

2017

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Recommended Citation

Braudo-Bahat, Yael (2017) "Towards a Relational Conceptualization of the Right to Personal Autonomy," *American University Journal of Gender, Social Policy & the Law*: Vol. 25 : Iss. 2 , Article 1.

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TOWARDS A RELATIONAL CONCEPTUALIZATION OF THE RIGHT TO PERSONAL AUTONOMY

Yael Braudo-Bahat*

ABSTRACT

This Article lays the foundation for a relational conceptualization of the right to personal autonomy, where personal autonomy is perceived as a fluid and dynamic competency, which evolves and flourishes through one's web of relationships. On its face, the more common, liberal conception of personal autonomy seems more fitting for the articulation of the right to personal autonomy, as most Western legal systems are based on liberal grounds. Indeed, several liberal legal scholars have addressed the right to personal autonomy and the state's duty to promote it. Nonetheless, I show that the liberal conception of autonomy is limited in its ability to serve usefully as a basis for the right to personal autonomy, for several reasons. Most notably, as feminist and communitarian critics have highlighted, the liberal conception of personal autonomy is mostly based on an inaccurate perception of persons and autonomy. As shown in this Article, the relational conception of autonomy provides a more complex and accurate

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account of personal autonomy, and thus can serve as a better basis for developing the legal right to personal autonomy. Throughout the Article, I analyze the conditions needed for the development of personal autonomy and define the right to personal autonomy, as well as the role of the state in promoting it. Besides ensuring the availability of a satisfactory variety of options (a condition that has been developed by liberal scholars and embraced by relational ones), the state's responsibility also includes ensuring the availability of constructive relationships through which one's personal autonomy can thrive.

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I. INTRODUCTION

In liberal societies, personal autonomy is considered essential for one's ability to lead a meaningful life. Although it has not been officially recognized in most Western legal systems as a legal right (Israel being an

exception in this regard¹), its significance is often mentioned in cases and legal scholarship. Moreover, some liberal legal scholars advocate the recognition of personal autonomy as a legal right. Joseph Raz, for example, recognizes autonomy as an “ultimate value”² and discusses the state’s ability to promote the personal autonomy of members of the society.³ Although Raz seems reluctant to recognize personal autonomy as a legal right *per se*,⁴ Jeremy Waldron shows that Raz does address a state’s duty to promote its citizens’ autonomy.⁵ More explicitly, Hanoch Dagan addresses a state’s responsibility for actively promoting its citizens’ personal autonomy by providing institutional pluralism.⁶

Despite the apparent centrality of personal autonomy and the emerging recognition of the right to autonomy, and while the liberal conception does provide a preliminary basis for developing the right to personal autonomy,⁷ I argue in this Article that the liberal conception of personal autonomy is insufficient for this task, for several reasons. First, the liberal conception emphasizes a person’s individuality and independence, and portrays autonomy as an internal and isolated process.⁸ Thus, the liberal conception makes it rather difficult to define the role of others, including the state, in actively promoting one’s personal autonomy. Second, the individualistic focus leads to an imprecise conceptualization of personhood and personal autonomy, as in reality persons are not isolated from each other but rather

1. See *infra* notes 56-58 and accompanying text.

2. JOSEPH RAZ, *THE MORALITY OF FREEDOM* 205 (1986).

3. *Id.* at 265, 428. The term “state” in this Article refers generally to a state’s official authorities (such as legislators, courts, executive authorities, policymakers, etc.). In addition, I use the terms “members of the society” and “citizens” interchangeably, but intentionally abstain from defining their scope. The question regarding to whom a state is obliged is substantial but exceeds the goals of this Article, which merely focuses on the definition of a specific right.

4. *Id.* at 247 (arguing that acknowledging the right to personal autonomy requires placing a heavy burden on private persons and not only on the state).

5. See Jeremy Waldron, *Autonomy and Perfectionism in Raz’s Morality of Freedom*, 62 S. CAL. L. REV. 1097, 1123-24 (1988); see also Nicole Hassoun, *Raz on the Right to Autonomy*, 22 EUR. J. PHIL. 69 (2011).

6. Hanoch Dagan, *Pluralism and Perfectionism in Private Law*, 112 COLUM. L. REV. 1409, 1424 (2012) (“An autonomy-based pluralism must take seriously the state’s obligation to provide a sufficiently diverse set of robust legal frameworks for people to organize their lives.”).

7. Mostly, the liberal conceptualization of the right to personal autonomy focuses on state’s responsibility to expand the variety of one’s options, thus promoting her autonomy. See, e.g., RAZ, *supra* note 2, at 205; Dagan, *supra* note 6, at 1424; see also *infra* Section I.C.

8. For further explanation of the critique on the liberal conception of autonomy, see *infra* Part II.

are embedded within networks of relations and relationships.⁹ Basing the conceptualization of the right to personal autonomy on a partial conception of personhood and autonomy might infringe autonomy instead of promoting it.

A more adequate conceptualization of the right to personal autonomy can be provided by the relational account of personal autonomy.¹⁰ As thoroughly discussed throughout this Article, although the relational-autonomy scholars have criticized the liberal conception of personal autonomy, they have not negated the mere significance of personal autonomy. Rather, they developed an alternative conceptualization of personal autonomy — one that highlights the social interactions and relationships through which one's autonomy evolves and develops. While many liberal scholars conceptualize autonomy as a strictly rational and internal process of considering one's options and reflecting upon one's preferences,¹¹ relational scholars conceptualize it as a more dynamic process. Most persons develop their autonomy and reach autonomous decisions by learning from and consulting others. Moreover, persons' emotions and embodiedness (and not just their rationality and reason) influence their decisions, preferences and choices. Nevertheless, conceptualizing persons as inherently relational does not contradict their individuality. On the contrary, the relational conception characterizes persons as both constantly embedded within relationships and distinct from each other; as both independent and interdependent; as both rational and embodied. In other words, personal autonomy in its relational conceptualization is best conceived as a synergy between the individuality and the interconnectedness of persons and personhood. I argue that the conceived synergy should serve as the basis for the articulation of the right to personal autonomy.

Moreover, the relational scholarship views the state as a major actor with which a person interacts, i.e., it considers the relationship with the state as a substantial relationship within which one's personal autonomy is

9. The individualistic focus as well is discussed *infra* Part II.

10. To mention but a fraction of the prominent scholarship on relational autonomy: AUTONOMY, OPPRESSION, AND GENDER (Andrea Veltman & Mark Piper eds., 2014); FEMINISTS RETHINK THE SELF (Diana T. Meyers ed., 1997); RELATIONAL AUTONOMY (Catriona Mackenzie & Natalie Stoljar eds., 2000); MARILYN FRIEDMAN, AUTONOMY, GENDER, POLITICS (2003); DIANA T. MEYERS, SELF, SOCIETY, AND PERSONAL CHOICE (1989); JENNIFER NEDELSKY, LAW'S RELATIONS (2011); John Christman, *Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves*, 117 PHIL. STUD. 143 (2004).

11. See, e.g., GERALD DWORKIN, THE THEORY AND PRACTICE OF AUTONOMY 12 (1988); Harry G. Frankfurt, *Freedom of the Will and the Concept of a Person*, 68 J. PHIL. 5, 20 (1971).

developed. The substantial relationship affords a stronger foundation for the role of the state in promoting personal autonomy than the one provided by the liberal conception. However, since most of the scholarship on relational autonomy is philosophical, it rarely deals with public policy. Consequently, it has not yet directly addressed personal autonomy as a legal right. Although legal scholar Jennifer Nedelsky draws a connection between relational autonomy and legal discourse in her groundbreaking book *Law's Relations*,¹² she does not explicitly develop the right to personal autonomy. My aim in this Article, therefore, is to re-conceptualize the legal right to personal autonomy and state's responsibility to promote it, based on the theoretical literature on relational autonomy. The Article proceeds as follows. In Part I, I briefly discuss the liberal conception of personal autonomy and the definition it provides for the state's role in promoting it. Part II addresses the limits of the liberal conception of personal autonomy, mainly by discussing its feminist critiques. Part III explores the relational conception of personal autonomy, as developed in the literature thus far. Part IV introduces the preliminary relational conceptualization of the right to personal autonomy and of the state's role in promoting it. The last Part concludes by pointing to the need for further development of the relational conceptualization of the right to personal autonomy in various legal contexts.

II. THE LIBERAL CONCEPTION OF PERSONAL AUTONOMY

A. *Personal Autonomy in a Nutshell*

Liberal scholarship defines personal autonomy as the ability of a person to be the author of her own life, determine her "self-law,"¹³ and make her own choices. The autonomous ideal, according to Raz, is a person's control over her own destiny, by an ongoing series of choices throughout her life.¹⁴ Such choices may be anecdotal or substantial, and either short- or long-term.¹⁵ Philosopher Harry Frankfurt adds to the definition the consistency and coherency of such choices with a person's values, identity

12. NEDELSKY, *supra* note 10 (uncovering the inherent limits of the liberal conceptualization of autonomy and rights in legal discourse and advocating their reconceptualization in relational terms); *see also* Pamela Laufer-Ukeles, *Reproductive Choices and Informed Consent: Fetal Interests, Women's Identity, and Relational Autonomy*, 37 AM. J.L. & MED. 567 (2011).

13. DWORKIN, *supra* note 11, at 12. "Self-law" the literal meaning of "autonomy": auto=self; nomy=law. Note that this Article focuses on personal autonomy rather than moral autonomy.

14. RAZ, *supra* note 2, at 369.

15. Waldron, *supra* note 5.

and morality.¹⁶ Personal autonomy, in other words, relates to the ability to live according to a self-made life-plan while making concrete choices that conform with it.

In order to lead an autonomous life, a person's considerations, volitions, and preferences should be authentic, i.e., should be the product of her free will rather than formed by coercion or manipulation.¹⁷ As we shall see, there is no need for one's choices to be "clean" of external social influences, but they should be consciously and actively formulated, examined and chosen by the person herself. Choices that a person is coerced into making are not authentic and therefore not autonomous.¹⁸ Similarly, choices that are the result of manipulation are not autonomous either.¹⁹ At the basis of the conceptualization of autonomy lies the rational and reasonable individual agent. The agent is able to consider the possible consequences of her choices and verify the coherence between her choices and her preferences, as well as between her choices and her life-plan.²⁰ Her rationality and reason enable the agent to distinguish herself from others, develop her independent opinions and unique character, and be enterprising and innovative.²¹ They also enable her to be responsible for her own actions and choices.²²

Liberal scholars also address the personal relations and social connections that influence one's autonomy. Philosopher Gerald Dworkin, for example, discusses such influences on one's choices and preferences. Rational choice, according to Dworkin, includes, inter alia, the norms, values and rules that are learned and acquired from one's social environment.²³ Although the agent cannot control these norms and values, they do not infringe one's autonomy. On the contrary, autonomy should be realistic and viable, and if a condition for autonomy were to be a complete independence of one's choices from her social environment, it could not be

16. Frankfurt, *supra* note 11.

17. On authenticity, see John Christman, *Autonomy in Moral and Political Philosophy*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2011), <http://plato.stanford.edu/archives/spr2011/entries/autonomy-moral/>.

18. RAZ, *supra* note 2, at 150-57.

19. *Id.* at 377-78. Manipulation is the use of tactics aimed at changing one's preferences and making her choose options that she otherwise would not have chosen.

20. JOHN RAWLS, *POLITICAL LIBERALISM* 47-53 (1992).

21. JOHN S. MILL, *ON LIBERTY* 17-18 (2d ed. 1863).

22. Thomas C. Heller & David E. Wellbery, *Introduction*, in *RECONSTRUCTING INDIVIDUALISM: AUTONOMY, INDIVIDUALITY, AND THE SELF IN WESTERN THOUGHT* 1, 1-2 (Thomas C. Heller, David E. Wellbery & Morton Sosna eds., 1986).

23. DWORKIN, *supra* note 11, at 12.

achieved.²⁴ Moreover, according to Dworkin, autonomy, having a central personal value, should be consistent with other substantial values, such as loyalty, commitment and love.²⁵ Dworkin therefore contends that considering others' needs is a legitimate part of the autonomous process of decision-making.²⁶

Raz also refers to the connection between personal autonomy and one's relationships. He argues that in order to be autonomous, one needs be able to develop relationships and constitute long-term projects and commitments.²⁷ For those projects and commitments to be successful and meaningful, they should conform to social norms.²⁸ Of course, one can reject some of those norms, but in order to succeed it is crucial that at least some personal goals conform to them; otherwise, the person might constantly fail to achieve her goals. Such failures might lead to the infringement of her personal welfare and autonomy. Since social norms influence one's relationships, choices, goals and commitments, and all of those influence her autonomy,²⁹ Raz concludes, the ideal of personal autonomy does not resonate with extreme individualism.³⁰

B. The Conditions for Personal Autonomy: The Procedural Account of Autonomy

Some liberal scholars have articulated the conditions that are required for leading autonomous lives and making autonomous decisions. This branch of scholarship is referred to as the procedural account of autonomy.³¹ According to this account of autonomy, autonomous decisions should be made through a process of internal consideration of a person's desires and preferences. The internal consideration process is known as "critical reflection," and it includes the examination of the preferences, as well as the way in which they have been formed, their advantages and their costs. The ability to critically consider the preferences, their sources and consequences makes a person autonomous. Such a process is required for concrete choices, as well as for determining one's long-term life-plan.³² When conducted rationally and reasonably, critical reflection enables a

24. *Id.* at 7.

25. *Id.* at 12.

26. *Id.* at 21-23.

27. RAZ, *supra* note 2, at 154, 383.

28. *Id.* at 308.

29. *Id.* at 350.

30. *Id.* at 205-06.

31. See DWORKIN, *supra* note 11; Frankfurt, *supra* note 11.

32. DWORKIN, *supra* note 11, at 7-12, 17.

person to distinguish between her immediate desires and her volitions.³³ Critically reflecting on them enables the development of one's authentic preferences and ultimately results in rational and autonomous decisions.³⁴

Critical reflection also enables the formation of a variety of options from which one can choose the most preferable. Raz argues that a person cannot be autonomous and make autonomous choices unless she has an adequate variety of options.³⁵ Those options can be short- or long-term,³⁶ and they should be sufficiently distinct from one another.³⁷ Like autonomy in general, those options too are influenced by a person's social environment and one's commitments to others.³⁸ Moreover, Raz emphasizes that in order to be autonomous, a person must be aware of the existing options: the mere existence of options is not enough.³⁹ Unawareness can stem from ignorance or from blindness to existing options.⁴⁰ The lack of an adequate variety of options, either objectively or subjectively, infringes one's ability to lead an autonomous life.

For one to adequately conduct a process of critical reflection and form her variety of options, she needs to be competent. Such competency is defined in liberal scholarship as a cognitive capacity that enables a person to identify her options, create new ones, critically consider them, and eventually choose and execute the preferable one.⁴¹ In this context, as well, a person's rationality and reason are considered the main qualities that enable a person to be aware of her desires, volitions and preferences and to distinguish between them, i.e., they are central and crucial for the ability to

33. For further discussion on the differences between first-order desires and second-order volitions, see Frankfurt, *supra* note 11.

34. DWORKIN, *supra* note 11, at 20.

35. RAZ, *supra* note 2, at 204, 273. It bears mention that too wide a variety of options might make the choice between them rather difficult and thus infringe autonomy instead of enhancing it. See BARRY SCHWARTZ, *THE PARADOX OF CHOICE: WHY MORE IS LESS* (2004); Hanoch Dagan, *The Utopian Promise of Private Law*, 66 U. TORONTO L.J. 392, 412 n.66 (2016); Maytal Gilboa & Omer Y. Pelled, *Optimizing Autonomy in the Law* (July 31, 2016) (unpublished manuscript) (on file with author) (arguing that expanding one's options also creates substantial costs, such as mental costs of making a decision, costs of regretting one's choice after it has been made, information costs, and risk-of-error costs). It is extremely difficult to explain what is considered too wide a variety, and I therefore leave it outside the scope of the current Article.

36. RAZ, *supra* note 2, at 374.

37. *Id.* at 375.

38. *Id.* at 154, 383.

39. *Id.* at 371 ("To choose one must be aware of one's options.").

40. *Id.* at 382 (referring to such blindness as "self-deception").

41. See MILL, *supra* note 21; RAZ, *supra* note 2, at 343-71.

be autonomous.⁴²

In addition, both critical reflection and the formation of a variety of options should be independent of coercion and manipulation. Some authors refer to such independence as “procedural independence.”⁴³ According to Raz, coercion narrows the variety of options, since some options become unavailable.⁴⁴ Coercion also infringes the process of critical reflection, since even if one has several options the coercion substantially subverts her preferences and choices.⁴⁵ Similarly, manipulation infringes procedural independence, as it leads a person to develop preferences and options that would not have been developed (or chosen) otherwise.⁴⁶

C. The State’s Responsibility Under the Liberal Conception of Personal Autonomy

The conditions discussed in the previous Section provide a preliminary basis for developing the legal right to personal autonomy and defining the state’s duty to promote it. Indeed, some liberal legal scholars have addressed several aspects of those right and duty, focusing mainly on the responsibility of the state and other actors to expand a person’s variety of options.⁴⁷ Raz, for example, demonstrates the state’s responsibility for expanding citizens’ variety of options by advocating the recognition of gay marriage. He argues that when states avoid such recognition they prevent gay people from enjoying the benefits of marriage as a legally and socially recognized institution. This narrows their variety of options and infringes their personal autonomy.⁴⁸ Interestingly, when recently holding that preventing gay marriage is unconstitutional, the U.S. Supreme Court related as well to the need to enhance gay couples’ autonomy by providing them with the ability to choose to marry (along with other options for

42. Frankfurt, *supra* note 11, at 11-12.

43. See DWORKIN *supra* note 11; RAZ, *supra* note 2, at 377-78.

44. See RAZ, *supra* note 2, at 377; see also Harry Frankfurt, *Alternate Possibilities and Moral Responsibility*, 66 J. PHIL. 829, 830-31 (1969).

45. The most obvious example is the choice to give in to a robber’s demands in order to save one’s life.

46. See RAZ, *supra* note 2, at 377; see also Irving Thalberg, *Hierarchical Analyses of Unfree Action*, 8 CAN. J. PHIL. 211, 217 (1978).

47. See generally Waldron, *supra* note 5, at 1120-22.

48. See RAZ, *supra* note 2, at 205-07; see also Shahar Lifshitz, *The Pluralistic Vision of Marriage*, in MARRIAGE AT THE CROSSROADS: LAW, POLICY, AND THE BRAVE NEW WORLD OF TWENTY-FIRST-CENTURY FAMILIES 260 (Elizabeth Scott & Marsha Garrison eds., 2012) (regarding the need for institutional pluralism with regard to regulating and formulating spousal relationships).

formalizing their relationships), thus expanding their variety of options.⁴⁹

Dagan addresses another aspect of the state's responsibility for expanding persons' variety of options by focusing on institutional pluralism with regard to contracts and property.⁵⁰ According to Dagan, the state has to provide its citizens with a variety of legal institutions that enable them to choose their preferable and suitable ways for designing their relationships with others. A monistic approach to contracts and property narrows those options, infringes citizens' autonomy, and might lead to an inadequate formation of contractual and property relationships. Dagan therefore advocates an institutional pluralism in both legal branches and casts this responsibility on the state. In a recent article, Dagan and Avihay Dorfman develop the notion of relational justice and expand the active responsibility of promoting personal autonomy from the state to other persons as well.⁵¹ Mainly, they focus on the duty of persons to accommodate each other's choices (though not in an unlimited manner⁵²). State's responsibility in this regard is to formulate the legal schemes that cast such horizontal duties and to enforce them.

Another significant example of promoting the right to personal autonomy lies within the doctrine of informed consent.⁵³ In a nutshell, this doctrine aims at promoting one's autonomy by requiring hospitals and physicians to disclose the information on one's medical condition and the various available treatment options. Disclosure enables her to autonomously choose the treatment she prefers.⁵⁴ When harm is caused by medical treatment that has not been consented to, the injured individual is entitled to compensation even if the physician and hospital were not negligent.⁵⁵ The Israeli Supreme Court has further developed the informed consent doctrine and determined that the absence of informed consent in

49. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015) (Kennedy, J.).

50. See Hanoch Dagan, *Autonomy, Pluralism, and Contract Law Theory*, 76 LAW & CONTEMP. PROBS. 19 (2013); Dagan, *supra* note 6.

51. Hanoch Dagan & Avihay Dorfman, *Just Relationships*, 116 COLUM. L. REV. 1395 (2016).

52. *Id.* at 1422-24.

53. For a discussion on the connection between informed consent and personal autonomy, see RUTH FADEN & TOM BEAUCHAMP, *A HISTORY AND THEORY OF INFORMED CONSENT* 235 (1986). The example of informed consent will also be referred to in a further part of this Article. See *infra* Section IV.B. It should nevertheless be emphasized that informed consent serves in this Article as a mere example, and is therefore not thoroughly developed and discussed.

54. One of the American landmark cases in this context is *Canterbury v. Spence*, 464 F.2d 772, 787 (D.C. Cir. 1972).

55. PAUL S. APPELBAUM, CHARLES W. LIDZ & ALAN MEISEL, *INFORMED CONSENT: LEGAL THEORY AND CLINICAL PRACTICE* 13-14 (1987).

and of itself constitutes a compensable tortious wrongdoing — even when no physical damage was caused, and even when it can be proven that the patient would have chosen the same treatment if her informed consent had been obtained.⁵⁶ The Court based its ruling on the acknowledgement of the right to personal autonomy, infringement of which is compensable.⁵⁷ As far as I know, Israel is the only legal system that has thus far officially established the right to personal autonomy in the informed consent context,⁵⁸ but nonetheless, informed consent is considered a prominent doctrine in most Western legal systems. It can therefore be argued that most legal systems acknowledge, albeit unofficially and indirectly, some form of the right to personal autonomy.

The examples discussed above highlight two major ways in which the state can and should actively promote personal autonomy: direct and indirect. As regards institutional pluralism, the responsibility to promote personal autonomy is cast directly upon the state: it should provide an adequate variety of legal options to regulate spousal, contractual and property relations. As regards relational justice and informed consent, the duty falls upon private people and upon private (or semi-private) institutions. The duty of the state in the latter cases is to define the personal and institutional duties and enforce them. Whether casting a direct or indirect duty upon the state, the liberal conception of personal autonomy can serve as a preliminary basis for the articulation of the legal right to personal autonomy.

Nevertheless, the liberal articulation of this right is insufficient, since it focuses mostly (and almost exclusively) on the variety of available options, and on the state's and others' responsibility to expand it. The variety of options is, of course, crucial for autonomy, as one cannot act autonomously when lacking adequate options, but it is not enough: other conditions — namely conducting critical reflection processes and developing a competency for autonomy — are also needed. However, under the liberal conception of personal autonomy it is rather difficult to conceptualize and define the state's (or others') duty to promote the other conditions of autonomy: those conditions are considered internal and independent, and thus the involvement of the state (or others) in such processes can be

56. See CA 2781/93 Daka v. Carmel Hosp. 53(4) PD 526 (1996) (Isr.); Assaf Yaakov, *The Daka Case: The Metamorphosis of the Right to Autonomy*, 52 MISHPATIM [HEBREW U. L. REV.] 5 (2012) (Isr.).

57. The right to personal autonomy has gradually been expanded in Israeli legal discourse to non-medical cases as well. See, e.g., CA 1138/97 Tnuva v. Rabi 57(4) PD 673 (2003) (Isr.) (ruling that withholding information on adding silicone to drinking milk infringes peoples' autonomy to choose whether or not to consume the milk).

58. See Yaakov, *supra* note 56, at 5, 81.

understood as manipulation or even coercion. This limitation of the liberal conception of personal autonomy is discussed in the next Part.

III. THE LIMITS OF THE LIBERAL CONCEPTION

A. The Dominance of Individualism

Many critiques have been voiced against the individualistic nature of personal autonomy, as constructed in liberal scholarship.⁵⁹ Some of them are specifically directed at the conceptualization of the autonomous process as an internal, Cartesian process: the person is usually perceived, according to the critics, as an inner citadel, in which the process takes place.⁶⁰ The problem with such conceptualization is twofold. First, it limits the ability to articulate state's (and others') duty to actively promote personal autonomy, since such involvement might be perceived as coercion and manipulation, as mentioned above. Second, it conveys a partial and inaccurate image of personhood and autonomy. In reality, a major part of one's choices and preferences evolve and take form through discussion of them with others, consultation with others, and more broadly — interaction with others.⁶¹ An inaccurate conception of personhood and personal autonomy, as Nedelsky warns us, leads to an inaccurate conceptualization of legal rights.⁶² Most notably, it might lead to an inaccurate conceptualization of the legal right to personal autonomy.

Alongside the critiques on the individualistic nature of the autonomous process, some feminist critiques also focus on the separation between autonomy, dependence and care. Philosopher Loraine Code points out that interdependence, which is inherent to interpersonal relationships, is conceived by many liberal scholars as a threat to personal autonomy.⁶³

59. Such critiques have been voiced by communitarian scholars, such as MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982), and CHARLES TAYLOR, *What Is Human Agency*, in 1 *PHILOSOPHICAL PAPERS: HUMAN AGENCY AND LANGUAGE* 15 (1985). They are also found in scholarship on identity politics, *see, e.g.*, IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990), as well as in feminist scholarship, *see, e.g.*, FRIEDMAN, *supra* note 10 (providing an overview of feminist critiques); Marilyn Friedman, *Autonomy and Social Relationships: Rethinking the Feminist Critique*, in *FEMINISTS RETHINK THE SELF*, *supra* note 10, at 40 (same). The discussion in this Article focuses mainly on the feminist critiques.

60. Annette C. Baier, *Cartesian Persons*, 10 *PHILOSOPHIA* 169 (1981); Marina A.L. Oshana, *Personal Autonomy and Society*, 29 *J. SOC. PHIL.* 81 (1998); Natalie Stoljar, *Informed Consent and Relational Conceptions of Autonomy*, 36 *J. MED. & PHIL.* 375 (2011).

61. NEDELSKY, *supra* note 10, at 59-60; Stoljar, *supra* note 60.

62. NEDELSKY, *supra* note 10, at 38.

63. LORRAINE CODE, *WHAT CAN SHE KNOW? FEMINIST THEORY AND THE*

Nedelsky shows as well that in Western culture a person is considered autonomous if she is free from collective and community constraints.⁶⁴ However, as Nedelsky argues, no person is completely independent from others, and more importantly, the development of personal autonomy stems from — and occurs within — the dependency of people on one another.⁶⁵ Philosopher John Christman makes a similar contention, arguing that each person is inherently dependent on other persons, institutions, social groups, social norms, etc., and that consequently the development of one's personal autonomy depends on all of those.⁶⁶ In other words, conceiving autonomous persons as inherently independent and disconnected from each other leads to a misconception of personhood and personal autonomy, and might therefore lead to a misconception of the right to personal autonomy.⁶⁷

Another strand of critiques focuses on the abstractness of the autonomous person. As a part of the internal, individualistic conceptualization of the autonomous person, liberal scholarship emphasizes the person's rationality and reason, while ignoring physical and emotional aspects. The abstract person lacks any characteristics that distinguish her from other persons, such as color, sex, gender, physical disabilities, emotions and feelings; and ignorance of physical or emotional aspects serves as the basis for the liberal conceptualization of equality and rights.⁶⁸ However, as feminist scholars argue, this abstract image of persons and personhood actually leans on the image of white men.⁶⁹ Consequently, women and other social minorities that are identified with

CONSTRUCTION OF KNOWLEDGE 79 (1991); Lorraine Code, *The Perversion of Autonomy and the Subjection of Women: Discourses of Social Advocacy at Century's End*, in RELATIONAL AUTONOMY, *supra* note 10, at 181.

64. NEDELSKY, *supra* note 10, at 52 (using the image of the isolated Marlboro man as a symbol of the aspiration to independence and autonomy).

65. *Id.* at 28.

66. John Christman, *Autonomy, Independence, and Poverty-Related Welfare Policies*, 12 PUB. AFF. Q. 383 (1998).

67. See FRIEDMAN, *supra* note 10, at 47-50. Note that Dagan and Dorfman attribute the separation between autonomy and dependence to the libertarian conception of autonomy rather than to the liberal one. See Dagan & Dorfman, *supra* note 51, at 1414-15.

68. See NEDELSKY, *supra* note 10, at 161. But see Dagan & Dorfman, *supra* note 51, at 1414-17 (arguing that a profound account of liberal equality does not disregard differences between persons, and that persons should respect others as equals regardless of such differences).

69. See, e.g., MARTHA MINOW, MAKING ALL THE DIFFERENCE 51 (1990); Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7, 8 (1989).

physical and emotional characteristics are considered less autonomous, and are thus exposed to being treated paternalistically.⁷⁰ It is also harder for those groups to identify with the prevailing conception of personal autonomy.

Moreover, the abstract conception of the autonomous person directly influences the conceptualization of the autonomous process. Here as well, the liberal conception emphasizes the intellectual, rational and reasonable aspects of the process, while ignoring its physical and emotional aspects.⁷¹ The autonomous process, according to relational scholars, is not just intellectual and not influenced only by reasonable considerations. Rather, it is also influenced by the person's concrete physical characteristics (such as sex, color, body size, etc.), as well as constant and temporal physical conditions (such as disability, hormonal changes, fatigue, physical strength, sickness, health, etc.).⁷² It is also influenced by a person's emotional state: happy, excited, sad, angry, confident or worried. Any attempt to disconnect the body and the emotions and base the process of autonomous decision-making on rationality and reason alone might lead to less than optimal decisions.⁷³

It should be noted that some of the abovementioned critiques were criticized for presenting a "caricature" of the liberal conception and disregarding the ways in which many liberal scholars relate to the influence of personal relations and social connections on personal autonomy.⁷⁴ Nonetheless, the critiques of the highly-individualized conception of autonomy are mostly justified. Although liberal scholars have dealt with some relational aspects of autonomy, they have indeed failed to conceptualize the complex connection between persons' autonomy and

70. See SARA RUDDICK, *MATERNAL THINKING: TOWARD A POLITICS OF PEACE* 194 (1989); IRIS YOUNG, *ON FEMALE BODY EXPERIENCE: "THROWING LIKE A GIRL" AND OTHER ESSAYS* (2005); Natalie Stoljar, *Autonomy and the Feminist Intuition*, in *RELATIONAL AUTONOMY*, *supra* note 10, at 94, 106; Young, *supra* note 59, at 96-121 (1990).

71. CODE, *supra* note 63, at 110-72; NEDELSKY, *supra* note 10, at 50, 162; Oshana, *supra* note 60, at 83-86; Stoljar, *supra* note 70.

72. Diana Tietjens Meyers, *Decentralizing Autonomy: Five Faces of Selfhood*, in *AUTONOMY AND THE CHALLENGES TO LIBERALISM* 27, 31 (John Christman & Joel Anderson eds., 2005).

73. NEDELSKY, *supra* note 10, at 164-65 (citing ANTONIO DAMASIO, *DESCARTES' ERROR: EMOTION, REASON AND THE HUMAN BRAIN* (2008)); see also Susan J. Brison, *Outliving Oneself: Trauma, Memory and Personal Identity*, in *FEMINISTS RETHINK THE SELF*, *supra* note 10, at 12 (arguing that a detachment from one's body is a symptom of post-trauma, rather than a healthy decision-making procedure).

74. See FRIEDMAN, *supra* note 10, at 87-88; Catriona Mackenzie & Natalie Stoljar, *Introduction*, in *RELATIONAL AUTONOMY*, *supra* note 10, at 3, 5.

their relationships.⁷⁵ More specifically, most liberal scholars have not sufficiently addressed the concrete, dynamic ways in which personal autonomy evolves, develops and changes through the interactions with others and within the networks of personal and social connections and relationships. Even Dagan and Dorfman's account of relational justice, while indeed tying between relationships and personal autonomy in a more complex manner than most liberal scholars, does not address the ways in which autonomous processes are conducted *through* personal relationships and interactions. Consequently, and although casting a personal duty to accommodate others' choices and respect others' autonomy, Dagan and Dorfman as well disregard the active role of others in one's autonomous processes and the duties derived from this role. This limits the ability to articulate a comprehensive legal right to personal autonomy based on its liberal conception.

B. The Failure to Address Socialization and Its Consequences

Critics of the liberal conception of autonomy have also highlighted liberal scholarship's inadequate attention to the problem of socialization. Philosopher Diana Meyers defines socialization as the delicate social processes that are hard to notice and pinpoint but nonetheless tremendously influence a person's belonging to her community.⁷⁶ These processes are embedded in wide social systems and in many social arenas (such as the family, the workplace, the community, the media, popular culture, and so on), and formulate one's preferences, values, beliefs, aspirations, etc. Socialization is crucial for one's self-development and autonomy, as it enables her to situate herself within a specific community and society and enjoy a feeling of belonging and confidence, while acquiring an education and absorbing social values.⁷⁷ One cannot realistically avoid socialization, and any attempt to avoid it might lead to isolation that infringes autonomy.⁷⁸

However, socialization also has some dark sides. Under its influence, it is hard to distinguish between one's authentic choices and choices that stem from coerced adaptation to social norms. Moreover, under strong socialization persons might choose to live a life that cannot be regarded as autonomous.⁷⁹ Socialization might lead a woman, for example, to conform

75. See FRIEDMAN, *supra* note 10, at 95.

76. MEYERS, *supra* note 10, at 26.

77. *Id.* at 189-202; Paul Benson, *Oppressive Socialization*, 17 SOC. THEORY & PRACTICE 385 (1991).

78. MEYERS, *supra* note 10, at 189-202.

79. See Benson, *supra* note 77; Oshana, *supra* note 60; Stoljar, *supra* note 70.

to coercive social norms of feminine beauty,⁸⁰ to adopt a subservient stance in her social role as a woman,⁸¹ and so on. These aspects of socialization have served as the basis for critiques on the content neutrality of the procedural approach to personal autonomy, i.e., its focus on the process rather than on the process's outcome.⁸² Due to content neutrality, according to the critiques, non-autonomous outcomes might be wrongfully conceived as autonomous, merely because they are the product of a reflective process. It should be noted, however, that what is considered a non-autonomous choice as well as what is considered coercive socialization are difficult and complex questions. Not surprisingly, even those who criticize the content neutrality of the procedural approach rarely offer a conclusive distinction between autonomous and non-autonomous choices or between benign and coercive socialization.⁸³

Christman offers a defense against the substantive critique of the procedural account of personal autonomy.⁸⁴ First, he criticizes the substantive approach, arguing that it is paternalistic: it coerces specific values on a person rather than respect her own values and choices.⁸⁵ Therefore, according to Christman, the substantive approach might infringe personal autonomy. Second, he argues, if as a part of one's critical reflection one critically examines the socialization and specifically the social norms that led her to formulate specific options and make a specific choice, she acts autonomously.⁸⁶ A critical examination of the impact of socialization includes, *inter alia*, the ability to imagine a different choice under different circumstances.⁸⁷ When one does so, a choice that conforms

80. Benson, *supra* note 77.

81. Stoljar, *supra* note 70.

82. The content-neutrality critique is not unique to feminist or relational scholarship, but is also voiced by liberal scholars who take a substantive approach to autonomy and object to the content-neutral approaches. *See, e.g.*, Sigurdur Kristinsson, *The Limits of Neutrality: Toward a Weakly Substantive Account of Autonomy*, 30 CAN. J. PHIL. 257 (2000); Robert Young, *Autonomy and Socialization*, 89 MIND 356 (1989); Robert Young, *The Value of Autonomy*, 32 PHIL. Q. 35 (1982). However, it bears emphasis that these liberal scholars, like their procedural counterparts, also conceive personal autonomy as internal and individualistic.

83. *See* Paul Benson, *Free Agency and Self-Worth*, 91 J. PHIL. 650 (1994); Stoljar, *supra* note 70.

84. Christman, as we have seen above and shall see in further parts of this Article, is considered a relational scholar. Nonetheless, some parts of his account of personal autonomy, specifically his approach to socialization, are closer to the liberal conception of autonomy.

85. Christman, *supra* note 10, at 158.

86. *Id.* at 154.

87. *Id.* at 155; John Christman, *Autonomy and Personal History*, 21 J. PHIL. 1, 10

to social norms constitutes an autonomous endorsement of those norms. Similarly, one can endorse subservient relations, if the endorsement is the product of an adequate critical reflection on socialization and its influences.⁸⁸

The endorsement defense invites further critiques. The assumption that each person can simply examine her socialization and its consequences is based on the internal isolated image of the autonomous process, discussed in the previous Section. It overlooks the ways in which the autonomous process is embedded in the same connections, relationships and social norms that are supposed to be critically reflected upon. In other words, the process itself and the very ability to reflect are tremendously influenced by socialization. Moreover, the stronger and more coercive the socialization, the harder it is to notice it and its consequences; and even if it can be noticed and critically examined, it is extremely hard to resist it. Thinking of non-resistance to socialization as its autonomous endorsement might strengthen it and its coercive consequences instead of weakening it and enabling one to resist it.⁸⁹

Such an assumption of alleged endorsement of coercive socialization has also been criticized for leading to the abuse of the concept of free choice in order to justify women's social subservience and discrimination. For instance, the decision of women to be stay-at-home moms and give up their own careers,⁹⁰ to apply to less competitive (and less rewarding) jobs,⁹¹ or to stay with their abusive spouses⁹² — all can be considered autonomous choices under the procedural content-neutral account. Therefore, all can be considered as an endorsement of subservient social norms. Of course, at least some of those choices might be genuinely and authentically autonomous, but under strong socialization it is hard to tell to what extent one can critically reflect on one's socialization — and to what extent one can resist it.⁹³

Another critique of Christman's argument that socialization can be reflected upon addresses the impact of a person's socioeconomic status on her ability to conduct any such reflection. To critically reflect on social

(1991); John Christman, *Liberalism and Individual Positive Freedom*, 101 ETHICS 343, 346-47 (1991).

88. Christman, *supra* note 10, at 154.

89. Andrea C. Westlund, *Rethinking Relational Autonomy*, 24 HYPATIA 26 (2009).

90. See JOAN WILLIAMS, UNBENDING GENDER 37-39 (2000).

91. See Vicky Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990).

92. See FRIEDMAN, *supra* note 10, at 144.

93. Benson, *supra* note 77.

norms, one must be aware of them, recognize them and realize their consequences. Such awareness might be a privilege of the stronger, more educated social groups.⁹⁴ The ability of underprivileged social groups to recognize socialization and its consequences and include them within the critical reflective process might be limited (or conceived as limited). A similar limitation may result from the lack of adequate material resources.⁹⁵ When a person invests her cognitive and emotional efforts in survival and obtaining the basic needs for her and her family, she is less able to dedicate them to conducting reflective processes.⁹⁶ The liberal conception of personal autonomy rarely properly addresses these significant aspects of socialization and a shortage of material resources.⁹⁷

Now, there is a catch: on the one hand, if we assume that any and every person can be aware of socialization, then subservient choices made by members of underprivileged groups might be considered an endorsement of coercive socialization. This consideration might strengthen those groups' social marginalization. On the other hand, if we acknowledge their difficulty in recognizing socialization and critically reflecting upon it, those groups might be considered non-autonomous, thus justifying a paternalistic approach towards them. Either way, the liberal procedural content-neutral account of autonomy infringes the ability of members of such groups to develop their personal autonomy. Add to that the limited role of the state under the liberal, individualistic conceptualization of the right to personal autonomy, and the result is that underprivileged groups are left to deal with the harmful impacts and consequences of socialization on their own.

The critiques that have been discussed thus far, namely the dominance of individualism and the failure to address the consequences of socialization

94. FRIEDMAN, *supra* note 10, at 45-47; Benson, *supra* note 83, at 654-55. It bears mention that Friedman takes a procedural approach to autonomy, but adapts it to the relational conception of autonomy, *inter alia* by directly addressing the challenges of socialization. See Marilyn Friedman, *Relational Autonomy and Independence*, in AUTONOMY, OPPRESSION, AND GENDER, *supra* note 10, at 42.

95. See FRIEDMAN, *supra* note 10, at 18; Carolyn McLeod & Susan Sherwin, *Relational Autonomy, Self-Trust, and Health Care for Patients Who Are Oppressed*, in RELATIONAL AUTONOMY, *supra* note 10, at 259, 261; see also Menachem Mautner, *A Liberalism of Flourishing* (Nov. 17, 2015) (unpublished manuscript) (on file with author) (referring to the centrality of social and material resources in the philosophical current usually referred to as "liberalism of flourishing" — as opposed to liberalism of autonomy).

96. See Eldar Shafir, *Poverty and Civil Rights: A Behavioral Economics Perspective*, 2014 U. ILL. L. REV. 205, 206, 213-15 (2014).

97. Raz only briefly and anecdotally mentions the infringement to autonomy caused when a person needs to focus on her basic survival. See RAZ, *supra* note 2, at 155; see also A.L.H. Hart, *Between Utility and Rights*, 79 COLUM. L. REV. 828, 836 (1979).

and a shortage of material resources, reveal some of the limitations of the liberal conception of autonomy as the basis for the right to autonomy. As mentioned above, a partial and inaccurate conceptualization of personal autonomy is not merely a theoretical problem, but rather determines the formulation of legal rights, specifically the right to personal autonomy. Therefore, an alternative, more adequate theoretical ground is required for developing the right to personal autonomy. Such is provided by the relational conception of personal autonomy, which emerged from the feminist critiques and is further discussed in the next Part.

IV. THE RELATIONAL CONCEPTION OF PERSONAL AUTONOMY

A. Finding One's Own Law

Most feminist scholars who have criticized the liberal conception of personal autonomy have not argued that autonomy should be neglected.⁹⁸ On the contrary, they have advocated for the intrinsic value of personal autonomy and shown that women need personal autonomy in order to define their own lives — lives that are as free as possible from coercion.⁹⁹ The concept of autonomy is crucial for identifying the causes of women's subjection,¹⁰⁰ as well as combating them.¹⁰¹ Consequently, out of the feminist critiques of the liberal conception of personal autonomy, a new current emerged during the 1980s: relational autonomy. Relational autonomy has included personal autonomy within the feminist movement, while adapting it to feminist principles.¹⁰² Contrary to the liberal, individualistic conception of autonomy, the relational conception highlights the relational nature of persons, and the development of their identity and autonomy through social connections and relationships with others. Being a part of relationships and social networks makes all persons interdependent; however, interdependence does not infringe their autonomy, but is rather simply an inherent part of their personhood.¹⁰³

98. Mackenzie & Stoljar, *supra* note 74, at 3, 5. *But see* SARA HOAGLAND, *LESBIAN ETHICS: TOWARD NEW VALUE* 144-47 (1988) (suggesting that the concept of autonomy be replaced with the concept of "autokoenony," i.e., the community-self).

99. *See* NEDELSKY, *supra* note 10, at 43-44.

100. Mackenzie & Stoljar, *supra* note 74, at 3-4.

101. Marilyn Friedman, *Autonomy, Social Disruption and Women*, in *RELATIONAL AUTONOMY*, *supra* note 10, at 35, 47.

102. *Id.* at 36-37. At about the same time other liberal conceptions, such as justice, privacy and equality, were criticized by feminist scholars, who suggested their new, feminist conceptualization. *See, e.g.*, ANITA ALLEN, *UNEASY ACCESS* (1988) (privacy); SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989) (justice); Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279 (1987) (equality).

103. CODE, *supra* note 63, at 71-105; NEDELSKY, *supra* note 10, at 28; Baier, *supra*

According to the relational scholarship, autonomy emerges, develops and transforms through those relationships and connections, and through a person's interactions with other persons, such as family, friends, community members, employers, colleagues and employees, the state, public and private institutions, and so on.¹⁰⁴

Nedelsky clarifies the significance of relationships by challenging the basic liberal definition of autonomy as determining one's own law. According to Nedelsky, one cannot *determine* her own law, but rather must search and *find* it.¹⁰⁵ The law is not formed within the person and she does not choose it: there is no "menu" of laws. Rather, the self-law is formulated through a person's constant understanding of the social connections, powers and structures, as well as the relationships in which she is embedded, combined with her constant interaction with other persons and institutions.¹⁰⁶ Since relationships and social structures and connections are dynamic and change over time, so does one's own law. Finding it, according to Nedelsky, is a lifelong dynamic project.¹⁰⁷ The relational account of autonomy, then, does not assume the mere existence of personal autonomy or a "self-law," but rather constantly asks how both are developed, what kind of relationships nurture them, and what kind of relationships infringe them.¹⁰⁸

Several relational scholars have endorsed the procedural account of personal autonomy, while adapting it to the relational conception of autonomy. They have included variety of options, the autonomous reflective process and the competency to act autonomously among the conditions needed for autonomy, but have also emphasized the role of relationships in promoting (or withholding) those conditions.¹⁰⁹ The

note 60, at 180 ("A person, perhaps, is best seen as one who was long enough dependent upon other persons to acquire the essential arts of personhood. Persons essentially are *second* persons, who grow up with other persons.").

104. NEDELSKY, *supra* note 10, at 30-31.

105. *Id.* at 123-24.

106. *Id.* at 124. It bears emphasis that this is not a deterministic account, according to which a person has absolutely no control over her life and choices. On the contrary, an autonomous person, according to Nedelsky, is a person who can find her own way in light of her inability to control substantial parts of her life. *See id.* at 277-306. For another alternative conception of the autonomous person — as the storyteller of her own life (rather than the author of her own life), see HANNAH ARENDT, *THE HUMAN CONDITION* 184-86 (1958). Such a conception also takes into account the other persons in one's life, who serve as an audience and as the relational networks within which a person's autonomy is developed.

107. NEDELSKY, *supra* note 10, at 50, 124.

108. *Id.* at 278-79.

109. *See, e.g.*, FRIEDMAN, *supra* note 10, at 15, 65, 103-04; MEYERS, *supra* note 10.

reflective process — whether anecdotal or ongoing¹¹⁰ — takes place through dialogues, deliberations and interactions with others. Similarly, the competency to act autonomously is learned from others and is developed through the relationships with them. In the same manner, the variety of options is formulated and transformed within one's network of relationships. The influence is dyadic: one's relationships with others affect her personal autonomy, and at the same time one's personal autonomy affects her relationships with others. In other words, contrary to the rather linear, analytic and internal perception of the autonomous process in liberal scholarship, the relational scholarship perceives it as a dynamic, fluid and external process. This dynamic process *does not* mean that one's decisions and choices are not her own. Rather, the emphasis is on the contention that autonomy does not develop in solitary — and the same is true with regard to the processes through which one makes her decisions.

It is important to emphasize that relational scholars are extremely careful not to romanticize connections and relationships. In this regard, they distinguish themselves from communitarian critics of the liberal conception of autonomy, who tend to focus mainly on the positive attributes of communities and their contribution to the development of the self.¹¹¹ Relational scholars also address the ways in which relationships can *harm* autonomy, and vice versa. A person, for instance, may be embedded within a network of relationships that infringe her personal autonomy. For this reason, the relational scholarship distinguishes between relationships that foster autonomy and those that undermine it.¹¹² At the same time, a person's self-conception as autonomous may lead her to prefer to leave certain relationships including, but not limited to, destructive ones. In addition, the enhancement of one's autonomy might be conceived as threatening by other members of her community (or other social group) and thus lead to her exclusion.¹¹³ In any case, the possible tensions between relationships and personal autonomy do not undermine the relational account, but merely complicate it.¹¹⁴ Those tensions are conceived as

110. See MEYERS, *supra* note 10, at 40-48 (distinguishing between episodic autonomy and programmatic autonomy).

111. See FRIEDMAN, *supra* note 10, at 86; NEDELSKY, *supra* note 10, at 32.

112. See *infra* Section III.B.

113. FRIEDMAN, *supra* note 10, at 106.

114. EVELYN FOX KELLER, REFLECTIONS ON GENDER AND SCIENCE 112-13 (1985); NEDELSKY, *supra* note 10, at 52 (demonstrating the tensions between collective and personal autonomy, and pointing to the contribution of the relational theory to the conceptualization of those tensions: "It is not that a better framework makes the puzzles, both theoretical and practical, simply disappear. But they are reconstituted in a way that makes them productive rather than illogical or simply frustrating.").

inherent to the relational conception of personal autonomy and to its dynamic evolvement and development.¹¹⁵

B. Constructive Relationships as a Necessary Condition for Personal Autonomy

The centrality of relationships in one's life has led relational scholars to add another, crucial condition for the development of personal autonomy: constructive relationships.¹¹⁶ Constructive relationships are relationships that enable the development of original thinking, critical competency and creativity. The interaction of a person with others within constructive relationships and a supportive environment enables her to develop her autonomy by observing others, leaning on them, learning from them, experiencing autonomy with them and practicing it with their help.¹¹⁷ Constructive relationships enhance one's confidence in herself and in others, which encourages her to acknowledge her self-worth, formulate her goals and execute them.¹¹⁸ Constructive relationships, in other words, are crucial for one's self-determination. When a child grows up around adults who are self-confident, she is more likely to become self-confident as well, especially if her confidence is actively fostered by the adults around her.¹¹⁹ Constructive relationships nurture one's selfhood and self-worth within the networks of relationships in which she is embedded; and in turn, one's selfhood and self-worth enhance her constructive relationships with others.

115. Friedman, *supra* note 94, at 60.

116. See NEDELSKY, *supra* note 10, at 38-41, 46-49. I must emphasize that Nedelsky explicitly abstains from referring to relationships as a "condition." *Id.* at 46. According to Nedelsky, using the language of conditions might lead to a static and binary conception of personal autonomy. However, her conceptualization of relationships that foster autonomy (constructive relationships) is powerful and can substantially contribute to the development of a relational-procedural account of personal autonomy. This account, as we shall see in the next Part, contributes to the relational conceptualization of the legal right to personal autonomy. Therefore, when discussing constructive relationships as a crucial condition for personal autonomy, I lean on Nedelsky's discussion on constructive relationships, while being extremely careful not to take her conceptualization out of its context. Specifically, in my reference to relationships as a condition, I maintain their dynamic and evolving nature, which is central to Nedelsky's account.

117. FRIEDMAN, *supra* note 10, at 15, 65; NEDELSKY, *supra* note 10, at 55.

118. Benson, *supra* 83.

119. See, e.g., Inge Seiffge-Krenke & Vilmante Pakalniskiene, *Who Shapes Whom in the Family: Reciprocal Links Between Autonomy Support in the Family and Parents' and Adolescents' Coping Behaviors*, 40 J. YOUTH & CHILD. 983 (2011); Laura Wray-Lake, Ann C. Crouter & Susan M. McHale, *Developmental Patterns in Decision-Making Autonomy Across Middle Childhood and Adolescence: European American Parents' Perspectives*, 81 CHILD DEV. 636 (2010).

Through constructive interactions, one can discover new areas of interest, her preferences change, and her abilities to be innovative and creative are enhanced. All of these, in turn, enhance the constructive nature of existing relationships and enable her to develop new ones. Hence, the connection between constructive relationships and personal autonomy is of a reinforcing nature: constructive relationships serve as a crucial basic condition for the development of personal autonomy, and personal autonomy contributes to the enhancement and development of constructive relationships. This reinforcing nature is a prominent feature of the relational account of personal autonomy.

The influence of constructive relationships on personal autonomy is also apparent with regard to the autonomous critical reflective process. The reflective process improves if conducted through constructive dialogues and interactions with others.¹²⁰ Deliberations with one's spouse, parents, other family members, colleagues and friends enable her to identify more clearly her desires, considerations and preferences. In some cases, the mere need to explain a certain preference or choice to others helps a person articulate it more precisely. The explanation of choices thus promotes a more accurate and substantial reflective process than when it is conducted alone. Moreover, the dialogue with others gives them a chance to suggest new considerations, options and perspectives, which may be crucial for the reflective process, whether regarding a concrete urgent decision or a long-term life-plan. Such an influence is also reinforcing by nature: the deliberative constructive process and the personal autonomy that is nurtured within it in turn enhance the relationships themselves.

Conversely, destructive relationships might infringe autonomy. Such relationships are characterized by coercion, exploitation, oppression, violence and self-deprecation. Therefore, according to Nedelsky, although relationships are considered central to the relational account of autonomy, its main purpose is not to preserve existing relationships at any cost, but rather to evaluate whether certain relationships are constructive or destructive.¹²¹ Destructive relationships limit one's ability to formulate an adequate variety of options, reduce the likelihood of a constructive deliberative reflective process, and diminish one's confidence and self-worth. Moreover, destructive relationships restrict a person's ability to develop alternative, constructive ones. For instance, it is rather difficult for battered wives to develop social relationships outside their homes, and thus they suffer not only from the violence itself, but also from isolation.¹²²

120. See Andrea C. Westlund, *Autonomy and Self-Care*, in AUTONOMY, OPPRESSION, AND GENDER, *supra* 10, at 181.

121. NEDELSKY, *supra* note 10, at 32, 122-23.

122. Jan Bostock, Maureen Plumpton & Rebekah Pratt, *Domestic Violence Against*

This isolation prevents them from strengthening their personal autonomy through constructive relationships with others, making it even harder for them to leave the destructive, violent relationship. Clearly, the reinforcing nature of the connection between relationships and personal autonomy can be negative as well as positive.

Destructive relationships are not only interpersonal, but may exist in other, broader social contexts, such as cultural or religious conservative communities and societies. The question whether the relationships within a conservative community infringe or enhance one's autonomy is constantly debated in academia as well as in political discourses. On the one hand, such communities tend to provide their members with a wide and strong safety net, which fosters their confidence in themselves and in others, enables them to develop constructive relationships, and promotes their personal autonomy.¹²³ Putting aside the extreme cases of cults, most conservative communities do not tend to forcefully oppress their members and negate their selfhood and autonomy. On the other hand, in many cases — not just the extreme — belonging to a conservative community might limit a person's variety of options and her chances of practicing autonomy.¹²⁴ Moreover, the relationships within conservative communities might be oppressive and subservient in part, i.e., they might be destructive and infringe the ability of the community members to develop their personal autonomy.

Nonetheless, relational scholars are careful not to assume that persons who are embedded within destructive relationships are not autonomous at all. Such persons' autonomy is most likely diminished, but not annulled, since personal autonomy is not binary, but rather a matter of degree.¹²⁵ Accordingly, every person can autonomously choose to leave destructive relationships or a destructive community. However, relational scholars are also aware of the difficulties in identifying the destructive nature of such relationships, specifically the difficulty of leaving them. First, as discussed above, the limited autonomy within such relationships restricts the ability to critically evaluate them.¹²⁶ Such an evaluation takes place within the community itself, in light of its values and norms, and through the

Women: Understanding Social Processes and Women's Experiences, 19 J. COMMUNITY APPLIED SOC. PSYCHOL. 95, 99 (2009).

123. JOEL F. HANDLER, *THE CONDITIONS OF DISCRETION: AUTONOMY, COMMUNITY, BUREAUCRACY* 265 (1986); MEYERS, *supra* note 10, at 26 (referring to the bright sides of socialization); *see also* NEDELSKY, *supra* note 10, at 125 (referring to a legitimate framework of collective force).

124. Christman, *supra* note 10, at 154.

125. FRIEDMAN, *supra* note 10, at 104.

126. *See supra* notes 88-97 and accompanying text; *see also* Oshana, *supra* note 60.

interaction with its members. Therefore, if the communal relationships are oppressive and coercive, such an evaluation is substantially limited. Here, again, we see the negative impact of the reinforcing nature of relational autonomy. Moreover, the relational theory explicitly addresses the costs of leaving a community — even a coercive one. Besides the material resources that are needed to start a new life outside the community, in many cases leaving it also means leaving behind family and friends. From a relational perspective, these costs are extremely high.¹²⁷

To conclude, the relational scholarship attributes great significance to the existence of constructive relationships in one's life, and addresses the impacts of destructive relationships. It conceives personal autonomy and the autonomous process as a major way to evaluate relationships and forsake destructive ones, though it acknowledges the limited ability to conduct such an evaluation and leave such relationships. The ongoing and reinforcing connection between relationships and personal autonomy — whether positive or negative by nature — stands at the heart of the relational account of personal autonomy.

C. The Synergy Between Individuality and Relationships

Alongside the centrality of relationships, most relational scholars have not neglected the individualistic character of the autonomous person and personal autonomy.¹²⁸ This focus does not entail a return to the liberal internal abstract conception of personal autonomy. Rather, the relational authors point to the inherent connection between one's individuality and her relationships with others, as well as to their interdependence and mutual constructiveness. Individuality evolves and develops within one's relationships and, at the same time, (constructive) relationships can be developed and fostered only between distinct individuals. Similarly, as Nedelsky points out, a person's selfhood and autonomy evolve and are transformed through her relations with her community, and the community is transformed and changes through the choices of the individuals who constitute it.¹²⁹ In other words, one's individuality and relationships are synergic and reinforcing; and this synergy is what enables the development

127. In the next Part, we shall see how the relational perspective is translated to a duty of the state to promote the personal autonomy of persons trapped in oppressive relationships. *See infra* Section IV.C.

128. *See, e.g.*, FRIEDMAN, *supra* note 10, at 116-17; NEDELSKY, *supra* note 10, at 21, 52; Christman, *supra* note 10; Catriona Mackenzie, *Three Dimensions of Autonomy: A Relational Analysis*, in AUTONOMY, OPPRESSION, AND GENDER, *supra* note 10, at 15; *see also* Elizabeth Anderson, *Towards a Non-Ideal, Relational Methodology for Political Philosophy*, 24 HYPATIA 132 (2009).

129. NEDELSKY, *supra* note 10, at 21.

of one's personal autonomy.

Note that Nedelsky declares that she prioritizes relationships over individuality, for two reasons: first, she contends that relationship networks constitute a major part of all individuals, and hence theorizing relationships is sufficient for the conceptualization of personal autonomy and the individual autonomous person.¹³⁰ Second, she argues that the individualistic character of personal autonomy still prevails in the scholarship on autonomy, and therefore a preference for its relational aspects is required.¹³¹ Nonetheless, she attributes major significance to a person's individuality and distinctiveness from others, and not just to relationships.¹³² Nedelsky clarifies that conceptualizing autonomy in relational terms does not entail the subjugation of a person to a collective, such as the family, the community, or the nation.¹³³ Personal autonomy evolves within those relationships, but a person is not merged into them.

Friedman points out another aspect of the synergic connection between autonomy and relationships through her discussion on autonomy within romantic love. She begins by denying the notion that romantic love inherently merges both partners into a single entity and negates their individuality.¹³⁴ Such a conception of romantic relationships leans on the contradiction between individuality and relationships, and it prevails in Western cultures, albeit mostly metaphorically.¹³⁵ Instead, Friedman suggests that we should perceive romantic love as creating a third entity: beside the distinct partners, there is also a romantic merger.¹³⁶ Both partners constitute the third entity, but, at the same time, it is separate from them. All three entities (both individual lovers and the romantic merger) interact with each other, change each other, and are transformed in light of each other. Within this dynamic interaction, the personal autonomy of each partner develops in a way that ties both partners together, yet maintains their individuality and distinctiveness.¹³⁷

130. *Id.* at 30.

131. *Id.*

132. *Id.* at 35-36 ("I embrace the notion of the unique, infinite value of each individual, and the value of interiority, and the value of the ability of individuals to shape their own lives.").

133. *Id.* at 86.

134. FRIEDMAN, *supra* note 10, at 116-17.

135. *Id.*

136. *Id.* at 117-20.

137. Needless to say, Friedman does not attribute only positive facets to romantic relationships, but also addresses their inherent tensions and the ways in which they might infringe autonomy and individuality. *See id.* at 120, 127-29. Like other relational scholars, Friedman perceives such tensions as an inherent part of the relational

D. The Multidimensional Self

Having discussed the importance of constructive relationships and of individuality, I now turn to discuss another aspect of the relational conception of personal autonomy: the significance it attributes to the body and to emotions. This significance is analyzed here through the concept of the multidimensional self, as developed by Nedelsky. Contrary to the liberal abstract and monolithic conception of the person, Nedelsky portrays the person as multidimensional.¹³⁸ Along with her intellect and reason, a person has myriad dimensions that characterize her, including her sex, gender, color, ethnicity, body size, nature, emotions, religion, etc.¹³⁹ All of them constitute inherent parts of the person's selfhood, make her unique and distinct from others; and at the same time, they shape and construct her relationships with others. The complexity of a person, according to Nedelsky, is what constitutes her creative interactions with others, and personal autonomy is a part of this creative interaction.¹⁴⁰ Any account that ignores the myriad dimensions of a person conceptualizes personhood and autonomy in a partial, superficial and inaccurate manner.

Other relational scholars as well place special emphasis on the physical and emotional dimensions of the self. Meyers, for example, criticizes the exclusion from the liberal scholarship of a person's self-perception as being embodied. She shows that the body is a crucial part of one's identity and selfhood, and thus has a tremendous impact on the development of one's autonomy.¹⁴¹ The body can limit the ability to act autonomously (e.g., when sick, weak or disabled), but it can also enhance one's autonomy. Meyers demonstrates the ability of the body to enhance one's autonomy quite interestingly: when a person is in danger or going through an emergency crisis, the body reacts by releasing the hormone adrenaline. This adrenal reaction is what enables a person to gather her strength and overcome the crisis in a way that would not necessarily be possible with the mere power of mind and intellect.¹⁴² This practical example clarifies the

conceptualization of personal autonomy.

138. See NEDELSKY, *supra* note 10, at 158-73.

139. *Id.*; see also Christman, *supra* note 10, at 147.

140. NEDELSKY, *supra* note 10, at 158.

141. Meyers, *supra* note 72, at 31.

142. *Id.* at 33-34. Meyers presents this example by telling a personal story about her own physical experience, through which she learned about herself and personal autonomy. While hiking alone, Meyers fell and broke her wrists; nevertheless, she managed to reach a safe place and receive medical treatment. She describes the way her body reacted to the emergency and enabled her to cope with it. The way Meyers uses this personal physical experience as a way of learning and developing a theoretical notion emphasizes even more the significant role she attributes to the body as a source

importance of one's body for her competency to act autonomously. It also highlights the strong interdependence between one's body and mind: the body cannot function without the mind, and the mind cannot function without the body.¹⁴³ Together, they enable a person to act autonomously and develop her personal autonomy.

A person's emotions constitute another important dimension of the multidimensional self. Contrary to the liberal conception of feelings and emotions as contradicting reason and rationality — and possibly distorting one's realistic perception and observation — philosopher Christin Tappolet has analyzed their crucial evaluative role.¹⁴⁴ Emotions — and not only reasonable thinking — enable a person to be aware of important considerations and aspects when going through autonomous processes.¹⁴⁵ Moreover, Tappolet emphasizes that feelings and emotions are not only internal, but rather constitute a major part of one's relationships with others. Love, anger, disappointment, sadness, happiness, etc. — all take part in forming one's personal relations, constitute them and transform them.¹⁴⁶ Therefore, all have a direct impact on the development of one's personal autonomy. Tappolet admits that there are situations in which feelings and emotions do distort the conception of reality and thus might infringe one's ability to act autonomously, but she does not find such occurrences to justify the complete disregard and exclusion of emotions from the conceptualization of personal autonomy. Her contention is even more powerful if we keep in mind that the intellect as well can lead to a distorted conception of reality, given possible cognitive biases.¹⁴⁷ Both intellect and emotions, therefore, play a crucial part in evaluating reality, and both are required to improve autonomous processes. Both intellect and emotions, according to the relational account of personal autonomy, constitute a part of a person's reason and rationality, and both are considered major sources of knowledge.¹⁴⁸

of both personal autonomy and knowledge.

143. *Id.* at 49.

144. Christine Tappolet, *Emotions, Reasons, and Autonomy*, in AUTONOMY, OPPRESSION, AND GENDER, *supra* note 10, at 163, 172.

145. *Id.* at 177, 178.

146. *Id.* at 181.

147. See Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124 (1974).

148. See NEDELSKY, *supra* note 10, at 164-66; Meyers, *supra* note 72; Tappolet, *supra* note 144.

V. A PRELIMINARY DEFINITION OF THE RIGHT TO PERSONAL AUTONOMY:
THE STATE'S RESPONSIBILITY FOR CONSTRUCTIVE RELATIONSHIPS

The previous Part stressed the synergic integrations between the mind and the body, between emotions and intellect, and between individuality and relationships, which form the relational conception of personal autonomy. This synergy overcomes many of the flaws of the liberal conception of autonomy, which were discussed in Part II above, and can therefore serve as a more adequate basis for articulating the legal right to personal autonomy. It provides a complex, rich conceptualization of personhood and autonomy and enables a more precise articulation of the right to personal autonomy and of the state's duty to fulfill it. Moreover, acknowledging the role of other people and institutions in the development of one's autonomy — the state being one of those "others" — makes it simpler to advance the state's responsibility for the personal autonomy of its citizens. Lastly, the relational approach takes socialization and its consequences seriously and does not assume that each person can overcome them on her own; this facilitates a discussion on the responsibility of the state to address them, at least partially. In other words, although the scholars who developed the relational conception of autonomy have not conceptualized personal autonomy as a legal right, their conceptualizations nonetheless can serve as a sound basis for the right to personal autonomy.

Certainly, the relational conception has its own flaws, some of which have been discussed above. One such flaw, which should be considered seriously when articulating the right to personal autonomy based on relational grounds, is the relational account's tendency toward over-particularization.¹⁴⁹ This over-particularization, as Christman argues, might make it rather difficult to use the relational account of personal autonomy for further developing a normative model of autonomy.¹⁵⁰ The myriad dimensions of the self, the dynamic nature of relationships, the focus on the differences between people rather than their similarities — all pose challenges to the goal of articulating personal autonomy as a broad legal right. Therefore, the right to personal autonomy must be flexible enough to promote the personal autonomy of all members of a society, despite the apparent differences between them.¹⁵¹

In this Part, I suggest some preliminary foundations for such an articulation of the right to personal autonomy. Section A addresses the

149. See Christman, *supra* note 10, at 145.

150. *Id.*

151. On promoting equality in light of the differentiation between multidimensional individuals, see NEDELSKY, *supra* note 10, at 186-89.

state's duty to promote constructive relationships between state institutions and the recipients of their services. Section B turns to examine the state's responsibility for constructive relations between people and private (or semi-private) institutions. Section C focuses on the need to prevent destructive relationships. Section D turns to the responsibility of the state to address the consequences of coercive socialization. Lastly, in Section E, I address a possible consequence of the relational framework I suggest: the growing intervention of the state in people's lives.

A. Relationships Provided by the State

A substantial part of the legal right to personal autonomy, when conceptualized in relational terms, is the state's responsibility for ensuring the existence of constructive relationships in its citizens' lives. It bears emphasis that in most cases, the state is not responsible for *providing* its citizens with relationships per se; such a responsibility is quite rare. Rather, as we shall see in the following sections, the state's responsibility is usually to ensure that existing relationships are constructive enough, enhance the constructiveness of such relationships, fix destructive ones (if possible), and help persons leave undesired destructive relationships. Nonetheless, some relationships are indeed provided by the state itself: such are, for example, the relationships within public educational institutions, and between welfare institutions and the recipients of their services.

Under a relational conceptualization of the state's duty to promote personal autonomy, it is not enough to supervise the adequacy of schools' pedagogic contents, and it is not enough to provide welfare recipients with material necessities. These are, of course, very important for the ability to lead an autonomous life and develop one's autonomy, but they are not sufficient. The relational approach also insists on ensuring that the relationships within those institutions are constructive. The relationships between children and teachers should foster and nurture children's personal autonomy. Similarly, although the relationships between welfare institutions and the recipients of their services are hierarchal by nature and based on dependency, it does not mean they should necessarily be paternalistic, as they are usually perceived (and tend to be).¹⁵² Instead, according to the relational account of personal autonomy, such relationships can and should foster autonomy not only *despite* the inherent dependency they constitute, but also *through* this dependency.

Christman demonstrates the connection between dependency and

152. NEDELSKY, *supra* note 10, at 39, 67, 140.

autonomy by criticizing U.S. welfare programs.¹⁵³ He shows that the contrast between autonomy and dependency, which prevails under the liberal conception of personal autonomy, results in inadequate welfare programs. Such programs aim at reducing the recipients' dependency on the state and promoting their independence by cutting their financial support and encouraging them to find a job. Such policies, however, as Christman argues, although allegedly constructed to promote the recipients' autonomy, actually infringe it. Leaving the welfare recipients to cope alone with the lack of income makes it harder for them to develop their autonomy. An alternative, relational construction of welfare programs, according to Christman, should be based on the *dependency* of the recipients, and promote their autonomy through it. Mainly, he calls for combining direct financial support with active personal assistance in the process of finding a job. Active personal assistance creates opportunities for constructive relations, specifically for conducting joint deliberative reflective processes. Designing welfare programs in a deliberative and reflective manner can raise the recipients' confidence and self-esteem and provide them with opportunities to practice autonomy with professional, relational assistance. Such reforms are more likely to enhance the recipients' autonomy than independence-based ones.

Another interesting example of state-fostered constructive relationships through which one's personal autonomy can thrive is an Israeli case where it was necessary to appoint a guardian for an incapable woman.¹⁵⁴ In this case, which concerned a seventy-eight-year-old woman suffering from occasional episodes of dementia, a family court judge decided not to appoint her a regular guardian. Instead, a good friend of hers was appointed as a "decision-making supporter."¹⁵⁵ By appointing a decision-making supporter the family court promoted the woman's autonomy through her dependence on her friend, while avoiding the paternalistic nature of guardianship. It enabled the woman to continue navigating her own life, while being assisted and accompanied for this purpose. It leaned on the constructive relationship between both women, gave it legal

153. Christman, *supra* note 66.

154. Guardianship Case 43640-01-15 Doe v. N. County Gen. Admin. (Apr. 8, 2015) (unpublished) (Isr.).

155. The judge mentioned that the decision-making supporter conforms to the U.N. Convention on the Rights of Persons with Disabilities (2006). Although the relationship between both women existed before it was legally acknowledged, I consider it to be state-fostered, as this official appointment has a substantial impact on both women's legal authorization in several contexts. For an analysis of the decision-making supporter model, see Nina A. Kohn, Jeremy A. Blumenthal & Amy T. Campbell, *Supported Decision-Making: A Viable Alternative to Guardianship*, 117 PENN. ST. L. REV. 1111 (2012).

recognition, and enabled the women to strengthen their relationship and its constructiveness even more, thus enhancing the personal autonomy of both of them. About a year after this case, the Israeli Parliament amended the Legal Capacity and Guardianship Act by formally adding the option to appoint a decision-making supporter instead of a regular guardian.¹⁵⁶

There are several ways, then, in which the state can provide its citizens with constructive relationships through which their autonomy can thrive. In keeping with the relational approach, however, I am very careful not to romanticize relationships, nor to assume that the state's power to provide constructive relationships is unlimited. Paternalism, oppression and exploitation might characterize the relationships provided by the state, even when it makes an effort to formulate them as autonomy-enhancing relationships. Moreover, the dynamic nature of relationships makes it rather difficult to regulate them, supervise them, or ensure that they are indeed constructive. Nevertheless, ignoring the significance of constructive relationships and adhering solely to the liberal conceptualization of the right to autonomy might place much stricter limits on the ability to promote personal autonomy through legal and public policies. Policymakers should consider both the strengths and possible flaws of the relational conceptualization of the right to personal autonomy when articulating this right in different contexts and cases.

B. Relationships Within Private or Semi-Private Institutions

Another kind of relationships that the state should ensure their constructiveness are those taking place within private or semi-private institutions, such as hospitals. In the private and semi-private context, we should recall the dual duty of the state in promoting its citizens' autonomy: the responsibility can be imposed directly on the state, as seen in the previous Section, or it can be placed on other entities, individuals and institutions. In the latter case, the state's responsibility is to articulate and enforce the rules that ensure that those institutions promote the citizens' autonomy. The case of informed consent serves as a good example of the second kind of state responsibility. As discussed above, from a liberal point of view, obtaining one's informed consent by clearly stressing the variety of possible treatments and letting her choose the most preferable option is perceived as enhancing one's autonomy and fulfilling her right to personal autonomy.¹⁵⁷ The duty imposed by the informed consent doctrine does not include, however, a duty to actively support the patient throughout

156. Legal Capacity and Guardianship Act (Amendment No. 18), 5776-2016, SH No. 2550 p. 798 (Isr.).

157. See *supra* text accompanying notes 53-58.

the process of making her decision. Although hospitals may do so voluntarily,¹⁵⁸ the legal obligation requires only the disclosure of the full information needed for the consent to be informed.¹⁵⁹

There is no doubt, of course, that disclosing the full information is essential for the patient's autonomy, but the relational approach would not find it sufficient. The focus on information leans on the liberal assumption that once a patient has full information, she can independently, critically, and reflectively weigh all options and choose the one she prefers. Such an assumption ignores the tremendous effect one's bodily and emotional conditions have on her ability to conduct an independent process.¹⁶⁰ Contrarily, as discussed above, the relational approach rejects the notion of an internal decision-making process and points to the advantages of deliberative processes and to the integration of the body and emotions into the process. Accordingly, under a relational conceptualization of the right to personal autonomy, the duty to obtain the patient's informed consent should also include providing sufficient consultation and assistance in the process of decision-making. More generally, a relational approach would emphasize the need for maintaining constructive relationships between the patients and the medical staff. Constructive relationships and an assisted deliberative process not only improve the patient's ability to reach an autonomous concrete decision, but also enhance her confidence in herself and in her caretakers, provide her with a chance to practice autonomous decision-making — and enhance her personal autonomy.

Some scholars and courts have indeed advocated an expansion of the informed-consent doctrine to include a substantive dialogue between the patient and the physician.¹⁶¹ One legal scholar, Pamela Laufer-Ukeles, has

158. See, e.g., Erik Falkum & Reidun Førde, *Paternalism, Patient Autonomy, and Moral Deliberation in the Physician-Patient Relationship: Attitudes Among Norwegian Physicians*, 52 SOC. SCI. & MED. 239 (2001).

159. See Laufer-Ukeles, *supra* note 12; Nadia N. Sawicki, *Patient Protection and Decision-Aid Quality: Regulatory and Tort Law Approaches*, 54 ARIZ. L. REV. 621 (2012) ("Unlike the traditional informed consent process, which is highly regulated and governed by decades of common law, the creation and use of decision-support tools is currently controlled only by market forces. No administrative regulations exist to delineate the appropriate scope of decision aids . . ."). In Israel, see Patient's Rights Law, § 13(b) ("For receiving an informed consent, the physician is required to deliver the patient the medical information needed for him to decide if he consents to the suggested treatment.").

160. And if not ignored, the bodily and emotional conditions might lead to justifying a paternalistic approach towards the patient.

161. See Peter Shuck, *Rethinking Informed Consent*, 103 YALE L.J. 899, 903-04 (1994) (referring to such advocates as "idealists," as opposed to "realists" who highlight the barriers to and costs of expanding the informed-consent doctrine).

recently linked such a deliberative approach to informed consent to the relational conception of personal autonomy.¹⁶² However, her discussion focuses exclusively on reproductive decisions, related to abortions, fertility treatments, and medical care during pregnancy. According to Laufer-Ukeles, physicians' deliberative assistance in the decision-making process is crucial for such decisions, since they are complex and involve significant identity-related aspects: the choice whether or not to become a mother, the preferred way of giving birth, etc. Laufer-Ukeles argues that for such decisions just the information on the various available options is not enough.¹⁶³ Obviously, I agree with Laufer-Ukeles regarding the need to incorporate a duty to provide deliberative assistance into the informed-consent doctrine. However, I do not think that it should be restricted to reproductive decisions, nor to identity-related ones. In my opinion, an assisted deliberative decision-making process is necessary for other substantial medical decisions as well, in order to promote patients' autonomy.¹⁶⁴ Such a contention has been voiced by philosopher Natalie Stoljar.¹⁶⁵ Stoljar, like other philosophers who write on relational autonomy, does not articulate autonomy as a legal right, nor does she discuss the duty of the state to promote it. Nonetheless, she does point out that the relational conception of autonomy highlights the insufficiency of information disclosure and the consequent need for an assisted deliberative process when making medical decisions.

It bears mention that a duty to provide substantial deliberative decision-making assistance for all (or most) patients is costly, and might impose a heavy (possibly too heavy) burden on hospitals and physicians.¹⁶⁶ It might also make medical treatment more expensive and thus less accessible to the poor. One possible reply to the budgetary challenge may be broadening the state's responsibility to include not only the duty to formulate and enforce the legal rule, but also to subsidize — at least partially — its costs.¹⁶⁷ Another reply is that maintaining constructive relationships between

162. Laufer-Ukeles, *supra* note 12.

163. *Id.* at 604, 606, 611 (criticizing especially the practice of providing such information via pamphlets).

164. A big question is, of course, what are considered "substantial medical decisions." This question should be debated and decided by policymakers.

165. Stoljar, *supra* note 60.

166. See Shuck, *supra* note 161.

167. I find it important to emphasize again that this Article uses informed consent as an example, and does not aim at providing a thorough analysis of the doctrine. Future research should further develop the theoretical and practical connections between informed consent and the relational conception of personal autonomy, while discussing both the advantages and costs of conceptualizing informed consent in relational terms.

patients and hospital personnel most likely would lessen the chances of a hospital being sued. Providing substantial deliberative decision-making assistance maintains constructive relationships between patients and hospital personnel. This, in turn, mitigates costs, since more constructive relationships increase the ability to obtain genuine informed consent and reduce the likelihood of a patient filing a lawsuit.¹⁶⁸ In other words, the costs of improving the constructiveness of the relationships in the hospitals and providing personal assistance in the process of decision-making might be balanced by a reduction in legal expenses, and can be covered, at least partially, by the state.

C. The Prevention of Destructive Relationships

A third aspect of the state's duty to ensure that its citizens are provided with constructive relationships is the prevention of destructive ones. A prominent example of the state's duty is the prevention of violence in general, domestic violence in particular. Domestic violence diminishes one's autonomy in several ways: it impairs her bodily integrity, as well as her self-esteem and self-confidence; it deprives her of constructive relations within her own home; and it usually prevents her from developing alternative constructive relationships outside her home.¹⁶⁹ Friedman further explains that violent relationships compel women to focus on their safety and survival,¹⁷⁰ thus making it difficult for a woman to invest her cognitive and emotional resources in developing her personal autonomy and conducting autonomous reflective processes. Moreover, according to Friedman, battered women — as a part of their efforts to survive — tend to prefer their spouses' volitions and preferences, putting aside their own.¹⁷¹ Such a preference impairs women's autonomy in a way similar to manipulation and coercion, and causes their distinct personalities to merge within their spouses' personalities. Lastly, in many cases violent relationships enfold within them strict control and supervision by the men

168. See Kristin E. Schleiter, *Difficult Patient-Physician Relationships and the Risk of Medical Malpractice Litigation*, 11 AM. MED. ASS'N J. ETHICS 242, 242 (2009) ("The impact of poor communication skills increases the likelihood that patients with adverse outcomes will sue, whether or not an error has occurred.").

169. Since more women than men are abused by their spouses, my discussion in this Section focuses on women; nonetheless, it is applicable to male victims as well. On domestic violence against men, see, for example, PHILIP W. COOK, *ABUSED MEN: THE HIDDEN SIDE OF DOMESTIC VIOLENCE* (2009); Jamie R. Abrams, *The Feminist Case for Acknowledging Women's Acts of Violence*, 27 YALE J.L. & FEMINISM 287 (2016); and Christopher F. Barber, *Domestic Violence Against Men*, NURSING STANDARD, Aug. 27, 2008, at 3.

170. FRIEDMAN, *supra* note 10, at 142.

171. *Id.*

over their wives' lives.

Most Western states acknowledge the severe problem of domestic violence and are engaged in developing legal and public policies to cope with it. Nonetheless, as some relational scholars point out, such policies are usually of a paternalistic nature.¹⁷² Moreover, many policies involve taking the victim away from her home and community in order to protect her. Although such protection is necessary, it can help the woman only partially in redeveloping her autonomy. Contrarily, a relational articulation of the state's duty in the context of facilitating a woman's ability to redevelop her autonomy would also focus on the need to help the victim develop new constructive relationships or enhance the constructiveness of existing ones.¹⁷³ For example, it would emphasize the need to provide her with a supporting network following her removal from her home, so she does not remain isolated. Such a policy would improve her chances of restoring and enhancing her personal autonomy.

An interesting example of the difference between relational and paternalistic policies regarding domestic violence is found in Nancy Fraser's article from 1989 on the politicization of needs in general, women's needs in particular.¹⁷⁴ Fraser describes the establishment and management of shelters for battered women by feminist activists in the United States during the 1970s. A few years after those shelters were established, the government and local municipalities acknowledged the problem and began funding and supporting the shelters. The move toward funding was a remarkable feminist achievement, as it signaled the move from viewing domestic violence as a private issue to addressing it as a political, public phenomenon. However, the governmental support, as described by Fraser, was accompanied by a sharp change in the way the shelters were run. When feminist activists ran the shelters, major emphasis was placed on enhancing the constructive relationships between the tenants of the shelters and the shelters' staff (some of the staff were women who themselves suffered from domestic violence). In addition, an inherent part of the help given to women in the shelters was assistance in finding an alternative residence and workplace and in developing new, constructive networks of relationships. Contrarily, under state funding and management of the shelters, a professional discourse took over, and a psychological, psychiatric, hierarchical, and paternalistic approach was implemented in the shelters. Instead of helping women to thrive as a part of a community,

172. See, e.g., NEDELSKY, *supra* note 10, at 213.

173. See *id.* at 213 ("If we are to stop violence against women we will have to think differently about the task of law and the state.").

174. Nancy Fraser, *Talking About Needs: Interpretive Contests as Political Conflicts in Welfare-State Societies*, 99 ETHICS 291, 308-10 (1989).

the shelters personnel treated women as therapeutic objects. From a relational perspective, although such therapy may indeed be very helpful for reconstructing women's lives, it is not enough for redeveloping and enhancing their personal autonomy.

The contradiction described by Fraser, between the aspiration to redevelop women's autonomy through constructive relationships and the paternalistic approach of the state, is central to our discussion on the state's responsibility for the development of personal autonomy. Specifically, it highlights the need to develop a public policy that is not based on a paternalistic approach towards battered women, but rather focuses on the need to enhance women's autonomy. The relational approach, which characterized the shelters when they were run by feminist activists, can also be implemented by the state. The state can provide women with support systems, through which they can redevelop their autonomy, while establishing constructive — rather than paternalistic — relationships between the women and the state's agents. The state can also actively assist women in finding a new workplace and residence, enabling them to reconstruct their families and keep raising their children. Lastly, it can enhance women's economic autonomy by providing or subsidizing adequate programs to assist women.¹⁷⁵ Those strategies can accompany (yet not *replace*) the policies that aim to protect women's lives and safety.

D. Addressing Coercive Socialization

The need to deal with destructive relationships is also apparent in cases of coercive socialization. The state's role in this regard might be rather vague since, as explained above, there are no clear criteria for distinguishing between the oppressive (or coercive) and benign consequences of socialization.¹⁷⁶ The state cannot — and should not — aim at eliminating all sorts and forms of socialization. Any attempt to overcome all social and cultural influences is doomed to fail. However, the relational account of personal autonomy does acknowledge that it might be difficult for a person to critically examine by herself the impacts and consequences of socialization, or resist them. The state and its agents may be in a better (albeit not perfect) position to identify oppressive socialization in various contexts, address it or prevent it. An interesting example is found in section 6C2 of the Israeli Equal Rights for Women Law, which requires legislators to consider the possible impacts of each bill

175. See, e.g., AMY CORREIA, PA. COAL. AGAINST DOMESTIC VIOLENCE, STRATEGIES TO EXPAND BATTERED WOMEN'S ECONOMIC OPPORTUNITIES (2000), http://www.vawnet.org/Assoc_Files_VAWnet/BCS9_EO.pdf.

176. See *supra* Section II.B.

on the social status of women.¹⁷⁷ This section requires the state to prevent in advance at least some of the negative consequences of gender-related socialization in concrete contexts. This, in turn, can help mitigating oppressive socialization in broader social contexts and eventually eliminating at least some coercive social norms.

Moreover, state authorities and institutions have the power to assist persons who are subjected to oppressive socialization to leave such relationships and develop alternative, constructive ones. An apparent example is the case of conservative communities, which was discussed above.¹⁷⁸ The state and its agents can assist individuals within such communities to decide whether they wish to stay or leave. The state can also regulate, at least partially, the relationships within such communities, and enforce policies aimed at reducing the impacts of socialization, strengthening constructive relationships within the communities, and promoting the members' personal autonomy.¹⁷⁹ However, here as well, it bears emphasis that the power of the state is limited. Some communities and cultural groups are too conservative and segregated for the state to be able to deal with the powerful socialization within them. It is also extremely difficult to regulate the relationships within such communities given the tendency of many Western states not to interfere with them, due to multicultural considerations.¹⁸⁰

It should be noted that not all policymakers would be willing to reject policies and laws that might have such problematic consequences or to regulate relationships within segregated communities. There are various reasons for such unwillingness: identification with conservative perceptions, political considerations, an inability to confront powerful social groups and actors, etc. In fact, the state itself serves in many cases as a prominent agent of coercive socialization. Such is, for example, the limitations placed upon women's right to have an abortion. Recent legislative developments in some U.S. states (as the 2013 Texas regulation on abortion clinics) restrict the availability of abortions for many women. Such policies infringe women's autonomy, both by narrowing their variety of options (i.e., to abort or to keep the pregnancy) and by strengthening the social conception of motherhood as women's primary social role. At the

177. Equal Rights for Women Law, 5711-1951, § 6C2, 5 LSI 171 (as amended) (Isr.).

178. *See supra* Section II.B.

179. Another example, which I intend to develop in future papers, is regulating the relationships between spouses in a manner that encourages the promotion of their constructive relationships and consequently of their personal autonomy within the family.

180. *See* AYELET SHACHAR, MULTICULTURAL JURISDICTION (2001).

same time, as explained by Laufer-Ukeles, from a relational point of view, at least some policies that are considered pro-life and anti-abortion (such as the duty to consult) can actually *promote* women's autonomy, if implemented correctly.¹⁸¹ I intend to further develop the relational discussion on abortions in another paper. What the current discussion has made clear, however, is the need to pay careful attention to the relationships between the state and the individuals whose autonomy it has a responsibility to promote.

E. A Possible Critique: Autonomous Individuals and the State

The previous Sections address several aspects of a state's responsibility to promote its citizens' personal autonomy. We have seen that on the one hand, the state can promote constructive relationships among individuals, as well as between individuals and public or semi-public institutions. It can also prevent destructive relationships and address the influence of coercive socialization. On the other hand, we have also seen that the state itself can be the source of paternalistic (or even destructive) relationships, and serve as an agent of coercive socialization. Moreover, charging the state with a responsibility to promote individuals' autonomy — specifically the responsibility for the constructive relationships in people's lives — raises the concern of massive state intervention within the private sphere. The juxtaposition of the potential for paternalistic and coercive relations between the state and its citizens and the concern of massive intervention leads to a possible critique of the policy set forth in this Article: that it would eventually infringe people's autonomy instead of enhancing it.

This concern is not unjustified. Nedelsky herself admits that a relational articulation of legal rights and rules might indeed lead to the expansion of the state's presence in private lives and strengthen the coercive power of the collective over the individual.¹⁸² Nedelsky ties this possible critique to another one: the risks that may emerge from forgoing the concept of borders. According to Nedelsky, rights and legal rules should be formulated and conceptualized in terms of relationships rather than borders. In many instances, however, such borders seem to be crucial, as in the case

181. Laufer-Ukeles, *supra* note 12, at 591; cf. CAROL GILLIGAN, IN A DIFFERENT VOICE ch. 2 (1982) (arguing that the individualistic conception of women's decision-making process regarding abortions misconceives the way women actually make such a decision; and, more significantly, that an individualistic, either/or conception of that process results in women perceiving themselves as either selfish or victims, rather than autonomous agents).

182. NEDELSKY, *supra* note 10, at 202. As emphasized by her and by other relational scholars, besides the importance of relationships for one's autonomy, an individual also needs to be protected from a possible collective coercive power. *Id.* at 86.

of legal rules aimed at protecting people from violence. In the relational framework context, Nedelsky points to an inherent contradiction between the relational conception of autonomy and the feminist intuition, which highlights the importance of borders for maintaining people's — especially women's — safety. Through the example of violence against women, Nedelsky examines both possible critiques: the risks of forgoing the concept of borders and the fear of enhancing the state's power within the private sphere.¹⁸³

Nedelsky analyses the policies of liberal states regarding violence against women (domestic violence as well as other forms of violence), and shows that liberal legal policies that are based on the concept of borders and aim to create a separation between victims and their victimizers have failed to protect women. This failure is attributable, *inter alia*, to the fact that in many cases the violence constitutes a part of the relationships within which women are embedded. Therefore, the attempt to distance the victims from the source of the violence is mostly inefficient — and sometimes even impossible. As an alternative, Nedelsky suggests that the relevant legal rules should be formulated in relational terms, focusing on the constructiveness of the relationships between men and women and not on the borders between them. Leaning on the example of revisions made in the Canadian law dealing with sexual assaults,¹⁸⁴ she shows that formulating rules on the basis of equal and respectful relationships is more likely to lead to the enhancement of women's safety and the prevention of violent relationships than formulating those rules in terms of borders.

Nedelsky's conclusion is twofold. First, she resolves the alleged contradiction between the relational approach and feminist intuition with regard to the concept of borders by showing that borders have failed to serve as an adequate framework for protecting women from violence. Second, and more importantly for our discussion, Nedelsky shows that the relational conception does not inherently lead to the expansion of the state's presence in individuals' lives, but rather merely changes the way the state acts within the private sphere. Instead of setting borders, the state can regulate relationships; either way, the state is already present in all individuals' lives. Moreover, Nedelsky's discussion leads to another conclusion: that the liberal approach as well — and not just the relational one — in fact formulates the relationships between individuals. In other words, the difference between the liberal conceptualization of legal rules and the relational one lies not in the extent of the state's presence within the private sphere, but rather in the nature of the relationships each

183. *Id.* at 200-30.

184. *See id.* at 218-21.

promotes. While the liberal approach mostly focuses on the borders between individuals,¹⁸⁵ the relational one focuses on the constructiveness of the relationships between them.

I would add to Nedelsky's conclusion another important layer, which is not discussed in her work: regarding the border between the state and the individuals. While Nedelsky rejects the concept of borders between individuals, she does not discuss the borders between individuals and the state. The liberal approach justifies state interventions within the family, but only to a certain extent, especially when an individual's liberty causes harm to another individual's liberty.¹⁸⁶ Liberals justify placing responsibility on the state to enforce equality and rights within the family, intervene in what is conceived as pathological (such as rape and violence in the family¹⁸⁷), implement welfare policies,¹⁸⁸ and so on. Therefore, both liberal and relational approaches acknowledge the legitimacy of state's involvement in people's lives.

However, there is an inherent difference between the liberal and relational conceptualization of state's intervention in the private sphere. Liberals insist on drawing a clear line between individuals and the state, thus limiting the latter's intervention in people's lives. Where the line between individuals and the state is located, according to John Stuart Mill, is one of the most fundamental questions in liberal theory,¹⁸⁹ and has not

185. But see Dagan and Dorfman's liberal account of relational justice, *supra* note 51 and accompanying text.

186. In this respect, liberals differ from libertarians, who advocate minimizing the state's intervention in the private sphere as much as possible. See, e.g., ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974). For a critique on the libertarian notion of state nonintervention, see, for example, Carol M. Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73 (1985) (arguing that it is the state's regulation that determines the right to possess, i.e., that even when it seems, from a libertarian point of view, that the state does not intervene, its power over people's lives is constant). Another set of critiques of the notion of state nonintervention is found in feminist scholarship on the distinction between the private and the public, specifically on the family. See, e.g., Frances E. Olsen, *Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835 (1984) (arguing that the state's alleged "nonintervention" in the family is no less active than its "intervention," since it constitutes an active decision to maintain the hierarchal, sometimes destructive, power relations within the family).

187. Note that the definition of "pathological" is constantly changing. Not too many years ago a wife's rape by her husband and domestic violence were not considered to justify state intervention. See, e.g., Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996).

188. The implementation of welfare policies in the family is considered to justify enhanced state intervention in the family. See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643 (2009).

189. MILL, *supra* note 21, at 3-4.

been solved to this day. Conversely, the relational approach enables us to rethink the concept of the border between the state and individuals. Instead of focusing on the border and trying to determine its appropriate location, the relational theory turns the spotlight on the *relationships between the state and individuals*. The state is not a monolithic entity, whose reach terminates at a certain spot; rather, relationships between the state and individuals are complex and dynamic. Therefore, the “border” between the state and the individuals is in fact a fiction. To be clear: I do not contend that there is no *distinction* between the private and public sphere; I merely suggest that the terminology of *borders* is inadequate for describing and prescribing the relations between both spheres.¹⁹⁰ The state is an inherent part of the network of relationships that persons are embedded in, and at the same time, it is responsible for the relationships that constitute this network. Moreover, the relationships between the state and individuals enhance people’s personal autonomy in some respects, but infringe it in other respects. The complexity of the relationships between individuals and the state, which is revealed through the relational theory, leads to the conclusion that the fundamental question with regard to the state’s power within the private sphere should not be *where do we draw the line between the state and individuals*, but rather *how constructive are the relationships between the state and individuals*.

Consequently, it does not suffice to examine the ways that legal rules formulate the relationships among individuals; the relationships between the state and individuals should be scrutinized as well. It is extremely crucial, for instance, to identify the cases in which the state enhances coercive socialization and reformulate the relationships between the state and individuals in such cases, so they enhance people’s personal autonomy instead of infringing it. The solution to possible coercion and paternalism by the state is not found in the retreat of the state from individuals’ lives. This solution is infeasible, since the state is inherently present in them. It might also be harmful, since, as we have seen in the previous sections, the state has a major and active role in promoting people’s personal autonomy. Rather, the solution is to identify the cases in which the relationships between the state and individuals are not constructive enough (or even destructive), and enhance their constructiveness.

To sum, the discussion in this short Section provides two preliminary replies to the concern that the relational conceptualization of the right to personal autonomy would enhance the state’s involvement in individuals’

190. For other, contemporary discussions on the fluidity and complexity of the public-private distinction, see, for example, Dagan & Dorfman, *supra* note 51, at 1424-30; and Hila Shamir, *The Public/Private Distinction Now: The Challenges of Privatization and of the Regulatory State*, 15 THEORETICAL INQUIRIES L. 1 (2014).

lives. First, as Nedelsky shows, what matters is not the extent that the state is involved, but rather the way it formulates the relationships among individuals. Second, as I argue, it is no less important to address the constructiveness of the relationships between individuals and the state. Both replies not only diminish the fear of the state's involvement in the promotion of people's autonomy, but also provide a new framework for thinking about the distinction between the private and the public. A relational discussion in the context of states duties should be further developed in the future.

VI. CONCLUSION

This Article lays preliminary foundations for a relational conceptualization of the right to personal autonomy. It leans in part on the liberal attempt to articulate such a right, unveils the substantial limitations of the liberal conception of autonomy for this task, and turns to the relational conception of personal autonomy as a more adequate ground for the articulation of the right to personal autonomy. The aim of this Article thus was to explore the potential of the relational conception to serve as a basis for the legal right to personal autonomy, and begin conceptualizing the right itself. It did so by introducing three aspects of state responsibility — namely, providing constructive relationships, ensuring the constructiveness of existing relationships, and preventing destructive relationships. Each aspect is relevant to relationships that are provided by the state, as well as relationships between individuals and institutions and among individuals. The state has a duty to ensure the existence of constructive relationships in people's lives, as well as a duty to initiate and encourage deliberative autonomy-enhancing processes of decision-making. It should be emphasized that these duties of the state do not replace the duty to expand the citizens' variety of options in various contexts — a duty that is based on the liberal conceptualization of the right to personal autonomy. Rather, both kinds of duties supplement each other. Together, the duties discussed in this Article begin to provide a clearer definition of the right to personal autonomy, thus overcoming some of its current vagueness in legal discourse.

Obviously, it has not been my intention in this Article to provide a full articulation of the right to personal autonomy, but merely to highlight the need for its renewed, relational conceptualization, and set its foundations. The aspects of state responsibility discussed above should be further developed in future research, *inter alia*, by delving into specific issues in various contexts. In another part of my research, for example, I focus on the articulation of the right to personal autonomy within the family, specifically with regard to the management of marital property. Another

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relevant context for future advancement of the right to personal autonomy is the doctrine of informed consent, which was briefly addressed in some parts of this Article. Many aspects of the debate on the autonomy of women in the context of abortions should also be discussed in light of the relational conceptualization of the right to personal autonomy, and can shed important light on the articulation of such a right. To conclude, much work has yet to be done in order to thoroughly and adequately articulate the right to personal autonomy; hopefully, the ideas set forth in this Article can serve as a starting point for this task.