choices in assenting to or refusing surgery were routinely acknowledged and that they had a legal right to compensation for malpractice (Faden *et al*., 1986:77). Beauchamp and Childress (1994:79-81) similarly found cases where purposeful disclosure of information about the nature and consequences of the proposed treatment, together with its risks, benefits and possible alternatives, and an invitation to the patient to make an autonomous choice, occurred. They however maintain that the justification of the consent seeking was not respecting autonomy, but

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rather that disclosure provided some medical benefit or that the proposed intervention required the patient's active cooperation.

It therefore seems that, initially, the need for consent from research participants was primarily to benefit or to minimize the potential for harm. More weight was therefore placed on the principle of non-maleficence. However, in recent years the influence of the advent of a socio-political commitment to Liberal Individualism has permeated the field of medicine as well. A shift occurred that saw the justification of informed consent move away from a beneficence/ non-maleficence model to one founded on the protection of autonomous choices, often interpreted to mean the protection of the rights of patients and research participants. The principle of respect for autonomy in modern times, therefore, justifies the rules, policies and practices of informed consent that are currently in use in medical research (Lindegger & Richter, 2000).

Based on the autonomy model, Faden *et al* (1986:278) argue for a concept of informed consent as "an autonomous authorisation by a subject or a patient that authorizes a professional either to involve the subject in research or to initiate a medical plan for a patient (or both)". Accordingly, there are three preconditions for autonomous choice: intentionality, the absence of controlling influence, and understanding.

Autonomous choice might however be hampered by multiple factors that are immeasurable and unassailable, such as the presence of unwanted, unconscious influences and the inability of patients to adequately comprehend the medical complexity of healthcare decisions. It therefore seems as if a real discrepancy exists between the rhetoric of the ethical doctrine of informed consent and the reality of decision-making in medical practice. Even though it might at times be only a token, autonomy seems to be the only feasible principle upon which a relationship between doctor and patient can be based. The doctrine of informed consent, based on autonomy, designates the patient as the ultimate decision-maker and charges the doctor with disclosing information that is material to the patient's choice (Mariner, 1988:403).

At the turn of the century, the first "wave of the malpractice crisis", which peaked in the 1970's occurred (Faden *et al*., 1986:82). A 1929 legal commentary in the *New England Journal of Medicine* stated: "about once every four days some patient makes a claim against a physician, seeking legal redress for alleged malpractice" (Editorial, 1929:93-94). It was suggested that surgeons should refuse to treat strangers without obtaining from them "a bond covenanting not to sue for damages if deformity or permanent loss of use in a limb should follow". The application of the ethical doctrine of informed consent started to play out in the judicial courts and the consequent court rulings strongly influenced medical practice.

Even though it should thus be clear that the idea of informed consent has firm roots in philosophy and biomedical ethics, an increasingly strong legal foundation developed that irrevocably influenced the interpretation of the demands of the doctrine of informed consent. The courts served – and continue to serve – as the battleground where the scope and meaning of the notion of informed consent is delineated and demarcated. The next section will thus be devoted to a historical description of the development of the idea of informed consent in modern legal discourse.

4.1.4 Legal foundation of informed consent

The moral perspective on informed consent refers to the principle of respect for autonomy, as demonstrated in the preceding section, and therefore focuses on the subjects, the patients, and their autonomous decisions, rather than on the professionals and their liability. The moral interpretation of informed consent can perhaps best be described as "an autonomous authorization by a patient or subject" (Faden *et al*., 1986:3). It has been argued that the law approaches matters from pragmatic theory and has mostly been concerned with the legal duty incumbent on doctors to inform patients and to obtain their consent. Accordingly, in the event of a patient being injured or harmed as the result of a doctor's failure to disclose adequate information about a specific treatment or procedure, the patient is legally entitled to claim financial compensation from the doctor. This legal version of informed consent thus focuses on

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financial compensation for adverse medical outcomes, rather than on either the disclosure of information or the consent of the individual patient. For this reason the law has been accused of being an inadequate vehicle for setting the requirements of informed consent and the major issues have increasingly been deemed to belong to the moral rather than the legal sphere.

The influence of the legal fraternity, especially in the form of court judgements concerning health care provided to specific patients, however forms an integral component of the establishment of regulatory standards in medical practice and experimentation (Young, 2001:441). This statement has however not been accepted without opposition and it is widely argued that what is legal is not necessarily moral, and vice versa. The case of apartheid South Africa demonstrates this point. I however contend that both the legal and the moral approaches are integral to an adequate understanding of the development of consent practices as the law is to some extent the practical application and expression of the moral theory in society. An exploration of the legal foundation and application of informed consent is therefore mandatory for an archaeological analysis of the subject. The legal foundations of informed consent, as found in international and South African case law, will now be discussed. Specific cases in international law are included in this analysis, since it preceded South African law in many instances and hence informed the test cases that were influential in South African law.

Moral principles are expressed and enforced by the law within the legal framework of rights and duties. Legal rights and duties are correlative: if someone has a legal right, it necessitates that another has a corresponding duty and may be held liable for violating the former's right by failure to fulfil the duty. South African law is divided into common law – judge-made law originating from medieval England – and constitutional law that supplements or supersedes the common law. The common law is divided into criminal and civil law, and civil law is in turn divided into sub-categories, among others tort, property and contract law.

Two areas of law are relevant to the legal doctrine of informed consent: tort law and constitutional law. A 'tort' is a "civil injury to one's person or property that is intentionally or negligently inflicted by another and that is measured in terms of, and compensated by, money damages" (Faden *et al*., 1986:23). In common law an unjustified failure to obtain informed consent for a procedure is thus a tort. Constitutional law provides citizens with certain rights that serve to limit the authority of the state over individuals. The right to privacy is one such constitutional right and has been applied to various kinds of medical choices, including the right to refuse medical treatment. There is however no constitutional doctrine of informed consent yet, and most cases thus fall under tort law.

Common Law

In the legal tradition, informed consent is interpreted as deriving from the moral principle of respect for autonomy. Legal language however tends to focus less on principles and more on their correlative rights and duties. For this reason, the justification for informed consent is expressed in rights-language – predominantly the patient's right to self-determination – and the law focuses on delineating the duties doctors should fulfil for these rights to be protected (Faden *et al*., 1986:25). This right and others, like the right to bodily integrity, are supplemented by the fiduciary duty doctors have towards their patients to respect and promote their interests and wellbeing. In law, both the right to self-determination and the fiduciary duty of doctors serve to restrict the doctor's role and to protect the patient from undesired intrusions such as interventions without consent.

The informed consent doctrine originally developed under the battery theory of liability but has today mostly shifted to the negligence theory of liability. Under the *battery* theory the defendant is liable for any *intended* action that resulted in physical contact that the plaintiff did not give permission for and which the defendant knew, or should have known, was not authorised. It is important to note that neither evil intent nor injury need be present; the essential purpose of the battery theory is the protection of the patient's bodily integrity (so-called dignitary interest) and the unauthorised contact itself is thus

deemed culpable. The defendant may have acted in good faith or even in a manner beneficial to the patient, yet may still be found guilty of battery. The defendant is usually fined 'token' damages that translate into a small amount of money not intended as compensation for measurable harm. Most plaintiffs however file a lawsuit only when they can claim substantial damages and their attorneys therefore attempt to prove either malicious intent or serious injury (Faden *et al*., 1986:27).

Charges of battery operate on the common precept that consent should be based on adequate, though not comprehensive, understanding of the nature of the proposed intervention. The doctor may thus be found guilty if no consent at all was obtained, if consent was obtained for an intervention different in scope or kind from the one performed, or if the doctor failed to inform the patient adequately about the potential consequences of the procedure. Although not all consequences need to be explained, all the material consequences – those the patient deem relevant and important – have to be explicated. "In general, if the physician performs a particular procedure, the basic nature of which has not been communicated to the patient, whether by virtue of omission of important information or by misrepresentation, then what appears to be a 'consent' is 'vitiated' and rendered invalid" (Faden *et al*., 1986:28). The battery theory is seen as more drastic than the negligence theory in that it has an antisocial connotation, and most courts and commentators have thus abandoned it in favour of the negligence theory of liability.

The *negligence* theory of liability centres on the failure to use due care, and *unintentional, careless* actions are consequently deemed culpable. Five conditions apply: (1) a legally established *duty* to the plaintiff must exist; (2) the defendant must *breach* that duty; (3) the plaintiff must experience an *injury*, measurable in monetary terms as damages; (4) this injury must be *causally* related, by a direct causal chain, to the defendant's breach of duty; and (5) the causal relationship between the act or omission and the injury must be *proximate* (Faden *et al*., 1986:28). This theory of negligence, when applied to informed consent, assumes that doctors have a professional duty to disclose appropriate information to their patients before procedures. Failure to obtain

adequate informed consent is thus treated as professional negligence in the same way as careless, substandard treatment or surgery is. According to condition (5), the court has to establish that, had the plaintiff been informed of the particular outcome or risk, he or she (or a reasonable person) would not have consented, and also that the injury was in fact caused by the nondisclosure.

The first legal acknowledgment of the right of individuals to make choices based on their own values and preferences occurred in the 1914 case of *Schloendoff v Society of New York Hospital*[27] (Nieuwkamp, 2007:42). The patient had agreed to be examined under anesthesia for a lump in her breast, suspected of being cancer. While the patient was unconscious, the surgeon removed the lump. The patient subsequently developed complications – in the form of gangrene – due to the surgery, and she sued the surgeon for battery since she had only authorized examination and diagnosis and not removal of the lump (Grimm, 2007:48). In his judgment, Justice Cardozo emphasized the idea that consent had to be voluntary. He stated: "every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." This was a crucial judgment since, at the time, there was sufficient case law to suggest that the beneficent objectives of the doctor could overrule the lack of consent. It was only much later, however, that the idea that consent is more than simply assenting to a procedure was implemented.

While this case was filed in terms of battery charges, subsequent cases were mostly phrased in terms of negligence charges, such as in the case of *Salgo v Leland Stanford Junior University Board of Trustees*[28]. The claimant, Martin Salgo, was awarded a sum of $250,000 against the defendant, Dr Gerbode, a surgeon and professor at Stanford University. Mr. Salgo had become permanently paralysed after the performance of an

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[27] Schloendorff v Society of New York Hospital 105 N.E. 92 (1914 at 93)

[28] Salgo v Leland Stanford etc. Bd. Trustees, 154 Cal.App.2d 560 [Civ. No. 17045. First Dist., Div. One. Oct. 22, 1957]

aortogram to determine the extent of his vascular disease. It was alleged that Dr Gerbode had failed to explain all the various possibilities of the proposed procedures to the plaintiff (Bray, 1957).

An argument was made for negligence, or *res ipsa loquitur*, literally meaning, "the thing speaks [for] itself" (Shain, 1944:187). The application of the doctrine of *res ipsa loquitur* is a relatively new development in malpractice cases. It refers to a doctrine of law, or rather a rule of evidence, that usually applies to actions of tort in which negligence of the defendant is involved (Shain, 1944:187). This rule of evidence however virtually requires the doctor to prove that he or she was not guilty of negligence (Adamson, 1961:1043). Traditionally an assessment of negligence was based on the fact that medicine is not an exact science, that the human body could not be precisely understood, that the care required of a medical professional is equivalent to the degree of learning and skill common in the profession, and that unsatisfactory results could occur in medical and surgical procedures despite the use of the greatest of care. The so-called 'conspiracy of silence' where it was felt that medical professionals never testify against one another, and the fact that the patient, either due to anaesthesia or lack of medical knowledge, was unable to know what had happened to him, lead the Court to attempt to equalise the situation. This saw a move from expecting the patient and other medical experts to explain what had happened or gone wrong during the procedure or intervention, to placing the burden of evidence on the attending health professional to overcome the plaintiff's charge of negligence.

The greatest problem with the doctrine of *res ipsa loquitor* is the scope of its application. If it is applied to all cases where adverse outcomes occur, the development of medical science might be hampered, since some element of risk-taking is essential if medical progress is to be achieved. No new procedures will arguably be undertaken since injury will then imply negligence. The Courts thus have a great responsibility in defining where this doctrine should be applied in order to be fair to patients and health professionals alike. A study of cases where the doctrine had been applied and in those where it was deemed inappropriate, suggests that the doctrine is applicable only where it is a matter of

common knowledge – among lay persons and medical professionals or both – that the injury would not have occurred had there not been negligence (Bray, 1957).

Since the *Salgo v Leland Stanford Junior University Board of Trustees* case, there has been a dramatic shift in the disclosure practices observed in the United States. In 1961, a survey of physicians revealed that 90% of respondents preferred not to inform patients of their cancer diagnosis (Oken, 1961:1120). Two decades later, a Presidential Commission (1982:74-76) found that 98% of physicians usually or always discuss the diagnosis and prognosis of cancer with their patients. Whether this change had been sparked by the legal rulings, by the acceptance of a general culture of Western Liberalism, or rather by the changes in medical codes of conduct, is difficult to gauge.

There has also been a shift in the standard of measurement of disclosure practices: from a professional standard to a reasonable patient or materiality standard. The former is based on the standard of medical care and requires the disclosure of the information a competent physician would disclose in a similar situation, as defined by expert medical testimony. The latter is a modern trend that demands the disclosure of information that is material for the patient to make an informed decision in light of his or her personal interests. The Courts have allowed considerable discretion in the application of the materiality standard and this has been criticized for being conversely too restrictive and too unlimited. Some argue that it forces disclosure of information that has no impact – or even an unintended negative impact – on patient choice, whereas others feel that it does not go far enough to ensure truly autonomous choice (Mariner, 1988:386-387).

In the 1767 case of *Slater v Baker and Stapleton*[29] the Court defined what is today recognized as the reasonable practitioner standard. In this case, the defendants were found liable for failing to obtain the patient's consent to disunite a badly healed fracture and reset it using a metal fixing device (Maclean, 2006:323). Because custom at the time was for surgeons to obtain consent before proceeding with surgery, "it was only fair to

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[29] Slater v Baker and Stapleton 95 Eng. Rep. 860 (K.B. 1767). This was the first reported legal case of informed consent.

impose liability on a physician who failed to meet this standard of care" (Berg *et al*., 2001:42).

This physician-based standard of disclosure was upheld in the case of *Bolam v Friern Hospital Management Committee*[30] in 1957. Mr. Bolam suffered from manic-depressive disorder and was treated with electro-convulsive therapy, but was not told of the possibility of injury during the procedure. He did suffer injury and sued the hospital. Justice McNair, in giving content to the professional standard of disclosure, stated that a doctor: "is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a *reasonable body of medical men* skilled in that particular art..." (Berg *et al*., 2001:122).

The Bolam case influenced subsequent British cases and was upheld by the House of Lords in the case of *Sidaway v Governors of Bethlem Royal Hospital*[31], which took place in 1985. The claimant suffered from pain in her neck, right shoulder and arm and her neurosurgeon recommended cervical cord decompression. He did not however disclose the remote (< 1%) chance of paraplegia. The patient developed the said complication and sued for damages. The court held that consent does not require an elaborate explanation of remote side effects and should follow the Bolan standard of disclosure. Importantly, English law has never recognized an obligation of informed consent as is recognized in other jurisdictions, such as the United States, and there is no right to full disclosure of all information concerning the nature and risks of treatment (Gallagher & McHale, 2001:32).

The American courts abandoned the professional standard (known as the *Bolam* standard) for three reasons: because there was no custom in the medical profession for disclosure despite the claim, because disclosure does not bring the physician's medical knowledge and skills into play, and because it was difficult to get doctors to testify against one another.

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[30] Bolam v Friern Hospital Management Committee (1957) 1 WLR 582; [1957] 2 All ER 118
[31] Sidaway v Governors of Bethlem Royal Hospital (1985) A.C. 871 (H.L)

It was the 1957 *Salgo v Leland Stanford Junior University Board of Trustees* case that was crucial and forever changed the nature of informed consent towards a reasonable patient standard in the United States (Katz, 1984:60). In fact, it was in this case that the phrase "informed consent" was coined (Berg *et al.*, 2001:44). The Court gave a broad view on the duty of disclosure incumbent on the doctor. It ruled that the doctor should disclose to his patient "all the facts which mutually affect his rights and interests and of the surgical risk, hazard and danger, if any" (Bray, 1957). Accordingly, a physician violates his duty and can be subjected to liability if he fails to disclose any information related to the proposed treatment that is deemed material for the patient to make an 'intelligent consent'. This further entails that a physician may not induce the patient in acquiescing to a procedure or operation by minimizing known dangers. This should be balanced by the fact that the physician is expected to place the welfare of his patient above all other considerations.

These two obligations, disclosing all material information and prioritising the welfare of the patient, can at times be competing and opposing, thus placing the doctor in a position where he has to choose between mutually exclusive courses of action. For instance, if one discloses to a patient all the possible risks – no matter how small – associated with a procedure, this might alarm a patient that may already be anxious. This heightened anxiety may lead to adverse consequences: it may firstly cause a patient to refuse a necessary procedure or operation where there is in fact minimal risk, or secondly, it may in fact increase risk by means of an altered physiological response caused by the anxiety. This situation is further complicated by the recognition that each patient represents a unique mental and emotional condition, necessitating the physician to exercise discretion in tailoring the disclosure of information to the particular interests and needs of the patient (Bray, 1957).

The *Salgo* case was revolutionary in the medical profession since it "imposed on physicians affirmative obligations of disclosure that were absent from the history of medicine" (Mariner, 1988:392). This new interpretation of the mandates of informed consent found support in the socio-political milieu of the post World War II society in

three distinct ways. Knowledge of the atrocities performed by doctors on victims of the Holocaust made the public aware of the need to be protected against illegitimate medical power. This protection could only be secured through acknowledging the right of respect for autonomy and self-determination. The Nuremburg Code underscored this by unambiguously declaring that human beings could not be used as research subjects without their express and informed consent. The civil rights movement concurrently emphasized freedom of choice and medical ethics resurfaced as an important aspect of medical practice.

Further cases in the United States in the 1960s supported the *Salgo* ruling. In *Natanson v Kline*[32], for instance, a patient had suffered substantial burns from radiotherapy after a mastectomy. The patient was not warned of these possible effects of treatment. The Court described the doctor's duty as requiring a reasonable disclosure of the nature and probable consequences of the suggested or recommended treatment, and included reasonable disclosure of the dangers that, within his knowledge, were incidental to, or possible in, the treatment he proposed to administer (Berg *et al*., 2001:45).

The landmark case of *Canterbury v Spence*[33] in 1972 however saw the complete adoption of a patient-oriented approach to disclosure in the United States and the Court specifically defined which risks had to be disclosed to the patient. This was a case of a nineteen-year old boy who had undergone surgery for a herniated spinal disc. After the surgery, he fell in his hospital room and became paralysed from the waist down. He sued the doctor for failing to disclose the risk of paralysis before the surgery. The court ruled that information disclosure should include risks that the patient deems to be material. Accordingly, a "risk is … material when a reasonable person, in what the physician knows or should know to be the patient's position, would be likely to attach significance to the risk…in deciding whether or not to forego the proposed therapy" (Grimm, 2007:49). This ruling created an objective legal standard by which doctors' disclosure should be measured. "Respect for the patient's right to self-determination on particular

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[32] Natanson v Kline (1960) 186 Kan 393, P2d 1093
[33] Canterbury v Spence (1972) 464 F 2d 772 (DC Cir)

therapy demands a standard set by law for physicians rather than one which physicians may or may not impose on themselves." This ruling effectively saw the removal of subjectivity from the standard of disclosure since it was no longer the doctor or the patient, but rather the law, that decided what information should be disclosed (Grimm, 2007:41)

Adopting the patient-centered approach to information disclosure as outlined in *Canterbury v Spence* requires that the physicians tell patients what a reasonable person would find material to making a decision. However, some courts felt that, as informed consent was intended to permit patients to make their own healthcare decisions, the objective standard of the "reasonable person" would be inadequate. A small number of courts and legislatures in America adopted the subjective standard. Under this standard, "a physician is obligated to disclose the information that the *particular* patient would find material to making a decision" (Berg *et al.*, 2001:51).

A landmark case in Australia, *Rogers v Whitaker* [34], demonstrates the tension between the patient-oriented approach accepted in the United States after *Canterbury v Spence*, and the doctor-oriented British rule established in *Sidaway v Governors of Bethlem Royal Hospital* and the Bolam standard. Ms Whitaker had lost most of the sight in her right eye after a penetrating eye injury as a child. An ophthalmic surgeon advised her when she was 47 years old that removal of scar tissue from the eye would improve her appearance and probably her vision as well. She unfortunately developed a rare condition called sympathetic ophthalmia and lost the vision of her left eye as well. Experts testified that this condition occurred in approximately 1 out of 14 000 such operations (Tickner, 1995:109). The Australian High Court determined that the law of informed consent fell under the auspices of laws regulating professional negligence. While the ruling rejected parts of both the Canterbury and the Sidaway decisions, it endorsed the "American" patient-oriented rule of liability. The court however did not address who should decide how much information should be provided to patients (Chalmers & Schwartz, 1993:139) and whether the subjective or objective standard should apply.

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[34] Rogers v Whitaker (1992) 67 A.L.J.R. 47 (High Court of Australia)

Exceptions to Informed Consent

The duty to obtain informed consent – as most legal and moral duties and rights – only has *prima facie* standing and five valid exceptions are recognised: a public health emergency (e.g. quarantine to prevent the spread of an infectious disease as with the SARS virus epidemic in Hong Kong), a medical emergency, an incompetent patient, therapeutic privilege and a patient waver (Faden *et al*., 1986:35). These five exceptions are however not absolute. The therapeutic privilege for instance, has only tenuous standing at present. The therapeutic privilege entails that a doctor may legitimately withhold information if he or she has sufficient reason to believe that the information would be potentially harmful to a depressed or unstable patient (Beauchamp & Childress, 2001:84). It has been widely criticised as paternalistic and against the spirit of respect for autonomy expressed in informed consent theories. Some courts do however recognise the acceptability of a narrow formulation of the therapeutic privilege, as in the Canterbury[35] decision where it was held that:

> "The [therapeutic privilege] exception obtains [if] risk-disclosure poses such a threat or detriment to the patient as to become unfeasible or contraindicated from a medical point of view. It is recognized that patients occasionally become so ill or emotionally distraught on disclosure as to *foreclose a rational decision*, or complicate or hinder the treatment, or perhaps even pose psychological damage to the patient" (Faden *et al*., 1986:37).

It however remains unclear when exactly, and according to whose judgement, the therapeutic privilege can be applied. Would the doctor's medical opinion and family's observation of emotional distress, for instance, carry equal weight, or could only a qualified psychologist make such a judgement? Consent for incompetent patients and the patient waiver have been no less contentious. When dealing with an incompetent patient, the law dictates that a doctor is required to approach an appropriate third party e.g. a guardian or a legally empowered representative for consent, unless it is an emergency

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[35] Canterbury v Spence, 464 F.2d 772, 786 (D.C. Cir.1972)

situation. A patient waiver entails that the "patient voluntarily relinquishes the right to an informed consent" and hence delegates the decision-making authority to the doctor (Beauchamp & Childress, 2001:92). Patient waivers remain controversial and many legal commentators deem it too open for abuse and hence doubt its legality and desirability.

Waivers of consent have predominantly been used in research where the Principal Investigator can apply for such a waiver if the research involves no more than minimal risk to the participants, the waiver will not adversely affect the rights and welfare of the participants, the research could not practically be carried out without the waiver, or, whenever appropriate, the participants will be provided with additional information after participation (Office for Human Research Protections, 1996:51531-3). This should be distinguished from waivers of documentation of consent where informed consent is still obtained, but without documenting the process. Situations where this might be necessary is when the consent form is the only record linking the subject and the research, and the participant might suffer potential harm in the case of breach of confidentiality. This waiver is also sometimes used when the research entails very sensitive questions and the participants might thus not be willing to truthfully reflect their ideas if their answers are linked to the informed consent document (U.S. Department of Health and Human Services, 2009:CRF46.117).

The two exceptions to informed consent that appear the least controversial are public health emergencies and medical emergencies. In the latter case, it is deemed acceptable to proceed with treatment, or duly approved research, if a human subject is in need of emergency treatment, and, because of the subject's medical condition and the unavailability of legally authorised representatives of the subject, no legally effective informed consent can be obtained. This waiver however excludes research involving prisoners, foetuses, pregnant women and in vitro fertilisation (Office for Human Research Protections, 1996:51531). This principle has been appealed to in numerous public health emergencies as well. The US regulations, for instance, allow that in cases such as flu pandemics and bio-terrorist attacks, experimental tests can be run on blood and tissue samples without consent. The Food and Drug Administration justifies this

approach by appealing to the finding that "the absence of this exception [waiving informed consent] was an impediment to the most efficient and effective public health response to the SARS outbreak" (U.S. Department of Health and Human Services, 2009:CRF50.23). Even though testing without informed consent is thus acceptable in such situations, it is more contentious whether treatment might also be mandated. Mandatory treatment for infectious diseases – such as SARS, H1N1, syphilis, and multidrug resistant tuberculosis (MDR TB) – and mandatory childhood vaccinations have been advocated for, and enforced, in many countries.

Constitutional Law

The constitutional right to privacy protects individual liberty by creating a zone of privacy that is not subject to governmental intrusion and within which the individual is free to choose and act. The Constitution protects individuals against governmental intrusions and the individual thus holds this right only against the State and parties acting on behalf of the State. Constitutional law does not offer protection of the right to autonomy as such, but uses a proxy right, mostly the right to privacy. The right to privacy thus aims to protect the autonomy of the individual and has been appealed to in order to prevent governmental interference in personal health care decisions such as contraception, termination of pregnancy, and refusal of treatment. Justice Douglas' opinion in the US case of *Doe v. Bolton*[36] delineated categories of activities that are protected by this privacy right:

> "First is the autonomous control over the development and expression of ones'
> intellect, interests, tastes, and personality… Second is freedom of choice in the
> basic decisions of one's life respecting marriage, divorce, procreation,
> contraception, and the education and upbringing of children…Third is the freedom
> to care for one's health and person, freedom from bodily restraint or compulsion,
> freedom to walk, stroll, or loaf" (Delgrado & Keyes, 1974:203).

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[36] Doe v Bolton (410 US 179, 1973)

Another well-known US case, *Roe v Wade*[37], is seen as the prime example of the Court's commitment to uphold decisional privacy. It held that the state's interest in protecting the foetus and the health of the mother are outweighed, at least until the birth of the foetus, by the mother's interest in obtaining an abortion (Burnham, 2003:4). Another landmark case, concerning collection of information, *Whalen v. Roe*[38], found that a databank that matched the names of prescription drug buyers against particularly harmful prescription drugs did not violate the buyers' privacy rights. The Court argued that the safeguards inherent in any government database would protect the privacy of the individuals submitting their information (Burnham, 2003:5-6). The Supreme Court determined that the right to privacy protects an "interest in independence in making certain kinds of important decisions", such as decisions regarding medical treatment (Faden *et al.*, 1986:40).

The right to privacy in medical matters was made explicit in two other famous US cases; one dealing with an incompetent patient – the Karen Quinlan[39] case – the other with a competent patient – the Joseph Saikewicz[40] case. The case of Karen Quinlan evoked a lot of debate. Karen was a 22-year old woman admitted in a persistent vegetative state with, according to a medical expert, no prospect of recovering consciousness. She was on a respirator and had a feeding tube inserted in her stomach. Her adoptive parents applied to the New Jersey Supreme Court for permission to be made her legal guardians in order to authorise that the respirator be switched off (Kennedy, 1976:3). The Court declared that Mr Quinlan, as Karen's guardian, could select another physician to make an independent assessment and if the physician concluded that there was no reasonable hope of recovery, the family should consult with the ethics committee, or like body, of the institution where Karen was hospitalised. If the ethics committee concurred that there was no reasonable chance of Karen emerging out of her comatose state, then the respirator could be switched off (Veatch, 1977:22). The court further ruled that there is "implicit recognition in the law of the Commonwealth, as elsewhere, that a person has a strong interest in

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[37] Roe v Wade, 410 US 113 (1973)
[38] Whalen v Roe, 429 US 589, 605 (1977)
[39] Quinlan, 70 N.J. 10, 355 A.2d 647 (1976)
[40] Superintendent of Belchertown State School et al v Joseph Saikewicz, Mass, 370 N.E. 2d 417 (1977)

being free from non-consensual invasion of his bodily integrity." "One means by which the law has developed in a manner consistent with the protection of this interest is through the development of the doctrine of informed consent…" (Faden *et al*., 1986:41).

The case of Joseph Saikewicz is deemed to be legally more significant than the Karen Quinlan case (Annas, 1978:21). Joseph Saikewicz was a 66-year old man with severe mental retardation with a mental age of approximately 2 years 8 months. He had been institutionalised his entire life and was unable to communicate verbally. He had been diagnosed with leukemia, the treatment of which was successful in ensuring remission in only 30-50% of patients and was accompanied by significant side effects and pain. The Court ruled that the factors favouring treatment were outweighed by the factors against treatment, most notably the patient's age, inability to cooperate with treatment, side effects, low probability of remission, immediate suffering and quality of life possible after a remission. As in the Quinlan case, the Court upheld the patient's right to privacy "against unwanted infringements of bodily integrity in appropriate circumstances" and that the individual's decision to refuse treatment could only be overruled if the State had a strong interest (Annas, 1978:21).

The constitutional right to privacy can thus be appealed to in cases of informed consent as an alternative to the common law. In the United States of America the constitutional law has mostly been invoked in cases where patients seek prospective autonomy rights (requesting court authorization to make disputed medical decisions in the light of opposition) since the common law classically protects autonomy by a retrospective evaluation of decisions that have already been made. It should however be recognized that the Constitution can only be invoked to challenge an informed consent statute adopted by a State legislature; individual doctors who are not agents of the State cannot be so compelled to obtain informed consent. The power of appealing to the Constitution however lies in its authority to issue injunctions and thus order parties to act or refrain form action. A patient is thus able to compel a doctor acting as an agent for the State to prove to a Court that the requirements of informed consent have been met before the proposed procedure is performed. Under the common law of informed consent doctors

cannot be compelled to seek consent, and patients can only sue for damages after there had already been an alleged failure to disclose information (Faden *et al*., 1986:42).

The right to privacy is however not an absolute, constitutional right – akin to *prima facie* moral rights – and can be overridden by the State when there are compelling reasons to do so. The compelling interests mostly invoked by the State to override patients' medical decisions are: (1) the interest of particular third parties, such as the viable foetus's interest in life when the mother chooses termination of the pregnancy, or a surviving infant's interest in the mother's care when the mother refuses life-saving treatment for herself; and (2) the health, safety and welfare of society at large such as the protection of the public's health when an individual refuses vaccination (Faden *et al*., 1986:41).

South African Law

In the South African legal system, a doctor can be found liable for wrongful or unlawful conduct during medical intervention based on any, or a combination of, the following: contractual, delictual or criminal liability, or professional censure for unprofessional or unethical conduct (Nienaber, 2010:118). South African law differs from that in the United States in that the doctor's duty of disclosure does not fall under negligence, arising from a breach of care, but is rather seen as consent in the contractual setting (Carstens, 2005). According to Van Oosten (1989:17-25) the requirements for legally valid consent are:

1. Informed consent must be recognised by law: it must not be against the *boni mores* or public policy.
2. The person who consents must have legal capacity to consent, i.e. the consenting person must be legally and factually capable of understanding information and deciding on a course of action.
3. The consent must be informed, i.e. information and comprehension should be present so that the consenting party knows what risks and benefits he or she is consenting to.

4. Consent should be free and voluntary, clear and unequivocal, and comprehensive.

5. It must be prior consent or consent given in advance; and it must be revocable.

When a person is not capable of consenting, proxy consent is allowed. The proxy can be mandated by the user in writing to grant consent on his or her behalf or can be authorised to give such consent in terms of any law or court order. Alternatively, if no person has been mandated or authorised, consent can be given by the spouse or partner of the user, or in the absence of such a person, by a parent, grandparent, an adult child or brother or sister of the user, in the specific order as listed (National Health Act 2003, Section 7(1)).

South African law used to uphold the reasonable doctor standard. In the case of *Richter v Estate Hammann*[41] in 1976, the doctor performed a unilateral nerve block, which carries a slight risk of affecting the side on which the block is performed. The patient was however affected on both sides, which is a very rare event indeed. Medical experts testified that this was "very uncommon in any man's experience" and "could not have been expected by any stretch of the imagination" (Wilson, 2006). The court held that: "in principle his conduct should be tested by the standard of the reasonable doctor faced with the particular problem. In reaching a conclusion a court should be guided by medical opinion as to what a reasonable doctor, having regard to all the circumstances of a particular case, should or should not do" (Nienaber, 2010:124).

South African case law has however also shifted to accept a reasonable patient standard, as evidenced in the case of *Castell v De Greef*[42] in 1994. In this case a patient had a prophylactic subcutaneous double mastectomy and simultaneous breast reconstruction using silicone implants and a transpositional flap procedure. The procedure has a 50% rate of complication, and this particular patient developed necrosis and infection. The Court ruled that the doctor must warn the patient consenting to medical treatment, of any

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[41] Richter v Estate Hammann 1976 (3) SA 226 (C)

[42] Castell v De Greef 1994 (4) SA 408 (C)

material risk inherent in the proposed treatment. A risk is deemed material if "in the circumstances of the particular case: (a) a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it; or (b) the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it" (Supreme Court, Cape Provincial Division, 1994:408-441). This case is now regarded as the *locus classicus* on informed consent in South Africa (Nienaber, 2010:123).

A subsequent South African case dealing with informed consent has however highlighted the fact that the patient standard is not always applied. This is the case of *Oldwage v Louwrens*[43] that was heard in 2004. The defendant performed vascular surgery on the plaintiff who consulted him because of excruciating pain in his right leg. Following the surgery the plaintiff suffered from claudication in his left leg that prevented him from leading the life he had been accustomed to. As this risk had not been specified before the procedure, an allegation of inadequate consent was made and it was contended that the surgery thus constituted an assault. The court found in favour of the plaintiff and specified the nature of informed consent as the subjective patient-centred standard. It stated that:

1. False or negligent representation by a practitioner can result in a claim of assault.
2. Without informed consent, services rendered can constitute assault against the bodily integrity of the patient .
3. Assault is defined as the unlawful, intentional application of force against the body of another (or the threat thereof).

On appeal however, the Court did not rely on the *Castell v De Greef* verdict, but rather on the *Richter v Estate Hammann* verdict that stated that the court should be guided by medical opinion as to what the reasonable doctor should have done. The Court overturned the original ruling and found in favour of the defendant. Importantly

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[43] Oldwage v Louwrens, 2004 (1) All SA. 532 (C).

however, although the Court did not apply the patient-centred standard, it did not overrule it and there is thus, as yet, no binding judgement by the South African Supreme Court of Appeal as to the legally preferable and acceptable approach to determining the boundaries of disclosing information in South Africa (Wilson, 2006).

A study of South African doctors found that the majority (79%) felt that it was their responsibility to ensure that patients and parents are supplied with adequate information about diagnostic and therapeutic interventions. Most doctors (62%) supported a patient-centred standard of information disclosure and most believed that they routinely disclosed the aspects of the interventions that were required by law. The most common reason cited for not obtaining informed consent was the belief that patients expect doctors to know what is in their best medical interest and that patients should therefore just be told what the doctor intends to do (Henley *et al.*, 1995:1273).

Obtaining informed consent in children has always been a thorny issue. The previous Child Care Act (No 74 of 1983) gave children from 14 years of age the right to consent independently to medical interventions, and children from 18 years of age the right to consent independently to surgical intervention (Republic of South Africa, 1983). The New Children's Act (No 38 of 2005) however provides children from the age of 12 years with the right to independently consent to all medical and surgical interventions, provided that they have "sufficient maturity and the mental capacity to understand the benefits, risks, social and other implication" of the intervention or procedure (Republic of South Africa, 2005:90). Children are however only allowed to independently consent to medical research at the age of 18 years although their assent should be sought in all instances where they can comprehend the information and express their views (HIV/AIDS Vaccines Ethics Group, 2007:15-16, 29).

The National Health Act also addresses the issue of informed consent in minors, but is problematic in a number of ways: it does not set an independent age for consent for research, it focuses on informed consent and not other protections, it is inconsistent with existing or draft legislation and ethical guidelines and it retains the contested distinction

between 'therapeutic' and 'non-therapeutic' research (Strode, Grant, Slack & Mushariwa, 2005:265).

Informed consent is further protected in the South African Constitution, which is the supreme law of the Republic. Section 12(2)(c) of the Constitution (1996) reads: "[e]veryone has the right to bodily and psychological integrity, which includes the right…not to be subjected to medical or scientific experiments without their informed consent" (Republic of South Africa, 1996b). The right to make informed decisions is underpinned by recognition of the right to autonomy and hence research or medical procedures without informed consent would amount to a violation of bodily and psychological integrity (Nienaber, 2010:121).

The National Health Act (Republic of South Africa, 2003) is the first attempt to regulate the rights of research participants in South Africa. It addresses informed consent in scientific research and makes the requirement for informed consent a statutory imperative. Section 71(1) of the Act specifies that "research or experimentation on a living person may only be conducted in the prescribed manner; and with the written consent of the person after he or she has been informed of the object of the research or experimentation and any possible positive or negative consequences to his or her health." Section 6(1) specifies the information that should be disclosed to participants. It entails:

1. The user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to her best interests.
2. The range of diagnostic procedures and treatment options generally available.
3. The benefits, risks, costs and consequences generally associated with each option; and
4. The user's right to refuse health services and the implications, risks, and obligations of such refusal.

The South African legal system has thus set forth specific requirements for informed consent in both the common and constitutional law and has followed the American example by requiring disclosure of information according to the reasonable patient standard, although this standard has not been uniformly adhered to in all legal judgement.

It should be clear that legal and moral theories act synergistically to respect autonomy but that neither framework is reducible to the other. For instance, it does not follow that the moral acceptability of an act should be sanctioned by the law: there are some cases where a refusal to disclose information might be morally praiseworthy; yet, it does not follow that legal policy should permit this since wide-spread legally-sanctioned deception will only serve to undermine the authority of the law. Similarly, acts that are morally wrong do not entail that they should be legally prohibited, for instance, the classic case of lying. Faden *et al* (1986:43) similarly hold that "[i]ssues of the symbolic value of law, legal liability, cost to the system, practicability within the litigation process, and the question of compensation may demand that legal requirements be different from moral requirements." The law can thus be interpreted as responsible for establishing the minimum requirements for informed consent and medical ethics as responsible for incorporating the ideals of informed consent into professional medical practice (Mariner, 1988:401).

4.2 Limited archaeological and genealogical analysis of informed consent in healthcare

Having now explored the steps of the historical development of the ethical and legal notion of informed consent, I will supplement my findings with a limited archaeological and genealogical analysis of this concept. The archaeological exploration will briefly focus on discourse analysis of informed consent, and this analysis will be informed by the preceding archaeological analyses of personhood and autonomy in chapter 2 and 3. The genealogical analysis will explore the power differentials within the concept and their implications and manifestations in a healthcare setting.

4.2.1 Limited archaeological analysis

As discussed in chapter 1, and demonstrated in chapters 2 and 3, I apply an archaeological analysis in only a limited way. I am only concerned with tracing and exposing the discursive formations of discourse and the concepts operative within the discourse. Since informed consent can be seen as the paradigmatic expression of autonomy in a healthcare context, and since it is founded on the preceding concepts of autonomy – and thus in a sense also personhood – it should be no surprise that the findings from the limited archaeological analysis of informed consent, mimic that of autonomy and personhood.

The first element of the discourse analysis, namely the objects about which statements are made, seems now to be concerned no longer with the object of 'Enlightenment man', but rather with modern, 'androgynous man'. Androgynous[44] in the sense that the male members of the species are no longer the referent for 'man' but men and women are now treated indiscriminately; thus, in a gender-neutral manner. This is evident in both the moral and legal discourse of informed consent, where the same degree of rationality and autonomy is required of men and women alike. Persons are judged competent and incompetent, not by virtue of their sex, but rather by virtue of their mental capacity and ability to reason. This change in attitude is reflective of the wider social milieu in which the idea of informed consent originated and continues to operate, namely post World War II Western society, where women have almost universally won voting rights[45], achieved excellence in academic disciplines and intellectual circles, and attained positions of high public office.

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[44] Stoltenberg (1993:xiv) argued that because men have forced women to occupy subordinate gender roles, the very categories of masculine and feminine must be replaced with that of androgyny.

[45] There are six locations around the world where women are not yet allowed to vote. In two countries – Brunei and the United Arab Emirates – no one is allowed to vote since there is not yet an electoral system. In two countries – Bhutan and Lebanon – women are technically allowed to vote, but this is almost impossible in practice. In Bhutan, for instance, a household is given only one vote and the man usually places this vote. In Lebanon, women have to show proof of education before they are allowed to vote; men do not have any such requirement. Finally, in two countries – Saudi Arabia and Vatican City – women are by law not allowed to vote (Smith, 2011).

The second element, namely the places from which statements are made, is no longer the Enlightenment space, but rather the consulting rooms and courtrooms of modern society. Even though men and women have equal access to this space, it is far from a gender-neutral environment, since the majority of doctors, lawyers and judges are still male[46]. One could expect this space to be permeated with a bias towards masculine characteristics, such as rationality. In medicine, one could also speculate that such an inherent bias might determine the type of consultation offered and might, to some extent, determine the type and structure of communication within this space. It is interesting to ponder what the experiences of women might be in this space.

Interestingly, studies have shown that male doctors are more likely to be sued for malpractice than female doctors (Hickson, Federspiel, Pichert, Miller, Gauld-Jaeger & Bost, 2002:2953). There is no real data to explain this difference, but, after performing a retrospective cohort study of 645 physicians in the US, researchers speculated that it might be related to some of these factors: male doctors tend to have worse communication and interpersonal skills; they are more likely to practice disciplines with a high risk for malpractice suites, like Gynaecology and Obstetrics; or, simply, patients are just less likely to file suits against women (Hickson *et al.*, 2002:2955). Mendelsohn (1982:230), admittedly a self-proclaimed medical heretic, has also contended that chauvinistic doctors in the US often subject female patients to degrading, unnecessary, and often dangerous medical procedures. They are more likely to order laboratory tests and x-rays for women than for men. They furthermore tend to overprescribe for women and more often – and in his view, indiscriminately – recommend surgical procedures, such as hysterectomies, for women. At this stage, one can only speculate as to the myriad of possible reasons for this, and one could not possibly generalise to all male practitioners, but it does make one question whether part of this phenomenon might in fact be attributed to the different communication styles, as manifested in gender stereotypes, between the sexes.

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[46] Today the majority of doctors are still male. This is however predicted to change. For instance, in 2009, approximately 40% of doctors in Britain were female and it was estimated that female doctors would outnumber male doctors by 2017 (BBC News, 2007). The gender ratio among lawyers has also changed: in Texas, men made up 99% of all attorneys in 1900 and 70% in 2004. Males made up 77% of judges in 2001 (Olsson & Kim, 2005).

The main concepts involved in the construction of the discourse of informed consent consist of the seven elements – discussed earlier in this chapter – and their application: competence, voluntariness, disclosure, recommendation, understanding, decision and authorization. All these elements can be argued to be dependent on the principle of rationality, since rationality seems to be a prerequisite for the exercise of all of them. Competence is a direct measure of the ability to reason; voluntariness is dependent on the ability to understand information, balance benefits and risks, and be free from controlling influence – all dependent on the faculties of reason; disclosure depends on the balanced (and rational) presentation of information; recommendation similarly depends on a rational presentation of the suggested treatment; and finally, both decision and authorization depend on a subject that can weigh and balance all the information and competing risks and benefits, in order to reach a reasoned and deliberated decision. These elements of course do not preclude the use of other faculties, such as the emotions or desires, but they seem to find their authority in the cool, dispassionate use of reason. A model based on subjects that make sound, thoughtful and rational choices on the basis of the information they are given, however fails to take the complex nature of social contexts and relationships into account (Elbourne, Snowdon & Garcia, 1997:248).

The final element of discourse analysis is concerned with describing the themes and theories developed by the discourse. In the case of informed consent, these can be described as themes of competence and themes of negligence and accountability. The theme of competence controls who qualifies as autonomous and who is thus able to give informed consent. This theme is instructive since it not only demonstrates the kind of people that are deemed autonomous – namely rational adults – but also shows who are not viewed as autonomous and hence ignored by the medico-legal requirement of informed consent. This latter category includes among others, children, the demented elderly, mentally disabled, psychiatrically unstable and people with substance abuse disorders. Various substitutions and standards of informed consent in non-autonomous people have been suggested: parents, family, proxies, substituted judgement, best interest, and assent. It is however still poorly understood how these categories of people can be adequately represented in the healthcare setting and how their interests can be best

protected within the context of a healthcare system that is dependent on the ideal of autonomy. Especially in light of the unique challenges in South Africa – large numbers of orphans and child-headed households[47]; major contagious and infectious pandemics, such as HIV and TB; and alarming statistics of violence, also directed at children, the mentally ill and the elderly – there is an urgent need to address the issue of who is allowed to give consent for their treatment and research.

The theme of negligence and accountability is similarly important since it also exerts a controlling influence, albeit of a different nature. This theme not only controls which medical practices are acceptable, but also which forms of communication should be practiced between a doctor and patient or participant. This control is exerted along the lines of the majority view of acceptable social interaction.

4.2.2 Limited genealogical analysis

A genealogical analysis, as developed by Foucault, is primarily concerned with the exposition of the inherent power dynamics in social practices. As described in Chapter 1, power dynamics is inherent to all social relations and is ultimately not a physical entity but rather a mode of interaction, manifested in the modes of surveillance, regulation, or discipline that are used to conform human beings to a desired social structure. The exercise of power controls the self-definition of members of society and is functional in the production of forms of truth and identity. Foucault's conception of power is delimited by four conditions: it should be concerned with power at the extremities as found embodied in techniques and institutions; it should be studied at the point of direct contact with its target; it should be understood as part of a chain with individuals seen as vehicles of power; and lastly, power should be studied in an ascending fashion from its microscopic beginnings to its forms of global domination (Foucault, 1980a:96-99). The medical consulting room thus seems a fitting place for such analysis, since it is here where there is direct contact between the institution (the medical profession) and the

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[47] There are an estimated 660 000 (4%) double orphans and 122 000 children (0.67%) that are currently living in child-headed households in South Africa. This is mostly due to the HIV pandemic, which is the largest in the world (Meintjies et al, 2010:40).

target (the patient or research participant), and power might exist here as a microscopic beginning.

The genealogical analysis of informed consent will be concerned with an exploration of the power differentials operative within the concept of informed consent, as it operates through rules of homogenization and exclusion. It is thus specifically concerned with the objects that seemingly control the discourse: its objects, rituals, and privileges. The remainder of this chapter will be concerned with demonstrating the power operating in the concept of informed consent and the manners in which it is maintained in society. I argue that two forms of power dynamics are operative in the scope of informed consent practices: the first between the individual patient and doctor, and the second between a collective of patients and the State. These power differentials seem tethered to inherent tensions in the concept of informed consent.

The major tension in informed consent lies between its ethical grounding in patient autonomy on the one hand and its deference to physician discretion, partially based on beneficence, on the other. The legal enforcement of informed consent is similarly confounded by an ostensible disagreement about the types of decisions that fall in the proper ambit of patient autonomy or doctor discretion. As a result, the law seems to vacillate between a patient-centred and physician-centred standard of disclosure – as demonstrated in the South African case of *Oldwage v Louwrens*. The philosophical and ethical arguments for the importance of autonomy have been explored in Chapter 2. In a healthcare context, autonomy's rise to prominence was strongly influenced by the prevailing socio-political mood after World War II and the increasing popularity of liberal individualism that dictated that existing power differentials should be equalised, also in health care.

There are of course obvious reasons for the power differential existing between doctors and patients. The doctor has superior medical knowledge based on years of training and practice. The doctor is well versed in the complex and inherently unpredictable nature of the human body and the changeability of accepted medical knowledge and practice. The

patient usually enters the arena of the medical field as a novice and needs to assimilate a large amount of information in a very short time. This is compounded by the fact that the patient is ill or in need of some medical assistance and is dependent on someone within the medical profession who can fulfil this need. Fear of the illness, the procedure, or even the unknown, makes the patient vulnerable to exploitation and makes him or her less likely to be able to function as an equal in this therapeutic relationship. For many patients, their encounter with the healthcare profession might spark an existential crisis, necessitating them to take stock of their life and confront the possibility of the end of this life. This is necessarily an emotional time for the patient and complicates the cool, disinterested, objective reasoning of the fully autonomous person foreseen in the doctrine of informed consent. Gaylin and Jennings (2003:155) therefore argue that: "[t]he unparalleled power that we place in the hands of doctors stems directly from that existential fear of death that we all share. The preserver of life has often been exempted from normal rules of behaviour in the service of his profession".

Apart from these obvious causes of power inequity, it has been argued that subtler and more deeply hidden reasons for the need for the preservation of the power differentials exist in medicine and found manifestation in the doctrine of informed consent. The basic premise pre-1940 was that patients needed to comply with the treatment prescribed by doctors in order for them to benefit, and thus the purpose of the consent was not so much to give full information, but rather to give sufficient information for the patient to acquiesce to the proposed treatment. There was a belief that faith in the treating physician expedites the cure and that authority serves to strengthen this faith. The first American Code of Medical Ethics aptly demonstrates this point. This demand for authority required that the patient should obey the physician and hence obliterated the possibility of the patient functioning as an autonomous agent (Mariner, 1988:389). This view found expression in the concept of informed consent as well. Even though the concept of informed consent therefore existed before World War II, it has been argued that the type of informed consent that was sought at that time was not informed at all. Katz (1984:41-46) proposes that this emphasis on patient obedience stemmed from the pursuit of authority and power by a profession in need of credibility. Starr (1949:229)

agrees that the rise and triumph of the medical profession depended on the growth of its authority.

Foucault (1994) supports this assertion on a larger scale through his archaeological exposition of the development of the medical profession at a time when numerous schools of healing and quackery abounded with few means of curing disease. He concludes that the medical profession strove for credibility through licensure and that the developments of early 20th century medical science provided the basis for claims to authority and the power inherent in a real profession (Foucault, 1994:64-85). The perceived need for a power differential between an individual patient and doctor was thus institutionalised in the form of medical codes and guidelines that supported the superiority of beneficence above autonomy.

This form of power conforms to Foucault's four requirements: it is a form of power that functions at the extremities, embodied in institutions, and at the point of direct contact with the target, the patient. It can be seen as part of a chain where persons – in the form of doctors – are the vehicles for power – and the development of this power dynamic can be traced from its miniscule inception between the individual patient and doctor, to its large manifestation as an ethical guideline for a profession.

The existence of a power imbalance between patients and doctors also served to complicate legal judgments of negligence and accountability. Traditionally, an assessment of negligence was influenced by acknowledgement of the fact that medicine is not an exact science, that the human body cannot be precisely understood, that the care required of a medical professional is equivalent to the degree of learning and skill common in the profession, and that unsatisfactory results could occur in medical and surgical procedures despite adequate precautions and care. The nebulous nature of medicine thus made the act of assigning blame very complicated. This was further compounded by the so-called "conspiracy of silence" where it was felt that medical professionals never testify against one another, mostly since they feared like action from their colleagues. The profession thus managed to close ranks and attempted to protect the

fraternity from unfavourable scrutiny and censure. The power of the profession appeared in stark contrast to the vulnerable position of the patient who, either due to anaesthesia or lack of medical knowledge, was unable to know what had happened to him. This clear power differential between the healthcare professional and patient prompted the Courts to attempt to shift the balance of power. In accepting the patient-centred standard, the Court moved from expecting the patient and other medical experts to prove negligence, to placing the burden of evidence on the attending health professional to explain himself in order to overcome the plaintiff's charge of negligence.

Even though some Courts have accepted and implemented the patient-centred standard of disclosure, the ethical question about the real possibility of autonomous choice is still a valid one. It has to be asked whether it is ever possible for patients to be equal partners in the decision-making process and whether truly informed consent is thus ever achievable. This is even further complicated by the subjective nature of understanding, the essential foundation for autonomous decision-making that precludes exact measure and legal enforcement. As argued by Beauchamp and Childress (2001:59), it is doubtful that fully autonomous choice can ever exist. This, however, does not mean that patients should not be respected as partners in decision-making and that attempts should not be made to facilitate autonomy and respect the right to self-determination. The function of the law seems at best to require the presence of objectively observable factors that create the opportunity for understanding and autonomous choice (Mariner, 1988:402). It seems to come down to ethical standards and codes of conduct in medicine to support and enable the fullest form of autonomous choice possible.

Too much emphasis on the requirements of autonomy and informed consent can however have unexpected repercussions in the health care setting. Molyneux, Wassenaar, Peshu & Marsh (2005:443-454) aptly demonstrated this in their description of medical research activities on the coast of Kenya. They looked at issues around informed consent in a rural community where a lot of research activity is taking place, especially paediatric clinical trials of anti-malarial treatment. Some members of the community felt that it would be particularly difficult to understand information about the trials for mothers with little

formal education, and for mothers with very ill children. Some argued that the informed consent process is a source of concern for these people, since they are so bewildered by all biomedical procedures that anything will confuse or worry them. They further argued that some parents, in fact, do not *want* to understand, and that even the best efforts to try and help them understand, will fail. They felt that further explanations would only lead to complaints and suspicion. If a mother does not want to understand, she might avoid giving consent by hiding behind cultural practices, for instance, by saying: "'I don't mind myself but let me go and ask my husband.' They'll divert things to their husband knowing that he is away" (Molyneux, Wassenaar, Peshu & Marsh, 2005:449). The underlying power differential in this relationship between healthcare worker and parent of the potential participant, defines what type of behaviour is acceptable. The mother feels that she cannot bluntly refuse participation or say that she does not want to understand; she rather claims that she is in fact not allowed to give consent, and thereby escapes the requirement of autonomy and informed consent.

Enhanced autonomous choice can be achieved in various ways. Katz (1984:124), drawing on his background in psychotherapy, argues that processes of self-reflection and reflection with others, as achieved through conversation, are prerequisites for achieving the right to autonomy and self-determination about ultimate healthcare choices. He thus focuses on the relationship between the doctor and patient and sees informed consent as the product of an ideal relationship. This not only obligates the patient to actively engage in the decision-making process but also demands of the doctor to acknowledge his or her own uncertainties. This has proved to be problematic in medicine, since, even though uncertainty abounds, doctors are taught to act decisively and communicate clear options to their patients. Katz (1984:171) attributes the medical profession's reluctance to admit uncertainty to their fear that this will undermine their scientific and personal basis for medical authority and power. He believes that doctors will insist on obedience and resist empowering their patients to freely choose as long as their profession demands that authority be vested in the doctor. Mariner (1988:406) however argues that exactly this conversation, as advocated for by Katz, might ultimately lead to trust in doctors, since

patients who know they are respected as autonomous agents will have confidence in their doctors.

A second tension inherent in informed consent is operative between patients and the State. This tension develops because of the need to balance respect for patient autonomy and maintaining primary societal interests, such as the preservation of life, the prevention of suicide, the maintenance of the medical profession's ethical integrity, and the protection of the interests of third parties (Grimm, 2007:43). The requirement of the State to maintain these primary social interests can lead to paternalistic actions by the State, such as demands for isolation or quarantine, which can overrule the will of the individual or a collective of patients.

In order to balance the power differential between the patients and the State, the State has a correlative role in advancing patients' right to self-determination. The promotion of such a right in healthcare presupposes a notion of autonomy that is however also open to abuse (Nieuwkamp, 2007:50). It can lead to the medical profession functioning as mere technicians that facilitate patients' choices. The patient thus needs the doctor only to give access to the medical treatment the patient demands. In the modern era where value relativism is embraced and promoted, it thus becomes increasingly difficult to limit choice, even if those choices are irrational and contrary to medial opinion (Katz, 1984:166).

Valuing the concept of autonomy as the principal value in society can lead to the establishment of the notion of the ideal person as a rational, collected and calculated being in full control of his environment and emotions – the typical male persona. This value judgment functions as a power dynamic that aims to conform human beings to a desired social structure. It thus creates an ideal form of identity based on the autonomous being that neglects acknowledgement of the social embeddedness and relational dependence of human beings. This is especially hazardous in a vulnerable population where lack of scientific and medical knowledge, or impairment of judgement as in patients with mental health problems, may leave these patients exposed to the adverse

consequences of their own decisions (Nieuwkamp, 2007:60). An overemphasis on respect for choice might also expose patients to exploitation by those with questionable integrity or scientific credibility.

The State has a further role of equalising power differentials within the broader societal framework. This power is operative in the existing inequalities of expertise and the State aims to protect its citizens through various legislative frameworks that allow for legal recourse after injury and set minimum standards for the practice of obtaining informed consent. This protective framework is inherently paternalistic in that the patient is assumed not to have the necessary knowledge in judging whether an intervention or treatment will be in his or her best interest. The role of the State in promoting patients' right to autonomous choice while protecting patients from inequalities in expertise through paternalistic action, pull in opposite directions. This tension contributes to both the confusion in roles and to the uncertainty that is evident in the practical application of informed consent in healthcare (Nieuwkamp, 2007:60).

4.3 Conclusion

In this chapter, I aimed to give an account of the historical development of the concept of informed consent in an ethical and legal framework. By exploring the historical development of the concept in these spheres, I attempted to situate it in a broader socio-cultural context while highlighting specific cases that allow for practical assessment of the content of the philosophies and doctrines. I further attempted to move beyond language and the social context, to explore the historical relations between the ethical and legal disciplines and focused on the conditions under which the discourse of informed consent was allowed to develop.

I argued that the modern doctrine of informed consent developed from a principle of beneficence but found firm footing in the concept of patient autonomy in the post World War II era. The ethical and legal foundations of informed consent are distinct but fulfil complimentary roles in promoting the idea of autonomous decision-making. Yet, as

demonstrated by case law, the legal demands of informed consent do not serve as a guarantee that patients will understand the information or use it to make autonomous decisions regarding their healthcare. It merely requires that they have the opportunity to make such decisions. The question about the scope and responsibility of the law and of professional ethical codes in prescribing a more or less rigid standard remains unanswered. "It is a question of what kinds of decisions are enforceable, in the sense that the decision-maker cannot disclaim responsibility for their consequences (Mariner, 1988:387).

I then proceeded to perform a limited archaeological-genealogical assessment of the idea of informed consent. I argued that the object of the discourse is 'androgynous man', that the places from which statements are made are the consulting rooms and courtrooms of modern society, that the main concepts in the construction of the discourse are the seven elements of informed consent, and lastly, that the themes that are developed by the discourse are themes of competence and themes of negligence and accountability.

Finally, I attempted to expose the power differentials within the discourse by focusing on two power dynamics: that between the patient and doctor and that between the patient and the State. It should be clear that the primary power differential in the discourse operates by controlling what can be spoken of (only that which is rational), where and how one may speak (only through the using the rational language of medicine or law) and who is allowed to speak (only the rational adults). I find Foucault's methodology useful since it allows the silent voices to be heard. It opens a path for the suppressed and neglected voices to emerge and be heard. I thus find it important to look at which voices are *not* heard in the dominant discourse – for instance the neglected voices of children, psychiatric patients, the demented, and the frail.

The following chapter will now launch a critique of the male-constructed and male-dominated notion of autonomy. This critique is constructed through the voices of feminist and non-Western writers.

Chapter 5: Feminist and Non-Western Critique of Autonomy

"There can be no free society without individual autonomy, yet no sustainable society can rest on autonomy alone" (Gaylin & Jennings, 2003:67).

Chapter 3 and 4 were concerned with an analysis of the history of the establishment of the concept of autonomy and its manifestation in the form of informed consent as ethical and legal requirement. I attempted to expose the power relations and gender imbalance in such an existing concept in favour of a 'male-oriented', individualistic, societal construct, by means of a historical analysis, augmented by a limited Foucauldian archaeology-genealogy.

This chapter sees the launch of a critique of the concept of autonomy and its antecedent and interconnected concept, personhood, and centres on criticism from feminist and non-Western perspectives. It explores the possibility of the conceptualization of autonomy outside the framed male and Western boundaries and embraces notions of communitarianism, multiculturalism, diversity, responsibility and reciprocity. This chapter starts with an exploration of the major feminist critiques of autonomy. It then looks at communitarianism in the broad sense and subsequently focuses on literature from and about sub-Saharan African perceptions of the self and personhood, paying special attention to the work of amongst others Mbiti, Menkiti, Wiredu, Gyekye and Tangwa on African perceptions of personhood and Metz on African moral theory. In the spirit of Foucault's methodology, information is sourced not only from traditional philosophical texts, but also from alternative sources such as encyclopaedias, literary works such as popular fiction and poetry, and political commentary.

In this approach, I follow Mark Siderits (2003:xi), in his attempt to address the problematic of the 'self'. Siderits attempted a kind of 'fusion philosophy' where he argued that philosophical problems could sometimes be solved by looking at what traditions distinct from our own have had to say about the issue with which we are concerned.

5.1 Introductory remarks

Before I commence my critique in this chapter, I believe it is crucial to address three fundamental premises. I firstly wish to reaffirm my view that discussions about personhood are inherently of a moral nature and are thus essential for the criticism of the related concept of autonomy. Secondly, I need to address the potential concern about ascribing to so-called 'Western' and 'non-Western' points of view, particularly as pertaining to the concepts of personhood and autonomy. This I find necessary in order to counter the accusation that in this endeavour I have merely created a straw man of Western thought that can be easily dismantled with appropriate argument. Thirdly, I need to define the manner in which I use the concepts 'group' and 'community' in this dissertation.

Regarding the first premise, concerning the moral relevance of personhood, I concur with Noonan (1978:210) that recognizing a person is "a moral decision; it depends on objective data but it also depends on the perceptions and inclinations and ends of the decision makers; it cannot be made without commitment and without consideration of alternative values."

As argued in chapter 3, the concept of personhood has a dual function in morality: it protects those considered persons against suffering the hurts and indignities which the selfish tendencies of human psychology could inflict on them, and it justifies treating those creatures not considered persons, selfishly. By assigning moral rights, the concept of personhood determines how beings can rightly be treated morally (Sapontzis, 2010). Since judgments about personhood in many ways thus lie at the heart of moral discourse and decisions, it seems obvious why it is steeped in controversy. For example, questions have been asked and are still being asked about the nature of personhood and in particular, the kinds of entities that can properly be considered persons as well as when, and at what point, human life should begin or cease to have moral value (Tooley, 1998:117; Harris, 1985:13).

The second premise I would like to defend is whether there truly exists a singular uniform Western perspective of personhood and autonomy. Can the views of the likes of Engelhardt, Tooley and Singer be said to be a true and complete representation of Western moral philosophical thought on personhood? I propose that the pre-eminence of autonomy in social and ethics discourse is a Western, and more specifically an American, construct that permeates the psyche of that society. In their book *The Perversion of Autonomy*, Gaylin and Jennings (2003:53) argue that, since the 1970s, American society has undergone a shift away from social values toward individualistic values. American laws have been changed to grant individuals increasing scope for freedom of choice and self-expression. Autonomy has hence ceased to be one value among many, but has been embraced as the moral touchstone of American personal and public life. Glendon (1991:x) similarly emphasizes the role that legislation has played in this process and argues that thirty years of jurisprudence has weakened state authority and strengthened embodiments of autonomy such as individual rights, privacy and property. Gaylin and Jennings (2003:11) further argue that "Americans have embraced freedom so tightly, they can now see only one aspect of it, the side of autonomy" and the central vision of America has become a vision of "the autonomous self in a voluntary society" (Gaylin & Jennings, 2003:10). Americans are universally understood to live, breathe and dream autonomy.

Although one will not hear the *word* autonomy often in everyday conversation, the *idea* of it can be found everywhere in American society, variably expressed in colloquial terms as "the good life, security, rights, privacy, peace of mind, steady work, respect, fairness, equal treatment, decency and even break". Underlying these diverse hopes and values is a unifying notion of personal liberty, self-expression, self-reliance and noninterference. This peculiarly individualistic interpretation that has been placed on almost every social and moral value in American life, makes it possible to speak about a culture of autonomy that has come to define this society (Gaylin & Jennings, 2003:47).

Discourse about rights has become the principal language that is used in American public settings to discuss questions of ethics (Glendon, 1991:x) and the concept of autonomy is

similarly framed in rights language as the right to liberty and noninterference. The American focus on rights forms part of the wider landscape of a universal rights language that developed in the wake of World War II. It can however be distinguished from rights discourse in other liberal democracies by its "starkness and simplicity, its prodigality in bestowing the rights label, its legalistic character, its exaggerated absoluteness, its hyperindividualism, its insularity, and its silence with respect to personal, civic, and collective responsibilities" (Glendon, 1991:x). The language of rights fits poorly with the more traditional and complex languages of ethical discourse, but it influences them by imposing a rights mentality into spheres of American society that traditionally nurtured personal responsibility and social obligation.

It is argued that the pre-eminence of rights language and the focus on personal liberty in ethical discourse corrode the social foundations on which individual freedom ultimately rests (Glendon, 1991:x). Taken at its extreme, the American culture of autonomy has created a distorted vision of an independent individual that holds the concepts of privacy and autonomy sacred at the expense of his obligations to his society and community. It idealizes the individual with practically limitless authority over his actions and with no corresponding responsibility for its consequences. "It has created a society of rights without duties or obligations; of authority without responsibility" (Gaylin & Jennings, 2003:203). Even though this depiction of autonomy is by no means ubiquitous in Western society, it has become the paradigmatic representation of American life, and it is this vision that I wish to take to task.

In the third place, I will define the manner in which I use the concepts 'group' and 'community' in this dissertation. A 'group' can be understood as "a number of persons or things located close together, or considered or classed together" (The Oxford English Reference Dictionary, 1995). Members of a group are associated by some common tie – such as occupation, interests, values, social background, kinship, etc. – and are regarded as an entity because of that tie. A social group can be defined as two or more humans who interact with one another, share similar characteristics and collectively have a sense of unity. Such a group has some degree of social cohesion and is thus more than a simple

collection of individuals. Importantly, one elects to be part of a group through self-identified characteristics and an experience of belonging. It is this definition of social group that I am referring to when I talk about a 'group'. In sociology, groups can be subdivided into primary and secondary groups. Primary groups are small groups whose members share personal and enduring relationships; whereas secondary groups are large and impersonal social groups whose members pursue a specific interest or activity (Sociology Guide). In my dissertation I do not distinguish between these two and see the property of self-elected 'membership' as the fundamental component that constitutes a group.

'Community' is a very elusive concept[48] and in sociology, at minimum, refers to a collection of people in a geographic area (The Oxford English Reference Dictionary, 1995). The manner in which I use the word, however, seems to be closer to the word 'society', or as termed by The Oxford English Reference Dictionary (1995) a "social community". The word 'society' is derived from the Latin word '*socius*', meaning companionship (sociability) or friendship. Interpreted in this manner, the word 'society' implies that human beings always live in the company of other people; society is therefore a "whole functioning interdependently" (The Oxford English Reference Dictionary, 1995). Society – and thus in my mind, community – defines a group of people who share a common culture, occupy a particular territorial area and feel themselves to constitute a unified and distinct entity (Sociology Guide). The term 'community' is present in this dissertation predominantly in the work of Communitarian philosophers and African philosophers. The difference between groups and communities is therefore the geographic location: communities are defined by their location in a specific geological space, whereas groups are undefined by space and can stretch across continents and cultures.

After having thus argued why I place so much emphasis on the concept of personhood as a moral value, why I believe it acceptable to talk about a dominant Western view of

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[48] There is no agreed definition of 'community' in sociology. There were already 94 discrete definitions of the term by the 1950s (Hillery, 1955:111).

autonomy, and defined the manner in which I use the terms 'group' and 'community', I will now briefly explore preeminent feminist views that oppose the Western concept of autonomy.

5.2 Feminist critique

Feminism is a diverse collection of movements, united in their concern with the definition, establishment and defence of equal political, economic and social rights for women (Merriam-webster.com). It draws on feminist theories that explore the social construction of sex and gender and the origins of inequality in diverse disciplines such as anthropology, sociology, economics, literary criticism, art history, psychoanalysis and philosophy. There have been three distinct waves of feminism. The first wave started in the United Kingdom and United States in the nineteenth century and focused on the promotion of equal contract, marriage, parenting and property rights for women. At the turn of the century and extending into the early twentieth century, the main focus turned to women's right to vote, or suffrage. The second wave refers to feminist activities associated with the women's liberation movement that started in the 1960s and focuses on issues of equality other than voting rights. Second-wave feminists are primarily concerned with exposing social power dynamics and encourage women to view their cultural and political inequalities as closely linked, and to understand aspects of their personal lives as deeply politicized and representative of sexist power structures. The third wave of feminism is characterized by a reaction to the perceived shortcomings of second-wave feminism, notably the perception that it selectively represents the experiences of upper middle-class white women. It started in the 1990s and continues to coexist with second-wave feminism (Krolokke & Sorensen, 2006:24).

Even though all the disciplines and waves of feminist theory are instructive and can be relevant to an archaeological-genealogical analysis of autonomy, time and space do not allow a thorough exploration of all of these. I will limit myself to feminist theory operating within a philosophical sphere and will mostly focus on second wave and, to a limited extent, third-wave feminism. I will furthermore pay particular attention to the

influence of poststructuralist thought, specifically that of Michel Foucault, on the feminist rejection of traditional concepts of autonomy.

The first question to be addressed is whether women really do speak in 'a different voice' as famously claimed by Carol Gilligan (1982) and whether their moral theories really do look different from those constructed by men. Baier (1985:53) argues that she indeed notices a difference in tone and approach in a vast number of feminist texts as compared to standard 'male' philosophy. She specifically cites the work of Philippa Foot on moral virtues, Elizabeth Anscombe's work on intention and modern moral philosophy, Iris Murdoch's philosophical writings, Ruth Barcan Marcus' work on moral dilemmas, Jenny Teichman's book on illegitimacy, Susan Wolf's articles, Claudia Card's essay on mercy, Sabina Lovilbond's book *Realism and Imagination in Ethics*, Gabriele Taylor's work on pride, love and integrity, Cora Diamond's and Mary Midgeley's work on attitudes towards animals, Sissela Bok's work on lying and secrecy, and the work of Virginia Held, Alison Jaggar, Marilyn Frye, to name but a few. Even though I will not refer again to most of these stated works, but will merely attempt to briefly touch on some aspects of feminism as related to concepts of autonomy, this list does illustrate the unique brand of feminist theory that has developed over the last decades.

The most prominent point of convergence of poststructuralism and feminism is found in the poststructuralist critique of metanarratives and the feminist rejection of the prevailing phallocentric concept of universal reason and autonomy (McNay, 1992:91). In essence, poststructuralism is the rejection of the structuralist ideas that man is shaped by sociological (following Marx), psychological (following Freud) and linguistic (following Saussure) structures that are beyond his control. Poststructuralism rejects the notion that there are definite underlying structures that can explain the human condition and is sceptical of judgments of truth and objectivity (Jones, 2008).

One of the truth claims that is disputed by poststructuralism is that of the rational, self-reflective subject, which has dominated Western thought since the Enlightenment. It argues that this notion was established through the displacement and exclusion of its

'other' – *vis-à-vis* the irrational, the corporeal and the female – in order to stabilize and secure its identity (Stormhoj, 2000:8). Thus the masculine notion of rationality is privileged over the feminine notion of emotion, and in a similar fashion, spirituality is favoured above the material, and the objective over the subjective. These dualisms can be traced back to the classic Cartesian opposition between mind and body that privileges an abstract, pre-discursive subject at the centre of thought and disparages the body[49] – viewed as the seat of the emotions, passions and needs – as the site of opposition to the spirit and rational thought. By favouring the first term in the series of dualisms, Enlightenment thought thus determines the parameters of what legitimately constitutes knowledge and controls the kind of discourses that can be produced (McNay, 1992:12-3).

The feminist critique of rationality and universal reason as a masculine construct in a phallocentric power regime (Butler, 1990:31) has drawn extensively on this poststructuralist critique of the rational subject. The feminist critique centres on the historical connections between rationalist ideas and the belief in a hierarchical opposition between 'mind' and 'nature'. Similar to poststructuralists, feminists argue that this opposition is grounded in an aversion of the embodied condition that is viewed as quintessentially feminine. Feminists thus reject the assertion that concepts such as universal reason and autonomy are objective and impartial standards, and argue that they are, in fact, historically situated and contingent terms that reflect masculine characteristics that serve the purpose of legitimizing and maintaining a dominant masculine culture.

Benhabib (1987:81) for instance argues that it is imperative to recognize that the universalistic rational theories underlying much Enlightenment thought are based on a universalism that is defined 'surreptitiously' by identifying the experiences of a specific group of subjects as the paradigmatic case of the human. "These subjects are invariably white, male adults who are propertied or at least professional." The universal rationality thus espoused by the Enlightenment then becomes a regulative ideal that is impervious to difference and the reality of embodied existence (McNay, 1992:128). The failure of the

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[49] The idea of the body is a concept central to post-structuralist thought, and features prominently in the work of Michel Foucault.

Enlightenment project to take difference and a gendered perspective into account causes feminists to call into question the entire dominant philosophical project of seeking objectivity that transcends circumstance or perspective (Fraser & Nicholson, 1988:376-7, 381; Harding & Hintikka, 1983:199; McNay, 1992:91-92).

The most influential feminist in this regard is undoubtedly Simone de Beauvoir. In *The Second Sex* she argues that we are brought up in a world defined by men, where women are defined as 'other' or as 'not normal'. She asserts that women are defined by a certain lack of qualities or viewed as afflicted with a natural defectiveness, as asserted by Aristotle, and seen as 'imperfect men', as pronounced by St Thomas (De Beauvoir, 1997:15-16). She claims that no woman in society can act outside this constriction that defines man as the standard, or the 'normal'.

> "The terms *masculine* and *feminine* are used symmetrically only as a matter of form, as on legal papers. In actuality the relations between the two sexes is not quite like that of two electrical poles, for man represents both the positive and the neutral, as is indicated by the common use of man to designate human beings in general; whereas woman represents only the negative, defined by limiting criteria, without reciprocity" (De Beauvoir, 1997:15).

Feminists, most notably postmodern feminists, have also been influenced by the post-structuralist argument that subjectivity is constructed through language and is thus "an open-ended, contradictory and culturally specific amalgam of different subject positions", rather than an entity with a fixed core or essence (McNay, 1992:2). The universal rational subject is thus called into question and space is created for the contingent, the contradictory and the transient. The emphasis on language is strongly influenced by the Foucauldian legacy of discourse analysis where language is seen as the primary vehicle of knowledge and power (Gutting, 2010).

Postmodern feminists have built on the work of Foucault and de Beauvoir, and although there is much variation in their work, a few common themes can be identified. The first is that most postmodern feminists embrace diversity in the form of 'multiple truths, multiple

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roles, and multiple realities'. The second theme is that postmodern feminists, most notably Hélène Cixous, Luce Irigaray and Julia Kristeva, view human experience as inescapably located within language. They however object to linear, syntaxically 'normal' speech and writing as part of the propaganda of the dominant order and view the dismantling of the linguistic power structure as an essential component of their struggle (Tong, 1989). Not all feminists are however equally enthusiastic about the possibilities of postmodernism. Judith Butler (1995:35-58), for instance, claims that postmodern feminism offers no clear path to action and she even rejects the term postmodernism as too vague to be meaningful.

Feminists, inspired by these poststructuralist arguments, are in agreement that rationality has been defined in masculine terms, but disagree on the acceptable response to this problem. Three schools of thought can be broadly identified. The first argues that the Enlightenment definition of rationality should be accepted and merely expanded to include the perspectives of women. The second believes that the Enlightenment rational/irrational dichotomy should be accepted since it is an accurate representation of the true nature of male/female relations; yet, the feminine side of the dichotomy should be strengthened. And the third, conversely, calls for a complete rejection of the Enlightenment concept of rationality and its alleged false dichotomy of rational/irrational. The last school of thought leads to two possibilities: feminists can either formulate an alternative feminine knowledge – such as found in the French feminist strategy of '*écriture feminine'* – or they can abandon the gendered connotations of knowledge altogether – as proposed in 'postmodern' feminism (Hekman, 1990:39-61; McNay, 1992:92).

The most influential school of thought has been the third with a focus on the development of an alternative moral theory that incorporates a gendered perspective, commonly known as 'mothering' ethics. This theory is based on the premise that, just as rationality should not be defined in implicitly masculine terms of universality, so morality should not be based on a masculine 'justice perspective' that is dependent on notions of rights and formal reasoning. Feminists thus reject an ethic grounded in a categorical imperative or

abstract moral law in favour of an ethic based on relationships and responsiveness to others that creates an environment in which care can be given.

Nancy Chodorow was instrumental in defining the 'mothering theory' that underpins this feminist moral theory. In *The Reproduction of Mothering,* Chodorow (1999:7-8) explores the cross-cultural activity of mothering to explain the psychological dynamics that lead many women to freely reproduce social patterns that reinforce female inferiority. She examines why mothering is reproduced cyclically over time as a female-associated activity that produces a new generation of women with the psychological inclination to mother, whilst men are not so inclined. She argues that the answer to this question can be found in the concept of gender identity. Accordingly, female mothering produces women whose deep sense of self is relational and men whose deep sense of self is based on separation from others and autonomy (Chodorow, 1999:180-182). This particular model of development is known as 'object relations theory' that is a subset of psychoanalytic theory that emphasizes interpersonal relationships, specifically between mother and child (Fairbairn, 1954:312).

Carol Gilligan developed her moral theory in response to Lawrence Kohlberg's account of moral psychological development. Kohlberg (1983:630-646) postulated that moral reasoning has six identifiable developmental stages and claimed that moral agents that were more developed achieved a greater amount of moral autonomy and independence in their judgments. According to Kohlberg, the highest levels of development approximated Kant's moral ideal of adopting universal standards as one's own. In her book, *In a Different Voice*, Gilligan accuses Kohlberg of reflecting a purely male pattern of development, with disregard for the pattern of female development. She claims that for women, instead of taking "steps toward autonomy and independence", "identity has as much to do with intimacy as with separation" (Gilligan, 1982:98). Whereas for men separation becomes the model of growth and the way in which it is measured, women develop toward ultimately balancing and harmonizing the individual's interests with those around her (Gilligan, 1982:98).

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Gilligan draws heavily upon Chodorow's theory of gender identity in the development of her version of an ethics of care that claims that the experience of mothering is central to understanding the more caring and empathetic moral standpoint of women. Gilligan seeks to replace the masculine definitions of moral maturity represented by abstract notions such as justice and rights – "the generalized other" – with an idea of ethics that is more contextual and immersed in a network of relationships and narratives – "the particular other" (Gilligan, 1982:11). She argues that these feminine characteristics should not be viewed as deficiencies, but rather as essential components of adult moral reasoning. In Gilligan's view, once the self recognizes itself as immersed in a network of relationships with others, what was once regarded as moral deficiency is revealed as moral maturity (Benhabib, 1987:78). An impoverished moral view fixated on masculine concepts like autonomy is thus augmented by a feminist exposition of the relevance and importance of the recognition of the values of reciprocity and social embeddedness.

Many feminists regard Chodorow's theory as a cogent account of the real psychic differences between men and women. Gilligan's work is similarly applauded for its powerful antifoundationalism that challenges formal moral systems and re-evaluates women's lives and experiences as real and morally important. Both theories have however been accused of sharing some of the essentialist, monocausal and ahistorical features of the very metanarratives they are trying to refute. They are essentialist insofar as they are based on certain assumptions about the nature of human beings and the conditions of social life and project onto all women and men universal qualities that are rather believed to develop under historically specific social conditions. They are monocausal insofar as they explain women's oppression in all cultures by means of one set of characteristics, such as women's physiology. They are ahistorical insofar as they pay insufficient attention to historical and cultural diversity, and falsely universalize features of the theorist's own era, society, culture, class, sexual orientation, and/or ethnic or racial group (Fraser & Nicholson, 1988:382-383). For instance, although Gilligan claims to be speaking in 'a' different voice, she fails to specify "which women, under which specific historical circumstances have spoken with the voice in question" (Fraser & Nicholson, 1988:388). Thus Gilligan generalizes a particular feminine perspective to

the exclusion of other perspectives that are mediated by class, sexual orientation, race and ethnicity.

Kate Soper (1989:102) further contends that Gilligan's argument – that it is purely because of their nurturing experience that women acquire this particularist ethical perspective – implies that there would be a moral imperative on society to confine women to a mothering role in order to guarantee the ongoing presence of these 'female', caring capacities. Finally, many critics have pointed out problems with Gilligan's argument for a distinct and definitive male and female identity, and her concept of fixed gender identity. Concerning the former point, Virginia Held (1987:146) argues that Gilligan's insistence on a monolithic difference between masculine and feminine moral reasoning is unsubstantiated in contemporary Western culture, where extensive contact between men and women effectively precludes the existence of separate cultural feminine and masculine spheres. Regarding the latter point, Fraser and Nicholson (1988:385) have pointed out that the idea of a fixed gender identity is premised on the idea that "everyone has a deep sense of self which is constituted in early childhood through interaction with one's primary parent and which remains relatively constant thereafter." This is problematic since it is derived from a concept of mothering believed to be an ahistorical, cross-cultural constant, rather than a culturally determined activity, and is based on only one of the multitude of activities women engage in. While the importance of mothering is not disputed, it remains unclear why it should be singled out from all the other forms of social interaction to be paradigmatic of human relations in general. McNay (1992:95-96) similarly argues that relations between mothers and children can be as oppressive as any other social relation and that relations between equals, who can freely decide on terms of engagement, may therefore be more desirable.

Benjamin builds and improves on the work of Chodorow and Gilligan and attempts to reconcile the concepts of mothering and autonomy. She argues that maternal nurturance does not preclude the growth of autonomy, but rather implies it: "what is nurturance if not the pleasure in the other's growth?" (Benjamin, 1978:51). She tasks feminists to conceive of freedom in relation to the maternal bond, rather than in opposition to it, and

seeks to establish the maternal bond as the origin of freedom by contending that it combines the desire for autonomy with the need for dependence. She further argues that the unconditional love, exemplified by the mother, allows the child to feel accepted for who she truly is and could become. She views the paternal world as operating in the realm of the conditional and the earned, determined by rules of reward and punishment (Benjamin, 1982:158). Benjamin argues that the entire structure of recognition between men and women needs to be altered before there can be an end to domination.

> "The ideal of the autonomous individual could only be created by abstracting from the relationship of dependency between men and women. The relationships which people require to nurture them are considered private, and not truly relationships with outside *others*. Thus the other is reduced to an appendage of the subject – the mere condition of his being – not a being in her own right. The individual who cannot recognize the other or his own dependency without suffering a threat to his identity requires the formal, impersonal principle of rationalized interaction, and is required by them (Benjamin, 1988:197).

Johnson (1988:28) however disputes the success of this approach and accuses Benjamin's appeal to nurturant maternal love of repeating the paradox that it attempts to dispel. She argues that Benjamin fails to break down traditional conceptions of the nurturing mother and merely reinforces the traditional, unnegotiated relationship. She therefore "does not succeed in recovering a notion of autonomy for feminism; instead, she re-inscribes the idea that autonomy is a version of the masculine desire for domination and sentimentalizes the feminist desire for sisterhood and solidarity" (McNay, 1992:102).

While feminists agree on the necessity to develop a moral theory that takes emotional and interpersonal aspects of human existence into account, the tendency of all three feminist theories discussed thus far to naturalize aspects of women's socially-defined nurturing role, is problematic. Naturalizing the female mothering capacity and viewing a highly culturally specific notion of mothering as the essence of feminine identity, perpetuates the concepts of masculine autonomy and feminine dependence. For example, object relations theorists relate autonomy to the male child's split from the mother to indentify with the

father, and autonomy is hence naturalized as an aggressive drive inherent to masculine identity. Similarly, the fact that the girl child does not split from the mother in the classic Oedipal account of gender identity[50] naturalizes the feminine inclination to dependency by emphasizing the role of empathy and care of the other. McNay (1992:96-97) contends that by naturalizing the concepts of autonomy and dependence, feminists failed to capitalize on the opportunity to reconstruct, in non-naturalistic terms, a concept of autonomy as inherent to a humanizing social existence. In exploring this possibility, the work of Foucault in developing an ethics of the self, can be instructive as he endeavoured to reconstruct the notion of autonomy to uncover its emancipatory potential.

For Foucault, the essential condition for the practice of ethics is freedom. Freedom implies the ability to choose one action amongst alternatives. Foucault proposes that there are four aspects to how the individual constitutes him/herself as the moral subject of his or her own actions. These four aspects respectively relate to: the part of the individual that acts as the focus of moral conduct; the question of what makes an individual recognize their moral obligations; the means by which individuals transform and work on themselves; and finally, what sort of person an individual might want to be (Gutting, 2010).

Foucault makes a distinction between moral codes and ethics. In *The History of Sexuality: The Use of Pleasure* (1985), Foucault contrasts modern ethics with ancient Greek ethics. He argues that modern ethics is concerned with moral codes, which are simply collections of rules and precepts, whereas ancient Greek ethics represents a more autonomous form of ethics. In modern ethics, a man's behaviour is thus judged ethical if it conforms with the prevailing rules in society, even though that man's motivation for his actions may be suspect or immoral. The emphasis within this morality is on the individual's conformity to externally imposed codes of behaviour. Foucault (1985:29-30) argues that "subjectivization" occurs in a quasi-juridical form: the ethical subject measures his conduct according to a law to which he must submit for fear of committing offenses that may make him liable to punishment. Foucault thus views modern ethics as

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[50] As described by Freud in *Three Essays on Sexuality* in 1905.

determined by normalizing tendencies that are primarily concerned with obeying rules, in contrast with ancient Greek ethics, which he sees as free from such normalizing pressures. According to his analysis, ancient Greeks were free to establish a relation with themselves through a process of stylization. Here the emphasis is not on conformity with the law, it is on the formation of a relationship with the self and on the methods and techniques through which this relationship is worked out. This type of morality permits a greater element of freedom since the individual is relatively free to interpret the spirit of the law in his own style, rather than having to conform to the exact letter of the law (McNay, 1992:53). Far from obeying seemingly objective and rational rules, the ancient Greeks practiced self-control and self-mastery in order to maximize the pleasure, beauty and power that could be obtained in life.

Foucault cites the case of Nicocles, the King of Cyprus, as an example of autonomous Greek ethics. Nicocles chooses to be faithful to his wife, not because it is prohibited by a sense of duty, but rather because it is an expression of self-control. Self-control is essential since, as a king in command of others, he should first demonstrate that he is in command of himself. His self-control becomes a public and 'theatrical' display of his ethical worthiness. So even though neither law nor ancient Greek custom requires fidelity, Nicocles deliberately limits the power of his sexual self as it is connected to his ethical and political self (Foucault, 1985:18). By operating beyond normative rules, ancient Greek ethics thus allows for a 'certain practice of liberty' (Foucault, 1985:23). Foucault thus reconceptualizes the concept of autonomy as operating outside a universal set of rules and conceives it as an expression of the freedom of the individual to transform himself into the type of individual he wishes to become. Foucault thus marries a concept of autonomy with an expression of freedom in stylizing a life according to free choice (McNay, 1992:86). It is the principle of an autonomous aesthetics of the self that Foucault presents as an antidote to the normalizing tendencies of modern society.

It is however important to understand that even though Foucault interprets the type of self-mastery practiced by the Greeks as giving access to "an active freedom", this freedom was always informed and determined by larger cultural constraints (Foucault

1985:92). So even though the individual had some choice in the way he wished to fashion his existence, the practices through which self-mastery could be achieved were always conditioned and determined by the socio-cultural context. Foucault (1988b:11) explains:

> "I am interested … in the way in which the subject constitutes himself in an active fashion, by the practices of the self, these practices are nevertheless not something that the individual invents by himself. They are patterns that he finds in his culture and which are proposed, suggested and imposed on him by his culture, his society and his group."

Even though Foucault does not address the insubordination of women in either ancient or modern culture, the emphasis he places on autonomy as freedom has important implications for the feminist argument. Foucault argues that one of the most significant political struggles of modern individuals is the struggle against the forms of subjection, such as regulated forms of identity and sexuality, which contemporary society prescribes and tolerates (McNay, 1992:86).

> "The political, ethical, social, philosophical problem of our day is not to try to liberate the individual from the state, and from the state's institutions, but to liberate us both from the state and from the type of individualization which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us for several decades" (Foucault, 1983:216).

This statement is of particular importance to the feminist argument since it demonstrates that the Foucauldian concept of autonomy is not merely a descriptive category, but is principally connected to political resistance or opposition in that certain modes of individual behaviour can be constructed to counter the homogenizing tendencies of modern life (McNay, 1992:87). Foucault (1980a:81-4) argues that the discourses and experiences of subordinate and marginalized groups – such as those belonging to people undergoing psychiatric treatment, homosexuals, women and children – have never been fully articulated and have thus been denied official status. He refers to such discourses as

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'subjugated knowledges' and sees the methodology of genealogy as having the potential to tactically reverse these discourses and to activate them into a resistant counterpower.

To be modern is, for Foucault, to take oneself as an "object of complex and difficult elaboration", like a work of art (Foucault, 1984c:350-351). He however warns against the endless examination of one's psyche, which Foucault sees as a dominant characteristic of modern society. He argues that practices such as psychoanalysis do not lead to greater self-knowledge, but rather is the result of a forgotten coercion. These practices are modern systems aimed at normalizing thoughts and actions into a homogeneous mold of social acceptability. Foucault thus views some modern practices of individualization as a smokescreen for normalizing tendencies of modern technologies of power. What is needed is not conformity to a mold, but rather the development of a new form of subjectivity, based on a concept of autonomy as freedom.

The theme of liberty can also be seen in Cassirer (1955:9) who describes the emancipatory kernel of the Enlightenment project thus: "[m]an is not simply subject to the necessity of nature; he can and should style his identity as a free agent." Drawing on the classical Weberian distinction between instrumental and substantive reason[51], Horkheimer (1947:3, 21) argues that the emancipatory aims of the Enlightenment become blocked and deformed when society is predominantly organized around instrumental reason. Foucault similarly regards discourses of universal reason as indissolubly linked to the rationalization of society and objects to this since he argues that the relationship between rationalization and excesses of political power is self-evident (Foucault, 1983:210). The object of feminist critique is thus rightly this deformed image of freedom and autonomy, and this has inspired the formulation of an alternative feminist ethics grounded in naturalized ideas of dependency and 'mother-love'. As discussed, the tendency to naturalizing the female mothering capacity is however problematic and tends

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[51] Weber distinguished between functional and substantive rationality. Horkheimer developed a distinction that resembles that of Weber in the form of instrumental and substantive rationality, where "instrumental reason is interested only in determining the means to a goal, without reasoning about ends in themselves" (Berendzen, 2009), whereas substantive rationality is characterized by the concept of the end in itself (Lohmann, 1993:389). La Capra (2001:177) further argues that substantive rationality also allows for emotional responses to be taken into account and rejects a limited technical rationality dominant in modern discourse.

to perpetuate, rather than mitigate, concepts of masculine autonomy and feminine dependence. In a collection of essays, *Women and Moral Theory*, published in 1987 (edited by Kittay & Meyers), various authors attempted to reformulate the relation between feminism and autonomy and, in the process, shifted feminist moral theory away from a feminine ethics based primarily on the mothering role.

One of these essays in the section on *Autonomy: Self and Other*, titled 'The Importance of Autonomy', written by Thomas Hill (1987:129), argues that the right to autonomy and the need for compassion, as expressed by Gilligan, are not incompatible. Hill concedes that Gilligan's critique of autonomy as an ideal specific to a dominant group that serves to reinforce established patterns of oppression is undoubtedly correct on many points. He however contends that this particular feminist critique is too undifferentiated and therefore results in a blanket rejection of the concept of autonomy. Feminists thus end up rejecting many fundamental elements implied in the notion of autonomy that may be important for moral theory and may be interpreted as compatible with the concept of compassion and the recognition of one's dependencies. Hill (1987:134) identifies three specific points embedded in the concept of autonomy that could be salvaged by feminists:

1. Autonomy as impartiality in the review and justification of moral principles and values.
2. Autonomy as a right to make certain personal decisions.
3. Autonomy as a goal for personal development.

These three points will be discussed in turn. In relation to the first point, autonomy as impartiality, Hill (1995:44-45) argues that it is important to understand two points in Kant's position. First, autonomy means considering a moral question from a position of temporary detachment from the specific desires and dislikes one might have. Second, autonomy is the ideal feature of a person in the role of moral legislator. The first point entails that a person, when debating moral principles and values, should not be influenced by blind adherence to tradition or authority, by threats or bribes, unreflective impulse, or unquestioned patterns of thought. Crucially, a person in such a position should strive not

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to give special weight to his particular preferences and personal attachments. Kant (2008:101) refers to it as "abstraction from personal differences" and Rawls (1971:136) describes it as choosing "behind a veil of ignorance". At the basic level of deliberation about principles, morality requires an impartial regard for everyone, meaning that a moral legislator cannot favour a principle based on the fact that it would benefit those closest to him, for instance, his family or his country.

The second point entails a very important qualification. Even though Kant views autonomy as impartiality as part of an ideal form of moral legislation, it is however not a recommended way of life. Hill (1995:45) argues that the legislative ideal is often mistakenly intermingled with the idea that a person should constantly strive to act on impartial principles, ignoring distinguishing features of individuals and specific situations, even when facing moral choices in daily life. Hill argues that this does not follow. In fact, living life focused on abstract, impartial principles seems to be the opposite of what autonomous moral legislators would recommend. For instance, even when reasoning from a position of impartiality, there are valid moral reasons for respecting principles such as "be compassionate" and "take responsibility, within limits, for your family, your country and yourself". The moral life is far from a mathematical puzzle and moral problems should be conceived with sensitivity with the aim of finding a "caring solution" (Hill, 1995:46).

Hill thus contends that these two definitions of impartiality are all but interchangeable and that it is essential to distinguish between them: while the latter is problematic in that it may contradict moral imperatives to be compassionate, the former does not necessarily conflict with the demand for compassion. Impartiality in determining moral principles need not imply that one should act cool, detached and calculating. It is however important to incorporate impartiality into morality in order to transcend a morality based solely on reference to our personal needs or to those of other individuals identified essentially by relation to ourselves. Hill therefore concludes that Kant's thesis that the individual must strive to remain impartial in the review and justification of moral principles is still fundamental to the establishment of any form of contemporary ethics.

In relation to the second point on autonomy and rights, Hill argues that all individuals can claim the right to autonomy and this implies that everyone should respect one another's freedom to deliberate and act on their moral problems. Accordingly, "it is a right to make otherwise morally permissible decisions about matters deeply affecting one's own life without interference by controlling threats or bribes, manipulations, and wilful distortion of relevant information" (Hill, 19987:134). This right to autonomy is of course not unlimited and unreciprocated. Morality does require that the personal decisions of individuals should be consistent with other basic moral principles and that individuals should be cognizant of the corresponding liberties of other individuals. Even though this principle of non-interference may indeed constrain the concept of compassion, it does not imply that self-sufficiency, independence and separation from others are goals worth pursuing. This principle also does not espouse rational decision-making as intrinsically valuable and attempts to safeguard the opportunity to make choices without interference from others on grounds that they are deemed not rational or wise.

Finally, Hill argues that the idea of autonomy should be understood as a goal of self-development. Autonomy thus implies that individuals should be self-governing in the sense that their responses to problems are not dictated by forces "beyond or behind his self" (Wolf, 2005:261). As Hill puts it: "[i]deally autonomous, or self governing, moral agents would respond to the real facts of the situation they face, not to a perception distorted by morally irrelevant needs and prejudices" (Hill, 1987:137). Hill suggests that, once autonomy is properly understood as a goal of self-fulfilment, it will be seen as a morally worthy and important goal, in keeping with a care perspective.

Even though it might seem ironic that I have used the work of two male philosophers, Michel Foucault and Thomas Hill, to critique the feminist perspective on autonomy, they are instructive since both reject the side of Kant's definition of autonomy that emphasizes the need for the individual to act on abstract, impartial moral principles regardless of the network of relations and dependencies in which she may exist. However, unlike some feminists who, having criticized this aspect of autonomy, reject the concept altogether, both thinkers attempt to retain the original emancipatory aim of the Enlightenment notion

of autonomy. For Hill the aim of autonomy is for the individual to achieve a positive state of liberty through the development of a critical understanding of the motivations of his thoughts and actions. This contrasts with negative conceptions of autonomy according to which freedom appears merely as the absence of constraining or inhibiting relations.

Foucault (1984:38) reasons that for Kant, autonomy and enlightenment consisted partly in the 'mature' use of reason and states that the Enlightenment was "the moment when humanity is going to put its own reason to use, without subjecting itself to any authority." Foucault attempts to salvage the notion of the mature and autonomous use of reason (McNay, 1992:102-4). He specifically attempts to retain a concept of autonomy that can reconcile a decisive interrogation of the socio-cultural and emotional determinants of an individual with a capacity for critical independence or self-governance. The purpose of recognizing such a form of autonomy is not to strive for a state of impersonal moral transcendence, but rather to refuse to submit to the homogenizing 'government of individualisation' (McNay, 1992:105). Foucault believes that this can be achieved by constantly questioning what appears to be the natural and inevitable in one's own identity:

> "We must try to proceed with the analysis of ourselves as beings who are historically determined, to a certain extent, by the Enlightenment. Such an analysis implies a series of historical inquiries that are as precise as possible; and these inquiries will not be oriented retrospectively towards the 'essential kernel of rationality' that can be found in the Enlightenment…they will be oriented toward the 'contemporary limits of the necessary,' that is, toward what is not or is no longer indispensable for the constitution of ourselves as autonomous subjects" (Foucault, 1984b:43)

Like Foucault, Susan Wolf, radically abandons all procedural accounts of autonomy[52] but does so in favour of a substantive account. She draws on the argument that procedural

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[52] These are so-called content-neutral accounts of autonomy that view actions as autonomous if they have been informed by critical reflection. They represent the majority of accounts of personal autonomy. Procedural accounts define neutral criteria by which actions can be judged to be autonomous or not (McCormick 2005).

accounts fail to capture autonomous motivation and action and are inadequate to rule out actions and agents that are not truly autonomous. Wolf (1990:124) posits constraints on what can be considered autonomous and argues that agents should have "normative competence", or the capacity to identify right from wrong, in order to qualify as autonomous beings. Moral responsibility requires a person to have the upbringing and mindset conducive to reason and rational deliberation. According to her view, agents act freely only if they have the ability to choose the 'True and the Good'. If an agent rejects the Good, he chose freely only if he could have acted differently (O'Connor, 2011).

Wolf (2005:261) opposes what she refers to as the "Autonomy View" of responsibility, which implies that persons are responsible only insofar as they are autonomous, and whenever their actions are therefore determined by external forces, persons cannot be held accountable. Her first argument against such an assertion is that, if responsibility does require autonomy, nobody will be held responsible for anything, since we are never truly self-governed but rather largely determined by external forces, whether they be bad or good. Essentially, nobody is freely able to choose their own character, their formative environment and their influences. The self is relational and constituted by social influences as well as through personal deliberation and assessment of personal values.

Wolf then questions why being an autonomous agent – if one accepts that it is indeed possible to be autonomous – should make one a responsible agent. She bases her objection on what she calls the "real self view", which entails that a subset of an agent's motivating psychological elements are privileged for conferring self-determination and responsibility. Accordingly, when this subset of elements determines one's actions, they are believed to be truly one's own and one can thus be held responsible for them. This subset, or the 'real self', has been variably defined, as amongst others, the will, higher-order desires, or one's evaluational system (Faraci & Shoemaker, 2010:320). All these can be equated with one's value system. Wolf however argues that values are embedded in people from childhood and they are therefore powerless to control them. She postulates that a person can only be held responsible for his actions if he can govern his actions with his desires, govern his desires with his real self, and only if his real self is sane. She

therefore argues that many historical immoralists, like the Nazis, were not fully responsible since they were "normatively insane" due to either "deprived childhoods" or "misguided societies". She concludes that their actions "are governed by mistaken conceptions of value that the agents in question cannot help but have" (Wolf, 2003:383). She argues that agents choose freely only if they could have acted differently.

Wolf develops her argument further by addressing what she sees as a false dichotomy between determinism and free will. She argues that, if being autonomous means being undetermined by external forces, it is unclear why an undetermined self should be more responsible than a determined self. She believes that there is no explanation as to why an agent is deemed more responsible for actions that are governed by his values than he is for actions that are determined by his non-valued desires, since values are no more within his control and are no more products of his choice than the mere desires for which he is recognized not to be responsible. Wolf (2005:262) explains it so:

> "But if being autonomous means that instead of one's self being a product of external forces, one's self is a spontaneous, undetermined entity, it is hard to see why one should be any more responsible for the decisions, choices, and actions that flow out of *that*. One is in no more control of a self that has arisen out of nothing than one is if one's self has arisen out of something. An undetermined self seems no more responsible than a determined self."

Wolf (2005:266) concludes that independence from external forces – which she deems the metaphysical property of autonomy – is not necessary for the kind of freedom required by responsibility. The independence that is needed is thus not independence from the world, but rather independence from forces that prevent us from choosing how to live in light of a sufficient appreciation of the world. We therefore need freedom within reason. "If values are formed, or revised or affirmed, in accordance with their reason and truth, then they have exercised…at least all the powers of self-determination that our status as responsible agents requires" (Wolf, 2005: 270). Wolf thus believes that we need not be metaphysically responsible for ourselves or be absolutely self-originating

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in order to be morally responsible and capable of changing ourselves according to our moral reasoning.

Wolf has been criticized for misrepresenting the 'Autonomy View' and for postulating an untenable theory (Ward, 1997:161). Wolf's view has also been criticized for being too constricting since it fails to allow for rehabilitation of an agent that was subjected to a limiting or oppressive upbringing, which, consequently, precludes a person from exercising autonomy (Szymanski, 2011:3). Ward also claims that far from introducing a new moral theory, Wolf merely draws on existing reasoning and therefore fails to make an original contribution to the autonomy debate.

Foucault has also been criticized – not least by feminists – for failing to make definitive statements about the normative basis of his ethics. McNay (1992:117) argues that because Foucault engages in the rhetoric of political engagement without grounding it in a coherent normative standpoint, a series of contradictions can be found in his work that make it difficult for feminists to draw on in their project to reconcile the idea of difference within an explicit normative and political framework. Although the idea of difference is therefore important and acknowledged in Foucault's work, it's uncertain normative foundation minimizes its application in a wider feminist critique of autonomy.

More recent work has however disputed this criticism levelled at Foucault. Postmodern feminists draw on the work of Lyotard, who insists that the field of the social is heterogeneous and non-totalizable and that criticism cannot be grounded by foundationalist philosophical metanarratives. Lyotard rejects the legitimacy of large normative theories of justice and social-theoretical accounts of macrostructures that institutionalize inequality. This means that social theories that make use of general categories like gender, race and class are too reductive to capture the complexity of social identities and should be abandoned (Fraser & Nicholson, 1988:378-389). "…[I]n the postmodern era legitimation becomes plural, local and immanent. In this era, there will necessarily be many discourses of legitimation dispersed among the plurality of first-order discursive practices" (Fraser & Nicholson, 1988:377). Foucault's refusal to provide

a normative theory for his social and political enquiry thus becomes a strength for the postmodern approach. There is ongoing and intense debate about whether Foucault could be classified as a postmodern thinker, but this is beyond the scope of this work and I will merely refer to it in passing and note the peril of attempting to classify Foucault in a neat philosophical mold.

In summary then, the feminist project moved from a complete rejection of the Enlightenment notion of normative ideals, such as autonomy, to the realization that these ideals cannot be abandoned altogether. In whatever direction feminist alternatives to Enlightenment projects may develop, it is not clear how they could completely abandon certain Enlightenment assumptions, specifically the belief in the value and desirability of social progress and the idea that improved theories about ourselves and the world around us will contribute to that progress (Harding, 1990:99). Feminists are united in their opinion that Enlightenment values are problematic in so far as they implicitly rely on and legitimize a privileged, male perspective. Yet on the whole, if feminism is to retain a moral force to its declaration that the subordination of women is unjust, then some form of legislative rationality that enables distinctions between progressive and oppressive actions, such as proposed by the Enlightenment, must be retained (McNay, 1992:129).

Having now given a very cursory view of the feminist critique of autonomy, that by no means claims to be comprehensive or definitive, yet hopefully served the purpose of sketching the broad outlines of the argument, I now move on to a brief assessment of the criticism that communitarianism has levelled at the concept of autonomy. I specifically explore communitarianism as it overlaps with and augments the feminist argument and also as it leads into the African critique of autonomy.

5.3 Communitarianism

> "By exalting autonomy to the degree we do, we systematically slight the very young, the severely ill or disabled, the frail elderly, as well as those who care for them – and impair their own ability to be free and independent in so doing"

(Glendon, 1991:74).

Communitarianism is an ideology that emphasizes the responsibility of the individual towards the community[53] and stresses the role of the community in defining and shaping the individual. It thus recognizes both individual dignity and the social dimensions of human existence. Communitarians believe that the institutions of civil society maintain individual liberty by teaching citizens respect for the self and others, fostering a sense of personal and civic responsibility and developing the skills and habits not only of self-governance, but also of service to others (Bellah, 1995).

Modern forms of communitarianism started in Anglo-American academia in response to Johan Rawls' book *A Theory of Justice* that was published to critical acclaim in 1971. Inspired by the philosophies of Aristotle and Hegel, communitarians levelled criticism at Rawls' conception of liberalism, most notably the idea that the main function of government was to secure and justly distribute the liberty and economic resources to individuals in order to enable them to lead freely chosen lives. Benhabib furthered the communitarian argument by claiming that liberalism has destroyed a historic sense of community and belonging. "The liberal conception of historical progress is illusionary and that history has brought with it irreversible losses such as a coherent sense of community and a moral vocabulary which was part of a shared social universe" (Benhabib, 1992:69).

The most notable Western philosophers that have been labelled communitarians, namely Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer [54], place at the

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[53] Communitarians use the word 'community' in the same manner that I use it in this dissertation, namely to refer to a shared territory, shared social characteristics (e.g. ethnicity), or a local social system (Crow & Allen, 1994:3-4). It is important to note that community itself has a symbolic dimension. Cohen (1985:19) argues that this dimension does not exist as a type of consensus of sentiment; rather, it exists as something for people "to think with". The symbols of community can therefore be seen as mental constructs: "they provide people with the means to make meaning". These mental constructs are important since the individual grows up with them and therefore makes meaning of the world around him, through them.

[54] All these authors are viewed to have communitarian tendencies although they never themselves specifically identified with the communitarian ideology. Their most notable works are: Alasdair MacIntyre – *After Virtue*; Michael Sandel – *Liberalism and the Limits of Justice*; Charles Taylor – *Sources of the Self*; Michael Walzer – *Spheres of Justice*.

heart of their criticism of liberalism the devaluation of community. Three general claims can be deduced from their work: methodological claims about the importance of tradition and the social context of moral and political reasoning; ontological or metaphysical claims about the social nature of the self; and normative claims about the value of the community (Bell, 2010). Each will be briefly discussed in turn.

The first methodological claim centres on the opposition between universalism and particularism. It contests the universal pretensions of liberal theory and claims that, since these theories are abstracted from particular social contexts, they are fated to be irrelevant and incoherent. MacIntyre and Taylor both reject Rawls' 'original position' from which he claims the human condition can be regarded from the perspective of eternity. They argue that moral and political judgment depend on the language of reason and the interpretive framework agents use to make sense of their world as manifested in specific beliefs, practices and institutions within specific communities. Walzer develops the argument further by claiming that effective social criticism can only be derived contextually from the habits and traditions of actual people living in a specific time and place (Bell, 2010).

This idea has resonated with feminists. Benhabib (1992:11-12) for instance, seeks to develop an interactive universalism in which she envisages a universalistic moral view as situated within an ethical community. She specifically addresses the reconstitution of a community under conditions of modernity and differentiates between an "integrationist" and "participationist" communitarianism. "Integrationists" attempt to reconstitute community by means of regrouping and reclaiming a united vision of fundamental values and principles, whereas the "participationists" view community as emerging from common action, engagement and debate in the civic and public spaces in democratic societies. Benhabib rejects an "integrationist" view on the grounds that it is incompatible with modern values such as autonomy, pluralism, reflexivity and tolerance, and develops a "participationist" account that encourages the qualities of "civic friendship and solidarity". She claims that these qualities serve to mediate between the standpoints of the "generalized" and the "concrete others" by teaching us to understand the standpoint of

"collective concrete others". This understanding can only develop in a public political sphere as found in liberal democracy. The underlying justification for these arguments thus does not seem to be a rejection of liberalism as such, but rather the rejection of the foundation of this theory that seem to be exclusively Western and liberal.

The ideal of liberal democracy has of course not been universally realized and factors such as ethnic warfare, crippling poverty, environmental degradation and pervasive corruption pose serious obstacles to the implementation of liberalism, especially in Africa. Recent civilian unrest and political turmoil in many African and Middle Eastern countries such as Egypt, Tunisia, Libya, Morocco, Algeria, Syria, Jordan, Yemen and Sudan, have highlighted the inability of liberal democracy to penetrate the autocratic stronghold of political dictatorship in these regions.

The second metaphysical claim about the nature of the self argues that liberalism, deriving from Rawls but also more importantly from Robert Nozick, promotes an overly individualistic conception of the self. This individualistic conception focuses on the overarching interest of the individual to shape, pursue and revise his own life plans at the expense of the understanding that the self is constituted through various communal attachments that can only be neglected at great cost, if at all. Charles Taylor specifically attacks the atomistic view of the self [55] that is perhaps best epitomized by the poem of Walt Whitman (1967:37-39), *Song of Myself*:

> "I celebrate myself, and sing myself…
> Trippers and askers surround me,
> People I meet, the effect upon me of an early life or the ward and city I live
> in, or the nation,
> The latest dates, discoveries, inventions, societies, authors old an new,
> My dinner, dress, associates, looks, compliments, dues,
> The real or fancied indifference of some man or woman I love,
> The sickness of one of my folks or of myself, or ill-doing or loss or lack of

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[55] Atomism is the view that the self is, like an atom, self-contained and independent of other atoms. The self is thus an autonomous individual with an independent core (Velasquez, 1992:99).

money, or depressions or exaltations,

Battles, the horrors of franticidal war, the fever of doubtful news, the fitful

events;

These come to me days and nights and go from me again,

But they are not the Me myself.

Apart from the pulling and hauling stands what I am,

Stands amused, complacent, compassionating idle, unitary,

Looks down, is erect, or bends an arm on an impalpable certain rest,

Looking down with side-curved head curious what will come next

Both in and out of the game and watching and wondering at it"

Taylor (1985:190) argues for a return to the Aristotelian view that man is a social animal, and indeed a political animal, because he is not self-sufficient alone and, in an important sense, is not self-sufficient outside a polis. Aristotle (2007:3) defined human nature contextually:

"[h]ence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either a bad man or above humanity…The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole. But he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god…"

It has been challenging to relate to the ancient Greek view in modern times and Colin Morris (1972:2) argues that this is due to a fundamental difference in the starting points of Hellenistic and modern philosophy. He claims that we fail to understand the Greek teaching largely because they had no equivalent to our concept 'person'. Their vocabulary was however rich in words expressing the community of being. Morris claims that even though we tend to view Western individualism as representative of the common experience of humanity, one might come to understand it as an eccentricity among cultures when one embraces a wider view of the world.

Communitarians have also drawn on the work of Heidegger and Wittgenstein to argue for the recognition of individuals as embodied agents in the world. Consequently, individuals have to acknowledge that large parts of human existence are governed by unchosen routines and habits embedded in our socio-political background and that our actions are not primarily informed by life plans that have been conceived autonomously. The individual is thus party constituted by communal attachment. Feminists, such as Frazer and Lacey (1993:53-60), have explored this line of reasoning and have thus argued that the mother-child relationship is one such constitutive feature that should be acknowledged in order to develop a sensitive understanding of women's special experiences.

The importance of the conception of the nature of the self comes into play when conflict arises between the interest of the individual and that of the wider community. Communitarians argue that, although individuals have some claims to autonomy and some interest in achieving their freely chosen life goals, these do not necessarily supersede or outweigh that of the community. It however remains unclear how these conflicts are to be practically managed and it seems as if much will depend on the concrete realities, cultural outlooks and social practices of particular communities.

The third claim sets the community as a normative ideal that emphasizes social responsibility and promotes policies that can stem the pervasive erosion of communal life in an increasingly fragmented society. Communitarians argue that it is vital to experience our lives as inextricably bound to the communities that constitute our identity and set out to identify, protect and promote valued forms of community. Three types of communities are traditionally invoked: communities of place, based on geographic location; communities of memory, that can also involve strangers who share a morally-significant history; and psychological communities where personal interaction is governed by values of trust, cooperation and altruism[56] (Bell, 2010).

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[56] The first form of 'community' conforms to the manner in which I use the term; the second two forms of 'community' however, are similar to my use of the term 'group'.

Drawing on the three claims of communitarianism against liberalism, one can thus explore the implications of communitarianism for Western conceptions of autonomy. The basis for such a critique can be summarized as a rejection of the notion of autonomy as independence. This notion, which I would like to term the 'myth of the independent self', will now be explored further.

5.3.1 Myth of the independent self

One of the most influential and provocative books espousing a goal of indepedence and individualism has been a philosophical novel penned by Ayn Rand, titled *Atlas Shrugged*. The novel explores a dystopian [57] United States where leading innovators, or 'people of the mind', refuse to be further exploited by society. Society starts to collapse as the government increasingly takes control of all industry. Society's most productive citizens go on strike – to stop the motor of the world – and by disappearing from society they seek to demontsrate that a world in which the individual is not free to create, is doomed. The message is that civilization cannot exist where people are slaves to society and government.

The novel's title refers to Atlas, the Titan of Greek mythology, who carries the weight of the world on his shoulders. The title is significant as it reflects the idea that the world will collapse when those that are holding it up through their own effort, walk away. This idea is expressed in the book when the question is raised as to what sort of advice could be given to Atlas upon seeing that "the greater [the titan's] effort the heavier the world bore down on his shoulders". The only feasible answer that is offered is "to shrug" (Rand, 1992:455).

Rand self-identifies as an 'objectivist', her own philosophical term that derives from the idea that human knowledge and values are objective: they are not created by thoughts, but are determined by the nature of reality, to be discovered by the mind (Rand, 1967:14).

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[57] The term 'dystopian' reflects the idea of a society in a repressive and controlled state, often under the guise of being utopian. These societies have different kinds of repressive social control systems and feature various forms of active and passive coercion. It can also be termed anti-utopian.

She views rationality as the primary virtue in objectivist ethics and argues for the recognition and acceptance of reason as the only source of knowledge, judge of values and guide to action. According to her view, all the principal virtues are applications to the role of reason as man's basic tool of survival: rationality, honesty, independence, integrity, productiveness, and pride. Rand argues that these values represent the view that the individual's primary moral obligation is to achieve his own well-being – it is for his life and his self-interest that an individual ought to adhere to a moral code – and proposes a form of rational egoism. "My philosophy, in essence, is the concept of man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute" (Rand, 1992:1170-1171).

Rand rejects altruism and argues that coerced self-sacrifice will necessarily cause any society to self-destruct. The essence of her objectivist ethics is perhaps best summarised by this inscription made by the protagonist of the story: "I swear by my life and my love of it that I will never live for the sake of another man, nor ask another man to live for mine" (Rand, 1992:733). The novel expresses many facets of her philosophy, such as the advocacy of reason, individualism, the market economy, and the failure of government coercion. Even though Rand's philosophy has been met with ambivalence in academic circles, it has found massive appeal among young people in their formative years and is therefore deemed important as an influential moral text.

Ralph Emerson (1983:261), an American teacher of autonomy as independence, reflects a similar distrust of society and sets it up as the enemy of the individual in his essay *Self-Reliance*: "[s]ociety everywhere is in conspiracy against the manhood of every one of its members. Society is a joint-stock company, in which the members agree, for the better securing of his bread to each shareholder, to surrender the liberty and culture of the eater. The virtue in most request is conformity. Self-reliance is its aversion. It loves not realities and creators, but names and customs. Whoso would be a man must be a nonconformist."

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In her book Rand distinguishes between three classes of people: the looters, the moochers and the non-looters. Looters are people who confiscate the earnings of others by force and this category includes government officials who demand high taxes, big labour, government ownership and regulation. Moochers demand the earnings of others for the sake of the needy and those that are unable to earn anything themselves. Even though moochers depend on the non-looters, they are jealous and resentful of them, and try to destroy the productive through guilt and appeals to the 'moral right'. The moochers are viewed as equally destructive as the looters. The non-looters are the talented and productive members of society that practically keep the whole society afloat through their efforts and are in constant conflict with the looters and moochers.

Rand proposes a clear, simplistic division between the looters and non-looters with the looters always in the wrong and the non-looters always in the right. This is a false dichotomy that neglects the complexity of the human condition. The fierce arguments for independence put forward by Rand and Emerson seem to suggest that the individual single-handedly achieves a state of productivity, through the mere application of his or her will, and neglects the importance of the role of society in shaping and constituting the individual. It fails to acknowledge the role of biological endowment, education, social and family environment, public health systems and opportunities for progress imbedded in a societal system, that allow for human flourishing.

The argument made by Gaylin and Jennings (2003:34) for understanding the role of human biology in development is instructive here. Unlike most mammals, human beings are born biologically premature and many neurological and physical functions and all the behavioural capacities exist at birth in potential form only. As has been sadly demonstrated by cases of severe parental neglect, these potential capacities only develop fully when they are molded by a social environment. "We are shaped by God in our potential and reshaped by human choice – by nature and by nurture. Each human being is constructed in such a way that as an infant it is born incomplete, awaiting the impact of the parent-controlled environment to determine whether it will develop into a fully mature human being or something less (Gaylin & Jennings, 2003:92).

Unlike Rand, who rejects all forms of altruism, Gaylin and Jennings (2003:99-100) argue that human beings have "built-in biological directives for altruism and social accommodation." They argue that the long period of dependence, this uniquely human feature, helps to create a bond between the infant and her caring adults, but also creates the opportunity to imbue the infant with a value system. They further contend that conditions of reasonable care will allow the natural attributes of altruism and social accommodation to develop and shape moral conduct. The purpose of these directives is to limit choice and they are controlled through the social emotions of guilt, shame, and pride and the primal emotion of fear. Like most of human nature they can however be enhanced or destoyed by nurture and culture.

Attitudes that determine adult behaviour are shaped during infancy and it is thus vital to understand the moral significance of dependence. Dependence is crucial for moral development since it creates the opportunity to establish values, allows the emergence of conscience, restrains selfishness and encourages beneficence. Gaylin and Jennings believe that dependence is the necessary constraint of a dominant autonomy. "It is a period in which we shape future adult behaviour, by shackling autonomy with internal moral constraints" (Gaylin & Jennings, 2003:104).

Gaylin & Jennings (2003:106) argue that various other internal and external constraints are biologically placed on autonomy. They list the following internal limits: spinal reflexes; internal drives (hunger, thirst, libido, internal taboos and directives); incest aversion; care of infants; the primitive emotions of fear and rage; and the social emotions (guilt, shame, pride, and conscience). In their view the external limits to autonomy include appeals to rationality; appeals to conscience and the social emotions; and appeals to the primal emotion of fear. They however blame modern society for promoting ideas of self-mastery and critical detachment at the expense of the social emotions. Modern society should thus not be surprised that the self that is emerging in this self-involved culture is an isolated self that focuses on self-serving concepts such as 'fulfilment', 'experience', 'expression', and 'being true to one's self'. This focus on the independent self fails to understand that the self is most fully realised in relationships and within a

culture that encourages a readiness for commitment and involvement (Gaylin & Jennings, 2003:129). There is thus a need to revalue the concepts of reciprocity, mutuality and interdependence. As Gaylin & Jennings (2003:35) state: "there is a big difference between no one being in charge of you – 'anomia' – and being in charge of yourself – 'autonomia'.

A child moves from a state of complete dependence and immaturity towards increasing independence and maturity within the constraints of social structures that support and mold human development. An adult never attains a state of complete independence since the social order is not something from which one can be autonomous. The social order can thus be viewed as a precondition for autonomy. This does not imply that the developing adult must not strive to attain progressive independence, but rather that this process is never absolute or complete, but ever constrained within a wider framework. Rand's non-looters can thus not withdraw from society and live in a mythical world of complete independence and self-mastery, since they are irrevocably tethered to the society that constituted them in the first place.

Integral to any human society is the entity of language. Language is necessarily social and contextual and concepts such as meaning, values and 'the good' can only be defined within a social relationship. It is therefore nonsensical to believe that an individual can unilaterally define his or her own good. Rand's view abstracts moral will and choice from all contexts of value located outside the self. This abstraction is flawed since it deprives both the will and choice from everything that gives meaning to it (Gaylin & Jennings, 2003:228).

As reflected in Rand's exposition of objectivist rational ethics, rationality is viewed as the principal virtue. This idea resonates with Enlightenment thought that framed ethics in terms of reason and rationality. This leads me to the second myth that I would like to address, namely the myth of the rational self.

5.3.2 Myth of the rational self

> "I do not understand my own actions. For I do not do what I want, but do the very thing I hate…I can will what is right, but I cannot do it" (Saint Paul, Romans 7:13).

As expressed so clearly by Saint Paul, there does not seem to exist a direct relationship between knowing the good and doing the good. This is evident from everyday human behaviour, such as healthcare workers who smoke, HIV-positive patients who do not use condoms, diabetic patients who do not stick to a low-glucose diet, cardiac patients who fail to exercise, to name but a few. If knowing the good cannot ensure that we will do the good, we might not be as self-directed as we would like to think we are.

We do however act as if the ability to reason is indeed the same as the ability to behave reasonably. Many healthcare campaigns are aimed at providing information about healthy lifestyles with the assumption that enough information will eventually lead to the desired lifestyle changes. The failure of such thinking has been brought out especially starkly in the HIV prevention campaigns where the ABC (abstinence, be faithful, condomise) message has failed to halt new infections and allowed the epidemic to spin out of control. The campaign is based on the assumption that if people understand the ways in which HIV is transmitted, they will adapt their behaviour to align with this knowledge. Alas, this information does not seem to have impacted on behaviour at all.

This is not a uniquely South African phenomenon and evidence of similar educational failures abound. ABC messaging has completely failed in neighbouring countries such as Botswana as well (Su, 2010:93). It is also not a phenomenon restricted to infectious diseaeses, such as HIV. The *New York Times* (Kolata, 1995) reported a story titled *Advice Unheeded on Averting Birth Defects* that laments the fact that despite educational efforts in South Carolina, women were not taking folic acid, a simple B vitamin that has been proven to prevent the development of neural tube defects, one of the most common and devastating birth defects.

There is a wealth of psychological literature devoted to the analysis of the complex nature and motivators of action and I will not attempt to explore those arguments within these limted pages. I will however briefly mention a couple of points that might shed some light on this complexity. Freud postulated a structural theory of the mind in which the mind is divided into three distinct, yet interrelating, agencies: the id (the wholly unconscious domain consisting of the primary drives and suppressed material), the ego (partly conscious and containing the defence mechanisms and the capacity to calculate, reason and plan) and the super-ego (partly conscious and consisting of the conscience and beyond that, unconscious feeling of guilt). Freud believed that we live in the world of our own perception and that we are not always aware of our own motivations. It seems as if a large part of our behaviour that we consider rational is actually motivated by unconscious desires and needs that we subsequently justify by logical rationalization (Freud, 1960). Freud thus ascribes to a strong form of determinism.

Two of the major influences in psychology, behaviourism and psychoanalysis, both espouse a form of modified determinism. Both view behaviour as a complex endpoint resulting from the interaction between forces and counterforces that pattern the individual in such a way as to produce an inevitable result. This follows Freud's thinking that human choice is delimited by the sense of reality that each child constructs out of his early childhood experiences. A child's developmental past and his life experiences will shape the way in which he interprets the present as an adult and will therefore predispose him to a limited number of choices (Thornton, 2010). The basic conditions that determine adult behaviour are therefore laid down early in life by a combination of parents and culture.

Developmental psychologists do however not ascribe to unconditional determinism. Although they do hold that present behaviour is causally related to the past, their treatment methodologies are dependent on the existence of a responsible agent. They seem to have compromised by suggesting that, although behaviour might not be changeable through appeals to reason and rational discourse alone, personal behaviour might not operate entirely outside the realm of rational control (Gaylin & Jennings,

2003:203). This compromise is important since it introduces the possibility of responsibility and accountability. If humans are not entirely determined by childhood experiences and instinctual fixation, they are able to make decisions and be held accountable for them. This view, however, does not rely on a belief in rationality alone, but allows for other influences that can determine behaviour, especially the emotions. The human condition is thus unique since humans are expected to make responsible decisions despite the fact that rationality is mitigated by emotion. It is however crucial that the notions of culpability and responsibility be preserved and cherished, even when sociological and psychological explanations for human conduct abound (Gaylin & Jennings, 2003:211).

As was discussed in the feminist critique of rationality, the emotions are often presented as the opposite of rationality. In the conventional philosophical hierarchy reason is believed to represent the 'true' or 'higher' self and the emotions the 'lower' self. Gaylin and Jennings (2003:125) however argue that if this were the case, then human beings, with their extraordinary rationality, would need *fewer* emotions than other animals. It however seems as if the exact opposite is true: humans seem to have a repertoire of emotions that is unequalled in the animal kingdom. They go on to postulate that fine-tuned feelings should not be viewed as the antagonists of reason, but rather as the necessary by-products of reason (Gaylin & Jennings, 2003:181).

Gaylin and Jennings specifically focus on what they term the social emotions of guilt and shame, and argue that they do not serve just to punish, but also to shape personhood through the development of the most refined and elegant qualities of human potential – generocity, service, self-sacrifice, unselfishness, love and duty – and support our ability to feel remorse. The social emotions correspond to Freud's ego-ideal, an internalized image of an ideal self through which the person judges her own behaviour (Freud, 1959:52). As such, they are essential to the maintenance of civilized society. As the building blocks of conscience, the core of the moral animal, they encourage social living by providing internal, self-imposed restraints. A society that encourages the development of internal constraints on behaviour, minimizes the need for external ones, thus allowing

for a *freer* society and *freer* individuals (Gaylin & Jennings, 2003:129). Acknowledging the importance of the emotions and allowing them a rightful place in the construction of both the individual and society, in no way implies that rationality does not have a place in decision-making or that accountability cannot be enforced.

The importance of exploring and critiquing the myths of individual independence and rationality lies in the opportunity that it presents to negotiate, borrowing from Rousseau, a new social contract. By refocusing attention away from the autonomous self, towards the imbedded self, a new contract can be conceived that, although still respecting the individual, will more aggressively support and preserve the social structures and institutions necessary to sustain and define that individual. In this way we can place the individual back into the community that sustains her.

> "If we elevate the rights of the individual too far above his duties and responsibilities to family, community, and state, we will surely destroy him. Only in human creatures is the self defined not merely by distinguishing it from others but relating it to at least some others. Our very 'humanness' is a phenomenon of engagements and attachments. We survive in a network of relationships with other human beings. Each knot of individuality is bound to the next, creating the social fabric in which personhood has true existence. The isolated individual is an illusion. If we unravel the network of social contracts, the knots disappear" (Gaylin & Jennings, 2003:211-2).

In this section I have attempted to address the myths of the independent self and the rational self by means of an appeal to the work of developmental psychologists and philosophers. The main arguments against these myths and their implications for communitarianism can be summarized as follows:

1. Human beings are born incomplete and are constructed through the interaction of nature and nurture.

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2. Human beings are obligate social animals and the species can only survive within a group[58]. It might therefore sometimes be necessary to constrain the individual to serve the common good. The individual is however not viewed as outside of or positioned against the group, since individuals and groups are inextricably linked.

3. Human beings are born 'free' in the sense that they are not solely determined by the genetic fixity that characterizes all other animals.

4. Human beings have inherent biological constraints and limits consisting of the social emotions, such as fear, shame, and guilt, that constrain antisocial behaviour.

5. Biological limits to autonomy must be socially and culturally nurtured by caring adults and societal values, since they exist in infancy in nascent form only (Gaylin & Jennings, 2003:86-7).

5.3.3 Communitarianism in East Asia

An underlying ideology of communitarianism is seen as integral to many cultures, most notably in countries in Africa and Asia. Confucianism, a predominant philosophical tradition in East Asia, views persons contextually as constructed within a society. It proposes a two-dimensional view of persons: a vertical dimension that is akin to the Western concept of personhood consisting of a rational, autonomous self; but also a horizontal dimension consisting of a relational, altruistic self (Tsai, 2001:44). A person is born as "raw material" that has to be cultivated through education to become a truly human being (Fingarette, 1972:34). This education can only occur through continuous interaction with other human beings and a person's dignity is informed by this communal participation (Tu, 1985:55). The individual is never regarded as a separate entity, but as part of a network where each person's role is defined in relation to the other. Self-actualization can thus not be achieved by the individual in isolation, but only through a process of engagement with others within the context of social roles and relationships (Tao, 1997:16).

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[58] It seems to me that the manner in which Gaylin & Jennings use the word 'group' here, can be interpreted to be similar to either my definition of 'group' or 'community'.

The boundary between the self and others is not always clearly distinct in Confucianism. The self, even though viewed as the centre of relations, is not a private self that operates within a closed system. The self is rather seen as a public-spirited self that operates within spheres of selfhood related to the family, community, country, and even the world – "a small self, encompassed by one of many greater selves" (Tsai, 2008:175). Relational personhood thus calls for respect for the person as an individual and also for respect for the person as a relational being with a family, a community and a socio-historical context (Tao, 1997:16).

Values belonging to an Asian system, based on Confucian ethical theory, emphasize the importance of family and social harmony. In fact, the family, and not the individual, is viewed as the primary social unit. One of the greatest contemporary proponents of Confucianism, Lee Kuan Yew, a senior minister from Singapore, claimed about a decade ago that Asians have "little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America" (Hirsh, 2001). Yew specifically espoused the Asian values of "thrift, hard work, filial piety and loyalty and the extended family, and, most of all, the respect for scholarship and learning."

It has been argued that the notion of a constituted self has particularly relevance and meaning for the individual in the healthcare setting. As Tsai (2008) argues: "[w]hen one is ill, frail, vulnerable, or dying, the value of one's relatedness, mutuality, and communion with others is no less and sometimes more important than one's separateness, individuality, and distinctiveness from others." Tsai specifically criticizes a Western focus on the practice of informed consent as a means of respecting patients' autonomy, of becoming bleak and detached if it does not also embody a sincere concern for patients' welfare. Too often the practice of informed consent becomes a politically correct procedure that can leave patients alienated, helpless and lonely amid a myriad of choices. The theory of Principlism that places liberal individualism and autonomy at the locus of morality, at the expense of the relational dimension of personhood, similarly fails to reflect the moral milieu satisfactorily and leads to an impoverished and anaemic morality.

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Despite the importance of these Confucian insights, many traditional Confucian values have come under attack in the last few years, especially after the international financial crisis that plunged the world in an economic recession in December 2007. Concepts such as filial piety have become almost obsolete in the information age where the children might indeed know and understand more than their elders. The demands of the global economy have also placed values such as family loyalty under pressure. Practices such as family cronyism, where people invest on the basis of familial ties and relationships rather than on expertise and financial astuteness, have been criticized as inappropriate in the context of globalisation and have mostly been abandoned in favour of Western values such as transparency (Hirsh, 2001).

Confucianism has also been accused of endorsing seemingly immoral practices, such as patriarchal values that have contributed to the subordination and suffering of women. It has also been blamed for contributing to a culture of collectivism where the individual's needs, rights and freedom are trampled on in the name of public interest. Calls have therefore been made to hold the vertical and horizontal dimension of a person in equipoise in order to protect the individual from manipulation and coercion by collectivist pressure (Tsai, 2008). Contemporary feminist theorists have attempted to reinterpret Confucianism to make it more compatible with modern-day values while maintaining commitment to central Confucian values (Chan, 2000:115-132).

It however remains to be seen if these limitations to Confucianism can be successfully overcome to allow for global application. I will therefore now turn to an evaluation of communitarian values in sub-Saharan Africa and assess whether an African critique of personhood and autonomy might hold more promise at this moment than the Asian critique.

5.4 African critique of autonomy

"Amidst gathering talk of human rights and civil society, of the celebration of autochthony[59] and authenticity, the vision of an African Renaissance arises to counter the rampant excesses of European modes of being-in-the-world" (Comaroff & Comaroff, 2001:278).

I have been intrigued by African scholarship on personhood and autonomy. There is in fact precious little talk about autonomy in such scholarship, but a wealth of information about the concept of personhood that precedes and informs the concept of autonomy. This section is thus predominantly devoted to different notions of personhood rather than explicit notions of autonomy. I consulted sources in diverse disciplines such as ethnography, anthropology, psychology and philosophy. Let me immediately start by qualifying what I mean by 'African' scholarship. By this term I merely mean scholarship from the African continent, and I will focus specifically on sub-Saharan Africa. This scholarship is not restricted to people who self-identify as 'African' or who will be described by others as belonging to an African ethnic group. Any person who has worked on the African continent and taken up the systematic study of concepts and thoughts emerging from sub-Saharan Africa are thus included in this group. I am thus concerned with African themes rather than with African philosophers.

Let me also clarify from the outset that, although I do not subscribe to a universal African form or content of thought, I do agree with Tangwa (2004:41) that "any identifiable group[60] of people, sharing a common culture and world view, necessarily shares certain ideas, convictions, attitudes, and practices that can be attributed to it as a group, without any implication of exceptionlessness at the level of the individual." Having said this, I do not attempt to construct in these pages a generic account of the African perception of personhood. As Comaroff and Comaroff (2001:268) unequivocally state: "[t]here is no

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[59] Autochthony literally means: "emerging from the soil" and is usually interpreted as: "nativeness by virtue of originating or occurring naturally". Synonyms are endemism and indigenousness (The American Heritage Dictionary).

[60] Tangwa's use if the word 'group' is similar to my use of the term 'community'.

such thing." Sharing Foucault's distrust of the grand metanarratives of modernity, I steer clear of constructing such an account.

My point of departure is thus an acknowledgement that the African continent is as diverse as it is large and that different notions of selfhood have taken root in various parts of the continent (Comaroff & Comaroff, 2001:268). I discuss a few of these notions emanating from the continent, selected with the purpose of demonstrating similarity and disparity. This for the most part represents a combination of ethnophilosophy and philosophical sagacity and distinctive folk-beliefs and world-views will be taken into account. Even though this approach has been criticized by 'professional' philosophers, I find these accounts instructive as they open a window into the world of perceptions and ideas on the African continent, and as such aid my project of constructing a critique of Western notions of autonomy and personhood. I also attempt to overcome the main criticisms against ethnophilosophy by guarding against over-generalization and by adopting a critical and reflective stance. I finally also appeal to the work of some 'professional' philosophers such as Wiredu and Metz.

By virtue of adopting an ethnophilosophical view, I necessarily rely heavily on language as a vehicle for discovering traditional thought-contents. I am well aware of the perils of subjective interpretation and selective exclusion ingrained in this approach. I am however one with Wiredu (2004:6) who explains: "…although language may not necessarily lead to the discovery of truths about reality, it can lead to the discovery of some truths about the thought of an individual or a group about reality. Language is, in fact, an essential resource in the discovery of the philosophy embedded in an oral tradition not just in a lexicographical, but also in a deep conceptual sense. It goes without saying, of course, that caution is necessary in any recourse to language in this manner."

My main aim with this discussion is to address the following three questions:
1. What are the characteristics of African conceptions of personhood?
2. Are these characteristics different from Western perspectives of personhood?

3. How can Western concepts of personhood be augmented by such African accounts?

Having thus clarified and framed my approach, I start with some of the work of two distinguished South African anthropologists, John and Jean Comaroff. The Tswana people of colonial Southern Africa, one of the largest ethnic groupings of that time, viewed personhood as an intrinsically social construct in two distinct ways. Firstly, no person could exist or be known except in relation and with reference to a large number of significant other persons; secondly, the identity of every person was forged through a series of practical activities. Selfhood was thus not ascribed but people – especially men – were self-constructed and expected to constitute their person through communal activities, ranging from the social, economic, political and religious. These were expressed metaphorically as forming alliances, acquiring 'wealth in people', or 'eating' rivals. Selfhood and social status were thus works in progress and always negotiable. Personhood referred not to a state of being, but rather to a state of becoming (Comaroff & Comaroff, 2001:268-271). Personhood was thus not a binary concept that could be either present or absent, but could be viewed in degrees in terms of how 'much' personhood one had acquired.

The position of women in Tswana culture is interesting. Even though women were officially viewed as jural minors, subject to the representation of their senior male family members, they were anything but inert or passive outside of the public eye. Like men, women were also seen as active agents in the world and could – although to a lesser extent than men – realise and complete themselves as parents, spouses, citizens and ancestors-in-the-making (Comaroff & Comaroff, 2001:270-2).

The concept of self-construction was embodied in the idea of labour, which was viewed as a "positive, relational aspect of human social activity" (Comaroff & Comaroff, 2001:270-3). Labour consisted of the accumulation of riches in family and social relations, in cattle and clients, and in position and possessions, which were all viewed as 'great work' that contributed to the common good (Comaroff & Comaroff, 2001:274).

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'Great work' allowed the individual to extend the self through bonds of interdependence and this was often manisfested through objects, such as cattle or property. These objects did not create a sense of self-sufficiency, but rather allowed the individual to exert power over the social production of reality. Social beings were perpetually constructed through this activity of labour and the product – personhood – was inseparable from this process of production. As Alverson (1978:132) noted: "[a]n individual not only produces for himself, but actually produces his entitlement to be a social person." The Tswana conception of personhood was formed in an Afro-modernist universe in which labour, the self and the social were mutually constituting.

The process of construction was however under threat from enemies and rivals. This necessitated the protection of the self, which was accomplished through a process of fragmentation. Since the self was not confined to a physical body, but seen to range over a large social and historical space and time, it could be so fragmented that only a small aspect of the self was ever presented at any given time. This fragmentation could however only be successful if it was not known or discovered and thus the process of concealment, especially the need to conceal the concealment, was an integral part of the success of the construction of the self. It was usually only at the time of death that all the different fragments of the self were revealed, allowing for the construction of a coherent whole (Comaroff & Comaroff, 2001:275-6).

Two important notions emerge out of the description of the Tswana people: the importance of the community in constructing a person and the idea of becoming a person over time. Many other African scholars echo these two notions. Menkiti for instance describes the African concept of personhood as "processual" in nature – a person becomes a person only after a process of incorporation into a community:

> "…..persons become persons only after a process of incorporation. Without incorporation into this or that community, individuals are considered to be mere danglers to whom the description 'person' does not fully apply. For personhood is something which has to be achieved, and is not given simply because one is born of human seed" (Menkiti, 1984:172).

It can thus be argued that the older a person becomes, the more of a person he becomes. A person not only acquires wisdom in old age, but also other excellencies that fundamentally change the core of his being. This concept finds expression in well-documented rituals in certain parts of Africa where the death of a young child is marked by the relative absence of ritualized grief, whereas the death of an older person is characterized by an elaborate ceremony with ritualized displays of grief. This difference in practice can be traced back to the significant difference in ontological status conferred on the individual by the community (Menkiti, 1984:173-4).

John Mbiti (1970:25) corroborates the view that physical birth is not sufficient for one to be viewed as a person. He maintains that what is necessary to become a person is the observance of social rituals – such as naming ceremonies, puberty, initiation rites, marriage and procreation – throughout the individual's life. These rituals are performed by the community as the individual goes through each stage of life. It is therefore the community that gives the individual the status of person through these rituals of incorporation through the stages of life.

Kwasi Wiredu (2004:17) similarly maintains that a person is not just an ontological construct, a biological entity with certain psychophysical properties, but also a normative construct. In order to be assigned the status of personhood, such a biological entity has to demonstrate a willingness and ability to fulfil his or her obligations in the community. The individual belongs to and is in solidarity with an extensive circle of kin. This solidarity is premised on a system of reciprocity in which relationships are characterized by corresponding obligations and rights. The community globally and the relationships specifically, provide the norms on the basis of which achievements can be evaluated and socially recognized. Personhood thus becomes normative and its attainment is viewed as an achievement.

The Nigerian philosopher, Segun Gbadegesin supports the normative notion of personhood. He describes the Yoruba word '*eniyan*', which is seen to denote "the moral

standing of the human being who is thus determined as [either] falling short [or living up to the expectations] of what it takes to be recognized as such" (Gbadegesin, 1998:149).

A wide range of African scholars thus seem to agree on the importance of the community in shaping a person. This dominant view of communitarianism informs the conception of personhood in various African societies. It is therefore the community that defines the person as a person, and not some isolated abstract quality such as rationality, will, or memory, as found in Western notions of personhood. All the scholars discussed thus far also subscribe to the view that personhood is something that is acquired over time and that it is something that people can either achieve or fail to achieve.

The Ghanaian philosopher, Kwame Gyekye, is however sceptical of the view that personhood involves a process of becoming. Through his study of the Akan people of West Africa, Gyekye notes that even though there are some Akan expressions and judgments about the life and conduct of people that give the impression that personhood is something that is acquired when one takes up responsibility within the community, they should not be interpreted literally. The Akan use the expression '*onnye 'nipa'* as a moral judgment to describe someone who is wicked, bad, and ungenerous to others. Conversely, a person of high moral standard or conduct is described as '*oye onipa paa'*, literally translated as: 'she is a real (human) person'. Finally, an individual who fails completely will be called '*onipa hun'*, literally meaning 'useless person'. Instead of taking these locutions literally, Gyekye argues that they merely reflect the status or character traits that are acquired in life. It does not reflect personhood (Wiredu & Gyekye, 1992:108). For Gyekye, personhood is prior to and independent of the acquisition of status. He concludes that viewing personhood as a continuous property capable of degrees is to confuse conventional notions of status, which is a highly variable quantity, with the notion of personhood, which is a constant for all human persons (Wingo, 2008).

Wiredu and Gyekye differ in their interpretation of Akan morality. The ambiguity of the term '*onipa'*, or 'person', in the Akan language, might explain some of the disagreement

between them. In one sense '*onipa*' means simply a human being; in another, it refers to a human being of a certain moral and social status. An individual, for example, who is unable to fend for his or her family or to contribute to the community due to confirmed laziness and waywardness, would be said not to be an *onipa* (person). However, if one kills such an individual, one has killed an *onipa* (a human being). Even though this human being might not be regarded as a person, there will still be severe consequences associated with such an atrocity since the Akan believe that any human being harbours an element of divinity, or *okra*, and is by virtue of that entitled to life, liberty, and an ample dispensation of natural rights. Wiredu claims that the dual meaning of '*onipa*' is evidence of a crucial conceptual distinction between a human being and a person. A human being is merely a biological entity whereas a person has special moral and metaphysical qualities. Gyekye however disputes this and says that our common humanity affords everyone innate moral equality and we are human persons before we are anything else. Gyekye aligns himself with Kant by arguing that it is our capacity for reason that serves as the basis of our moral worth. "One is a person because of what he is, not because of what he acquires" (Wiredu & Gyekye, 1992:108).

Godfrey Tangwa similarly argues that the Nso' do not distinguish between a person and a human being. He bases this argument on a couple of traditional Lamnso'[61] sayings:

> "*Wir dzë wir*!" – a human being is a human being is a human being, simply by being a human being.
> "*Wan dzë wan a dzë lim Nyuy*" – a baby/child is a baby/child, a handiwork of God.

"*Wan dzë wan*" leads directly to "*wir dzë wir*" at the level of the adult human being. The term *wir* is used to connote both a human being and a human person indiscriminately and the term *wan* performs the same function indiscriminately for a baby, infant or child, irrespective of age (Tangwa, 2000:39). According to the Nso', the various stages in the progressive maturation of a human being – as well as their individuating physical and

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[61] Lamnso' is the traditional language of the Nso'

non-physical characteristics – do not carry any moral significance. Babies thus have the same moral worth as elders and no human life is of better or higher quality than another.

It seems that the terms 'human being' and 'person' are often used interchangeably in various African cultures. In Chichewa, for example, *munthu* denotes as much a 'human being' as it does a 'person'. However the usage of these two terms may vary depending on the circumstances. Kaphagawani (2004:336-8) explains that, in Chichewa, the literal translation of the statement: "*Azungu siwanthu*" means "Whites are not human", which would seem to indicate that the Chewa deny humanness to whites. Yet after careful analysis, this statement does not seem to be uttered to assert the non-humanity of whites; rather, it denies that whites are Chewa persons insofar as their looks and behaviour are at variance with that of the Chewa. Thus, this statement, as Kaphagawani puts it, should not be translated as "Whites are not human", but rather as "Whites are not Chewa persons."

Kaphagawani further explains that some situations however, warrant translating *munthu* as "human". For example, to say that "*Achewa ndi wanthu*" is more to assert the humanness of the Chewa than their personhood. Similarly "*Azungu ndi wanthu*" means that whites are just as human as the Chewa except for differences in pigmentation. Here, *munthu* refers to the species of human beings and has universal applicability, whereas when this word is translated as 'person', it involves a socio-centric view of personhood, which varies from one culture to another and from one time to another due to the dynamic nature of culture and society.

It is therefore possible that the diverging views of different authors on personhood may be partially attributed to the fact that the words denoting personhood in many cultures have various meanings. It may be that the different authors are talking of completely different constructs of personhood and may as a result draw different conclusions in terms of how the concept of personhood can be applied to moral reasoning in their cultures. As Strathern and Stewart (1998:1) remarked, there is great fluidity and diversity of use in the literature on 'personhood' and these different conceptions of personhood may lead to different conclusions when it comes to issues of morality.

But the interpretation of words is not the only source of conflict between African scholars. Some also dispute the importance of the role of society in constructing the individual. John Mbiti (1970:141) famously claimed: "I am because we are, and since we are, therefore I am". This is colloquially translated as "a person is person through other persons", or "I am because we are" (Metz, 2010:83-4). The 'we' referred to here is not an additive 'we' but a thoroughly fused collective 'we'. Gyekye (1984:199-213) however is critical of this communitarian view espoused by Mbiti, Menkiti, Wiredu and others. He accuses them of taking a too radical approach to communitarianism and argues that individual identity and independence are in fact recognized and respected in the African society and form the basis on which individuals can be held responsible and accountable for their actions. Gyekye argues that although there exists a close relationship between the communal structure and the individual's goals, this relationship does not imply that the former is the only consideration for the latter:

> "[I]individual persons as participants in the shared values and practices, and enmeshed in the web of communal relationships, may find that aspects of those cultural givens are inelegant, undignifying or unenlightening and can thoughtfully be questioned and evaluated. The evaluation may result in individual's affirming or amending or refining existing communal goals, values and practices; but it may or could also result in the individual's total rejection of them. The possibility of reevaluation means, surely that the person cannot be absorbed by the communal or cultural apparatuses" (Wiredu & Gyekye, 1992:112).

This statement of Gyekye is important since it locates a source of identity within the individual that is in a meaningful way independent of a particular society. This identity and independence ultimately allow for self-criticism. Actions can now be judged morally laudable or blameworthy, and actors can be judged responsible for their actions. It does not, however, seem as if one has to reject the role of the community in shaping the individual completely in order to allow for some kind of agency and accountability. Communitarians need not necessarily subscribe to the view that the individual should be subsumed by the community. It is possible to conceive of a view of communitarianism

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that, while stressing the embeddedness of the individual within a community, still allows for individual free will and choice.

The Akan conception of personhood, defined in terms of social achievement and personal relationships, holds promise for such a workable form of communitarianism. Their system motivates the individual to contribute to the social good through the reward of the status of personhood. The basic moral worth of even the most unproductive members of society is however maintained by the basic moral respect afforded to all human beings by virtue of a common humanity. This can be seen as a prime example where networks conducive to the flow of information and obligations are nurtured for the promotion of communal trust. Such an embedded notion of personhood helps to support social cooperation and provides a framework that is well suited to resolving collective action problems (Wingo, 2008).

The dynamic nature of social reality raises the question of whether one can generalize from one community to the wider African community in order to construct a greater African conception of personhood. Tangwa is one such proponent. He argues that he can indeed generalize from the Nso community to the rest of Africa, since "…in their essentials, African cultures, metaphysics, attitudes, and customs are at least very similar, if not entirely the same" (Tangwa, 2000:41). In his view, the Nso community thus represents the view of traditional African people on the concept of personhood. This still begs the question of whether traditional African communities still exist given the interconnectedness of modern societies with consequent intermingling of cultures through the influence of politics, economics, religion, literature, art and education (Abraham, 1992:13).

Anthropological studies have demonstrated that African cultures are very diverse and this diversity is also reflected in variations in mindset, aspirations, concerns, principles of action and efforts to advance reality towards an ideal (Abraham, 1992:13). This is not, however, to claim that each traditional African community is unique, but rather to dispute the existence of a unified single-voiced continent with a monolithic culture, worldview

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and philosophy. There is thus no existing, comprehensive, systematic African moral theory that can be compared with Western moral theories such as Kantianism or Utilitarianism. Thaddeus Metz recently attempted to construct such a coherent, philosophical African theory of moral status, grounded in relational properties, by focusing on a central strand of sub-Saharan ethical thought. He argues that even though the notion of individualism does exist in African moral philosophy and even though relational ideas do occur in Western philosophy, the emphasis placed on these concepts differ substantially in the two accounts. His theory proposes that a relational account of morality implies that "the more a being is capable of being part of a certain communal relationship, the greater its moral status" (Metz, 2011:2).

Metz's relational theory does not accord moral status based on the intrinsic properties of organisms. A being is assigned moral status only if, and for the reason that, it displays a kind of *intentional* property with regard to other beings (Metz, 2011:4). This implies that moral status does not depend on membership of a group, but can also inhere in things as they exist outside of a group. What matters is the *capacity* for being part of a communal relationship of a certain kind (Metz, 2011:7). Metz's (2011:8) favoured expression of this theory is this: "the more a being is capable to being part of a friendly or loving relationship with normal humans, the greater its moral status". Accordingly, a being that has the capacity to be both the subject and object of such a relationship is accorded full moral status; yet, a being that can only be the object of this relationship, is viewed as having only partial moral status.

Metz (2007:324) argues that this theory can be viewed as 'African' not only because the values imbedded therein are more widespread in the sub-Saharan part of the continent than in Europe, North America or Australasia, but also since they have been held over a long time, from traditional societies to contemporary African intellectuals. This theory is attractive since it attempts to give a systematic, theoretical account of an African moral theory and thus avoids many of the perils of ethnophilosophy and philosophical sagacity. It also seems to offer a better account than Western theories of a variety of widely shared intuitions about what has moral status and to what degree (Metz, 2011:16), and therefore

has the potential that diverse African cultures might find it a true refelection of their belief system. Time will be the true test of this statement.

I have thus attempted to address the first question, namely identifying the characteristics of African conceptions of personhood, by demonstrating two characteristics that appear specific to a number of different African communities: the relational nature of morality – as expressed in the importance given to the role of the community – and the concept of becoming a person over time. This brings us to the second question about whether these characteristics are indeed different from Western perspectives of personhood. This does indeed seem to be the case.

At first glance, the concept of 'becoming a person', seems to be akin to the Western Existentialist concept of person. The famous existentialist, Jean-Paul Sartre (1956:349), seemed to support the concept of becoming a person through his proposal that existence precedes essence: "…man first of all exists, encounters himself, surges up in the world – and defines himself afterwards. If man as the existentialist sees him is not definable, it is because to begin with he is nothing. He will not be anything until later, and then he will be what he makes of himself." Menkiti however (1984:178) warns that, although both views can be regarded as adopting a notion of personhood as something acquired, the Sartrean view that man is a free "unconditioned" being, unconstrained by social or historical circumstances, flies in the face of African beliefs. Menkiti also warns that the existentialist view, by claiming that individuals solely constitute themselves, encourage eccentricity and individualism – traits which run counter to African ideals of what the human person should be.

In his article, *The traditional African perception of a person: some implications for bioethics,* Godfrey Tangwa claims that there are categorical differences between the traditional African perception of personhood and that of the West. He bases this claim on the assertion that Western moral philosophy is driven by the attempt to sharply distinguish persons from the rest of the cosmos and then to identify the ways in which persons must be treated (Tangwa, 2000:39). African philosophy does not attempt either

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and rather seeks to embed the individual within the wider cosmos. He further argues that another fundamental difference lies in the fact that African accounts do not distinguish between a person and a human being and that the various stages in the progressive maturation of a human being – as well as their individuating physical and non-physical characteristics – do not carry any moral significance in the African account. Babies thus have the same moral worth as elders and no human life is of better or higher quality than another.

Ifeanyi Menkiti views the Western conception of person – viz. a human being with soul, rationality, will or memory – as representing a *minimum* definition of a person. In contrast, he views the African concept as aspiring to what could be described as the *maximum* definition of the person. In the African view, personhood is thus "something at which individuals could fail, at which they could be competent or ineffective, better or worse" (Menkiti, 1984:173). Menkiti further claims that African societies tend to be organised around the requirements of duties, whereas Western societies tend to be organised around the postulation of individual rights. In African societies priority is given to the duties which individuals owe to the collectivity, and their rights, whatever these may be, are seen as secondary to the exercise of their duties (Menkiti, 1984:180).

The most fundamental difference that has been demonstrated over the preceding chapters is however the individualistic notion of Western accounts of personhood versus the communitarian and embedded notion of African accounts. Whereas the West focuses on the individual traits of persons and appeals to characteristics of rationality and independence, African accounts appeal to notions of relations and reciprocity. As recounted by Steve Biko:

> "We regard living together not as an unfortunate mishap warranting endless competition among us but as a deliberate act of God to make us a community of brothers and sisters jointly involved in the quest for a composite answer to the varied problems of life. Hence…our action is usually joint community oriented action rather than the individualism which is the hallmark of the capitalist approach" (Biko, 1971:46).

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This difference appears real and definitive. One should thus not understand African communities as being pre-European or pre-Western – societies en-route to be westernized – but rather as a collectivity of unique communities that harbour distinct, yet overlapping and complimentary, notions of personhood. In the words of Comaroff and Comaroff (2001:268): "[s]o, too, is the telos of Afromodernity, which is not moving in a fixed evolutionary orbit, toward Euromodernity. For one thing, the continent, as diverse as it is large, has spawned alternative modernities in which very different notions of selfhood, civility, and publicity have taken root."

This leaves the last question, namely how Western concepts of personhood may be augmented by African accounts, to be addressed. An example from the healthcare setting might be instructive. If a system of morality is based on a rights-based approach where attention is predominantly given to patient rights rather than to communal responsibilities, as is increasingly seen in the West, the system faces the threat of turning into a 'supermarket model' of care. Julian Savulescu, a professor of ethics at Oxford University, has argued that where a certain treatment is legal and desired by the patient – say for example plastic surgery, termination of pregnancy or physician assisted suicide – it should be provided even if the doctor in good conscience deems it futile or even morally wrong. This approach leaves no place for the recognition or incorporation of value systems.

According to Savulescu (2006:297), values are important but "they should not influence the care an individual doctor offers to his or her patient. The door to 'value-driven medicine' is a door to a Pandora's Box of idiosyncratic, bigoted, discriminatory medicine." This approach however puts autonomy – as reflected in the law – as the trump card of moral reasoning that outplays notions of beneficence and social justice. Gaylin and Jennings (2003:202) argue that one should not confuse freedom to choose with the idea that the individual's decisions are proper because they are autonomous. Just because a patient makes his or her own decision about his or her healthcare is not reason enough that the clinician should in all circumstances show respect or tolerate the decision. The

doctor should not simply be a means to an end – a servant or a slave – but should be afforded an equal opportunity to act within his or her value system.

This is true for two reasons. Firstly, doctors are also the moral legislators of their own lives. They should have an equal right to exercise their own autonomy. Modern medical ethics strives to equalise the power differential between doctors and patients; it does however not follow that a reversal in the balance of power should be effected where the autonomy of the medical profession is made subservient to that of its patients. The doctor should have an equal right to refuse to perform a certain procedure or treatment, if it conflicts with his autonomous judgement. Secondly, the value system of the medical profession is strongly influenced by the moral requirements of beneficence and non-maleficence. In fact, these are seen as forming the cornerstone of biomedical ethics, and have been variably expressed since the time of Hippocrates as: "First, do no harm" or "Help, or at least do no harm" (Faden *et al.*, 1986:10). It is therefore important to reserve a space for the moral consideration of the potential benefit and harm of the requested treatment and the doctor should be allowed to assign moral weight to such a deliberation. The doctor, *par excellence*, thus needs to weigh and balance the moral considerations of the patient's wish, his respect for the patient's autonomy, respect for his own autonomy, and considerations of beneficence and non-maleficence, in the greater context of his value system and world-view, in order to make a decision he can be held accountable for.

As has been argued by feminist critiques of autonomy, an African view of personhood that is based on a relational account of morality, can augment modern society by making it more aware and respectful of responsibilities owed to society. This view does not necessarily lead to the abandonment of the notion of autonomy, but calls for the reconciliation of the divergent component ideas of autonomy – such as individual rights, freedom of choice, privacy, independence, freedom from outside interference – with an acknowledgment of our social nature and interdependence – as manifested in notions of community, citizenship, authority, obligation, responsibility, reciprocity, tradition, rules and limits. By placing the individual firmly back into the community, this account might serve to mitigate the alienation and isolation of modern times.

5.5. Conclusion

In this chapter I embarked on a critique of the concept of autonomy. This critique was launched from the perspective of feminist and communitarian writers. It explored the possibility of reconceptualising the traditional male and Western notion of autonomy by incorporating ideas of communitarianism, multiculturalism, diversity, responsibility and reciprocity. The main thrust of the argument centred on a recognition that one has in some way to temper the notion of Western autonomy with an acknowledgment of humanity's social nature and interdependence.

This chapter strove to dispel some of the myths of modernity, most notably the myth of the rational self and the myth of the independent self. By appealing to developmental psychology and philosophy alike, arguments were made to show that human behaviour is less rational than we often like to believe and is also less voluntary than libertarians and theorists of autonomy would have us believe. I argued for the recognition of the importance of the community and the group, by demonstrating that the individual cannot be separated in her interests from the culture that cradled her and the society that sustains her.

Following post-structuralist and feminist critiques of metanarratives, an argument was made for the rejection of the prevailing phallocentric concept of universal reason and autonomy. I argued that this is an impoverished view that can be augmented by the recognition of the values of reciprocity and social embeddedness. This recognition has great importance since it creates the opportunity to negotiate a new social contract that can lend support to and preserve the social structures and institutions necessary to sustain and define that individual. Human beings are products of their environment as well as their creators and the community can thus never be sacrificed for the sake of the individual.

Social structures also bring with them the controls necessary for sustainable social cooperation. Civilization depends in a great part on reciprocity in terms of rights and

corresponding responsibilities and it cannot succeed when its citizens demand limitless freedom. Civilization is founded on the right of the community to insist on certain conduct from its citizens. The social nature of human beings demands that a limited social order should exist, even though this may at times constrain the exercise of freedom and rights by the individual. The entire structure of an organized society depends on predefined limits of freedom and social controls are an essential aspect of any sustainable, viable society.

There is however a need to temper the power of the community to protect the individual from being trounced by societal pressure and tyranny. Maintaining the foundations of social order thus requires respect for autonomy as well as respect for freedom; it requires institutional power and restraint as well as self-expression and independence. Human flourishing and the realization of humanity's full moral potential require a social order correspondingly complex.

I thus argued that the development of modern individualism should not be rejected altogether, since we cannot return to some pre-modern sense of community, or transcend it altogether in some postmodern deconstruction of the self. As Gaylin & Jennings (2003:227) suggest, we should attempt an internal critique of autonomy, this aspiration to self-sovereignty. Such a critique would, in effect, attempt to rescue autonomy from itself…

> "It seems to me that a meaning that can be attributed to that critical interrogation on the present and on ourselves which Kant formulated by reflecting on the Enlightenment…the critical ontology of ourselves…has to be conceived as an attitude, an ethos, a philosophical life in which the critique of what we are is at one and the same time an historical analysis of the limits that are imposed on us and an experiment with the possibility of going beyond them" (Foucault, 1984b:49-50).

Chapter 6: Autonomy and Informed Consent as Constructs of Power

Chapters 2 to 5 systematically traced the historical development of the concept of autonomy, its preceding and constitutive idea of personhood, and its extension and application as informed consent in a health care context in the modern world. In this final chapter I will attempt to bring the Foucauldian conceptualisation of power to bear on the concept of autonomy and the idea of informed consent. I will do this by dissecting Foucault's view of how power operates through modern systems and see if this can be applied to my concepts of focus in this dissertation. The main claims of Foucault's philosophy of power were briefly discussed in chapter 1, and will now be examined in more detail.

Retaining the positive sense of power as constitutive of the individual, I will then turn to the idea of value reciprocity by means of transculturalism, to explore how it might assist in augmenting an impoverished version of autonomy as rationality and independence.

6.1 Introduction to the concept of Foucault's docile bodies

In *Discipline and Punish,* Foucault argues that discipline creates so-called 'docile bodies'. These bodies are subjected, used, transformed, practiced and improved bodies (Foucault, 1977:138-9). He traces the development of this form of discipline to the classical age where he postulates the body was first discovered as the target of power. The disciplines involved had always existed in monasteries and armies, but were extended in the seventeenth and eighteenth centuries to become general formulae of domination. The purpose of such domination was to create bodies that could function in factories, ordered military regiments and school classrooms, ideal for the new economics, politics and warfare of the modern industrial age (Armstrong, 2005). These docile bodies are constructed through disciplinary institutions that can observe and record the bodies they control on a continuous basis. Discipline is initially applied with excessive force through careful observation that molds the bodies into the 'correct' form.

This kind of uninterrupted observation requires a particular form of institution, exemplified for Foucault by Jeremy Bentham's Panopticon. Bentham designed this building in the eighteenth century as the ideal form of prison. The design is a circular structure with an 'inspection house' at its centre from where inmates, stationed around the perimeter, could be observed without them being able to tell if they were in fact being watched or not. Bentham (1995:29) described his design as "a new mode of obtaining power of mind over mind, in a quantity hitherto without example." The possibility of constant observation creates an 'unequal gaze', which causes the inmates to internalize the discipline exerted on them and thus finally creates the 'docile bodies' required by the prison. The internalization is based on the fact that an inmate is less likely to break the rules or laws if he believes that he is being watched, even if he is in fact not under observation at that time. This kind of prison thus provides the ideal form of modern punishment and control.

Foucault turns the panopticon into a metaphor[62] for modern disciplinary societies and their inclination to observe and normalise the individual. In fact, contemporary social critics have argued that various forms of technology have allowed for the deployment of invisible panoptic structures throughout society. A prime example of where the gaze of the superior is brought into the daily lives of workers and the general public is surveillance by closed-circuit television (CCTV) cameras in work and public spaces. The former creates the possibility that the supervisor can view the activities of the workers at any time without the workers being able to tell when they are under observation. Similarly, CCTV cameras in public spaces create the possibility of continuously observing the general public and can incorporate even greater functionality such as face and number plate recognition, as is currently found in London. The Internet also allows for a panopticon form of observation. Internet service providers can track a user's activities and user-generated content allows for the recording, and possibly even the online broadcasting, of daily social activities. The panopticon thus seems like the ultimate realisation of modern institutions of discipline and control.

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[62] The metaphor of the panopticon was excellently depicted in the epic fantasy novel, *Lord of the Rings,* written by J.R.R. Tolkien, as the lidless evil eye of Sauron, the prime antagonist of the story.

6.2 How power reduces social agents to docile bodies

Foucault develops a detailed account of how power is used in society to reduce social agents to docile bodies. He postulates that in pre-modern societies, power was centralised and coordinated by a sovereign authority that exercised total control over the population through the threat or open display of violence. As from the seventeenth century new mechanism of power, concerned with the administration and management of life, however started to emerge. This new form of power is manifested in two distinct ways: the efficient government of the population as a whole and the disciplinary power exerted over the body. The first manifestation – the efficient government of the population – is primarily concerned with the management of the life processes of the social body through the regulation of phenomena such as birth, death, sickness, health, sexual relations and so forth. The second manifestation – which Foucault labels 'disciplinary power' – targets the human body as an object to be manipulated and trained through appropriate discipline. The specific practices of discipline referred to were taken from institutional settings – such as prisons, military establishments, hospitals, factories and schools – and gradually applied more broadly as techniques of social regulation and control. This manifestation is unique since the disciplinary power is exercised directly on the body through the subjection of bodily activities to constant surveillance and examination that enables continuous and pervasive control of the individual. Such discipline thus produces subjected and practiced bodies, so-called 'docile bodies' (Foucault, 1977:138-9). Essentially thus, docility is achieved through the actions of discipline and the body is subjected to forces of discipline and control. It is important to Foucault that philosophical texts are part of the same structures of power.

Foucault describes four techniques of this discipline in detail – the drawing up of time tables, prescription of movements, imposition of exercises and arrangement of tactics – but this does not concern us in this particular analysis, and I will not expand on them. What is important for this analysis is that these disciplinary techniques not only target the body, but also produce certain types of subjects. The central technique of disciplinary power, constant surveillance, although initially directed towards disciplining the body,

eventually induces a psychological state of "conscious and permanent visibility" in the mind (Foucault, 1977:201). "In other words, perpetual surveillance is internalised by individuals to produce the kind of self-awareness that defines the modern subject" (Armstrong, 2005).

Foucault challenges the juridical notion of 'power as law', which assumes that power is a wholly negative force consisting of constraining or repressing that which is already constituted. He develops an account of power that is also productive: modern power operates to produce the phenomena it targets. How can this be so? Foucault claims that the transition to modernity entailed that 'the norm' effectively replaced the law as the primary instrument of social control, and links the importance assigned to norms in modern society to the development of the human or social sciences. He uses the example of the social science discourse on sex and sexuality, explored in *The History of Sexuality*, to illustrate this point. During the eighteenth and nineteenth century, issues of sex and sexuality became politically important in a society that wished to manage the life of its population. The discourses of sex around this time predominantly understood sex as an instinctual biological and psychic drive with deep links to identity. By 'medicalising' sex, the idea was created that the sexual drive could either function in a normal, healthy way, or could be perverted into pathological forms. Sexual behaviour could thus be classified on a "scale of normalisation and pathologization of the sexual instinct" (Dreyfus & Rabinow, 1982:173). The establishment of these social science categories of normalcy and deviancy effectively allowed various political technologies, aimed at treating and reforming 'deviant' behaviour, to be sanctioned and presented as in the interest of both the individual and society. Foucault thus aims to show that during modernity the body and sexuality have both become cultural constructs rather than natural phenomena.

Foucault thus claims that, in modern society, the behaviour of individuals and groups is increasingly controlled through standards of normality. These standards are propagated by a range of knowledges: assessment, diagnostic, prognostic and normative techniques employed by disciplines as diverse as criminology, medicine, psychology and psychiatry. These knowledges construct a scientific discourse that claims to understand and reveal

the 'truth' about the identity of the individual. Furthermore, and importantly, modern individuals become the agents of their own 'normalisation' in so far as they are subjected to, and become invested in, the classifications and norms propagated by these scientific discourses. This enables modern disciplinary society to replace direct forms of repression and constraint with subtler strategies of normalisation; strategies that produce self-regulating, normalised individuals. Foucault (1977:194) thus concludes that power in modern societies is fundamentally creative rather than repressive. Modern regimes of power operate by producing subjects that are both the objects and the vehicles of power.

> "The individual is not to be conceived as a sort of elementary nucleus, a primitive atom, a multiple and inert material on which power comes to fasten or against which it happens to strike, and in so doing subdues or crushes individuals. In fact, it is already one of the prime effects of power that certain bodies, certain gestures, certain discourses, certain desires, come to be identified and constituted as individuals. The individual, that is, is not the *vis-à-vis* of power; it is…one of its prime effects" (Foucault, 1980a:98).

Foucault also pays specific attention to the interaction between knowledge and power in society. His conception of the knowledge-power interplay is complex but primarily bi-directional. On the one hand he argues that power can be said to create knowledge, in the sense that institutions of power determine the conditions under which scientific statements come to be counted as true or false. This suggests that the production of 'truth' is never entirely separate from technologies of power (Hacking, 1986:24-40). On the other hand, Foucault argues that knowledge also exerts an effect on power by establishing new objects of inquiry – objects like 'the delinquent', the homosexual' or the 'criminal type' – which can then be manipulated and controlled (Rouse, 1994:97).

> "We should admit rather that power produces knowledge…; that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations" (Foucault, 1979a:27).

Power is once again aided and abetted by the social sciences. In fact, Foucault (1980a:151) claims that it is the knowledge generated by the human sciences that enables modern power to gain access to the "individuals themselves, to their bodies, their gestures, and all their daily actions." Foucault speaks of 'regimens of power/knowledge' to highlight the mutually conditioning operations of power and knowledge, and of 'discourses' to refer to the structured ways of knowing and exercising power (Armstrong, 2005).

The pervasiveness of power in society, the core component of Foucault's conceptualisation of power, has been fiercely criticized, most notably by Habermas. This debate, widely known as the 'Foucault-Habermas debate', is complex but centres on the fundamental question of, if Foucault is correct and power does indeed permeate every aspect of life, how is it possible to engage in the critique of power in such a way that one might (at least partially) be liberated from the oppressive aspects of power? If power is believed to pervade everything, surely it must also pervade rationality, thereby rendering rationality itself riddled with the very means of subordination it needs to be overcome. I will not attempt to replicate the debate in these pages. I will just add my voice to that of Allen, who argues that Foucault's analysis has been largely misunderstood as the repudiation of critique, when in fact Foucault's work is a call to critique:

> "What Foucault is calling for is a critique of critique, which means not only a criticism of Kant's project for the way in which it closes off the very opening for thought that it has created but also a critique *in the Kantian sense of the term* – that is, an interrogation of the limits and conditions of possibility of that which Kant himself took as his own starting point, namely, the transcendental subject" (Allen, 2008:35).

According to Allen's interpretation, Foucault essentially rejects the possibility of pure rationality, as represented by a power-free subject, and critically analyses the very notion of subjectivity and the historical conditions that produce it. The rejection of rationality should not stifle critique, but rather create an awareness of the historical situatedness of the subject and the influence that has on his ability to be a self. This of course entails that

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I, as author of this dissertation, should likewise be sensitive to the historical forces at work on my capacity to be a self, and on my ability to reason rationally.

The second criticism levelled at Foucault, mostly from a feminist perspective, is concerned with the fact that individuals created by Foucault's conceptualization of power are simply the effects of power, namely the created 'docile bodies' that are passive. This makes it difficult to explain how the individual might resist power. As discussed in chapter 5, Foucault does however provide for the possibility of resistance in his later work, most notably through the process of self-formation. Foucault (1980b:142) states in support of this:

> "[T]here are no relations of power without resistance; the latter are all the more real and effective because they are formed right at the point where relations of power are exercised."

In my interpretation of Foucault, I concur with this latter view and thus have no qualms in basing my assessment of the concept of autonomy and the idea of informed consent as constructions of power, on this particular conceptualisation of power.

6.3 Are concepts of autonomy and informed consent constructs of power?

After having now dissected Foucault's view of how power operates through modern social systems to produce 'docile bodies', I will now address the question of whether autonomy and informed consent might be viewed as such constructions of power.

The 'truth' of humanity that was propagated in the Enlightenment was that of an independent and rational, thus an autonomous, self. This 'truth' was constructed through academic philosophical discourse in the context of a larger explosion of scientific ideas and discoveries. The Enlightenment brought with it the promise that the achievements of man, realized through reason alone, could be limitless. The discovery of the heliocentric model of the universe did not temper these ideas, but rather urged them on and man found himself once again at the centre of the universe; this time not because the location of the

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earth placed him there, but rather because his own mental capacity made it possible. Enlightenment man was practically omnipotent and flourished on the idea that all problems, even those relating to the moral life and ethics, might be resolved through reason alone. The discovery of the universal laws of nature inspired Kant to similarly define the universal laws of morality that operated through the faculty of reason. These ideals were spurred on not only by scientific discovery, but also by changes in religion – with Protestantism proclaiming that man had direct access to God – and changes in the very structure of society – with the rise of the bourgeoisie.

Immanuel Kant was a favourite son of the Enlightenment. He argued for rationality and impartiality in all cases of moral deliberation. His idea of an autonomous self as a moral legislator, abstracted from specific desires and context, found favour because it opened up the possibility of transforming ethical decision-making from the idiosyncratic and erratic, to the rational and thus, universalizable. Importantly however, Kant's view saw the triumph of the 'higher self' – rationality – over the 'lower self' – the emotions. Kant saw the 'lower self' as subsumed by desire, emotion, and personal interest, and argued that detached rationality had to rule this baser self. An interesting differentiation occurred during this time: men were viewed as being able to transcend their base self – equated with 'the body' – through the application of their rational faculties, whereas women were defined solely by their bodies and their biological characteristics – the foremost being their capacity for motherhood. Thus constrained by their biology, women were deemed unfit for public office and were prohibited from occupying positions in any academic discipline.

Women were for all intents and purposes absent from the history of the Enlightenment, and traditional forms of history have been accused of being a male preserve, "telling stories of men for men" (Black & Macraild, 1997:140). This has prompted many feminists to relook at history in order to write a 'herstory'. Virginia Woolf (1989:46) defined the problem perfectly in *A Room of One's Own* by asking why the life and history

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of Shakespeare's sister[63] had been overshadowed by that of her brother. Even though Woolf writes of the sixteenth century, the main point of her argument is still relevant in the eighteenth century: women were effectively prevented from expressing their talents by the prevalent social systems of the day that privileged men above women and confined women to a domestic role. The contrasting prospects of the sexes seems to have been partially produced by divisions between areas of practice and areas of analysis, allowing them to operate in parallel.

The division between practice and analysis meant that claims of equality and freedom that typified liberal morality, could in fact be founded on practices of inequality and unfreedom in law (regarding women, slaves and all non-property-owners) and that assertions of universal reason in philosophy could coexist with exclusionary justifications elsewhere (Reiss, 2002:37). Kant postulated that the possession of autonomy of the will is a necessary condition for moral agency and this idea became the norm of the Enlightenment. It can thus easily be deduced that, since autonomy rests on the requirement of rationality, and since women were viewed not to be rational, women could not be autonomous. This idea was in fact reflected in the law at the time of the Enlightenment, which held that women were not independent legal entities but the possession of either their fathers or husbands.

The next step of the argument flows readily: since women are thus not autonomous, they are not capable of moral agency and can thus be regarded as 'less than human', just like slaves were deemed to be 'less than human'. This assertion legitimates inequality by making women not only less than human, but themselves responsible for being so: *qua* humans, they must either have failed fully to act as such – probably because of the constraints of their biology – or have made a choice not to act rationally. This justified many things, such as limiting suffrage and the academic domain to men. This line of reasoning is similar to that employed by Locke who, by making ownership of property

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[63] Shakespeare's sister is the imaginary woman invented by Virginia Woolf who had the same genius as her 'brother' Shakespeare but was prohibited by social rules and constraints from expressing it, and thus ended up killing herself out of frustration.

the prerequisite of the human condition, had no difficulty in accepting that human freedom could not, and should not, extend to African slaves (Philip, 1992:271).

The ideas of the Enlightenment were spread through academic treatises and publications – coincidentally made possible through advances in the printing press – but also through public demonstration and informal lectures, such as those organised by the elite ladies who ran the *salons*. The language of science became the preferred language of the educated and the elite, both male and female. Although the Enlightenment space was for all practical purposes a male space, women did manage to gain access to its ideas through the informal dissemination of information, and some did penetrate the masculine domain through their close association with men of power and influence.

Autonomy, as the expression of freedom and rationality, became the main currency of the Enlightenment. The idea permeated scientific and moral discourse and its expression enabled people to gain credibility in these spheres. Women could similarly come to be accepted by men in the academic disciplines by rejecting their inherent female characteristics – such as the emotions, their caring nature, their spiritual dimension – in favour of the male ideal of rationality and impartiality. Indeed, even the early claims for women's status as full legal subjects were formulated around women's similarity to men (Eagleton, 2003:8). This proved to be a successful strategy and more women entered the public space as authors, and eventually even as scientists. This success however came at a price. Women now had to fulfil the demands of two ideals: conform to the patriarchal standards of femininity in the social and private space; yet, conform to the masculine ideals of rationality and independence in the academic sphere. A woman wanting to operate in both spheres had to be both sensitive <u>and</u> impartial, emotional <u>and</u> rational, caring <u>and</u> objective; a tension that proved to be impossible to reconcile.

The kind of rationality espoused in the Enlightenment is reason without emotion. Jaggar (1989:145) argues that in ancient times, rationality was typically contrasted with the emotional, but never to the exclusion of the latter. Emotions were seen as providing the indispensable motivating power for action and although the emotions needed to be

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appropriately channelled for maximum effect, they were never negated. During the modern period, the relationship between reason and the emotions however changed and reason was reconceptualised "as the ability to make valid inferences from premises established elsewhere…the validity of logical inferences was thought independent of human attitudes and preferences; this was the sense in which reason was taken to be objective and universal" (Jaggar, 1989:146). The emotions were similarly reconceptualised and portrayed as non-rational urges that regularly "swept the body, rather as a storm sweeps over the land."

In modern society, the notion of the paramount importance of rationality has been securely entrenched. Lloyd (1984:ix) argues that: "[p]ast philosophical reflection on what is distinctive about human life, and on what should be the priorities of a well-lived life, has issued in character ideals centred on the idea of Reason". This is perhaps best reflected in the fact that our greatest accolades and rewards are reserved for those who excel at rationality. If rewards are judged in material terms, one sees that the highest paying careers in the US at present mostly belong to the sciences like medicine, business and engineering: physicians, chief executives, engineering managers, computer and information systems managers, air traffic controllers, airline pilots and flight engineers, lawyers and judges, and marketing managers (US Bureau of Labor Statistics, 2011). If rewards are judged in terms of accolades, it is instructive to note that the Nobel Prize, judged to be the most prestigious award in its field, has more categories devoted to science – physics, chemistry, physiology or medicine, and economic sciences – than devoted to non-scientific endeavours – literature and peace. In fact, 349 of the total 543 prizes have been awarded in the scientific disciplines (Nobelprize.org., 2011).

A population devoted to a culture of autonomy as rationality is in many ways easier to control than a society that appeals to a wide array of principles or values, such as the moral importance of the emotions. The emotions are generally depicted as the diametric opposite of rationality and as such defy logic and prediction. The actions of a population governed by rules of rationality are predictable and hence, manageable. The idea of the importance of rationality has however also permeated down to the individual level and

people themselves have come to accept it as a prime value. The power embedded in rationality thus becomes productive of the desired way of being in the world. As Gebster (1985:306) explains:

> "Who today finds pleasure in nature or in a work of art such as a poem? Adults will at best recall a certain enjoyment of nature from their childhood (when they were still rooted in the magic realm), or that they had a certain pleasure in poems during their youth (when they lived in the mythical domain). But naturalness and beauty have in the meantime become illusionary values to them: what counts now are the value-less facts, the material and the rational. All else is regarded with condescension as being of only sentimental value."

Rationality has become *the* standard of normality in modern discourse. As such I would argue that it has become a strategy that produces self-regulating, normalised individuals. If rationality is viewed according to Foucault's conceptualisation of power, it seems to fit with his three prerequisites. Firstly, Foucault states that standards of normality are propagated by a range of knowledges: rationality indeed is the standard that is upheld through the assessment of scholars and students in school and university, and rationality is pervasive in all modern scientific disciplines. Secondly, these knowledges construct a scientific discourse that claims to understand and reveal the 'truth' about the identity of the individual: the 'real' identity of an individual is seen as the rational self, which is able to triumph over the lower, emotional, self. And finally, modern individuals become the agents of their own 'normalisation' in so far as they are subjected to, and become invested in, the classifications and norms propagated by these scientific discourses: the individual strives to be a rational self since this is the norm and standard set by society and the main characteristic rewarded by society.

The ideal of rationality thus becomes a controlling force in society. This power operates through implying that if you are not like everybody else, you are abnormal, and if you are abnormal, then you are sick. If rationality is the mainstay of modern morality, then irrationality becomes a form of immorality. Irrationality is thus the sickness of the moral body. Foucault (2004:95) argues that these three categories, not being like everybody

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else, not being normal and being sick, are in fact very different but have been reduced to the same thing. By imposing precise norms that people can be judged by as 'normal' or 'abnormal', these normalising judgments serve to correct deviant and undesired behaviour.

It is also instructive to assess how the idea of power/knowledge might operate within this context. Foucault argues for a bidirectional view of power/knowledge. In so far as power creates knowledge, the institutions of power determine the conditions under which scientific statements come to be counted as true or false: in medicine one can argue that the institution of power, namely the medical fraternity[64], views scientific statements only as valid after publication in a peer-reviewed journal. Conversely, knowledge also exerts an effect on power by establishing new objects of inquiry. In medicine, these objects can be viewed as 'the autonomous', 'the non-autonomous', and the 'rational' and the 'irrational', the latter distinction finding specific application in the field of psychiatry. Behaviour can thus be classified on a scale of normalisation and pathologization of the ability for rational action. The categories of normalcy and deviancy allow for a diversity of practices of control that vary from the extreme – such as legal sanction of the involuntary commitment of psychiatric patients – to the more mundane – such as the banning of cigarette advertising.

This notion of power/knowledge operates on a macro level. Regimes of power are however also manifested on a micro level, such as in the doctor-patient relationship. The concept of autonomy aims to balance the power differential existent between doctors and patients, and as such, has attained some success. An expectation of autonomy as rationality can however affect the patient adversely. The idea that the patient has to weigh and balance treatment options rationally negates the reality that illness brings with it a loss of power. A patient is placed in a position of subordination, not only by the superior information of the doctor and the unfamiliar surroundings of the clinic or hospital, but also by the fear and insecurity brought about by the illness. To pretend that this is not so,

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[64] I argue that it is valid to still refer to the medical community as a 'fraternity' since it is still dominated by men and male principles, such as rationality and impartiality.

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is to deny the patient's experience of the situation and deny her the possibility to express and find comfort for those fears. The emphasis on rational decision-making can thus serve to exacerbate the problematic power-differential between doctor and patient.

The demand of rationality not only applies to patients, but to doctors as well. Doctors are taught to focus on the 'hard' clinical signs of pathology, as they form a clear-cut roadmap to the underlying disease and the clinical diagnosis. The so-called 'soft' signs are hard to interpret and open to individual variation in expression of the sign (by the patient) and individual interpretation of the sign (by the doctor). The 'softer' side of the medical consultation – such as the discussion about the diagnosis and treatment options with the aim of developing an understanding of the patient's specific needs and fears, in order to negotiate a management plan with the patient – is usually neglected, by teachers and students alike, in favour of the 'scientific' side – the examination, the differential diagnosis and the medication or treatment options. I argue that this bias towards the more scientific side of medicine is partially related to our socialisation in the belief in the superiority of rational knowledge over emotional knowledge. Medical students are forever warned not to get emotional, not to get 'too involved' with patients, and instructed to keep a safe professional distance. The belief and teaching is that the emotions will cloud your judgement as a doctor, causing you to make mistakes and misjudge the correct diagnosis or treatment option.

This argument of course does not imply that rationality is not important; but rather that a medicine focused on rationality alone, fails to do justice to the complex nature of illness and the important role that the 'irrational' faculties of hope, fear, belief and trust play in healing. It is now widely argued that the unconscious – representing the emotions, intuitions, biases, longings, genetic predispositions, character traits and social norms – is far from a primitive vestige that needs to be conquered in order to make wise decisions. The unconscious is believed to be the place where "most of the decisions and many of the most impressive acts of thinking take place" (Brooks, 2011:11). The unconscious mind is viewed to be sensitive to context, enables the interpretation and organisation of data via perception, and assists in solving complex problems. The unconscious, by its very nature,

is however an unchartered domain and many psychoanalysts maintain that the relationship between a conscious desire and the ultimate unconscious aim that underlies it, need not be direct at all. While I thus acknowledge the importance of the unconscious, I find that the exact place it should hold in a moral theory of autonomy remains elusive.

An important argument for embracing the emotions comes from Van Zyl (2000:37) who argues that a medicine based on a notion of independence alone will fail to act as a corrective of the "dehumanisation and depersonalisation" of modern medical practice that is steeped in scientific discourse. Feminist thinkers have also reacted to the male bias in the processes of modernity and extensively criticised the failure of modern ethical approaches to act as correctives for modernity's ensuing dehumanisation. Many have argued for the introduction of a more 'feminine' ethics of care, as described by Carol Gilligan (Crosthwaite, 2001:36).

As a doctor gains experience in medicine, she starts to realise that it is precisely the relationship she has with her patients that makes medicine such a unique and special profession (or calling). It is her display of empathy, her investment in the wellbeing of her patients, and her communication style that conveys these qualities, that make her a 'good' doctor. A 'bad' doctor is not only viewed as such by virtue of poor diagnostic or surgical skill, but also because of poor bedside manner. The latter can be manifested as arrogance, failure to listen to a patient, abruptness, dismissal of a patient's fears, and rudeness. Research has shown that the most likely reason given for suing a doctor was for breakdown of communication, where the doctor either refused to communicate to the patient what went wrong, or even worse, where the doctor was believed to be hiding or covering up important information (Huntington & Kuhn, 2003:157).

I have thus argued that autonomy, as understood in terms of rationality and independence, can indeed be viewed as a construction of power that operates on a macro and micro level. Can the same be said of the medical and legal practice of informed consent?

Informed consent has become the *sine qua non* of medical research and treatment. Its

absence effectively vetoes the practice of either, except in specific, predefined, situations where it is deemed impossible or impractical to obtain such consent. As delineated in chapter 4, the concept essentially has its roots in the post World War II developments in ethics and law, and was principally necessitated by the atrocities committed during the war. The principle underlying informed consent, that every human should freely consent to experimentation or treatment based on adequate information and consideration of her world-view, is a valid and commendable one. The consideration envisioned in the concept is based on the requirement of rationality as reflected by the component ideas of competence and understanding. The concept as such is thus a Western one based on the Enlightenment value of autonomy.

Since the concept of informed consent hinges on the requirement of autonomy, it should function as a Foucauldian construct of power in a similar manner as autonomy. And so it does. The standard of rationality is upheld and all patients and potential research participants are assessed according to it. The 'real' identity of an individual is viewed as the rational self, abstracted from her emotions, desires and social context. And finally, informed consent becomes the norm according to which the medical fraternity operates and the individual strives to be able to fulfil this norm through being a rational self.

The desire for the universal application of the practice of informed consent has been made explicit in international documents such as The Declaration of Helsinki, The Belmont Report, and Good Clinical Practice guidelines such as ICH[65]-GCP. The application has however been challenging in non-Western societies. Examples abound in Africa where a decision to participate in a clinical trial or to undergo medical treatment is often determined by issues of trust rather than based on clinical information and rational decision-making (Molyneux, Peshu & Marsh, 2005:1463; McKneally, Martin, Ignagni & D'Cruz, 2009:1341). This is not surprising since trust is an essential component of any relationship. It has also been proposed that trust is a mechanism that enables people to

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[65] ICH stands for the International Conference on Harmonisation of technical requirements for registration of pharmaceuticals for human use. The ICH-GCP guideline is recommended for adoption by the three regulatory parties to ICH, namely the European Union, Japan and the USA (available from: http://www.ichgcp.net).

deal with situations that carry uncertain risk (Van der Geest, Pieterson & de Vries, 2005:3). Since medical research and treatment occur within an existing doctor/researcher-patient/participant relationship, and since both carry inherent uncertainty and risk, trust should be acknowledged as an important component of the informed consent process.

The current practice of informed consent has been disparaged for being insensitive to different cultural milieus and individual needs within those milieus. Roux (2001:8) argues that the standard method of informed consent for HIV testing is inadequate in an African setting because it fails to acknowledge and incorporate the African role of the family and authority figures in decision-making. Furthermore, being informed of the relevant facts may not be sufficient for patients to make decisions that are in their best interest and correspond with their moral views and religious beliefs. The physician who relies solely on the consent of a patient would often fail to act according to the values of the patient, since she is unaware of the extent of that patient's dependency and vulnerability to fear, trauma, or ignorance. This is particularly true in a multi-cultural society like South Africa.

Issues related to community consent, spousal consent and child assent have specifically complicated the application of a Western form of informed consent in non-Western societies with alternative belief systems and cultural practices. Patriarchal systems are entrenched in the structures of many traditional communities and researchers have to approach the community leadership to get permission to work in such a community prior to approaching research subjects. The World Health Organisation states (2011): "[o]btaining the agreement of local community leadership for the proposed research is almost always good research practice and is mandatory in some communities." The leadership allows the researcher access to the members of his community, but this is not a substitute for individual informed consent and each member still has to give her own informed consent before participating in a research study. The World Health Organisation (2011) however warns that, even though the process of community consultation can lead to more culturally sensitive research practices, it is not always clear what (and who) constitutes community leadership, that it is furthermore not always ethically supportable,

and that consultation does not necessarily result in agreement!

In some cultures, it is the norm that the head of the household – thus a male figure – makes all the important decisions on behalf of all the members of the household. A husband, father or brother would thus be responsible for making decisions involving a wife, mother or daughter of any age. A woman in such a community would therefore not be able to sign consent for herself, or on behalf of her child, to participate in a clinical trial before discussing this with the head of the household. Molyneux, Peshu & Marsh (2005:1463) showed that many women, when afraid or uncertain of the risk entailed in such research, might use this as an escape route to evade the responsibility of having to make the decision. All adults entering a research study should however give their free and informed individual consent after consultation with the head of the household.

Attaining assent from children can be equally complicated. Generally, children who are considered able to understand the proposed research should be given the opportunity to be informed about the research, have their questions answered, and express their agreement or refusal to participate. The age at which children are deemed capable of the requisite understanding varies between and within cultures. The World Health Organisation (2011) recommends that researchers should consider asking for assent from children over the age of seven, and definitely get assent from all children over the age of twelve years. This standard should probably also apply to adults with mental disabilities.

These complexities in international research have necessitated Western countries to amend their guidelines on informed consent. For instance, the US regulatory bodies now mandate community[66] consultation prior to the approval of a study. This means "consultation with representatives of the community in which the clinical investigation will be conducted and from which the subjects will be drawn" (U.S. Department of Health and Human Services, 2011:21 CRF 50.24(a)(7)(i) and 21 CRF 56.115(a)). The goals of community consultation are threefold: show respect for persons by informing the

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[66] The Food and Drug Administration (2011) understands the word 'community' to mean: "the group of patients who share a particular medical or other characteristic that increases the likelihood that they (or a family member) may be enrolled in a study."

community about the study and providing them with a means to provide meaningful input to the IRB; show respect for the community by allowing representatives of the community to identify potential community-level concerns; and, show respect for autonomy by including individuals who may have been, or is at risk for the condition under study, in the community consultation activities. The US regulatory bodies further require the Institutional Review Board to "…be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects" (U.S. Department of Health and Human Services, 2011:21 CRF 56.107(a)).

Even though these measures go some way in respecting the values of some non-Western communities, it is clear that the Western conceptualisation of informed consent however remains the ethical and legal norm that should be applied. Informed consent thus functions as a social construct of power. But it can also be understood as a type of 'cultural instrument'. Reiss (2002:2) described and defined cultural instruments, or *rationes*, as "ubiquitous standard categories of Western thought and practice." These categories equate to normative forms of analysis and practices that are central to Western culture. Cultural instruments function by creating graphic models of the world that remain distinct from the world. These graphic representations treat all space as secular and measurable and have the effect of cutting the observer off from the world and thus from others and from her own humanity[67]. Cultural instruments operate within a so-called 'analytico-referential discourse' that *prescribes* the truth. "Whenever analytico-referential discourse establishes itself, it does so with a degree of dissimulation, the effect of which is to confine the human being to a kind of anhedonic ideology profoundly antithetical to the tactile and non-theoretical" (Bertonneau, 1986:3).

Reiss (2002:2) identified various examples of such categories, such as:

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[67] In support of this statement, see also Said (1994:58), who argued that: "[i]t has been the practice in the West since Immanuel Kant to isolate cultural and aesthetic realms from the worldly domain."

"notions of *autonomy* and the division of intellectual, social, cultural and aesthetic practices; the notion of *otherness,* taking forms like *Gemeinschaft/Gesellscaft*, *organic/mechanistic*, *négritude*, afrocentrism at cultural and political levels, or opposition of the self at a narrower, "personal" one; such "conflictual" concepts such as fiction and real, truth and falsehood; certain modes of history and memory; cultural and aesthetic categories like *tragedy, mimesis, self, mind/body*; particular forms of discourse like science, philosophy, aesthetics, literature…"

Reiss (2002:4) argues that these cultural instruments have historically offered a means of understanding and controlling other cultures, by making itself the universal standard of progressive humanity. Understanding thus became a process of control and dominance through the oppressive use of cultural instruments on grounds of their 'universality'. For example, claims about the equality and freedom of individuals rely on ways of understanding that abstract 'individuals' from complex real-life contexts, split these contexts into separate activities and experiences that belong to different knowledge 'disciplines', and make manifold strangers of people who are not. In the practice of informed consent, the Western construct of rationally, universally applied, abstracts the individual in her capacity as autonomous being from her 'irrational' faculties and social context, and she is expected to conform to the rationality demanded by the 'universal' norm of individual informed consent. This ignores her real-life position as a – often subordinate – member of society – a mother, a wife, a daughter – with responsibilities that might entail conforming to the male dominance of a patriarchal societal system. "Philosophy, psychology, economics, sociology, and whatnot are unable to put poor Humpty Dumpty together again as an unequal, unfree member of a collectivity" (Reiss, 2002:25).

6.4 Value reciprocity

I have thus argued that the concept of autonomy and the idea of informed consent can both be considered constructs of power and that this line of argument might be extended to view informed consent as a cultural instrument aimed at controlling other cultures. A

question implicit in this argument is, to the extent that 'the autonomous person' is a Western invention, does its absence elsewhere imply a deficit or a failure? Does it imply that cultures that have not adopted and embraced this vision of the individual are in some way uncivil? This question exposes the underlying assumption that 'the autonomous person' is the end-point in a world-historical *telos*, something to which humanity is inexorably drawn as it casts off its primitive nature. Comaroff and Comaroff (2001:267) ask: "[i]s it, in other words, a universal feature of modernity-in-the-making, a Construct in the Upper Case? Or is it merely a lower case, local euroconstruct?"

This question has even greater importance in the current era of globalisation. Globalisation is the increasing unification of the world's regional economies, societies and cultures by means of communication, transportation and trade. Even though the term is most closely associated with economic globalisation, it is also driven by technological, socio-cultural, political and biological factors that create the possibility of the transnational circulation of ideas, language and popular culture through a process of acculturation (Croucher, 2004:10). Posited as the vehicle for the 'progress of humankind', it subsumes cultural difference in an attempt to create a single commercially homogeneous global network, thus crafting a utopian global village[68] or a commercialised McWorld[69] (Barber, 1992). This drive has seen political leaders declare a New World Order where democratic transitions worldwide will usher in a world culture of modernization. Croucher (2004:3) argues that socioeconomic development, technological advancement and democratization seem to have supplanted parochial attachments such as ethnicity and nationalism, causing Francis Fukuyama (1989:4) to declare the "end of history" and postulate "the endpoint of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government."

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[68] Marshall McLuhan first expressed the idea of the 'Global Village' in his book, *The Gutenberg Galaxy: The Making of Typographic Man* in 1962.
[69] McWorld is the term used to describe the spread of McDonald's restaurants throughout the world as the result of globalisation, and has come to represent the effects of international 'McDonaldization' of services and commercialisation of goods (Barber, 1992).

Globalisation, however, raises issues concerning identity and belonging. There has thus, not surprisingly, simultaneously been a reaction against this process of unification and individuals and groups in both the developed and developing world have mobilized around issues of cultural recognition, autonomy and separateness, presenting as outbursts of identity-based conflicts[70] and cultural clashes[71] throughout the world (Croucher, 2004:3-4). During imperialism, it was the habit of the imperialist to subjugate the conquered population and impose his own culture on that population. I argue, with others, that globalisation might become a new form of imperialism[72]. Without due cognizance of the danger of this neo-imperialism it is possible that, in the age of globalisation, the 'globalist' might impose his world-vision on the 'conquered' and subsume all that is foreign or different. History has shown us the folly of such a policy. It would be mindful to heed Goethe who praised the foreignness of other cultures and believed that such mutual foreignness might highlight intellectual needs previously unknown and could address these needs through a process of nurturing knowledge, understanding, tolerance and acceptance (Schulz & Rhein, 1973:3).

I believe there are valid reasons for not viewing all societies as striving to achieve a Western ideal of autonomy. The Western history of the development, or rather the invention, of the concept of autonomy is rich in its diversity. It has however been the idea of autonomy as a rational and independent self that has become the hegemonic expression thereof. As argued in chapter 5, this type of autonomy has been much criticized for its alienating nature and its propensity to ignore the contextual reality of persons. It can be described as an autistic[73] form of autonomy. This depiction draws on Habermas' (2004:335) critique of systems theory that argues that, since systems theory claims that all functional systems achieve their autonomy by developing their own codes and their own semantics, which no longer allows for common translation, they sacrifice

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[70] The most striking and tragic example of this conflict is the terror attacks of September 11, known as 9/11. For a discussion of the place of globalization in these attacks, see Croucher (2004:3-7).

[71] Michael Harrington (1998) argues that we have replaced the clash of ideologies with the clash of civilizations.

[72] For a comprehensive explanation of this view, see Amin (2011).

[73] Autism is a mental condition, usually present from childhood, characterised by complete self-absorption and a reduced ability to respond to or communicate with the outside world (The Oxford English Reference Dictionary, 1996).

the ability to communicate directly with one another. These systems, unable to interact with one another, can only observe; hence, become autistic. In much the same way, individuals who subscribe to a strong form of autonomy are abstracted from their social contexts and thus, self-referentially, close themselves off from their environment. This "autopoietic encapsulation" – to borrow a term from Habermas (2004:335) – makes integration in society problematic. This form of selfhood becomes an impoverished, anaemic notion that needs to be augmented by a fuller realisation of the importance of the emotions and a notion of embeddedness in a society and a group.

The field of medicine is not just a 'functional system'. Medicine reflects broad social values and biomedical ethics is constituted by manifold moral principles emanating from various religious traditions and secular moral philosophies. It however seems as if, influenced by the current dominant legal and political culture in the West that is based on the protection of individual rights, autonomy as a governing philosophical principle has been prioritized in medical ethics. In modern ethical discourse, even though different principles of ethics are espoused, autonomy thus seems to dominate. In the Principlism model, developed by Beauchamp and Childress, four principles of ethics are proposed but the dominance of autonomy makes for a lopsided table.

The next question is then, since autonomy functions as a positive construct of power in creating identity, can it be imbued with common foundational values that transcend culture[74], in order to escape from the delimiting male notion that currently surrounds it? And if so, would the idea of transculturalism as a vehicle for value reciprocity be practicable? Transculturalism is a pluralistic idea with the vision of "seeing oneself in the other" (Cuccioletta 2001/2002:1). According to Slimbach (2005:211) it is rooted in the quest for identifying shared interests and common values across cultural and national borders and hinges on the ability to see "many sides of every question without abandoning conviction, and allowing for a chameleon sense of self without losing one's cultural centre." It is different from multiculturalism – that insists on identity – in that it

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[74] The notion of culture is almost impossible to define. According to Eagleton (2000:1) it is one of the most complex words in the English language. I will use it in this dissertation to denote "the customs, civilisation and achievements of a particular time or people" (The Oxford Reference English Dictionary).

encourages the individual to move beyond her identity and overcome the determinations and limitations of her original 'inborn' culture, for instance, in terms of categories of race, gender, and class (Epstein, 2007).

This is an appealing idea since the process allows a person to assimilate those values that she finds admirable and commendable in other cultures into a new value system without abandoning her culture altogether. Although transculturalism is seen as a new aspect of cultural development (Epstein, 2007), I propose that this is in fact not a new idea, but just the verbal expression of the unremitting process of the formation of cultures. Culture is an evolutionary process and no culture is truly static (Appiah[75], 2006; Kleinman & Benson, 2006:1673), but is ever influenced and shaped by its meeting of the other. This process has been facilitated and accelerated by the removal of time and space[76] as insurmountable barriers to encountering other cultures and ideas. In a sense, each culture, and by extension, each person, is a mosaic.

I think that one of the most valuable contributions of a strategy of transculturalism is that it allows for moments of mutual recognition. Feminists, like Allen (2008:69), have argued that social interaction that is based on communication, reciprocity and mutual recognition, is vital for a radical exploration of identity[77]. By not imposing a hegemonic view of culture or its attributes, mutual recognition allows for a way of understanding ourselves not in terms of power relations and subjugation, but rather in terms of a collectivity. An identity constituted by recognition levels the playing field and, while maintaining that power is pervasive in society, need not involve subjection, since the one that is recognised need not be conquered or controlled. In the medical context this might mean that the doctor recognises herself in the patient as a potential patient with

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[75] Appiah (2006) said: "[c]ultures are made of continuities and changes, and the identity of a society can survive through these changes. Societies without changes aren't authentic; they're just dead."

[76] The removal of time and space as barriers is meant to denote the improvements in global travel, communication and the spread of information, for instance by means of the Internet.

[77] This is the principal feminist critique against Foucault's account of the politics of the self. It is argued that, since Foucault focuses exclusively on power in terms of strategic relations, his conception of the self necessarily overlooks the role of non-strategic social relations, such as those based on communication, reciprocity and mutual recognition. Foucault does however incorporate a normative conception of reciprocity in his later interviews, making it fair to say that although his version of reciprocity might be underdeveloped, it is not absent in or precluded by his work (Allen, 2008:69-70).

insecurities and fears, and the patient recognises herself in the doctor as a decision-maker with provisional knowledge. Part of this recognition is the awareness that we are all constructed and situated in social space, and that this communal space engenders dependence. We depend on the like recognition of others for our identity and depend on the like actions of others for the expression of our freedom. As Butler (2005:82) explains:

> "if, at the beginning…*I am only in the address to you*, then the 'I' that I am is nothing without this 'you', and cannot even begin to refer to itself outside the relation to the other by which its capacity for self-reference emerges. I am mired, given over, and even the word *dependency* cannot do the job here."

The exploration of structured social space holds the promise of liberation through a critique of the ideological forces present in our own social structure, for instance, the recognition of the often-oppressive centrality of gendered construction in the social space. The aim is not to uncover some unique 'truth' about ourselves prior to our construction in social space, but rather to develop a better understanding of ourselves, *qua* mutually constructed beings. This might allow us to better approach moments of mutual recognition and these moments can be emancipatory since they can potentially transform those agents involved in them.

One might argue that such an approach represents an oversimplified view of subjection in society. If such a view is seen to explain the oppression of women, for instance, simply be exploring the social space and exposing the patriarchal social structures that secure power of men over women, one might deduce that women are simply the passive, powerless victims of male power. This will ignore the complicated ways in which women's experiences and self-understandings are constructed in and by the very power relations that they seek to transform, and how women often collude with patriarchal standards of femininity[78]. Ignoring this might lead one to conclude that the dismantling of

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[78] Sandra Bartky (1988) describes how women, through disciplinary practices such as dieting, exercise and beauty regimens conform to the prevailing norms of feminine beauty. This view is echoed by Susan Bordo (1988) who argues that predominantly female eating disorders, such as anorexia nervosa and bulimia, might be understood as disciplinary technologies of the body through which women attempt to conform to cultural norms of an ideal female form.

dominant structures of male power will lead to the emancipation of women; a notion that feminists vehemently reject. I agree with Armstrong (2005) that liberation from domination is not enough to guarantee freedom and what is needed is establishing new patterns of behaviour, attitudes and cultural forms that have the ability to empower the vulnerable and, in this way, "to ensure that mutable relations of power do not congeal into states of domination."

One should however be mindful of the ubiquitous barriers of racism, fear, ignorance and imaginative stereotypes that remain constant obstacles to the application of transculturalism (Cuccioletta 2001/2002:1). One should furthermore be vigilant that the process of transculturalism is not turned into an affirmation of the self, whereby the individual endeavours to replace herself in order to seek that which resembles her own image. She is therefore not looking for alternative world-views and values, but merely attempting to recognise her own values, thus in a way searching for her own home in other cultures. This idea is expressed by the great writer, Octavio Paz, who in his reflections on multiple identities and a transcultural world, postulates that when we move from one place to the other, we are in reality remaining in the same place.

6.5 Practical application of value reciprocity

At this point it seems prudent to develop an example of the practical application of value reciprocity in a healthcare context. In my field of clinical practice, I treat patients with end-stage HIV[79] disease. Practically all patients qualify for treatment with antiretroviral treatment (ART) – regardless of how advanced their disease and how complicated their disease profile – and the prognosis of most patients is excellent. In fact, the 5-year survival rate in our clinic is 90%, which greatly exceeds that of patients with heart failure, for instance. I have however occasionally encountered patients who refuse this life-saving treatment. The typical scenario is of an ill young man who is brought in by his family members – usually women – for treatment. He goes through the process of counselling, testing and preliminary investigation for ART, but at the moment treatment should be

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[79] Human Immunodeficiency Virus

started, he point blankly refuses. Appeals by the health care personnel and the family seemingly fall on deaf ears. Without treatment, the patient invariably dies within a few months. News of the patient's death is usually met with one of the following two responses from the health care workers: "This is sad, but it was his choice" or "It was God's will."

The underlying assumption is that the patient rationally decided against treatment or that he would have died in any event. Further discussion with some of these patients reveals that they are indeed autonomous according to all the medical criteria: they fulfil the conditions of *liberty* (independence from controlling influence) and *agency* (capacity for intentional action). According to a bioethical model, they thus autonomously refuse treatment. In a few such patients, the prime conviction lying behind their refusal is that they do not believe that they are in fact infected with HIV. They acquiesce to testing but do not believe the results of the test. They dispute the existence of HIV and rather believe that they have been bewitched by someone who is jealous of them or that they have unwittingly angered their forefathers and are now being punished. What could then be more rational than to refuse treatment for a disease that you believe you do not have? Any amount of persuasion on the part of the health care workers fails to convince them otherwise.

It seems that insistence on autonomy as the principle deciding a course of action, fails these patients. In a cultural milieu where disease is not necessarily understood by means of a germ theory but rather by means of metaphysical properties such as destiny and ancestral influence, it makes no sense to appeal to medical explanations of the HI virus. This is compounded by the fact that HIV has been shrouded in stigma and stereotypic understanding of risk and transmission that engender fear and denial. In such cases, a Western understanding of autonomy abstracts the individual from his emotional faculties and socio-cultural context, and ignores his real-life position as a member of a group that attaches importance to a metaphysical understanding of the world. I argue that such patients operate within a parallel belief system and that no amount of medical information is able to mediate between the two. Without an adequate understanding of patients'

worldview within a larger socio-cultural milieu, they are doomed to be misunderstood and improperly treated.

One successful strategy embodying the notion of transculturalism has been to work together with traditional and spiritual healers in order to address the patient's metaphysical anguish while at the same time treating the medical condition medically. This approach implies a willingness of both parties to value and respect the other's world-view and belief paradigm. It further implies a willingness to attach moral significance to a patient's emotional and spiritual dimensions of being and acknowledge the importance of valuing situatedness and context. In this manner the patient can access treatment and healing for both his body and his mind, culminating in a greatly improved doctor-patient relationship and ultimate disease prognosis. Too often, doctors dismiss the metaphysical outright as irrational and hence medically objectionable, or even immoral. I believe that such a view, constrained by rational medico-scientific understanding, fails to respond to the patient in a holistic and morally responsible manner.

This example is rather straightforward and it is tempting to test the idea of value reciprocity in a more complex ethical example. For this purpose I select one of the most vexing ethical dilemmas of our times: euthanasia. Euthanasia is understood as the "deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering" (Harris, 2001:367). I will only refer to voluntary forms of euthanasia – whether active or passive – as I believe they are morally distinct from non-voluntary and involuntary forms of euthanasia. Voluntary euthanasia is based on the moral principle of respect for autonomy or individual self-determination. The autonomy referred to pertains to both the patient and the doctor. A patient thus makes an autonomous decision to request euthanasia and should be able to give informed consent, "which is given by an individual competent to choose PAS[80] or euthanasia, and whose choice is both voluntary (free from coercion or undue influence) and based on adequate information (about matters such as diagnosis, prognosis, and effectiveness of pain management)" (Landman, 1998:242). The doctor similarly autonomously agrees to

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[80] Physician Assisted Suicide

participate in the act of euthanasia, based on his assessment of the patient's unique circumstances.

Manifold arguments have been levelled against the proposed practice of euthanasia (Young, 2010). The most prominent arguments come from the religious sphere where it is argued that euthanasia is against the word of God, that it weakens society's respect for the sanctity of life and that suffering might have intrinsic value.[81] Ethicists have argued that euthanasia might not be in a person's best interest, that euthanasia assumes that some lives are worth less than others, and that it is the start of a slippery slope that will lead to involuntary euthanasia and the killing of people that are deemed to be socially undesirable. Finally, there are practical arguments that allege that palliative care makes euthanasia unnecessary, that there is no way of properly regulating euthanasia, that it gives too much power to doctors, and that it will expose vulnerable people to pressure to end their lives. I will not attempt to counter all these myriad religious, ethical and practical arguments, but rather attempt to show how the practice of value reciprocity might open an avenue that could lead us out of the impasse created by arguments founded exclusively on autonomy.

The ethical debate of euthanasia is mostly framed as an opposition between autonomy and beneficence/ non-maleficence. Landman (1997:867) argues that these principles need not be in conflict and supplements the reliance on autonomy in his account of euthanasia with the moral imperative of patient wellbeing – specifically the prevention of suffering – and links it to the moral requirement of non-maleficence, in that patients freely decide what constitutes harm for them. It however seems as if no one can agree on what can 'correctly' be viewed as benefit and harm in such situations. Some argue that life is always a benefit (based on the sanctity of life) and death is always a harm (based on the religious prohibition of suicide and killing). Others, like Landman, however argue that

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[81] Pope John Paul II (1984:27) wrote: "[i]t is suffering, more than anything else, which clears the way for the grace which transforms human souls." Some non-religious writers have expressed a similar view that suffering might have value, such as M Scott Peck (1997: 203-4) who wrote that suffering might teach one "how to negotiate a middle path between control and total passivity, about how to welcome the responsible care of strangers, about how to be dependent again…about how to trust and maybe even, out of existential suffering, at least a little bit about how to pray or talk with God."

suffering can become so excessive and unmanageable that life ceases to be a benefit and that dying is no longer a harm. There seems no prospect of ever reaching agreement on this, since these arguments are based on man's (human's) deepest existential and religious beliefs and fears. In the absence of agreement, the principle of autonomy and appeals to the law are left to do all the work in deciding such matters.

It however seems to me that questions about the moral permissibility of euthanasia cannot be resolved by an appeal to autonomy, understood as rationality and impartiality, alone. Even though autonomy is vital and indispensible in assuring that the request for euthanasia is indeed voluntary and informed, I feel it fails to capture the complexity of the moral quagmire that exists around euthanasia, for three reasons. Firstly, I fail to see how a request for euthanasia can ever be a purely rational decision. In fact, appeals to rationality that imply adequate information seem like a category mistake given the incomprehensible and arcane nature of that which lies beyond death. Can one thus ever have adequate information to make a truly informed decision? Secondly, the uncertain nature of death and the afterlife, and the existential crisis elicited by such prospects, necessarily bring about feelings of, amongst others, fear, panic, uncertainty and anger. A patient's fear can be about intractable pain, psychological suffering, abandonment by family, friends and the medical profession, loss of dignity and loss of control. Fear can however also be about making the wrong decision and God's ensuing wrath. The principle of autonomy is unable to account for the complexity of these emotions and fears and allows them no opportunity for expression. Thirdly, claiming that a request for euthanasia can be rational and independent, mocks the patient's state of debilitation and disempowerment. The doctor seems to hold most, if not all, the power in such cases since he can deliberate about the information about prognosis, alternative treatments and their costs and burdens, from the detached perspective of a physically well human being.

Insistence on rationality, objectivity and independence without due appreciation of the emotional and spiritual aspects inherent in a decision about euthanasia, will serve to isolate the individual, dehumanise and depersonalise her further in the harsh light of modern scientific medical practice, and will only exacerbate the problematic power-

differential between doctor and patient. Furthermore, autonomy viewed as independence, fails to recognise the reality that euthanasia is about more than the request of an individual patient. Many people are affected: family and friends, medical and other carers, other people in similar situations and society in general. We cannot divorce the patient from her family, culture and worldview. Doctors must understand their patients' request within the framework of their idea of selfhood and their situatedness in a wider socio-cultural context. An adequate understanding of the role and effect of the particular patient's context and circumstance is essential if the healthcare profession is to adequately respond to the patient's suffering.

A clear distinction should be made between pain and suffering. Pain is a physical state of the body whereas suffering "is an afflicted state of being, a specific distress that happens to a particular person on whom has been inflicted unendurable pain or other symptoms, losses, enduring fear, hardship, injury, disaster, grief, sorrow, or care and who has been changed as a result of the burden" (Cassell, 2004:76). It is not just the body, but the whole person, that is involved in suffering. Suffering is concerned with the meaning attached to the pain and relief of pain might not necessarily bring relief of suffering. I argue that suffering could be addressed by means of value reciprocity in which moments of mutual recognition might serve as a reminder that we are all potential patients and that we might all experience times of intractable suffering. By contemplating what type of responses might adequately relieve our own suffering, compassion and mercy might be allowed a place of moral significance.

How might compassion be given moral significance and not just token status in bioethical discourse? If compassion merely functions at the outskirts of moral deliberation or as an add-on after the four principles have been applied, it fails to offer real comfort in the face of suffering that entails intransigent losses. The meaning of compassion is to 'feel with' someone. If we are thus to take compassion seriously, we should be willing and able to actively engage with the patient's emotions, fears and spiritual beliefs and value them as morally significant. We need to attempt to understand a patient's emotions and spirituality as a morally relevant part of the person that is as important as his or her

rational faculties. Too often, doctors disengage in the face of such a display of emotional anguish and hide behind the legal prohibitions in a country. Compassion transcends cultural and gender boundaries and might challenge the legal paradigm of prohibition of euthanasia. Importantly, in order to counter the alienation of terminal disease, the transcultural value of non-abandonment is of paramount importance. A patient should thus feel free to express all her emotions and fears to a non-judgemental healthcare worker and know that such expressions will be valued as significant components of her whole person. Regardless of the ultimate decision that is made, whether for or against euthanasia, the patient needs to know that she will not be abandoned by those who promised to care for her.

Medicine is primarily concerned with the care of the ill and this is not based on rationality or a sense of freedom, but rather on a deep metaphysical sense of our interconnectedness and on our desire to assist those in need. This is not to argue that autonomy is not important in a judicial-legal sense, but rather that it can create a rather impoverished view of morality if it is emphasized at the expense of the other moral values. One such value that might counter the alienation of modern medical pratice and its ensuing byzantine ethical dilemmas is value reciprocity.

6.6 Transcending gender, transcending culture

I have discussed the ways in which a traditional Western construct of autonomy and informed consent can be conceived of constructs of power, and briefly addressed the possibility of using an idea such as value reciprocity to augment the autistic version of autonomy. By engaging in a process of transculturalism to realise an ideal of value reciprocity, feminists and non-Western critiques can be taken seriously and attempts can be made to incorporate their suggestions in a new vision of autonomy.

This, however, does not mean that the Enlightenment project that spawned autonomy, failed – as suggested by MacIntyre (2007) – and that we should abandon the project altogether. Many positive things emanated from the Enlightenment, amongst others the

emancipation of the individual from the collective. The seeds of liberty sown during the Enlightenment did eventually also find fertile soil in female fields so that women have been able also to mobilise and demand equal legal and moral status in most societies. The modern concept of autonomy has also acted as a necessary corrective in the medical sphere, by assisting in levelling the playing fields between patients and doctors. Autonomy is seen as a powerful means of resisting the loss of personhood that results from being ill, and autonomy thus becomes a mechanism through which people can reclaim control and authority over decision-making in their lives in the face of the 'medicalisation' of their identity. It thus allows people to resist being reduced from persons to patients (Tauber, 2005:14-15). It should however be remembered that the demand for the recognition and respect of autonomy is reciprocal and that doctors are equally autonomous beings. The autonomous wish of a patient thus cannot trump the conscientious objection of a doctor.

Although feminists have argued that the concept of autonomy should be abandoned altogether, since it cannot be rescued from its masculine foundations and chauvinistic tendencies, I agree with Hill that a blanket rejection of the concept of autonomy is uncalled for. What is needed seems to be a re-evaluation and re-interpretation of autonomy. As described in chapter 3, autonomy draws on two understandings of freedom: one negative – representing freedom from oppression or interference by another – and one positive – the freedom to participate in the process by which one's life is controlled. The positive force of autonomy can be harnessed to create a new understanding of autonomy that creates new possibilities of being in the world. In this regard, I support Hill's argument for the retention of the three fundamental components of autonomy[82], and argue for a further elaboration of the concept of autonomy to incorporate the recognition of the emotions and the importance of a sense of embeddedness in the world.

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[82] As discussed in chapter 5, these three components are: 1) autonomy as impartiality in the review and justification of moral principles and values; 2) autonomy as a right to make certain personal decisions; and 3) autonomy as a goal for personal development (Hill, 1987:134).

I argue that the reason-emotion dichotomy is in fact a false one, stemming from a devaluation of the emotions during the Enlightenment. According to this dichotomy, a person can either ascribe to reason on the one hand – and thus be cold, heartless and calculating – or subscribe to emotion on the other – and thus be compassionate, kind and loving. I do not however believe that reason and emotion are unrelated and diametrically opposed in such a manner. I believe there should be a manner in which to reconcile them. A few such theories have been proposed. The theory of Objectivism[83] holds that the emotions are by-products of reason. The connection is of course not direct, as the emotions are the product of a subconscious mechanism that is programmed by a person's value-judgements and conclusions. It is however possible for the emotions to be 'programmed' to be consistent with reason through the process of explicitly identifying values and objectively judging past actions and conclusions. Supposedly, such programming will result in a harmonious cooperation of reason and emotion, with the two mirroring each other. The Objectivist view however still seems to devalue the emotions and requires them to be subservient to reason. Only when the emotions are seen to conform to reason are they held to be authentic and true. I however do not believe that it is necessary to subscribe to such a structured view of reason and emotion for the emotions to be taken seriously or judged valuable. Even the complete absence of a theory explaining the functioning and role of the emotions does not imply that they are not important. Some things escape rational definition and confinement.

It is however not only important to focus on the emotions and cultural milieu of the patient; similar cognisance should be taken of the doctor's situatedness. Tangwa (2000:40) argues that a key problem with Western ethical theory is that, by focusing on the object of morality – in this case, the patient – at the expense of the subject, the agent of morality – in this case, the doctor – it shifts critical attention from the agent and his actions. Promoters of virtue-ethics have thus called for the rejection of 'objective' ethics based on reason in favour of a 'subjective' ethics based on personal traits and character.

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[83] The theory of Objectivism was developed by the novelist Ayn Rand, as discussed in chapter 5. She wrote: "[e]motions are the automatic result of man's value judgments integrated by his subconscious; emotions are estimates of that which furthers man's values or threatens them, that which is *for* him or *against* him…" (Rand, 1964:30).

By acknowledging that we are all potential patients, the doctor is better able to comprehend that the patient's suffering is not deserved and that the patient's losses are significant. Such an understanding leads to the possibility of not viewing the patient's dependency negatively as a lack of autonomy or incompetence, but rather as the result of our shared human vulnerability to illness, disease and injury.

Can we thus define meaning that transcends gender and culture? This should indeed be possible, but this meaning will not be captured in a single word or phrase. The meaning will always be provisional and just like culture, change and develop as it is exposed to further scrutiny and opposition. What is important is not the search for a final meaning or final word that will complete the process; it is rather an attitude of being open to ideas from outside the bastion of Western, male privilege. It is a willingness to actively explore and incorporate ideas of communitarianism, diversity, dependence, vulnerability, responsibility and reciprocity into the tired, delimited, Western construct of autonomy. Transculturalism could not, and in my opinion should not, strive to replace the unitary notion of autonomy with a unitary notion of a different name.

If we are to substantially revise the Enlightenment concept of autonomy, does this mean that we can still use the term 'autonomy'? In other words, can the old skins still hold the new wine? Will we as *Homo moralis* be better able to evolve together with a new concept of autonomy that embraces emotions and one another? Or do we need to fundamentally reconstruct, redefine and rename a notion that can incorporate all our requirements: rationality, independence from self-regarding aspects, regard for the emotions and unconscious components, a notion of embeddedness and cultural sensitivity? What is needed is synergy between these terms. Synergy is defined as two or more things that function together to produce a result not independently obtainable (The Oxford English Reference Dictionary, 1995). Following the view that a cohesive group is more than the sum of its parts, synergy thus embodies the ability of a group to outperform even its best individual member. The value added by the system as a whole is primarily created by the relationship among the parts, specifically how they interconnect. Such a system thus consists of interrelated components that work together with a common objective:

fulfilling some designated need (Blanchard, 2004:8). In seeking a new moral term, could it be possible to achieve this type of synergy with a new word that incorporates all of our components?

Some people have suggested abandoning the word 'autonomy' in favour of its antecedent, 'respect for persons' (Lysaught, 2004:678). But as I have shown in chapter 2, such a word is as encumbered with the baggage of the Enlightenment and is as such unable to help us escape from the current bind. One could possibly make up a new term, centering on the words *holo* – incorporating the concept of wholeness into the idea of the individual moral legislator – or *competira* – to denote the process of searching for excellence together. Alternatively, one could substitute the word 'autonomy' with another known Greek word, such as *phronesis* – depicting practical knowledge – or perhaps *arête* – depicting human functional excellence, most specifically as *phronesis* operating to develop the virtues. These do not accurately capture the meaning that I have in mind. Rather then the word *sophrosyne* – usually translated as temperance, but literally meaning 'moral sanity', in other words, personal stability and integrity that emanate from the harmony of the appetites, passions and reason; a form of enlightenment through harmonious living (The Free Dictionary, 2011). Of these contestants, the latter would seem to capture the meaning most completely.

Words have incredible power. Words create meaning that allows us to shape and define the world around us. We should choose them carefully. In the moral world, the word 'autonomy' has generated centuries of controversy and debate. But if we understand that words are just metaphors, once again socially constructed, we realise that words are just frameworks for meaning, a window to another world that lies beneath[84]. Words depend on a shared meaning that lies beyond its agreed spelling and articulation. A word, such as *sophrosyne,* newly introduced into moral discourse, will probably fall victim to the same treatment as autonomy. It will be dissected, traced back to its 'origin', and conceivably be accused of the same ancient Greek male heritage that devalued women. It thus seems equally possible to redefine the word 'autonomy' in order to give it its rightful place in

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[84] Perhaps akin to Plato's world of Ideal Forms?

moral language, than having to invent a new word and more importantly, getting everyone to agree on its ultimate meaning. As argued in chapter 5, it seems that the origin of the word 'autonomy' is not necessarily the problem, but rather the interpretation of the word and how it has come to be applied in a modern context. Part of the problem might be that we use the word 'autonomy' to refer to so many diverse things, ranging from a legal to a political context and hence, in the moral context, the word is muddled by this diversity and has lost its unique definition. What ultimately matters is what something is, not what it is called. In the inimitable words of Shakespeare (1839:22):

> *"'Tis but thy name that is my enemy;*
> *Thou art thyself, though not a Montague.*
> *What's Montague? It is not hand, nor foot,*
> *Nor arm, nor face, nor any other part*
> *Belonging to a man. O, be some other name!*
> *What's in a name? that which we call a rose*
> *By any name would smell as sweet;*
> *So Romeo would, were he not Romeo call'd,*
> *Retain that dear perfection which he owes*
> *Without that title. Romeo, doff thy name,*
> *And for that name which is no part of thee,*
> *Take all myself."*

So perhaps what is needed is not a new word, but a new synergy between the existing principles and values of morality. In a group, the individual components might very well be able to achieve more than they can individually and as such move us closer to achieving a sufficient and mature understanding of the moral life and our responsibility within it.

6.7 Conclusion

In this chapter I argued that the concepts of autonomy and informed consent can both be viewed as Foucauldian constructs of power. I attempted to develop a brief, yet

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contextualised, analysis of the interstices and intersections of power and autonomy and informed consent; an analysis that recognizes the limits of rationality in engaging in critique, but one that also recognizes its importance.

Autonomy functions as a construct of power in three distinct ways: it demands a standard of rationality through the assessment of scholars and students in school and university, and throughout all modern scientific disciplines; it constructs the 'real' identity of an individual as a rational self, able to triumph over the lower, emotional, self; and finally, individuals themselves strive to become rational selves in order to conform to the norm and standard set by society. Informed consent similarly functions as such a construct of power in three related ways: the standard of rationality is upheld and all patients and potential research participants are assessed according to it; the 'real' identity of an individual is viewed as the rational self, abstracted from her emotions, desires and social context; and finally, informed consent becomes the norm according to which the medical fraternity operates and the individual strives to be able to fulfil this norm through being a rational self.

I then built on the critique initiated in chapter 5, showing that autonomy can be an anaemic, and even autistic, term if abstracted from the whole self and the society in which it is embedded. Harnessing autonomy's positive power of constructing identity, I explored whether it might be possible to use the vehicle of transculturalism as a means of value reciprocity to augment the constrained sense of autonomy as rationality and independence. I argued that although an exploration of transculturalism will not deliver a final word or phrase encapsulating the essence of what we seek, it does provoke in us an attitude of continually searching for an acceptable, culture- and gender-neutral account of autonomy. This attitude is vital if we are to incorporate ideas of communitarianism, diversity, dependence, vulnerability, responsibility, and reciprocity into our moral milieu.

In the end, we might not need a new word to encapsulate such diverse meanings. We will probably not be able to find one that satisfies all our needs and expectations. What we should strive for is not a different word, but a different attitude of being in the world. In

general, this mode of being might engender a re-evaluation of the importance of holism and of the recognition of our shared vulnerability, dependence and responsibility to one another, and also to other species, future generations and the planet. A medicine inspired by value reciprocity might result in a doctor-patient relationship that functions as a partnership, imbued with an understanding that we are partners not because of the rational decision to be so, but because of our common humanity. We are all interdependent as social and moral beings, as *Homo moralis*.

Chapter 7: Conclusion

"In teaching philosophy I'm like a guide showing you how to find your way round London. I have to take you through the city from north to south, from east to west, from Euston to the embankment and from Piccadilly to the Marble Arch. After I have taken you on many journeys through the city, in all sorts of directions, we shall have passed through any given street a number of times – each time traversing through the street as part of a different journey. At the end of this you will know London; you will be able to find your way about like a born Londoner. Of course, a good guide will take you through the more important streets more often than he takes you down side streets; a bad guide will do the opposite. In philosophy I'm rather a bad guide" (Wittgenstein in Gasking & Jackson, 1967:51).

In this dissertation, I acted as a guide through the streets of the moral city with the name autonomy. I aimed to describe how it was built, by whom and when; how it operates within the country of morality and beyond; why it has become too small to contain all its inhabitants of meaning; and finally, who are the enemy at its gates. I further looked at the city's market, namely informed consent, and how the ideals of the city determine and inform the activities of the market. On this tour, we did indeed traverse some streets multiple times, especially the ones where feminism and communitarianism live. I showed you the monuments in honour of the non-rational faculties and social embeddedness erected on these streets, and I tried to explain why I think they are such an important part of our tour. Many of the routes took us past these monuments, not necessarily because I am a good guide, but perchance because I find this part of the city the most familiar or perhaps, the most exciting.

Plainly, I thus critically explored and appraised the concept of autonomy as it developed in Western discourse at the time of the Enlightenment. This journey had its start before the Enlightenment, at the antecedent and constitutive idea of personhood, and ended in the modern world, looking through a medical lens at the extension and application of autonomy as informed consent in a health care context. Five questions were specifically

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addressed:

1. In what context did the concept of autonomy originate and develop?
2. What is the socio-historical character of the concept of autonomy?
3. What are the underlying power differentials in modern-day ethical discourse and how are they maintained?
4. How can feminist and non-Western critique augment the traditional Western concept of autonomy?
5. Can cultural diversity be acknowledged through a process of value reciprocity?

I attempted to answer these questions by means of a historical analysis, perhaps better described as a 'narratology', partly inspired by Michel Foucault's method of archaeology-genealogy. I was thus inspired by Foucault's (1983:187) statement that "[p]eople know what they do; frequently they know why they do what they do; but what they don't know is what *what they do* does."[85] I went in search of the "what they/we do". I wanted to explore and see if I could unearth the power inherent in the concept of autonomy.

7.1 On using Foucault's method

The theoretical underpinning of this dissertation was discourse analysis and the method of archaeology-genealogy as developed by Michel Foucault. I used discourse analysis to explore the meaning and context of the language and texts relating to autonomy and informed consent in the biomedical sphere. It not only focused on the construction of the discourse, but also on the conditions that enabled the discourse of autonomy and informed consent to develop within the specific socio-historical period from the Enlightenment to modern times in the specific knowledge domain of medicine. A fundamental component of this analysis was the demonstration of the internal order of the discourse – in line with the archaeological approach – and the regulatory function that

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[85] My emphasis

defines meaning – in keeping with the genealogical approach. This was specifically addressed in chapters 3 and 4 where the underlying power dynamics that allow the concepts of autonomy and informed consent to function as social constructs that define and control acceptable behaviour in society, were discussed.

I relied on Foucault's method in the following specific ways. I analysed personhood, autonomy and informed consent by examining the discursive formations of each, namely: the objects about which statements are made, the places from which statements are enunciated, the concepts involved in the construction of the discourse, and the themes and theories they develop. Such an archaeological approach provided an alternative method for conducting the history of ideas. I then turned to genealogy to assist me in creating a critical history in the sense of sketching a picture of the present time without necessarily accepting what is postulated as self-evident, and to dispel what is familiar and accepted (Foucault, 1988a:265). Genealogy held attraction for me since, in Foucault's view, it is a form of history which can account for the construction of knowledges, discourses, and domains of objects, without having to make reference to a subject which is either transcendental in relation to the field of events or remains immutable throughout history (Foucault 1980b:149).

The Foucauldian methodology allowed me to stand sceptical of the prevailing dogma surrounding autonomy and enabled me to explore the specific roles of objects such as personhood, self, identity and personal identity, and the powerful role of ethicists in defining and determining the discourse. It further allowed me to expose the diametric oppositions that exist in the biomedical discipline: independence/ interconnectedness; individual/ community; rationality/ emotion; empowered/ disempowered; absolute truth/ relativity; universal/ contextual; good/ bad; man/ woman; Western/ non-Western. In my view, the recognition of these oppositions is instrumental to understanding how mainstream discourse determines 'the other' and how this us/them dichotomy feeds into the male domination of the discourse. Finally, the ultimate purpose of this line of reasoning was to demonstrate how we, as modern human beings and persons, are historically determined by the concepts and ideas of the Enlightenment, specifically the

manner in which the self was constituted as an autonomous subject.

Another advantage of Foucault's methodology is that it allows for words and texts out of different countries and different historical periods and disciplines to be grouped together based on a common cohesion and to combine them in one study object. It allows the author to make use of texts and social commentary outside of the dominant texts legitimised within the dominant discourse, and thus enables the author to transcend academic boundaries by lending as much legitimacy to works of poetry, prose and literature, than to academic texts and dissertations. This methodology, importantly, further allows for the voices of the silent populations – such as women, children, the mentally ill and the elderly – that are often excluded from the legitimated, dominant discourse, to be recognised and heard.

This approach is however not without its pitfalls and inconsistencies. Three specific criticisms about the methodology could potentially be levelled at my work. Firstly, it proved to be impossible not to rely extensively on the texts that dominate the existing discourse on autonomy. Even though alternative texts were explored and incorporated, the selection of these were problematic since there was no systematic way in which to identify them in terms of importance and relevance. My selection may thus, at best, be viewed as arbitrary, and at worst, as opportunistic. It could be argued that my texts were purposefully selected to demonstrate a point, rather than because they represented the 'true other'. Foucault himself has been criticized for failing to apply his own method. Poster (1986:217-8) argues that, despite the announcements that Foucault makes about his methodology, he abandons the objectivist level of reading statements in the text, and instead relies too heavily on the intentional level of meaning, direct arguments and explicit phrases. The accusation of arbitrariness has also been levelled at him: "[h]asn't history, under the stoic gaze of the archaeologist Foucault, frozen into an iceberg covered with the crystals of arbitrary formation of discourse?" (Habermas, 1986:106).

Foucault has further been criticized for rejecting the values of the Enlightenment while at the same time relying on them. Foucault's claim that questions of validity are not relevant

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to his mode of analysis, since truth is merely the effect of a given power regime, undermines the foundations of his own argument. (This accusation can of course be turned around to show that Foucault was not being inconsistent, since he did not aim to derive any fundamental truth-claim from his discourse analysis.) A more serious accusation is that Foucault utilizes the very notions of global theorizing, totalizing forms of analysis and systematicity he rejects, to formulate a "singularly affirmative understanding of modern philosophizing" (Habermas, 1986:106). Habermas (1986:106-7) further accuses Foucault of 'cryptonormativism' since he covertly introduces normative values and judgments into forms of analysis that he claims are value-free. In a similar fashion, I might be accused of having been overly reliant on the traditional, 'male' use of concepts such as rationality and freedom in my analysis of autonomy, instead of achieving a true 'gender-neutral' account. I might also seem to have constructed a meta-narrative of the development of the concept of informed consent, while as the same time criticizing this historical method.

Thirdly, it proved very difficult to fully grasp Foucault's methodology, because of three interrelated problems: the reluctance of Foucault to clearly delineate his research method, especially with respect to genealogy (Graham, 2005:2); the controversy surrounding the interpretation of the original French texts; and, the difficulty of accounting for the change and development of his thought over time. Gordon (1990:3) argues that some of Foucault's work has been misread or misunderstood often because commentators have relied on reading the abridged translation. Soyland and Kendall (1997:10) have claimed that such misappropriations are due to the unavailability of full translations. This is partly due to the vast number of texts available – the *Dits et écrits* alone spans more than 3000 pages! The translations are, however, often themselves contested in that the original French distinctions are often blurred when key words are translated into English. The translation of words such as 'dispositif', 'pouvoir', 'la gouvernementalité', 'savoir' and 'connaissance' are particularly controversial (Faubion, 1994:xlii).

The second aspect that complicates the use of Foucault's methodology lies in accounting for the change and development of his thought. In his earlier work, Foucault devoted

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himself to a deconstruction of the idea of the constitutive and rational subject. His critique was based on the denial of the individuals' capacity for rational and autonomous thought and turned the individual into a 'docile' body, incapable of overcoming the limitations of the society in which he lives. In his later work on the self, Foucault however infuses the individual with the capacity for self-determination and autonomy, which he sees as the basis of a modern ethics of the self. Foucault thus seems to have moved from an anti-Enlightenment stance to a position that directly follows the Enlightenment tradition (McNay, 1992:83-4). Many scholars have argued that this represents not a contradiction in Foucault's thought, but rather a natural development. Be this as it may, it seems clear that some of Foucault's fundamental thoughts might be interpreted differently, depending on which time period is referred to.

Having noted these limitations, I do however believe that Foucault's methodology was valuable in that it allowed me to take a critical stance outside of the academic dogma and that this enabled me to notice aspects of autonomy that I might otherwise have neglected or ignored. This methodology was instrumental in opening my eyes and ears to the neglected voices that need to be heard in the ongoing discourse of autonomy in the biomedical sciences. In the end, I hope to have used Foucault's method as he intended:

> "I would like my books to be a kind of toolbox that others can rummage through to find a tool which they can use however they wish in their own area…I would like the little volume that I want to write on disciplinary systems to be useful to an educator, a warden, a magistrate, a conscientious objector. I don't write for an audience, I write for users, not readers" (Foucault, 1974:523-4).

7.2 Summary of findings

7.2.1 Development of the concepts of autonomy and informed consent in biomedical discourse

Autonomy has been the subject of much debate in contemporary biomedical discourse. Derived from the Greek words, *autos* (self) and *nomos* (rule), originally referring to the self-governance of independent Hellenic states, it was extended to individuals during the

time of the Enlightenment, most notably through the work of Immanuel Kant and John Stuart Mill. They developed two independent theories that differ in their conceptualisation and application of the notion of freedom, but agree that the conditions of *liberty* and *agency* are central to this concept. The health care model of autonomy can be viewed as a reaction against paternalism and attempts to safeguard the dignity of persons. It finds expression in the practice of informed consent, whereby every autonomous person is granted the right to establish his or her own life plan based on adequate information and the freedom to act on this plan. Practically, this translates into being informed of one's diagnosis, having access to one's medical records, and having the final say in one's treatment. Informed consent, though based on a moral foundation, is largely the creation of various contracts and court judgements pertaining to the health care provided in specific cases and the establishment of regulatory standards in medical experimentation.

The discourse of autonomy and informed consent in biomedical ethics can thus be traced back to the Enlightenment, "when the science of morals and the morals of science became the subject of intense deliberation" (Tauber, 2011). The advent of rapid technological and medical advances in the mid-twentieth century challenged the very definition of life and death, and brought previously inconceivable dilemmas such as artificial reproduction, physician assisted suicide and genetic engineering to the fore. Concurrently, after World War II, Western society was committed to socially realign its conventions in favour of the recognition and protection of civil and human rights. This introduced even more ethical challenges into the discourse, such as the legal requirement of informed consent for therapy, protection of subjects enrolled in human research, and legal recourse in instances of medical malpractice. Medical ethics thus became a formal discipline, comprised of dedicated institutions, journals, books and conferences, and professional ethicists took over from theologians and philosophers in attempting to make sense of the moral life.

Medicine reflects broad social values and biomedical ethics is constituted by a complex array of moral principles forged together from various religious traditions and secular

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moral philosophies. Largely secondary to the dominant legal and political culture currently operative in the West that is based on the protection of individual rights, autonomy as a governing philosophical principle has been prioritized in medical ethics. The prominence of rights-based language in medical discourse however leaves medical ethics open to be over-determined by legal interpretation. The main concern is that a rights-based morality does not leave scope to express the ethics operative in other dimensions of the doctor-patient relationship. Medicine is primarily concerned with the care of the ill and this is not based on rationality or a sense of freedom, but rather on a deep metaphysical sense of our interconnectedness and on our desire to assist those in need. This is not to argue that autonomy is not important in a judicial-legal sense, but rather that it can create a rather impoverished view of morality if it is emphasized at the expense of the other moral values.

The founders of American biomedical ethics, Joseph Fletcher and Paul Ramsey, were theologians and espoused autonomy as a reflection of their deep religious commitment to respect for persons (Thomasma, 1984:142). They did not however specify how autonomy should be tempered by the other moral principles. This moral inheritance seems to have placed us in a perpetual state of obfuscation regarding the appropriate balancing of principles. A significant part of philosophical medical ethics has since been devoted to finding the desired equilibrium between the politico-legal view of individual autonomy and other moral principles that make strong claims in the medical culture, such as respect for persons, beneficence, and the sanctity of life. This makes for a complex debate and if we are to make sense of it, we require tools of analysis that are flexible and analysts who are wise.

The most significant criticism of the principle of autonomy is its universalization. Environmentalists, feminists and multiculturalists have been particularly vehement in their critique with the latter two launching the most comprehensive attacks. They raise, among others, the following concerns. Firstly, since the principle rests on the Enlightenment ideals of rationality, objectivity and independence, unconstrained by emotional and spiritual qualities, it serves to isolate the individual. Secondly, because

modernity made man the proprietor of his own person, in control of his own destiny, any principle adhering to the image of man as an independent "philosopher's abstraction" will fail to rectify the dehumanisation and depersonalisation of modern scientific medical practice (Van Zyl, 2000:37). And finally, the emphasis on rational decision-making serves to exacerbate the problematic power-differential between doctor and patient. The practice of informed consent has also been disparaged for being insensitive to different cultural milieus and individual needs within those milieus.

Even though the concept of autonomy and the idea of informed consent have thus been slated for being too individualistic and for marginalizing the importance of communities and traditions, the question remains whether its ethos of Western liberal individualism precludes it from being utilised by non-Western societies. In search of 'enlightenment', I set out to explore the historic development and context of the word 'autonomy' and then analysed it from a feminist and non-Western perspective.

7.2.2 Description of the findings of chapters

Chapter 1 was a foundational chapter that described the theoretical underpinning of this dissertation in the work of the French philosopher and historian, Michel Foucault. It explored the concepts of discourse analysis, archaeology-genealogy and power in Foucault's work and attempted to delineate the manner in which his methodology would be applied in this dissertation.

Chapter 2 explored the historical context of the concept 'person' and argued that it was a prerequisite for an adequate understanding of the contextuality and complexity of the concept of autonomy. I relied on an analysis of the discursive objects of personhood, self, identity and personal identity, and explored when and where these objects were added to the discourse. I attempted to expose the diversity and discontinuity of their historical development as a way of explaining the reasons why disagreement exists on a uniform and ubiquitous application of the concept of personhood.

I argued that the concepts of person and personhood are part of a modern ideology of individualism and are not universal 'truths' but rather historical developments and social constructs. I demonstrated that neither the concept of personhood, nor the concept of autonomy, were used in the moral language of ancient Greece – even though the idea of self-mastery was prominent during that time – and that these were modern notions that emerged for the first time in moral philosophy during the Enlightenment, most notably in the work of Immanuel Kant.

An important distinction between the concept of personhood and human being appears in philosophical texts, even though such a distinction is not made in common language. Personhood seems to have distinct and diverse beginnings and ends in a variety of disciplines such as law, religion, anthropology and philosophy. In law, the notion of personhood is used to infer liability; in religion, personhood is seen as the basis of our shared nature with God through the attribute of rationality; in anthropology, it denotes the social nature of being; and in philosophy, personhood has both metaphysical and moral meanings and implications. Philosophical notions of personhood were principally influenced by Descartes' duality and Locke's criteria of rationality and consciousness, and remnants thereof are still present in the myriad definitions of personhood today. I argued that the creation of the concept of personhood occurred in a male-dominated intellectual sphere that for all practical purposes excluded women and lower social classes, and that personhood could therefore be viewed as a male construct that was legitimised through academic and exclusivist debate.

I applied the method of archaeology to describe the discursive formations of the concept of personhood. Accordingly, the objects about which statements are made are person, self, identity and personal identity. The place from which statements are made is essentially a privileged male position. The concepts involved in the construction of the discourse are mainly rationality and consciousness. Finally, the themes and theories developed are a metaphysical theory of being and a moral theory of accountability. A limited genealogical analysis explored the dimensions of power inherent in the discourse, as it operates through rules of exclusion. I argued that the objects that seemingly control

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the discourse are its objects (what can be spoken of – amongst others, personhood and rationality), ritual (where and how one may speak – predominantly through academic debate and treatises) and the privileged (who is allowed to speak – the male philosophers). My aim with this methodology was to expose some of the interactions between knowledge and power and I concluded that those in the know, who could thus participate in the public debate, were all male, and that this male domination of the discourse effectively ignored the voices of women, non-Europeans, the illiterate and the underprivileged.

Chapter 3 proceeded with a historical exploration of the concept of autonomy. I traced the development of the concept from ancient Greece to the Enlightenment and through to its modern application. I aimed to show that autonomy, like personhood, is a social construct that has acquired diverse meanings and applications in different times and social milieus. I showed that it changed from a concept applied to independent city-states in ancient Greece, to a characteristic applied to human beings in the Enlightenment, and that this change was mediated by three social transformations that culminated in a fundamental shift in thinking about the place of the individual: the religious Reformation movement, the rise of the bourgeoisie, and the eminence of science.

I then discussed the development of the modern notion of autonomy by means of an analysis of predominantly the work of Immanuel Kant and Isaiah Berlin, and discussed the positive and negative notions of freedom that are operative within this discourse. I explored the most notable philosophers that preceded and influenced Kant, in order to contextualise his moral theory. I similarly positioned Berlin within his social context and explored the ideas that influenced him and contrasted this with the ideas of his contemporaries.

I finally looked at the discourse through an archaeological-genealogical lens. My limited archaeological analysis was concerned with a discourse analysis of the concept of autonomy, and I specifically discussed the objects about which statements are made, the places from which statements are made, the concepts involved in the construction of the

discourse, and the themes and theories they develop. I further aimed to expose the diversity and discontinuity of the historical development of the notion of autonomy. The genealogical analysis was concerned with an exploration of the power differentials operative within the concept of autonomy, most notably by exploring the foundation of modern ethical theories, analysing the different concepts of freedom dominant in society, and exploring whether the concept of autonomy can have a homogenizing and controlling function in society. I alluded to the power inherent in the discourse as it operates through rules of exclusion. Accordingly, the objects that seemingly control the discourse are its objects (what can be spoken of – amongst others, rationality), ritual (where and how one may speak – though academic debate and treatises) and the privileged (who are allowed to speak – the male philosophers).

The main finding of this exploration is that the concept of autonomy is a necessary feature of the moral life, but that its current interpretation and application in moral discourse need to be diversified. A narrow interpretation of autonomy as the capacity for independent and dispassionate action, as it currently stands, can be seen as a fantasy that pretends that the social and non-rational aspects of our lives do not inform our decisions and choices. Autonomy cannot be *the* principle of morality, but needs to be re-contextualised as *one of* the important principles of morality. Especially in medicine, autonomy fails to account for medicine's moral calling. It does so in two ways: firstly, by ignoring the true power differentials in knowledge and health status between patients and healthcare providers; and secondly, by failing to embody the full ethical responsibility of the healthcare provider. In society, and particularly in medicine, our common humanity should instil a sense of our deep metaphysical interconnectedness and cause a response that generates *response-ibility* (Tauber, 1999). Autonomy further fails to give guidance in cases where patients are deemed incompetent to make decisions, or, even when considered competent, make decisions that conflict with the medical opinion about what would constitute the best *medical* outcome. The moral dilemma inherent in such a case is whether patients can rightly (and paternalistically) be prevented from pursuing this course. Can beneficence thus outweigh the principle of autonomy, and if so, when and how?

The concept of autonomy, as influential and prevalent as it has become in modern ethical discourse, is therefore not unattested and uncontroversial. While it is plausible to accept that only agents that are capable of autonomous action can be held responsible for their actions, and can thus be assigned moral responsibility, it is important to acknowledge that other properties, apart from autonomy, carry moral weight and can assign responsibility, such as the values of compassion, care, responsibility, commitment and professionalism.

In order to substantiate and practically illustrate some of the abstract concepts raised in chapter 3, informed consent as the expression of autonomy in healthcare, was thus reviewed in chapter 4. A similar process was followed: I traced the historical development of the idea, supplemented with a limited archaeological and genealogical analysis. I attempted to situate informed consent in a broader socio-cultural context while highlighting specific cases for practical assessment. I explored the historical relations between the ethical and legal disciplines and focused on the conditions under which the discourse of informed consent was allowed to develop.

I concluded that the modern doctrine of informed consent developed from a principle of beneficence but found firm footing in the concept of patient autonomy in the post World War II era. The ethical and legal foundations of informed consent are distinct but fulfil complimentary roles in promoting the idea of autonomous decision-making. Yet, as demonstrated by case law, the legal demands of informed consent do not serve as a guarantee that patients will understand the information or use it to make autonomous decisions regarding their healthcare. It merely requires that they have the opportunity to make such decisions. The question about the scope and responsibility of the law and of the professional ethical standards in prescribing standards, remains unanswered.

The limited archaeological analysis revealed that the object of the discourse is 'androgynous man', that the places from which statements are made are the consulting rooms and courtrooms of modern society, that the main concepts in the construction of the discourse are the seven elements of informed consent, and lastly, that the themes that are developed by the discourse are themes of competence and themes of negligence and

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accountability. Limited genealogical analysis attempted to expose the power dynamic within the discourse by focusing on two power dynamics: that between the patient and the doctor and that between the patient and the State. It argued that the primary power differential in the discourse operates by controlling what can be spoken of (only that which is rational), where and how one may speak (only through using the rational language of medicine or law) and who is allowed to speak (only the rational adults). This methodology was useful since it opened a path for the voices that had been suppressed and neglected in the dominant discourse, to emerge and be heard.

In chapter 5 I embarked on a critique of the concept of autonomy, based on the perspective of feminist and communitarian writers. I explored the possibility of reconceptualising the traditional male and Western notion of autonomy by incorporating ideas of communitarianism, multiculturalism, diversity, responsibility and reciprocity. The main thrust of the argument centred on a recognition that one has to temper the notion of Western autonomy with an acknowledgment of humanity's social nature and interdependence.

This chapter strove to dispel some of the myths of modernity, most notably the myth of the rational self and the myth of the independent self. By appealing to developmental psychology and philosophy, arguments were made to show that human behaviour is less rational than we often like to believe and is also less voluntary than libertarians and theorists of autonomy would have us believe. I argued for the recognition of the importance of the community and the group, by demonstrating that the individual cannot be separated in her interests from the culture that cradled her and the society that sustains her. Following post-structuralist and feminist critique of metanarratives, an argument was made for the rejection of the prevailing phallocentric concept of universal reason and autonomy. I argued that this is an impoverished view that should be augmented by the recognition of the values of reciprocity and social embeddedness. This recognition has great importance since it creates the opportunity to negotiate a new social contract that can lend support to and preserve the social structures and institutions necessary to sustain and define that individual. Human beings are products of their environment as well as

their creators, and the community can thus never be sacrificed for the sake of the individual.

I further argued that social structures also bring with them the controls necessary for sustainable social cooperation. Civilization depends in a great part on reciprocity in terms of rights and corresponding responsibilities and it cannot succeed when its citizens demand limitless freedom. Civilization is founded on the right of the community to insist on certain conduct from its citizens. The social nature of human beings demands that a limited social order should exist, even though this may at times constrain the exercise of freedom and rights by the individual. The entire structure of an organized society depends on predefined limits of freedom and social controls are an essential aspect of any sustainable, viable society. Having said that, there is however still a need to temper the power of the community in order to protect the individual from being overwhelmed by societal pressure and tyranny. Maintaining the foundations of social order thus requires respect for autonomy as well as respect for freedom; it requires institutional power and restraint as well as self-expression and independence. Human flourishing and the realization of humanity's full moral potential require a social order correspondingly complex.

The final chapter in this journey attempted to bring all the component ideas together. I relied on Foucault's conceptualisation of the social construction of power to argue that the concepts of autonomy and informed consent can both be viewed as such constructs. I proposed that autonomy functions as a construct of power in three distinct ways: it demands a standard of rationality through the assessment of scholars and students in school and university, and throughout all modern scientific disciplines; it constructs the 'real' identity of an individual as a rational self, able to triumph over the lower, emotional, self; and finally, individuals themselves strive to become rational selves in order to conform to the norm and standard set by society. Informed consent similarly functions as such a construct of power in three related ways: the standard of rationality is upheld and all patients and potential research participants are assessed according to it; the 'real' identity of an individual is viewed as the rational self, abstracted from her

emotions, desires and social context; and finally, informed consent becomes the norm according to which the medical fraternity operates and the individual strives to be able to fulfil this norm through being a rational self.

I then built on the critique initiated in chapter 5, showing that autonomy understood as rationality and independence can be too constrained if abstracted from a holistic conception of the self and the society that nourishes it. By focusing on the positive aspect of power in the construction of identity, I explored whether it might be possible to use transculturalism as a means of value reciprocity to augment this rather anaemic understanding of autonomy. I argued that although an exploration of transculturalism could not deliver a final word or phrase encapsulating the essence of what we seek, it does provide an attitude of respect for the other. This attitude is vital in that it encourages a dedicated search for an acceptable and sustainable moral life, and allows us to incorporate ideas of communitarianism, diversity, dependence, vulnerability, responsibility and reciprocity into our moral milieu.

7.3 Conclusion

Medicine is a unique profession. It operates in a space where religion, morality, metaphysics, science and culture come together. It is a privileged space because health care providers assume responsibility for the care of their patients outside the usual moral space defined by equality and autonomy. As such, autonomy cannot account for the moral calling that epitomizes and defines medicine. By necessity, patients relinquish some of their autonomy and power to experts who have more knowledge – although knowledge is of course always provisional – and experience in the field. From a position of such vulnerability, it is impossible for patients to make truly autonomous decisions, if autonomy is understood to denote rationality and independence. The practice of medicine thus entails more than knowledge, competence and rules governing conduct; it demands a well-developed sense of moral responsibility, compassion and commitment. According to the autonomy model, medicine is however a type of contract, where a patient only receives medical attention as and when he demands it and to the extent that it respects his

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rights as an autonomous person. This is at odds with the moral drive that in most health care workers can be defined as providing care to those in need, thus beneficence imbued with a moral sense of responsibility.

Autonomy, resting on the Enlightenment ideals of rationality, objectivity and independence, unconstrained by emotional and spiritual qualities, isolates the individual. Treating patients as mere philosophical abstractions of independence fails to respond to the existential crisis sparked by illness and the dehumanisation and depersonalisation rampant in modern scientific medical practice; it only serves to exacerbate the problematic power-differential between doctor and patient. Recognition of the dependence of patients need not be viewed negatively as a lack of autonomy or incompetence, but could rather reinforce the understanding of our shared human vulnerability and that we are all ultimately patients.

This recognition should however not lead us to abandon the concept of autonomy altogether. A world without autonomy is inconceivable. When we recognise how the concept functions in the modern world as a social construct, we can harness its positive properties to create a new form of identity. We can utilise the possibility of self-stylization embedded in autonomy, as promoted by Foucault, to fashion ourselves into responsible moral agents that are responsive not only to our own person, but also to others, whether in our own species or in that of another. Responsible agency depends on mature deliberators that are mindful of the necessary diversity of the moral life and the complex nature of the moral subject.

I thus argue that the development of modern individualism should not be rejected altogether, since we cannot return to some pre-modern sense of community, or transcend it altogether in some postmodern deconstuction of the self. We also do not need to search for a different word to supplant the concept of autonomy in moral life. What we rather need is a different attitude of being in the world; an attitude that strives for holism, not only of the self, but also of the moral community. We can only be whole if we

acknowledge and embrace our interdependence as social and moral beings, as *Homo moralis*.

In the end, philosophical analysis might frustrate those in search of final answers and tidy solutions. Philosophy rather embraces the complexity of the moral life and attempts to balance competing moral claims in untidy circumstances. Its failure to provide perfunctory solutions and categorical answers should not lead to despair however, but rather to a greater understanding of the nature of the moral life and our uncertain journey through it.

> "At least my feeling at the end was not of having said something so much as having gotten ready to say something" (Cochran, 1985:vii).

THE END

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