

## Reflections on bioethics: consolidation of the principle of autonomy and legal aspects

Reflexões em bioética: consolidação do princípio da autonomia e aspectos legais

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**Abstract** *The author highlights the importance of emotions in all ethical reflections. He describes the most common positions of ethicists employing duties and rights as the basis for ethical thought. The author, goes to Freudian theory as viewed by the utilitarians, stating that the 'quest for pleasure' is not necessarily egocentric, especially for adults. For example, the feeling of solidarity emerges 'from the inside out', making irrelevant all the emphasis laid on obedience to duty (from the outside in). The article questions the essence of Kantian theory, based exclusively on 'reason' with disregard for feelings, by establishing what he considers a 'positivist' view of rational thought. It emphasizes the principle of autonomy, which it seen as basically opposing the principles of beneficence and fairness. It is proposed that the latter should be seen as what he calls heteronomy (a concept different from that of the rational ethicists). In theory, autonomy is not assigned to anyone on the basis of an external assessment. Any intervention in individual autonomy must be made (by the intervenor) when it becomes imperative in the defense of social or cultural values. The article distinguishes between ethics and morals) and states that the sole acceptable ethical principle is that ethics (theoretically) has no principle.*

**Key words** *Bioethics; Social Values; Morals; Legislation*

**Resumo** *O autor destaca a importância das emoções em todas as reflexões éticas. Descreve as posições mais comuns dos eticistas, que empregam deveres e direitos como base para o pensamento ético. O autor refere-se à teoria freudiana, sob o enfoque dado pelos utilitaristas, ao afirmar que a "busca do prazer" não é necessariamente egocêntrica, especialmente para os adultos. Por exemplo, o sentimento de solidariedade emerge de "dentro para fora", tornando irrelevante toda ênfase colocada na obediência ao dever. O artigo questiona a essência da teoria Kantiana – baseada exclusivamente na razão, desconsiderando os sentimentos –, ao estabelecer o que ele encara como uma visão positivista do pensamento racional. Enfatiza o princípio de autonomia, que é visto como basicamente se opondo aos princípios da beneficência e da justiça. Na teoria, a autonomia não é atribuída a ninguém, tendo como base uma avaliação externa. Qualquer intervenção na autonomia individual precisa ser feita (pelo interventor) quando se torna imperativa a defesa de valores sociais ou culturais. O artigo distingue ética de moral e estabelece que o único princípio ético aceitável é o de que a ética (teoricamente) não possui princípios.*

**Palavras-chave** *Bioética; Valores Sociais; Princípios Morais; Legislação*

## Introduction

We could not start this paper on bioethics, based on the full acceptance of the concept of autonomy, without quoting Pellegrino (1990: 379-389): “*The philosophical roots. The principle of autonomy has several sources in moral philosophy. One is Locke’s Second Treatise on Government, which held Man in the natural state to be free and equal such that no one might have sovereignty over another except through a social contract entered into freely. Locke’s arguments gave rise to the notion of ‘negative rights’, or the rights of a person not to be interfered with by others. These negative rights have become the foundation of liberal democracy for many.*”

*A second powerful and influential philosophical moral claim to autonomy is proposed in Kant’s Groundwork for the Metaphysics of Morals (...). Kant argues that freedom is essential to all morality, that it is identical to autonomy, and that autonomy is ‘the ground of the dignity of human nature and of every rational nature’. Kant combines the idea of a rational being with dignity as follows: ‘(...) a rational being himself must be the ground for all maxims of action, never merely as a means, but as a supreme condition restricting the use of every means, that is, always also as an end’. He goes on, ‘And the dignity of man consists precisely in his capacity to make universal law, although only on the condition of being himself subject to the law he makes.’*

*A third source for a moral claim to autonomy is John S. Mill’s essay On Liberty. Mill asserts that the only restraint to liberty is harm to others, not harm to oneself. The latter notion, combined with Locke’s idea of negative rights, is the main link between the philosophical notion of autonomy and the legal notion of privacy. This link is highly influential in the American court system. It is the principle generally used to solve conflicts about who should make the final decision in accepting or rejecting medical treatment. It is also the dominant concept in the report of the President’s Commission on withholding and withdrawing life-sustaining treatment” (Pellegrino, 1990:381-382).*

Pellegrino (1990:383) concludes: “*Finally, the prevailing emphasis on autonomy generates a cult of moral privacy, atomism, and individualism that is insensitive to the fact that humans are members of a moral community. When autonomy becomes absolute, each person is a moral atom who asserts his or her rights independently and even against the claims of the social entity to which he or she belongs. Conflicts between the rights of a community and the*

*rights of its individual members raise serious questions of economic and social justice that demand a better balance between autonomy and the common good now prevailing. Many of the moral shortcomings of the concept and principle of autonomy are ameliorated if we look to the more fundamental concept of integrity of persons – of which autonomy is a partial, but not a full, expression.”*

We do not agree with the honorable professor of the Kennedy Institute who considers the acceptance of autonomy as a moral guide, a trend towards the acknowledgment of minimalism as a moral guide (Pellegrino, 1990). We believe there are no conditions for the existence of a universal moral guide. Consolidated morals may only exist for different communities or by imposition of authorities (religious, political, etc.) or by a democratic negotiation between the different groups (beliefs) that make up society. We would also like to quote a passage found in an article recently published on the principle of autonomy (Segre, 1995).

At present, the concept of autonomy is seldom fully understood, although continuously referred to in court proceedings (particularly in the USA and Canada, from where it propagated to the rest of the world, almost always related to complaints filed by patients and involving indemnities for what they consider unauthorized medical acts)(Beauchamp & Childress, 1989).

We are dealing with a concept which is abstract. We are quite justified in saying that acknowledgment of autonomy may extend to the child, the insane (devoid of reason), or to the irrational being. It should be noted that our idea of autonomy covers what Pellegrino (1990) calls ‘integrity’. Such autonomy could obviously not be implemented in a society where there are legitimate individual and social rights governed by rules, but the understanding of this conceptual aspect is important. When we judge the ability of persons to manifest themselves or act in this or that way and we intervene contrary to their will, at that very moment we are violating their autonomy (Pellegrino, 1990).

Accepting this view, we find that a physician’s intervention in the patient’s condition or, in a broader sense, intervention by health professionals in general, can only be accepted from the autonomist’s point of view when patients ask for help.

Beyond that point, the social interest may prevail (as in the case of parents or the state itself protecting and intervening with minors), as can the social interest or defense of the community (in the case of mandatory intervention with people displaying conduct that

conflicts with the cultural standards of a community).

Our position is contrary to that of most ethicists, who consider autonomy a right to be granted to those mature enough to exercise self-determination. However, in our opinion, it is precisely when we judge such 'maturity' that we violate the principle of autonomy.

To the allegation that drug use, religious fanaticism, or a brain tumor are obstacles to autonomy to start with, we reply that we are all certainly subject to a wide variety of conditioning factors for our own respective conducts and thus for our respective realities (that is what counts, that autonomy must at least be understood).

We insist on characterizing our concept of autonomy. Autonomy is not assigned to anyone: i.e., we admit that every person has his or her own. Conditioning of personality certainly exists in everyone, and relates to cultural, physical, psychological, genetic, and nosologic factors. But within this view of each person 'from the inside out' (i.e., not a judgment by third parties), each individual may consider him/herself sovereign when exercising some kind of self-determination.

As we have already said, the above ideological position does not mean that our conduct as health professionals should necessarily change with regard to specific conditions which we will describe below using some of the following examples: children's autonomy; autonomy in mental health; autonomy and blood transfusions; autonomy and vaccination campaigns; autonomy and substance abuse legislation (incrimination of substance abusers); autonomy and sterilization or transsexual surgery; autonomy and driving under the influence of alcohol.

A paternalistic approach is usually taken with regard to children's autonomy. There is thus a conscious violation of their autonomy which is socially assumed and accepted.

We say children and not minors so that no legal age limit is construed in this situation. The child is only taken into consideration as someone who, under certain circumstances, needs protection. This is a social attitude also found among other species, where it is regarded as instinctive. The mother 'protects', conducts, and constantly violates the autonomy of her offspring: they would die otherwise. Unfortunately, mistreatment of children by their parents or guardians is often disguised by false paternalism. The same often occurs with child labor (even in some illegal and criminal activities). Oppression inside the family, especially psychological, is more noticeable in certain

cultures and consolidates the abominable violation of autonomy, especially if it is imposed with 'sweet talk' (brainwashing). A good example, in this case, is the religious instruction of children. We contend that even the old and 'affectionate' phrase, "*Drink your milk, child, it's good for you,*" says much more about the mother's pursuit of satisfaction (since this relieves her worry about the baby's nutrition) than her compliance with the baby's needs at that given moment.

Ethics *vis-à-vis* psychiatric patients deserves a special approach and emphasis regarding the traditional (and blameworthy) position taken by health professionals as far as these 'sick persons' are concerned. Let us recall that the concept of disease or illness is a statistical concept. 'Sick' persons are ones whose characteristics (physical, functional, psychological, affective, sociocultural, etc.) exclude them from the statistical curves of normalcy (Segre & Ferraz, 1997).

For example, the fact that a disease leads to death should not be used to define it, because every living being was born one day and will die some other. The same reasoning applies to the fact that disease produces pain, immobility, or any other morphological, physical, or social change, because one can feel pain without being defined as sick or display behavior that is absolutely incompatible with the cultural environment in which one lives without being sick. The only common trait in all these 'diseases' is deviation from normalcy (a statistical criterion).

In psychiatry it becomes still more difficult to define diseases (although statistical criteria are accepted to demarcate them). Variations in the psychological sphere are essentially subjective. Any intervention in such variations that is contrary to the individual's will is a violation of autonomy. If we invoke the well-known definition of health used by the World Health Organization – physical, mental, and social well-being – we not only corroborate all the above, but are also reminded of the confinement of political dissidents to psychiatric hospitals in their respective countries.

Thus, in psychiatry, if we are to take the principle of autonomy into account, we say that we will only treat a patient who asks for help, who suffers and wishes to be saved. If that is not the situation, intervention is compulsory (and therefore a violation of the patient's autonomy) when there is a social interest (in the case of minors or other 'different' people whom our cultural values prescribe that we must 'protect') or else, as a true social defense, when

those 'different' people place the physical or moral integrity of the other members of a society at risk. We think that it is extremely important when we intervene with psychopaths (preferably in a minimum of situations) – not to sugarcoat the bitter pill of therapeutics, but to clearly assume the psychiatrist's role of 'social defender'.

We contend that in blood transfusions, just like in any other treatment, the patient's refusal must be accepted if he has displayed informed knowledge of the risks he runs if the transfusion is not performed.

Returning to previous examples, there are comments on autonomy with regard to euthanasia, organ donation, the Brazilian legislation on substance abuse (with regard to the incrimination of substance users), sterilization or sex-change surgery, and use of safety belts in motor vehicles. On the other hand, there are pertinent considerations related to autonomy in vaccination campaigns and driving a motor vehicle under the influence of alcohol.

These are just a few examples of situations that can be classified in two groups: those in which violation of autonomy does not place other people at risk (euthanasia, voluntary organ donation, personal use of drugs, and sterilization or transsexual surgery at the patient's request) and others in which the non-violation of autonomy (or failure to restrict someone's individual freedom) implies real risk to the community (e.g., refusal to accept a vaccine during an epidemic, or drunken driving)

We do not intend to discuss each of these events now (although we will be doing so later for transsexual surgery), because just like euthanasia (assisted suicide) or organ donation, each of them in itself would suffice for an entire paper. The purpose of this article is limited to the theoretical characterization of the principle of autonomy.

It stands to reason, however, that there are (and always will be) situations in which public well-being may overlap with individual well-being. Violation of autonomy is admissible under these circumstances. Allow me to explain better. If we see no reason to oppose surgery to develop a *neovagina* in a male transsexual at his own request (i.e., in a person having the soul of one sex and the body of the other, according to Prof. Antônio Chaves, Dean of the University of São Paulo Law School) or to prevent a woman who does not want to have children from having a tubal ligation, or if we consider it a real outrage against human freedom to punish someone for 'snorting coke' or 'smoking pot', we recognize as fair that people should be

compelled to take vaccines against polio, for example, during an epidemic of such a disease or that they should be forbidden from driving under the influence of alcohol. The collective well-being justifies, violation of autonomy in these cases. The same was not true for the other situations to which we referred.

Also, further clarifying the bioethical concept, we have adopted as our strategy for ethical reflection the following passage from the chapter on the *Definition of Bioethics and its Relation to Ethics, Deontology and Diceology* (Segre, 1995:28-29):

*"As we have already mentioned, our concept of bioethics had two primary objectives. The first was an attempt to define the scope of this study by outlining the major issues. The second was to create a method comprising the psychoanalytic experience for assessing all such issues. We agree with Beauchamps & Childress (1989) regarding their criteria for acceptance of a theoretical construction in ethics. They do not reject any of the great lines of ethical thinking over time, from which they derive what they consider positive aspects rather than invalidating them because of opinions with which they disagree. However, they demand that all such lines of thought comply with certain prerequisites, namely: 1) clarity; 2) coherence; 3) scope; simplicity; 5) explanatory power; 6) power to formulate justifications; 7) innovative power; and 8) practicability.*

*Based on these assumptions, the authors analyzed utilitarianism (Bentham and Mill), Kantism, the ethics of virtues, liberal individualism, communitarianism, and ethics, based on 'principles of common morality', 'ethics which takes into account the emotional involvement' (ethics of care, which comes closer to psychoanalytical ethics, but which does not reject the premises of communitarianism and liberalism), and finally attempted to reach a convergence of all these theories.*

*Regarding the ethics of care, initially proposed by psychologist Carol Gilligan and philosopher Annette Bauer, we should point out that it is theoretically opposed to such positions as those of Plato and Kant, who refer to inclinations, emotions, feelings, and passions as obstacles to 'moral judgment'; they contend that actions based on feelings such as love, solidarity, and passion may be 'good', but not 'morally good', because they lack a cognitive structure.*

*Gilligan insists that we should listen to the voice of care (the voice of the 'heart'), more suitable to women, and not only the "voice of rights", the 'voice of duties', and the 'voice of justice'. She adds, 'Men tend to embrace the ethics of*

rights by using a quasi-legal terminology and impartial principles followed by dispassionate reflection, whereas women tend to the 'ethics of care', based on responsibility and an integrated network of necessities, care, and prevention of dangers.'

*Therefore, it is clear to us and them that bioethics is not merely one more line of ethical thought, but an area of study for which we are proposing a methodology (which is close to the ethics of care: see A Care-Based Approach to Ethics, by Alisa Casse, PhD) which assimilates proposals ranging from the 'ethics of virtues' expounded by Pellegrino to the absolutely legalist focus that can be used to solve major problems of human coexistence" (Segre, 1995:28-29).*

We agree with Kant (1964) that all beings with minds can be regarded as founders of universal law. Consider an ethical model with no predefined parameters as we are proposing. Imagine the abstract example of the first man living alone on the planet and gradually working out rules for living together with other men he would meet. They would use the 'psyche', continuously fed by individual and collective experience. We would admit that this Kantian man also has what we call emotions (or feelings), in addition to his rationality (whose difference with regard to feelings is, in our opinion, just its greater uniformity in various human communities, because the acquired cultural component bears more influence on it) and these artificially conceived segments in a personal interaction between them in every thought and act.

There is no thought disconnected from emotions, contrary to those who contend that rationality always prevails. An excessive appeal to reason aims to conceal feelings regarding ourselves (as psychoanalytical theory and practice give ample proof). And reason, which is much more related to one's sociocultural environment (contrary to emotions, which are basically internalized), is seen as 'common to all men' (considering a man devoid of reason as insane) and is given a mass connotation which satisfies the inclinations to positivism that people have to a greater or lesser extent.

According to the point of view (and ethics) of full social and individual relativism (meaning the 'radical' theoretical acceptance of the principle of autonomy) we consider a choice more autonomous when it is made with the greatest possible knowledge of one's own emotions. Here we refer to the concept of ethics espoused by Cohen & Segre (1995), that 'ethicalness' is the capacity to perceive one's own emotions by managing conflicts generated by them

through a hierarchical arrangement of the values that originate such emotions. For example, if we decide in favor of (or against) the legalization of abortion, we face conflicting feelings, one of them inherent in the destruction of a life and another related to compliance with the mother's autonomy, which under certain circumstances (contrary to moral preaching) is the 'natural enemy' of the fetus. Regarding the abortion issue, there are other factors to be taken into account (for example, damages caused by performing an illegal abortion), but our basic ethical position results from confronting the value we assign to the embryo's life and the mother's autonomy.

Taking another example, note how people behave regarding the dilemma created by the request for sex-change surgery. For emotional reasons, many people point to the immorality of these interventions, contending that they are the desire of a person with a male phenotype (who claims to consider himself a woman) requesting the amputation of his external genitalia and the production of a *neovagina*. They claim that this is a pathological aspiration and explicitly reject any surgical intervention on the grounds that it goes against nature. The attitude is rooted in feelings, because dozens of equally 'unnatural' medical practices are accepted which are geared to improving quality of life for humans (plastic surgery, for example). There is no reason to deny the right to a better life for those who "*have the soul of one sex and the body of another*", in the words of jurist Antônio Chaves (oral communication).

If the assumption of ethical, social, and individual relativism is accepted (i.e., that the only ethical principle is that ethics has no principle), and if we also acknowledge the important role played by emotions in the groundwork of an ethical stance (in the development of a concept of ethicalness as a 'condition for value hierarchy arrangements'), we must agree that our proposal about the concept of ethics has theoretical grounds, contrary to Kant, who considered 'passions' the antithesis of ethical thought.

After all, not all human feelings are destructive to social coexistence: love, solidarity, and respect for autonomy coexist with hatred, fear, and envy.

Renowned ethicist Engelhardt Jr. (1996:32-101) has the same opinion as ours when he refers to the reasons for the failure of all attempts to justify principles: the absolute relativity of good and evil, both from the social and individual points of view.

Scarpelli (1991) clearly demonstrates that orienting ethics towards religion, 'laws of na-

ture', or rationality leads to 'blind alleys' and cannot withstand a skillful critical analysis. As he points out, "*In the magma of passion and compassion, ethical thought introduces its order, but the principles upon which this order should be based do not depend on reason, but on each person's characteristics. Facing someone who pores over sacred scriptures or buckles under authoritarianism, a free soul will say that there is only one condition that moves him: human misery, expelled from the worldly paradise through sheer vengeance*" (Scarpelli, 1991: 25) Here we find a 'connection' with religion made by the renowned Italian philosopher when he writes about the Biblical expulsion of man from the 'worldly paradise'.

The same author proceeds, "*Sympathy generates respect and tolerance. Respect and tolerance lead to autonomy as the capacity to create rules for oneself. The principle of autonomy is the key to unlock bioethics and is decisive for many issues: euthanasia, assisted fertilization for a couple, organ donation, etc*" (Scarpelli, 1991:25).

Returning to the conceptual development of ethics, we value the statement by Hobbes ascribing greater moral weight to "*a person who knows he is hungry but has the ability to think whether he is going to eat or not*" (Cohen & Marcolino, 1995:54).

The criticism of the utilitarian philosophers (Bentham, Mill, and Sidgwick), i.e., that utilitarianism is immoral because of its hedonism (or quest for pleasure), is challenged by one of the three himself (Sidgwick) when he states that individual pleasure is felt not only by the individual himself, thus admitting that there is pleasure in giving pleasure to someone else. This contention is brilliantly corroborated by Freud who, in analyzing personality development (from birth to adulthood) proves how man is progressively socialized by learning the benefits of affective interrelations. Based on Freud's studies, one can say that there is an 'ethics of being' and not just the 'morals of what must be'.

We also believe that the 'principles' already traditionally referred to as 'principles of bioethics', that is, autonomy, beneficence, non-maleficence, and justice, can actually be summed up in autonomy and heteronomy (the latter not in the Kantian sense of sovereignty of 'passions'). As a matter of fact, they are not really principles, but only two forms of human relationships, in which there will always be a greater or lesser degree of individuality (autonomy) or constraint by third parties as to the way each person thinks and acts (heteronomy).

We reiterate the total relativism of ethical thought: laws, moral codes, and religions play the required role in regulating social conviviality. However, it is indispensable for the purposes of reflection that the pragmatic connotations of all these instruments be very clear. Finally, it is impossible to deny that there is an educational meaning in regulations (legislation, morals, and religion), introjecting the notion of 'prohibition', which ends up reinforcing the super-ego, to which Freudian theory itself assigns a relevant role in the 'ego structure'.

By way of conclusion, the notion of autonomy can only be understood based on the concrete modalities of constructing human subjectivity in its experiential individuality.

If all perception involves each individual's subjectivity, i.e., if the 'real' phenomenon is described as it is seen and felt by each respective epistemic subject, who is also an emotional subject, then knowledge is always embodied in concrete subjects and may potentially be shared. Thus, what is 'real', which is always a construction by human(s), becomes a 'common (or shared) trait' according to the perception of many individuals and thus a cultural phenomenon susceptible to scientific investigation. Put simply, if ones jumps from a given height and sees and feels that one is falling, and other people witnessing the event describe it as the same phenomenon, for each and every one of them the event/phenomenon becomes real. Under such circumstances, we will have to investigate the cause of falls, thereby deducing the laws of gravity.

If we admit that, thanks to rational competence, human thought can be autonomous (although not fully so, since it is presumably conditioned by genetic inheritance, cultural factors, education, language, etc.), and that both our thinking and feeling are the only things exclusive to each one of us, we realize that the idea of autonomy is at the root of liberty itself, an idea and a value that belong to our modern and 'individualist' culture. Thus, the problem (both ethical and political) is how to integrate ourselves as 'we' (which defines the self-understanding that we have of a cultural and social community) with supposedly alien differences as a way of preserving the spirit of tolerance for and equal consideration of different values, which are also part of the cultural legacy of modernity.

To take just one example, the terms 'insane', 'sick', 'ignorant', and 'heretical' are really nothing more than statistical concepts, which (as Canguilhem and Foucault have taught us concerning the 'norm') do nothing more than

label those who show they have extrapolated the criteria for normalcy. Although one cannot fail to concede the practical importance of traditions, religions, and laws for the coexistence of individuals, they all, in principle, indoctrinate and normalize, with their concepts of 'sin', 'misdemeanor', and 'abnormality', and are thus opposed to 'free will', seen fully as 'legacy' and which is also part of Western (or modern) cultural and political tradition (Brasil, 1989a).

Autonomy as an ideal only partially permeates Brazilian legislation. It is established in principle by the Federal Constitution, Article 5 (Brasil, 1989a), in keeping with the laws of other countries and based in spirit on the Universal Declaration of the Rights of Man (December 10, 1948), Articles I, II, and III (ONU, 1993), from which derive such legal instruments as the Brazilian Statute for Children and Adolescents (MS, 1991) (Article 7), Penal Code (Brasil, 1989b), Code of Medical Ethics (Coutinho, 1989), Legislation on Organ Transplants (Brasil, 1997), and various rulings by the Brazilian Federal Board of Medicine (CFM, 1992, 1994) and the National Health Council (CNS, 1997; Resolução 196/96). A close examination of this legislation shows that its scope is restricted, if not clearly in the wording itself, certainly in its enforcement. The Constitution guarantees every Brazilian citizen the right to life, but does not make explicit whether life is also a duty. There are thus divergent interpretations concerning the moral validity of 'desisting from life at one's own will'. The prevailing view is that life is an inalienable good. Thus, based on this reading of the Federal Constitution, Article 122 of the Brazilian Penal Code (Brasil, 1989b:93) establishes sanctions against those who "*induce or instigate someone to commit suicide or assist him in so doing.*" Note that the concept of life as an inalienable good has resulted from the pragmatism of states throughout history, in not allowing their subjects to deprive them of a work force or potential group defense. The issue is the so-called 'collective good', extrapolating individual autonomy, an event that is sublimated by most religions, which consider suicide a sin. Life becomes not only a right, but an obligation.

This approach is present not only in the legislation, but also in numerous bioethical positions in which the principle of beneficence or non-maleficence prevails over the autonomist trend.

The codes of ethics of health professions, while emphasizing the patient's right to accept or refuse treatment, emphasize situations of

imminent risk to life, which allow professionals (in the name of the principle of beneficence) to intervene therapeutically, even against the patient's will. Health legislation is no different with regard to individuals displaying abnormal behavior, medicalizing the approach to them and intervening in their autonomy through compulsory internment in psychiatric institutions. Once again, the notion of autonomy is seen as something to be granted to those situated within the range of the statistical curve that is arbitrarily defined as 'normal' (tending to rule out individuality), and not as a condition inherent to all living beings.

The legislation pertaining to children and minors does not take an autonomist approach. It reflects a trend that is present in both humans (and to an even greater degree in other animal species) to protect the offspring and the helpless in general (i.e., paternalism). Other pieces of legislation that are not autonomist include Article 124 of the Brazilian Penal Code (Brasil, 1989b:93), which penalizes a mother who "*performs an abortion on herself*" and the prevailing *Substance Abuse Act* (6368/76), penalizing substance abusers (Segre & Carvalho, 1978:97).

Many jurists give a non-autonomist reading to Article 129 of the Brazilian Penal Code (Brasil, 1989b), which classifies all forms of surgical sterilization by physicians as serious lesions. Serious lesions (or grave lesions according to the sub-classification drafted by jurist Nelson Hungria) include loss of reproductive function (vasectomies, i.e., ligation of the vas deferens in men, and tubal ligations in women). These jurists disregard the patient's will, i.e., his/her autonomy to opt for the loss of a function that he/she no longer wishes to retain.

The same can be said of 'sex-change' surgery in Brazil, i.e., the attempt to morphologically adapt the genitals of individuals from one biological gender to that which they consider representative of their personalities. Although the ruling which is about to be approved by the Federal Medical Board (CFM) proposes that such surgeries be allowed experimentally, there have been numerous cases brought against Brazilian surgeons who have removed the penis and testes of male patients to produce *neovaginas* or removed the ovaries of women and implanted penile prostheses.

The legislation pertaining to organ transplants is reasonably autonomist (although it is all permeated by a heavy dose of 'beneficent' social control). So is Ruling 196/96 of the National Health Council (CNS, 1997), which requires that all research on human beings be

preceded by the 'informed consent' of the individual participating in the experiment.

As another example, the mandatory use of seat belts in motor vehicles is also not autonomist, since failure to use such safety equipment entails an increased risk for the drivers and passengers themselves.

Forthcoming is a thorough analysis by Segre and Schramm of Brazilian legislation and jurisprudence pertaining to the ideal of autonomy. This paper is merely an outline of the ideological content of this proposed research.

However, it is already evident that the much-lauded principles of autonomy, beneficence and non-maleficence, and fairness (the latter strictly in keeping with a community's habits, customs, and legislation) are much less principles (which are thus external to human subjectivism) and much more characteristic of our individual personalities, where feelings of individual freedom constantly clash with those of solidarity, even as the same subjectivism encompasses feelings of love, hate, and envy.

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