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HISTORICAL ANALYSIS OF THE CONCEPT OF AUTONOMY FROM A GERMAN PERSPECTIVE

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3.1. Introduction

The principle of autonomy constitutes a large component of the contemporary bioethical discussion but is at the same time subject to different interpretations and to a lively debate on its normative reach. In this essay, we will try to present how this category and its related ethical principle are interpreted and applied in the philosophical and theological literature in general, and in German biomedical ethics in specific. In keeping with the spirit of this body of work, we will try to present the problems and discussions in such a manner as to be accessible to non-specialists and this even with no direct knowledge of German language and culture.

We start from the very general hypotheses according to which the principle of autonomy is the subject of a large semantic confusion, i.e. confusion related to the meaning of the word and even contaminated by a series of misunderstandings linked to its undifferentiated use and application. We would therefore like – in the framework of this contribution – not really to support a precise thesis but to participate in a sort of operation of ‘semantic disinfection’ so that the debate on the principle of autonomy at least gains in clarity.

Our discussion is ordered in the following manner: first, we will present the historical roots of the concept of autonomy highlighting the specific contribution of German philosophy. Second, we will present the history of the same category as part of the history of the medical literature. Next, we will have to examine the use of the term autonomy within the current discussions on biomedical ethics in the
German-speaking environment. Finally, our essay is an attempt to
determine the issues and criticise the normative reach. The whole
will stay fragmentary and not at the service of the work of the spe-
cialist, but will be rather general in order to give an idea of the
fundamental debate.

3.2. A Historical and Philosophical Retrospective

The philosophy of the age of Enlightenment has through the concept
of autonomy expressed most precisely and coherently its ideal of
human liberty and morality. The work of Immanuel Kant is here
foremost. Autonomy represents the essential condition from which
true morality derives. According to Kant and the Kantian tradition,
there is no true ethics if it is not justified by autonomy. Without will-
ing to enter here into an interpretation of details, one has to notice
that, in Kant’s view, what has to be proclaimed as necessarily
autonomous is first and foremost the human will, which, through
the light of practical reason, is capable of deciding the moral good
without referring to any external reality.

It is this quality of the will that renders human activity moral. It per-
mits at the same time universalisation, i.e. the general validity of the
norms linked to this kind of will. The autonomy of practical reason
has thus first and foremost an anthropological connotation, i.e. it is a
characteristic of all human life; even before being a quality of a
philosophical discipline such as ethics. Since man is free with regard
to the laws of nature, he can become a legislator in the reign of
the finites. By the same token he only submits to the maxims he
has established, declaring them to be a possible basis for a universal

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1 Before Kant, the term was mainly used in a legal context, indicating the organi-
sational independence of a personal or collective subject. One notes a certain move-
ment in the evolution of legal and philosophical ideas towards an universalisation
of the concept of autonomy. For more on the historical-philosophical evolution, see
p. 701-719; G. Rohbrücker, Autonomie, in Handbuch der philosophischen Grundbegriffe,
Vol. I, München, p. 155-176; G. Rohbrücker, Autonomie, in Religion in Geschichte und

2 For a global reconstruction of Kant’s concept of autonomy, see numerous publi-
cations: A. Gunker, Spontaneität und moralische Autonomie: Kant’s Philosophie der Frei-
heit, Bern, 1989; W. Martin, Bestimmung und Abgrenzung von Ethik und Religion: ein
Beitrag zur Diskussion über das christliche Proprium in der Ethik unter besonderer Berück-
sichtigung der Philosophie Kant’s, Pfaffenweiler, 1990; M. Schefczyk, Moral ohne Nutzen:
eine apologie des Kantschen Formalismus, St. Augustin, 1995; C. Schilling, Moralische
influence is particularly obvious in the fact that the physician or the researcher can be compared to the sovereign who decides for his subjects, but does not understand their interests; if he understood them then he would not protect them, since he gives priority to his own interests. John Locke immediately joins this pragmatic American vision on autonomy. The English philosopher was pre-occupied with protecting the rights of the individual against the interference by the state. The autonomy favoured by American bioethics is in a large degree identical to the negative liberty of classic liberalism, i.e. to protect the individual against intervention by others. Doucet's interpretation is also valid for German bioethics. Even in this cultural environment, this variation on the liberal tradition is stronger than the one derived directly and exclusively from Kant. The same observations can be made for the philosophy of Mill, which takes on the liberal ideal of autonomy but in an explicitly utilitarian context, undoubtedly, contrary to Kant, but filled with the preoccupation common to all Enlightenment philosophy of liberating the individual from intervention exterior to the subject regarding decisions which fall within the competence of the individual.

From the 19th century onwards, philosophers talked increasingly about another meaning of autonomy where different forms of knowledge are autonomous and methodologically independent. This autonomy is called Eigengesetzlichkeit in German.\(^3\) Since the French and English language do not have two specific terms to define autonomy as Eigengesetzlichkeit, one has to pay particular attention to the significance of the term autonomy, if possible, to distinguish this term explicitly from the meanings used here above. In this context autonomy is first and foremost medical knowledge with links to other forms of knowledge. Such an interpretation of autonomy has consequences for one's opinion about the relationship between medical and ethical knowledge.

3.3. The Principle of Autonomy throughout the History of Medical Thinking

Autonomy, which was one of the most original expressions of Enlightenment philosophy, did not have a great reputation in the past theoretical medical literature.\(^7\) The relationship between physician and patient was conceived from the perspective of a paternal bond wherein the will of the patient was not a significant element.\(^6\) The only sphere which seems to introduce a new perspective into this relationship may be 'private life'. One could ask whether the relationship between physician and patient could be reduced to this social sphere. Compared with the English literature since the 17th century, this problem has not been further developed in German medical literature.\(^8\)

One can therefore observe a different sensibility in the cultural environment of the German language and that of the English language in their respective perception and application of the word 'autonomy'. This is the case even when it comes to discerning the implications for the field of medicine. The Germanic culture tends to accept the principle of autonomy as an Abwehrrecht, i.e. the right not to be prohibited from making our own choices; whereas the Anglo-American culture tends to interpret the same principle as an Anspruchsrecht, i.e. as a positive and subjective right.

3.4. The German Contemporary Debate on Autonomy in Biomedical Ethics

The contemporary debate confirms on the one hand a difference in sensibility but on the other hand exceeds it, insofar as the influence of the Anglo-American bioethics has become more obvious in the works written in German. Tristram Engelhardt's The Foundation of

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\(^8\) For the reconstruction of the history of this terminology in the domain of medical thinking, see D. GRACIA, *Fundamenti di bioetica*, Madrid, 1989.


\(^8\) Gracia evokes for example the debate between Gregory and Cullen at Edinburgh University on the freedom to practice medicine in D. GRACIA, *Fundamenti di bioetica. Sviluppo storico e metodo*, Cinecittà Biserno, 1993, p. 175 ff.
Bioethics has been the subject of debate in Germany despite the fact that this book has not been translated in its entirety. Because of the influence of this author, it is a common conviction in German literature that since it is impossible to obtain a consensus on common moral values which have absolute value therefore one has to orient oneself to the principle of autonomy, which guarantees everyone an equal respect of his or her own personal opinions. This minimalist ethics has its opposing view in the fact that explicit consent becomes the moral condition of all medical interventions. No physician could intervene against the patient’s will without offending the autonomy principle. But this does not mean that the physician becomes the executor of the patients’ wishes and options in Engelhardt’s and other German ethicists’ opinion. The autonomy principle only requires that one does or does not do as promised in an explicit contract.

In line with European cultural environments, the German bioethics literature also demonstrates the improper but very widespread use of the term autonomy in a purely descriptive sense. In this context, predominately to be found in literature for paramedical personnel, one asserts that a patient is autonomous in the sense that he/she is capable of organising his/her physical needs without assistance from external forces. This interpretation of autonomy can perhaps be accepted in principle but one has to be aware that if this is the case, it loses all moral pertinence because everyone should be able to enjoy this kind of autonomy for as long as possible during his or her lifetime. One could never reproach a person if at some point in time this should be partially or completely lacking. Autonomy in this sense, while organising one’s physical existence, has no moral quality and is therefore sufficiently insignificant from an ethical standpoint which is indicated by the fact that the lack of said autonomy is an indirect request for help from the person who is no longer autonomous.

Another dimension in the German debate on the concept of autonomy is that this category has been at the centre of the ethical-theological debate on the ultimate foundation of moral actions since the 1970s. One should not assume that the German speaking culture is so influenced by the reflections of theological ethics that even the interpretation of autonomy in bioethics is directly influenced by it. Its influence is more indirect. Indeed, in the German as in other European cultural environments, the number of theologians engaged in bioethical research is certainly remarkable. Theology has no monopoly on bioethics but it still makes it presence felt. Those authors who have tried to give a theological pertinence to autonomy can certainly not remain indifferent to its significance in bioethics. On the contrary, understanding the multiple meanings of autonomy and those linked to Eigengesetzlichkeit, German speaking theologians are well prepared to receive it in a differentiated and critical manner specifically in the domain of medicine and biology. In general, one can observe that the autonomy principle has been accepted into German bioethics literature, but with some reservations.

In my opinion, the most important limitation on the use of autonomy as a category is specifically connected with the fact that the category has to be respected not only when it is empirically present. Autonomy is a constituent principle of human existence as a whole and not just of its particular manifestations. The partial or even definitive lack of autonomy in minors or in persons incapable of understanding and judgement (incapacitated persons) does not signify, for most German authors, that the principle of autonomy does not apply to them. Such application will have to take into account the specific situation of the individual, where charity and

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10 A partial translation in German has been made: Die Prinzipien der Bioethik, in H.M. Sass (ed.), Medizin und Ethik, Stuttgart, 1989, p. 96-117. For comment and a critique, see K. Steigleder, Die Begründung des Männlichen Sollen, Studien zur Möglichkeit einer normativen Ethik, Tübingen, 1992, p. 36.
12 As introduction to this debate, which takes place mainly among Roman Catholic theologians but also has not left the Protestant theologians indifferent, see A. Bondolfi, Autonomie et théologie: une alternative pour la morale chrétienne? Présentation et évaluation du débat en cours entre moralistes de langue allemande, in Recherches de sciences religieuses 70 (1982) 161-180; Id., Autonomie et ‘Morale autonome’, Recherches en cours sur un mot clé, in Concilium (1984) 155-164.
justice replace that which autonomy cannot exercise directly. The German debate on the 'Bioethics Convention' and especially on the article that anticipates the regulation of experiments on incapacitated persons has been sufficiently confused precisely since the convention has not been translated. This has prompted confusion between the term 'incapacitated' and 'handicapped'.

Despite these misunderstandings and confusions, one can at any rate note that the German debate on autonomy has nevertheless gained in clarity, insofar as the different authors more or less defend an application of the same principle. They define it as neither the absolute power of self-determination nor as moral autonomy in the Kantian sense of the term. This is pointed out by Birnbacher: “The principle of autonomy has to do less with moral or metaphysical autonomy in the Kantian sense of the term but rather with self-determination in a political and legal sense. This principle demands respect for projects, ideals, the goals and wishes of others, irrespective of the fact that persons have a duty towards those who make these projects, ideals, goals and desires their own.”

3.5. Towards a Global Appreciation

What assessment can be drawn from these few major points in a debate that evidently has not yet reached its conclusion? I will try to formulate some strictly personal comments. First and foremost, one can note that the difficulties that the concept of autonomy encounters in the field of bioethics are linked to the fact that liberal thinking has had objective difficulties of asserting itself in the domain of clinical practice and biomedical research. On the one hand, liberal thinking was confronted with the classic paternalism of the physician-patient relationship and on the other hand with the alleged objectivity of scientific knowledge regarding pathologies which will not allow a discussion on the rationality of a clinical decision.

Secondly, autonomy runs the risk of leading to highly dubious normative results when confronted only with itself and abstracted from any relationship – whether harmonious or conflicting – with other moral principles. In ethics in general or bioethics in particular, all argumentative monism can only be pernicious. One can therefore not adequately defend the principle of autonomy without expressing an opinion on its relationship with the other bioethical principles, even if the answers regarding the relationship can and must be multiple. They cannot shy away from the debate on the relationship between the principles themselves.

Finally, one cannot defend the principle of autonomy if we do not conceive the latter in a relational context. All human beings are autonomous insofar as one understands him or herself to be free in relation with external constraints. In distancing oneself from these constraints the human being acts morally. But if one understands him or herself to be autonomous in the sense that he or she is the source and producer of all moral values, then autonomy will transform itself into autarky. Our human existence is autonomous within the totality of mutual relationships and therefore cannot by definition think itself to be absolute. A bioethics which has this constantly in mind, is able to contribute to a solution, even if only partially, to our daily conflicts.

Not only do our relationships set limits and bring significance to our autonomy, but our limitations are also linked precisely to our capacity to become ill and to die. Our preferences and desires find their limitations in this morbidity and mortality. Despite all this, we can and must continue to understand our existence as being autonomous. But if one looks more closely, one will see that the latter cannot exist without solidarity.

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