



A Critical Examination of the Concept of Autonomy in Law and Legal Theory

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Abstract

This thesis concerns the meaning of autonomy. As the scope, mention and significance of autonomy have increased in recent years, the meaning of autonomy has itself been subject to increasing academic attention in law, as elsewhere. Far from consensus, this scholarly interest has resulted only in contestation and confusion, universally acknowledged. The present thesis argues that the cause of present frustration concerning autonomy is logical and semantic error at a fundamental level. In short, present scholarship seeking to articulate autonomy has neglected the insight on which modern logic and attendant conceptual analysis depends - Frege's distinction between sense and reference. In consequence, theorists all happen to deploy a referential theory of meaning, thus producing multiple accounts of 'autonomy' that inadvertently track the autonomous *objects* that command theorists' primary interest. Predictably, as accounts proliferate, disagreement and confusion has multiplied, to the detriment of the significant work the concept is intended to deliver in law and beyond. Tracing my hypothesis through the work of key theorists, I propose a rival account of autonomy simply as self-governance, with the literature field itself standing in striking support of the claim, once account has been made for the Fregean oversight. The thesis demonstrates the non-trivial nature of the point in relation to arguments in law, showing the explanatory power of the account in resolution of contemporary debates in these domains.

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A Critical Examination of the Concept of Autonomy in Law and Legal Theory

1. Introduction

Following its ancient Greek origin, AUTONOMY¹ features across an immense range of literature fields, including, but not limited to, law and legal theory,² philosophy,³ political theory,⁴ education,⁵ and (more recently, for example), robotics.⁶ In each of these fields debate and uncertainty is displayed concerning the meaning of AUTONOMY itself. This uncertainty is significant, as autonomy is widely considered a concept of great importance, not least within legal scholarship, and is expected to work extremely hard as a foundational principle in both practical and theoretical domains of the law. Thus rights conveyed by the concept's express application are protected by important international statute,⁷ and throughout legal sub-disciplines its status is attested routinely. For example, in contract law autonomy has been described as 'contract's ultimate value',⁸ as well as its 'telos... and grounding principle',⁹ and this high esteem is similarly evident elsewhere, in justifications concerning criminal responsibility, or concerning the agency of state and supranational actors in international law. Due to this importance, AUTONOMY has prompted a series of academic works that discuss and

¹ From this point in the thesis onwards, I use the convention of small caps in lieu of 'the concept of autonomy'. The concept is written in lower case when used as part of an expression.

² Markku Suski, *Autonomy: Applications and implications* (Kluwer Law International 1998).

³ Gerald Dworkin, 'The Concept of Autonomy' (1981) 12 *Grazer Philosophische Studien* 203, 204; Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge University Press 1986).

⁴ Marilyn Friedman, *Autonomy, Gender, Politics* (OUP 2003) 3.

⁵ Wieland Wermke and Maija Salokangas, 'Autonomy in Education: Theoretical and Empirical Approaches to a Contested Concept' (2015) 2015 (2) *Nordic Journal of Studies in Educational Policy* 1.

⁶ Willem F.G. Haselager, 'Robotics, philosophy and the problems of autonomy' (2005) 13 (3) *Pragmatics and Cognition* 515, 516.

⁷ European Convention on Human Rights 1950, Articles 8 & 9; Human Rights Act 1998.

⁸ Hanoch Dagan and Michael Heller, 'Autonomy for Contract, Refined' (2021) 40 *Law and Philosophy* 213.

⁹ *ibid.*

debate its meaning. As this discussion has developed, theories of the meaning of AUTONOMY have increased, both in technicality and number, with modern works often acknowledging former theories, and most adding an additional layer of technicality or detail.¹⁰ Despite the rigour of these investigations into the concept, uncertainty remains. Thus AUTONOMY is described as ‘full of loose ends of all kinds’,¹¹ ‘a complex notion’,¹² an ‘ambiguous’ idea,¹³ a term without a ‘generally accepted definition in international law’,¹⁴ ‘difficult to define with precision’,¹⁵ a term for which ‘current conceptions are inadequate’¹⁶. Meanwhile, and perhaps predictably then, the literature field concerning it is ‘characterised by confusion, miscommunication, and disconnection’.¹⁷ As such, it is the ambition of this thesis to elucidate the concept, but in a way that overcomes an error that I claim has led directly to present contestation and confusion. I demonstrate that through careful fidelity to established understandings in analytic philosophy of language and logic, such an elucidation can be provided. I will thereby show that autonomy is self-governance, with this account amenable and compelling regardless of likely differences in anyone’s semantic commitments otherwise: its attraction holds whether one commits to semantic realism or anti-realism, whether one is convinced by pragmatism, ordinary language philosophy or truth-conditional semantics.

¹⁰ Lubomira Radoilska, ‘Autonomy and Responsibility’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 149. – I chose this reference specifically as the author acknowledges the idea that autonomy is an essentially contested concept (a technical stipulation), and subsequently builds upon it by using ‘three families of autonomy conceptions’ (further technicality).

¹¹ *Autonomy: Applications and Implications* (n 2).

¹² Filimon Peonidis, ‘Freedom of Expression, Autonomy, and Defamation’ (1998) 17 *Law and Philosophy* 1.

¹³ Conrad D. Johnson, ‘The Idea of Autonomy and the Foundations of Contractual Liability’ (1983) 2 *Law and Philosophy* 271.

¹⁴ Hurst Hannum and Richard B. Lillich, ‘The Concept of Autonomy in International Law’ (2017) 74(4) *American Journal of International Law* 858.

¹⁵ Edmund D. Pellegrino, ‘Patient and Physician Autonomy: Conflicting Rights and Obligations in the Physician-Patient Relationship’ (1994) 10 *J Contemp Health L & Pol’y* 47.

¹⁶ Rebecca K Helm, Roxanna Dehaghani and Daniel Newman, ‘Guilty Plea Decisions: Moving Beyond the Autonomy Myth’ (2021) 85(1) *Modern Law Review* 133.

¹⁷ Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 1.

The thesis has the following structure. After this opening *Introduction*, Chapter 2 provides an overview of the history of theorising about AUTONOMY, concluding in a critical review of recent seminal pieces in the autonomy literature. To resolve the problems thereby identified, Chapter 3 examines the philosophy of language and theories of concepts, beginning with the classical theory of concepts and an analysis of AUTONOMY'S constituent definitional elements. Following this, Frege's theory of sense and reference is discussed in relation to AUTONOMY. For contrast, some alternative philosophical approaches, popular in the literature, are then considered, focusing on family resemblance and the deployment of degree. The chapter ends with a defence of 'self-governance' as the definition of AUTONOMY against proposed alternatives. Chapter 4 demonstrates the plausibility and usefulness of my account in relation to law. This chapter focuses predominately on Joel Feinberg's seminal work and its relation to criminal law and United States Supreme Court jurisprudence, as well as offering an examination of international law scholarship and analysis of contemporary debates situated within these domains. Finally, I conclude in Chapter 5 by drawing together the ideas presented throughout. Seen as self-governance, autonomy emerges 'fitter and thinner'¹⁸ than presently imagined, thereby resolving persistent dispute and leaving the concept able to be deployed successfully in the high-value contexts in which its use is urged.

¹⁸ Stephen Pethick, 'On the Entanglement of Coherence' (2014) 27(1) Ratio Juris 116.

2. Review of AUTONOMY Literature

2.1. The History of AUTONOMY

Many articles which discuss AUTONOMY opt to introduce it through etymology and history,¹⁹ which I will adhere to here as a sensible opening approach, in which it is offered not merely as scene-setting background, but because an examination of autonomy's etymological and historical context can help to account for its contemporary uncertainty, as we will see as discussion develops.

Autonomy is derived from the Greek words '*auto*' and '*nomos*', meaning 'self' and 'law' (or 'rule') respectively, and was originally used to describe the self-governance of political entities,²⁰ chiefly states or cities such as Athens and Sparta.²¹ Significantly, the available evidence suggests that only later was AUTONOMY used to describe an individual person, in Sophocles' play *Antigone*.²² The eponymous character was described by Sophocles as *autonomos*, which was a negative descriptor used to show the conflict between Antigone's 'personal quality'²³ of living by her own rules, and 'the stated directives of political authority'.²⁴

Over time, the use of AUTONOMY broadened from these initial instances to include philosophical considerations of a more general nature, notably in work by Plato and Aristotle in their characterisation of the autonomous person. While, for the most part, they did not use the word autonomy (c.f., one use of *autonomoi* by Aristotle in *Politics*, exclusively referring to individual citizens who do not live under a tyrant)²⁵, in his dialogue, *Protagoras*, Plato

¹⁹ S.R.M Miller, 'Autonomy' (2018) *The SAGE Encyclopedia of Surveillance, Security, and Privacy* 79.

²⁰ Lucas Swaine, *Ethical Autonomy: The Rise of Self-Rule* (Oxford University Press 2020) 2.

²¹ *ibid.*

²² Sophie Grace Chappell, 'Autonomy in Sophocles' *Antigone*' in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 13.

²³ *Ethical Autonomy: The Rise of Self-Rule* (n 20) footnote 30.

²⁴ *ibid* 7.

²⁵ 'Autonomy in Sophocles' *Antigone*' (n 22).

discusses the notions of personal responsibility and individual self-governance.²⁶ This dialogue concerns the philosophers, Protagoras and Socrates, discussing the notion of virtue, specifically whether one can be taught to express the virtues of a good citizen or if virtue itself is an inherent quality: ‘Now I, Protagoras, having these examples before me, am inclined to think that virtue cannot be taught... And I wish that you would, if possible, show me a little more clearly that virtue can be taught.’²⁷ It would not be possible within the confines nor is it the ambition of this thesis to discuss this dialogue at length; rather I produce it here because it is routinely identified as one of the earliest pieces of literature concerning AUTONOMY.²⁸ Similarly, in *Nichomachean Ethics*,²⁹ Aristotle considers the importance of personal agency and moral virtue.³⁰ While Plato and Aristotle do not mention autonomy by name in their works concerning self-governance, their discussion of the adjacent concepts of agency and self-sufficiency are widely considered to relate to AUTONOMY in the exegetical literature³¹. However, this relation is not universally supported, and it has been argued to be problematic.³²

More recent conceptualisations of AUTONOMY often trace their roots back to the Enlightenment, rather than to classical Greece, with a focus particularly on the works of Immanuel Kant. It is here that AUTONOMY came to be associated with ideas of individual rationality and self-legislation on matters of morality.³³ Scholars have argued that due to Kant’s work, AUTONOMY has mainly become associated with the notion of individual

²⁶ Plato, *Protagoras* (translated by Benjamin Jowett, Project Gutenberg Ebook 2008) available at <<https://www.gutenberg.org/files/1591/1591-h/1591-h.htm>> accessed 16 December 2023.

²⁷ *ibid.*

²⁸ Charles L. Griswold Jr., ‘Relying on Your Own Voice: An Unsettled Rivalry of Moral Ideals in Plato’s “Protagoras”’ 53 *The Review of Metaphysics* 283, footnote 59.

²⁹ Aristotle, *Nichomachean Ethics* (translated by W. D. Ross, Batoche Books Kitchener 1999) available at <<https://historyofeconomicthought.mcmaster.ca/aristotle/Ethics.pdf>> accessed 16 December 2023.

³⁰ C. M. M. Olfert, ‘Self-Sufficiency and Autonomy in Aristotle’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 23.

³¹ See, for example, Griswold, n.28.

³² ‘Self-Sufficiency and Autonomy in Aristotle’ (n 30) 29.

³³ JB Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge University Press 1998) 3.

freedom, ‘with a positive, morally charged meaning’.³⁴ Kant tells us that “autonomy of the will is the property of the will by which it is a law to itself (independently of any property of the objects of volition)”.³⁵ Many academics have endeavoured to demystify Kant’s ‘complex and multi-faceted’³⁶ conception of autonomy, but, despite their studies’ best attempts, the concept remains elusive.

Following Kant, John Stuart Mill is often credited as the next great proponent of AUTONOMY. I note proponent specifically (rather than theorist or scholar), as it is debateable how much of Mill’s work focussed on AUTONOMY itself. In fact, it is well known that Mill rarely used the concept of autonomy. Mill was aware of the concept, having used it to refer to the ‘principe’ or ‘règle’ of liberty in correspondence;³⁷ however, the lack of its usage in his works may be due to the fact that ‘the word had not sufficiently migrated into philosophical English in Mill’s formative years’.³⁸ Mill’s work, predominantly *On Liberty*,³⁹ presented ideas related to AUTONOMY from which a secondary literature discussing Mill’s ‘conception of autonomy’⁴⁰ has been generated. It has been argued by Capaldi that Mill’s conception of autonomy runs in accordance with the ‘classical Greek-Christian-Protestant-Kantian-Humboldtian tradition’,⁴¹ and that ‘the ultimate value is freedom understood as personal

³⁴ Susan Meld Shell, *Kant and the Limits of Autonomy* (Harvard University Press 2009) 2.

³⁵ Andrew Reath, ‘Kant’s Conception of Autonomy of the Will’ in Oliver Sensen, *Kant on Moral Autonomy* (Cambridge University Press 2013) 32.

³⁶ Oliver Sensen, *Kant on Moral Autonomy* (Cambridge University Press 2013) 1.

³⁷ John Skorupski, ‘The Philosophy of John Stuart Mill’ (2007) 15 *British Journal for the History of Philosophy* 181, 191.

³⁸ Christopher Macleod, ‘Mill on Autonomy’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 75.

³⁹ John Stuart Mill, *On Liberty* (Batoche Books Kitchener 2001) available at <https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/mill/liberty.pdf> accessed 17 December 2023.

⁴⁰ Christian F. Rostbøll, ‘Kantian Autonomy and Political Liberalism’ (2011) 37 *Social Theory and Practice* 341, footnotes 4 and 64; Robert W. Hoag, ‘Happiness and Freedom: Recent Work on John Stuart Mill’ (1986) 15 *Philosophy & Public Affairs* 188, 194; Viv Ashley, ‘Philosophical Models of Personal Autonomy’ (2016) V/5 *The Essex Autonomy Project Green Paper Technical Report* <https://autonomy.essex.ac.uk/wp-content/uploads/2016/11/Essex-Autonomy-Project-Philosophical-Models-of-Autonomy-October-2012.pdf> accessed 17 December 2023.

⁴¹ Nicholas Capaldi, *John Stuart Mill: A Biography* (Cambridge University Press 2004) 280.

autonomy’.⁴² In response to this analysis, Skorupski argued that this interpretation misses ‘differences which were rightly vital to Mill’,⁴³ and ‘places far too much emphasis on autonomy, or moral freedom, at the expense of other equally important elements in Mill’s liberal idea of character’.⁴⁴ I draw attention to this discourse in particular as AUTONOMY has been ascribed to the works of Mill, which has invited comparison to the AUTONOMY spoken of by Kant, finally leading to contestation regarding this comparison. This brief deviation from the history of AUTONOMY shows that the concept continues to generate contestation even in secondary literature which concerns a work that does not even mention AUTONOMY by name. Kant and Mill wrote of many overlapping concepts which deserve consideration, but the discussion of a concept which Mill never specifically mentions in his works serves merely to promote the perceived complexity of AUTONOMY.

The admittedly brief survey of historical approaches above is intended principally to contextualise the following review of contemporary approaches to AUTONOMY, for these will be my chief concern as discussion develops.

2.2. Recent AUTONOMY Literature

The literature field on AUTONOMY is vast, but in it four scholars stand out due to the extent of the interest and the secondary literature generated by their works. These are Robert Paul Wolff, John Rawls, Gerald Dworkin, and John Christman. Joel Feinberg is a scholar whose work also fits the profile, but as his analysis of AUTONOMY is rooted in legal theory, it will be examined in significant depth later in my thesis. This section examines the relevant works of the four scholars mentioned in the order presented above, which is chronological, for as we shall see, a significant feature of the relevant literature is the addition over time of component parts proposed for AUTONOMY. Moreover, the work on AUTONOMY produced by the four scholars in question is widely regarded as seminal,⁴⁵ and is produced within disciplinary areas directly adjacent to legal theory – that is, political and moral theory – or

⁴² *ibid* 140.

⁴³ ‘The Philosophy of John Stuart Mill’ (n 37) 192.

⁴⁴ *ibid*.

⁴⁵ Thomas May, ‘The Concept of Autonomy’ (1994) 31 *American Philosophical Quarterly* 133, 138.

which attends in passing to legal theory itself. In what follows I introduce each theorist with a quotation from their work that illustrates their contribution on AUTONOMY. As noted, I begin with consideration of the thesis offered by Wolff, which is striking in its deployment of AUTONOMY in relation to anarchism.

2.3. Robert Paul Wolff

As Kant argued, moral autonomy is a combination of freedom and responsibility; it is a submission to laws which one has made for oneself. The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not because he has been told to do it. He is therefore, in the political sense of the word, *free*.⁴⁶

Wolff's book, *In Defense of Anarchism*,⁴⁷ argues for what he calls 'philosophical anarchism', asserting that we treat 'all governments as non-legitimate bodies whose commands must be judged and evaluated in each instance before they are obeyed; or else, we must give up as quixotic the pursuit of autonomy in the political realm'.⁴⁸ Wolff's work on the dichotomy between the expression of Kantian moral autonomy and the 'duty to obey',⁴⁹ the laws produced by parliament is prudent. However, I want to draw attention to Wolff's consideration of 'the duty of autonomy',⁵⁰ and the works which have been produced resulting from it. At no point in his book does Wolff attempt to define AUTONOMY, but his discussion of the political implications of *Kantian* autonomy has resulted in the idea that he has produced his own 'conception' of AUTONOMY itself.⁵¹ The above passage is especially apposite as it begins with 'As Kant argued' and follows with an account of Kantian moral autonomy. Plainly, it might be problematic to call this Wolff's 'conception of autonomy', as he utilises Kant's moral conception of autonomy within a (further) philosophical and political framework. Despite this, as we shall see, *In Defense of Anarchism* continues to be regarded as offering a conception of autonomy; a conception which is then taken to complicate the

⁴⁶ Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper & Row 1970) 8.

⁴⁷ *ibid*.

⁴⁸ *ibid* 35.

⁴⁹ *ibid* 15.

⁵⁰ *ibid* 12, 13 & 23.

⁵¹ Thomas May, 'The Concept of Autonomy' (n 45) 135.

concept. Either way, Wolff's work has contributed, either directly or indirectly, to AUTONOMY's reputation as 'a complex and contested concept'.⁵² Steven Wall says exactly that, in a recent compendium dedicated to AUTONOMY:

Autonomy, as the other chapters in this volume make plain, is a complex and contested concept. Among other things, it can refer to a condition of agency (Mele 1995) a duty to think for oneself (Wolff 1970), a right to self-determination (Feinberg 1986) or an aspect or component of a good human life (Raz 1986).⁵³

In this way AUTONOMY appears as a 'complex' concept because of the number of ways in which the concept can be attributed to the individual. Wall's consideration of Wolff's work is overly reductive, as in addition to Wolff's description of AUTONOMY as 'a duty to think for oneself', Wolff also states that '[s]ince the responsible man arrives at moral decisions which he expresses to himself in the form of imperatives, we may say that he gives laws to himself, or is self-legislating. In short, he is *autonomous*.'⁵⁴ Therefore, for Wolff, AUTONOMY is not only a 'duty to think for oneself' but involves responsibly arriving at moral decisions expressed in the form of imperatives'. To reduce Wolff's thoughts on AUTONOMY merely to the duty expressed above is, moreover, to reduce Kant's conception of AUTONOMY in like manner, as Wolff's argument on the point is so strongly based on the works of Kant. Further, Wolff reasons that a man who self-legislates is therefore autonomous, indicating that thinking for oneself is alone insufficient to constitute autonomy where self-legislation is absent. It is the giving of laws to oneself which separates the autonomous man from the independently thoughtful, or perhaps reflective, man, on which point Wolff's view aligns unsurprisingly with the history of AUTONOMY, going beyond 'the duty to think for oneself'. Similarly Kantian in its foundation is the work of the next theorist in our contemporary set, John Rawls.

⁵² Steven Wall, 'Autonomy as an Ideal of the Good' in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 303.

⁵³ *ibid.*

⁵⁴ *In Defense of Anarchism* (n 46) 8.

2.4. John Rawls

These observations are evident consequences of the contract doctrine and the fact that its principles regulate the practices of moral instruction in a well-ordered society. Following the Kantian interpretation of justice as fairness, we can say that by acting from these principles persons are acting autonomously: they are acting from principles that they would acknowledge under conditions that best express their nature as free and equal rational beings... Thus moral education is education for autonomy.⁵⁵

Rawls' book, *A Theory of Justice*, contains a chapter (IX - 'The Good of Justice') which includes a section titled 'Autonomy and Objectivity'.⁵⁶ The above quotation is taken from that section and demonstrates the Kantian influence on Rawls's discussion of AUTONOMY. Rawls places particular importance on choice behind what he calls 'the veil of ignorance'.⁵⁷ In a re-imagining of social-contract theory, Rawls states that 'the veil of ignorance prevents us from shaping our moral view to accord with our own particular attachments and interests',⁵⁸ and thus, autonomous decisions detached from these 'attachments and interests' would be impartial and promote justice within the social order.⁵⁹ It is fundamental to his work that Rawls adopts and interprets Kant's conception of moral autonomy in order to present his *Theory of Justice*, and this adoption is widely recognised within the AUTONOMY literature.⁶⁰ Despite this acknowledgement, it is frequently and perhaps surprisingly widely-held that Rawls presents his own 'conception of autonomy'.⁶¹ Thus, despite it appearing more accurate to hold that *A Theory of Justice* delivers a conception of *justice*, in turn supported by Kant's conception of autonomy, in specific reference to an article written by Rawls titled 'Kantian Constructivism in Moral Theory',⁶² Wermke and Salokangas state that 'autonomy has also been widely contested in philosophy, and as

⁵⁵ John Rawls, *A Theory of Justice* (first published 1971, Revised Edition, Harvard University Press 1991) 452.

⁵⁶ *ibid* 450.

⁵⁷ *ibid* 11.

⁵⁸ *ibid* 453.

⁵⁹ *ibid*.

⁶⁰ Anthony Taylor, 'Rawls's Conception of Autonomy' in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 99.

⁶¹ *ibid* 96.

⁶² John Rawls, 'Kantian Constructivism in Moral Theory' 1980 77 (9) *The Journal of Philosophy* 515.

suggested by Rawls, for example, the concept has been defined in a variety of ways'.⁶³ This is not what Rawls proposes in his article, in which he instead contrasts the notions of 'full' and 'rational' autonomy as they pertain to his continued promotion of justice as fairness.⁶⁴ I phrase these quotations in this specific way to highlight the fact that Rawls' focus in this article was not on AUTONOMY, but rather on elucidating the notions of 'full' and 'rational', as they pertain to AUTONOMY. In fact, in reference to the Kantian 'conception of the person as reasonable and rational, and fully autonomous',⁶⁵ Rawls states that '(he) shall not examine here what these more general model-notions are or how they might be defined'.⁶⁶ It is understandable that Wermke and Salokangas might view Rawls' discussion of the distinctions between 'full' and 'rational' autonomy as competing definitions of AUTONOMY, but this is methodological overreach as AUTONOMY might not be the site of difference here; indeed, a ready distinction already presents in the division between *rationally* and *fully* autonomous. This quick note on method is worth remembering, as the point will become increasingly significant as my discussion develops.

In his later work *Political Liberalism*,⁶⁷ Rawls considered again the stability argument offered in *Theory of Justice*, and came to doubt his supposition there that everyone born into a well-ordered society would express an innate desire for Kantian autonomy. Rawls now believed that in a well-ordered liberal society there would be a plurality of worldviews, therefore presenting an overlapping consensus from which liberal principles would be reflected, but not necessarily as a result of Kantian autonomy.⁶⁸ It therefore appears that Rawls has reduced the significance of the role played by Kantian autonomy in his idea of justice as fairness. It is here that Rawls presents his 'political conception'⁶⁹ of autonomy, in

⁶³ Wieland Wermke & Maija Salokangas, 'Autonomy in Education: Theoretical and Empirical Approaches to a Contested Concept' (2015) 2015 (2) Nordic Journal of Studies in Educational Policy 1.

⁶⁴ 'Kantian Constructivism in Moral Theory' (n 62) 521.

⁶⁵ *ibid* 535.

⁶⁶ *ibid* 536.

⁶⁷ John Rawls, *Political Liberalism* (Columbia University Press 1993).

⁶⁸ 'Rawls's Conception of Autonomy' (n 60) 101.

⁶⁹ Geoffrey Brahm Levey, 'Autonomy and Multiculturalism' in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 386.

which the principles of political justice are self-legislated within a pluralistic society in which its citizens ‘are left free to pursue their own conceptions of the good in the non-public sphere.’⁷⁰ What I wish to draw attention to here is not the nuances of Rawls’s political conception of autonomy, but rather the response to it. Rawls may have rationalised the dichotomy between the Kantian notion and a pluralistic society, but AUTONOMY itself remained elusive in the associated literature. Shortly following his acknowledgment of Rawls’s contributions,⁷¹ Fallon stated autonomy to be ‘a protean concept, which means different things to different people, and occasionally appears to change its meaning in the course of a single argument.’⁷² For all the strides which may have been made within moral, legal, and political philosophy, it appears that across his two discussed works, Rawls contributed little to the demystification of AUTONOMY. Of course, that was likely not an ambition, but his work has nonetheless stimulated the view that AUTONOMY ought to be redefined.⁷³ Rawls’s work focuses entirely on the notions of *full* and *rational* as they pertain to his subject matter, and yet Fallon does not consider that it may be the dynamic subject matters in which AUTONOMY is discussed that are ‘protean’. If Fallon is correct, the consequences for law are serious, for how could any lawyer, judge or legislator know which protean AUTONOMY is of relevance to their present situation? Plainly, such an understanding of AUTONOMY is likely to be quite unhelpful in the context of law, the rule of law and the general co-ordination project of putting ourselves under the guidance of rules.

2.5. Gerald Dworkin

Autonomy is a term of art introduced by a theorist in an attempt to make sense of a tangled net of intuitions, conceptual and empirical issues, and normative claims. What one needs, therefore, is a study of how the term is connected with other notions, what role it plays in justifying various normative claims, how the notion is supposed to ground ascriptions of value, and so on – in short, a theory.⁷⁴

⁷⁰ *ibid.*

⁷¹ Richard H. Fallon. Jr, ‘Two Senses of Autonomy’ (1994) 46 *Stanford Law Review* 875, footnote 2.

⁷² *ibid* 876.

⁷³ ‘Autonomy and Multiculturalism’ (n 69).

⁷⁴ Gerald Dworkin, ‘The Concept of Autonomy’ (n 3).

In his work on AUTONOMY spanning the better part of half a century, Gerald Dworkin has remained steadfast in his belief that the ‘philosophically complex’⁷⁵ concept of AUTONOMY is best not defined, lest it fail to fulfil its theoretical role.⁷⁶ Much of Dworkin’s work is focussed on the notion of first and second order motivations, and ‘[i]t is only when a person identifies with the influences that motivate him or her, assimilates them to himself or herself, that he or she is autonomous.’⁷⁷ In lieu of a ‘core meaning’ of AUTONOMY, Dworkin presents a theory of *being* autonomous, which involves the concepts of motivation, critical reflection, and identification. Particular significance arises from Dworkin’s belief that such a theory ought to exist *in place* of a ‘core meaning’ of autonomy. If this is true, AUTONOMY immediately becomes more complex as Dworkin’s associated concepts must be integrated into an understanding of AUTONOMY, even if they are not taken to be part of a formal definition. Dworkin’s reluctance to define AUTONOMY is further evidenced by the fact that his article, ‘The Concept of Autonomy’, is republished with few alterations in his later book under the different title, ‘the nature of autonomy’.⁷⁸ The phrases ‘concept of’ and ‘nature of’, used as titles, indicate works with different intentions and subsequently contents. ‘Nature’ is a more appropriate term to describe this work, as it is built upon the criteria Dworkin believes to be necessary ‘for a satisfactory theory of autonomy’.⁷⁹ Moreover, Dworkin states that he aims to ‘characterise rather than define’⁸⁰ autonomy. Dworkin’s decision to provide a theory (described as ‘a study of how the term is connected with other notions, what role it plays in justifying various normative claims, how the notion is supposed to ground ascriptions of value, and so on’⁸¹) in place of a definition of AUTONOMY prompted in his analysis conceptual overlap with MOTIVATION, CRITICAL REFLECTION, and IDENTIFICATION. However,

⁷⁵ *ibid.*

⁷⁶ *ibid.*, ‘It is very unlikely that there is a core meaning which underlies all these various uses of the term. Autonomy is a term of art and will not repay an Austinian investigation of its ordinary uses. It will be necessary to construct a concept given various theoretical purposes and some constraints from normal usage.’

⁷⁷ *ibid.* 1.

⁷⁸ *The Theory and Practice of Autonomy* (n 3) 3. Please note that the following citations which refer to this chapter use the page numbers from a republication of Dworkin’s chapter, available at <https://doi.org/10.3402/nstep.v1.28479> accessed 25 December 2023.

⁷⁹ *ibid.* 9.

⁸⁰ *ibid.* 8.

⁸¹ *ibid.*

FREEDOM and LIBERTY are two concepts which Dworkin regards as separate to AUTONOMY, demonstrated through his consideration of the myth of Odysseus:

Consider the classic case of Odysseus. Not wanting to be lured onto the rocks by sirens, he commands his men to tie him to the mast and refuse all later orders he will give to be set free. He wants to have his freedom limited so that he can survive... In limiting his liberty, in accordance with his wishes, we promote, not hinder, his efforts to define the contours of his life.⁸²

Dworkin considers Odysseus's efforts to 'define the contours of his life' to be his display of autonomy. Dworkin argues that 'a separate notion of autonomy'⁸³ (separate to FREEDOM and LIBERTY) is required 'because not every interference with the voluntary character of one's action interferes with a person's ability to choose his or her mode of life.'⁸⁴ So while FREEDOM⁸⁵ and LIBERTY⁸⁶ have been equated with AUTONOMY in the literature, Dworkin's reasoning demonstrates that these concepts cannot mean the same thing: if the restriction of one's freedom can promote autonomy, then FREEDOM and AUTONOMY must be distinct concepts. Although Dworkin's reasoning arrives, I believe, at the correct conclusion, he disregards another method which could reveal the very same conceptual insight.

According to Dworkin, '[i]t is very unlikely that there is a core meaning which underlies all these various uses of the term. Autonomy is a term of art and will not repay an Austinian investigation of its ordinary uses.'⁸⁷ Dworkin states that "'autonomy' is used in an exceedingly broad fashion",⁸⁸ which, in combination with his belief that '[i]t is very unlikely that there is a

⁸² *ibid* 12.

⁸³ *ibid*.

⁸⁴ *ibid*.

⁸⁵ See '*Kant and the Limits of Autonomy*' (n 34) for an example of this.

⁸⁶ *The Theory and Practice of Autonomy* (n 3) 8; see Dworkin's comment that '[autonomy] is used sometimes as an equivalent of liberty (positive or negative in Berlin's terminology) for an example of this.

⁸⁷ *ibid* 8.

⁸⁸ *ibid*, Dworkin's entire summary of this broad usage is as follows: 'It is apparent that, although not used just as a synonym for qualities that are usually approved of, 'autonomy' is used in an exceedingly broad fashion. It is used sometimes as an equivalent of liberty (positive or negative in

core meaning' which underlies this broad usage, informs his dismissal of an 'Austinian investigation'. However, it is possible that such an investigation could deliver the same conclusion provided by his consideration of Odysseus. Simply, we would typically not describe an autonomous vehicle as free, nor would we speak of an autonomous streetlamp's⁸⁹ liberty. These are two examples in which the ordinary use of AUTONOMY demonstrates its conceptual distinction from FREEDOM and LIBERTY. Dworkin's consideration of Odysseus demonstrated that, in practice, autonomy and freedom can be opposed, which differs from my ordinary use examples, but Dworkin's ambition was to show that AUTONOMY, FREEDOM, and LIBERTY are *distinct*. Thus, Dworkin reasons that we need a separate concept of AUTONOMY. An investigation into ordinary uses of AUTONOMY achieves this ambition as well, as the need for a separate concept of AUTONOMY is demonstrated plainly by the inadequacy of describing my examples, vehicle or streetlamp, as *free* or *liberated*.

Dworkin continues by making note of the etymology of autonomy,⁹⁰ yet this does little to inform his theory. He notes that the term first applied to the Greek city-state in reference to a lack of some conquering power, yet when examining the constituent elements of this etymology, Dworkin turns almost immediately to metaphysical notions of the 'self'. He says that theorists who have written on autonomy 'at a very abstract level... share the same concept',⁹¹ but is that a concept of AUTONOMY which is constituted by these metaphysical

Berlin's terminology), sometimes as equivalent to self-rule or sovereignty, sometimes as identical with freedom of the will. It is equated with dignity, integrity, individuality, independence, responsibility and self-knowledge. It is identified with qualities of self-assertion, critical reflection, freedom from obligation, absence of external causation and knowledge of one's own interests. It is even equated by some economists with the impossibility of interpersonal comparisons. It is related to actions, beliefs, reasons for acting, rules, the will of other persons, thoughts and principles. About the only features held constant from one author to another are that autonomy is a feature of persons and that it is a desirable quality to have.'

⁸⁹ Laraki Mehdi, Aawatif Hayer, Ntwali Benjamin Sendama, El M'Kaddem Kheddioui and Mimoun Zazoui, 'Public Street-lamps autonomy increasing based on self-lighting concept' (2016) International Conference on Electrical Sciences and Technologies in Maghreb (CISTEM), Marrakech & Bengir Morocco 1; This is a less 'ordinary' example than an autonomous vehicle, but it is nonetheless an ordinary object bestowed with autonomy.

⁹⁰ *The Theory and Practice of Autonomy* (n 3) 11.

⁹¹ *Ibid* 10.

notions of the self, or is it the very same concept of AUTONOMY applied to the Greek city-state? In describing their own city-states as autonomous, it is not helpfully exegetical to impose Dworkin's axiomatically modern 'metaphysical notions' which include 'the noumenal self of Kant, and the 'historical self of Marx'.⁹² Bluntly, the 'noumenal self of Kant' and the 'historical self of Marx' have no contemporary relevance to the ancient Greek city-state, and yet *this* is the first documented use of AUTONOMY. In any event, an investigation into ordinary uses of AUTONOMY readily yields those which are distinct from the person. Understanding the metaphysical self may be relevant to considerations of the autonomous *person*, but if one is to consider such ideas as necessary to understanding AUTONOMY, they must disregard both its origin and ordinary uses.

What begins to emerge from review of Dworkin, Rawls and Wolff, above, is that complexity arises when AUTONOMY is considered within specific frames, where it is understood - without relevant reflection or defence - to be conceptually altered by those frames. Dworkin's work on AUTONOMY is influential in the literature field, and thus has perpetuated the view that AUTONOMY is too complex for there to be a settled definition.⁹³ If Dworkin is right, and definitional lines are inappropriate for AUTONOMY, then the consequences for law are severe. May is correct that AUTONOMY 'is used in very concrete roles and is a key issue in many practical debates',⁹⁴ and for this very reason, understanding AUTONOMY in Dworkin's esoteric way means it may struggle to benefit people practically, in law as elsewhere.

2.6. John Christman

Now as I admitted, some of the writers discussed here avoid the use of the word 'autonomy' altogether in their work, but there are various, seemingly unrelated problems that are connected in that they all revolve around this core notion of individual autonomy.

⁹² *ibid.*

⁹³ See John Christman, 'Autonomy and Personal History' in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 178; 'As Gerald Dworkin pointed out, "autonomy" is a term of art, and its definition is a constructive philosophical enterprise whose adequacy depends on the uses to which it is meant to be put'.

⁹⁴ Thomas May, 'The Concept of Autonomy' (n 46) 133.

This is not to presuppose an obviously controversial claim that 'individual autonomy' has a single meaning that everyone who uses the term is aware of. It is only to focus in on the notion of self-government that underlies at least the central use of the concept.⁹⁵

Christman does not share Dworkin's reluctance to define AUTONOMY. Dworkin believes it not likely that anything underlies all uses of AUTONOMY except it being a 'feature of persons... that it is a desirable quality to have.'⁹⁶ In contrast, Christman states that 'the notion of self-government... underlies at least the central use' of 'individual autonomy'. However, Christman is hesitant to suggest that 'individual autonomy' has a single meaning commanding widespread acceptance. Despite Christman's hesitation, a now-familiar secondary literature generated by his work has credited him with delivering a 'core concept' of AUTONOMY. Thus Colburn states that:

Following John Christman (1988: 109)... the core concept of autonomy is of individual self-government. Different ways of understanding autonomy are different *conceptions* falling under this core concept, either defending or relying on alternative proposals for what self-government amounts to.⁹⁷

However, Colburn's statement is not an accurate representation of Christman's position, as the latter states that self-government underlies the central use of individual autonomy. Christman does not mention 'individual' self-government. Colburn's interpretation is explicable as the discussion of autonomy and its related notions on pages 109 and 110 of Christman's article flit between the concept of autonomy, and the conceptions of individual and personal autonomy. Christman begins by stating that the works of other theorists (which do not use the word 'autonomy') on 'seemingly unrelated problems' 'revolve around this core notion of individual autonomy'.⁹⁸ Following this, he identifies the notion of self-government as underlying 'at least the central use of the concept'. On this evidence, Christman might believe that self-government underlies autonomy, or that it underlies *individual* autonomy. The title of the relevant section is 'The Concept of Individual

⁹⁵ John Christman, 'Constructing the Inner Citadel: Recent Work on the Concept of Autonomy' (1988) 99 *Ethics* 109.

⁹⁶ *The Theory and Practice of Autonomy* (n 3) 8.

⁹⁷ *The Routledge Handbook of Autonomy* (n 17) 2.

⁹⁸ 'Constructing the Inner Citadel: Recent Work on the Concept of Autonomy' (n 95) 109.

Autonomy’,⁹⁹ so it can be assumed that Christman is referring to *individual* autonomy. This lack of immediate clarity may have affected Colburn’s interpretation. While Colburn may have misrepresented the core concept of autonomy, his definition of ‘individual self-government’ circumnavigates Christman’s reluctance to ‘presuppose an obviously controversial claim that ‘individual autonomy’ has a single meaning that everyone who uses the term is aware of.’¹⁰⁰ Colburn’s text is less hesitant than Christman’s, but in delivering his point Colburn provides a ‘core concept’ which departs from Christman’s work. Christman briefly mentions the singular ‘autonomy’ before moving onto the compound ‘individual autonomy’ - what he calls ‘the core notion’. If Christman believes that ‘the notion of self-government’ underlies ‘individual autonomy’, he may also believe that ‘self-government’ underlies AUTONOMY. Clearly, the disconnect between Christman’s work and Colburn’s interpretation of it arises due to intercession of the term ‘individual’. Christman states that some writers ‘avoid the use of the word ‘autonomy’ altogether in their work, but there are various, seemingly unrelated problems that are connected in that they all revolve around this core notion of individual autonomy’. An important consideration here is that the writers referred to by Christman avoid the singular term ‘autonomy’ in response to ‘seemingly unrelated problems’ that instead all revolve around the compound term ‘individual autonomy’. In his paper, ‘Freedom, Autonomy, and Social Selves’,¹⁰¹ Christman states that ‘the challenge for conceptions of autonomy - self-government - is how to conceptualize the “self”’.¹⁰² Unfortunately, this statement raises more questions than it answers. Do the challenges of ‘conceptualizing the “self”’ affect all conceptions of autonomy? Or exclusively ‘individual autonomy’? If AUTONOMY is ‘self-government’ across all conceptions, then is a unique ‘conceptualization’ of ‘self’ required for each and every one? Christman calls ‘individual autonomy’ a ‘concept’ and a ‘core notion’, but his later works ‘conceptualize’ ‘the self’ in the social context,¹⁰³ as well as the personal historical context,¹⁰⁴ which in turn are both clearly facets of ‘the individual’. Thus, in Christman’s work at least, ‘individual

⁹⁹ *ibid.*

¹⁰⁰ *ibid* 109.

¹⁰¹ John Christman, ‘Freedom, Autonomy, and Social Selves’ (2009) APSA 2009 Toronto Meeting Paper <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1449586> accessed 28 December 2023.

¹⁰² *ibid* 8.

¹⁰³ *ibid* 6.

¹⁰⁴ ‘Autonomy and Personal History’ (n 93).

autonomy' is a conception which grapples with the challenge he describes, but there is no evidence for this challenge amongst conceptions of autonomy, even if 'self-government' is common for each. Thus Christman's work does not help to pin down AUTONOMY.

'[I]ndividual autonomy' is said to possess no 'single meaning that everyone who uses the term is aware of', and AUTONOMY is either 'self-government', or its 'core concept is of individual self-government'. Either way, it is not clear how to 'conceptualize the self'. Moreover, what is '*self*-government' anyway?

3. A Conceptual Analysis of AUTONOMY

3.1. Introduction

Now that the present research condition of AUTONOMY has been foregrounded, the confusion and contestation it has produced is apparent. The previous section of this thesis began with Wall's determination of AUTONOMY as complex and possessing a plurality of meanings. For example, one such meaning is 'a duty to think for oneself', taken from Wolff's discussion of Kantian autonomy in a political context. Rawls's consideration of Kantian moral autonomy in his theory of justice, coupled with his examination of 'full' and 'rational' autonomy, led Wermke and Salokangas to draw from Rawls the view that 'the concept has been defined in a variety of ways'. Following this, Rawls' later consideration in *Political Liberalism* led Fallon to describe AUTONOMY as 'protean'. Dworkin's theory of autonomy goes a step further. Instead of suggesting AUTONOMY to have a plurality of meanings, or a 'protean' nature, Dworkin believes that, as a philosophically complex 'term of art', it ought not to be defined at all. Departing from Dworkin, Christman states that 'the notion of self-government' underlies the central use of individual autonomy. However, this does not amount to a definition in Christman's eyes, as he does not intend 'to presuppose an obviously controversial claim that 'individual autonomy' has a single meaning that everyone who uses the term is aware of'. So, Christman leaves us short of a definition or account of AUTONOMY, but with a 'notion which underlies at least the central use of the concept.' And finally, even if 'self-government' is understood as an account of AUTONOMY, the hurdle of 'how to conceptualize the self' remains. These theories, and the secondary literature they have generated, put AUTONOMY in a confusing place; it is said to have multiple meanings, a dynamically changing meaning, no meaning at all, and an underlying notion which sounds a lot like, but is nonetheless short of, meaning. As such, what AUTONOMY requires is a thorough conceptual analysis. As Christman demonstrates, self-governance is commonly referenced in conversations concerning the meaning of autonomy, and it can be said to pick out at least the context of AUTONOMY'S central use - thus Colburn calls *individual* self-government the 'core concept of autonomy'. However, I argue that even these latter theorists, advocates of the centrality of self-governance to AUTONOMY, have missed the opportunity to deliver AUTONOMY in clear and simple terms, as self-governance itself. And the reason for this is universal inattention to the distinction between sense and reference. It is the ambition

of this chapter to present the argument needed in defence of my analysis and criticism, and thus to show that self-governance is sufficient to accomplish the semantic work required of the concept across all its invocations, in both ordinary and technical contexts.

Once unburdened from the conceptual theories and elements beyond self-governance which theorists attempt to apply to AUTONOMY, the concept presents as clear-cut and fit for purpose as a foundational legal principle. To introduce my argument, I begin by presenting three positions in philosophy of language that have been deployed (albeit, typically, implicitly) in approaching the concept's meaning. These are, first, use of or commitment to the so-called classical theory of concepts; second, family resemblance; and third, AUTONOMY understood as a degree term. Additionally, I deploy sense and reference to foreground the distinction which I claim has been entirely overlooked by scholars of AUTONOMY. Finally, I conclude with a defence of the tractability and comprehensiveness of 'self-governance' in capturing the semantic content of autonomy *tout court*. Each section begins with an overview of the proposal in question, including its inception and examples of supposedly correct application, followed by the analysis of its application to AUTONOMY, and subsequently ending with an explanation why further additions beyond self-governance are a burden. I aim to show the relative simplicity of AUTONOMY, while cautioning against the illicit inclusion of supplementary conceptual elements which obscure its definition.

3.2. The Classical Theory of Concepts

Under this paradigmatic theory,¹⁰⁵ a lexical concept – *C* – possesses a definitional structure comprised of simpler constituent concepts which exhibit the necessary *and* sufficient conditions for falling under *C*.¹⁰⁶ This structural theory has been applied to a wealth

¹⁰⁵ Despite what its name may imply (*classical*), this theory was preceded by the Aristotelian method *per genus et differentiam* and by the referential theory of meaning. For context, *per genus et differentiam* is defined as 'An Aristotelian pattern of definition that proceeds by citing a genus to which a term belongs, and then the difference that gives its species and so locates it within the genus. The classic example is the definition of humans as rational animals.' – Simon Blackburn, *The Oxford Dictionary of Philosophy* (2nd edition, Oxford University Press 2008).

¹⁰⁶ Under this theory, constituent elements must express conditions which are *individually* necessary and *jointly* sufficient to constitute a definition of the term and its application. In this way, strict borders

of philosophically rich concepts with varying success,¹⁰⁷ as certain concepts are resistant to a classical definition.¹⁰⁸ Akin to the classic example of bachelor (unmarried man), AUTONOMY thus has two constituents – ‘self’ and ‘governance’. This *a priori* method of conceptual analysis finds its rigour in the attempted generation of counterexamples which are identified via thought experiment to determine the strength of the assigned definition. *A priori* definitions are those which can be ascertained exclusively through the knowledge of the relevant language, independent of experience (beyond, that is, competence in the language in question). Thus, no-one need conduct field research to see if all bachelors actually are unmarried men; indeed, no amount of studying empirical ‘evidence’ would help to refine or support the concept in question. While *a priori* thought experiment is the classic method supporting these types of definitions, I begin instead with the *a posteriori* method of etymological enquiry in establishing ‘self-governance’ as sufficient to account of AUTONOMY.¹⁰⁹ While ‘self-governance’ is knowable *a priori*, the *a posteriori* experience of examining autonomy’s etymology (‘self-rule’) ensures that ‘self-governance’ encompasses the original ancient Greek use of the term. Recall that in the scholarly literature dedicated to AUTONOMY, Colburn’s is one of the most parsimonious, yet even here AUTONOMY is described as “individual self-government”,¹¹⁰ and so is notably thicker than the account I advocate. On the argument I will advance, the weakness of this definition arises from the inclusion of “individual”, for the existence (and ordinary language use) of autonomy in

are painted around the definition such that no one constituent can be removed, and the combination of all constituents is required for a definition. The outcome, if produced successfully, is a definition which is maintained through every instance of a term. As is articulated through this chapter, theorists continuously impute supposedly necessary elements to autonomy, simultaneously undermining sufficiency as it appears impossible to reach.

¹⁰⁷ See ‘On the Entanglement of Coherence’ (n 18) for an example of a robust classical definition.

¹⁰⁸ See Wittgenstein’s example of game for a term which is resistant to classical definition (explored later in this section).

¹⁰⁹ The *a priori* - *a posteriori* distinction is epistemic and concerns the justification for the experience required for knowledge to be held. See Jason S. Baehr, ‘A Priori and A Posteriori’ (*Internet Encyclopaedia of Philosophy*) <<https://iep.utm.edu/apriori/>> accessed 3 May 2024 for a more comprehensive overview. It is important to note that certain definitions cannot be known entirely *a posteriori*, for example, one could not ascertain the definition of the adjective ‘complete’ (possessing all necessary parts to constitute an object) through experience of complete objects, as the specific elements of each instance differ.

¹¹⁰ *The Routledge Handbook of Autonomy* (n 17) 2.

relation to groups from the Greek city-state onwards provides the abovementioned counterexample, thereby demonstrating the inadequacy of Colburn's definition. By using Christman's definition of *individual* autonomy as a definition of autonomy, Colburn fails to deploy the relevant, robust test, notwithstanding that later in his chapter, he states that "any theory of autonomy sets out necessary and sufficient conditions *for being autonomous*" (my emphasis).¹¹¹ On my argument, Colburn's definition thereby fails under its own method, as "individual" cannot be a necessary condition of autonomy. Consider, for example, an autonomous nation comprised of a population with a democratically elected government.¹¹²

As discussed, under the classical theory of concepts, AUTONOMY'S constituent elements are 'self' and 'governance', but the determination of this alone does not reveal the meanings of these constituents. Therefore, each of these constituent elements must be considered in order to understand AUTONOMY. When examining a dictionary entry of 'self', a reader is presented with distinct definitions and forms of the word,¹¹³ so as a constituent element in the definition of autonomy, it pays to be certain of which form and meaning is used in the compound, self-governance. The risk for failing to do so is the production of a theory of AUTONOMY, potentially adduced for instrumental intentions, which falls at the first hurdle and communicates an inaccurate sense of the term. Subsequently, this deficit might result in legislation or proceedings which contain exploitable gaps, thereby failing to best promote and protect the value of autonomy in mind.¹¹⁴ This type of ground-clearing ought to

¹¹¹ *The Routledge Handbook of Autonomy* (n 17) 3.

¹¹² *ibid* 2; 'Following John Christman (1988: 109), I think the core concept of autonomy is of individual self-government.' See also pages 109 and 110 of 'Constructing the Inner Citadel: Recent Work on the Concept of Autonomy' (n 95), where Christman uses the predicates 'personal' and 'individual' interchangeably. As the root word of 'personal', 'a person' can be inferred to express the sense of Christman's 'individual'.

¹¹³ See the entries for 'self', '-self', and 'self-' in the Shorter Oxford English Dictionary (Volume 2, 2007) page 1932-1933, which contain roughly (at least) 1258 words. While what I am saying under this subheading may initially appear obvious, it is due to this breadth that simple recourse to a dictionary may at least require significant labour to ascertain the appropriate meaning and form of the term. Further, the bulk of these entries is provided by instances of each terms use, which fails to capture the necessity of the *a priori* method discussed above.

¹¹⁴ For an example of the value and importance of autonomy, see 'Autonomy for Contract, Refined' (n 8) – autonomy is "contract's ultimate value", as well as its 'telos... and grounding principle'.

be conducted as a first-order priority, as a mistake at this stage can cause a concept to suffer definitional uncertainty. For example, if the constituent ‘man’ in bachelor is understood as ‘a person’,¹¹⁵ the term would appear redundant, as it would communicate nothing beyond ‘unmarried’. This is particularly important for autonomy as a high-value legal and philosophical concept, because the prevention of such uncertainty is necessary to remove the perception of vagueness or ambiguity which can be detrimental to its application.¹¹⁶ As such, I begin with the consideration of the multiple forms and definitions of ‘self’ to ascertain which features in AUTONOMY’s definition.

As a noun, ‘self’ often refers to the individual character of a person, which includes expressions such as ‘one’s old self’ and ‘one’s sense of self’, and ‘one true self’. This noun form of ‘self’ also commonly connotes the idea of the ‘ego’, or one’s ‘own interest’, from which expressions such as ‘the total surrender of self’ find their meaning. The adjectives ‘selfish’ and ‘selfless’ reflect this sense of ‘self’, meaning the promotion of one’s interest over others and the promotion of the interests of others over one’s own respectively. It is this sense of ‘self’ which is often discussed within the theoretical literature on AUTONOMY - consider Dworkin’s ‘The Nature of Autonomy’ in which after brief attention to etymology turns to ‘the noumenal self of Kant, and the ‘historical self of Marx’.¹¹⁷ Despite its frequent connotations, the noun form of ‘self’ does not *exclusively* apply to people. ‘Self’ simply refers to the specific identity of a thing, not necessarily a thing which is a person or even animate. The pronoun ‘itself’ contains this noun form of ‘self’ and is often used in relation to objects. Rarely, ‘self’ can also function as a verb, as is the case in botany where the term

¹¹⁵ ‘man’ (Cambridge Dictionary) <<https://dictionary.cambridge.org/dictionary/english/man>> accessed 3 May 2024.

¹¹⁶ This is also known as a fallacy of equivocation. If a term is used ambiguously, proceeding premises which use the term could result in false conclusions. For example, “[t]he loss made Jones mad [= angry]; mad [= insane] people should be institutionalized; so Jones should be institutionalized.” Such a fallacy could occur if the wrong sense of self is communicated in further premises regarding autonomy. See Nicholas Rescher and Morton L. Schagrin, ‘Verbal fallacies’ (Britannica) <<https://www.britannica.com/topic/fallacy/Verbal-fallacies>> accessed 6 May 2024 for more information.

¹¹⁷ *The Theory and Practice of Autonomy* (n 3) 11.

features in the compound ‘self-fertilisation’,¹¹⁸ or as an adjective meaning ‘having its own or a single nature or character throughout’ (such as a ‘self bow’ being made all of one piece¹¹⁹). Lastly, and most crucially to a conceptual analysis of autonomy, ‘self-’ is a combining form which prefixes words to create terms in which the self is intrinsic. The created term can vary in grammatical form by virtue of the word which attaches to ‘self-’. For example, ‘self-governance’ is a noun, and ‘self-governing’ is an adjective. The meaning and form of the created term depends on which word is prefixed with ‘self-’, and this determines whether the attached word is ‘by’, ‘to’, ‘in’, ‘due to’, ‘for’, or ‘from’ the self.¹²⁰ The meaning of the combining form, ‘self-’, is constant throughout all created terms, simply denoting the *subject* of the prefixed word. This use can relate exclusively to individuals, such as in the case of ‘self-respect’ or ‘self-employed’, as well as used in instances which would be unusual or inappropriate if attached to a person, such as ‘self-replicating’ or ‘self-cleaning’ (often claimed for certain types of oven). ‘Self-governance’, akin to ‘self-defeating’, can be, and often is, deployed in instances concerning human *and* non-human referents. When theorists deliberate on the autonomy of human referents, the particular and complex instance of ‘self’ mentioned above is consequently assumed to be the same ‘self-’ which is a component of ‘autonomy’ at a conceptual level.¹²¹ I believe it safe to say that if these very same theorists were tasked with considering ‘self-’ in ‘self-replicating computer virus’, there would be no question as to the function of the combining form in question. Now, if humans became capable of self-replication, and subsequently worthy of description as ‘self-replicating’, would this instance of ‘self-’ also become imbued with esoteric, human-focused meaning? I think not. This is demonstrated by the original referent of AUTONOMY – the ancient Greek city-state. It was only later that people became the most *common* referents of AUTONOMY. So, if the constituent ‘self-’ of the ‘self-governing’ ancient Greek city-state was not imbued with an esoteric, human-focused meaning, and the hypothetical ‘self-’ of the ‘self-replicating’ human is not either, it does not follow that ‘self-governance’ receives such treatment in conceptual analyses. In the examples given thus far, it is not the choice of word – ‘self’ – which is cause for deliberation, rather it is the chosen meaning that theorists attribute to

¹¹⁸ Shorter Oxford English Dictionary (Volume 2, 2007) (n 113); an example of the verb use of self in botany is ‘a variety that selfs itself loses lots of vigour in the progeny’.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ See ‘Freedom, Autonomy, and Social Selves’ (n 101) 8, in which Christman states that ‘the challenge for conceptions of autonomy - self-government - is how to conceptualize the “self”’.

autonomy's proposed conceptual complexity. If this ground-clearing is completed in advance of a discussion of autonomy with the ambition of facilitating its application, the challenges of 'how to conceptualize the self'¹²² can be avoided, and 'self-governance' can be used unambiguously.

'Governance', the other constituent element required to account for AUTONOMY'S semantics, is similarly subject to conceptual considerations.¹²³ As such, its analysis begins with the examination of the senses of 'governance' and its related terms. The verb 'govern' is the root word of 'governance' and means 'to rule' or 'control'. It can function transitively, for example 'she allowed money to govern her', and intransitively, such as 'one ought to allow reason to govern'. This term is often associated with political control (relating to government, especially the proper noun of the Government), however, this does not reflect an alternative sense of the term, merely the same sense is expressed and attached to a referent of political authority. As a proper noun, the sense of 'the Government' is the ruling politically authoritative body which presides over a nation. The Government possess and express the function of the verb 'govern', hence the name. Additionally, in grammar and linguistics, 'government' 'is used to convey the concept that some words are habitually used with certain constructions, which in a sense they control or govern.'¹²⁴ This specific usage of

¹²² *ibid.*

¹²³ Interestingly, 'governance' appears significantly less contentious in the autonomy literature. For example, there is no easily accessible equivalent to Christman's statement that "the challenge for conceptions of autonomy – self-government- is how to conceptualize the "self". 'Governance', often used interchangeably with 'government', seems to cause significantly fewer issues for theorists, potentially because 'the self' is a philosophical notion which has historically received many more instances of deliberation. This phenomenon is indicative of the wider argument of this thesis, as the reduced capacity for ascription of features of senses and referents of 'governance' to autonomy has resulted in the less muddled perception of this constituent. With that being said, 'governance' has still been the subject of conceptual considerations, and thus merits the analysis I conduct under this subheading. See Kathryn A. Ballou, 'A Concept Analysis of Autonomy' (1998) 14(2) *Journal of Professional Nursing* 102, 103 - ('Others have referred to governance as the right and responsibility to establish conditions and make decisions pertinent to one's professional practice to maintain control over practice, self, and working conditions (Aydelotte, 1983; Dayani, 1990; Susman, 1976).'

¹²⁴ Lois L. Earl, 'Use of word government in resolving syntactic and semantic ambiguities' (1973) 9 *Information Storage and Retrieval* 639.

‘government’ may appear unrelated to the abovementioned sense; however, it is simply that very same sense expressed in a technical context. Finally, ‘government’ can function as the predicate noun form of ‘govern’ (through the addition of the suffix ‘-ment’). This is also the sense of autonomy’s constituent ‘governance’; it is the predicate noun form of ‘govern’, constructed through the addition of the suffix ‘-nance’ (in the same way the adjective ‘ignorant’ becomes ‘ignorance’, or the verb ‘resist’ becomes ‘resistance’). So, in this case, ‘governance’ is the predicate noun constituent of ‘self-governance’, meaning ‘control’ or ‘rule’. If ‘rule’ is taken to be the sense of ‘governance’, notice that the constituent elements of autonomy are definitionally coherent, as ‘self-rule’ is the etymology of the term and possesses definitional symmetry with AUTONOMY. As such, there exists definitional symmetry between AUTONOMY and ‘self-governance’, if self-governance is understood as expressed in this component conceptual analysis. This is crucial, as if ‘governance’ is understood with proposed features of *human* self-governance, such as ‘authenticity’,¹²⁵ ascribed to its definition as constituent elements, the symmetry will likely not exist and coherence between the definition and concept in use is lost.

3.3. Fregean Senses

Although calculated use of it has been made throughout the thesis so far, significantly without either fanfare or difficulty, it is now necessary to foreground the argumentative core of this thesis. To do so we must turn our attention to the work developed by Gottlob Frege which is widely acclaimed to be the foundation of modern philosophy of language and logic. In the last decade of the nineteenth century, Frege published his theory of sense and reference (*Über Sinn und Bedeutung*)¹²⁶ which remarkably, despite its seminal character, plays no part at all in initial method or problem-clearing solution concerning AUTONOMY’S meaning through the relevant literature.

In this chapter of my thesis, there have thus far been several mentions of the sense and referents of AUTONOMY, and so this section explains what is meant by these terms. As discussed, the *sense* of AUTONOMY, defined as self-governance, is widely recognised, but this

¹²⁵ ‘Freedom, Autonomy, and Social Selves’ (n 101) 5.

¹²⁶ Gottlob Frege, ‘Sense and Reference’ (1948) 57 *The Philosophical Review* 209.

is only one piece of the puzzle. Under this heading, I articulate why the understanding presented above is correct, and how the numerous and discordant senses presented in the literature thereafter are derived from inadequately separating AUTONOMY's sense from its referents. This section begins with an overview of Frege's theory, followed by the presentation of its relevance to an analysis of AUTONOMY. Foregrounding the distinction between sense and reference in this section underscores my argument in the subsequent sections of this chapter, as the recourse to first, family resemblance and second, AUTONOMY as a degree term results from the inattention paid to sense and reference that Frege's work combats.

Frege developed his theory to explain how the 'thought' of a sentence changes if one word is replaced by another for the same referent.¹²⁷ Frege used the example of the morning star and the evening star to illustrate the point. Thus, the sentence, "The morning star is a body illuminated by the sun" differs in *meaning* from the sentence, "The evening star is a body illuminated by the sun", even though they happen to share the same referent, Venus¹²⁸. In the interests of concision, I will call the first and second sentences *S1* and *S2*. Both *S1* and *S2* happen to be true, but, as each sentence contains a different sense, a person may believe, for example, *S1* to be true and *S2* to be false - if they are unaware of the common referent. 'Person *X* believes *S1*', 'The morning star and the evening star are both the planet Venus', and consequently 'Person *X* believes *S2*' are together deductively valid,¹²⁹ yet if *Person X* is unaware of the common referent the conclusion would not follow, even though it would remain true that the morning and the evening star both refer to Venus.

¹²⁷ It is worth mentioning that Frege developed his theory of sense and reference in response to the referential theory of meaning. Based on this latter theory, meaning is derived from the referent of a statement. The truth of a statement can be ascertained through this theory. For example, the referents of the names Donald Trump and Joe Biden are sufficient to ascertain why 'Donald Trump is the current president of the United States' is true, while 'Joe Biden is the current President of the United States' is not. However, as explained above through the morning/evening star example, this theory of meaning fails in statements regarding identical referents, mediated via different senses.

¹²⁸ 'Sense and Reference' (n 126) 210.

¹²⁹ These statements are deductively true as the premises are correct, however the meaning of these statements is not provided by deductive truth alone. *Person X* may not 'believe' *S2*, which Frege explains through their differing senses.

It is through his consideration of senses that Frege solved the difference in cognitive significance between $a = a$ and $a = b$ statements and elucidated the distinction between the sense and reference of concepts. Turning our attention to AUTONOMY, the concept is clearly defined by its sense (self-governance), but possesses no one specific referent, as is the case with Frege's proper noun example of Odysseus.¹³⁰ This contrasts with the concepts of the morning/evening star and their shared referent. The problems of reference are particularly acute in relation to general predicate terms, as these possess multiple intelligible referents across the wide scope of their application. To clarify, my use of 'concept' follows the natural English expression. In this expression, 'concepts' correspond to 'senses', whereas for Frege, 'Begriff' applies to the *referent* of a predicate.¹³¹ The denominal adjectival suffix '-ous' attaches to 'autonomy', transforming the noun into an abstract general predicate. In this adjectival form, the sense remains constant - 'self-governance' becomes 'self-governing' - but the word now functions predicatively. As such, I argue that the misattribution of features of a referent (person, car, nation etc) to its predicate term (autonomous) results in the illicit ascription of those features to its corresponding concept (AUTONOMY). For the purpose of my thesis, this key distinction is caught just as adequately by Carnap's distinction between *intension* and *extension*.¹³² Consider complete, or yellow, or equal – or private or coherent.¹³³ 'Autonomous', as a general predicate term, has multiple intelligible referents in use, such as

¹³⁰ 'Sense and Reference' (n 126) 215.

¹³¹ Michael Dummett, *Frege: Philosophy of Language* (Duckworth Overlook 1976) 173; see Dummett's comment that '[t]he German word 'Begriff', as used by Frege to apply to that for which a predicate stands, is less unnatural in this use than its nearest English equivalent, 'concept'. In English, we should naturally interpret a 'concept' as being that which a person possesses when he grasps the *sense* of a word or range of words: but 'Begriff', for Frege, applies to the *referent* of a predicate, not its sense, and is thus correlative to 'Funktion' ('function'— the referent of a functional expression) and to 'Beziehung' (relation'— the referent of a relational expression).'

¹³² Rudolf Carnap, *Meaning and Necessity* (The University of Chicago Press 1947) 40-41; '*The extension of an individual expression* is the individual to which it refers (hence the descriptum, if it is a description) ... *The intension of an individual expression* is the individual concept expressed by it.'

¹³³ This mode of analysis has already begun to be undertaken in recent literature, aiming to resolve long-standing dispute and confusion. See Pethick's 'On the Entanglement of Coherence' (n 18); 'Illusions of Degree: the instructive case of 'coherence' (2025) 50(1) *Journal of Legal Philosophy* 27; 'A New Theory of Privacy' (2024) <http://dx.doi.org/10.2139/ssrn.4883140>.

an autonomous person, drone,¹³⁴ or streetlamp. Were reference to be determinant of AUTONOMY's meaning, unwittingly or otherwise, the prospect opens for (mis)identification of multiple 'meanings' of the concept, each different from the last as the referent under inspection alters, assembling over time into archetypes and sub-types, or merely into kinds, and with further divisions of meaning falling out within kinds as specificity and object changes – autonomy in self-regulating systems; in central heating systems, in AI-governed systems, and so on. In just this way I argue that theorists have produced referential theories of AUTONOMY which not only are, in Fregean terms, more than a century out of date, but which thereby fail to distinguish the concept from its numerous referents, so that whenever a novel referent or element of a referent of AUTONOMY is identified, the relevant theory of AUTONOMY must be amended (or a new one produced) to account for some new 'feature'. While 'self-governance' may have widespread recognition as lying at the conceptual core of AUTONOMY, if its *sufficiency* is not recognised (or even tested), attempts at regulation deploying the concept are also destined to be locked in time and, so, reactionary or otherwise unfit for present purpose.

3.4. AUTONOMY as a Family Resemblance Term

Consider for example the proceedings that we call "games". I mean board-games, card-games, ball-games, Olympic-games, and so on. What is common to them all? – Don't say: "There *must* be something common, or they would not be called 'games'" – but *look and see* whether there is anything common to all. – For if you look at them you will not see something that is common to *all*, but similarities, relationships, and a whole series of them at that... I can think of no better expression to characterize these similarities than "family resemblances"; for the various resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc. etc. overlap and criss-cross in the same way. – And I shall say: 'games' form a family.¹³⁵

Presented by Wittgenstein in his *Philosophical Investigations*, family resemblance describes concepts which are resistant to classical definition due to a lack of a feature shared in common by all referents. I do not dwell on an explanation of this theory as the above passage succinctly describes it through Wittgenstein's now classic example of 'game.'

¹³⁴ Dario Floreano and Robert J. Wood, 'Science, technology and the future of small autonomous drones' (2015) 521 Nature 460.

¹³⁵ Ludwig Wittgenstein, *Philosophical Investigations* (first published 1953, translated by G.E.M. Anscombe, Blackwell 1978) 31-32.

Wittgenstein's insight is relevant to this thesis as it has been ascribed to AUTONOMY. In his article, 'Key Concepts: Autonomy',¹³⁶ Agich states that 'it might be best to regard *autonomy* as a term that does not admit precise definition. Its meaning consists of a set of family resemblances based on its use in a variety of contexts or language games.'¹³⁷ Agich's reasoning is that AUTONOMY 'admits a wide range of meanings which includes qualities such as self-rule, self-determination, freedom of will, dignity, integrity, individuality, independence, and self-knowledge... This evidently wide range of usage of the term autonomy undoubtedly complicates the application of the term in psychiatry.'¹³⁸ This article represents a perfect example of the phenomenon discussed above; in taking note of autonomy's wide and varied application, Agich concludes that this must entail that AUTONOMY 'does not admit precise definition'. Agich's analysis is conducted concerning the application of AUTONOMY to psychiatry, which is complicated by his list of qualities supposedly included in AUTONOMY'S 'wide range of meanings'. Following the previous section of my chapter, the cause of this complication, and Agich's subsequent recourse to family resemblance, now has an obvious explanation. The qualities identified by Agich which he considers amounting to a family resemblance derive entirely from AUTONOMY'S referent of the person. In failing to consider Frege's insight, Agich has inappropriately ascribed family resemblance to AUTONOMY, thus producing an entirely referential assessment of the concept. It is thus of no surprise that Agich considers AUTONOMY'S application in psychiatry to be complicated when he equates the concept with entirely referential features such as 'dignity' and 'integrity'.

To further demonstrate the presence of inattention to sense and reference, I include below a passage from a paper which again seeks the use of AUTONOMY, but in an entirely modern context. This paper features the combined efforts of several philosophers and roboticists to produce another understanding of AUTONOMY as a family resemblance term:

Does robot autonomy need authenticity? Some appear to have thought so. Totschnig for example, suggests a relatively strong account of autonomy: the ability to determine one's own goals. This stems from Totschnig's operationalism of self-governance. Totschnig writes: an instance of such autonomy would be an agent who decides, by itself, to devote

¹³⁶ George John Agich, 'Key Concepts: Autonomy' (2009) 1(4) *Philosophy, Psychiatry & Psychology* 267.

¹³⁷ *ibid* 268.

¹³⁸ *ibid* 267.

its efforts to a certain project.... Whether robots will be able to achieve the ability to set their ultimate goal is debatable.¹³⁹

I argue that while family resemblance terms are an apt designation for some kinds of concepts, AUTONOMY is not one of them. In the above passage, Totschnig describes ‘an agent who decides, by itself, to devote its efforts to a certain project’ to be an ‘instance’ of autonomy, in humans no less. The authors of this paper (Collins et al), in attempting to ascertain the autonomy of robots, ascribe proposed features of (in this case, an instance) of human autonomy to robots. For illustrative purposes, consider the example predicate PERFECT. Great difficulty would arise if features of a perfect exam result (e.g. one hundred out of one hundred marks) were ascribed to any non-numerical referent when trying to determine whether it is perfect. Imagine an examiner who is attempting culinary critique and wishes to ascertain whether a dish he believes to be perfect really is. The examiner however is unsure of how to determine perfection. He recalls a perfect exam result he witnessed, where all one hundred marks were achieved, and determines that ‘one hundred marks’ must be a feature of PERFECT. Turning his attention back to the dish, the examiner does not observe ‘one hundred marks’ amongst the ingredients. Through this flawed deduction, the examiner determines that the dish cannot be perfect. The food critic who ascribes ‘accurately seasoned’ to PERFECT would suffer similarly when attempting to determine the perfection of an exam result. This is the error made by Collins et al in ascribing a feature of an instance of *human* autonomy to a robot. This practice does not necessarily result in an automatic error, but the risk is high when adequate attention is not given to the specific origin of the feature being ascribed to the concept. When AUTONOMY is considered at a foundational level, parted from the human referent (notably the referent of an instance of human behaviour), roboticists need not deliberate the presence of human qualities in their machines to satisfy the predicate term. Consider again Agich’s analysis of the term in relation to psychiatry. While humans (as psychiatric subjects) and robots include a plethora of referents, each with distinct characteristics and functions, and subsequently ‘family resemblances’ between them, it does not follow that such resemblances be imputed to AUTONOMY. One psychiatric patient may display contrasting symptoms with another, and one robot may entirely differ functionally and aesthetically from another, and thus family resemblances may appear as the appropriate

¹³⁹ Emily C. Collins, Joshua D. Baker, Brian Ball, Alice C. Helliwell, and Julie L. Marble, ‘Autonomy: A Family Resemblance Concept? An Exploration of Human-Robot Teams’ (2023) in *Interdependent Human-Machine Teams. The Path to Autonomy* (Elsevier, In Press) 7.

method to group these referents, but this arises due to the obvious distinctions otherwise between these referents. Therefore, it may be challenging to draw sharp borders around the totality of functions of these referents, but this challenge does not extend to AUTONOMY, from which self-governance emerges as the sharp border which unites every instance of the term. The passage below further demonstrates this erroneous ascription of characteristics to the concept of autonomy:

We have now seen some of the ways in which the term “autonomy” gets used, both in robotics, and in relation to human beings (and groups thereof) - and we have seen that different conditions seem to be imposed in these different contexts: for example, self-governance, and the ability to set one’s own goals, which are so crucial in the context of human autonomy, are not present in Growbots... perhaps, then, there are no necessary and sufficient conditions of autonomy in general.¹⁴⁰

The ability to set one’s own goals is described by Totschnig as an instance of autonomy. In fact, a human who does so would be producing a display of autonomy, as they demonstrated self-governance in setting said goals. In the case of the ‘Growbots’ mentioned in the above quotation,¹⁴¹ they displayed autonomy through their searching of the building’s corridors and rooms to locate, and form a perimeter around, a spill. The Growbots were self-governing with respect to this search operation. As the human was self-governing with respect to the setting of their goals, and the Growbots were self-governing with respect to their search operation, it can be ascertained that self-governance is a (I argue the only) necessary condition for AUTONOMY. When autonomy is considered of an entity in its entirety, be it robot or human, it must be understood whether the entity is self-governing in entirety, but when autonomy is considered ‘with respect to what’, it loses its proposed “open endedness”.¹⁴² As we see with the human’s goal setting, and the Growbot’s search, self-governance emerges as individually necessary and jointly sufficient. Therefore, the discrepancies between the debated conditions of an autonomous human and autonomous robot (including authenticity and intelligence) do not deliver the conclusion that AUTONOMY is a family resemblance term. Collins et al include Wittgenstein’s thought that “we extend our concept [to new cases] as in spinning a thread we twist fibre on fibre. And the strength of the thread does not reside in the fact that some one fibre runs through its whole length, but in the

¹⁴⁰ *ibid* 8.

¹⁴¹ *ibid* 4.

¹⁴² *ibid* 8.

overlapping of many fibres”.¹⁴³ This is true for family resemblance terms; however, the fibre of self-governance does run through every instance of autonomy, clearly observed when autonomy is considered with respect to the specific function.

3.5. AUTONOMY as a Matter of Degree

AUTONOMY *as a matter of degree* is a conceptual feature which is promoted in a vast array of literature, including the theoretical¹⁴⁴ and doctrinal domains.¹⁴⁵ Speaking of degrees of autonomy is an easy way to articulate the presence of the concept within certain referents; however, a theorist who does so ought to fully consider what is meant by this notion. This section of my thesis takes its cue from a paper by Pethick, ‘Illusions of Degree: the instructive case of ‘coherence’’,¹⁴⁶ which investigates what is meant by a ‘matter of degree’. Pethick’s paper focuses on COHERENCE, but the focus is intended to be ‘instructive’, as his title suggests, using consideration of COHERENCE to present a rubric for the analysis of any concept with degree attribution. However, such an extension or ‘rubric’ cannot be taken and applied merely at face value; its rigour and suitability must be put to the test, which my investigation of AUTONOMY can begin to accomplish. Notably, as is the case with COHERENCE, if AUTONOMY is treated as a matter of degree, ‘the satisfaction of necessary and sufficient conditions, or any other conceivable, modal bright line simply *ought* to be dropped, as inappropriate.’¹⁴⁷ The practice of degree attribution in law is not only extensive, but consequential, for if any conceivable modal bright line around AUTONOMY is inappropriate, then *degrees* of autonomy arise in their place which, as we shall see, defy ambitions of consensus in the literature. Pethick states:

The stakes are high. The concerns already introduced are only magnified by the concepts that are subject to degree attribution. Through no coincidence these include the weightiest and most contested in law, politics and public policy – for example, privacy, moral status, harm, torture, autonomy and personal identity – for the imputation of degree

¹⁴³ *ibid.*

¹⁴⁴ *The Theory and Practice of Autonomy* (n 3).

¹⁴⁵ *Fitchik v New Jersey Transit Rail Operations* [1989] 873 F 2d 655.

¹⁴⁶ ‘Illusions of Degree: the instructive case of ‘coherence’ (n 133).

¹⁴⁷ *ibid* 20.

to concept appears to resolve (in fact remove) the felt obligation to ascertain agreed-upon sharp modal boundaries for a concept's correct application through cases.¹⁴⁸

Pethick's analysis determines COHERENCE to have obtained degree attribution in error, but he does not attempt a similar demonstration for the concepts mentioned above. Thus, they must be tested to see whether a compelling argument can be made in each case. I argue, in line with Pethick's assessment of COHERENCE, that the imputation of degree to AUTONOMY 'removes the felt obligation to ascertain agreed-upon sharp modal boundaries' for AUTONOMY'S application through cases. For a foundational legal concept such as autonomy, one that is protected in statute and conferred as a right, such hard lines are crucial for its protection and implementation. While concepts resistant to a classical definition such as Wittgenstein's 'game' still possess meaning, it is much more difficult to craft rules regarding such concepts.¹⁴⁹ The promotion of AUTONOMY as a matter of degree creates unnecessary vagueness, which this thesis opposes. The following passage by Dworkin exemplifies this promotion:

The final constraint is that the explication of the concept be in general accord with particular judgments we make about autonomy. These judgments may be conceptual: for example, one may believe that autonomy is not an all-or-nothing concept but a matter of more or less. The judgments may be normative, for example, that autonomy is that value against which paternalism offends. The judgments may be empirical, for example, that the only way to promote autonomy in adults is to allow them as children a considerable and increasing degree of autonomy.¹⁵⁰

So, Dworkin posits that one may make a judgement of the term as 'a matter of more or less'. And this seems sensible. Thus, Dworkin plausibly offers as an example the judgment that 'the

¹⁴⁸ *ibid.*

¹⁴⁹ An ordinary language example of this point is the 'no ball games' signs which I am sure any reader of this thesis is familiar with. It is not farfetched to assume that the inclusion of 'ball' is a necessary qualifier to such rules for the purpose of offsetting the vagueness inherent to a 'no games' sign. While this may not reflect the intention of the person who hung the sign, those subject to its rule could reasonably be assumed to display confusion as to why they are not permitted to play their mobile phone game of choice within the perimeter. As such, specificity of terms is crucial to the interpretation of a rule, which is why it pays to have a robust, non-vague definition of a term as legally important as autonomy.

¹⁵⁰ *The Theory and Practice of Autonomy* (n 3) 9.

only way to promote autonomy in adults is to allow them as children a considerable and increasing degree of autonomy'. What reason is there, then, for holding AUTONOMY to be absolute?

In Dworkin's example, autonomy is granted increasingly as a child ages, but how this is accomplished is not stated. In ordinary language use, it is perfectly permissible to speak of 'more or less' autonomy, 'increased' autonomy, and 'semi-autonomous'. From this, speaking of 'degrees' of autonomy, such as in awarding an 'increasing degree of autonomy', has meaning as well. But do these ordinary language instances show AUTONOMY to be a degree concept, or, to use Dworkin's words, is autonomy 'not an all-or-nothing concept but a matter of more or less'? I argue no. Pethick notes that there are two types of concepts which are routinely and appropriately called 'degree concepts'. These are scalar and vague concepts.¹⁵¹ Pethick notes that TEMPERATURE, WEIGHT, and LENGTH 'are sometimes called 'exemplary degree concepts' because they are concepts whose extension always locates on a relative degree scale.'¹⁵² Therefore, a crucial determinant of scalar concepts is gradable relativity. Contrasting exemplary degree concepts, *more* or *less* is the only common 'relative degree scale' with which to articulate a degree of AUTONOMY. Pethick notes that, '*Less heavy, heavier* and *just as heavy* would be sufficient to furnish a comprehensive linear scale of heaviness',¹⁵³ but *more* and *less* work differently when describing AUTONOMY. Consider an autonomous car. One of the car's functions may be the ability to wipe its windshield. Perhaps the car is *just as autonomous* as that other car because they both do the same autonomous things, including autonomous windshield wiping, while not doing other things autonomously. The same applies to a car which is *more autonomous* than another. The former car possesses a greater number of autonomous features. If a fancier version of the same car model has more autonomous features than a cheaper version, it IS more autonomous than its counterpart. But this is – is demonstrably – because it has one (or more) autonomous features over the other. Thus the car model is just a set within which a greater number of autonomous features are present, the set being *more* or *less autonomous* as matters fall out. This does not generate an

¹⁵¹ See 'Illusions of Degree: the instructive case of 'coherence' (n 133) for Pethick's analysis of scalar and vague concepts.

¹⁵² *ibid.*

¹⁵³ *ibid.*

understanding of AUTONOMY as a matter of degree – AUTONOMY has the same meaning whether applied to the autonomous feature one car has and its fellow lacks, or whether it is applied to the whole car itself. That is, AUTONOMY just remains ‘self-governance’. To co-opt Pethick’s apple example,¹⁵⁴ you might want more apple in the pie, or you might want to pay extra for an autonomous car – but this neither makes APPLE nor AUTONOMY a matter of degree. *More autonomous* is dependent on the presence of a greater number of autonomous features, whereas an object which is *heavier* than another falls further along the relevant gradable linear scale.

But what of *just as autonomous*? Any referent of an exemplary degree concept can be related to another within the same graded scale – that car can be *just as heavy* as that boulder or tree at any point on the degree scale.¹⁵⁵ The same cannot be said for *just as autonomous*, as the absence of a graded scale means claiming one referent as *just as autonomous* as another relies on counting autonomous features. This works for like referents (two cars with the same autonomous features), but the significance and weight of each feature between *different* referents cannot be determined with precision. A university and a car may have the same number of autonomous features, but the difference in significance between wiping a windshield and dictating curriculums comprised of smaller dictated curriculums challenges claims of *just as autonomous*. *Just as autonomous* only works between different referents if both referents claim autonomy in the absolute, in which case describing them as *just as autonomous* is redundant.

The second type of degree concepts are vague concepts. Examples include BALD, TALL, and HEAP. These predicates are considered vague as they give rise to borderline cases. When considering AUTONOMY, this type of degree concept is not easy to immediately dismiss. In fact, the aforementioned Growbots may be considered a borderline case of

¹⁵⁴ *ibid* 8, 12.

¹⁵⁵ The immediate response to this may be that some objects can never be just as heavy as other objects; a leaf can never match the weight of a planet. But that is not the point, beyond the empirical, one can imagine an extremely large and/or dense leaf which is just as heavy as, say, Earth and the relative graded scale works. We know the weight of the earth, and we *could* know the weight of this leaf, and if they match ‘*just as heavy*’ works.

AUTONOMY, as they are assigned their functions and lack the ability to stray from them. However, if AUTONOMY is considered in the frame of ‘autonomous with respect to what’, then it can be observed that the Growbots do not represent a borderline case of AUTONOMY; rather they possess autonomy in the absolute with respect to the conduct of their function. If humans are considered ‘fully autonomous’, then stating Growbots to be a ‘borderline case’ of AUTONOMY because they do not possess some of the features of a human is a fallacy of division.¹⁵⁶ The autonomy of Growbots works in the same way as my example car. They possess autonomous functions which are either greater or lesser in number than another referent. To use Dworkin’s example, the child who is awarded more autonomy as they age is not awarded increased autonomy akin to a scalar concept, nor did they represent a ‘borderline case’ until reaching adulthood. Rather, they were awarded a greater number of instances of autonomy; the child may originally have been permitted autonomy with respect to television show choice and later granted autonomy with respect to internet usage. In this case, it is simply the instances of autonomy in which they were allowed to engage that increased in number. As such, it does not follow that AUTONOMY is a matter of degree as it does not function like scalar concepts; nor does it generate borderline cases. This is how enumerated instances of autonomy work and, as mentioned, to suggest otherwise because referent X possesses more autonomous functions than referent Y is a fallacy of division. AUTONOMY is not altered because a person can shape their life in a multitude of ways: in my example the autonomous streetlamp can only switch on at night.

¹⁵⁶ A fallacy of division is when one takes something that is true of a collective to be true of an individual who is part of that collective, for example ‘English people are good at football. John is English. John is good at football.’ See ‘Verbal Fallacies’ (n 116) for more information.

3.6. In Defence of ‘Self-Governance’

Most theorists readily accept ‘self-governance’ as the ‘core concept’,¹⁵⁷ ‘meaning’,¹⁵⁸ ‘translation’¹⁵⁹, ‘conception’¹⁶⁰, or ‘classical definition’¹⁶¹ of autonomy; however, there is a persisting conceptual debate concerning this ‘definition’. This thesis has advocated self-governance based upon its etymological grounding, definitional symmetry, rigour in application across instances of autonomy, and sturdiness when subject to the thought experiment-based tests of classical definitions. Despite these factors, and in direct opposition to the etymology, Berofsky attacks this definition. He states that ‘etymology would suggest that autonomy is self-government. I suggest otherwise and wish to replace this with a conception of autonomy as liberation.’¹⁶² I take issue with this idea but must begin by acknowledging Berofsky’s admission that his ‘focus is primarily on autonomous lives or agents rather than autonomy as a characteristic of a specific decision or action.’¹⁶³ With this priority at the forefront of both readers’ and Berofsky’s minds, his argument is well-reasoned and expresses a profound insight into the qualities of autonomous individuals. It is difficult to oppose Berofsky’s argument that a self-governed ‘self’ is inadequate to generate autonomy if that ‘self’ lacks authenticity and is not liberated from (however deeply internalised) socialisations.¹⁶⁴ In this respect, if autonomy requires the realisation of desires without obstruction from socialisation, then liberation is a necessary ingredient to the actualisation of autonomy.

¹⁵⁷ *The Routledge Handbook of Autonomy* (n 17) 2.

¹⁵⁸ Oliver Sensen, ‘Autonomy After Kant’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 55.

¹⁵⁹ Mark Piper, ‘Justifying Respect for Personal Autonomy’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 294.

¹⁶⁰ Lorella Terzi, ‘Autonomy and Capability’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 327.

¹⁶¹ Andrea Veltman, ‘Autonomy and Work’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 392.

¹⁶² Bernard Berofsky, ‘DOING WHAT COMES NATURALLY - Autonomy as Liberation’ in Ben Colburn, *The Routledge Handbook of Autonomy* (Taylor and Francis 2022) 127.

¹⁶³ *ibid.*

¹⁶⁴ See Berofsky’s example of the woman whose ‘self’ is entirely dictated by her deeply internalised fear of a negative attractiveness perception by men.

Where Berofsky's argument falters is through the suggestion of the replacement of 'self-governance' with 'liberation'. For Berofsky's hypothetical woman, liberation from her harmful internalised socialisations may be required for her authentic 'self' to govern but this requirement specifically exists for the actualisation of this woman's autonomy. Perhaps this example represents humans generally, and the realisation of autonomy for all humans requires liberation from harmful internalised socialisations, but it is not a (or *the*) necessary constituent of autonomy conceptually. Berofsky states 'to be autonomous, we must also be free from external and internal limitations and barriers. So autonomy/authenticity essentially involves liberation.'¹⁶⁵ Berofsky is correct that 'external and internal limitations and barriers' can harm or entirely halt the actualisation of autonomy (likely in all cases, including Berofsky's hypothetical woman, or the removal of the autonomous streetlamp's solar panel); however, one cannot entirely generate an accurate definition of autonomy through the consideration of autonomy's barriers with respect to a specific referent. As is likely the case with many of the philosophically rich concepts which generate discussion, there exist many barriers to their realisation. Liberation from these barriers is necessary for realisation, but this liberation is not constituent to these concepts. For example, liberation from a hypothetical all-seeing eye which observes a man constantly will be required for that man to actualise his privacy, but it does not follow that 'liberation' ought to replace a definition of PRIVACY simply because it may be impeded by barriers.

Although I have previously acknowledged Berofsky's admission that he does not focus on 'autonomy as a characteristic of a specific decision or action', not doing so represents a serious methodological error. While his hypothetical woman may only be wholly autonomous once liberated from her internalised socialisation, what of her autonomy with respect to certain actions? Consider, for example, after a day of acting in accordance with her internalised desire to appear attractive, that woman decides to spend her evening reading a book. She may not live her life autonomously, it may even be said that she is not autonomous, but it would not be an error to say she was autonomous with respect to that evening's choice of entertainment. In this scenario, she was self-governing with respect to reading said book. By philosophising over that woman's entire life and being, and thus trying to ascertain autonomy, the concept is obfuscated and appears conceptually complex. When

¹⁶⁵ *ibid* 133.

attached to the referent of the human (and the human condition no less), autonomy appears to suffer from a potentially infinite array of barriers to its realisation which Berofsky, and other theorists, ascribe to AUTONOMY itself.

As I have said before, the consideration of the autonomous life is not one to be taken lightly; it is incredibly nuanced and philosophically rich, but such considerations must not bleed into a conceptual analysis of AUTONOMY, lest a robust and fit-for-purpose definition like ‘self-governance’ receive unwarranted opposition. Put simply, AUTONOMY is self-governance. As noted, multiple terms have been deployed to describe the relationship between AUTONOMY and self-governance,¹⁶⁶ but I argue that this difference between theorists is at least indicative (and potentially a *cause*) of autonomy’s definitional uncertainty. If one theorist regards ‘self-governance’ as the ‘core concept’ of autonomy, and another as the ‘conception’, contributions to the literature may always run counter to each other. ‘Self-governance’ can appear repeatedly necessary and yet never sufficient. When expressed as ‘AUTONOMY is self-governance’, with ‘is’ used to denote identity,¹⁶⁷ sufficiency is readily provided. With these hard borders in mind, theorists who aim to do so can dedicate their efforts to ascertaining the requirements of autonomy in whichever referent commands their focus. Simultaneously, theorists can avoid pitfalls derived from the erroneous ascription of features of such referents (or barriers to autonomy’s realisation) to AUTONOMY itself. Unburdened from these illicit ascriptions, AUTONOMY becomes ready for use, and conceptual uncertainty no longer hinders this ambition.

¹⁶⁶ ‘Core concept’, ‘meaning’, ‘translation’, ‘conception’, or ‘classical definition’ etc.

¹⁶⁷ Contrast ‘is’ as predication – for example, ‘the car is red’.

4. AUTONOMY in Law

4.1. Introduction

In light of the methodological ground-clearing and conceptual analysis undertaken above, the question remains how my analytic examination of AUTONOMY applies to law and legal theory. In order to answer this question adequately, this chapter comprises the bulk of my thesis, and in line with my ambition, demonstrates the force of my understanding of AUTONOMY to law and legal theory. Within the confines of this thesis it is plainly impossible to apply my account of AUTONOMY to every relevant facet of the law, so I have chosen instead several high value domains in which the concept is deployed as the site of my demonstration. Thus, my aim is to show the force of the thesis in examination of seminal work in the legal sphere that deploys and comments on the concept in question.

As mentioned in the introduction to my literature review, this chapter begins with an analysis of Feinberg's seminal work.¹⁶⁸ This work is positioned in theoretical criminal law, though Feinberg's analysis of AUTONOMY stretches far beyond this domain. In addition, I consider a contemporary challenge to Feinberg's argument.¹⁶⁹ Using this analysis as a platform, my account of AUTONOMY is applied to a practical debate concerning an autonomy-based test of criminal responsibility. As it provides a key focus for Feinberg's discussion of AUTONOMY in law, jurisprudence of the Supreme Court of the United States is then analysed. This analysis highlights equivocation of PRIVACY and AUTONOMY, located in interpretation of the Bill of Rights. My chapter then changes focus to international law in theory and practice, where contemporary analyses of AUTONOMY are a matter of scholarly and practitioner attention. Thus, my demonstration in law aims to show breadth and depth, with attention to a sub-discipline in jurisprudence (criminal law and statutory interpretation) as well as consideration of AUTONOMY holding across jurisdictions through the dimension of international law. With its philosophical robustness demonstrated in my conceptual analysis,

¹⁶⁸ Joel Feinberg, *Harm to Self* (Oxford University Press 1986).

¹⁶⁹ Dorothea Magnus, 'Philosophical Bases for Self-determination in Criminal Law' (2018) 104(3) *Archives for Philosophy of Law and Social Philosophy* 421.

my position is that AUTONOMY is an absolute non-gradable predicate. Alternative accounts, misconceived on the argument advanced here, have resulted from startling inattention paid to sense and reference. Worries about divisions between the sense of AUTONOMY and any of its many referents are simply absent in the literature. My claim is that the modal closure provided by AUTONOMY'S individually necessary and jointly sufficient conditions ('self-governance') is not only appropriate, but solves the confusion generated by persistent misunderstandings of the concept's semantic content. As is shown in this chapter, confusion is both prevalent and consequential within law and legal theory, yet scholars routinely overlook the fundamental simplicity of AUTONOMY advocated in my account.

4.2. Feinberg on AUTONOMY

Feinberg's chapter contains five subheadings beginning with an introduction titled '*Conceptions of personal autonomy*', followed by '*Autonomy as capacity*', '*Autonomy as condition*', '*Autonomy as ideal*', and '*Autonomy as right*'. The last four sections are so titled as they are the 'four closely related meanings'¹⁷⁰ identified by Feinberg when the word autonomy is applied to individuals. This section of the thesis starts with the analysis of Feinberg's introduction, followed by the examination of two of these 'meanings', '*autonomy as capacity*' and '*autonomy as condition*', with attention paid to the accurate and the erroneous elements. These meanings are considered in lieu of the others as they most substantially represent Feinberg's conceptual understanding of autonomy. Through this analysis, the merits as well as shortcomings of this foundational conceptual work are identified. The understanding of AUTONOMY advocated for in this thesis, bolstered by the analysis of Feinberg's work, is then used to aid in the resolution of a contemporary scholarly debate concerning autonomy's place in criminal responsibility.

It is helpful to begin with a lengthy quotation from Feinberg's introduction, in which he states that:

Philosophers have long had an expression to label the realm of inviolable sanctuary most of us sense in our own beings. That term is *personal autonomy*. The word "autonomy"

¹⁷⁰ *Harm to Self* (n 168).

is obviously derived from the Greek stems for “self” and “law” or “rule”, and means literally “the having or making of one’s own laws.” Its sense therefore can be rendered at least approximately by such terms as “self-rule,” “self-determination,” “self-government,” and “independence.” These phrases are all familiar to us from their more frequent, and often more exact, application to states and institutions. Indeed it is plausible that the original applications and denials of these notions were to states and that their attribution to individuals is derivative, in which case “personal autonomy” is a political metaphor.¹⁷¹

An extremely important yet overlooked detail arises under the very first subheading of Feinberg’s chapter - that the term which receives most of his attention is ‘*personal autonomy*’. The first two sentences of this quotation are particularly revealing. Feinberg states ‘*personal autonomy*’ to be the expression/term which labels ‘the realm of inviolable sanctuary’ that people sense in their ‘own beings.’ Earlier in his chapter, Feinberg provides some helpful ordinary language example exclamations, including “No one can tell me what I must do with my *own time*,” and “What I do with *my own* life is no one else’s business.”¹⁷² These examples, coupled with Feinberg’s description of personal autonomy as ‘the realm of inviolable sanctuary most of us *sense* in our own beings’ (my emphasis) appear to render personal autonomy as a feeling or sensation. Taking another look at Feinberg’s example expressions of ‘moral indignation and outrage’¹⁷³ in response to ‘irksome constraints justified wholly on paternalistic grounds... analogous to the invasion of their property or the violation of their privacy’,¹⁷⁴ it would appear that these protests could equally be exclamations of free-will.¹⁷⁵ This may seem innocuous, but the weight of this point will become more apparent later in the present chapter. For now, note that the addition of ‘*personal*’ before ‘autonomy’ results in a concept which is seemingly understood through the labelling of a feeling or sensation. One may say that of course a concept such as autonomy is best articulated with reference to protests, feelings, and sensations when attached to people, as people are rational and emotional creatures. But does the presence of a ‘feeling’ of autonomy, or ‘moral

¹⁷¹ *ibid* 27-28.

¹⁷² *ibid* 27.

¹⁷³ *ibid*.

¹⁷⁴ *ibid*.

¹⁷⁵ Additionally consider Feinberg’s first example, “*I’m in charge here*”.

indignation and outrage' at its curtailment alter its conceptual content? I argue no. To ground this point, consider Feinberg's examination of autonomy detached from 'personal':

The word "autonomy" is obviously derived from the Greek stems for "self" and "law" or "rule", and means literally "the having or making of one's own laws." Its sense therefore can be rendered at least approximately by such terms as "self-rule," "self-determination," "self-government," and "independence."

Feinberg provides this point uncontroversially, in fact, 'obviously'. Feinberg's point is the crux of my thesis; self-government, consistent with the term's etymology, defines AUTONOMY in every instance. The only difference between Feinberg's point and the argument of this thesis is that 'self-government' does not render autonomy's sense 'at least approximately', for it is rather its sense in its entirety. Again, parallel to my thesis, Feinberg considers the original referent of autonomy in informing his discussion of the term's sense, stating that:

These phrases are all familiar to us from their more frequent, and often more exact, application to states and institutions. Indeed it is plausible that the original applications and denials of these notions were to states and that their attribution to individuals is derivative, in which case "personal autonomy" is a political metaphor.

Feinberg believes AUTONOMY as applied to non-human referents to be an 'often more exact' term. This is not stated explicitly, but it would follow that Feinberg would consider the terms 'state autonomy' and 'institutional autonomy' to thus be 'more exact' than 'personal autonomy', which indicates that it is not the inclusion of a predicate term before 'autonomy' which results in imprecision, but specifically it is 'personal' which has this effect. This may be cause for concern, as within the domain of the criminal law, such conceptual imprecision is unlikely to withstand serious scrutiny. In fact, Feinberg does not consider autonomy to be applicable to people literally, stating 'personal autonomy' to be a 'political metaphor'. Fortunately, although the concept is derived from its original ancient Greek referent, that does not necessarily entail that every other referent of the concept is merely political metaphor. Were this the case, every predicate term with an original referent could not apply literally to subsequent referents. 'Data privacy', 'gay marriage', and 'robot autonomy' would all be metaphors, which they are plainly not. It is the proposed imprecision of 'personal' autonomy identified by Feinberg which belies the concept's literal application to people, thus

resulting in a concept he begins by defining sharply becoming muddy, with no fewer than ‘four closely related meanings’, each with distinct conceptual elements.¹⁷⁶ However, with the appropriate distinctions advanced in this thesis in mind, AUTONOMY need not receive metaphorical status within criminal law nor indeed when applied to people generally, with this idea a major research conclusion of the present study.

4.3. Feinberg’s ‘Capacity’ of AUTONOMY

Let us now look at Feinberg’s claims in more detail. Feinberg’s first ‘sense’ of autonomy, ‘*autonomy as capacity*’ is contrasted with his other senses, as it ‘of course is a matter of degree’.¹⁷⁷ He states:

In summary, capacities relevant to self-government do differ in the degree to which they are possessed by various competent persons. Therefore, above a minimal threshold, the autonomy that is defined in terms of those capacities is also a property admitting of “more” and “less”. The actual condition of self-government (and its associated virtues), which defines “autonomy” in the second sense, also is subject to differences in degree. Some people are “more in control of themselves” than others, have more prudence, sagacity, self-reliance, authenticity, or integrity than others. The explanation of these differences may in some cases be that the better governed (or more self-governed) people have more of the capacities that define autonomy in the first sense.¹⁷⁸

Feinberg’s reasoning for this summary is informed by his consideration of the concept of competence. Strikingly, the first element of his consideration articulates a central premise of this thesis, what I have called ‘autonomy with respect to what’. He states that ‘[i]t is commonly said of those who qualify [for the right to autonomy] that they and only they are *competent* to govern themselves.’¹⁷⁹ With this relation in mind, Feinberg begins by discussing the use of ‘competence’ within the law - ‘the word “competence”, referring to the possession

¹⁷⁶ *ibid* 28; ‘It can refer either to the capacity to govern oneself, which of course is a matter of degree... or to the *sovereign authority* to govern oneself, which is absolute within one’s own moral boundaries.’ Whether autonomy is a matter of degree, according to Feinberg, depends on which of his four meanings are considered.

¹⁷⁷ *ibid*.

¹⁷⁸ *ibid* 30.

¹⁷⁹ *ibid* 28.

of legal powers, expresses an all or nothing concept.’¹⁸⁰ To summarise Feinberg’s discussion, legal competence includes the capacity to commit a crime, including being human, of a certain age, and in a fit mental condition. Additionally, legislators are competent to make laws, but not make people married. A reverend is competent to conduct weddings, but not legislate. Some people may be more competent than others inasmuch as they possess a greater number of competencies.¹⁸¹ According to Feinberg, competence in this sense is mirrored by the equally absolute concepts of ‘standing’ and ‘legal qualification’¹⁸². I expect this reasoning sounds familiar, as, according to my thesis, AUTONOMY is also an absolute concept. Parallel to the legislator who is competent to make laws, and the reverend who is competent to conduct weddings, the autonomous car is self-governing with respect to driving, and the autonomous academic is self-governing with respect to, for example, their research. However, Feinberg diverges from this reasoning through the consideration and endorsement of Daniel Wikler’s article on the ‘common-sense notion of competence as natural ability’.¹⁸³ Wikler, and thus Feinberg, makes a claim which seems intuitively correct; that competence becomes a matter of degree when attached to capabilities possessed by people in degrees.¹⁸⁴ Feinberg and Wikler use the concept of intelligence with a proposed scale,¹⁸⁵ stating that ‘[t]hose at the one end of the scale are less “competent” (capable) intellectually than those in the middle or at the other end.’¹⁸⁶ There are two important considerations here. First, intelligence, and the predicate ‘intelligent’, is a vague concept. As is the case with the predicate BALD, there are instances which undoubtedly match the term, and instances which undoubtedly do not, but the borderline between the two is unclear. Wikler acknowledges this, stating that ‘We may be able to distinguish various levels of mental ability through tests, but any line drawn between mentally “impaired” and mentally “unimpaired” is arbitrary. The line

¹⁸⁰ *ibid.*

¹⁸¹ *ibid* 29.

¹⁸² *ibid* 28.

¹⁸³ *ibid* 29.

¹⁸⁴ *ibid.*

¹⁸⁵ This scale is ‘profoundly retarded, to the mildly retarded, the average, the bright, and the gifted’ (sic).

¹⁸⁶ *ibid.*

could be drawn anywhere else on the scale with equal justification.’¹⁸⁷ Recall from chapter 2 that such vague concepts are one of the kinds which admit degrees, so does *this* make competence a matter of degree? Surprisingly, no. Feinberg says that ‘[t]hose at the one end of the scale are less “competent” (capable) intellectually than those in the middle or at the other end’, but as this is a scale of intelligence, his wording here is curious. Surely, it is more natural to state that those at the end of the scale are less intelligent than those further up. If placement on the scale has an element of arbitrariness, and there is potential for borderline cases, then understanding intelligence as a degree concept makes sense. But if ‘intelligence’ can be wholly accurately substituted for ‘intellectual competence’, then does ‘intellectual competence’ possess degree credentials as well? The second important consideration answers this. It is appropriate to speak of more or less intelligence, because intelligence is a vague degree concept. It is also appropriate to speak of more or less competence, but this is a result of enumeration. The person deemed more intellectually competent than another possesses more competencies. In fact, Wikler states that:

The point of this relativist view can be illustrated by reference to the specific components of what are thought to make up the retarded person's deficit. The mildly retarded person, according to one authority, is unable to think about and deal with more than one or two aspects of a complex situation. He or she is unable to defer gratification so as to make choices most likely to be of benefit over the longest run, and to foresee long-term consequences of present acts. Similarly he or she will be markedly less adept than a normal person in handling abstract concepts, and in making the kinds of judgments conducive to smooth social functioning.¹⁸⁸

Here Wikler provides an example of such enumeration which informs the descriptions of more or less intellectually competent. He gives five competencies which the ‘mildly retarded person’ (sic) does not possess, thus making them less intellectually competent than ‘a normal person’. In this respect, speaking of intellectual competence as a matter of more or less is clearly suitable as the competence in question attains such a descriptor by reference to the enumerated competencies. Despite his attribution of degree credentials to ‘competence’, Feinberg recognises this, stating that ‘[w]e also distinguish those who are intellectually

¹⁸⁷ Daniel Wikler, ‘Paternalism and the Mildly Retarded’ (1979) 8(4) *Philosophy & Public Affairs* 377, 381.

¹⁸⁸ *ibid.*

competent in various degrees, on the one hand, from those who are simply incompetent, on the other, but where we draw the line is in part relative to the requirements of the tasks we are assigning'.¹⁸⁹ Wikler's five tasks illustrate this point clearly. In fact, there are likely more than five tests of intellectual competence, but the specific number is inconsequential as any number at all indicates a matter of enumeration. Speaking of 'more or less' 'relative to the requirements of the tasks we are assigning' mimics the notion of 'autonomy with respect to what', as 'more or less' can be said of both predicate terms as autonomies and intellectual competencies are countable.

Feinberg continues his discussion with the consideration of 'Wikler's second notion of competence'.¹⁹⁰ In summary, this conception, termed a 'threshold conception',¹⁹¹ resembles the above example of legal competence. In reference to a task, or 'with respect to what', a non-arbitrary level of intelligence or intellectual competence is required which permits completion of the task to an identical standard to the most intellectually gifted. Consider basic addition; at the threshold of intellectual competence, one could solve $10 + 10$ and receive an answer indiscernible from that of someone far above the threshold. This is obvious; in fact, Feinberg remarks approvingly of Wikler, '[t]hough a certain person may have more intelligence than another, he will be no more *competent* at performing certain tasks; his added power is simply a surplus' is 'unremarkable'.¹⁹² Feinberg states that '[i]t is the threshold conception of natural competence - minimal relevant capability for a task - that is used in stipulations of necessary and sufficient conditions for the sovereign right of self-government ascribed to individuals'.¹⁹³ There is no doubt about this; autonomy is ascribed to those capable of wielding it on an absolute basis. Again, Feinberg is correct that a person who 'rightfully rules' may do so 'badly, unwisely, only partially' and thus have 'relatively little

¹⁸⁹ *Harm to Self* (n 168) 29.

¹⁹⁰ *ibid.*

¹⁹¹ *ibid.*

¹⁹² *ibid.*

¹⁹³ *ibid* 30.

personal autonomy’,¹⁹⁴ but these considerations do not correctly inform the conclusion that AUTONOMY is a matter of degree. If autonomy were dictated by competence, and competence was a matter of degree, then it could follow that AUTONOMY were a matter of degree, but neither legal, threshold, or even supposedly vague intellectual competence are matters of degree. They merely admit of more or less by way of enumeration. A rightly autonomous person who uses their autonomy ‘badly’ may make poor decisions, contrasted with another who makes better decisions, but this hardly makes AUTONOMY a degree concept. ‘Unwisely’ is much the same thing. Also, ‘partially’, as in a person who is ruled externally in certain respects again has fewer autonomies; again, this does not alter autonomy’s conceptual content. The Fregean distinction is once more relevant here, as is the consideration of other referents. In the totality of autonomous vehicles, there are likely some that use their autonomy ‘badly’, perhaps even metaphorically ‘unwisely’, and undoubtedly ‘partially’ (containing some of the autonomous features of other autonomous vehicles), but of course this does not render AUTONOMY a matter of degree. Put simplistically, the capacities relevant to an autonomous vehicle may be to start, stop, and change speed, and a vehicle which does any of these badly does not make it less autonomous as a matter of degree (and thus make AUTONOMY a matter of degree), it is simply bad at that function. Regarding ‘partially’, a vehicle without one of these functions is less autonomous as a matter of enumeration; it possesses one fewer capacity. The point of this discussion is to illustrate that Feinberg’s points appear much less intuitively correct when the Fregean distinction is regarded. Like his consideration of ‘competence’, the deep yet narrow focus on the human referent obfuscates autonomy’s sense. This leads to the production of four proposed senses with differing conceptual elements, each unknowingly reducible to the absolute self-governance and its capability for extension to all instances of autonomy. The beginning of this section includes Feinberg’s statement that ‘capacities relevant to self-government do differ in the degree to which they are possessed by various competent persons’. Despite my criticisms, this point is still correct as perhaps intelligence for example differs in degrees between persons, and to stretch the example, maybe being taller or skinnier has some relevance to autonomy. But relevance to self-government does not alter the conceptual content of AUTONOMY, as these are only relevant in specific instances of *human* autonomy. With that being said, Feinberg *is* aware of other referents of autonomy and uses this information to inform his discussion of the

¹⁹⁴ *ibid.*

concept's absoluteness (at least in one of his senses). Specifically, he refers to 'the analogous case of nations'.¹⁹⁵

4.4. Feinberg's 'Condition' of AUTONOMY

Before considering the merits of this analogy, there are errors in Feinberg's section, '*Autonomy as condition*', which must be investigated. Feinberg posits 'a congeries of virtues',¹⁹⁶ which amounts to his second 'sense' of autonomy, what he deems '*de facto* autonomy',¹⁹⁷ or 'the actual condition of self-government'.¹⁹⁸ Included in this list are twelve virtues, each supposedly characteristic of the autonomous person, but at this stage it is crucial to reassert that this thesis is not concerned with the qualities of the perfectly autonomous person. Any, all, or none of these virtues may well be required for a person to exist in the condition of self-government, and it is beyond the scope of this work to determine that. After all, what is required of an autonomous vehicle is quite different to what is required to be an autonomous academic. While such an investigation is beyond present scope, Feinberg makes one point regarding 'autonomy as condition' which has conceptual ramifications. As noted above, he says that:

The actual condition of self-government (and its associated virtues), which defines autonomy in the second sense, also is subject to differences in degree. Some people are "more in control of themselves" than others, have more prudence, sagacity, self-reliance, authenticity, or integrity than others.¹⁹⁹

Feinberg's wording in this passage is crucial. If he instead claimed that the condition of personal self-government is a matter of more or less, followed by '[t]he explanation of these differences may in some cases be that the better governed (or more self-governed)

¹⁹⁵ *ibid* 40.

¹⁹⁶ *ibid* 31.

¹⁹⁷ *ibid*.

¹⁹⁸ *ibid*.

¹⁹⁹ *ibid* 30.

people have more of the capacities that define autonomy in the first sense'²⁰⁰ and '[d]ispositions of character, feeling, or sensibility, and differences in life circumstances too, may be contributing factors',²⁰¹ then I would not contend his point. Feinberg's would be a simple case of enumeration as explained above. However, Feinberg is explicit that '*autonomy as condition*' is a distinct sense of AUTONOMY which is *defined* by his associated virtues. Feinberg appears to readily admit that what he terms differences in degree 'may in some cases' result due to a higher number of autonomy capacities, but '[d]ispositions of character, feeling, or sensibility, and differences in life circumstances too' are supposed to represent exceptions to this enumeration. However, this is simply not the case.

Consider, for example, 'differences in life circumstances'. A person may be severely indebted with prescribed minimum payments and looming criminal sanctions, thus leaving them no income to use freely. This person can be said to lack financial autonomy due to this 'life circumstance', thereby leaving them with one fewer exercisable instance of autonomy which may contrast with their peers. While this may differ from an internal capacity such as intelligence, it is still a clearly enumerable instance of autonomy (or lack thereof), and thus does not define the condition of autonomy as a matter of degree in such circumstances. Feinberg's next error is one discussed a chapter earlier in this thesis, that being a fallacy of division. Feinberg says, in reference to his 'associated virtues' that 'some people are "more in control of themselves" than others, have more prudence, sagacity, self-reliance, authenticity, or integrity than others.' I do not mean to presuppose that these virtues are not associated with *personal* autonomy, as it is likely the case that many human virtues are associated with concepts ascribed to humans. But claiming that differences in these virtues affects AUTONOMY conceptually is to commit a fallacy of division. In lieu of restating the autonomous vehicles example in its entirety, simply consider the 'integrity' or 'authenticity' of such an entity and note how these virtues have little relevance. In fact, Feinberg states these virtues to be 'a remarkably miscellaneous lot, united only by a family resemblance, and a connection, however far removed, to the generating idea of self-government'²⁰² as well as

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² *ibid* 32.

only ‘some of the chief items in this blend’.²⁰³ At best, this would determine AUTONOMY to be a family resemblance term, resistant to classical definition, or at worst, if defined by a long list of virtues not all of which are discussed by Feinberg, a term with a very lengthy set of necessary and sufficient conditions. Regarding the former, this argument has been advanced in the literature and dispatched earlier in this thesis, and if the latter, this definition is entirely referential, referring exclusively to human virtues. As mentioned earlier in my thesis, such referential theories are entirely inadequate as each identified referent would result in an amendment to the theory. If Feinberg’s virtues all represent necessary conditions, and *do* define AUTONOMY, then the definition is incomplete until Feinberg reveals the rest of the ‘items in this blend’. Of course, Feinberg ascribes this matter of degree and ‘associated virtues’ to his own ‘sense’ of autonomy, which is supposed to be distinct from what I claim is autonomy’s only sense; however, this does not immunise his points from my criticism. The fact that autonomy can manifest as a human condition does not therefore introduce another sense of the term when ‘self-government’ remains entirely capable of extension there, and where all differences noted by Feinberg can be attributed instead to the human referent or the predicate *personal*. Therefore, while a sense of *personal* autonomy distinct from that of AUTONOMY may exist (owing entirely to the addition of *personal*), the creation of the compound term does not introduce additional senses or conceptual elements to the root term.

Feinberg’s work does illuminate some conceptual points about autonomy which have unfortunately been overlooked in later examinations of his work. Specifically, under his virtue ‘*moral independence*’,²⁰⁴ Feinberg considers ‘the analogous case of nations’:

Consider the analogous case of nations. The United States is committed to the defense of Western Europe from attack, to the honoring of its trade agreements and formal treaties, to the care of its own helpless, and so on, but that hardly tempts anyone to speak of its degree of independent self-government as thereby diminished.²⁰⁵

²⁰³ *ibid.*

²⁰⁴ *ibid* 39.

²⁰⁵ *ibid* 40.

Akin to Feinberg's analogous case of nations, AUTONOMY's original referent (the ancient Greek city-state) did not exhibit autonomy as a matter of degree, nor have its autonomy diminished as such.²⁰⁶ The contemporary case of nations represents the persistence of the original referent of the concept with its sense articulated by the term's etymology. The aforementioned *Antigone* represents the first recorded instance of that sense's extension to the human referent. Of course these referents can and should be compared, but the identical element between both is the sense of the predicate term 'autonomous'. Feinberg uses his analogy to argue that the moral commitments of an individual (save for extreme artificial cases) do not diminish the individual's '*de facto* autonomy'; rather, by using Wilkie's writings on nation-states, he argues that autonomy ought to be used for moral commitments, the existence of which do not diminish the degree of independent self-government.²⁰⁷ This argument is astute, but it does not capture the grander conceptual point raised by the analogy. I argue that the possession of moral commitments, be it by nation or individual, does not diminish autonomy, as AUTONOMY does not operate on a degree scale. The burden of commitments may reduce the independence of a referent, thereby reducing the opportunity for self-governance, but autonomy is not diminished on a sliding scale. Consider the

²⁰⁶ In fact, under the League of Corinth each state swore an oath under King Philip guaranteeing an alliance of independent states with respect for one another's constitutions. The oath is unfortunately fragmented, but it reads:

"Oath. I swear by Zeus, Gaia, Helios, Poseidon and all the gods and goddesses. I will abide by the common peace and I will neither break the agreement with Philip, nor take up arms on land or sea, harming any of those abiding by the oaths. Nor shall I take any city, or fortress, nor harbour by craft or contrivance, with intent of war against the participants of the war. **Nor shall I depose the kingship of Philip or his descendants, nor the constitutions existing in each state, when they swore the oaths of the peace.** Nor shall I do anything contrary to these agreements, nor shall I allow anyone else as far as possible. But if anyone does commit any breach of the treaty, I shall go in support as called by those who need and I shall fight the transgressors of the common peace, as decided (by the council) and called on by the hegemon and I shall not abandon----- of Thessalians--Elimiotes--Samothracians and Thasians---Ambraciots---from Thrace and---Phocians, Locrians

Oitaeans and Malians and Ainianes --and Agraeans and Dolopes---Perrhaebi---of Zacynthus and of Cephalenia." Attic Inscriptions Online, 'Dedication of a statue of Demos by the ephebes of the tribe of Antiochis (SdAIII 403)' <<https://www.atticinscriptions.com/inscription/SdAIII/403>> accessed 28 July 2024.

²⁰⁷ *Harm to Self* (n 168) 39.

preceding notion of ‘autonomy with respect to what’, as well as the discussion of enumeration. When an individual increases the number of moral commitments they possess, or a nation enters into an additional protective agreement, they lose the potential for future instances of self-governance. An individual with new childcare commitments may lack the ability to display autonomy when they must tend to their child (providing the sturdiness of the moral commitment), but their autonomy has not decreased as a matter of gradability. Rather, they do not possess autonomy with respect to their childcare responsibility due to their moral commitment, thus their instances of autonomy have decreased by one. This is also the case for the analogous nation; they may now be tasked with the protection of another actor; thus, they are governed by their commitment in this instance. This leaves us with AUTONOMY in the same conceptual place. The instances of its use can decrease in number due to moral or political commitments, but AUTONOMY does not become a matter of degree. Simply, its instance in the absolute operates as a binary concept; it is either present, or it is not with respect to changing circumstances.

4.5. Magnus’s Challenge to Feinberg

In her short article, ‘Philosophical Bases for Self-determination in Criminal Law’,²⁰⁸ Dorothea Magnus challenges Feinberg’s concept of autonomy. She acknowledges that ‘Feinberg’s concept of autonomy is important for the criminal understanding of autonomy’,²⁰⁹ and states that ‘it would be wrong to claim that full autonomy existed if the requirements of all four categories [capacity, condition, ideal, and right] are met.’ She continues by saying that ‘[t]his would not be realistic, albeit desirable. Full autonomy in all areas of life ages is a quite dubious ideal to the extent in that it disregards the network of relationships, pre-conditioning, etc. in which everyone, the sick as well as the healthy, is situated.’²¹⁰ It is unclear whether the latter of these quotes is intended as a challenge to Feinberg, as it precedes her divergence from Feinberg’s threshold conception in favour of AUTONOMY on a ‘continuum’,²¹¹ but it is mostly in accordance with Feinberg’s work. In fact,

²⁰⁸ ‘Philosophical Bases for Self-determination in Criminal Law’ (n 169) 421.

²⁰⁹ *ibid* 431.

²¹⁰ *ibid*.

²¹¹ *ibid*.

Feinberg states that '[d]ispositions of character, feeling, or sensibility, and differences in life circumstances too, may be contributing factors'²¹² to the 'differences in degree'²¹³ of the condition of autonomy. Clearly, Feinberg would readily acknowledge that 'full autonomy in all areas of life' would be affected by 'the network of relationships, pre-conditioning, etc. in which everyone... is situated'. Thus it is obvious Magnus and Feinberg agree that 'full autonomy in all areas of life' 'would not be realistic'.²¹⁴ However, where they appear to diverge within this passage is through Magnus's comment that full autonomy, so determined by Feinberg's four categories, would be 'desirable'. Feinberg believes that the maximisation of autonomy through the manifestation of his twelve virtues would not result in an ideal character, stating that:

It is one thing to avoid the state of moral overcommitment which, like literal indebtedness, can lead to its own kind of bankruptcy, but quite another to arrange one's life deliberately to minimize involvement with, and therefore commitment to, other persons on the grounds that commitment *per se* diminishes autonomy. It would take a misanthrope or egoist (though perhaps a principled one) even to aim at such an ideal.²¹⁵

Despite appearing as a divergence in Magnus's conclusion, earlier in the body of her article she acknowledges that 'absolute autonomy is not, in Feinberg's view, an ideal that should be aimed at.'²¹⁶ The tangible divergence from Feinberg's 'threshold conception of autonomy' that Magnus argues for is that:

Autonomy is not an immutable abstract entity, but may vary according to circumstances. Autonomy as capacity is relative in nature. Its degree varies according to age, life situation and state of health. The ability to make autonomous decisions develops in the course of life, increases and decreases and is present to varying degrees in many situations.

²¹² *Harm to Self* (n 168) 30.

²¹³ *ibid.*

²¹⁴ *ibid* 46; see also Feinberg's comment that 'No individual person selects "autonomously" his own genetic inheritance or early upbringing. No individual person selects his country, his language, his social community and traditions. No individual invents afresh his tools, his technology, his public institutions and procedures.'

²¹⁵ *ibid* 45.

²¹⁶ 'Philosophical Bases for Self-determination in Criminal Law' (n 169) 429.

Therefore, depending on the situation, autonomy can be fully or partially present, but can also be missing entirely. This concept of a continuously variable continuum between full autonomy and the complete absence thereof diverges from Feinberg's concept, which regards autonomy as complete above a certain threshold, altogether lacking if it is below a certain predetermined threshold. However, the concept of autonomy would prove much more useful if it were considered on a continuum expressing varying degrees of realization.²¹⁷

In this passage Magnus does not quite capture Feinberg's argument. Feinberg does not state autonomy to be 'complete' above the threshold. Additionally, in the body of her work, Magnus argues that 'Feinberg contradicts his own contention that the capacity for autonomy may take on various degrees, and so, for example may be present in a child or a mentally disabled person to some extent' as he 'proposes a "threshold concept of natural competence"' and maintains that everyone of at least average intelligence has the capacity for autonomy, regardless of whether he reaches the state of actual autonomy.' Recall from earlier consideration, Feinberg states that 'above a minimum threshold, the autonomy that is defined in terms of those capacities is also a property admitting of "more" and "less".²¹⁸ Additionally regarding Feinberg's notion of 'autonomy as condition', this is also a property admitting of more or less²¹⁹ as it is informed by his twelve virtues, which can be matters of more or less, as well as the aforementioned capacities, in addition to external circumstances. So, Feinberg's work also expresses a continuum, it is just that his stretches from minimal, but nonetheless existent, autonomy to maximal autonomy. Further, as discussed prior, this threshold is based on 'intellectual competence' which informs exclusively the minimum standard for the capacity of autonomy; intelligence above this level is 'an unused surplus'.²²⁰ Evidently, this is no contradiction as, according to Feinberg, intellectual competence informs the threshold, and other capacities, virtues, and circumstances inform "more or less" above the threshold. Simply, Feinberg would not consider autonomy to be present 'in a child or a mentally ill person to some extent' as they do not reach the threshold at which his 'continuum' begins.

²¹⁷ *ibid* 431.

²¹⁸ *Harm to Self* (n 168) 30.

²¹⁹ *ibid*.

²²⁰ *ibid* 29.

Despite their proposed divergence, the circumstances of life acknowledged by both theories, termed ‘truisms’²²¹ by Feinberg, result in very similar conclusions. Magnus believes these truisms inform the state of an instance of autonomy on a continuum, and Feinberg believes that as they cannot be detached from the individual, their autonomy must be considered ‘consistent with the requirement that he is, of course, a member of a community.’²²² As such, composite autonomy for Feinberg, beyond *de jure* autonomy granted equally to the minimally capable and above, only contrasts Magnus’s conception inasmuch as it features a threshold. Suffice it to say, the ‘usefulness’ Magnus attributes to the ‘degrees of realization’ present within her ‘continuum’ conception arises as well from Feinberg’s idea of AUTONOMY.

Despite the actual accordance between these theories, Magnus’s ‘continuum’ conception of autonomy is not free from error. She argues that ‘*the concept of autonomy* would prove much more *useful* if considered on a continuum’ (my emphasis), but this argument results from inadequate attention paid to the now-familiar distinction between sense and reference. Magnus provides a view of AUTONOMY which is both broad and narrow in the wrong directions. It is broad with respect to the fact it posits AUTONOMY on a continuum throughout the human referent’s entire life, thus undoubtedly subject to factors including ‘age, life situation and state of health’. On the other hand, if AUTONOMY is to be considered dynamic and varying in degree *because* aspects of human life are dynamic and vary in degree, then this is a fallacy of division. This is where the narrowness of Magnus’s conception is displayed. Attaching the concept to every facet of human existence, while ignoring its many other referents, results in a conceptual understanding which is detrimentally focussed on only one referent. Feinberg’s threshold conception is more useful here as it clearly identifies instances in which autonomy is non-gradable, such as *de jure*

²²¹ *ibid* 46; also ‘[a]nd yet to *be* a human being is to be part of a community, to speak a language, to take one’s place in an already functioning group way of life. We come into awareness of ourselves as part of ongoing social processes. Their fruits and instruments, precedents and records, wisdom and follies accumulate through the centuries and leave indelible marks on all the individuals who are part of them. And all individuals *are* part of these social histories. We can no more select our historical epoch than we can select our country of birth and our native tongue.’

²²² *ibid* 47.

autonomy. A degree of *de jure* autonomy would be entirely inappropriate by virtue of there being no gradable linear scale with which to position the right to autonomy, as well the affront to the concept of rights if they were conferred in degrees. In the same way that Feinberg discusses the impossibility of *diminishing* a nation's autonomy, his consideration of *de jure* autonomy indicates the correct conclusion. However, he does not take his argument far enough. As discussed before, it is not that AUTONOMY becomes gradable when attached to a human referent, even as a condition or capacity rather than a right, simply it is the immense number of human capacities and undertakings that creates many more enumerable instances of autonomy. Once again this becomes obvious when Fregean senses are given adequate attention. *De jure* autonomy and a nation's autonomy are not matters of degree because AUTONOMY is not a matter of degree. Autonomy as capacity and condition only appear as matters of degree where features of their referent are erroneously ascribed to AUTONOMY. While, as a matter of fact, AUTONOMY may not be a degree concept, it still may be more *useful* to consider it as such with respect to the criminal law. The next section will consider a contemporary instrumental debate which posits this.

4.6. FREE WILL and AUTONOMY

In their 2010 article,²²³ Juth and Lorentzon argued for the replacement of the concept of free will with one of AUTONOMY in the determination of criminal responsibility. Put simply, they argue that conceptions of free will impact on law and forensic psychiatry, specifically claiming that the 'unresolved philosophical issues'²²⁴ associated with questions of free will 'are better left out of the everyday decision-making incumbent on the legal and psychiatric systems.'²²⁵ Due to the potentially obfuscatory nature of metaphysical questions associated with free will, Juth and Lorentzon propose 'an empirically useful and gradual

²²³ Niklas Juth, Frank Lorentzon, 'The concept of free will and forensic psychiatry' (2010) 33(1) International Journal of Law and Psychiatry 1.

²²⁴ *ibid.*

²²⁵ *ibid.*

conception of autonomy'²²⁶ which is 'neutral on the question of free will'²²⁷ in its stead. Their idea is promising for reasons even beyond those considered in their article. The ambition of this section of the thesis is to advocate for Juth and Lorentzon's proposal, but the weaknesses of their formulation of AUTONOMY as a matter of degree are considered first. This formulation is summed up in the following passage (it is necessary to quote at length):

To be autonomous is to govern oneself or to decide one's own way. To live autonomously is then to live in accordance with one's basic desires or values. There are two ways of being less than fully autonomous according to this general characterisation: if one does not or cannot live the life one has chosen to live, or if one does not or cannot choose the life one lives.

From this it should be obvious that autonomy is a matter of degrees: a person can more or less lead the life he has chosen and more or less choose how to live. Against this background, the following minimal definition of autonomy can be formulated: to be autonomous *in a situation* is at least to do that what one has decided to do, because one has decided to do it, and to decide to do what one wants to, because one wants it. Thus, a necessary condition for autonomy is that the will causes the decision and the decision causes the action. Here three components are discernable: will (or desire, value, or other pro-attitude), decision, and action. How autonomous a person is, is determined by all these components and all these components can vary in degree.²²⁸

Through this formulation, Juth and Lorentzon propose for accountability to depend on control, which in turn depends on a degree-based conception of autonomy.²²⁹ This creates challenges for their argument as reasoning that AUTONOMY is a degree concept, itself based on proposed constituent degree concepts, introduces the very type of associations exhibited by free will which the theorists aim to circumvent. For example, Meynen argues that 'control is a central concept in the philosophy of free will... Therefore, I do not think that replacing free will with autonomy provides a watertight distinction between the assessment of criminal

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ *ibid.* 5.

²²⁹ *ibid.*

responsibility and the concept of free will'.²³⁰ Meynen's argument only has merit if 'control' is to be understood as a necessary constituent to criminal responsibility. Juth and Lorentzon suggest that autonomy is constituent to control which then determines the answer to the question of responsibility;²³¹ however, later in the same section, they state that '[i]t seems reasonable to hold that the more "in control" *or* autonomous a person is in this sense, the more reasonable it is to hold that person responsible'²³² (my emphasis). This suggests that control and autonomy are substitutable in their theory, which begs the question of whether it is necessary to speak of control at all? Regardless of whether Meynen's understanding of control is correct or not, his criticism is irrelevant if control, however related it may be to autonomy, is not included in Juth and Lorentzon's theory. In the above passage of their formulation, Juth and Lorentzon make the same mistake of unnecessary inclusion as Meynen, as their analysis extends so deep into the human referent that it begins to display the concerns attached to free will. Being less than 'fully autonomous' because 'one does not or cannot live the life one has chosen to live' hardly circumvents considerations of free will, as such a statement almost invites a determinist to question whether anyone chooses the life they live.

Of course, such metaphysical questions as those above ought to have little place in the attribution of criminal responsibility, but constructing AUTONOMY in this way does not highlight its merits over the concept of free will. In fact, one of the three components derived from Juth and Lorentzon's 'minimal definition' is 'will'. Granted, this passage omits the 'free' of 'free will', but if Juth and Lorentzon's argument centres around autonomy's conceptual distinction from free will, including will as a matter of degree (perhaps ascertaining degree from 'more or less' *freedom* of will) indicates the opposite. It must be noted that they list a possible implication of their proposal as 'the extent to which one is held responsible (e.g. the severity of sanctions) should be proportional to the degree of the offender's autonomy when performing a criminal action.'²³³ Proportionality is undoubtedly an

²³⁰ Gerben Meynen, 'Autonomy, Criminal Responsibility, and Competence' (2011) 39(2) *Journal of the American Academy of Psychiatry and the Law* 231, 232.

²³¹ 'The concept of free will and forensic psychiatry' (n 223) 5.

²³² *ibid* 6.

²³³ *ibid*.

important consideration of many legal systems including extension in the criminal law, but the ‘severity of sanctions’ can be determined by reference to all relevant enumerable factors rather than a stipulated vague degree of ‘will’. With that being said, Juth and Lorentzon’s proposal shows promise; however, this is due to reasoning quite different to their own.

The first important distinction missed by these theorists is that free will is a distinctly human concept; when machines are spoken of regarding free will, such considerations typically originate from science fiction. Contrastingly, autonomous machines are a very real, contemporary, and ever-increasing referent of AUTONOMY. If ascribed exclusively to humans, autonomy is very well connected to free will and the metaphysical question of its existence, but the practical application of autonomy to a range of referents precludes any necessary connection to this question. If the connection between the criminal law principle of free will and the metaphysical question creates problems, AUTONOMY is a concept which is more fit-for-purpose in legal use. Conceptually, AUTONOMY is not burdened by determinism as free will’s natural counterpart, as self-governance is not extinguished by the regress of cause and effect. This is especially visible if autonomy is considered in the recurring frame of, ‘autonomous with respect to what’. In the case of criminal proceedings, it is the ambition of the court to ascertain whether an offence was committed under the free will of the defendant. Of course, ‘the free will of the defendant’ presupposes the metaphysical question cautioned against by Juth and Lorentzon. If instead it is the autonomy, the self-governance, of the defendant with respect to the accusation which is to be ascertained, metaphysical notions do not obfuscate this inquiry. Meynen references Alfred Mele’s comment that “Autonomy, as I understand it, is associated with a family of freedom-concepts: free will, free choice, free action and the like”,²³⁴ which is not incorrect, yet it is no rebuttal to the points made above. Autonomy’s association with Mele’s ‘family of freedom-concepts’ seems almost an instance of common sense, but ‘association’ does not necessitate a ‘direct’²³⁵ relation which prevents the use of the concept in this instance. The association noted by Mele exists due to two noteworthy reasons, the second of which is illuminated by my prior discussion. First, there exists a conceptual proximity between AUTONOMY and FREEDOM, with the two often being

²³⁴ ‘Autonomy, Criminal Responsibility, and Competence’ (n 230) 232.

²³⁵ *ibid.*

discussed in tandem. Crucially, like ‘association’, proximity does not preclude autonomy’s use, as autonomy’s unique necessary and sufficient conditions make it apt for specific use. Secondly, this association exists as Mele, akin to much autonomy scholarship, considers the concept in the frame of the human referent, of which many associated, especially value promoting, concepts exist. This, however, is where my prior conceptual discussion demonstrates applicability. AUTONOMY, defined as ‘self-governance’, freed from the elements erroneously ascribed to it from features of the human referent is a sharply bordered concept suitable for use in law.

4.7. PRIVACY and AUTONOMY– The Jurisprudence of the Supreme Court

Thus far in my examination of AUTONOMY following Feinberg’s work, a large number of concepts have been mentioned which in one way or another are said to be connected with AUTONOMY. These include COMPETENCE, INTELLIGENCE, CONTROL, FREE WILL, and FREEDOM among others. My analysis of Juth and Lorentzon’s, and later Meynen’s, considerations of the relation between CONTROL and AUTONOMY cautioned against the potential dangers of the amalgamation of separate concepts, but such dangers are displayed no clearer than in the case of PRIVACY and AUTONOMY. In his article ‘Autonomy, Sovereignty, and Privacy: Moral Ideals in the Constitution?’,²³⁶ Feinberg states that:

The Court itself has used the unfortunate term “privacy” for this foundational idea, but philosophers, reading between the lines of the leading judicial opinions, have had no difficulty identifying it as the concept we have often called personal autonomy or self-determination – a notion that has puzzled philosophers for centuries and divided them into contending schools.²³⁷

The ‘foundational idea’, and ‘moral concept’,²³⁸ which Feinberg calls ‘personal autonomy’ was found by the Supreme Court of the United States ‘lurking in various shadowy crevices of the Bill of Rights’,²³⁹ and was said by the Court ‘to be presupposed somehow by

²³⁶ Joel Feinberg, ‘Autonomy, Sovereignty, and Privacy: Moral Ideals in the Constitution?’ (1983) 58 Notre Dame L Rev 445.

²³⁷ *ibid* 446.

²³⁸ *ibid*.

²³⁹ *ibid*.

the rights that are explicitly guaranteed in that document.’²⁴⁰ This determination is troubling, as it goes without saying that the Bill of Rights is of foundational importance to the law of the United States, and its interpretation by the Supreme Court is clearly a matter of contention. Is it *privacy* that is ‘presupposed somehow by the rights that are explicitly guaranteed in that document’, or is it *personal autonomy* that is presupposed by explicitly guaranteed rights? According to Feinberg, philosophers ‘have had no difficulty’ in determining that which the Supreme Court recognised as ‘privacy’, to, in truth, be ‘personal autonomy’; however, the notion of ‘personal autonomy’ has ‘puzzled philosophers for centuries’. This is quite the dichotomy. Philosophers can recognise ‘personal autonomy’ in the Bill of Rights (and perhaps elsewhere) with ease, and yet they are left puzzled and divided by it. In short, ‘these philosophers’ know it when they see it, but developing an understanding of ‘personal autonomy’ is puzzling and divisive. Perhaps then, these philosophers were so sure that this ‘foundational idea’ was ‘personal autonomy’, and not ‘privacy’, because PRIVACY is obvious and less divisive? Unfortunately, this is not the case. Any confusion and dissent regarding AUTONOMY which has been discussed in my thesis is mirrored within PRIVACY scholarship and relevant court judgments.²⁴¹ In 1890, Warren and Brandeis famously called the right to privacy ‘the right to be let alone’,²⁴² but despite the notoriety of this claim, and over one hundred years later, PRIVACY remains a matter of contention.²⁴³ This leaves us with two concepts, AUTONOMY and PRIVACY, both of which have puzzled philosophers and lawyers for at least a century, the former of which can be recognised on a whim, and the latter disregarded just as quickly, and yet, neither have been pinned down. On the one hand, scholars like Feinberg confidently express that it is NOT ‘privacy’ which is presupposed in the Bill of Rights, and on the other, ‘personal autonomy’ and ‘the right to privacy’ have been

²⁴⁰ *ibid.*

²⁴¹ Although it is in at least as much need as AUTONOMY, it is outside the scope of my thesis to provide a conceptual analysis of PRIVACY. The insights provided in this section can be found in much greater detail in ‘A New Theory of Privacy’ (n 133).

²⁴² Samuel Warren and Louis Brandeis, ‘The Right to Privacy’ (1890) 5 Harvard Law Review 193.

²⁴³ ‘Privacy is a concept in disarray’; Daniel Solove, *Understanding Privacy* (Harvard University Press 2008) 1; ‘Despite more than a decade of privacy precedent, the right to privacy stubbornly eludes definition and remains analytically unclear’; June Aline Eichbaum, ‘Towards an Autonomy-Based Theory of Constitutional Privacy: Beyond the Ideology of Familial Privacy’ (1979) 14 Harv CR-CL L Rev 361.

equivocated.²⁴⁴ Additionally, and falling just short of equivocation, Eichbaum has advocated for ‘an autonomy-based right’ of privacy, one ‘grounded in notions of individual autonomy’.²⁴⁵ In accordance with Feinberg, Ortiz argues that:

The term “privacy” itself is a misnomer. The privacy cases do not centrally concern an individual’s right to keep certain information secret, but instead refer to what types of decisions an individual can make without interference from the state. In other words, privacy addresses not secrecy, but the scope and limits of individual autonomy.²⁴⁶

Feinberg’s position, that which he deemed to be common to the philosophers who interrogated the Supreme Court’s analysis of the Bill of Rights, certainly appears popular. However, Ortiz’s point that ‘[t]he term “privacy” itself is misnomer’ relies upon the fact that the privacy cases he mentions ‘do not centrally concern an individual’s right to keep certain information secret, but instead refer to what types of decisions an individual can make without interference from the state’. Further, Ortiz states that ‘privacy addresses not secrecy, but the scope and limits of individual autonomy.’ If ‘privacy’ were to be a misnomer following Ortiz’s reasoning, that must mean that ‘an individual’s right to keep certain information secret’ defines privacy, but what of *private* property, a *private* party, and decisional *privacy*? These instances do not necessarily relate to the ‘right to keep certain information secret’, or necessarily ‘secrecy’ more generally, and yet each compound contains the concept of privacy. In fact, Krotoszynski remarks that ‘[a]n initial problem with the study of privacy law is the concept of privacy itself. Difficulties arise because privacy cannot be defined with precision.’²⁴⁷ Clearly, what Ortiz deems PRIVACY to be lacks precision,

²⁴⁴ ‘One hears with increasing regularity of this amorphous right, as against the government due to electronic surveillance, data banks and undercover agents (informational privacy), and also as a defense to prosecution under statutes regulating certain types of personal conduct. In this later context, the right may be classified as one of personal autonomy: the right to be free from government regulation of choices we make in our everyday lives’; Linda J. Ehrlich, ‘Freedom of Choice: Personal Autonomy and the Right to Privacy’ (1978) 14 Idaho L Rev 447.

²⁴⁵ ‘Towards an Autonomy-Based Theory of Constitutional Privacy: Beyond the Ideology of Familial Privacy’ (n 243) 262.

²⁴⁶ Daniel R. Ortiz, ‘Privacy, Autonomy, and Consent’ (1989) 12 Harv J L & Pub Pol’y 91, 91-92.

²⁴⁷ Ronald J. Krotoszynski Jr., ‘Autonomy, Community, and Traditions of Liberty: The Contrast of British and American Privacy Law’ (1990) 1990 Duke LJ 1398, 1401.

specifically it lacks extensional capability. So, what does this mean for AUTONOMY? As Henkin writes in reference to the Supreme Court of the United States:

That the Court cites search and seizure cases as precedent for its new zone of autonomy suggests that it does not distinguish between privacy and autonomy and may be treating them both as aspects of “the right to be let alone”. But they are, I think, different notions conceptually, with different philosophical, political and social (and, one might have thought, legal) assumptions and consequences; they may look different also if viewed as aspects of the confrontation of private right with public good.²⁴⁸

Henkin says it well, AUTONOMY and PRIVACY are different. As a definition of PRIVACY, ‘self-governance’ plainly would not work. A self-governing car, robot, or person may well also be private, but they are not *necessarily* so. An autonomous university is self-governing by definition, and yet it may also be a public institution. As is often the case, a diary may be private, but you would seldom find a self-governing diary. As Krotoszynski states, ‘[p]rivacy relates to personal autonomy, but they are not coextensive. For example, autonomy would reach public acts such as one’s public dress or a speech given at a public gathering, acts that are not encompassed in any notion of privacy.’²⁴⁹ As is the case with many abstract general predicates, relation and overlap can be expected in the use of language, but what is often missed by theorists of AUTONOMY are the instances of *opposition* between autonomy and privacy. In a paper on smart home monitoring technologies, Townsend et al discovered that participants willingly trade privacy for autonomy in situations concerning their health. Elderly participants were more likely to sacrifice their privacy through home monitoring technologies if it meant they would not suffer the autonomy loss resulting from residence in a care facility.²⁵⁰ Clearly, PRIVACY and AUTONOMY are not coextensive, nor is it appropriate to equivocate them as the potential for a transaction between the two demonstrates. It is not likely that one would trade identical items, or indeed concepts, as doing so precludes value to be gained from the trade. This is why I advocate for hard definitional lines to be drawn around AUTONOMY, because as the scholarship on the Supreme

²⁴⁸ Louis Henkin, ‘Privacy and Autonomy’ (1974) 74(8) Columbia Law Review 1410, 1425.

²⁴⁹ ‘Autonomy, Community, and Traditions of Liberty: The Contrast of British and American Privacy Law’ (n 247) 1398.

²⁵⁰ Daphne Townsend, Frank Knoefel, Rafik Goubran, ‘Privacy Versus Autonomy: A Tradeoff Model for Smart Home Monitoring Technologies’ (2011) Annu Int Conf IEEE Eng Med Biol Soc 4748.

Court demonstrates, the promotion of a right is made much more challenging if few can agree on the concept (or value) which is protected by the language of that right.

It is of no surprise that many relations have been observed between autonomy and privacy, as it is common practice in scholarship, and indeed the Supreme Court, to consider instances of these concepts with no mind paid to the Fregean distinction. This purely referential practice will clearly not suffice, as overlap between instances of autonomy and instances of privacy will continue to occur, thereby furthering the illusion of their inseparability. There will be instances in law where AUTONOMY must be considered, instances where PRIVACY must be considered, instances where they both must be, and instances where they compete. If the law cannot determine *what* each concept *is*, judicial and scholarly interpretation will continue to be in contention.

4.8. AUTONOMY in International Law

I have chosen international law as the focus of this section of my thesis as AUTONOMY is ubiquitous in the field's academic works, and yet it has been described there as a 'hopelessly confused concept'.²⁵¹ Although there 'exists no express right to autonomy at the level of general international law',²⁵² echoes of the concept have been observed within official documents. AUTONOMY'S 'escape [of] a legal definition'²⁵³ has been noted to result in 'loose ends of all kinds',²⁵⁴ including the creation of autonomy arrangements through '*ad hoc* regulation',²⁵⁵ while simultaneously being heralded as a beneficial outcome of the concept's perceived 'ambiguity'²⁵⁶ and vagueness.²⁵⁷ This section will challenge these notions of

²⁵¹ Matti Wiberg, 'Political Autonomy: Ambiguities and Clarifications' in Markku Suksi *Autonomy: Applications and Implications* (Kluwer Law International 1998) 43. See also Wiberg's comment that 'It is fair to claim that no clear account of the concept of autonomy is available.'

²⁵² *Autonomy: Applications and Implications* (n 2) 357.

²⁵³ *ibid* preface.

²⁵⁴ *ibid*.

²⁵⁵ *ibid* 357.

²⁵⁶ *ibid*.

²⁵⁷ Asbjørn Eide, 'Cultural Autonomy: Concept, Content, History and Role in the World Order' in Markku Suksi, *Autonomy: Applications and implications* (Kluwer Law International 1998) 251.

AUTONOMY'S ambiguity and vagueness, subsequently demonstrating that 'self-governance' is capable of extension to the concept's many instances in international law. Free of these erroneous additions, AUTONOMY obtains the robustness befitting a legal principle, while maintaining its capability of practical extension.

This section makes particular use of Markku Suksi's edited collection *Autonomy: Applications and Implications*²⁵⁸ as it contains works of various scope and ambition from several academics. Again, as it would not be feasible to cover the entirety of international law scholarship, this book allows for my account of AUTONOMY to be tested against several nuanced contributions to demonstrate the capability of its extension to law and legal theory. Specifically, this section first examines the work of Matti Wiberg in order to analyse the state of conceptual analysis within international law scholarship. The latter part of this section examines the work of Hans-Joachim Heintze in order to interrogate AUTONOMY'S instrumental role in international law, specifically in a United Nations (UN) Declaration. Finally, this section concludes with a summary of AUTONOMY'S perception in international law scholarship, as well as an optimistic note for the concept's future

4.9. The 'Ambiguity' of AUTONOMY

In his article, 'Political Autonomy: Ambiguities and Clarifications', Wiberg writes that:

It is very disturbing that almost all writers on the topic of autonomy do not make clear to the readers (or even to themselves!) what they actually mean with the notion. The word is used to denote many different meanings in a bewildering amount of contexts... There is little hope that the use of language could at any time be unified to the degree that a concept such as autonomy could ever be used to denote only one meaning in political contexts.²⁵⁹

On the points that AUTONOMY has been used to denote many different meanings and writers often do not make clear how they understand the notion, Wiberg and I agree. However, this

²⁵⁸ *Autonomy: Applications and Implications* (n 2).

²⁵⁹ 'Political Autonomy: Ambiguities and Clarifications' (n 251).

thesis aims to show that the unification of the concept is not such a hopeless endeavour. Initially, Wiberg's specific mention of 'political contexts' may appear an obstacle to this ambition. The previous chapter of my thesis articulated autonomy at the conceptual level, presenting 'self-governance', classically understood, as the concept's constituent necessary and sufficient conditions while unburdening it from erroneous features and theories. As previously analysed, it is commonplace for theorists, upon acknowledgement of AUTONOMY'S sweeping referents, to purport that such wide scope must entail the concept to be vague, or a family resemblance term (or a matter of degree). In this respect, 'political contexts' may suggest situations in which AUTONOMY'S application is so varied that it must lack a single, unifying meaning. Wiberg's article is a comprehensive and well-researched response to the noted lapses of other theorists and is composed with a structure similar to that of this thesis, including an identification of 'The Research Problem', 'Lexicographical Remarks', 'Historical Perspectives', 'Modern Presentations', and 'Discussion and Conclusions'. This section of the thesis omits examination of 'Historical Perspectives' and 'Modern Presentations', as they contain much of the same content as my literature review. It begins with the analysis of Wiberg's first two sections, coupled with my own analytic conceptual reasoning. The use of AUTONOMY in law in Wiberg's article is the next and final section of this analysis. Despite Wiberg's attempt to 'shed some analytical light on the notion of autonomy',²⁶⁰ his lack of adequate attention paid to 'self-governance' and the Fregean distinction means he commits inevitable errors in his undertaking. Wiberg's analysis concludes that 'It is not the clarity, but the ambiguity of the concept that is the most important guarantee of its popularity. It is a wishing well ready to serve anyone'.²⁶¹ While this supposed ambiguity may aid in the concept's popularity, this section of my thesis shows that AUTONOMY is not ambiguous at all.

Beginning then with Wiberg's section - 'The Research Problem'. Of particular note is his claim that '[s]urely, if an agent claims that he is autonomous in the strict sense, that he is completely independent of any causal factors, we simply consider him a particularly ill-informed, absurdly self-centred person, if not directly a madman'.²⁶² This is thus far,

²⁶⁰ *ibid* 45.

²⁶¹ *ibid* 57.

²⁶² *ibid* 46.

uncontroversial. As mentioned in my previous section, assessing an entity, in this case a ‘person’, to be entirely autonomous, it must be understood whether that entity is self-governing in entirety. ‘[I]n the strict sense’ then, it is likely that no person is exempt from any and all ‘causal factors’... ‘All agents, even the most free ones are in many ways dependent on some external forces, such as certain physical preconditions of human life (food, oxygen, suitable temperature, etc).’²⁶³ It is here where Wiberg begins to falter in his analysis. Of course, at least with current scientific knowledge, no person does or can exist independently of ‘food, oxygen, suitable temperature, etc’, but by Wiberg’s own admission, these dependencies attach to the ‘person’. If one were to understand AUTONOMY based on these premises, would AUTONOMY mean existing independent of ‘food, oxygen, suitable temperature, etc’? Of course not: autonomous vehicles do not require these ‘physical preconditions of human life’ (they may require oxygen and a suitable temperature, but they are requirements attached to a functional vehicle, not its predicate ‘autonomous’). To avoid the risk of sounding obtuse, I note that Wiberg specifically refers to ‘physical preconditions of *human life*’ (my emphasis), and as such he is likely entirely aware that these preconditions attach to ‘person’ in ‘autonomous person’. However, my analysis is non-trivial, as Wiberg follows his considerations by claiming that:

We may illustrate these points by considering a unidimensional continuum, where an autonomous agent is situated between total social isolation and entire dependency upon others in a fool-proof deterministic manner. Autonomy is thus a matter of degree, not one of dichotomy.²⁶⁴

From his premises, Wiberg’s conclusion does not follow. Only by misunderstanding degree concepts and failing to pay adequate attention to sense/reference, is Wiberg able to claim AUTONOMY ‘a matter of degree’. As I have examined degree concepts in the previous section of this thesis, I will not again explain the conditions necessary for the attribution of ‘degree credentials’²⁶⁵ to a concept. I will however provide an explanation for Wiberg’s (erroneous) conclusion. If one is to consider autonomy exclusively descriptive of an entity in its entirety, then of course the person with an electronic tag attached to their ankle would

²⁶³ *ibid.*

²⁶⁴ *ibid.*

²⁶⁵ ‘Illusions of Degree: the instructive case of ‘coherence’ (n 133). Credit to Pethick for this phrase.

seem more autonomous than the person in a maximum-security prison. When one can be described as ‘more’ or ‘less’ autonomous, it seems to follow that AUTONOMY must be a degree concept. This is where Wiberg’s reasoning takes him; if people (such as the two example criminals) fall on a ‘unidimensional continuum’ of autonomy, AUTONOMY exists in degrees. However, when a close look is taken at why people can be more or less autonomous, in every case it happens that the more autonomous person is autonomous with respect to more things. For example, the electronically tagged criminal is likely autonomous with respect to their meal choices, whereas the maximum-security prison resident may be on a diet of prescribed nutraloaf. There are many examples which could be given, based on this hypothetical situation, and they would warrant the conclusion that one prisoner is more autonomous than the other. But when autonomy is observed ‘with respect to what’, it exists exactly as Wiberg claims it does not, as ‘one of dichotomy’. One prisoner is autonomous with respect to meal choice, the other is not. Regarding the Fregean distinction, Wiberg ascribes degree credentials to AUTONOMY exclusively through the examination of the autonomous person. It is particularly easy to fall into this trap when inadequate attention is paid to AUTONOMY’S many referents, and the concept subsequently understood as appropriately abstract and general. This pitfall is especially likely when the person is the sole examined referent of AUTONOMY, as features of the complex nature of, and many possible undertakings by, people are ascribed as features of AUTONOMY. Although people breathe, eat, and exist in suitable temperatures, this does not make AUTONOMY a matter of degree. These are features of people, not of AUTONOMY.

The final point I would like to make relates to Wiberg’s list of questions at the end of his section, which ‘any satisfactory theory of autonomy should be able to answer in a convincing way’.²⁶⁶ To preface, I restate that the conditions attached to the description of one referent as ‘autonomous’ differ to another. For example, an autonomous researcher would require self-governance when conducting their research, and an autonomous Growbot self-governs with respect to its search for spillages. These differences arise due to the distinction between the functions of a *researcher* and a *Growbot*, not a difference in predicate meaning of autonomous. With this in mind, Wiberg’s first two questions can be answered. ‘What is

²⁶⁶ ‘Political Autonomy: Ambiguities and Clarifications’ (n 251) 46.

autonomy?’²⁶⁷ AUTONOMY is self-governance; I do not believe I need to defend this position again. ‘Which necessary and sufficient criteria should be fulfilled before an agent can be claimed to be autonomous?’²⁶⁸ Note my above preface; this depends on the agent. The researcher may very well receive precise and mandatory instruction on how to search for a spillage, and an ambitious Growbot may be told it must research a specific topic in a specific way. So, as a predicate term, ‘autonomous’ attaches to an instance. In these alternative hypothetical situations, the researcher is not an autonomous spill-searcher, and the Growbot is not an autonomous researcher, but with respect to their original functions, the predicate term is accurate. Crucially, these facts do not alter autonomy conceptually. AUTONOMY’S ‘necessary and sufficient criteria’ are ‘self-governance’, but due to the way ‘autonomous’ works, additional work is required to understand its referent. The remainder of Wiberg’s questions²⁶⁹ can be answered with the same reasoning deployed above, so I will not repeat

²⁶⁷ *ibid.*

²⁶⁸ *ibid.*

²⁶⁹ *ibid* 46 - 47; the remainder of Wiberg’s questions:

3. Under which conditions can we argue that an agent is autonomous?
4. What points of interest, if any, follow from the claim that a certain agent or a particular act of his are autonomous?
5. How can it be that an agent is on the one hand a social product through education and socialization in general, and on the other hand he is supposed to be a free agent in a moral sense?
6. Must the autonomy of an agent X be somehow accepted or confirmed by some other agents?
7. Do all relevant "others" have to give their consent before an agent can be classified as autonomous? Which criteria for relevance should be applied here?
8. How important is autonomy compared to other values?
9. Can an agent pretend to be autonomous?
10. Must an agent know that it is autonomous in order to be autonomous?
11. Can an agent be autonomous by chance or is it possible to be autonomous only if the agent in question has earlier somehow decided to be autonomous?
12. Can a prisoner in any sense be autonomous if he continuously and systematically rejects to comply with formally valid regulations?
13. Is autonomy a good thing? If it is, on what grounds?
14. Should autonomy be respected? If yes, why?
15. Is autonomy something that can be realized?
16. If agents X and Y are both autonomous, how do we know in a particular situation, which of these agents is more autonomous?
17. Can a representative be autonomous with respect to those he is representing and still be a responsive politician?

myself by doing so. It is worth noting that Wiberg's section attempts to 'shed some analytical light on the notion of autonomy *from the viewpoint of political theory and political science*'²⁷⁰ (my emphasis). With this viewpoint in mind, what Wiberg considers to be a 'satisfactory theory of autonomy' will be a politically theoretical and scientific theory, which is not the ambition of this thesis. As such, insights from political theory and political science will likely be required to satisfactorily answer Wiberg's questions. However, Wiberg's introduction states that 'it is fair to claim that no clear account of the concept of autonomy is available. Autonomy is a hopelessly confused concept'.²⁷¹ In order to deploy the concept in political contexts, the 'clear account' that Wiberg laments the lack of is required, and such an account is obtained through rigorous conceptual analysis. With these faults in Wiberg's reasoning corrected, it ought to be possible to answer his questions with a decreased margin for error. With that being said, I predict that their complexity will remain, simply as a result of the complexity of their political contexts. While additional work would still be required to provide the answers that would satisfy Wiberg, my analysis displays that AUTONOMY is not the perpetrator of these difficulties.

Wiberg's section, 'Lexicographical Remarks', is brief in content and follows naturally from his previous section. Much of his section is a restatement of Feinberg's analysis of AUTONOMY which I have examined earlier in my thesis. Thus, the only point of note that Wiberg makes in his section is that:

Autonomy has its etymological roots in the two Greek words for self and rule or law. Literally it stands for self-rule: to have or make one's own laws. In order for an agent to be autonomous, he should, firstly, have a developed self, to which his actions can be ascribed.²⁷²

Wiberg's etymological remarks are correct, and a 'developed self' may very well be required for *an agent* to be autonomous ('an agent' in Wiberg's case being a person - shown by his use of 'he'). While I do not disagree with this passage, it is worth noting that Wiberg does not consider that an agent's developed 'self' is not the same sense of the term 'self-' constituent

²⁷⁰ *ibid* 45.

²⁷¹ *ibid* 43.

²⁷² *ibid* 47.

to autonomy's etymology. Details of this position are included in the previous chapter of this thesis, so again, I will not repeat its content. It is simply worth mentioning that Wiberg may not have considered this distinction at all, and thus this may be another display of his Fregean misstep.

Thus far, this analysis of Wiberg's work may seem like lexical pedantry, but it is within his 'Discussion and Conclusions' that the errors he commits show instrumental significance. Wiberg states that 'the concept of autonomy is used to express bewilderingly many different meanings. No clear common pattern has emerged in Western thought.'²⁷³ This finding leads Wiberg to state that:

²⁷³ ibid 56, 52; A non-exhaustive list of Wiberg's 'random sample of presentations of the concept of autonomy' (ibid 52.) which show this lack of 'clear common pattern... in Western thought' includes:

- 'An autonomous agent is a free agent, being self-directed in that he both knows what he wants and is not obstructed in the pursuit of it' (ibid - M. Hollis, *The Philosophy of Social Science* (Cambridge University Press 1994) 73).
- 'An organization is relatively autonomous if it undertakes actions that are (a) are considered harmful by another organization and that (b) no other organization, including the government of the state, can prevent, or could prevent except by incurring costs so high as to exceed the gains to the actor from doing so.' (ibid 53 - R.A. Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control* (Yale University Press 1982) 26).
- 'John Rawls characterizes autonomous action in the following way, echoing Kant's position. Persons are acting autonomously when "they are acting from principles that they would acknowledge under conditions that best express their nature as free and equal rational beings". (ibid - J. Rawls, *A Theory of Justice* (Oxford University Press 1970) 515.
- 'Nozick links the concept of autonomy with the concept of inviolability. Respecting the domain of human autonomy is defined in terms of the putting of certain constraints upon how one set of human beings may behave towards others and others towards them.' (ibid - R. Nozick, *Anarchy, State and Utopia* (Blackwell 1974)).
- 'Michael Taylor provides further clarification on the concept of autonomy. The following points are his. Two things are involved in the notion: *rationality* (having or using the capacities of the intellect, thus excluding, *inter alia*, brainwashed persons and those acting under hypnosis) and *authenticity*. Both notions are ambiguous.' (ibid 54 - M. Taylor, *Community, Anarchy and Liberty* (Cambridge University Press 1982) 148-150).

I include these passages as they all discuss the concept of autonomy in relation to a specific referent (once '[a]n organization', and four times the person). The significance of this is that Wiberg has not

There are, however, good political reasons for this: the strategies of ambiguity may be politically profitable. A vague notion of autonomy is very useful in many instances exactly because of its vagueness: when there is no commonly shared clear notion of what autonomy in the final analysis stands for, that is, what it covers and what it excludes, it is a very useful tool for many actors in various kinds of social disputes.²⁷⁴

Of particular note is Wiberg seemingly synonymizing vagueness and ambiguity. Chapter 3 of this thesis described vague concepts, and explained why AUTONOMY is not one of them, so I will not restate that reasoning here. Ambiguity, on the other hand, while often conflated with vagueness, is a distinct conceptual feature. While BALD is a vague concept as it gives rise to borderline cases, the classic example of BANK is ambiguous as it possesses distinct senses. BANK can be defined either with respect to the type of financial institution, or a riverside; as such it is ambiguous. BANK is not a vague concept as it would likely require some hyperbolic rationalisation to identify a borderline bank. So, if vagueness has been ruled out as a feature of AUTONOMY, what about ambiguity? Wiberg thinks so, apparently demonstrated by his sample of presentations. However, as discussed previously, these presentations do not deliver distinct meanings of AUTONOMY. Hollis discusses what an ‘autonomous *agent*’ is, Dahl describes ‘*an organization*’ that is ‘*relatively autonomous*’, Rawls speaks of ‘*persons*’ that are ‘*acting autonomously*’, Nozick ‘*links the concept of autonomy with the concept of inviolability*’ and discusses ‘*[r]especting the domain of human autonomy*’, and Taylor says ‘[t]wo things are *involved* in the notion: [rationality]... and [authenticity]’ (my emphasis). In an ironic turn of phrase, these presentations may discuss what autonomy means for these theorists’ referents, but they do not provide distinct meanings of AUTONOMY.²⁷⁵ Simply, AUTONOMY is ‘self-governance’, and separated from these referents, no alternative presents itself. The Aristotelian test for ambiguity involves the attempted construction of a definition that encompasses the supposed meanings of a concept. If unable to do so, ambiguity can be ascribed. BANK has ambiguity ascribed under this test, as its meanings are distinct and thus

considered that these ‘bewilderingly many different meanings’ may originate from autonomy’s referents, rather than the concept itself.

²⁷⁴ *ibid* 56.

²⁷⁵ To avoid confusion, I used ‘means’ akin to ‘What leaving the EU means for the UK’ and ‘meanings’ as definitions (of which they need to be multiple and distinct to constitute ambiguity).

unable to fall under one definition.²⁷⁶ AUTONOMY is not such a concept, as ‘self-governance’ encompasses all instances of autonomy when taken in the form of ‘autonomous with respect to what’. It is worth mentioning that in Wiberg’s passage above, he does not specifically call AUTONOMY an ambiguous concept (‘the strategies of ambiguity may be politically profitable’), but later in the section he states that ‘it is not the clarity, but the ambiguity of the concept that is the most important guarantee of its popularity.’²⁷⁷ To show how this erroneous ascription of ambiguity affects AUTONOMY instrumentally, it is necessary to include a lengthy passage from Wiberg’s article:

Take, for instance, the Camp David Agreement, which was signed on 17 September 1978 by President Jimmy Carter of the USA, President Anwar Sadat of Egypt, and Prime Minister Menachim Begin of Israel. It ended the state of war between Egypt and Israel, and supposedly offered a solution to the Palestinian problem, which had been at the heart of the Middle East conflict since 1948. Sinai was returned to Egypt by Israel, and the Israelis agreed to offer autonomy to the Palestinian Arabs living in the West Bank and Gaza regions. It was no coincidence that the agreement did not define autonomy. The different parties to the agreement interpreted the content of the agreement differently: the Israelis understood by autonomy a very limited form of administrative control over some day-to-day affairs. If the Israelis have their way, the lands over which the Palestinians might have autonomy would come permanently under Israeli sovereignty, and the Israelis would maintain complete control over such vital matters as internal security and foreign policy. On the other hand, the Egyptians understood autonomy to mean something far more substantial. For them, autonomy meant no less than self-government, perhaps in the sense of territorial sovereignty.²⁷⁸

It is beyond the scope of this thesis to discuss the Camp David Agreement in further detail, and attempting to do so would undoubtedly do a disservice to the complexity of the associated conflicts. However, Wiberg’s discussion of ambiguity is pertinent. I do not wish to make politically leaning analyses, but it is clear from Wiberg’s statement that ‘it was no coincidence that the agreement did not define autonomy’, and the discordance between the beliefs held by the parties regarding the notion, that ‘ambiguity’ was of no benefit to the Palestinian Arabs. From this discussion, it is apparent that AUTONOMY’S proposed ambiguity

²⁷⁶ Adam Sennet, ‘Ambiguity’ (Stanford Encyclopedia of Philosophy Archive, first published 16 May 2011, substantive revision 8 February 2016)
<https://plato.stanford.edu/archives/sum2020/entries/ambiguity/#:~:text='Ambiguity'%2C%20as%20used%20by,a%20difficult%20and%20tendentious%20affair> accessed 18 June 2024. See here for more information on ambiguity and the Aristotelian test.

²⁷⁷ ‘Political Autonomy: Ambiguities and Clarifications’ (n 251) 57.

²⁷⁸ *ibid* 56.

provided the greatest service to the Israelis who ‘understood by autonomy a very limited form of administrative control over some day-to-day affairs.’ If it truly is this ascription of ambiguity which acts as the catalyst for such one-sided (one might say *unfair*) agreements, it does not require much speculation to ascertain the potentially disastrous consequences that conceptual imprecision can yield. Crucially, AUTONOMY is not an ambiguous concept, nor is it vague, and purporting it to be so within international law scholarship only rationalises the concept’s inaccurate utilisation in law. Wiberg’s statement regarding the intention of autonomy’s lack of a definition in the Camp David Agreement indicates that potentially, were it present, the interpretation of the agreement would have been more unanimous amongst the parties. I will not speculate by stating the mere presence of a definition would have altered the outcome of the agreement, but I agree with Wiberg that definitions are important.²⁷⁹ This is why rigour is paramount in conceptual analysis. Taking Wiberg’s article at face value, one would be left believing that AUTONOMY has been used in agreements as if it were vague and ambiguous because it is vague and ambiguous. As such, Wiberg’s bewilderment at the seeming definitional imprecision of the concept appears only natural, for how could we possibly hope for linguistic unification if AUTONOMY means so many different things to so many different people? Aware of the Fregean distinction, matters of degree, vagueness, and ambiguity, one can observe AUTONOMY to be definitionally precise. Perhaps with this analysis in mind, the concept’s ambiguous use in agreements need not appear an unavoidable consequence of its ascribed features to Wiberg or any other scholar of autonomy.

4.10. ‘On the Legal Understanding of Autonomy’

In his article, ‘On the Legal Understanding of Autonomy’, Heintze states that: ‘Practice shows that autonomy is always based on the particular circumstances of the case and cannot be defined in general. From the viewpoint of legal theory, autonomy is, therefore, a general legal term that has to be given concrete content.’²⁸⁰ Heintze’s wording in this passage is confusing; it is unclear what ‘concrete content’ amounts to if AUTONOMY ‘cannot

²⁷⁹ *ibid* 43; ‘It is very disturbing that almost all writers on the topic of autonomy do not make clear to the readers (or even to themselves!) what they actually mean with the notion.’ *ibid* 56; ‘every writer should define what he, strictly speaking, means when he uses the notion.’

²⁸⁰ Hans-Joachim Heintze, ‘On the Legal Understanding of Autonomy’ in Markku Suksi, *Autonomy: Applications and Implications* (Kluwer Law International 1998) 8.

be defined in general'. Nevertheless, Heintze and I agree regarding the latter sentence of this passage; however, we diverge on the former as while the application of autonomy undoubtedly depends on 'the particular circumstances of the case', the concept, as demonstrated, can be defined in general. The analysis of this article will thus begin with Heintze's introduction, as it is here that his justifications for his belief regarding AUTONOMY'S resistance to definition are provided. Heintze begins by noting that:

The term autonomy appears in various legal contexts. In domestic law, autonomy is part of the self-government of certain public corporations and institutions... Constitutional autonomy is an essential condition of statehood. In international law, autonomy means that parts of the State's territory are authorized to govern themselves in certain matters by enacting laws and statutes, but without constituting a State of their own.²⁸¹

At face value, Heintze's opening sentence appears merely as a statement which is provided with justification by the remainder of the passage; however, it reveals precisely why Heintze believes AUTONOMY 'cannot be defined in general'. As has been echoed many times throughout this thesis, scholars of autonomy view the many instances of the application of the concept as definitive proof of its irreducibility to a general definition. In fact, the errors that Heintze specifically makes can be identified in his list of examples. He states that '[i]n domestic law, autonomy *is part of* the self-government of certain public corporations and institutions' (my emphasis). Heintze appears to view 'self-government' as a term which applies to the totality of 'certain public corporations and institutions', whereas autonomy 'includes the power to make statutes, that is, the authority to regulate their own affairs by enacting legal rules'.²⁸² This could be accurate and in accordance with my own analysis in this thesis. In the context of domestic law, autonomy may well be given with respect to 'mak[ing] statutes', which is to say 'enacting legal rules'. This could be the limit to autonomy within this context. With that being said, Heintze's consideration of autonomy in this context reveals nothing about its definition, or more specifically, its resistance to one. Autonomy may be 'part of the self-government of certain public corporations and institutions' but being 'part of' something does not reveal a meaning or definition (or work as evidence against the possibility of a definition). For an ordinary language example of this point, consider that a wheel is part of a car, and part of a watermill. A wheel is necessary for this car to travel, and

²⁸¹ *ibid* 7.

²⁸² *ibid*.

it is necessary for this watermill to produce power. These are two contrasting applications of a wheel, and both feature a wheel as ‘part of’ something, but this does not provide a definition for WHEEL, and, even more so, does not demonstrate that WHEEL cannot be defined.

Heintze’s next note is that ‘[c]onstitutional autonomy is an essential condition of statehood’. This may appear closer to a definition than his previous example, as Heintze uses the term ‘is’ rather than ‘part of’, but yet again this context is not a demonstration of AUTONOMY’S resistance to definition. As I mentioned earlier, at the end of the section ‘In Defence ‘Self-Governance’ Against an Alternative Definition’, there is a distinction between identity and predication concerning ‘is’ statements. Heintze’s statement, that ‘[c]onstitutional autonomy is an essential condition of statehood’, is an example of the latter. This is not likely to be an identity statement as Heintze believes that AUTONOMY is resistant to definition. If this statement is examined in the compound, ‘is an essential condition of’, it is revealed to be a statement of predication. Ordinary language examples corroborate this. Consider that oxygen is an essential condition of a breathable atmosphere, the brain is an essential condition for human thought, and sunlight is an essential condition for life. These examples are true, but we would not define oxygen, the brain or sunlight as the above statements. I have no doubt that ‘[c]onstitutional autonomy is an essential condition of statehood’, yet this context is not a definition, nor is it evidence for the impossibility of one. Heintze’s final legal context, that ‘[i]n international law, autonomy means that parts of the State’s territory are authorized to govern themselves in certain matters by enacting laws and statutes, but without constituting a state of their own’ appears the closest to a definition of the three. However, there are two important considerations regarding this statement. The first, and more trivial of the two, is that this is the case for autonomy ‘[i]n international law’. This is more trivial as Heintze presents ‘legal contexts’, so of course autonomy is contextualised in this instance, but this first point is related to a second. The second point concerns Heintze’s use of ‘means’, or specifically, ‘means that’. Recall my above point made on ‘means’ statements; what Heintze provides is a context which shows what autonomy means for ‘parts of the State’s territory’ in ‘international law’. ‘[T]hat’ is crucial here for understanding the semantic content of this statement. Consider again the ordinary language example of WHEEL. In hydropower, a wheel means that a watermill can translate the energy of flowing water into power, and in vehicular transportation, a wheel means that a car can translate power from the engine into motion. It is worth mentioning that AUTONOMY is a more abstract concept than

WHEEL, but Heintze speaks of the instrumental use of autonomy in international law, and thus the comparison is apt. With this in mind, none of Heintze's contexts provide meanings in the definitional sense to AUTONOMY, nor do they provide robust evidence for the impossibility of one. It must be acknowledged that Heintze does not explicitly state these contexts to provide meanings, but of his '[p]ractice[s]' discussed thus far none show that 'autonomy *cannot* be defined in general' (my emphasis). Heintze says that 'it is obvious the term autonomy is used differently depending on the context, because the concept of autonomy is not a well-defined legal concept.'²⁸³ The ambition of a robust legal definition is to alleviate persistent confusion surrounding the semantic content of the concept, so it can be applied in law with more certainty; however, the autonomous territory of the State prompts considerations clearly distinct from those of the autonomous robot. This is true of all abstract general predicates by virtue of their function as that kind of term.²⁸⁴ 'Self-governance' does not and will not provide all there is to know regarding all *applications* of autonomy, but what it does accomplish is the unification of all uses through a definition which is capable of extension to these uses.

Compared to Wiberg's article, Heintze's conceptual analysis is sparse, but he does provide a cursory overview of AUTONOMY in a range of fields, as well as an attempt at informing of its origin. He states that 'the concept was originally derived from sociology',²⁸⁵ which contrasts with the rest of the literature investigating origin. As stated earlier in this thesis, AUTONOMY is derived from Ancient Greece. Its etymology (*auto nomos*) and earliest recorded uses (the ancient Greek city-state and *Antigone*) are evidence of this. Heintze's source for his contrasting claim is Frederik Harhoff's article 'Institutions of Autonomy', in which he states:

Operating with clear and precise concepts has become necessary and essential in every legal profession. - Scientific method, systematic analysis and legal practice all depend on a distinct and unequivocal professional terminology, which leaves the least possible uncertainty in the interpretation and subsumption of legal sources. In this respect, the

²⁸³ *ibid.*

²⁸⁴ Consider 'coherent argument' and 'coherent light wave' (Pethick, 'On the Entanglement of Coherence' (n 18)), or 'private property' and 'private diary' ('Pethick, 'A New Theory of Privacy' (n 133)).

²⁸⁵ 'On the Legal Understanding of Autonomy' (n 280) 7.

concept of autonomy is not a well-fitted legal concept. In fact, this concept was originally derived from sociology, but has been applied as well in legal science because of the need to approach decolonization in a constitutional legal context as well, and because of its highly appealing and motivating force.²⁸⁶

Unfortunately, the citations end here. There is no doubt the term is deployed in sociology,²⁸⁷ but to state that it is derived from sociology appears incorrect.²⁸⁸ This may seem like nitpicking of an innocuous detail in Heintze's work, but it is indicative of a lack of methodological rigour. If such a claim is made with such a low standard of evidence (in the same book which contains AUTONOMY'S correct origin no less)²⁸⁹ then it may be of little surprise that the concept appears elusive to scholars of law. Regarding the use of AUTONOMY in various fields, Heintze says:

The term autonomy is used today in three different branches of science. In philosophy, autonomy is the power of the human being to self-determination based on the rational will of the individual. In natural sciences the concept means organic independence. In law and politics autonomy has many meanings. Lapidoth identifies four "conceptions of this concept" of autonomy in the law: a) as a right to act upon one's own discretion in certain matters; b) as a synonym of independence; c) as a synonym of decentralization; and d) as exclusive powers of legislation, administration and adjudication in specific areas of an autonomous entity.²⁹⁰

For Heintze's consideration of AUTONOMY in philosophy, he provides no citation for this claim; however, he later references Ruth Lapidoth's article 'Autonomy: potential and limitations'²⁹¹ in relation to her 'conceptions of autonomy', and it is here that Heintze finds his meaning of the concept in philosophy. Heintze speaks of Kantian moral autonomy when he references the concept in philosophy, as shown by Lapidoth's citation of the Oxford

²⁸⁶ Frederik Harhoff, 'Institutions of Autonomy' (1986) 55 *Nordic Journal of International Law* 31.

²⁸⁷ Marc Weller and Stefan Wolff, *Autonomy, Self-governance and Conflict Resolution* (Routledge 2008).

²⁸⁸ I say 'appears' as my research yielded no corroboration for Heintze and Harhoff's claim, and without Harhoff citing any sources it might seem specious, but it is possible some documentation exists as evidence that I was unable to locate.

²⁸⁹ 'Political Autonomy: Ambiguities and Clarifications' (n 251) 47.

²⁹⁰ 'On the Legal Understanding of Autonomy' (n 280) 7.

²⁹¹ Ruth Lapidoth, 'Autonomy: potential and limitations' (1994) 1 *International Journal on Group Rights* 269.

English Dictionary (OED).²⁹² This is certainly one conception of autonomy in philosophy, but to claim that this is how AUTONOMY is understood in the totality of philosophy based on one dictionary entry is incorrect, especially when that entry specifies ‘Kantian philosophy’. For example, this thesis concerns the philosophy of language, thus this Kantian conception does not provide the definition of AUTONOMY I argue for. Again, Heintze’s statement that ‘[i]n natural sciences the concept means organic independence’ is uncited, yet is derived from Lapidoth’s article, which references the OED’s biological meaning and use of the term.²⁹³ Lapidoth’s reference is more comprehensive, also including ‘the condition of a phenomenon conforming only to its own laws and not being subject to higher rules, i.e. not a mere form or state of some other organism.’²⁹⁴ Lapidoth references the 1989 version of the OED, so although similar, the modern alternative scientific meaning concerns biology’s autonomy in relation to its lack of reducibility to a more fundamental science, such as physics, rather than ‘some other organism’.²⁹⁵ Already, this search yields alternative meanings of the concept within science beyond the single meaning implied by Heintze. Furthermore, in their article ‘Mechanism, autonomy and biological explanation’, Leonardo Bich and William Bechtel say ‘An organism is autonomous because it creates the set of constraints responsible for its own constitutive activities that maintain its existence.’²⁹⁶ My research also yielded two articles which discuss the autonomy of science²⁹⁷ and scientific autonomy.²⁹⁸ The first of these discusses the ‘degree of independence’²⁹⁹ granted to scientists in the wake of ‘authoritarian

²⁹² OED Online, ‘autonomy, n’ (Oxford University Press, Revised 2011)

<https://www.oed.com/dictionary/autonomy_n?tab=meaning_and_use> accessed 22 June 2024; ‘*Philosophy*. In Kantian Philosophy: the freedom of the will which enables a person to adopt the rational principles of moral law (rather than personal desire or feeling) as the prerequisite for his or her actions; the capacity of reason for moral self-determination.’

²⁹³ *ibid.* ‘*Biology*. The condition of an organism, or part of one, of being (to some degree) free from dependence upon or regulation by other organisms or parts; organic independence.’

²⁹⁴ ‘Autonomy: potential and limitations’ (n 291) 276.

²⁹⁵ ‘autonomy, n’ (n 292); ‘The condition of a subject or discipline (e.g. biology) of having its own laws, principles, and methodology which are not simply deducible from or reducible to those of a more fundamental subject (e.g. physics).’

²⁹⁶ Leonardo Bich & William Bechtel, ‘Mechanism, autonomy and biological explanation’ (2021) 36(53) *Biology & Philosophy* 13.

²⁹⁷ M. Polanyi, ‘The Autonomy of Science’ (1945) 60 *The Scientific Monthly* 141.

²⁹⁸ David B. Resnik, ‘Scientific Autonomy and Public Oversight’ (2008) 5 *Episteme* 220.

²⁹⁹ ‘The Autonomy of Science’ (n 297) 141.

doctrine.’³⁰⁰ The second article is similar in focus, stating that ‘[t]he progress of science depends on its independence from government control and authority.’³⁰¹ Crucially, this latter article also mentions ‘science’s right to self-governance’.³⁰² From this search, it is clear that scientific scholarship is at times concerned with autonomous organisms, as well as the independence of science; however, it is hardly conclusive to claim that autonomy means ‘organic independence’ in the natural sciences. As if to contrast law and politics with philosophy and the natural science’s supposed respective single meanings of autonomy, Heintze states that ‘[in] law and politics autonomy has many meanings’. This indicates that Heintze gave these other fields a cursory examination, as my thesis alone has identified several proposed meanings of autonomy in philosophy and science. The point of this analysis is to demonstrate Heintze’s seeming conflation of ‘concept’, ‘meaning’, and ‘conception’, which is significant as if proper consideration is not given to the distinction between these terms, conclusions such as autonomy ‘cannot be defined in general’ may appear warranted.

To corroborate his reference to autonomy’s ‘many meanings’ in ‘law and politics’, Heintze references Lapidoth’s ‘*conceptions*’ (my emphasis) of AUTONOMY. This is a revealing point, as in her article, Lapidoth distinguishes between concept and conception,³⁰³ but neither Heintze nor Lapidoth distinguishes between meaning and conception. Lapidoth describes conceptions as ‘differing views on [a concept’s] interpretation’.³⁰⁴ In relation to various legal fields, this notion of interpretation appears strikingly similar to the above discussed sense of means - what the concept ‘means for’ something, such as ‘political autonomy’³⁰⁵ (what the concept means for politics) and ‘administrative autonomy’³⁰⁶ (what the concept means for administration). So, this leaves us with ‘meaning’ as definition,

³⁰⁰ *ibid.*

³⁰¹ ‘Scientific Autonomy and Public Oversight’ (n 298) 227.

³⁰² *ibid.* 236.

³⁰³ ‘Autonomy: potential and limitations’ (n 291) 277; ‘In order not to be confused by the numerous notions, it may be helpful to keep in mind the difference between concepts and conceptions: whilst there is a general agreement on the basic concept of autonomy, there are many conceptions of this concept, i.e. differing views on its interpretation.’

³⁰⁴ *ibid.*

³⁰⁵ *ibid.*

³⁰⁶ *ibid.*

‘conception’ as specific interpretation (or meaning as in means for) and ‘concept’ as the generalised term. With these distinctions in mind, Heintze’s claim that AUTONOMY ‘cannot be defined in general’ is unsupported, as the vast array of autonomy ‘meanings’ Heintze mentions derive from AUTONOMY’S many conceptions (or as Lapidoth suggests, technical *interpretations*). In fact, Heintze comes very close to this realisation, stating that ‘[s]ometimes the term “self-government” is used instead of autonomy. This is a close concept to that of autonomy. Moreover, in legal-political vocabulary, autonomy denotes self-government’.³⁰⁷ It cannot be said with certainty why Heintze believes self-government to be a close concept to that of AUTONOMY when, put simply, self-government is AUTONOMY, but it may be because his examination of AUTONOMY’S many referents seemingly must entail the concept to be far more elusive and complex than self-government.

The final area of Heintze’s article to which I draw attention is his section, ‘The Legal Basis of Autonomy’,³⁰⁸ in which he states:

Autonomy is sometimes classified as a principle of international law...However, forms of self-government and autonomy vary so much from case to case that their specific content remain doubtful and a customary rule has not evolved. There is no right to autonomy to be found in treaties...The discussion on the possible status for autonomy as a principle of international law has gained new input from the debate in the UN on the Rights of Indigenous Peoples. Article 31 of the draft Declaration on the Rights of Indigenous Peoples provides that *indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs*...With its content, the proposed Declaration could contribute to clarifying the concept of autonomy in international law.³⁰⁹

This classification as a principle of international law communicates the importance of the concept; but since Heintze’s article was published in *Autonomy: Applications and Implications* in 1998, AUTONOMY is still not mentioned by name in any EU Treaties.³¹⁰ However, the Declaration on the Rights of Indigenous Peoples was passed in 2007, and

³⁰⁷ ‘On the Legal Understanding of Autonomy’ (n 280) 7-8.

³⁰⁸ *ibid* 13.

³⁰⁹ *ibid* 13-14.

³¹⁰ Jed Odermatt, ‘When a Fence Becomes a Cage’ (2016) European University Institute Working Paper Max Weber Programme 2016/07

<https://cadmus.eui.eu/bitstream/handle/1814/41046/MWP_2016_07.pdf?sequence=1> accessed 22 June 2024.

Article 4 states ‘Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.’³¹¹ Although UN General Assembly resolutions are legally non-binding, the UN’s website describes them as the views of member states.³¹² Regarding the scope of this thesis, this is an important development as, in accordance with Heintze’s statement, the Declaration ‘could contribute to clarifying the concept of autonomy in international law.’ Earlier in his article, Heintze says that ‘[i]n principle, autonomy is regarded as the granting of internal self-government to a region or group of persons.’ The Declaration in question clearly demonstrates this as the right to autonomy is used interchangeably with the right to self-government. One consideration however may be that the term ‘or’ could indicate a disparity between autonomy and self-government, insomuch as indigenous persons ‘in exercising their right to self-determination’ have the right to *either* autonomy *or* self-government. In this respect, the declaration could benefit from autonomy being deployed in Article 4, stating its definition to be self-government, however when the Article is examined in the compound, it is likely the terms will be viewed as synonymous and thus interchangeable.

My analysis paints an optimistic picture for the future of AUTONOMY’S conceptual understanding in international law, as not only is the term seeing implementation in a UN Declaration, but its definition, while not explicitly stated, is included in the same document. With that being said, the field of international law scholarship appears to fall victim to the very same confusion plaguing the other fields examined thus far. Self-governance is a term recognised by scholars of international law, but the notion of necessity yet never sufficiency is prevalent here too. Conceptual analysis is clearly deemed worthy of attention by some of these scholars, but the errors cautioned against in this thesis must be considered if this analysis is to bear fruit.

³¹¹United Nations General Assembly, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (2007) A/RES/61/295 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> accessed 22 June 2025.

³¹² United Nations, ‘What is the difference between a resolution and a decision?’ (Ask DAG, 6 May 2024) <<https://ask.un.org/faq/14484>> accessed 22 June 2024.

5. Conclusion

As Onora O'Neill observed in her inaugural address to the *Joint Session of the Mind Association and Aristotelian Society*, '[i]n the last half-century appeals to autonomy have played a larger and larger part in ethical and political debate. Yet the advocates of autonomy still disagree about what it is, and why it is important.'³¹³ She likens AUTONOMY to the 'Emperor's New Clothes' in reference to the scant resemblance of modern conceptions of individual autonomy to the Kantian tradition, despite frequent appeals to the contrary. Twenty-one years later, O'Neill's observation is relevant beyond her comparison to Kant's works. As it is presented in the literature, AUTONOMY possesses very little resemblance to its sense which was helpfully introduced and articulated by the ancient Greeks over two thousand years ago. Despite the time and effort of countless theorists, the development of AUTONOMY scholarship has perpetuated the confusion and contention surrounding the notion, and yet no one has thought to consider the fundamental simplicity of the concept. The single most striking aspect of present scholarship is, then, the lack of any serious attention at all to the prospect that AUTONOMY is simply self-governance *tout court*, with other suggested features arising contingently from the instant referent that happens to be in mind. The omission is particularly striking because it would be a simple matter to put the literature to the test under the rubric proposed. This is what I have done. Plainly I am unable to demonstrate the universality of the oversight in the present study, but at least I have shown it in a series of works in law and beyond that are considered seminal in the related literature; in light of the omission there, it is plausible to speculate that the oversight is indeed comprehensive in scope, though of course further study would be needed to confirm this. The work undertaken and defended in the present study is not speculative, however: I aimed to show the oversight in the stated work, and the test of my demonstration is to be found in its success in relation to those works in the preceding chapters of the thesis.

Of course, faced with the question, 'what is AUTONOMY?', theorists have often been quick to notice 'self-governance'. In fact, in some instances, they have even called it the

³¹³ Onora O'Neill, 'Autonomy: The Emperor's New Clothes' (2003) 77(1) *Aristotelian Society Supplementary Volume* 1.

meaning or definition of AUTONOMY. But even quicker still, that answer which has presented itself to them is either disregarded or assimilated into a wholly inappropriate theory of AUTONOMY. Most of the time,³¹⁴ ‘self-governance’ is considered as *one necessary* constituent of AUTONOMY, but *sufficiency* has been felt to require recourse to at least one, often more, additional conceptual features. Unaware of the Fregean distinction, theorists have taken AUTONOMY and run in all manner of inappropriate directions, unknowingly ascribing features of the concept’s referents to AUTONOMY itself. Indeed, my thesis has noted that once puzzled by AUTONOMY, theorists have been willing to abandon modal closure altogether in the course of their misattribution of extraneous theories and features to the concept.

Starting at one extreme, Gerald Dworkin, entirely rejects the fundamental simplicity of AUTONOMY. Under my analysis he opts instead for a referential theory in lieu of a definition which, although philosophically technical, is (predictably, then) unable to express the generality of AUTONOMY or provide borders for the concept’s correct extension. Taking family resemblance next, once again theorists advocating this explanation in a variety of disciplines failed to distinguish AUTONOMY’S sense from its referents. The method is striking: observation of features common to autonomous people, yet not present in, say, robots, has informed the conclusion that AUTONOMY is a family resemblance term. The insecurity of the reasoning here has passed unnoticed – that is, noticing authenticity in autonomous people, thus ascribing AUTHENTICITY to AUTONOMY, then noticing authenticity’s lack of presence in, say, Growbots, to conclude that AUTONOMY is a family resemblance term. But this absurdity does not come as a surprise, as like the rest of the errors made in the literature, inattention to Frege is the cause. Next, and most prevalent of all within the legal literature, comes AUTONOMY as a degree term. In addition to its prevalence, AUTONOMY as degree is perhaps the most consequential for law. If the concept is understood in terms of degree, the pursuit of a definition, of necessary and sufficient conditions, or modal closure of any sort is an entirely wasted endeavour for it would not be appropriate for AUTONOMY. In this way, AUTONOMY is left ‘shapeless’,³¹⁵ with responsibility falling on the theorists who have professed the concept’s degree credentials now to communicate what these are degrees *of*. Significantly, there has been no answer to the call.

³¹⁴ Berofsky being the obvious example of an exception to this.

³¹⁵ ‘Illusions of Degree: the instructive case of ‘coherence’ (n 133) 24.

So, what does all this mean for law? My thesis has undoubtedly painted a worrying picture of AUTONOMY'S contemporary status in law and legal theory. Even Feinberg, who comes perhaps the closest to capturing the semantic content of AUTONOMY, finally commits the same errors seen time and again in the literature. To be sure, his consideration of *de jure* autonomy, as well as the autonomy of nations, results in his conclusion that AUTONOMY (in these respects) is an absolute non-gradable concept, but this realisation does not extend far enough. For all the strengths of his work, Feinberg, like all theorists who have come before and after him, veers in the wrong direction when confronted with the autonomy *of people*. Magnus extends Feinberg's mistakes, pushing for AUTONOMY as a degree term with even more force in advocacy for the concept as 'a continuum'. These are not mere verbal distinctions, as my consideration of FREE WILL and AUTONOMY as well as PRIVACY and AUTONOMY demonstrate. The law requires the *use* of these concepts, be that in the determination of criminal responsibility, or United States constitutional interpretation, or the many others which the confines of this thesis have not permitted me to explore. For AUTONOMY to be used effectively in law, it must be understood, which is rendered an impossibility if the distinction between sense and reference is ignored. If AUTONOMY is considered a matter of degree, then the law will be left having to determine what these degrees are, and thus how they inform criminal responsibility (which perhaps too would be understood as a matter of degree). However, there is hope, as my analysis of Juth and Lorentzon's proposal demonstrates the functionality of AUTONOMY regarding criminal responsibility *if* degree-based features of the concept's referents are not ascribed erroneously to AUTONOMY. The necessity for AUTONOMY's modal closure is presented no clearer than in my consideration of the jurisprudence of the US Supreme Court, as the equivocation of PRIVACY and AUTONOMY undermines the relative value of both concepts. In the United States, legal authority of course goes no higher than the Supreme Court, and legislation does not get more foundational than the Constitution, so the value of AUTONOMY, and the stakes of misunderstanding the concept, cannot be understated.

But what of international law? My investigation of this sub-discipline in relation to AUTONOMY revealed, unsurprisingly, the same set of errors visible elsewhere in the literature. Along with these, Wiberg emphasised the supposed vagueness and ambiguity of AUTONOMY.

My conceptual analysis showed Wiberg not only to misunderstand vagueness and ambiguity, but that he appeared to conflate the two. Wiberg's appeal to ambiguity was based on the 'meanings' of AUTONOMY he identified in the literature, but once again, these meanings only differed because they were entirely referential. Although erroneous, Wiberg's identification of ambiguity is not without consequence, as the Camp David Agreement demonstrated. In lacking a definition of AUTONOMY, the agreement biased the Israelis heavily, thus leaving the Palestinian Arabs with an autonomy arrangement that fell far short of self-governance. As Wiberg states, 'it was no coincidence that the agreement did not define autonomy'³¹⁶ which is precisely why AUTONOMY'S clarity and modal closure are required. Biased agreements may still be written, but if AUTONOMY is properly defined, the prevalent misunderstanding of the concept cannot be used to construct agreements which disproportionately benefit powerful entities.

Heintze's article contained the same errors already listed in this conclusion. In typical fashion, these errors stem from the inattention to Frege, leading to the superficial impression that AUTONOMY possesses multiple meanings, supported by a lack of attention to the modal sufficiency of 'self-governance'. I do not wish to labour these same points, so I end on an optimistic note for AUTONOMY in law. As mentioned at the end of my previous chapter, the United Nations Declaration on the Rights of Indigenous Peoples mentions AUTONOMY by name, as well as its apparent relation to 'self-government'. Not only could this development help to clarify AUTONOMY in international law, but those looking from other sub-disciplines of law may subsequently be less hesitant to define the concept on these terms within their domains. The clarity and modal closure provided for AUTONOMY by 'self-governance' not only solves the confusion and contention present in the literature, but as this thesis indicates, presents the best chance of the concept's effective use in law.

Lastly, in considering the scope of AUTONOMY beyond the theoretical, I hope this thesis has demonstrable relevance for the future. As autonomous technology surges forward, the analysis present in my work will continue to show not just applicability, but necessity. It would be speculative to speak of the specific reach this kind of conceptual work will come to

³¹⁶ Political Autonomy: Ambiguities and Clarifications' (n 251) 57.

have, but it is no exaggeration to state that as the literature on autonomy is entirely referential, it is locked in time to an imagined instant, and thus likely inadequate for the pressing needs – not least regulatory – of the immediate technological future.

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