

A Compatible Defense of Respect for Autonomy and Medical Paternalism in the Context of  
Mental Capacity on the Grounds of Authenticity

by

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## ABSTRACT

Respect for autonomy has become the guiding principle at the forefront of health-care decision-making. In an attempt to preserve this principle, patients can be neglected to make decisions for themselves during times when they cannot make fully capable decisions. Under certain circumstances, it is necessary to have others assist a patient in making decisions that may have a significant impact on the patient's life and, will ultimately, respect the patient's prior expressed capable wishes and values. This thesis aims to provide arguments in favor of both respect for autonomy and medical paternalism under very specific circumstances. It provides traditional, contemporary and psychological arguments in support of respect for autonomy. Several key arguments in favor of medical paternalism are also presented on the grounds of the loss of personal identity, a social insurance policy and the abandonment of vulnerable patients. Furthermore, the difficulties involved in both accounts are also discussed with respect to the idealization of autonomy and the potential abuses involved in medical paternalism. This thesis concludes through drawing upon the notion of an authentic self as applied to this discussion, allowing for a compatible defense of these two traditionally competing theories.

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## Table of Contents

Introduction .....	1
i) Discussion on Mental Capacity .....	4
ii) The Distinction Between Personhood and Selfhood .....	5
iii) The Connection Between Selfhood and Autonomy .....	10
CHAPTER 1: Traditional and Contemporary Arguments for Valuing Respect for Autonomy ...	15
1.1) A Traditional Analysis of Respect for Autonomy .....	15
1.1.1) Autonomy Provides a Greater Sense of Responsibility .....	18
1.1.2) Autonomy's Importance With Respect to Morality .....	20
1.1.3) Dignity as Intrinsic to Autonomy .....	28
1.2) Autonomy and Well-being .....	30
1.3) A Contemporary Psychological Perspective of Autonomy .....	33
1.4) The Relationship Between Autonomy and Mental Capacity .....	38
CHAPTER 2: Medical Paternalism: Under Which Circumstances May it be Appropriate to Place Limitations on Respect for Autonomy .....	43
2.1) Loss of Personal Identity .....	46
2.2) Medical Paternalism as a Social Insurance Policy .....	54
2.3) The Vulnerable Patient and Moral Abandonment .....	57
2.4) Difficulties with Prior Expressed Capable Wishes .....	63
2.5) Recapitulation: Circumstances Under Which it Might Be Appropriate to Limit Autonomy .....	66
CHAPTER 3: Reconciling Respect for Autonomy and Medical Paternalism .....	69
3.1) Autonomy as an Idealistic Concept .....	69
3.2) Expected Impairments to Autonomy in Medicine .....	71
3.3) Paternalism Justified on the Grounds of Authenticity .....	73
3.4) Potential Abuse of Power with Respect to Medical Paternalism .....	77
3.5) Summary .....	81
Bibliography .....	83

## Introduction

If either a public officer or any one else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back, without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river.

- John Stuart Mill<sup>1</sup>

In health-care there exists an extremely intricate balance – many might say, arguably, an imbalance – of power between clinical staff and patients. Often, patients find themselves thrown into situations with which they are completely unfamiliar. They are expected to make substantial decisions under incredibly emotional, fearful and daunting circumstances. The environment – including the use of medical terminology and extremely complicated processes that patients are exposed to – is often quite new and alien to them, often causing patients to feel confused and overwhelmed. Hence, these decisions can be quite burdensome to both patients and their family members.

One major challenge that currently exists in health-care is that these critical decisions need to be made in frequently fast-paced situations occurring in medicine. In these very difficult situations, patients need to reflect upon their values, desires and preferences in order to make decisions that accurately reflect their beliefs. The question that needs to be addressed is: upon whom the burden of making these difficult decisions ought to rest, and under which circumstances might this burden shift? On the one hand, people appear to deeply value their freedom to make decisions for themselves. They cherish having the autonomy to decide what is best for themselves with respect to their values, beliefs and desires. It is terribly worrying, if not

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<sup>1</sup> John Stuart Mill (as described by Onora O'Neill), *Autonomy and Trust in Bioethics* (Cambridge: Cambridge University Press, 2002).

frightening, to imagine others deciding what is best for oneself, when they do not have a thorough understanding of who you are and what you value.

On the other hand, there are circumstances under which people experience tremendous emotional stress, illness or injuries, which impose limitations on their autonomous ability to make reflective decisions. Under these very specific circumstances, people might not have the ability to consider what they would actually want, if they were in a fully competent state of mind. Here, one can imagine that it would be reassuring to have someone assist you to make these tough decisions with respect to *what you would have wanted* in an authentic state of mind.

The aim of this thesis is to examine both respect for autonomy and medical paternalism when applied to the concept of mental capacity. This thesis will explore some of the major traditional and contemporary arguments that discuss the importance of safeguarding autonomy. In addition, it will defend the notion that there exists a need for paternalism in health-care, under very specific circumstances. Although there will be some discussion on the legal concept of capacity, the focus of this thesis will be to reconcile autonomy and paternalism in the medical context in which mental capacity is used. However, it is important to note that both the legal and medical concepts of capacity are very closely related, because the legal concept of capacity has been developed in deference to the medical notion. Furthermore, this thesis will provide a compatible position that ties both respect for autonomy and medical paternalism together through a discussion on authenticity. The originality of this argument rests in bringing together two traditionally opposing concepts to make them compatible through the concept of authenticity in the medical context.

The first chapter of this thesis will aim to critically examine the premises upon which the argument rests. It will describe why respect for autonomy is a valuable concept to individuals

and why it is necessary to protect an individual's autonomy. This chapter will examine several major traditional and contemporary arguments in support of respect for autonomy. Several authors that will be discussed in this chapter, who have provided the foundation for the argument for respect of autonomy, include Kant, Mill, Sartre and Heidegger. The contributions of other contemporary philosophers will also be mentioned, as well as a current psychological perspective on the value of respect for autonomy.

The second chapter of this thesis will provide a detailed discussion of medical paternalism, which has often been regarded as antagonistic to respect for autonomy. This chapter will provide several arguments for there being very specific circumstances under which individuals can no longer make decisions for themselves that accurately reflect their authentic desires. This chapter will focus on when it may be acceptable to override an individual's seemingly autonomous decisions. It will provide an analysis of the concepts of personal identity, paternalism as a social insurance policy and the duty towards the vulnerable in health-care.

Lastly, the final chapter of this thesis will examine the difficulties posed around introducing a practical account that incorporates both respect for autonomy as well as medical paternalism under specific circumstances. It will critique respect for autonomy as an idealistic concept as well as provide a brief discussion of issues that may arise with abuse of medical paternalism. Furthermore, it will provide a description of authenticity, as discussed by author and philosopher Gerald Dworkin, and its significance in this discussion.

This thesis will focus on the theoretical and practical ethics involved in respect for autonomy and medical paternalism when applied to mental capacity. It will also address the epistemological question of how one can have knowledge of values and desires and which of these preferences are to be adopted as authentic to a specific individual.

The introduction of this thesis will commence with the definitions of several important concepts that will be addressed in this thesis. It will also provide a discussion of personhood and the notion of a “self.” The first term that ought to be addressed is that of mental capacity.

### **i) Discussion on Mental Capacity**

Mental capacity is a term that incorporates several components. In short, it may be considered as the ability of individuals to make rational decisions. In this respect, a rational decision can be considered making a decision that is based on reflective reasoning. Mental capacity is this ability to understand and consider a number of alternatives when faced with a decision in order to determine the personally-desired outcome based on one’s values, beliefs and preferences. It involves a reasonable understanding of both the circumstances as well as an understanding of necessary concepts or relevant facts surrounding the decision being made. This is not to say that an individual ought to have an exhaustive knowledge of medical terminology and processes. Rather, mental capacity in a medical framework requires that an individual ought to have a basic knowledge of how certain processes work and their outcomes, which is presented to a patient by clinical staff. Any uncertainties ought to be clarified by the clinical team in the appropriate manner, such as using language and terminology that the patient is able to understand.

Furthermore, integral to the notion of capacity, one must be able to appreciate how the reasonably foreseeable outcomes could impact oneself as well as others involved.<sup>2</sup> An individual may have an excellent grasp of the knowledge surrounding a decision, yet not appreciate how the decision being made will directly impact that individual. For example, consider individuals who

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<sup>2</sup> “Guidelines for Conducting Assessments of Capacity,” *Capacity Assessment Office: Ontario Ministry of the Attorney General* (Ontario: Capacity Assessment Office, 2005).

suffer from anorexia. Many individuals with this illness are able to give precise details with respect to the number of calories in certain foods and they have an extensive knowledge of nutrition. However, they are unable to comprehend how these facts affect their own bodies and fail to appreciate how their decisions are affecting their bodies.

In the book, *Deciding for Others: The Ethics of Surrogate Decision Making*, authors Allen Buchanan and Dan Brock discuss how mental capacity (or competency in legal terminology) is very specific to the task or decision that ought to be made.<sup>3</sup> Charles Culver and Bernard Gert likewise comment that they, "...define competence 'exclusively as an ability to carry out certain mental tasks: to understand the information relevant to making the decision; to appreciate that this information applies to oneself in one's current situation; and to realize that one is being asked to make a decision about the treatment(s) being suggested.'"<sup>4</sup> The preceding quotation reveals that capacity is very task-specific and related to the decision that the individual ought to make at a very specific moment in time. The idea of mental capacity being task- and time-specific opposes the traditional, often philosophical, view that capacity is a global concept covering all or most situations.

## ii) **The Distinction Between Personhood and Selfhood**

When considering the notion of mental capacity, one must contemplate as to why it appears to be such an integral component to an individual's experiences and existence. This next section will describe why mental capacity is a necessary element to autonomy and its relation to the notion of selfhood.

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<sup>3</sup> Allen E. Buchanan and Dan W. Brock, *Deciding for Others: The Ethics of Surrogate Decision Making*. (Cambridge: Cambridge University Press, 1990) pp. 65-66.

<sup>4</sup> Buchanan and Brock, pp. 65-66.

Selfhood may be considered as the components or distinctions of individuals that set them apart from others. The notion of a self involves a collection or assemblage of an individual's beliefs, values, preferences and desires. It is the combination of these characteristics that make an individual a distinct being. There is a distinction that ought to be drawn between a self and a person. A self is a sub-category of personhood that involves the recognition of the values, desires and preferences that are exhibited by the individual over a continuous period of time. Furthermore, a person may be capable of recognizing that his body is uniquely his own, such as having the ability to experience pain with respect to certain parts of one's body when harmed. However, a self is capable of making judgments and being critical about the embodiment of oneself, such as the kind of body type one wishes to have. Hence, embodiment is essential to both personhood and selfhood.

Authors Allen E. Buchanan and Dan W. Brock write that there are three conditions that describe a self. The first condition that they discuss is that an individual who is considered a self ought to recognize one's existence over a period of time, such as having a past, present and future. The second condition they describe is that a self ought to have specific reasons for acting in a particular manner. Lastly, they describe that selves ought to act in a purposive sequence of actions. If any of these three conditions are roughly met, Buchanan and Brock argue this is considered as acceptance into selfhood.<sup>5</sup> A self is a deeply reflective individual who is capable of determining the values and beliefs important to that specific individual.

It can be argued that the notion of a self is a sub-category of a person. Tom Beauchamp and James Childress argue that the concept of a person is very difficult to accurately depict. In philosophical discussions, there appears to be no clear-cut definition of personhood. They argue

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<sup>5</sup> Buchanan and Brock, p. 160.

that traditionally there are both biological and cognitive distinctions that may be drawn between who may be considered a person and that which is not a person. However, these distinctions cause issues such as that, depending on the definition of a person, some human beings will not fall into that category. Similarly, when the definition is broadened, there are non-human beings that fall into the category of personhood as well and this is a concern to some. For the purposes of this essay, I will assume the broad definition of personhood, crafted by Peter Singer. Singer writes:

The capacity for suffering and enjoying things is a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in any meaningful way. It would be nonsense to say that it was not in the interests of a stone to be kicked along the road by a schoolboy. A stone does not have interests because it cannot suffer. Nothing that we can do to it could possibly make any difference to its welfare. A mouse, on the other hand, does have an interest in not being tormented, because it will suffer if it is.<sup>6</sup>

Singer argues that anyone who has interests is a member of the moral community. Any entity that experiences pleasure or pain has interests. Hence, any entity that experiences pleasure or pain is a member of the moral community. To be as inclusive as possible, this essay will assume that any entity which has these basic features is considered a person, despite any other specific distinction, such as specific physical features or cognitive abilities. However, the main focus of the essay will be on selfhood, as it directly relates to autonomy and mental capacity.

Although one may be considered a person, one may lack a sense of self, depending on the circumstances. For example, an individual who suffers from severe Alzheimer's disease may have a fleeting sense of self, yet would, of course be considered a person. Furthermore, an individual who suffers from a severe mental disability may have a very limited sense of a self, with a minimal category of preferences and desires.

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<sup>6</sup> Peter Singer, "All Animals are Equal," *Bioethics: An Anthology*, ed. Helga Kuhse and Peter Singer. (Oxford: Blackwell Publishers Ltd., 2002) p. 464.

An interesting analogy to the distinction between selfhood and personhood is that drawn by philosopher Tom Regan between moral agents and moral patients. For Regan, moral agents are aware of the moral nature of their actions and these individuals are capable of actively participating in the moral community. These individuals are able to contemplate moral matters and rationally derive at what choice they ought to make. On the other hand, he describes individuals who are moral patients, those who lack the reasoning ability to participate actively in moral behaviors, yet are still considered to be persons and a part of the moral community.<sup>7</sup> In the case of the self versus the person, the self would be the active participant in the rational activities of the individual, whilst the person would be considered as a sentient being.

Individuals are capable of formulating certain decisions based on criteria such as preferences, beliefs and values. These kinds of decisions involve second-order desires, based on Harry Frankfurt's notion of the freedom of the will.<sup>8</sup> For the purposes of this discussion, it will be assumed that Frankfurt's notion of second-order desires is accurate. These desires, again, include an individual's values, beliefs and preferences. These desires are not mere volitions, which are immediate reactions to certain stimuli, which Frankfurt denotes as first-order desires. On the contrary, they are well-considered desires to be a certain *kind* of person. Selves have the ability to change, or at least want to change, their primary or basic desires in order to coincide with a greater or deeper sense of values and wishes.<sup>9</sup> Hence, selves have the ability to control their desires in a relatively consistent manner that coincides with their abilities to reason and think logically. In this sense, freedom may be considered as the ability for an individual to self-

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<sup>7</sup> Tom Regan, "The Case for Animal Rights," *The Animal Ethics Reader*, ed. Susan Jean Armstrong and Richard George Botzler. (London: Routledge, 2003) pp. 17-24

<sup>8</sup> Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *Free Will*, 2nd ed. Ed. Gary Watson (New York: Oxford University Press, 2005) pp. 322-336.

<sup>9</sup> Susan Wolf, "Sanity and the Metaphysics of Responsibility," *Free Will*, 2nd ed. Ed. Gary Watson (New York: Oxford University Press, 2005) pp. 372-387.

govern and make decisions based on a variety of criteria that, as a package, are unique to that individual.

Furthermore, it is important to note that sometimes individuals may hold two competing desires at the same time, such that they wish for both *a* and *not-a*.<sup>10</sup> Although this may appear to be a logical contradiction, philosopher Patricia Marino argues that there are often components of *a*, that one might both desire and not desire.<sup>11</sup> For example, consider a patient who suffers from cancer and has the opportunity to receive chemotherapy, although the treatment may only marginally affect his prognosis. He may wish to both receive chemotherapy for his cancer and not receive this treatment. Although, it appears immediately that the patient has conflicting desires, he perhaps desires different values in either case. On the one hand, he may wish to refuse the treatment due to the intensive side-effects of the treatment. He may not wish to cause more pain and suffering to his family and friends from seeing him in this state. On the other hand, he may wish to follow through with the treatment in order to prolong his life, if even, in his case, the treatment is likely to offer minimal improvement. This kind of situation will arise in the next chapter, when describing that individuals themselves are ideally the best people to consult when faced with making challenging decisions.

In a mereological sense, one may examine the different characteristics of the individual to be the parts that create the whole. In this case, the whole would present itself to be one unified individual that is relatively consistent, with respect to the criteria presented by Buchanan and Brock, over an extended period of time. Although some of the components may alter and change over time, the general sense of a whole entity exists for each unique individual. It is this presentation of a whole individual that allows people to be considered as selves.

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<sup>10</sup> Patricia Marino, "On Essentially Conflicting Desires," *The Philosophical Quarterly*, 59.235 (April 16, 2008) pp. 274-291.

<sup>11</sup> Marino, "On Essentially Conflicting Desires," pp. 274-291.

### iii) The Connection Between Selfhood and Autonomy

To have the ability to control one's desires and to desire to be a certain kind of person appear to be essential for individuals to give reasons for their actions and decisions and in order to justify why they act particular ways. When this liberty is taken away from individuals, they no longer have the choice to act as they will. The ability to make decisions for one's self allows individuals to be autonomous beings. Autonomy, which is closely related to freedom, is the ability to self-govern or self-determine in the context of this thesis. There are, however, a wide variety of interpretations for this term.

Onora O'Neill quotes Gerald Dworkin's descriptions of autonomy in *Autonomy and Trust in Bioethics* as the following, " 'Liberty (positive or negative)...dignity, integrity, individuality, independence, responsibility and self-knowledge...self-assertion...critical reflection...freedom from obligation...absence of external causation...and knowledge of one's own interests.' "<sup>12</sup> In Gerald Dworkin's book *The Theory and Practice of Autonomy*, he further argues that autonomy can be described as:

...a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values. By exercising such a capacity, persons define their nature, give meaning and coherence to their lives, and take responsibility for the kind of person they are.<sup>13</sup>

Similar to Frankfurt's notion of second-order desires, Dworkin argues that, in order for an individual to be autonomous, they must essentially "own" their decisions. They must be able to identify certain values and desires with themselves and their actions ought to reflect these preferences.

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<sup>12</sup> Onora O'Neill, *Autonomy and Trust in Bioethics* (Cambridge: Cambridge University Press, 2002) pp. 21-22.

<sup>13</sup> Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1997) p. 20.

O'Neill further describes Ruth Faden and Thomas Beauchamp's understanding of autonomy as, "privacy, voluntariness, self-mastery, choosing freely, choosing one's own moral position and accepting responsibility for one's choices."<sup>14</sup> In both of these descriptions of autonomy, there appear to be some common themes. One of the major themes is the notion of having a self, of being an independent being with a unique set of values and preferences, as well as the ability to make choices on behalf of one's self, whether that be everyday choices or moral and ethical choices.<sup>15</sup>

Authors Allen Buchanan and Dan Brock write that self-determination may be "...understood here as a person's interest in making significant decisions about his or her own life."<sup>16</sup> Autonomy is an important part of freedom, which is the freedom of thought or freedom of the mind. It is the ability to have independence and sovereignty over one's desires and wishes. Bernard Lo writes, "Autonomous people act intentionally, are informed, and are free from interference and control by others. They should be allowed to shape their lives and control their destinies. The concept of autonomy includes the ideas of self-determination, independence and freedom."<sup>17</sup> Here, one can see that having the freedom of thought to make one's own decisions is vital for the concept of autonomy.

The notion of safeguarding our autonomy appears to be a significant notion for people in order to be free, unique beings. Gerald Dworkin writes, "The only features that are held constant from one author to another are that autonomy is a feature of persons and that is a desirable

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<sup>14</sup> O'Neill, p. 22.

<sup>15</sup> Philosopher Onora O'Neill illustrates the difficulties in describing autonomy as being independence. She writes that independence can mean a wide variety of things. For example, she writes, "Some independent action is spontaneous, disciplined, altruistic and even heroic; some is self-centered, pig-headed, impulsive, random, ignorant, out of control and regrettable or unacceptable for these and many other reasons." She writes that choices made under the heading of "autonomous" should not be mere choice, but rather involve a certain process. (O'Neill, p. 28.)

<sup>16</sup> Buchanan and Brock, p. 36-37.

<sup>17</sup> Bernard Lo, *Resolving Ethical Dilemmas: A Guide for Clinicians* (Philadelphia: Lippincott Williams & Wilkins, 2005) p. 10.

quality to have.”<sup>18</sup> If our ability to make our own decisions is taken away, we would no longer be free. We would merely be drones or passengers of our lives adhering to external commands, rather than actively taking control over one’s wishes and desires. Considering past events, such as slavery, individuals value their freedom to choose and make decisions. With this autonomy taken away, people are unable to participate in the freedom to rationalize for themselves; they are considered to be animals following basic desires and being unable to contemplate upon deeper desires to want to be a certain kind of person. Furthermore, it would be impossible to translate this want into action in the case of slavery, limiting both individuals’ ability to make their own decisions along with being able to translate those decisions into actions. In slavery, slave owners attempted to take away the autonomy of individuals by limiting people’s abilities to participate in healthy ways to rationalize and make decisions, such as basic communication skills and access to resources and information.

The ability to have autonomy appears to be an important part of human existence, being able to exercise our rational abilities to make decisions. Without this ability, rational beings would be comparable to animals or passive moral agents, who cannot contribute their own unique choices, limiting ingenuity. Onora O’Neill describes cross-cultural studies that were done by Lawrence Kohlberg that describe the maturity of children as correlating with their abilities to criticize certain moral rules and attempt to reform them, as opposed to merely accepting certain moral claims as being infallible.<sup>19</sup> Having this sense of deliberation and reasoning appears to be important for developmental processes and is a beneficial component for the learning process. It also allows for greater creativity and ingenuity. Having autonomy is something that we value

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<sup>18</sup> O’Neill, p. 22.

<sup>19</sup> O’Neill, pp. 24-25. O’Neill further mentions that these studies were criticized on the basis that building relationships with others was also proved to have a strong relationship with moral maturity.

deeply as it is connected to our having selves. Being individual beings with preferences and desires is something that we find appealing.

To conclude this brief introduction to selfhood and autonomy, Onora O'Neill claims that, not only are there many different notions of the idea of autonomy, but there also exist several parameters within which autonomy appears to fall. She writes on autonomy:

It is generally seen as a matter of *independence*, or at least as a *capacity for independent decisions and action*. This conception of individual autonomy sees it as *relational*: autonomy is always autonomy from something; as *selective*: individuals may be independent in some matters but not in others; and as *graduated*: some individuals may have greater and others lesser degrees of independence.<sup>20</sup>

In the quotation stated above, O'Neill reveals that autonomy ought not be described as something that is globally present or absent, rather that it may be fleeting or segmented in an individual's experience; autonomy may be present for certain circumstances or situations, but not in others.

Furthermore, autonomy is a concept that can be described as being present in degrees. Individuals may have a low-functioning or limited sense of autonomy, which would mean that they may be able to make very basic decisions, rather than complex ones. For example, individuals with this kind of ability may have the autonomy to decide what clothes they would like to wear, yet would not be able to decide on a specific moral decision that required a lengthy appraisal of possible outcomes and people affected. Hence, O'Neill describes autonomy as existing on a gradient.

As described in the preceding paragraphs, it appears as though autonomy is vital for individuals to maintain a sense of self. However, this thesis aims to argue that, not only should respect for autonomy be a guiding principle in medical ethics, but there ought to exist the

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<sup>20</sup> O'Neill, p. 23.

concept of medical paternalism to aid those who cannot make decisions on their behalves.

Author Bernard Lo writes:

If a person is incapable of making informed decisions, trying to respect his or her autonomy might be less important than acting in his or her best interests. Autonomy might also be constrained by the needs of other individuals or society at large. A person is not free to act in certain ways that violate other people's autonomy, harm others, or impose unfair claims on society's resources.<sup>21</sup>

The second chapter of this thesis will discuss in great detail under what kinds of circumstances medical paternalism needs to occur, following from the situations described by Lo.

The proceeding chapter will be concerned with the value of respect for autonomy and its importance for selves. I will examine some major arguments in favor of respect for autonomy, including a detailed Kantian perspective with respect to Kant's arguments for respecting and safeguarding autonomy. In this discussion, both Heidegger and Sartre offer related contributions towards the value of autonomy. Additionally, I will present John Stuart Mill's account of liberty and autonomy to offer a utilitarian account of valuing autonomy. Furthermore, I will introduce some contemporary thoughts on autonomy, including a psychological critique of embodiment theories that downplay the importance of autonomy or at least the perception of having autonomy. The last section of this chapter will focus on the essential connection between autonomy and mental capacity. I will argue that since autonomy is a notion that is highly valued by selves, one ought to respect and dignify individuals' abilities to make decisions for themselves in support of preserving their mental capacity.

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<sup>21</sup> Lo, p. 10.

## **CHAPTER 1: Traditional and Contemporary Arguments for Valuing Respect for Autonomy**

Autonomy has many faces. The most widely held concept of autonomy is that of free action and the ability to make a decision without significant coercion or influence keeping in mind values and preferences that individuals recognize to be their own. This chapter will begin with an analysis of traditional philosophical arguments for preserving and safeguarding autonomy. It will then discuss contemporary philosophical and psychological notions of autonomy. Finally, it will conclude with drawing a connection between autonomy and bioethics, with respect to mental capacity.

### **1.1) A Traditional Analysis of Respect for Autonomy**

Kant is a proponent for both empiricism and rationalism. He argues that an individual ought to use the empirical evidence gathered from experience in order to develop and deduce rational principles.<sup>22</sup> However, these principles can only be developed through an intricate thought process. He writes, “To describe such a will as *free* would be to say that it can act causally *without* being caused to do so by something other than itself.”<sup>23</sup> Kant argues that individuals are free so long as they are able to make their own decisions based on logical thinking, with no pressure or persuasion from others. In this section of the thesis, I would like to discuss, in further detail, Kant’s argument for the importance of rationality, which stems from being autonomous entities. The arguments presented will relate autonomy to responsibility, morality and dignity from a traditional account. Furthermore, I will describe how autonomy is essential when arguing for the safeguarding and protection of our mental capacity.

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<sup>22</sup> T.Z. Lavine, *From Socrates to Sartre: the Philosophical Quest* (New York: Bantam, 1984) pp. 193-198.

<sup>23</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 3rd ed., transl. H. J. Paton (London: Hutchinson & Co., Ltd., 1956) p. 41.

Kant argues that human beings are rational, in the sense that we are capable of careful deliberation and reasoning. This process allows people to make decisions based on principles that one ought to consider as universal maxims. If these principles can be applied without logical contradiction and respects the autonomy of all, individuals ought to act accordingly. In the quotation above, Kant places great significance on the ability for individuals to form these principles and justifications for actions on their own. Although the principles ought to be objective, such that they apply to everyone, they must stem from the subjective individual in order for the individual truly to understand the importance of the meaning of these principles.

The understanding and thought process that the individual must endure allows the rational being to appreciate why the individual ought to adhere to certain principles. If individuals were merely told what to do, they would not be able to appreciate how these maxims were formed or perhaps exactly why they are important. Kant continues his analysis to describe that if these laws or principles were merely given to us, we would not be free individuals. Instead, we would be similar to animals following “natural necessity.” Kant writes:

...a free will would act under laws, but that these laws could not be imposed on it by something other than itself; for, if they were, they would merely be laws of natural necessity. If the laws of freedom cannot be other-imposed (if we may use such an expression), they must be self-imposed. That is to say, freedom would be identical with autonomy; and since autonomy is the principle of morality, a free will would be a will under moral laws.<sup>24</sup>

He argues that autonomy is what gives people a sense of freedom. The ability to self-govern and make choices on behalf of one’s self is a prerequisite for human beings to be rational creatures. Without this ability to think critically and examine the circumstances to make decisions, one would also lack this kind of freedom.

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<sup>24</sup> Kant, p. 41.

According to Kant, animals are not free entities as they lack the ability to consider events rationally and make decisions. Instead, they act based on natural or immediate desires, as opposed to having ordered preferences. Rational beings are capable of this advanced thought process in order to have second-order desires that are able to order preferences and desires so that an individual can choose to be a particular kind of person. I would like to argue contrary to Kant that individuals who lack this ability, such as animals or individuals with fleeting rationality, are not any less intrinsically valuable. These individuals have an intrinsic value equal to those who are considered rational beings, through their membership into personhood. Rather, those who have autonomy and the ability to think rationally, recognize and value this concept as an important component of their selves.

When there is risk of losing this freedom to be autonomous beings, there is great concern to individuals. Consider the notion of being locked away in prison or even being subjected to slavery: the very notion of being held captive against one's will and not being able to make elemental decisions on one's behalf is a frightening and worrisome thought to most. It appears as though the concept of being autonomous is something that we ought to safeguard and care for vigilantly. It is not a concept that individuals, at least from a dominantly Western perspective, would easily give up. In the section to follow on a psychological perspective, authors Deci and Ryan actually argue that autonomy is a cross-culturally valuable concept. In fact, this notion is something sacred and sacrosanct to individuals.<sup>25</sup>

One must be careful here again to make the distinction that individuals who are perhaps less able to think rationally are not automatically considered non-autonomous beings. There appears to exist a gradient upon which individuals may have a very severely diminished ability

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<sup>25</sup> Ryan and Deci, "Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?" pp. 1577-1579.

to think rationally, or perhaps it is a fleeting sense of self-government that occurs under varied circumstances. In this sense, one must not generalize that people are either autonomous or not, but there must be room to allow for individuals who may perhaps have a degree of rationality or autonomy. It is now necessary to elaborate on Kant's work as to why autonomy is vital to human rationality.

### **1.1.1) Autonomy Provides a Greater Sense of Responsibility**

Author Ted Honderich writes on Kant, "In the *Groundwork*, Kant appealed to this result and argued, in effect, that we must assume the reality of freedom from a 'practical point of view,' if we are to regard ourselves as rational agents capable of reasoned choice; and from this he inferred that validity of the categorical imperative or moral law as the 'law of freedom'."<sup>26</sup> Honderich describes Kant as arguing that the autonomy to choose certain actions is necessary in order to have morality. If the world was a purely deterministic phenomenon, morality would be vacuous in the sense that people would be less inclined to act in a morally acceptable manner if they thought that they were merely determined creatures. It is not to say that a sense of morality would not exist, but it appears as though people would be less concerned with their actions, knowing that they were pre-determined to act and behave in a particular manner; in this case, individuals would not feel as if they had to take full responsibility for their actions, at least in the traditional sense where the action or decision made stemmed solely from the individual who commits it. Kant argues that autonomy, and the freedom of the will, allows individuals to take responsibility for their actions in this traditional sense, as to feel culpable for their decisions and actions. Hence, when individuals make a decision to act in a particular manner, they would feel

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<sup>26</sup> Ted Honderich, *The Oxford Companion to Philosophy* (New York: Oxford University Press, 1995) pp. 437-441.

responsible to the degree that they would perhaps pay closer attention to this action knowing that the consequences that result from this action would be directly linked to their decision.

In two experiments from the University of Minnesota and the University of British Columbia, researchers attempted to find a link between individuals' beliefs that they were either determined or that they had free will and their consequent actions. Before performing a test, some of the subjects were briefed by the experimenters that there was clear evidence that disproves that free will exists. The subjects of these experiments were given a set of math problems on a computer screen. They were told that there would be a computer glitch that would cause the answers to show up on the screen, but in order to make the answers disappear, the subject simply had to hit the space bar.<sup>27</sup> The results of the test illustrated Kant's concern over freewill and autonomy. Although Kant may argue that we do have free will, he also notes that if even we only think that we are free, this impacts how seriously people regard responsibility. The article indicates, "The results were clear: those with weaker convictions about their power to control their own destiny were more apt to cheat when given the opportunity as compared to those whose beliefs about controlling their own lives were left untouched."<sup>28</sup> Therefore, Kant argues that having autonomy, even for practical purposes, must be assumed in order to have a deeper sense of responsibility and moral duty to pursue an ethical course of action. Keeping this notion in mind, people would possess a greater sense of responsibility for their actions and translate this perception into a greater consideration of moral attitudes.

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<sup>27</sup> "Destined to Cheat? New Research Finds Free Will Can Keep Us Honest," *ScienceDaily*, Association for Psychological Science, February 1, 2008. Web. June 2, 2009  
<<http://www.sciencedaily.com/releases/2008/01/080129125354.htm>>.

<sup>28</sup> "Destined to Cheat? New Research Finds Free Will Can Keep Us Honest," Web.

### 1.1.2) Autonomy's Importance With Respect to Morality

Similarly, Kant argues that it is important that the will or autonomy of the individual stem directly from the individual. For example, the will is not derived from external influences or authorities, such as “natural necessities.” Kant argues that this is necessary when assigning moral judgments or principles because individuals will view the source of their commitments to these laws as stemming from themselves. This notion is similar to Gerald Dworkin’s concept of autonomy, which requires that individuals “own” their values and desires. They are the authority of their principles and values, which gives it both personal and convincing meaning and value.<sup>29</sup> Author Lawrence Hinman writes on Kant’s notion of autonomy, “It is because each person's own reason is the legislator and executor of the moral law that it is authoritative for her.”<sup>30</sup> Individuals value that the root of their ideas and will stem directly from themselves.

This notion is also apparent in Heidegger’s *Being and Time*. In this book, Heidegger describes the authentic self.<sup>31</sup> The authentic self is a self that is unencumbered by others and unique to each individual. As described earlier, the self is what makes every individual different and it is the sense or feeling of being in control of one’s actions and desires. Heidegger writes that individuals are constantly bombarded by the notions of other people and external influences. For example, advertisements are frequently and relentlessly attempting to manipulate individuals into valuing certain lifestyles and having specific needs and wants. The film The Corporation does an excellent job of exposing some of the tactics that businesses employ to convince customers of their needs.<sup>32</sup> For example, “the nag factor” is when advertising is aimed directly

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<sup>29</sup> Lawrence Hinman, “Kant’s Moral Philosophy,” *Stanford Encyclopedia of Philosophy*, Web. June 6, 2009 <<http://plato.stanford.edu/entries/kant-moral/#AutFor>>.

<sup>30</sup> Lawrence Hinman.

<sup>31</sup> Martin Heidegger, *Being and Time* (New York: Harper & Row, 1962) pp. 232-235.

<sup>32</sup> “Transcripts and Extras,” *The Corporation*, Spring 2009, Web. June 8, 2009 <[http://www.thecorporation.com/index.cfm?page\\_id=314](http://www.thecorporation.com/index.cfm?page_id=314)>.

towards children. The item, most often a toy, will be flaunted towards children, as they watch other children enjoying the item. The children watching, who are perhaps too young to make decisions for themselves, automatically begin to beg their parents for this item.<sup>33</sup> Here, one can observe the influence of others on an individual's decisions. Furthermore, individuals are submersed in these influences in a society such as North American society, where advertising prevails. It is also important to consider that individuals may be constantly influenced by others, such as family members, religious figures and authority figures. However, the decisions and choices that are being made ought to be well-thought-out and ultimately made by the individual. The decision should be endorsed by the individual, with no manipulation or deceit. Manipulation or deceit would include cases such as manipulative advertising, brainwashing and addictions.

This is, of course, not to say that being completely removed from others is the only method to achieve authenticity. Practically speaking, it is necessary that individuals interact with one another and are influenced by one another. However, the authenticity that Heidegger proposes is that individuals recognize their beliefs, values and preferences as being rationally and freely chosen by each individual. This would include individuals who change their beliefs based on others, so long as they personally and rationally acknowledge these new principles to be their own, similar to adopting Frankfurtian second-order desires.

Furthermore, from a utilitarian perspective, John Stuart Mill similarly argues that individuals with autonomy may only flourish if they are not under any kind of pressure or persuasion. This may include pressure from despots or the "tyranny of the majority."<sup>34</sup> Without these kinds of restrictions, individuals are able to develop their ideas and creative abilities, allowing ingenuity to thrive. Hence, people have the opportunity for personal development,

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<sup>33</sup> "Transcripts and Extras," *The Corporation*.

<sup>34</sup> O'Neill, pp. 30-31.

which may also lead to ideas and creations that will benefit the community and society as well. There will be a greater improvement in society for the greater good. Through the arguments presented in this chapter, respect for autonomy is both inherently valuable and instrumentally valuable.

Additionally, Mill argues, “A person whose desires and impulses are his own – are the expression of his own nature, as it has been developed and modified by his own culture – is said to have a character. One whose desires and impulses are not his own, has no character, no more than a steam engine has a character.”<sup>35</sup> Here Mill is arguing the importance of having autonomy to be an independent self, as opposed to having no concept of a personality or unique entities with certain traits of which individuals are self-aware. He is arguing that a steam engine, similar to individuals who merely act according to how others will them to act, rather than independently, has no unique personality or character. As described above, since these kinds of individuals lack these personalities, there is a lack of development and flourishing.<sup>36</sup> Personality, or autonomy according to Mill, is an important characteristic that allows individuals to be free to rationalize and be creative in their own manner, which in turn has the ability to produce greater utility for the community at large. Greater innovation and within a greater sphere of opportunities allows individuals to develop ideas that would not be possible in a restricted society.

Heidegger also writes that, “Anxiety thus takes away from Dasein the possibility of understanding itself, as it falls, in terms of the ‘world’ and the way things have been publicly interpreted.”<sup>37</sup> He writes that although people are afraid to venture into personal reflection and a deeper understanding of the self, getting to know the authentic self is necessary to live a

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<sup>35</sup> John Stuart Mill (as described by Onora O’Neill), *Autonomy and Trust in Bioethics*, p.31.

<sup>36</sup> O’Neill, p. 31.

<sup>37</sup> Martin Heidegger, *Being and Time* (New York: Harper & Row, 1962) p. 232.

fulfilling life. He writes that although individuals may be lured by the seeming tranquility of merely adhering to what others desire, there is a sense of aggravation or irritation that the individual will experience.<sup>38</sup> Individuals feel frustrated not being able to communicate or explain their own desires and wishes in these situations. They are further disgruntled knowing that they cannot align their true desires with their actions, leading to a decrease in well-being.

Heidegger argues that one way to be torn from the everyday bombardment of others is to listen to one's individual conscience. This is one way to access the true and authentic self, as opposed to someone who is submersed in external values and beliefs.<sup>39</sup> According to Heidegger, conscience is a good indicator as to what an authentic self feels is right or wrong. The authentic self, for Heidegger, is a necessary component of existence. He argues that merely being an inauthentic self is not a rewarding or truthful existence and this ought to be ameliorated through the discovery of the authentic self. In this sense, Heidegger also wants to argue that we ought to be answerable and responsible for our own actions if we follow our authentic selves.<sup>40</sup> This is a similar notion to Kant's argument that, if the maxims are derived internally from each self, it would prescribe greater value to that maxim, as the individual would have a better grasp of the importance of the principle along with feeling responsible for creating such a notion. Furthermore, author Roy Hornsby writes on Heidegger:

For Heidegger, the 'belonging to others' is a drastic irresponsibility because the 'they' deprives the particular Dasein of its own accountability by making every decision and judgment for it. The 'they' can do this most easily because it can always be said that 'they' were responsible for such and such. Heidegger said that this passivity creates the alienated self, the 'Man' who is fatally disburdened of

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<sup>38</sup> Heidegger, p. 222.

<sup>39</sup> Heidegger, p. 313.

<sup>40</sup> Charles B. Guignon, *The Cambridge Companion to Heidegger* (Cambridge: Cambridge University Press, 2006) pp. 285-286.

moral autonomy and, therefore, of moral responsibility. This 'Man' can know no ethical guilt.<sup>41</sup>

Hornsby illustrates the notion that, without a concept of a distinctive self, there exists the issue of individuals relinquishing responsibility in order to place blame upon others. He argues that it is necessary to have an individualized sense of self in order to act in a reasonable and ethical manner. Individuals are often raised with the aim that they will grow-up in order to eventually be responsible agents in the world. Although children are often raised to adopt their parents' values and beliefs, they reach a level of maturity when they become responsible agents. At this point, they can be held accountable for their actions and behaviours, as they are capable of critiquing previously held values of their parents, along with forming new desires and beliefs.

There also exists a similarity between these two theories as Heidegger, like Kant, requests that individuals reflect and use their rationality to discern what is important not only to their selves and their well-being, but similarly what is rational in order to exist amongst others. Hence, in the consideration of what is good for oneself, one ought to consider how this would affect others in the process. Mill is, as well, sympathetic towards this position, as he argues that mere choice is not what constitutes character, but it is that individuals identify that the choice made stems directly from themselves.<sup>42</sup> This kind of reasoning again invokes a sense of responsibility for one's actions.

Jean-Paul Sartre also expressed the importance of autonomy and the ability for individuals to act according to their unique and identifiable wills. He writes:

Consequently, when, operating on the level of complete authenticity, I have acknowledged that existence precedes essence, and that man is a free being, who, under any circumstances, can only ever will his freedom, I have at the same time acknowledged that I must will the freedom of others. Therefore, in the name of

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<sup>41</sup> Roy Hornsby, "What Heidegger Means by Being-in-the-world," *Royby.com*, Web. June 8, 2009 <<http://royby.com/philosophy/pages/dasein.html>>.

<sup>42</sup> O'Neill, p. 31.

this will to freedom, implied by freedom itself, I can pass judgment on those who seek to conceal from themselves the complete arbitrariness of their existence, and their total freedom. Those who conceal from themselves this total freedom, under the guise of solemnity or by making determinist excuses, I will call cowards.<sup>43</sup>

Similarly to Heidegger and Kant, Sartre argues that individuals wish for autonomy and the ability to be free to self-govern themselves. He writes that individuals want the ability to have their actions stem directly from within themselves. Sartre further argues that individuals who choose to argue that they do not have a sense of freedom or who argue that their actions do not stem directly from their own will, are merely cowards. The term ‘coward’ for Sartre, describes that these individuals are afraid of taking such a responsibility to have full ownership over their own actions and decisions. Although taking this kind of responsibility forces individuals to consider their decisions under much more scrutiny rather than merely adopting what others deem to be right and morally acceptable. The following quotation illustrates Sartre’s position on freedom and responsibility: “That is what I mean when I say that man is condemned to be free: condemned, because he did not create himself, yet nonetheless free, because once cast into the world, he is responsible for everything that he does.”<sup>44</sup> This quote illustrates, along with the other traditional arguments presented, that individuals ought to take responsibility for their autonomous actions in order for morality to have a deeper sense and for individuals to act in a manner that promotes rigorous deliberation.

As described earlier, Heidegger also argues that individuals who choose to follow the wills of the masses are irresponsible in the same sense that they relinquish their ability to make rational and well-thought-out decisions for themselves, as well as taking responsibility for these actions. In summation, here one can argue that having the sense of freedom and autonomy to

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<sup>43</sup> Jean-Paul Sartre, *Existentialism is a Humanism* (United States: Yale University Press & New Haven and London, 2007) p. 49.

<sup>44</sup> Sartre, p. 29.

control oneself is a necessary element for Kant, Heidegger and Sartre in order for individuals to feel morally responsible for their actions. Once they feel that they are responsible, they can take full ownership and will act more prudently knowing that they are the legislator of their actions. Having a sense of freedom and autonomy makes individuals think much more critically before performing an action or reaching a specific decision. Therefore, autonomy and the ability to self-govern are necessary for individuals to think prudently about their actions in order to act in a morally acceptable manner so that people may co-exist in a peaceful condition. Autonomy is not only necessary for the individual, but also for others.

Sartre has an analogy that he employs to describe how individuals exist as free beings; he discusses the notion of a painting. He writes that a painting, as it is being created, requires innovation and creativity on the behalf of the painter. The painting evolves and changes, as more paint is added onto the canvas, becoming something new and unique.<sup>45</sup> The full idea or notion of the painting is not understood or developed until the painting is completely finished. One may have the ability to make estimates about the painting, such as perhaps trends in the consistency of the paint and colours. However, one is unable to make global judgments about the painting until it is completely finished. Sartre compares this painting to persons. People are ever-evolving and changing due to the new circumstances that arise on a daily basis. Sartre argues that people choose their own paths based on their unique beliefs and principles and this ability to change as one experiences new circumstances allows people to slowly discover their preferences and desires, which lead to a full image of a person that emerges. Although people may have certain consistencies in their beliefs and desires, it is apparent that these can also evolve and change

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<sup>45</sup> Sartre, pp. 45-46.

under new circumstances. Hence, it is difficult to predict how individuals might react or what they might desire in a new situation, without actually consulting the individuals themselves.

One can immediately observe the difference in Kant's moral theory with respect to Sartre. Contrary to Kant's belief that individuals must invoke universal laws that apply to every situation across all expanses of time, Sartre argues that we ought not create universal maxims that are globally applied; Sartre writes that there should not exist "inviolable moral maxims".<sup>46</sup> He argues that we ought to examine each situation individually to regard the individual's actions according to his general personality or beliefs and preferences, or perhaps to determine if the actions under examination were completely out of character for the individual. Hence, Sartre argues that one must examine each situation carefully, with certain principles in mind, yet allow for exceptions to occur since in certain new circumstances, the maxim may be toppled by other considerations.

One may argue, as author Charles Taylor does in his book, "The Ethics of Authenticity," that this kind of ethics collapses into mere subjectivism.<sup>47</sup> It can be argued that although Sartre does provide a solution to Kant's rigorous doctrine, there seems to be too much leniency involved in his ethics. This kind of ethics results in a collection of ethics, rather than a Kantian unified, cohesive ethics.

The aim of this thesis is not to argue for a particular kind of ethics. However, it does expose the importance for individuals to reflectively come to a certain decision whether that be in a Kantian sense or as well as Sartre's notion of ethics. For morality to be meaningful and for individuals to have a deep sense of responsibility for their decisions and actions, individuals ought to consider themselves as autonomous beings. As individuals are aware that they alone are

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<sup>46</sup> Sartre, p. 49.

<sup>47</sup> Charles Taylor, *The Ethics of Authenticity* (Cambridge: Harvard University Press, 1992).

responsible for their choices, this provides them with a greater sense of accountability, especially in a society where individuals must interact.

### **1.1.3) Dignity as Intrinsic to Autonomy**

There exists another justification as to why autonomy is a notion that individuals regard as being valuable. Honderich writes that Kant sees a clear connection between an individual having autonomy and being treated with dignity. Dignity refers to respecting individuals as having worth or value. It is something with which everyone desires to be treated, with the assumption that those individuals who lose the ability to demand to be treated with dignity would like to continue to be treated with dignity.

Furthermore, it is safe to assume that even those individuals who lack, from birth, the ability to demand to be treated with dignity would prefer to be treated in such a manner that they are respected. All individuals ought to be treated with dignity despite their status of autonomy, such as if it is lacking, severely diminished or not fully expressed. Treating people with dignity entails that they are an ends and not merely a means to achieve another goal. Honderich writes on Kant: “The ability to use practical reason to generate principles of conduct Kant calls ‘the autonomy of the will,’ and Kant sees it as constituting the dignity of a person... Kant argues, as we have seen, that it is in virtue of their autonomous wills that persons have dignity or are ‘ends in themselves.’”<sup>48</sup> Honderich displays that, in Kantian ethics, preserving the autonomy of an individual protects and respects their dignity. Realizing that other people have the ability to choose and use their rational abilities to form conclusions respects the fact that these people have worth and would like to be treated in the manner that we would like to be treated. The worth in

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<sup>48</sup> Honderich, pp. 437-441.

this respect is that it rests upon the appreciation that individuals can decide for themselves what they prefer and enjoy and will for their lifestyle. Having the freedom to choose and make decisions preserves individuality and the sentiment that each person is a unique individual with a self that is distinct from any other individual. Having a sense that individuals are different is important to people, as they appear to value their individuality and uniqueness as distinct beings from others. However, it is important to note that Kant not only recognizes the value of autonomy, but he argues that the universalizability of the action is necessary in order for an action to be considered good. Therefore, although one must respect the dignity and choices of other individuals, in order for an action to be ethically permissible, one must be able to apply their maxims and principles universally.<sup>49</sup>

This is not to say that individuals who lack autonomy do not have dignity. Here, it is important to reiterate and explain that individuals who are not capable of being autonomous selves do *not* lack dignity. These individuals still have dignity of persons that must be respected and treated with utmost care. However, for individuals who have autonomy, they are fully aware of their dignity and have an understanding that it ought to be preserved and respected.

Referring back to Regan's distinction between moral agents and moral patients, moral agents are aware of their responsibilities and duties towards others, whilst moral patients lack this knowledge, yet are still part of the moral community due to their membership in the moral community as persons. Moral patients may not be aware of their dignity, yet ought to be treated with respect for their dignity. Moral agents are both aware of their dignity and its value to themselves, and they must also be treated with respect for their dignity. These individuals understand that if their autonomy is not respected, they experience a loss in dignity. One way to

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<sup>49</sup> Kant, p. 98.

treat individuals with dignity is to respect their autonomy and that ability to make choices on one's own behalf. This, however, is not the only way to treat people with respect and dignity. There are other ways to treat people with dignity who lack the ability to make decisions on their own behalf, such as the severely mentally disabled. These individuals ought to be treated with dignity as well, such as treating individuals who cannot make their own decisions as to how others who have the ability to make their own decisions would like to be treated. This principle is, of course, treating others as you would wish to be treated. Hence, it is apparent that individuals who have autonomous wills wish to, and are fully aware that they ought to, be treated with dignity, as this respects their selfhood and their ability to make decisions on their own behalves.

## **1.2) Autonomy and Well-being**

Deeply related to dignity is an individual's well-being. When respect for dignity is considered, it is often in order to promote a healthy well-being of that individual. This next paragraph will describe how respect for autonomy or self-determination is important to promote a thriving well-being of individuals. Authors Allen Buchanan and Dan Brock describe different ethical theories that all lead to an individual's well-being. They describe well-being to be what makes an individual satisfied with one's situation. This is of course different for each individual; however, they describe that there exist certain trends as to what people consider a good well-being, such as hedonistic arguments and preference arguments.<sup>50</sup> Buchanan and Brock write that:

Thus, on each of these theories, the fact that competent adults are generally the best judges of what serves their own well-being supports persons' interests in making significant decisions affecting their lives for themselves. Individual self-

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<sup>50</sup> Buchanan and Brock, pp. 37-38.

determination is instrumentally valuable in the promotion of individual well-being, although only on most but not all occasions of its exercise.<sup>51</sup>

From the quotation above, one can infer that individuals often know or are generally the best people to make decisions for themselves. They often have subjective knowledge about the preferences and values that they hold for themselves. It is this kind of knowledge that their well-being rests upon and from which they can derive a “good life.” Buchanan and Brock argue that for the most part, individuals ought to be their own primary decision makers, as they know what is in their best interests, based on the internal knowledge of which they are solely aware. From this argument, one can infer that, since only subjective individuals will have access to this private knowledge, the individuals ought to have their autonomy respected in order to make the decisions needed to support their well-being. In order for individuals to succeed in having a healthy well-being, it is most appropriate to allow them to make decisions for themselves based on the knowledge of which they alone have a full comprehension.

One may argue that although individuals are the best source of knowledge with respect to their desires and wishes, these values are often transparent to others. As people make decisions surrounding their values and beliefs, their preferences become apparent to others. Indeed, it is often the case that these values begin to manifest themselves in individuals’ decisions and actions. However, in the case of health-care, decisions often ought to be made in a relatively timely manner, making it difficult for clinical staff to gather as much information needed about the patient. Similarly, family members who assist in making decisions for others are often emotionally distraught from the situation. Although these individuals may provide useful information in attempting to make a decision that best reflects patients’ desires and wishes, only patients themselves can have a full-grasp of all of the values that are involved in this decision. As

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<sup>51</sup> Buchanan and Brock, pp. 38-39.

described earlier, individuals may also have closely competing interests and desires, which makes it ideal for individuals themselves to make decisions regarding their well-being. Since decisions in health-care are often alien and new to individuals, it appears as though only the specific individual would truly know the preference-order important to oneself, if even family and friends can make a best guess.

In the following chapter, however, I will discuss means by which other individuals may assist the individual who has a diminished mental capacity in order to make decisions; however, here one may argue that, although external individuals may be useful in determining what is in someone else's best interests, it is most beneficial to have first-hand knowledge of the individual's desires and wishes, if possible, for the reasons described above.<sup>52</sup>

Similar to the argument presented by Buchanan and Brock, John Stuart Mill also describes the importance of individuality in order to have, or increase, well-being. O'Neill writes on Mill: "He holds that persons of marked character or individuality contribute pre-eminently to the well-being of humankind, making 'the free development of individuality... one of the leading essentials to well-being,' construed broadly as 'grounded in the permanent interests of man as a progressive being.'" <sup>53</sup> In the previous quotation, Mill is making two major claims. First, he is arguing that the ability for individuals to foster their individuality is very important as it allows individuals to have a healthy well-being. Being able to develop character is valuable to individuals, as they are able to determine what they enjoy and value, as well as the things that they dislike and feel are wrong or immoral. From these considerations, they are able to turn these values and desires into actions, which allows people to achieve their desires and preferences,

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<sup>52</sup> Buchanan and Brock also make mention that, although well-being is an important concept, people often consider that some decisions are more important than others. They describe that some individuals would gladly give up their decisions that they believe will not have dire consequences upon themselves; however, the decisions that will effect a greater portion of their lives, they prefer to be the decision maker. (Buchanan and Brock, pp. 37-38.)

<sup>53</sup> O'Neill, pp. 31-32.

giving them a sense of accomplishment and contentment. Hence, Mill argues that being able to nurture people's individuality grants individuals the ability to live the kind of lives that will increase their well-being.

Interestingly, Mill argues that, not only is this quest for individuality and autonomy beneficial for the individual but, in fact, it benefits society as a whole. This is the second claim that Mill is making in the quotation above. He refers to man as being a "progressive being". Individuality encourages thinking "outside of the box" and the production and consideration of innovative ideas. Being able to create new inventions and to encourage new ideas allows man, as a whole, to benefit with a better quality of life. Hence, individuality ought to be sought after as it benefits both the individual as well as mankind in general. From Mill's utilitarian perspective, utility is increased in both of these two cases, so we ought to encourage individuality and the building of personal character. In summation of his view, he writes that liberty is, "the only unfailing and permanent source of improvement."<sup>54</sup>

### **1.3) A Contemporary Psychological Perspective of Autonomy**

After an examination of several traditional and contemporary philosophical models for the preservation of autonomy, it is now necessary to also consider contemporary psychological perspectives on autonomy and its value. In an article called, "The Support of Autonomy and the Control of Behaviour," authors Edward Deci and Richard Ryan discuss the difference between an action being autonomous and an action that is controlled. They write that autonomous actions are, "...initiated and regulated through choice as an expression of oneself." They further write, "...other intentional behaviours are pressured and coerced by intrapsychic and environmental

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<sup>54</sup> O'Neill, p. 32.

forces and thus do not represent true choice.”<sup>55</sup> They argue that having the ability to make choices that suit an individual’s personal desires and preferences is a beneficial concept.

Consider that, when an individual makes a certain decision, often an expected action or a certain number of actions will generally result. If predicted actions rarely occurred, people would not be confident that making certain decisions, to follow a specific course of action, is necessary or important. However, most often the expected action will occur. Deci and Ryan argue that individuals are comforted in the thought that their decisions can have influence on their lives.

They argue:

However, believing that behaviours are reliably related to outcomes is not enough to ensure a high level of motivation and adaptation. People must also believe that they are sufficiently competent to execute the requisite behaviours. Indeed, the expectation of incompetence, like the expectation of behaviour-outcome independence, has been shown to result in low motivation and maladaptation.<sup>56</sup>

This quotation reveals that people need to feel not only that their decisions will lead to certain outcomes, but that they are capable of being a rational autonomous being in order to execute their decisions. If individuals feel as though they are not capable in this sense, this will result in poor motivation and difficulty in validating one’s choices. Hence, there appears to be a need for individuals to actively recognize that they are able to process information and produce decisions based on their values and desires in order to productively participate in society in a manner that will increase their well-being.

Deci and Ryan also argue that, although autonomy is often considered as purely a theoretical concept, it has important empirical consequences.<sup>57</sup> They write that although mere choice does not necessarily mean that it is autonomous (due to external influences) an

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<sup>55</sup> Edward L. Deci and Richard M. Ryan, “The Support of Autonomy and the Control of Behaviour,” *Journal of Personality and Social Psychology*, 53.6 (1987) pp. 1024-1037.

<sup>56</sup> Deci and Ryan, “The Support of Autonomy and the Control of Behaviour,” pp. 1024-1037.

<sup>57</sup> Deci and Ryan, “The Support of Autonomy and the Control of Behaviour,” pp. 1024-1037.

autonomous decision ought to be composed of something more fundamental. Autonomous decisions are rooted in second-order desires that lead to an affirmation of desires and preferences. They argue:

Autonomy connotes an inner endorsement of one's actions, the sense that they emanate from oneself and are one's own. Autonomous action is thus chosen, but we use the term *choice* not as a cognitive concept, referring to decisions among behavioural options, ... but rather as an organismic concept anchored in the sense of a fuller, more integrated functioning. The more autonomous the behaviour, the more it is endorsed by the whole self and is experienced as action for which one is responsible.<sup>58</sup>

As one can see, there is a clear connection between the Heideggerian concept of having an authentic self to which one relates and this concept of autonomy. Deci and Ryan argue that autonomy occurs when one endorses one's second-order desires. The choice is supported by the individual's unique desire set.

The kind of autonomy described by Deci and Ryan is also consistent with the traditional arguments presented above on responsibility for one's actions. Both Kant and Sartre argue that autonomy is essential for a deep sense of responsibility, which fosters a greater attention to the decisions that people make and encourages rationality. Therefore, if this kind of deep authentic autonomy exists, it also allows a deeper sense of morality and responsibility to exist according to traditional philosophical notions of autonomy as well as psychological endorsements of autonomy.

An interesting note, with respect to social psychology in Deci and Ryan's article, is that the level of autonomy an individual has is also dependent on the context in which the decision ought to be made. They write that if the context is supportive of autonomous decision-making, individuals will act in a manner that makes them feel more empowered and their decisions will tend to favor their values and desires. However, often in medicine there exists a context in which

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<sup>58</sup> Deci and Ryan, "The Support of Autonomy and the Control of Behaviour," pp. 1024-1037.

there is a struggle between power. Often, a clinical team will have great expertise in the issues being presented, compared with a vulnerable patient who usually has substantially less-informed knowledge of the procedures and potential outcomes. In these kinds of situations, individuals will often feel helpless and are, "...particularly vulnerable to being controlled."<sup>59</sup> Hence, if the environment is autonomy-supportive, this fosters a greater sense of self-determination which, in turn, promotes the values and preferences of the individual. These themes will be returned to in later chapters.

In another article, "Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?" authors Ryan and Deci discuss several issues with current psychological attacks on autonomy. They argue:

These popular, and sometimes sophisticated, critiques of autonomy require scrutiny, both with respect to their definitions and conceptual treatment of autonomy and the growing body of evidence suggesting that autonomy, when accurately defined, is essential to the full functioning and mental health of individuals and optimal functioning of organizations and cultures.<sup>60</sup>

They proceed with a survey of the benefits related to individuals who adopt a positive attitude towards autonomy, such as an individual who acts in an autonomous manner. They write that both performance and creativity are enhanced and, "when autonomous motivation (whether intrinsic or integrated) is undermined, there are well-documented costs in terms of performance..."<sup>61</sup> Furthermore, autonomy also aids in attachment and intimacy with respect to the quality of relationships. Ryan and Deci write that studies indicate a greater sense of autonomy in a relationship correlates with, "...greater satisfaction, relationship stability, and

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<sup>59</sup> Deci and Ryan, "The Support of Autonomy and the Control of Behaviour," pp. 1024-1037.

<sup>60</sup> Richard M. Ryan, and Edward L. Deci. "Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?" *Journal of Personality*. 74.6. pp.1557-1588.

<sup>61</sup> Ryan and Deci, "Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?" p. 1564.

well-being for both partners.”<sup>62</sup> Ryan and Deci also argue that having an environment that is autonomy supportive also fosters a greater well-being. They write that environments that inhibit or put restraints on autonomy, “...yield negative effects on wellness, whereas those that are autonomy-supportive enhance it.”<sup>63</sup> Their overarching conclusion against traditional, hostile or skeptical psychological approaches to autonomy, is that, “...autonomy is indeed more than an irrelevant illusion and, instead, is a central characteristic of healthy functioning.”<sup>64</sup> In conclusion, Ryan and Deci do not argue that autonomy is incompatible with modern science and materialist theories. Rather, they argue that autonomy is fully compatible with these theories, as autonomy describes certain aspects of the complex interactions that occur in the brain and is not a mere illusionary concept.<sup>65</sup> They use the term “regnant levels” to describe this relationship. Ryan and Deci write: “We label these the *regnant levels* of explanation... defined as that level (or levels) that captures the variables most relevant to what is to be explained and that is most relevant for effective interventions.”<sup>66</sup> Taking this into consideration, autonomy is a concept that appears very real to individuals and it is appropriate when discussing social psychology and many other disciplines within psychology to discuss autonomy as a real concept. They argue that autonomy exists at a macro-level in psychology and it is very useful to consider it to be a real phenomenon regardless of whether it can be broken down into purely physical feature. Furthermore, taking autonomy to be a real concept that individuals experience can have a profound impact on individuals’ lives.

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<sup>62</sup> Ryan and Deci, “Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?” p. 1564.

<sup>63</sup> Ryan and Deci, “Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?” p. 1564.

<sup>64</sup> Ryan and Deci, “Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?” p. 1564.

<sup>65</sup> Ryan and Deci, “Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?” p. 1571.

<sup>66</sup> Ryan and Deci, “Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?” p. 1572.

#### **1.4) The Relationship Between Autonomy and Mental Capacity**

After a thorough discussion on the reasons why we ought to value and safeguard the notion of autonomy, one must now relate respect for autonomy back to our discussion on mental capacity. There are many reasons as to why autonomy is important to individuals, including having a deeper sense of responsibility for one's actions, a stronger sense of morality and reflective reasoning, as well as respect for the dignity of ourselves and others, and the importance of respecting and increasing our well-being and that of society as a whole.

The aim of this first chapter was to provide an illustration that autonomy is something very valuable to individuals. The ability to make rational decisions that reflect our own personal values and desires represents an important part of being entities that participate actively in our experiences. With these notions in mind, mental capacity, as described from the introduction of this thesis, is the ability to understand all relevant facts and processes surrounding the decision, as well as to appreciate the outcomes that the decision may have, not only upon just the individual, but on other parties involved as well. Autonomy is the underlying base upon which this process can occur. If individuals did not have autonomy and the ability to make their own decisions, one would not have to be concerned with their understanding and appreciating all of the components of the decision. The decision itself would be arbitrary, as there would be no rational entity participating in a process of reasoning required to understand and appreciate the consequences. The individual would be a 'steam engine,' according to Mill, lacking any kind of character or personality to make decisions based on values and desires that have been well-thought-out and recognized as important to that individual. Hence, autonomy is a vital component that underlies the decision-making process for individuals in order to have mental capacity. Without autonomy, mental capacity would be a vacuous and absurd concept.

First, we have considered that without autonomy, mental capacity is a meaningless concept. Now, we must examine that, without mental capacity, does an individual necessarily also lack autonomy? If there exists a scenario in which an individual is unable to either understand the circumstances of a decision or appreciate the consequences of a decision, one may argue that this individual also lacks the kind of autonomy that has been argued for in this thesis. Although the individual may choose a particular course of action, this decision would not rest on the criteria presented above for autonomy, which is a directed choice propelled by the values and desires that this individual holds as important to oneself. If the individual cannot both understand and reflectively appreciate the consequences of the action, the individual is said to be lacking or to have a diminished sense not only of mental capacity, but of autonomy as well.

As described by philosopher Onora O’Neill, the kind of autonomy to which we are referring is trying to get away from decisions that are seen as, “impulsive, random, ignorant, out of control...”<sup>67</sup> The kinds of choices that are made by autonomous beings require a deeper reflection into the character’s values, preferences and desires, which necessitate the withstanding of self-scrutiny over these wishes. If an individual has mental capacity, we can argue that the decisions made are ones that are meaningful to the fully autonomous being. If even an individual had a diminished sense of autonomy, those actions that are still considered a reflection of the individual’s preferences, desires and values, would be seen as autonomous decisions.

Often, autonomy is integral to the concept of mental capacity. It appears as though in order to have mental capacity, an individual ought to be an autonomous being. Individuals must have a basic understanding of their goals, desires and values in order to make decisions regarding their preferences. Similarly, in order for individuals to appreciate the consequences and the

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<sup>67</sup> O’Neill, p. 28.

effects of a decision, individuals must have the knowledge as to what is important to themselves, which requires having a sense of autonomy.

One may argue that some children and teenagers may have impressive mental capacity in some regards, while lacking autonomy, as they have not yet developed a completely authentic self. When making certain medical decisions, adolescents may understand the procedures, yet lack the appreciation for how it will impact their lives, as they have not yet developed an authentic identity at a young age. Other adolescents may have a sense of self and deep values and beliefs rooted in their parents' and family's desires. However, it is arguable that these desires may not be authentic at such a young age. Therefore, it is difficult to imagine that without autonomy, one can still have full mental capacity.

In a recent Canadian court case of a fourteen-year-old Jehovah Witness' girl, the court ruled that the child was not yet of an appropriate maturity to make certain decisions that could have severe consequences on her life. In the documentation provided by the Supreme Court of Canada, they write:

Children may generally be assumed to lack the requisite degree of capacity and maturity to make potentially life-defining decisions. This lack of capacity and maturity provides the state with a legitimate interest in taking the decision-making power away from the young person and vesting it in a judge under the *Child and Family Services Act*. At common law, proof of capacity entitles the "mature minor" to exercise personal autonomy in making medical treatment decisions free of parental or judicial control. While it may be very difficult to persuade a judge that a young person who refuses potentially life-saving medical treatment is a person of full capacity, nonetheless, the Charter requires such an opportunity to be given in the case of an adolescent of C's age and maturity.<sup>68</sup>

Although children may appear to have the ability to understand the procedures involved in their decision, it is necessary that they are autonomous, in the sense that they are capable of recognizing their authentic values and desires in order to make these significant decisions. Some

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<sup>68</sup> *A.C. v. Manitoba (Director of Child and Family Services)*. 2009 SCC 30. June 26, 2009.

children may possess the autonomy to make fully informed decisions, yet it appears as though many do not due to the nature of the maturation and development of the mind. Autonomy may be recognized as essential to the appreciation of the outcomes of certain decisions. Individuals ought to have a sense of self and recognition of a set of values and preferences in order to realize how outcomes will affect their lives specifically.

Another important notion is that, although it appears as though one cannot be an autonomous being if one lacks mental capacity, there exists a certain case in which lacking mental capacity does not mean that one entirely lacks autonomy. One must briefly consider individuals who suffer from “locked-in syndrome.” This syndrome is often the result of severe strokes, where individuals lose voluntary control over their muscles in every part of their body. The one method in which it is possible for these individuals to communicate is through eye movements. However, these individuals are unable to articulate their wishes and desires, yet have shown the ability to reason and think.<sup>69</sup> The memoir, *The Butterfly and the Diving Bell*, is written by Jean-Dominique Bauby, who was involved in a car accident in 1995, where he suffered a massive stroke leading to locked-in syndrome. The entire book is a dictation through the blinking of one eyelid.<sup>70</sup> Hence, here is a rare case in which these individuals may be said to have autonomy, such that they may contemplate their desires, wishes and values, yet these individuals are unable to communicate these desires in a manner where they may act upon this autonomy, or at least they can only communicate their wishes to a very minimal degree. Perhaps advancements in areas of neuroscience will relieve these difficulties, but as of yet it is difficult

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<sup>69</sup> “NINDS Locked-in Syndrome Information Page,” *National Institute of Neurological Disorders and Stroke*, February 13, 2007. Web. June 21, 2009  
<<http://www.ninds.nih.gov/disorders/lockedinsyndrome/lockedinsyndrome.htm>>.

<sup>70</sup> Jean-Dominique Bauby, *The Diving Bell and the Butterfly* (New York: Random House, 1997).

fully to understand the desires of these individuals and they are often deemed to be incapable, even though they possess autonomy.

In conclusion, it is important to note that both mental capacity and autonomy are very closely related and the treatment of one will affect the other. As discussed above, the value of autonomy appears to be extremely crucial for existing in a manner that promotes individuals' well-being. Hence, since it is something that people value and ought to respect; it is important to both protect and preserve it as much as possible; not only does it prove to be valuable when considering the interaction between individuals, but it can have a profound impact on the individual as well. Having autonomy allows individuals the potential for living a lifestyle that corresponds to their values and desires, making them content and satisfied with achieving their aspirations. Its empirical consequences, as described through the contemporary psychological account provided earlier, can increase the healthy functioning of an individual as well.

However, when does protecting and safeguarding autonomy become detrimental to our well-being? Which ought we to preserve more than the other: our well-being or our autonomy, our happiness or our freedom? As described earlier by Buchanan and Brock, these two are often in agreement; however, there do exist certain situations in which they appear to disunite.<sup>71</sup>

The next chapter in this thesis will focus on arguing whether or not autonomy ought to always be safeguarded and under which, if any, circumstances, it may be appropriate to prioritize one's well-being over one's apparent autonomy. Arguments in support of medical paternalism will be presented in the following chapter.

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<sup>71</sup> Buchanan and Brock, pp. 38-39.

## **CHAPTER 2: Medical Paternalism: Under Which Circumstances May it be Appropriate to Place Limitations on Respect for Autonomy**

The last chapter described the importance of preserving autonomy. Autonomy is a valuable concept that we ought not want to compromise easily. However, there appear to be many cases in medicine and health-care where both autonomy and mental capacity are seemingly lacking. In these situations, individuals' abilities to make decisions for themselves are vacuous and the individual is said to be unable to make decisions that they can fully comprehend or appreciate. Philosopher Onora O'Neill describes individuals in this state:

Consent cannot be given by children, at least not by younger children; it cannot be given by patients who are seriously deranged (however temporarily); it cannot be given by those with learning disabilities (or at most in highly simplified form); it cannot be given by patients with dementia; it cannot be given by patients who are traumatized or unconscious; it often cannot be given in medical emergencies. One might add that most of us... find it hard to express our individuality or independence, and even to muster the presence of mind needed for giving informed consent, when we are ill.<sup>72</sup>

O'Neill writes that individuals who are experiencing the circumstances outlined above have a limitation on their ability to make decisions, whether that be maturation of the mind, as in children, the degeneration of the thought process amongst some elderly, or severely impaired mental cognition due to illness or injury. Nonetheless, under these conditions, the individual may express certain wishes and desires. Since the mental cognition of the individual is somehow impaired, the professional who is attending to the patient must use careful examination in order to determine whether or not these are the true desires and wishes of the individual.

Here, it is difficult to determine what the "true" desires of the individual may be since people constantly change and adopt new beliefs and values. It is hard to know whether or not someone has sincerely changed their beliefs, attitudes and values towards a certain decision as opposed to being temporarily or perhaps permanently impaired. It is important to try and

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<sup>72</sup> O'Neill, p. 40.

determine the distinction between individuals who genuinely desire different values from previously stated values as opposed to someone who has impaired judgment.

This chapter will attempt to explore the difference between the scenarios described above through an examination of various circumstances under which individuals may wish to give up a certain degree of autonomy in order to preserve their dignity, core beliefs and values. The difficulty lies in the fact that other people do not always have comprehensive knowledge of an individual's internal belief system and values. We can only know what people desire through their previous actions and decisions, as well as through feedback from the people with whom they have relationships. It is from this background of knowledge that someone can infer an individual's desires and preferences. However, it is still difficult to determine the difference between someone valuing something new, such as changing their value system based on new experiences, as opposed to deeming that someone has impaired cognitive abilities, essentially deeming their "new values" as being vacuous due to their current impairment. Furthermore, in a health-care setting, decisions often ought to be made relatively quickly, and since clinical teams most often do not have long-standing relationships with patients, this presents a greater challenge for exposing the core desires of the patient. The first section of this chapter will discuss several medical paternalistic approaches to mental capacity, which is when a patient's outwardly autonomous decisions do not appear to coincide with their well-being and previous desires and values. Under these situations, what ought one do?

The term 'paternalism' in this sense will take on a very particular definition within the context of medicine and health-care. I will use the definition proposed by Tom L. Beauchamp and James F. Childress. They write:

Accordingly, we define 'paternalism' as the intentional overriding of one person's preferences or actions by another person, where the person who overrides justifies

this action by appeal to the goal of benefiting or of preventing or mitigating harm to the person whose preferences or actions are overridden.<sup>73</sup>

Beauchamp and Childress wish to argue for a kind of paternalism that does not assume that the individual who is acting in a paternalistic manner is necessarily deceiving the patient. Rather, they wish to allow for a paternalism that can simply involve the refusal of an individual to abide by the wishes of another; the clinical team sincerely acting in what they believe are the patient's best interests. This thesis will also represent a *soft paternalist* framework, as this thesis aims to argue that the kinds of decisions that ought to be overruled occur when an individual is acting in a non-authentic manner. Beauchamp and Childress describe soft paternalism as required to prevent nonvoluntary actions. The following quotation describes this kind of action: "Substantially nonvoluntary actions include cases such as poorly informed consent or refusal, severe depression that precludes rational deliberation, and addiction that prevents free choice and action."<sup>74</sup> This thesis will argue for medical paternalism in situations where patients lack fully informed consent, due to the circumstances described throughout the preceding chapter. *Hard paternalism* will not be the framework used in this thesis, as it argues that even fully-autonomous decisions ought to be overruled in certain situations. Instead, this thesis will provide an opportunity for soft paternalism and respect for autonomy to be compatible.

Author Catherine Oppenheimer writes that the current role of a psychiatrist – who treats people with mental disorders – ought to be a paternalistic one, in order to preserve patients' wishes and desires, yet psychiatrists ought to try to limit their paternalistic abilities as much as possible. She writes, "There is a kind of modified paternalism: a paternalism bent on reducing its

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<sup>73</sup> Tom L. Beauchamp, and James F. Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, 2009) p. 208.

<sup>74</sup> Beauchamp and Childress, pp. 209-210.

own scope as much as possible.”<sup>75</sup> In this kind of paternalism, the psychiatrist is the ultimate decision maker for the individual, yet the individual is still involved in the decisions, as the psychiatrist attempts to involve the patient as much as possible. Critical to this discussion, Oppenheimer discusses the circumstances under which it may be appropriate to temporarily rescind individuals’ autonomous decision-making abilities. She writes, “But if it can be shown that he lacks the abilities needed for the *process* of making this decision, then – and only then – is it proper to discount his decision.”<sup>76</sup> This chapter will focus on several issues with the decision-making process that will aim to enlighten individuals as to when it may be appropriate to take a paternalistic approach in health-care.

Under which circumstances ought one to be deemed incapable? It is important to examine this question in great detail, as once an individual’s mental capacity has been deemed defective, an individual loses this valuable notion of autonomy to make decisions on one’s own behalf. As described in the introductory chapter to this thesis, mental capacity has two main components, one of which is that individuals are able to understand *the circumstances* under which the decision must be made. Furthermore, the individual must be able to appreciate *the outcomes* of the decisions, such as how it will affect the individual’s life and well-being. If *either one* of these two conditions is *not* met, the individual is said to be lacking full mental capacity.

## **2.1) Loss of Personal Identity**

It is essential to re-visit our concept of the notion of well-being. In order to have a comprehensive discussion about scenarios when the two notions of autonomy and well-being may conflict, one must understand each concept. Autonomy has already been discussed in the

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<sup>75</sup> Catherine Oppenheimer, “Ethics in Old Age Psychiatry,” *Psychiatric Ethics*, ed. Sydney Bloch, Paul Chodoff and Stephen A. Green (New York: Oxford University Press, 1999) p. 322.

<sup>76</sup> Oppenheimer, p. 326.

preceding chapter. Here, we may assume that autonomy represents the ability of individuals to make decisions on their own behalf, being aware of their desires, values and preferences.

Well-being, on the other hand, is “a state of being well, health, contented.”<sup>77</sup> Having a good well-being is often associated with being happy and content with one’s nature and circumstances. One way in which to ensure happiness is to live in accordance with the values and desires that one believes in. It is described here that: “Well-being is most commonly used in philosophy to describe what is non-instrumentally or ultimately good *for* a person.”<sup>78</sup> What is generally understood to be good for a person is that which coincides with their belief system and values, so long as these desires do not harm the well-being of others. The Stanford Encyclopedia of Philosophy also describes well-being in the following quotation: “One correlate term worth noting here is ‘self-interest’: my self-interest is what is in the interest of myself, and not others.”<sup>79</sup> Once again, well-being reflects the interests and desires of the individual at hand; what is in an individual’s well-being will be different for each individual, although some qualities will most certainly overlap.

Buchanan and Brock describe certain circumstances where an individual’s well-being may take precedence over their autonomy:

The decision itself is to be evaluated principally in terms of its rationality, where ‘a decision or action is irrational if its foreseeable results are that the person will suffer evil(s) without an adequate reason.’ They define evils or harms as ‘a finite set of conditions: death, pain (both physical and mental); various disabilities (physical, mental or volitional); and loss of freedom, opportunity or pleasure.’ A reason ‘is a conscious belief that one’s decision or action will help oneself (or someone else) avoid or relieve some evil or gain some good’ and it is adequate

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<sup>77</sup> Della Thompson, *The Concise Oxford Dictionary of Current English*, 9th ed. (Oxford: Clarendon Press, 1995) p. 1591.

<sup>78</sup> Crisp, Roger, "Well-Being", *The Stanford Encyclopedia of Philosophy (Winter 2008 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2008/entries/well-being/>>.

<sup>79</sup> Crisp, Roger, "Well-Being", *The Stanford Encyclopedia of Philosophy (Winter 2008 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2008/entries/well-being/>>.

‘when the evils avoided (or the goods gained) by suffering the evils of a contemplated act compensate for the evils caused by that act.’<sup>80</sup>

Buchanan and Brock write that, if one is to appreciate the choice of another individual, it appears as though the individual ought to provide reasons to ensure that their decision is based on reliable and correct information, so that individuals understand the circumstances, as well as that the decision is well-thought-out and the outcomes appreciated. For example, individuals are fully aware of the consequences that stem from the decision that they are making and how the decision will impact their lives. Furthermore, Buchanan and Brock do not argue that the specific harms or evils ought to be determined and judged by others, but that the specific perceived evils must stem personally from the individual. For example, a physician may believe that the reasons that a patient gives for refusing treatment are completely rash, but the patient may hold certain religious or cultural values that the patient has held his entire life to which he wishes to abide. Under certain circumstances, the evils caused from defying the individuals’ religious and cultural beliefs and desires may cause more damage and shame to that individual than living a longer life. Buchanan and Brock argue that one must be mindful of these kinds of situations as well.

It is necessary, according to the quotation above, that one take the determination of mental capacity to be very serious, as any of the outcomes listed above can have drastic affects upon the well-being of an individual. Consider an individual who suffers from depression and wishes to refuse treatment, resulting in the end of his life. Suffering from a mental disorder skews the patient’s perception and ability to comprehend the outcomes of the decision. The individual may have many goals and aspirations that he wishes to achieve further in life, but the overwhelming sense of depression clouds these desires. There appears to be a disconnect between the individuals’ first- and second-order desires in a certain sense. The second-order

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<sup>80</sup> Buchanan and Brock, p. 66.

desires of the individual are temporarily forgotten or perhaps overridden with new immediate desires that lack a full awareness of the outcomes that they may produce.

Buchanan and Brock write that a paternalistic intervention in health-care allows people to have their well-being safeguarded and protected in times where their autonomy may lead to irrational decisions that will have a profound impact on their lives. They further write:

Some people appear to decide in ways that are contrary to their own best interests or well-being, even as determined by their own settled conception of their well-being, and others may be unable to convince them of the mistake. In other cases, others may know little of a person's own settled values, and the person may simply be deciding in a manner sharply in conflict with how most reasonable persons would decide. However, it may be difficult or even impossible to determine whether this conflict is simply the result of a difference in values between this individual and most reasonable persons, or whether it results from some failure of the patient to assess correctly what will best serve his or her own interests or good.<sup>81</sup>

Here they expose the difficulty for others when trying to decide whether or not the individual has mental capacity to make decisions. From the previous quotation, they describe that actions that have more serious consequences, such as refusing therapy that will cure a fatal disease, are the decisions when the assessment of mental capacity is most vital. Decisions that result in minor changes to individuals' lives may be regarded as less urgent.

They raise the issue in the quotation above as to whether or not the individual can make rational decisions and the difficulty for an external observer to understand and accept this decision as being a fully capacitated decision. In order to discover whether or not the individual is making a rational decision, the individual assessing mental capacity has the responsibility to follow a few different procedures. One way in which to assess whether or not individuals are making decisions in their best interest is to examine, once again, the concept of "selfhood". This is the notion described earlier in the introduction to chapter one, whereby individuals are able to

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<sup>81</sup> Buchanan and Brock, p. 40.

identify with themselves a clear set of values and beliefs that are continuous with previous desires and wishes. People generally have certain values that they hold to be their own. However, these values and preferences may also change over time, although people often have a set that they can at least identify with.

One method to determine whether or not individuals have changed these values into new rational desires is to participate in dialogue and conversation with these individuals. It is important to discuss why their apparent former desires and wishes no longer take precedence over their current desires. Although court rulings in Europe have indicated that patients need not give reasons for their decisions, it appears as though it is necessary in order for health-care workers to gain valuable insight as to whether or not they are truly respecting their patient. Family members, others who have relationships with the individuals at hand, along with prior expressed wishes will help the individuals who are assessing mental capacity to determine whether or not the individuals being examined have indeed changed desires. If there appear to be rational reasons as to why the individual has changed these desires, it may be said that the individual participated in actively considering the circumstances of the decision being made and appreciates the circumstances.

However, if individuals fail to produce reasons for why this sudden change has occurred in values, it may be considered that these desires do not rationally stem from the continuous self of that individual. As described earlier, there is a temporary lapse in selfhood that does not rationally coincide or flow, from the individuals' prior notion of self. Under these circumstances, individuals may be seen as disjointed from the previous self and not making rational choices based on their well-being. Here, the individual may be said to be lacking mental capacity. Buchanan and Brock write: "Instead, the term 'personal identity' as used here denotes those

conditions which constitute an individual as the particular person he or she is and that make a person existing at one time, and a person existing at a later or earlier time, the same person.”<sup>82</sup>

Buchanan and Brock argue that one indication that people are no longer making decisions that are in their well-being is that people lose this sense of continuity of self. They no longer understand their previous desires and are unable to make any connection as to how their desires have changed. This account is arguing that people do not hold pre-packaged identities; people can change their values and desires, as long as their experiences are continuous and they understand how they have come to hold the values that they possess. They write that this process, as described above, is a method to determine whether or not an individual has a continuous self. They also describe the importance of acknowledging the history of oneself to appreciate the entirety of selfhood.<sup>83</sup>

Consider an elderly woman who suffers from advanced Alzheimer’s disease. She has a fleeting sense of her desires and wishes and acts in a manner that would lead her to feel ashamed and demeaned based on her desires and wishes prior to developing the advanced Alzheimer’s disease. It is important to distinguish here that she has not completely succumbed to Alzheimer’s in this case. There is an argument by Buchanan and Brock that, in some extremely severe scenarios, individuals will completely lose all memories of their past and will essentially become new selves. It is difficult, arguably impossible, in these scenarios to make this reconnection.<sup>84</sup>

Referring back to the example described above, consider that this lady was a devout Muslim her entire life and never ate pork, as it is forbidden in her religion. She now requests a meal that includes pork. Although this lady may have the seeming autonomy to act in a particular manner, with very specific desires and wishes, they do not align with the desires and values that

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<sup>82</sup> Buchanan and Brock, pp. 154-155.

<sup>83</sup> Buchanan and Brock, p. 155.

<sup>84</sup> Buchanan and Brock, pp. 157-158.

she has upheld for her entire life. Due to her illness, she could not rationally think through why she ought to change her values, but the disease itself led to a discontinuity in her experiences and she no longer understands and realizes her past and the events in her history. She does not appreciate that her new decisions will be contrary to her prior desires and wishes, which may, in her value and belief system, lead to actions that she would find completely immoral. Here, this lady may be said to lack mental capacity for this decision, as she no longer has a sense of continuous self with respect to this action. She does not appreciate how the decision she is currently making will impact herself, since she has lost her sense of continuous selfhood and personal identity. The clinical team who are taking care of this individual have a duty to respect her prior wishes and ensure that she is being respected as a self, since her new desires do not logically flow from her previous desires and they ought to try and discuss the matter with the lady as sensitively as possible. Furthermore, her family members and friends will also likely insist that she does not eat the pork.

The solution to the situation above raises a difficulty for the health-care team. Ideally, the clinical team would want a patient who has full capacity to make a decision for oneself. However, in times when the patient lacks capacity, there appear to be several options that they ought to follow. First, one ought to consider any past or background values that the patient has exhibited. This may include prior expressed wishes and even the lifestyle that the patient has lived. For example, if a patient has shown a desire for independence throughout life, one ought to take this into consideration. If one does not have access to this kind of information directly, such as from prior expressed wishes, one ought to consult with family members and friends in order to gather an accurate picture of the values and desires of the patient. This would allow the patient's authentic values and beliefs to be protected and sustained. However, sometimes there is little to

no information regarding a patient's background; consider a homeless man, who does not have immediate family members or friends. In this case, unless otherwise indicated, the clinical team ought to take a purely objective standpoint with the patient, as an individual who needs to be cured. Hence, it is necessary to attempt any reasonable means (within the timeframe allowed by the kind of intervention needed) to try to gather as much information as possible with respect to the prior values and desires of the patient before merely considering the patient as a sick body to be cured through any intervention necessary.

Furthermore, John Hodson argues that there exist certain requirements for medical paternalism in *American Philosophy Quarterly*: "(1) there is good evidence that the decisions with respect to which the person is to be coerced are encumbered, and (2) there is good evidence that this person's decisions would be supportive of the paternalistic intervention if they were not encumbered."<sup>85</sup> Hodson argues that individuals must not be hindered in any way when making these kinds of decisions. He writes that, if the individual were unhindered by illness or injury, the individual would want the intervention by the clinical staff. In a reasonable state of mind, if the individual would have certain beliefs and desires regarding a decision, the clinical team has a responsibility to intervene.

The argument presented in this section reveals that, under very specific circumstances, there can exist inconsistencies in an individual's expression of desires and beliefs. These inconsistencies may be due to illness or injury in the medical environment. When these incongruencies occur, there is an immediate cause for concern that the individual may not be acting in a rational or well-thought-out manner. When these concerns are shown to stem from a disconnect from reality by patients, it is arguably appropriate to utilize medical paternalism to

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<sup>85</sup> John Hodson, "The Principle of Paternalism," *American Philosophical Quarterly*, 14.1 (January 1977) p. 65.

attempt first to reconcile the differences in discussions with the patient. Furthermore, when this reconciliation fails, it is appropriate to abandon respect for the temporary autonomy exhibited by the patient in order to support the patients' authentic desires and values.

## **2.2) Medical Paternalism as a Social Insurance Policy**

When considering the occasions when it may be appropriate to override an individual's ability to make decision on one's own behalf, a common argument is that of a "social insurance policy." Gerald Dworkin writes that as human beings, we can make decisions that reflect poor judgment. Beauchamp and Childress write on Dworkin's argument:

Such persons would know, for example, that they might be tempted at times to make decisions that are far-reaching, potentially dangerous, and irreversible. At other times, they might suffer irresistible psychological or social pressures to take actions that are unreasonably risky. In still other cases, persons might not sufficiently understand the dangers of their actions, such as medical facts about the effects of smoking, although they might believe they have a sufficient understanding.<sup>86</sup>

This quotation reveals that individuals may generally have a superior grasp of what is in their own best interest as they, more often than not, know what they value and desire. However, there do exist moments when an individual has a lapse in clear thinking and judgment and makes an unwise choice. According to Dworkin, it is during these moments when an outsider may aid the individual in making a more well-rounded and fully-informed decision. Dworkin further argues that having some form of paternalism allows people to be protected from these temporary moments in lapsed judgment. This argument makes the assumption that individuals, who are thinking as rational individuals making decisions, would appreciate another person stepping in to make the decision on behalf of the individual who is experiencing a lapse in judgment. These lapses in judgment may be reflected through the argument presented above about the non-

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<sup>86</sup> Beauchamp and Childress, p. 214.

continuous individual. This would help to distinguish between an individual who merely has different or altered beliefs with someone who has an irrational belief.

Furthermore, Dworkin describes this argument as a “social insurance policy,” as individuals are investing in paternalism to save themselves from making poor decisions that would inevitably have negative consequences on themselves. Their autonomy is being respected in the traditional sense, that their autonomy, when in a rational state of mind, is what will govern their actions. This kind of paternalism respects their “true” or authentic autonomy, while protecting individuals from vacuous desires and decisions that reflect inauthentic values whilst individuals are experiencing certain influences in a hospital setting. A further discussion on authentic autonomy will occur in the following chapter.

Philosophers Neil C. Manson and Onora O’Neill, in *Rethinking Informed Consent in Bioethics*, describe how paternalistic practices simply cannot be eliminated from medical practice for reasons similar to the social insurance policy provided by Dworkin. They argue that often in medicine, the complexity of the decision that needs to be made is simply incomprehensible by the patient. There may be elements of the decision that the patient is able to understand, but a full grasp of all relevant information and consequences is beyond the comprehension level of the patient.<sup>87</sup> Furthermore, there may exist other influences, such as emotional stress that also cloud an individual’s ability to make a fully informed decision. In cases such as these, although the patient may understand to some degree the circumstances and outcomes, the patient’s decision-making abilities are obscured by these other influences. In either of the cases described above, Manson and O’Neil argue that it is impossible to completely rule out paternalism from medicine due to the variety of levels of comprehension of the general

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<sup>87</sup> Neil C. Manson and Onora O’Neill, *Rethinking Informed Consent in Bioethics* (New York: Cambridge University Press, 2007) p. 156.

public, along with the influences that affect individuals when they experience the circumstances of a hospital environment. Having an insurance policy to allow for individuals to be protected from these influences is a useful tool, as individuals may feel safe knowing that their desires and preferences will be respected and ensured, even in times when their cognitive abilities experience fluctuations. This will provide individuals with a satisfying feeling that their authentic autonomy will essentially be respected.

Edmund D. Pellegrino and David C. Thomasma similarly argue that individuals who are suffering from illness or injury will not be of an “authentic” state of mind. They write that an individual may be so overwhelmingly, “...anxious, guilty, angry, fearful, or hostile that they make judgments they would not make in calmer times.”<sup>88</sup> These feelings may arise in even the briefest of time periods, according to Pellegrino and Thomasma, so that the individual will temporarily have clouded judgment to make fully informed decisions. The decisions may not take into account all of the patient’s desires and wishes, as the patient may temporarily, or sometimes permanently, have a distorted view of the situation at hand. They further argue: “These primary characteristics of illness alter personal wholeness to a profound degree. They also change some of our assumptions about the operation of personal autonomy in the one who is ill,”<sup>89</sup> Along the same lines as O’Neill, they argue that patients under these circumstances lack the continuity of selfhood and are no longer capable of providing or making decisions that reflect their values and desires.

The arguments provided by Dworkin, O’Neill, Pellegrino and Thomasma indicate that in a health-care environment, people are exposed to circumstances that may alter their abilities to make fully-rational decisions that they would have made in a unhindered state of mind. Patients

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<sup>88</sup> Edmund D. Pellegrino and David C. Thomasma, *For the Patient’s Good* (Oxford: Oxford University Press, 1988) p. 15.

<sup>89</sup> Pellegrino and Thomasma, p. 15.

often experience extremely overwhelming emotions and are unable to make fully informed decisions. These emotions not only stem from the stress of the medical context, but may also be amplified by the course of the illness. Hence, there exists a need for paternalistic intervention in order to preserve and respect an individual's prior values and desires. Of course, the first course of action would be to try to discuss these matters with the patients and aid the patient in making an informed decision, before attempting to take more drastic actions. In these situations, it is often useful to involve family members and people with whom the patient is closely connected in order to make the circumstances and outcomes easier to comprehend for that specific individual.

### **2.3) The Vulnerable Patient and Moral Abandonment**

This argument follows closely behind the discussion on medical paternalism as a social insurance policy. Individuals who are not in a rational state of mind are caught in a vulnerable situation. Tom L. Beauchamp and James F. Childress refer to this population of individuals as being a "vulnerable population." These populations may include individuals who may experience, "...sickness, debilitation, mental illness, immaturity, cognitive impairment, and the like."<sup>90</sup> They further include, the individuals in this population are, "...easily susceptible to intimidation, manipulation, coercion, or exploitation."<sup>91</sup> Authors Edmund D. Pellegrino and David C. Thomasma argue that, in times where patients are severely affected by illness or injury, it is a doctor's duty to step forth and provide guidance. If the doctor fails to support the patient and to provide assistance with making the decision that the patient needs to make, this would be considered moral abandonment.

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<sup>90</sup> Beauchamp and Childress, p. 89.

<sup>91</sup> Beauchamp and Childress, p. 89.

Pellegrino and Thomasma write: “On the whole, patients’ choices can and should be accepted. On the other hand, people who are incapacitated by disease or trauma should not be abandoned to their autonomy, that is, merely given the ‘facts’ and asked to make a decision. This is a form of moral abandonment.”<sup>92</sup> Here they describe individuals who are lacking a component of mental capacity. The individual would be given certain facts about their illness or injury and forced to make a decision. They argue that patients are abandoned to make decisions that may result in potentially detrimental outcomes that they would not desire. Pellegrino and Thomasma write that the trouble with the principle of autonomy is that it assumes individuals ought to have complete authority over decisions related to their care. The problem with the scenario that Pellegrino and Thomasma reveal is that some individuals are not cognitively capable of making such decisions; they might not be able to fully understand the diagnosis or the treatment options that the doctor has presented.

Similarly, the individual may not be able to relate to the outcomes of the various options. Individuals may understand but not appreciate what effects the consequences of a particular surgery may have on their life after the surgery is complete. They simply may not be able to comprehend the effects resulting from the specific treatment options. One example that illustrates this difficulty is patients who are in need of brain surgery. It is incredibly challenging to try to comprehend the changes that will occur in one’s life post-surgery. In these situations, Pellegrino and Thomasma argue that individuals, who are incapable at the time of the decisions being made, ought to have another individual, or individuals, make the decision or at least assist in making the decision.

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<sup>92</sup> Pellegrino and Thomasma, pp. 18-19.

In situations that involve this vulnerable population, the autonomy of these individuals is merely an illusionary notion. The decision made reflects merely a reactionary stance taken by the individual, who may not fully understand or appreciate the decision being made. This decision is in opposition to a decision that an individual ought to make free from duress, illness or injury that significantly impairs their cognitive abilities. Hence, if autonomy always takes precedence and remains unchallenged, individuals who lack mental capacity will be forced to make health-care decisions that they are cognitively unable to make and the consequences could be dire to the individuals' well-being. Furthermore, Beauchamp and Childress write that, "Hence, they may not be able to resist or refuse acceptance of the risk involved, requiring trade-offs among their interests."<sup>93</sup> Individuals who are forced to make autonomous decisions, when they are incapable of using a fully capacitated mind-frame are disadvantaged. They are generally required to make decisions that will impact their lives in substantial ways. In an incapacitated mind-frame (to whatever degree that may be) individuals often "trade-off" their interests, since inaccurate projections are made about themselves and the consequences of their actions.

Referring back to the notion of the elderly lady who has never eaten pork due to religious beliefs, if her autonomy is respected at the time to make that specific decision, she would likely request to have pork as her meal and eat the pork. Since this lady's mental capacity appears to fluctuate, once her continuous self from before suffering Alzheimer's is aware that she has eaten something that she believes is against her religious beliefs, this will devastate her. It is important to act in a particular manner in this situation to protect her authentic self, whether or not she will experience any apparent future unhappiness. Although some individuals may not conceive of a particular way of acting as bringing about happiness, the individual during an authentic period of

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<sup>93</sup> Beauchamp and Childress, p. 254.

time ought to decide what brings about happiness to herself. Hence, it is important in certain circumstances to consider having other individuals, who acknowledge others' prior expressed capable wishes, to be involved in the decision-making process in order to respect the wishes of those who are no longer capable of making decisions on their own.

Furthermore, Joel Feinberg is a proponent of weak paternalism. He argues that sometimes it is necessary to intervene and assist individuals in making certain decisions when individuals are lacking the faculties to make decisions for themselves. Donald VanDeVeer in *Paternalistic Intervention: The Moral Bounds on Benevolence*, reveals a quotation from Feinberg, as Feinberg describes an individual who is fully capable of making decisions:

... one shoulders it while fully informed of all relevant facts and contingencies, with one's eyes wide open, so to speak, and in the absence of all coercive pressure of compulsion. There must be calmness and deliberation, no distracting and unsettling emotions, no neurotic compulsion, no misunderstanding. To whatever extent there is impetuosity, clouded judgment (as e.g., from alcohol), or immature or defective faculties of reasoning, to that extent the choice falls short of voluntariness. Voluntariness is then a matter of degree.<sup>94</sup>

Feinberg writes that if there is any indication that an individual may lack full mental capacity to make a decision on one's own behalf, soft paternalistic intervention is morally permissible. In order to make fully-capacitated decisions, individuals ought not have any kind of disturbance inhibiting their decision-making abilities.

One may argue that most difficult decisions are filled with emotion. Ought one consider these decisions to be non-autonomous? The response to this objection would be that these decisions are indeed often laden with emotional barriers that make decision-making extremely overwhelming. However, it is often a good idea to involve an outsider, someone who has an objective viewpoint for a different perspective and allow other people who are involved to aid in

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<sup>94</sup> Donald VanDeVeer, *Paternalistic Intervention: The Moral Bounds on Benevolence* (New Jersey: Princeton University Press, 1986) p. 82.

making the decision. Furthermore, autonomy appears to be a concept that rests on a gradient, which allows for decisions to be partially autonomous. It is necessary to try to determine what the patient would desire in times when the patient is fully autonomous. This is especially important for substantial decisions that could lead to significant alterations in an individual's life.

Feinberg further writes that it is permissible to interfere only in the case that, "...not to evaluate the wisdom or worthiness of a person's choice, but rather to determine whether the choice is really his."<sup>95</sup> This quotation accurately describes the difficulty when an individual has a fleeting mental capacity for others to try and determine whether or not that decision actually stems from the individual's value system. As described in the preceding section, it is important for an individual to have a continuous sense of a self.

Feinberg also indicates that the decisions that stem from an individual, but are not consistent with the 'continuous self' as described earlier are, "...'nonvoluntary choices,' which, being the choices of no one at all, are no less foreign to him."<sup>96</sup> Feinberg is arguing that the choices presented by an individual who is lacking mental capacity, although stemming from the individual, do not accurately reflect the decision that this individual would have made, had the individual had full mental capacity at the time. Once again, he argues that it would be appropriate in these circumstances to consider carefully what these individuals are asking for and determine if it is possible to try and respect the decision without infringing on any prior values and desires. Feinberg also argues that voluntariness is a matter of degree. Hence, although there may be some certainty or truth in a wish from an individual who lacks certain elements of mental capacity, one must try to discern how much of this wish is truly representative of the desires of

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<sup>95</sup> VanDeVeer, p. 82.

<sup>96</sup> VanDeVeer, p. 82.

the individual when full mental capacity was present. There must then be an attempt to resolve the differences in order to discern how best to respect the individual's values and wishes.

Furthermore, Beauchamp and Childress discuss the issue that was raised at the beginning of this chapter: what happens when both well-being and autonomy appear to differ? They describe autonomy and well-being, for which they use the term "benefits", as being on a scale. They write, "As a person's interests in autonomy increase and the benefits for that person decrease, the justification of paternalistic action becomes less plausible; conversely, as the benefits for a person increase and that person's autonomy interests decrease, the justification of paternalistic action becomes more plausible."<sup>97</sup> This quotation reveals that there exists a unique relationship between autonomy and well-being. If the autonomy of individuals will be greatly disrespected for a minor increase in well-being, then one ought to be more reluctant to proceed with paternalistic intervention. On the other hand, they argue that if there is significant increase in the well-being of individuals, while there is a small disregard for autonomy, this is the ideal situation for paternalism to be employed. They argue, "Thus, preventing minor harms or providing minor benefits while deeply disrespecting autonomy lacks plausible justification, but actions that prevent major harms or provide major benefits while only trivially disrespecting autonomy have a plausible paternalistic rationale."<sup>98</sup>

This section has revealed that in medicine there often exists situations that are laden with emotions, along with illness or injury that makes patients vulnerable. Under these circumstances, it appears as though abandoning a patient is morally reprehensible. These individuals are pressured into making decisions that they are unable to fully process. It appears necessary for others to assist that individual to make a decision that would cohere with their prior expressed

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<sup>97</sup> Beauchamp and Childress, p. 214.

<sup>98</sup> Beauchamp and Childress, p. 214.

wishes and desires in order to promote a greater well-being. Under these circumstances, soft paternalism is something desirable for individuals to be able preserve their authentic sense of self.

#### **2.4) Difficulties with Prior Expressed Capable Wishes**

Another issue that arises when dealing with the vulnerable or mentally incapable is the notion that, although some may have written prior expressed capable wishes it is, first, hard to determine whether or not the individuals had all of the appropriate knowledge in order to make the decisions that they did. Second, it is also very difficult to speculate as to what an individual would do under a new circumstance. Let us examine the first concern. Beauchamp and Childress write that, “The challenge is serious. As persons slip into incompetence, their condition can be very different from, and better than, they had anticipated. If so, it seems unfair to the now happily situated incompetent person to be bound by a prior decision that may have been ill informed.”<sup>99</sup> They argue that, although there do exist prior expressed capable wishes about certain procedures, it is difficult for certain individuals to fully grasp what it means to be subject to certain treatments unless they are in that particular situation. In the actual situation, a clinical team would be able to fully disclose the effects from the treatment and respond to questions pertaining to it as well. If these patients were in fact capable, they might have a greater understanding of the procedure and be more inclined to go forward with it, once they fully grasp the outcomes. The other case may be true as well: that individuals may not wish to go through with an intervention once they understand exactly what the treatment entails.

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<sup>99</sup> Beauchamp and Childress, p. 139.

Although it is important to respect the autonomy and prior expressed wishes of individuals, it appears as though it is difficult to determine whether or not these wishes are based on fully disclosed information and a comprehensive understanding of the situation. With newly exposed information, the patient may have chosen an alternative or might have been more willing to explore these options with a greater understanding. This is not to say that all or even many cases are in fact uninformed decisions, yet there is the possibility that this kind of case may occur.

Beauchamp and Childress discuss the case of “Margo.” Margo is an elderly patient who had prior expressed capable wishes to forgo the use of antibiotics in order to treat pneumonia. A medical student had noted that this patient was one of the happiest patients observed. Once Margo developed pneumonia once again, the team struggled as to whether or not to start the treatment to reflect her current contented state, or to respect her prior expressed capable wishes to not be treated with antibiotics. The President’s Council on Bioethics writes: ““Margo’s apparent happiness would seem to make the argument for overriding the living will morally compelling in this particular case.””<sup>100</sup> This case illustrates the difficulty in deciding for others even under circumstances where they have already expressed certain desires and wishes.

The second issue with deciding on behalf of others is the notion that, although an individual expressed certain desires about specific treatments, what if a new kind of treatment is required that was not formally discussed? In these cases, it appears as though an individual who lacks mental capacity requires that others try to make a decision based on the kind of preferences and values that the individual desired. Although one cannot be certain as to the wishes of another individual, it is necessary when individuals lack the mental capacity to express their desires or to

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<sup>100</sup> Beauchamp and Childress, p. 139.

even make decisions for themselves due to an impairment, whether that be illness or injury, that others take on this responsibility. As described in an earlier section, to leave incapacitated individuals to make certain decisions that they do not fully understand would be neglect and it would not be considered treating them with respect and dignity. If the individual who lacks mental capacity is given this authority, decisions may well be made that do not accurately reflect the values and desires of the individual being treated.

Furthermore, Buchanan and Brock argue that there may also exist conflict between substitute decision-makers along with the individual's prior expressed capable wishes. They suggest that this stems from:

...failure on the part of the patient, when competent, to envision concretely and accurately the circumstances in which the treatment decision must be made, or a change in the individual's values after the advance directive was issued (before the person became incompetent)...it the patient had not suffered from a lack of imagination or information, or if the patient had anticipated the change in values, he would have issued a different advance directive.<sup>101</sup>

Once again, the difficulties are apparent even with advance care directives, as individuals may change their desires and wishes after issuing the directive, but not change the directive before their mental capacity is diminished. In these cases, it may be difficult to determine which course of action to follow. Similarly, Buchanan and Brock argue that, as Hodson discusses above, one must take into consideration if the person who now lacks mental capacity would have changed the directive; this ought to play a role in deciding the best course of action for the individual, since values and desires do change over time and directives are not always updated. Furthermore, the occurrence of diminished mental capacity can happen suddenly, such as resulting from an accident or injury and the individual may not have thought to issue a new directive during this period of time.

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<sup>101</sup> Buchanan and Brock, pp. 96-97.

All of these concerns with directives and prior expressed capable wishes expose the difficulty in making decisions on behalf of others. Although they appear to be useful tools for determining what individuals may desire when they are no longer capable of doing so themselves, it appears that even these documents may sometimes pose the risk of representing faulty information. It seems as though a substitute decision-maker in these cases, along with the document, may aid in a more precise determination of the individual's desires and wishes. Hence, a paternalistic role can also be useful even in situations such as these.

## **2.5) Recapitulation: Circumstances Under Which it Might Be Appropriate to Limit Autonomy**

From the arguments presented above, it appears that autonomy ought to be respected and valued when considering decisions. However, the arguments presented in this chapter illustrate that, under certain circumstances, it may be appropriate to limit one's autonomous self. The first argument reveals that a self may not be continuous under certain circumstances. If the self is completely and irreversibly different from the original autonomous self, one ought to respect the new desires of the individual. However, if the changes in desires are inconsistent and do not logically follow from the individual, and the individual has a fleeting sense of self, one ought to consider respecting the original wishes of the individual. In these cases, individuals still have moments of recognition of their original wishes and desires.

The second argument presented was Gerald Dworkin's notion of a "social insurance policy." People want to be protected from illness and injury, including those who suffer from impairment of the mind. When individuals are vulnerable, they want to rely on others to look after and protect them from harms to their well-being and interests. In this argument, paternalism is acceptable, so long as the course of action taken is respecting the desires and values of the

authentic self, rather than what the clinical team or others feel is best for the individual. One must always consider what is best for the individual, but only given the desires and wishes of that individual when in a fully competent mind-frame.

Closely following from the notion of medical paternalism as social insurance policy is that of our responsibility to help those in need. This argument is with respect to the tradition of the medical profession, with the notion of beneficence deeply rooted in its core values. Individuals who are suffering from an injury or illness face a difficult challenge of trying to think and make decisions in a logical and systematic manner. When faced with injury or illness, an individual is often overwhelmed with emotions, stress, worry and fear. These overpowering and overwhelming emotions disrupt an individual's deliberative process and cause difficulty in making rational decisions. In these situations, there is a need for an outsider, to help the individual think through the decision as much as possible with the patient's authentic autonomous desires at the forefront of any decisions.

The final segment in this chapter discusses some of the issues that can occur even when a prior expressed capable wish has been issued in support of or against a specific treatment or certain course of action. Even in these circumstances, it is unknown if the individual fully understood the circumstances and outcomes of their choice. In addition, faced with a new situation, it is difficult to say whether or not the individual would actually proceed with these desires, since the circumstances are likely completely alien and new to the individual. Hence, even with an individual expressing or having written documentation with respect to a certain procedure, one must proceed cautiously.

Therefore, although autonomy is an extremely valuable concept, it appears as though there do exist certain circumstances under which professionals ought to disobey the wishes of an individual in order to preserve and respect the authentic self of that individual.

## **CHAPTER 3: Reconciling Respect for Autonomy and Medical Paternalism**

After a detailed examination of the two concepts of respect for autonomy and medical paternalism, one must attempt to reconcile the differences that these notions encounter. Where do these two principles in bioethics leave us with respect to mental capacity? How can we respect autonomy of individuals, while still ensuring that their desires are being respected and executed through paternalistic means? The final chapter will bring both concepts of respect for autonomy and medical paternalism together through a discussion of a practical way to incorporate aspects of both of these principles. This chapter will incorporate a Heideggerian approach to determining when it is necessary to override an individual's seeming autonomy and when one ought to respect the individual's wishes, through a discussion on authenticity. As discussed in chapter one, it is important to develop the notion of an authentic self, which is the self that requires second-order desires to determine the kind of person an individual wishes to be. The authentic self is the self free from coercion to make decisions based on one's own desires.

### **3.1) Autonomy as an Idealistic Concept**

Autonomy is something that individuals ought to work towards. However, as described in detail throughout the second chapter, it is almost impossible to have complete autonomy in situations such as health-care. Individuals are constantly bombarded with emotional and physical ailments that alter their regular thought patterns. These influences do not allow individuals to think through processes objectively and with perspective. Philosopher Barbara Secker argues that:

For example, common internal constraints include pain, anxiety, fear, depression, effects of treatment, lack of information, inadequate understanding, false beliefs, and so on. Common external constraints include pressure from relatively powerful health care professionals, or from friends and family members... The institutional

environment itself is often disorienting and restrictive, controlling patients in various ways via architecture, equipment, procedures and routines.<sup>102</sup>

It appears as though individuals lack some form of autonomy when influenced by a hospital setting due to the enormous pressures that are involved in these circumstances. Autonomy is influenced when experiencing these situations. Hence, Secker argues that both autonomy and mental capacity in the traditional, Kantian sense, simply cannot exist due to its idealistic nature. Due to pressures from society and other individuals, this kind of autonomy cannot exist. There is a constant bombardment from others to the point where it is difficult to discern individuals' values and beliefs apart from those around them.

Neil C. Manson and Onora O'Neill argue along the same lines. Although it is best to try to reconcile differences between well-being and autonomy, this is not always possible in a hospital setting. They write: "The need for paternalistic decisions may be reduced by making informed consent procedures clearer and easier, but the gap between patient capacities and those that would be needed for consent cannot always be eliminated.... So paternalism is ineliminable in medical practice."<sup>103</sup> Manson and O'Neill argue that medical paternalism will always have a role in health-care due to the cases where it is impossible to bridge the gap between those who have mental capacity to make decisions on their behalf and those who cannot make decisions for themselves. In the arguments presented in this section, it is evident that there exist some concerns with the traditional notion of autonomy as free will. There appears to be a need to find a different kind of autonomy that respects individual choice as well as perhaps supporting well-being of individuals.

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<sup>102</sup> Barbara Secker, *Mental Competency and the Autonomy of Patients*, August 1993. Web. July 18, 2009 <<http://ir.lib.sfu.ca/bitstream/1892/7019/1/b15197050.pdf>> p.50.

<sup>103</sup> Manson and O'Neill, p. 156.

### 3.2) Expected Impairments to Autonomy in Medicine

Individuals who suffer from an injury or illness may have certain impairments that disrupt their judgment and ability to make decisions that would accord with their desires and values if they were in their authentic state of mind. Authors Workman, et al., write:

Patients with executive dysfunction exhibit distinctive deficits in two components of decisional autonomy: difficulty with formulating and carrying out plans, including alternatives to plans proposed by clinicians – the intentionality component – and difficulty with making voluntary decisions, or the voluntariness component. Consequently, they participate in the clinical decision making with, at best, impaired decisional autonomy.<sup>104</sup>

They describe a dysfunction of the autonomous ability to make decisions when there appears to be a loss of the faculty, to any degree, to make a decision on one's own behalf reflecting the goals and desires that the individual values. Individuals in a setting, such as health-care, where there are frequently very life-altering decisions to be made, are often under an enormous amount of stress and emotional trauma. These influences make it difficult to make well-thought-out decisions, as Workman, et al., describe above. It becomes challenging for individuals to make decisions that accurately reflect their authentic desires, being those desires they want to have during times when they are fully-capacitated. During these times, it may be said that the autonomy of these individuals, specifically the decision-making autonomy, is impaired.

When autonomy is impaired in individuals, it appears as though individuals are expected to make certain decisions that do not accurately reflect their wishes. We would be doing a disservice to individuals by placing them in this situation, as it does not respect their authentic self. Forcing an individual to make decisions when their autonomy is impaired is disrespecting that individual as an independent self with certain wishes and desires. Hence, when individuals

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<sup>104</sup> Richard H. Workman, Laurence B. McCullough, Victor Molinari, Mark E. Kunik, Claudia Orengo, Devi Kirin Khalsa and Pamela Rezabek, "Clinical and Ethical Implications of Impaired Executive Control Functions for Patient Autonomy," *Psychiatric Services*. 51.3 (March 2000) p. 360.

face difficulties in making fully-capacitated decisions, one ought to determine what they would have wanted in times when fully-capacitated. This respects the desires of individuals and allows them to feel comforted, especially if the individuals regain full mental capacity, knowing that their desires and values are congruent with their well-being. As described in the section on well-being in the first chapter, when an individual's lifestyle is in accordance with the desires and wishes of that individual, this aids in creating a healthy well-being.

In order to respect the desires and wishes of an individual one must take into consideration these authentic values and desires. Moye, et al., in the article, "A Conceptual Model and Assessment Template for Capacity Evaluation in Adult Guardianship," write that it is essential to consider the individual values, preferences and behaviour patterns of the individual making the decision when discussing mental capacity.<sup>105</sup> These concepts are unique and highly valued by each individual. By inquiring and attempting to gather as much information regarding these notions, one is able to have a better understanding of the individual and aid in making decisions that will likely increase the well-being of that individual and respect the authentic self. Moye, et al., write that in many different mental capacity assessment methods, such as the Uniform Guardianship and Protective Proceedings Act and the "ABA's Model Rules of Professional Conduct" for the American Bar Association, the attempt to determine prior (that is prior to loss of mental capacity) values and preferences ought to be determined.<sup>106</sup> Moye, et al., further argue that having a guardianship, such as an individual who will aid in decision-making is useful because, "...guardianship will protect the individual's well-being, promote his or her

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<sup>105</sup> Jennifer Moye, Steven W. Butz, Daniel C. Marson, Erica Wood and the ABA-APA Capacity Assessment of Older Adults Working Group, "A Conceptual Model and Assessment Template for Capacity Evaluation in Adult Guardianship," *The Gerontologist*, 47.5 (April 16, 2008) pp. 595-596.

<sup>106</sup> Moye et al., pp. 595-596.

values, and maximize the individual's functioning."<sup>107</sup> Although guardianships are valuable, it is also important to try and increase mental capacity in everyway possible, according to Moyer, et al. For example, individuals who may need aid in visual or auditory methods of communication need to be presented with options, such as large print documents or amplification devices.

It is important to try to increase mental capacity as much as possible, without forcing individuals into the situation where they are making decisions in a state of mind that they cannot accurately portray or utilize their values and beliefs. As this section described, in health-care it is almost impossible to divorce emotions, stress and fear from a fully capacitated mind-frame. Furthermore, the medical paternalism described earlier offers a unique kind of guidance that allows patients to be at ease during these overwhelming situations, knowing that their clinical team is regarding the patients' authentic desires, values and preferences as the most important factor when assisting patients to make crucial decisions.

### **3.3) Paternalism Justified on the Grounds of Authenticity**

Gerald Dworkin argues that there are two main components to autonomy. The first is that of authenticity. Eric Cassell describes Dworkin's reflection upon authenticity: "Authenticity is the true selfness of a person. The degree to which their beliefs, ideas or actions are truly *their* ideas, beliefs or actions despite whatever source they may have had. Someone is authentic to the degree that they are uniquely themselves."<sup>108</sup> In the first chapter, it was argued that selfhood is something that people value and having this notion, of being a self, allows people to feel unique and independent. Independence is the second component to Dworkin's notion of autonomy. Dworkin argues that individuals have a usual character or a particular way of acting that is

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<sup>107</sup> Moyer et al., pp. 595-596.

<sup>108</sup> Eric J. Cassell, "What is the function of medicine?" *Moral Problems in Medicine*, ed. Samuel Gorovitz, Ruth Macklin, Andrew L. Jameton, John M. O'Connor and Susan Sherwin (New Jersey: Prentice-Hall, 1983) p. 75.

familiar to that individual. The originality of this thesis rests in applying Dworkin's concept of authenticity to the case of the health-care environment and elaborating on the discussion in this context.

Once the individual begins to act out of this "normal" pattern, people often become concerned that something is wrong with that individual. For example, in health-care settings, as described earlier, individuals are often faced with emotional events and circumstances that overwhelm an individual. When an individual appears to be acting incongruently to previous desires and wishes, the individual is often said to be acting or behaving out of character. This is, of course, not to say that individuals always remain consistent. People constantly change their beliefs and attitudes. However, when people change these desires and values, they often have specific reasons for doing so. Manson and O'Neill discuss this notion and the fact that people act for reasons:

People act for reasons... The reasons that an agent has for acting must be *known* to her. The agent herself must see that there is something to be said for acting in *that way*, in *that* context (as she takes things to be)... This does not mean that communicating is always a course of action to be favoured (i.e. 'the rational thing to do'), it simply means that, as with other actions, communicating is done for *reasons*, and reasons are the kind of thing which we may formulate in propositions, can ask for, offer to one another, accept or reject.<sup>109</sup>

Manson and O'Neill argue that, if there appears to be a change in beliefs, desires or values, this is often reflective of the individual having altered their preferences based on certain reasons. Regardless as to whether or not these reasons appear to be reasonable to an outsider, they are in accordance with the authentic or previous self. There needs to be a connection between the previous set of beliefs and the new desires and preferences. If asked why the individual has this new desire set, the individual ought to be able to give reasons showing a clear connection not only to previous desires, but also to basic knowledge about the world itself.

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<sup>109</sup> Manson and O'Neill, p. 156.

Author and philosopher Bruce Miller similarly discusses the continuity of alterations in values and desires when he writes:

A person's dispositions, values, and plans can be known, and particular actions can then be seen as not in conformity with them... If an explanation for the unusual or unexpected behaviour is apparent, or given by the actor, that usually cuts off concern. If no explanation appears on the face of things or if one is given that is unconvincing, then it is appropriate to wonder if the action is really one that the person wants to take.<sup>110</sup>

Miller argues similarly to Manson and O'Neill that, if the behaviour can be justified coherently, following from the individual's previous desires as well as the individual showing an understanding of basic circumstances, one may interpret the change in value as being authentic. However, trouble arises when individuals appear to lack either of these two conditions. If the individual does not appear to know or recall previously held beliefs, there exists a disconnect in the authenticity of that individual. Furthermore, if the individual lacks an understanding of basic facts about the world that surround the decision being made, it may also warrant concern that the individual is lacking an essential component of mental capacity in order to make decisions appropriately on one's behalf. There appears to be a requirement for individuals to have a certain basic knowledge about the world in order to have second-order desires that accurately reflect the world. Hence, you cannot have an authentic self who does not have a basic grasp of the world.

Susan Wolf describes that sanity is a prerequisite for having responsibility. She argues that sanity is being, "connected to the world in a certain way – we could even say it is a desire that one's self be *controlled by* the world in certain ways and not in others."<sup>111</sup> She argues that individuals ought to have a Platonic sense of morality and have a working knowledge of the way the world works in general. Only when individuals have these necessary links to the world can

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<sup>110</sup> Bruce L. Miller, "Autonomy and the Refusal of Lifesaving Treatment," *Moral Problems in Medicine*, ed. Samuel Gorovitz, Ruth Macklin, Andrew L. Jameton, John M. O'Connor and Susan Sherwin (New Jersey: Prentice-Hall, 1983) p. 63.

<sup>111</sup> Wolf, p. 381.

they be held truly responsible for their actions. Further to the discussion above, only if individuals are aware of the external world around themselves, can they truly formulate desires that accord with the way the world works.

Bruce Miller further argues that there are four kinds of autonomy. The first he describes to be “Autonomy as Free Action”.<sup>112</sup> This notion, as described in earlier chapters, appears to be too vague. The number of actions that are included in this kind of autonomy are vast, and appear to represent any action that is freely performed. Generally, when discussing autonomy, there appears to be a much deeper sense of independence that follows from this term. Miller argues that “Autonomy as Authenticity” is the kind of autonomy that relates directly to an individual’s preferences and values. This exposes the individual’s beliefs and preferences, and goes beyond mere action that is not coerced. Autonomy also contains a kind of intentionality behind it, involving the individual’s desires and values.

The kind of autonomy that has been described in this chapter is also closely related to the two other kinds of autonomy that Miller describes. He discusses “Autonomy as Effective Deliberation” and “Autonomy as Moral Reflection.”<sup>113</sup> Effective deliberation is incorporated into the autonomy described in this chapter, as individuals ought to be able to deduce, describe and explain their reasons for having and changing their values. Furthermore, moral reflection, according to Miller, is described as “...acceptance of the moral values one acts on.”<sup>114</sup> This kind of autonomy is also described in this chapter as people ought to be aware of their values and beliefs when making a decision, so that they will have a base from which they can work.

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<sup>112</sup> Bruce L. Miller, “Autonomy and the Refusal of Lifesaving Treatment,” *Moral Problems in Medicine*, ed. Samuel Gorovitz, Ruth Macklin, Andrew L. Jameton, John M. O’Connor and Susan Sherwin (New Jersey: Prentice-Hall, 1983) p. 66.

<sup>113</sup> Miller, pp. 66-68.

<sup>114</sup> Miller, p. 67.

Therefore, the kind of autonomy presented in this chapter narrows down the free action view and incorporates aspects from authenticity, effective deliberation and moral reflection as well.

In conclusion, authenticity, when applied to the medical context, is a concept that allows for autonomy to reveal the individual's line of reasoning, exposing the connection between past and present preferences. When specific the reasons are given for an individual choosing to change certain beliefs, in order for a clinical team to be confident that the individual possesses capacity, they need to be coherent with previous beliefs and coincide with the nature of the world. Bringing authenticity into the discussion of mental capacity allows both respect for autonomy and medical paternalism to be compatible.

#### **3.4) Potential Abuse of Power with Respect to Medical Paternalism**

After discussing the limitations of autonomy and the difficulty that autonomy faces in a health-care environment, it is now necessary to discuss several issues with the medical paternalistic view defended in the second chapter. It may be reassuring to have a social insurance policy against ourselves, in times when we cannot process certain situations due to emotional involvement and lack of understanding. However, there ought to be certain measures that can be taken to protect an individual in times of need from others as well. Individuals who lack the ability to make fully informed decisions can easily be taken advantage of, or have others' values imposed on them.

It is necessary for the clinical team and individuals who are involved in the decision-making process to gather as much information as possible regarding the values and preferences of the individual being cared for. Moye, et al., discuss the importance of determining values and preferences of individuals in "A Conceptual Model and Assessment Template for Capacity

Evaluation in Adult Guardianship.”<sup>115</sup> Methods used to do this would include regarding the individual’s cultural and religious background, along with discussions with family members and friends. Another key way to determine an individual’s values would be to examine any written documentation that represents the individual’s wishes and desires, such as prior expressed capable wishes.

Issues concerning prior expressed capable wishes were discussed at the end of chapter two. However, although there may exist challenges with whether or not individuals actually fully understand the processes involved in the treatments and perhaps do not have all of the information to make an informed decision, there is an indication as to what the individual would want. It would also be necessary to discuss with the individual whether or not values have changed under the circumstances, and although mental capacity may be diminished, one may be able to give reasons that reflect a thorough understanding of prior values and provide a reasoned explanation as to why these values have changed. Under these circumstances, it is necessary to reexamine the prior wishes. The decision is very situation-specific and it depends significantly on the degree of mental capacity of the individual.

Furthermore, a “durable power of attorney (DPA)” is also another alternative that individuals might find appealing.<sup>116</sup> A DPA is an individual who is appointed by the individual who now lacks fully mental capacity to make decisions. In Canada, this position is referred to as a Continuing Power of Attorney. The appointment of a DPA allows individuals to select a specific person to act in their best interests, which often results in someone having a fairly extensive knowledge of the individual lacking mental capacity. However, there do also exist problems with appointing a DPA as this individual may not be available or may lack mental

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<sup>115</sup> Moyer et al., pp. 595-596.

<sup>116</sup> Beauchamp and Childress, p. 186.

capacity in certain respects. Although both prior expressed capable wishes and DPA's have certain drawbacks, they appear to be means that help to restore and respect the autonomy of individuals who suffer from a lack of mental capacity.

Another issue with respect to paternalism that Buchanan and Brock expose is that of the asymmetry between deciding to proceed with a treatment and deciding to not proceed. Oppenheimer writes on this asymmetry, as doctors will often accept an individual's agreement to consent to a treatment without a thorough assessment of mental capacity, as it coincides with the physician's wishes.<sup>117</sup> An ethical alarm sounds off here that these individuals may not have full mental capacity to accept these treatments, but if it is what the clinical team desires, the patient is not being fully respected. Perhaps, if some of these patients were actually deemed incapable when seemingly consenting, their fully-capacitated second-order desires, values and belief systems would grant them to disagree with the treatment being offered. Hence, physicians might be too quick to assume consent implies informed and fully capacitated consent and patients might be taken for granted under these circumstances. Furthermore, as soon as patients refuse to consent to treatment, the automatic consideration is that they might well lack mental capacity. Although it is best to consider all options, and examine the patient's mental capacity, it appears as though there do exist reservations towards the asymmetry that Buchanan and Brock present.

Another condition that must be placed on paternalism is that the least intrusive alternative must be explored first in order to minimize the restriction on autonomy. It is necessary to try to have a treatment option that will both be successful in treating the individual, as long as it corresponds with the authentic self. However, if there does exist a dispute between the treatment option and the inauthentic self, it is best for the clinical team to aim towards a medium in which

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<sup>117</sup> Oppenheimer, pp. 328-329.

the patient is treated according to authentic values, as well as being as respectful as possible of the desires of the inauthentic self. Minimizing intrusion fosters a greater relationship between the clinical team and the individual being treated as well as minimizing the pain and duress that the individual must endure during this process. Beauchamp and Childress write that there are several conditions when paternalism can be justified, one of which is: “The least autonomy-restrictive alternative that will secure the benefits and reduce the risks is adopted.”<sup>118</sup> They describe this kind of paternalism to be “minimal infringement.”<sup>119</sup> Hence, the aim is towards respecting the inauthentic self as much as possible, in order to proceed with supporting the values and desires of the authentic self.

This section has provided several concerns with respect to paternalism that a clinical team ought to be aware of in order to provide the best care possible to respect their patients’ authentic autonomy. It is important to try to gather as much information as possible surrounding patients’ previous fully-capacitated desires, beliefs and values through a variety of means in order to have a full account of their wishes. Furthermore, one ought to be cautious of the asymmetry that exists between merely accepting patient decisions when there exists compliance with the clinical team and, questioning patient capacity if a treatment option is refused. Lastly, the team must always attempt to consider the less intrusive alternative in order to foster greater trust between the patient and the clinical team, and to respect both the inauthentic and authentic self, wherever possible.

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<sup>118</sup> Beauchamp and Childress, pp. 215-216.

<sup>119</sup> Beauchamp and Childress, p. 216.

### **3.5) Summary**

After a discussion on the importance of autonomy and why we ought to allow for medical paternalism, it becomes clear that in modern health-care both the principles of autonomy and medical paternalism are necessary and, depending on the certain circumstances and the specific situation, one may be more heavily weighted than the other. Autonomy, being applied to health-care in this thesis as authenticity, appears to be a practical method to assign mental capacity, so long as there exists a basic understanding of the general concepts needed to make the decision on hand. Furthermore, there exist situations when paternalism is necessary due to the very nature of health-care. When patients are brought into a hospital or health-care facility, there is often a disruption of daily life, which can be quite daunting, frightening and emotionally laden. The overwhelming circumstances along with emotional concerns and investments make decision-making incredibly difficult for individuals in this situation. In these situations, it is necessary for others, as Dworkin argues, as a “social insurance policy,” to assist individuals in making very tough and crucial decisions that can have a profound impact on their lives. This support ought not be an imposition of others’ values upon the individual, but rather a deep consideration of the individual’s authentic values and desires in order to preserve not only the authentic autonomy of the individual but also to promote a greater well-being.

It is also important to note that in health-care it is always ideal to obtain fully informed consent from patients themselves. This would include every attempt to restore capacity, as well. If, however, it is not possible to obtain full consent, due to a deficiency in capacity, it is most beneficial to the patient’s well-being to gather as much knowledge of previous desires and wishes; this may be achieved through regarding prior expressed wishes, an examination of the individual’s lifestyle and through consultation with family and friends to extrapolate the core

desires of the patient. When a clinical team experiences difficulty in gaining knowledge surrounding the patient's authentic desires and the incapacitated patient wishes to refuse treatment, it is important to make every attempt to minimize intervention, as long as the patient is not at serious risk. Finally, if there is little to no knowledge surrounding an incapacitated patient's desires, the patient ought to be treated as a sick body in need of repair.

Hence, an account of authentic values and beliefs allows individuals to have their autonomy respected, which is a reflection of the desires and preferences they hold during periods in their lives when they have fully capacity. This thesis has shown that autonomy as authenticity allows individuals to change their beliefs and values, so long as they are able to recognize their original values, be able to give reasons for these changes and have a general grasp of the way the world works. By leaving room for medical paternalism, as long as it is carefully regulated to ensure that patients' values and preferences are at the fore-front of decisions, this allows patients to feel comforted and have their values and selves respected knowing that their wishes and desires will be retained and sustained during times when their decision-making abilities are impaired.

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