

Relational Autonomy from a Political Perspective

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Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others.

I thereby declare that two chapters are based on former work: a version Chapter 4 has been published in French, under the title 'Égalité entre les sexes et libéralisme: le cas des congés de paternité' ('Sex Equality and Liberalism: the paternity leave case') (2016), in the peer reviewed journal *Politique et Sociétés*, and was based on an essay produced in the class GV4G3. A version of Chapter 6 has been published in a special issue of the peer-reviewed *Journal Moral Philosophy and Politics* on the philosophy of Joseph Raz under the title 'Hounded Women: The IPV Protocol and the Autonomy of Abuse Victims' (2017).

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Abstract

Individual autonomy is crucial to both liberalism and feminism and, to some extent, for similar reasons: that is, the insistence on everyone being able to shape her own life and not just have it shaped for her. As it is currently understood, however, this ideal is a source of great dissatisfaction for feminists. For one, it is blind to the ‘problem of oppression’ –that is the way social factors, such as oppressive gender norms, can affect individuals’ capacity to lead a self-governed life. In addition, on the political level, autonomy is aligned with individualism, independence and rationality. This makes it an exclusionary ideal, which, under the cover of universalism, promotes a prejudiced and narrow vision of what agents and preferences should be seen as worthy of respect. I refer to this as the problem of exclusion.

My thesis is an attempt to reframe our understanding of autonomy in order to answer these two problems. I argue that the relational accounts of autonomy feminists have articulated should be understood as motivated by the need to address these key concerns (Ch. 1). However, none of the relational accounts developed so far truly succeed in simultaneously addressing the problem of oppression and the problem of exclusion (Ch. 2). I suggest that this is because they are still too individualistic in their focus and remain fixed on the question of what individual agent and/or preference should be considered autonomous. In order to ensure we avoid the problem of exclusion, I propose we remain agnostic towards this question. This results in a systematic presumption of autonomy, which commits us to demonstrate respect to all agents (especially vulnerable ones), as well as to their declared preferences. Such a commitment, however, should not lead us to overlook the problem of oppression. In order to address this problem, I argue that we should devote our attention to the way the socio-relational context structures how agents can plausibly exercise their autonomy. In other words, in order to address the problem of oppression without reproducing the problem of exclusion, we need to stop focusing on the question of who should be considered autonomous and instead refocus on the question of what structural changes might promote the autonomy of all (Ch. 3).

I call the resulting account an ‘agnostic and structural’ understanding of autonomy. I argue that such a conception of autonomy is promising as it offers an inclusive conception of self-government, which nonetheless gives us grounds to vindicate substantial emancipatory policies. I then present a set of case studies in order to show how such a conception of autonomy could help us deal with entrenched gender inequalities. Doing so enables me to illustrate the difference adopting an ‘agnostic and structural’ conception of autonomy could make in the areas of our legal system that are underpinned by an individualistic understanding of autonomy. Legal frameworks surrounding parental leave (Ch. 4), divorce and separation (Ch. 5), domestic violence (Ch. 6) and even our understanding of criminal responsibility (Ch. 7), I argue, could be effectively reframed using the kind of understanding of autonomy I propose.

Content

Acknowledgements.....	6
Introduction.....	7
1: Individual Autonomy, the Problem of Oppression and the Problem of Exclusion.....	13
I. Autonomy from a Political Perspective.....	14
II. Feminist Dissatisfaction with Autonomy.....	18
A. The Problem of Exclusion.....	20
B. The Problem of Oppression.....	26
III. The Relational Conceptions of Autonomy.....	30
A. Why Keep Autonomy?.....	30
B. The Relational Accounts of Autonomy.....	32
2: Existing Relational Frameworks.....	37
I. Procedural Accounts.....	38
A. The Minimalist Model.....	39
B. The Historical Model.....	41
C. The Self-Regarding Attitude Model.....	44
D. The Competencies Model.....	47
II. Substantive Accounts	51
A. Strong Substantive Accounts.....	51
B. Structural Substantive Accounts.....	57
III. Legal Accounts.....	64
3: Towards an Agnostic and Structural Account of Autonomy.....	71
I. An Agnostic Framework.....	72
A. Autonomy as Causally Relational.....	73
B. The Problem of Thick Disagreement.....	76
C. The Problem of Epistemic Uncertainty.....	78
D. An Open Account of the Competencies Needed for Self-Determination..	79
E. Avoiding Exclusion: A Systematic Presumption of Autonomy.....	83
II. A Structural Framework.....	86
A. Autonomy and Adequate Options.....	87
B. Listening to the Agent.....	90
C. Identifying Oppression.....	92
D. The Temporal Dimension of Oppression.....	96
E. The Question of Legitimate Means.....	96
F. What about Adaptive Preferences?.....	99

4: Disrupting Gendered Preferences.....	105
I. Champions of the Global Gender Gap Index.....	106
II. The Structural Forces at Play.....	108
III. The Daddy Quota.....	111
IV. The Anti-Perfectionism Objection.....	113
5: When the Family Is No Longer: Separations and the Vulnerable Caregiver.....	119
I. The Case.....	121
II. The Grounds for the Decisions: The Strong Autonomy View.....	122
III. The Grounds for Contestation: The Functionalist Argument.....	124
IV. Respecting Autonomy While Protecting Caregivers.....	126
6: Hounded Women and the IPV Protocol.....	135
I. The No-Drop Protocol and the Debate Surrounding It.....	136
II. Hounded Women.....	141
7: Victims or Agents? When Battered Women Kill.....	150
I. The Guilty Agent or the Helpless Victim: Diminished Responsibility and Provocation Pleas.....	151
II. What About Self-Defence? Lavallee, the Battered Women Syndrome and Its Consequences.....	157
III. An Agnostic and Structural Defence for Battered Women Who Kill.....	163
Conclusion.....	173
References.....	177

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Introduction

Feminism has a conflicting relation with the ideal of individual autonomy. Historically, much of feminists' efforts were devoted to opposing the exclusion of women from the realm of autonomous agency. Because autonomy served as the grounds to refuse them political and legal equality, early feminists attempted to disprove the idea that women were too emotional to be considered properly self-governed. In *A Vindication of the Rights of Women*, for instance, Mary Wollstonecraft attacks the presumption that women are less reasonable and capable of responsible decision-making than men, which she regards as legitimising their lack of political rights and as supporting their confinement to subordinate roles.¹ Her discourse, however, exposes a fundamental ambivalence that still marks feminist views of autonomy. Given the oppressive patriarchal social system that was in place, it was factually true that women's minds were formed so as to be 'weak and wretched'. As Wollstonecraft regretfully admits, women's education and socialisation turned the assumption that women were less capable of rational self-government than men into a reality. This, in turn, justified denying equal rights to members of the 'fair sex', while simultaneously fostering women's indulgent collusion in their own oppression.

The two concerns Wollstonecraft expresses with regard to women's autonomy have not disappeared with modernity. They still mark and structure feminists' complex relationship with autonomy, especially given the centrality of this ideal in the liberal political system. On the one hand, even if they are no longer so crudely institutionalised as they were during the previous centuries, patriarchal systems of domination have yet to disappear from our societies. Gender roles and norms, oppressive stereotypes, constrictive social expectations and popular imagery that conveys expectations of 'proper' femininity still affect women's ability to lead a life of their own choosing. These social forces still create desires, preferences and structures of choices that render women complicit in the reproduction of gender inequality on the social level. Yet, their incidence of self-determination is often ignored due to the liberal focus on individuals and its failure to sufficiently acknowledge the social forces that affect individual self-determination. The liberal imperative of respect and non-interference in the autonomous choices people make for themselves, in turn, often serves to justify the political *status quo*, which perpetuates systemic inequalities between the sexes. I call this concern the 'problem of oppression'.

¹ Women, she states, 'are treated as a kind of subordinate beings, and not as a part of the human species, when improveable reason is allowed to be the dignified distinction which raises men above the brute creation, and puts a natural sceptre in a feeble hand' (Wollstonecraft 2014 (1792), 30).

On the other hand, however, feminists also express their dissatisfaction with the exclusionary dynamics that autonomy serves to promote and justify. Under the cover of universalism and neutrality, autonomy can serve to marginalise subjectivities that do not correspond to a prejudiced and narrow vision of what constitutes a properly self-governed individual. This is the ‘problem of exclusion’. Even if the gendering of autonomy is no longer explicitly inscribed in legal documents, this ideal still retains its problematic association with masculinity. Feminists thus criticise autonomy as its alignment with independence and individualism implicitly denies autonomy to types of agency coded as ‘feminine’. In practice, this feeds a problematic gender hierarchy of value on the political and legal level, which systematically frames women’s gendered preferences and social roles as less valuable and worthy of respect than those of men. This issue is further complicated by the fact that feminists’ focus on the detrimental effect of oppressive norms on women’s autonomy can have the unfortunate effect of further reinforcing these exclusionary dynamics. Hence, denouncing the way oppression structures women’s agency can serve to justify ignoring women’s declared preferences and can further the idea that their autonomy is somewhat more fragile and easily eroded by social circumstances than that of men. This is especially problematic given the culturally diverse and globalised world in which we live. As the ideal of autonomy remains firmly grounded in a situated liberal conception of the good, this dynamic of exclusion is reproduced along existing lines of power and privilege that exceed that of gender.

Wollstonecraft’s conundrum is, in this respect, still very much at the core of feminist discourses and debates on autonomy. On the one hand, given the role autonomy serves on the political level, it is imperative to acknowledge the autonomy women manifest. In this respect, a feminist understanding of autonomy should refrain from feeding problematic exclusionary dynamics that frame women, women’s social roles and women’s agency as somehow less worthy of respect than that of men. On the other hand, however, it remains important for feminists to arrive at a concept of autonomy that can serve as grounds to denounce and alleviate the oppression women suffer. The tension between the conflicting roles autonomy serves produces vexing problems that have led some feminists to avoid relying on this concept as a foundation for feminist politics.

Among other things, it has prompted what Sumi Madhok, Anne Phillips and Kapana Wilson (2013) referred to as the feminist ‘turn to agency’. Moving away from the normatively loaded term of autonomy is not purely symbolical here. Though it is sometimes employed interchangeably with autonomy, the concept of agency acquires a radically different

connotation in the work of feminists such as Saba Mahmood (2005) and Lila Abu-Lughod (1990, 2002).² Mahmood, for instance, argues that it is crucial to detach the notion of agency from the goals of progressive politics that are usually linked with autonomy within feminist discourses. Keeping alive the affiliation of agency with the teleology of emancipation, she claims, leads us back to the exclusionary binary of resistance or subjection. Doing so is problematic, first, because it simplistically ‘elides dimensions of human action whose ethical and political status does not map onto the logic of repression and resistance’ (Mahmood 2005, 14). Second, and more importantly, it reproduces exclusionary imperialistic views that ‘arrogantly assume that secular forms of life and secularism’s progressive formulations necessarily exhaust ways of living meaningfully and richly in this world’ (Mahmood 2005, xi). Using Judith Butler’s criticism of the humanist conception of agency, she moves away from the liberal presumption underlying the notion of autonomy that agents are ‘endowed with a will, a freedom, and an intentionality’ which can then be ‘thwarted by relations of power that are considered external to the subject’ (Mahmood 2005, 20). Instead of offering a basis to prescribe emancipatory change, the notion of ethical agency she proposes is rather descriptive and seeks to enable a fine-grained understanding and analysis of the lived reality of the subjects she studies.³

As for Nancy Hirschmann (2003), she argues that the concept of freedom offers a better basis to vindicate emancipatory changes than autonomy. While she admits there are several concerns and features common to autonomy and the conception of freedom she develops, she maintains that freedom is less conceptually constrained than autonomy. Even the conceptions of autonomy that seek to remain neutral with regard to what an autonomous choice should look like, she argues, are extremely value-laden ‘echoing the essence of Enlightenment rationality’ (Hirschmann 2003, 38). They continue to equate autonomy with the expression of a ‘true self’ that can stay somewhat impervious to the impact of external influences. This presumption that underlies the concept of autonomy, she states, is a problem for feminists, as it remains blind to the ‘more subtle influences of social construction’ as well as

² In this thesis, I will differentiate between agency and autonomy. I will consider the term ‘agency’ to be a descriptive term in contrast to autonomy which is explicitly non-normatively neutral.

³ In many parts of her book, Mahmood stresses the need for a conception of agency. which, rather than being prescriptive, helps foster a better understanding and analysis of the mosque movement. For instance, in *Politics of Piety*, she writes that she seeks to emphasize ‘two interrelated points: first, that it is impossible to understand the political agency of the movement without a proper grasp of its ethical agency; and second, that to read the activities of the mosque movement primarily in terms of the resistance it has posed to the logic of secular-liberal governance and its concomitant modes of sociability ignores an entire dimension of politics that remains poorly understood and undertheorized with the literature on politics and agency’ (Mahmood 2005, 35).

to the presence of oppressive barriers that constrains the choices we make and the preference we adopt. By contrast, freedom offers a better means to liberate women ‘from the multiple, intersecting, and overarching barriers that pervade patriarchal society’ (Hirschmann 2003, 39). Taking seriously social construction and the way it challenges the possibility of an essential and authentic self (which the idea of autonomy seems to presuppose), she contends, entails acknowledging that freedom should be seen as a precondition to autonomy, and not the other way around. If there is such thing as a true and authentic self, women must first be freed from patriarchal constraints in order to determine what this autonomous self might be.

In this thesis, my goal is to rehabilitate autonomy as a useful normative tool in the feminist arsenal. I seek to show that autonomy *can* serve to address the problem of oppression and ground emancipatory feminist policies, while simultaneously avoiding the reproduction of discriminatory exclusion. However, I contend that if it is to be of any use to feminists, this ideal needs to be reconceptualised in order to take into account the important role social context plays in self-determination. As Hirschmann (2003) points out, an understanding of autonomy that fails to devote sufficient attention to the way norms and social expectations affect and structure vulnerable individuals’ self-determination offers no means to vindicate the emancipatory goals of feminism. A social conception of autonomy is also necessary to alleviate the problem of exclusion and to avoid feeding into existing systems of domination (gendered as well as imperialistic) that feminists such as Mahmood denounce. Arriving at an inclusive conception of self-government necessitates the explicit recognition that caring relationships are a precondition of an autonomous existence and that dependence is an integral part of autonomous human life. Acknowledging that socio-relational conditions shape all of us also encourages a humbler stance vis-à-vis our own tendencies to restrict the attribution of autonomy to only those agents and preferences that manifest a form of agency we recognise. In this respect, I see my own attempt to arrive at a feminist reconceptualisation of self-determination as belonging to the relational accounts of autonomy.⁴

Before reviewing the current relational accounts of autonomy and justifying my own attempt to reframe autonomy, I begin this thesis by exploring the role and form the ideal of autonomy takes within the liberal political and legal system. In Chapter 1, I suggest that feminists should indeed be concerned with autonomy given its central role in a liberal political and legal system. I seek to show that feminists are justified in their efforts to reframe autonomy given that this ideal underpins the regime of power that is currently in place. I then expose, in

⁴ These feminist attempts aim at reconceiving autonomy by accounting for the social dimension of self-determination.

more depth, the two key concerns I see as structuring feminist dissatisfaction with autonomy: the problem of exclusion on the one side, and that of oppression on the other. I argue that far from being mere symbolic issues, these problems have consequences for the ways women are treated and perceived on the political, and legal levels. I conclude this chapter by introducing the relational accounts of autonomy. In contrast to the more restrictive definition John Christman (2004) offers, I suggest that we should not understand relational accounts as defined by a particular formal feature. Rather, we should understand them as characterised by their normative aims—that is, as integrating concerns relating to the socio-relational context as a means to address the issue of oppression as well as that of exclusion.

In Chapter 2, I then offer a critical review of the existing families of relational understandings with respect to three criteria: 1. whether they enable us to address the problem of oppression, 2. without falling back into the problem of exclusion, and 3. whether they are operationalisable and could be of use on the political and legal levels to replace the individualistic ideal that is the object of feminist criticisms. Each of these frameworks, I contend, has its strengths and advantages. Some provide inclusive conceptions of autonomy that are adequately mindful of the exclusionary dynamics that denying autonomy to certain types of preferences or agents can have on the political level. Others offer a strong basis to ground an emancipatory feminist agenda and enable us to account for the ways oppressive social influences can diminish self-government—by warping people’s desires and by limiting the way they can plausibly exercise their autonomy. However, in spite of the important contributions they make, I contend that none of the accounts devised so far entirely succeeds in addressing the problems of exclusion and oppression. I suggest that this is because there is a real normative tension between these two goals, which is impossible to avoid if we remain fixed on the question of what individual agent and/or preference should be considered autonomous. The focus on offering criteria to assess the competency for autonomy of agents either globally, or as linked to a particular local preference, I argue, causes relational conceptions to be either too thin to successfully address the problem of oppression or too thick to avoid the problem of discriminatory exclusion. For some other relational accounts, the problem is rather at the level of their potential use on the political level. Some theorists, indeed, avoid offering any clear normative guidance concerning what makes some social conditions autonomy-promoting and what makes others autonomy-undermining.

In Chapter 3, drawing on the strengths of the different frameworks reviewed in Chapter 2, I develop and defend my own understanding of autonomy. In order to ensure we avoid the

problem of exclusion, I argue that we should maintain a careful analytical distinction between autonomy as a mental or emotional competency and the external conditions necessary for the exercise of autonomy. Autonomy is usually mainly understood in the first sense—that is, as designating the set of mental abilities. It is conceived as a sort of competency that autonomy is regarded as a precondition to receiving the status of full-fledged agent worthy of respect and consideration. In this regard, I suggest that avoiding the problem of exclusion necessitates that we remain agnostic towards autonomy in this first sense and avoid formulating criteria to assess the competency for autonomy that agents possess. This results in a systematic presumption of autonomy, which commits us to demonstrate respect to all agents (especially vulnerable ones, given the prevailing tendencies not to do so), as well as to their declared preferences. Such commitment, however, should not lead us to forget the problem of oppression. In order to address this problem, I argue that we should devote our attention to the way the socio-relational context structures how agents can plausibly exercise their autonomy. In other words, addressing the problem of oppression without re-establishing the problem of exclusion necessitates that we stop focusing on the question of who should be considered autonomous and that we focus instead on the structural changes that might promote the autonomy of all. I call the resulting account an ‘agnostic and structural’ understanding of autonomy. I argue that such a conception of autonomy is promising as it offers an inclusive conception of self-government that nonetheless gives us grounds to vindicate substantial emancipatory policies.

In Chapters 4, 5, 6 and 7, I then present a set of case studies in order to show how such a conception of autonomy could help us deal with entrenched gender inequalities. This enables me to demonstrate that the ‘agnostic and structural’ conception of autonomy could offer a plausible replacement for the ideal that underlies our political system and could make a valuable difference in the areas of our legal system that are underpinned by an individualistic understanding of autonomy. Legal frameworks surrounding parental leave (Ch. 4), divorce and separation (Ch. 5), domestic violence (Ch. 6) and even our understanding of criminal responsibility (Ch. 7), I argue, could be helpfully reframed using the kind of understanding of autonomy I propose.

Chapter 1: Individual Autonomy, the Problem of Oppression and the Problem of Exclusion

Autonomy is fundamental to both liberalism and feminism and, to some extent, for similar reasons: that is, the resistance to paternalism and the insistence on everyone being able to shape her own life and not just have it shaped for her. As it is understood within the liberal tradition, however, the ideal of autonomy is a source of great dissatisfaction for feminists.

In this chapter, I seek demonstrate three things. First, that we should indeed be interested in autonomy given its fundamental role in our political system. This chapter thus begins with a brief overview of the different roles individual autonomy has on the political and legal levels within a liberal society. Second, that feminist dissatisfaction with autonomy is not merely descriptive: it is properly normative and has to do with the inadequacies this ideal gives rise to on the political level. The problem feminists have with autonomy, I argue, is not merely that it is an abstraction that ‘brackets’ the contingent predicates of concrete agency, and fails to accurately depict the reality of human agency.⁵ Rather, the problem is that the selective omissions this ideal operate do have problematic implications and consequences in practice. First, because they often serve to reinforce current systems of domination. They lead to what I call the ‘problem of exclusion’: they encourage all the ways in which women or women’s social roles are demeaned and excluded as not really autonomous. But these selective omissions also lead to a second type of inadequacy, which I call the ‘problem of oppression’. Because it ‘brackets out’ the way social conditions affect autonomy, this ideal fails to provide us with the necessary tools for distinguishing between social conditions that enable self-government and those that undermine it. As a result, it often serves to justify political *laissez-faire* in oppressive socio-relational context. These concerns, I argue, are not so much aimed at particular philosophical understandings of autonomy. They are political: a matter of the way autonomy functions as a political, regulatory ideal. What this suggests— and this is the third point I seek to make in this chapter—is that mainstream accounts of autonomy fall short not only because they understate the importance of the social but also because they do not get to grips with the two key concerns of feminist politics: that is, how to avoid reproducing exclusionary dynamics on the one hand, while alleviating oppression, on the other. I seek to show that it is the will to address these key concerns that should be seen as the defining feature of the relational accounts of autonomy that have emerged in the literature.

⁵ On the difference between idealisation and abstraction, see O’Neill (1987) as well as Schwartzman (2006), who critically explores this divide. I will return to it in the second part of this chapter.

I. Autonomy from a Political Perspective.

Personal autonomy is crucial for liberalism both as a philosophical doctrine and as the political framework guiding the organisation of our laws and policies. Used as a status marker that enables one to be regarded as worthy of respect, autonomy is usually thought to confer normative authority over one's life. In this regard, individual autonomy sets the boundaries to legitimate state actions: it gives rise to negative duties of non-interference in autonomous self-determination and to positive duties of intervention when this auto-determination is threatened. In short, autonomy can be seen as a regulatory ideal that structures and justifies the whole organisation of liberal societies. Yet, in spite of its political importance, autonomy remains something of a portmanteau word (Conly 2013, 16) used to make sense of a 'tangled net of intuitions, conceptual and empirical issues, and normative claims' (Dworkin 1988, 7). It is a 'woolly' concept (Raz 1986, 409) that is used and characterised in a multitude of ways that are not always readily compatible with one another.

Autonomy comes from the Greek words 'autos' (self) and 'nomos' (law). Broadly defined, it means to be the author of one's own law, in one's thoughts and actions. It is a 'deontic status' which, unlike dignity, is not something individuals are born having (Anderson 2014). It is usually assimilated to either one particular mental competency, or to a set of mental skills, that one needs to have developed enough to count as autonomous. These skills are usually of two types (Christman 2015). On the one hand, there are the abilities necessary to be viewed as competent to direct one's own life. These generally include things such as the capacity for rational thought, being adequately receptive and reactive to reasons for actions (i.e. reasons-responsiveness), the freedom from debilitating pathologies and the capacity to keep one's heteronomous impulses under control (Wolf 1990; Fischer & Ravizza 1993). Being autonomous is thus not simply a matter of being governed by oneself. It is a matter of being governed by the 'right' parts of oneself. As Berlin (1969, 178) explains, in order to count as properly self-governed, one needs to be moved only by one's own conscious reasons and purposes and 'not by causes which affect me, as it were, from outside'. On the other hand, there are competencies necessary to claim one's thoughts and actions as genuine. These include critical self-reflexion, self-consciousness and the independence of thought (Dworkin 1988; Frankfurt 1987). These authenticity skills are thought necessary to endorse one's desires independently of external influences and values in order to claim them as genuinely ours.

Being seen as competent enough to be attributed the status of autonomous agent is important in various social practices. As Anderson (2014, 357) writes, '[w]hen we attribute

autonomy to someone, we are not just identifying general properties of the person but are situating those properties relative to the relevant thresholds for how it is appropriate to treat him or her'. Used as a global characterisation, it acts as a status marker that marks a person as worthy of respect, responsible for her own choices and competent enough to make her own decisions without undue interference. It can also be used locally to characterise particular choices or preferences that are understood as stemming from the exercise of the right competency (Christman 2015). To characterise a choice as autonomous, in turn, raises the liberal duty of respect and non-interference regarding it.

Autonomy is also thought to require external conditions to be properly exercised. The first one is the absence of coercion, which prevents the agent from exercising self-government by forcing her to do another's bidding. Manipulation, deceit and brainwashing are also often cited examples of external conditions that interfere with the agent's capacity to formulate and act upon autonomous desires.

Thus understood, autonomy amounts to a demanding standard of self-determination that we cannot so easily expect of real individuals. As indicated by Sarah Conly (2013), real people regularly act impulsively in an irrational and thoughtless manner. Yet, on the political level, autonomy functions more like a regulative ideal rather than as an actual standard by which to assess agents. However, in certain areas of our political and legal system, autonomy does prescribe minimal competency thresholds that individuals need to satisfy in order to count as properly autonomous. Criminal responsibility, for instance, requires that an agent be seen as sufficiently competent to be regarded as responsible for her deeds in order for these to be attributed to her.⁶ Yet, most of the time agents are simply presumed to be autonomous. The attribution of autonomy to an individual is, in turn, necessary to consider her a full-fledged political agent. In this regard, autonomy is closely linked to both equality and respect within the liberal system. Respect for persons is mainly understood as expressive of the recognition of individuals' fundamental moral equality, which, in turn, is grounded in their status as autonomous agents. Autonomy thus plays a chief role in justifying democracy, as the way to operationalise the liberal duty of equal respect for individual's autonomy is thought to be through a democratic decision-making process (Valentini 2013).⁷

On the political and legal levels, the normative liberal commitment to respect individual autonomy gives rise to two types of political duty for the state. First, it gives rise to negative

⁶ We will return to the link between criminal responsibility and autonomy in Chapter 7.

⁷ John Rawls can be considered as one of the most prominent contemporary liberal thinkers. As Thomas Nagel (1995, 125), puts it, 'The fundamental attitude toward persons on which justice as fairness depends is a respect for their autonomy'.

duties of non-interference, as it sets the limits to state action. Respect for autonomous self-determination thus underlies the liberal ideal of state neutrality (Dworkin 2007, 445). Indeed, it is thought that in order properly to recognise and respect the autonomy of its citizens, the state should not justify its actions on the grounds of a certain encompassing conception of the good.⁸ One reason for this is that respect for autonomy is thought to require individuals to be free to form, change or revise their own conception of the good in contrast to having a particular conception imposed on them (Kymlicka 1990). In this respect, it is often argued that the state should not promote some conceptions of the good as better or more valuable than others. The principles guiding the state's actions ought to be compatible with the pluralism of values inherent to the liberal state. They should represent the interests of autonomous agents, independently of the vision of the good they adopt (Rawls, 1971). This, in turn, gives rise to a duty of non-interference in the private choices that only affect the individuals making them.

Autonomy thus serves as the main justification against state paternalism. 'Paternalism' is broadly defined as a practice or policy that restricts the freedom of citizens on the grounds of their own (supposed) interest (Kleinig 1984, 18). Following most liberals, as long as the choices people make affect only themselves, the state ought not to intervene in them. Mortimer Sellers (2008, 6), for instance, writes that 'the essence of autonomy is the ability to make bad choices for oneself. Good choices are demeaned when they are not freely chosen'. Intervening in people's private choices is thought to constitute a failure to acknowledge the authority individuals have in making their own choices for themselves (Darwall 2006, 268). It is tantamount to treating a full-fledged rational agent as if he were a child incapable of making his own choices, which is both demeaning and arrogant (Feinberg 1986, 22; Anderson 1999, 301-2). In short, it implicitly denies that this person is worthy of equal respect and consideration.

In this regard, even if research shows that smoking or eating fast food is objectively bad for one's health, it is generally considered that the state cannot legitimately prevent citizens from accessing these options.⁹ As Conly notes (2013, 1), respect for autonomy implies that '[i]f some people choose poorly, that is unfortunate for them, but it is their own responsibility, and interfering, even with the most benevolent intent and the most beneficial effect, ignores that these are rational agents who have the right to make their own choices'. Likewise, autonomy often serves as the main justification for reforming laws that infringe on individual self-

⁸ We will return to this idea in Chapter 4.

⁹ We will return to this in the following subsection.

determination by promoting certain views of morality.¹⁰ Respect for individual autonomy is regularly invoked in liberal jurisdictions in attempts to challenge laws that target citizens' morality, such as legislation concerning pornography, the regulation of citizens' sexual practices¹¹ and medical decision-making.¹² Finally, autonomy also grounds legal arrangements that protect individuals' private lives. Privacy and autonomy are intimately linked given that the private is thought to be the privileged sphere of the exercise of autonomy.¹³ While the state might legitimately constrain the autonomy of its citizens in the public sphere, interferences in the private lives of individuals are generally understood as much more difficult to justify (Schouten 2013). As we will see in the second half of this thesis, this divide between the private and the public has important consequences for the way we understand the permissibility of state action within the family, among other things (Fineman 2004).¹⁴

In contrast to the negative duties of non-interference in citizens' private affairs, the second type of duty to which autonomy gives rise is positive. The state has to set and enforce the boundaries of the legitimate sphere of self-determination of its citizens to ensure they do not infringe on each other's autonomy. The harm principle, first articulated by John Stuart Mill in *On Liberty*, is generally understood to set the boundaries of individual self-rule.¹⁵ When an agent coerces another by preventing her from freely exercising her autonomy, this amounts to a criminal offence under liberal laws (Ashworth & Horder 2013, 23-27). The state has a positive duty to intervene in order to punish this type of infraction and to protect the autonomy of its citizens.

Concerns for non-autonomous agents, or agents otherwise perceived as not competent enough to be considered autonomous, also raise the positive duties of intervention. It is usually considered part of the liberal state's duties to protect agents whose competency for autonomy is still in development. Children are subject to legitimate paternalistic state intervention such as

¹⁰ For instance, the Wolfenden Report stated, against the conventional ideas of its time, that 'homosexual behaviour between consenting adults in private should no longer be a criminal offence'. This decision was based on personal autonomy, -that is, in the Report's language, on the idea that the law should 'give to individual[*sic*] freedom of choice and action in matters of private morality'.

¹¹ It has served, for instance, as the basis for arguing against a ban of the Montreal club L'Orage, whose purpose was to 'permit couples and single people to meet each other for group sex' (R.v. Labaye).

¹² See, for instance, *Paris Adult Theatre I v. Slaton* (No. 71-1051) on pornography and the US Patient Self-Determination Act.

¹³ Indeed, as Sellers (2008, 2) writes, "Privacy" is the negative expression of the positive value expressed by "autonomy." Autonomy signifies the right to decide for oneself. Privacy signifies that zone in which no others may interfere'.

¹⁴ It has also influenced the development of privacy law, which regulates the use of personal information about individuals and is generally designed to protect individuals from unwanted breaches of their privacy.

¹⁵ Mill (1859) formulates the harm principle as the following: 'The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others'.

mandatory state education, and they are placed under the tutelage of guardians (usually their parents) who are held responsible, under the law, for the children's welfare (Diduck & Kaganas 2012, 174-6).¹⁶ A momentous loss of competency provoked by psychosis or altered mental states can also justify paternalistic interventions. For instance, when a patient refuses a medical treatment, her desire can be bypassed if she is not considered competent at the moment of the decision (Buchanan 2004). Likewise, judges can order long-term psychiatric treatment when an agent is seen as not competent enough to be declared criminally responsible (Morrissey 2003, 71). Finally, state action can also be justified in cases of imperfect autonomy. This can happen in one of two cases. The first one is when it is considered that an agent does not possess sufficient knowledge to make an informed decision.¹⁷ Laws preventing people from buying potent medicine without a prescription fall within this category (Conly 2013, 4).¹⁸ The second case is when citizens' cognitive biases and impulses are thought to prevent them from satisfying important interests. Recent research on our (arguably) heteronomous bias has made 'soft paternalism'—that is, incentives, and nudges—increasingly and widely accepted as legitimate in crucial areas of our lives.¹⁹ For instance, while curtailing the option of smoking altogether is not considered permissible in liberal countries, it is now common practice to disincentivise this habit by making it wildly expensive, restricting smoking areas in public spaces and displaying gruesome images on cigarette packs.²⁰

II. Feminist Dissatisfaction with Autonomy

Precisely because of its importance, autonomy and the conception of the political agent it underlies have attracted much of the feminist criticism directed towards liberalism. For instance, Jennifer Nedelsky (1989, 8) writes the following:

¹⁶ In some jurisdictions, serious mental illness or mental disability also generates positive duties to ensure the welfare of the agents thus affected. See, for instance, Alberta's Adult Guardianship and Trusteeship Act, SA 2008, c A-4.2.

¹⁷ Even John Stuart Mill, one of the most ferocious opponents of paternalism, states that stopping someone from crossing a bridge was legitimated, if he does not know it is broken.

¹⁸ Given the complexity of modern medicine, the lengthy study required to become competent at identifying and treating illnesses, as well as the high risks implicated by a mistake or a misdiagnosis, it is thought legitimate for the state to restrict the autonomy of its citizens in this area.

¹⁹ As noted by Sarah Conly, recent research in behavioural science tends to show that far from being rational, self-conscious and reflexively critical, we are rather fragile heteronomous beings with imperfect capacities to make good decisions for ourselves.

²⁰ Other interesting examples of nudges that some liberal countries have adopted are making organ donation the default option and making the subscription to a universal health-care regime mandatory. See Thaler & Sunstein 2008.

The notion of autonomy goes to the heart of liberalism and the powerful, yet ambivalent, feminist rejection of liberalism. The now familiar critique by feminists and communitarians is that liberalism takes atomistic individuals as the basic units of political and legal theory and thus fails to recognize the inherently social nature of human beings. Part of this critique is directed at the liberal vision of human beings as self-made and self-making men [...]. The critics rightly insist that, of course, people are not self-made. We come into being in a social context that is literally constitutive of us.

It may seem exaggerated to reject liberalism as a whole because the conception of autonomy it favours does not encompass the social dimension of our lives. At first glance, this criticism might seem to be merely descriptive, pointing to the unrealism of understanding self-determination without taking into account the importance of social influences.²¹ In response, one might be tempted to argue that autonomy is a work of abstraction and that abstract ideals necessarily ‘bracket out’ and exclude the contingent characteristics of real world agents, such as the ‘inherently social nature of human beings,’ in order to emphasise the relevant normative features of self-determination. One might point out that such an abstraction is unavoidable for normative theorising (or even theorising as such) in order to make sense of the world, and to formulate the principles that should guide our reasoning and actions.²² These observations would be true indeed. The work of abstraction that concepts such as that of ‘individual autonomy’ presuppose is necessary if we want them to serve their normative goals. As noted by Onora O’Neill (1996, 40), this work of abstraction is ‘theoretically and practically unavoidable [...] All uses of language must be more or less abstract; so must all reasoning’. This means that the understanding of autonomy we adopt will necessarily ignore aspects of concrete individual self-determination, such as the fact that human beings are neither ‘self-made’ nor ‘self-making’.

What I mean to show in this section is that understanding feminist criticisms as primarily directed towards the unrealistic portrayal of agency the liberal ideal of autonomy presents misses the point. What feminist criticisms point to is that the selective omissions this ideal operates are neither normatively neutral nor harmless. Likewise, what is picked out as the salient features of idealised autonomous self-determination is not problematic mainly because it is unrealistic and assumes, for instance, ‘transparent self-knowledge’ or ‘archangelic insight into

²¹ Additional examples of such criticisms are the charge that human beings are not self-creating or independent from one another and that we need others in order to become autonomous and to exercise our autonomy in meaningful ways (Code 1991). Yet another criticism is that the nature of the human psyche makes it nearly impossible to possess the self-consciousness, self-transparency or internal coherency thought necessary to direct ourselves following our autonomous desires (Friedman 1986).

²² John Rawls (1993, 45–46), for instance, stresses that ‘the work of abstraction . . . is not gratuitous: not abstraction for abstraction’s sake. . . the deeper the conflict, the higher the level of abstraction to which we must ascend to get a clear and uncluttered view of its roots . . . formulating idealized, which is to say abstract, conceptions of society and person . . . is fundamental to finding a reasonable political conception of justice’.

others' preferences' (O'Neill 1987, 56). It is because it has problematic consequences on the political and legal levels. Addressing these criticisms, therefore, is not simply a matter of correcting the misleading sociological or/and psychological picture that this ideal draws. Rather, it is a matter of reframing this ideal in order to ensure that it does not inadvertently reproduce problematic symbolical, social and political consequences.

In this section, I regroup and summarise feminist dissatisfaction with autonomy under two broad categories. Criticisms regrouped under the 'problem of exclusion', point to the ways the liberal ideal of autonomy contributes to the reproduction of a problematic gender, class and race exclusionary hierarchy of value, which privileges and valorises dominant social identities (that is, among other things, identities such as 'men', 'white', 'upper-middle class') and denigrates others on the political and legal levels. They underline how what the ideal of autonomy emphasises as well as what it excludes undercuts, in practice, the liberal equality of respect as it implicitly contradicts the postulate that everyone should be seen as equal. The second type of criticism I examine in this section is regrouped under the 'problem of oppression'. This type of criticism underscores the inadequacies individualistic understandings of autonomy lead to with regard to oppressive norms/social context/relationships. As Lisa Schwartzman (2006, 566) notes, '[t]he effects of oppression can be deep seated and yet invisible, and [...] attempts simply to "abstract" from all knowledge about the social structure may backfire and implicitly endorse the effects of dominant ideologies'. Thus, criticisms pertaining to the problem of oppression point to the fact that excluding considerations relative to the socio-relational context cannot be justified because these features are not necessary nor normatively relevant to people's autonomy. The fact is that our socio-relational context is fundamental to our ability to lead a self-governed life, and ignoring this fact can lead us to turn a blind eye towards the way social structures unequally restrict and/or enable our autonomy.

A) The Problem of Exclusion

According to the *Oxford Dictionary*, to 'exclude' someone means 1. to deny her access to a place, group, or privilege and/or 2. to remove her from consideration. In the case at hand, the exclusion I refer to can apply either to the agent or to her preference. Autonomy, indeed, is either used as a global qualifier, which applies to the agent as such, or it can be used locally and attributed to a particular preference the agent adopts or to a given choice she has made. In this regard, to exclude someone as not properly autonomous entails denying her the status of

autonomous agent and the political privileges that go with it (e.g. equal respect and consideration, attribution of the rights and freedoms necessary to make one's own decisions unimpeded). When applied locally, the exclusion of a particular preference or choice entails not considering them as stemming from the autonomous will of the agent, and thus as not raising the liberal duty of respect and consideration. In practice, this may mean excluding the preferences and interests that are deemed non-autonomous from political considerations.

Criticisms regrouped under the 'problem of exclusion' can thus be summarised as the following: adopting an individualistic conception of autonomy is problematic because it can lead us to deny certain people the status of autonomous agent and to remove their desires from political consideration. Given how autonomy is linked to equality and respect, excluding someone as not properly autonomous thus implies denying her status as a moral equal, who is as worthy of respect and consideration as we are.

The fact that the concept of autonomy is exclusionary may not, in itself, be a problem. In order to be useful, concepts have to possess a determinate application: they ought to apply only to the class of entity or phenomenon they aim at characterising, thus excluding others. The problem is that individualistic conceptualisations of autonomy lead to patterns of exclusion that are unfairly discriminatory towards particular social groups.

Thus, feminist criticisms regrouped under the problem of exclusion point to the following: what gets selected as the normatively relevant features of idealised autonomous self-determination favours dominant identities. Moreover, what gets excluded and omitted renders it more difficult to manifest recognisable autonomy for women—especially those from minority groups. This, in turn, leads to problematic consequences on the political and social levels, as it participates in the systematic devaluation of preferences and social roles coded feminine and indirectly reinforces current systems of domination.

1. Symbolic Exclusions

Feminists have often underscored how autonomy is modelled after attributes symbolically associated with masculinity. This, in turn, opposes this ideal to traits, values and modes of self-determination symbolically associated with women. Lorraine Code (1991, 359), for instance, argues that autonomy is associated with the ideal of the 'autonomous man' who is 'self-sufficient, independent, and self-reliant, a self-realizing individual'. Based on this understanding of autonomy, other people are conceived mainly as threats to the independence of the

autonomous man: his autonomy depends on protecting himself from their undue intrusion (Nedelsky 1989). Autonomy-as-independence can then be said to reproduce a gender hierarchy of values in which masculinity is associated with independence while femininity is primarily linked to dependence. Feminists such as Simone de Beauvoir have stressed how, on the symbolic level, women are primarily defined by their relationships to others: they are the ‘second sex’, dependent on men for their self-definition (de Beauvoir 1949; Friedan 1963).²³

A related and often voiced concern stresses the alignment between autonomy and individualism. The fact that independence is seen as a condition of autonomy seems to imply a certain form of rational selfishness (Code 1991) that is radically opposed to responsibility, consideration and care for others. ‘Men’, writes Friedman (2000, 36) ‘are supposed to “stand up like a man” for what they believe or value, including the simple assertion of their self-interest. By contrast, women are supposed to “stand by [their] man”’. They are, in other words, supporting, secondary actors whose primary function is to care for others. One of the most recurrent virtues symbolically associated with femininity is, after all, selflessness: the entire and absolute dedication of ‘good women’ to others. One needs only to recall the archetypal figure of feminine virtue haunting Virginia Woolf in *Professions for Women* (1942): the ‘utterly unselfish’ Angel in the House, who is ‘so constituted’ that she prefers to ‘sympathize always with the minds and wishes of others’.

A third object of feminist criticism is the association of autonomy with rationality. Genevieve Lloyd (1984), for instance, demonstrates that the common philosophical presumption of rationality as a neutral and universal ideal can be seriously questioned. She shows that rationality has historically been conceptualised so as to exclude anything that was perceived as feminine. Whereas reason is male, argues Lloyd, its antithesis –irrationality and emotionality—is female.²⁴ Rather than being a clearly identifiable faculty, universally possessed by humankind, reason is thus a culturally situated ideal; it is a normatively loaded term that has served as a status marker for (white) men from Western cultures.²⁵

In addition to being construed as against femininity on the symbolic level, the autonomy ideal also problematically excludes certain types of subjectivity. Nancy Chodorow (1978) and Carol Gilligan (1982), who can be considered as major influences in the

²³ Similar criticisms are formulated by communitarians. See, for instance, Sandel (1982).

²⁴ Likewise, Susan Hekman (1991, 57) notes that ‘[f]or centuries the conception of the feminine subject as irrational, passive, and emotional has been influential in excluding women from the political sphere’.

²⁵ Rationality has also served in colonialist discourses claiming the superiority of Western culture on others and legitimising imperialism. Kipling’s poem (1899), ‘The White Man’s Burden’, provides evidence of this. For other discourses legitimising colonialism on the grounds of white men’s duty to bring rationality to people deemed ‘primitive’/‘irrational’/‘childish’, see the anthropologist Levy-Bruhl (1926).

development of the relational conceptions of autonomy, were the first to formulate this type of criticism. To put it simply, they argue that the psychic development of males and females differs, given that mothers tend to assume the role of primary caregiver. Whereas the relationship of the mother with her son encourages the individuation and differentiation of the infant boy from his female caregiver, daughters tend to identify with their mother and develop fuzzy egos (Chodorow 1978). This, in turn, leads to different types of subjectivity and to different types of self-determination. Following Evelyn Fox-Keller (1985, 97), men adopt the model of autonomy-as-independence (which Fox-Keller calls ‘reactive autonomy’), whereas women’s sense of self is derived from others, which make them empathetic, conscious of their dependence on others and open to their needs. This is not necessarily due to innate characteristics but rather to the combination of the gender norms which structure individual subjectivity and the way sexual differentiation operates. In practice, the result is that autonomy, as traditionally conceived, is ill-equipped to account for the subjectivity and type of self-determination of many women.²⁶

Critical race theorists and post-structuralist thinkers formulate a similar criticism. Specifically, they argue that the ideal of autonomy, requiring as it does a sort of internal coherence achieved through critical self-reflection, problematically excludes the subjectivity of ‘intersectional subjects’ and ‘border dwellers’ (Meyers 2000a; Lugones 1990). In addition to pointing to ways in which the self-transparency and reflexive self-consciousness demanded by the autonomy ideal is unrealistic, some feminists seek to show that internal coherence is much easier to achieve for members of the dominant group, who have little reason to question the desires and norms stemming from their group affiliation (Barvosa-Carter 2007, 10). As Gloria Anzaldúa explains, someone with a ‘mestiza consciousness’ will have to grapple with contradictions among her identities and negotiate between competing value systems and sets of meanings linked to these identities in her everyday life: she will experience daily struggles between her different desires. Maria Lugones (1990) presents a compelling illustration. As a lesbian, she is committed to combatting heterosexism. She also strongly identifies with her Latina identity, which is structured by traditional gender norms that are not quite compatible with homosexuality. This situation leaves her no alternative but to maintain a divided identity and ambivalence towards her conflicting identities. Diana Tietjens Meyers (2000a, 157) stresses that having such a conflicting identification can also present one with difficult ‘political

²⁶ This line of argument, which regards 1) men’s and women’s self-determination as significantly different and 2) presents feminine modes of self-determination as somewhat more valuable than men’s, is not without critics among feminists. See, for instance, Hirschmann (2014).

conundrums'. For instance, a black woman might find herself in an identity double bind as her 'commitment to antiracist politics may entail tolerating sexism, and commitment to feminist politics may entail tolerating racism' (Meyers 2000a, 157). In this respect, linking autonomy to internal coherence problematically excludes the subjectivity of border dwellers who identify both as members of a specific minority and as members of the larger community. Yet, the cognitive struggle encountered by agents with multiple identity commitments can, in fact, provide precisely the critical distance from which to reflect, endorse, reject or transform the norms and outlooks stemming from her affiliations (Barvosa-Carter 2007, 8). This internal negotiation, in turn, can be interpreted as more conducive to autonomy, given that it forces the agent into the creative process of finding her own law (Meyers 2000a).

2. Political Inadequacies

Of course, even though rationality, independence and individualism are not symbolically associated with femininity, this does not mean that real women are necessarily less rational/independent/individualist than men. Likewise, women's tendency to have (arguably) more trouble developing a psychological sense of independence does not entail that they should not aspire to be independent (Hirschmann 2014). The problem is that these symbolic exclusions translate, on the political level, into concrete forms of injustice and discriminatory exclusions. The ideal of the 'autonomous man' is still taken as a model to emulate in our society. It still underlies politics, laws, as well as popular culture, while the binary construction of male/female continues to structure the gender models that are available in our society and continues to influence social perceptions of both men and women. The fact remains that in our current social order, the association of autonomy with independence and individualism factually excludes more women than men. Gender norms still make it far more likely for women to be dependent on others, as their role as the primary caregivers of their family often leaves them dependent on the income of their partners. Moreover, the type of traits socially valorised in women –that is, empathy, care, and generosity– seem to be incompatible with autonomy, when this ideal is aligned with individualism. This, in turn, makes it more difficult to emulate autonomy for people who are not Western (white) males. More importantly, however, it also makes it more difficult for others to acknowledge and recognize the autonomy women manifest. Exclusions on the symbolic level thus contribute, in practice, to reinforce and reproduce gender inequalities.

Historically, autonomy has been mobilised to justify the exclusion of women from the political sphere. Seen as emotional, irrational and incapable of thinking for themselves, women were considered as eternal minors, unworthy of bearing the status of autonomous agents. The same has been true for members of many minority groups. Even if such a gross discriminatory exclusion is no longer acceptable or possible, women's autonomy, especially the autonomy of women from minority groups, is still often assumed to be somewhat more fragile than that of men. I use concrete cases to further demonstrate this point in Chapters 5, 6 and 7. However, to offer a quick and evocative example here, one need only think of the recurrent controversies surrounding the veil, where it is often assumed that women cannot autonomously choose to wear such a religious symbol.²⁷ This, in turn, partly supports arguments in favour of paternalistic bans, in spite of women's claims that wearing the veil is their own choice.²⁸ Women are thus still the main targets of paternalistic interventions, and their autonomy is much more likely to be put under scrutiny and questioned than that of men, as debates surrounding domestic violence, prostitution, surrogacy and the like demonstrate.

This leads to an epistemological problem: the association of the ideal of autonomy with symbolically masculine traits leads to a failure to recognise manifestations of autonomy by women. This, in turn, reinforces testimonial injustices against women. This type of injustice occurs when a speaker is given less credibility than deserved because of prejudices related to her identity (Fricker 2007, 27-8). Epistemic authority is linked to receiving the status of autonomous agent, given that such status gives its bearer the authority to make his own decisions and have his desires taken into account. By contrast, putting an agent's autonomy under question or identifying her desire as non-autonomous gives others no duty to take this desire into account or to grant her epistemic authority. As Beate Roessler (2015) argue, this type of injustice can destroy the agent's sense of self-trust, which, in turn, further undermines her autonomy.²⁹ In this respect, the association of autonomy with traits associated with masculinity reinforces bias against women and contributes to robbing women of their epistemic agency and autonomy. Among other things, some feminists argue that it contributes to the

²⁷ The recent debate on the burkini in France is illustrative of this.

²⁸ See Hirschmann (1997) and Djavani (2003).

²⁹ In Roessler's words (2015, 79): '[e]pistemic injustice can undermine or destroy the basis of autonomy in undermining the self-knowledge and the self-worth of a person, which are constitutive for her autonomy. Without self-worth or self-respect and without "knowing herself," a person cannot act autonomously as a rational agent, cannot reflect on what she wants to do, and cannot follow her project in the necessary self-confident way'.

systematic disbelief that the testimonies of victims of gender crime, such as domestic violence and sexual assault, encounter.³⁰

Autonomy has also been criticised because of the way it leads us to understand the role of the state. For instance, some take issue with its fostering of a demeaning attitude towards people who are dependent on the state for their subsistence. As Jonathan Herring (2014, 17) puts it, '[t]he assumption [...] is that everyone is responsible for their own well-being. We should be self-sufficient [...] being dependent on others or offering care to dependants is seen as antagonistic to the autonomous ideal'. This assumption, in turn, leads to framing women on welfare or women seeking child support as inadequately autonomous. On the political level, as Jennifer Nedelsky argues (2011, ch.3), it encourages legislators, administrators and politicians to treat these individuals in demeaning and paternalistic ways.

Finally, autonomy is perceived as problematic due to its tendency to devalue care work and represent it as not properly part of an autonomous life. This type of work, in turn, goes unrecognised and unsupported on the political level, further reinforcing inequalities of economical means and power between the sexes (Herring 2014, Nedelsky 2011). Yet, care work is not just one of the options among the many available to autonomous agents. It is a necessary and integral part of human existence. Hence, Nedelsky (1989, 12) writes that '[i]f we ask ourselves what actually enables people to be autonomous, the answer is not isolation, but relationships —with parents, teachers, friends, loved ones—that provide the support and guidance necessary for the development and experience of autonomy'. In this respect, if the ideal of autonomy excludes responsibility and care for others, then it seems that it is conceptually flawed. We need caregivers and responsible agents in order for society to function and for individuals to become autonomous. If our conception of autonomy leads us to deny autonomy to the very types of actions that make it possible to become autonomous in the first place, it seems that this is both untenable and incoherent.

B) The Problem of Oppression

If there is an important need to fully acknowledge the types of agency that are mostly associated with women as worthy of respect, there is also a need not to reproduce the *status quo* of 'gender subordination, in which 'women' were coerced into particular roles and identities through socialization' (Hutchings 2013, 16). In this respect, another important line of criticism concerns the failure to consider the implication of socialisation for autonomy. That we cannot

³⁰ See, for instance, Schneider (2000, 80-83) regarding the types of epistemic injustice encountered by female victims of domestic violence. We will return to this issue in Chapters 6 and 7.

become autonomous in a void implies that we need meaningful emotional connections with others and, more generally, a cultural context in order to become autonomous. Yet, this social context without which we cannot become autonomous or exercise our autonomy in any meaningful way can also reduce our autonomy in certain ways. In this regard, failing to devote sufficient attention to the social context leads to ignoring the power dynamics and (oppressive) norms existing within it. Catriona Mackenzie and Natalie Stoljar (2000, 21) describe this as the socialisation problem, which they view as underlying ‘the impetus toward the development of relational approaches to autonomy’. As the socialization problem specifically concerns the threat oppressive socialisation poses to personal autonomy, I refer to this issue as ‘the problem of oppression’ in this thesis.

1. What Is Oppression?

While oppression constitutes a major concern for feminists (James 1998, 576), it remains difficult to find a clear and comprehensive definition of this concept. I propose a general characterisation of oppression here, based on Iris Marion Young’s account (1990, Ch. 2), as it can account for the types of phenomena feminists would generally want to characterise as oppressive. I will return to this topic in Chapter 3.

‘Oppression’ is a group harm: it designates the structural disadvantage and injustice some people suffer as members of a social group. A ‘social group’ is a collective of persons who share similar traits, practices and/or ways of life.³¹ Oppression is also a structural harm. This means that for an injustice to count as oppressive, there is no need to identify a particular group or person as the oppressor. This enables us to acknowledge that everyday practices of well-intentioned members of society can create systemic, though not necessarily intentional, constraints on some groups of people (Young 1990, 41). If these constraints are unjust, then they are oppressive. Cultural stereotypes, unconscious bias underlying the everyday interactions of well-meaning people and structural features of social and political institutions can all have the unintended effect of systematically and unfairly disadvantaging members of a social group. In this respect, they can be called oppressive.

The notion of ‘unfair disadvantage’ is a bit more difficult to define. As Judith Shklar (1990, 16) remarked, while philosophers debate how to define the concept of ‘justice,’ they

³¹ As noted by Amy Cudd (2006, 37-50), the association of an individual with a group can be voluntary (religious communities, friendship groups, teams, etc.) or non-voluntary (culture, sexual orientation, gender, ethnic background).

have mostly ignored the issue of ‘injustice’.³² For our purpose, however, it remains important to adopt at least a minimal characterisation of injustice. Given that what constitutes a ‘just’ inequality is mostly a matter of justification, let us define ‘injustice’ as an unjustified inequality. Although injustice and inequality are often regarded as synonymous, the two terms are not equivalent: there are certainly some inequalities that can be justified.³³ Of course, what constitutes a justification is likely to be subject to debate. For now, however, let us recognise that there are many inequalities, especially inequalities that affect individuals because of their group affiliation, that are widely recognised as unjustified and, therefore, as unjust. This intuitive understanding of ‘unfair disadvantage’ should be sufficient for the argument I will make later in this chapter.

2. Conceptual Inadequacies

Feminists have been dissatisfied with the ideal of autonomy as it is blind to the problem of oppressive socialisation. This ideal presumes that human beings can be independent from one another and leads to problematically ignoring the role that social context plays in the constitution of the capacities needed to be self-determined. Marilyn Friedman (2003), for instance, highlights the inadequacy of hierarchical theories of autonomy in dealing with the problem of oppression. As she points out, these accounts either ignore the problem of oppressive socialisation or tend to assume the existence of an authentic higher self, which emits preferences that remain untainted by the influence of the oppressive social context. Yet, there seems to be no reason to assume that someone’s higher-order preferences are not also produced by the social context in which she finds herself. Likewise, Paul Benson (1991) and Jennifer Warriner (2015) point out that a person who has been thoroughly socialised to internalise certain oppressive norms is unlikely to revise her desires as a result of critical reflection. In other words, mainstream liberal theorists are said to ignore what some feminists view as the gist of the problem of oppressive socialisation. As Marilyn Frye writes, ‘[e]fficient exploitation requires that those exploited be relatively mobile, self-animating and self-maintaining’ (Frye 1983, 59). Hence, oppressive structures can maintain themselves through time only if they successfully convert (at least some of) the very people they oppress.

³² For the most part, it has simply been assumed that it was the concept ‘justice’ that enabled us *de facto* to define the contours of injustice. As pointed out by Shklar, this assumption seems both unhelpful and inaccurate: such a definition does not, for instance, enable us to differentiate between misfortune and injustice.

³³ Rawls (1971) second principle of justice, is a good illustration of this point.

3. Political Inadequacies

The fact that the ideal of autonomy ignores or fails adequately to account for the problem of oppressive socialisation leads, from a feminist perspective, to profound political inadequacies. Respect for voluntary choices is indeed a central feature of liberalism. Yet, as we have seen, preferences, attitudes and values tend to be differentially distributed on the basis of sex. This results in gendered choices that perpetuate income and power disparities among men and women and, in turn, reinforce the existing gender hierarchy. When it problematically ignores the impact socialisation can have on people's choices, liberalism gives these gendered choices the same normative weight as other desires. These choices are understood as raising the same duty of respect and non-interference as other individual preferences, even if they reinforce and perpetuate injustice. This is not to say that feminists would necessarily want all desires that reinforce the global gender structure to be considered non-autonomous. The issue, as Diana Tietjens Meyers points out, is much more complex.³⁴ Yet, the status of those choices, and what can be legitimately done about them, should be addressed within a theory of autonomy if it is to be of any use to feminists.

Another problematic feature of the mainstream liberal understanding of autonomy further reinforces this problem. As Nedelsky (2011) notes, because it assumes independent and self-sufficient agents who are capable of living their lives independent of others, the ideal of autonomy creates a problematic dichotomy between the individual and the collective. This ideal suggests that measures that promote the common good can only be brought about by infringing on individual autonomy. This, in turn, leads to a framing of any interference in the lives of individuals as illegitimate and paternalistic even when it can potentially help foster greater autonomy. It leaves no possibility to justify interventions in oppressive contexts—at least, as long as there is no gross discrimination or violence—as such an intervention is seen as illegitimate infringing on individual autonomy. In this regard, the liberal commitment to respecting people's choices, paired with its lack of attention towards the effect of gendered social structures on individuals' autonomy, make it impotent at best and complicit at worse, in reproducing the subjection of women (Levey 2005).

³⁴ Meyers poses it in terms of a conundrum (1989, xi): 'If women's professed desires are products of their inferior position, should we give credence to those desires? If so, we seem to be capitulating to institutionalized injustice by gratifying warped desires. If not, we seem to be perpetuating injustice by showing disrespect for those individuals'.

III. The Relational Conceptions of Autonomy

A) Why Keep Autonomy?

As its feminist critics argue, the liberal ideal of autonomy that underlies our political and legal systems can be understood as fundamentally flawed as it proves hostile to women and to women's interests. Why, then, is there an on-going reliance on this ideal if it leads to such grievous problems? There are at least three reasons that justify the continued vested interest feminists have in this ideal. These reasons, in turn, explain why many feminists have attempted to reframe autonomy rather than abandon this concept altogether. They also point to the fact that in spite of its current flaws, autonomy is still an important ideal for feminism that we should be wary of dismissing or disinvesting.

The first of these reasons is the fundamental role autonomy plays in Western societies. Whether we like it or not, within a liberal political system, autonomy still defines what constitutes a full-fledged agent, worthy of respect and consideration. It is crucially linked to both equality and to respect on the political level, which are two concepts that remain central for feminists. Autonomy determines what interests are worthy of consideration on the political level and, conversely, what options should be given to citizens as well as what preferences raise the liberal duty of respect. We can, of course, deplore the centrality of autonomy to liberalism and either reject liberalism as such or the importance it attributes to autonomy. Yet, it is difficult to avoid discussing autonomy altogether, especially if, as theorists, we are concerned with gender inequalities within Western liberal societies. Given how autonomy is woven into the very fabric of our political life, it seems unlikely that it will lose its place as one of the defining features of liberalism anytime soon. As feminist criticism notes, as it currently stands, this ideal is intrinsically linked to patriarchy and to the reproduction of an unjust and hierarchical social order that demeans and marginalises certain social identities. It thus seems problematic to ignore this ideal or to simply wish away its political importance and its normative consequences. Simply rejecting autonomy is unlikely to do much in terms of alleviating the normative imports this ideal has in our political system. In this respect, it remains important to redefine autonomy if we do not like the way it has been defined for us.

Second, autonomy remains central to feminism, insofar as feminist theorising remains centrally concerned with women's emancipation.³⁵ Being concerned about emancipation means ensuring that women do indeed have the ability to lead lives of their own choosing and do not

³⁵ Following the *Merriam-Webster Dictionary*, the term 'emancipation' means: 1. 'to free from restraint, control or the power of another'; 2. 'to release from paternal care and responsibility'; 3. 'to free from any controlling influences'.

have their lives defined for them. Yet, the working of feminist politics itself can sometime inadvertently reproduce the very paternalistic dynamics that feminists criticise as prohibiting women's emancipation. Without the will to respect women's autonomy, feminist politics faces the risk of merely displacing the coercive constraints that the patriarchal social order places on women. In this regard, it remains important not to abandon the ideal of autonomy as a central concern for feminism. Respect for autonomy can act as a necessary safeguard against our own pretensions to raise, as universal dictates, our own situated conception of the good. Thus, whether it is explicitly admitted or not, concern for autonomy remains central for feminists who believe that women's emancipation should be able to take a plurality of forms.

Third, autonomy is also vital for feminist theorising insofar as it enables us to study and understand subjection, oppression and agency (Mackenzie & Stoljar 2000, 3). It can be argued that feminists do not need a concept of autonomy that accounts for the problem of oppressive socialisation in order to denounce norms and social conditions that lead vulnerable individuals to reinforce their own vulnerability. What we need instead is to study oppression directly. However, identifying oppression is intrinsically linked to understanding autonomy. One of the reasons why oppressive social structures are so difficult to uproot and eliminate is, indeed, because they are often invisible. As Nancy Hirschmann (2003, 77-93) explains, an oppressive social structure does not merely constitute a 'misrepresentation of reality' which artificially deforms our 'authentic' desires and our 'true' selves. When oppressive ideologies such as sexism are normalised, they become an integral part of our understanding of the world and of who we are. They acquire a material reality and become constitutive of our social identity, and self-conception. They give shape to our desires and meaning to our actions, and determine how we interpret our social reality. Given the way oppressive norms become imbricated in the fabric of our social reality, it is highly difficult to identify them directly or to denounce them as problematic. It is often indirectly, through their effects on individual self-determination, that one can identify such problematic norms. When members of a given social group seem to adopt preferences for options that are socially devalued, and when they are significantly less likely to occupy socially valorised positions, suspicion should be high that oppression is at play as much in the social construction of value and meaning, as it is in the creation of constraints and barriers.³⁶

³⁶ As Nancy Hirschman (2003, 94) writes, '[t]he social choices that we make, the fact that certain options are available and others are not is thus a social construction in the most obvious, tangible sense. The availability of options relates most obviously to the concept of restraint or barrier, which is also socially constructed in this same sense [...] They are not "natural" or "inevitable" but rather reflect cultural assumptions of how women should

Of course, as it currently stands, the ideal of autonomy often serves to reinforce our current blindness to oppression. Because it leads us to regard the choices people make as detached from the social context in which they are made, an individualistic understanding of autonomy cannot be of much use to identify the oppressive structures of norms and expectations that constrain women's self-determination. Yet, as many feminists postulate, rather than abandoning concerns for self-determination, this observation should motivate us to redefine the ideal so as to include concerns for the social forces that construct and constrain individual choices and preferences.

B) The Relational Accounts of Autonomy

In consideration of its central role for both feminism and liberalism, autonomy remains an important ideal for feminists. It acts as a bridge between the need, on the one hand, to offer legitimising grounds to tackle oppression without, on the other hand, abandoning the commitment to emancipation that feminism has in common with liberalism. Yet, as it is currently understood and conceptualised, autonomy can hardly serve these twin goals. Ignoring the social hierarchy of value that currently underlies this ideal and the way it favours dominant social identities both serves and supports the reproduction of exclusionary patriarchal dynamics on the political, social and legal levels. Likewise, 'bracketing' considerations relative to the social context out of autonomy can serve to hide oppressive dynamics and legitimate the *status quo*. This is why many feminists have tried to reframe autonomy in order to alleviate these problems.

These attempts to refigure autonomy in a way that captures the social dimension of agency have received the name of 'relational autonomy' in the literature. As Catriona Mackenzie and Natalie Stoljar (2000) point out, 'relational autonomy' constitutes an 'umbrella term' and does not designate a single unified type of account. Rather, relational accounts present an eclectic collection of understandings of self-government. What these accounts share, however, is an emphasis on the social dimension of auto-determination and the will to arrive at an account of autonomy that is useful to feminist goals. Apart from that, relational views diverge widely (Mackenzie 2008, 519). As we will see in the following chapter, some frame personal autonomy as 'relational' mainly because they consider that social relationships contribute to the development of this capacity and can constitute a distorting influence in the formation of

behave and, derivatively, of the social meaning and significance of femininity, that is, what it means to be a "woman" in particular contexts: in short, the ideological construction (or misrepresentation) of reality'.

certain preferences. Others view the social context as constitutive of the capacity itself. Some relational accounts focus on autonomy as a local property of certain preferences, whereas others frame it as a global attribute of individuals that can only be assessed when one looks at the social conditions that structure the agents' lives as wholes. There are also many debates among relational theorists concerning what social conditions are necessary for autonomy.

Precisely because there is no easily identifiable formal feature that makes an account relational, these attempts to recast autonomy have been received with a healthy dose of scepticism within the literature. John Christman (2004, 146), for instance, writes that 'there is nothing about a social conception of 'self' that is incompatible with an individual conception of autonomy'. Indeed, it is not always clear what relational accounts have to offer that is fundamentally different or new compared to mainstream understandings of autonomy. Clearly, we might criticise the individualistic focus of some liberal conceptions of autonomy.³⁷ Yet, there are others who explicitly claim a compatibility of autonomy with caring relationships and social interdependence. The accounts devised by Joseph Raz (1986) and Gerald Dworkin (1988) constitute good examples of this. There is also a general acknowledgement, in the liberal literature on autonomy, that the competency for autonomy can be threatened and damaged by social obstacles such as coercion, manipulation and brainwashing. If existing accounts of autonomy can accommodate the social dimension of autonomy relational theorists have emphasised, is there any room left for alternative understandings of autonomy that would be distinctively relational?

In response to these questions, Christman (2004) has suggested that only those views that treat social relationships as conceptually necessary for autonomy offer something that is distinctively relational. He thus proposes to define 'relational accounts' as frameworks in which socio-relational factors play a constitutive role in the definition of autonomy itself. Conceptions of autonomy in which the socio-relational context merely makes a causal contribution to the development or sustenance of the capacity for autonomy would not count as relational (Westlund 2009, 26).

Christman is right to point to the fact that most liberal conceptions of autonomy, if they do not already explicitly incorporate considerations regarding the social dimension of autonomy, are nonetheless compatible with such concerns. He is also correct in his assessment that there is nothing radically new or different with the accounts relational theorists have devised –that is, with the exception of those that consider certain social conditions as

³⁷ Frankfurt's influential conception of autonomy can be viewed as one of these accounts 'devoid of any reference to social dimensions or conditions of autonomy', notes Marilyn Friedman (2003, 91).

constitutive of autonomy. Yet, I want to argue that trying to find a characteristic specific to relational accounts misses the point and leads to define such accounts in terms that are much too narrow. Many accounts of autonomy associated with the relational literature do not fit the characterisation offered by Christman.³⁸ More importantly, as I have attempted to demonstrate in this chapter, attempts to detach autonomy from its individualistic connotations are primarily motivated by the will to avoid the problematic normative and political consequences that result from such characterisation. In this respect, the relational focus of the accounts devised by feminists can be framed as a by-product of the normative aims they had in mind: to address the problems of oppression and avoid that of exclusion.

I therefore do not subscribe to Christman's narrow definition of relational autonomy. In this thesis, I define 'relational' conceptions of autonomy as accounts designed to address the problem of oppression and the problem of exclusion, by integrating considerations pertaining to the social context. This general characterisation has the merit of being inclusive, as it can apply to all the theorists who are typically associated with the literature on relational autonomy. Yet, contrary to Christman's more precise definition, it does not identify any specific formal feature of a framework that would make it distinctively relational and distinguish it from 'regular' autonomy understandings.³⁹ As I have suggested, feminists are not dissatisfied with autonomy merely because of some formal features that make it unrealistically individualistic. Rather, they criticise this ideal because by omitting the social dimension of auto-determination, it leads us to ignore oppression and can serve to unfairly exclude women (as well as members of other marginalised social groups) from political consideration. Attempts to reframe autonomy should therefore be understood as aimed at addressing their dissatisfaction with this ideal. For this goal, it is not enough to say that social context influences the development and the exercise of autonomy.

First, it is not sufficient to avoid feeding into problematic exclusionary dynamics. Most liberal accounts primarily associate autonomy with independence, rationality and internal coherence. Though these accounts do not make traditionally feminine values and modes of

³⁸ See, for instance, the accounts devised by Friedman and Stoljar, which are usually understood as relational. In these accounts, the social context is not conceived as constitutive of autonomy. Moreover, it is not clear that the accounts devised by Westlund and Nedelsky are 'constitutively relational' either, in spite of Westlund's and Nedelsky's claims that they are. They could be as easily framed as causally relational. In this respect, the difference between constitutively relational and causally relational is far from being very clear or useful. We will return to this point in Chapter 3.

³⁹ If the reader is unsatisfied with this fuzzy characterization of relational frameworks, and considers that I am rather interested in feminist reconceptualisations of autonomy in general, I am happy to bite the bullet. My interest does not lie in the 'relational' marker *per se*. Rather, I am interested in formulating a conception of autonomy that avoids the important inadequacies feminists have underlined.

determination incompatible with autonomy, they nonetheless do not consider them as a necessary part of an autonomous life. This, in turn, does not answer feminist concerns, as it reasserts the hierarchy of values that potentially reinforces exclusionary power dynamics on the political level. There is a difference between arguing that autonomy should not be viewed as incompatible with social and relational commitments and explicitly reclaiming modes of agency traditionally coded as feminine as autonomous. Redefining autonomy in a way that explicitly negates the gendered hierarchy of values that has historically grounded understandings of autonomy seems to be, in this regard, what is needed to satisfactorily avoid the problem of exclusion.

Second, it is insufficient to address the problem of oppression. While most liberal theorists readily acknowledge that social obstacles such as manipulation and coercion threaten individual autonomy, few concern themselves with milder forms of oppressive socialisation.⁴⁰ Yet, gender norms are rarely enforced by manipulation or overt coercion. However, given the way they affect individual self-determination, in addition to the socio-economic inequalities they lead to on the political and social levels, it is important to answer the question of what can legitimately be done about them. Given that respect for autonomy defines the contours of legitimate state action, it remains important for an autonomy framework to directly address the status of gendered choices and preferences if it is to be useful for feminist purposes.

More importantly, however, philosophical conceptions of autonomy are not the main target of feminists. While it might be true that many liberal theorists are now careful not to exclude relational modes of agency, individualistic understandings of autonomy still very much underlie our political and legal systems, as well as our popular culture.⁴¹ In this respect, the main interest of relational accounts of autonomy is not that they satisfactorily replace mainstream philosophical understandings of autonomy. Rather, their main interest is that they attempt to transform the individualistic ideal that underlies many of our laws and policies on the political level to avoid its problematic social and political consequences (Nedelsky 2011). As argued earlier, feminist theorising requires autonomy, as an ideal, to underpin its normative projects. Therefore, the criticisms regrouped under the problems of exclusion and oppression do not point to the need to abandon this ideal altogether. What they point to, instead, is the

⁴⁰ There are important exceptions to this. The capability approach does consider the impact of milder forms of influences. It proposes objective ways to assess individual's well-being, since oppression might distort individuals' subjective perceptions of their situations. It is not clear, however, that the capability approach can be considered as an account of autonomy. See Crocker, 2008, Ch. 5.

⁴¹ See Jennifer Nedelsky's book (2011) and article (1989), which powerfully demonstrate how individualistic understandings of autonomy still shape bureaucracies, legal systems and various policies.

need to acknowledge that, as an abstraction, autonomy can never merely be ‘neutral’. It is always a normative ideal, and, as an ideal, it is subject to criticism and revision.⁴² Given the problems autonomy leads to, we have good reasons to attempt to revise and reform this ideal. Schwartzman (2006, 575) states the following:

The solution [...] is not simply to do away with all abstraction (and focus only on the concrete particularities of each and every individual), nor is it to eliminate all conceptions of the person or all use of ideals. The best way to approach this problem may be to pay attention to the kinds of abstractions, ideals, and conceptions of the person that the theory employs and to disallow those that are sexist and that reinforce or perpetuate women’s oppression.

Given the ramifications of autonomy on the political level, it is important to work towards conceptualisations of the ideal that neither ignore the problem of oppression nor reproduce the problem of exclusion. Understood in this way, feminist criticisms do not justify rejecting liberal accounts of autonomy altogether. A more accurate way of viewing relational reconceptualisations is to understand them as efforts to reform –rather than reject– liberal understandings of autonomy in a way that makes them more adequate for feminist aims. An important consideration is whether they succeed in offering better alternatives than mainstream accounts to guide political and legal praxis in a way that does not feed into and reinforce oppressive and exclusionary sexist dynamics.

⁴² See Anderson’s (2014, 91-116) discussion of what criticising and reframing an ideal like that of autonomy requires.

Chapter 2: Existing Relational Frameworks

Jennifer Nedelsky was the first theorist to spell out the idea of relational autonomy. In ‘Reconceiving Autonomy: Sources, Thoughts and Possibility’, she argues that the individualistic understanding of autonomy that underpins our political system yields problematic results as it is transcribed into juridical and bureaucratic frameworks. Women, she states (1989, 10), need a conception of autonomy that incorporates their ‘experience of embeddedness in relations, both the inherent, underlying reality of such embeddedness and the oppressiveness of its current social forms’. She argues for the adoption of a relational understanding of autonomy in which relationships are conceived as constitutive of individuals’ autonomy to guide both practice and theory, leaving the question of how such a conception ought to be developed open. Twenty-five years later, this compelling article has provoked the hatching of a growing and diverse body of literature on the concept of relational autonomy.

In this chapter, I critically examine the different relational accounts of autonomy that have developed so far. I evaluate them with respect to three criteria: 1. whether they enable us to address the problem of oppression; 2. whether they do this without falling back to the problem of exclusion; 3. whether they are operationalisable and could offer a credible replacement to the ideal of autonomy that currently underlies our laws and policies. I seek to demonstrate that none of the existing frameworks fully succeeds in satisfying these three criteria. I suggest that this is because most relational reconceptualisations remain too individualistic in their focus. They remain fixed on evaluating the individual competency of autonomy and mainly try to answer the question of what individual agent and/or preference should be considered autonomous.

Multiple attempts at definitions and classifications have been made to make sense of the growing diversity of these accounts. The more common classification divides them into two broad types: procedural and substantive (Stoljar & Mackenzie 2000). While the procedural accounts are seen as value neutral, the substantive accounts explicitly imply ‘non-neutral’ normative conditions.⁴³ In this chapter, I follow this general division. I understand the

⁴³ Diana Tietjens Meyers (2014), for her part, proposes the double axis thesis where accounts can be ranked using the value-prescriptive axis and the value-thesis one. Natalie Stoljar and Catriona Mackenzie (2000) propose a refined understanding of these accounts in five broad categories (structural, historical, competency models, strong and weak substantives) following a broad division between substantive and procedural conceptions of autonomy. Most commentator and relational theorists use this latter categorisation to make sense of the different relational accounts.

procedural accounts as those that frame autonomy as pertaining to the mental processes that underlie agency. These accounts can be local and concern particular preferences, desires or choices. Under a local account, if the mental process that led to the formation of a preference involves the right kind of competency, then it is properly autonomous and worthy of respect. They can also be global: if an agent possesses the right kind of emotional or mental competency, then she should be considered ‘globally’ autonomous.⁴⁴ I suggest that even in their most demanding form procedural accounts remain unconvincing as a means to address the problem of oppression.

By contrast, substantive accounts of autonomy are explicitly devised to deal with the problem of oppressive socialisation. Here too, autonomy can be viewed as a local property of certain preferences or as a global attribute of individuals. I argue that precisely because they are substantive and treat certain preferences, actions and/or social conditions as incompatible with autonomy, this type of account cannot avoid reproducing the problem of exclusion.

Finally, the last section of this chapter is dedicated to an account that evades this neat typology. Instead of focusing on ways to identify non-autonomous agents or non-autonomous preferences, relational accounts of autonomy developed by legal theorists such as Nedelsky seek to reframe laws and institutions in a way that would be more hospitable to autonomy-enabling relationships. Such a framework, I argue, offers valuable insight regarding the relation between individual autonomy and the socio-relational context. However, as it fails to offer clear normative guidance concerning what makes some social conditions autonomy-promoting and others autonomy-undermining, this type of framework does not fulfil its promises to serve as a suitable replacement for the individualistic ideal that underlies our laws and policies.

1. Procedural Accounts

The most common account of autonomy developed in a relational perspective is the procedural one. This kind of account aims to be content-neutral. In local conceptions of autonomy, this means that the contents of a person’s choices, preferences and beliefs are irrelevant to the issue of whether she is autonomous with regard to them. In global conceptions of autonomy, this means that whatever the conditions in which an agent exercises her autonomy, or the form taken by her agency, she can be still be autonomous. What is important

⁴⁴ The distinction between local and global autonomy comes from Oshana (2006, 92) who defines the ‘global sense of autonomy’ as ‘the idea of living a self-governed life, the idea of autonomy as a global condition of persons rather than a transient characteristic’. She notes that there is a tendency to conflate this global state, which characterises the whole person with local autonomy—i.e. ‘autonomy with respect to some act or decision’ (Oshana 2002, 262).

for autonomy is whether the agent possesses and utilises the right kind of competency when she adopts a given preference or, more generally, when she exercises her agency.

A) The Minimalist Model

Marilyn Friedman's (2003) account constitutes a good example of a minimalist-procedural conception of relational autonomy.⁴⁵ She has developed what can be seen as a variant of Gerald Dworkin's (1988) approach. In her view, autonomy primarily implies a form of self-reflection. It is a competency that allows a person to take an evaluative stance towards her desires: if the agent endorses these desires, these desires are to be viewed as autonomous. Similar to Dworkin, she states that '[w]hat autonomy requires [...] is the absence of effective coercion, deception, manipulation, or anything else that interferes significantly with someone behaving in a way that reflects her wants and values' (2003, 5-6). Given the relational dimension of her account, she states that 'it does not matter whether someone's concern is itself the product of her socialization or otherwise the result of circumstances over which she has no control' (2003, 11). What counts for autonomy is whether a person considers her commitments and goals to be 'her own'. She distinguishes between different levels and kinds of self-reflection to show that autonomy is a matter of degree. However, she states that '[a] self who is at all minimally reflective has crossed a threshold' and is autonomous. Likewise, for a desire to be considered autonomous, '[p]ractically any self-reflective reaffirmation will do' (2003, 7), and it does not even have to be (fully) conscious.⁴⁶

The minimalism of this conception is strongly guided by the will to avoid categorising certain agents and subjectivities as non-autonomous. In this respect, Friedman (2003, 23) writes the following:

⁴⁵ Like Friedman, both Uma Narayan and Sarah Buss can be seen as utilising a minimalist conception of autonomy. Hence Buss (2005, 215) writes that '[t]he key to [...] self-governing agency is the distinction between a healthy human being and a human being who suffers from some psychological or physiological 'affliction' (e.g., intense pain, fear, anxiety, fatigue, depression, and obsession)'. As for her, Narayan (2002, 429) writes that '[a] person's choice should be considered autonomous as long as the person was a 'normal adult' with no serious cognitive or emotional impairments and was not subject to literal outright coercion by others'. In both conceptions, autonomy is seen as endangered only when the agent presents abnormal psychological and emotional characteristics or is a victim of a serious form of coercion. The default position is thus that agents are autonomous.

⁴⁶ Indeed, as Friedman (2003, 8) writes, '[t]he self-reflections that make choices and actions autonomous need not be conscious. Someone can be self-determining on particular occasions without representing her deep concerns to herself with conscious awareness at the time. As well, the commitments constituting the standpoint from which someone self-reflects need not be consciously accessible to her. What a person cares about may influence her self-reflection and, from that, her behavior, subconsciously. So long as a person's choices and actions reflect and issue from the self-reflections on her deeper wants and values that she undertakes from her overall perspective at some level of thought, they have at least a minimal degree of autonomy'.

In practice, someone's failure to manifest recognizable autonomy, or, what is more important for theories of oppression, the failure of others to recognize her behaviour as autonomous, may well promote the conviction in others that she is not really capable of autonomy and, therefore, does not deserve the respect that is premised on a capacity for it [...] Thus, an account of autonomy with fewer requirements has, independently of other considerations, the advantage of promoting a more inclusive sense of equal worth.

In this regard, her account is explicitly designed to avoid the problem of exclusion.

Attempts to articulate a minimalist definition of autonomy are important because they seek to stay clear of the cultural and rationalist biases that can be seen as informing liberal conceptions of autonomy. Doing so, they seek to avoid the problem of discriminatory exclusion and to challenge the assumption that behaviours that seem alien to liberals are *de facto* non-autonomous. Strongly guided by egalitarian concerns, they are sensitive to the effects of labelling someone non-autonomous on the political level. Given that the status of autonomous agent is coextensive, within liberal society, to being seen as an equal as worthy of consideration and respect as ourselves, Friedman seems right to point to the need to adopt a conception of autonomy with very minimal requirements.

However, as Éléonore Lépinard (2011, 210) notes, 'because it conceptualizes relations between the self, the social, and the individual action in a way that does not imply clear-cut decisions, self-awareness or self-determination', it 'casts some doubt on the vocabulary of "choice"'. The will to avoid denying autonomy to as many agents as possible leads proponents of a minimal conception of autonomy to redefine self-determination in the most inclusive terms possible. However, in doing so, this understanding of autonomy posits criteria that are too thin to address the problem of oppression. Such a minimalist conception of autonomy leaves us no tool to judge situations, norms or practices that could be problematic for personal autonomy. This seems unsatisfactory, as it leaves us with no grounds to either identify oppression or vindicate intervening in social contexts that are deleterious to individual autonomy. As it fails to devote sufficient attention to oppressive social conditions, adopting such a minimal conception of autonomy on the political level might equate leaving it to the individuals to negotiate over the constraints and abuses they encounter. In a nutshell, while it is adequately sensitive to the problem of exclusion, it nonetheless problematically neglects the problem of oppression.

B) The Historical Model

John Christman (1991, 2005, 2009) has developed a more stringent criterion to assess whether a given choice, preference or value is to be viewed as autonomous. Like Friedman, his conception of autonomy is primarily guided by the will to avoid rejecting forms of agency that may seem at odds with the liberal idea of self-determination as non-autonomous. Although Christman does not understand his account to be relational, I consider his account in this chapter, as it seems guided by the will to address the two key concerns that underlie relational approaches to autonomy.⁴⁷ Indeed, his version of the procedural approach seeks to take into account the social dimension of autonomous agency.⁴⁸ His conception of autonomy readily admits that all our preferences are produced and influenced, to some extent, by our social conditions.⁴⁹ Moreover, (and in contrast to proponents of the minimalist model), Christman wants to provide grounds to reject desires that are a product of the sort of ‘fierce conditioning’ that causes one to lead a ‘life of complete subservience’ (1991, 6). It is, in this respect, guided by the will to address the problem of oppression, as well as that of exclusion.

Oppressive socialisation is a problem for mainstream hierarchical autonomy accounts such as those developed by Gerald Dworkin (1988) or Harry Frankfurt (1987). In their accounts, a first order preference is autonomous if it is coherent with one’s second order preferences (Frankfurt 1987, 12-25; Dworkin 1988, 59). However, this view omits the role that oppressive socialisation can also play in conditioning agents’ second order preferences. Christman’s model can be seen as an attempt to remedy this problem. His account is historical because in order to avoid the problem of the hierarchical accounts of autonomy, he brings out the ‘historical’ or diachronic dimension of preference formation. His theory of autonomy thus ‘focuses on the manner in which the agent came to have a set of desires rather than her attitude toward the desires at any one time’ (1991, 1). This view, in turn, entails that a person is autonomous with respect to a given preference if, upon becoming aware of the process that led to its formation, she did not resist its development or counterfactually (if she were to become aware of it) would not resist it. Autonomy, in this view, is thus a matter of reflective

⁴⁷ I am not the only one who views his account as relational. Mackenzie (2008, 519), for instance, notes that ‘[a]lthough Christman sometimes represents procedural views as standing in opposition to relational theories, his version of the procedural approach could well be characterized as relational, since in his recent work he acknowledges the socially embedded, interpersonally constructed and historically situated nature of the self and the role of these factors in the constitution of agency’.

⁴⁸ John Christman does not affiliate his historical and procedural account as relational. Indeed, as we have seen in Chapter 1, the narrow characterisation of the relational accounts he adopts leads him to oppose relational theories to procedural ones.

⁴⁹ ‘Our values and preferences are explained by essential reference to a variety of influences that have come to bear on our development throughout our personal histories’, thus writes Christman (1991, 1).

endorsement that is directed towards the historical formation of preferences. Following Christman, this ‘counterfactual criterion’ offers a good guide to discover preferences that are the result of oppressive socialisation since an agent is likely to reject her preferences (or feel alienated towards them) if she were to discover that they were the result of an oppressive form of socialisation.⁵⁰ This rejection constitutes the ground for an effective differentiation between autonomous and non-autonomous preferences (2009, 144-7).

One of the strengths of Christman’s account is the nuanced understanding of agency under the oppressive conditions it offers. The introduction of the diachronic dimension in his account of autonomy is, indeed, most helpful in understanding the constraints oppression can pose to self-government. It adequately captures the ways autonomy develops and is exercised over time, with the past always structuring the way this competency can be exercised in the present. It is also sensitive of the fact that agents can come to autonomously endorse preferences that were initially formed in an oppressive social context. As Christman (2004, 155) writes, ‘[i]nsofar as the self is socially constituted, it is counter-intuitive to claim that such a *self* is only autonomous if she can break away from those very social conditions, authoritarian though they are, that constitute her being’. This, in turn, ensures that his account avoids excluding the preferences of agents *because* they were formed in conditions deemed oppressive. His account, in this regard, is adequately mindful of the problem of exclusion with respect to agents in oppressive social conditions. To stipulate that the declared preferences of agents embedded in oppressive social conditions are necessarily non-autonomous seems to introduce a radical and unfair divide between the preferences of agents who are deemed oppressed and our own preferences. On the political level, this would seem to imply that the preferences of agents socialised in oppressive conditions can never be seen as genuine, and as worthy of respect. By contrast, Christman states that provided that an agent maintains the ability to reflect, in an adequate manner, on the conditions that led to the acquisition of her preferences and still chooses to embrace them, these preferences are worthy of respect. In this regard, his account seems adequately mindful of the problem of exclusion, as it seeks to avoid unfairly excluding the preferences of agents struggling with oppressive constraints from consideration.

However, in spite of his efforts to offer a basis to address the problem of oppression, the account of autonomy Christman offers remains unconvincing in this respect. The counterfactual criterion seems unlikely to help us much in identifying the kind of warped and non-

⁵⁰ This ‘alienation’ is not necessarily reflective. It can also take the form of a negative emotional reaction to the desire (Christman 2009, 144, 155-6).

autonomous desires that oppressive circumstances produce. First, relying on this criterion seems to imply the same sort of implausibly transparent self-knowledge or ‘archangelic insight into others’ preferences’ criticised in mainstream hierarchical accounts of autonomy (O’Neill 1987, 56). Indeed, it seems that only the possession of such inhuman skills would make it possible confidently to trace the origins of preferences and identify those that are produced by oppressive socialisation. Second, even if an individual were able to effectuate the counterfactual analysis and came to discover that her preference was the result of the integration of an oppressive social norm, it is unlikely that she would *ever* repudiate it on this basis. As Benson (1991) points out, it seems implausible that a person who has been thoroughly socialised to internalise a given norm would reject what came to be her high-order preference, even if she was aware that it was the result of oppressive socialisation. In this respect, Christman seems to ignore what some feminists view as the very gist of the problem of oppression: it is precisely the agents whose autonomy is the most impaired by their oppressive circumstances that are the least likely to repudiate the desires and preferences that an oppressive script imposes on them. As a result, this criterion for assessing the autonomy of a choice or preference comes across as an implausible mechanism for identifying precisely the sort of preference produced by ‘fierce conditioning’ that Christman describes as non-autonomous (Benson 1991; Stoljar 2000; Warriner 2015). In short, it seems that the will to formulate an account that cannot be used to *de facto* exclude or dismiss the preferences of agents struggling with oppressive circumstances leads Christman to formulate a criterion which, in practice, proves too thin to be of much help in identifying the warped desires that oppression produces.

Moreover, for Christman, it seems that apart from their effect on creating preferences that are not genuinely endorsed by agents, oppressive social conditions are not much of a concern for autonomous self-determination. Christman’s account integrates concerns for the social dimension of autonomy, but these concerns are indirect and provide an insufficient basis to identify oppression. In his account, oppressive conditions become visible only when an agent possesses the kind of lucidity necessary to repudiate the desires she conceives as stemming from problematic social forces. This, in turn, seems to transform the identification of oppression into an individual and subjective matter: what might be considered oppressive for one particular agent might not be considered as such for another. His focus on individual internal competency for reflexive critical thinking and endorsement thus reproduces the problem of mainstream accounts and makes his understanding of autonomy blind to the actual oppressive forces which exist independently of individuals’ perceptions, and constrain the kind

of desires they can endorse. This, in turn, makes his account unsatisfactory to address the problem of oppression. It provides no grounds to vindicate political action when oppressive conditions are effective *before* they create the kind of ‘fierce conditioning’ Christman wants to avoid. Such an account is thus unsatisfactory to address the problem of oppression, given the central role autonomy has in justifying political action and preventing it.

C) The Self-Regarding Attitude Model

In contrast to Christman’s account, the self-regarding attitude model of autonomy does not presuppose critical self-reflection or even self-consciousness to be a sufficient guarantee for self-government.⁵¹ Proponents of such an understanding of autonomy thus disagree with Christman on the type of characteristics that should be associated with autonomy. Paul Benson, for instance, contends that individuals’ ‘status as agents [...] is not guaranteed by their abilities to act freely by reflectively authorizing their wills and their actions’ (1994, 650). Rather than linking autonomy to abilities such as rationality or critical self-reflection, proponents of this kind of account seek to acknowledge ‘the place of emotionally textured, reflexive attitudes in persons’ capacity to take ownership of what they do’ (Benson 2005, 119). Autonomous agency is thus understood as a form of self-ownership that stems from emotional attitudes such as ‘self-worth’, ‘self-esteem’ and ‘self-care’.⁵² In Benson’s account (1994, 2000, 2005), autonomous agents are those who have the competence to claim their actions as their own, as well as the authority to speak for themselves in justifying these actions (Benson 1994, 2005).⁵³ This ownership implies both an emotional disposition—the self-worth necessary to regard ‘oneself as being competent’ (1994, 660)—and a more active competence to ‘actively claim or seize’ ownership of their actions (Benson 2005, 110).

Accounts that view autonomy as residing within a certain emotional disposition towards the self incorporate more straight-forward considerations pertaining to the social context than do more classically internalist understandings of autonomy such as Christman’s. A self-regarding understanding of autonomy, explains Benson, is relational in at least two respects.

⁵¹ Self-regarding attitude accounts are sometimes classified as weakly substantive accounts (Benson 2005). I classify them as procedural accounts here, as these understandings of autonomy aim at being content neutral with regard to the kind of desires that are endorsed. Westlund (2009), who adopt a conception of autonomy that is very close to that of Benson, regards her own account as procedural.

⁵² Among the other contenders of such an approach to autonomy are Paul Benson (1994, 2000, 2005), Andrea C. Westlund (2003, 2009), Carolyn McLeod and Susan Sherwin (2000), Catriona Mackenzie (2000, 2001, 2008) and Robin S. Dillon (1992, 1999).

⁵³ Contrary to John Christman’s historical account, Benson’s model is therefore not based on identity or authenticity, as he explains that the autonomous action ‘need not be authorized as belonging to or expressing what [the agents] really care about’. Rather, an agent’s motives are his own because the agent possesses a certain kind of authority regarding them, which entails that he feels entitled to claim ownership over them.

First, the self-worth required for autonomy is relationally enabled and partly created by others' recognition (2005, 112). For this reason, oppressive socialisation or negative stereotypes regarding an aspect of one's identity should be considered a serious threat to autonomy, as they can corrode self-worth and indirectly harm an agent's ability to take ownership of her actions (Benson 2005, 2015). Second, the ability to take ownership of one's action is intrinsically linked to one's social position.⁵⁴ Thus, oppressive social conditions can still pose a problem for autonomy, even if the agent were able to retain her sense of self-worth and has successfully resisted internalising demeaning views about herself. Given that an oppressive social order functions by implicitly negating the equal social standing of those it oppresses, it often ends up affecting the ability of an agent to speak for herself and to be adequately listened to by others. However, neither of these two problems that oppression creates is truly inescapable according to Benson. An agent can successfully reclaim her self-ownership by 'taking a new stance toward [her] social position as an agent' and by deliberately 'and perhaps in some public way' reclaiming it 'in order to secure in [her] own mind [her] regard for [her] competence and worthiness to speak for [herself]' (Benson, 2005, 115).

In Benson's view, the self-regarding attitude model is the best suited to account for the problem of oppression without, for all that, becoming too demanding. Indeed, similar to minimalist and historical models, this account does not reduce the range of preferences an agent can autonomously endorse and leaves room for the possibility that she might autonomously abide by 'subservient' norms of behaviour.⁵⁵ It also leaves open the possibility that an agent could restore her autonomy, even if she is struggling with oppressive social conditions. Taken together, these two aspects of the understanding of autonomy that he offers seem indeed promising to avoid the problem of discriminatory exclusion. As it leads to an understanding of this competency mainly in terms of being able to speak for oneself and see oneself as responsible for one's own actions, a self-regarding understanding of autonomy does not deny autonomy to the expressed preferences of agents. Provided an agent sees herself as adequately competent to speak in her own name, this kind of account yields the conclusion that we should consider her as autonomous and treat her as such. As the relational dimension of the account stipulates, refusing to do so would contribute to the oppressive dynamics that threaten her autonomy. This realisation, in turn, neatly captures what is so troubling in discriminatory exclusion: denying the status of autonomous agent to an individual because she

⁵⁴ 'Intuitively, this position is captured in the idea that those who take ownership of their intentions and actions are appropriately positioned to own up to them, or to speak for them', Benson explains (2005, 108).

⁵⁵ On this particular topic, see Westlund (2003).

is oppressed can sometimes end up reinforcing and reproducing the very oppressive dynamics that reduced her autonomy in the first place.

As Stoljar and Mackenzie (2000, 21) state, this kind of account also ‘[p]rovides a good starting point in explaining why agents who are operating within oppressive institutions and structures exhibit failures of autonomy’. As it addresses the social and discursive dimensions of autonomy (Benson 2005, 112), the account Benson offers is more sensitive to the way adverse social conditions can threaten autonomy than most procedural understandings of this competency. Interestingly enough, it is also one of the rare understandings of autonomy that enables one to capture and theorise the threats that social factors such as negative stereotypes, unequal social standing and unequal social recognition can pose to an individual’s autonomy. In this respect, self-regarding understandings of autonomy can potentially offer a valuable normative guidance as well as a justificatory basis to ground political actions aimed at reforming aspects of the socio-relational contexts that prove deleterious to agents’ self-worth. However, the main issue with this kind of account is that identifying these problematic aspects solely through the deficits they create in self-worth insufficiently addresses the problem of oppression.

More specifically, self-regarding accounts of autonomy function on the basis of two assumptions that can be questioned: first, that autonomy is to be equated with the competency to take ownership of one’s actions; second, that oppression harms autonomy mainly as it erodes the agent’s self-worth and self-ownership. To understand self-government merely as the possession of the self-worth necessary to regard oneself as a competent agent responsible for her desires and actions seems to render autonomy akin to Berlin’s sinister ‘freedom of the stoic’.⁵⁶ It implies that whatever external constraints I might face and whatever social roles I am coerced into, I can still be autonomous provided I continue seeing myself as an agent and can reclaim what was forced on me as my own choice. This ignores the vested psychological interest most of us have in seeing ourselves as agents. It also overlooks the fact that what often makes oppressive social orders particularly pernicious is that the system of beliefs and norms they impose are reclaimed by individuals as their own and become an integral part of their sense of self-worth. Jennifer Warriner, for instance, notes the following (2015, 37):

[S]ubordinate individuals have an interest in seeing themselves -and having others see them- not as slaves who cannot act for their own reasons but as

⁵⁶ Berlin talks about the ‘freedom of the stoic’ in his influential essay ‘Two Concepts of Liberty’ (1969). See, in particular, part III where Berlin criticises positive freedom (and thus autonomy) because it is conceived mainly as a set of internal attitudes. This, in turn, makes it possible to still be autonomous (provided one adapts her own desires and internal attitudes) when encountering terrible constraints. He notes that ‘every form of autonomy, has in it some element of this attitude. I eliminate the obstacles in my path by abandoning the path’.

individuals who authorize and exercise their will for their own reasons [...] dominant individuals also have an interest in ensuring that the subordinated individuals view themselves as having agential authority. This is because oppressive social relations are best maintained and have the best possibility of continuing not when subordinated individuals are forced to accept a subordinate status, but when subordinated individuals exercise (and view themselves as exercising) their agency to willingly accept their subordinate status.

Reviewing Kathryn Joyce's study of the Christian Patriarchy Movement (2009), Warriner notes that oppression, far from being necessarily destructive for the subordinate's sense of self-worth and agential authority, can provide her with a narrative that glorifies her own subservience and enables her to posit it as freely chosen. However, as she stresses, when subordinate individuals possess no other viable option besides abiding by the 'script' they are given, it seems legitimate to entertain doubts concerning the choices that perpetuate their 'subordinate status'. When such cases arise, it seems unsatisfactory simply to state that such imposed choices should be viewed and respected as autonomous *because* the individuals were able to claim ownership over their compliance with oppressive norms. In sum, as it considers oppression mainly as a threat to an individual's self-worth, this type of account seems too thin to properly address the problem of oppression.

D) The Competencies Model

The main proponent of a competencies model of autonomy is Diana Tietjens Meyers (1987, 1989). For her, autonomy requires the ability to formulate and identify desires of the 'true autonomous self', as well as sufficient internal and external control to realise these desires.⁵⁷ Like other procedural proponents, Meyers is deeply concerned with the issue of exclusion and explicitly rejects the traditional association of autonomy with rationality and independence.⁵⁸ Like Christman, she links autonomy to authenticity. However, in place of a counterfactual endorsement, for her autonomy requires the exercise of a 'repertory of coordinated skills that makes self-discovery, self-definition, and self-direction possible' (1989, 76). This repertory includes, among other things, skills such as memory, imagination, instrumental and critical reason, the disposition to consult oneself and the capacities to both resist external pressures

⁵⁷ She indeed explains that 'the explanation of a competent person's flawed use of this competency [for autonomy] can be external or internal'. In her view, 'social structures or more can defeat autonomy skills' (1989, 89).

⁵⁸ By contrast, she writes that "[j]ust the reverse of promoting embattled isolation, autonomy competency fosters a form of affection that is compatible with reciprocal dependency and care' (1989, 85).

and act following one's own judgement (1989, 80-91).⁵⁹ In contrast to most autonomy theorists, she does not regard the particular repertory of skills she mentions as necessary for all individuals' self-government. Rather, they are meant to exemplify the types of competencies that might be of use in self-discovery, self-definition and self-direction. In her view, since there is a large variety of people and circumstances, 'to affirm a list of universal personal goods [...] and to maintain that every autonomous life must realize such goods is to deny the uniqueness of individuals' (1989, 82). Her conception of autonomy is, in this respect, explicitly articulated so as account for the variety of forms authentic and autonomous agency can take. Hence, in contrast to the coherent and unitary self often implied in mainstream conceptions of autonomy, Meyers' account readily admits that our identity is always an evolving and fragmentary assortment of attributes that emerges through the exercise of our autonomy and the on-going use of our skills for self-discovery, self-definition and self-direction (Meyers 2005, 49).⁶⁰

For Meyers, autonomy requires external conditions insofar as such conditions are necessary to ensure the acquisition of the autonomy competencies. Reflecting more specifically on the issue of feminine socialisation, Meyers argues that traditional Western gender socialisation may foster the emotional receptivity and perceptiveness needed for self-discovery. It can nonetheless simultaneously hinder the skills for self-direction and self-definition that are also needed for self-government (Meyers 1987 & 1989, 3.2).⁶¹ Therefore, one of Meyers' main goals is to offer a conception of autonomy that can account for the ways gender socialisation and oppressive social circumstances may curtail an individual's autonomy without, however, extinguishing it. If, like the other procedural autonomy proponents, she does not want to dismiss the 'traditional women' type of agency as non-autonomous, she nonetheless takes the issue of oppression to heart. She thus devises a framework that would enable us to push emancipatory goals independently of whether the preferences imposed by feminine socialisation become autonomously endorsed by individuals. In this respect, even if traditionally feminine roles cannot be excluded as non-autonomous, 'insofar as feminine socialization impedes the development and the exercise of autonomy competency, feminists must seek to overhaul these socialization practices' (1987, 628).⁶² For example, in order to

⁵⁹ In Meyers' account, the capacity to resist pressure and to act following one's own judgement are both 'volitional modes of agency' and are respectively called the 'resistance' mode and the 'resolve' mode (1989, 83).

⁶⁰ See also her article 'Intersectionality Identity and the Authentic Self?: Opposites Attract!' (Meyers 2000).

⁶¹ Men do not, however, fare much better than women: gender socialisation also hinders some of their autonomy skills (Meyers 1989, 141-55).

⁶² Indeed, given Meyers account of content neutrality, even if a woman abides by the most traditional gender norms, she still cannot, for all that, be judged non-autonomous. Provided that she makes a correct use of her autonomy skills, she can even be more autonomous than one who refuses these norms and traditions (1989, 90).

counterbalance the potentially deleterious effect of gender norms, Meyers argues for the importance of education programmes that ‘augment autonomy’ by mobilising, for example, women’s introspection and imagination (Meyers 2000a, 485).⁶³

There are many merits to the nuanced and sophisticated account of autonomy that Meyers develops. Its complexity and open-endedness enable her to account for the multiplicity and diversity of autonomous behaviours. In contrast to most procedural theorists, she readily acknowledges that associating autonomy with one particular characteristic is problematic, insofar as it implicitly links self-government to particular conceptions of the good life. Thus, when critical self-reflection and self-worth are seen as the main skills needed to autonomously endorse or reclaim desires as one’s own, these skills become elevated as the virtues that make us full-fledged agents worthy of respect and consideration. This implicitly frames certain conceptions of the good as superior (or at least more autonomy-enhancing), and thereby valorises these traits.⁶⁴ Yet, as Meyers convincingly argues, it remains unclear as to why a particular competency should be conceived as the fundamental marker of the capacity to lead a life of one’s own choosing. While possessing the self-worth necessary to see oneself as an agent or being self-reflective enough to endorse one’s desires might help one lead a self-governed life, it seems doubtful that any of these particular skills should be considered as the sole marker of autonomy. As Meyers’ account acknowledges, leading a life that is truly one’s own can involve a multiplicity of competencies, and identifying only one of these as salient for autonomy leaves us with a one-dimensional and simplistic portrait of what it means to be self-governing. In this regard, her framework seems truly immune to the problem of discriminatory exclusion.

This multidimensional portrayal of autonomy also leaves more of an opportunity to recognise oppressive forces and the complex ways they operate. It makes it easier to acknowledge that socialisation and norms can be oppressive in certain respects and autonomy-promoting in others. This, in turn, potentially vindicates emancipatory policies aimed at ensuring the development of the skills needed for autonomy. Given Meyers’ focus on skills acquisition, her autonomy account could serve as a powerful guide to create educational

⁶³ This citation is taken from Meyers’ article on the practice of female genital cutting (2000a). Outside of this particular context, however, education is also seen as an important means to promote individuals’ autonomy. Hence, she writes (2004, 55), ‘I can’t resist putting in a plug for liberal education here, for it seems to me that education [...] has a pivotal role to play in strengthening self-definition skills and thus in securing autonomy. I would stress, moreover, that liberal education should not be confined to colleges and universities; grade schools and high schools should also see liberal education as their mission’. See also 1989, 189-202.

⁶⁴ It also opens the door to scalar comparisons between individuals, which could enable the situating of agents on an autonomy scale depending on the degree of competency they seem to manifest. In this respect, these conceptions risk indirectly reinforcing the problematic exclusionary dynamics of which they seek to steer clear. I will return to this point in the following chapter.

programmes aimed at promoting and fostering the autonomy of children (and vulnerable adults).

Meyers' account, however, also has certain faults associated with its qualities. Precisely because of its open-endedness and the complex picture it offers of the interaction of social forces and individual self-determination, it fails to convince as a means to address the problem of oppression. While she argues that her account can help identify oppression and justify political action, this claim becomes difficult to sustain in the face of her open-ended conception of the skills needed to lead an autonomous life. Indeed, if Meyers is right that gender norms do foster the development of certain skills needed for self-government, how can we justify trying to reform them? The claim that we can do so because they tend to hinder other skills needed for self-direction or self-discovery does not seem very convincing. It seems that all social practices, as well as all forms of socialisation, will foster certain skills while hindering others. In this respect, instead of providing us with normative guidance to identify oppressive constraints and ground political action, Meyers' open-ended framework seems instead to open the door to an *ad hoc* intuitionist approach to political action. Moreover, many real-life cases that arise in the political sphere revolve around the question of how to assess the autonomy of vulnerable individuals. What are we to do, for example, with the battered woman who wants to stay with her abuser in spite of the abuse and refuses to press charges against him?⁶⁵ If her desires are to be seen as autonomous, then it seems that they ought to be respected. If not, then this might as a reason for the state to prevent further contact with her abuser and orchestrate a prosecution that does not hinge on her consent. Given that, for Meyers, 'only the individuals can be the measure of their own autonomy'(1989, 82), it becomes very difficult, in practice, to use her approach to identify oppressive constraints and to assess concrete cases.

This latter problem is not confined to Meyers' competency model. Indeed, it seems that by virtue of its nature, any versions of the procedural approach will find itself with this difficulty. Because it is committed to content neutrality, procedural accounts rely on the assessment of the mental and emotional procedures associated with autonomy in order to determine if a preference is worthy of respect or if an agent should be considered as globally autonomous. However, since this kind of criterion focuses exclusively on the agent's interiority, it fails to devote sufficient attention to the way the socio-relational context might, in fact, 'force' an agent to adopt a preference. There thus always remain legitimate doubts regarding whether self-worth, critical reflection (or the exercise of any given skill) actually ensure that a preference

⁶⁵ I will return to this kind of case in Chapter 5.

is truly autonomous. Moreover, in all of the variations we have seen in this section, procedural criteria only enable us to judge preferences as non-autonomous in the cases where the agent readily admits her own heteronomy and alienation towards them. This makes procedural accounts ultimately unconvincing as means to address the problem of oppression given that we do not have the sort of epistemic access to the agent's psyche that would allow us to verify if her preference was, truly, properly endorsed. In short, while assessing autonomy on the basis of the kind of relation the agent has with her preferences allows the sort of content neutrality needed to avoid the problem of exclusion, it also internalises the criterion used to assess autonomy. This has the effect of making autonomy a matter of individual perception. What might constitute a non-autonomous preference for any given agent might not be problematic for another, even if the content of the preference is the same and if it was acquired in the same way. This makes this kind of account unsatisfactory as a way to properly address the problem of oppression.

II. Substantive Accounts

A) Strong Substantive Accounts

In contrast to procedural accounts, strong substantive accounts are developed as an explicit means to address the problem of oppression. This kind of account aims at identifying preferences that might seem authentic and autonomous to the agent who endorses them but are, in fact, the result of an oppressive socialisation. Theorists working within this framework put forward substantive criteria to assess the autonomy of a preference. Such criteria are explicitly non-normatively neutral. They stipulate that the content of certain preferences renders them incompatible with autonomy.⁶⁶ Proponents of such a substantive view contend that limiting the range of preferences that can be called autonomous is necessary to detect the kind of warped desires that oppressive social conditions induce. Natalie Stoljar, for instance, argues that only a substantive criterion can account for what she refers to as 'feminist intuition': namely that 'preferences influenced by oppressive norms of femininity cannot be autonomous' (Stoljar 2000, 95). Thus, in a strong substantive account of autonomy, insofar as preferences are found to be coherent with an oppressive norm or script, they are to be judged non-autonomous.

⁶⁶ Among the proponents of a substantive account of autonomy are Natalie Stoljar (2000) and Jennifer Warriner (2015). Before adopting a procedural (or weak substantive) model of autonomy, Paul Benson (1991) also identified with such an account of autonomy.

In order to demonstrate that strong substantive accounts alone can account for the problem of oppressive socialisation, Stoljar uses Luker's study of fifty women who attended an abortion clinic in California as a result of failing to use a contraceptive. This study was aimed at understanding why women, who presumably had freely available methods of contraception, nonetheless failed to make good use of them and ended up with unwanted pregnancies. Stoljar shares Luker's presentation of these women as acting in a way that is both rational and reasonable given their understanding of their situation. Yet, she argues (2000, 96) that these cases nonetheless 'trigger the intuition that they are not autonomous'. Analysing Luker's interviews, she aims to show that the preferences the women exhibited –and the contraceptive risks they took– stemmed from the internalisation of oppressive norms of femininity that made the option of taking contraceptives costlier and increased the benefits of risking an unplanned pregnancy. She states the following:

The overall picture derived from these interviews is one of women motivated in large part by the following norms: it is inappropriate for women to have active sex lives; it is unseemly for women to plan for and initiate sex; it is wrong to engage in or be seen to engage in premarital sex; pregnancy and childbearing promote one's worthiness by proving one is a 'real woman'; [...] women are worthwhile partners only if they are capable of childbearing. (Stoljar 2000, 99)

In Stoljar's view (2000, 109), '[w]omen who accept [these] norms [...] accept something false. And because of the internalization of [these norms], they do not have the capacity to perceive [them] as false'. It is thus not the reasoning through which Luker's subjects arrived at their decision to engage in risky behaviour that attracts Stoljar's feminist intuition, nor is it the irrationality of their decision-making process. The problem is that oppressive norms were taken for granted in their reasoning. It is thus the internalisation of oppressive norms that constitutes the main cause of their contraceptive failure. This, she argues, implies that the examination of the mental process that led to the formation of their preference cannot, in and of itself, reveal whether or not a preference is autonomous. Given its premises, the decision to take contraceptive risks was both adequately reflective and rational. What this suggests, she argues, is that unveiling the internalisation of oppressive norms necessitates looking directly at the content of preferences. When a preference proceeds from such an internalisation, it should not be considered autonomous.

Strong substantive accounts of autonomy are interesting because they stipulate that oppressive norms are a problem for individual autonomy, independently of whether the individuals abiding by such norms endorse them. They avoid framing oppression as a matter of

individual perceptions and provide a way to assess individuals' preferences that does not hinge on their emotional or subjective take on it. They stipulate that when the content of a preference is congruent with an oppressive norm, then this preference should not be viewed as autonomous, nor should it raise the liberal duty of respect. This, in turn, provides an attractive and intuitively plausible answer to a conundrum that feminists with liberal leanings encounter. Diana Tietjen Meyers (1989, xi) neatly captured this conundrum:

If women's professed desires are products of their inferior position, should we give credence to those desires? If so, we seem to be capitulating to institutional injustice by gratifying warped desires. If not, we seem to be perpetuating injustice by showing disrespect for those individuals.

If preferences congruent with oppressive norms are part of individuals' considered conceptions of the good, then it seems that not respecting these preferences would simultaneously disrespect individuals who adopt them. This has led some to argue that liberalism is impotent to truly remedy the inequalities between the sexes, given the way it ties respect for individuals to respect for their avowed preferences. Ann Levey (2005, 128), for instance, contends that '[t]aking feminism seriously enough means giving up liberalism in the following respect: it requires us to take seriously that justified political action may fail to respect the considered choices of some women'. Stoljar's solution is thus convenient, as it provides feminists who do not wish to abandon the liberal duty of respect towards autonomous choice with a strong justificatory basis to ground political actions that might interfere with preferences that (arguably) stem from and reinforce oppressive norms. If these preferences are not autonomous but rather produced by oppressive norms, then such preferences are not autonomous. As such, they do not raise the liberal duty of respect, and interfering with them cannot be seen as a mark of disrespect.

The first problem with this kind of account is linked to the difficulties of correctly assessing the norms that guide an agent's behaviour. Since, in Stoljar's account, certain norms are seen as 'incorrect' or 'false', preferences or choices that are produced by these problematic norms cannot be seen as autonomous. In theory, this enables us to judge the autonomy of a given choice or preference from an external standpoint. However, in practice, it leads to important epistemological difficulties. Given that we have no access to an agent's 'real' motivations, the account forces us to make assumptions and suppositions based on appearance and on the limited information we possess. This is evidently a problem since there are many cases where an agent might adopt behaviour coherent with a problematic norm of behaviour, without the behaviour actually being the result the norm. Distinguishing between a behaviour

that is truly motivated by an oppressive norm and one that is not is therefore more difficult than Stoljar presents it as being. In fact, even her own assessments of certain cases give rise to doubt regarding whether or not the agent's behaviour was actually motivated by the internalisation of problematic norms.

For example, it seems plausible, as Stoljar claims, that the woman in Luker's study who cites her strong maternal urge and desire to take care of a baby as justification for her contraceptive risk-taking behaviour is in fact influenced by the internalisation of the idea that maternity is a fundamental component of femininity (Stoljar 2000, 99). However, the reverse seems equally plausible: her desire might be authentic and not linked to the integration of a gender norm. Given that becoming a parent is, arguably, often motivated by such maternal (or paternal) urges, it would be odd to imply that children are always the product of their parents' unfortunate integration of oppressive norms. Sometimes one might just want a baby. If we accept this, then we cannot assume —based either on the woman's behaviour or on the information we possess on her motivation for taking contraceptive risks— that the integration of oppressive gender norms caused her contraceptive failure. Thus, the fact that this woman's behaviour and motivations are consistent with an oppressive gender norm does not guarantee that they are caused by it. The same could arguably be said about other cases where preferences and behaviours are consistent with an oppressive gender norm but are not necessarily caused by it.⁶⁷

Moreover, contrary to what Stoljar assumes, even if the woman were to provide, as an explanation for her behaviour, an account that seems to endorse what others might see as an oppressive gender norm, we can still not assume that the way people describe their behaviour —even to themselves— adequately captures the real reasons behind it. As argued earlier, we do not possess the transparent self-knowledge that is often assumed within mainstream conceptions of autonomy. Even if we are able to rationalise them afterward, we do not always know why we do the things we do.

Now, there are cases other than the one Stoljar presented where it is much clearer that a choice is the product of an identifiable gender norm. Paul Benson (1990, 389), for instance, gives the example of an eighteen-year-old college student who excels in her studies but nonetheless feels compelled to devote a lot of time, energy and money to her physical

⁶⁷ To offer another example, many feminists have argued that the norm consisting of wearing a hijab is an oppressive one because it implies a certain idea of gender hierarchy (Zelensky & Vigerie 2003; Djavann 2003). Now, if I have a preference for wearing a hijab—and consequently do so—can we really assume that it is by virtue of the gender norm that underlies it? There seem to be many other reasons why I should hold this preference: many women do so nowadays for political reasons (Takolia 2012).

appearance.⁶⁸ Given the way Benson construes this case, it seems self-evident that the student's behaviour is causally linked to the gender norms associated with women's appearance. However, even if it is the case that her actions aimed at 'fixing herself up' are the effects of oppressive norms of femininity, it still seems unclear that they should be judged as non-autonomous.

As Benson explicitly mentions, given that gender norms linking women's success and prospects in life to their appearance are effective in the student's social context, her belief that her appearance does impact on her opportunities in life is factually true. In this context, it is both reasonable and rational for this bright student to devote a lot of time and energy to her physical appearance. Certainly, using Benson's case, Stoljar would be right to point out that the pressure to comply with these femininity norms constrains this student's self-determination. Gender norms, like all norms, restrict the way agents can plausibly exercise their autonomy by adding social costs to the option of not complying with what they prescribe. However, Stoljar implies more than that when she claims that behaviours motivated by oppressive norms are not autonomous. She also implies that, because they become internalised, oppressive norms effectively damage the autonomy competencies and lead to the agent being unable to perceive the 'falseness' of oppressive norms. This represents both Benson's bright student and Stoljar's contraceptive risk takers as having an impaired capacity to make their own choices; they are seen as the victims of oppressive norms.

Benson's case is construed in such a way that the student's critical consciousness of the norm seems extremely minimal. Nevertheless, looking more closely at the student's case, we can hardly see her as a passive and uncritical victim of the norm. As Benson (1990, 389) notes, '[p]eriodically, she has tried not to care so much about all of this, but in each instance, something arose to remind her that others attach significant value to a woman's appearance'. Uma Narayan (2002) would call this kind of behaviour 'bargaining with patriarchy'. She argues that it ought to be differentiated from being a mere 'dupe' of oppressive norms. In the 'bargainer' case, even if the oppressive environment that forces compliance with the oppressive norm constitutes a constraint on the exercise of autonomy, we can hardly view this compliance as stemming from an impaired capacity for autonomy. Often, it is only through this bargaining with oppressive norms that individuals within oppressive social-contexts can exercise their autonomy: excluding this type of agency from the realm of autonomous behaviour thus seems

⁶⁸ I use this case because Stoljar herself refers to it in order to demonstrate the need for a substantive account of autonomy (Stoljar 2000, 101).

to overlook the point. It is not the agent that lacks autonomy; her behaviour is not the result of the uncritical acceptance of problematic norms. Rather, it is her social context that constrains her autonomy exercise and forces her to conform to problematic norms. As Stoljar herself acknowledges, '[f]ocusing on deficiencies in agents' psychologies may end up "psychologizing the structural" —that is, putting causal responsibility for oppression inappropriately on the agent rather than appropriately on unjust social conditions' (2014, 249). However, if she agrees that such an individualistic focus is misleading and better avoided, the account she develops seems to have such an effect.

The second problem with the strong substantive account is that the feminist intuition is presented as a 'given' that automatically stems from a feminist perspective —as if certain norms were intrinsically and objectively 'incorrect', 'false' or fundamentally 'oppressive'.⁶⁹ Yet, it remains unclear why, and in what respect, a given norm could be considered 'false'. Norms of femininity have acquired a material reality: they cannot, in this respect, be considered 'false'. They exist objectively, and effectively constrain individual self-determination. The statement that these norms are nonetheless 'false' seems, therefore, to concern their normative content. However, this seems to presuppose a form of moral realism that would enable the framing of certain norms' content as evidently false. Of course, it would be convenient if truths concerning normative matters were self-evident and if we the kind of epistemological access to them that would enable us to declare certain norms as patently false. However, the fact is that we do not possess such epistemological access, nor do we possess uncontested standards to assess normative matters. In this respect, identifying oppressive or false norms is far from being as self-evident a matter as Stoljar would have it. In fact, as theorists such as Kimberly Hutchings (2013) or Nancy Hirschmann (2003) argue, what one holds as self-evidently true in such normative matters is likely to be considered as such by virtue of one's own culturally situated conception of the good.⁷⁰ There is, in this regard, reasons to be wary of considering certain norms and preference content as self-evidently 'oppressive' and, consequently, as 'false'.

⁶⁹ Indeed, Stoljar (2000, 95) does not justify the 'feminist intuition' and simply states that even if some preferences satisfy the standard of critical reflection, many feminists would still regard them as non-autonomous because they attract the feminist intuition.

⁷⁰ As noted by Nancy Hirschmann (2003, 94), 'Choices are discursively constructed as well; whether particular social formations are defined as barriers, what social arrangements seem "natural," what possibilities can be imagined, are historically and culturally variable, pertaining more to language and differing understandings of reality. Hence, women who choose to wear the chador or head scarf as a mark of cultural membership, or to demonstrate a solidarity of political resistance, may not view cultural sanctions against those who do not veil as a barrier to their liberty. By contrast, Westerners who read about the enveloping burqa that Afghan women wear (not to mention the Taliban beating up women for showing their ankles) will be likely to assume that veiling restricts women's liberty'.

This concern could have been at least partly alleviated if Stoljar had separated the issue of truth from the issue of oppression and had unveiled the kind of standards we could use to identify oppressive norms. However, given that she does not do so and frames the identification of oppression as a matter of intuition, her analysis runs the risk of identifying oppression where there is simply a different conception of the good. This, in turn, reproduces one of the major pitfalls regarding current conceptions of autonomy that feminists have extensively criticised: the problem of discriminatory exclusion. The image of the woman who is too emotional and irrational to count as properly autonomous is substituted with the image of the women who accept ‘norms of religion, femininity, and sexuality’ (Stoljar 2000, 100) that certain feminists would intuitively consider inadequate. This problem is particularly troublesome, as framing certain preferences and choices as non-autonomous has a political effect on the agents that bear these choices and preferences. To say that a given preference is autonomous implies that the liberal commitment of respect and non-interference applies to it. Moreover, to say that an agent is autonomous is to judge him/her as competent to speak for him or herself and as worthy of being listened to and respected. On the contrary, to identify an agent as not fully autonomous is an effective way of discrediting her discourse: it means a return to a state of ‘minority’, which may entail that someone else has to speak ‘for her’ since she cannot be seen as having a correct understanding of her own experience.⁷¹ In other words, while it is adequately mindful of the problem of oppression, a strong substantive account of autonomy leads us back to the problem of exclusion.

B) Structural Substantive Accounts

At first sight, Marina Oshana’s structural account bears a close resemblance to the strong substantive accounts. In fact, Oshana herself associates her conception with the substantive understandings of autonomy, stating that she parts ways with proceduralists when they allege that people can be autonomous ‘despite having desires for subservient, demeaning, or even evil things’ (2006, 42). However, in contrast to strong substantive understandings, her structural account does not imply ‘that the autonomous agent cannot internalize oppressive norms, or that she cannot value subordinate roles’ (2014, 152). In her account, when a preference is deemed incompatible with autonomy, it is because of the consequences it has on the *de facto* possibility of leading an autonomous life given the social context. For example, she explains

⁷¹ As Code (2000, 183) has noted, ‘[i]n its Kantian origins, autonomy is an achievement of Enlightenment, understood as man’s “emergence from...self-incurred immaturity,” where the immaturity endemic to heteronomy manifests itself in an “inability to use one’s own understanding without the guidance of another”’.

that the Marine who ‘expresses a preference to conform to the will of another, and pursues a lifestyle that will compel him to have (or at least give expression to) desires that may not be his own’ (2006, 42) is not autonomous. However, it is not by virtue of his choice or preference in itself that the Marine lacks autonomy. It is because of the way the exercise of his autonomy is restricted and submitted to the will of another *as a consequence* of his choice to be a Marine.

What matters for autonomy, then, is the effective control over one’s life that a given agent possesses given the socio-relational context in which she exists. This means that the compatibility of a given preference with autonomy should always be assessed in reference to the socio-relational context of the agent who adopts the given preference. Preferences that imply that one loses effective control over one’s choices and actions, even if they are made in a seemingly autonomous fashion, cannot be seen as compatible with autonomy. To illustrate her point, Oshana contrasts the situation of two fictional women who share a similar preference for being perfect homemakers, akin to Woolf’s Angel in the House.⁷² Both live in a manner consonant with their desires, and the choices they make are exclusively guided by the will to always defer to the needs and wishes of others. Both also satisfy the criteria of psychological authenticity and procedural independence and give us no reason to doubt that their preference has been authentically and reflectively endorsed. The sole difference between these two women is the social and relational context in which they live. One woman (Oshana calls her Harriet) lives in a context similar to our own, where her choice of life ‘afford[s] her less financial flexibility, less social mobility, and fewer opportunities for intellectual and creative development’ and where there exist no economic or political institutions that might empower or protect homemakers (2006, 59). By contrast, ‘the personal relations in which Wilma [the second woman] finds herself, and the social institutions that affect her life, afford her control over her choices’ (2006, 60). For Oshana, the different circumstances in which these two ‘angels’ find themselves should lead us to different conclusions concerning the compatibility of their desires with autonomy. Thus, Wilma’s dedication to others is consistent with autonomy, as she retains her capacity of control over her life and ‘is treated by others as one whose needs and wants deserve to be respected on independent grounds’ (2006, 60). However, someone like Harriet can no longer be described as autonomous given that she cannot be considered in

⁷² This is how Oshana describes these women’s preference: ‘[t]here is nothing she values more or wants more than to be the angel in the house’ (Oshana 2006, 58). Here is how Woolf describes the Angel: ‘She was intensely sympathetic. She was immensely charming. She was utterly unselfish. She excelled in the difficult arts of family life. She sacrificed herself daily. If there was chicken, she took the leg; if there was a draught she sat in it – in short she was so constituted that she [...] preferred to sympathize always with the minds and wishes of others’ (Woolf 1979, 58).

control over her life.

For Oshana, autonomy is thus not a matter of the subjective take the agent has on her life and choices. For her, whether an agent has reflectively and authentically endorsed her desires and whether she is content and/or satisfied with the kind of life she lives have no relevance for her autonomy.⁷³ This establishes a radical distinction between the substantive-structural account she proposes and the procedural accounts. She explains that, in contrast to the proceduralists, her objective is to construct an entirely ‘naturalized’ conception of autonomy, which provides objective ways to assess autonomy.⁷⁴ In her view, ‘a completely naturalized account must treat autonomy as, in part, a function of a person’s status and relations that are extrinsic to facts about her psychological history and occurrent psychological state’ (2006, 5). She does not deny that autonomy requires the exercise of a set of competencies.⁷⁵ However, within a structural and substantive account, it is ultimately by looking at the socio-relational context that one can determine if an agent is autonomous. To explain her views, she states the following (Oshana 2006, 49-50):

On the social-relational analysis I defend, it is possible for two individuals to satisfy all the psychological, historical, and competency conditions we have been discussing but to differ nonetheless with respect to their status as autonomous beings [...] in addition to whatever can be said of a person’s psychological history, there are social criteria according to which we judge someone as autonomous. These external criteria are independent of facts about the individual’s internal state: autonomy is not decided ‘from within’ or on the basis of the evaluational perspective of the individual whose autonomy is at stake. External criteria constitute autonomy and external criteria measure it.

These external criteria consist mainly of 1. adequate control, which entails that the person ‘must enjoy a social status that safeguards her right to manage key aspects of her life

⁷³ Autonomy, for her, mainly has to do with the agent’s effective ability to be in control of her life, and this ability mainly concerns the possibilities her socio-relational context affords her. To illustrate this point, Oshana gives the example of the ‘would-be surrender woman’ who would rather be subservient but is ‘propelled...to a life as a self-supporting successful professional woman’. Following Oshana, this woman has to be seen as autonomous, even if the type of life she lives is not coherent with her preferences and even if she feels alienated and resents her own life (2006, 64-8).

⁷⁴ Hence, she explains that ‘[a] naturalized view of personal autonomy is a view according to which autonomy is a natural property of persons, possession of which can be established *a posteriori* on the basis of natural facts’. By contrast, ‘[n]on-naturalized theories all require something to be true of autonomous persons that cannot be known empirically’ (2006, 4-5).

⁷⁵ She provides a list of seven necessary and jointly sufficient conditions (2006, 76-87) for personal autonomy. Here is the list of internal conditions she offers: the epistemic competence condition (i.e. being self-reflective and self-aware) (1) and the rationality condition (2) are both internal psychological conditions. Others are partly psychological and partly socio-relational. The condition of procedural independence (3) (reframed as the lack of influences that would undermine the legitimacy of the person’s motivations, regardless of the person’s own take on those influences) and the condition of self-respect (4) (which includes being regarded by others as worthy of respect) are both examples of this.

against other people or institutions that might attempt to wield coercive control over her' (2006, 84); 2. access to a range of relevant options; 3. substantive independence, which includes freedom from the fear of reprisals, freedom from domination and self-sufficiency and other freedoms (2006, 87). Thus, even people like Rosa Parks (2006, 175) and Judith Miller, a journalist for the *New York Times* who was imprisoned for eighty days (2006, 126-8), cannot be said to be autonomous following Oshana.⁷⁶ Given the kind of socio-relational constraints these people faced, and the way these restrictions were aggravated as a result of their actions, Oshana (2006, 175) states that 'we can hardly call the person who takes [these actions] autonomous even if we can call her act an expression of autonomy, a defiance of subjugation'.

It should be specified here that what interests Oshana is 'global' personal autonomy in opposition to local (or episodic) autonomy. For Oshana, a slave with a benevolent master who enables him to make choices for himself is not globally autonomous. However, he can still be locally autonomous regarding the 'local' choices he makes. Oshana also warns against conflating global autonomy with political autonomy. While both global autonomy and political autonomy 'draw on suppositions about personal autonomy', these concepts are nonetheless less substantial than the global idea of personal autonomy (2006, 20). She writes (Oshana 2006, 173):

A theory of personal autonomy needs not address the special concerns of political autonomy. A person who counts as politically autonomous might lack personal autonomy and persons can live in a manner consonant with having a high degree of personal autonomy even though subject to law, and to other non-arbitrary directives of the state.

Similarly, she detaches the notion of global autonomy from that of moral autonomy. She states that global autonomy cannot serve as the basis to attribute moral responsibility to an agent. People who would count as globally autonomous in her framework, she argues, could be 'beyond the pale' when it comes to moral autonomy and consequently cannot be held morally responsible for their actions. Psychopaths, for instance, lack the competency to be responsive to the expectation of a moral community (2006, 169). Thus, they may be globally autonomous but cannot be considered responsible for their actions. Inversely, people who are not globally autonomous, such as Rosa Parks, can certainly be considered responsible, and morally accountable for their actions.

The structural view of autonomy that Oshana proposes has many strengths. Its most striking and intellectually compelling aspect is the thoroughly social understanding of autonomy

⁷⁶ Judith Miller was imprisoned for refusing, under *subpoena*, to provide the name of a confidential source.

it proposes. In contrast to both procedural and strong substantive approaches, a structural understanding does not regard autonomy solely as a set of mental or emotional competencies that are internal to the agent. It stipulates that the effective possibility the agent has to exercise her self-government is as much a part of autonomy as being adequately reflexive and/or not being duped by oppressive norms. In other words, it acknowledges that autonomy is an ‘exercise concept’ and that being adequately competent to make one’s own decision does not have much value if one has no real possibility to exercise this competency and/or enact one’s decisions.⁷⁷ As Noggles (2011, 234) notes, ‘[t]his makes her view more robustly social than the views of philosophers who claim merely that social context can indirectly influence whether a person is autonomous by affecting the psychological states which directly determine whether the person is autonomous’.⁷⁸ In this sense, a structural account of autonomy, such as Oshana’s, seems more coherent with the intuition at the core of the idea of relational autonomy than the procedural or strong substantive accounts. For proceduralists, the socio-relational context is seen as important for autonomy only insofar as it enables the acquirement of the competency deemed necessary for self-governing. Likewise, for strong substantive proponents, it seems that attention to the socio-relational context is instrumental for identifying which desire should be considered as not properly autonomous. A structural understanding, by contrast, is thoroughly relational. It stipulates that autonomy is a product of the social context and that we ought to direct our attention towards this socio-relational context when we seek to evaluate people’s autonomy.

This direct focus on the socio-relational context, in turn, allows Oshana a better and more comprehensive take on the problem of oppression. A structural framework stipulates that oppressive constraints are not solely a problem for autonomy insofar as they negatively affect the agent’s mental competency or create warped desires. They are also a problem for autonomy when they create constraints that limit or burden the exercise of self-government. This, in turn, allows for the acknowledgement that oppressive structures exist and are a problem independently of agent’s subjective take on them. In this respect, Oshana’s structural account integrates the main strength of substantive accounts while avoiding its main problem. Like strong substantive accounts, a structural understanding of autonomy cannot result in

⁷⁷ The term ‘exercise concept’ comes from Joseph Raz, another proponent of a structural understanding of autonomy. He notes that while being autonomous necessitates certain mental abilities, ‘[i]t is hard to conceive of an argument that possession of a capacity is valuable even though its exercise is devoid of value’ (Raz 1986, 372). Autonomy, as a competency, thus has value primarily in view of its exercise.

⁷⁸ See also Holroyd (2009, 324) who states that Oshana’s account of relational autonomy provides the most well-developed constitutively relational account.

making the identification of oppression a matter of individual perception. It enables us to acknowledge that, regardless of whether an agent authentically and reflexively endorses the choice to become a homemaker, it is still a problem if this preference was coercively enforced on the agent, and if endorsing such preference leaves the agent incapable of being in control of her own life. This provides the justificatory ground to recognise oppressive social-scripts, even when agents thoroughly endorse them, and provides the necessary grounds to justify interventions within the social order. Moreover, in contrast to strong substantive theorists, Oshana's account does not have the effect of linking autonomy to a particular conception of the good, nor does it stipulate *prima facie* restrictions on the content of the preferences that can be considered cogent with autonomy. In short, it seems convincingly to address the problem of oppression without implying the problematic and exclusionary assumptions of the strong substantive accounts.

The first problem of Oshana's account is, however, caused by its stringency. First, if it is true that her account is neutral concerning the content *per se* of choices, it nonetheless denies, in practice, autonomy to roles traditionally associated with women. In her view, economic independence and self-sufficiency are deemed necessary for autonomy, and it seems that embracing the roles of caregiver and homemaker is then incompatible with autonomy (2006, 7-60).⁷⁹ Oshana's conception can thus be subjected to the same criticism as the mainstream conceptions of autonomy that have been deemed hostile to women because they reproduce a problematic gender hierarchy of value by making autonomy difficultly compatible with dependency or care for others.

Second, and more importantly, the stringency of her account makes it difficult to see how one can be considered autonomous at all. To be considered autonomous, an agent has to have control of a 'fairly robust variety' in her life. She must not have been influenced in a way that undermines the legitimacy of her motivation or have been deprived of information about what she is able to do. In sum, in order to be considered self-governed, one must be independent psychologically as well as materially. Yet, as Nedelsky (2011) states, our autonomy is always shaped and influenced by others, and since dependency constitutes an unavoidable aspect of human life, it seems difficult to see how all these conditions can be truly attainable by any human being.⁸⁰

⁷⁹ Except, of course, in the kind of society that Wilma enjoys.

⁸⁰ As Benson (2014, 94) noted, autonomy, when articulated in this manner, thus seems more like a demanding ideal than a truly attainable reality, possible only in idealised social and political circumstances. This is rather odd given Oshana's claim that her account is a naturalised one. Hence, it seems that for a conception of autonomy to be naturalised, it must be possible to meet its conditions in the natural world (2006, 4-6).

The stringent conditions for autonomy that Oshana provides also lead to deeply counter-intuitive results. It seems rather strange, to say the least, to claim that political activists such as Rosa Parks, Shirin Ebadi and Judith Miller are not truly autonomous. There is something deeply problematic in this conclusion. What else, if not autonomy, can explain the courageous acts of resistance we so admire in these political figures? If the conception of autonomy we adopt leads us to deny autonomy to such political heroes simply because they were living in an oppressive society, it seems to me that we lose a fundamental dimension of what the concept of autonomy is meant to capture. There is a sense in which someone like Parks can be seen as possessing a much higher degree of autonomy than many socially and economically privileged persons who uncritically and unreflectively abide by dominant norms and institutions. Autonomy is often conceived as a tool for emancipation: it thus seems inconsistent to hold people who actively try to fight their oppression as non-autonomous.⁸¹ Because Oshana equates oppression with the lack of autonomy, something fundamental that the concept of autonomy normally serves to designate is lost.

This latter problem seems to stem from another one —that is, the failure, in practice, to distinguish between the competency needed to live an autonomous life and the socio-relational conditions necessary to be able to exercise one’s autonomy in meaningful ways. Oshana does not deny that autonomy necessitates certain emotional and mental skills and that these are different from the socio-relational conditions she puts forward. However, in practice, there seems to be a conflation between 1. being competent enough to be called autonomous and 2. existing in social conditions that enable one to exercise one's autonomy. Given that her goal is to articulate an account of autonomy that would enable us to assess autonomy in an ‘objective way’ (and from an external perspective), the criteria she formulates have the effect of reducing autonomy to the degree of self-government agents are *de facto* able of exercising given the social structure in which they are embedded. Articulated in this manner, autonomy becomes a measure of the options that are truly accessible to an agent without coercion or interference. This, in turn, leads to the concern about discriminatory exclusion given that agents who are otherwise competent to make their own choices, are nonetheless denied the status of autonomous agent because of the restrictive socio-relational context they are in.⁸²

Oshana attempts to alleviate this problem by making a distinction between different types of autonomy. However, as she refuses the association of her conception of autonomy

⁸¹ It is, of course, possible to criticise autonomy precisely because of its ties to the teleology of emancipation. As noted in the introduction, this is what has prompted theorists such as Mahmood (2005), to abandon the concept of autonomy altogether.

⁸² I will not expose this problem in length here, as I have already done that in the first chapter.

with the notion of political autonomy (which, I take it, links autonomy to the status of full-blooded agent), moral agency, responsibility and local autonomy, much of the normative role autonomy plays on the political level is lost in her account. The notion of global autonomy she proposes thus seems to serve exclusively as a tool to ground policies aimed at alleviating oppression. This makes her account unlikely to serve as a replacement to the current ideal that underlies our laws and policies, as it is explicitly not meant to play the same role.

Moreover, explicitly restricting the purpose of her account to addressing the problem of oppression does not enable Oshana to avoid the problem of exclusion, nor that of paternalism. If autonomy is only compatible with certain choices by virtue of their effects on the *de facto* autonomy that agents exercise, it becomes a value that can paradoxically serve to override choices that have been autonomously made. This worry is further reinforced by the example Oshana gives of the ‘would-be surrender woman’ who would rather be subservient but is ‘propelled [...] to a life as a self-supporting successful professional woman’. Oshana states that this woman has to be seen as autonomous, even if the type of life she lives is not coherent with her preferences and even if she feels alienated and resents her own life (2006, 64-8). Conscious of this pitfall, Oshana claims that she ‘cannot declare with certainty when the value of autonomy should be overridden despite the cost to the individual’(2006, 120). However, her account certainly opens the door to such an outcome. In her view, autonomy is not to be equated with what a person cares for, or needs to flourish. Hence, if we are to take autonomy seriously, as Oshana advocates, we ought to override several individual choices that have been autonomously made —especially the choices of women. In sum, while her account convincingly addresses the problem of oppression as it allows for adequate consideration of the socio-relational context, its stringency renders it unfit to avoid the problem of exclusion.

III. Legal Accounts

Twenty-five years after publishing ‘Reconceiving Autonomy’, Jennifer Nedelsky returned to her proposal to detail a relational understanding of the ideal of autonomy in *Law’s Relations*. Nedelsky begins this book by stating that her goal is to disrupt mainstream understandings of autonomy in academia but also, and maybe above all, in popular culture in order to replace it with a new way of conceiving autonomy that would be closer to our reality as relationally embedded, embodied, emotional and dependent selves (2011, 3-4). In shifting the ‘[p]revailing Anglo-American’ understanding of autonomy, in which ‘human beings are conceived separate

from each other', she states that it becomes possible to reconstruct a constellation of practices and institutions so that 'relationship becomes central to each part of it' (Nedelsky 2011, 3).

The kind of understanding she proposes, along with other law theorists, differs from procedural, substantive and structural accounts in one important respect.⁸³ Instead of aiming at assessing individual autonomy, legal accounts focus on how to reframe laws and rights so as to foster valuable relationships that promote autonomy. In this respect, it bears a certain resemblance with the kind structural understanding of autonomy Oshana offers. Indeed, like structural substantive accounts, legal accounts emphasise the idea that relationships are constitutive of autonomy and that the socio-relational context is an integral part of autonomy. However, the way Nedelsky interprets what it means for autonomy to be 'constitutively relational' seems quite different from Oshana's interpretation.

First, for Nedelsky, understanding autonomy as constitutively relational entails acknowledging that we cannot become autonomous outside of a socio-relational context. Relationships and institutions create autonomy and are not necessarily forces that threaten our autonomy. This entails that, in contrast to Oshana, Nedelsky does not concentrate solely on instances where relationships or institutions are autonomy-undermining. She also seeks to show what makes them autonomy-enhancing. This interpretation of 'constitutively relational' has consequences for the way we understand the state and in terms of what constitutes autonomy-promoting policies. When we come to see individuals as constructed and created by relationships, Nedelsky argues, we come to see that our vision of the self as a bounded entity is an illusion. As a consequence, our vision of rights and entitlement has to change. If our autonomy is the product of relational interactions and influences, then autonomous self-determination can no longer be viewed as necessitating a barrier to protect us against others' influences. Such an understanding of autonomy, she claims, should alter the way we understand the role of the state and its institutions (2011, ch.2).⁸⁴ Acknowledging that we are already shaped by the social context enables us to see that state interference, as well as the absence of interference, already structures our autonomy. In this respect, Nedelsky argues, we

⁸³ The proponents of a legal account of relational autonomy are Jonathan Herring (2009, 2013a, 2013b, 2014), Jennifer Nedelsky (1989, 2011) and, to a certain extent, Robert Leckey (2008).

⁸⁴ Among other things, she argues that rights and laws are viewed as forms of 'collective choices' (2011, 233) rather than as 'trumps' that restrain what we can collectively do (232-4). 'It will probably have already become apparent to readers familiar with the *Canadian Charter of Rights and Freedoms* that it is much better suited to implementing such dialogue than is the American system of judicial review, for which, at least formally, rights as trumps is an accurate metaphor', writes Nedelsky (2011, 247), as Section 1 of the Charter 'invites a dialogue internal to the courts, or to anybody considering the constitutionality of a law, by opening the Charter with an assertion that rights are not to be seen as absolute'. Indeed, the idea that rights are subjected to 'reasonable limits prescribed by the law as can be demonstrably justified in a free and democratic society' constitutes the first article of the Canadian Charter (*Canadian Charter of Rights and Freedom*, Section 1).

should refrain from seeing the state's interventions in our lives as infringing on our autonomy. Rather, we ought to think about how it can intervene so as to ensure that the socio-relational context we are in promotes autonomy rather than undermining it (2011, ch.3).

Second, seeing ourselves as fundamentally linked to each other has consequences for our vision of dependency (2011, 27). Thus, in contrast to Oshana who maintains the traditional affiliation of autonomy with independence, Nedelsky states that viewing self-government as possible only in the absence of dependency is not only illusory but also highly problematic. In addition to encouraging social fragmentation, it has at least two deleterious consequences. The first one is that it makes caring work invisible or frames it in terms of an option people can choose to take (2011, 27-9 & 190). By bringing to light the fact that dependency is a lifelong and inevitable condition of human life, Nedelsky argues that a relational understanding of autonomy should foster a much more coherent and constructive stance towards it. The second consequence is that when autonomy is seen as radically opposed to dependency, people who depend on state help and support are often *de facto* labelled as non-autonomous and treated as such. Welfare recipients, victims of domestic violence, as well as refugees, are often treated in a demeaning and disrespectful fashion by the state (2011, 152-6). This kind of treatment, in turn, negatively affects their autonomy by reducing the way they can plausibly exercise their autonomy and by submitting them to the authority of others.⁸⁵ Instead of seeing dependency as antithetical to autonomy and consequently as enabling all kinds of intrusive and paternalistic unilateral interventions in people's lives, we should treat dependency as a necessary feature of autonomous human life. This position, in turn, encourages us to develop ways to further the autonomy of people who are dependent on the state. Among other things, this implies taking their views into account and including them in the deliberation on the decisions that concern them (2011, 157).

In order to assess rights, laws, institutions, policy frameworks or even individual decisions, a legal relational approach demands that we evaluate them in terms of their impact on relationships.⁸⁶ Nedelsky's approach is thus consequentialist: the best laws and policies are

⁸⁵ Nedelsky would probably also agree with the self-regarding attitude theorists have expressed— for her, autonomy necessitates seeing oneself as autonomous (2011, ch.3). In this respect, demeaning attitudes would also be detrimental for vulnerable people's autonomy, as they fail to recognise them as agents in their own right.

⁸⁶ Thus, in Chapter 6, Nedelsky proposes a four-step approach when a right's conflict arises. The first step consists of examining the conflict in order to determine what types of relationships have generated the conflict in the first place and how our current laws participate in structuring these relationships. The second step consists of finding the core values, such as autonomy or equality, at stake within this given conflict.⁸⁶ The third step is to determine the kind of relationship that would likely foster such core values, and the final step is to determine how competing versions of laws or rights are the most likely to structure relationships in order to foster the best kinds of relationships.

those that allow us to better structure relations of equality ‘not only between citizen and state but also among citizens’ (2011, 17). In this respect, Nedelsky states that one of the core commitments of the relational approach she develops is the commitment to equality (2011, 9 & 82). Her understanding of autonomy, she claims, is better suited to further the egalitarian project of liberalism than the current individualistic understanding of autonomy that underlies our legal system. However, she also believes that her framework can be used in a ‘neutral’ fashion as a methodological tool that would illuminate points of dispute and enable a better understanding of our legal and political systems. Thus, Nedelsky claims, even if her own project is tied to her own feminist and egalitarian commitments, the relational framework she proposes can be used as a normatively neutral methodology to reframe and clarify debates and issues (2011, 77-86).

The work that legal theorists working in a relational perspective, such as Nedelsky, have completed thus far is compelling in many respects. Like the structural approach, Nedelsky’s framework has the advantage of refocusing our attention towards the relational context. Moreover, it does so without leading to the problem of exclusionary discrimination. First, in contrast to Oshana’s approach, it avoids denying the status of autonomous agent to individuals who are not substantively independent. Second, it explicitly frames autonomy as a human ideal, compatible with the vulnerability and deep interdependency that pervade human lives. This effectively breaks down the association of autonomy with traits and characteristics traditionally coded as masculine. The kind of understanding of autonomy Nedelsky proposes cannot be co-opted to justify excluding women, minorities or vulnerable individuals as insufficiently autonomous to be considered agents that are worthy of respect and consideration. Finally, given her positive emphasis on ensuring that our institutions are indeed autonomy-promoting instead of autonomy-undermining, it seems that Nedelsky’s account cannot inadvertently lead reinforcing existing exclusionary dynamics. In her account, it is the problematic relationship that needs to be reframed and not the vulnerable individual who needs to be ‘forced’ to become autonomous.

In spite of its many strength, however, the framework Nedelsky proposes does not seem to offer the necessary normative guidance to engage with cases and policies other than those she examines. This problem is due, in part, to the fact that she does not engage with the general literature on autonomy as it has developed since her initial intervention in 1989. This, in turn, makes her own account difficult to locate and interpret at times. More importantly, however, Nedelsky does not explain how to interpret the requirement of equality that makes

certain relationships autonomy-enhancing and others autonomy-undermining. This clearly makes it difficult to understand how to use her account as a normative guide to assess policies or ground political actions aimed at enhancing people's autonomy.

This latter concern is further reinforced by her claim that employing a relational approach has 'often not served women's interests well' (2011, 184). She gives two examples of such an instance. The first is the historical denial of women's claims to property once they were married as their relationship with their husband was seen as nullifying their legal autonomy in many areas (2011, 184). The second concerns cases where the non-guilty verdict was granted to cuckold husbands who killed their wives and/or their lovers (2011, 184). In Nedelsky's view, this type of judgement can be seen as relational because the autonomy of the individual implicated in these cases was assessed by taking into account both the circumstances of the relationship between the spouses and the broader social circumstances, such as those requiring 'legal immunity for revenge on a "seducer"' (2011, 184).

These examples are troubling as it is not clear why judgements denying married women's or homicidal cuckolds' autonomy are to be viewed as relational. If it is because of the way stereotypes and particular values play out in these judgements, it seems that non-relational cases would constitute the exception rather than the norm. Even in the best of cases, legal judgements can hardly be seen as purely neutral. They always enact particular values (or, unfortunately, stereotypes) and contribute to structuring relationships in certain ways, as Nedelsky herself states (2011, 69-73). In this respect, it becomes difficult to see why Nedelsky's employment of the relational account would alleviate feminist dissatisfaction with the current individualistic understanding of this ideal. It also makes the framework she proposes unconvincing as a means to address the problem of oppression. If using her relational framework can mean, in effect, sanctioning sexist laws that reproduce gender inequalities, then it becomes difficult to understand how it can help further feminism's emancipatory goals. Further explaining the criterion of equality, and showing how it enables the differentiation between 'good' and 'bad' relational outcomes, would have provided us with much-needed guidance. As noted by Robert Leckey, 'the relational inquiry, without revealing, explicating, and defending its normative underpinnings, does not move us forward through a contentious thicket' (421/7831). In this regard, because Nedelsky does not sufficiently explain what normative guidance her framework has to offer, her understanding of autonomy fails to convince as a suitable replacement for the individualistic ideal that currently underlies our laws and policies.

Moreover, Nedelsky's claim that relationships are constitutive of individual autonomy as well as her consistent rejection of individualism seem to lead her to disregard the problem of oppression. As Marilyn Friedman noted, it seems to make her relational approach at odds with the idea that persons are sometimes threats to one another. This, in turn, causes her to devote insufficient attention to the problems that can ensue from detrimental relationships. While she does address the problem of violence against women (2011, ch.5) she nonetheless does not offer criteria to identify problematic relationships apart from evidently abusive ones. Her will to move away from an interpretation of laws and policies as barriers against others' interference seems to ignore the usefulness of legal and political frameworks' protective function. Indeed, to detach relational autonomy from independence, as Nedelsky does, makes the version of the ideal she proposes unconvincing as a basis to ground vulnerable individuals' emancipation. As Friedman (2013) explains, it is necessary to acknowledge that the ideal of independence, especially for women, can often be a valuable asset. It remains important, in this regard, 'not to make formerly subordinated persons feel guilty for their fledgling and modest attempts to avoid the dependence on others that makes them vulnerable to, say, domestic abuse' (Friedman 2013, 339).

Conclusion

In this chapter, I have presented a critical exploration of the main families of relational accounts. These accounts vary, both in the way they understand the relational dimension of autonomy and in the criteria they put in place to assess this capacity. They possess different strengths and weaknesses with regard to their ability to provide a means to address the problem of oppression and to avoid the problem of exclusion. Because they are content neutral and do not restrict the range of preferences that individuals can autonomously endorse, procedural accounts of autonomy avoid the problem of exclusion.⁸⁷ However, even in their most stringent form, procedural criteria seem ill-equipped to address the problem of oppression. Strong substantive accounts of autonomy, by contrast, offer a more straightforward way to detect preferences caused by the internalisation of oppressive norms. Yet, this kind of account leads to the problematic —and factually untrue— assumption that preferences that seem coherent with an oppressive norm are necessarily non-autonomous. Consequently, such an account unduly excludes choices that might seem odd from a liberal feminist standpoint from the range of

⁸⁷ With the exception of Christman's account.

preferences that can legitimately and autonomously be endorsed by individuals. In other words, it leads back to the issue of exclusion.

Structural substantive accounts are interesting as they integrate the main strengths of procedural and substantive accounts. They do not constrain the kind of preference that an agent can autonomously endorse and offer ‘external’ criteria to assess autonomy. Using such an account of autonomy thus enables us to identify problematic socio-relational contexts and provides us with a means to tackle the problem of oppression. However, since Oshana’s structural account leads her to conflate the competency for autonomy and the exercise of this capacity, it leads her to oppose autonomy to oppression. More problematically, choices that reduce the agent’s capacity to exercise her autonomy are framed as non-autonomous, even if they reflect her profound convictions and relational engagements. These problems, in turn, lead Oshana’s account to reproduce the problem of exclusion. By contrast, the framework developed by Nedelsky stipulates that even when agents are victims of serious forms of oppression, they can never be seen as devoid of autonomy or interfered with on this basis. Her framework stipulates that it is the relationships that surround them that need to be restructured so as to better promote their autonomy. Doing so, it explicitly reclaims the compatibility of autonomy with both dependency and relational engagements. In this regard, it seems to successfully avoid the problem of exclusion. Nevertheless, because it fails to devote sufficient attention to the problem of oppression, such framework does not seem to offer a satisfying guidance to reform our laws and policies.

Reviewing the relational literature, it thus seems that adopting a relational account of autonomy means adopting an inclusive conceptualisation of this capacity—one that is respectful of the diversity of ways in which women can exercise their agency. Or, it means adopting a conception of autonomy focussed on identifying social obstacles that impede autonomy’s development and exercise and thus having the ability to justify an emancipatory feminist agenda. There seems to be a real and unavoidable normative tension created by the need to satisfy these two normative aims together. This tension, in turn, seems to leave us with the unappealing choice between formulating a criterion for autonomy that prevents exclusion but, by the same token, proves ineffective for identifying oppressive social circumstances, or articulating a stringent autonomy test, that denies the status of autonomous agent to certain categories of individuals. Faced with these alternatives, one wonders if addressing both the problem of oppression and the problem of exclusion simultaneously is possible. My task, in the next chapter, is to demonstrate that it is.

Chapter 3: Towards an Agnostic and Structural Account of Autonomy

I have ended the previous chapter with a puzzle. Given the central role it plays in our political framework, there is a need to reconceptualise autonomy in order to account for the way oppression impacts self-determination. Such reconceptualization is also necessary in order to ensure that we avoid perpetuating exclusionary dynamics that systematically favour dominant social identities. In this respect, feminism requires an inclusive conception of autonomy, which ‘begins with the assumptions that women do not share a common gender identity or set of experiences and that they often interpret similar experiences differently’ (Snyder-Hall 2010, 259). However, pushing an emancipatory feminist project forward necessitates adopting a conception of autonomy that enables us to identify the kind of social forces that lead agents to reproduce their own subjection. This seems to require a conception of autonomy that excludes preferences warped by oppression and/or agents whose self-government is impaired by oppressive constraints. In sum, trying to address the problem of oppression and that of exclusion simultaneously seems to leave us with a difficult conundrum. That none of the existing relational reconceptualisations of autonomy has proven able to satisfy both problems simultaneously should not be regarded as a failure on their part. Rather, it attests to the inherent difficulty of doing so, given that these two objectives push in opposite normative directions.

My goal in this chapter is to provide a framework that resolves this tension and could serve as a convincing replacement for the individualistic ideal that underlies our laws and policies. The solution, I argue, resides in adopting a twofold conception of autonomy. On the first level is autonomy as it is traditionally understood—that is, as a set of mental and emotional competencies. In order to avoid the problem of exclusion, I argue that we should remain agnostic about autonomy, understood in that sense. On the second level is autonomy in terms of its exercise. Self-government, in this sense, is made possible and structured by the socio-relational context. I suggest that it is at this level that we can properly address the problem of oppression. In order for an autonomy framework to adequately resolve the twin problems of exclusion and oppression, both levels are necessary and must be considered together.

I see the resulting agnostic and structural framework as owing to the insights and ideas of the different autonomy accounts presented in Chapter 2. However, its most evident influences are the relational theories Nedelsky and Oshana offer. Like that of Nedelsky, the

conception of autonomy I propose does not offer grounds to deny autonomy to vulnerable – nor indeed any- agents. It is, in this respect, explicitly agnostic with regard to autonomy on the ‘first level’.

The first part of this chapter is devoted to defending this view. I then explain why this agnosticism should result, on the political level, in a systematic presumption of autonomy that applies to the agents as well as to their declared preferences. In the second part of this chapter, I explain the working of the structural aspect of my framework, which serves to assess autonomy on the ‘second level’. Inspired by Oshana’s view of autonomy, I argue the competencies necessary to be perceived as autonomous do not have much value if individuals are not able to exercise them. The exercise of autonomy, in turn, is primarily social. It is structured and enabled by the set of relationships, norms and institutions that form one’s socio-relational context. It is at this level, I argue, that autonomy can be assessed and that we can use this ideal as the ground to vindicate emancipatory policies.

1. An Agnostic Framework

By virtue of its focus and of the way it understands autonomy, the framework Nedelsky offers precludes any judgements on whether or not a given agent is autonomous. She warns against the temptation to postulate that agents, even when they are in highly oppressive contexts, have lost their competency for autonomy.⁸⁸ Likewise, Marilyn Friedman proposes a minimal conception of autonomy, which, in practice, precludes framing any agents as having lost their competency for self-government. In this section, I expand on this intuition, implicit in the work of these theorists. In other words, I focus on the idea that we should refrain from attempting to assess the degree of autonomy that agents possess. I give four arguments to support this claim. First, there is the argument that autonomy should be understood as causally rather than constitutively relational. Acknowledging that social forces causally shape our competency for autonomy (rather than constituting it), closes off the possibility of assessing it externally, by looking at the agent’s socio-relational context. Second, there is the thick disagreement argument: the fact is that there is no agreement on the normatively relevant competencies necessary to be self-governed, nor is there likely to be one. Third, there is the epistemic

⁸⁸ This is most evident when she discusses domestic violence (Nedelsky 2011, 175-86) and states that we should not see victims of such abuse as devoid of autonomy. At the same time, however, she stresses that seeing them as autonomous agents should not lead us to undermine eventual harm to their self-determination ‘caused by the combination of [their] relationship to the batterer[s] and these societal failure’ (2011, 182). In another section in her book, she also comments that ‘one should be very cautious and humble about one’s judgments about what could constitute a “substantively” autonomous choice’ (2011, 60).

uncertainty argument, which entails that even if this thick disagreement were resolved, we would still have no convincing way to determine whether or not a given agent does possess the relevant competency at a sufficient level to be considered autonomous. Finally, the multiple competencies argument seeks to show that autonomy is not a scalar competency, which could be measured in agents and placed along a continuum. Taken together, these arguments should lead us to be explicitly agnostic on the question of whether or not agents possess a sufficient level of competency for autonomy. As I argue in the last part of this section this conclusion should not merely lead us to suspend our judgement on the political level. Rather, it should lead us to adopt a systematic presumption of autonomy towards individuals as well as their declared preferences.

These arguments might seem only to support agnosticism towards autonomy conceived as a global attribute of the agents. However, they should also lead us to adopt an agnostic posture locally, with regard to the declared preferences of agents. Typically, the reason we view a preference as autonomous is because we see it as stemming from the exercise of the right competency. This is more evident for proceduralists, who claim that a preference is autonomous when it is endorsed while making good use of the adequate competency (e.g. critical thinking abilities). Yet, strong substantive theorists assume the same thing. What they postulate, however, is that the adoption of a preference congruent with an oppressive norm demonstrates that the agent's competency for autonomy is skewed.

A) Autonomy as Causally Relational

As we have seen in Chapter 1, Christman (2004) understands the relational accounts as circumscribed to only those views that treat social relationships as constitutive of autonomy. However, the meaning of 'constitutively relational' remains unclear. For Christman, it seems primarily to designate a view similar to Oshana's, which entails that social factors entirely constitute autonomy. The socio-relational context (or the relevant aspect of it) therefore determines the level of autonomy we regard individuals as possessing. While this view might make sense if we consider autonomy, as Oshana did, mainly in terms of its potential to be exercised, it becomes much less plausible when it comes to autonomy as a competency.⁸⁹ Our competencies, in general, do not seem to be determined or constituted by the socio-relational context. For instance, even if I am in a socio-relational context conducive to learning English, I

⁸⁹ As discussed in the previous chapter, Oshana does not deny that autonomy requires mental or emotional competencies. However, it soon becomes evident that what is truly relevant for global autonomy is the possibilities left for the agent to exercise these competencies.

can still fail to master it properly. The same applies to people who are in socio-relational environments that are non-conducive or even hostile to learning a language. It will certainly be more difficult to learn English if one comes from a radical separatist family of French-Canadian descent that perceives speaking this language as a form of treachery. Yet, even in these circumstances, it can nevertheless be done. There seems to be no convincing reason to suppose that the competency for self-determination should be any different.⁹⁰ Autonomy, like any other skill or competency, is influenced by the socio-relational context. However, it seems implausible to consider it as entirely constituted by it.

Nedelsky offers another interpretation of ‘constitutively relational’.⁹¹ For her (2011, 55), an ‘individual’s capacity for autonomy is made possible, is constituted by, her relations [...] [r]elations, including those with collectives of all sorts, [are] not just potential threats to autonomy but its source’. That autonomy is constituted by the socio-relational context, however, does not mean that it is entirely determined by it. She writes that ‘autonomy, on this view, makes people more than the sum of conditioning. Autonomy is what enables people to sort, choose, reject, embrace and transform the many factors that might otherwise merely condition us’ (Nedelsky 2011, 54). In this regard, saying that autonomy is constitutively relational only implies that there is a causal link between the socio-relational context and autonomy. However, this causality is uncertain and cannot be seen as directly determining the level of autonomy, as a competency, agents possess. Following such a view, it is certainly better to be in a socio-relational context that is conducive to the acquisition of the repertory of skills needed for being considered autonomous. However, the socio-relational context cannot be assumed to be a predictor of the level on which people can be called autonomous.

Given these two radically different views of what ‘constitutively relational’ implies, I will use the term ‘causally relational’ to characterise accounts that ‘hold that certain relationships and social environments play a causal role [albeit uncertain and unpredictable] in the development and ongoing exercise of autonomy’ (Baumann 2008, 445).⁹² Following this characterisation, my own interpretation of autonomy, like that of Nedelsky’s, is only ‘causally relational’. Understanding autonomy as causally relational, in turn, seems much more in line

⁹⁰ Apart from if we postulate autonomy as residing in some sort of transcendental competency (such as the Kantian ideal of rationality) that remains unaffected by the contingencies of one’s life. However, this view also seems factually untrue and would probably be rejected by relational theorists.

⁹¹ Which, interestingly, Christman (2004, 148-9) dismisses as only ‘causally relational’. For Christman, this would imply that her account is not properly relational.

⁹² The precision of the ‘uncertainty and unpredictability’ of the causal role is my addition. It serves to emphasise the difference between causally and constitutively relational.

with our concrete reality and the way we develop skills than understanding it as constitutively relational.⁹³

This might seem like a trivial remark. However, acknowledging that our competencies (in general) as well as our competency for self-government are causally relational has two interesting consequences. First, it justifies considering the socio-relational context as relevant for the acquisition and development of the competency for self-government. Postulating a certain causal link between autonomy and the socio-relational context, in turn, gives us reasons to ensure that this context helps to foster, as much as possible, the competency needed for self-government in individuals. It also gives us reasons not to assume that substantive independence is a necessary condition for autonomy like Oshana does. Just like any other skill, autonomy needs to be fostered by the socio-relational context, as well as by meaningful relationships. This means that we are, to some extent, dependent on others to acquire and develop the skills needed for self-government. Given that developing autonomy benefits from the help of others, such independence cannot be required as a condition for self-government. In this regard, excluding the modes of agency primarily guided by caring concerns seems incoherent. In order to be consistent, a conception of autonomy cannot exclude the very modes of agency that enable the development of autonomy in the first place.

Second, it implies that it is impossible to assess the level of competency for autonomy that individuals possess by looking at their socio-relational context. To my knowledge, no relational theorist would explicitly adopt such a deterministic view of autonomy. However, people who understand oppression as incompatible with autonomous agency sometimes seem to adopt a mild version of this view. Indeed, the assumption underlying claims such as ‘subordinated individuals, once they are subordinated, cannot be autonomous’ (Warriner 2015, 39) or that ‘preferences influenced by oppressive norms of femininity cannot be autonomous’ seems to be that oppressive scripts or social forces extinguish or, at the very least, substantially diminish individuals’ competency for autonomy. In contrast, adopting a causally relational view of autonomy entails admitting that we cannot postulate the way oppressive factors will affect individuals’ competency for self-determination. While being in a socio-relational context that fosters the development of autonomy might indeed give the agent a

⁹³ Even if one thinks that determinism is true and that free-will is a mere fiction, it would seem bizarre to postulate that the competencies needed for autonomy are constitutively relational. There would be many other factors (biological, emotional, psychological) that would serve as determinants for our autonomy apart from relational ones. Here, I do not mean to take a position in the debate concerning determinism, as it is largely irrelevant for my current purpose. What I want to point out, however, is that even if determinism is true, the complex interplay of the different factors that determine us would make assessing the competencies for autonomy impossible in practice. And, in any case, it would still make little sense to view it as ‘constitutively relational’.

greater opportunity to develop the skills needed for self-governing, it cannot guarantee that she will develop them. Likewise, being in a highly restrictive socio-relational context might affect our self-governing competency. Yet, it is impossible to predict how and to what extent. There exist many examples of individuals who, faced with the most grievous constraints and the most hostile environments, seem to manifest what many would see as a high degree of competency for autonomy.

All of this goes to show that if we admit that autonomy is only causally relational, as I think we should, we also have to admit that assessing the socio-relational context cannot enable us to assess the level of competency for autonomy that individuals possess. Moreover, it cannot allow us to postulate that agents within oppressive socio-relational context have a diminished competency for autonomy.

B) The Problem of Thick Disagreement

There is a thick disagreement concerning what autonomy is and how it should be assessed. I use the term ‘thick’ here, following Laura Valentini (2013). She differentiates between thick and thin disagreement in the following manner. A ‘thin disagreement’ is when people reasonably disagree about X but agree about what the truth conditions of X would be. A ‘thick disagreement’, in contrast, implies that people reasonably disagree about both X and what its truth condition would be. A thick disagreement, in turn, has normative consequences because it implies that it is unlikely to disappear. We therefore have to acknowledge that ‘X’ is an essentially contested concept. Valentini employs this distinction to show that ‘justice’ is an essentially contested concept that is subject to a thick reasonable disagreement.⁹⁴ However, most of the concepts that interest us, as political philosophers, are subject to the same thick disagreement. Individual autonomy is no exception.

First, as Chapter 2 revealed, even relational theorists, who form a specialised minority of autonomy theorists, disagree on what competency makes an agent properly self-governed. Is it being able to critically reflect on your preferences, having the self-awareness necessary to retrace the origin of your preferences or possessing the self-worth to authorise them? Are the ability to judge certain norms as oppressive or the capacity to know right from wrong necessary for autonomy? Or, is autonomy simply being able to form desires and volitions that one considers as one’s own?

⁹⁴ For Valentini (2013), this does not mean that we can never define ‘X’. It means that defining ‘X’ becomes a matter mutual justifiability. She uses this argument to express the view that democracy should be seen as intrinsically valuable insofar as it is an integral part of justice. I will return to this argument in the last part of this chapter.

There is, of course, no way to resolve this debate by pointing to what autonomy really is. Autonomy does not designate a concrete reality that we can observe and analyse like an organ. It is a ‘woolly’ normative construction that we use in many different and sometimes contradictory ways in our ordinary lives, as well as on the political and legal levels. While some argue that our understanding of self-government should capture the ways we employ ‘autonomy’ as well as our intuitions about self-government, it is unlikely that the debate will be resolved this way. We have varying intuitions about what counts as self-determination, what is needed for it in terms of mental and emotional skills and what ‘autonomy’ means.

Another strategy involves adopting the conception of competency that is best able to fulfil the normative roles autonomy serves. As Joel Anderson (2014, 355) remarks, ‘[d]ebates about criteria for autonomy (and what autonomy entitles one to) are best understood, not as debates about what autonomy, at core, really is, but rather as debates about the relative merits of various possible packages of thresholds, entitlements, regulations, values, and institutions’. As I have argued, for relational theorists, this would mean an account of the competency for autonomy that would address the issue of oppression without leading us back to the issue of exclusion. However, as Chapter 2 revealed, these two roles are difficult to combine. Addressing the problem of oppression seems to require adopting an understanding of autonomy that enables the identification of agents whose competency for self-government has been distorted by their oppressive context. In other words, it seems to require us to adopt an exclusionary account of autonomy. Inversely, avoiding the issue of exclusion seems to require us to adopt a highly inclusive conception of what it means to be competent enough to count as autonomous. Yet, such an account of autonomy cannot, in and of itself, serve to identify or address the problem of oppression. Given that the tension between these two normative aims is not solvable at the level of autonomy conceived as a competency, theorists are forced to choose which one should take normative precedence.⁹⁵ Some claim that their conception is the best, as it precludes excluding agents and promotes an inclusive sense of self-worth. Others claim that a conception of autonomy should enable us to identify preferences skewed by oppression and to establish a feminist emancipatory agenda. Thus, because the roles autonomy plays are not compatible with one another, there is also a reasonable disagreement concerning what makes identifying a given competency as grounding self-government better than identifying another one.

⁹⁵ As I argue in this chapter, this tension can only be resolved through a twofold conception of autonomy that considers the capacity for self-government to reside not solely in a given competency (or rather set of competencies) but also in the effective possibilities individuals have to exercise it (which can be assessed by looking at the socio-relational context).

C) The Problem of Epistemic Uncertainty ⁹⁶

Even if agreement existed regarding which competency should be considered normatively relevant for autonomy, the problem of how to assess it in practice would remain.

Many autonomy theorists have devised criteria for autonomy that can function as ways to identify preferences or agents that should not be considered as autonomous. While these ‘autonomy tests’ are theoretically compelling, using them for practical purpose is fraught with epistemological difficulties. The fact is that we do not have epistemic access to the agent’s interiority, which would allow us to assess the level of competency she globally possesses and whether she was making good use of it when endorsing a given preference. People may *appear* adequately self-reflexive, self-responsible or critical of norms and conventions. In reality, however, they might not possess nor exercise any of these skills while endorsing a preference or when living their lives. Inversely, people may appear to us as lacking in the relevant competency for autonomy, but they might in fact possess and exercise it in ways that are indiscernible to us. This clearly is an issue for procedural accounts like that of Christman’s, which link autonomy to the competency of reflecting on the conditions in which a given preference was acquired. As argued in Chapter 2, in reality, there is simply no way of knowing whether or not a given agent was truly able to reflect on the conditions of acquisition of her preference or whether she would have rejected this preference if she were to do so. Strong substantive accounts make the inverse mistake when they automatically link the endorsement of a preference coherent with an oppressive norm with a loss of critical thinking abilities. By doing so, they may fall prey to the mistake of psychologising the structural or confusing a different conception of autonomy with a lack in competency for autonomy.

It might seem, at first glance, that self-worth accounts avoid this problem given that they equate autonomy to the ability to claim ownership of one’s action. In this respect, it does not seem that assessing autonomy requires an epistemic access to the agent’s inner emotional or psychological life. To a certain extent, autonomy is performative. We can verify whether or not agents are autonomous based on their ability to perform autonomy and actively claim their preferences as their own. Yet, in practice, this route is also thwarted by the same

⁹⁶ Serene Khader (2011) best expresses this point about the epistemological difficulties of correctly interpreting agents’ behaviours and situations. While her argument concerns adaptive preferences more specifically, her argument also applies to individuals’ competencies for autonomy. She rightly states that the unavoidable epistemological risks of ‘misunderstanding self-interested well-being trade-offs, treating deprivation caused by structural barriers as primarily caused by psychological problems, and mistaking unfamiliar ways of flourishing for instances of adaptive preference’ should be acknowledged within our theories rather than simply ignored (2011, 42).

epistemological uncertainty. As Warriner (2015) remarks, if an agent is pressurised and unable to deviate from the script she has been given, should she still count as self-authorising? Are the Pyongyang citizens who glorify their country and actively claim their pride in being subjects of the great Kim Jong-Un self-authorising when they do so? Can we consider women from the Christian Patriarchy Movement as taking ownership of their actions when they claim, as their own, preferences that they are simply not authorised to refuse? Inversely, when an agent inadequately performs autonomy, or seems too uncertain or ambivalent about herself or her action, can we really conclude that she lacks the self-worth necessary to be considered autonomous?

What these difficulties reveal is that, in practice, there is no sure way to determine if an agent possesses the relevant competency to the required level by looking either at the agent herself or at the preferences she endorses. Whatever skill we associate autonomy to, we always risk being wrong about what we perceive as an evident lack of this competency.

D) An Open Account of the Competencies Needed for Self-Determination

The arguments I have advanced so far suggest that there is only one competency, or cluster of related skills, that should be seen as relevant for self-government. This seems to be what most autonomy theorists assume when they present the competency for autonomy as a continuum, which has a minimal threshold, and along which it is possible to situate individuals.⁹⁷ However, as Meyers suggests, it does not seem to make sense to view autonomy as such a mono-scalar competency. Self-government can involve the set of skills usually associated with autonomy, such as instrumental and critical reasoning, independence of thought, a certain kind of lucidity and transparency towards one's own motivations and control over oneself and one's emotions.⁹⁸ It can also involve skills and capacities not traditionally linked to autonomy, such as imagination, creativity and memory.⁹⁹ Additionally, as some relational theorists have highlighted, it can even mean exercising many skills that are typically seen as antithetical to most rationalistic views of autonomy. Emotional attitudes and capacities regarding others (such as empathy, care for others and emotional openness)¹⁰⁰ or regarding oneself (such as self-

⁹⁷ See Nedelsky (2011) and Friedman (2003), for example.

⁹⁸ See Dworkin (1988) and Frankfurt (1987).

⁹⁹ Meyers (1987, 1989) and Mackenzie (2000).

¹⁰⁰ See Nedelsky (2011) and Meyers (1987, 1989) for emotional skills regarding others and the importance of care and empathy for self-determination.

consideration and self-authorisation)¹⁰¹ can also be sources of valuable forms of self-government. To posit only one of these competencies as relevant or as more important than the other for auto-determination seems misguided. Can we truly say that being rational is more important in order to lead a life of one's own choosing compared to being able to imagine oneself otherwise? Or, can we assess that the ability to critically reflect on one's preference is crucial to be able to govern oneself while self-worth is not? Self-government, it seems, must imply the simultaneous exercise of a range of different competencies, and cannot be associated to only one skill.

Admitting that autonomy is not a unified competency already adds complexity to the mono-scalar picture of self-government. It should lead us to admit that there is no single competency continuum for autonomy; rather, there are many. Yet, the idea that there are minimal thresholds for each of the different 'autonomy skills' that individuals must satisfy in order to count as properly self-governing could nonetheless be safeguarded. This would make assessing the level of competencies for self-government still possible, at least in theory.¹⁰² Yet, as Meyers mentions, the trouble is there are many different ways one can lead a life of one's own choosing as well as many different forms self-government can take. These different ways of life will imply different sets of skills to different degrees. Given that the range of capacities that could be of use in leading a life of one's own choosing is extremely large and varied, it seems neither possible nor desirable to circumscribe a particular register of 'autonomy skills'. Moreover, it seems impossible to simultaneously exercise all these registers of skills and capacities, or even to do so in the larger temporal context of one's life. Some of them are scarcely compatible with one another. In this context, to identify a particular set of competencies as constituting autonomy will necessarily privilege certain conceptions of the good life over the others.

To give a brief example of this, let us typify (and push to extremes) two types of auto-determination following 1. the traditional rationalistic understanding of autonomy and 2. the emotional and relational understanding that care feminists and some relational theorists promote. On the one hand, we would have someone resembling an ascetic stoic philosopher—for whom self-government implies the exercise of reason, self-control, critical thinking and independence—as the ultimate ideal for self-direction. On the other hand, we would have an

¹⁰¹ See Paul Benson (1994, 2000, 2005), Andrea C. Westlund (2003, 2009), Carolyn McLeod and Susan Sherwin (2000), Catriona Mackenzie (2000, 2001, 2008) and Robin S. Dillon (1992, 1999) for the importance of emotional skills regarding the self.

¹⁰² In practice, accepting that multiple competencies are needed for one to be considered self-governed is likely to make their assessment much too complex to be feasible.

agent like Mother Teresa, who is primarily guided by emotions such as empathy and the will to care for others.

These two archetypes of auto-determination involve two very different sets of skills and capacities, which are scarcely compatible with one another. Yet, they seem to constitute equally valuable and autonomous forms of a good life. While it is important to revalorise modes of agency that are typically coded as 'feminine', it would be problematic if such revalorisation were to lead us to frame those that are traditionally associated with autonomy as somewhat less autonomous. Likewise, understanding our ascetic stoic philosopher as somewhat more autonomous than Mother Teresa because he exercises skills usually associated with autonomy seems equally misguided.

What this example is meant to show is that associating autonomy with a particular register of skills is not innocuous. The competencies we will identify will privilege certain types of subjectivities and favour certain conceptions of the good life over others. Insofar as we take the liberal commitment to neutrality to heart, we have to assume that there is no legitimate (or good) way to discriminate between these different visions of the good life. Likewise, inasmuch as we are also committed to avoiding the issue of exclusion, drawing up a finite list of skills and capacities that someone should possess in order to be autonomous should be avoided. If we refuse to associate autonomy mainly to certain types of good life, then it makes no sense to view autonomy as a unified and clearly delineated competency or set of skills that could be subjected to evaluations and assessments. If autonomy implies an indefinite repertory of skills which varies in function according to the kind of good life one has chosen, then we have to admit that assessing the degree of competency an agent possess is simply impossible. In other words, we have to remain agnostic towards it.

This open and variable definition of what possessing the competency for autonomy entails can leave many sceptical. It can be thought that if autonomy cannot serve to exclude certain modes of agency or certain capacities from the realm of autonomous agency, then it is of little help in understanding what autonomy is.

I have two answers to this potential criticism. The first is that this open understanding of the competency for autonomy can still serve, to a certain extent, as a normative guide. Autonomy is what is necessary for self-governing and to lead a life of one's own choosing. This characterisation, in itself, enables us to evaluate skills in light of this objective. Doing this evaluative exercise, one realises that, rather than being linked to the presence of certain characteristics or particular modes of self-government, the lack of autonomy is instead linked to

the absence of certain skills.¹⁰³ For instance, consider obedience, a ‘skill’ usually seen as antithetical to autonomy. Obedience is certainly necessary for certain visions of the good life (such as the good life chosen by nuns or soldiers). It is also a valuable skill for most individuals: we all need to be able to follow directives and obey the orders of a superior from time to time. That is why we seek to cultivate this skill in children, for example. In this respect, insofar as it can be necessary to certain modes of self-government, obedience should not be seen as incompatible with autonomy. Some might even want to count it as one of the many skills that can be involved in self-government.¹⁰⁴ The problem for autonomy, however, arises when obedience is paired with the absence of skills such as critical thinking, imagination and self-consideration. Therefore, even if this understanding of the competency for autonomy is hazy, open and undefined, it can still offer certain guidance on the theoretical level.

The second answer is that it is not because the contours of the competencies needed for self-government are not clearly delineated that autonomy cannot serve its purposes on the normative level. As I will demonstrate in the rest of this thesis, the twofold conception of autonomy I propose, even if it is agnostic, can fulfil much of the normative purposes this concept serves on the political and legal levels. It can serve to determine the degree of (criminal) responsibility that should be attributed to individuals, and it can also protect individuals against unwanted interferences. Moreover, as I will argue in the second part of this chapter, it can enable us to identify oppression and be used to justify intervening in socio-relational contexts that are destructive of the ability to self-govern.

I would even suggest that, for this latter task, an open conception of the competencies needed for autonomy is more useful than a clearly delineated account. After all, identifying obstacles to autonomy is associated with the understanding of autonomy we adopt. If we think autonomy is mainly associated with critical thinking, we will try to foster critical thinking in our children and will view things that can thwart this competency as threats (hence the fixation most mainstream autonomy theorists have on things such as manipulation, subliminal influences and brainwashing). The more finite and narrow our conception of the competency is, the fewer obstacles we are able to see and the more ‘good life’ options we exclude from our considerations. As Nedelsky (2011) and Herring (2014) explains, that autonomy remains primarily affiliated with competencies such as independence, and rationality has rendered this

¹⁰³ Of course, if one can think of skills that cannot be plausibly linked to self-definition, self-discovery and self-determination, then it is possible that they ought not to be considered as autonomy skills.

¹⁰⁴ Saba Mahmood (2005), for instance, develops such argument in *The Politics of Piety*. She seeks to show that we may need to submit ourselves to a discipline in order to develop a skill and that submission or obedience is not antithetical to autonomy.

ideal blind to certain types of oppressive forces. If ‘Mother Teresa’ types of agency were more readily recognised as a valuable form of self-determination, fostering the development of skills such as empathy, care and attention to others would likely be of greater concern. As such, an open conception of the competencies needed for autonomy enables concerns for a greater range of ‘good life’ conceptions and therefore leads us to consider the difficulties and impediments individuals encounter when choosing them.

Admittedly, this agnostic conception of autonomy is primarily meant to be of use on the political and legal levels. In this respect, it has certain limitations. For instance, it cannot tell us why, and in what respect, children and people suffering from serious mental pathologies should count as less competent to make important decisions about their lives. However, I would argue that for most practical purposes, we do not need a conception of autonomy to do this. I would also suggest that we should remain wary of devising our account of the competencies needed for autonomy in view of the kind of cases we wish it to exclude. By doing so, we risk inadvertently creating an account that is too narrow and would exclude too many individuals and preferences we would otherwise see as autonomous. There is also a high risk of applying our own biases and prejudices to determine the kind of agents we think are self-evidently not autonomous, which will then come to structure our whole understanding of personhood. I will return on these points later on in this chapter.

E) Avoiding Exclusion: A Systematic Presumption of Autonomy

Accepting that autonomy does not reside in only one competency but demands the exercise of a multitude of skills depending on individuals’ conceptions of the good life implies a *de facto* agnosticism towards the degree of competency individuals possess. It becomes, in effect, impossible to situate individuals somewhere along a competency scale given that there exists no such unified scale. Even if one refuses the view of autonomy I propose and connects autonomy to one particular competency, this agnosticism should still hold. As I have attempted to show, there are, in practice, no convincing ways to determine whether or not individuals do possess a given competency to the relevant degree. An examination of the socio-relational context cannot determine this, as it would presume an implausible and counterfactual deterministic view of our competencies. Moreover, there is a thick and reasonable disagreement on what competency should be seen as necessary for self-government. Even if this disagreement were resolved, we would still have no convincing way to determine which individual should count as competent given that we have no epistemic access to their internal mental and/or emotional lives. In this context, I suggest that we ought to suspend our judgement regarding whether given

agents should be considered as possessing the relevant competency for autonomy and whether their preferences were endorsed while mobilising it. On the political level, however, there are reasons to translate this agnosticism into a systematic presumption of autonomy that would apply to the agent as well as to her declared preference.

First, only such a systematic prudential presumption of autonomy enables us to ensure that we avoid reproducing or reinforcing problematic exclusionary dynamics. Autonomy is most often conceived mainly as an internal competency. It is because it is conceived as such that it becomes intrinsically linked to the status of full-fledged moral agent, worthy of consideration and respect.¹⁰⁵ The competency for autonomy is, in this respect, conceived as the main basis to consider individuals as equals within liberal societies (Carter 2011). We owe the same duties of consideration and respect to all individuals insofar as they are all equally competent to choose and revise their own conception of the good life and to govern their life with respect to it. In this regard, they are all equally worthy of being considered and of participating in the collective democratic decision-making process.¹⁰⁶ Likewise, it is because individuals' preferences are seen as autonomously chosen, that they are considered worthy of being respected and protected against undue interference.¹⁰⁷ By contrast, not being seen as competent means being denied the status of full-fledged agent whose preferences and conception of the good life are as worthy of respect as anybody else's.

The problem of exclusion mainly stems from this view of autonomy as a form of competency that needs to be assessed. It is partly because autonomy was associated with competencies and skills that were coded as masculine that autonomy was used to exclude women and frame them as eternal minors. However, reproducing the same kind of discriminatory exclusionary dynamics becomes a risk for feminist views of autonomy meant to identify preferences deformed by oppression. Indeed, such views simultaneously deny that the agents who have adopted these non-autonomous preferences are as competent as we are to form and revise our own conceptions of the good life. Doing so they lead to implicitly deny that these agents should be considered as our equals.

¹⁰⁵ Anderson (2014, 355) for instance, notes that autonomy is a competency akin to being able to drive a car. It is a 'socially attributed, claimed, and contested status' and 'represents an especially significant move in a variety of social practices' and 'partly fixes what others are permitted and obligated to do or refrain from doing'.

¹⁰⁶ As Waldron (1993) notes, democracy is understood as necessary to express equal respect because it enables us to ensure that the rules that govern society are acceptable to all its citizens as rational and autonomous agents.

¹⁰⁷ Anderson (2014, 355) remarks that 'if you count as personally autonomous (in the sense of being competent to make your own decisions), you can legitimately insist on being taken seriously and not being interfered with in certain ways'.

It might be argued that respect implies treating people as they deserve to be treated. In this regard, it would not be disrespectful to treat people who are incompetent to direct their own lives as non-autonomous. We do not disrespect children, for instance, when we make important decisions about their lives for them. Yet, as I have sought to show, there are simply no convincing ways to 1. identify which skills are truly needed to make one's own decisions and to what level and 2. to ensure that we correctly identify instances where agents do not possess a sufficient level of these competencies. In this context, it seems much better to adopt a systematic presumption of autonomy rather than to risk the arbitrary exclusion of people whose competency we are not able to recognise. Given that so much hinges on receiving the status of autonomous agent, it seems preferable to avoid denying this status to anyone.

Adopting a systematic presumption of autonomy thus helps to avoid reproducing or reinforcing exclusionary dynamics because it implies systematically considering agents as our equals. It implies postulating that they are competent to make their own choices and to voice their own opinions and desires. It prompts the ethical and political duty to take their expressed desires and preferences into consideration and to grant them adequate respect. Even when, from our own perspective, an agent seems irrational and when the choices she makes seem to be to her own detriment, we still ought to see her as worthy of respect and as worthy of being listened to and taken seriously. In this regard, the agnostic conception of autonomy I propose cannot serve as a means to justify considering certain types of agents as less able than we are to direct their lives. It also cannot serve to legitimise disregarding these agents' declared preferences as less worthy of respect than our own.

This general attitude, in turn, is likely to be a better help in fostering vulnerable agents' autonomy skills than treating these agents as if they were not competent to make their own decisions about their lives. As proponents of the self-regarding attitude model note, being self-governed is partly dialogical for two reasons. First, developing the self-worth and self-trust that are often involved in self-government is relationally enabled. In order for a person to develop trust in herself, and to view herself as worthy of respect and consideration, it certainly helps if others see her and treat her as such.¹⁰⁸ Second, not being recognised as competent to direct one's own life often invites interferences and paternalism into one's life. It can mean having fewer opportunities to exercise one's autonomy in meaningful ways. This, in turn, can also result in effectively diminishing one's competencies for self-government. The fewer

¹⁰⁸ This does not mean, however, that these others have to remain uncritical of these choices and desires. As Andrea Westlund (2014) argues, critically engaging with an agent's motives and desires, if done in a respectful manner, can constitute an acknowledgement of his autonomy.

opportunities people have to exercise a given skill, the higher the chance that proficiency in this skill will diminish.¹⁰⁹ In this respect, adopting a systematic presumption of autonomy has the added advantage of helping people develop and/or sustain the kind of skills and self-regarding attitudes that promote their autonomy. Inversely, refusing to take on this ethical duty can be seen as a form of oppression, as it endangers the self-regarding attitudes necessary for self-government and can end up reinforcing the very dynamic of oppression we seek to alleviate.

2. A Structural Framework

One foreseeable criticism is that adopting an ‘open’ conception of autonomy that precludes any clear assessment of the competency an agent possesses (either as such or with regard to a given choice or a preference) makes the framework I propose impotent in addressing the issue of oppression. The main aim of this section is to demonstrate that this is not true.

Autonomy is often conceived solely as a competency. However, as remarked earlier, it does not suffice to be competent in making one’s own choices in order to lead a life of one’s own choosing. Agents also need to be able to enact these choices in the world. In this respect, we should acknowledge that what we refer to as the ‘capacity for autonomy’ includes two distinct (albeit connected) aspects of self-government. Leading a life of one’s own choosing necessitates, as we have just seen, the possession of certain (internal) mental and/or emotional skills. Yet, it also requires the ability to exercise these skills in the external world. Structural conceptions of autonomy, such as the one Oshana proposes, offer, in this regard, a great complement to understandings of autonomy that primarily focus on the mental and/or emotional competency needed for self-governing. As it refocuses on the social, institutional and relational conditions for autonomy, such an understanding enables us to evaluate the possibilities left to exercise one’s autonomy. In contrast to autonomy conceived as a competency, the conditions of possibility for the exercise of autonomy are indeed constitutively relational. Looking at the socio-relational context thus provides us with a means to assess self-government in terms of its possibilities of exercise.

In this section, I explain the general working of the structural component of my framework and its interaction with the open and agnostic conception of the competency for

¹⁰⁹ This does not entail that we should postulate that people who have been living in highly restrictive environment for a long time have lost their competency for autonomy. As previously explained, there is reason to see the autonomy competencies as causally connected to the socio-relational context. This should give us reasons to ensure that people are in a socio-relational context that allows them adequate opportunities to develop and exercise their autonomy. However, it cannot lead us to postulate that an oppressive socio-relational context necessarily extinguishes people’s ability to self-govern.

autonomy I have so far developed. In contrast to Oshana's conception, the twofold conception of autonomy I propose entails distinguishing between the internal and external dimensions of self-government and links the normative *status* of autonomous agent to autonomy as a competency. This, in turn, has consequences for the working of the structural part of the framework I propose because it implies that we cannot deny the status of autonomous agent to individuals who have limited possibilities to exercise their self-government. I argue that, in terms of its exercise, autonomy should be understood as demanding an adequate range of non-trivial options, which should nonetheless never be viewed as determined or fixed. I then turn to the problem of oppression and explain how such a conception of autonomy shapes the way we understand and identify oppressive forces. I suggest that identifying oppression should entail consulting with the concerned agents, especially in view of the very 'grey' picture of agency that previous conclusions has conveyed.

A) Autonomy and Adequate Options

As Oshana points out, leading a life of one's own choosing necessitates effectively possessing options from which to choose. In order to be able to govern one's life in significant ways, individuals need to have access to a sufficient range of quality options. However, how do we define the relevant range of options that needs to be accessible to individuals? As Meyers (2008, 204) notes about Oshana's theory:

[It] is notoriously difficult to pin down [what constitutes an adequate range of options]. Like many other exponents of this criterion, Oshana does not demarcate the minimal range of autonomy-sustaining options, and she does not comment on how to go about demarcating it (either in the abstract or at a given time and place). This omission reduces her signature demand for a theory that 'externalizes' autonomy to a disappointingly vague assertion that unspecified, external conditions are necessary for autonomy.

In order for a structural conception for autonomy to be of use, it therefore needs to provide minimal normative guidance concerning what options are necessary for self-government. Only such guidance, in turn, would enable us to differentiate autonomy promoting environments, from those that are deleterious to it. But how do we demarcate the range of options that would enable us to specify the external conditions needed to exercise one's autonomy?

This is an important question. For political purposes, the easiest answer is that, at a minimal, the relevant range of accessible options to which individuals should have access is to be determined contextually within a given time and society. In this respect, the concept of a

range of relevant options is connected to that of equality. Insofar as liberal societies are centrally concerned with ensuring that everyone has the capacity to lead a life of their own choosing, such a society should be centrally concerned with ensuring that people possess roughly similar range of options from which to choose. If a part of the population does not have access to certain types of occupations, for instance, this would count as an important injustice. It is necessary to define the relevant range of options contextually, because such a definition does not have to rest upon a conception of the options that a fully human life requires. Claims of this nature inevitably face the problem of thick reasonable disagreement. They also face the risk of reinforcing exclusionary dynamics by framing certain (Western) conceptions of the good life as more fully human than others. Adopting a contextual definition of the relevant range of options, in contrast, implies humbler normative claims (at least within liberal societies), as it hinges on the notion of equal opportunities. It is compatible with universalistic claims about what the good life should include, but does not need to imply such views. It only stipulates that, in order for a society to be minimally just, everyone within it should have access to a similar range of options from which to choose to determine the general shape and direction of their lives.

However, this general characterisation of a ‘range of relevant options’ creates further problems. First, what does it mean for an option to be accessible? Many feminists have criticised liberalism for its formal notion of equal opportunities that leads to the ignoring of the unequal restrictions that might effectively prevent individuals from accessing them. Clare Chambers (2008, 43), for instance, writes the following:

By reducing questions of justice to questions of choice, liberals effectively deny the importance of culture to practice, the importance of power in perpetuating practices, and the role that practices play in perpetuating regimes of power/knowledge. Saying that an individual chooses to participate in a practice is to say only that she was not coerced, in a Hayekian sense. The difference between choice and coercion is normatively relevant: in many cases, an otherwise unproblematic act becomes an injustice if coerced. But this distinction does not begin to exhaust the normative questions concerning the practice, or to capture the extent to which an individual has acted autonomously.

Acknowledging opportunities as socially constituted means acknowledging that they are constituted by the complex network of relationships, norms, cultural understandings, ‘regimes of power’ and institutions that form the socio-relational context of individuals. Their accessibility is affected by social situation and can be restricted by the expectations of others, as well as by the power relationships in which we stand. Being committed to the value of

autonomy and to ensuring that everyone has an equal capacity to lead a life of their own choosing is not consistent with ignoring significant and unequal obstacles some individuals may encounter when accessing options. In order to be truly accessible, the range of relevant options cannot simply be formally open. It has to be substantively accessible to individuals: the unequal restrictions individuals may face with regard to certain opportunities require adequate compensation. This, in turn, might demand positive action on the state's part to counterbalance the eventual restrictions individuals may face.¹¹⁰ However, given the complexity of our social world, how and to what extent can the state ensure that a given option is substantively open to individuals?

Another problem arises when we try to define what constitutes a relevant option. To say that, within a given society, every individual should have access to the same range of options does not entail that everybody should have access to the same range of, for instance, toothpaste brands. These are, evidently, not the kind of options that are important for the exercise of self-government. The kind of opportunities that should be considered as relevant are non-trivial options, and they are non-trivial precisely because they are the options that are important to lead a life of one's own choosing. This kind of option would include, among other things, the kinds of opportunities that are widely recognised as important social goods within a given society, such as education and social positions. The problem is, however, that not everybody has the same conception of the good: an option that might seem trivial to us, might in fact be extremely important for someone else. Moreover, what is usually seen as a non-trivial option is socially constructed through the existing regimes of power. This social construction of what is 'truly valuable' often ends up serving the interests of the dominant social identities. For example, the choice of professional occupation is usually considered among the important opportunities that should be accessible to individuals. However, as Nedelsky (2011) notes, this is much less the case for those that are traditionally coded 'feminine', such as the opportunity to care for one's child or family member. The conception of the 'relevant range of options' we adopt should not inadvertently reproduce or reinforce this kind of exclusionary dynamic. In this respect, if it is to be of use to feminists, we should begin by acknowledging that this range should include options, such as caring for one's loved ones, as important, not just for women

¹¹⁰ Hirschmann (2003, 235), for instance, notes that 'the state often intervenes most intrusively and egregiously precisely when it claims to be doing the contrary, such as when, under the rubric of privacy, its failure to arrest and prosecute domestic abusers results in the restriction of women's freedom'. Likewise, Mackinnon (1989, 191-2) notes that 'if inequality is socially pervasive and enforced, equality will require intervention, not abdication' on the state's part.

but for any human being. However, merely expanding the scope of options we consider non-trivial while still conceiving this range to be fixed is unlikely to solve the problem. If we want to avoid reproducing exclusionary dynamics, we can never postulate that the range of relevant options we have to define is fixed and unchangeable. It should be seen as open to contestation and evolution. But how do we define a relevant range of options without risking excluding options that are important for some agents?

B) Listening to the Agent

Thus far, we have seen that using the relational framework I propose entails postulating that our competency for autonomy is causally relational. This postulate does not have consequences solely for the assessment of autonomy as a competency. It should also change the way we understand agency. To propose that our competency for autonomy is causally relational entails recognising that agents are always ‘victims’ of their socio-relational context, to one extent or another, and that we can never be free from social influences. It also means acknowledging that what we refer to as the ‘competency’ for autonomy involves a plurality of skills that cannot all be exercised simultaneously. Therefore, it is impossible to conceive even privileged agents as possessing a ‘perfect’ competency for autonomy or to rank them higher than others on a given ‘autonomy scale’.

This very ‘grey’ picture of autonomy, in turn, has epistemological consequences. First, it has consequences for the way we conceive knowledge acquisition and for the kind of claims we can make about the world. Acknowledging that we are all products of a socio-relational context entails acknowledging that our experience within our own given socio-relational context structures the way we see the world. It entails recognising that our perspective on the world is always partial and situated.¹¹¹ It implies that our socio-relational location always structures and limits what we can know and that our faculties – our reasoning and imagination – are themselves created and limited by our social background. This should make us wary of methods commonly applied in law and political philosophy, such as the Rawlsian ‘veil of ignorance’ and the ‘reasonable man’ standard. Such methods imply the use of reason to attain an all-encompassing perspective that is supposed to enable us to know what is just and what is best for others without bothering to listen to them. It should also make us wary of defining the range of

¹¹¹ In this regard, the relational view proposed here is cogent with the main thesis underlying feminist social epistemology. As characterised by Elizabeth Anderson (2017), ‘[t]he central concept of feminist epistemology is that of a situated knower, and hence of situated knowledge: knowledge that reflects the particular perspectives of the subject’. In order to stress the fact that our knowledge is always local and limited, some feminist epistemologists have introduced the notions of ‘standpoint’ and ‘situatedness’ (Hartsock 1998; Harding 1991).

relevant non-trivial options that are important for individuals in their place without consulting them.

Second, this causally relational picture of agency has consequences for the way we perceive agents' testimonies. The systematic presumption of autonomy entails that even when people are embedded in a highly oppressive social context and make choices that seem to perpetuate their own oppression, and exercise skills that do not fit the normal description of autonomy, we still ought to presume they possess the competency for autonomy. In this respect, we should consider them as epistemic agents in their own right. While our own vantage points and situations constrict what we can know of others, they can also provide us with an epistemologically privileged perspective on our own socio-relational context and on the ways it might restrict our autonomy. The same applies to others: their own situations within their socio-relational contexts grant them a privileged epistemological vantage point on these aspects. They are thus well positioned to gain and provide valuable knowledge about their socio-relational contexts through their concrete experiences of such. This realisation, in turn, should lead to the acknowledgement that agents' testimonies can constitute valuable sources of knowledge regarding their own situations. Consequently, using the framework I propose implies that we ought to rely on these agents' testimonies as a valuable source of information regarding at least two things.

First, we should consider their testimonies regarding what counts as a non-trivial option in their lives. Options are non-trivial when they are linked to the ability to live a life of one's own choosing. In this respect, defining the minimal range of such options that should be available to agents within a given society should involve effectively consulting with people. Second, we should rely on the agents as a valuable source of knowledge regarding the obstacles they face in their own socio-relational contexts. While some of these socio-relational obstacles are certainly visible 'from the exterior', most of them are not so readily self-evident. We have to know where to look and what to look for if we are to understand the way a given socio-relational context structures the exercise of autonomy of a given agent. Only through listening to agents can we orient our inquiry in meaningful ways and ensure, as much as possible, that we do not miss something of importance.

The acknowledgement that the agent's situation grants her an epistemologically privileged perspective on her own socio-relational context should not, however, lead us to conclude that she is perfectly *objective* regarding her own situation. As highlighted by standpoint theorists, agents are not necessarily conscious or unbiased regarding their own

location.¹¹² All agents interiorise social norms and dominant perspectives that may, in turn, render them less likely to recognise the obstacles they face.¹¹³ In this respect, the agent's testimony cannot be considered as giving definitive access to the reality of her socio-relational situation. Yet this testimony can effectively aid in orienting research in her socio-relational context. Listening to the agent and considering her as an equal can also help balance prevalent blind points and biases, or common preconceptions about their situations.¹¹⁴ Listening to others is thus necessary to gain knowledge of their location and the kind of obstacles they face. This discussion, in turn, should orient research and reflexions concerning the kind of obstacles they face, and the kind of options that should be considered as non-trivial. In this respect, testimonies, factual data and empirical research (among other elements) should be used, when possible, to help substantiate the agent's testimony regarding the obstacles that confront her.

The idea of adopting such a situated conception of objectivity thus does not deny that objectivity, as such, exists.¹¹⁵ Acknowledging that, on our own, we can with difficulty reach an objective stance towards our own situation should not lead us to abandon the concept of objectivity altogether. The acknowledgement of our own 'situatedness' should, instead, make us humbler and more prudent about our own claims and those of others. Humbler, because it should lead us to consider normative and factual claims as situated. What is reasonable or what constitutes an obstacle in a given socio-relational context is not necessarily reasonable or problematic in other contexts. More prudent because it should lead us to acknowledge that our own perspective as well as that of others is likely to be partial, biased, and incomplete.

C) Identifying Oppression

This picture of agency leads to the recognition that the relevant range of non-trivial options to which individuals should have access to can never be conceived as determined or as finite. For political purposes, it is important to ensure that everyone has access to a roughly similar basic range of non-trivial options, which is to be determined contextually within a given society. However, this range can never be precisely circumscribed, nor should it be if we want to avoid

¹¹² As Hartsock (1987) emphasises, a standpoint is not simply one's situated perspective take. Rather, it is an 'achieved stance' that involves political engagement and the realisation of the shared nature of one's experience of oppression.

¹¹³ A rape victim that only blames herself for the harm she suffered constitutes a good illustration of this.

¹¹⁴ As underlined by both Annette Baier (1985) and Lorraine Code (1991), we are always 'second persons': we acquire our epistemic skills in relation to others.

¹¹⁵ As defined by Longino (1990, 62), '[o]bjectivity is a characteristic which has been applied to beliefs, individuals, theories, observations, and methods of inquiry. It is generally thought to involve the willingness to let our beliefs be determined by 'the facts' or by some impartial and non-arbitrary criteria rather than by our wishes as to how things ought to be'.

the risk of excluding options that are, in fact, important to certain agents. In this respect, the focus of the structural component of the framework I propose should be conceived as primarily negative. Rather than aiming at identifying the precise range of options individuals should have access to, inquiries into the socio-relational context should aim at identifying limitations and obstacles that burden individuals' capacity to lead a life of their own choosing and to access the kind of options that are important to them. This means, on the political level, that we should turn our attention towards the identification of oppression.

I have provided a general characterisation of oppression in Chapter 1, following that of Iris Marion Young. I have suggested that oppression designates the structural disadvantage and injustice some people suffer as members of a social group. Oppression is a problem for autonomy because it burdens or constrains the exercise of self-government. It is this type of harm that is primarily of interest on the political level. Indeed, we are all constrained by our particular socio-relational context, which, in turn, constructs the meaning we attribute to our lives, as well as what we value and aim to achieve. In this respect, we are all limited in what we can do because of the expectations others have for us. Yet, this type of constrains cannot be conceived as unjust, insofar as it is not inserted into a more global structure of norms and expectations that systematically disadvantages certain types of social identity on the socio-relational level.

Oppression constrains, burdens and/or reduces the possibilities for the exercise of autonomy, with 'possibility' understood as designating non-trivial options. We should conceive our definition of non-trivial options as open in order to account for the diversity of good lives that individuals can adopt. This, however, should not lead us to believe that oppression is subjective. In order to count as oppressive, the constraint or burden weighing on individuals cannot merely be subjective. They should be brought about by social forces that are actually effective in a socio-relational context. These forces are easy to identify when they are of an institutional or political nature: depriving certain individuals of a right or imposing a discriminatory institutional practice that removes access to social positions by virtue of social identity constitutes an example of this. Yet, very often, restrictive constraints that individuals face are much less readily observable. Oppressive social norms or negative stereotypes constitute an example of that.¹¹⁶ However, even if they are harder to discern, these types of obstacle are identifiable through their effects and the observable inequalities they establish. When one can observe that members of a given social group have access to fewer options than

¹¹⁶See Claude M. Steele's (2011) research on the impact of negative stereotypes on performance.

other members of the same society (such as certain privileged social positions), then suspicion should be high that there is some oppressive force at play. Likewise, if members of a given social group claim that they are oppressed by problematic social forces (such as norms or negative stereotypes and bias), this should be taken seriously and should prompt our enquiries concerning what constraints are effective in their given socio-relational context.

It should be noted here that because oppression has an objective dimension, the enquiry might prove group members wrong. As Amy Cudd (2006) notes, there is a difference between subjective and objective oppression. For example, many members of the masculinist movement now claim that feminism constitutes a form of oppression against men.¹¹⁷ While these men might feel subjectively oppressed by the feminist movement and the institutional measures brought about by feminist mobilisation (such as gender quotas, for instance), many of their claims remain unsubstantiated. Given that men continue predominantly to occupy privileged social positions, the claim that imposing quotas for women's employment oppresses men cannot be substantiated. Likewise, by virtue of its objective dimension, it is possible to identify oppression even if the concerned individuals do not feel subjectively oppressed. For instance, most men and women in society might not consider themselves to be oppressed by gender norms. However, given the observable gender division of social roles, we might still claim that the norms prescribing the sexual division between caregiving and breadwinning are oppressive as they constrain the way individuals can plausibly exercise their autonomy.¹¹⁸ Moreover, because oppressive obstacles have an objective dimension, and because we can observe them through their effect on individual self-determination, we do not necessarily need a critical mass of individuals from a given social group to denounce the oppression they are victims of in order to justify political action.¹¹⁹

Such a structural conception of oppression stands in sharp contrast to the intuitive and substantive conception that proponents of a substantive conception of autonomy assume. In particular, it cannot lead to see norms or preferences as oppressive merely by virtue of their content. They can become oppressive insofar as they contribute in creating a structure of

¹¹⁷ Georgia Duerst-Lahti (2008) distinguishes between the words 'masculism' and 'masculinism'. While masculism is associated with the early gender egalitarian days of the men's movement, masculinism is more closely linked with patriarchy. According to Francis Dupuis-Deri and Mélissa Blais (2012, 25), 'Masculinists are generally critical of even moderate feminists and feminists at the head of official feminist organizations'.

¹¹⁸ We will return to this issue in Chapter 6.

¹¹⁹ This partly addresses the 'dupe' concern some feminist might have regarding oppression. As Connolly (1993, 163) notes, '[t]he conative dispositions people have are themselves shaped in part by the concepts, beliefs, and roles they internalize from the society in which they are implicated...the more successful a group is in maintaining ideological hegemony the less liable it is to the charge that it has limited the freedom of other groups'. This means that the more success an oppressive system of constraints achieves, the less easy it will be for the people it oppresses to recognise their oppression.

constraints that limit the way individuals, by virtue of their social identity, can exercise their autonomy. As Hirschmann (2003, 94) remarks, '[c]hoices are discursively constructed as well; whether particular social formations are defined as barriers, what social arrangements seem "natural," what possibilities can be imagined, are historically and culturally variable, pertaining more to language and differing understandings of reality'. Understanding oppression as a structural harm that constrains individuals' self-government enables us to acknowledge this cultural variability and avoid framing certain types of norms as oppressive by virtue of what they prescribe. It can thus not lead us to stigmatise individual preferences that conform to this norm as intrinsically bad. What it allows us to see, however, is that if a norm becomes dominant and ends up significantly constraining the options to which certain individuals have access, there is a need to alleviate the obstacles it creates.

The definition of oppression articulated here is flexible enough to take into account the obstacles to autonomy that proponents of a relational account are concerned with, but it is also precise enough to filter out limitations to the exercise of autonomy that should not be considered as relevant on the political level. It is thus specifically devised to lead to the identification of norms that would concern proponents of a substantial account of autonomy, without leading to the same kind of problematic implications. Insofar as they target particular groups of individuals, this account of oppression can also help identify problematic forms of socialisation that unjustly curtail options for individuals. This conception of oppression can also lead to the identification of the socio-relational obstacles that mostly concern proponents of the self-regarding attitude model, because they negatively impact the relevant self-regarding attitudes necessary for self-government. Negative stereotypes, the lack of recognition and social marginalisation, insofar as they unfairly or unjustly burden or reduce the possibilities for the exercise of autonomy in an observable manner, constitute oppressive social forces. Moreover, insofar as something impairs or threatens the development of the competencies necessary for autonomy in an unjustifiable manner, it can be considered oppressive. In this respect, the lack of a suitable form of education and the presence of an authoritative socio-relational structure that was not chosen by the individual, for example, can constitute forms of oppression. Finally, this definition of oppression evidently incorporates the types of obstacles that concern proponents of a structural account, such as Oshana.¹²⁰

¹²⁰ This enumeration of the types of obstacles that can arise in a diverse socio-relational context is by no means exhaustive. As mentioned before, we have adopted an 'open' definition of autonomy in order to account for the diversity of the modes of determination that individuals can adopt. In this respect, the identification of oppression can never be seen as a finite task that can be considered dealt with once and for all.

D) The Temporal Dimension of Oppression

As intuited by John Christman, identifying oppression has to take into account the way past social circumstances have shaped the possibilities that remain for the current exercise of self-government. Temporality is an intrinsic dimension of relationships: without a temporal continuity, there can be no relationship. As a consequence, in addition to being structured by the social forces currently at play within a given socio-relational context, the past experiences agents have had within a given socio-relational context can also constrain the way they exercise their autonomy. Thus, there are obstacles that only become visible if one takes this temporal dimension into account. For instance, if members of a given community have long suffered from institutional racism, they might exhibit an understandable mistrust towards existing institutions. If calling the police was, in the past, to no effect or ended up making their situation worse, this might still count as an obstacle that limits their access to this option. Even if the institutional arrangement were changed, as long as past obstacles still observably constrain agents, it may still count as a form of oppression that needs to be remedied. In this respect, because a relational framework recognises the temporality of relationships, it entails acknowledging that oppression does not have to be effective within a given socio-relational context to constrain the way individuals can exercise their autonomy. This gives us yet another reason to rely on individuals' testimony concerning the obstacles they face.

E) The Question of Legitimate Means

In summary, so long as an aspect of a given socio-relational context is 1. unfair, 2. constrains, burdens or reduces the possibilities available for individuals' exercise of autonomy by virtue of their social identity and 3. has an objective dimension that is either directly observable or can be seen through its effect, this aspect should be considered oppressive. Insofar as a society is concerned about ensuring that everyone has an equal capacity to lead a life of their own choosing, I have suggested that the government should be centrally concerned about identifying and trying to alleviate such an oppressive force.

However, this goal should not lead us to ignore the problem of exclusion. In order to ensure that we avoid reproducing this problem, I have suggested that should always presume that individuals are competent to make their own choices about their lives. Adopting this systematic presumption of autonomy has consequences for the types of political action that can be pursued to alleviate sources of oppression. The framework I have proposed, for instance,

cannot serve to legitimise paternalistic interventions on the grounds that individuals are not competent to choose what is good for them. Paternalism entails restricting people's freedom on the grounds of their own supposed interest (Kleinig 1984). It entails positing an inequality of status between the person who *knows* what an individual's interest truly is and the person whose freedom gets curtailed. When paternalism is grounded in autonomy, it entails refusing to take people's preferences into account and treating individuals as if they are unable to make their own choices about their lives. This stance is inconsistent with the causally relational picture of agency I have put forward. It is also incompatible with the presumption of autonomy. We cannot prevent an individual from choosing an option because we see this option as running against her interest. Because of the presumption of autonomy, we have to assume that individuals, even when they make choices that seem to perpetuate their own oppression, can be autonomous with regard to them.

Rather than closing-off options, the types of intervention that should be privileged should aim at ensuring that agents have access to a greater range of non-trivial options. If oppression results in restricting people's access to options, alleviating oppression means working on removing these restrictions. In certain cases, this might mean implementing policies and institutions that aim to remove problematic double-binds that prevent individuals from accessing two non-trivial options simultaneously. For instance, when current social practices force women to choose between having either a fulfilling career or a family, implementing a child-care programme or flexible work legislation might be a good start to correct the oppressive aspect of the socio-relational context. It might also mean compensating costs associated with taking an option, which might penalise those that choose it and prevent others from choosing it. This might mean, for instance, offering legal protection and financial compensations to full-time caregivers in order to ensure that choosing this option does not come at the cost of these individuals' future economic stability.

At times, alleviating obstacles can even mean working on the social construction of desire and attempting to diversify societal perceptions of normality. The understanding of oppression I have proposed entails acknowledging that norms are oppressive insofar as they become hegemonic and block individuals' ability to access certain options. When this is the case, alleviating oppression might mean working on counterbalancing prevalent social understandings through means such as education, sensitisation campaigns and the promotion of diverse models of behaviours. For instance, in a socio-relational context in which gender norms that prescribe caregiving to women and breadwinning to men are prevalent, advertising

and publicising different models of parenting might be part of the measures that are necessary to alleviate the social pressure on individuals to conform. However, even when such norms are hegemonic, addressing oppression can never entail stigmatising the preferences people endorse when they conform to the hegemonic norm. The systematic presumption of autonomy I have proposed entails that even when people come to prefer things that are congruent with oppressive norms, these preferences have to be seen as autonomous and as worthy of respect. The structural aspect of the framework I have presented cannot justify treating people as if they are victims because their preferences, rather than truly being their own, are the outcome of their own oppression. It can, however, justify working on the transformation of a rigid social world to enable people to choose otherwise, should they wish to.

This short overview of the types of measures that are coherent with the agnostic and structural framework I propose is by no means exhaustive. Different cases will warrant different types of interventions based on the kind of obstacles individuals encounter. In certain cases, however, measures that respect the preferences individuals adopt will not be sufficient to alleviate oppression. Yet, given the systematic presumption of autonomy I have adopted, preventing an individual from accessing an option cannot be justified on the grounds that individuals are not competent enough to make choices that are in their best interest. Closing-off the access to an option can, however, be justified when it is necessary in order to avoid reproducing and reinforcing oppressive dynamics that rob individuals from the possibility of exercising their autonomy in significant ways. For instance, when the existence of an option negatively impacts the autonomy of a third party without their consent, there might be reason to curtail the option. The option for parents to send their children to a strictly religious school might fall within this category. However, the justification for curtailing this option is not that parents are incompetent to choose what is best for their children or that the mode of good life they have chosen for themselves is not worthy of respect. Rather, such measure would be justified on the ground that it is necessary to ensure that children have the same opportunities as their parents to choose how to direct their own lives.

Likewise, when choosing an option restricts access to other non-trivial options in an *irremediable* manner, and when its existence alone pressurises individuals to take it, it might be justifiable to curtail the option. To give an example, Diana Tietjens Meyers (2000b) argues that female circumcision can be autonomously chosen. Given the presumption of autonomy I have adopted, we have no other choice than to assume that adults who would want to undergo such a procedure are autonomous regarding this desire. However, insofar as genital cutting 1.

irremediably removes the non-trivial option of enjoying one's sexuality and 2. can pressurise individuals embedded within certain communities to agree to such surgery, curtailing this option might be justifiable on the grounds of autonomy. However, such political measure should be seen as a last resort, particularly if the members of the community who are most directly affected by the measure want to safeguard the option and view it as non-trivial. In this respect, before banning such a practice, we might try to transform it so that it does not irremediably entail preventing individuals from accessing another non-trivial option. For instance, Meyers (2000b, 481) refers to the 'circumcision through words' rituals and the 'symbolic pricking' that has come to replace actual genital cutting in some communities. If it is still true that the existence alone of this option is sufficient to pressurise certain groups of individuals to take part in it, we would then be justified in attempting to counterbalance the social forces pressurising individuals' involvement. However, it would be much more difficult to justify curtailing the option altogether.

F) What about Adaptive Preferences?

Thus far, I have avoided discussing directly the issue of adaptive preferences. This can seem incongruous given that oppression can and is often internalised. That is why it is so powerful and long-lasting. As feminists have pointed out, it is precisely because oppressive norms are internalised that they can subsist through time as they become part of individuals' preferences and lead them to reinforce and reproduce their own subservience through their seemingly free choices. This phenomenon has been referred to as the 'adaptive preference problem' within the literature. By virtue of its agnosticism, my framework seems to leave no way to identify preferences that result from the internalisation of oppressive constraints. Furthermore, the systematic presumption of autonomy that derives from my agnosticism means we have to assume that individuals are autonomous with regard to their preferences. It means we have to see them as worthy of respect even if their content is congruent with oppressive norms. This can be thought as a major flaw in my framework, preventing it from truly addressing the problem of oppression. The main goal of this section is to defuse this concern. I mean to show that identifying adaptive preferences is neither necessary nor beneficial in order to address the issue of oppression.

As Serene Khader (2011) notes, adaptive preferences are often understood as a class of desires antithetical to autonomy. Jon Elster (1987), for example, defines 'adaptive preferences' as those that are 'formed behind our back' and lead us unconsciously to downgrade desires for

things we cannot access. He gives the example, drawn from a Lafontaine fable, of a fox who adapts his preferences to his circumstances and claims that the grapes he is unable to access are ‘sour anyway’ (1987, 117-119). These ‘deformed desires’ are considered to be a problem for autonomy because they are either not chosen by the agent, are out of his control or are unconscious and thus out of his reflexive reach.

Because they fail to sufficiently consider the role of socio-relational context in the formation and exercise of autonomy, most mainstream autonomy theories have difficulty addressing the issue of adaptive preferences. For example, proponents of the ‘higher-order desire approach’ often seem to assume the existence of uninfluenced higher order desires,¹²¹ which does not account for the fact that higher order preferences can also be adapted from oppressive circumstances.¹²² Relational theorists have attempted to tackle this issue by avoiding the postulate of an authentic ‘inner citadel’ untouched by socio-relational influences. However, this creates further problems for the identification of adaptive preferences. This view implies acknowledging that all of our preferences are influenced and produced by the socio-relational context in which agents exist. To this extent, they can all be considered as adaptations to our social circumstances. Salvaging the concept of adaptive preferences thus entails finding a normatively relevant difference between such preferences and the others. Yet, as I seek to demonstrate here, there is simply no convincing way to differentiate adaptive preference from non-adaptive ones by assessing the preference itself. What makes certain adaptive preferences problematic is thus not their content or the way they were endorsed. Rather, it is the nature of the socio-relational context from which they are adapted. If this is true, then redirecting our attention towards the socio-relational context itself might be a more straightforward route to address the problem of adaptive preferences than devising tests to determine which preferences are truly adaptive and which are not.

This is most evident for proponents of procedural accounts of autonomy such as John Christman. Following the counterfactual criterion, an agent is autonomous with regard to a preference only if, when becoming aware of the process that led to its formation, she did not resist it or, counterfactually (if she were to become aware of it), would not resist it. The idea here is that if an agent were to become aware that her preference was the result of oppressive

¹²¹ Popularised by theorists such as Gerald Dworkin (1988) and Harry Frankfurt (1987).

¹²² As explained by Robert Noggles (2005, 91), the natural response to this problem would be to claim that a second order must be authentic for it to determine whether the first order desire is autonomous. However, this solution seems to require us to posit a third order of desires that would enable us to determine the autonomy and authenticity of the second order desires. But then nothing prevents a third order desire from being inauthentic, and the problem is whole again. This is known as the ‘regress problem’ within the literature and can be understood as stemming from the idea of the authentic and uninfluenced core.

socialisation, she would readily reject it. However, what makes a preference morally problematic is not really whether agents endorse it after having critically thought about the way it was formed. Rather, it is that it was the result of a problematic form of socialisation.

For the sake of the argument, let us say that I have a preference for stinky cheese that was developed through the influence of an uncle I now despise. If, when thinking about what led to the formation of this preference, I discover the origin of that preference and now resent having it (let us say I really do hate my uncle), then my preference would count as non-autonomous following Christman's test. However, this is clearly not the kind of preference Christman wants his test to rule out as non-autonomous. The kind of preferences that his counterfactual criterion seeks to identify are those caused by 'fierce conditioning' as opposed to those caused by a social influence that one does not like.¹²³ What makes a preference non-autonomous, then, is the 'fierce conditioning' that has led to the formation of the non-autonomous preference in the first place. But, if this is the case, then why not redirect our energy towards assessing the socio-relational context? As previously argued, given that we have no epistemic access to the agent's internal life, there is simply no way to verify whether the agent truly satisfies Christman's counterfactual criterion. As Christman remarks, we cannot postulate that an agent would necessarily reject all the preferences that were acquired through a dictatorial form of socialisation. Yet, insofar as such problematic conditions risk causing agents to form non-autonomous preferences, we might want to ensure that agents do not suffer such a form of socialisation in the first place.

As for the proponents of a strong substantive account of autonomy, they would identify adaptive preferences by virtue of their content. However, when looking more closely at the assumption that underlies their account, it seems that what makes a given preference morally troubling is not, in fact, its content. Rather, it is the oppressive circumstances from which preferences stem. Consider, for instance, Benson's example of a college student obsessed with her physical appearance.¹²⁴ Given the way Benson structures his example, it seems self-evident that the student's preference for devoting all her time and energy to her looks is causally linked to the presence of oppressive femininity norms. For that reason, proponents of a substantial account of autonomy would consider her preference as adaptive. Stoljar states that this is because the substance of the norms—that is the idea that the value of women derives from their appearance from which the preference derives—is problematic. However, it seems that without

¹²³ At times, Christman seems to imply that the problem with such a preference is that it causes one to lead a 'life of complete subservience'. However, for him, provided that the individual does endorse her preference for this kind of life and satisfies the counterfactual criterion, her preference cannot be seen as problematic. See Ch. 2.

¹²⁴ See Chapter 2.

the presence of an oppressive structure enforcing this belief, we would simply regard this student's obsession for personal grooming as an idiosyncrasy rather than as a problem for her autonomy.

This becomes clearer if we postulate that the student in question is male. If this is so, we would certainly consider this student's strong desire to correspond to a certain beauty ideal to be a bit vain and would probably not see it as the best route to his own flourishing. However, we would not claim that it is non-autonomous or adaptive, even though the content of his preference is identical to that of Benson's female student. This is because, in contrast to her, we cannot connect this male student's preference to the prevalent norms of masculinity. If I am right that substantive autonomy theorists would consider the preference problematic only in the woman's case, this suggests that the real object of concern is the oppressive dimension of the socio-relational context. It is the knowledge that our current socio-relational context does enforce rigid norms of feminine appearance on women and that ignoring them can have negative consequences for us (depending, of course, on the socio-relational context in which we exist). What makes Benson's student troubling is, consequently, not so much the content it has, but rather the strong suspicion that the preference was coercively enforced on the female student, and that she might be right in her belief that her appearance is crucial to the opportunities she has in life. In other words, the problem is the oppressive aspect of the socio-relational context in which her preference was formed.

To further illustrate the point, imagine a situation where coercion and brainwashing are used to force the agent to adopt a preference that more closely accords with the conception of the good life held by a strong substantive theorist. Imagine that in order to counteract the belief that a woman's place is at home, the government implants programmes aimed at brainwashing girls from conservative backgrounds to adopt the preference of becoming a career woman. Far from being cogent with an oppressive gender norm concerning behaviour, this preference seems rather consistent with Stoljar's feminist intuition. Looking strictly at content, it is impossible to judge the preference for being a career woman as adaptive or as otherwise normatively problematic. It is only when we consider the constraints of the socio-relational context that we can see that this preference is, in fact, produced by coercion and is, in this respect, not properly autonomous. What makes a preference problematic is, therefore, not its content but the nature of the socio-relational context which has led to its formation.

Serene Khader (2011) offers a third route to identify adaptive preferences. She takes the relational premise seriously and states that 'to describe adaptive preferences as more

‘imposed’ than other types of preferences is to ignore the fact that all of us have preferences that are shaped by our social conditions’ (2011, 14). Because adopting the relational premise leads her to consider most preferences as adapted to the socio-relational context, Khader proposes to replace the term ‘adaptive preferences’ with ‘inappropriately adaptive preferences’. She defines such preferences as ‘preferences inconsistent with basic flourishing that a person developed under conditions nonconductive to basic flourishing and that we expect her to change under conditions conducive to basic-flourishing’ (2011, 17). However, it soon becomes clear that the defining feature of an inappropriately adaptive preference is not truly that it ‘sustain[s] a form of life that is bad for a person’ (2011, 18). Rather, it is that it is formed in conditions nonconductive to basic flourishing.

For instance, we can imagine agents (let say they are hard-core ascetic stoic philosophers) who adopt preferences that do not seem conducive to their basic flourishing.¹²⁵ They live in isolation, deprive themselves of food for days and live in the most abject poverty. Khader would likely agree that these philosophers’ preferences are not inappropriately adaptive, even though they run against their basic flourishing. This is because such preferences were not ‘developed under conditions nonconductive to basic flourishing and that we expect [them] to change under conditions conducive to basic flourishing’ (2011, 17). Yet, this is precisely the point I seek to make here.¹²⁶ If the main problem with inappropriately adaptive preferences is that they are caused by a socio-relational context that is not conducive to basic flourishing, then there seems to be no real need to identify preferences not conducive to basic flourishing in order to justify interventions to eradicate inappropriately adaptive preferences. All we need is to address the oppressive conditions in themselves, which have caused the IAPs to appear in the first place. This is especially true if inappropriately adaptive preferences are a shallow sort of preference that agents are likely to revise when put under conditions conducive to basic flourishing, as Khader (2011, 147) claims they are.

¹²⁵ Khader does not stipulate what basic flourishing might look like or require as it is to be defined through an *actual* cross-cultural deliberation rather than through a hypothetical one. “My own reflection is not a cross-cultural deliberative process, and I do not expect it to stand in for one,” she explains. It is, therefore, not possible to affirm that the preferences adopted by the ascetic philosopher truly run against their basic flourishing. The reason I use this example is because it roughly resemble the situation of the El-Pital women Khader uses, at the beginning of her book, to introduce the notion of IAPs.

¹²⁶ As for her, Khader (2011, 48 & 102) gives the example of a woman who decides ‘to spend the rest of her life engaging repeatedly in a sport that is likely to kill her—say bullfighting’. Insofar as she experiences no ‘limits on her opportunities’, and that her preference is not caused by a socio-relational context unconducive to her flourishing, then her preference cannot be seen as an IAP.

Conclusion

I have started the chapter with a conundrum. On the one hand, there is a need for feminists to reconceptualise autonomy in a way that cannot serve to reproduce discriminatory exclusionary dynamics. Given that autonomy is linked to respect and equality, it is important to avoid denying this status to individuals because they manifest forms of self-government we do not recognise. On the other hand, however, autonomy remains an important normative ideal for feminists. For it to ground emancipatory feminist policies, it is important for the conception of autonomy we employ to remain adequately mindful of the problem of oppression. However, as Chapter 2 revealed, it seems almost impossible to combine these two goals. It seems that adopting a relational account means either adopting an inclusive conceptualization of autonomy—one that is respectful of the diversity of ways in which women exercise their agency— or adopting a conception that is focused on identifying social obstacles impeding autonomy's development and exercise and, as a result, allows for the justification of an emancipatory feminist agenda.

In this chapter, I have offered a way to resolve this divide. I have suggested that instead of thinking of autonomy as a united capacity that mainly consist either in the possession of a competency or in the ability to enact one's decisions in the world, we think of autonomy as requiring both. I have argued that autonomy does require certain competencies. Given that being considered competent is crucially linked to equality and respect, I have suggested that we adopt a systematic presumption of autonomy in order to ensure we avoid the problem of discriminatory exclusion. Yet, if we cannot and should not assess the competency for autonomy that individuals possess, refocusing our attention on the socio-relational context agents are in can enable us to assess the opportunities they have to exercise their autonomy. It is at this level that we can address the problem of oppression and use autonomy as means to legitimise emancipatory feminist policies. In the following chapters, I will attempt to demonstrate the interest and value of employing this twofold understanding of autonomy to replace the individualistic ideal that currently underlies our legal and political systems. These case studies focus on areas where political liberalism has proven deeply unsatisfactory for feminists because they concern the family or vulnerable individuals.

Chapter 4: Disrupting Gendered Preferences¹²⁷

‘The family is the linchpin of gender,
reproducing it from one generation to the next’.

Susan Moller Okin 1989, 170

‘One is not born, but rather becomes, a woman’, Simon de Beauvoir famously stated. The idea that womanhood ought to be understood as a social process rather than as a biological reality has marked generations of feminists. They have sought to demonstrate that gender, as a social construct, is one of the greatest vectors of injustice and inequality. Yet, if gendered preferences are part of individuals’ considered conceptions of the good, then it seems that liberals cannot do much about them. This has led some to argue that liberalism is unable to truly remedy inequalities between the sexes. Ann Levey (2005), for instance, argues that if we refuse to consider gendered preferences as autonomous, then it becomes difficult to see how anyone’s preferences might count as autonomous. It is true that the current social order might teach women to value and prefer different things than men, Levey explains. Yet, we are always influenced, in one way or another, by what we have been taught by the society in which we live. Gendered preferences are, in this respect, no different. To the extent that women have genuinely endorsed them, such preferences have to be considered autonomous. Therefore, Levey (2005, 128) concludes that ‘[t]aking feminism seriously enough means giving up liberalism in the following respect: it requires us to take seriously that justified political action may fail to respect the considered choices of some women’.

This criticism seems also to apply to my framework. Given its systematic presumption of autonomy, adopting an agnostic and structural framework implies that gendered preferences have to be considered autonomous and respected as such, even when they cause women to reinforce the gendered division of labour. In this regard, it seems that the understanding of autonomy I propose is not of much use to devise and legitimise policies that would truly address entrenched gender inequalities.

In this chapter, I attempt to respond to this worry. I argue that given its focus on the conditions necessary to exercise self-government, the conception of autonomy I propose is

¹²⁷ A version of this chapter was published under the title ‘Égalité entre les sexes et libéralisme: le cas des congés de paternité’ (‘Sex Equality and Liberalism: the case of paternity leave’), in the peer reviewed journal *Politique et Sociétés*, vol. 35, n.2-3, 2016, p. 39-64. An earlier version of this paper was submitted as an essay in the class GV4G3. It was entitled “‘One is not born, but rather becomes, a woman.’ Can (and should) political theorizing attempt to disrupt the social process of “becoming” a woman?’.

demanding enough to promote equality between women and men. I seek to show that the structural side of my framework makes it an effective tool for identifying and legitimising measures that can disrupt a social order that reproduces injustices through generations. Based on an examination of the policies that seem to have made the difference in countries that most closely approximate parity between the sexes, I suggest that imposing an equal division of parental leave constitutes one of the most promising measures to address gender inequalities. I argue that implementing such a measure, even in one of its most stringent forms, is not only justified on the grounds of the understanding of autonomy I propose but should also be viewed as one of its requirements. This demonstrates that a structural and agnostic framework can offer much better grounds than a liberal understanding of autonomy to further gender equality.

This argumentation, however, opens the door to another line of criticism. One could argue that the framework I propose is too perfectionist and/or paternalistic to be considered in line with political liberalism. Many feminists have chosen to bite this bullet and have defended an explicitly perfectionistic stance against liberalism. I want to suggest an alternative way to go about this criticism. In the second part of this chapter, I thus examine the form the accusation of perfectionism can take with regard to a measure such as mandatory paternity leave. I contend that given the kind of justification for political action it offers, my framework can avoid this objection and cannot be dismissed on the basis that it is incompatible with liberalism.

I. Champions of the Global Gender Gap Index

The Global Gender Gap Index is a framework developed to capture the scope of gender-based inequalities in countries, rank them and track their progress. In 2013, the uncontested champions of the Global Gender Gap Report (GGGR) were four Nordic countries: Iceland, Finland, Norway, and Sweden. These countries have succeeded in nearly erasing all gender-based disparities on the economic, political, educational and health levels (GGGR 2013, 16). Each of these four countries has a powerful set of institutional measures in place to promote gender equality, including policies such as political quotas and positive discrimination (GGGR 2013, 20). But what seems truly unique to these leaders in gender equality is something far more innovative and contentious from a liberal viewpoint. Indeed, policies surrounding parental leave are a standout feature of these countries. Whether we talk about Iceland or Norway with their 16 to 28 weeks of parental leave that has to be divided equally between the two partners (respectively adopted in 2000 and 1995), Finland with its mandatory ‘Daddy’s month’ (adopted in 2003 and recently extended) or Sweden with its 60 days reserved

exclusively for the father (adopted in 2002), these countries have all adopted a non-transferable paternity leave policy (GGGR 2013, 20). This type of policy, which reserves part of the leave to fathers, contrasts with what has been implemented by most other countries which either offer leave exclusively to mothers or grant a parental leave that can be divided freely between the parents.

The idea that an equal distribution of caregiving between parents of both sexes is a necessary component of achieving gender equality is not new. Many feminists have defended the idea that the gendered division of work within the family is the keystone of enduring inequalities between the genders. They have sought to show that the gendered division in the household constitutes a determining factor causing gendered disparities of investment in the workforce as well as in the public and political spheres, resulting in phenomena such as the earning power discrepancy between men and women observed in virtually every society around the world. Hence, as Nancy Fraser (1994, 612) concludes, '[t]he construction of breadwinning and caregiving as separate roles, coded masculine and feminine respectively, is a principal undergirding of the current gender order [...]. Achieving gender equity in a post-industrial welfare state, then, requires deconstructing gender'. More than a decade of evening up the parental leave in Iceland, Finland, Norway and Sweden seems to prove these assumptions right. Indeed, the explicit goal of mandatory paternity leave was to equalise caregiving and breadwinning between the sexes. As Christina Boll, Julian Leppin and Nora Reich note (Boll and al. 2014, 133):

In Nordic countries (Sweden, Finland and Norway), [...] the introduction of parental leave was driven by labour market and gender equality considerations. It was intended to give mothers the opportunity to continue participating in the labour market in the long term, ensure their income during the leave period, and reduce gender differences in paid labour and childcare work.

In forcing the disruption of traditional gender models, the 'daddy quota' policy seems to have produced impressive results. In addition to the causal effect on evening up parental participation as well as the household division of labour (Kotsadam & Finseraas 2011), non-transferable paternity leave seems to increase women's participation in the workforce (Sundström & Stafford 1992). For this reason, it is also likely to reduce poverty among elderly women in the long run (Baroni 2011). Moreover, the augmentation of the father's involvement in the child's upbringing as well as in domestic labour enabled by paternity leave seems to exert a certain influence on the child's internalisation of gender roles (Kotsadam & Finseraas 2013). In short, it seems likely that if a liberal society like Canada, for instance, were to implement

such a measure, it would greatly help close the gender wage gap (Selmi 2000). In evening up gendered expectations regarding familial responsibilities, non-transferable paternity leave is likely to reshape the ways in which individuals make their life and career choices.

II. The Structural Forces at Play

If the mandatory division of parental leave seems to be a powerful means to promote gender equality, it nonetheless constitutes an aggressive strategy to do so: this is where it becomes troublesome for societies attached to liberal principles. Though imposing a ‘daddy quota’ does not equate to coercing fathers into taking on caregiving, the measure can nonetheless be perceived as an illegitimate form of interference in people’s preferences. Indeed, if the father refuses to take the share of leave reserved for his use, the family loses it, along with the financial compensation associated with it. As this adds costs to the non-trivial option of following traditional gender models, it could be thought that such a measure is incompatible with the understanding of autonomy I propose. I have insisted on a systematic presumption of autonomy, and, respecting people’s declared preferences, how then can I defend such interference in people’s choices?

In order to see why a measure such as the daddy quota is not only coherent but should also be seen as a requirement of the structural and agnostic understanding of autonomy I propose, it is useful to look at the effect of gender neutral parental leaves. From a liberal perspective, it seems only fair to provide both parents with the opportunity to take the share they want of the parental leave. Parents should, after all, be free to decide for themselves how they want to raise their child and in what way they want to divide their leave. On this view, the measure that, in theory, comes across as the best able to express adequate respect for people’s autonomy is parental leave that can be divided as people want. It is thus this type of leave that is most often in place in liberal societies.

As studies show, however, a gender-neutral leave policy seems paradoxically to reinforce the traditional division of labour between breadwinning and caregiving rather than alleviating it (Brandth & Kvande 2009, 180).¹²⁸ Given that, presumably, more parents would want to divide the leave equally, there must be other obstacles preventing them from doing so.

¹²⁸For instance, in Canada where such a policy is currently in effect, only 8% of fathers take a share of the parental leave (Marshall 2008, 8). It is to be noted that this policy is different in Quebec where the Quebec Parental Insurance Plan (QPIP), which grants fathers five weeks of non-transferable paternity leave, was implemented. As noted by Marshall (2008, 8), this has produced a significant rise in the rates of fathers claiming parental leave at the national level, which ‘is mainly attributable to the introduction of the QPIP and the subsequent increase in the participation of Quebec fathers’.

Based on research pertaining to this the phenomena, these obstacles seem to be mainly of three types.

First, at the individuals' level, there are the preferences of the parents themselves. The idea that women are best equipped to care for children and household chores, as well as the norms that make masculinity incompatible with care, would explain, in part, the fact that neutral parental leave seems to change nothing in the gendered division of labour (Brandth & Kvande 2009). Although these ideas tend to change over time, it is clear that they are still relatively widespread in the population today.¹²⁹

However, and as a structural analysis clarifies, even if parents do not share beliefs or preferences about the traditional gendered division of labour, it is still extremely difficult to derogate from it. At the social level, the job market as well as the beliefs and expectations of employers can make it very difficult for men to take their fair share of the parental leave. Norms are social phenomena; as such, it is difficult to contravene on the basis of a unilateral decision. When widely accepted at the level of the society, they produce expectations and pressures on individuals that render costly the option of not abiding by what they prescribe. While most employers recognise the need to grant leave and flexibility in employment to their female employees so that they can look after their children, the same is not true for their male staff members (Bielby & Baron 1986; Kugelberg 2006; Townsend 2002; Feldman et al. 2004). Employers tend to be less supportive of this demand when it comes from their male employees, and this is especially the case if the job is typically coded as 'male' (Bygren & Duvander 2006). Thus, when an employer learns that one of his employees is expecting a child, as Magnus Bygren and Michael Gähler (2012, 811) note, he tends to adopt a radically different approach according to the sex of the employee. While female employees are given less responsibility in order to leave them more room for their future responsibilities as mothers, knowing that one of their employees is about to become a father often leads the employer to entrust him with even more work.

In addition to the job market, the family and peers of individuals can also become an important source of normative pressure. Given the prevalence of the idea that caring for children is the primary responsibility of the mother, women taking a smaller share of maternity leave than their partners may be judged negatively by their peers and families. By contrast, fathers who choose to take a substantial part of the leave are likely to encounter negative judgements from those around them (Bygren & Duvander 2006, 370). In this regard, Bygren

¹²⁹ See also Hooks (2010) and Sullivan (2006)

and Gähler (2012, 811) note that '[c]ultural images of being a parent are normative in the sense that shared beliefs and norms of what could be expected of men and women in this life stage constrain their own options as well as what society - including employers - expects of them'.

Finally, at the institutional level, two main obstacles seem to exist. The first has to do with the legal provision reserved for parents who take leave (Estes 2011). Parents from both sexes will receive financial compensation when they take a share of their parental leave. However, this financial compensation is typically calculated as a percentage of their normal individual earnings. This, in turn, incentivises the lesser-earning partner to take on the greatest share of the leave, as the family unit will lose less money this way (Cudd 1994). As women typically earn less than their male partners, having her taking the lion's share of the parental leave is often the rational economic choice (Moss & O'Brien 2006). The second obstacle has to do with the legal duration of paid parental leave. Six months, which is the duration of paid parental leave in the US, is far too short for men to realistically be able to assume a substantial part of it (Ray, Gornick & Schmitt 2010). This is, first, because giving birth can be physically taxing and can expose women to a whole host of physical ailments. These usually require a period of recovery, which can easily cover the majority of the leave. Second, feeding periods are frequent during the first six months of an infant's life, and this makes the option of going back to work impracticable for a mother who wishes to breastfeed (Gornick & Meyers 2008, 324-25).

An agnostic and structural framework implies that the preferences individuals adopt concerning their preferred share of parental leave or, more generally, their preferred division of caregiving and breadwinning, should be seen as worthy of respect. Yet, this is not the end of the story. As Anna Amilon remarks, 'Findings indicate that men and women alike might feel forced to follow the traditional gender pattern in parental leave sharing [...] without actually intending to' (Amilon 2009, 638). It is these other obstacles, operating at the social and institutional levels and possibly preventing people from choosing otherwise that a structural approach would seek to alleviate. We need to find ways to mitigate the social pressures and institutional obstacles that make it socially costly to contravene a traditional gendered division of labour. We also need to change the institutional framing of parental leave in order to make it economically viable, and temporally feasible, for fathers to take on their share of parental leave.

III. The Daddy Quota

While considering the challenges of promoting gender equality between the sexes within the family, Anca Gheaus and Ingrid Robeyn (2011) argue in favour of granting the mother and the father six non-transferable months of parental leave each. They propose to give four weeks of birth leave to mothers, which would be followed by five months of parental leave. Fathers would then automatically get their six months of parental leave at the end of the mother's overall leave. This arrangement would allow both parents some common leave time; however, it would prevent them from taking more than four weeks at the same time. That fathers should get a significant portion of the leave on their own, Gheaus and Robeyn explain, is important to prevent gender specialisation, as it will help ensure that men develop the same level of competency as mothers in caring for their child.

As with the policies implemented in Nordic countries, this measure is likely to significantly contribute to alleviating the obstacles that prevent fathers from taking on their fair share of parental leave. Making equal sharing of parental leave the 'by default' option would most likely constitute a decisive incentive in the effective taking up of the leave.¹³⁰ The first advantage of such a default rule, Robeyns and Gheaus (2011, 186) explain, 'is the shift of costs from fathers who want to take the leave to fathers who do not want to'. With gender-neutral parental leave, fathers have actively to claim their share of the leave. This burden can discourage many from doing so, as they might fear that it will jeopardise their career. By contrast, the default model makes the leave-taking automatic which, in turn, makes it much more difficult for employers to pressurise men into refusing it. A father who wants to waive his right to his share of parental leave would then need to go through the process of deregistering from the system.

As an increasing number of fathers take their share of leave, the social expectations and pressures weighing on both men and women are likely to lessen. As the model Robeyn and Gheaus propose leaves a full six months for the mother to recover and breastfeed (should she desire to), it also partly alleviates the institutional obstacles that pressurise women into taking the majority of the leave. As for the funding problem, an issue Robeyn and Gheaus do not consider, this could be remedied so as to remove the economic penalty associated with the higher earner taking a share of the leave. For instance, the economic compensation could be calculated as a function of the total family earnings, and additional funds could be added where

¹³⁰ Research on the underwriting of organ donations, for example, shows that making this option automatic, if no action is taken, substantially increases the number of participants (Thaler & Sunstein 2008, 184-192).

the amount is insufficient to guarantee financial stability and welfare for the family. As this seems to remedy and alleviate the most substantial obstacles preventing parents from sharing breadwinning and caregiving equally, the idea of a default model that divides parental leave equally between both parents seems promising. The results of the experience of more than a decade of the ‘daddy quota’ in Norway, Finland, Iceland and Sweden attest that such a policy can have impressive results.

Insofar as it contributes to removing the obstacles that prevent men from accessing the option of caring for their children and women from adopting similar career plans to men, promoting an equal division of parental leave between the sexes is justified on the grounds of autonomy. While it does incentivise the option of equally dividing caregiving and breadwinning, it does not cut off the option of following traditional gender roles. Fathers who do not want to take on their share of the leave can always waive their share. Alternatively, they can choose to take their share but defer caregiving to the mother when the leave is over. Such a measure is also mindful of the effect it can have on the larger socio-relational context. It does not reproduce or strengthen existing norms and stereotypes. On the contrary, it aims to alleviate the pervasive idea that care work is somewhat less valuable than breadwinning. Likewise, while it indeed makes the equal sharing of the leave the ‘by default’ option, it nonetheless does not frame the option of derogating from this option as somewhat bad or less autonomous.

Yet, if this non-negotiable sharing of parental leave between the mother and the father satisfies the criteria of my framework, the question of the legitimacy of such a policy, from a liberal perspective, nevertheless remains. In this regard, one could argue that adopting such an incentive is still far too perfectionist to be considered liberal. This, in turn, might lead to the questioning of the compatibility of my framework with liberalism. In contrast to Nedelsky, I have, after all, explicitly claimed that a structural and agnostic framework is not normatively neutral and has a strong feminist tethering. If this leads the relational autonomy model I propose to legitimise perfectionist measures, then it could be argued that such a framework does not constitute a coherent replacement for the current mainstream understanding of autonomy. My aim, in what follows, is to demonstrate that the daddy quota should not be considered perfectionist and that the framework I advance is indeed coherent with liberalism’s aims as it vindicates emancipatory policies on political grounds. First, though, I will explain and review the nature and content of the perfectionism objection.

IV. The Anti-Perfectionism Objection

As Deneulin (2002, 499) underlines, '[o]ften opposed to perfectionism, liberalism is characterized by a respect of the freedom of people to pursue their own conception of the good, arguing that a policy that gives incentives for people to live in a certain way, the way that most perfects human life, threatens the freedom of each human being to pursue the good she desires to pursue'. While some liberals are explicitly perfectionists, for others, the liberal commitment to respect individual autonomy should be seen as incompatible with perfectionism. For instance, Christman (2004, 147) writes:

Not only does the idea of autonomy set the boundaries of anti-perfectionism and anti-paternalism in principles of justice, it also (and relatedly) specifies the characteristics of the adult citizen whose interests and perspective mold those principles of justice and democracy. Such a conception must express sensitivity to the multiple differences among citizens involving patterns of thought, modes of identity, religious and other value commitments, and the like.

For Christman (2004, 146), this constitutes grounds to reject certain relational conceptions of autonomy, as they 'problematically import a perfectionist view of human values into the account of autonomy and thereby threaten to undermine the usefulness of the concept in certain theoretical and practical contexts in which it is often seen to function'. A perfectionist view, he explains, is characterised by the idea that there exist human perfections that can only be actualised in certain versions of the good life. These perfections constitute intrinsic goods, and their values are independent from individuals' judgement of them. One of the important reasons Christman has for rejecting certain relational views as too perfectionist is that they stipulate certain social conditions as necessary to label someone as autonomous. This, in turn, implies a perfectionist view of autonomy, which links this ideal to certain values and goods, independent of whether or not agents endorse these values. Christman (2004, 157) is concerned that this leads to the problem of discriminatory exclusion, as it implies that certain agents will be denied 'the status marker of an independent citizen whose perspective and value orientation get a hearing in the democratic processes that constitute legitimate social policy'.

As we have seen, this criticism seems to apply to a structural conception of autonomy like that of Oshana's. It also applies to substantive views in general. My agnostic understanding of autonomy, however, defuses this worry. As it implies a systematic presumption of autonomy that applies both to agents and to their declared preferences, it can never lead us to unduly exclude any agents or to perceive their preferences as less worthy of respect. However, even if

it cannot be accused of being too perfectionist in itself, the concern nonetheless remains that it leads to perfectionist outcomes on the political level.

As noted by Steven Wall, political perfectionism aims at creating institutions and initiatives that would allow for the actualisation of such perfections in all of its citizens (Wall 1998, 8). This, in turn, ‘implies that certain values —egalitarian ones of this sort— are valid for individuals even if they (*ex hypothesi*) authentically and freely reject them’ (Christman 2004, 152). From a perfectionist perspective, it would thus be coherent to attempt to impose the value of gender equality through policies like the daddy quota, even if no one was committed to it. This, in turn, would be incoherent with the goals of a liberal society. First, the *raison d’être* of liberal society is to allow everyone to freely choose their own version of the good life and to live according to their own beliefs and inclinations. To that extent, trying to impose a value (such as gender equality) that contradicts certain versions of the good life autonomously chosen by citizens would constitute a fundamental inconsistency. The objection is reinforced by the fact that choosing how to raise children is an integral part of people's good lives, and liberals tend to consider the family as being outside of the legitimate sphere of state action.¹³¹ The gendered models they choose to enact while raising their child should be viewed as expressing profound values and commitments. From this perspective, imposing an egalitarian model of child education, as in a policy like the daddy quota, penalises this particular of vision of the good life. Putting in place a daddy quota would then constitute a fundamental lack of respect for individuals and an illegitimate interference in their right to live according to their own (gendered) conception of the good.

Another potential worry is that a policy that aims at disrupting the gender division of labour would fail to respect social diversity. In a liberal society, pluralism is often seen as necessary for two reasons. One reason is because in order to be consistent with the commitment to respecting individuals’ conceptions of the good, the liberal state must ensure that it adequately respects and promotes the pluralism that results from the free exercise of autonomy of its citizens. The second reason is that society constitutes the primary context of individuals’ choices. The autonomous quest for the good life, which the liberal state must make possible for all, thus presupposes a semiotic material that allows individuals to form and revise their conceptions of the good. To lead a good life, therefore, implies not only the possibility of having the freedom to determine one's own conception of the good but also to live in a

¹³¹ William Galston (2002, 102) states, for instance, that ‘the ability of parents to raise their children in a manner consistent with their deepest commitments is an essential element of expressive liberty’. Likewise, Charles Fried argues that (1976, 152) ‘the right to form one’s child’s values, one’s child life plan and the right to lavish attention on the child are extensions of the basic right not to be interfered with’.

pluralistic society (Kymlicka 1999, 125). The liberal state would therefore have an interest in protecting and respecting social diversity in order to allow individuals the widest possible range of choices. The diversity and plurality of family forms and of the visions of the good life that tint them are, in this respect, what allows the emergence of social diversity.¹³² In this sense, respecting and protecting the rights of parents to freely determine how they wish to raise their children and the values and the modes of good life they wish to convey can be seen as paramount in maintaining the context of social diversity.

Against these objections, I want to suggest that a relational understanding of autonomy can indeed advance emancipatory policies that disrupt entrenched inequalities, and it does so on justificatory grounds that make it impervious to the anti-perfectionist objection. This, I argue, is one of the strengths of my framework: the measures it justifies cannot be dismissed on the grounds that they are incompatible with liberalism.

First, the question of how we should delimit the legitimate sphere of state action is a complicated normative query that cannot be answered by resorting to a crude distinction between the public and the private. While it is true that liberals tend to be reluctant to intervene within the family, this does not mean that it should be considered outside the legitimate exercise of state activity. Incidentally, as Nussbaum (2000, 61) states, the liberal state already intervenes in the family:

The state constitutes the family structure through its laws, defining which group of people can count as families, defining the privileges and rights family members, defining what marriage and divorce are, what legitimacy and parental responsibility are, and so forth. This difference makes a difference: the state is present in the family from the start, [...] the political sphere cannot avoid directly shaping the family structure, by recognizing some and not other groupings as families.

In this respect, the simplistic claim that a policy such as the daddy quota is impermissible because it infringes on its citizens' private self-determination cannot be taken very seriously. However, to the extent that the family is indeed the privileged sphere of individual self-determination, political actions that target the family have to be legitimate.

As Schouten (2013) argues, for an intervention to be considered legitimate, it must satisfy two criteria. First, it must be demonstrated that the reasons for the intervention do not rest on a substantial value or on a comprehensive conception of the good life. As the proponents of the anti-perfectionist argument point out, insofar as the liberal state must allow the peaceful coexistence of different modes of the good life, it cannot afford to favour certain

¹³² As Véronique Munoz-Dardé (1998, 49) states, '[t]he diversity of families makes it possible for the pluralism'.

conceptions of the good over others. This is because a justification that rests on substantive values would fail to retain the reasoned allegiance of people who do not subscribe to these values (Schouten 2013, 369). To illustrate her point, Schouten uses the example of equality. As a substantive value, equality implies subscribing to a comprehensive conception of the good that demands, for instance, that we equalise work across genders. However, equality is also an important political value, which implies that individuals are equally treated on the political level and granted an equal amount of political liberties. Contrary to substantive values, political value can thus serve as legitimate grounds to justify political interventions. Indeed, Schouten explains, it is these political values that justify the exercises of the political power in the first place (Schouten 2013, 373). In this respect, if a policy like the daddy quota is to be justified from a liberal perspective, it must be justified by strictly political values—that is values that ‘reflect the principles of justice intended for the basic structure’ (Rawls, 1993, 132). Second, to be legitimate, the measure put in place by the liberal state must infringe as little as possible on individual freedom (Schouten 2013, 379). If there are several means through which the liberal state can accomplish the same goals, it has the duty to choose the measure that interferes least with the lifestyles individuals have chosen. This can be referred to as the requirement of minimal infringement.

This suggests that the introduction of the policy of the daddy quota can be justified by means other than relying on substantive values. The framework I advance provides us with political grounds to justify such a measure. If the *raison d'être* of liberalism is to allow everyone to lead a freely chosen life, then this means ensuring that both men and women have access to the same range of non-trivial options. In this respect, what the structural focus of my framework allows is the realisation that in our current socio-relational context, both men and women are prevented from accessing important non-trivial options. Therefore, it is in view of the obstacles that might prevent both sexes from accessing options that depart from what gender norms prescribe, implementing a policy like the daddy quota is justified. While a perfectionist approach might indeed promote and justify a measure like the daddy quota on the basis of an egalitarian conception of the good life, a structural approach like mine rather focuses on *removing obstacles* to a roughly equal range of options. It is, in this respect, not because the equal sharing of caregiving and breadwinning is considered to be an intrinsic good that equalising parental leaves between men and women would be implemented. Given its agnosticism, the framework I propose gives us no grounds to vindicate the idea that egalitarian conceptions of the good life are to be seen as worthier of respect than others. Such framework

can only vindicate measures that aims at removing obstacles that limit individual access to non-trivial options. This, in turn, constitutes a *political* basis to legitimise the daddy's quota. The framework I offer cannot, in this respect, be dismissed as too perfectionist to be considered consistent with liberalism. Because it provides us with political grounds (rather than substantive ones) to vindicate emancipatory policies such as the daddy quota, such a framework can therefore be of use to feminists who do not want to reject liberal principles.

Attention to the way social context structures how individuals can plausibly exercise their autonomy allows us to see that it is the current political *status quo* that threatens the pluralism and social diversity that liberals vindicate. It is the failure to address the structural forces that corner individuals into adopting the traditional gender division of labour that seems inconsistent with liberalism, because this failure imposes *de facto* a homogeneous vision of the good life. In contrast, as it increases the options available to individuals, a policy like the daddy quota promotes the pluralism and social diversity that many liberals cherish. By making the option of staying at home if one is a man or keeping a demanding career after becoming a mother socially acceptable and truly practicable, this measure leads to greater social diversity. This, in turn, would also grant a wider range of choices to the children who have benefited from this measure. As studies on the impact of the paternity leave quota tend to demonstrate, having less traditionally gendered parenting models allows children to design more options outside those associated with gender (Kotsadam & Finseraas 2013; Cools, Fiva & Kirkebøen 2011). Even if parents still choose to follow traditional gender models, this measure allows for an expansion of the horizon of choices of children raised in a more traditional family, because it diversifies family models at the societal level.

Finally, my framework also satisfies the requirement of minimal infringement. Given its commitment to respecting people's avowed preferences, my framework is committed to opening up more options for individuals without curtailing existing options (even when they are seen as coherent with oppressive norms). This means that the policies that it will justify cannot be seen as seriously infringing on individual autonomy. It is important, that is, that a policy like the daddy quota does not curtail the option of following the traditional division of labour. Fathers who do not wish to take on their share of the leave can always waive this privilege. It might be true that the policy constitutes a strong incentive for them to take their share of the leave. However, as I have argued, such an incentive is justified insofar as it is necessary to alleviate the current obstacles that prevent men from accessing the option of taking on caregiving. To date, it seems that the mandatory sharing of parental leave is the most promising

measure to achieve an equality of opportunity between men and women.¹³³ If this is indeed the most effective measure for this purpose, then it seems that adopting this policy is not only legitimate but also necessary in order to counterbalance the social barriers that force the reproduction of the gender division of labour and prevent people from living a life of their own choosing.

Conclusion

The policy vindicated here is not particularly novel. Many feminists have stressed the need to implement policies that encourage a more equal division between caregiving and breadwinning. However, my aim was not so much to demonstrate that an agnostic and structural framework enables us to devise radically original solutions to the perennial problems we face. Rather, I sought to demonstrate that the proposed framework would help support and justify emancipatory feminist policies on grounds that can difficultly be dismissed by liberals. I have attempted to show that paying adequate attention to the way the socio-relational context structures the opportunities left for individual to exercise their autonomy provides us with a basis to vindicate substantial political and social change. Yet, it does so without framing gendered preferences as somewhat less autonomous or worthy of respect and without promoting an exclusionary conception of the good life. In this respect, it defuses the anti-perfectionist objection and can serve to justify state action on a basis that cannot be seen as incoherent with the aims of liberalism. This, in turn, makes it well suited as a normative tool to further feminist policies within liberal societies. It could thus be of use in replacing the inadequate individualistic understandings of autonomy that often serve as a basis to repel emancipatory policies, such as the daddy quota, which promote equality between the sexes.

¹³³ See, in particular, Noonan (2013) and Estes (2011). While subsidised day-care centres help women return more quickly to the labour market, this measure alone does not seem to reduce the social barriers that limit men's access to the option of taking on caregiving (Fuwa & Cohen, 2007; Noonan 2013). Similarly, programmes that aim to provide flexibility for working parents seem to benefit women to some extent but do not seem to change the situation of fathers (Noonan et al. 2007).

Chapter 5: When the Family Is No Longer: Separations and the Vulnerable Caregiver

‘And yet . . . the figure of the economically vulnerable female cohabitant returns to haunt us. No family law text can now avoid addressing her position, and how easy it is to slip into contrasting her vulnerability with the seemingly more protected position of her married sister’ (Bottomley & Wong 2006, 39).

In the preceding chapter, I argued that addressing the structural obstacles that reproduce the gender division of work is not only legitimate but also necessary to ensure people’s capacity to lead a self-governed life. I have suggested that a policy such as the daddy quota is justified because the option of caring for one’s family and children constitutes a non-trivial option that needs to be truly open to everyone –males and females. However, even if we were to implement a policy like mandatory paternity leave, there would still be non-negligible obstacles that both limit access to this option and put those who take it at a disadvantage. In our current socio-relational context, that caregiving remains unpaid, and unrecognised, leaves many women economically dependent on their partners, especially when they have children. This is a problem, as it adds costs to the option of caregiving, which creates the problematic double bind of either securing one’s economic well-being and independence or having a family. As this reduces the possibility left to exercise one’s autonomy in a non-trivial manner, we should aim at alleviating this oppressive double bind.

In this chapter, I explore this issue in relation to the legal treatment of cohabitants. Given the kind of gender norms that are currently in place, many women are left in a state of economic vulnerability following separation (Stanton 2014; Gadalla 2008). Research reveals that while a separation leads to a slight decrease in men’s income within the years following the separation, for women this economic drop tends to be much more dramatic, suggesting a major deterioration in their economic well-being (Gadalla 2008). These results are starker still if women are cohabitants who had been living in *de facto* unions with their partners (Avellar & Smock 2005). In many countries, *de facto* unions do not come under the matrimonial regime that protects the lesser-earning partner in the event of the dissolution of separation (Leckey & Favier 2016).

In what follows, I explore a much-discussed recent case from Quebec (*Family Law - 091768*) and the appeals that ensued as an illustration and exploration of this issue. I refer to

this case as *Lola v. Eric*, as this was the name employed in the media.¹³⁴ This legal saga revolved around the question of whether cohabitants are victims of discrimination (following article 15 of the Canadian Charter of Rights and Freedoms) and should be included under the same legal regime as married couples.¹³⁵ It is an important case in Quebec, as it reinstated the legal schism between marriage and cohabitation and reaffirmed Quebec's legal exceptionalism within Canada. It is also an interesting case to examine for our purposes for three key reasons. First, it revolves around the question of what legal framework is best able to protect the autonomy of cohabitants. Second, it illustrates the type of contextual legal dilemma that changing social norms and shifts of practice within modern societies pose. As noted by *Statistic Canada*, Quebec is the place in the world where cohabitation is most frequent.¹³⁶ In 2006, almost one couple in three was living in a *de facto* union (34,6%) in Quebec, compared to only 13,4% for the rest of Canada. The growing popularity of *de facto* unions over marriage in Quebec constitutes a trend that mirrors what is happening, albeit more slowly, around the globe.¹³⁷ The third reason why the case is so interesting is because the contrast between Quebec and the rest of Canada in the legal treatment of cohabitants is illustrative of a normative divide between two views concerning individual autonomy that are reproduced in liberal societies around the world. While Quebec's legal treatment of cohabitants is fairly similar to that of other jurisdictions, such as France, England and Wales, most Canadian provinces now adopt a legal scheme that tends to subsume *de facto* unions under the regime of formalised unions (Leckey & Favier 2016, 526). The debates initiated by the *Lola v. Eric* trials are, in this regard, illustrative of the broader normative divide surrounding what legal protections and obligations should be attributed to cohabitants (Bottomley & Wong 2006). In most jurisdictions, this question is closely linked to the issue of the legal rights of same-sex couples (Brake 2016; Bottomley & Wong 2006). Addressing this question in the context of Quebec has the added advantage of detaching these two issues, given that same-sex couples have the right to marry in this Canadian province (Boyd & Young 2003).

¹³⁴ Eric and Lola are fictive names used in the media to hide the real identity of the two protagonists.

¹³⁵ In contrast to married couples, the Civil Code of Quebec does not grant *de facto* spouses access to alimony, a share of the familial assets (such as the family residence) or the right to other financial compensations. Quebec Civil Code, L.Q. 1991, Ch. 64, art. 401 à 430, 432, 433, 448 to 484, 585 – see also the Canadian Charter of Right and Freedom, art. 1, 15(1).

¹³⁶ Statistics Canada, '2006 Census: Family portrait: Continuity and change in Canadian families and households in 2006: Findings.' Online [http://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-553/index-eng.cfm]

¹³⁷ Following Quebec, the countries that have the highest proportion of *de facto* cohabitants are Sweden (25.4%), Finland (23, 4%), New Zealand (23,7%) and Denmark (22.2%). Statistics Canada, '2006 Census: Family portrait: Continuity and change in Canadian families and households in 2006: Findings.' Online [http://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-553/index-eng.cfm]

I. The Case

Lola meets Eric in 1992. She is a 17-year-old high school student who still lives with her parents in her country of origin. At 32 years of age, Eric is the prosperous manager of a successful international business. From 1992 to 1994, Eric brings Lola on his many trips around the world. He also helps fund Lola's studies. When Lola becomes pregnant with the couple's first child in 1996, the pair move together to Quebec where Eric lives. They have two more children (one in 1999 and the other in 2001). Lola does not work (albeit she makes some attempts to become a model), and Eric provides for the needs of the whole family. Lola wants to marry; Eric does not. He tells Lola that he does not believe in marriage but says that he might reconsider his position after 25 years of *de facto* union. However, shortly after their third child is born, the couple separate. They were together for ten years and cohabited for seven.¹³⁸

In February 2002, shortly after the dissolution of their union, Lola files a motion in the Superior Court of Quebec. In addition to her claims for child support, she contests the constitutionality of the articles of the Civil Code of Quebec that distinguish the rights of married spouses from those of *de facto* ones. She argues that it is discriminatory to refuse cohabitants the same legal protection as married spouses (such as spousal support, the division of the family patrimony and the right to claim a compensatory allowance).

Justice Hallée dismisses the constitutional arguments in July 2009. Following this decision, Lola appeals. The appeal is partly allowed, and the article concerning spousal support (*art. 585 C.C.Q.*) is declared unconstitutional. For the most part, however, the Court of Appeal confirms Justice Hallée's decision concerning the family residence and patrimony and the right to compensatory allowance.¹³⁹ Following the result of this first appeal, Eric and the Attorney General of Quebec appeal to the Supreme Court of Canada, while Lola appeals the ruling concerning the division of property for cohabitants under Quebec's Civil Code. The Supreme Court judgement, rendered in 2013, concludes that far from being discriminatory toward cohabitants, the Civil Code rather respects their autonomy and freedom of choice.¹⁴⁰ As Caroline Harnois and Julie Brisson (2013, 4) note, '[i]n the end, the result of this lengthy judicial saga is to the effect that the *status quo* is maintained for *de facto* spouses in Quebec. The situation is clear: in the event of separation, there exists no right to spousal support or to the division of property of which one *de facto* spouse is not the owner'.

¹³⁸ *Droit de la famille-091768, 2009 QCCS 3210.*

¹³⁹ *Droit de la famille-102866, 2010 QCCA 1978.*

¹⁴⁰ *Quebec (Attorney General) v. A 2013 SCC 5*

II. The Grounds for the Decisions: The Strong Autonomy View

What underlined these different judgements and led to the reaffirmation of the *status quo* for cohabitants in Quebec is what Robert Leckey (2009) refers to as the ‘strong autonomy view’. This view can be summarised in the following terms: preserving the legal difference between marriage and cohabitation is necessary in order to respect people’s freedom and autonomy. This is the view that underlines Justice Hallée’s argument when she states that the similarities between married and *de facto* spouses should not lead us to forget the fundamental difference between these two types of union. Namely, that in contrast to married couples, cohabitants have chosen not to formalise their union.¹⁴¹ For her, it is clear that there is no discrimination in excluding *de facto* unions from the legal regime of formalised unions. Rather, this exclusion expresses an adequate respect for the autonomy and freedom of choice of cohabitants.

There are mainly three ways in which the strong autonomy view has been expressed. The first one can be understood as the ‘consent argument’. As argued by Justice Bastarache in the similar case *Nouvelle Écosse c. Walsh*, which was used as a precedent for *Lola v. Eric*, given that *de facto* cohabitants have chosen not to marry, they cannot be viewed as having consented to incur legal obligations vis-à-vis their spouses. In this regard, attributing to them such obligations is illegitimate and violates their autonomy. Following this line of argument, not marrying or otherwise institutionalising one’s relationship through a civil union is taken to reflect the cohabitants’ will to ‘subsist in a realm of liberty, outside the law’.¹⁴² This, however, does not entail that the law recognises no responsibilities or protections whatsoever to cohabitants. As stressed by Justice Hallée, the Civil Code does include articles that protect vulnerable cohabitants from being unfairly disadvantaged as a result of ending of their relationships. If the cohabitants have children together, both parents retain their obligation of support towards their children: alimony will be granted to cover for the children’s needs.¹⁴³ Moreover, if a correlation is found between the impoverishment of one party and the enrichment of the other, the doctrine of unjust enrichment can apply. In this regard, proponents of the strong autonomy view stress that even if a *de facto* union is exempt from most of the legal obligations that marriage entails, it still grants sufficient protections to vulnerable former partners.

¹⁴¹ See *Droit de la famille-091768 2009*, p. 48-49. She was quoting both M. Eichler’s (1997) and Judge Bastarache’s judgements in the similar case of *Nouvelle Écosse (Procureur général) c. Walsh*.

¹⁴² *Nouvelle Écosse (Procureur général) c. Walsh*, prec., note 5.

¹⁴³ *Droit de la famille-091768 2009*, p. 14, note 54.

The second form of the strong autonomy view has been expressed through the ‘meaningful choices argument’. Shahar Lifshitz (2009), for instance, claims that a liberal society has the responsibility to provide institutions that reflect and enable social pluralism. Given that there exist a great variety of intimate relationships, characterised by different levels of commitment, expectations and intentions, a liberal society should keep cohabitation as distinct from marriage in order to enable individuals to choose the level of commitment they wish to undertake. Similarly, Milton Reagan (2001) contends that a liberal society that is committed to autonomy has to offer the largest possible range of legal options to individuals so they can choose which option best expresses the level of commitment they deem acceptable. As proponents of the strong autonomy view emphasise, the choice is not just between the weighty legal obligations of marriage and informal cohabitation. In her judgement, Justice Hallée reminded the audience that *de facto* spouses are encouraged to ratify a cohabitation convention that organises their matrimonial regime following their specific needs and aspirations. In this respect, proponents of the strong autonomy view argue that maintaining the *status quo* for cohabitants should be viewed as a means to leave them free to come to a contractual agreement between themselves, specifying what legal obligations they want to share (Roy 2001, 447-8; Dubé 1987, 709). Subsuming cohabitation under the legal regime of marriage would, in this respect, not only violate individuals’ will not to take on the substantial commitments that come with marriage. It would also deprive them of the possibility to choose for themselves how they want to structure their relationship (Lifshitz 2009).

The strong autonomy view finds an echo in certain feminist discourses in the form of the ‘women’s equal agency argument’. Imposing such duties on *de facto* spouses, it is argued, contributes to two problematic views about women. First, it undermines equality between men and women as it implies that women are too weak to support themselves following a separation. This, in turn, reinforces prevalent inequalities and stereotypes. Quebec’s *Conseil du Statut de la Femme*, for instance, contended that women were now in an economic position to support themselves following a separation (1991, 15). In this regard, rather than helping women access a real equality of opportunity, the imposition of duties of support to an unmarried partner would be an obstacle to their full acceptance into the world of work. It perpetuates the hurtful and detrimental view that women are unable to provide for themselves following a separation. Ruth Deech (1980, 486) offers the following explanation:

Maintenance and property awards to former cohabiting partners are not simply payment for the freedom to leave one woman for another, but would also reinforce the outmoded view, upheld by the law, of the man as the head

of the household and the woman under obligation to provide domestic services and child care, a view which is too unsatisfactory in its application to married persons to permit of its extension to the unmarried.

Second, it is argued that imposing duties on the *de facto* spouse fails to acknowledge the will of female cohabitants. It seems to imply that not marrying can never be considered as the autonomous wish of a woman (Bottomley 2006). This ignores the fact that many women knowingly and autonomously reject the institution of marriage (Lifshitz 2009, 1588). Many feminists, for instance, argue against marriage as a sexist institution that reproduces pernicious forms of inequality and symbolic violence (Okin 1989; Kingston 2004; Chambers 2013). If imposing legal duties on cohabitants implies forcing them into a marriage-like institution, then it seems indeed that doing so would violate the autonomy of women who reject this institution.

III. The Grounds for Contestation: The Functionalist Argument

As remarked by Louise Langevin (2009), it is unfortunate that the important legal debate on cohabitants was initiated as a result of a case like that of *Lola v. Eric*. If the case attracted such a massive media attention and spurred a massive controversy in Quebec, it was precisely because it was so disconnected from the economic reality of the large majority of families. Lola demanded alimony of 56,000 dollars per month for herself, in addition to half of the family assets, and a flat sum of 50,000 dollars. In 2006, she had already obtained alimony of 34,260 per month for the three children, as well as Eric's reimbursement of the children's expenditures (such as the salaries of one cook, two full-time nannies, one preceptor and one psychotherapist). Given the kind of sums involved, it is difficult to feel sorry for Lola. Even if her standard of living did in fact drop following her separation with Eric, the monthly alimony she received still puts her in the top 5% of the wealthiest people in Quebec. Yet, it is on the basis of this exceptional case, which cannot be taken to reflect the situation of the vast majority of cohabitants, that a decision that bears major consequences on the hundreds of thousands of *de facto* spouses was made.

The exceptional nature of the case, Langevin argues, has led judges to err and to arrive at a decision that is unfair to the large majority of cohabitants. During the first trial, Justice Hallée used Lola's lawyer's failure to submit sufficient proof that cohabitants were victims of discrimination. As Langevin contends, were Justice Hallée to consider the actual statistics we possess on the economic situation of most women with children following a separation, she would have had evidence that the legal void surrounding *de facto* unions is indeed

discriminatory against female cohabitants.¹⁴⁴ Divorce augments the economic vulnerability of women, and this effect is far worse for cohabitants, as they cannot claim alimony or their fair share of the family assets. Yet, as Langevin stresses, the affliction women encounter after a separation is not due to their own failure to find decent employment. Given the current gender division of labour, women still assume the large majority of households' unpaid and unrecognised care work. They often take on flexible or part-time jobs to be able to devote themselves to caregiving, while their partner continues to climb the economic ladder (Gunderson 2006). In this regard, concludes Langevin, the decision to maintain the *status quo* for cohabitants reproduces a systemic discrimination against women: it fails to acknowledge the caregiving work they undertake and leaves them vulnerable and unprotected in the event of a separation.

Langevin's claim, as well as that employed in Lola's defence, is underpinned by what Leckey (2016) refers to as the functionalist argument. It is, incidentally, this kind of argument that justifies similar legal treatment granted to both cohabitants and married partners in other Canadian provinces as well as in the most progressive jurisdictions. This view emphasises the functional equivalence between *de facto* and married spouses and argues that provided a *de facto* union functions in the same way as that of a married couple, it should be granted the same bundle of rights and protections (Gaucher 2015). As argued by the dissenting judge L'Heureux-Dubé in *Walsh*, like married spouses, cohabitants become interdependent as they divide the balance of caregiving and bread-winning work.¹⁴⁵ While one partner might indeed become economically dependent on the other, the latter may need his partner to care for the children, and the household. Just as in a marriage, the role the main caregiver takes on is likely to make her economically vulnerable (Douglas, Pearce & Woodward 2009). This disadvantage, and the necessity to compensate for the invisible care work women so often take on, is acknowledged for married partners. Why not acknowledge it for cohabitants who are similarly committed and interdependent? According to the proponents of the functionalist view, not doing so fails to recognise the extent of women's non-monetary contribution to the maintenance of the family and reproduces the exploitation of women in this role (Diduck & Orton 1994, Langevin 2009).

In addition to calling attention to the similarities between married and *de facto* spouses, proponents of the functionalist view contest the assumptions that underlie the strong autonomy

¹⁴⁴ In 2006, the average income of single mothers in Quebec was of \$22,087, while that of single fathers was of \$32,154. This is well under the poverty level, which was estimated at \$24,412 for a single parent with only one child in 2006 (Secrétariat à la condition féminine 2010, Statistic Canada 2006).

¹⁴⁵ *Nouvelle Écosse (Procureur général) c. Walsh*

view. Not marrying, they stress, is seldom the free and autonomous joint decision strong autonomy proponents assume it to be (Wax 1998; Wong 2009; Leckey 2009). In this regard, it cannot be taken as expressive of the partners' common will to avoid the legal obligations that come with marriage. First, there are many other reasons that can lead a couple not to formalise their union. As Bottomley and Wong (2006, 40) note, '[t]he reasons for not taking steps to protect themselves need further investigation, but seem to range from believing in the myth of 'common-law marriage' and lack of basic legal information and advice through to believing in their men'. Second, and more importantly, the decision to marry or to not marry cannot be taken unilaterally. It has to be a joint decision. As illustrated by *Lola v. Eric*, one partner cannot force the other to marry her, nor can she oblige him to grant her legal protections in the event of a separation. Especially if she is the economically worst-off in the couple, she seldom has the tools or the bargaining power to convince her partner to consider marriage or to ratify a contract that protects her in the event of a separation. As Shahar Lifshitz (2009, 1581) remarks, '[i]n the real world, big differences exist between men and women in their economic capacity, business experience, patterns of negotiation management and status in the marriage market. Consequently, the choice not to marry reflects, in many cases, a unilateral decision of the most powerful partner, rather than a joint decision of both parties'. Whose freedom and autonomy is being protected by the decision not to grant economic protection to the most economically vulnerable cohabitant?

Moreover, as proponents of the functionalist argument stress, while it is true that some legal protections are available to economically vulnerable cohabitants, this recourse tends to be interpreted in a very narrow fashion by courts and constitutes a poor substitute for equality and justice (Douglas, Pearce & Woodward 2009). Hence, concludes Langevin (2009), the state has no problem intervening in the life of married spouses on the grounds of equality and the recognition of the invisible work done primarily by women. Why invoke the primacy of autonomy and freedom only when it comes to cohabitants? It might be true that the strong autonomy view protects autonomy; however, it is primarily that of the stronger partner.

IV. Respecting Autonomy While Protecting Caregivers

Both the Strong Autonomy View and the Functionalist View are unsatisfactory. A simplistic and individualistic view of autonomy, which regards cohabitants as akin to *homo economicus*, seems to underline the strong autonomy view. Individuals are presumed to be in possession of

complete information concerning the legal consequences of not marrying.¹⁴⁶ They are also assumed to have decided to forego formalising their union on the basis of a narrow, rational calculation where the legal costs of marrying are duly weighed against the benefits of not doing so. This is opposed to the romantic imagery of marriage and the kinds of social norms that underlie this institution. As Clare Chambers (2016, 58) argues, even if people were cognitively able to put themselves in the self-interested mind-set necessary to make this kind of calculus, the prevalent social norms would frame such reasons to marry as antithetical to good husbandly and wifely behaviour.¹⁴⁷ In this respect, focusing on the formal means of marriage as expressive of consent to a bundle of rights and obligations seems disconnected from the reality of coupledness. It also erases ‘the potentially stronger partner’s tacit choice to stay in the relationship, fostering reliance and encouraging relationship-specific investments on the other’s part’ (Leckey & Favier 2016, 536-7). As functionalists have noted, consent is not always expressed explicitly. Obligations and responsibilities can also be tacitly accepted.

Because of its individualistic focus, the strong autonomy view also overlooks the power differential that can exist within a couple as well as the fact that marrying has to be a joint decision. As *Lola v. Eric* demonstrates, the decision not to marry is often unilateral, and one of the spouses can easily refuse to institutionalise the union. In this respect, reliance on contracts as a means to guarantee a free agreement seems no less naïve, as the same power relationship can play out in such an agreement as well (Leckey & Favier 2016, 537). As Chambers remarks (2016, 57), ‘[t]he contract model relies on equality between the contracting partners, but if the parties are unequal then individuals can face pressure to agree to unfair contracts –just as women have always faced considerable pressure to agree to the profound inequality of traditional marriage’.

Refraining from imposing legal obligations outside of contracts or marriage does not then guarantee the free exercise of autonomy. In practice, it is more likely to serve to hide the reproduction of privilege and power differentials. As it fails to consider the dynamics of domination that can exist within a couple, the individualistic understanding of autonomy that underlies the strong autonomy view thus leads to the reproduction of a power dynamic that systematically robs women of the ability to exercise their autonomy.

¹⁴⁶ As noted by Leckey and Favier (2016, 536-7), this view is underlined by the epistemological presupposition that ‘commitment or undertaking is knowable solely by formal means. That is, only the formal ‘juridical acts’ – in the civil law, manifestations of intention in a manner and form designed to produce legal effects [...]– of marriage and contract signal willingness to take on legal obligations’.

¹⁴⁷ Chambers uses this argument with regard to relationship contracts. However, it also applies to marriage.

The functionalist argument, however, does not prove any more satisfactory in presenting women cohabitants as eternal victims. It seems to assume that, in both cohabitation and marriage, a classic gender division of labour necessarily develops through time. In theory, this serves to acknowledge the fact that gender norms often pressure women into taking the bulk of caregiving. In practice, however, it can have the effect of reinforcing and legitimising conservative norms of heterosexual relationships. When adjudicating which cohabitants should be treated ‘as if’ they were legally married, judges typically draw on functional characteristics thought to be part of marriage. This, in turn, often serves to enforce a certain ideal of conjugality, which represents ‘how judges imagine marriage ought to be’ (Cossman & Ryder 2001, 290). This is problematic for same-sex couples (which often do not correspond to this ideal) (Gaucher 2015).¹⁴⁸ However, it is also an issue for heterosexual couples, as it presents an exploitative gender division of labour as a normal dimension of conjugality (Lifshitz 2009).

The functionalist view also seems to reproduce problematic views about women’s autonomy, as it assumes that not marrying can never be an autonomous desire on their part. It forgets that the desire not to formalise one’s union can indeed be expressive of a joint and egalitarian decision from both partners. In this respect, as the strong autonomy proponents argue, imposing a unique legal regime on all problematically infringes on individuals’ autonomy. Moreover, if feminists are right that the institution is symbolically oppressive and can reinforce the gender division of labour, then including all *de facto* cohabitants in a marriage-like legal scheme, independently of their will, seems problematic (Okin 1989; Kingston 2004; Chambers 2013). It seems to simultaneously curtail the option of not subscribing to the institution of marriage and to reinforce oppressive views of conjugality.¹⁴⁹

Is the structural framework exposed in Chapter 3 of any use in addressing this agent or victim binary? It may seem, at first glance, that adopting the framework I propose leads us to the same conclusion as the strong autonomy view (albeit for different reasons). I have argued that if we want to avoid the problem of exclusion, then we should adopt a systematic presumption of autonomy. This presumption, in turn, means we cannot assume that women

¹⁴⁸ See also Ettelbrick (1997, 758), who notes that ‘marriage will not liberate us as lesbians and gay men. In fact, it will constrain us, make us more invisible, force our assimilation into the mainstream, and undermine the goals of gay liberation’.

¹⁴⁹ As Chambers (2013, 127) claims, even if marriage had no deleterious consequences for women in practice (that is, if it did not reinforce problematic gender norms), it would still be problematic to force women into a marriage-like institution. The fact is that marriage is an historically sexist institution, and it seems likely that, even in its best form, a marriage-like view of cohabitation could not help but to import some of the traditional symbolism of marriage. Even if we are not convinced by this argument, however, the mere fact that some people might perceive a marriage-like cohabitation framework to have problematic symbolical implications (and would therefore not want to subscribe to it) is a good reason not to impose it to all.

are any less autonomous than men. We should, in this respect, avoid questioning their declared desires and refrain from assuming that the desire not to marry (or not to be protected by a marriage-like institution) cannot correspond to the autonomous wish of at least some female cohabitants. My approach also seems to suggest that very strict conditions must be satisfied if we are to remove an option (such as the option to avoid the legal responsibilities of marriage), as doing so infringes on the autonomy of individuals. It commits us to the view that the more non-trivial options one possesses, then the better it is for autonomy.

However, the agnostic and structural framework I propose is equally committed to avoiding the problem of oppression. This means that it can never lead us to ignore or understate the power differentials that can exist within a relationship and which may leave those taking on caregiving responsibilities unprotected and economically vulnerable, thereby robbing them of non-trivial options. As Langevin (2009) comments, the problem at stake here is not so much that of a wealthy woman like Lola. There certainly was a power differential in Lola's case. It was, after all, her partner's will that prevented her from accessing the legal protection of marriage. However, not being granted the protections of marriage did not leave her in a situation of economic vulnerability that substantially reduced her ability to exercise her autonomy. Certainly, falling from the top 1% down to the 5% of the wealthiest persons might have reduced her access to certain options. Yet, these options cannot be considered as non-trivial. As seen in Chapter 3, a non-trivial option is one that is necessary to live a life of one's own choosing: it cannot be the kind of exclusive and outrageously expensive option that is only accessible to the elite of society. Moreover, it is difficult to sustain the functionalist argument that refusing to grant her \$50,000 per month constitutes a failure to acknowledge her non-monetary contribution to the family. Given the number of staff working for her, it seems doubtful that Lola took on much of the care work.

What Lola's case enables us to see is that the fact that marriage necessitates the consent of both partners is not oppressive in itself.¹⁵⁰ It takes two to form a couple, and it should indeed take two to institutionalise this union. Where the need to have the consent of both parties becomes a problem is when it exposes the weaker partner to the potential domination of the other and unfairly reduces her set of options in a non-trivial manner. In other words, the problem is that the status of 'married couple' is seen as the relevant basis to attribute rights and protections to individuals. It is this link between marriage and the different legal protection afforded by it that is questionable. As remarked by Chambers (2013, 133), '[t]hese rights are

¹⁵⁰ See the discussion on what constitutes oppression and how to identify it in Chapter 3.

given to the couple *because* they are married, not because they have chosen each right in turn (for they have not), and not because there is some other feature of their relationship that merits them (for non-married couples living in identical circumstances will lack some or all of these rights)'. This is a problem. There does not seem to be a valid justification for denying legal protections to individuals who take on the bulk of the caregiving work on the grounds that they were unable or unwilling to subscribe to the institution of marriage. As functionalists noted, in the current state of affairs, taking on the bulk of the caregiving work exposes women to economic vulnerability and exploitation. What is oppressive is that the recognition of women's contribution to their families *depends on their partners' will to marry*. This too often leaves women in a situation of economical vulnerability, which substantially reduces their capacity to lead a self-governed life. In short, the problem is that partners can rob caregivers of the non-trivial option to receive legal protection, recognition and economical compensation in exchange for their work.

Given that an agnostic and structural framework compels us to leave both the option of marriage and that of *de facto* cohabitation open, we have to find a way to compensate for the power dynamic that deprives caregivers of the possibility legally to protect themselves against the detrimental effect of a separation. This means detaching the issue of compensating for care work from that of marriage. As rightly argued by functionalists, women who take on caregiving work should be able to claim economic compensation for their non-monetary contribution to the family. This recognition, in turn, should not depend on their will, or that of their partners, to marry, for marriage can be separated from the recognition of care work. There is a precedent here: following Bottomley and Wong (2006), Tasmania is the first jurisdiction to operate such a divide between marriage and the recognition of care work. The *Domestic Relationships Act*, adopted in 2003, omits any reference to the nature of the care relationship and avoids sexualising it. It adopts a general definition of 'domestic relationship' as a relationship between two adults where 'one provides personal or financial commitment and support of a domestic nature to the material benefit of the other'.¹⁵¹ For this reason, Bottomley and Wong (2016) view such a legal framework as promising, as it effectively opens up the option of claiming compensation and economic protection for the non-monetary contribution. They stress that one does not even have to be in a sexual or amorous relationship to benefit from the legal protections provided by the Act: family members and unrelated friends could also benefit from the protections (Bottomley & Wong 2016, 48). This, they claim, effectively

¹⁵¹ *Domestic Relationships Act*, s 3(2)(a).

opens up the option of claiming legal protection and compensation for all and not just *de facto* partners.¹⁵²

This kind of solution provides an effective response to strong autonomy proponents, as it avoids subsuming all cohabitants under marriage-like regulations. Moreover, it participates in reshaping problematic gender norms by effectively making caregiving a viable option for all. It also sends the message that caregiving is worthy of respect and constitutes a social contribution that is valuable and should receive compensation. As it enables primary caregivers to receive adequate legal protection for their work independently of the type of relationship they are in, it also seems to answer some of the functionalist criticisms. However, in some respects, it does not go far enough.

First, the *Domestic Relationships Act* remains similar to marriage, in that it is a holistic regulation that creates a single status on which hinges the attribution of a bundle of rights and responsibilities covering multiple areas of life. While caregiving might be a better basis to attribute such a bundle than marriage given that it is essential to human existence (Brake 2012, 87), it remains unclear why this status should be the single basis on which to attribute rights such as tax status, inheritance, property ownership, next-of-kinship and immigration. This seems to assume that among the many relationships that may be important for individuals, only one constitutes the relevant basis for receiving all these diverse protections and obligations. The Tasmanian Act, for instance, emphasises the need for the relationship to be exclusive, as the parties (*Relationships Act, s 11*) ‘*must not be married or a party to a deed of relationship*’. Yet, as Chambers (2013, 136) notes, ‘[i]ndividuals’ arrangements are more wide-ranging. Separated couples with children may continue to co-parent but share no other relationship. Others maintain a nuclear family unit but also share property or care with an elderly parent or sibling’. In this respect, creating an exclusionary alternative status to marriage as the basis on which to grant marriage-like rights and privileges seems to reproduce some of the flaws of the functionalist view: it assumes that caring relationships are, like marital ones, exclusionary. This could leave many primary caregivers unprotected, given the impossibility for either partner to cumulate more than one status simultaneously.¹⁵³

¹⁵² Elizabeth Brake (2016) proposes a similar solution. She stresses that caregiving constitutes a much better basis to attribute legal protections to individuals than marriage. In this respect, she suggests we replace the existing institution of marriage with a minimal version of it, which would ‘support for caring relationships, with no assumptions about sexual interaction, procreation, number of parties, reciprocity of all legal rights, shared totality of lives, or union’ (Brake 2016, 120).

¹⁵³ This might be a problem, among other things, if the caregiver’s ‘partner’ (or former partner) is otherwise married and/or engaged in another deed of relationship.

Second, and more importantly, a policy like the *Domestic Relationships Act* operates on an opt-in basis and necessitates both parties' agreement to lodge a certificate making the caring relationship official.¹⁵⁴ Either party may also unilaterally withdraw the application within 28 days of lodging it (*Relationships Act 2003, S12*). Under the Act, the risk of reproducing the problem of domination is mitigated by the fact that if a caring relationship is not registered, such a status can still be invoked, provided that it is determined that the two persons entertain a caring relationship.¹⁵⁵ However, such a policy still potentially leaves individuals who take on the role of primary caregivers unprotected if the Court does not find the relationship significant enough to be attributed a status.

In view of these problems, the idea of piecemeal regulation like that proposed by Chambers (2013 & 2016) might prove more satisfactory. Instead of bundling all the different rights and protections together and linking them to one status that cannot be combined with another one, Chambers proposes to regulate each part of the relationships separately. She writes (2013, 137), '[t]here would be no assumption that, in any particular case, all the functions coincided in one relationship. Thus, there would be separate regulations for property, child custody, immigration, and so on. Each of these regulations would stand separately, and individuals could form relationships with different people for different functions'. In this respect, receiving protection for one's non-monetary work would not be reliant on the individual capacity to secure the exclusivity of a status with another individual. Under Chambers' proposal, nothing precludes individuals from incurring and being attributed rights and obligations from different sources. Anyone who is the primary caregiver of a child, for instance, independently of whether the other parent is otherwise married or engaged, can receive protection. Moreover, within a piecemeal regulation regime, receiving a given right or incurring a given obligation is automatic. The contracting parties may be able to opt-out of such obligations, but they cannot do so unilaterally.

As noted by Bottomley and Wong (2006, 48), '[t]he recent Australian reforms not only extend to non-sexual care relationships; they also reveal an emerging trend, following the lead taken in the *Domestic Relationships Act*, of shifting the focus from the status of marriage and

¹⁵⁴ See the *Relationships Act 2003, s11*, which states that '[e]ach party to a caring relationship must lodge a certificate, in a form approved by the Registrar, from a legal practitioner which states that the legal practitioner provided legal advice to that party, independently of the other party to the relationship'.

¹⁵⁵ The criteria the court uses are '(a) the duration of the relationship; (b) the nature and extent of common residence; (c) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; (d) the ownership, use and acquisition of property; (e) the degree of mutual commitment to a shared life; (f) the performance of household duties; (g) the reputation and public aspects of the relationship; (h) the level of personal care and domestic support provided by one or each of the partners to the other' (*The Relationships Act S5*).

marriage-like relationships to one based instead on emotional and financial interdependence as indicators of a legally recognized relationship'. There is, indeed, no distinction made in the Act between sexual relationships and other ones. This helps avoid the problem of exclusion as it does not enforce a traditional and heteronormative ideal on the legal level. Chambers' proposal, in turn, pushes this idea further. It opens up the option of claiming legal protection and compensation for all rather than solely for people in a privileged exclusive relationship. It participates in reshaping problematic gender norms, effectively making caring a viable option for everyone. It also sends the message that caregiving is worthy of respect and constitutes a social contribution that is valuable and should receive compensation. Finally, such a solution also addresses the issue of oppression as it counterbalances the power relationships that can develop within the family. By giving people who take on caregiver roles the option to claim legal protection and compensation, it alleviates the risks of exploitation and the potential for domination. In short, such a solution seems effectively to address functionalist concerns without leading to the same problems.

The idea of adopting piecemeal regulation should also satisfy the strong autonomy view proponents, as it does not infringe upon the autonomy of those who do not want to marry or otherwise formalise their unions. Contrary to the solution functionalists prefer, this proposal does not impose a unique legal framework for all. It acknowledges that the relevant relationships in our lives are multiple and marked by different levels and sorts of commitment, which, in turn, should give rise to different types of obligations and protections. It does not presume that cohabitation is necessarily marked by a traditional heteronormative division of labour and acknowledges that some cohabitants would not satisfy the criteria necessary to claim compensation. It is likely that someone like Lola, for instance, would not. The idea of piecemeal regulation also does not reinforce problematic assumptions concerning women's autonomy. It does not revolve around whether or not women are more fragile than men and necessitate more protection from the law. Rather, it reframes the debate as opening up an important option for all: that of one's contribution to society being duly recognised, compensated for and legally protected. It leads to solutions that are autonomy promoting and incorporates respect for the freedom of choice without returning to the problem of oppression.

It could, of course, be argued that this solution violates the autonomy of the person who benefits from the non-monetary work that his partner performs. This person has not chosen, after all, to incur legal and economic responsibility toward his partner. Yet, as discussed in Chapter 1, autonomy is also the normative basis to attribute responsibility. Being

autonomous does not solely consist of making free choices: it also entails accepting the responsibilities that come with these choices. When one tacitly consents to benefit from another's work, one also has to accept paying the fair costs of this work. Refusing to compensate for the work another has done for us can hardly be understood as an act of autonomy. It is an act of irresponsibility that, if supported by legal arrangements, amounts to legitimising exploitation.

Conclusion

In this chapter, I have tried to demonstrate that the structural and agnostic framework I defend enables us to avoid a simplistic agent or victim dichotomy, as it assumes that people who take on caregiving work are autonomous agents who may nonetheless need to be protected against oppressive dynamics. Contrary to the strong autonomy view, a structural framework cannot ignore the issue of oppression. It leads us to consider the autonomy of all parties within a relationship rather than only the dominant one. However, in contrast to the functionalist argument, such an agnostic framework cannot lead us to forget the issue of autonomy altogether or to deny that not marrying might be an autonomous choice that needs to be respected. It commits us to ensuring that the option to claim compensation and protection for one's work is truly open to everyone. In doing so, it avoids enforcing conservative heteronormative norms by invoking problematic assumptions about what constitutes a couple and what roles are normally taken on by men and women. It protects carers independently of their gender and the type of relationship they have with the persons who benefit from their work. In doing so, it contributes to institutionalising the recognition of caregiving work for all. As Bottomley and Wong (2006, 53) write, legal arrangements should reflect social change and 'keep open the possibilities of thinking other futures, rather than being caught by the past'. This is precisely what something like the idea of piecemeal regulation has the potential to do. Of course, if it had been effective in Quebec, such a legal framework would not have helped Lola much in obtaining half of Eric's financial assets. It might, however, have enabled Lola to obtain other rights, such as Canadian citizenship. More importantly, however, such a regulation would have been highly beneficial in promoting the autonomy of the hundreds of thousands of cohabitants in Quebec. It would also have been highly effective in protecting all those who take on caregiving work.

Chapter 6: Hounded Women and the IPV Protocol¹⁵⁶

It was the women's movement of the late 1960s that brought attention to intimate partner violence (IPV) as an issue for criminal justice (Sack 2004). Yet, the pervasive gendered culture as well as the discretion granted to both law enforcement agents and to abuse victims have contributed to the penal system's on-going ineffectiveness in regard to stopping and punishing IPV. Though this failure has many aspects, one part of it has been women's frequent unwillingness to press charges against their abusers—an unwillingness judges and police officers tended to perceive either as a form of masochism or as proof that the alleged abuse could not have been too bad (Showden 2011, 659). Feminist mobilisation in the second part of the 20th century led to the acknowledgment of the destructive effect abuse has on its victims' autonomy. IPV was recognised as a dynamic of systemic control that deprives its victim of the possibility to lead a self-governed life (Schneider 2000, 21-22). Legal activists increasingly used psychological work on learned helplessness and the battered woman syndrome to explain women's incapacity to end their abusive relationships and their unwillingness to press charges against their abusers (Miccio 2005, 303-7). As a result, many jurisdictions adopted a special mandatory no-drop protocol for IPV cases in the early 1990s (Sack 2004, 1675).¹⁵⁷ A paradigmatic example of such a protocol can be found in the procedure New York County implemented to replace the previously ineffective policing of IPV (Suk 2009, 35). This policy was designed to avoid giving discretionary decision-making power to law enforcement agents and to avoid a reliance on victim cooperation. Whether women want it or not, the suspicion that abuse has taken place triggers an automatic procedure: the suspect is arrested, prosecuted and issued a temporary order of protection (TOP) to prevent him from entertaining further contact with his victim.

The New York County protocol is a source of deep disagreement among feminists. In this chapter, I explore this debate in order to show: 1. that the controversy about the no-drop protocol revolves around the question of how to assess the autonomy of oppressed individuals; and 2. that a structural and agnostic understanding of autonomy can be of great use in resolving this disagreement. In order to show this, I first explain the functioning of the New York County

¹⁵⁶ A version of this chapter has been published in a special issue of the peer-reviewed *Journal Moral Philosophy and Politics* on the philosophy of Joseph Raz under the title 'Hounded Women: The IPV Protocol and the Autonomy of Abuse Victims,' Gauthier-Chung, Maud Faile. *Moral Philosophy and Politics*; Berlin 4.1 (2017): 67-85.

¹⁵⁷ See Hanna (1998) and Chiu (2001) for a list of specific jurisdictions where the IPV protocol has been adopted. The protocol takes different forms in each one of these jurisdictions: some force the victim to testify against her abuser, while others do not mandate the issuance of a restraining order.

no-drop protocol before reviewing the position of those who support the protocols and of those who view them as an illegitimate intervention. I suggest that both stances are unable to account for the situation of women in abusive relationships, as they reproduce the problematic agent or victim dichotomy. In the second part of the chapter, I relate the situation of victims of abuse to that of Raz's fictive case of the 'hounded woman'. I suggest that Raz's unorthodox focus on the social conditions needed to lead an autonomous life makes his framework particularly useful to feminists, as it enables us to go beyond the agent versus victim dichotomy. In contrast to Raz, however, I contend that such a structural understanding of autonomy should refrain from making judgements on the competency for autonomy 'hounded women' can retain. Using an agnostic and structural understanding of autonomy, I argue, enables us to acknowledge the agency of 'hounded women' while legitimising state actions aimed at eradicating the coercion of which they are victims. Hopefully, this leads to a more nuanced assessment of the situation of oppressed individuals, such as those who are victims of abuse, while accounting for important intuitions of both the pro- and anti-protocol proponents.

I. The No-Drop Protocol and the Debate Surrounding It

Within the NY protocol, the occurrence of a probable case of IPV automatically triggers the following steps. The first is the arrest of the presumed abuser upon reasonable doubt. Once an arrest has been made, a prosecution procedure is automatically started, regardless of the victim's willingness to testify or cooperate. Prosecutors routinely pursue cases in the face of the victim's explicit opposition to the prosecution and inform her that the choice to prosecute the abuser belongs to the state (Suk 2009, 37). To ensure the success of the prosecution, police officers are trained to accumulate hard evidence against the defendant, regardless of victim cooperation: this includes photographs of her injuries, her 'excited utterance' at the scene, the state of the house, etc. (Suk 2009, 37). The third step of the process consists of issuing a temporary order of protection (TOP) as a condition for releasing the defendant.¹⁵⁸ The TOP prohibits him from contacting the victim and from returning to her home, even if it is the defendant's normal place of residence.

It is important to note that as soon as the protocol is triggered, the presumed victim has no control over its automatic proceeding. The protocol cannot be dropped, and the defendant will automatically be prosecuted and issued a TOP. The presumed victim might not even have

¹⁵⁸ The TOP, commonly referred to as a 'restraining order', requires the abuser to stay away from both the plaintiff and the plaintiff's home and to have no contact of any kind with her or her children (Davis 2001, 117).

been the one to call the police in the first place. In this respect, critics of the no-drop protocol argue that far from protecting the victim's interests, this policy is rather 're-victimizing' her by substituting the will of her abuser with the will of the state (Mills 2003; Fedders 1997; Showden 2011). Critics point to the fact that this policy is typically advocated by middle-class white women but affects predominantly poor black, Hispanic and migrant women, and they claim that this underlines its failure to understand the agency exercised by women of colour (Suk 2009, Fedders 1997, Showden 2011). By analysing the strategies of resistance of abuse victims, critics of the protocol deconstruct the assumption that these agents are devoid of autonomy. They contend that while 'behaviours and subjective senses of oneself and what one needs to do might look maladaptive or masochistic to outsiders who cannot see patterns of behaviours, [...] they can be read as highly agentic, engaging the structures of autonomy and freedom available in a given situation' (Showden 2011, 725). The perpetrators of abuse are, indeed, often the main source of income of the household, which partly explains their victims' reluctance to separate (Meyer 2012). Critics of the protocol point to the fact that this policy can have a devastating effect on victims' long-term outcomes in terms of financial and housing stability, especially if the victim has children (Chiu 2001). As a result, they argue that a state solution to IPV should entail respecting women's autonomy and should present them with an array of resources and options instead of forcing a coercive and potentially detrimental procedure on them (Showden 2011; Mills 1999).

'Isn't this where we were over twenty-five years ago?' asks Emily J. Sack (2004, 1688) while reviewing the solutions proposed by critics of the protocol. According to supporters of this policy, letting women choose what to do in the face of abuse completely undermines the fact that IPV is characterised by a dynamic of systemic control. Placing the burden of choice on the victim problematically overlooks the psychological harm the abuse inflicts as well as the coercion and manipulation abusers exert on their victims. Ruth Jones (2000, 609), for instance, argues the following:

[S]tate-sanctioned intervention of guardianship is necessary because an abuser has brutally and systematically deprived a woman of her ability to exercise independent judgement. Existing resources available to a battered woman such as restraining orders, shelters, and support groups presuppose an ability to avail herself of assistance. But when a battered woman is so controlled that she has lost her autonomy, these resources are not genuine options. A battered woman incapacitated by mental and physical abuse must be empowered by forcible removal from the control of an abuser.

In addition, those in favour of the protocol stress that letting women choose whether or not to prosecute transforms IPV into a matter of individual preference. It disregards the systemic dimension of IPV and the compelling interest the state has in stopping and actively punishing endemic violence against women. In this argument, there is a necessary trade-off to be made between respecting the preferences of individual victims and the need to ensure global social security and an individual's autonomy (Sack 2004; Hanna 1998; Jones 2000).

We do not yet possess any conclusive information about the impact these policies have on the offenders' recidivism, victims' safety or the global prevalence of IPV. While these policies have indeed been evaluated, the results are conflicting.¹⁵⁹ Given that the evidence we possess is both limited and mixed, the best way to understand the debate is not as a matter of pragmatic efficiency but rather as a conflict between two opposing views on abused women's autonomy.

For those in favour of mandatory prosecutions, the no-drop protocol is required, 'because battered women are incapable of making a "rational" choice while being traumatized by the violence' (Miccio 2005, 241). The oppression they have suffered is presumed to have impaired their capacity for autonomy to such an extent that they are rendered incapable of critically assessing their own situation. This is the reason why most of them choose to stay with their abusers and fail to prosecute them (Jones 2000). Following this view, mandatory practices then serve as a shield not just from the violence of individual males but also from what is perceived as the victim's lack of autonomy. Since the victims of abuse cannot be seen as autonomous agents, the state has to intervene in their private lives, in order to prosecute their abusers, and put an end to the violent relationship.

What seems to underlie the arguments in favour of mandatory prosecution is a substantive vision of autonomy that is principally concerned with the problem of oppression. As we have seen in Chapter 2, this understanding of autonomy constrains the content of desires and preferences that can be viewed as autonomous (Stoljar & Mackenzie 2000, 19). These substantive constraints typically draw on liberal notions of autonomy, such as independence from social and private power and control over one's environment (Lépinard 2011, 207.). They also make autonomy incoherent with preferences tainted by oppression (Stoljar 2000). Autonomy, following proponents of such an account, should not be seen as cogent with constrained life situations, no matter how the person came to choose such a situation (Christman 2015). Even if agents grappling with oppressive constraints are able to rationalise

¹⁵⁹ See Sack (2004, 1676), who offers a review of the main studies concerning the effect of the IPV protocol.

their preferences, these reflective judgements should not be understood as an expression of autonomy (Stoljar 2000). Rather, they should be seen as symptoms of the way the coercive aspect of the agent's environment has affected her autonomy. Therefore, women who stay in abusive relationships cannot be regarded as autonomous 1. because autonomy is incompatible with the presence of oppressive external constraints (Lépinard 2011, 208) and 2. because the choice to remain in an abusive relationship demonstrates a lack of autonomy competencies on these women's part. Moreover, the decision to stay with a violent partner seems to be underlined by problematic oppressive gender norms that normalise male aggression and prescribe that women should stay with their partners at whatever cost.¹⁶⁰

By contrast, the critics of the protocol point to examples of the agency exercised by individuals in violent relationships and seek to prove that these women are indeed autonomous. In this view, victims of abuse should be viewed as agents in their own right. The coercion they experience should not be understated. However, the state's imposition of an automatic protocol constitutes an illegitimate usurpation of their decision-making power (Miccio 2005, 242). As autonomous agents, they deserve our respect and their stated desires should be taken into consideration.

In this analysis, anti-protocols seem to rely on a minimal conception of autonomy.¹⁶¹ This kind of account aims to remain content-neutral: the content of a person's choices, preferences and beliefs is irrelevant to the issue of whether she is autonomous in regard to them (Mackenzie & Stoljar 2000, 13-17). It also puts minimal requirements on agents and preferences in order to consider them as autonomous. Such a framing of autonomy seeks to address the issue of discriminatory exclusion. Women do not all have the same aspirations, values and political goals, and they come from different racial and social backgrounds. In order to account for this diversity, it is important to adopt a pluralist and inclusive conception of agency that cannot be seen as permeated by liberal standards of substantive autonomy. This is why, as we have seen in Chapter 2, theorists such as Marilyn Friedman (2003) propose a conception of autonomy that places minimal requirements on agents to be seen as deserving the status of autonomous agent. Insofar as being considered autonomous is the basis of being

¹⁶⁰ It is to be noted, however, that theorists who adopt a substantial conception of autonomy are not necessarily in favour of coercive interventions that bypass agents' desires. Natalie Stoljar (2014, 250), for instance, is resolutely against such interventions as they may 'well be self-defeating if they harm or damage the agent's autonomy further'. What I want to underline, however, is that people who seek to legitimise the mandatory protocol do so on the grounds of substantial conceptions of autonomy that allow them to frame abuse victims as non-autonomous.

¹⁶¹ As noted earlier, others have opposed the protocol on pragmatic grounds (e.g. its potentially harmful and/or counterproductive effects on victims). These are important concerns that need to be taken into consideration. Yet, given that we lack conclusive evidence regarding these, I will instead concentrate on arguments that revolve around autonomy in what follows.

seen as deserving of equal respect, such a minimal account of autonomy ‘has, independently of other considerations, the advantage of promoting a more inclusive sense of equal worth’ (Friedman 2003, 23). Given the agency they demonstrate, women who find themselves in abusive relationships should be seen as worthy of bearing the status of autonomous agents. Paternalistic intervention in their lives, such as the mandatory protocol, is both unwarranted and illegitimate.

Reviewing the position of the protocol supporters and that of its critics, it seems that we are confronted with an unappealing dilemma.¹⁶² We can frame women in abusive relationships as poor victims devoid of autonomy, which can justify adopting a paternalistic stance towards them that legitimises bypassing their desires altogether. The alternative, however, does not seem more satisfactory. To understand these women as agents in their own right is indeed important to avoid disrespecting them, and to understand the rationale guiding their actions (e.g. the need for financial stability, and the welfare of their children, for instance (Meyer 2016)). Yet, the conception of autonomy that critics of the protocol imply when they insist on framing abused victims as autonomous blurs the distinction between coerced choices and autonomous decisions. In practice, it returns us to the ineffective policies of the 1970s where the prosecution of abusive behaviour relied solely on the victim. In short, both pro- and anti-protocol positions seem equally inadequate as they entail an exclusive focus on determining the extent to which victims of abuse can be seen as possessing the necessary competencies to be granted the status of autonomous agent. This focus, in turn, leads to a framing of agents in abusive relationships through the unhelpful agent or victim dichotomy: these women can either be conceived as autonomous agents who carry the sole responsibility for their own welfare or as victims devoid of autonomy.¹⁶³

¹⁶² Referred to as the ‘Agency Dilemma’ by Serene Khader (2011, 30-36).

¹⁶³ My claim here is not that substantive or minimal conceptions of autonomy *necessarily* have the kind of normative implication concerning the legitimacy of paternalism I sketch in this chapter. There are many ways a proponent of substantive autonomy can prevent her account from serving to justify coercive interventions (see Stoljar 2014, for instance). Inversely, the proponent of a minimal account of autonomy could very well develop a separate line of argument in favour of interventions that bypass agents’ autonomous desires. What I want to point out is that legitimising coercive state action is made on the grounds of individuals’ autonomy in liberal societies (Conly 2013). Thus, supporters of the most paternalistic versions of the protocol have to rely on highly demanding autonomy standards if they want to legitimise intervening in the abuse victims’ lives, independently of their desires. Inversely, anti-protocols have to adopt minimal conceptions of autonomy that allow them to frame abuse victims as autonomous to prove that these interventions are illegitimate.

II. Hounded Women

In this second part, I argue that a structural framework is better suited to account for the situation of female victims of abuse than substantive or minimal understandings of autonomy. I consider Raz's account of autonomy here, as the structural understanding he proposes bears a close resemblance to my account. In this respect, exploring Raz's framework helps unveil both the general strength of structural accounts as well as the pertinence of the agnostic component of the version that I propose.

Just as in my own account, Raz insists that being the author of one's life is not just a matter of possessing the right mental capacities. Autonomy also has social conditions. The first one, Raz (1986, 155) claims, is relational: autonomy necessitates the absence of coercion and manipulation. The second one concerns the type and quality of options that are open to agents. These options are socially given (Raz 1986, 205-6). They are enabled and shaped by norms, conventions, as well as by social institutions. They are, in other words, dependent on the structure of the social context in which the agent finds herself. It is precisely because of its unorthodox focus on the prerequisite social conditions to lead an autonomous life that a structural account can be of great help in framing issues such as intimate partner abuse and determining what to do about them. Raz, of course, does not directly address the issue of abuse victims' autonomy. Yet, he does discuss a fictive case that, in many respects, is closely related to the situation of women who find themselves in violent relationships (Raz 1986, 374):

The Hounded Woman: A person finds herself in a small desert island. She shares the island with a fierce carnivorous animal that perpetually hunts for her. Her mental stamina, her intellectual ingenuity, her will power and her physical resources are taxed to their limits by her struggle to remain alive. She never has a chance to do or even to think of anything other than how to escape from the beast.

As Marilyn Friedman (2014, 223) notes, it is not too much of a stretch to compare the hounded woman to a victim of domestic violence. Many abuse victims are constantly hunted as well.¹⁶⁴ They live their lives in fear of possible physical and psychological attacks. They share their living space with a 'predator' whose behaviour and habits they must observe and learn to predict in order to avoid the next strike. Like the hounded woman, they must devote their energy, as well as their physical and mental power to the task of 'escaping from the beast'.¹⁶⁵

¹⁶⁴ Findings concerning situational couple violence suggest that some women may suffer sporadic episodes of physical violence without experiencing the broader patterns of coercive control that characterise domestic violence (Johnson & Leone 2005).

¹⁶⁵ For a thorough study of how this dynamic of systemic control works and entraps its victim, see Stark (2007). IPV remains, to this day, the leading cause of injuries to women of reproductive age in industrialised countries (Meyer

The hounded woman, Raz states, is incapable of living an autonomous life (Raz 1986, 374). For one, the options she possesses are inadequate. One can lead an autonomous life, Raz believes, only when faced with a decent range of different and valuable options. The main problem, in the hounded woman's case, is not that she does not have enough options or that they are insufficiently varied. On the contrary, she has a considerable range of options and can decide what to do during every moment of her life. She can hide in a tree, try to find something to eat; take a walk outside or cook dinner. Just like abuse victims who might sometimes seem to lead normal, unimpeded lives, in the minutia of her life, the hounded woman might sometimes resemble minimalist camping aficionados.¹⁶⁶ Yet, the medium and long-term options these 'hounded women' have are dominated by the need to escape being devoured by the beast. The ever-present fear for their lives leaves them unable to form meaningful personal projects and lead self-governed lives. And when the choices one possesses are dominated by the need to protect one's life then, Raz explains (1986, 376), one has no true choice at all.

The second problem with the hounded woman's autonomy is the coercion from which she suffers. To the extent that she is left unable to form and enact comprehensive goals for fear of the beast's attacks, she lives a coerced life. This coercion is even more evident in the case of women whose physical and mental integrity is being directly threatened by their partners.¹⁶⁷ Having to stop friendships or relationships with one's family, being forced to abandon one's career or goals or having to ask permission to leave one's house for fear of encountering one's partner's wrath are certainly among the most grievous real-life examples of coercion in our societies.¹⁶⁸

At this point of the argument, however, an important question arises. Does acknowledging that our 'hounded women' are incapable of being the authors of their lives commit us to denying them the status of autonomous agent? If it does, then it seems that adopting a structural framework entails subscribing to the views of those in favour of the protocols.

2012, 179-180). A total of 60% of homicides involve a female victim being killed by her partner (Shackelford & Mouzos 2005).

¹⁶⁶ That is not to say that abuse victims can decide what to do at *every* moment of their lives. What I want to underline is that while victims sometime seem to live normal, unimpeded lives, as they do make choices in their everyday lives, the options they possess are nonetheless always inadequate. Yet, it is important to stress that there are moments when these agents cannot really decide much (in the midst of an attack, for instance).

¹⁶⁷ Following Raz (1986, 154), coercion consists of forcing someone to do one's bidding 'by changing the circumstances surrounding that other person's choice or by credibly threatening to do so if the other does not act in a certain way'.

¹⁶⁸ For an in-depth analysis of the coercive control abusers can exert on their victims, see Dutton & Goodman 2005, among many others.

Raz himself is not very clear about what receiving the status of autonomous agent necessitates. His primary concern is with the social conditions needed to be able to lead a self-governed life. It thus remains unclear whether the implication of his conception of autonomy is that someone lacking effective conditions is to be denied the status of autonomous agent for this reason. As we have seen in Chapter 2, Marina Oshana is clearer in this respect. She proposes what can be seen as a feminist interpretation of Raz's framework. In her view, being considered autonomous entails having the power and options for being in *de facto* control of one's life (Oshana 2006). Insofar as abuse victims cannot be said to be in control over their lives, they cannot be regarded as autonomous agents.

There are, however, problems with denying the status of autonomous agent to people who, because of restrictions caused by unfortunate external circumstances, are incapable of leading self-governed lives. As noted by Raz (1986, 154-155), autonomy is usually assimilated to the set of mental abilities that are needed to form and revise life choices. As argued in Chapter 3, it is because autonomy is conceived as a sort of competency that it becomes a status marker that endows individuals with privileges as well as with responsibilities. If one does possess the necessary competencies —i.e. is sufficiently rational, reflective, self-aware, etc.— to form and revise one's preferences, then these preferences are seen as worthy of respect and consideration. One is, in other words, seen as able to make decisions about one's own life and receive the privilege of being treated like an equal by other members of the society. By contrast, if one's preferences are not autonomously formed, then there is no need to respect them. Non-autonomous agents, such as children or mentally disabled individuals, cannot be seen as equals by other members of the society: since they are not competent to make their own decisions, others' overseeing of important aspects of their lives for them is required for their welfare.

In this respect, equating the presence of impediments to the meaningful exercise of autonomy to the denial of the status of autonomous agent seems problematically to erase the distinction between possessing the competency for autonomy —that is the set of mental skills to form and revise projects— and having the possibility to *exercise* this competency in meaningful ways. There is an important distinction between not being able to live a self-governed life because of coercive constraints and not being able to do so because one does not possess the prerequisite capacities. The first situation warrants political action to alleviate the problematic aspect of the social context, while the second legitimises paternalistic interventions that disregard agents' stated desires.

In this thesis, I have suggested an alternative interpretation of the claim that coerced individuals do not enjoy autonomous lives. This entails carefully differentiating between autonomy as a set of competencies, and the external conditions for being able to live an autonomous life. An agent could be left unable to *exercise* autonomy –e.g. because she is paralyzed, in prison or, like our Hounded Women, lacks valuable options– but still possess the set of mental abilities necessary to formulate autonomous desires and thoughts. Inversely, a person could fail to possess the competencies necessary to be regarded as autonomous –e.g. if she suffers from serious mental disability– and yet be in an environment that grants her the possibility to lead an autonomous life. In this respect, it remains important to differentiate the *competency* for autonomy from the *external conditions necessary to exercise it* in meaningful ways. While it is true that abuse victims may be incapable of leading a self-governed life because of external impediments to the way they can exercise their autonomy, there are important reasons not to deny that they are competent enough to bear the status of autonomous agent and formulate decisions about their own lives that are worthy of respect and consideration.

First, as argued in Chapter 3, it seems misguided to postulate that coercion and a lack of options necessarily extinguish the competencies needed to make one’s own decisions.¹⁶⁹ Moreover, as highlighted by various studies, victims of IPV can be read as highly rational, reflective and imaginative, as they industriously employ the various harm-reducing strategies that are available to them given the highly constrictive environment in which they are trapped (Meyer 2016; Hamby 2014). There are, of course, reasons to think that prolonged episodes of coercion or the continued lack of meaningful options might affect the mental capacities needed to be self-governing. However, given that we do not possess epistemic access to agents’ mental lives, there seems to be no way to determine how or to what extent. Moreover, not all abuse victims are similar: they have different backgrounds, and they experience coercion to varying extents and might react to it in different ways (Roberts 2007). Therefore, to formulate broad generalisations about the effect coercion and a lack of options have on women seems ill-advised. As critics of the IPV protocol point out, most women do not stop being competent to direct their own lives because they are in an oppressive relationship (Meyer 2016; Hamby 2014). The *exercise* of their autonomy clearly becomes structured by the abuse they encounter. Yet, there is no reason to postulate that IPV extinguishes their competency to make

¹⁶⁹ For an analysis pertaining to the agency and autonomy exercised by women in violent relationships, see the special issue of *Global Public Health* entitled ‘Conceptualizing the agency of highly marginalized women: Intimate partner violence in extreme settings’ (Campbell & Mannell 2016), as well as Meyer’s (2012) on the agency women exercise when they choose to stay with their abusers.

autonomous decisions altogether. The fact that someone is not able to enact her desire in the world because of the constraints she faces does not substantiate the conclusion that she is incapable of formulating autonomous desires altogether.

Second, and more importantly, given that being seen as possessing the mental abilities to be self-governing is necessary to be granted the status of autonomous agent, we should be wary of framing abuse victims as incompetent to lead autonomous lives.¹⁷⁰ As underlined by critics of the no-drop protocol, presenting women as victims devoid of autonomy opens the door to paternalistic interventions that further deprive them of the little control they were able to retain over their lives. It also ignores the rationale guiding these women's actions. This, in turn, makes it difficult to take into account the very real constraint victims of abuse sometimes encounter and the dire effects policies like the IPV protocol can have on them if they are not supplemented with targeted interventions aimed at alleviating these deleterious effects. Moreover, insofar as it contributes to reproducing the stereotype of the incapacitated and irrational woman, it seems that framing abuse victims as unworthy of bearing the status of autonomous agent feeds into problematic power relationships that are not only gendered but also classed and raced (Miccio 2005, 242).¹⁷¹ As mentioned by Showden (2011), IPV policies tend predominantly to affect vulnerable individuals. In this respect, such policies, especially if they are grounded on the view that abuse victims are somewhat less autonomous than we are, risk inadvertently reproducing problematic exclusionary dynamics.

Under this interpretation, adopting a structural framework entails acknowledging that rather than a lack of competency, what victims of abuse suffer from is coercion as well as a lack of adequate options. And these issues, in a liberal society, should not be tolerated. Raz is well known for what he refers to as the 'principle of autonomy', which requires that people (and therefore the state) secure the conditions of autonomy for all people. Going far beyond the negative duty of non-interference, this principle entails a duty to actively promote autonomy through political action. To the extent that domestic violence denies women the opportunity to lead a self-governed life, its gravity cannot be minimised. Moreover, as stressed by Raz, autonomy is a social product. Prevalent norms and institutions determine individuals' horizon

¹⁷⁰ For examples of the kind of problematic legal consequences that framing abuse victims as non-autonomous has had, see Schneider 2000, Ch. 5. Among other things, presenting abuse victims as non-autonomous leads to the credibility deficits these women face as complainants and witnesses. It also makes it very difficult for them to claim self-defence when they end up killing their abusers while attempting to save their own lives. In certain cases, it has also served to deny them guardianship of their children.

¹⁷¹ On this topic, see Crenshaw (1991) who shows how violence against women is shaped by multiple social and intersecting determinants. Ignoring the importance of these social determinants and of their interaction, explains Crenshaw, can lead to devising solutions that interact with women's pre-existing vulnerabilities and further disempower them.

of possibilities, shape social practices and structure the relationships that are valuable in one's life. Further, given the kind of norms and institutions that currently govern our societies, domestic violence constitutes a widespread and systemic phenomenon.¹⁷² The absence of serious penal consequences for abusers implicitly sanctions the dynamic of systemic control that deprives part of the population of the conditions to lead a self-governed life. It sends the message that it is acceptable for men to do whatever they want with their spouse –that coercing and threatening them is acceptable. In other words, it reinforces social forms inhospitable to women's autonomy. Therefore, the prosecution of abusers should not depend on the victims' will; the coercion that abusers inflict on their victims should be treated as a crime. In light of the long *status quo* of the state towards IPV, this sends a clear message that such behaviour is intolerable and contributes in restructuring deeply problematic gender relationships. There are thus compelling reasons for the state to prosecute abusers on a mandatory basis and not leave the choice to prosecute one's abuser open to the agent.

Nevertheless, it is not because an agent cannot properly *exercise* her autonomy that she should be seen as incompetent to bear the status of autonomous agent. That IPV poses as a real threat to its victims' capacity to exercise their autonomy in meaningful ways cannot justify deafness to their voices and desires. But does that mean that we should allow them to choose whether they want to continue living with their partners? On the one hand, the choice of one's partner seems to be an integral part of living an autonomous life. On the other hand, in the case of an IPV victim, her partner is also the beast that threatens her. The option of staying with him could therefore be conceived as a 'bad' or 'morally repugnant' option. For Raz, leaving open such as bad option to individuals is not a requirement of respect for autonomy. It would, in this respect, be justified to prevent women from remaining with their partners.

Contrary this idea, I want to defend the agnosticism of my framework and suggest that there are important reasons not to automatically issue a TOP that coercively forces the separation of a woman from her partner, even when this relationship has become abusive. The analogy drawn between the hounded woman and IPV victims might be misleading in this respect. While staying on an island with a predator has indeed no value for someone's autonomy, intimate relationships can sometime be constitutive of one's sense of self and purpose. Intimate relationships are not the same as the relationship between a woman and a strange beast: they are often emotionally charged, factor into one's identity and give value and

¹⁷² Data from the most recent National Intimate Partner and Sexual Violence Survey indicate that nearly 29 million US women (that is, more than 1 in 5 women) have experienced severe physical violence by an intimate partner at some point in their lives (Center for Disease Control and Prevention 2015).

meaning to one's goals. In this respect, the relationship one has with a particular partner can have a deep positive value for one's autonomy. Understanding this allows us to recognise that women might have compelling reasons to try to save their relationship from the abuse (and sometimes succeed) (Mahoney 1991, 1302). Yet, this desire must also be understood in its context. In Mahoney's words (1991, 1301), '[w]omen do not love "batterers"'. Women love their husbands, lovers, and partners. The problem is that their loved ones have begun using violence'. When women claim their desire to stay with their partner, they seek to safeguard their relationship and the positive things this emotional commitment brings to their lives –not the abuse.

This, however, should not lead us to forget that victims often 'need' their partner for other reasons, as they are often the main breadwinners of the household (Meyer 2012). Too often victims must choose between staying in an abusive relationship and facing dire economic consequences if they leave.¹⁷³ When they ignore women's voices and the reasons guiding their choices and actions, the flip side of well-intended policies, such as the no-drop protocol, may well become counterproductive at best and deleterious. As it is agnostic and compels us to listen to women within abusive relationships, the framework I propose should encourage us to take such problems into account when devising a solution.

All this goes to show that the form taken by mandatory intervention, where the systematic issuance of a TOP is used as a means to disrupt relationships between abusers and victims, is highly problematic. A TOP lasts from one to three years, and even if the couple can reunite at its term, it seems unlikely that a relationship would survive for years without any form of communication or contact (Suk 2009, 48). However, women sometimes do want to safeguard their relationships, and this desire has to be understood as an expression of their autonomy. While it is true that the state has a compelling interest in punishing abusers independently of the victim's will, it is equally true that the strategy used to do so is not legitimate when it fails to respect some women's desires. Moreover, it is misleading. Criminalising the relationship itself punishes the woman who want to safeguard it instead of punishing the abuse: putting a violent man in prison, even if it burdens the relationship, does not equate to forcibly ending it. The couple can still see each other and communicate. For the many victims who want or need to maintain their relationships, the added element of forced separation through no-contact orders that can last for up to three years can have a deterrent effect on help-seeking. Such a policy can also have a devastating effect on victims' long-term

¹⁷³ As noted by Bassuk and al.(1998), 63% of homeless women have been victims of domestic violence, and many women struggle to find decent and stable housing for themselves and their children after leaving abusive partners.

outcomes in terms of financial and housing stability. Furthermore, since the focus of the TOP is to end the relationship between the abuser and the victim by monitoring the latter, this measure is often unproductive: abusers sometimes respect the TOP but end up repeating the abuse with another victim (Miccio 2005, 280-1).¹⁷⁴

Thus, instead of coercively ending the relationship, the state should work on ending the abuse. This might mean allowing the relationship to continue through monitored contacts (if the victim wishes to), while ensuring that this is a real choice on the victim's part. For this task, eliminating the dependency of these women on their partners is crucial. Ensuring the presence of adequate temporary and permanent housing, the accessibility of emergency funds and employment programmes, constitutes examples of measures that could help alleviating this problem. Monitoring the abuser instead of his victim is another measure that could be used instead of the TOP. The evidence we now have on the efficacy of using GPS to track sex offenders to reduce the risk of recidivism is very promising.¹⁷⁵ Provided that the abuser is properly monitored, allowing supervised contact between a woman and her partner would not increase the victim's risk of suffering further attacks. In fact, this strategy could even be safer for victims than no-contact orders.¹⁷⁶

Conclusion

A structural and agnostic analysis is more nuanced than that proposed by both defenders of the protocols, and those who oppose the protocols, and it combines important intuitions of both positions. It permits us to acknowledge that women can be victims of coercion while remaining agents in their own right, as they retain their competency to form and revise autonomous thoughts and desires. In short, exiting the agent or victim dichotomy necessitates understanding autonomy in the broader social context of the agent. In addition to pointing toward potential changes to the current protocol, such a structural understanding of autonomy allows the realisation that a criminal approach to domestic violence is highly insufficient. Abusive relationships are, indeed, enabled by a larger social context that is structured by gender norms (Showden 2011, ch.2). This social form (to use Raz's terminology), which prescribes aggressive and dominating behaviour to men and docility and submissiveness to women, is the

¹⁷⁴ The National Network to End Domestic Violence (NNEDV) also notes that monitoring victims raises serious safety and privacy risks and might be used against them by offenders' attorneys.

¹⁷⁵ A recent study on the efficacy of such a device in California found that high-risk sex offenders were 91.5 per cent less likely to commit a new offence if they were monitored via GPS (Gies et al. 2012).

¹⁷⁶ Following Diane Rosenfeld (2007), while TOPs are effective in most cases, when they do not work, it can be deadly. Most IPV homicides occur when the couple are separated and when many murder victims have had restraining orders against their killer (Davis 2001). By contrast, GPS tracking seems to drastically reduce the risk of homicides (Rosenfeld 2007).

very same social form that makes women far more likely to be victims of physical aggression and threats, sexual harassment and sexual abuse.¹⁷⁷ Women are, of course, made highly conscious of these threats from a young age. We are told not to go out too late, not to wear certain types of clothes, not to drink too much and not to be alone with unknown men. This social form, in short, is not only a problem for the autonomy of women in abusive relationships: it structures the everyday life of every person who identifies as a woman in our society. Many feminists are, of course, highly conscious of that. However, this awareness tends to disappear behind an increasingly prominent and exclusively criminalised approach to IPV (Miccio 2005, 289). This approach is tantamount to seeing abuse as an ‘individual problem’, that is as a behaviour presented by some particular individual exhibiting abnormal criminal tendencies, and not as something that is enabled and created by a larger social context that affects everyone. By contrast, a structural and agnostic framework allows us to refocus on the social conditions necessary to lead an autonomous life and enables us to recognise that it is highly insufficient to punish some particular individual in order to end violence against women. What we need to do is to transform the underlying social form that transforms women into prey and men into beasts.

¹⁷⁷ As explained by Steve Wall (1998, 164-165), ‘[s]ocial forms refer to the ‘forms of behaviour’ which are ‘widely practiced’ in a society’ and thus cover a wide range of phenomena, including gender norms.

Chapter 7: Victims or Agents? When Battered Women Kill

The legal and criminal responsibility of individuals accused of violent crimes is usually thought to be closely associated with the degree of autonomy, as a competency, they were thought to possess at the moment of the deed.¹⁷⁸ This is especially true when the defendant is a woman who is a victim of intimate partner violence. With the growing awareness of the deleterious effects abuse can have on women's capacity for autonomy, it is often argued that women who kill their abuser should be at least partly absolved of criminal liability. That these women did not leave a relationship they thought to be life threatening, or that they seemingly failed to use legal resources for protection is often explained by the impairments the abuse had caused to their autonomy capacity.

It could be thought that the agnostic framework I propose is useless for assessing criminal responsibility (especially in such cases), as it precludes a clear assessment of an individual's competency for autonomy. In this chapter, I attempt to disprove this idea and seek to show that linking criminal liability to the assessment of the competency for autonomy is not only unnecessary: it can be prejudicial. I claim that it is precisely because my relational framework is 'agnostic' about the question of the defendant's degree of autonomy that it is a useful first step in assessing criminal liability. In order to do so, I review the way homicides committed by victims of abuse tend to be assessed. Using the English case *R v Scamp- [2010] EWCA Crim 2259*, I attempt to show how the current legislative framework can be viewed as reproducing the 'victim or agent' dichotomy. In the second part, I explore the difficulties of claiming self-defence for battered women who kill, and I review the famous case of *Lavallee* and its jurisprudence effects in the Canadian context.¹⁷⁹ The last part is then dedicated to demonstrating the use of an agnostic and structural framework of autonomy in assessing these kinds of cases. I conclude this chapter by arguing that this approach is a good first step in determining criminal liability in violent crimes in many other cases, especially when these involve agents who belong to socially marginalised groups.

¹⁷⁸ See Schneider (2000, 115), for example, who notes that 'well-intentioned lawyers, legislators, legal scholars, and judges have made legal arguments, developed legislation, and written articles and judicial opinions that assert "battered women's" or "battered woman syndrome" defences or claims, whether as the basis for claims of self-defence, for admissibility of expert testimony, or for a special cause of action in tort'.

¹⁷⁹ The Canadian Common Law is derived from the English and Welsh law. However, even though these two jurisdictions share great similarities, the precedents set in one jurisdiction are not legally binding for the other.

I. The Guilty Agent or the Helpless Victim: Diminished Responsibility and Provocation Pleas

In jurisdictions that use common law, there are four possible defences available to someone who stands accused of murder (Morrissey 2003, 71). The first is *self-defence*. It is considered a ‘perfect’ defence as it can lead to the complete acquittal of the defendant.¹⁸⁰ In most jurisdictions, a successful claim of self-defence entails the satisfaction of four criteria: 1. The threat was serious enough to reasonably justify a self-defence killing; 2. the threat was imminent and the self-defensive action was neither preventive nor vengeful; 3. the defence was proportional to the threat; 4. the defendant had no alternative course of action and no real possibility to retreat.¹⁸¹ Unlike self-defence, *provocation* is an ‘imperfect defence’ which can only lead to a reduction of the culpability and sentence of the defendant. It is typically used when the victim’s behaviour is believed to have caused a loss of control by the defendant. Similar to provocation, the *diminished responsibility* defence also reduces the crime to manslaughter and leads to a lesser sentence for the defendant. As noted by Belinda Morrissey (2003, 71), this type of defence ‘rests on the defendant’s possession of an abnormality of mind at the time of the killing, which was so different to that of an ordinary person that the reasonable man would consider abnormal’. Finally, the defence of *insanity* nullifies the case: the defendant is seen as too mentally impaired to be considered responsible for her actions. In such an eventuality, judges can order long-term institutionalisation or psychiatric treatments.

I review the three latter defences (provocation, diminished responsibility and insanity) in this part of the chapter. Though this presentation can suggest there is a neat distinction between them, in practice, these different categories often merge with each other. Using the fairly recent English case of *Kirsty Scamp*, I show how these defences are invoked in cases involving victims of abuse who kill their partners. I mean to demonstrate that the use of these defences depends on the defendant’s assumed degree of competency for autonomy.

¹⁸⁰As noted by Schneider (2000, 116), some jurisdictions recognise “imperfect” self-defence when a defendant is found honest in believing that self-defence was necessary, but this belief is found to be ‘unreasonable’. The imperfect self-defence results in a reduction of the sentence from murder to manslaughter.

¹⁸¹We will return to these criteria and the way they are used and understood in the second part of this section.

A) The Case¹⁸²

Kirsty Scamp was eighteen when she started working in a residential care home for adults with learning disabilities and mental health problems where she was reported to be a valued and competent member of staff. She met Jason Bull in 2005, and they moved in together in Sheerness in December of the same year. During the period they lived together, she experienced a number of violent incidents; three were documented. In February 2006, after picking her up from work, Bull punched Scamp and destroyed some flowers he had bought for her. In the second incident, Bull pushed Scamp onto the bedroom floor and smashed her head against the wall before overdosing on painkillers. In February 2006, when Scamp threatened to leave him, Bull tried to strangle her and started punching her. Following the attack, she suffered a perforated eardrum and reported the assault to the police. Bull was arrested and subsequently bailed.

After this incident, Bull promised to get help and to abstain from alcohol. He was subsequently referred to a psychologist (Justice for Women 2016). However, on 13 March 2006, Scamp accepted an invitation to go out with him to celebrate his birthday. At the bar, Bull had a few drinks and some cocaine. After returning home, Scamp tried to stop him from drinking more, and they started to argue. Bull began punching her and pulled out clumps of her hair. Scamp left the flat and sat on the steps outside the front door. While waiting for Bull to calm down, she overheard him talking about her and suspected he was calling a woman with whom he was previously seen flirting. As she went back to the flat to confront him, they began to argue. Bull became violent, and he attempted to strangle her and threw her against the wall. At one point, he grabbed her by the hair and punched her. Scamp stated that she was terrified because he would not stop. She reported that she ‘had never seen him look the way he did that night’ (Justice for Women, 2015). She grabbed a kitchen knife to defend herself against the increasing violence of Bull’s attacks. Seeing all the blood and Bull slumped against the door, she ran out to the street to summon help. An ambulance arrived, but the medical staff could not save Bull. The police arrived at the flat at 8.43. In the police car, she is reported to have said, ‘I can’t have killed him, the knife didn’t go in all the way’ (*R v Scamp*).

¹⁸² In building this case, I relied on the Judgement on Conviction, *R v Scamp- [2010] EWCA Crim 2259*. Unfortunately, the 2007 and 2010 judgements were not available. However, the 2010 judgement summarises and cites transcripts from these two previous trials. I also used the documentation provided by the organisation *Justice for Women* and found further information in multiple newspaper articles: Bindel, Julie. 26 June 2009, ‘Driven to Kill’, *The Guardian*; Staff writer. 30 July 2010, ‘Released woman: I still can’t go home to mum’, *Kent and Sussex Courier*; Staff writer. 26 July 2010, ‘Kent woman freed after stabbing ‘never meant to kill’’, *BBC News*; Staff writer, 30 July 2010, ‘Kirsty is released from prison’, *Kent and Sussex Courier*; Staff writer, 22 July 2010, ‘Woman who stabbed boyfriend to death is freed because trial judge failed to properly direct jurors on victim’s violent past’, *The Daily Mail*; Staff writer, 20 July 2010, ‘Kirsty released from prison’, *Kent and Sussex Courier*.

While she was awaiting trial, the prosecution's barrister offered her a deal: the Crown would drop the murder charge if she pleaded guilty to manslaughter. Scamp rejected this deal. She felt she had acted in self-defence. 'I don't remember killing him but I suppose I must have done', she wrote in a letter from Holloway prison. 'I just know I was scared he would kill me' (Bindel 2009). In February 2007, the jury convicted Scamp of murder by a majority of ten to two. In spite of the evidences regarding Bull's abusive behaviour and the testimony of Tracy Dunn, Bull's previous girlfriend, the judge sentenced Scamp to the maximum sentence: life imprisonment. In sentencing, the judge mentioned the strong positive references from the care home where Scamp worked and remarked that her 'care skills should have made her better equipped to tolerate Jason's violent and erratic behaviour' (Justice for Women 2015; Bindel 2009). The Judgement on Conviction mentions that, in this first trial, '[t]here was some evidence from a neighbour, Paul Chimes, and from the deceased's sister, that the appellant was the stronger personality. The sister said that the appellant wore the trousers' (*R v. Scamp*).

Following her conviction, Justice for Women took up Scamp's case. The organisation lodged an appeal in February 2010. This first appeal was based on the failure of the Court to properly consider the defence of provocation, which would have reduced her sentence from murder to manslaughter. However, the judge 'failed to draw the jury's attention to the violence Kirsty had been subjected to' and focussed, instead, on Jason's comments that Kirsty had overheard and implied that she 'had acted out of jealousy rather than fear' (Justice for Women, 2015). Being directed in considering whether it was reasonable to kill as a result of jealousy, the majority concluded that Scamp had committed murder.¹⁸³

The second appeal happened on the 21st of July 2010. This time, following a recent change in the law on provocation,¹⁸⁴ the defence was successful and Scamp's conviction was reduced from murder to manslaughter. The imposed sentence was reduced to six years for manslaughter based on provocation. Since the defendant, who was 24 at the time, had already served this time in Holloway prison, she was released immediately. During the sentencing, Lord Justice Laws explained that the 'appellant had been brought up in a culture of sustained

¹⁸³ The judge gave the following direction to the jury: 'that she lost her self-control [...] as a result of what Jason may have said to her about her mother and father or as a result of what she heard him saying to Kelly on the phone. It is a matter for you to consider'. (*R v Scamp*).

¹⁸⁴ Here is Justice for Women (2015) comments on this change: '[i]ronically, since Kirsty's conviction, the law has changed, partly as a result of Justice for Women's campaign. The old defence of provocation has been replaced by the defence of loss of control, which applies in cases where someone kills out of fear of serious violence. Had this law been in place at the time of Kirsty's trial, the judge would have been required to bring the jury's attention to the violence and the fear she had experienced'. To the extent that the loss of control defence is more readily usable than the old provocation one for women who suffered domestic violence, this change is certainly for the best. However, as we will see, in framing women who kill their abusers as having loss control over their actions, this new defence also reinforces common prejudices against women victim of intimate partner violence.

domestic violence' (*R v Scamp*). Scamp's history of abuse when she was a child and the violence she endured from Jason Bull were judged as having 'provoked' her 'loss of control' on the night of the 13th of March 2006. Commenting on the issue of this second appeal to the Press, the judge mentioned that he had found the case difficult and highlighted the fact that, despite Scamp's difficult childhood, she had secured a good job at a home for vulnerable adults.¹⁸⁵

Though she was free, Scamp was still exposed to travel restrictions: she could not yet return to her parents' home in Sittingbourne and had to stay in Stepney for two additional years. Commenting on the result of this second appeal, Scamp said that the initial joy of being finally free, after years in prison, was rapidly replaced by worries about her future.¹⁸⁶ Because of her criminal record, it is unlikely that Scamp will be able to find employment as a carer.

B) The Victim or Agent Dichotomy

Kirsty Scamp's case illustrates, in a powerful manner, how criminal liability, in cases involving intimate partner abuse, is seen as intimately linked to the victim's presumed degree of competency for autonomy. As Elizabeth Schneider (2000, 120) argue, 'the phrase "battered woman" is interpreted by judges, legislators, and scholars in a rigid and dichotomized fashion. This has particularly serious ramifications for cases of battered women who kill'. Within the legal and popular iconography, battered women are primarily seen as incapacitated victims whose 'learned helplessness' has prevented them from leaving an abusive relationship or seeking help. This rigid and monolithic representation is, however, seriously contradicted when a battered woman disproves her helplessness by demonstrating strong agency in other spheres of her life. As she does not fit the mould of the helpless victim, she is then framed as an autonomous agent who must bear full criminal liability for her acts. This is especially true if the woman's professional position does not fit the 'victim trope'. This was true for Scamp, whom the judge implicitly blamed, during her first trial, for not being able to better deal with Bull's abusive behaviour. Women seen as 'too strong' are viewed as able to cope with the abuse they encounter and are therefore understood as somewhat responsible for it. They are not 'true' victims anymore. Even when judges and legal actors do not insist on the strong degree of

¹⁸⁵As reported in the newspaper article 'Kirsty released from prison', *Kent and Sussex Courier* (20 July 2010) and substantiated by Judgement on Conviction where the judge contrasts the 'early history of this young woman's life in which she suffered very deleterious experiences and considerable difficulties' with the 'fact that she obtained eight GCSEs' and that 'upon leaving school at 16, she gained a further qualification and has been in good paid work, as we understand it, virtually continuously from then until the date of the death' (*R v Scamp*).

¹⁸⁶As reported by the *Kent and Sussex Courier* in the article 'Released woman: I still can't go home to mum' (30 July 2010).

autonomy competency manifested by the defendant in her life, the sole fact that an abused woman has been able to take defensive action against her abuser often plays against her in trial (Schneider 2000). Because these women have proven that they were not helpless by defending themselves, they are to be viewed as guilty for killing their abusers. Many commentators have noted the preponderance of the tropes of the ‘vigilante’ or ‘revenge killer’ when women kill and then report that they were victims of serious forms of abuse at the hands of their victims (Maguigan 1991; Ayyildiz 1995).¹⁸⁷

The vigilante or revenge killer trope is exemplified in multiple judgements. It is exemplified in Kirsty Scamp’s first appeal, where the judge framed her act as being caused by jealousy rather than by fear of violence. It is exemplified in Sara Thornton’s case, when she was accused of inflicting a fatal stab wound on her husband, Malcolm Thornton, after he threatened to kill both her and their daughter Louisa.¹⁸⁸ Despite the strong evidence of the abuse she suffered, the prosecution convicted her of murder and claimed that Thornton was a ‘pathological liar’ who ‘had carried out the killing for financial gain’.¹⁸⁹ This pattern is also exemplified in Kiranjit Ahluwalia’s first trial, during which the Court refused to consider the evidence of abuse and suggested that the killing of Ahluwalia’s abusive husband was instead motivated by jealousy due to her husband’s repeated affairs.¹⁹⁰ These are only a few examples: the trope of the revenge killer is a recurring one when a battered woman kills. As the agentic and proactive act of killing contradicts the image of the helpless victim, a woman who ends up killing her partner cannot be trusted when she claims she was abused. She is thus assumed to have killed out of spite or jealousy or to avenge herself, and her allegations of abuse are perceived as attempts to dodge full criminal liability.

In contrast, when abused women who kill are able to avoid full criminal liability for their actions, it is often because they were successfully placed within the mould of the helpless victim. We can observe this transformation in Scamp’s case. Whereas she was framed alternatively as responsible for the abuse and as a revenge killer in her first and second trials, in her final appeal, the iconography of the abuse victim successfully replaced that of the autonomous murderer. Suddenly, insisting on Scamp’s history of abuse when she was growing

¹⁸⁷ Other commentators have expressed mistrust towards the so-called ‘abuse excuse’, thus mirroring the way courts tend to judge abused women who kill. For example, Alan M. Dershowitz in *The Abuse Excuse and Other Cop-Outs, Sob Stories, and Evasions of Responsibility* (1994) has claimed that it constitutes a ‘legal tactic by which criminal defendants claim a history of abuse as an excuse for violent retaliation.’ This ‘abuse excuse’, claims Dershowitz, is ‘quickly becoming a license to kill and maim’, which ‘endangers our collective safety by legitimating [...] vigilantism’.

¹⁸⁸ The case *R v Thornton* [1992] 1 All ER 306 is a prominent English case.

¹⁸⁹ As reported in the *BBC News* article ‘Spotlight on domestic abuse laws’ (29 July 2008).

¹⁹⁰ The case *R v Ahluwalia* [1992] 4 All ER 889 is also a well-known English case.

up as well as the violence she suffered from Bull's part, the Court explained her act as a 'loss of control' amounting to provocation, implying that her history of abuse had affected her judgement and her capacity to act rationally. This is also what happened in both Thornton's and Ahluwalia's appeals: abuse and 'mind abnormality' evidence was admitted and seen as amounting to 'diminished responsibility' sentences.¹⁹¹ Finally, the same happened with Emma Humphrey, who stabbed her boyfriend and pimp for fear that he would either rape or stab her.¹⁹² Commenting on her subsequent successful appeal,¹⁹³ the organisation Justice for Women (2015), which supplied Humphrey's legal help, wrote that it had 'created an important precedent. It concerns the aspect of the defence of provocation, where the jury are directed to consider the characteristics of the "reasonable man" [...] Emma's so called "abnormal personality" and her "attention seeking traits", should have been taken into account [in her first trial] when considering the relevant characteristics of the "reasonable man".'¹⁹⁴

What these examples indicate is that courts interpret criminal responsibility as closely linked to the defendant's presumed degree of autonomy competency. On the one hand, when a defendant can be successfully framed as a 'true' victim whose autonomy is judged to be irretrievably impaired/ diminished by the abuse she suffered, it leads to a proportional diminution of the sentence from murder to manslaughter. The act of killing an abuser is partially excused, either because a temporary loss of control (provocation) is thought to cause it or because the 'abnormality of mind' of the defendant prevented her from being fully conscious and responsible for what she was doing (diminished responsibility). On the other hand, the act of killing one's abuser is rarely immediately understood as caused by such an impaired competency for autonomy. Women who kill their (alleged) abusive partners are often assumed to be autonomous, and the fact that they were victims of domestic violence is either ignored or used to frame their act as a form of revenge against their partner. In all the cases

¹⁹¹ Returning to Sara Thornton, it is only when, in the second appeal, psychiatrists successfully argued that Thornton suffered from dissociation and mind abnormality that her sentence was reduced to manslaughter. The Court then finally agreed to consider evidence concerning the extent of the domestic violence Thornton had suffered. The same happened in Kiranjit Ahluwalia's case: the court finally admitted expert evidence and psychiatric reports as relevant evidence, and the sentence was subsequently reduced to manslaughter based on diminished responsibility. It was argued that the fact that she was suffering from severe depression when she killed her husband had altered her decision-making abilities at the time. *R v Thornton*-[1992] 1 All ER 306 and *R v Ahluwalia*- [1992] 4 All ER 889.

¹⁹² *R v Humphrey* - [1995] 4 All ER 1008.

¹⁹³ The appeal reduced her sentence from murder to manslaughter on the grounds of diminished responsibility.

¹⁹⁴ Returning the notion of abnormal personality, Justice for Women (2015) notes that '[a]lthough Justice for Women does not like the term "abnormal personality", it does prove that the courts are indirectly recognising the relevance of a long term history of abuse going back to childhood. Such abuse caused Emma to regularly self-harm. The court has now recognised that the *behaviour associated with self-harm can be so significant that a jury should take it into account when considering the relevant characteristics of the 'reasonable man'*, where the act of provocation is somehow connected with such characteristics' (emphasis mine).

reviewed, the possibility left to these women to *exercise* their autonomy in any meaningful ways, given the abusive socio-relational context they were in, was not assessed. Therefore, these judgements were made solely on the grounds of the degree of autonomy, as a *competency*, that the defendant allegedly possessed.

It should be noted here that both diminished responsibility and provocation are seen as ‘excuses’, contrary to self-defence, which is seen as a justification.¹⁹⁵ An ‘excuse’ suggests that the act was personal to the defendant, caused by her own particular psychological issues. By contrast, a ‘justification’ is thought to reflect the public and common sense of rightfulness: the act, given the circumstances, is justified since any rational and autonomous person would have done the same. As we will see in the following section, victims of abuse have yet to be acknowledged *both* as victims of very serious abuses and as rational and autonomous agents. In this respect, the appearance of a new standard of ‘reasonableness’ in English law, following Emma Humphrey’s case, which would apply only to battered women in order to take into account their so-called ‘mind abnormality’, is unlikely to help dissipate the non-autonomous battered women trope.

II. What About Self-Defence? Lavallee, the Battered Women Syndrome and Its Consequences

It could be thought that a successful self-defence plea would better fit Scamp’s, Humphrey’s, Ahluwalia’s and Thornton’s situations, as it would mitigate the rigid agent or victim dichotomy, attesting both to the serious harm these women suffered (and from which they needed to defend themselves) and to their competency to take control of their lives. However, apart from Scamp, these women readily pleaded guilty to manslaughter charges, based either on provocation or diminished responsibility. I begin this section by reviewing the reasons why this is so and exploring the four criteria used to assess self-defence. I then focus on the famous Canadian case *R. v. Lavallee*, [1990] 1 R.C.S. 852 and its subsequent influence on jurisprudence. This case, and the consequences it has had in Canadian legal context, is interesting for our purpose as it granted self-defence for a victim of domestic violence.

¹⁹⁵ As noted by Schneider (2000, 135), ‘[s]elf-defence as justification focuses on the act of defending one’s self; it rests on a determination that the act was right because of its circumstances. In contrast, a finding of an excuse, like insanity or heat of passion, focuses on the actor; it is a finding that the act, though wrong, should be tolerated because of the actor’s particular characteristics or state of mind’.

A) The Problems with the Traditional Criteria for Self-Defence

According to Belinda Morrissey (2003, 93), ‘The diminished responsibility/provocation defence is common for battered women in Britain, as a way to avoid the mandatory life sentence for a murder conviction’. Indeed—and this is not exclusive to Britain—self-defence is traditionally not seen as applying to abuse victims. Although the self-defence law is supposed to be universal in its application, many feminists have pointed to the fact that male experience has shaped its current understanding (Schneider 2000; Sheehy 2014; Wallace 2004; McColgan 1993). More precisely, the fact that self-defence was originally thought to apply in typical male confrontations has shaped each of the four criteria utilised to assess rightful self-defence, thus making them difficult to apply to women who kill their abusers. This often prevents self-defence from being considered in these kinds of case. The criterion of ‘imminence’, for example, was originally put in place in order to prevent both preventive and vengeful actions against an eventual aggressor. It is often used to reject the self-defence pleas of battered women who delayed their self-defensive actions. For instance, even though they did not plead self-defence,¹⁹⁶ the criterion of imminence was used to discredit both Sara Thornton’s and Kiranjit Ahluwalia’s pleas. Because of the minute it took Sara Thornton to find the knife after her husband had threatened her life and her daughter’s, the court refused her first attempt to appeal on the grounds of provocation. As for Ahluwalia, it seems that a key reason her plea of provocation was rejected was because of the few hours that elapsed between her husband’s last attack and her retaliation. This period was deemed to be a ‘cooling down’ period rather than a ‘boiling over’ period, which would have supported her claims of provocation.¹⁹⁷

It is sometimes thought that the self-defence plea fails for battered women primarily because these cases tend to fail the ‘imminence’ criterion. However, the idea that battered women typically kill a sleeping, unconscious and unsuspecting partner tends to be disproved by studies and inventories made of these kinds of cases (Maguigan 1991). Cases such as *R v. Scamp*, where the killing happens during a potentially life-threatening attack, are much more frequent than delayed killings. Nonetheless, even when the threat is imminent, self-defence pleas are often still ruled out. Given that a typical male confrontation involves opponents of comparable strength, skills and stamina, resorting to the use of a weapon against an unarmed man tends to be judged as a failure to use proportional force. In this respect, notes O’Donovan

¹⁹⁶ For delayed action in self-defences cases, see Shaffer (1997, 7).

¹⁹⁷ Justice for Women (2015) notes that ‘[a] key reason for the failure of Kiranjit’s plea of provocation was the bias towards male behaviour in such cases. The time that had elapsed between Deepak’s last attack on Kiranjit and her retaliation (a few hours) was deemed to be a ‘cooling down’ period and not a ‘boiling over’ period as her defence suggested’.

(1991, 222), '[b]ased on the standard of 'reasonable proportionality' the traditional conception of self-defence does not permit a weapon being used in response to a fist or a boot'. This criterion poses obvious problems for women who are, on average, smaller, lighter and less likely to have experience in controlled aggression compared to their male partner. During a violent attack that might be life-threatening, women often have no viable self-defence means other than to use a knife or gun against their aggressor.

The criterion of the 'absence of alternative course of action' also tends to work against battered women who kill, as it is often understood as being a duty to retreat.¹⁹⁸ However, as noted by McColgan (1993, 516), since intimate partner abuse typically occurs in the intimacy of the home, 'to require [the battered woman] to flee from that attack is to require her to leave her home. [...] Furthermore, where the woman has children in the home, to require her to flee from violent attacks would, in many cases, require her to leave those children with the attacker'.¹⁹⁹ If, as exemplified by Thornton's case, the duty to retreat is sometimes interpreted as being the possibility of walking out of the house or 'going upstairs', it is also often equated to leaving the relationship altogether. According to Schneider (2000, 77), '[t]he common view is that a battered woman should somehow have left the violent relationship and that if she didn't leave, anything that happened was her fault'.²⁰⁰

The principal obstacle against allowing self-defence pleas for battered women who kill is, however, most certainly to be found in the doctrinal notion of the 'reasonable man' used to assess the general reasonableness of the self-defence plea given the threat faced by the defendant.²⁰¹ As many commentators have remarked (e.g. Schneider 2000; O'Donovan 1991), this standard of 'reasonableness' is often interpreted as being antithetical to the notion of the 'abused women'. One reason it is viewed in this manner is because within popular culture, femininity is associated with the realm of irrationality and emotions, and this association has

¹⁹⁸As exemplified in Sara Thornton's first appeal, even if in theory, using the 'duty to retreat' criterion has been forsaken by most jurisdiction, in practice it is still often used, albeit implicitly, in cases involving a battered woman who kills. During Thornton's first appeal, the judge stated that 'on the whole it is hardly reasonable [...] to stab them fatally when there are other alternatives available, like walking out or going upstairs' (*R v Thornton [1992] 1 All ER 306*).

¹⁹⁹Incidentally, McColgan (1993, 516) notes the injustice of imposing this requirement on battered women, writing that '[e]ven at the time when a duty to retreat was assumed, that duty did not arise where it would have entailed a retreat from the home'.

²⁰⁰We have discussed, in the first section of this chapter, both of the reasons that might justify a woman's decision to stay with her abuser and the obstacles of leaving an abusive relationship. We have also seen why requiring a woman to leave an abusive relationship is deeply prejudicial.

²⁰¹As noted in the *Stair Memorial Encyclopaedia* (Vol. 15), this standard 'is set by the hypothetical reasonable man. The court has to decide what the average or ordinary man – often known as the man on the Clapham omnibus – would have done in the circumstances if he had acted with reasonable skill or care'. The idea behind this legal test is to test the jury's intuitions about the general reasonableness of the defendant's act. Would a reasonable man, placed under the same circumstances, have done the same?

consequences for the way judges understand the legal standard of reasonableness. As O'Donovan (1991, 222) noted, '[i]t is common in the literature to report not a single common-law reference to the "reasonable women" and it has been implied that this is a contradiction in terms'. It is also viewed this way because 'within legal discourse, battered women who remain in dangerous situations don't and can't fit the legal understanding of the subject as a rational, independent autonomous being' (Morrissey 2003, 74). In spite of the broad advertising and education campaigns surrounding intimate partner violence, the stereotypes of the masochistic, abnormal or provocative battered woman are stubborn. The common understanding of 'reasonableness' is therefore often seen as incompatible with the commonplace representations of battered women who kill.

B) *R v. Lavallee* and Its Consequences

Fitting neatly within the prevailing stereotype of the 'good' woman, passive and somewhat lessened in terms of autonomy and reasonableness compared to a man, the defence of 'diminished responsibility' and 'provocation' helps frame battered women who kill as 'victims' instead of 'murderers'. As they are more readily compatible with prevailing ideas about victims of abuse, it is these two types of defence that are most commonly used in cases involving domestic violence. Of course, it might be thought that the problems battered women experience when presenting a self-defence plea are particular to the UK and that it might be different within the Canadian jurisdiction. Indeed, one of the most discussed successful abused women's defence can be found in the Canadian case *R. v. Lavallee*.

In 1990, Angelique Lynn Lavallee²⁰² was charged with the second-degree murder of her husband Kevin Rust. Lavallee readily admitted accidentally shooting Rust in the back of the head as he was returning to the on-going party happening elsewhere in the house.²⁰³ While the evidence revealed that Rust had abused Lavallee throughout their relationship and threatened to kill her right after the party, Lavallee's actions in shooting Rust while he was leaving the room did not fit the traditional criteria for self-defence. Having killed Rust in anticipation of an assault, and not during its course, her actions failed the traditional criteria of imminence. Likewise, the fact that there were other people in the house at the time of the killing and that Lavallee was in possession of sufficient time to seek the assistance of the police could easily be viewed as failing both the 'reasonableness' and the 'alternative course of action' criteria.

²⁰² *R. v. Lavallee*, [1990] 1 R.C.S. 852

²⁰³ She was trying to shoot above his head in an attempt to scare him. However, that Lavallee claimed to have killed Rust by accident does not seem to have played any decisive role in her prosecution and subsequent acquittal.

However, at trial, the testimony of the psychiatrist Dr Fred Shane about the battered women syndrome overturned the guilty verdict to which the case was likely to lead. The jury subsequently acquitted Lavalée on self-defence grounds.²⁰⁴ Though the appeal court invalidated this verdict, the Supreme Court nonetheless stated that the expert evidence on battered women syndrome was admissible in self-defence cases, thus creating an important precedent in Canadian jurisprudence.

At first, feminists celebrated the acceptance of expert evidence regarding the battered woman syndrome in Lavalée's case, as they had long campaigned for the judicial recognition of the BWS as a way to transform societal and legal understandings of intimate partner abuse (Wallace 2004, 1755). As noted by Schneider (2000, 80), the admission of expert's testimony on BWS was seen 'as a way to remedy the unequal treatment of women resulting from the application of male norms and standards in the criminal justice system'. In addition, the appeal to BWS was seen as a way to overcome the current understanding of 'reasonableness' as incompatible with being a battered woman. Martha Shaffer (1997, 5), for instance, notes that 'expert evidence could explain how a battered woman's perception that she faced a threat of death or grievous bodily harm might be reasonable, even where outside observers might not perceive an attack to be imminent'. While the 'cycle of violence' part of the BWS helped explain the defendant's perception of the threat she faced, the 'learned helplessness' provided a convenient answer to the recurring question of why the defendant had not left her partner if she was a victim of such grievous harm, thereby dispelling the myth of the 'irrational', 'liar' or 'masochist' battered woman.

Unfortunately, Lavalée's case does not appear to have led to a dramatic increase in self-defence claims by women. According to Schaffer (1997, 17-8), '[o]f the 16 women charged with murder or manslaughter of an abusive partner, only three were ultimately acquitted [...] The remaining 11 women were found guilty of manslaughter, nine of them pleading guilty to the offence'. While BWS has certainly contributed to raising awareness about domestic violence and has earned widespread recognition from both the population and the courtrooms (Schaffer 1997; Schneider 2000), its use in the courtroom has had problematic consequences. Indeed, it paradoxically contributed to making self-defence claims at odds with being a victim of abuse (Schneider 2000, 131). The automatic association of abuse with learned helplessness leads to a conundrum: if a woman really was abused and really could not leave or seek help due to learned helplessness, how could she kill her abuser? Following a rigid interpretation of BWS,

²⁰⁴ The jury acquitted Lavalée, but the verdict was overturned on appeal. The issue brought before the Supreme Court was whether the expert evidence on battered wife syndrome was admissible.

acting aggressively or showing any measure of autonomy can be seen as dismissing the possibility of framing the defendant as a ‘true’ battered woman. As a result, the more a woman departs from the incapacitated victim trope, the more difficult it is to convince judges and jurors that she actually was a victim of abuse and could have acted in self-defence. Thus, if *R v. Lavallee* has not led to a significant increase in women’s successful self-defence claims, Schaffer (1997) explains, this may be partly because BWS makes it a difficult defence to use for women who do not fit the trope of the helpless victim. Explaining the decisions of nine women who pleaded guilty to the manslaughter charges during the five years after *Lavallee*, Schaffer (1997, 25) writes that the stakes might be too high to risk a trial ‘when a battered woman deviates from the ideal of the “deserving” victim/battered woman who has “faultlessly” and passively endured vicious abuse’. In such cases, the defendant’s own defence counsel tends to strongly advise a guilty plea.²⁰⁵

Alternatively, when the defence successfully frames the defendant as a victim of BWS, this often serves to show that she was not in possession of the necessary autonomy to commit murder instead of supporting self-defence claims (Schaffer 1997, 19-25). The ‘syndrome’ terminology is, in this respect, more readily linked with the traditional defence of diminished responsibility, insanity or provocation rather than with the reasonableness necessary for self-defence. When BWS does work to support self-defence pleas, it often does so at the cost of the credibility and rightfulness of the claim. The BWS tends to depict battered women as damaged individuals whose perception of reality did not really correspond to their situations. It suggests that the court ought to revise its standard of reasonableness in light of the fact that the defendant was supposedly unable to see the options of leaving the relationship and seeking help. As a result, it psychologises the defendant’s situation, obscuring the actual obstacles that might have prevented her from doing so. The harm of the abuse is reduced to a mere individual problem, which masks the socio-relational factors that facilitate domestic violence. Hence, writes Schneider (2000, 80), ‘despite the purposes of this legal strategy, old stereotypes of incapacity have been replicated in a new form. Lawyers who have submitted testimony have primarily focused on the passive, victimized aspects of battered women’s experiences—their “learned helplessness”—rather than explaining homicide as a woman’s necessary choice to save

²⁰⁵As noted by Schaffer (1997, 25-31), this is what seemed to have happened in both *R. v. Whitten* and *R. v. Bennett*: these defendants had solid grounds to claim self-defence, but both pleaded guilty of manslaughter, seemingly because they were both tough women who did not fit the ‘victim trope’. In *Bennett*’s sentencing hearing for manslaughter, ‘[t]he Crown argues that the evidence reveals Ms. Bennett was, in her life with Mr. Shaw, often drunk, profane, verbally abusive, physically abusive, prone to lying and exaggeration, that she was not in fact the submissive, passive, vulnerable woman who lived in a state of learned helplessness [...] she was not, in her stabbing of Mr. Shaw, defending her life but acting in drunken revenge’.

her own life'. Instead of supporting the self-defence claims of a defendant as being justified and rational in light of the situation in which she was involved, relying on the BWS instead seems to contribute in replacing her in the trope of the 'incapacitated victim'.

III. An Agnostic and Structural Defence for Battered Women Who Kill

As we have seen, self-defence is notoriously difficult to claim for battered women, and this difficulty does not seem to have been overcome with the precedent set by *R v. Lavallee*. Instead of leading towards a more finely grained analysis of cases wherein battered women kill their abusers, the use of BWS in self-defence cases seems to reinforce the victim or agent dichotomy, even when the self-defence plea is successful. In this section, I argue that an agnostic and structural conception of autonomy provides a way to assess homicidal battered women's criminal liability without entering the murky water of the assessment of the competency for autonomy these women possess. This, I argue, makes the framework I propose better equipped to deal with this kind of case than the conception of autonomy that is currently used.

A) Neither Victims nor Agents

As Schneider (2000, 74) comments, '[f]eminist work has [...] often been shaped by an incomplete and static view of women as either victims or agents; this false dichotomy between women's victimization and women's agency is a central tension within feminism'. Indeed, feminist mobilisation and activism on behalf of battered women who kill have often been shaped by the perceived need to present defendants as victims.²⁰⁶ While this representation is accurate, the problem is that the exclusive focus on women's victimhood has led to the failure to perceive their agency. As Schneider (2000, 120) comments, '[w]omen who are battered, and particularly battered women who kill, are simultaneously victims and agents: they are abused but they also act to protect themselves'. The relational framework presented in this thesis helps support this idea. Using this framework, strong women of the likes of Kirsty Scamp cannot be penalised for remaining autonomous in spite of the abuse they encountered. Likewise, by using an agnostic framework, one can never conclude that a defendant is no longer autonomous due to the abuse she suffered. Because it leads us to postulate that an agent can safeguard her capacity for autonomy, even in the face of an extremely coercive socio-relational context, such a framework cannot be co-opted to represent abused women as helpless victims who can no

²⁰⁶ See *Justice for Women*, for example.

longer be seen as competent enough to act reasonably. It encourages us to recognise that women within abusive relationships are both agents in their own rights and victims of their oppressive socio-relational contexts.

B) The Use of Socio-Relational Criteria

An agnostic framework prohibits us from making invidious judgements about a defendant's degree of the competency for autonomy: we have to rely on the assessment of the external socio-relational context in which she exercised her autonomy in order to assess her criminal responsibility. It is, consequently, not through the use of psychological evidence of 'mind abnormality' or 'learned helplessness' that the criminal responsibility of these women ought to be assessed. Such psychological evidence is often met with scepticism, contested or rejected as irrelevant in courtrooms (Wallace 2004, 1749; Beecher-Monas 2001, 83); relying on external evidence regarding the way the socio-relational context has constrained the autonomy exercise of a defendant has the added advantage of being harder to dismiss by judge and jury. Contrary to psychological evidences, such evidences can be verified and supported by empirical data.

As a means to provide an overview of the kinds of obstacles that could have prevented a defendant from accessing other options than self-defence, I now focus on four examples of the kind of evidence that can usefully be introduced in court proceedings. One of these is the police response to the defendant's calls, which can be substantiated by records and depositions. For instance, as indicated by Bull's arrest and subsequent bail without further consequences, such evidence often demonstrates that the police are ineffective in responding to IPV. The unresponsiveness of law enforcement agents is also demonstrated in innumerable cases of women struggling with abusive partners. To refer back to the cases already discussed, this ineffectiveness is demonstrated in Thornton's case who 'had called the police to her house at least five times because of Thornton's attacks on her' (Justice for Women 2015) and in Kiranjit Ahluwalia's case, who 'obtained two court injunctions in an effort to stop Deepak's attacks on her, but to no effect' (Justice for Women, 2015). As Martha Minow (1990) explains, the societal failure of law enforcement to intervene in abusive relationships should not be seen as separate from the violence; rather, it should be viewed as a part of it.²⁰⁷ Often, when the defendant has failed to appeal to law enforcement agents, this can be explained in regard to the

²⁰⁷ On this subject, Minow (1990, 1671-72) writes, '[w]hen clerks in a local court harass a woman who applies for a restraining order against the violence in her home, they are part of the violence [...] Society permits such violence to go unchallenged through the isolation of families and the failures of police to respond'.

well-known futility of such action given the community from which she derives. Moreover, as noted by several researchers (Crenshaw 1991, Allard 1991; Rasche 1988; Richie 1985), when a woman comes from a socially stigmatised community, her distrust of the law enforcement apparatus is potentially justified. In such cases, the defence can appeal to statistical evidence regarding police intervention within the given community to show the reasonableness of such mistrust.²⁰⁸

In regard to the second example, it is clear that the presence of a viable alternative to staying in an abusive relationship should also be assessed. It is often thought that shelters for battered women are abundant and easily accessible. However, most shelters offer time limited services, and transitional housing that allows women to move safely to independent living are few and far between (Tutty & Rothery 2002; Becker 1995). Additionally, shelters are often overcrowded and are regularly forced to refuse or delay access to their services to many women (Roberts et al. 2007).²⁰⁹ According to Wallace (2004, 1754) '[t]he U.S. still has three times as many animal shelters as battered women shelters'. This number is astonishing in light of the statistics concerning both the frequency of IPV and the known fact that the presence of shelters considerably diminishes the number of homicides committed by women (as well as, of course, IPV homicides in general) (Wallace 2004).

Thirdly, the presence or absence of sustainable sources of subsistence such as jobs paying a 'family wage', day care and affordable and permanent housing should also be considered. As noted by several researchers, IPV is a phenomenon that affects women from all economic and social backgrounds. However, what best predicts the extent and length of the abuse is women's socio-economic vulnerability, which renders them dependent on their abusers for their sustenance. The wider legislative framework can also increase this dependence on the abuser. The legal framework surrounding IPV, divorce and separation, children's guardianship and immigration sponsorship can, in this respect, contribute to women's dependence on their abusers.

²⁰⁸ Such evidence could help the defence in cases such as *Wanrow*. During the first trial, as Schneider (2000, 30) noted, 'the judge's instructions had prevented the jury from considering Yvonne Wanrow's state of mind, as shaped by her experiences and perspective as a Native American woman, when she confronted Wesler. The jury had not been presented with evidence concerning the general lack of police protection in such situations, the pervasiveness of violence against women and children, the effect on Wanrow of her belief that Wesler was a child molester, Wanrow's lack of trust in the police, and her belief that she could successfully defend herself only with a weapon'. Evidence concerning the lack of police response in the Native American community would thus have greatly helped in this case.

²⁰⁹ As noted by Mary Becker (1995, 19) '[s]helters are notoriously short of room, particularly for mothers with children, and have time limitations—such as thirty days—that make them inadequate as transitional housing for an effective escape. Even on a short-term basis, shelters are far from ideal housing situations, and often do not permit boys over a certain age, making them inadequate for many mothers'.

Finally, in addition to the above socio-relational factors, the way the abusive relationship itself has contributed to restraining the exercise of autonomy needs to be assessed. A relational framework has to take into account the fact that an abusive relationship cannot be ‘time-framed’ and analysed only as a series of discrete episodes of violence that can be studied in isolation from one another. In reality, it is an on-going and intimate relationship that often forms the core of the defendant’s relational context. Like all relationships, the history of an abusive relationship contributes in forming both partners’ perception of what it is possible for them to do. The history of abuse has to be examined carefully in order to assess the way it restrained the defendant’s actions. If all previous attempts to flee the abuse or report it have failed and were met with greater violence and threats from the abuser, it might have been reasonable for the defendant to act in self-defence rather than call the police or leave the house. Contrary to some commonplace ideas, women in abusive relationships often attempts to leave the relationship and employ diverse strategies to diminish their partners’ violence. However, when judging battered women who kill, courts tend to ignore these attempts and strategies. This is exemplified in Kiranjit Ahluwalia’s case. Even though she actively tried to escape the relationship and successfully obtained two court injunctions against her husband, Deepak always found her and brought her back. Terrified of staying but knowing the futility of running away or using legal means against her abusive partner, she set fire to his clothes while he was sleeping to ‘make him understand what pain was’ (Justice for Women, 2015). These circumstances were ignored during her trial and do not seem to have played any decisive role in her subsequent appeal. The framework proposed here would change that: the way her abusive relationship has constricted Ahluwalia’s sense of what she could reasonably do would be given an important role in determining her criminal liability.

C) Listening to Battered Women

It might be difficult to judge the way a relationship has constrained the exercise of autonomy using only externally observable facts: 1. because it might be impossible to substantiate, using witness or police testimony; and 2. because abusive relationships, like all relationships, are different from one another. Despite expert efforts to typify IPV and its cycle of violence, it remains the case that ‘one model fits all’ constitutes a gross, and sometimes problematic, representation of reality. Even if it seems that, in most abusive relationships, violence tends to be cyclical, experts note that the form and duration of the cycle greatly vary and also differ from one relationship to another (Ogle & Jacobs, 2002). Some forms of violence and control can

also be difficult to assess from an external point of view. Women routinely report psychological and emotional abuse as worse than the actual battering episodes (Kelly 1988, 120; Schneider 2000, 65). All of this is to say that in such cases, the defendant's own knowledge of the way the abuse has structured her life has to be seriously considered within the courtroom.

As noted by Schneider (2000, 102), '[s]torytelling—using the “stories” of clients as the essential factual matrix of the case—has always been an essential part of good lawyering'. This is particularly true for the stories of battered women who kill. These narratives are often the sole access to the extent and nature of the abuse and to the way the abusive relationship has structured the defendant's life. Additionally, truly listening to defendants can help us refine our current understandings of IPV. Specialists have now developed a general theory of IPV. However, battered women are not all similarly situated, and their own experience of IPV is shaped by the specific dynamics of their own socio-relational context. Apart from the difficulties linked to securing jobs and housing, IPV can present an 'acute dilemma for the battered woman who identifies her experiences not only as an abused individual, but as an abused person who is a member of an abused community' (Schneider 2000, 63). As noted by Crenshaw (1991, 1245-6), the existing stigma and stereotypes of violence weighing on African-American communities might explain why abused women from this community may feel pressured to minimise or suppress information about IPV. Listening to female victims of abuse can thus provide us with better insight into their particular situation as well as into the factors enabling IPV within a given socio-relational context.

As Schneider (2000, 139) states, '[t]raditionally, courts and commentators have distinguished “subjective” from “objective” standards of self-defence. The objective standard—the traditional “reasonable-man standard”—looked at reasonableness from the perspective of the hypothetical reasonable man, while the subjective standard regarded reasonableness from the individual's own perspective'. As we have seen in Chapter 3, the use of a relational framework ought to make us wary of such a differentiation between what constitutes an 'objective' standard and what constitutes a 'subjective' one. We are all situated subjects, embedded in our own particular socio-relational context. If, within a given society, a majority might share some common references, the simple fact that these cultural markers are the most common does not mean that they ought to be seen as the 'good' or 'reasonable' ones. This is not to say that everything is relative or that there is no way of differentiating what is reasonable from what is unreasonable. However, as I have suggested, the presupposed and unquestioned view that the standard of the reasonable man is truly neutral tends to lead to the adoption of

partial and prejudiced criteria to assess ‘reasonableness’. This is why abused women’s testimonies are so sorely needed. We must listen to these women not because they possess, as the reform following *R v Humphrey* implies, a ‘deformed perception of reality’ that we must use to lessen our standards of reasonableness. Rather, we must listen to victims of abuse because benefiting from their own privileged perspective on their socio-relational context can help us arrive at a less biased view of the reasonableness of their act.²¹⁰

D) Self-Defence for Battered Women

In summary, we can see that the changes brought about by a structural and agnostic framework should lead courts to the presumption that abused women who kill have done so in self-defence. Using an agnostic framework prevents presupposing, as is usually the case, that the homicide was due to a diminished mental state the abuse caused. Rather, the possibility that victims of domestic violence might have acted autonomously, in self-defence, must be thoroughly examined by both the courtroom and the defence counsel.

In this part, I seek to offer different names and understandings for self-defence criteria. Of course, as Holly Maguigan (1991) argue, the problem is not really the names of the criteria but rather the way courtrooms frame and understand them in cases where abused women kill. Yet, it seems helpful to suggest possible changes to these criteria, given that different words have different interpretative ranges and impacts. The name and description of the criteria used to assess self-defence can serve as a way to tighten their interpretative range and reduce their potential for prejudicial interpretations.

Following a relational framework, the first thing that needs to be reframed in self-defence cases is the standard of reasonableness informing courtroom judgements. As I have previously argued, the idea that there is such thing as a purely objective point of view that can lead to universally valid standards of reasonableness is not only highly questionable from an epistemic point of view but it can also be deleterious. For it is when legal actors form opinions based on this supposedly neutral perspective and take it for granted that it has led them to form an impartial judgement that they are most at risk of letting prejudice and stereotypes cloud their opinions. Instead of this ‘view from nowhere’ presupposed by the perspectival take of the ‘reasonable man’, courtrooms should admit a *situated notion of reasonableness*. Given a particular defendant’s socio-relational context and situation, was it reasonable to act as she has

²¹⁰ Of course, what they say should not be assumed to represent the truth of their situation. Like all agents, victims of abuse might be biased, and they might lie. What I mean to emphasise, however, is that we should be wary of representing their vision of the reality, or their testimony, as somewhat *more* distorted or as less reliable than that of any other agent.

done? This is, of course, not to suggest that the courtroom should wholly adopt the defendant's subjective take on her actions. This replacement of the reasonable man standard by one of *situated reasonableness* is only there to emphasise the trivial truth that reasonableness is always situated: for instance, what would be a reasonable course of action in a pub fight might not be the same during an assault by one's abusive partner. It is also there to remind both judge and jury that their perspectives have been shaped by their own life experiences and socio-relational contexts. Judging women from radically different relational backgrounds might demand a greater effort at empathy, which is not always helped by resorting to a supposedly neutral standard.

Since an abusive relationship cannot be 'time-framed', the criterion of 'imminence' used to assess these cases should also change. As we have seen, a threat occurring within the context of an abusive relationship is not the same as one occurring in a confrontation opposing two strangers. The self-defensive action can only be understood in the light of the way the history of the relationship has participated in structuring the life. A criterion such as the *probability of a further attack*, similar to that used in international conflicts, would be more pertinent than 'imminence', as it incorporates the 'intuitive point of probability, which entails some assessment of risk based on past behaviour' (Wallace 2004, 1749). Unlike 'imminence', it can encompass the historical component that so often characterises IPV.²¹¹ The criterion of 'imminence' is, incidentally, already used in generous fashion when courtrooms are faced with a 'standard' male case of self-defence, as it is often seen 'as a proxy for any number of other self-defence factors -for example strength of threat, retreat, proportionality, and aggression' (Wallace 2004, 1761). Thus, explicitly changing the criterion from 'imminence' to *the probability of a further attack* would not radically alter the self-defence doctrine. It would simply change the way it is currently used to block battered women's use of self-defence pleas.

Similarly, as Wallace (2004, 1775-7) proposes, it seems more coherent to adopt the criterion of *the magnitude of the harm that could result from the threat* rather than the criterion of 'reasonable force'. It seems absurd to demand that abused women renounce the use of knives or guns for self-defence. In addition, based on the history of violence and past threats, this standard seems to be more adequate to assess abused women's self-defence claims. Given their history of abuse and the life-threatening magnitude of the harm they might impose

²¹¹ As noted by Wallace (2004, 1771), '[i]f the threat is imminent in the sense of being permanent, the threatened party should be allowed to act when presented with a 'window of opportunity,' rather than allowing the aggressor to choose the exact time and manner of confrontation'.

on their victims, it might be reasonable to use a weapon to defend oneself against a spouse of the likes of Deepak Ahluwalia, Jason Bull or Malcolm Thornton.

Finally, a structural and agnostic framework could also suggest modifications to the criterion of ‘retreat’. While it is true that this criterion has been officially abandoned in most jurisdictions, as exemplified by Sara Thornton’s case, it is often still implicitly used to assess the reasonableness of a self-defensive act. This interpretation of the ‘alternative course of action’ ought to be eliminated within a relational framework. Replacing the criterion of alternatives with the *constraints of the socio-relational context* could help to rectify problematic interpretations. Instead of focusing attention on enumerating all theoretically possible *courses of action* a defendant could have taken instead of resorting to self-defence, this criterion orients it towards all the *socio-relational obstacles* the defendant faced. I have indicated some of these above and will not review them again here. Suffice to say here that when the police or the law-enforcement apparatus has repeatedly failed the defendant; when, because she risks losing her children or immigration status or lacks the socio-economic resources, she has no other viable alternative than to stay with her abuser; when the dynamic of control is so bad that she has lost contact with her friends and family and cannot exit the house without making her partner suspicious—there might be more than sufficient reason to think that she had no other viable alternatives than to resort to self-defence.

As both Wallace (2004) and Shaffer (1997) argue, most of the time, cases of abused women who kill their abusers are better framed as self-defence cases than as provocation or diminished responsibility. Referring back to Kirsty Scamp’s case, it seems clear that her stabbing of Jason Bull was an attempt to defend herself and not a loss of control provoked by years of abuse. Given that Bull was already attacking her and seemed in an uncontrollable fit of rage, the criterion of the *probability of further attacks* is more than satisfied with this case. As for the *magnitude of harm* that could have been caused by this attack, given Bull’s history of violence, it seems that Kirsty was right in feeling that she had to defend herself given that, just a month earlier, he had left her with a perforated eardrum. Even if Bull had not killed her, Kirsty would doubtlessly have suffered grievous harm if she had not tried to defend herself. As for the criterion of *constraints of the socio-relational context*, though *R v. Scamp* does not include details that would enable us to arrive at a complete analysis of her socio-relational context, we can still note that her call to the police did not result in any legal consequences for Bull. One cannot help but think that if the police had treated Bull’s violence more seriously and

monitored him closely, law enforcement agents could have stopped the attack.²¹² Finally, if the courtroom had taken Scamp's point of view seriously, listened to her and attempted to judge her case by using a *situated standard of reasonableness* instead of a supposedly neutral and universal standard of reasonableness, it could not have concluded that Scamp was liable of the murder of Jason Bull. Putting oneself in Kirsty Scamp's position, knowing that one month earlier he had inflicted grievous injuries on oneself, being forcefully attacked by him while knowing that he was intoxicated and never having seen him in such a violent state, a member of the jury would probably have been scared for his life, too. In this context, the act of grabbing a knife to attempt to defend oneself against an attack might have been not only understandable but also reasonable. Kirsty Scamp's case is, unfortunately, no exception: it seems that all the cases previously reviewed could have been successfully framed as self-defence.

Conclusion

In this chapter, I have sought to show the use of a structural and agnostic framework to reframe traditional criteria of self-defence. Using Kirsty Scamp's case, I have tried to demonstrate, in the first part, that evaluating the criminal liability of women who kill their abusers, in light of the degree of autonomy capacity they are thought to possess, is both problematic and detrimental. Framing defendants as either helpless victims or as autonomous murderers reflects a simplistic and erroneous view of these individuals, which then reinforces prejudicial stereotypes about abuse victims. In the second part, I have reviewed the current obstacles preventing abuse victims from claiming self-defence. I have suggested that the traditional criteria for self-defence are frequently used to exclude the pleas of abused women who kill. I have also attempted to show that despite its promising results in Lavallee's case, the use of BWS to assist the self-defence claims of battered women is not truly helpful in the long run. As Shaffer's review of the subsequent cases indicated, *R v. Lavallee* has not led to a significant increase of self-defence pleas for battered women who kill. In this respect, the principal obstacle preventing defendants claiming self-defence is that being reasonable is often viewed as antithetic to being an abuse victim. Because the BWS frame abuses victims as 'abnormal' and 'pathological', it reinforces the idea that they cannot be viewed as both reasonable and autonomous. Against this traditional view, I attempted to show, in the final part, how a relational framework can help reframe the criteria used to assess self-defence so as to accommodate abused women's pleas without relying on the BWS or on assessments of one's competency for autonomy. I have

²¹² As was proposed in Chapter 6.

sought to show that it is precisely because it is agnostic towards the degree of competency for autonomy agents possess that such framework can help us arrive at a less biased view of these women's criminal responsibility. By contrast to the individualistic and competency based understanding of autonomy, which underpins the current understanding of criminal responsibility, it is much more difficult to co-opt such an understanding of autonomy to reinforce long-lasting prejudices against victims of domestic violence, and women in general.

Conclusion

My goal, in this thesis, was to help resolve the conflicted relationship feminism has with autonomy. In consideration of feminist criticisms of the individualistic ideal that underlies our laws and policies, I have sought to arrive at an understanding of autonomy that cannot serve as the grounds to deny individuals their political and legal equality, as has so often been the case with women, and vulnerable individuals. I have argued that in order to avoid the risks of autonomy being used to fuel exclusionary dynamics, we ought to remain agnostic concerning who should be seen as sufficiently competent to be attributed the status of full-blooded agent who is worthy of respect. I have suggested that there is no plausible or convincing way to restrict the attribution of the status of autonomous agent to only certain individuals. Moreover, for feminist purposes, there seems to be no convincing reason to do so. I have tried to show that redirecting our attention towards the way the socio-relational context might restrict individuals' *exercise* of their autonomy gives us the grounds we need to justify intervening in oppressive dynamics. We do not need to frame women as 'poor victims' with impaired competencies for self-government in order to legitimise challenging problematic social scripts. What we need is to pay sufficient attention to how the socio-relational context, with its prevalent gender bias and norms, reduces the way individuals can plausibly exercise their autonomy. I have tried to demonstrate that it is by adopting a twofold account of autonomy, which frames us all as equally competent to make our own choices, while paying adequate attention to the unequal obstacles we might face while exercising our self-government, that it becomes possible to address the problem of oppression without causing the problem of exclusion to resurface. In short, I have sought to demonstrate that in order to ease the conflicted relationship feminists have with the ideal of autonomy, we need to stop focusing on the question of who should be considered autonomous and instead address the question of what structural changes might promote the autonomy of all.

In the second part of this thesis, I sought to convey that such a conception of autonomy could advantageously replace the individualistic ideal that underlies liberal laws and policies. As it enables us to legitimise emancipatory policies on grounds that are compatible with liberalism, such a framework could be of use to feminists. Its agnostic component makes it coherent with the liberal duty of respect towards people's choices. Its structural component enables it to effectively address the reproduction of oppressive dynamics through people's seemingly free choices. Refocusing our attention towards the socio-relational context enables us to see that, very often, choices cannot be conceived as 'free' once we take into account the costs certain

socio-relational elements add to the option of diverging from what is conceived as ‘normal’. It is these obstacles and pressures that limit the way individuals can exercise their autonomy (regardless of whether they are conscious of them) that the structural component of this framework seeks to identify and alleviate.

That the framework I propose is committed to promoting a greater equality of opportunity does not mean, however, that it should be blind to the disadvantage affiliated to some opportunities. As I have suggested in Chapter 6, some non-trivial options, especially when they are coded feminine, increase individuals’ vulnerability. The option of taking on the bulk of the caregiving constitutes one of these. This is especially true if the person (usually female) who makes this choice is unwilling or unable to institutionalise her union with her partner. Nevertheless, I have argued that respecting individual self-determination entails leaving both the option of marrying and that of receiving legal protections for one’s work, open. Thus, the structural component of the framework I propose should encourage us to remain attentive to the unequal dynamic that can exist between individuals, and help us vindicate state actions meant to alleviate the unfair costs that choosing certain non-trivial options creates.

In Chapters 6 and 7, I have suggested that precisely because of its agnosticism and not (as one might be tempted to think) in spite of it, the framework I propose can offer valuable normative guidance to address issues that involve individuals’ struggles with oppressive constraints. As it entails systematically considering people as competent and worthy of respect, it can never lead to treating vulnerable individuals in a demeaning or paternalistic manner. This, in turn, helps ensure that the kind of policies adopted to address endemic problems such as intimate partner abuse, and the assumptions employed to justify such policies, do not inadvertently reinforce other forms of oppressive (and exclusionary) dynamics against the very people seeking help. Adopting a systematic presumption of autonomy, I have suggested, can even help us establish more constructive ways to assess criminal responsibility. Linking responsibility exclusively to the competency for autonomy people possess, as individualistic understandings of autonomy tend to do, often results in overlooking the role that socio-relational context plays in enabling criminality. By contrast, the structural framework I offer links responsibility to the effective possibilities agents have to do otherwise. In doing so, it enables us to consider the role institutions, policies and social infrastructures might have played in making an appalling course of action the most viable one. This, I argued, enables a better understanding of crimes, such as the manslaughter of one’s abusive partner. However, in view of the statistics revealing the close ties criminality has with poverty, race and the lack of

resources and opportunities, it seems that such an approach could also be beneficial in many other areas of our criminal system. By encouraging us to consider the collective responsibility all share in leaving individuals with such a scarcity of non-trivial options, a structural view of criminal responsibility might orient us towards more constructive ways to reduce its incidence as well as to a more humane way to treat perpetrators.²¹³

There are evident limitations to adopting the agnostic conception of autonomy I propose. People do sometimes suffer from serious mental pathologies that render them unfit to be considered properly self-governed and responsible for their actions. The framework I propose is clearly not meant to address this kind of case. In this regard, it might be necessary to complement its use, in certain cases, with assessments of the psychological competency of agents. Yet, its limits do not entail that understandings of autonomy that concentrate exclusively on the competency for self-government are, after all, more adequate. As I have attempted to demonstrate, when autonomy is exclusively understood as in internal competency agents possess, it becomes all too easy to frame structural problems as if they were caused by the abnormal psychology of some incompetent individuals. This, in turn, often results in consolidating the structure of oppression in place, fuelling existing prejudices against vulnerable people and leading to ignore the unequal constraints they face. In this respect, the fact that my framework has limitations simply means that, in some cases, its use might be complemented by an assessment of the competency for autonomy that individuals manifest. However, as I have tried to show, these instances are much less common than we might be tempted to think; and the resources we have for assessing interiority are themselves deeply limited. In view of the significant political and legal consequences of framing agents as incompetent to make their own choices, we should be wary of resorting to such a solution.

Of course, it would be naïve to assume that the agnostic and structural framework I propose here would magically prevent autonomy from being co-opted to fuel exclusionary dynamics and consolidate the existing injustices caused by existing power structures. As Khader (2011, 174) aptly notes, '[a]ll moral concepts are susceptible to rhetorical co-optation, and all require significant empirical knowledge and goodwill to be appropriately applied in practice'. The framework I propose is not immune to the risk of being used in unpalatable ways that are, at present, still unimaginable to me. Yet I would maintain that, as it systematically forces us to refocus on social and structural conditions in which individuals exercise their autonomy rather than on whether or not agents should be considered competent to lead their own lives,

²¹³ This is, of course, not to say that we should systematically consider individuals from stigmatised communities as innocents or as having a diminished responsibility regarding the crimes they have committed.

employing an agnostic framework makes such co-optation less likely. If taken seriously, the systematic presumption of autonomy encourages a more respectful dialogue with those we mean to help. Rather than regarding them as poor victims that need saving, such a presumption encourages us to see and treat everyone as our equals and to recognise that the limits and exhortations of our confusing social world affect us all. It encourages us, in other words, to consider that the 'other woman' is, in fact, just like us: governing herself through bargaining with the constraints she faces and creatively engaging with the current regimes of meaning and power she encounters.

It could be thought that the price to pay in order to minimise the risk of co-optation is too high. One could argue that what I have ended up with is not an understanding of autonomy at all. Since it postulates agnosticism towards the competency needed for autonomy and refocuses instead on the social conditions needed for self-government, it could be thought that it is an understanding of freedom I have ended-up with (albeit a very substantive one). If this is so, then the thesis I defend becomes much more radical. I would have shown that in order to account for the social dimension of self-government in a way that addresses the problem of oppression without simultaneously leading us back to the problem of exclusion, we need to abandon the concept of autonomy altogether. My own framework would then figure among that of feminists who repudiate the use of the ideal of autonomy.

I do not think, however, that this is the message that should be taken from my thesis. The understanding of autonomy I put forward does not deny that autonomy consists of a set of internal competencies. It simply argues that if it is to serve on the political and legal level, it is neither necessary nor useful to seek to assess these competencies. Given that what is important, within a liberal society, is to ensure that everyone truly has the opportunity to lead a life of their own choosing, I have sought to refocus autonomy on the social conditions needed to do so. The concept at which I arrive serves the same basic normative roles as traditional understandings of autonomy. It guards individuals against unwanted intrusions in their lives and fixes limits to legitimate state action. It can serve as a basis to devise laws and policies or to assess existing ones. Moreover, it can serve as grounds to protect individual self-determination and to ensure that everyone has the means and option to lead a life of their own choosing.

Nevertheless, the question of whether the understanding of autonomy I propose would be a better understanding of autonomy to employ in transnational context, or to guide political action within societies which do not subscribe to liberalism, remains open.

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