

The Essex Autonomy Project

Green Paper Technical Report



Philosophical Models of Personal Autonomy

(Version 5)

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1. Introduction

Doctors and lawyers have common responsibilities to ensure the protection of people who lack capacity to decide specific matters for themselves and to promote the autonomy and choices of those who can regulate their own lives.¹

For both policy makers and practitioners, there is a difficult balance to be struck between maximising autonomy and ensuring adequate protection for those who need it.²

The idea of maximising or promoting personal autonomy is a characteristic feature of health and social care policies and is a familiar requirement of the good practice frameworks they prompt. But it is far from clear what this ideal of personal autonomy means in theory and practice. What *is* it and what does it *imply* for the day-to-day work of frontline practitioners?

Whilst few in contemporary Western society deny the significance of personal autonomy, debates abound over what it actually consists in, and whether it is ever achievable or unconditionally desirable. For example, some bioethicists denounce the hegemony of personal autonomy over other values, such as welfare, in medical ethics.³

This report aims to sketch out the theoretical terrain occupied by this much-contested liberal ideal, and expose four broad models of personal autonomy that all claim to best capture our intuitive beliefs

¹ The British Medical Association & the Law Society (2010) *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers*, 3rd Edition (London: The Law Society), p. 3.

² The Law Commission (2010) *Adult Social Care* (Consultation Paper No. 192) (London: The Law Commission), p. 136.

³ See, for example, Foster, Charles (2009) *Choosing Life, Choosing Death: The Tyranny of Autonomy in Medical Ethics and Law* (London: Hart).

concerning what it is to be the author of our own lives. We will start by looking at its history (Section 2), and then survey the various conceptualisations and distinctions that are applied to it (Section 3.1). With these tools in hand, we will proceed to define four broad models of personal autonomy (Section 3.2.) and then apply them to three case studies, to see how well they lend themselves to public policies which must distinguish autonomous from non-autonomous decision-making (Section 4).

2. The History of Personal Autonomy

The term personal autonomy is derived from ancient Greek [*autonomia* (n.), *autonomos* (adj.) from *autos* – self, and *nomos* – law], and has evolved to denote self-legislation, self-governance, self-determination, self-ownership, and personal sovereignty. However, the term was predominantly deployed by Ancient Greek writers to describe the right of city-states to self-legislate and govern free from the interference of foreign powers. In contrast with the value afforded to it in contemporary society, personal autonomy was originally regarded as a problematic, and even tragic, ideal for persons.⁴ However, at the end of the first century AD, Dio Chrysostom predicated autonomy of individual persons, and argued that the political autonomy the city-states had fought for was worthless unless the people themselves were *individually* autonomous (anything else being simply another form of slavery).⁵ Here we may observe an important conceptual difference between collective autonomy (the self-government of a group) and personal autonomy (the self-government of an individual).

However, these ancient conceptions of personal autonomy address the question of how people should orient themselves to the world, for example, by adapting themselves to the communities within which they live.⁶ These ancient conceptions contrast with more modern conceptions: whilst the former associate autonomy with living well in accordance with certain externally imposed standards, the latter associate autonomous life with living by our own lights and on our own terms. This important distinction foreshadows a schism in discourse about autonomy: between theories that purport to be value-neutral insofar as they do not require autonomous agents to act in accordance with any specified standards of goodness or rationality, and value-laden theories that do.

Religious developments were an important factor in the rise of the understanding of individuality that these value-neutral understanding of autonomy are based upon. The marked increase in the significance of individual spiritual experience, which is particularly evident in the twelfth century, is accompanied by the exploration of psychological interiority in the arts and culture more generally. In

⁴ For further discussion, see O'Shea, Tom (2011), 'Autonomy and Value,' *Essex Autonomy Project Green Paper Report* (University of Essex: Essex Autonomy Project). Available at <http://autonomy.essex.ac.uk/autonomy-and-value>.

⁵ Cooper, John M. (2003) 'Stoic Autonomy', in *Social Philosophy and Policy*, Vol. 20, No. 2, p. 4.

⁶ For further discussion see O'Shea (2011) 'Autonomy & Value', *supra* fn 4.

latter centuries, the Protestant Reformation heralded ‘an era in which social relations were transformed by a newly acquired sense of the importance and, indeed, the sanctity of individual consent’.⁷

The notion of one’s own conscience as a moral guide in directing one’s own life was cemented by the need to manage religious conflict in the wake of the Thirty Years War which devastated central Europe. Originally, recognition of religious conscience was granted only to rulers, but there arose a growing sense amongst the intellectual classes that imposing religious observance on recalcitrant citizens was a recipe for continual conflict; although, this sentiment only slowly and unevenly took hold amongst European society as a whole. This kind of religious liberty became an important precursor to the notion that people should be permitted to decide for themselves concerning ethical issues about which reasonable people disagree.

The modern era is the most formative historical period in terms of the development of the ideas that have motivated contemporary conceptions of autonomy. Here we see personal autonomy cashed out in terms of ‘original sovereignty’ and legitimate government grounded on the consent of the people.⁸ Subsequently, Kant locates the autonomy of rational agents in their ability to legislate for themselves, that is, in the ability to formulate universally valid and binding principles of morality.⁹ On his view, rational persons are only bound by principles that originate from the exercise of their deliberative capacities, and they should be motivated to act only in accordance with reasons thus generated. It is this very particular capacity – to generate authoritative, universally binding moral principles – that Kant claims forms the basis of human dignity. Kant’s conception of autonomy is a form of *moral* autonomy insofar as it associates self-government with acting in a morally permissible fashion. Moral autonomy is often distinguished from personal autonomy, which is more broadly concerned with the development and cultivation of individuality. This latter conception of autonomy emerged with J.S. Mill’s utilitarian liberalism, according to which personal autonomy is a constitutive element of wellbeing.¹⁰

⁷ Johnston, David (2009) ‘A History of Consent in Western Thought’ in Miller, F. And A. Wertheimer (eds.) *The Ethics of Consent, Theory and Practice* (Oxford: Oxford University Press), pp. 25-54, at p. 44. Although Johnston is writing on consent, this can be understood as a prerogative that flows from the right to self-determination.

⁸ Social contract theorists Locke and Rousseau conceive of human beings as naturally free and equal, endowed with the authority to regulate their own conduct. Only through consent can such beings become subject to the authority of others. See Locke, John ([1690]1988) ‘The Second Treatise of Government’ in *Two Treatise on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press), and Rousseau, Jean-Jacques ([1762]1997) *On the Social Contract* in Gourevitch, V. (1997) *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press)

⁹ Kant, Immanuel (1785) *Groundwork of the Metaphysics of Morals*

¹⁰ Mill, J.S. ([1859] 1991) ‘On Liberty’ in J. S. Mill (1991) *On Liberty and Other Essays*, John Gray (ed.) (Oxford: Oxford University Press), p. 67.

Post-Kantian theories of autonomy continued the theme of individuality introduced by Mill, albeit in different terms. Notable amongst these are Hegel's *recognitional* and Sartre's *authenticity* accounts. Hegel's recognitional (or social) account of freedom characterises it as 'being at home with oneself in another'.¹¹ Whilst he agrees with Kant that self-government is central to ethical life, he believes that the meaning of our actions is determined socially, and thus individual freedom requires reciprocal recognition from others. According to Sartre, we have unlimited freedom to make authentic choices free from bad faith. Whilst our freedom to act is inevitably limited by physical or social constraints, Sartre claims that we remain free to choose. On this view we are 'condemned to be free' – choice being an inescapable burden.¹²

Finally, we come to the most recent period of history in which the ideal of personal autonomy has attracted sustained theoretical (and practical) interest. In the last three decades in particular we have witnessed the emergence of a broad range of competing and conflicting ideas concerning the value, nature and function of personal autonomy, and forceful criticism from those who deny either its achievability or desirability.¹³ Therefore, although personal autonomy is an increasingly cherished ideal, it remains highly-contested.

Our brief survey, then, shows us that the idea of personal autonomy is not a product of modernity, but rather one which has evolved throughout history. From the ancient idea that it must track certain prescribed values and goals, there has been added a new and competing sense of autonomy in modernity, predominantly detached from such evaluative criteria and refocused on our authority to decide for *ourselves* how we should live our lives.

3. Theory

The broad range of different theories that has emerged in recent years is a testament to the vagaries and disagreements that prevail concerning the substance of autonomous agency and how it relates to other moral and political precepts. In this section, we begin with a summary of the various conceptualisations and distinctions that apply. This will provide us with the conceptual tools necessary to approach the case studies set out in Section 4, and think through the dilemmas they pose.

3.1. Conceptualisations and Distinctions

3.1.1. The Nature of Autonomy

¹¹ Hegel ([1821]1991) *Elements of the Philosophy of Right* (New York: Cambridge University Press).

¹² Sartre, Jean-Paul ([1943]1957) *Being and Nothingness* (London: Methuen)

¹³ For example, feminists and communitarians who argue that autonomy is over-valued at the expense of attachment and embeddedness and bioethicists who warn that the hegemony of personal autonomy in medical ethics is unjustified and can result in sinister consequences. For further discussion on such criticism, see O'Shea, Tom (forthcoming), 'Critics of Autonomy,' *Essex Autonomy Project Green Paper Report* (University of Essex: Essex Autonomy Project).

It is clear from the mass of philosophical literature pertaining to personal autonomy that ‘autonomy’ is a word that has a variety of different connotations and can be understood, appreciated and applied in importantly distinct ways.¹⁴ Helpfully, Feinberg distinguishes four closely related meanings, which tease out the different senses in which the word is deployed: the *capacity* to govern oneself, the actual *condition* of governing oneself, the ‘*sovereign authority*’ to govern oneself, and as an ‘*ideal of character*’.¹⁵ We will broadly adopt this method of categorisation, and, after explaining the particularities of each, discuss and contrast them with the illustrative help of four vignettes.

We start with the meaning of autonomy as the capacity to govern oneself. On this view, autonomy is understood as a minimal capacity – basic autonomy - which signifies the ability to act independently, authoritatively and responsibly. This minimal capacity can be cashed out in two ways: legally and philosophically. Legal standards of competence (or mental capacity),¹⁶ are largely concerned with a person’s ‘cognitive ability’¹⁷ to make a particular decision at a particular time, i.e. to understand and retain the relevant information, to appreciate the potential consequences of each option and to weigh them in the balance as they make a choice, and to communicate their decision.¹⁸ However, whereas the law adopts a threshold conception of competence, which draws a line to separate those who are capacitous from those who are not, some theories of autonomy can acknowledge a continuum of autonomy-skill. To one extreme are agents who completely lack autonomy, to the other are agents who are fully (or ideally) autonomous; in between are agents who exhibit autonomy by different degrees. On this view the capacity for personal autonomy is not innate, but developed, and potentially difficult to achieve.

Let us now turn to the second meaning of autonomy, as a set of rights. In Western society, the capacity for basic (minimal) autonomy establishes our entitlement to certain liberal rights; rights upon which our political status and freedoms are constructed, including the freedom to make decision for ourselves, free from interference. On this understanding, personal autonomy is viewed as a set of rights, or, as Feinberg puts it, as ‘personal sovereignty’.¹⁹ But having the capacity, and thereby the

¹⁴ As Arpaly observes, autonomy is an ‘overworked term’, ‘a term of art [that] performs so many tasks that it becomes at least as elusive and complex as the natural-language terms it was supposed to help clarify’: Arpaly, Nomy (2003) *Unprincipled Virtue* (Oxford & New York: Oxford University Press), pp. 117-8.

¹⁵ Feinberg, Joel (1989) ‘Autonomy’ in Christman, John (ed.) (1989) *The Inner Citadel: Essays on Individual Autonomy* (New York & Oxford: Oxford University Press), pp. 27-53, p.28. These distinctions, as Feinberg notes, also help us to appreciate the different ways in which the word ‘independence’ can be used.

¹⁶ Within this briefing, these terms will be used interchangeably.

¹⁷ In Section 3.1.5. (a) we address an ongoing debate concerning the extent to which legal standards of decision-making capacity can be said to be cognitive, i.e. concerned with information-processing and communicative skills, as opposed to evaluative skills and dispositions.

¹⁸ Consider for example, the test for decision-making capacity under England and Wales’ Mental Capacity Act 2005. Also, the four legal standards of competence derived from US case law, which are tested by the MacCAT-T clinical tool for assessing a patient’s ability to make decisions about their medical treatment - see Grisso, Thomas & Paul S. Appelbaum (1997) ‘The MacCAT-T: A Clinical Tool to Assess Patients’ Capacities to Make Treatment Decisions’ in *Psychiatric Services*, Vol. 48, No. 11, 1415:1419.

¹⁹ Feinberg (1989) ‘Autonomy’, *supra* fn 15, p. 46.

right, to govern ourselves, does not mean that we can actually do so. This leads us to the third meaning of personal autonomy, as the actual condition of governing oneself.

Here we must observe an important distinction between *de jure* and *de facto* autonomy. The former pertains to the moral and legal right to self-government, whilst the latter pertains to both the competence and opportunities necessary to exercise that right. After all, possessing a formal right to self-government does not guarantee that it can be effectively exercised. For example, social status and economic power can either enhance or diminish a person's ability to put her plans into action.

Our final meaning – autonomy as an ideal – goes beyond the threshold of minimal autonomy and sets a higher goal. The goal is fully autonomous agency, predicated upon 'autonomy-virtues' (skills and dispositions conducive to self-government), which defines one extreme of the autonomy-continuum sketched out above. The prospects of fully achieving this ideal are, for most of us, very slight because we are beings whose psychological development and opportunities are largely determined by contingency and luck, and who are naturally prone to error and weakness of will. Nevertheless, it could be argued that the achievability of this goal is not the critical issue, but rather its potential to correctly guide our agency and orientate public policies concerned with fostering autonomy, especially education policies. Therefore, whilst this meaning of autonomy cannot be proceduralised to distinguish between choices we should respect and those that we should not, it is nevertheless a useful conceptual device.

Let us now bring these ideas to life with the aid for five vignettes.

VIGNETTE 1 – Anselm the Monk

Anselm is a Benedictine monk who has taken a solemn vow of unconditional obedience. From an early age he felt called by God to join the order, to devote his life to spiritual contemplation and to the service of others; his vocation was so powerful he knew that he would not find peace or contentment in any other way. He has relinquished his right to make decisions for himself, save in relatively minor matter, and subordinates himself to the authority of his spiritual superiors. Annually, Anselm is given the opportunity to renew his vows or leave the order.

The case of Anselm could be viewed as a case of *relinquished autonomy*, insofar as he autonomously chooses to give-up control over his life as an act of religious devotion. However, it could instead be understood to exemplify an instance of choice designed to promote his overall autonomy, i.e. living a life of religious devotion, even though it involves giving up his decision-making authority. There is no reason to suppose that Anselm lacks the capacity for autonomy, only that in certain day-today matters he does not actively choose for himself. Insofar as his authority is concerned, he retains the legal right to self-govern but for religious reasons has chosen not to avail himself of it. Nevertheless, autonomy may still act as an orienting ideal, albeit in a circumscribed fashion, e.g. it may motivate his

choice and strengthen his resolve to live by it. In summary, our intuitions may tell us that, overall, Anselm is autonomous since his commitment to unconditional obedience is a means to realise his conception of the good life: the life of the monk.

VIGNETTE 2 – Daw Suu - The Political Prisoner²⁰

Daw Suu is a pro-democracy leader who is being held under house arrest by a military junta. As a political prisoner she has no freedom of movement and no freedom of speech, and her contact with the outside world – with her family, friends, colleagues and followers – is severely constrained. She is given the opportunity to leave her country but chooses to remain, believing that her captivity is part of a struggle for democratic freedom that she must be lead. Daw Suu remains psychologically free: the generals have been unable to break her will; despite the adversity she maintains her conviction; and her ability to silently agitate remains intact.

Daw Suu can be seen as a case of *constrained autonomy*. We might wonder if, like Anselm, she has relinquished her autonomy in the interests of achieving something vitally important to her life-plan. However, since Daw Suu’s choice is forced upon her, rather than taken-up voluntarily (like Anselm), it seems, at best, that we should view the loss of her autonomy as a necessary sacrifice rather than as a voluntary relinquishment. Like Anselm, Daw Suu has the capacity for autonomy. *Unlike* Anselm, she lacks legal authority over her life because her rights and freedoms have been taken away from her. Nevertheless, insofar as she can choose, for example, what book to read, how to dress, when to listen to the radio, what to write and what to think, Daw Suu enjoys the actual condition of self-government in some respects. Furthermore, Daw Suu’s mental freedom and the power of her inner conviction help to demonstrate the importance of autonomy as goal. Despite the limitations placed on her opportunities for autonomy, Daw Suu’s reflective capacities are deployed to cultivate the skills and dispositions conducive to ideal self-government.

VIGNETTE 3 – ‘Martin’ – The Independent Youth’

Martin is a bright and able 15 year old youth. Aside from minor acts of rebellion and tomfoolery that are to be expected given his age, he has proved himself to be a thoughtful and responsible young man, and his parents place great trust in his judgement. Accordingly, Martin enjoys considerable freedom to make choices for himself. However, his education is one exception to this policy of parental non-intervention. Martin is careless about his education and wants to leave school at 16 in order to pursue his dream of pop-stardom. His parents have made it clear, however, that although they are happy to continue to support him and his musical interests – financially and otherwise - this is conditional upon him applying himself to his education and getting A-Levels, thereby safeguarding his future interests. Although they admire his passion, they believe that his naivety is blinding him to the realities of life;

²⁰ This case obviously refers to Aung San Suu Kyi before she was released from house arrest.

namely, that his chances of achieving material success in the music business are negligible and that higher education is of critical important to his future opportunities and wellbeing.

Martin can be viewed as case of *developing autonomy*. He hasn't relinquished it or had it taken from him, but rather he has not had sufficient lived experience to develop an adequate level of capacity. There is no reason to suppose that Martin lacks the *cognitive* capacity to self-govern, i.e. the ability to acquire, understand and assimilate relevant information. But due to his immaturity and lack of experience there is good reason to assume that he lacks other skills – particularly evaluative– that we need when faced with important decisions that can have far-reaching consequences on our life. For this reason, the law does not assign under-18s the right to make such decisions, and so Martin lacks legal authority over his life. However, although he is subject to the authority of his parents, they are gradually allowing him to make some decisions for himself and to take more responsibility for himself. Within the bounds of parental protection, he can therefore exercise autonomy in limited respects, and in so doing develop the skills and dispositions conducive to ideal autonomy which he as yet lacks.

VIGNETTE 4 – 'Susan' – The Reckless Adult

Susan was received into care when she was 13 following years of neglect and abuse. She was both victim and bully in successive placements in foster homes, children's homes and young offender units, and presented a significant "management issue". Susan is now 21 years old, and having left care is "living independently". Sadly, the course of her adult life has been as chaotic as her earlier years. She routinely makes "unwise decisions", which have led to criminal conviction, problems with welfare benefits and eviction from a youth hostel. She is currently sleeping rough, involved with a "bad crowd" who exert a strong influence over her, and is using drugs. Statutory services have washed their hands of her, maintaining that she must start taking responsibility for herself. Periodically, and in some distress, she asks a local homelessness charity to help her get accommodation and get her life back on track. The charity agree to help but it takes time to persuade statutory agencies to help her and in the meantime Susan misses appointments, fails to follow through on advice, and doesn't fully co-operate with efforts made to help her.

Susan can be seen as a case of *under-developed autonomy*. Although she is an adult and as such has the legal right to make important, life-changing decisions for herself, she has no more capacity to do so than Martin. Indeed, she may have less. Like Martin, there is no reason to assume that Susan lacks the *cognitive* capacity to make such choices, however there is reason to believe that she lacks other skills and dispositions. Her history speaks of impulsive, imprudent, misguided and careless decision-making, which has failed to protect her short-and long-term best interests. However, whilst Martin's

lack of competence can be attributable to his age and lack of experience, Susan's must be attributable to something else. It would not be unreasonable to suppose that the trauma and lack of nurturing she suffered as a child, and the instability and chaos she has experienced ever since, are connected. Whilst on one level we can see Susan as a person who constantly makes decisions, can we say that she is a person that constantly makes *autonomous* decisions? Are these active decisions, or passive responses? Are they thought-through and purposeful, or thought-less and impulsive? Either way, it would appear clear that she lacks the virtues associated with the ideal of autonomy, and is not being guided by them.

VIGNETTE 5 – 'Robert' – The Incapacitated Adult

Robert is a 50 years old, and is in a coma. Although doctors are uncertain how much he is aware of what is going on around him, he is unresponsive to all stimuli.

Due to his complete lack of consciousness, Robert is unable to make decisions for himself. Therefore he does not enjoy the condition of autonomy, and obviously lacks the legal right to make decisions.²¹ Although, prior to lapsing into a coma, he may have been autonomous (perhaps, even, ideally so), his current mental state is such that he is now wholly *unautonomous*.

3.1.2. *The Scope of Personal Autonomy*

An important conceptual variation of autonomy concerns its scope. According to one view, personal autonomy is *local* in that it pertains to a particular decision, made at a particular time and in particular context. In this sense, an agent is autonomous relative to a particular preference, value, character trait or social situation. According to a second view, autonomy is *global* in that it pertains to the status of an agent over the course of a life. These two views are not mutually exclusive and, as the literature illustrates, they are interrelated. Consider, for example, *Martin*; as a minor lacking complete authority over his life he is not globally autonomous, but he does enjoy instances of local autonomy when he is permitted to make certain decisions for himself. The limits placed on his local autonomy are safeguards against his making choices that impair his global autonomy. Whether or not he should leave school early to pursue his dream of pop-stardom or stay on at school to secure an adequate set of academic qualifications is a momentous decision, one which will have implications for his future hopes in life.

3.1.3. *The Function of Autonomy*

²¹ However, Robert has legal rights that survive his loss of autonomy-capacity, e.g. the right not to be harmed. Furthermore, had Robert made a legally binding 'advance decision' prior to his loss of capacity, which applied to these circumstances and the relevant decisions regarding his medical treatment and other affairs, then his right to decide is in a sense preserved.

There is a broad array of related, and not necessarily mutually exclusive, claims regarding the function of autonomy, and these can be organised under four broad headings.

(a) *Moral*

A key idea in this respect is that personal autonomy is a designator of moral status. On this view the autonomous person is a right-holder, subject to a concomitant duty to respect the rights of others, and a moral agent who is accountable for the outcomes of her choices. In Section 2 we discussed Kant's ethical theory, according to which our moral status and obligation to treat others with equal dignity and respect are grounded on this capacity for autonomy.

(b) *Political*

Autonomy is a key concern in social contract theories which aim to explain the conditions under which individuals consent to relinquish their 'original sovereignty' to the state and to being governed. Consent, a product of autonomous judgment, is therefore the basis of political authority and obligation in the modern democratic state. In this sense, we can observe autonomy as a necessary condition of a legitimately governed society.

(c) *Legal*

The ideal of personal autonomy helps to distinguish between public and private; that is, between those matters of personal concern which are not legitimate for the state or society to intrude upon, and those that are within the legitimate purview of the state and society. A key function of autonomy, then, is to carve out and preserve a sphere of personal sovereignty. This is achieved by providing a check on perfectionism,²² paternalism,²³ and oppression (primarily through the means of legal rights). Consider, for example, the Mental Capacity Act 2005, which protects an individual's right to make choices that most other people might believe to be unwise.

(d) *Personal*

It is commonly suggested that autonomous agency – wherein we select and pursue options which reflect our own conception of the good life – is the means of self-creation; the process through which we discover who we are, what we care about and what we want for our lives. As noted earlier, Mill highlights this capacity as a critical feature of living well.

3.1.4. *The Value of Autonomy*

Why is autonomy valuable? Two broad, non-mutually exclusive sets of views are discernable in the literature: the first claim that autonomy has *intrinsic* value, and the second claim that autonomy is *instrumentally* valuable.

²² Broadly, perfectionism holds that the state ought to promote and implement a particular ideal of the good life.

²³ Broadly, paternalism holds that it is legitimate for the state to intervene in the freedom of citizens in order to promote their best interests, whether they recognise that it is in their best interests or not.

(a) *The Intrinsic Value of Autonomy*

According to this set of views, autonomy is valuable for its own sake, whatever the outcome its exercise produces. Consider, for example, the intrinsic value that both Kant and Mill place on autonomy. Kant claims that autonomy has such value that we should act in such a way so as to treat ourselves and others as an end, and never simply as a means to an end; Mill argues that autonomous agency is a constitutive element of individual wellbeing.²⁴

(b) *The Instrumental Value of Autonomy*

According to this set of views, autonomy is valuable *insofar* as its exercise is a means to some end that has intrinsic value. Here it is useful to return to the function of autonomy, and the moral, legal, political and personal ends it serves. Insofar as those ends are intrinsically valuable, autonomy is instrumentally valuable as a means of achieving them. For example, autonomous agency can be seen as a designator of dignity and a means to personal wellbeing, which in turn are viewed as having value in themselves.

To illustrate how these two views of autonomy might make a difference in practice, consider a case of self-harm. According to the intrinsic view, self-harming activity might have to be respected if it is autonomously chosen. In contrast, the instrumental view offers greater scope for intervention on the basis that self-harming activity has no value, irrespective of whether or not it is autonomously chosen. Still, some claim that both views can be combined.²⁵

3.1.5. *The Conditions for Autonomy*

Finally let us turn to the conditions for autonomy, a site of much debate and disagreement. We will consider these within the context of particular models of autonomy in due course.²⁶ But for now, it will be helpful simply to distinguish between internal and external conditions, and the range of conditions that fall under these headings.

(a) *Internal Conditions*

These concern the competency of the agent, and can be organised under three sub-headings. The first concerns *decision-making capacities*, such as understanding and retaining relevant information, using it to weigh up available options, and communicating the decision reached. According to some, the capacity for rational thought is also a decision-making skill necessary for autonomy.²⁷ The extent to which these decision-making skills are ‘cognitive’ – as hinted earlier – is a significant area of controversy that we should pause here to note.

²⁴ See Section 2. (*‘History’*)

²⁵ For example, Young, Robert (1986) *Personal Autonomy: Beyond Negative and Positive Liberty* (London: Croom Helm), who we will discuss above in Section 3.2.2.(a) (*‘The Strongly Substantive Model’*).

²⁶ See Section 3.2. (*‘Four Models of Personal Autonomy’*).

²⁷ For example, see Kristinsson, Sigurdur (2000) ‘The Limits of Neutrality: Toward a Weakly Substantive Account of Autonomy’, in *Canadian Journal of Philosophy*, Vol. 30, No. 2, 257:286.

Legal standards of decision-making capacity are sometimes said to be overly cognitive insofar as they predominately concern information-processing and communicative skills.²⁸ It is argued that as a result of this bias they fail to (adequately) account for the influence strong emotions and distorted values can have on people's choices. For example, it has been argued that tests that focus on understanding and reasoning do not capture the kind of evaluative difficulties that people with anorexia nervosa experience in appreciating the consequences of their self-starvation or treatment refusals.²⁹ In reply, it has been argued that legally defined decision-making abilities – particularly the ability to use and weigh, and appreciation – are sufficiently capacious to account for these kinds of difficulties.³⁰ Notwithstanding this dispute, the term ‘cognitive’ is deployed in this briefing to refer to the process of acquiring, understanding and assimilating information relevant to a particular decision, and the skills such a process requires. The extent to which legal tests make room for the significance of evaluative skills remains a live issue.

The second sub-group of internal conditions for personal autonomy concerns the *authenticity* of the values, preferences and character traits that motivate an agent's choice, and the ability to identify, evaluate and, in some sense, validate these. Authenticity in this sense signifies endorsement of, or non-alienation from, those aspects of our motivational set that influence our choices. The third concern *attitudes to self* – self-respect, self-trust, self-esteem – and the extent to which these are bound up with our relationship with others. According to some, personal autonomy is contingent upon appropriate recognition by others.³¹

A particular theory is deemed to be *internalist* to the extent that it conceptualises autonomy in terms of and contingent upon these capacities and psychological conditions.

(b) External Conditions

A particular theory of autonomy is externalist to the extent that it recognises that autonomous agency is not simply contingent upon the reflective and evaluative capacities favoured by internalists, but emphasises the significance of certain *enabling conditions* that pertain to the environment in which the agent is operating. These external conditions relate to the context of the decision-making situation, and can be organised under two headings. Firstly, *freedom from duress, manipulation and coercion*, which can force an agent to choose or act against their authentic will. Secondly, a more

²⁸ For example, Charland, Louis (2011) ‘Decision-Making Capacity’, in *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), retrieved on 1 May 2012 from <http://plato.stanford.edu/archives/sum2011/entries/decision-capacity> and Brown, Hilary (2011) ‘The Role of Emotion in Decision-Making’ in *The Journal of Adult Protection*, 13:4.

²⁹ Tan, Jacinta, Anne Stewart & Tony Hope (2009) ‘Decision-Making as a Broader Concept’ in *Philosophy, Psychiatry, & Psychology*, Vol. 16, No. 4, 345:349.

³⁰ Grisso, Thomas & Paul Appelbaum (2006) ‘Appreciating Anorexia: Decisional Capacity and the Role of Values’ *Philosophy, Psychiatry, & Psychology*, Vol. 13, No. 4, 293:297.

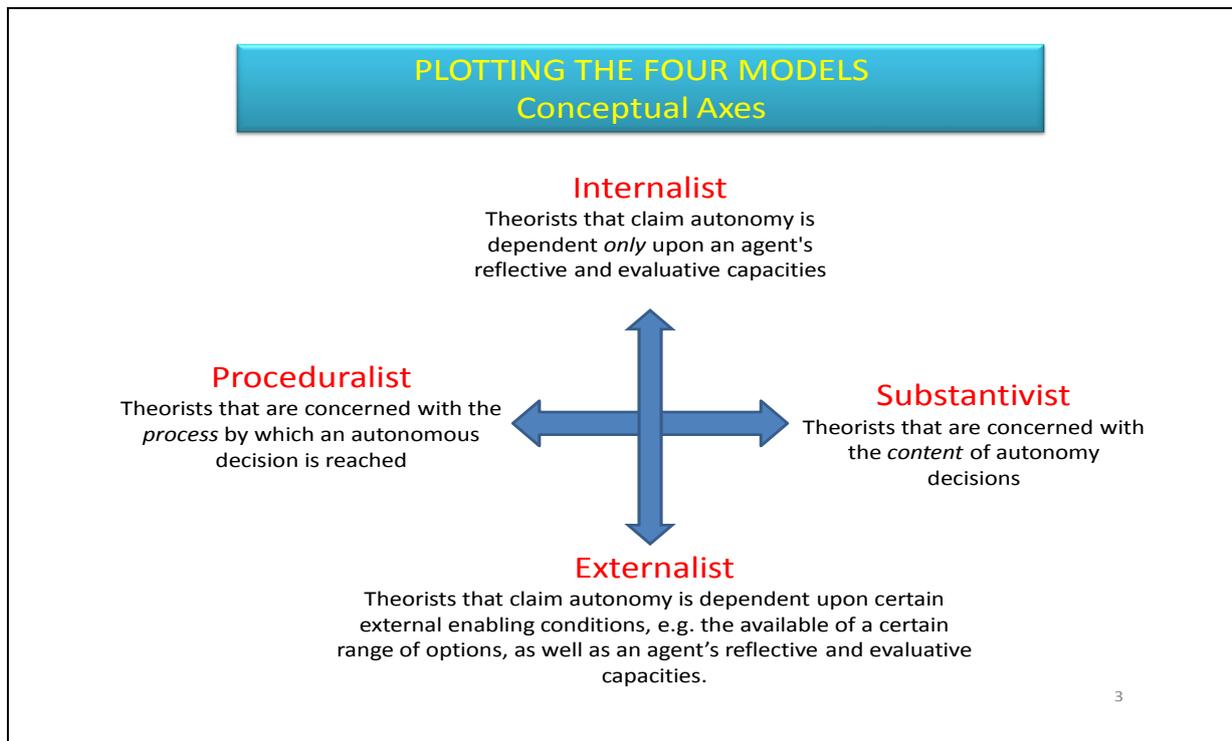
³¹ For example, see Mackenzie, Catriona (2008) ‘Relational Autonomy, Normative Authority and Perfectionism’, in *Journal of Social Philosophy*, Vol. 39, No. 4, 512:533.

controversial condition for freedom relates to the nature and extent of the options available to the agent. But some argue that *autonomous* choice is dependent on more than this minimal conception of a choice situation, and that what is required is a *set of acceptable options*.³²

3.2. Four Models of Personal Autonomy

The above conceptual variations, in particular those relating to the conditions for authentic self-governance, have given rise to a range of contrasting theories of personal autonomy. These four models can be roughly differentiated according to two theoretical dividing lines (see Diagram 1, below).³³ The first distinguishes *procedural*³⁴ models from *substantive* models, that is, between theories that are concerned with the *process* by which an autonomous decision is reached and those that are concerned with the *content* of such choices, and the values and preferences that motivate them. The second dividing line (which cross-cuts the first) distinguishes between theories that adopt an *internalist* position with respect to the conditions for autonomy and those that adopt an *externalist* position.

DIAGRAM 1:



³² Oshana, Marina (2006) *Personal Autonomy in Society* (Aldershot: Ashgate Publishing) and Raz, Joseph (1986) *The Morality of Freedom* (Oxford & New York: Oxford University Press)

³³ Other cross-cutting theoretical dividing lines can be drawn, including individualist vs. relational conceptions of autonomy, and many of the distinctions can be graded on a weak/strong continuum.

³⁴ For the purposes of this paper, we will understand 'procedural' to mean *normatively neutral*, i.e. value-free and structural accounts of autonomy (see Section 3.2.1 (a)) will count as procedural.

3.2.1. The Proceduralist Model of Personal Autonomy

The proceduralist model of personal autonomy (also known as content- or value-neutral) refrains from making autonomous agency contingent upon certain value commitments. On this conception, a person is autonomous provided that she chooses in accordance with a prescribed procedure, or that her choices cohere with her settled outlook or value-set in the way prescribed. There is no requirement for an autonomous agent to adopt a particular value, preference or goal; therefore the proceduralist model claims to be consistent with the principle of liberal neutrality, which holds that the state should not promote any particular conception of the good.³⁵ The proceduralist territory can be carved-up according to two internalist conditions: endorsement and historical critical reflection.

(a) *Autonomy as Endorsement*

On this view the capacity to endorse one's desires through a process of critical reflection is what distinguishes autonomous agency from non-autonomous agency.³⁶ Endorsement is a form of authentication, cashed out in terms of the interplay between first- and second-order preferences. A first-order preference is a *mere* desire, expressed as 'I want to do X', whereas a second-order preference is a *considered* desire expressed as 'I *want* to want to do X'.³⁷ If we act on desires that we can endorse with our higher-order preferences, then we are acting autonomously. If on the other hand we act contrary to our higher order preferences, we are not acting autonomously. Consider, for example, a smoker who recognises how bad smoking is for her health and so resolves to give it up. Imagine she is seized by the urge to smoke a cigarette. If she acts on her first order desire to inhale the deliciously noxious fumes of Golden Virginia, despite her higher order preference not to, she will act contrary to her authentic will, and therefore lack autonomy in this respect. If on the other hand she acts in accordance with her endorsed preference NOT to smoke, she will be autonomous in this respect.

At first blush, this account is intuitively attractive since it recreates a familiar, common-sense view of decision-making; one in which we struggle between doing what we want and what we feel we ought to do. However, it is vulnerable to a number of objections which question the authority of second-order preferences. In a nutshell, are our second-order desires a reliable means of determining the authenticity of our first-order desires? Can we be sure they are authentic to us and not manipulated by others?

³⁵ For an overview of this doctrine and its relevance to public policy see Raz (1986), *supra* fn 32, pp. 110–64.

³⁶ Dworkin, Gerald (1988) *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press)

³⁷ Frankfurt, Harry (1971) 'Freedom of the Will and Freedom of Action' in Watson, Gary (ed.) (2003) *Free Will* (Second Edition) (New York: Oxford University Press), pp. 322-35. According to Frankfurt, where someone wants their second-order desires to be effective ('[w]here A wants the desire to X to be the desire that moves him effectively to act' (p. 326)), this is a *second-order volition*. It is the capacity for second-order volitions that is a distinctive element of personhood and a condition for self-determination.

(b) Autonomy as Historical Critical Reflection

In an effort to correct this weakness, Christman defends a procedural account of autonomy which adopts an historical criterion for autonomous agency.³⁸ The historical condition for autonomy holds that a person is autonomous in relation to some desire, preference or value provided that she did not resist its development, or would not have resisted its development had she attended to the process. In his later work he develops this idea and argues that a person is autonomous in relation to some value or commitment provided that: (a) he is sufficiently competent to subject it to sustained critical reflection; and, (b) *were* he to do so, he would not be *alienated* from it. Authenticity, as a condition for personal autonomy, emerges as ‘non-repudiation’ as opposed to non-resistance.³⁹

However, it is far from clear that non-repudiation provides adequate protection against the autonomy-diminishing threats of direct manipulation and oppressive socialisation. Of particular concern here is the ability of persons who have internalised certain ideologies and oppressive norms to critically reflect on their development. The challenge faced by this account is to draw a coherent conceptual line between authentic and inauthentic desires, preferences and values.⁴⁰

In summary, we may conclude that whilst procedural models are attractive to defenders of liberal neutrality, in that they aim not to promote any particular conception of the good, they are vulnerable to the charge that they fail to adequately account for autonomy-diminishing influences. In particular, they do not clearly distinguish between authentic and inauthentic desires, i.e. desires that are truly the agent’s, rather than the product of some manipulative force.

3.2.2. The Substantive Model

Objections raised concerning the adequacy of the procedural model have given risen to a range of *substantive* approaches. These argue that the value-neutral conditions favoured by proceduralists, whilst necessary for autonomy, are not sufficient. Accordingly they add various external and/or relational conditions to the mix, which import some level of normative content. This is achieved either by placing direct restrictions on the content of an autonomous agent’s preferences, or by stipulating certain conditions that are necessary for authenticity and independence in the development and appraisal of a person’s desires; conditions related to an agent’s political, social and economic status and personal psychology. The former mechanism is the distinctive feature of the so-called

³⁸ Christman, John (1991) 'Autonomy and Personal History', in *Canadian Journal of Philosophy*, Vol. 21, No. 1, 1:24.

³⁹ Christman, John (2009) *Politics of Persons: Individual Autonomy and Socio-Historical Selves* (Cambridge and New York: Cambridge University Press), p. 143.

⁴⁰ We will consider these matters further in Section 4 (*‘Practice’*).

strongly substantive model, and the latter is the distinctive feature of the so-called *weakly substantive model*.⁴¹

(a) **The Strongly Substantive Model**

As we noted in our historical survey, in antiquity autonomy was predominantly conceptualised substantively, in that an autonomous life required one to adapt to the mores of one's community. However, despite its regular evocation by proponents of liberal neutrality - who generally favour the procedural model - a review of the literature suggests that there are very few contemporary fully-articulated *genuinely* strongly substantive accounts of autonomy.⁴² However, there are some candidates that place direct constraints upon what an autonomous agent must value, including the following account which appeals to the value of autonomy itself.

According to Young, although autonomy has both intrinsic and instrumental value, its intrinsic value is ascendant.⁴³ He defends this view with the claim that most people would agree that, all things being equal, it is better to make decisions about our own lives than to be subject to the will of others, irrespective of the value of the object of our choices. It follows, he argues, that in valuing autonomy so highly we are committed to defending, preserving and enhancing it. Accordingly, where a person wishes to engage in activity which will impair their future ability to live autonomously, intervention is justified. In this way, Young links a strong commitment to the value of autonomy with the defensibility of *strong paternalism*.⁴⁴ Strong paternalism effectively amounts to an intervention in autonomous choice in what is regarded as that individual's best interests.⁴⁵ This is distinct from softer conceptions of paternalism, where intervention is only justifiable where the individual in question lacks adequate decision-making capacity, on grounds that consent to interference would be forthcoming if individual had capacity, or that the individual would not make the choice in question if he had it.

Young's defence of his brand of autonomy-defending strong paternalism takes its lead from J.S. Mill. Despite the fact that Mill claims that individuals are generally the best judge of what is in their best

⁴¹ Although for the purposes of this document these two substantive approaches have been distinguished, the reader should bear in mind that: (1) Some purportedly strong accounts are, on the criteria outlined, actually weak accounts, and vice versa; and, (2) The distinction between strong and weak may not hold, either in terms of the style or the extent of the constraint. We will consider these matters as we proceed.

⁴² For a discussion on the range of substantive theories of autonomy see Benson, Paul (2005) 'Feminist Intuitions and the Normative Substance of Autonomy' in Taylor, J.S. (ed.) *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge: Cambridge University Press).

⁴³ Young (1986) *Personal Autonomy: Beyond Negative and Positive Liberty*, *supra* fn 25.

⁴⁴ For a helpful survey of the different conceptions of paternalism – including the distinction between soft/weak and hard/strong paternalism - see Dworkin, Gerald (Summer, 2010) 'Paternalism', in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/archives/sum2010/entries/paternalism/>.

⁴⁵ Young (1986), *Personal Autonomy: Beyond Negative and Positive Liberty*, *supra* fn 25, p. 78.

interests, he nevertheless provides an exception to that general rule: ‘The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom’.⁴⁶ Young relates this to his claim that local autonomy is a legitimate target of strong paternalism where it promote/preserve future freedoms necessary for global autonomy.

In summary, Young defends a conception of autonomy that is not solely contingent upon an agent’s reflective and evaluative capacities. He adopts a substantive conception that places limits on what an autonomous agent is permitted to choose. On his view, paternalistic intervention is a justifiable and necessary evil insofar as it is deployed to prevent an agent from relinquishing her long-range autonomy. Depending on how the relinquishment of autonomy is cashed out, this is potentially very demanding, both in terms of the restrictions this may place on what agent is permitted to choose, and in terms of the duties placed on the state to defend autonomy.⁴⁷

(b) The Weakly Substantive Model

In contrast with strong substantive model of autonomy, that place *direct* constraints upon the content of an autonomous agent’s preferences, weakly substantive models claim to impose only *indirect* normative constraints by stipulating those competencies necessary for autonomous judgement. According to Benson’s weak substantive account,⁴⁸ these competencies rest upon an agent’s attitude towards her own self-worth and authority, but he also highlights the agentic skills of ‘introspection, communication, memory, imagination, analytical reasoning, “self-nurturing”, resistance to pressures to conform, and political collaboration’ suggested by Meyers’s normative-competency account of autonomy.⁴⁹ Whilst these do not impose direct restrictions upon what an autonomous agent can value or prefer without forfeiting some degree of autonomy, normative content is imported indirectly, ‘through values subsumed in its description of autonomy competencies’, e.g. Meyers’s skill of ‘self-nurturing’ implies the value of self-worth.⁵⁰

Benson maintains that a weakly substantive theory (unlike a strongly substantive theory) permits a person to autonomously choose things that are wrong, or bad, or against their best interests, but only if that person had the competencies necessary to choose what is right, good and in their best interest. The obvious challenge faced by this account is the need to explain how we are to identify and publicly agree the range/measure of skills and dispositions necessary for autonomous judgement, and how public policies can effectively operationalise such decision-making standards.

⁴⁶ Ibid., p. 114.

⁴⁷ What activities might potentially lead to a long-term, irrevocable relinquishment of autonomy? We suspect many are likely to fall short of the paradigm case of willing slavery, e.g. extreme sports where individuals risk serious injury and long-term impairment.

⁴⁸ Benson (2005) ‘Feminist Intuitions and the Normative Substance of Autonomy’, *supra* fn 42.

⁴⁹ Ibid. p. 135, in which Meyers, Diana T (2003) *Gender in the Mirror* (Oxford & New York: Oxford University Press) is cited.

⁵⁰ Ibid.

On the first point, one may wonder whether the evaluative attitudes and skills demanded by the weakly substantive model have the potential to be as extensive and exacting as the normative standards imposed by the strongly substantive model. For example, in defining the set of skills and dispositions required for autonomy-competence, the state may in effect promote a particular conception of what it is to live well. Consider, for example, the case of a dedicated non-planner who drifts through life, a passive recipient of whatever fate deals him. Unused to deploying the deliberative and evaluative skills associated with forward-thinking and plotting a specific course in life, let's imagine that he lacks the state-determined prerequisites for autonomy-competence. In principle, would our dedicated non-planner be deemed insufficiently capacious to qualify for liberal rights, and, if so, could the state force him to adopt a (particular) plan for his life in his best interests?

In summary, whilst the strongly substantive model seeks to link 'autonomous choice' with some conception of 'right choice', the weakly substantive model seeks only to link 'autonomous choice' with 'competent choice'. In theory, it takes the best of the procedural model (i.e. its concern with the *process* of decision-making, rather than *content* of the decision-reached) and combines it with the best of the strongly substantive model (i.e. its imposition of a normative standard for autonomous decision-making, albeit one which attaches to the competence of an agent rather than her preferences or values). But is this weakly substantive middle ground stable, or is there the risk that it can slide towards one extreme or the other? And is it possible that it could - in practice at least - be as demanding as the strongly substantive model?

3.2.3. The Relational Model

The relational model of autonomy offers an alternative to the *individualist* focus that other models – procedural and substantive - can adopt. Whereas individualist models of autonomy are essentially concerned with an agent's capacity to make independent judgements in isolation from the influence of others, relational models place emphasis on the inescapable role 'relatedness' plays in how people value themselves and the authority they assign to their agency.

This distinction has proved particularly relevant and influential in social care settings, where decision-making can often be seen to take place within 'decision-communities', in which others take a role in supporting a mentally infirm individual to make important choices – including those people whose interests may be affected by that choice. For example, the Nuffield Council on Bioethics argues that:

[Autonomy] should not be equated simply with the individual's ability to make and communicate rational decisions. Rather, [...] a person's autonomy is found also in how they

express their sense of self, in their relationships with those important to them, and in their values and preferences.⁵¹

The relational model also helps to account for the ways in which repressed socialisation and oppressive life conditions can lead to the internalisation of autonomy-diminishing values; values that can directly influence an agent's dispositions and capacities. To illustrate this, consider the case of a liberated slave whose adaptive preference for unconditional obedience has rendered her content to live according to the will of others and prevents her from seeing herself as a free agent. Despite her endorsement of her servility, the notion that she is an autonomous agent defies our common intuitions. Accordingly, the relational model of autonomy seeks to define the interpersonal and social relations necessary for autonomous agency.⁵²

Relational autonomy is an 'umbrella term', insofar as it comprises a range of accounts that adopt different views concerning the conception of the 'self' in question and the role social relations play in the development and exercise of autonomy, i.e. whether social relations of a certain sort are *constitutive* of autonomy or merely of contributory benefit.⁵³ Another point to make is that whilst we have distinguished the relational model from the procedural and substantive models, they can be procedural, weakly substantive and strongly substantive. Mackenzie's offers 'a weak substantive, relational approach to autonomy that grounds an agent's normative authority over decisions of import to her life in her practical identity and in relations of inter-subjective recognition'.⁵⁴ The range of options open to an agent is also important according to Mackenzie, since valuing autonomy entails disvaluing ways of life that unjustly restrict the range of valuable options open to certain persons (or groups).

Central to this conception of autonomy is an agent's attitude towards herself – self-respect, self-trust, self-esteem and other affective attitudes that underpin the capacity for self-interpretation, i.e. working out which desires constitute reasons for action. To the extent that the 'self' of the agent is socially embedded, Mackenzie argues, our self-conception and self-regarding attitudes are 'bound up with, and vulnerable to, our relationships with others'.⁵⁵

In summary, the relational model is both first-personal (since it concerns the agent's attitude to herself) and second-personal (since the agent's sense of herself is inter-subjective). This interplay is a necessary condition for the normative authority upon which autonomous agency depends, since it underpins the selection and enactment of authentic motivating desires. However, insofar as the

⁵¹ Nuffield Council on Bioethics (2009) *Dementia: ethical issues* (London: Nuffield Council on Bioethics), p. 74.

⁵² This example is based on the case of Fatima, in Kristinsson, Sigurdur (2000) 'The Limits of Neutrality: Towards a Weakly Substantive Account of Autonomy' *supra* fn 27.

⁵³ Mackenzie (2008) 'Relational Autonomy, Normative Authority and Perfectionism', *supra* fn 31.

⁵⁴ *Ibid.*, p. 512.

⁵⁵ *Ibid.*, p. 527.

relational model, makes autonomy contingent upon appropriate recognition of others it runs the risk of the ‘double-jeopardy problem’: by failing to properly recognise the value and dignity of P we not only injure her feelings, but we also strip her of her autonomy-status.

4. Personal Autonomy in Practice

In this section, we will consider three case studies and evaluate which model of personal autonomy best captures our intuitive responses in relation to each, and what problems we might anticipate in applying these models in practice.⁵⁶

4.1. Case Study 1: Miss B and Medical Consent

*Miss B is 24 years old and has been diagnosed as having a personality disorder and suffering from post-traumatic stress. She was sexually abused throughout her childhood, and compulsively punishes herself. Having been admitted to a secure psychiatric unit, the only means of punishment available to her is self-starvation. Her weight is dangerously low and, although her intent is not suicide, she has refused treatment. She says that what she needs is to punish herself and for people to understand why. B’s doctors ask the court to sanction force-feeding, and on reviewing B’s written and oral evidence, the judge notes that she is both impressively intelligent and self-aware. Despite this, the judge questions her capacity to make a ‘true choice’ in refusing to eat.*⁵⁷

Some Possible (Conflicting) Intuitions:

1. B appears to have cognitive capacity and, if this is confirmed by a specialist, then she has the capacity to make an autonomous choice and we should respect it.
2. Irrespective of her cognitive capacities, B’s evaluative capacities are likely to have been distorted by childhood trauma and mental illness. If so, she lacks the evaluative capacity necessary for personal autonomy and she should be force-fed in her best interests.
3. No sane person would choose to starve themselves at the risk of irreparable harm and death. B’s desire to punish herself is pathological – a symptom of mental disorder rather than her authentic will – and thus it is neither autonomous nor worthy of our respect. We should force-feed her.
4. Irrespective of her capacity for autonomy, we should not recognise a right to self-harm and accordingly she should not respect the decision and force-feed her.

Procedural Model

⁵⁶ The discussion set out in this briefing is necessarily limited, and is intended to prompt the reader rather than to provide a comprehensive and complete analysis.

⁵⁷ This case study is taken from a UK court of appeal case *B v Croydon Health Authority* [1995] 2 WLR 294.

This model is neutral to the outcome of B's choice, and is concerned only with her ability to make decisions in the prescribed manner, so that her choices cohere in the right way with her settled outlook or values.

On the Endorsement Account, one could view B's first order desire (to starve herself) as consistent with her higher order desire (to punish herself and/or be in control of her life). Assuming that her higher order desires are authentically hers, her decision to refuse treatment is autonomous and we should respect it. On the *Historical Critical Endorsement Account*, B's higher order desires are authentic only if she is sufficiently competent to subject them to sustained critical reflection, and *were* she to do so, she would not be *alienated* from them. But these matters are difficult to judge and raise the following questions:

- Does B have the capacity to subject these preferences to sustained critical reflection, particularly in view of the traumatic circumstances in which they developed?
- Even if we judge that she has the capacity to do so, how can we judge if this would have resulted in endorsement or alienation?
- Can B help us answer these questions, or is it likely that she will have internalised the effects of the trauma to such an extent that she lacks the ability to adequately reflect on such matters?

We might balk at this complexity and indeterminacy and argue that it is obvious that B's desire to punish herself is secondary to the abuse she has suffered, and that her desire is clearly *pathological* - the product of trauma rather than of *normal* development – and is therefore non-autonomous. But this approach strays from the strictly neutral path of the committed proceduralist, since in order to make sense of the idea of *pathological* desires or values we need to apply a perfectionist standard of a *normal* desire or value.

It seems, therefore, that the procedural model fits best with *Intuition 1* above, and is at odds with *Intuitions 2-4*.

Substantive Model

According to the stronger model, B's right to self-determination does not permit her to engage in self-harming activities which will jeopardise her future capacity for personal autonomy. Insofar as starvation can impair deliberative functioning and lead to death, B should not be permitted to refuse treatment and paternalism is justified to prevent her from relinquishing her autonomy-interests, i.e. her disposition and opportunities for self-government. Therefore, her decision to refuse treatment should not be respected and force-feeding is permitted. This model, therefore, seems to fit best with *Intuition 4*, and clash with *Intuitions 1-2*.

On the other hand, the weaker model fits better with *Intuitions 2-3*. Although it could be argued that B is able to acquire and understand the information relevant to her treatment decision, it could be that her ability to fully appreciate and evaluate the harm she is doing herself – the consequences of her choices – is compromised by her lack of self-worth. The risks of self-harm – even the potentiality of death - are relevant considerations that B cannot adequately weigh in the balance because she does not value herself. This evaluative failure provides a ground for denying B’s capacity for autonomous judgement in respect of her treatment, and for force-feeding.

Relational Model (An add-on, as opposed to alternative, to the procedural and substantive models.)

The relational model is concerned with inter-subjective recognition, central to which is the agent’s attitude towards herself and how this impacts on her decision-making. B’s feelings of low self-worth are autonomy-diminishing insofar as they undermine B’s evaluative capacities and normative authority. On this basis it could be argued that the conditions for autonomous judgement are lacking, and that B should be force-fed in her best interests. Accordingly, it seems that this model chimes best with *Intuition 2*.

3.3. Case Study 2: JK and the Refusal of Social Care Service

JK is a 76 year old woman. She lives alone and suffers from a range of health needs, although her mobility is limited she is able to move around inside her home using a zimmer frame. She has previously been assessed as able to manage her own personal care and prepare meals for herself, and her friends help her with her shopping. She chooses not to venture out from her home, and is known to spend most the day on her bed with her three dogs. Recently, a number of reports have been received expressing concern for her welfare, particularly the unhygienic state of her home, and her ability to manage. Social Workers visit and find her living in squalor, but JK is adamant that she does not wish to leave her home or change her situation by accepting help. The situation is deteriorating rapidly and this week four referrals have been made to social workers asking them to intervene as a matter of urgency due to concerns for her health and safety at home. JK continues to refuse assistance and there is no obvious evidence of lack of mental capacity.⁵⁸

Some Possible (Conflicting) Intuitions:

1. JK appears to have *cognitive* capacity and, if this is confirmed by a specialist, then she has the capacity to make an autonomous choice and we should respect it.
2. JK’s resistance to offers of help has nothing to do with cognitive capacity but everything to do with those fears and anxieties associated with ceding power to others.

⁵⁸ Case study taken from a Serious Case Review undertaken by Cornwall & Isles of Scilly Safeguarding Adults Board in 2009, reported on in Scourfield, Peter (2010) ‘Reflections on the serious case review of a female adult (JK)’ in *The Journal of Adult Protection* Volume 12 Issue 4

3. No sane, autonomous person would choose to live in squalor and subject herself to serious risk of harm. We should therefore assume JK lacks the capacity for autonomy and intervene against her wishes, if necessary.
4. Irrespective of her capacity for autonomy, the right to self-determination does not entitle us to choose harmful self-neglect and accordingly we are not obliged to respect such decisions and should intervene as necessary to keep JK safe.

Procedural Model

Recall that this model is content-neutral and therefore is concerned only with JK's ability to make decisions in the prescribed manner. On the *Endorsement Account*, JK's first order desire (to refuse social care) to cohere with her higher order desire (to live independently and maintain her privacy – although these desires do not necessarily imply the desire to live in squalor). Assuming that her higher order desires are authentically hers, then we should respect her refusal to accept help as autonomous. On the *Historical Critical Reflection Account*, assuming she has the capacity to critically reflect on these preferences and would not be alienated from them then her decision to refuse care service is also autonomous. This is likely, since most people embrace independence and privacy, even once they find out how they came to value them. It seems therefore, that the procedural model fits best with *Intuition 1* and that on the basis the JK has cognitive capacity to make this choice for herself, we should respect JK's choice to refuse support

But what if JK's judgement is skewed by fear? Maybe she worries that accepting home care will inevitably lead to her being forced into giving up her dogs and going into residential care? Perhaps her choice to refuse help is a (mistaken) means to an end; that she has failed to properly appreciate that her ability to remain living in her home – enjoying maximal independence and privacy – is dependent upon her accepting help that will keep her safe and well. If this is the case, then perhaps it can be said that JK lacks the ability to make an autonomous choice insofar as her first order desire does not cohere with her higher order desires. But the problem in making this judgement is this: how can we be sure what JK's higher order volitions really are, and that they are reflective of her own will and not, say, fear (irrational or otherwise)?

Relational Model (An add-on, as opposed to alternative, to the procedural and substantive models.)

The relational model seems to offer a better way to try to appreciate the source of the fears that might be impairing JK's autonomy in this respect, and in so doing speaks to the worry expressed in *Intuition 2*. As an older, disabled woman she may feel particularly vulnerable to the well-meaning, though ultimately over-reaching 'help' of friends, family and professionals, who regard her as a source of anxiety, a burden or a risk-management problem. This interplay between how others see us and how

we see ourselves can distort the selection and enactment of our motivating desires, and in so doing impair our capacity for autonomy.

Substantive Model

The stronger model, however, is concerned with the content and effect of JK's decision, and chimes with *Intuition 4*: the right to self-determination does not permit her to make choices that jeopardise her future capacity for personal autonomy. Consequently, insofar as living without care places her autonomy-interests at risk of serious harm, JK's decision to refuse social care should not be respected and paternalistic intervention is justified. To an extent, it also chimes with *Intuition 3*, the assumption that given the harmful consequences refusing help, JK must lack autonomy-capacity. However, this rests on the precarious assumes that autonomous choice is necessarily consonant with prudent choice.⁵⁹ The weaker model, however, is more plausible: JK's ability to fully appreciate and evaluate the consequences of refusing care is compromised by her fear of losing her independence and privacy. This evaluative failure coheres with *Intuition 2* and could provide grounds for denying JK's capacity for autonomous judgement in respect of her refusal of social care.

3.4. Case Study 3: M and the Entitlement to Social Welfare Goods

M is 17 years old "the youngest of her mother's five children by different fathers. The family spent many years in unsettled and temporary accommodation. On her own account the mother (who had spent her own childhood in local authority care) had tremendous difficulty controlling her children. M was excluded from school at the age of 14 and never returned. Her mother has been ill for many years with a stomach complaint which was eventually diagnosed as an inoperable malignant tumour. M was expected to look after her mother but at the same time left 'to get on with her own thing without supervision'. Early in 2005 she became involved with the criminal justice system. Soon afterwards, the relationship with her mother broke down [and she was told to leave the family home]. In a letter to the Council, M's mother stated that M 'is no longer able to stay in my home as she has broken every rule laid down to her'. M's mother refused to engage in mediation, with a view to M returning home, and so the local authority eventually placed her in a hostel for young people. However, she was subsequently evicted because she broke hostel rules. She is found intentionally homeless and on the basis the Council refuse to provide further accommodation. M is at risk of rough-sleeping."⁶⁰

Some Possible (Conflicting) Intuitions:

⁵⁹ This would commit us to the counter-intuitive view that we can hold people responsible for imprudent acts and omissions.

⁶⁰ Case study adapted from *R (On The Application of M) (Fc) V London Borough of Hammersmith and Fulham* [2008] UKHL 14.

1. M appears to have *cognitive* capacity and, if this is confirmed by a specialist, then she has the capacity to make an autonomous choice and we should hold her accountable for her behaviour and not rehouse her.
2. Irrespective of her cognitive capacities, the development of M's evaluative capacities is likely to have been stunted by childhood instability, lack of nurturing, and the cumulative effect of a broad range of disadvantages. If so, she may lack the evaluative capacity necessary for personal autonomy and so should not be punished for her behaviour and should be rehoused.
3. These acts and omissions are not decisions, let alone *autonomous* decisions. Therefore, should not attract responsibility and M should be rehoused.

Procedural Model

Provided the relevant choices (which led to her eviction) were motivated by preferences that M could critically reflect upon and which, were she to do so, she would not feel alienated from, they were autonomous and M should be held accountable for them. However, it is not clear whether the instances of her breaking the hostel's rules amount to what could be viewed as decisions. It is more likely that they were impulsive, thoughtless and reckless acts and omissions; that they were not motivated by preferences that M has the capacity to reflect upon. On the procedural model, then, these appear to be non-autonomous decisions. We might, therefore, see the procedural model as chiming with either *Intuition 1* or *Intuition 3*, depending on the view we take of the nature of the acts and omissions in question, i.e. whether they were motivated by preferences upon which M could reflect or wantonly impulsive.

Substantive Model

According to the stronger model, it could be argued that M's right to self-determination does not permit her to make choices that would jeopardise her future capacity for personal autonomy, such as the decision that led to her homelessness. Insofar as homelessness places her autonomy-interests at risk of serious harm, M's behaviour is, therefore, a secondary concern. The first concern is to defend M's autonomy-interests by rehousing her, and the second is to initiate services designed to improving her ability to make decisions that promote her long-term best interests. This view – that in effect we should disregard M's acts and omissions because they are autonomy-damaging – is likely to attract considerably less support than the equivalent view expressed on behalf of B and JK, above. Some of us will want to intervene to preserve the health and wellbeing of B and JK irrespective of whether their refusal is capacitous, but will not want to intervene to prevent M's homelessness and the negative impact this will have on her health and wellbeing. Is such an inconsistency defensible?

On the weaker model, it could be argued that M's ability to fully appreciate and evaluate the consequences of her behaviour is compromised by poor self-esteem, anger, poor self-control, and other dispositions attributable to her childhood experiences. On this basis, in line with *Intuition 2*, M may lack an adequate range of skills and attitudes necessary for selecting and enacting courses of action which promote one's long-range interests.

Relational Model (An add-on, as opposed to alternative, to the procedural and substantive models.)

Again, the relational model provides a useful means to try to appreciate the source of some of the factors that might be impairing M's capacity for autonomy. She is a troublesome youth from a deprived background, who has been involved in the criminal justice system and who has been rejected by her the education authority, her mother and now the housing authority. She is viewed as reckless and feckless, and as a burden on society. Given the way she is viewed by others, it would not be surprising to learn that she viewed herself similarly. This interplay between how others see us and how we see ourselves can distort the selection and enactment of our motivating desires, and thus impair our capacity for autonomy. This model, therefore, best fits with *Intuition 2*.

4. Concluding Questions for Practitioners

1. What understanding of autonomy have you been (perhaps implicitly) operating with?
2. Are the practices that you partake in (such as providing medical treatment or social care) value-laden? Could they be reconfigured so as to be compatible with value neutrality?
3. How can one avoid objectionable perfectionism while empowering individuals and protecting vulnerable persons?
4. What role of others is compatible with autonomous decision-making? What decision communities are functional and empowering, which are dysfunctional and oppressive?
5. When is choice genuine or authentic?
6. Do you think autonomy is valuable? If so, why?

Suggested Further Reading

Christman, John (2011, Spring) 'Autonomy in Moral and Political Philosophy', in the *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2011/entries/autonomy-moral/>.

Owen, G.S. et al (2009) 'Mental Capacity and Judgemental Autonomy: An Interdisciplinary Challenge' in *Inquiry* Vol. 52(1), 79:107.

Bibliography

- Althusser, Louis (1976) *Essays in Self-Criticism*, trans. Grahame Lock (London: New Left Books).
- Arpaly, Nomy (2003) *Unprincipled Virtue* (Oxford & New York: Oxford University Press), pp. 117-8.
- Benson, Paul (2005) 'Feminist Intuitions and the Normative Substance of Autonomy' in Taylor, J.S. (ed.) *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge: Cambridge University Press).
- Berlin, Isaiah (1958) "Two Concepts of Liberty", in Isaiah Berlin (1969) *Four Essays on Liberty* (Oxford: Oxford University Press)
- The British Medical Association & the Law Society (2010) *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers*, 3rd Edition (London: The Law Society)
- Brown, Hilary (2011) 'The Role of Emotion in Decision-Making' in *The Journal of Adult Protection*, 13:4.
- Charland, Louis (2011) 'Decision-Making Capacity', in *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), retrieved on 1 May 2012 from <http://plato.stanford.edu/archives/sum2011/entries/decision-capacity>.
- Christman, John (1991) 'Autonomy and Personal History', in *Canadian Journal of Philosophy*, Vol. 21, No. 1, 1:24.
- Christman, John (2009) *Politics of Persons: Individual Autonomy and Socio-Historical Selves* (Cambridge and New York: Cambridge University Press)
- Cooper, John M. (2003) 'Stoic Autonomy', in *Social Philosophy and Policy*, Vol. 20, No. 2
- Dworkin, Gerald (1988) *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press)
- Dworkin, Gerald (Summer, 2010) 'Paternalism', in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/archives/sum2010/entries/paternalism/>.
- Feinberg, Joel (1989) 'Autonomy' in Christman, John (ed.) (1989) *The Inner Citadel: Essays on Individual Autonomy* (New York & Oxford: Oxford University Press)
- Foster, Charles (2009) *Choosing Life, Choosing Death: The Tyranny of Autonomy in Medical Ethics and Law* (London: Hart).

Frankfurt, Harry (1971) 'Freedom of the Will and Freedom of Action' in Watson, Gary (ed.) (2003) *Free Will* (Second Edition) (New York: Oxford University Press), pp. 322-35

Grisso, Thomas & Paul S. Appelbaum (1997) 'The MacCAT-T: A Clinical Tool to Assess Patients' Capacities to Make Treatment Decisions' in *Psychiatric Services*, Vol. 48, No. 11, 1415:1419

Grisso, Thomas & Paul Appelbaum (2006) 'Appreciating Anorexia: Decisional Capacity and the Role of Values' *Philosophy, Psychiatry, & Psychology*, Vol. 13, No. 4, 293:297.

Hegel ([1821]1991) *Elements of the Philosophy of Right* (New York: Cambridge University Press)

Johnston, David (2009) 'A History of Consent in Western Thought' in Miller, F. And A'. Wertheimer (eds.) *The Ethics of Consent, Theory and Practice* (Oxford: Oxford University Press)

Kant, Immanuel (1785) *Groundwork of the Metaphysics of Morals*

Kristinsson, Sigurdur (2000) 'The Limits of Neutrality: Toward a Weakly Substantive Account of Autonomy', in *Canadian Journal of Philosophy*, Vol. 30, No. 2

The Law Commission (2010) *Adult Social Care* (Consultation Paper No. 192) (London: The Law Commission)

Locke, John ([1690]1988) 'The Second Treatise of Government' in *Two Treatise on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press)

Mackenzie, Catriona (2008) 'Relational Autonomy, Normative Authority and Perfectionism', in *Journal of Social Philosophy*, Vol. 39(4), 512:33

Mill, J.S. ([1859] 1991) 'On Liberty' in J. S. Mill (1991) *On Liberty and Other Essays*, John Gray (ed.) (Oxford: Oxford University Press)

Nuffield Council on Bioethics (2009) *Dementia: ethical issues* (London: Nuffield Council on Bioethics)

Oshana, Marina (2006) *Personal Autonomy in Society* (Aldershot: Ashgate Publishing)

O'Shea, Tom (forthcoming) 'Critics of Autonomy,' *Essex Autonomy Project Green Paper Report* (University of Essex: Essex Autonomy Project).

O'Shea, Tom (2011), 'Autonomy and Value,' *Essex Autonomy Project Green Paper Report* (University of Essex: Essex Autonomy Project)

Raz, Joseph (1986) *The Morality of Freedom* (Oxford & New York: Oxford University Press)

Rousseau, Jean-Jacques ([1762]1997) *On the Social Contract* in Gourevitch, V. (1997) *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press)

Sartre, Jean-Paul ([1943]1957) *Being and Nothingness* (London: Methuen)

Sartre, Jean-Paul (1948) *Existentialism and Humanism* (trans. Philip Marlet) (London: Methuen)

Scourfield, Peter (2010) 'Reflections on the serious case review of a female adult (JK)' in *The Journal of Adult Protection* Volume 12 Issue 4

Tan, Jacinta, Anne Stewart & Tony Hope (2009) 'Decision-Making as a Broader Concept' in *Philosophy, Psychiatry, & Psychology*, Vol. 16, No. 4, 345:349.

Young, Robert (1986) *Personal Autonomy: Beyond Negative and Positive Liberty* (London: Croom Helm)