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THE SOCIAL AND HISTORICAL SUBJECT IN SARTRE
AND FOUCAULT AND ITS IMPLICATIONS
FOR HEALTHCARE ETHICS

By:

Kimberly S. Engels, BA, MA

A Dissertation submitted to the Faculty of the Graduate School,
Marquette University,
in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy

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ABSTRACT
THE SOCIAL AND HISTORICAL SUBJECT IN SARTRE
AND FOUCAULT AND ITS IMPLICATIONS
FOR HEALTHCARE ETHICS

Kimberly S. Engels, BA, MA

Marquette University, 2017

This dissertation explores Jean Paul Sartre's and Michel Foucault's view that subjectivity is socially and historically constituted. Additionally, it explores their corresponding ethical thought and how these viewpoints can be applied to ethical issues in the delivery of healthcare. Sartre and Foucault both hold the view that human beings as subjects are not just participants or spectators in social practices, rather, they become subjects with ontological possibilities through their interaction with these practices. In Chapter One, I trace Sartre's views on subjectivity in his two major works *Being and Nothingness* and *The Critique of Dialectical Reason, Volume 1*, showing how he argues that we are constituted as subjects through a dialectical interaction of consciously intended praxis with the reified results of human affairs, or practico-inert. In Chapter Two, I trace Foucault's views on the subject through all three periods of his career, and show how he argues that we are constituted as subjects through systems of thought, strategies of power, and practices of the self. I specifically differentiate the views of each philosopher from those of the more traditional moral philosophers Immanuel Kant and John Stuart Mill, who view the subject as self-determining and ahistorical. In Chapter Three, I examine each thinker's later lectures on ethics, and show that each philosopher presents an outline for an ethical mode of being, which I call "ethical subjectivity." For both philosophers, ethical subjectivity requires critical historical reflection, ethics as an ongoing task, and innovation. In Chapters Four and Five, I use Sartre's and Foucault's views on subjectivity and ethics to analyze two contemporary issues in healthcare ethics: conscience-based refusals and mandatory HPV vaccination. Through discussion of these two issues, I show how focusing on the social, historical, material dimensions of how we become who we are introduces a different starting point for analysis and leads to a unique discussion in contrast to the ethical approaches rooted in the thought of Kant or Mill.

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Introduction:

Despite being two of the most important thinkers in 20th century France, Sartre and Foucault are often characterized as having little common ground. However, a close examination of the two philosophers' later work reveals that they have many related insights regarding subjectivity as socially and historically constituted. By subjectivity, I mean the state of being a conscious subject capable of having beliefs, setting goals, experiencing emotions, acting intentionally, and possessing a conception of self. The later Sartre (after 1961) and the later Foucault (after 1969) are both concerned with the extent to which social, material, and historical conditions introduce a field of possibilities for thinking, speaking, and acting that individuals then use their freedom to navigate. Both Sartre and Foucault share the view that we are not merely spectators or participants in societal practices, institutions, and norms, but that we become subjects with ontological possibilities through our interactions with social and historical practices. The subject is not a starting point; rather our subjectivity emerges through various modes of social and historical interaction. The purpose of this work is a comparison and application of Sartre's and Foucault's views on subjectivity and their relevance for contemporary ethics, rather than a historical study of the influences of Sartre on Foucault.

While Sartre is better known for his earlier phenomenological works, it is in the *Critique of Dialectical Reason* (CDR)¹ that Sartre presents his most convincing account of human experience and how it is necessarily intertwined with its social and historical

¹ Jean-Paul Sartre, *Critique of Dialectical Reason, Volume 1: Theory of Practical Ensembles*, translated by Alan Sheridan-Smith (New York: Verso, 2004).

conditions and material environment. Whereas Sartre's earlier philosophy, particularly *Being and Nothingness* (BN)² describes human subjectivity as constituted by spontaneous, free consciousness, in CDR human beings are presented as material organisms that interact in a dialectical relation with their environment and the socio-historical practices of their time. Sartre stated in an interview shortly before his death that CDR is the work he would like to be remembered for, suggesting that he retained this conception of subjectivity for the rest of his life.³ This position is not in contradiction with Sartre's earlier view that the subject's essence is developed through one's ability to choose some possibilities over others. The dialectical experience of the human subject involves negating some options while affirming others. In both Sartre's early and late philosophy, human beings are characterized by unconditional freedom, or, their unique ability to imagine possibilities beyond the current states of affairs. On this point, there is consistency in all of Sartre's work.

However, in CDR Sartre recognizes the extent to which these very possibilities are limited, confined, and structured by human historicity. He argues that we are constituted as subjects through a dialectical relationship of human "praxis" with the "practico-inert." Praxis is defined as purposeful, conscious activity which organizes or totalizes all the various objects of its environment into a continuous unity when pursuing certain ends or goals.⁴ The practico-inert is that with which praxis interacts and is described as the "traces" of past praxis that have become alienated from the individuals

² Jean-Paul Sartre, *Being and Nothingness*, translated by Hazel Barnes (New York: Philosophical Library, 1956).

³ Michel Contat, "Sartre at 70," translated by Paul Auster and Lydia Davis, <http://www.nybooks.com/articles/archives/1975/aug/07/sartre-at-seventy-an-interview/>.

⁴ Sartre, CDR, 80.

who initiated them and have solidified into material and social structures. Examples used by Sartre throughout CDR include social institutions, such as school systems, prison systems, and labor unions. These solidified structures can also include deeply ingrained attitudes and ideas that do not rise to the level of intentional, goal-oriented praxis.⁵ Subjectivity emerges through a dialectical interaction of individual praxis with the practico-inert. The subject is still characterized by unconditional freedom, however. The historical, material, and social realm offer a field of possibilities for thinking, speaking, and doing, but human subjects are always free to take up an attitude or place among this field of possibilities. While CDR reveals Sartre's most convincing account of subjectivity, there has been little literature developing the full contemporary significance of his insights in this text.

Foucault's social thought explores similar issues, studying what he refers to as three different "axes" of experiences through which subjects become who they are. In his earlier works such as *The Order of Things* (OT)⁶ and *The Archaeology of Knowledge* (AK),⁷ he studies how language and discourses introduce conceptual frameworks through which subjects differentiate potential objects of knowledge and categories for determining truth. In his genealogical works such as *The History of Sexuality* (HS),⁸ and *Discipline and Punish* (DP),⁹ he articulates how social institutions and practices (related

⁵ Sartre, CDR, 191-196.

⁶ Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books, 1994).

⁷ Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972).

⁸ Michel Foucault, *The History of Sexuality, Volume 1*, translated by Robert Hurley (New York: Pantheon 1978).

⁹ Michel Foucault, *Discipline and Punish*, translated by Alan Sheridan (New York: Random House, 1977).

to madness, sexuality, and prisons) introduced strategies for controlling behavior and a field of possibilities for becoming a subject. Foucault clarifies in later interviews that the themes he studied in his genealogical works were, ultimately, a study of how human subjects become who they are through the discourses, behavioral regulations, and standards for normality established by the social practices of their epoch.¹⁰

Foucault's descriptive analyses argue that our possibilities for subjectivity are currently governed by an epoch of "biopower." "Biopower" refers to strategies or mechanisms of control which developed alongside the discovery of human beings as a specific species occupying a specific environment. Certain characteristics of human beings have come to be seen as susceptible to being controlled and manipulated.¹¹ Biopower functions by bringing humans as a species in line with certain medical or behavioral norms. The norms are established through policies and practices directed at controlling certain behavior. Normalization acts through imposing homogeneity on subjects, while at the same time individualizing them. This takes place through observing human behavior or examining results from medical tests or developments and mathematizing the findings. The differences between subjects are then measured, and levels of normality determined. When a "normal" behavior or disease rate is established, the norms are then enforced through societal mechanisms such as the appointment of specific personnel, or the development of social institutions that can

¹⁰ "What I wanted to try to show was how the subject constituted itself, in one specific form or another, as a mad or healthy subject, as a delinquent or non-delinquent subject, through certain practices that were also games of truth, practices of power, and so on," Foucault, *Essential Works 1: Ethics: Subjectivity, and Truth*, edited by Paul Rabinow and Nikolas Rose (New York: The New Press, 1997) 290.

¹¹ Foucault, *The History of Sexuality*, 142.

observe and regulate behavior.¹² Biopower is a mechanism that is rich for philosophical analysis and contemporary application for three reasons: First, it captures a shift that occurred in human development when a series of mechanisms were discovered for controlling human life, which is especially relevant to how medicine is currently practiced and delivered. Second, biopower is a mechanism that Foucault argues is *currently* operative in society and is structuring our possibilities. Third, biopower as a modern mechanism of power affects the ways that we relate to each other and form beliefs about ourselves and the world.

Sartre and Foucault also both give an account of ethics that is significantly different from traditional deontological and utilitarian approaches, both historically and in the present. Both philosophers provide the conceptual foundations for a model of ethical subjectivity. By ethical subjectivity, I mean a mode of being-in-the-world characterized by an ethical orientation and ethical commitments. By ethical orientation, I mean the framing of ethical reflection and deliberation in terms of certain questions, attitudes, and background assumptions. Ethical commitment refers to the result of ethical inquiry that takes the form of concrete principles, maxims, rules, or concepts.¹³ An ethics primarily focused on commitments will be eager to make moral judgments and formulate universal moral maxims. An ethics primarily structured on an orientation, such as we find in Sartre and Foucault, instead aims to situate our possibilities for ethical living in the present.

¹² Foucault, *Discipline and Punish*, 181-187.

¹³ This metaethical distinction is made by Colin Koopman in his discussion of ethical subjectivity in Foucault, to be discussed further in Chapter Three. See “The Formation and Self-Transformation of the Subject in Foucault’s Ethics,” in *A Companion to Foucault*, edited by Christopher Falzon, Timothy O’Leary, and Jana Sawicki (Chichester: Wiley and Blackwell, 2013), 530.

Both Sartre and Foucault argue that a necessary criterion for humans to be ethical involves a critical reflection on the forms of conditioning that have structured our experience of the world, including a recognition of how social practices have contributed to how we—and others—interpret our possibilities. In the case of Sartre, an examination of three post-CDR lectures on ethics, *Morality and History*,¹⁴ *The Rome Lecture*,¹⁵ and *A Plea to Intellectuals*,¹⁶ reveals a prescriptive framework for creating ourselves as ethical subjects: subjects who are critically reflective, actively empathetic, and have the courage to produce or invent ourselves in spite of, or even in opposition to, our past. However, there is a paucity of scholarship on *Morality and History* and *The Rome Lecture*, as they are currently unpublished. Foucault, too, suggests that ethics is a process of self-transformation requiring refusal, curiosity, and innovation.¹⁷ This theme is present in his late interviews as well as his last lecture series at the Collège de France. In his lecture series *The Hermeneutics of the Subject*,¹⁸ *The Government of Self and Others* (GSO),¹⁹ and *The Courage of Truth* (CT),²⁰ he examines several forms of what

¹⁴ Jean-Paul Sartre, *Morality and History*, excerpts found in Robert Stone and Elizabeth Bowman, "Sartre's Morality and History: A First Look at the Notes for the Unpublished 1965 Cornell Lecture Notes," in *Sartre Alive*, edited by Ron Aronson and Adrian Van den Hoven (Detroit: Wayne State University Press, 1991), 53-82.

¹⁵ Jean-Paul Sartre, *The Rome Lecture Notes*, Lecture given at Insituto Gramsci in Rome on May 23, 1964, translated by Elizabeth Bowman and Robert Stone, accessed September 7-20, 2015, at Bibliothèque nationale de Paris, France.

¹⁶ Jean Paul Sartre, *A Plea for Intellectuals*, in *Between Marxism and Existentialism*, translated by John Matthews (London: Verso, 1974), 228-285.

¹⁷ Michel Foucault, "Power, Moral Values, and the Intellectual," interview by Michael Bess, *History of the Present* 4 (1988), 13.

¹⁸ Michel Foucault, *The Hermeneutics of the Subject, Lectures at the Collège de France, 1981-1982*, translated by Graham Burchell (New York: Palgrave Macmillan, 2005).

¹⁹ Michel Foucault, *The Government of Self and Others: Lectures at the Collège de France, 1982-1983*, translated by Graham Burchell (New York: Palgrave Macmillan, 2010).

²⁰ Michel Foucault, *The Courage of Truth: Lectures at the Collège de France, 1983-1984*, translated by Graham Burchell (New York: Palgrave Macmillan, 2011).

he calls the practices of the subject. Through his discussion of historical practices of care of the self in the Hellenistic period as well as *parrhesia* or truth-telling in Ancient Greek and Roman life, Foucault opens a window into how ethics functioned historically in relation to the truth and as a practice of caring for self and others. However, in the literature there has been little development of what truth-telling as a philosophical way of life and care of self would mean for us today, in our current epoch of biopower.

While Sartre's and Foucault's views on subjectivity and ethics can add depth and perspective to debates about different ethical practices of our time, their views are especially useful for healthcare ethics. Healthcare as a profession is directly concerned with individuals' physical health, flourishing, and well-being. It also deals with foundational human issues related to the beginning and end of life. Thus, individuals' frameworks for thinking, speaking, and acting, their beliefs about themselves and the world, and their relationships with others play an integral role in the delivery and practice of medicine. For example, moral and religious beliefs about when life begins or under what circumstances it should end affect how healthcare providers approach their jobs and affect the treatments that patients' choose. Similarly, experiences such as pregnancy and childbirth, and undergoing treatment for a serious disease have profound influences on individuals and their possibilities. Consequently, healthcare practices are distinctly subject-forming experiences. Thus, Sartre's and Foucault's views on subjectivity and ethics can add insight and depth to conversations in healthcare ethics by introducing perspectives that are not currently present in mainstream healthcare ethics literature.

Current approaches to applied healthcare ethics are primarily deontological or utilitarian approaches rooted in the thought of Immanuel Kant and John Stuart Mill, and these approaches are often extrapolated into a rights-based framework. Utilitarian and deontological approaches often assume a liberal conception of subjectivity. Moral and political liberalism is the view that individuals should have the basic right to live as they choose and to determine their own ends, so long as they respect that right in others.²¹ The subject of moral and political liberalism is characterized as primarily self-determining and ahistorical. This conception is founded on the belief that human beings are autonomous, rational, and capable of self-governance, and that their possibilities are a combination of a universal human nature and their own autonomous control. For example, Kant posits the idea of an ahistorical “noumenal self” that exists outside of the empirical world, which is capable of making objective rational judgments and possesses a robust sense of autonomy.²² Mill presents a view of human nature in which human essence is defined by its rationality and a capacity to lead self-directed, autonomous lives that are free from interference from the state, culture, and custom. Mill argues that human capacities are fully actualized when they make our own decisions free from interference from others.²³ For Mill, like Kant, the subject exists prior to being potentially interfered with or left alone.

²¹ See John Christman, *The Politics of Persons* (Cambridge: Cambridge University Press, 2009), 2; Will Kymlicka, *Liberalism, Community and Culture* (New York: Oxford University Press, 1989) 1-2.

²² Immanuel Kant, *The Critique of Pure Reason*, edited and translated by Paul Guyer and Allen Wood (Cambridge: Cambridge University Press, 1998), 530-537.

²³ John Stuart Mill, *On Liberty*, edited by Elizabeth Rapaport (Indianapolis: Hackett Publishing Company, 1972), 56-66.

In accordance with his view of human nature, Kant introduces a moral framework based on acting in a manner that is universalizable and that acknowledges the inherent worth of each rational human being.²⁴ Mill's moral system is based on the consequences that produce the most happiness for the most people. Because Mill ascribes to a view of subjectivity in which human nature flourishes best when free from constraints, he advocates for introducing societal rules which protect an individual from interference from others. These rules will, in Mill's view, lead to the greatest good for the greatest number.²⁵ Kant's and Mill's moral frameworks are often extrapolated into a system of moral rights in which certain protections are introduced in order to protect the rights holder. While in a Kantian framework, rights are introduced to protect the inherent dignity of each person, in a Millian utilitarian framework, rights are introduced as instrumental for producing human happiness or wellbeing.

Because healthcare ethics approaches often presuppose the liberal conception of subjectivity, the discussions primarily focus on balancing the moral rights of patients and providers as well as balancing concern for each individual against the welfare of the population as a whole. While these philosophical discussions focus on an important dimension of the ethics of the delivery of medicine, they do not emphasize the subject-forming dimension of healthcare practices. There is no development of how these issues are *existential*—how they are shaping the field of possibilities for us, as subjects. I choose two ethical issues that are currently being debated in healthcare ethics: conscience-based refusals and mandatory HPV vaccination. Conscience-based refusals

²⁴ Immanuel Kant, *Grounding for the Metaphysics of Morals*, translated by James Ellington (Indianapolis: Hackett, 1981), 30.

²⁵ John Stuart Mill, *Utilitarianism*, edited by George Sher (Hackett: Indianapolis, 2001), 53.

refers to a healthcare provider refusing to perform a task or provide a service because doing so would conflict with personal moral or religious beliefs.²⁶ This is currently an area of debate in the delivery of medicine and in the philosophical healthcare ethics literature. Regarding mandatory vaccination, the HPV vaccine is an interesting case. It became available in 2006 and the debate about whether or not it should be mandatory is still ongoing.²⁷ The vaccine introduces a different set of concerns compared to routine vaccines because the disease is spread sexually not casually, and the vaccine is given in adolescence, not infancy. The contribution of Applied Ethics literature to conscience-based refusals and mandatory vaccination have typically consisted of general analyses that attempt to balance competing rights of liberal subjects. Such approaches miss what I want to emphasize: how these practices contribute to the shaping of socio-historical conditions through which humans as subjects emerge and modify the possibilities we have as subjects for what we think, speak, and do. Thus, evaluating these practices through the lens of Sartre's and Foucault's views on subjectivity and ethics can add an important and currently absent voice to the debate.

The objectives of the following dissertation, then, are as follows: First, I intend to articulate the cogency of Sartre's and Foucault's views on social and historical subjectivity, differentiating them from the views of Kant and Mill, and emphasizing their contemporary relevance. Second, I aim to articulate prescriptive frameworks for self-transformative ethical subjectivity that Sartre and Foucault offer in their late

²⁶ James Childress, "Civil Disobedience, Conscientious Objection, and Evasive Non-compliance: A Framework for the Assessment of Illegal Actions in Healthcare," *Journal of Medicine and Philosophy* 10 (1985): 68.

²⁷ Center for Disease Control and Prevention, "HPV Vaccine: Questions and Answers," accessed January 5, 2017, <http://www.cdc.gov/vaccines/vpd-vac/hpv/vac-faqs.htm>.

lectures and strengthen them through my own insights, emphasizing how these approaches are unique compared to traditional deontological and utilitarian approaches to ethics. Third, through a critical analysis of conscience-based refusals and HPV vaccination, I seek to demonstrate both the relevance and cogency of their views for contemporary discussion in healthcare ethics. This analysis will explore how these practices are conditioning our existential possibilities and our emergence as subjects in our social and historical context. Lastly, I construct ethical responses to these issues from a Sartrean or Foucauldian framework. It is important to note that my project is an exploration of subjectivity and ethics in each thinker, and what this can contribute to our current understanding of ourselves and our healthcare practices. My project is not a historical study of the influence of Sartre on Foucault.

In Chapter One, I will present an examination of Sartre's views on subjectivity and freedom in both BN and CDR. By providing a clear conception of Sartre's view of social and historical subjectivity in CDR, I demonstrate the progression and improvement of Sartre's thought from BN. In particular, I show that, in CDR, Sartre fully develops the extent to which the possibilities one can imagine are conditioned by social practices, discourses, and conceptual frameworks of one's time. CDR recognizes that our unconditional freedom is necessarily limited by our historicity and social practices.²⁸ I will show that Sartre still maintains his earlier assertion from BN that the individuals experience the world by affirming certain possibilities and negating others, but he recognizes that the possibilities which we envision for ourselves are necessarily a product of our culture, society, and practico-inert structures. Thus, Sartre has not

²⁸ Sartre, CDR, 79.

abandoned his prior claim that existence precedes essence, but now emphasizes that the practico-inert precedes our existence.²⁹ Through my close reading of CDR, I examine the different “layers” of the social and historical conditioning that Sartre argues shape our field of possibilities: physical objects imprinted with human meaning, language, deeply engrained ideas, social institutions, class, and societally specific moral norms. I show how these layers both limit and enable our freedom, as our freedom operates in response to them. I then contrast Sartre’s view of subjectivity and freedom with that of Kant, in order to show the uniqueness of Sartre’s views and set up the discussion of ethics in Chapter Three.

In Chapter Two, I examine Foucault’s vision of subjectivity, showing that Foucault, like Sartre, examines specific discourses and social practices and shows that they have a historically dated origin and change over time. These social and historical practices make modes of thinking, speaking, and acting possible. I elucidate three different axes in Foucault’s work: the axis of things, the axis of behaviors, and the axis of practices of the self.³⁰ In his works on the axis of things, for example in *The Order of Things*, his interest was the lived experiences of subjects in different historical periods that were influenced by the creation of bodies of knowledge. This period focused on uncovering different standards for truth, that is to say, the rules governing speaking and acting that determine what is accepted as true. In the second axis focused on behavior, for example in *Discipline and Punish* and *The History of Sexuality*, Foucault focuses on how conduct was controlled, observed, and classified in order to establish different categories of normality and abnormality. Foucault refers to these systems of controls as

²⁹ Sartre, CDR, 77-121.

³⁰ Foucault, GSO, 4-5.

“strategies of power.”³¹ Foucault’s third axis studies modes of being a subject or practices of the self. This refers to ways that subjects perform practices on themselves in order to become a certain type of subject. I then focus on biopower in particular, as Foucault argues that biopower has dominated Western thinking and life processes for the past several centuries. The introduction of biopower was an important moment in our recent historical past. I show that according to Foucault, there is room for freedom in his thought, and this freedom takes the form of resistance and critical reflection. I then compare Foucault’s views on subjectivity to the views of John Stuart Mill, in order to show the uniqueness of Foucault’s view over the liberal conception, as well as to set up the contrast in Chapter Three with respect to ethics. Because Foucault elucidates his philosophical views by examining particular historical practices in their specificity, the best way to compare and contrast Foucault’s views with another thinker’s is through application to a specific example. Thus, I use the example of the modern War on Drugs in the United States to illustrate the differences between Foucault and Mill.

In Chapter Three, I articulate the important differences between Sartre’s and Foucault’s views on subjectivity. I then examine each thinker’s lectures on ethics, showing how their ethical views flow from their visions of the subject. I develop a model for a historically-situated, intersubjective, transformative mode of being, which I call “ethical subjectivity,” in each thinker. For Sartre, this consists of a critically reflective, actively empathetic moral subjectivity which includes the moral courage to creatively direct one’s freedom. This is accompanied by ethical commitments to mutually recognizing each other’s freedom and to meeting human needs. For Foucault,

³¹ Foucault, HS, 93.

ethical subjectivity involves a refusal of inevitabilities, a critical inquiry into ourselves in our historical moment, and a general orientation towards self-transformation. I develop what ethical commitments to care of self and the philosophical way of life could mean for us today in our epoch of biopower, acknowledging that Foucault himself does not explicitly advocate for these commitments. My analysis shows that both Sartre and Foucault provide us with the foundational concepts for a model of ethical self-creation as engaged historical agents in our own epoch. This discussion will set up a demonstration of how Sartre's and Foucault's approaches to ethics provide a significantly different model in comparison to ethics as presented in the thought of Kant and Mill.

In Chapter Four, I examine conscience-based refusals in healthcare through a Sartrean lens. I use the Sartrean views on subjectivity that I develop in Chapter One to show that conscience-based refusals are subject-forming and shape the praxis of patients and providers. I then use the ethical subjectivity model that I develop in Chapter Three in order to formulate an ethical response from a Sartrean viewpoint. I make a case for what Sartrean ethical subjectivity demands of individual healthcare providers and I show how a Sartrean analysis should be applied at the level of policy. Drawing on Sartre's vision of social, historical, and materially situated subjectivity, along with the model of ethical being-in-the-world I develop in Chapter Three, I show how conscience-based refusals shape the possibilities of both providers and patients, and how this should affect our moral approach. I explain why none of the current approaches in the Applied Ethics literature, which discuss conscience-based refusals primarily in the context of competing moral claims to liberty, are properly accounting for the subject-forming dimension of

conscience-based refusals. I emphasize the differences in my approach to those rooted in the deontological or utilitarian thought of Kant or Mill, respectively.

In Chapter Five, I analyze mandatory HPV vaccination through the Foucauldian framework I construct in Chapters Two and Three. I show why none of the current philosophical approaches in the Applied Ethics literature are properly accounting for the subject-forming dimension of HPV vaccination and how this should influence our response. I argue that the HPV vaccine and its administration are particularly subject-forming because of the link to adolescent sexuality. I examine the HPV vaccine as a mechanism of biopower. I show that this practice shapes the possibilities for youth who are targeted to receive the vaccine and for their parents who must make the decision whether or not to vaccinate. I argue that the issue of mandatory HPV vaccination is not only a debate between parental autonomy weighed against the benefits to the population as a whole. Possibilities for subjectivity, new strategies of power, and new categories for normality and abnormality emerge alongside this medical procedure and mechanisms for implementing it. To elucidate this point, I discuss Foucault's analysis of the administration of the smallpox vaccine in 18th-19th century Europe and the new concepts and categories for normality that emerged alongside it. I then use the Foucauldian ethical subjectivity model from Chapter Three to suggest how this analysis should influence our moral approach. I again emphasize how the analysis I offer is unique from traditional approaches that are rooted in the thought of Kant or Mill.

I conclude by highlighting the key points of my analyses, as well as making suggestions for how Sartre's and Foucault's views on subjectivity and ethics can continue to be applied in discussions of contemporary moral problems, especially in

healthcare. Overall, the significance of my project is fourfold. First, given that Sartre's *Morality and History* and *The Rome Lecture* are unpublished, there is a paucity of scholarship on them. There is very little development of Sartre's later ethics in the applied ethics literature. Second, Foucault's late lectures at the Collège de France *The Government of Self and Others* and *The Courage of Truth* have only been recently published in French in 2008 and translated into English in 2010 and 2011, respectively. My project is one of the few offering a reading of them on ethics, and there has been very little development of these lectures in approaches to applied ethics. Third, there is currently no scholarship studying the connections between Sartre's lectures on ethics and Foucault's last lecture series. Fourth, the ethical issues that I have chosen to evaluate through Sartrean and Foucauldian frameworks have primarily been discussed in terms of balancing the rights of the liberal subject, while my approach will emphasize how we are becoming subjects through these practices. As a result, my dissertation will make a contribution in four ways: the historical scholarship on Sartre and Foucault, a comparison between them, a demonstration of the cogency of their views through contemporary application, and, through all of these, an innovative philosophical contribution to healthcare ethics.

Chapter One: Sartre and our Historical, Material, Social Possibilities: The Subject as Spiral and the Practico-Inert

Introduction:

Jean-Paul Sartre's philosophical work focuses on giving a rich account of the experience of individuals in the world. Throughout both of his major works *Being and Nothingness* (BN)³² and *The Critique of Dialectical Reason Volume 1* (CDR),³³ he presents a conception of subjectivity as socially and historically constituted. By subjectivity, I mean the state of being a conscious subject capable of having beliefs, setting goals, experiencing emotions, acting intentionally, and possessing a conception of self. Sartre's view that history and sociality condition the possibilities for subjectivity are rooted in his conceptions of the For-itself and In-itself in BN, and progress to his notions of praxis and the practico-inert in CDR. CDR fully develops the influence of historicity, materiality, and sociality on human subject formation. Additionally, it shows how this influence is incorporated into our existential choice of self, which Sartre calls "project."

By historicity, I mean that human subjectivity necessarily has a historical origin so that people interpret experience within a historically given framework of material objects, concepts, social practices, norms and shared values. In BN Sartre gives an abstract account of the relationship between consciousness (For-itself) and matter (In-itself), in which consciousness relates to matter through a process of differentiation and

³² Jean-Paul Sartre, *Being and Nothingness*, translated by Hazel Barnes (New York: Philosophical Library, 1956).

³³ Jean-Paul Sartre, *Critique of Dialectical Reason, Volume 1: Theory of Practical Ensembles*, translated by Alan Sheridan-Smith (New York: Verso, 2004).

negation. In CDR he gives a more concrete description of the individual within history and the material world.³⁴ In this text the relationship between human consciousness (praxis) and worked matter (practico-inert) is characterized by mediation. Human subjectivity is presented as a dialectical spiral that is deeply influenced by the historical past, the current material environment, social institutions, and relationships with others.³⁵

While Sartre explores a multitude of philosophical themes in his account of human experience, he is most known for his views on human freedom. His theory of freedom argues that freedom is an originary ontological characteristic of human consciousness. In BN, he is known for his claim that human consciousness is spontaneously, radically free, due to its ability to question and doubt, therefore “negating” the given.³⁶ In CDR, Sartre qualifies his viewpoint of freedom through a new focus on the historical and the material, that is to say, the practico-inert. While human consciousness is free, the practico-inert thoroughly conditions and limits our possibilities for thinking, speaking, and acting. Thus, the vision of freedom that Sartre offers in CDR is much more limited and conditioned. In this text, freedom takes the form of practical choice, resistance, and imagination.

This change in Sartre’s views of freedom has to do with his transition from the In-itself to the practico-inert as the realm encapsulating the material environment with which we interact. The practico-inert introduces a relationship of mediation rather than negation, in which worked matter is absorbed into the project, not negated. It introduces

³⁴Sartre, CDR, 65-69.

³⁵ Ibid., 67-70.

³⁶ Sartre, BN, 127-130.

a realm of passivity into our subjectivity, while in BN the For-itself is characterized by its intentional activity. The practico-inert also has interests or demands of its own that counteract our praxis and make it difficult to achieve our intended goals. Additionally, the practico-inert has modes of social interaction and thinking embedded within it, which Sartre refers to as “seriality.”³⁷ These modes of thinking and interacting are characterized by a lack of conscious reflection and by feelings of alienation. These layers of the practico-inert put significant restrictions on our freedom.³⁸

Sartre’s vision of a free subject with historically, socially, and materially constituted possibilities is a direct challenge to accounts which consider the subject primarily as self-determining and ahistorical. This includes the conception of subjectivity in traditional liberal approaches to ethical and political theory. Moral and political liberalism is the view that individuals should have the basic right to live as they choose and determine their own ends, so long as they respect that right in others. This conception is founded on the belief that human beings are autonomous, rational, and capable of self-governance, and that their possibilities are a combination of a universal human nature and their own autonomous control.³⁹ One philosopher who held this view of human nature was Immanuel Kant. In order to set the stage for discussing the normative implications of Sartre’s thought and how it differs from deontological ethical approaches in Chapter Three, I will contrast important characteristics of Sartre’s view with Kant’s. Kant introduces the concept of an ahistorical “noumenal self” that exists

³⁷ Sartre, CDR, 65-68. Also see 171.

³⁸ Ibid., 310, 332.

³⁹ See John Christman, *The Politics of Persons* (Cambridge: Cambridge University Press, 2009), 2; Will Kymlicka *Liberalism, Community and Culture* (New York: Oxford University Press, 1989), 1-2.

outside of the empirical world, which is capable of making objective rational judgments and possesses a robust sense of autonomy. He also views our possibilities for subjectivity as constructed by external, pregiven, universal laws and meanings. Freedom for Kant is characterized by human's ability to obey or disobey the objective moral law. This is a significant contrast to Sartre, who views freedom as a complex interplay of our conscious behavior and thoughts with the conditioning forces of our historical epoch.

Thus, this Chapter has four objectives: 1) to explicate Sartre's conception of subjectivity, beginning with his concepts of the For-itself and In-itself, and showing how these concepts evolve to praxis and the practico-inert. This will demonstrate how the shift to from In-itself to the practico-inert is of significant philosophical importance for Sartre's view of subjectivity, 2) to show how history, materiality, and sociality within our given situation shape our possibilities for subjectivity, as elucidated in BN and CDR, 3) to explain the important role of freedom in Sartre's thought and the place it occupies in both BN and CDR, including the modifications it undergoes, and 4) to contrast the important characteristics of Sartre's view of subjectivity with Kant's in order to show the uniqueness of Sartre's position and set up the discussion of the ethical implications of his thought in Chapter Three. Because I cannot provide a detailed overview of the entirety of Sartre's corpus, I will focus my discussion in each section on the specified themes.

1 Sartre's Critique of Dialectical Reason: Current Literature

Important current work on Sartre's CDR comes from Joseph Catalano,⁴⁰ Anthony Manser,⁴¹ Kenneth Anderson,⁴² Thomas Flynn,⁴³ and Thomas Busch.⁴⁴ Catalano's detailed commentary was the first major work on CDR. Catalano provides important clarifying exposition regarding Sartre's method and philosophical views in CDR, offering exceptional explanatory work on points on which Sartre himself was less than clear. Catalano argues that Sartre attempts one of the most philosophically needed tasks of our time—an analysis of the historical significance of the mundane, showing how individuals sustain a historical context even in our most ordinary daily actions.⁴⁵ Catalano argues that through an examination of specific historical events, Sartre's thesis in the text is that we can never separate the historical and material situation of the human questioner from philosophical investigations. Catalano provides thorough explanation and examples of all the important concepts in CDR, including the practico-inert. He additionally emphasizes how, for Sartre, our personality and identity are formed in response to the praxis of others and to practico-inert structures.⁴⁶ My project is different from Catalano's to the extent that I will, first, focus on the connections between CDR and Sartre's earlier BN, second, discuss in detail the different categories or layers of the

⁴⁰ Joseph Catalano, *A Commentary on Sartre's Critique of Dialectical Reason, Volume 1* (Chicago: University of Chicago Press, 1986).

⁴¹ Anthony Manser, *Sartre: A Philosophic Study* (Westport: Greenwood Press, 1981).

⁴² Kenneth Anderson, "Transformations of Subjectivity in Sartre's *Critique of Dialectical Reason*," *Journal of Philosophical Research* 27 (2002): 267-280.

⁴³ Thomas Flynn, *Sartre and Marxist Existentialism* (Chicago: The University of Chicago Press, 1984).

⁴⁴ Thomas Busch, *The Power of Consciousness and the Force of Circumstances in Sartre's Philosophy* (Indianapolis: Indiana University Press, 1990).

⁴⁵ Catalano, *A Commentary*, 262-268.

⁴⁶ *Ibid.*, 120-133.

practico-inert that are evident throughout CDR, and, third, will emphasize the role of the concept of practico-inert in Sartre's ethical views.

Anthony Manser traces the development of Sartre's thought throughout all of his major works. Manser argues that Sartre's early focus was on the choices of individuals, portrayed as detached from their social surroundings, while his later focus reflected a growing awareness of the influence of social, political, historical circumstances on humans' ability to choose. Manser emphasizes that CDR focuses on the dialectical relationship between individual experience and history, and how this affects our philosophical approach.⁴⁷ Manser traces Sartre's thought through all of his major works, including his novels and plays, to show the shift from the strong focus on individual consciousness to Sartre's later focus on how social, historical, and material factors lead people to think, speak, and act the way they do. Thus, while Manser presents a monumental work, the attention paid to Sartre's lengthy CDR is rather brief, as is his discussion of the practico-inert, which is wedged in between discussion of all of Sartre's other works in his massive corpus.

Kenneth Anderson presents a strong analysis of Sartre's view on subjectivity in CDR. Anderson argues that there are three conceptions of subjectivity present throughout the text, although Sartre does not refer to them this way: the organic subject, the serial subject, and the common subject. Anderson argues that the organic subject, the most basic level of subjectivity, forms in response to need or lack. The pure physical needs of human subjects present an initial tension with our material environment, and we direct our individual praxis to resolve this tension by modifying the environment to

⁴⁷ Manser, *Sartre: A Philosophic Study*, 206-223.

meet our needs. This interaction constitutes organic subjectivity. Next, Anderson introduces serial subjectivity, which forms through the mediation of the practico-inert. Through interaction with others in the practico-inert field, subjects form as atomistic individuals, isolated from and in antagonistic opposition to others. The last type of subjectivity is common subjectivity, which occurs when individuals unite around common goals, allowing unifying group praxis in which subjects are no longer alienated from one another.⁴⁸ Anderson's work is unique because he succinctly identifies different modes of subjectivity in Sartre's text, especially in relation to social interaction. My project is not in tension with Anderson's findings, but will focus more on clarifying Sartre's concept of practico-inert, drawing connections between the practico-inert and Sartre's earlier conception of In-itself, explaining Sartre's changing views on freedom, and making connections to ethics.

Thomas Flynn and Thomas Busch both provide works on CDR that discuss the link between the In-itself and the practico-inert. In Flynn's *Sartre and Marxist Existentialism*, he argues that there is continuity between Sartre's early existentialist social thought and his later post-Marxist views. Flynn argues that Sartre's later works retain a place for the traditional existentialist values of individual freedom and responsibility within a historical understanding of structural exploitation and class struggle. He argues that a robust notion of responsibility unites these two philosophical periods. In Flynn's view, Sartre's earlier focus on a strong sense of individual responsibility evolves in CDR, through a focus on social collectives, into a strong sense of collective responsibility for making social change.⁴⁹ Flynn's book was also the first,

⁴⁸ Anderson, "Transformations of Subjectivity," 275-279.

⁴⁹ Flynn, *Sartre and Marxist*, 173-186.

(and currently one of the only) works to provide a comprehensive analysis of the concept of the practico-inert.⁵⁰ Flynn shows that the focus on freedom and responsibility in Sartre's earlier writings is supplemented and improved by his introduction of the practico-inert. I will draw on Flynn's exposition of the practico-inert as appropriate.

Busch, for his part, traces the changes in Sartre's thought from his earlier to later works, and also identifies a unifying thread—the relationship of individual consciousness to a given field of historical possibilities. He takes up the relationship between Sartre's career-long thesis of the power of free consciousness and Sartre's later discovery of the force of circumstances. In other words, Sartre's later work is influenced by the realization of how much our social, historical, material circumstances constrain and limit our conscious experience. Busch convincingly identifies the shift in Sartre's thinking from a robust, spontaneous free consciousness to a view of subjectivity that is socially and historically mediated. Busch argues that Sartre's growing awareness of social alienation and solidarity later in his life developed a tension between his earlier and later thought.⁵¹ Busch also provides an in-depth analysis of Sartre's concept of the practico-inert and how the overall shift from In-itself to practico-inert accounts for some of the changes in Sartre's thought. I will discuss Busch's work on the practico-inert alongside Flynn's throughout my analysis below.

My work will differ from current Sartre literature on CDR in that I, first, make connections between BN and CDR by detailing the transition in Sartre's thought from In-itself to practico-inert and the changes in his view of subjectivity that accompany this

⁵⁰ Flynn, *Sartre and Marxist*, 93-106.

⁵¹ Busch, *The Power of Consciousness*, 190-101.

transition. Second, I identify common themes in BN and CDR in terms of the different layers of social, material, and historical conditioning that shape our field of possibilities. I show that Sartre gives many similar examples throughout both texts, although with some modifications. Third, I specifically differentiate Sartre's vision of the subject from the liberal conception of the subject rooted in the thought of Kant. Fourth, I specifically develop the implications of Sartre's view of subjectivity for ethics. As the purpose of this Chapter is to provide a close reading of Sartre's texts in order to clarify his concept of the practico-inert and the role it plays in his view of subjectivity, my use of secondary literature throughout the main discussion will be limited. I will draw on the work completed by others, notably Flynn's and Busch's in-depth discussion of the practico-inert, when it will help clarify important points in Sartre's thought.

2 **From For-itself/In-itself to Praxis/Practico-inert**

2.1 From Nihilation to Dialectic, Negation to Spiral

To begin, we must set up the basic concepts that Sartre introduces in BN and trace their evolution in CDR. In BN, Sartre uses the expressions "being In-itself" and "being For-itself" to refer to objects and consciousness respectively.⁵² Being In-itself characterizes objects and matter in the physical world. Examples Sartre uses throughout the text are an inkwell, a pen, and a glass.⁵³ This category further includes natural entities such as trees or mountains. These things simply are what they are; they are objects that cannot willfully change their characteristics. As Sartre says, they are fully

⁵² Sometimes Sartre refers to these categories as "the In-itself" and "the For-itself" and I will subsequently refer to them this way.

⁵³ Sartre, BN, 102-103.

“positive” being, that is, not free to be anything other than what they are.⁵⁴ Being In-itself “is what it is. It is full positivity. It knows no otherness; it never posits itself as other-than-another-being. It can support no connection with the other.”⁵⁵ Being In-itself is isolated and ontologically inert until it interacts with being For-itself.

Being For-itself characterizes human consciousness. It is “negative” being in the sense that it can differentiate itself from its environment by understanding what it is not, and then negatively construct a concept of what it is. Being For-itself can consciously make choices, have goals and beliefs, experience emotion, and imagine. This category of being includes only human consciousness.⁵⁶ Sartre argues that the For-itself, because it compares itself to what it is not, experiences itself as a lack in the fully positive In-itself. Being For-itself is radically different from the In-itself, but it is at the same time dependent on the In-itself to found its being. “The For-itself corresponds...to an expanding and de-structuring of the in-itself, and the in-itself is nihilated and absorbed in its attempt to found itself.”⁵⁷ In other words, because consciousness is necessarily consciousness of *something*, the For-itself needs the In-itself to have the characteristic “conscious of” and to differentiate itself.

In BN, Sartre argues that people develop as subjects by projecting themselves toward a future that they want to be. Our subjectivity is based on a choice we make of ourselves in the world through nihilation of the In-itself, which Sartre refers to as a human’s “fundamental project.” By fundamental project, Sartre means “the projection of myself toward an original possibility, which causes the existence of values, appeals,

⁵⁴ Sartre, BN, 24-30.

⁵⁵ Ibid., 29.

⁵⁶ Ibid., 56-60.

⁵⁷ Ibid., 133.

expectations, and in general a world.”⁵⁸ Our project refers to a future goal or image we have of ourselves that we strive to be. We then use this image to structure our beliefs, memories, actions, and choices into an intelligible totality. Without the human project, the In-itself has no meaning or value, as nothing is bestowed from the outside.

The choice of fundamental project is made against the backdrop of our situation. Our situation, or the given, presents us with various possibilities for our actions, goals, and choices. We then build ourselves by negating, or as Sartre says, “nihilating” some of those possibilities while affirming others. “Human reality is its own surpassing toward what it lacks; it surpasses itself toward the particular being which it would be if it were what it is.”⁵⁹ Those possibilities that we choose to affirm are influenced by our original choice of ourselves in the world. It is our original choice of ourselves in the world—our project—which arranges the world and gives it meaning.⁶⁰ Our subjectivity emerges from an ongoing process of interaction with and nihilation of the given. This notion is behind Sartre’s famous claim that “existence precedes essence.” Our essence or nature is determined by our choice of project.

While the primary emphasis in the text is human beings’ power of choice, BN does acknowledge the important social dimension of subject-formation, for example, the importance of communal meaning. The given is not a blank slate for the For-itself to write on; it is already imprinted with human meaning. Sartre writes:

[W]e do not first appear to ourselves, to be thrown subsequently into enterprises. Our being is immediately “in situation”; that is, it arises in enterprises and knows itself first in so far as it is reflected in those enterprises. We discover ourselves then in a world peopled with demands, in the heart of projects.⁶¹

⁵⁸ Sartre, BN, 77.

⁵⁹ *Ibid.*, 139.

⁶⁰ *Ibid.*, 435.

⁶¹ *Ibid.*, 77.

Sartre uses the term “facticity,”⁶² which can be defined as the limits that are imposed on human beings by their concrete situations. These limits come from the In-itself and our encounters with other For-itselfs. Our consciousness understands objects by nihilating them, but they have first been given. In interpreting and nihilating the In-itself, the For-itself is constantly aware of concrete limitations.

Sartre’s early view of freedom is often referred to as “radical freedom” because he argues that our presence in the world is always characterized by freedom. Freedom is an unconditional fact of our existence. Even though we are thrown into an already given situation, we can always use the power of our free consciousness to nihilate some possibilities and affirm others. “Man does not exist first in order to be free subsequently; there is no difference between the being of man and his being free.”⁶³ While our facticity limits us, the ways we choose to interpret and respond to our facticity are free choices, according to Sartre. Human beings are thus unconditionally free and unconditionally responsible for their choices.

An important concept in Sartre’s early vision of subjectivity is what he calls “bad faith” or a state of lying to oneself. Bad faith occurs when the For-itself either denies its freedom, or denies elements of facticity. Sartre’s famous example of bad faith is that of a waiter at a café. In one sense he *is* a waiter, because it is a part of his facticity.

However, he does not exist as waiter in an unchanging, permanent state:

[T]he waiter in the cafe cannot be immediately a café waiter in the sense that this inkwell *is* an inkwell or the glass is a glass...it is not that I do not wish to be this person or that I want this person to be different. But rather there is no common measure between his being and mine...But if I represent myself as him, I am not he; I am separated from him as the object from the subject... Yet there is no

⁶² Sartre, BN, 127.

⁶³ Ibid., 60.

doubt that I *am* in a sense a café waiter—otherwise could I not just as well call myself a diplomat or a reporter? But if I am one, this cannot be in the mode of being in-itself. I am a waiter in the mode of being what I am not.⁶⁴

The waiter exists in bad faith if he considers himself simply a waiter—because his free consciousness can transcend his situation as a waiter. But he is also in bad faith if he denies that he is in some way a waiter. It is part of his situation and social role. Bad faith is possible, according to Sartre, because we always possess some level of awareness regarding our freedom, even if we deny it. This is a point that will change for Sartre by the time he writes CDR.

In CDR Sartre introduces different terms to capture roughly the same concepts, but with some important alterations. The For-itself/In-itself pair is replaced with the praxis/practico-inert. Praxis generally replaces Sartre’s previous notion of For-itself and refers to purposive, conscious activity which totalizes (makes intelligible as a whole) all the various objects and perceptions of its environment into a continuous unity when pursuing our chosen ends. Praxis is thus not just a process of thinking, imagining, and differentiating like the For-itself, but involves material interaction with the environment.⁶⁵ In BN, Sartre describes the relation of For-itself-In-itself at the level of ontological nihilation; in CDR he emphasizes the importance of the physical body and its concrete interaction with the material realm. He claims that our relationship with the given is a relationship of mediation, not nihilation. What this means is that consciousness no longer “negates” what is given, rather the given is incorporated and retained in praxis. Sartre keeps the concept of fundamental project from his earlier work, but now claims that our project is constructed through a dialectical interaction of praxis

⁶⁴ Sartre, BN, 102-103.

⁶⁵ Sartre, CDR, 80.

with reified and institutionalized results of previous human affairs. This includes manipulated physical matter, language, sociality, culture, and class.

The project is now portrayed as an ongoing totalization, and takes the shape of a spiral. While the nihilating project was portrayed as a break from positive being, the spiraling project interiorizes the given. Our projects are ongoing totalizations, in which our praxis dialectically interacts with history and materiality. A totality is traditionally understood as an entity that is distinct from its individual parts. A totalization by contrast, is a totality that is continuously being formed by human activity. The parts and the whole are being developed simultaneously and can be potentially altered by the totalizing activity itself:⁶⁶

I find myself dialectically conditioned by the totalized and totalizing part of the process of human development: as a ‘cultured’ man I totalize myself on the basis of centuries of history and, in accordance with my culture, I totalize this experience. This means that my life itself is centuries old, since the schemata which permit me to understand, to modify and to totalize my practical undertakings...have *entered the present*.⁶⁷

The “dialectical” aspect of our subjectivity is a product of our conscious decisions and actions being directly altered by their encounter with the environment and with the historical past, the traces of which are all around us. These traces are then integrated into our project. While in BN these environmental conditions are described as layers of the In-itself and modes of being with and for others, in CDR Sartre refers to them as the “practico-inert.”

The practico-inert replaces Sartre’s references to In-itself but is a philosophically distinct category. The practico-inert is more than just physical matter, but an ontological

⁶⁶ Sartre, CDR, 45.

⁶⁷ Ibid. 54.

realm where past actions influence current praxis. Sartre introduces the term to represent “alienated praxis and worked inertia.”⁶⁸ As Flynn comments, “the complex term ‘practico-inert’ introduces aspects of being-in-itself into the realm of action.”⁶⁹ Sartre refers to the practico-inert as “simply the activity of others insofar as it is sustained and diverted by inorganic inertia.”⁷⁰ There is also a constraining factor, as Manser points out: the practico-inert is “the area in which previous free actions restrict present behavior.”⁷¹ In short, in the words of Flynn, the practico-inert names the “‘worked matter’ that mediates our social and historical relations even as it preserves the sediment of past praxes.”⁷² Unlike the In-itself, the practico-inert contains inertia that allows it to respond, or act upon current praxis. It is not just a background against which we build our project, but is incorporated into and preserved in our project. As Sartre says, praxis:

[A]lways arises within an existing society, it is in fact never wholly natural and as we have seen, is always expressed in techniques and social institutions—which transform it to the extent that it occurs within them.⁷³

These practices, social conventions, collectively valued objects, and even deeply ingrained attitudes establish the boundaries of our current praxis and become the practico-inert.

Sartre emphasizes that the practico-inert is what most forcefully shapes our possibilities for our projects. He comments:

Subjectivity then appears, in all its abstraction, as the verdict which compels us to carry out, freely and through ourselves, the sentence that...society has

⁶⁸ Sartre, CDR, 67.

⁶⁹ Flynn, *Sartre's Marxist Existentialism*, 93.

⁷⁰ Sartre, CDR, 556.

⁷¹ Manser, *Sartre: A Philosophic Study*, 207.

⁷² Thomas Flynn, *Sartre, Foucault, and Historical Reason: Toward an Existentialist Theory of History* (Chicago: University of Chicago Press, 1997), 121.

⁷³ *Ibid.*, 120.

pronounced upon us and which defines us *a priori* in our being. This is the level at which we shall encounter the *practico-inert*.⁷⁴

From this passage it is clear that our original project is given to us as inevitable, as a *verdict* that we must obey. This has implications for Sartre's view of freedom. Because we emerge into the practico-inert, the radical freedom Sartre proposes in BN is revised and limited in CDR. Existence precedes essence, but the practico-inert precedes existence. The thoughts we can think, the words we can speak, and the ideas we can imagine are all conditioned by the historical, material, social realm.

There are several characteristics of the practico-inert that were not part of Sartre's concept of In-itself in BN. The first is the possibility for the practico-inert to negate the negation, or, deflect our praxis. Sartre calls this potential "inertia," and describes it as "a magical field of quasi-dialectical counterfinality...everything acts on everything else from a distance."⁷⁵ Because human praxis is projected onto the practico-inert, which harbors the potential to repel praxis, the results of human action can become alienated from their original intentions. This potentiality was not accounted for with the In-itself. The free praxis of human beings alters the environment, becomes solidified into the practico-inert, and then comes full circle to restrict their possibilities. In the complexity of a subject's historical situation in the practico-inert realm, an individual encounters what Sartre calls an "authorless antipraxis." He describes antipraxis as:

[A] retroactive power eroding my freedom, from the final objectivity to the original decision; but nevertheless emerging from it; it is the negation of freedom in the domain of complete freedom, sustained by freedom itself, and proportional to the very completeness of this freedom.⁷⁶

⁷⁴ Sartre, CDR, 71. Sartre's italics.

⁷⁵ Ibid., 224.

⁷⁶ Ibid., 226.

Antipraxis is the practico-inert's "reply" to praxis. It is our free praxis that leads to the antipraxis. Thus, in a sense, our freedom restricts itself. The In-itself was considered inert and subject to interpretation and manipulation by the For-itself. The practico-inert, in contrast, has physical demands of its own that often conflict with an individual's interests. For example, physical machines such as cars or factory lines impose demands upon us that can be at odds with our own interests. Cars need fuel and repair, and factory lines need power and people to operate them. Sartre refers to one extreme form of antipraxis as a "counterfinality." According to Sartre, a counterfinality is "the contradiction...which develops within an ensemble, in so far as it opposes the process which produces it."⁷⁷ Counterfinalities are a modification of the environment through praxis in which the field of inertia deflects this praxis, resulting in the direct opposite of the agent's conscious intentions. Sartre gives the example of the discovery of gold in Spain at the end of the sixteenth century. Attempts to increase wealth by King Philip II through the outsourcing of gold led to an increase in the price of living throughout the Mediterranean, the effects of which eventually led to the decline of Spain.⁷⁸

In another departure from the In-itself, the practico-inert is the mediating factor in all of our social interactions. The practico-inert is the primary source of individual alienation because its workings often keep individuals in a state of "seriality." Sartre refers to the most basic social collective of individuals as a "series." In a series, individuals are loosely grouped around some practico-inert object but remain isolated from each other. This leads to what Sartre calls "serial rationality," which is the default mode of thinking in the series. With serial rationality, ideas are spread passively and

⁷⁷ Sartre, CDR, 193.

⁷⁸ Ibid., 166-169.

without conscious intention.⁷⁹ Sartre gives the example of colonialist's attitudes about the native people they were colonizing being dirty, dishonest, or lazy. Sartre argues that the colonizers were a series, not a socially bonded group:

[W]hen two colonialists, in conversation, appear to be *exchanging* these ideas, they actually merely reactualize them one after the other in so far as they represent a particular aspect of serial reason...the sentence that is uttered, as a reference to the common interest, is not presented as the determination of language by the individual himself, but as his *other* opinion, that is to say, he claims to get it from and give it to others.”⁸⁰

With serial reason, individuals accept ideas from others and the practico-inert at face value with no process of reflection. Sartre argues that serial reason is the default mode of thinking contained in the practico-inert realm. This is different from the In-itself which was limited to describing physical matter.

Sartre argues that the practico-inert is characterized by scarcity (*la rareté*). Periodically throughout the text he refers to the practico-inert field merely as the “field of scarcity.”⁸¹ Sartre says that scarcity persists even in developed societies with more readily available resources. While developing countries experience scarcity of food, water, or shelter; in more developed societies, scarcity still exists in lack of jobs, educational disparities, or wealth inequality. “The origin of struggle always lies, in fact, in some concrete antagonism whose material condition is *scarcity (la rareté)*.”⁸² Additionally, he says scarcity “is the contingent but fundamental relation of man to Nature, which remains the context of the whole investigation.”⁸³ Here Sartre references

⁷⁹ Sartre, CDR, 258.

⁸⁰ Ibid., 301. Sartre's emphasis.

⁸¹ See for example, CDR, 320.

⁸² Ibid., 113.

⁸³ Ibid., 260.

nature; shortly after he gives the example of scarcity at a bus stop when there are not enough seats for everyone, exemplifying the scope with which he employs the term.

Sartre's concept of project transitions from the nihilating For-itself/In-itself in BN to the spiraling praxis/practico-inert in CDR. The philosophical implications of this shift are an important development in Sartre's thought, but its discussion occupies a disproportionately small place in the philosophical literature on Sartre compared to the exhaustive studies on his early works on radical freedom. The most extensive discussion comes from Busch and Flynn, who explore the transition in depth. A discussion of their views will help highlight the important philosophical changes and their implications.

2.2 The In-itself and Practico-Inert: Current Literature

In Busch's detailed discussion of the progression of Sartre's thought, he identifies five relevant philosophical modifications when Sartre transitions from the In-itself to the practico-inert. First, Busch says, there is a material bond between praxis, as consciousness acting on matter, and the practico-inert, as matter worked on by praxis. This material bond was not identified and emphasized in the In-itself/For-itself dualism. Busch notes that in CDR, the situation or givenness, as he calls it, is no longer simply "there" as a factual scenery upon which we project our existential possibilities. Instead, the practico-inert exists as a thoroughly conditioned material region itself dependent on history and the social forces that have created it.⁸⁴ In BN, Busch says, Sartre's language of transcending or surpassing what is given is "depicted...as a sharp severance."⁸⁵ In

⁸⁴ Sartre, CDR, 62.

⁸⁵ Ibid., 64.

BN, the material world, even when used by us to achieve our ends, is secondary to our free project. Our projects are a negation of any external meaning and objects are objects for us and our ends. However in CDR, Busch argues, using the material world to navigate our possibilities does not negate the meanings bestowed upon it by historicity and sociality. Human beings, when acting on the material world in order to pursue their ends, are themselves subject to the material effects of the world which modify and influence their ends. According to Busch, we see that “using a technique, such as a tool or a machine, in CDR involves an internalization that is profoundly influenced by these techniques.”⁸⁶ This is illustrated in Sartre’s examples of factory lines and cars. In addition to these objects having their own physical demands, we must adjust our physical bodies to the objects in order to use them.

This material link between consciousness and matter flows logically into Busch’s second point. While in BN, consciousness interacted with matter by “nihilating” it through the power of choice and differentiation, in CDR, the practico-inert mediates praxis rather than being nihilated by it:

The thrust of the language [in CDR] is not consonant with *Being and Nothingness*, where negation was equivalent to rupture, fission, break. Here the language allows for conservation. The project in both *Being and Nothingness* and *Search for a Method* is an instance of ‘surpassing the given,’ yet the intelligibility is different in the early and later text.⁸⁷

To support this point Busch references two passages from Sartre describing the project in *Search for a Method*, which was an introduction to CDR.

⁸⁶ Busch, *The Power of Consciousness*, 64.

⁸⁷ *Ibid.*, 63

““To surpass...is also to preserve”⁸⁸ and “the project retains and unveils the surpassed reality.”⁸⁹

Busch concludes that the relationship between consciousness and matter is no longer one of negation or rejection.⁹⁰ Busch notes that the fact that the practico-inert is preserved and cannot be transcended or nihilated like the In-itself has existential and social ramifications. As material conditions constrain our actions and are incorporated into our project, circumstances such as socio-economic class become so integral to our project that attempts to transcend them merely result in fulfilling them.⁹¹

The third important difference Busch identifies is the active versus the passive self. Busch argues that the existential self emerging from Sartre’s discussion in BN is characterized by activity—the intentional, free action of the For-itself. The existential self presented in CDR, in contrast, is characterized by both activity and passivity because of the inertia contained and preserved in the practico-inert. This includes serial rationality. Busch says that serial rationality is characterized by an interiorization of the practico-inert without individual conscious reflection. It is not a matter of sharing consciously intended ideas, but passively accepting ideas from others and the environment.⁹² Thus, with the introduction of the practico-inert, passively received ideas become a much more prominent factor in our project.

The last important philosophical difference that Busch believes Sartre introduces with the practico-inert is the transition in the degree of awareness subjects have of our

⁸⁸ Jean-Paul Sartre, *Search for a Method*, translated by Hazel Barnes (New York: Vintage Books, 1968), 10.

⁸⁹ Busch, *The Power of Consciousness*, 92

⁹⁰ *Ibid.*, 65.

⁹¹ *Ibid.*, 70.

⁹² *Ibid.*, 60.

freedom. In BN, Busch says, the For-itself intuitively “knows” its freedom. If people deny their freedom, this is a matter of bad faith. With the shift to the practico-inert, Sartre’s position evolves into the stance that we do not immediately comprehend ourselves as free. Rather, praxis initially interprets itself in matter, in our “inert” form. We know ourselves through the ways we are inscribed in matter.⁹³ Busch draws on the following passage from Sartre, “his objective perception of himself presents him as an inanimate object, the result of an operation.”⁹⁴ Consequently our freedom must be discovered through experience with the practico-inert. Busch comments:

Whereas in his earlier, existentialist thought it was assumed that everybody ‘knew’ about freedom, now, in order to account for alienation, it appears that everyone must ‘discover’ freedom out of an initial alienation of knowledge.⁹⁵

This is an aspect of serial rationality, in which individuals passively interiorize a conception of themselves as unfree, as this is how they immediately experience themselves in the practico-inert.

Flynn also discusses the link between practico-inert and In-itself in depth, noting that the differences between them are important for understanding Sartre’s later view of a human being. Flynn echoes Busch’s sentiment that the practico-inert is the “givenness” of every situation, but this givenness assumes a different form in CDR than it did in BN. First, Flynn says, unlike the In-itself, the practico-inert is an “intrinsically subject referring term;” it functions as practico-inert “only while interiorized-totalized in our activities.”⁹⁶ While the In-itself was presented as a realm of matter subject to be interpreted by For-itselfs, the practico-inert is only practico-inert through interaction

⁹³ Busch, *The Power of Consciousness*, 70.

⁹⁴ Sartre, CDR, 227.

⁹⁵ Busch, *The Power of Consciousness*, 70.

⁹⁶ Flynn, *Sartre, Foucault*, 1, 121.

with subjects. Additionally, the practico-inert does not relate to praxis through nihilation or destruction, but by “deviation and inversion.”⁹⁷ Flynn argues that if the For-itself was the negation of matter, practico-inert is matter’s “negation” of the For-itself. It deflects our actions and makes them other than we intend.

Second, Flynn, like Busch, notes that the practico-inert introduces a realm of passivity into our subjectivity that was not present in the In-itself/For-itself dichotomy:⁹⁸

We have seen how praxis inherits the intentionality and self-transparency of the for-itself. Praxis, like consciousness, is ontologically free, for it is the unifying and reorganizing transcendence of existing circumstances toward the practical field. But Sartre has come to realize that this transcendence is dialectical; that is, that it is simultaneously negation, conservation, and spiraling advance. In other words, it is totalizing.⁹⁹

The inclusion of practico-inert and image of the project as a spiral introduces the realm of passive activity. Flynn argues that the forces at work in the practico-inert, such as antipraxis and counterfinality, contribute to the passivity of our projects and serial rationality. When projected in the practico-inert realm, people’s actions are absorbed and in Sartre’s words, “replaced by monstrous forces.”¹⁰⁰ Flynn says that those monstrous forces are the necessities and counterfinalities present in the practico-inert field of the various systems that people participate in. This is the realm of passive activity.¹⁰¹ Flynn draws on Sartre’s example of panic, exemplified in the following passage from CDR:

The basic difference between serial activity, which—though counterfinalized and passive...is not the freedom of individual praxis, since contagious panic, as much as a deliberate attack, realizes itself through everyone’s praxis; is that in the first case, freedom posits itself only to reveal its alienation in the passive activity of impotence.¹⁰²

⁹⁷ Flynn, *Sartre, Foucault, 1*, 120.

⁹⁸ *Ibid.*, 121.

⁹⁹ Flynn, *Sartre and Marxist Existentialism*, 104.

¹⁰⁰ Sartre, CDR, 319.

¹⁰¹ Flynn, *Sartre and Marxist Existentialism*, 96.

¹⁰² Sartre, CDR, 397.

This passage on panic is relevant because the experience of panic is not consciously intended praxis, although its effects are realized through praxis. Flynn argues that this passage shows that passive activity does not originate in individuals themselves, which would be intentional praxis. Instead, the passive is an “ontological deformation of praxis”¹⁰³ that results from practico-inert mediation.

Third, Flynn, like Busch, argues that the introduction of the practico-inert entails that human beings do not intuitively know their freedom, although he words it differently. Flynn says that the practico-inert “allows inauthenticity to be linked to the ‘sorcery’ of matter.”¹⁰⁴ According to Flynn, the introduction of the practico-inert means that failing to recognize our freedom is no longer just a personal failure, but is ontologically located in the practico-inert field. Our self-determination is also not immediately evident to us because the practico-inert responds to praxis and makes our actions appear out of our own hands. “This awareness, simultaneously of necessity and powerlessness, is the experiential basis for the concept of the practico-inert.”¹⁰⁵

Fourth, Flynn also identifies the point that the practico-inert contains a type of rationality, serial rationality, embedded within it that was not present in Sartre’s conception of In-itself:

[T]he practico-inert serves to connect a class of automatic and impersonal processes with underlying praxes, while retaining a certain rationality of its

¹⁰³ Flynn, *Sartre’s Existentialist Marxism*, 105.

¹⁰⁴ Flynn, *Sartre, Foucault, 1*, 51. There is disagreement in the secondary literature about whether “inauthenticity” and “bad faith” are the same concepts for Sartre. It would diverge too far from my purposes to discuss it in depth here. For my purposes, I will characterize both terms as including a failure to recognize one’s freedom and a desire to be defined by existing social categories.

¹⁰⁵ Flynn, *Sartre and Existentialist Marxism*, 96.

own...It is the logic of otherness, of exteriority, of passivity, of alienation, of social impotence, and 'flight.'¹⁰⁶

We see again the emphasis that while the In-itself was a type of brute factuality, the practico-inert contains forms of reasoning and acting within it.

Last, Flynn, too stresses the importance of the inability of human beings to transcend the practico-inert, as part of it is absorbed into our dialectical projects. Because the practico-inert is characterized by scarcity, this leads to the formation of class. Flynn argues that Sartre's entire aim of discussing the practico-inert is to afford us a more adequate grasp of socioeconomic class.¹⁰⁷ He notes that in CDR working people discover themselves and their possibilities as they are "signified" by their class status.¹⁰⁸ Sartre does not think it is inevitable or inherent that the practico-inert should be alienating, rather, as Flynn shows, it is the historical reality of scarcity that leads to class divisions and seriality.¹⁰⁹

Busch and Flynn correctly point out that with the transition from In-itself to practico-inert in Sartre's thought, there is no longer nihilation of our materiality and historicity, but mediation between our praxis and the environment. The new image of the existential project as a spiral illustrates how the practico-inert is both surpassed and absorbed in the totalization of our projects. As the practico-inert precedes our existence, there is no longer a pre-reflective consciousness. Additionally, our existential project is both active and passive. It is active in the sense that we have intentional, freely chosen projects. It is passive in three senses: first, we interiorize the practico-inert in order to

¹⁰⁶ Flynn, *Sartre, Foucault*, 1, 121.

¹⁰⁷ Flynn, *Sartre and Marxist Existentialism*, 101.

¹⁰⁸ Flynn, *Sartre, Foucault*, 1, 122.

¹⁰⁹ *Ibid.* Also, *Sartre and Marxist Existentialism*, 93-95.

decide what projects to pursue. Second, the self is passive in terms of serial rationality in which we receive and transfer ideas passively, without conscious reflection. Third, the existential self is passive to the extent that we are acted upon by the antipraxis and counterfinalities. Busch and Flynn are also correct that Sartre repeatedly emphasizes socio-economic class as the most powerful conditioning factor in shaping our possibilities.¹¹⁰

As both Busch and Flynn accurately show, the addition of the practico-inert means that human beings are not immediately conscious of our freedom. We do not recognize our freedom because we passively form a vision of our nature from the practico-inert. Our freedom is not immediately obvious to us and we must become gradually aware of it. Sartre also admits much stronger limits on our practical freedom, acknowledging that our presence in a historical, material, social environment constricts our possibilities. This is perhaps the starkest contrast between Sartre's earlier and later thought. The following passage explains the transition from In-itself to practico-inert: "[I]t would be quite wrong to interpret me as saying that man is free in all situations...I mean the exact opposite: all men are slaves insofar as their life unfolds in the practico-inert field."¹¹¹ The constraints of the practico-inert realm are not abstract limits or barriers we place on ourselves through bad faith, but concrete barriers given by history, materiality, and sociality.

The transition from In-itself to practico-inert is important for my purposes because it adds a level of historical depth and material constraint to Sartre's existential project. The praxis/practico-inert spiral represents human beings as dialectical who

¹¹⁰ For example, see CDR, 65-67, 193-194, 679-680, and 787-788.

¹¹¹ Sartre, CDR, 331-332.

incorporate the givenness of the situation into our projects. The backdrop against which we build our project is not just inert matter, but given modes of thinking, doing, and group membership. In both the In-itself and practico-inert, our freedom exists as a negotiation amidst already given conditions. The inclusion of the practico-inert shows that lack of awareness of freedom is not a moral failing of an individual, but a product of material limitation and modes of thinking embedded within practico-inert mediations. In order to develop how we can apply Sartre's views to ethics, which will be explored in Chapter Three, we must examine how we can act intentionally, develop awareness of our freedom, form our conception of self, and relate to others. All of these things are mediated by the practico-inert.

In the following section I will discuss Sartre's vision of our social-historical possibilities for our projects, elucidated through both BN with the In-itself and CDR with the practico-inert. We see that constructing our essence is a matter of negotiating with our physical environment, with language and collective ideas, social practices, and class, all in our unique historical moment. We will also see that in CDR Sartre recognizes more and more the limitations to freedom and the full force of historical, material circumstances. Throughout the discussion in both texts, we will see the recurrence of the identified themes: mediation rather than nihilation, the active and passive self, serial rationality, a lack of immediate awareness of our freedom, and the effects of scarcity, including class and alienation.

3 Our Given Possibilities

3.1 The Material: Physical Objects, Human Artifacts, and Altered Nature

In BN, Sartre says that being In-itself, even though it is interpreted by individual For-itself, is already imprinted with collective meaning. We become conscious of physical objects which have been collectively designated for particular purposes. Examples include items that have been given a special status in society, such as precious metals, fine china, or artifacts.¹¹² It also includes socially designated physical structures, such as buildings designed specifically for schools, prisons, or offices. These objects reveal to us a world that is already collectively organized and intersubjectively shared. In BN, Sartre says, “It is the world which makes known to us our belonging to a subject-community, especially the existence in the world of manufactured objects.”¹¹³ When we see a human-created instrument, we recognize the use it serves for others and hence the purpose it should serve for us. We understand ourselves as emerging into a community with collective ends. He continues:

As soon as I use a manufactured object...it indicates to me the movement to be made...Thus it is true that the manufactured object makes me known to myself as ‘they’; that is, it refers to me the image of my transcendence as that of any transcendence whatsoever.¹¹⁴

Using a collectively designated object makes one aware of oneself as a person interchangeable with others. There is nothing unique about using things for their intended purposes, so one becomes part of a collective “they.”

¹¹² Sartre, CDR, 168.

¹¹³ Sartre, BN, 547.

¹¹⁴ *Ibid.*, 548.

Designated objects present options for our possibilities. Sartre gives the examples of signs prohibiting certain behavior, such as “No Exit” signs, or exclusions forbidding minorities from utilizing public services. The “they-meaning” conferred through these signs automatically immerses us in a network of relationships in which we obey or disobey the collective command.¹¹⁵ As soon as I understand the collective designations, the objects themselves reveal the actions and expectations of others to *me*. I understand what I should do, what kind of person I can be, and how I fit into society:

It is indeed to me that the printed sentence is directed; it represents in fact an immediate communication from the Other to me: I am *aimed at*. As soon as I avail myself of the opening market ‘Exit’ and go out through it, I am not using it in the absolute freedom of my *personal* projects. I am not constituting a tool by means of *invention*; I do not surpass the pure materiality of the thing toward my possibles...The object is already *humanized*; it signifies ‘human control.’...I do not submit to the object itself when I use it as an ‘Exit’; I adapt myself to the human order. But by my very act I *recognize* the Other’s existence; I set up a dialogue with the other.¹¹⁶

Objects convey to us that we are in a social situation with expectations and responsibilities from others. At the same time, the fact that these objects direct us toward certain behavior open up possibilities for our project:

[A]ccording to the free possibilities which I choose, I can disobey the prohibition, pay no attention to it, or, on the contrary, confer upon it a coercive value which it can hold only because of the weight which I attach to it.¹¹⁷

Objects have normative force for us as they offer potential for our actions. At another level we create our own meaning by choosing how to react to the sign. Sartre gives another example of public transit. The working of the transit system, what it is used for, where it takes us, how we use it, and the rules for using it are a socially collective

¹¹⁵ Sartre, BN, 672

¹¹⁶ *Ibid.*, 552.

¹¹⁷ *Ibid.*, 672.

project, not simply a projection of one individual For-itself. “In this subway corridor there is only one and the same project, inscribed a long time ago in matter, where a living and undifferentiated transcendence comes to be absorbed.”¹¹⁸ The subway has absorbed the meaning of other past freedoms to become one collective project. But a subway can also take on a very personal meaning for someone who meets a special person there. All collectively inscribed objects can simultaneously hold individual meaning.

In CDR, Sartre reaffirms that manufactured objects, altered nature, and artifacts are integral to interpreting our possibilities and relating to others. However he goes further from his discussion of objects as In-itself in BN and now argues that human made objects, as practico-inert, can have their own physical demands. As emphasized by Busch, physical objects have a bond of materiality with consciousness and impose a material exigency on our experience. Sartre now argues in CDR that these human made apparatuses alter our being at its core. Not only do we modify our behavior, but we adjust the rhythm of our bodies to the working of the machines when we are operating them.¹¹⁹ While objects in BN have normative force, in CDR, materiality and consciousness are ontologically intertwined. We need not view Sartre as completely abandoning his previous views in BN, but as further recognizing that human-made objects have a conditioning effect that goes beyond conveying collective meaning.

¹¹⁸ Sartre, BN, 548.

¹¹⁹ See CDR, 206-219. “Interests” in Sartre’s discussion here does not require conscious intention. He also refers to interests as “demands.” A car, for example, has an interest in, or demands, gasoline in order to run. But clearly there is no conscious intention at play.

3.2 Our Given Possibilities: Language, Attitudes, and Ideas

Our existential possibilities are also shaped through the use of language. In BN, Sartre identifies the use of language as automatically placing us into a web of social relations at the level of our community, nationality, and all of humanity:

[T]o know how to speak is not to know how to pronounce and understand words in general; it is to know how to speak a certain language and by it to manifest one's belonging to humanity on the level of a national collectivity.¹²⁰

The words we use precede us, so that our freedom is bound to the collective terms and concepts we use to communicate. Yet, defined in their communal sense, Sartre says it is the *act* of speaking that makes words exist. Language exists before us but it functions when we use it to communicate with other free individuals.¹²¹ The laws of language and speaking are produced by individual freedoms because each act of speaking is an act of freedom by the For-itself. Language possesses many qualities of the In-itself like an inanimate object. Because it is linked to the actions of the For-itself, it *comes to be* through For-Itselfs and exists at the level of communal meaning.

In CDR, Sartre refines this distinction. While language most certainly conditions our possibilities, the intermediary category of the practico-inert allows him to make clear distinctions between language and speaking. Speaking is a form of praxis, but language itself is practico-inert. In one reference, he says, “words are matter.” At the same time, “they carry the projects of the Other into me and they carry my own projects into the Other.”¹²² Thus, Sartre suggests that “language might well be studied in the same way as money: as circulating, inert materiality” but, as he adds, language “unifies

¹²⁰ Sartre, BN, 657.

¹²¹ Ibid., 663.

¹²² Sartre, CDR, 98.

dispersal.”¹²³ Words cannot fit into Sartre’s previous ontological dichotomy: they are neither inert physical objects (the In-itself) nor pure consciousness (For-itself). These distinctions regarding words and language remain implicit in Sartre’s further discussion of how speaking and listening lead to practico-inert beliefs, which he calls “Ideas.” “Ideas” are a byproduct of serial rationality.

We briefly explored the transmission of serial Ideas through the example of colonialist’ characterization of natives. Sartre uses another example of the Great Fear of 1789. The Great Fear was a widespread panic among the rural population that occurred at the beginning of the French Revolution. A shortage of crops, in addition to circulating rumors of a conspiracy to starve the peasant population, led fearful citizens to organize and arm themselves in self-defense. During this time period rumors circulated that there were “bandits” or “foreigners” burning buildings. Sartre uses this example to show how easy it is for ideas to spread without any conscious reflection on the part of those who “think” them:

The *opinions* of public opinion arise like the Great Fear, in that everyone makes of himself other by his opinion, that is to say, by taking it from *the Other* because the Other believes it as Other, and makes himself the informer of Others. At this level, the Idea is a process; it derives its invincible strength from the fact that nobody thinks it. That is to say, it does not define itself as the conscious moment of *praxis*—that is to say, as the unifying unveiling of objects in the dialectical temporalization of action. Instead it defines itself as a practico-inert object whose self-evidence, for me, is the same as my double inability to verify it and transform it to Others.¹²⁴

When the Idea of “bandits” or “foreigners” posing a threat was circulated between various individuals who accepted the Idea without thinking, the force of the Idea grew even stronger. No one reflected on the idea as consciously intended praxis, and yet a

¹²³ Sartre, CDR, 98.

¹²⁴ *Ibid.*, 300.

great sense of panic spread among peasants in France. This exemplifies serial rationality and an idea “embedded in matter.” Discourses can become solidified, unquestioned, static, and “carved” into the very structure of our thought.

Through this example, we see not only how language automatically places us in networks of relationships within a community, but also how language can make ideas almost “ours,” even when we do not consciously intend them, allowing the meanings embedded in matter to shape the possibilities we imagine for ourselves. This is accounted for with the practico-inert, but was not with the In-itself. We also see evidence of why Flynn and Busch characterize serial rationality as fundamentally alienating, leaving subjects feeling powerless.

3.3 Our Given Possibilities: The Social and the Other

We have already discussed some of the ways in which sociality affects our possibilities: others communicate to us through objects, language, and Ideas. Another aspect intricately detailed by Sartre includes the effects an original encounter with another person has on our own self-formation. Our encounters with other For-itselfs instill in us an awareness that we too represent an objectivity for others. In other words, in the individual For-itself’s experience, one understands oneself as the subject for which the environment is there. When we encounter other For-itselfs we realize in turn that we are there for them. Our actions, gestures, and words are subject to be interpreted by other free individuals.¹²⁵ Thus my physical surroundings, which I may have viewed as there “for me” before encountering the Other are, in a sense, stolen from me, as I

¹²⁵ Sartre, BN, 343-353, 472-473, 486-487.

now realize I cannot perceive the world as the Other perceives it.¹²⁶ This also means that my whole perception of my possibilities can be changed if the Other looks at me:

[M]y fundamental connection with the Other-as-subject must be able to be referred back to my permanent possibility of being seen by the Other. It is in and through the revelation of my being-as-object for the Other that I must be able to apprehend the presence of his being-as-subject.¹²⁷

The recognition of the Other as a subject and oneself as an object makes us realize that we are not purely self-determined. While we can try to behave in a way that gives others the perception we want to convey, we ultimately cannot control how others view us and the type of “object” they perceive us to be.

Sartre argues that the realization that we are potentially observable by others conditions all of our thoughts. “Being-for-others is a constant fact of my human reality, and I grasp it with its factual necessity in every thought, however slight, which I form concerning myself.”¹²⁸ Because our consciousness understands what it is by differentiation, we compare ourselves to others in order to form our conception of ourselves.¹²⁹ This includes understanding ourselves through social categorizations, which are projected upon us by others:

There exists, in fact, something in ‘my’ world other than plurality of possible meanings; there exist objective meanings which are given to me as not having been brought to light by me. I, by whom meanings have come to things, I find myself engaged in an *already meaningful* world which reflects to me meaning I have not put into it.¹³⁰

In a recent work on social subjectivity in BN, Matthew Eschleman argues that Sartre’s claim that existence precedes essence is complemented in the second half of the

¹²⁶ Sartre, BN, 340.

¹²⁷ Ibid., 344-345.

¹²⁸ Ibid., 373.

¹²⁹ Ibid., 379

¹³⁰ Ibid., 655.

text by the claim that *sociality precedes existence*. Social forces and social categorizations contribute to one's identity and shape the possibilities that we imagine for ourselves. We "carve out" our possibilities in the In-itself, but the way we do the carving is affected by social conditions which precede us.¹³¹ Social categorizations are not concepts created by us but concepts presented to us by others through which we then organize our projects. As Eschleman comments, "Basic social designations like being black, white, rich, poor, etc., define one's identity before being 'actively' interiorized, and...they provide the grounds upon which one understands the world and projects oneself into it."¹³² However, none of the social categorizations given to us *strictly* determine the choices we make. In Eschleman's words:

[T]he molding powers that form one's social identity are, in some sense, necessary for free actions to take place. Only upon the imposition of social categorization does a field manifest, and only within the field do individuals carve out practical possibilities.¹³³

This is how powerfully our sociality affects our perceived possibilities in BN. Sartre is willing to go even further in CDR due to the addition of the practico-inert as a historical, material realm which mediates our praxis. Sartre takes his view regarding how our possibilities are altered by the encounter with the Other, and places it in a historical and material context. This results in his discussion of socioeconomic class.

¹³¹ Matthew Eschleman, "Sartre, Foucault, and 'Ideal Restraint'," *Sartre Studies International* 10.2 (2004): 56-76.

¹³² *Ibid.*, 70.

¹³³ *Ibid.*, 72.

3.4 Our Given Possibilities: Class Being

Beyond sociality, Sartre argues that the effects of socio-economic class have the most formative influence on our possibilities, a point repeatedly emphasized in the secondary literature. This assertion is made in BN, but more forcefully emphasized in CDR. In BN Sartre says:

It appears that it is no longer I who decide in terms of my ends whether the world appears to me with the simple, well-marked oppositions of the “proletarian” universe or with the innumerable interwoven nuances of the “bourgeois” world. I am not thrown face to face with the brute existent. I am thrown into a worker’s world, a French world...which offers me its meanings without my having done anything to disclose them.¹³⁴

Our possibilities are affected by the fact that others have more or less than us. Social categorizations regarding class and material possessions are imposed upon us, not freely chosen. Although Sartre discusses sociality at length in BN, the issue of class is a secondary one, portrayed as one social designation among others. In BN, class does not place an untranscendable limit on one’s freedom.¹³⁵ In CDR Sartre’s position changes because of his introduction of the practico-inert. The fact that the practico-inert is characterized by scarcity entails that our encounters with others are saturated with shortages within the material environment. This leads to a state of practico-inert being that accompanies the fact that we belong to a certain class, which he calls “class being” (*l’être de classe*).¹³⁶ Scarcity includes not only scarcity of resources necessary for subsistence, but also scarcity of space, land, jobs, possessions, and opportunities. Even

¹³⁴ Sartre, BN, 659.

¹³⁵ *Ibid.*, 680.

¹³⁶ Sartre, CDR, 65.

in advanced societies, our general interaction with others is permeated with the differences that are linked to the socio-economic classes to which we belong.

For example, class differences lead to identifying one's project in relation to the types of work considered a realistic option for oneself. This is especially true in developing societies where the wealth of one's family strictly determines the educational opportunities available. While in BN Sartre focuses on the structure of encountering another freedom, in CDR he includes in the discussion the way these meetings between free subjects are shaped by existing class structures. The following passage describes a "bourgeois" on vacation who encounters laborers from the lower working class. The bourgeois cannot view these workers without comparing them to himself:

It is in fact as a "holiday-maker" confronting a gardener and road-mender, that I come to conceive myself; and in making myself what I am I discover them as they make themselves, that is, as their work produces them...*I realise myself as a member of a particular society which determines everyone's opportunities and aims*; and beyond their present activity, I rediscover their life itself, the relation between needs and wages, and, further still, social divisions and class struggles.¹³⁷

Class being is not consciousness nor pure matter, but it is certainly real. When one sees the gardener and the road-mender, one interprets them as members of a particular societal class with an economically and socially specified array of possibilities. In turn one shapes one's own possibilities in relation to the class one occupies. Individuals bond with other members of their class because they collectively understand common interests and values as necessary for their life as members of the same class. In addition, the occupations of those of the lower working class usually involve factory labor that is completely bound to a physical practico-inert structure, "individuals realize their class

¹³⁷ Sartre, CDR, 101. Emphasis added.

statute through one another...everyone's class-being comes to him not only from the class which exploits him, but also from all his comrades."¹³⁸ Class being is such a dominating force within the practico-inert that attempts to eliminate class differences are countered by social and historical forces: the discourses we use to communicate, the attitudes about those of a different class, the physical structures which designate individuals to certain space, such as segregated neighborhoods, the social institutions, such as proper schooling or health insurance to which the lower classes have never had complete access. Even if someone successfully moves to a different class out of good fortune, one cannot escape how much class being has saturated the way one views and understands the world.

From this discussion we see that according to Sartre, historicity and sociality are not secondary to our subjectivity. Rather, our historicity assigns meanings to the worked matter of the objects of our experience, and these historically constituted meanings govern our possibilities. While the In-itself serves as a useful philosophical concept for showing how environment shapes our thinking, doing, and comprehension of ourselves, the practico-inert as a ontological realm of historical materiality and rationality shows how intertwined are possibilities are with the given. The nature and role of freedom is extremely important in Sartre's thought and also undergoes important modifications with the shift from nihilation to spiral. The complexity of Sartre's position on freedom warrants a separate section dedicated to his views.

¹³⁸ Sartre, CDR, 101.

4 Sartre, Subjectivity, and Freedom

4.1 Freedom in *Being and Nothingness*

We have seen that what is referred to as Sartre’s “radical” human freedom is in fact restricted. Even in BN, not only do social and historical forces limit our practical actions, they also condition our ability to project meaning onto the In-itself, because our projects are always simultaneously affected by communal meanings. Yet our historical situation does not eliminate our freedom, but rather enables it:

This historization, which is the effect of the for-itself’s free choice, in no way restricts its freedom; quite the contrary, it is in the world and no other that its freedom comes into play; it is in connection with its existence in this world that it puts itself into question. For to be free is not to choose the historical world in which one arises—which would have no meaning—but to choose oneself in the world whatever this may be.¹³⁹

Freedom results from a relationship between different conditioning forces that arise from our situation. It is only by interacting with these conditioning forces that we can resist or accept them, and this is how freedom reveals itself in a meaningful way. Thus, freedom and facticity are interwoven and interdependent. Sartre writes:

Freedom is indispensable to the discovery of my facticity. I learn of this facticity from all the points of the future which I project; it is from the standpoint of this chosen future which I project...My place appears in terms of the changes I project. But to *change* implies something to be changed, which is precisely my place. Thus, *freedom is the apprehension of my facticity*.¹⁴⁰

Our project necessitates an understanding of our present characteristics. An apprehension of our situation in the world provides us with the parameters for the future we can imagine. We learn how our facticity can be transcended and how it will

¹³⁹ Sartre, BN, 668.

¹⁴⁰ Ibid., 634-635.

inevitably limit us. However, how we choose to respond to these limits is an exercise of freedom:

Our freedom itself creates the obstacles from which we suffer. It is freedom itself which, by positing its end and by choosing this end as inaccessible or accessible with difficulty, causes our placing to appear to our projects as an insurmountable resistance or a resistance to be surmounted with difficulty... To be sure, in being born I *take a place*, but I am responsible for the place which I take.¹⁴¹

Even if all we can do is take up a certain attitude in relation to our possibilities, Sartre considers this attitude the product of freedom. Sartre argues repeatedly throughout BN that failing to acknowledge that we are free and possess no determined nature is a matter of an individual's bad faith.¹⁴² An example of this is the waiter who may be tempted to deny that he is free to transcend his role as a waiter. But this notion undergoes significant changes in CDR when Sartre shows that our available tools for interpreting our possibilities are constricted. The introduction of practico-inert mediation, the role of the passive, and serial reasoning result in freedom playing a more limited role in our subjectivity.

4.2 Freedom in *The Critique of Dialectical Reason Volume I*

In CDR, there are more significant restrictions on freedom than were implied in the abstract picture presented in BN. Freedom is still operative, however, and takes the form of practical choices, resistance, and imagination. These different operations can lead to a significant change in a person's project. However, the practico-inert places limits on all types of freedom. As identified by secondary authors, Sartre shows that our immediate perception of ourselves in inert terms means that our freedom is not

¹⁴¹ Sartre, BN, 636.

¹⁴² *Ibid.*, 86-88, 94-96, 112-115.

immediately evident to us. Due to antipraxis and counterfinality, the free praxis of human beings alters the environment, becomes solidified into the practico-inert, and then comes full circle to restrict their possibilities. We are frequently exposed to historical forces that seem to arise from nowhere and thwart our best laid plans. This places concrete limits on our options and also leads to feelings of determinism.¹⁴³

Seriality also places limits on our freedom. Sartre uses the example of individuals waiting for a bus. The practico-inert object (the bus stop) unites these individuals to the extent that they all need the bus to take them where they need to go. However, they have no other bond beyond the fact that they are waiting for the same bus. In seriality, the practico-inert object unites individuals and isolates them at the same time. The practico-inert “unites them from the outside”¹⁴⁴ because the only connection between them is their gathering around the object. Though they have the common interest of riding the bus to reach their destination, this is not a collective interest or internal bond. The possibilities presented by waiting in line for a ticket to ride the same bus are basically interchangeable. The lack of meaningful practical options and the feeling that one’s place is interchangeable with others does not support a comprehension of ourselves as free.

“Seriality derives from practico-inert matter, that is to say, from the future as an ensemble of inert, equivalent possibilities.”¹⁴⁵ This is reminiscent of Sartre’s discussion of the subway in BN which shows the continuity between the two works. The bus stop brings together individuals of various ages, sexes, classes, and social milieus who would

¹⁴³ Sartre, CDR, 225-228.

¹⁴⁴ *Ibid.*, 258

¹⁴⁵ *Ibid.*, 263

otherwise not be in contact with each other. However, they remain semi-unaware of each other, mostly indifferent to those around them, and only notice others if something out of the ordinary occurs. When individuals are interacting with each other only to the extent that they are united by a practico-inert object and see no intentionally chosen unifying bond between them, a feeling of alienation from others arises as well as a lack of control over one's own fate. The following passage describes someone who has come to awareness of the destiny presented to him by the practico-inert. He is alienated from his freedom, as he comprehends himself in inert terms:

[T]he man who looks at his work, who recognizes himself in it completely, and who also does not recognize himself in it at all; the man who can say both: 'This is not what I wanted' and 'I understand that this is what I have done and I could not do anything else,' and whose free praxis refers him to his prefabricated being and who recognizes himself equally in both—this man grasps, in an immediate dialectical movement, necessity as the *destiny in exteriority of freedom*.¹⁴⁶

Sartre introduces the example of a woman who works long shifts in a Dop shampoo factory whose existential project is devoted only to struggling to meet her daily needs. For many people, especially in developing societies, their possibilities are reduced to striving to fulfill their basic needs amidst practico-inert limitations:

What is "assigned" to them is a type of work, and a material condition and a standard of living tied to this activity; it is a fundamental *attitude*, as well as a determinate provision of material and intellectual tools; it is a strictly limited field of possibilities.¹⁴⁷

When Sartre speaks of "material and intellectual tools" he means not only that some people lack material resources, but that the available mental apparatuses for interpreting experience are constricted. The nature of their attitudes toward the world and the orientation of their projects are predetermined by their class being. The practico-inert

¹⁴⁶ Sartre, CDR, 226. Sartre's emphasis.

¹⁴⁷ *Ibid.*, 232.

produced a verdict for the Dop shampoo worker's project the moment she emerged into the proletariat class:

Her life and destiny can be determined before she gets her job, and this pre-fabricated reality must be conceived in the mode of being, in the pure materiality of the in-itself. The role and attitude imposed on her by her work and consumption have never even been the object of an *intention*.¹⁴⁸

There was no deliberate choice for this woman of where she would work, how she would live, or what she could value. The practico-inert structures established very narrow boundaries for her thoughts, motives, beliefs, and choices.

In spite of the bleak and deterministic picture painted by this example, Sartre still argues that this woman is in some sense free. While our possibilities are *structured* by the practico-inert, this does not mean that we are completely determined. By forcing themselves upon us, these different conditioning forces themselves enable our freedom to exist. This claim by Sartre is in direct continuation with his discussion of the interplay between freedom and facticity in BN. The fact that we can become aware of our own limitations and take up an attitude in relation to them is itself an exercise of freedom. Freedom is exercised when we choose how to navigate these limitations, resist these limitations, or imagine a state of affairs beyond them.

I suggest that the freedom that Sartre envisages in CDR operates on several different levels. First, there is freedom to make simple everyday choices within the practical options available. The Dop shampoo factory worker can choose to spend her wages on food for her family or on a new pair of shoes. Although these options are not always strictly determined, they also cannot be considered meaningful choices. The second way that freedom can operate is when a subject intentionally resists the forces of

¹⁴⁸ Sartre, CDR, 232.

the practico-inert. In a later interview, Sartre describes freedom as “the small movement which makes of a totally conditioned social being someone who does not render back completely what his conditioning has given him.”¹⁴⁹ This characterizes freedom as resistance or refusal to become only what the practico-inert has conditioned you to be. In this case the Dop shampoo worker attempts to earn more by increasing her production or searching for a new job. In this case freedom acts as a rejection of complacency with her situation. The last way that freedom can operate is the use of human imagination or creativity to imagine new possibilities. This view of freedom is only hinted at throughout CDR, but will become more prominent in Sartre’s lectures, to be discussed in Chapter Three. In this passage, Sartre argues that if his work in CDR is ultimately successful:

[W]e shall finally be able to prove the strict equivalence between praxis with its particular articulations and the dialectic as the logic of creative action, that is to say, in the final analysis, the logic of freedom.¹⁵⁰

Creativity and imagination do not involve completely transcending the practico-inert because what is surpassed is also incorporated into the dialectical spiral. The power of imagination, when coupled with ideal resources and practical options, can lead to significant transformations in a person’s project. One of Sartre’s main points in CDR is that current practico-inert structures, especially those related to class being, make such a transformation impossible for the majority of people. In order for an opportunity for change to be achievable by all, there must be alterations in the practico-inert field. Because the practico-inert is subject dependent and created by freedom, it can change.

¹⁴⁹ Sartre, “The Itinerary of a Thought,” in *Between Marxism and Existentialism*, translated by John Matthews (London: Verso, 1974), 35.

¹⁵⁰ Sartre, CDR, 69

Change is possible, although not easy, due to the primacy of individual praxis over the practico-inert. He writes, “praxis alone...is, in its *dialectical freedom*, the real and permanent foundation (in human history up to the present) of all the inhuman sentences which men have passed on men through worked matter.”¹⁵¹ While the practico-inert restricts our freedom, it is created by and rooted in our freedom: “[T]he original foundation of unity, of action, and of finality is individual praxis as the unifying and reorganizing transcendence of existing circumstances toward the practical field.”¹⁵² The practico-inert field, while constricting, is ultimately created and sustained by praxis.

The view of subjectivity and freedom that Sartre presents has significant normative implications, especially his view of the limits placed on freedom by the practico-inert domain. In order to lay the groundwork of my overarching goal of showing the importance of Sartre’s views for ethics in Chapter Three, I now highlight how Sartre’s view of the dialectical subject with socially and historically conditioned possibilities is different from the liberal subject that is presupposed in mainstream deontological approaches to healthcare ethics. When we see the key differences between the two views of subjectivity, we will easily see the divergence in normative views in Chapter Three.

5 The Sartrean Subject and the Kantian Liberal Subject

By liberal subject I mean the individual as generally conceived by moral and political liberalism: the view that individuals should have the basic right to live as they choose and determine their own life path, so long as they respect that right in others. In

¹⁵¹ Sartre, CDR, 332.

¹⁵² *Ibid.*, 310.

philosophical literature this view is usually founded on the belief that human beings are autonomous, rational, and capable of self-governance, and that their possibilities are a combination of a universal human nature and their own autonomous control.¹⁵³ I here outline the conception of subjectivity which is rooted in the thought of Kant, who provides the groundwork for deontological approaches to ethics. Deontological approaches to ethics are focused on universal moral duties owed to all human beings, who by their nature deserve respect, and are grounded on the premise that human nature is generally rational, ahistorical, autonomous and capable of making independent, objective judgments. My intent here is not to offer a detailed historical comparison between Sartre on the one hand and Kant on the other, but rather to trace the roots of the contemporary liberal subject in Kantian thought in order to show how Sartre challenges key points of this view. I choose to contrast Sartre's view of the subject with Kant's subject because as we will see, Sartre directly mentions Kant several times and specifically differentiates his position from Kant's. Additionally, the phenomenological tradition of which Sartre's philosophy is a part was strongly influenced by Kant's thought. Kant presented the view that there was a distinctly human experience of the world, focusing on how our categories of rationality structure the objects of our experience.

Through this discussion we will see that Sartre's views challenge Kant's in four key ways. First, Kant posits an ahistorical "noumenal self" that exists externally to the historical and material realm. For Sartre, as we have seen, our historicity and materiality are integral to our subjectivity. Second, the two thinkers diverge regarding the meaning

¹⁵³ Christman, *The Politics of Persons*, 2; Kymlicka *Liberalism, Community and Culture*, 1-2.

bestowed externally onto human actions, which Kant argues is given by the moral law. Third, Kant argues for a robust sense of autonomy of the will, which is a contrast to Sartre's strong focus on the passive dimension of the self and limits on freedom. Fourth, the two thinkers diverge regarding the nature and role of freedom in human experience. All of these differences result in the two thinkers having significantly different visions of that which comprises our possibilities for being subjects.

5.1 Kant and the Noumenal Self

Kant's view of subjectivity is characterized primarily by three premises: 1) each person has an ahistorical "noumenal self" which is independent of the empirical world, 2) human beings possess a strong sense of autonomy, and 3) humans are free to the extent that they can choose whether or not to follow the moral law. This is in addition to the view that the moral law is universal and that the moral value of an action is not affected by historicity.

Kant's view of the subject must be understood in terms of his philosophical divide between the things as they appear to us, or the phenomenal realm, and things as they exist without being conditioned by our rationality, or the noumenal realm, which he also refers to as the "thing-in-itself." Kant argues that we are incapable of experiencing the world as a thing-in-itself because we are separated from the world by the workings of our intellect.¹⁵⁴ Our experience of the world is necessarily conditioned by our universal faculties of sense perception and rationality, and we only interpret the world after it has been processed through the categories of our understanding. This

¹⁵⁴ Immanuel Kant, *The Critique of Pure Reason*, edited and translated by Paul Guyer and Allen Wood (Cambridge: Cambridge University Press, 1998), 106-120.

conditioning is the same for every human being, and is at the heart of Kant's view of human nature.

Kant applies his distinction between the phenomenal and noumenal realm to human beings and uses it to argue that there is no inherent contradiction between causality and human freedom. Now, Kant's principles of understanding require that we understand the objects of experience through causation.¹⁵⁵ The idea of transcendental freedom, which is an event not purely caused, is what provides the foundation for the concept of practical freedom, the ability to choose without necessitation or, in other words, to perform actions free from determining causes.¹⁵⁶ Normative moral judgments, Kant says, require that an individual's choice could "produce something determined in the temporal order in accord with empirical laws, and hence begin a series of occurrences entirely from itself."¹⁵⁷ In Kant's view, the possibility of practical moral philosophy necessitates that we are free to act outside of a causal series.

To solve this problem, in his "Third Antinomy" Kant makes a distinction between the intelligible and empirical character of a human being. Kant defines the empirical character as the causally determined self that exists in the world of appearances:

[F]or a subject in the world of sense we would have first an empirical character, through which its actions, as appearances, would stand through and through in connection with other appearances in accordance with constant natural laws.¹⁵⁸

The empirical character is subject to the same natural laws of causality, just as all other objects in the phenomenal world. However, Kant argues that there must also be an

¹⁵⁵ Kant, *Critique of Pure Reason*, 532-533.

¹⁵⁶ *Ibid.*, 533.

¹⁵⁷ *Ibid.*, 534.

¹⁵⁸ *Ibid.*, 536.

intelligible character that exists in the realm of the thing-in-itself and is not subject to these same causal laws:

[O]ne would also have to allow this subject an intelligible character, through which it is indeed the cause of those actions as appearances, but which does not stand under any conditions of sensibility and is not itself appearance.¹⁵⁹

Kant's argument is that freedom can only be attributed to the intelligible character--the "noumenal self"—not the empirical one, because the empirical character is bound by the causal laws of nature and is not free of necessity.¹⁶⁰ Kant returns to this split between the empirical and noumenal self in his ethical work, the *Groundwork for the Metaphysics of Morals*. He says:

[A] rational being must regard himself as intelligence (and not from the side of his lower powers), as belonging to the world of understanding and not to that of the senses. Thus he has two standpoints from which he can consider himself and recognize the laws of the employment of his powers and consequently of all his actions: first, as belonging to the world of sense under laws of nature (heteronomy), and, second, as belonging to the intelligible world under laws which, independent of nature, are not empirical but founded on reason.¹⁶¹

It is through this dualistic conception of the self that Kant makes room for freedom of the will. The possibility of the freedom of the will allows Kant to posit his robust sense of human autonomy which is at the heart of his ethical thought.

This bridges into the second key characteristic of Kant's subject: that human beings possess a robust sense of autonomy. This autonomy allows objective, rational judgments that aid in self-determination. For Kant, human beings are moral *agents*—

¹⁵⁹ Kant, *Critique of Pure Reason*, 536.

¹⁶⁰ This distinction of Kant's has come under much criticism, but it would deviate too far from my purposes to discuss it here. See for example Jonathan Bennett, *Kant's Dialectic* (London: Cambridge UP, 1974) and "Kant's Theory of Freedom" in *Self and Nature in Kant's Philosophy*, edited by Allen Wood (Ithaca, NY: Cornell UP, 1984) 73-101.

¹⁶¹ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, 3rd Edition, translated by James Ellington (Indianapolis: Hackett Publishing, 1993), 53.

they have the ability and the responsibility to follow the moral law. Essential to this view of moral agency is the autonomy of the individual agent's will. In his third formulation of the Categorical Imperative, he writes that people should "always act as both subjects and sovereigns in the kingdom of ends."¹⁶² This means that human rationality creates the moral law and at the same time is subjected to it or should obey it. Kant is clear that genuine moral requirements originate in our ability for rational deliberation and are not based on values, principles, or ends that are imposed on the will from the empirical world. Wise judgments and moral decisions come from within, originating in reason *a priori*:

[W]e cannot possibly conceive of a reason as being consciously directed from outside in regard to its judgements; for in that case the subject would attribute the determination of his power of judgement, not to his reason, but to an impulsion. Reason must look upon itself as the author of its own principles independently of alien influences.¹⁶³

It is from this premise that Kant argues morality is universal and independent of social and historical circumstances. What matters for the issue being discussed here is that Kant views individuals as rational, autonomous agents who can separate themselves from the specificity of their circumstances to make objective reasoned judgments.

Third, Kant introduced the idea of the noumenal subject with the motivation of preserving the possibility of freedom. For Kant, freedom is grounded in our rationality and ability to understand the moral law, and thus freedom and morality are intrinsically linked:

A free will must find its ground of determination in the law, but independently of the material of the law... Thus freedom and unconditional practical law reciprocally imply each other. The moral law and how we act in relation to it

¹⁶² Kant, *Groundwork*, 44.

¹⁶³ *Ibid.*, 116.

together constitute freedom. It is therefore the moral law, of which we become immediately conscious as soon as we construct maxims for the will, which first presents itself to us; and, since reason exhibits it as a ground of determination which is completely independent of and not to be outweighed by any sensuous condition, it is the moral law which leads directly to the concept of freedom.¹⁶⁴

Kant argues that the moral law is discoverable through the use of reason alone without the need for empirical observation. The first two formulations of the Categorical Imperative (that one should act only in a way that is rationally universalizable and that no one should be treated only as a means) are dependent upon this universal conception of human rationality.

Thus, the key characteristics of Kant's view of subjectivity are as follows: Kant argues that all human beings have a "noumenal self" which makes free choices externally to the empirical realm, where it is not restricted by the laws of causality. The noumenal self is independent of the historical and material influences. Human beings possess a strong autonomy of the will and are free to obey or disobey the moral law, which is discoverable through the use of reason alone. This moral law is objectively given and does not vary in historical or social contexts. Historicity is seen as secondary to subjectivity, not as constituting it.

5.2 The Dialectical Spiral versus The Noumenal Self

We are now in a position to contrast Sartre's views with Kant's. The first difference regards the existence of the noumenal self which makes choices independent of the empirical realm, removed from history and materiality. Kant's noumenal self persists independently of historical norms, material scarcity, educational opportunities,

¹⁶⁴ Immanuel Kant, *The Critique of Practical Reason*, translated and edited by Mary Gregor (Cambridge: Cambridge University Press, 1997), 29

social institutions, or relationships with others. As we have seen, this is a significant departure from Sartre, who views human nature as a dialectical spiral resulting from an ongoing interaction between one's choices and the material in BN, and the historically conditioned worked matter of the practico-inert in CDR. The key difference is Kant's removal of the most defining characteristics of the subject from the empirical realm, thus divorcing it from historical, cultural, and social influences. It is in the image of the human project in CDR, as one that retains history as it surpasses it, that is in greatest contrast to Kant's noumenal self. Our encounter with human made objects, institutions, deeply engrained ideas, and class establish limits for what we can do and think.

Second, the two thinkers diverge regarding the meaning bestowed externally onto human actions, which Kant argues is given by both our universal nature and the moral law. For, Sartre, as we have seen, the meanings that we encounter in the In-itself or the practico-inert are imprinted by the freedom of human beings. There is no external, objective meaning or value that precedes our actions. Meaning is created through an interplay between individual freedom and collective significance inscribed in the "worked matter" of our experience. This point is elucidated in the following passage in which Sartre explicitly criticizes the Kantian view that the meaning of one's actions (potentially moral or immoral) precedes both the action itself and the person's own existence in the world. This, for Sartre, has instilled in many people the false view that meaning exists externally from experience. He writes:

[I]nstead of seeing that the transcendences there posited are maintained in their being by my own transcendence, people will assume that I encounter them upon my surging up in the world; they come from God, from nature, from 'my' nature, from society. These ends readymade and prehuman will therefore *define the meaning of my act even before I conceive it*.¹⁶⁵

¹⁶⁵ Sartre, BN, 568. Sartre's emphasis.

This passage is from BN, but this is also true in CDR. While the meanings embedded in the practico-inert precedes our individual existence, as I discussed, the practico-inert is subject referring and dependent on human praxis. Thus the world we occupy is dependent on our ancestors and on us. However, the nature of things is not given to us from anything outside of human affairs. The objective meaning posited by Kant with the universal moral law are not malleable, but the practico-inert, as a human construction, is.

Third, Kant argues for a robust sense of autonomy of the will, derived from our powers of reason. The contrast to this assertion is most apparent in CDR, in which Sartre emphasizes the importance of the passive dimension of self. Passive dimensions of self include the ways the practico-inert deflects our intended praxis through anti-praxis and counterfinality. Kant's strong sense of autonomy and its relation to morality suggests that we can use reason to determine the correct course of action. But this does not take into consideration the ways that our chosen actions (praxis) will be deflected by embedded inertia, making the choice of what to do never easily predictable. Passive dimensions of self also include serial rationality, Ideas, and the interiorization of class being. Given these strong constricting factors on our ability to both determine and complete our own ends or goals, Sartre's spiraling subjects cannot be considered autonomous in the same sense as Kant's. While Sartre does believe in the primacy of praxis over the practico-inert, his emphasis on the constraining forces of the practico-inert reveals that we are not primarily self-determining.

Fourth, the two thinkers diverge on the nature of human freedom and its role in our subjectivity. In BN Sartre explicitly rejects Kant's choice of intelligible character or noumenal self:

This is why we reject Kant's 'choice of intelligible character.' The structure of the choice necessarily implies that it be a choice in the world. A choice which would be a choice in terms of nothing, a choice against nothing, would be a choice of nothing and would be annihilated as choice.¹⁶⁶

In this passage, Sartre argues that a free choice is inconceivable if it is not made in relation to the In-itself. This particular criticism is made by many commentators of Kant.¹⁶⁷ Freedom for Kant exists only in relation to objective values (the moral law). "[A] free will and a will subject to moral laws are one and the same."¹⁶⁸ In contrast, Sartrean freedom in BN is the ability to choose values themselves in relation to collective, contingent, historical values that are offered to us. Sartre's freedom is one that is engaged in the world—it comes into being only through its existence in its historical situation which determines its possibilities.

In further contrast to Kant's view of freedom, Sartre argues that it is not the will that is the operation of freedom in the individual. The reflective decision to choose certain possibilities over others takes place in light of the original act of freedom that is our emergence into the world:

[T]he will, far from being the unique or at least the privileged manifestation of freedom, actually—like every event of the for-itself—must presuppose the foundation of an original freedom in order to be able to constitute itself as will. The will in fact is positive as a reflective decision in relation to certain ends. But it does not create these ends. It is rather a mode of being in relation to them.¹⁶⁹

While Sartre's view of freedom in BN is clearly different from Kant's, his revised view of freedom in CDR takes him even further away from the Kantian view, as consciousness and action become more deeply dependent on our physical environment

¹⁶⁶ Sartre, BN, 617.

¹⁶⁷ See again Bennett (1974 and 1984).

¹⁶⁸ Kant, *Groundwork*, 49.

¹⁶⁹ Sartre, BN, 571.

and the meanings engraved in matter. I identified three different operations of Sartrean freedom: practical choice, resistance, and imagination. Together they can lead to a transformation in one's project. All three of these manifestations of freedom are interdependent with the practico-inert. The first manifestation of freedom, practical choice, necessitates interaction with the empirical world to present those options. The second manifestation, resistance, require practico-inert circumstances against which to resist. The third manifestation, imagination, takes place with the practico-inert as the original foundation against which we imagine another state of affairs. Freedom for Sartre is deeply dependent on historical and material conditions and is inconceivable independent of the empirical realm.

These four differences between Sartre's and Kant's views result in very different framework for interpreting what conditions our possibilities as subjects. For Kant, our possibilities for being subjects are conditioned by our universal categories for rationality, objective, pre-existing moral values, and our freedom to obey or disobey the moral law. For Sartre, our possibilities are conditioned by material objects with collective meaning, language and ideas, encounters with others, and class—all which bear the traces of history within them. With the introduction of the practico-inert in CDR, the praxis/practico-inert spiral presents an even starker contrast to Kant. As I have noted, the practico-inert adds historical depth to every aspect of subjectivity, drawing a larger margin of difference between the noumenal self and the dialectical spiral. The practico-inert shows the full force of circumstances on our experiences, our comprehension of ourselves, and all of our decision making. This becomes especially

important when we explore ethics in Chapter Three—while for Kant, the moral law is timeless and objective, for Sartre, ethics is historically situated and dependent.

Conclusion

In this Chapter, we have seen that Sartre introduces a view of subjectivity as an ongoing project. In BN, this project is built by a relationship of nihilation between consciousness and matter. In CDR, the project is an ongoing spiral of consciousness mediated by matter, history, and sociality. CDR adds historical depth to the existential vision Sartre builds in BN and shows the full force of historical circumstances on the formation of our subjectivity. The introduction of the practico-inert introduces a realm of worked matter comprised of physical objects, culture, and class. It introduces serial thinking, passive activity, and the effects of antipraxis and counterfinality on our project. Sartre constructs a socially, materially engaged historical agent whose possibilities are structured by material objects, language and ideas, culture, class, and sociality. This has consequences for Sartre's view of freedom, in which individuals' freedom must take place as a negotiation with that which is already given. The examples of people from the lower working classes, such as the Dop shampoo worker, show the limits on practical navigation, resistance, and imagination. CDR introduces passivity, seriality, antipraxis and counterfinality, and shows how these both limit and enable us.

Sartre's views are clearly at odds with the self-determining and objectively rational liberal subject. Kant's metaphysical move of positing the noumenal self outside of the empirical realm and his association of freedom with the universal moral law result in a subject whose possibilities are narrowly defined through limits which are independent of historical, social, and cultural situations. At the same time, Kant's

subjects are granted a robust sense of autonomy that they possess independently of individual material circumstances. Similarly, contemporary deontological and contractarian approaches rooted in Kantian principles see social and historical conditions as secondary to our subjectivity, not as constituting it.

As will be emphasized in detail in Chapter Four, Sartre's views on subjectivity have significant implications for the field and profession of healthcare. For example, the delivery of medicine in the United States is affected by the practico-inert in terms of the employer-sponsored private insurance system, which contributes to scarcity in the delivery of medicine in by limiting providers and constraining the treatment options providers can offer patients. Additionally, experiences with each other in the context of healthcare bring together individuals of many different economic and social backgrounds whose worldviews and conceptions of self and other have been shaped by their specific experiences unique to their social, historical context. Consequently the delivery of medicine is an intersubjective experience that unites individuals around a common object (for example, medical facility) but may result in serial relations between patients and providers. Additionally, the passive dimensions of self that Sartre identifies, including internalized ideas and discourses, are reflected in patients' and providers' beliefs and this affects the delivery and practice of medicine. Because healthcare requires cooperation between numerous agents to deliver care, seriality and serial reasoning are especially undesirable in this context. The freedom of both patients and providers is a matter of navigating amidst a set of sometimes very constraining limiting conditions. For example, providers' praxis is operates within limited time to interact with patients, shortage of staff, pressure from colleagues, facility rules, medical

codes of ethics, and the choices and desires of patients. In a Sartrean framework, individuals are becoming subjects with possibilities through healthcare practices, inscribed in a social, historical, material context, and affected by the practico-inert, scarcity, seriality, and other intersubjective encounters. Thus, a Sartrean approach to healthcare ethics provides a more encompassing analysis of the subject-forming dimension of healthcare than deontological approaches rooted in the thought of Kant.

In the next Chapter I will show how Foucault shares several of Sartre's assertions on social-historical subjectivity and the relationship of freedom and necessity in subject-formation. However Foucault's theory also challenges Sartre's assertions in several respects: Foucault rejects Sartre's notion that the relationship between the individual and one's environment is dialectical, arguing instead that subjects form through historical breaks, not constantly developing totalisations. Foucault focuses on unintentional mechanisms of power as structuring individual's ontological possibilities, a position that holds similarities and differences with Sartre's conception of practico-inert. Foucault's thought also challenges Sartre's view regarding the primacy of praxis by showing how unintentional mechanisms of power, such as biopower, can transform our material conditions. Contrasting Foucault's subject with a version of the liberal subject will also bring the differences between the two thinkers into greater clarity.

Chapter Two: Foucault and our Historical, Material, Social Possibilities: Systems of Thought, Strategies of Power, and Practices of the Self

Introduction: Foucault's Turn to the Subject

Michel Foucault's philosophy, like Sartre's, is focused on giving an account of the historically specific experiences of individuals. His corpus, including his early works on language and knowledge, his genealogical period focused on regulation of behavior, and his later lecture series on practices of the self, share at least one common goal with Sartre's work: to uncover how social, historical, and political forces shape the ontological and practical field of possibilities for individuals to become subjects. Foucault, like Sartre, examines specific social practices and discourses and shows that they have a historically dated origin and change over time. These social and historical practices make modes of thinking, speaking, and acting possible. Sartre began his philosophical exploration in *Being and Nothingness* by focusing on the conscious subject's experiences, and then later explored the external social forces which structure the possibilities for subjectivity in *The Critique of Dialectical Reason, Volume 1*. Foucault, in contrast, began his philosophical career by first exploring the social and historical sources of conditioning, and turned to the experiences of individual conscious subjects in his last lectures. Like Sartre, he also thought that his earlier works should be understood in light of his later conclusions.

In his lecture series *The Government of Self and Others* (GSO), Foucault retrospectively comments on his motives throughout his career. He states that throughout his works he has explored a "history of thought," which he describes as:

[A]n analysis of what could be called focal points of experience in which forms of a possible knowledge (*savoir*), normative frameworks of behavior for individuals, and potential modes of existence for possible subjects are linked together.¹⁷⁰

He identifies three different axes in his work: the axis of things, the axis of behaviors, and an axis of modes of subjectivity.¹⁷¹ In his works on the axis of things, for example in *The Order of Things* (OT),¹⁷² his interest was the lived experiences of subjects in different historical periods that were influenced by the creation of bodies of knowledge. This period focused on uncovering different standards for truth, that is to say, the rules governing speaking and acting that determine what is accepted as true. In the second axis where the focus is on behavior, for example in *Discipline and Punish* (DP),¹⁷³ and *The History of Sexuality* (HS),¹⁷⁴ Foucault analyzed how conduct was controlled, observed, and classified in order to establish different categories of normality and abnormality. Foucault refers to these systems of controls as “strategies of power,” understood in a non-pejorative way.¹⁷⁵ Foucault’s third axis, for example, *The Hermeneutics of the Subject*,¹⁷⁶ refers to modes of being a subject or practices of the self. This refers to ways that subjects perform practices on themselves in order to become a certain type of subject. The conditions for knowledge and truth, control over

¹⁷⁰ Michel Foucault, *The Government of Self and Others: Lectures at Collège de France, 1982-1983*, translated by Graham Burchell (New York: Palgrave Macmillan, 2010), 3.

¹⁷¹ *Ibid.*, 4-5.

¹⁷² Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books, 1994).

¹⁷³ Michel Foucault, *Discipline and Punish*, translated by Alan Sheridan (New York: Randomhouse, 1977).

¹⁷⁴ Michel Foucault, *The History of Sexuality Volume 1*, translated by Robert Hurley (New York: Vintage Books, 1990).

¹⁷⁵ *Ibid.*, 93.

¹⁷⁶ Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France 1981-1982*, translated by Graham Burchell (New York: Picador, 2005).

behavior, and practices of the self offer possibilities for experiences in each historical epoch. It is by navigating these possibilities that subjects emerge. Every stage of his thought, Foucault says:

[T]ried to define to some degree what could be called “experiences.” The experience of madness, the experience of disease, the experience of criminality, and the experience of sexuality are, I think, important focal points of experiences in our culture.¹⁷⁷

Foucault’s famous explorations of human thought and behavior are ultimately about experiences people have that influence what they think, speak about, and do. In “The Subject and Power,” Foucault echoes these statements, asserting that his interest throughout his philosophical works was ultimately “to create a history of different modes by which, in our culture, human beings are made subjects.”¹⁷⁸

During his second axis of study, in *The History of Sexuality*, Foucault identifies a strategy of power he calls “biopower.” Biopower refers to a diverse set of controls which developed after the Western discovery that human beings are a species. Foucault describes biopower as the “numerous and diverse techniques for achieving the subjugation of bodies and the control of populations,”¹⁷⁹ and defines it as “the set of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power.”¹⁸⁰ With the emergence of biopower, mechanisms of conditioning were put into place to foster new understandings of human life processes and to control or modify them. Foucault argues

¹⁷⁷ Foucault, GSO, 5.

¹⁷⁸ Michel Foucault, “The Subject and Power” in *The Essential Works of Michel Foucault, 1954-1984, Volume 3: Power*, edited by James Faubion (The New Press, 2001), 326.

¹⁷⁹ Foucault, *The History of Sexuality* (HS), 140.

¹⁸⁰ Michel Foucault, *Security, Territory, and Population* (STP), translated by Graham Burchell (New York: Palgrave Macmillan, 2007), 1.

that biopower has dominated Western thinking and life processes for the past several centuries, and the introduction of biopower was an important moment in our recent historical past. Understanding how our subjectivity is constituted today must include an exploration of biopower and the disciplinary mechanisms or “mechanisms of security” that accompany it. Although Foucault believes that strategies of power comprehensively shape our field of possibilities, he nevertheless argues that there is still room for freedom in his thought, which takes the form of resistance and critical reflection. We will see that freedom for Foucault is not an unconditional characteristic of human consciousness, as it is for Sartre, but a practice that individuals can participate in.

Foucault’s view of the subject, like Sartre’s, calls into question many characteristics of the liberal subject that are presupposed in mainstream healthcare ethics. In Chapter One I examined the liberal roots of the deontological subject using Kant’s work. In this Chapter I present the liberal view of the subject found in the thought of John Stuart Mill, which is at the basis of contemporary rule-utilitarian approaches. Mill presents the view that human nature is defined by our rationality and ability to lead self-directed, autonomous lives that are free from interference from the state, culture, and custom. I show that Foucault’s analyses challenge Mill’s thought by rejecting an inherent human nature. In a Foucauldian interpretation, in *Utilitarianism* and *On Liberty*, Mill offers a set of historically specific practices for becoming a subject, and Mill’s thought has historical limitations, not universal application. Additionally, for Mill, the subject exists prior to being potentially interfered with or left alone. This is in contrast to Foucault’s argument that the subject develops alongside our policies and

practices. Because Foucault presents his philosophical views through analysis of historical examples, I will illustrate this point with a contemporary example.

Hence, the objective of this Chapter is fourfold: 1) to explicate how Foucault argues that possibilities for subjects are constituted through frameworks of thought, behavioral control, and practices of the self, 2) to focus on discipline and biopower in particular, illustrating their functioning and connection with contemporary subjectivity, 3) to show the role of freedom in Foucault's vision of subject-formation, and 4) to contrast Foucault's conception of the subject with the view of the liberal subject found in the work of John Stuart Mill.

1 Foucault and Subjectivity: Recent Literature

There are many recent historical studies tracing Foucault's views on subjectivity and how it relates to his different focal points throughout his career. Jon Simons,¹⁸¹ for example, focuses on Foucault's conceptualizations of power and resistance in his genealogical period, or axis of behavior, focusing on the relationship between truth, power, and ethics. Simons focuses on discipline, normalization, and biopower as they infiltrate possibilities for subjectivity. He shows how resistance against these mechanisms is necessary for actively fashioning our own subjectivity, and allows us to carve our own identities. He pays great attention to resistance of power mechanisms as a practice of freedom.¹⁸² My project will be different from Simons' because, first, I include all three of Foucault's periods in my analyses, second, I focus on biopower as a

¹⁸¹ Jon Simons, "Power, Resistance, Freedom," in *A Companion to Foucault*, edited by Christopher Falzon, Timothy O'Learly, and Jana Sawicki (Chichester: Wiley-Blackwell, 2013) 301-319.

¹⁸² *Ibid.*, 311.

life-affirming mechanism, third, I emphasize critical historical reflection as a practice of freedom, and, fourth, I contrast Foucault's views on subjectivity and the liberal version found in Mill.

Amy Allen's project discusses three different moments in Foucault's corpus, focusing on his examination of madness, the subject and normalization in prison, and practices of the self.¹⁸³ She argues that all three of these moments in Foucault's thought can be interpreted through the lens of the subject formed through power. Allen focuses on *Madness and Civilization*,¹⁸⁴ *Psychiatric Power*,¹⁸⁵ and the *Hermeneutics of the Subject*. She argues that there is continuity in all three periods of Foucault's career, and works that are traditionally separated as incompatible periods of Foucault's thought actually show coherence and consistency. All three eras, in Allen's view, can be considered studies of power. Even though Foucault had not yet fully developed his own concept of power during his first axis, Allen argues that power is present in the text. All three axes can also be considered investigations into the discursive and non-discursive possibilities for subjectivity. Last, Allen argues that all three periods show consistency in terms of the relationship between truth and subjectivity.¹⁸⁶ She argues that Foucault uses different concepts and analytical frameworks as tools in each period to examine historical experiences, but always focused on the problematics of power, subjectivity, truth, discourse, and knowledge.¹⁸⁷ I am in agreement with Allen that Foucault is using

¹⁸³ Amy Allen, "Power and the Subject," in *A Companion to Foucault*, 337-352.

¹⁸⁴ Michel Foucault, *Madness and Civilization*, translated by Richard Howard (New York: Pantheon, 1965).

¹⁸⁵ Michel Foucault, *Psychiatric Power: Lectures at the Collège de France, 1973--1974. Volume 1*, translated by Graham Burchell (New York: Palgrave Macmillan, 2008).

¹⁸⁶ Allen, "Power and the Subject," 350.

¹⁸⁷ *Ibid.*

different tools to study the same themes throughout all three axes. I will emphasize in more detail how each period is an analysis of historically specific practices that introduce a field of possibilities for subjects to emerge.

Johanna Oksala provides recent work tracing Foucault's concept of biopower to his concept of governmentality, which refers to the actual historical practices and technical means through which Western liberal democracies are governed.¹⁸⁸ Oksala traces the shift in Foucault's thought from studying disciplinary power and biopower in his earlier genealogical periods to his focus on the administrative state in his lecture series *Security, Territory, and Population*. In this lecture series, she argues, Foucault transfers his discussion of the new interest in "populations" that arose with biopower into the context of the power of the political state.¹⁸⁹ She argues that Foucault convincingly shows that disciplinary power was never more important or valuable than the moment when it became useful to control people at the level of populations. She argues that Foucault's shift of interest from the specifics of disciplinary institutions to that of governments was not a change in focus, just an extension of his interest in power and how discipline and biopower became integrated into security apparatuses of the state. The new concept of "population" that arose in the 18th century led to government officials having interest in things like birth and death rates, labor capacity, and economic potential. To govern a population meant to have some degree of control over these characteristics. Oksala writes, "[W]e live in society in which a complex managerial and administrative apparatus governs a population by means of policies, tactics, and

¹⁸⁸ Johanna Oksala, "From Biopower to Governmentality," in *A Companion to Foucault*, 320.

¹⁸⁹ *Ibid.*, 325.

strategies in the name of wellbeing and care.”¹⁹⁰ She emphasizes that this shift to the state having an interest in controlling these aspects of the “population” as a whole produced a new type of subjectivity that was carefully regulated by various apparatuses of the state.¹⁹¹ Oksala provides a convincing and useful account of Foucault’s interests in his lectures on governmentality, their connections with earlier works, and how biopower and mechanisms of security are related to subjectivity. My work will go beyond Oksala’s in that I focus on Foucault’s views of subjectivity in all three periods of his career, and emphasize the contemporary relevance of biopower and mechanisms of security for understanding contemporary subjectivity, especially as it relates to healthcare practices.

In a comprehensive work, Robert Strozier¹⁹² outlines Foucault’s views on subjectivity as they relate to different representations of subjectivity in various periods and thinkers in the history of Western Philosophy, including the Sophists, Renaissance thinkers, Descartes, Kant, and Freud. Strozier examines these traditions against the background of Foucault’s work, especially Foucault’s later writings on care of self as a practice of self-relation and Foucault’s idea of historical subjectivity in general. Strozier argues that almost every treatment of subjectivity in the history of Western thought is related to the idea of the “originating subject” in which the subject is a starting point that produces culture and history. In contrast, he characterizes Foucault’s view as one in which the subject is produced by culture and history. For example, Strozier comments on Kant:

¹⁹⁰ Oksala, “From Biopower,” 328.

¹⁹¹ *Ibid.*, 320.

¹⁹² Robert Strozier, *Foucault, Subjectivity, and Identity* (Detroit: Wayne State University Press, 2002).

The Kantian ahistorical subject defines an essential part of the discourse of modernity; it is this transparent subject and object of knowledge from which scientific knowledge is produced. On the other hand, it is this same subject that, by a later turn of the discursive element, becomes obscure, demanding autonomy, ahistoricity, and escape from determination by scientific discourses.¹⁹³

Strozier includes commentary on how Foucauldian genealogy can be used to reveal how categories related to race, gender, or sexual orientation have been produced by culture or history. This provides us with insight into how these categories might be disrupted. In other words, showing a lack of necessity in the categories through which we identify ourselves can help us rethink the boundaries of those very categories.¹⁹⁴ These are possibilities enabled by Foucault's view of the subject, which would not be possible if we view the subject as the origin or starting point. Strozier provides an important, comprehensive study that engages with many different thinkers throughout history to show the uniqueness of Foucault's views. My analysis will be different from Strozier's to the extent that, first, I focus more on contemporary subjectivity as it relates to biopower and mechanisms of security in particular, second, I draw connections between biopower and ethics in Chapter Three, third, I compare Foucault's subject to the view of the subject found in Mill, and, fourth, show the relevance of Foucault's thought for contemporary healthcare policy analysis.

In a recent work, Arun Iyer¹⁹⁵ explores the epistemological implications of Foucault's discursive practices and Heidegger's history of being, and argues that the two thinkers significantly expand the notions of knowledge and thought. Iyer traces how

¹⁹³ Strozier, *Foucault, Subjectivity, and Identity*, 20.

¹⁹⁴ *Ibid.*, 79-99.

¹⁹⁵ Arun Iyer, *Towards an Epistemology of Ruptures: The Case of Heidegger and Foucault* (New York: Bloomsbury, 2014).

both philosophers argue that thought is not just an act by which the object is represented in an idea, and knowledge is not just a state of the mind of the individual subject corresponding to the object. Both Heidegger and Foucault argue that thought is a dynamic process in which the subject and the object gain their respective identities alongside each other. Iyer shows how for both, knowledge is the opening up of a space in which the subject and object can encounter each other and in which true and false statements about an object then become possible. Iyer focuses on Foucault's argument in his first axis focused on knowledge and thought. My project is different from Iyer's to the extent that I examine Foucault's views on subjectivity in all three of his periods (or "axes"), and emphasize how power is shaping our possibilities today. I will draw on Iyer's work as appropriate when exploring Foucault's first axis.

In short, my work differs from all current work on Foucault to the extent that I, first, explore all three periods or "axes" through the lens of how Foucault argues that these practices are shaping a field of possibilities for becoming a subject. Second, I focus specifically on how biopower and mechanisms of security are influencing our possibilities for subjectivity in the present. Third, I draw a comparison of Foucault's views with the work of Mill. Fourth, I show the implications of Foucault's views for contemporary healthcare ethics. As my objective in this Chapter is to explain how Foucault argues throughout various stages of his career that subjectivity is constituted through discursive practices, behavioral control, and practices of the self, I will focus primarily on illustrating these concepts through a close reading of the primary texts. I will draw on secondary literature when appropriate to highlight important concepts in Foucault's views on subjectivity.

2 First Axis: Discursive Practices and Possible Knowledge in *The Order of Things* and *The Archaeology of Knowledge*

2.1 *The Order of Things*

In *The Government of Self and Others* (GSO), Foucault says that in order to study subjectivity as constituted through the axis of things he sought to:

[I]dentify the discursive practices which were able to constitute the matrices of possible bodies of knowledge, and study the rules, the game of true and false, and, more generally, the forms of veridiction in these discursive practices.¹⁹⁶

In the texts that can be retrospectively interpreted as belonging to his first axis of study, Foucault argues that the systems of thought we use to order and arrange objects of possible knowledge are governed by justificatory frameworks (or rules) that operate below the reflective awareness of individuals. These rules determine the boundaries of what is able to be thought of and spoken about at a certain time. In *The Order of Things* (OT) Foucault explores how precise historical changes led to new ways of thinking in three different eras. These changes rearranged the ways we ordered and interpreted potential objects of knowledge. Foucault says that any relationship between a subject and an object necessarily takes place within an epistemological domain or a field of knowledge, which he calls *savoir*. Knowledge as *connaissance* refers to a particular corpus of knowledge such as biology or psychology. Knowledge as *savoir* refers to the conditions and relations that allow *connaissance* to emerge:

By *connaissance* I mean the relation of the subject to the object and the formal rules that govern it. *Savoir* refers to the conditions that are necessary in a particular period for this or that type of object to be given to *connaissance* and for this or that enunciation to be formulated.¹⁹⁷

¹⁹⁶ Foucault, GSO, 4.

¹⁹⁷ Foucault, OT, 15.

Thus, a field of conditions for knowledge (*savoir*) is necessary for there to be subjects and objects at all, as this field provides the conditions and categories for thought to take place during this period. Foucault refers to this field of knowledge as each epoch's *episteme*. Foucault frames his central question as follows: "Generally speaking, what does it mean, no longer being able to think a certain thought. Or to introduce a new thought?"¹⁹⁸ To answer this question he explores three different eras of thought to show that each had very specific historical conditions of possibility.¹⁹⁹ In this text, when Foucault refers to "thought," he does not mean the intentional conscious activity of an individual's mental deliberations, such as Sartre means with *praxis*. Rather, "thought" refers to an anonymous field of material relations that allow us to distinguish objects of knowledge.

In Iyer's discussion of OT, he uses the phrase "crossing the threshold of subjectivity and objectivity" to indicate that in different historical periods, there were different standards, or thresholds, that subjects and objects were required to cross in order to be distinguished and individuated.²⁰⁰ At the level of speaking and writing, a field of knowledge manifests as a discursive formation: a complex group of elements which make it possible for subjects to be subjects and for subjects to define objects. The various elements that comprise a discursive formation cannot be considered purely subjective, as existing only in human thought, nor objectively independent of our thinking them. Rather, the discursive formation defines the boundaries between subjects and objects. A discursive formation, that is to say, a system of thought, describes how

¹⁹⁸ Foucault, OT, 50.

¹⁹⁹ *Ibid.*, 386-387.

²⁰⁰ Iyer, *Towards an Epistemology*, 120.

different elements in each period are *related* to each other. A discursive formation stipulates the boundaries between valid and invalid, truth and falsity, and subject and object. As Iyer comments, “[I]t specifies the threshold an individual thought, belief, or idea has to cross in order to be eligible for classification of true or false.”²⁰¹ Discursive formations are not consistent progressions in which subjects are able to give better accounts of objects of knowledge. Rather, discursive formations are characterized by rupture and historical breaks.²⁰²

In OT, Foucault examines the Renaissance, the Classical age (sixteenth to eighteenth century) and the contemporary period (late eighteenth century to the first half of the twentieth century). He traces the transitions of how subjects ordered and related objects of knowledge in each of these periods, and the transitions in the conditions enabling subjects to speak about and have knowledge of objects. Foucault believes it is intuitive to assume a correspondence between the objects we perceive and the words we use to describe them.²⁰³ However, he rejects this simplistic view of a correspondence between the language we use and the objects that language is intended to represent. Rather, subjects and objects define themselves within an *episteme*, an anonymous framework of relations that determines their place in the order of things.²⁰⁴ Although there is no way to return to previous forms of thought, Foucault suggests that exploring the conditions for the possibility of thought will enable the possibility for us to think differently.

²⁰¹ Iyer, *Towards an Epistemology*, 120.

²⁰² Foucault, OT, 12; Iyer, *Towards an Epistemology*, 117-118.

²⁰³ Foucault, OT, 9-10.

²⁰⁴ Foucault, OT, 160; Iyer, *Towards an Epistemology*, 119.

In OT, Foucault says that in the 16th century (the Renaissance period), people understood and arranged objects in terms of similarities, resemblances, and oppositions. Foucault comments, “The nature of things, their coexistence, the way in which they are linked together and communicate is nothing other than their resemblance.”²⁰⁵ In these passages, Foucault emphasizes that resemblance or similitude was the threshold of determination, as Iyer would put it, through which both subjects and objects could be distinguished. Things became nameable and susceptible to conceptualization through relationships of similitude with other objects. Being a subject with beliefs about self and the world was a matter of deciphering relationships between different types of objects. One crossed the threshold of subjectivity by discovering “the hidden resemblances and kinship, attraction, or secretly shared nature within them.”²⁰⁶ During this period, magic and mythology were considered valid foundations for knowing, as they explained resemblances between things and how they were related to each other.²⁰⁷

In the Classical period, beginning in the 17th century, Foucault argues that there was a shift in the *episteme*. People began to understand and interpret things through representation rather than resemblance. Magic and mythology were replaced with scientific understanding. Foucault argues that this was not a moment of enlightenment in which new thinkers began to interpret the world properly in contrast to their predecessors. Instead, what occurred was a rupture in the discursive formations that articulated the boundaries in which thought could take place. In the Classical period, objects were now classified scientifically in ordered series and tables based on their

²⁰⁵ Foucault, OT, 29.

²⁰⁶ Foucault, OT, 55; Iyer, *Towards an Epistemology*, 128.

²⁰⁷ Foucault, OT, 31-33.

complexity. Things were arranged by quality and quantity.²⁰⁸ Objects became objects, or, as Iyer says, crossed the threshold of objectivity, when susceptible to scientific analysis. Establishing oneself as a subject then became a matter of “providing oneself by intuition with a distinct representation of things, and apprehending clearly the inevitable connection between one element in a series with that which immediately follows it.”²⁰⁹ The meeting of subject and object now takes place on the level of intuition. Scientific measurement becomes the new means of interpreting objects and the properties of an object capable of objective measurement become the new threshold for knowledge.²¹⁰

Foucault argues that at the end of the 18th century, thought undergoes another rupture, one that is impossible to objectively describe because our own thinking is still characterized by it. As order replaced resemblance in the Classical age, in the contemporary age, order was replaced with History. In this *episteme*, objects gained a new level of depth and complexity. Objects now become objects not through visible measurement and order, but through their functions within human experience. We began to interpret objects based on how they emerge and give rise to each other.²¹¹ Physical properties are no longer sufficient for things to be objects for us, as objects of knowledge possess more depth. Studying living beings means studying organizational systems. We are able to talk about an economics characterized by labor and production rather than economics as quantifiably representing exchange of wealth. We are now able to recognize a historicity to language and study how it changes over time.²¹²

²⁰⁸ Foucault, OT, 53.

²⁰⁹ Ibid., 51.

²¹⁰ Foucault, OT, 55; Iyer, *Toward an Epistemology*, 128.

²¹¹ Foucault, OT, 219-221; Iyer, *Towards an Epistemology*, 133.

²¹² Foucault, OT, 232-236; Iyer, *Towards an Epistemology*, 135.

These changes in the threshold of objectivity (how objects were established as objects) were accompanied by changes in the threshold of subjectivity. The new mode of subjectivity was being a “man” or a human being as understood by the new human sciences. This was a new concept that did not exist in the previous *episteme*:

Before the end of the eighteenth century *man* did not exist—any more than the potency of life, the fecundity of labor, or the historical density of language....It has been too easy to imagine that he had been waiting for thousands of years in the darkness for that moment of illumination in which he would finally be known.²¹³

In this passage, Foucault argues that the concept of a “human being” as now understood by the human sciences is only a recent mode of being a subject, not a subject that has been present all along but just not understood or discovered. In the modern *episteme*, human beings are no longer just subjects who have knowledge of objects, but became objects of knowledge themselves:

[N]o philosophy, no political or moral option, no empirical science of any kind, no observation of the human body, no analysis of sensation, no imagination, or the passions, had ever encountered, in the seventeenth or eighteenth century, anything like man; for man did not exist (any more than life, or language, or labour); and the human sciences did not appear when, as a result of some pressing rationalism, some unresolved scientific problem, some practical concern, it was decided to include man...among the objects of science...they appeared when man constituted himself in Western culture as both that which must be conceived of and that which is to be known.²¹⁴

The depth gained by both subject and object in the modern *episteme* makes it so objects are interpreted and organized through the complex categories of life, labor, and language, which are not reducible to sortable physical properties. When people began to understand humans both as possessors of knowledge and themselves susceptible to observation and study, it was believed that these new bodies of knowledge were

²¹³ Foucault, OT, 308.

²¹⁴ *Ibid.*, 344-345.

revealing previously uncovered truths about the nature of the human. Foucault, on the contrary, emphasizes that the standards for knowing objects actually provided a change in the conditions for thinking about objects at all, and placed us in a new position in relation to objects.²¹⁵

Foucault's arguments in OT have implications for his vision of social and historical subjectivity and its relation to practice. If our subjectivity is interwoven and only emerges alongside the objects we are able to think and speak about, our social and political practices are also formulated through these categories that make reasoning possible. The thresholds for being a subject who knows and the establishment of human beings as objects to be known also affect how we view and relate to others. Perhaps most importantly, though, by showing that we used to think differently and that the conditions for speaking, writing, and knowing have changed over time, Foucault's analyses enable a rejection of inevitability in the way we categorize objects, including individuals. This allows us to question the nature of the concepts and justifications that we use, and consequently also question the thinking behind our own practices.

2.2 The Archaeology of Knowledge

The second text that can be interpreted as belonging to Foucault's first axis of study is *The Archaeology of Knowledge* (AK).²¹⁶ In this text, Foucault explores how the ways we think and speak about objects is interwoven with precise historical conditions. By examining the conditions for how things are spoken and written about, Foucault is

²¹⁵ Foucault, OT, 344-346.

²¹⁶ Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (AK) (New York: Pantheon Books, 1972).

simultaneously studying how our experiences of speaking and writing create possibilities for us to be subjects. Foucault states that this book belongs to the “field in which the questions of the human being, consciousness, origin, and the subject emerge, intersect, mingle, and separate off.”²¹⁷

In AK, Foucault introduces the term “archaeology” to refer to a historical exploration of “archives,” or systems regulating speech and thought. As Foucault is not interested in the logical or grammatical structures behind what we say and do, he examines discourse in terms of statements rather than sentences. A statement, unlike a sentence, cannot be written or spoken at any time, but occurs in a context. A statement may not necessarily have the grammatical structure of a sentence or the logical structure of a proposition, but it must have a referent (something to which it refers), a subject (one who produces the statement), an associated field (rules for the body of knowledge it belongs to), and a materiality (the means through which the statement can be expressed).

The statement:

[I]s a function of existence that properly belongs to signs and on the basis of which one may then decide, through analysis or intuition, whether or not they ‘make sense,’ according to what rule they follow one another or are juxtaposed, for what they are the sign, and what sort of act is carried out by their formulation (oral or written).²¹⁸

Statements occur in a context and are governed by informal rules that are created and enforced through the practices of knowing subjects. They emerge in relation to existing fields of knowledge, institutions, and authorities.

Statements take place within the context of a discursive practice. By discursive practice, Foucault means “a body of anonymous, historical rules, always determined in

²¹⁷ Foucault, AK, 16.

²¹⁸ *Ibid.*, 89.

the time and space that have defined a given period, and for a given social, economic, geographical, or linguistic area.”²¹⁹ Hence, we can speak of a “historical *a priori*” in the sense of the conditions necessary for the emergence of true statements. The historical *a priori* designates a group of rules that characterize a discursive practice. These rules are not imposed from the outside, but are interwoven amidst the things they regulate.²²⁰

Foucault says that archaeology focuses on how and in what form political practice “takes part in [the] conditions of emergence, insertion, and functioning”²²¹ of a discourse. This refers to how the rules for speaking about something are formed at a specific time. The body of rules governing discourse, Foucault argues, include “surfaces of emergence,” which refers to the existing fields into which a new discourse emerges. The rules also include “authorities of delimitation” which refers to those individuals and institutions who are trusted to define the boundaries of what is true and false regarding this object of knowledge. Further, the body of rules includes “grids of specification,” or, the systems according to which the different types of the object are divided, contrasted, related, or classified.²²²

For example, Foucault examines the concept of “madness” and how the rules governing speaking and thinking about madness changed over time. We do not find consistency, but rupture in the different ways that madness was considered an object to be known:

The unity of the object ‘madness’ does not enable to individualize a group of statements, and to establish between them a relation that is both constant and

²¹⁹ Foucault, AK, 117.

²²⁰ *Ibid.*, 127.

²²¹ *Ibid.*, 164.

²²² *Ibid.*, 41-42.

describable...The unity of discourses on madness...would be the interplay of the rules that make possible the appearance of objects during a given period of time: objects that are shaped by measures of discrimination and repression, objects that are manifested in pathological descriptions, objects that are circumscribed by medical codes, practices, treatment, and care.²²³

What provides unity and structure to a discourse is not the nature of the object of knowledge, but the set of rules that governs the way the objects are thought about.

Madness as form of deviance or mental illness was not conceptualized over time through purely objective descriptive statements about it. Rather, its boundaries emerged in the different roles the concept played in societal practice.

In the 17th and 18th century, Foucault argues that madness was spoken about using medical statements. The rules determining the truth about madness were derived from the rules that were used to talk about other types of disease. Madness was contained through confining people deemed to be mad in order to separate them from the healthy public. In the 18th century, the surfaces of emergence were constituted by family, social group, work situation, and religious community. Each of these fields was normative and had different tolerance for deviance, “degrees of rationalization, conceptual codes, and types of theory,”²²⁴ which determined what counted as mad. In the 19th century, new surfaces began to function: art, sexuality, and penalty. It was during this time, Foucault says, that sexuality’s deviations first became subject to psychiatric analysis and the object of madness became associated with sexual deviance. Additionally, madness was previously carefully distinguished from criminality, but with the new field of penalty, criminals were seen as mad or mentally ill.²²⁵

²²³ Foucault, AK, 32-33.

²²⁴ *Ibid.*, 41.

²²⁵ *Ibid.*

The 19th century also brought with it changes in the authorities of delimitation. “In the nineteenth century, medicine...became the major authority in society that delimited, designated, named, and established madness as an object.”²²⁶ By medicine, Foucault means institutions, individuals who practice medicine, and medicine as a body of knowledge and practice, which were viewed by the public and government officials as authoritative sources. New authorities of delimitation also included agents of the state, as madness was incorporated into the determination of appropriate punishment with new definitions and categories affecting how people were sentenced. In the 19th century new grids of specification also emerged and the object of madness took on a new depth. Madness was classified in relation to the soul, the physical body, and the life and history of individuals.²²⁷

These surfaces of emergence, authorities of delimitation, and grids of specification do not provide fully formed objects of knowledge that are then then susceptible to being known. Instead, they provide tools of differentiation that allow madness as an object of knowledge to be possible. It was a web of relations between medicine, the justice system, and how these fields were practiced that led to the formation of a group of objects susceptible to conceptualization.²²⁸ As a consequence of Foucault’s argument, a subject cannot speak about any object at any time, nor do objects present themselves to us without conditions. Objects do not wait to be discovered by us, but emerge from “a complex group of relations.”²²⁹ When we examine the relations in a discursive formation, “what we discover is neither a configuration, nor a form, but a

²²⁶ Foucault, AK, 42.

²²⁷ *Ibid.*

²²⁸ *Ibid.*, 44.

²²⁹ *Ibid.*

group of *rules* that are immanent in a practice, and define it in its specificity.”²³⁰ Objects that can be spoken about emerge from the practices of speaking, thinking subjects. Subjects do not consciously, intentionally create these objects of thought. Subjects become subjects with beliefs about themselves, the world, and others through interaction with these practices and objects. The kinds of subjects we are and the kinds of things we know and speak about cannot be separated from each other, but come to be concurrently.

Again, we can interpret AK in light of Foucault’s own retrospective overview of his objectives. Discursive practices play a prominent role in shaping our lived experiences. Through speaking with others, especially those perceived as authorities, criteria emerge for understanding the truth about ourselves and others. Subjects are constituted as subjects by the different roles that can be assumed within the discourse:

[A]ccording to a certain grid of explicit or implicit interrogations...[the subject] is the questioning subject, and, according to a certain programme of information, he is the listening subject; according to a table of characteristic features, he is the seeing subject, and, according to a descriptive type, the observing subject.²³¹

A system of formation for a particular discourse or group of statements does not stem from a transcendental subject, rather, from a “regularity of practice.”²³²

In his axis of things, Foucault makes a convincing case for the historical contingency of thought and discourse. He shows that discourse is a *practice*, resulting from a complex web of relations, intertwined with individuals and institutions which lead to categories through which objects come to be known and spoken about. Subjects are both originators of those statements and objects of them. By assuming a position

²³⁰ Foucault, AK, 46.

²³¹ *Ibid.*, 53.

²³² *Ibid.*, 74.

within these statements and objects, subjects develop beliefs about self, other, and world.

3 **Second Axis: Discipline, Biopower, and Mechanisms of Security**

3.1 *Discipline and Punish*

Foucault's second method for examining subjectivity involves "studying the techniques and procedures by which one sets about conducting the conduct of others."²³³ This is Foucault's focus in his genealogical period, in which he traces the history of modern social institutions such as prison systems. Whereas his archeological period focused on the relations present in different *episteme*, his genealogical period was focused on the question of *why*. Why were there transitions from one way of thinking to another? The point of a genealogical analysis is to show the transformations from one form of thinking to another, one type of practice to the next, and to reveal that systems of thinking and regulation are the result of contingent historical changes.

The answer to the question of *why* is found in Foucault's exploration of what he calls "mechanisms of power." Typically when power is discussed in philosophical discourse it refers to intentional domination over or oppression of others, and is almost always associated with the authority of the state or a group. Foucault's conception of power is much broader. Foucault calls power a "complex strategical situation in a particular society"²³⁴ which involves methods for regulating conduct. This includes direct limits placed on behavior or ways that subjects are conditioned to govern

²³³ Foucault, GSO, 4.

²³⁴ Foucault, HS, 93.

themselves. These methods “involve a set of rational techniques, and the efficiency of those techniques is due to a subtle integration of coercion-technologies and self-technologies.”²³⁵ In other words, subjects exercise power in their interaction with others and are simultaneously submitted to power in any society with institutions and rules. Power relationships, as Foucault understands them, are not external to other types of relationships. Rather, they are immanent in all of our relationships. For example, relationships between experts, teachers and students, family members, sexual partners, doctors and patients, public officials, and citizens all involve power relations.²³⁶ Foucault further describes power as “the strategies, the networks, the mechanisms, all those techniques by which a decision is accepted and by which that decision could not but be taken in the way it was.”²³⁷ From this viewpoint, power parallels Sartre’s practico-inert—systems, attitudes, and structures that no one individual designs or intends. Foucault writes:

Power relations are both intentional and nonsubjective...there is no power that is exercised without a series of aims and objectives. But this does not mean that it results from the choice or decision of an individual subject...[its] logic is perfectly clear, the aims decipherable, and yet it is often the case that no one is there to have invented them, and few who can be said to have formulated them.²³⁸

The mechanisms and techniques which lead subjects to behave and decide in a certain way are, Foucault says, “not something invented by the individual himself. They are models that he finds in his culture and are proposed, suggested, imposed upon him by

²³⁵ Michel Foucault, *The Politics of Truth*, translated by Lysa Hochroth and Catherine Porter, edited by Sylvère Lotringer (Los Angeles: Semiotexte, 1997) 155.

²³⁶ Foucault, STP, 2.

²³⁷ Michel Foucault, *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, edited by Lawrence Kritzman (London: Routledge, 1988), 104.

²³⁸ Foucault, HS, 95.

his culture, his society, and his social group.”²³⁹ Individuals are born into systems of power and power relations operate in every societal context. It is only because of power relations that bodies of knowledge (*connaissance*) can emerge.

According to Foucault, two modern forms of power operating since the 19th century in Western society are discipline and biopower, although these two strategies are intertwined and employ overlapping techniques. In *Discipline and Punish*, Foucault exemplifies both disciplinary power and the roots of biopower by tracing the shift in punitive mechanisms from public torture and execution to the modern system of imprisonment. The common assumption is that this transition occurred because society realized that imprisonment is a more humane way to punish than public execution. Foucault calls this assumption into question and shows that the shift to imprisonment was actually the result of precise historical changes in the way that behavior came to be seen as controllable for public goals.²⁴⁰

Foucault argues that public torture and execution in the 17th and 18th century had a specific set of aims: it was not meant to reform or correct behavior, but intended to enact the vengeance of the law, display sovereign authority, and make an example of what would happen if one trespassed against the ruling class.²⁴¹ In the 18th and 19th centuries, there was a shift in punitive mechanisms. Foucault traces some of the changes in punitive measures to a change in the types of crimes that were committed—violent crime decreased and economic crime increased. In response to this change, gentler

²³⁹ Michel Foucault, *The Essential Works of Michel Foucault, 1954-1984, Volume 1: Ethics: Subjectivity and Truth*, edited by Paul Rabinow (New York: The New Press, 1997), 291.

²⁴⁰ Michel Foucault, *The Essential Works of Michel Foucault, 1954-1984, Volume 3: Power*, translated by Robert Hurley, edited by James Faubion (New York: The New Press, 2001), 339.

²⁴¹ Foucault, DP, 53-55.

punishments were introduced that were commensurable with the crime committed.²⁴² These new methods of control were not based on a newfound respect for the “humanity” of criminals, but were motivated by an effort to increase control over the social body. The aim of reform, ultimately, was “to make of the punishment and repression of the illegalities a regular function, coextensive with society; not to punish less, but to punish better.”²⁴³ According to Foucault, punitive techniques of this period established a new set of individuals with the authority to punish. The new techniques were intended to preemptively condition people’s thinking and behavior rather than only exerting physical punishment on the body after a crime was committed, as was the aim of public torture and execution. In other words, instead of seeking simply to physically punish someone by inflicting pain on his or her body, discipline was a process of convincing people to change their conduct.²⁴⁴

In addition to the introduction of new control over behavior, Foucault explains that the 18th century also saw a new interest in the modification of the human body.²⁴⁵ Several new techniques of control were introduced: subtle coercions, gestures, and attitudes which were controlled by isolating and observing prisoners and then motivating or coercing them to act in a certain way. These new methods can be considered “disciplines” and they paved the way for the emergence of the prison system. “The human body was entering a machinery of power that explores it, breaks it down, and rearranges it.”²⁴⁶ New methods were present in educational, disciplinary, and medical

²⁴² Foucault, DP, 76. Also 106.

²⁴³ *Ibid.*, 82

²⁴⁴ *Ibid.*, 102.

²⁴⁵ *Ibid.*, 137.

²⁴⁶ *Ibid.*, 138.

institutions such as schools, hospitals, and prisons. While each of these institutions had different explicitly stated social aims, they employed overlapping techniques to achieve their ends.

To illustrate this point, Foucault uses the example of military hospitals. He argues that it is impossible to dissociate the disciplinary measures of the 18th century from new advances in medicine and the way that disease was treated. Disease was now treated by controlling bodies and influencing minds. Disciplinary and medical practices developed alongside one another:

[A]n administrative and political space was articulated upon a therapeutic space; it tended to individualize bodies, diseases, symptoms, lives and deaths; it constituted a real table of juxtaposed and carefully distinct singularities. Out of discipline, a medically useful space was born.²⁴⁷

Schools, hospitals, and prisons all introduced new, but similar, means of evaluation and classification. Although there was some variation in implementation, Foucault identifies three primary features of disciplinary apparatuses in these institutions: hierarchical observation, normalizing judgment, and examination.

First, new mechanisms of observation were introduced in which observers could watch or regulate without themselves being seen. Foucault says that this process “was secretly preparing a new knowledge of man.”²⁴⁸ Hospital buildings allowed a controlled environment for observation and separation of patients. Schools became structures of observation, many having living quarters that enabled students’ behavior to be seen and regulated.²⁴⁹ Through the power of functional surveillance, “disciplinary power became

²⁴⁷ Foucault, DP, 144.

²⁴⁸ *Ibid.*, 171.

²⁴⁹ *Ibid.*, 172-173.

an ‘integrated’ system, linked from the inside to the aims of the mechanism in which it was practiced.”²⁵⁰

New methods of surveillance and control allowed the establishment of institutional standards and introduced processes of normalization. By normalization, Foucault means the introduction of a prescriptive norm and the subsequent classification of individuals based on their deviation from the norm. Normalization is integral to the application of techniques of discipline. Foucault argues that within 18th century schools, hospitals, and prisons, five new disciplinary operations came into play in order to bring subjects in line with a specific behavioral standard—to normalize them. First, there were strategies for comparing the actions or behavior of individuals to a standard principle or rule to be followed regarding what could be said and done and at what times. These standards could be educational (different methods of testing), medical (quarantine, prescribed therapies), or punitive (isolation or required work in prison) depending on the institution in which they were employed. Second, these procedures differentiated individuals from each other by the extent to which they followed the overall educational, behavioral, or medical standard. Third, authorities in these institutions measured the value of abilities or nature of individuals in order form a plan of correction. Fourth, a process of training and correction with measurable standards for progress was introduced. This established a system for evaluating and categorizing subjects as “good” and “bad” “healthy” and “sick” “normal” and “deviant.” Fifth, by marking gaps, hierarchizing qualities, skills, and aptitudes, these various normalizing processes established a limit that defined the boundaries of normal and abnormal

²⁵⁰ Foucault, DP, 176.

subjects.²⁵¹ If subjects were considered abnormal, behavioral controls were introduced to bring them in line with the norm. Through a very precise system of controls, there emerged a framework for individuals to understand themselves and others as normal or abnormal.

Hierarchical observation and normalization within schools, hospitals, and prisons were then combined to comprise techniques of examination. “It is a normalizing gaze, a surveillance that makes it possible to qualify, to classify, and to punish.”²⁵² The examination involved the evaluation of individuals by experts designated to speak the truth about them. These experts used standards of measurement to determine if the individual was of normal intelligence for one’s grade level, of normal health, or exhibited normal behavior.²⁵³ Individuals could be classified and categorized, and comparative systems were established:

[I]t is the individual as he may be described, judged, measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalized, excluded, etc.²⁵⁴

The system of disciplinary controls that emerged in the 19th century and permeated several different institutions made specific lived experiences possible for individuals that presented them with knowledge about themselves.

Through the new mechanisms of disciplinary power a new *connaissance* formed: criminology, which studies the offender, the convict, the delinquent, and the dangerous individual and constitutes them as objects of knowledge.²⁵⁵ Categories for classifying

²⁵¹ Foucault, DP, 181-183.

²⁵² *Ibid.*, 184.

²⁵³ *Ibid.*, 187.

²⁵⁴ *Ibid.*, 191

²⁵⁵ *Ibid.*, 248-251.

subjects emerged: some were considered psychologically deviant and incurable, some with strong intellectual capacities that needed redirection, some whose delinquency stemmed from lack of knowledge and therefore had to be educated, and some who were simply incapable of functioning on their own and must be permanently integrated into the prison.²⁵⁶ Subjects now could compare their own criminal case to others and formed their beliefs through the new categories of normalcy and deviance established by criminology.

The knowledge about and the ability to control facets of human life, which was such an integral part of disciplinary power, was then applied at the level of populations. This is what Foucault refers to as “biopower.”

3.2 *Biopower: The History of Sexuality and Security, Territory, Population*

Biopower incorporates the strategies of disciplinary power, but applies them to human beings at the level of populations. Power manifested itself through the control of human life processes with the aim of advancing the proliferation of life. For example, power functioned to increase the possibilities for longevity and the health of populations by regulating birthrates, organizing shared space, and vaccinating. This new understanding of life as susceptible to manipulation and the accompanying strategies introduced a historical break in thinking, speaking, and acting. According to Foucault, this break fundamentally changed the way power was exercised by public officials:

Power would no longer be dealing simply with legal subjects over whom the ultimate dominion was death, but with living beings and the mastery it would be able to exercise over them would have to be applied at the level of life itself; it was the taking charge of life...one would have to speak of biopower to designate

²⁵⁶ Foucault, DP, 252-254.

what brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life.²⁵⁷

With the emergence of new bodies of knowledge surrounding human life processes came the power to regulate the human body. The flourishing of the human population was the newly established goal:

If the question of man was raised—insofar as he was a specific living being, and specifically related to other living beings—the reason for this is to be sought in the new mode of relation between history and life: in this dual position of life that placed it at the same time outside human history, in its biological environment, and inside human historicity, penetrated by the latter's techniques of knowledge and power.²⁵⁸

Biopower introduced new historical era and an alteration in human historicity. The new techniques of knowledge and power specific to this historical era understood subjects in terms of our species' biological life processes. As emphasized by Oksala, this new knowledge became the rational principle behind Western governmental institutions.²⁵⁹

In Foucault's 1977-1978 lecture series *Security, Territory, and Population* (STP), he discusses how discipline and biopower were manifested in governmental processes starting in the 18th century. By incorporating elements of disciplinary power with the new understanding of the human species at the level of populations, society from the 18th century forward was controlled through what Foucault refers to as "mechanisms of security."²⁶⁰ Mechanisms of security integrate techniques associated with disciplinary power such as surveillance and normalization and apply these techniques at the level of populations. Biopower utilizes the same techniques as discipline, but the application of these techniques is governed by a different set of

²⁵⁷ Foucault, HS, 143

²⁵⁸ Ibid.

²⁵⁹ Oksala, "From Biopower," 325.

²⁶⁰ Foucault, STP, 6.

objectives. For example, biopower was at play when calculating average rates of criminality, when statistically predicting theft in a specific town or region, when trying to design penal systems which tended to reduce these rates, and costs of incarceration weighed against cost of crime.²⁶¹ The general objective became keeping a type of criminality within an optimal average and acceptable limits.²⁶² Mechanisms of security identified not only a norm but also an optimal average. There was a standard with which individuals should be brought into conformity, and thus an acceptable rate of failure.²⁶³

As Oksala correctly points out, mechanisms of security do not constitute a break from previous forms of discipline, but need disciplinary strategies in order to function.²⁶⁴

To guarantee security in any given society:

[O]ne must appeal to a whole series of techniques for the surveillance of individuals, the diagnosis of what they are, the classification of their mental structure, of their specific pathology, and so on; in short one has to appeal to a whole disciplinary series that proliferates under mechanisms of security and is necessary to make them work.²⁶⁵

What characterizes the emergence of new technologies of biopower is that they are strategies aimed at either distinct forms of social control, or directed at modifying something in the biological destiny of the species.²⁶⁶

In his second axis, Foucault showed how transitions in thinking occurred and new institutional practices were introduced. He did not argue that the new controls over behavior were necessarily a transition to better ways of doing things. It was merely a change in how people were conditioned to behave and relate to others. Discipline and

²⁶¹ Foucault, STP, 4-5.

²⁶² *Ibid.*, 5.

²⁶³ *Ibid.*, 6.

²⁶⁴ Oksala, "From Biopower," 325.

²⁶⁵ Foucault, STP, 8.

²⁶⁶ *Ibid.*, 10.

biopower are important for understanding our subjectivity today, because our modern epoch is still affected by this shift in power strategies. Just as we cannot objectively describe our modern system of thought characterized by History, we cannot completely divorce ourselves from strategies of biopower and discipline and think and act independently of them.

4 The Third Axis: Practices of the Self and *The Hermeneutics of the Subject*

In contrast to Sartre, later in his career Foucault shifts his focus to individuals' conscious experiences as his starting point. Foucault describes his third method for examining subjectivity as follows: “[I]nstead of referring to a theory of the subject, it seemed to me that one should try to analyze the different forms by which the individual is led to constitute him or herself as a subject.”²⁶⁷ In a historical context very unlike his study of the prisons, Foucault examines some of these forms of subjectivity in Greek, Hellenistic, and early Christian culture in his lecture series *The Hermeneutics of the Subject*. In these lectures, Foucault examines the philosophical attitude of “care of self” through the different forms it took in each of these historical periods. In this study, Foucault reveals that this philosophical attitude was a *practice*, a principle which formed the rationale for various forms of conduct. Caring for self involved a range of tests, meditative practices, and actions through which one attained self-knowledge.

Foucault argues that beginning with Plato and then solidifying with Descartes, modern Western philosophy has understood the Greek proposition “know thyself” (*gnothi seauton*) as the primary means of access to truth, while overlooking that in

²⁶⁷ Foucault, GSO, 5.

ancient thought, *gnothi seauton* was only possible in conjunction with “care of self” (*epieleia heautou*). When Descartes introduced the self-evidence of the subject’s existence as the foundation for knowledge, *gnothi seauton* became the sole starting point for accessing the truth. *Gnothi seauton*, with Descartes, was no longer a form of knowing oneself in terms of care of and self-knowledge, but a matter of the impossibility of doubting one’s own existence.²⁶⁸ Foucault believes that the Greek mandate to care for oneself played an equally important role in how the Greeks understood the path to truth, as caring for oneself was the “justificatory framework, ground, and foundation for the imperative ‘know yourself.’”²⁶⁹

Foucault argues that the era guided by the principle of “care of self” included a sense of spirituality that we have lost today. Spirituality, he says, refers to the:

[S]earch, practice, and experience through which the subject carries out the necessary transformations on himself in order to access the truth...[Spirituality] postulates that the truth is not given to the subject by a simply act of knowledge (*connaissance*)...It postulates that for the subject to have right of access to the truth he must be changed, transformed, shifted, and become, to some extent and up to a certain point, other than himself.²⁷⁰

In ancient Greek, Roman and Hellenistic thought, individuals did not simply receive the truth by studying different bodies of knowledge. Subjects were required to perform practices on themselves in order to be capable of receiving the truth. A philosophical way of life that incorporated spirituality required active work upon oneself to make oneself different and capable of receiving the truth. After the Cartesian turn, access to the truth became possible through the autonomous development of knowledge as

²⁶⁸ Foucault, *Hermeneutics*, 14.

²⁶⁹ *Ibid.*, 8.

²⁷⁰ *Ibid.*, 15.

connaissance, and no longer required preparing oneself to receive the truth.²⁷¹ Thus, while Foucault expresses admiration for care of self and the role it played in Greek, Roman, and Hellenistic subjectivity, the requirement to change oneself in order to be capable of knowing is not a part of our modern mode of thinking, speaking, and doing.

The care of self is, Foucault says, a way of considering things, behaving in the world, and relating to others. Such a care was a careful examination of what we think and what takes place in our thought. Further, it required a series of actions performed upon oneself such as techniques of meditation, memorization, examination of conscience, rites of purification, techniques of withdrawal, practices of endurance, and preparation for death.²⁷² Foucault is particularly drawn to the Hellenistic era of practices of the self, referring to it as the “golden age in the history of the care of the self.”²⁷³ In the Hellenistic period, care of the self became a universal principle, applicable to everyone in every stage of life.²⁷⁴ Foucault believes that this was a privileged moment in terms of the relationship of the subject to truth.

The Hellenistic period was characterized by self-conversion, which involved the intention “to live with oneself, to ‘dwell in oneself’ and to remain there.”²⁷⁵ Through this practice, subjects gained independence and self-control, and experienced self enjoyment. Training to care for the self as a practice served several functions: a critical function, in which one must rid oneself of bad habits and false opinions; a function of struggle, in which the practice of self was conceived of as an ongoing battle for which

²⁷¹ Foucault, *Hermeneutics*, 24.

²⁷² *Ibid.*, 10-11.

²⁷³ *Ibid.*, 81.

²⁷⁴ *Ibid.*, 83; also, 254.

²⁷⁵ *Ibid.*, 495.

one must be prepared to fight for one's entire life; and a curative function, a matter of healing the soul.²⁷⁶ For example, the Epicureans prepared for life's possible events by knowing the principles that govern the world, the nature of the gods, the laws of nature, and the causes of life and death. These beliefs were accompanied by a system of thought, expressed through discourse, about our place in the natural order of the world. These discourses were meant to be available to subjects when they needed them and were appropriated through various methods: memory, listening, reading, writing, and mental exercises for retaining what one had learned.²⁷⁷ True ideas were not simply passed from an expert to an individual who received them passively. The truth about us and the world was not directly accessible, but was attainable only after subjects prepared themselves to receive it.

For example, Foucault identifies the most famous thought exercise as the meditation of future evils, which was practiced diligently by the Stoics. This practice involved not only imagining the very worst thing that might happen, no matter how unlikely, but also envisaging that this awful thing had already occurred, such as the death of one's child. Through this process, subjects could convince themselves that these things were not actually real evils, but only appeared to be due to the individuals' worldly attachments.²⁷⁸ For practices of testing oneself, Epictetus, for example, introduces a method of controlling representations and being vigilant over one's thoughts, in order to practice reactions to specific situations, such as the death of a relative:

²⁷⁶ Foucault, *Hermeneutics*, 496-497.

²⁷⁷ *Ibid.*, 500.

²⁷⁸ *Ibid.*, 469-473.

[T]he aim of this control of representations is not to decipher a hidden truth beneath appearances, which would be the truth of the subject himself. Rather, [Epictetus] finds in these representations, as they appear, the opportunity for recalling a number of true principles concerning death, illness, suffering, political life, etcetera.²⁷⁹

Foucault considers the meditation on or training for death as the very height of these practices. The Hellenistic philosopher Seneca was very experienced in the death meditation, ordering one to live each day as if it were the span of one's whole life. One assumes each day to be one's last, but in assuming it, one reflects back on one's life as a whole. This exercise allowed the subject to see one's present from above or "immobilize the present in a snapshot."²⁸⁰ This meditation also provides a retrospective view of one's whole life, enabling one to grasp the value of the present moment and comprehend one's life as a totality.²⁸¹

In his third axis, Foucault exemplifies subjects' own participation in the creation of the truth about themselves, others, and the world. He also demonstrates how differently thought, knowledge, and truth were conceived of and practiced in a previous period. During this epoch, the justificatory framework for access to the truth was one of active involvement and self-creation. Our contemporary modes of subjectivity, by contrast, do not include this kind of spirituality and take place in an epoch where our social practices are intertwined with mechanisms of discipline and biopower.

²⁷⁹ Foucault, *Hermeneutics*, 504.

²⁸⁰ *Ibid.*, 479.

²⁸¹ *Ibid.*, 480.

5 Foucault and Freedom

By showing that our possibilities are constructed through historically specific anonymous material relations and strategies of power, Foucault argues for a strong influence of historical circumstances on our thoughts, words, and actions that may make it difficult to see room for subjects to be free. However, by showing that many factors of the world that people believe to be self-evident or universal are actually the product of contingent historical circumstances, Foucault argues that he actually opens up new possibilities for freedom. He says:

It is one of my targets to show people that a lot of things that are a part of their landscape—that people think are universal—are the result of some very precise historical changes. All my analyses are against the idea of universal necessities in human existence. They show the arbitrariness of the institutions and the space of freedom we can still enjoy and how many changes can still be made.²⁸²

In Foucault's view, however, freedom is not an originary ontological characteristic of all human consciousness as it is for Sartre. Instead, it is a practice in which subjects can participate. Allen comments:

[F]reedom, for Foucault, takes place within an axis of immanent power relations; it is an embodied practice; and it is connected to the spiral movement by means of which thought breaks free of its own discursive and non-discursive conditions of possibility.²⁸³

In two different stages of his career, Foucault describes two ways in which subjects can exercise freedom: resistance and critical reflection.

²⁸² Michel Foucault, *Technologies of the Self: A Seminar with Michael Foucault*, edited by Luther Martin, Huck Gutman, and Patrick Hutton (Amherst: University of Massachusetts Press, 1988), 11.

²⁸³ Allen, "Power and the Subject," 349.

5.1 Freedom as Resistance

With respect to *resistance*, Foucault claims that it is only possible for power to operate if participating subjects have some room for freedom. Power *relations* entail different strategies for pushing back or defying strict mechanisms of control. In an interview, he says:

In order for power relations to come into play, there must be a certain degree of freedom on both sides... This means that in power relations there is necessarily the possibility of resistance because if there were no possibility of resistance there would be no power relations at all.²⁸⁴

Freedom as resistance requires that there are still options for subjects in terms of how they behave and potentially resist against norms, even though the behavior chosen will be interpreted and categorized based on the norms present in a power relation. Power cannot operate in a framework of strict determinism—it is exercised by subjects, not blind machines. Thus, there will always be some degree of consent, or lack thereof, from other subjects:

Power is exercised only over free subjects, and only insofar as they are “free.” By this we mean individual or collective subjects who are faced with a field of possibilities in which several kinds of conduct, several ways of reacting and modes of behavior are available... there is not a face-to-face confrontation of power and freedom as mutually exclusive facts... but a much more complicated interplay. In this game, freedom may well appear as the condition for the exercise of power (at the same time its precondition, since freedom must exist for power to be exerted, and also its permanent support, since without the possibility of recalcitrance power would be equivalent to a physical determination).²⁸⁵

Power as regulation of conduct always allows multiple reactions from individuals, even if subjects are being encouraged or coerced to act or think in a certain way. The existence of an authoritatively desirable way for subjects to think, speak or behave opens

²⁸⁴ Foucault, *Essential Works 1*, 292.

²⁸⁵ Foucault, *Essential Works 3*, 342.

up the possibility of becoming a desirable or undesirable subject, or pushing back against a particular category of desirability.

The prominence of resistance as a form of freedom in Foucault's thought is emphasized by Simons, who argues that for Foucault, resistance is the most pertinent form of freedom within power mechanisms. According to Simons' interpretation, resistance occurs because power relations, even when dominating, never completely render subjects without options. Power mechanisms are fragmented and operate through different mechanisms with different focal points. While power relations are ubiquitous, "the same system of power relations does not fill the whole field of forces."²⁸⁶ One individual can be constituted as several different types of subjects: a "mad subject" a "deviant subject" or a "healthy subject" and these constitutions are not necessarily exclusive. Simons points out that all power relations have limits. Even within situations of political domination, there can be no power strategy so forceful that it can control the conduct of individuals who do not fear death. When it comes to power that is being exercised by the state or by public officials, enforcement through these mechanisms requires cooperation from the ruled subjects. This also opens possibilities for resistance in spite of, or because of, the presence of power mechanisms. Resistance can also take the form of a refusal to accept strict categories and classifications of subjects. By affirming identities previously understood as deviant, we can "dissolve the categorizations or subjections that construct sexual or other natures."²⁸⁷ The importance of striving for things like liberation from stringent sexual categories is not to affirm a different form of subjectivity, but to dissolve the boundaries for subjectivity in which

²⁸⁶ Simons, "Power, Resistance, Freedom," 311.

²⁸⁷ *Ibid.*, 313.

only these constructed categories are recognized as possible. In a later interview about his concept of power, Foucault again emphasizes that we must resist policies which cause us to define ourselves deterministically, stating that we must instead “promote new forms of subjectivity through the refusal of this kind of individuality that has been imposed on us for several centuries.”²⁸⁸ Locating and identifying possible resistances brings us to the next potential exercise of freedom.

5.2 Freedom as Critical Historical Reflection

A second practice of freedom that Foucault identifies is specifically directed at philosophers or intellectuals. In his essay “What is Enlightenment?” Foucault explores the historical context of philosophy during the period of Enlightenment and he presents a distinct task for philosophers today. He suggests that they adopt an inquisitive attitude and questioning of historical events and practices that have structured the possibilities for how we think, speak, and behave. He calls this a “historical ontology of ourselves.”²⁸⁹ Foucault himself undertook this task with his archaeologies and genealogies. This process of critical questioning must include:

[A] historical investigation into the events that have led us to constitute ourselves and to recognize ourselves as subjects of what we are doing, thinking, saying. [This critique] is not seeking to make possible a metaphysics which has finally become a science; it is seeking to give new impetus, as far and wide as possible, to the undefined work of freedom.²⁹⁰

When using the word “critical,” he explains, “I don’t mean a demolition job, one of rejection or refusal, but a work of examination that consists of suspending as far as

²⁸⁸ Foucault, *Essential Works* 3, 336.

²⁸⁹ Michel Foucault, “What is Enlightenment?,” found in *The Foucault Reader*, edited by Paul Rabinow (New York: Randomhouse, 1984), 16.

²⁹⁰ *Ibid.*

possible the system of values to which one refers when testing and assessing it.”²⁹¹ This mode of critical examination does not seek to uncover a metaphysics of human beings which would then be translated into a scientific discourse of the truth about ourselves. Instead, it would reveal our contingency. Foucault expresses a role for philosophers that does not consist of telling others what should be done, but instead asking new questions that are not currently being asked. Doing so enables the potential creation of new possibilities for pushing the boundaries of how we currently think, speak, and behave. This philosophical ethos, as Foucault calls it:

[O]pens up a realm of historical inquiry and put itself to the test of reality, of contemporary reality, both to grasp the points where change is possible and desirable, and to determine the precise form this change should take.²⁹²

He is careful not to advance the point of view that this historical ontology could give us complete and definitive knowledge of ourselves and our historical limits, as it is impossible to objectively remove ourselves from our current way of thinking.²⁹³ He suggests that the criticism makes an indefinite number of inquiries into the following questions: “How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own actions?”²⁹⁴ By posing these questions for different historical epochs, we unveil the contingency of how we think, speak, and act. The critical ontology of ourselves:

[H]as to be considered not, certainly, as a theory, a doctrine, nor seen as a permanent body of knowledge that is accumulating; it has to be conceived as an attitude, an ethos, a philosophical life in which the critique of what we are is at

²⁹¹ Foucault, “What is Enlightenment?,” 44.

²⁹² *Ibid.*, 46.

²⁹³ *Ibid.*, 47

²⁹⁴ *Ibid.*, 49.

one and the same time the historical analysis of the limits that are imposed on us and an experience with the possibility of going beyond them.²⁹⁵

This demonstrates that there is more to a Foucauldian view of freedom than only an individual's resistance to power mechanisms. Foucault considers his own philosophical studies to be, in a sense, practices of freedom.

To conclude the Chapter and show the novelty of Foucault's views on subjectivity and freedom, I will compare his vision of the social and historical subject to the subject found in the work of John Stuart Mill. Mill's thought is at the core of contemporary utilitarian approaches to healthcare ethics as well as the root of political approaches that rely on negative liberty. I compare Foucault to Mill because Mill's views provide a substantial contrast, and, as I will show, Mill's portrayal of the subject can be interpreted through a Foucauldian lens as offering a set of "practices of the self." Because Foucault presents his philosophical thought through the use of analysis of specific historical examples, I will use an example of a contemporary public practice to illustrate the differences between Foucault and Mill.

6 Foucault's Subject versus Mill's Liberal Subject

6.1 Mill's *Utilitarianism* and *On Liberty*

In his texts *Utilitarianism* and *On Liberty*, John Stuart Mill presents his case that morality should seek to obtain the greatest good for the greatest number of people, and that human beings flourish through freedom from intervention. He views freedom from intervention necessary for developing individuality, which he views as both good for

²⁹⁵ Foucault, "What is Enlightenment?," 50.

individuals and a means to a better society. This view is foundational for future political theories and ethical thought that are grounded in the principle that people should generally be left alone. Utilitarianism as an ethical theory aims at maximizing good outcomes for the greatest number of people, rather than, for example, prescribing universal maxims to guide action. The goal of rule-utilitarianism is to develop rules for society that will lead to the greatest happiness for everyone. Actions are morally good when they lead to consequences that make the most people happy or lead to their well-being.²⁹⁶ Mill argues in favor of formulating rules for society that result in more happiness for more people. He suggests shaping our “conduct by a rule which all rational beings might adopt with *benefit to their collective interest*.”²⁹⁷ This argument is now referred to as “rule-utilitarianism” and introduces rules for society that, if followed by everyone, lead to the greatest good for the greatest number. Mill’s thought can also be extrapolated into a defense of a system of moral rights. In this view, rights are not defended as ends in themselves, but because they are *instrumental* in realizing certain desirable ends. Mill himself says that when we refer to something as a person’s right, “we mean that he has a valid claim on society to protect him of possession of it, either by the force of law or by that of education and opinion.”²⁹⁸ These rights are grounded in general utility, that is to say, in the happiness they create for society as a whole.²⁹⁹ Mill’s ethical theory is founded on his assumptions about human beings’ nature and the subject.

²⁹⁶ John Stuart Mill, *Utilitarianism*, edited by George Sher (Hackett: Indianapolis, 2001).

²⁹⁷ *Ibid.*, 53, Mill’s emphasis.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

In *On Liberty*, Mill's main political text, he argues that freedom from state intervention will produce the best outcomes for the greatest number of people. His intention is to show the *utility* of what is generally referred to as negative freedom. Negative freedom is the removal of barriers or constraints over behavior. This is in contrast to positive freedom, which refers to collective interventions by the state or a group intended to help people realize their full potential. An ethical vision founded on negative freedom argues that it is morally good that individuals should generally be free from limits over their behavior. Mill presents the thesis that individuals are happiest if they are able to develop themselves independently of social and cultural customs. He also argues that such individuality will lead to the greatest benefits for society, as social progress results from the pursuit of a diversity of life paths.

Mill presents his thesis in *On Liberty* as follows:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection... The only part of the conduct of anyone for which he is amenable to society is that which concerns others.³⁰⁰

Let us call this the “no-harm-to-others principle.” At its core, it simply means that individuals should be free to do as they please as long as they are not causing harm to others. Their ability to make choices is what makes them distinctly human. When individuals exercise their ability to choose, they flourish individually and collectively. The “distinctive endowment of a human being,” Mill says, consists in our “faculties of perception, judgement, discriminative feeling, mental activity, and even moral preference.” These faculties are “exercised only in making a choice.”³⁰¹ Being able to

³⁰⁰ John Stuart Mill, *On Liberty*, edited by Elizabeth Rapaport (Indianapolis: Hackett Publishing Company, 1972), 9.

³⁰¹ *Ibid.*, 56.

make choices, on Mill's view, fulfills our purpose as human beings. Because we are the only creatures with the faculty of choice, Mill argues, human beings flourish when they can make their own decisions:

[I]t is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character.³⁰²

According to Mill, human well-being is achieved through the pursuit of self-directed ends, not from having our courses of action forced upon us through instructions or social and cultural customs. "He who chooses his plan for himself, employs all his faculties."³⁰³ If we are not using our rationality to be self-directed, according to Mill, we are not distinguishing ourselves from other species. He considers letting one's peers or societal customs determine one's life path as living an "ape-like one [life] of imitation."³⁰⁴

Although Mill acknowledges that culture and history do influence our individuality, he thinks it is necessary to train oneself to think and act independently of them. When people are able to do this, they can be said to have character:

A person whose desires and impulses are his own—are the expression of his own nature, as it has been developed and modified by his own culture—is said to have a character. One whose desires and impulses are not his own has no character.³⁰⁵

According to Mill, character develops through choosing one's own goals and life plans, being creative, and not allowing oneself to be defined solely by societal custom. The

³⁰² Mill, *On Liberty*, 55.

³⁰³ *Ibid.*, 66-67.

³⁰⁴ *Ibid.*, 56.

³⁰⁵ *Ibid.*, 57-58

possibilities to do so require the freedom to live as one chooses. Privacy and freedom from interference are thus key to a good human life:

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating [individuality] and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation.³⁰⁶

In contrast to the Kantian subject, Mill's subject cannot be considered purely ahistorical because subjects are shaped by their own experiences and historicity. However, Mill argues that the noblest form of human being removes oneself from socially and historically specific influences and becoming self-directed, thereby obtaining individuality. Developing individuality is foundational to human well-being and constitutes flourishing of human being's pre-given nature which persists throughout changes in historical epochs and circumstances.

Because Foucault rejects a universal nature of human beings as I have emphasized throughout the Chapter, Foucault would suggest that we understand this text within its historical context and as part of a system of thought and strategic societal arrangement. From a Foucauldian perspective of *On Liberty*, we could interpret Mill's prescriptions as a modern set of practices of the self. Michael Clifford argues that a Foucauldian reading of *On Liberty* reveals it as a contemporary "manual for living," which prescribes a model of political subjectivation, or urges us to become political subjects. This model works by encouraging individuals to interpret their actions, practices, beliefs, and ideals in order to constitute a specific mode of being in the world, what Clifford calls a "technology of political selfhood."³⁰⁷ Clifford argues that Mill's

³⁰⁶ Mill, *On Liberty*, 60.

³⁰⁷ Michael Clifford, "The Cultivation of Individuality: Foucault Reading Mill," *Revista De Filosofia* 11 (1995): 29.

view of the individual in *On Liberty* emerges from a historical framework for truth, knowledge, and ethics. Mill's support of negative liberty in the text is intended to "legitimize a space of emergence for the 'private, autonomous individual.'"³⁰⁸

With the introduction of the no-harm-to-others principle, Mill delineates a social framework in which freedom from interference provides a space for subjects to pursue their own view of the good life. This unhindered realm of action will enable subjects to develop their capacities. As Clifford reminds us, the *telos* of this model of subjectivity can be summed up through one word: happiness: "This is the happiness of the fully actualized human being, a being whose moral and mental faculties are developed to their fullest potential."³⁰⁹ It can be said that Mill's prescriptive model for subjectivity is guided by the justificatory principles of his historical epoch. During Mill's period, becoming a political subject entailed developing personal autonomy and individual freedom from state control. The ethical vision offered in this text can be considered useful to the extent that its principles are still operative in how we become subjects today, but its limits should be acknowledged alongside its use.

Foucault shows through his analyses of language, institutions, and practices that all thought and behavior are to some extent regulated from sources other than individuals themselves. Mill's argument that human nature flourishes best when it is essentially left alone is challenged by Foucault's observations that individuals and their possibilities are always influenced by circumstances outside of their control. In Mill's discussion of the political subject, he sets up a divide between subjects and their relationships with others and the societal practices of their time. Subjects exist first—

³⁰⁸ Clifford, "The Cultivation," 32.

³⁰⁹ *Ibid.*, 35-36.

there is no threshold they must pass in order to become a subject—and they possess a pre-given nature. This is why the subject can be left alone, can be interfered with, can interact with others, or stay away from them. In all cases, it is a subject's power of choice that defines him or her, and institutions, relationships, and practices are secondary. Their existence either hinders or assists the freely choosing self. Although Strozier's analysis did not include discussion of Mill, Mill's view of the subject could fit into Strozier's category of the "originating subject."³¹⁰ In Mill's view, the subject is a starting point which creates history and culture.

In contrast, according to Foucault's analyses, subjects do not exist outside of or prior to the mechanisms of power, bodies of knowledge, social practices, and relationships with others that characterize their time. Power, knowledge, and practice merge to form the categories for thinking. These conditioning factors enable the possibility for someone to be a subject at all. When a political subject comparable to the one offered by Mill is presupposed as a starting point for evaluating social practices, this presupposition overlooks the ways this practice is forming the possibilities for us to be subjects at all. The very frameworks through which we interpret normality and abnormality, what it means to be political, knowledgeable, moral, and free, are potentially affected by the practice.

Because Foucault's philosophy is presented through specific empirical analysis of examples, elucidating the difference between Mill's and Foucault's views of subjectivity is best achieved through an analysis of a concrete example. Let us examine a contemporary case which exemplifies current strategies of power and their influence

³¹⁰ Strozier, *Foucault, Subjectivity, and Identity*, 20.

on our subjectivity: the modern War on Drugs in the United States. I use the example of the War on Drugs because it exemplifies very clearly Foucault's concept of mechanisms of security and how mechanisms of security affect an array of relationships and frameworks for understanding ourselves. It is also a worthy example because philosophical literature on the issue approaches it through the lens of contemporary liberalism and the model of the subject found in Mill.

6.2 Foucault versus Mill: The War on Drugs

The "War on Drugs" in the United States began in the 1970s and continues to the present. This example is particularly illustrative of Foucauldian mechanisms of security, which refer to a series of disciplinary interventions aimed at the social body as a whole with the intention of establishing a norm at the level of populations. The War on Drugs is illustrative of mechanisms of security in four ways: First, a series of disciplinary interventions rationalized in terms of the overall health of the population were introduced. Second, the War on Drugs led to new ways of thinking and speaking about the use of drugs, and introduced new experts qualified to speak the truth about drugs. Third, this set of mechanisms significantly affected individuals' perception of self and their relationships with others. Fourth, it led to changes in police officers' interactions with the community. Fifth, it led to the categorizing of individuals as criminal or delinquent because of their drug use. Through discussion of each of these points below, it will become evident how the War on Drugs influences our contemporary possibilities for thinking, speaking, and doing.

First, the War on Drugs is a set of policies that was introduced out of concern for the welfare of the population. The mechanisms of security exercised over individuals are defended because they allegedly benefit the social whole. When Richard Nixon launched the War on drugs in 1971, he referred to drug abuse as “America’s public enemy number one.”³¹¹ The Drug Awareness Resistance Education (DARE) program, founded in the mid-80s, cited “community safety” as the number one reason to oppose drugs.³¹² The motivation for introducing tough drugs policies was not the harm drug offenders inflicted only on themselves, but the harmful effects that individual drug use could have on communities and the nation at large. If the concern was to prevent drug use in an individual, this was due to the belief that one person’s use of drugs influenced other people who may use drugs in turn.

Second, the War on Drugs led to the establishment of new ways of speaking about drug use and to the establishment of new authorities who were trusted to speak the truth about the effects of drugs. Slogans such as “Just Say No,” “Friends don’t let friends do drugs,” “This is your brain on drugs,” and “Zero tolerance” were communicated to parents and adolescents through experts such as doctors and police officers, and were relayed through television commercials, billboards, and other forms of media.³¹³ Currently, over 25,000 police officers are employed solely to fight drug

³¹¹ PBS, “Thirty Years of America’s Drug War: A Chronology” 2014 <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/>, accessed 12/9/2015. When the Anti-Drug Abuse Act was signed in 1986, it appropriated over 1 billion dollars to fighting the United States’ “drug crisis,” including money for education and building new prisons. This was the beginning of a system based primarily on punishment and incarceration of drug offenders rather than treatment.

³¹² National Institute of Justice, “Program Profile: Drug Abuse Resistance Education (DARE),” accessed 12/9/2015, <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=99>.

³¹³ Drug Policy Alliance, “Brief History of the Drug War,” accessed 12/9/2015, <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>.

usage.³¹⁴ Additionally, U.S. elementary and middle schools became institutional, disciplinary sites where children were informed of the truth about drugs by means of training and testing. These programs focused on resisting peer pressure, being informed of the effects of drugs, and, controversially, urging students to avoid individuals they knew who used drugs or considered doing drugs.

Third, through educational policies advanced through the War on Drugs, adolescents came to significantly associate their sense of self with the abstaining from or using drugs or alcohol. The most widely-used program was the DARE program which is still being used in many schools today. Lessons do not only target drug use but also discuss other topics pertaining to children's conception of self: personal rights and safety, resistance to peer pressure, self-image and self-esteem, identifying positive qualities in oneself and peers, managing stress, practicing assertiveness, role modeling, and building friendships. These topics are taught alongside discussions about the harmful effects of using drugs and gang activity, topics elementary school children may not be thinking about without DARE.³¹⁵ With a close documentation of student behavior, public agencies are able to track the effects of the program on drug use in adolescents and future adults.

Fourth, strategies employed through the War on Drugs, like all social practices, influenced an array of other relationships. One of the relationships most affected was

³¹⁴ James Gray, *Why Our Drug Laws Have Failed and What We Can Do About It: A Judicial Indictment Of War On Drugs* (Philadelphia: Temple University Press, 2001), 43-44.

³¹⁵ National Institute of Justice, "Program Profile." DARE states their own objectives as follows: "DARE uses the social influence approach to drug-use prevention. This psychosocial approach emphasizes and aims to strengthen children's refusal skills so they can better resist social pressures to try and use drugs. It also builds general social competencies to help prevent or at least delay adolescent drug use."

between police officers and citizens. In order to help police officers enforce strict, punitive drug laws, the federal government provided surplus military equipment to police departments beginning in 1996. Since then, many small-town police departments are now equipped with military style weapons. This funneling of military equipment changes the relationship with citizens who can be submitted to military weaponry like potential enemies to be combatted, arrested, and defeated rather than treated as individuals to be served and protected. This situation has in some instances caused an erosion of the trust and respect in police officers, who are often perceived as authoritarian oppressors by the groups targeted.³¹⁶ This is especially true in minority communities who have been disproportionately affected by drug laws.

Fifth, the criminalization of the use of drugs, and the categorization of individuals who use or sell drugs as delinquents or criminals has had the result of an increase in incarceration so much so that now the United States has the largest prison population in the world. In addition, because of the stigma surrounding drug use and possession, drug offenders who do complete their prison and parole time are afterwards unemployable and denied full integration back into society. The strict punitive mechanisms introduced for controlling drug use have created a new category of criminality with very harsh penalties, an increase in incarceration rate, and an added burden for rehabilitation.

³¹⁶ Congressman Hank Johnson, "The Failed 'War on Drugs' is Militarizing Law Enforcement, Fueling Police Violence," *Huffington Post*, December 24, 2014, http://www.huffingtonpost.com/rep-hank-johnson/the-failed-war-on-drugs-i_b_6043558.html; also Bill Trine, "The Genesis of Increasing Incidents of Police Brutality: The War on Drugs," *Prison Legal News*, June 3, 2015, <https://www.prisonlegalnews.org/news/2015/jun/3/genesis-increasing-incidents-police-brutality-war-drugs/>.

If we were to base our drug policy on a Millian approach grounded in his view of the unencumbered subject, this would, I argue, entail removing restriction over individuals as long as they are not causing harm to others. This would likely result in the removal of prohibition against individual drug use for some currently prohibited drugs that cause little harm, such as marijuana, as long as drug users are not putting others at risk by driving or working while under the influence of drugs. In Mill's conception of liberty, whether or not to use drugs would be a matter of one's own life choice. With proper freedom of opinion, privacy, and association, Mill would likely conclude that those who properly exercise their faculties would choose not to use drugs. Because most individuals on their own would choose not to use drugs, and because ending the War on Drugs could save money that could be put into other public services, end mass incarceration, and combat the stigma surrounding addiction in the US, this would lead to the greatest good for the greatest number.

This application of Mill is supported by a recent utilitarian argument from Andrew Koppelman. Koppelman provides an explicitly Millian critique of our current drug laws, advocating for a rights-based approach which "recognizes the rights of the majority of drug users who are prudent and responsible."³¹⁷ Koppelman argues that this is necessary for fostering the abilities of rational self-governance at the heart of modern liberal thought. Koppelman argues that the liberal ideal that we have the right to direct our own lives and the duty to respect others' right to direct their lives "depends on the existence of selves of the right kind: free, equal, self-governing agents who really do

³¹⁷ Andrew Koppelman, "Drug Policy and the Liberal Self," *Northwestern University Law Review* 100.1 (2006): 281.

make choices about what ends to pursue.”³¹⁸ The argument for drug prohibition is that drug users are no longer living these lives because drugs impair or eliminate their autonomy so that the state is justified in intervening. Koppelman argues that such reasoning is based on extreme worst case scenarios which only occur in a small number of addicts, not casual users.³¹⁹ Thus, according to Koppelman’s interpretation of Mill’s no-harm-to-others principle, casual drug users cause no harm to others and their own autonomy is not stifled or denied. Koppelman concludes that an approach based on the Millian conception of the liberal subject and the normative no-harm-to-others principle results in decriminalizing the use of drugs. Because his analysis presupposes an autonomous liberal self who is affected by drug policy, Koppelman does not consider the extent to which public policies regarding drug use affect the field of possibilities for becoming subjects at all.

If we look at the War on Drugs through a Foucauldian lens, identifying strategies of power and mechanisms of security, it results in a more robust analysis that properly accounts for the complexity of the issue. A Foucauldian analysis includes considering the role of discursive practices, the strategies of power operative in our institutions, and our relationships with others, as well as the ways that these conditioning forces influence decisions to use or abstain from drugs. A Foucauldian approach enables us to see what is at stake both in the current strategies surrounding the War on Drugs and the shortcomings of a “hands-off” approach derived from Mill’s vision of the subject. First, a Foucauldian analysis enables us to identify the rational principles and strategies of power operating behind the current policy. Second, according to a Foucauldian analysis,

³¹⁸ Koppelman, “Drug Policy,” 284.

³¹⁹ *Ibid.*, 292.

our regulation of drug usage affects categories for normalcy and deviance, and the labels we use to understand ourselves and others. It also, as exemplified, affects power relationships between various individuals, such as parents and children, police officers and the community, adolescents and their peers. Third, a Foucauldian analysis allows us to question the inherent necessity of current policies surrounding the current War on Drugs, including the link between drug use and incarceration.

First, as explained above, the War on Drugs was initially developed with the justification of the overall health of the social whole. Drug use was considered bad for the population, so that a series of disciplinary interventions were introduced in order to bring down drug usage rates. These interventions included: the legal standard, the introduction of abstaining from drug use as integral to being a “good” or “normal” child, and the incarceration and societal exclusion of offenders. It is important to note that if these policies worked as intended, it would have resulted in a decrease in drug use and abuse. Some studies show that the drug war has had no effect, while others suggest that the rate of drug use has actually increased as much as 34%.³²⁰ The continued use of drugs by individuals in spite of a legal standard designed to bring the population in line with an intended norm exemplifies freedom as resistance. The fact that subjects directly resist against the norm enforced by our modern institutions shows a counteraction of power.

Second, from a Foucauldian perspective we must consider that changes in the disciplinary interventions used will result in changes in our understanding of normality

³²⁰ Asma Jahangir, et. al, “War on Drugs: Report of the Global Commission on Drug Policy,” 2011.
https://drugscouts.de/sites/default/files/image/pdfs/Global_Commission_Report_English.pdf, 2.

and abnormality. Additionally, changes in drug policy will result in changes in relationships that could be harmful or beneficial. For example, a “hands-off” approach in which drugs are legalized, such as advocated for by Koppelman, could run the risk of more harmful drugs being perceived as normal or desirable. On the other side, removing the legal prohibition could free up police officers to focus more on preventing violent crime and seeing citizens as people who need protection. This could allow a rebuilding of relationships of trust between neighborhoods and the local police.

Third, the most controversial aspect of the current War on Drugs is the criminalization and incarceration of those who use drugs. Foucault challenges us to look beyond necessities in our political and social landscape, and question if things need to be the way they are. Understanding that incarceration has not led to the originally desired effects (decrease in drug usage for the overall social whole), and is not the only option for regulating drug use opens the possibility of envisioning new strategies. For example, instead of incarcerating drug users, they could be offered treatment, reformation, and reintegration into society through education and employment programs.³²¹ I am not arguing that Foucault himself would explicitly advocate for these specific reforms—his philosophy was focused on uncovering or exposing rather than formulating normative “oughts.” What is distinctly Foucauldian is identifying the historical contingency of our practices and acknowledging that we become subjects with possibilities through these

³²¹ These policies are in line with those recommended by experts who have studied the negative effects of the War on Drugs. The 2011 Global Commission Report on the War on Drugs, the result of the combined efforts of 19 international scholars, human rights activists, politicians, and government officials, recommended ending the criminalization and stigmatization of people who use drugs but cause no harm to others. They recommended encouraging experiments from governments with models for the legalization of drugs and providing addicts with health and treatment services.

practices, not before or outside of them. This should inform our reasoning when considering this important public policy that influences our contemporary subjectivity.

We thus see two stark contrasts between Foucault's and Mill's conceptions of subjectivity and the application of their views: 1) Mill believes in an inherent human nature grounded on autonomy and choice, which flourishes through lack of interference and ability to choose one's own life path. Mill argues that we are subjects prior to and independent of the practices we participate in. Foucault, on the other hand, rejects a universal human nature, arguing instead that human nature is made by historicity and the discourses, practices, and power strategies of one's time. 2) Because there is no universal nature of a human being, for Foucault, there is no self-evident moral principle that holds for all time. At most, the no-harm-to-others principle could be a historically specific guideline. Instead, public practices must be addressed in their historical specificity, while noting their contingency, and with consideration of how subjects' relationships, modes of thinking, and categories for speaking and thinking about oneself and others are affected.

Conclusion

In this Chapter we have seen that Foucault presents three different axes through which subjects interpret their experiences and thus form their possibilities: systems of thought and discourse, strategies of power such as discipline and biopower, and practices of the self. Freedom for Foucault takes the form of resistance and critical reflection. We have seen how the discourses, institutions, and practices of our contemporary epoch manifest the import of discipline, biopower, and the accompanying

mechanisms of security. Through the contrast between Foucault's and Mill's views we have also seen how Foucault challenges assumptions about the subject present in contemporary utilitarian theory. Specifically, Mill presents a view of the subject as prior to conditioning forces such as history, culture, and power.

As will be emphasized in Chapter Five, Foucault's views on biopower and mechanisms of security are especially relevant for healthcare ethics. Foucault argues that practices related to controlling or altering the human body have a substantial influence on how our bodies and behavior are regulated and how we relate to others. Established norms for health and accompanying categories of normality and abnormality introduce frameworks for understanding oneself and others as potentially "healthy" or "diseased." Healthcare personnel such as doctors, public health officials, and healthcare agencies such as the Center for Disease Control have been entrusted with the authority to produce the truth about individuals' health. Hospitals and clinics control space, bodies, and behavior in a way conducive to producing outcomes related to the introduced norms. Thus, a Foucauldian approach to healthcare ethics will provide a more encompassing analysis that places more emphasis on the subject-forming dimension of our medical practices than utilitarian approaches rooted in the thought of Mill.

The previous illustration of Foucault's views on social and historical subjectivity have laid the groundwork for comparing his views with Sartre's. In the next Chapter, I will begin by clearly identifying the differences between Sartre's and Foucault's understanding of the subject. I will present the normative implications that follow from both Sartre's and Foucault's views by introducing a model for ethical subjectivity based on each thinkers' later lectures on ethics. I will reaffirm what I have argued in these first

two Chapters through my comparison with the liberal subject: both Sartre and Foucault reject deontological and utilitarian ethics as commonly used in modern healthcare ethics. Instead, they offer a model for creating oneself as a critically reflective, inventive, engaged historical agent.

Chapter Three: Ethical Subjectivity in Sartre and Foucault: An Ethics of Self-Creation for an Engaged Historical Agent

Introduction:

In the previous two Chapters I introduced Sartre's and Foucault's conceptions of social and historical subjectivity, focusing on how history, materiality, and sociality structure the possibilities for what we think, speak, and do. I demonstrated that for both thinkers our freedom is conditioned and enabled through interaction with these structuring forces. We are neither completely free nor completely determined, but historical agents who shape social practices at the same time we are shaped by them. In this Chapter I examine each thinker's ethical views that correspond with the vision of subjectivity outlined in the previous Chapters, focusing on lectures given in the latter part of their careers. I argue that in these lectures, both philosophers provide the conceptual foundations for a model of ethical subjectivity.

By ethical subjectivity I mean a mode of being-in-the-world characterized by both an ethical orientation and ethical commitments. Ethical orientation refers to the framing of ethical reflection and deliberation in terms of certain questions, attitudes, and background assumptions. Ethical commitments refers to the result of ethical inquiry that takes the form of concrete principles, maxims, rules, or positions.³²² An ethics primarily focused on commitments, such as we find in Kant and Mill, will be eager to make moral judgments and formulate universal moral maxims. An ethics primarily structured on

³²² This metaethical distinction is made by Colin Koopman in his discussion of ethical subjectivity in Foucault, to be discussed further below. See "The Formation and Self-Transformation of the Subject in Foucault's Ethics," in *A Companion to Foucault*, edited by Christopher Falzon, Timothy O'Leary, and Jana Sawicki (Chichester: Wiley-Blackwell, 2013), 530.

orientations, such as we find in Sartre and Foucault, will instead aim to situate our possibilities for an ethical way of living in the present.

I begin by briefly summarizing the key differences between Sartre's and Foucault's views on subjectivity: historical dialectic versus rupture, the degree of freedom and autonomy granted to human agency, and their different reasons for rejecting a theory of rights, such as found in contemporary deontological or utilitarian theory. I present the alternative each thinker offers, building on the normative concepts they introduce in their lectures on ethics. By tracing Sartre's position through three of his post-*Critique of Dialectical Reason* lectures, I introduce an ethical mode of being characterized by the orientation of critical historical reflection, active empathy with the vulnerable, and invention. Sartrean ethical subjectivity is further characterized by commitments to integral humanity and mutual freedom, which are most effectively realized through communal group praxis.

I then explore what Foucault says about ethics, focusing on his historical analyses of care of the self and the ancient practice of *parrhesia*, or truth-telling. I argue that a mode of ethical being with Foucauldian roots requires an ethical orientation characterized by refusal of inevitabilities, a critical ontology of ourselves, and a disposition toward innovation. I provide a close reading of Foucault's lecture series on care of self and ancient practices of *parrhesia*. Through his historical presentation of previous epochs' practices of ethics and truth, Foucault offers us a window into how ethics was approached in the past. This descriptive looking back can help inform a normative looking forward. I introduce a set of commitments based on care of self and the philosophical way of life, acknowledging that Foucault himself does not explicitly

advocate for these commitments, but that his historical philosophical analyses enable their formulation. I include in my argument what these commitments mean for us in our epoch of biopower and mechanisms of security.

My analysis will show that both Sartre and Foucault provide us with the foundational concepts for a mode of ethical self-creation as engaged historical agents in our own epoch. Both thinkers advocate for an ethical orientation that includes critical, historical reflection, the theme of ethics as an ongoing “task,” and inventive self-transformation. At the level of ethical commitments, I show that Sartre explicitly advocates for dedication to integral human needs and mutual freedom. Foucault, for his part, does not explicitly advocate for any specific ethical commitments. I use the conceptual tools that Foucault provides with his historical analyses in order to construct what I think the commitments to care of self and the philosophical way of life require of us in our epoch. I make suggestions for what each model of ethical subjectivity requires of us in terms of our own individual actions and how it could function as a philosophical approach to applied ethics or public policy.

Hence, the objective of this Chapter is fourfold: 1) to specify the important differences between Sartre’s and Foucault’s views on subjectivity and their relevance for ethics, 2) to reconstruct a model of ethical subjectivity based on each thinker’s lectures on ethics, 3) to compare and contrast these models, and 4) to emphasize what these models require of us in terms of our own individual actions and as a philosophical approach to applied ethics or public policy. The lectures I focus on for Sartre include his Cornell lecture notes titled *Morality and History* (MH),³²³ his *Rome Lecture Notes*

³²³ Excerpts from Sartre’s Cornell lecture notes, titled *Morality and History*, can be found in Robert Stone and Elizabeth Bowman, “Sartre’s *Morality and History*: A First Look at the Notes

(RL),³²⁴ and a set of lectures titled *A Plea for Intellectuals (A Plea)*.³²⁵ For Foucault, I use his lecture series *The Government of Self and Others (GSO)*³²⁶ and *The Courage of Truth (CT)*.³²⁷

1 Social and Historical Subjectivity: The Dialectical Spiral vs. The Three Axes

Sartre's and Foucault's views on subjectivity share several characteristics. First, both thinkers argue that there is an absence of necessities in the social, material, and historical field of possibilities. Second, they agree that there is not a singular, unchanging nature of human beings. Rather, we develop through possibilities that are presented to us by the unique discourses, practices, and norms of our historical epoch. Third, both argue that we form a conception of self through our intersubjective experience. Despite these similarities, there are also three key differences that must be acknowledged, which have been elaborated on in depth by Thomas Flynn.³²⁸ I will only briefly summarize them here in order to set up a backdrop to my discussion of ethics. The first difference concerns the ontological nature of the interaction of the subject with

for the Unpublished 1965 Cornell Lecture," in *Sartre Alive*, edited by Ron Aronson and Adrian Van den Hoven (Detroit: Wayne State University Press, 1991), 53-82.

³²⁴ These notes are understood to be the most complete account of Sartre's later ethics. The untitled notes were written in preparation for a lecture Sartre gave at the Instituto Gramsci on May 23, 1964, at a conference titled "Ethics and Society." Translated by Robert Stone and Elizabeth Bowman, accessed September 7-20 2015 at Bibliothèque nationale Paris, France.

³²⁵ Jean Paul Sartre, *A Plea for Intellectuals*, found in *Between Marxism and Existentialism*, translated by John Matthews (London: Verso, 1974), 228-285.

³²⁶ Michel Foucault, *The Government of Self and Others: Lectures at the Collège de France 1982-1983*, translated by Graham Burchell (New York: Palgrave MacMillan, 2010).

³²⁷ Michel Foucault, *The Courage of Truth: The Government of Self and Others II, Lectures at the Collège de France, 1983-1984*, translated by Graham Burchell (New York: Palgrave MacMillan, 2011).

³²⁸ Thomas Flynn, *Sartre, Foucault, and Historical Reason: Vol 2: Toward a Post-Structuralist Mapping of History* (Chicago: University of Chicago Press, 2005) 232-260.

the sources of conditioning. Sartre argues that history is incorporated into our project in a dialectical way whereas Foucault argues that we develop as subjects through historical breaks without dialectical continuity. The second major difference between the two accounts concerns human agency, that is to say, the degree of freedom and deliberate choice-making of the human subject. According to Sartre, agents have a greater degree of freedom and conscious control over shaping our possibilities than Foucault allows. The third difference concerns the reasons that each philosopher rejects a theory of rights as a starting point for ethics and politics. Sartre rejects rights because he associates them with a type of violence perpetrated against disadvantaged people by those with societal power. Foucault rejects rights because, first, rights are introduced into a society that is governed by a certain form of rationality and particular power mechanisms and, second, rights are intended to produce a certain type of subject.

1.1 Dialectic versus Rupture

As we saw in Chapter One, Sartre considers manipulated nature, machines, social institutions, class being, language, and ideas as “layers” of the practico-inert. These structuring conditions are presented as the antithesis of praxis: they limit and enable praxis. The practico-inert and praxis thus create a circular dialectic in which the practico-inert encounters praxis and incorporates it into the practico-inert. Foucault, on the other hand, does not posit the existence of an ontological realm with consistent characteristics that functions in opposition to human consciousness throughout each historical period, nor does he believe that the structuring conditions operate in a dialectical relationship with human thought and action. Instead, each epoch is

characterized by rupture, so that new modes of thinking, speaking, and doing replace the old.³²⁹ Biopower and mechanisms of security are a good example. A new understanding of human life processes ushered in a new era of rationalization and strategies for controlling behavior, directed at the proliferation of life as a norm. These new strategies represented a break from previous ways of thinking, speaking, and doing. We do not find continuity, but rupture.

The difference between dialectic and rupture is relevant for each thinker's moral thought. Foucault does not believe that there are consistently applicable ethical commitments that transcend historical epochs, while Sartre will ultimately argue that there are. Sartre sees our field of possibilities as historically conditioned, but still sees ontological and metaphysical consistency in the interaction of our consciousness with structuring forces. Thus, he will be more eager to posit consistent ethical ideals that transcend historical epoch. Because Foucault believes there are ruptures in the way we think, speak, and act, the ethical commitments of past historical periods cannot be directly transferred to ethical living in the present.

1.2 Freedom: Originary or Empirical?

The second major difference between Sartre and Foucault are their differing views on human freedom, and consequently differing views on human agency. Human agency in this context can be defined as the degree of intentional, autonomous choice-making granted to each individual human being. This difference is rooted in the two

³²⁹ Flynn, *Sartre, Foucault 2*, 232-236.

thinkers' incompatible views on freedom. Sartrean freedom is ontological and originary, while Foucauldian freedom is empirical and nonfoundational.³³⁰

As we saw in Chapter One, Sartre sees some degree of freedom as an unconditional aspect of our subjectivity. In *Being and Nothingness*, he argued that just the comprehension of our own facticity is an act of freedom. Our engagement with communal meanings, such as the act of speaking or riding in a subway, are acts of freedom.³³¹ With the introduction of the intermediary category of the practico-inert in *The Critique of Dialectical Reason, Volume 1*, Sartre shows that our freedom operates through an interplay with the worked matter of our epoch. However, he never fully changes his view that our ability to imagine a state of affairs beyond the current one and redirect our praxis accordingly means that we are always ontologically free. In a 1969 interview, Sartre says:

[T]he idea I have never ceased to develop is that in the end one is always responsible for what is made of one. Even if one can do nothing else besides assume this responsibility. For I believe that a man can always make something out of what is made of him.³³²

Sartre never gives up on a robust sense of agency derived from a forward looking “project” and the intentional, goal-oriented nature of conscious activity.

Even though Sartre admits that much of our thought is configured by the practico-inert and serial reasoning, he nevertheless holds firm that any significant transformation of the practico-inert field comes from communal, intentional goal-

³³⁰ Flynn identifies the fundamental incompatibility between Sartre and Foucault to be their views of human agency, which diverge because of their positions on freedom. See *Sartre, Foucault 2*, 256.

³³¹ Sartre, *Being and Nothingness*, translated by Hazel Barnes (New York: Philosophical Library, 1956), 548 and 657.

³³² Sartre, Interview with *New Left Review*, “The Itinerary of a Thought,” found in *Between Marxism and Existentialism*, 35.

oriented praxis.³³³ He says, “praxis alone, in its dialectical freedom, [is] the real and permanent foundation (in human history and up to the present) in all the inhuman sentences which men have passed on men through worked matter.”³³⁴ While the practico-inert saturates our experience with meanings we cannot help but take for granted, those meanings are themselves the product of past praxis. As the practico-inert is created by praxis, it is ultimately intentional human action that can take control.³³⁵

For Foucault, however, we experience our freedom through practicing it, not through simply consciously experiencing the world. We *exercise* freedom by resisting power mechanisms, or by performing active critical reflection. Our interpretation of our situation is not itself an act of freedom, rather our freedom emerges through our interaction with the practices of our time and our relationships with others. Our original interpretation of our situation and our place is determined by the categories of our *episteme*, and the frameworks for normality and abnormality that are presented to us, not chosen. Our freedom emerges secondarily to these forces of conditioning. Thus, Foucault’s sense of individual autonomy and agency is not ordinary and must be developed through reflection and practice.³³⁶ This has implications for Foucault’s views

³³³ See for example, *The Critique of Dialectical Reason Volume 1: A Theory of Practical Ensembles*, translated by Alan Sheridan-Smith (London: Verso, 2004), 739, 741-745.

³³⁴ Sartre, CDR, 332. Flynn calls this *the* “principle of the primacy of praxis” in Sartre’s work. See Flynn, *Sartre, Foucault 2*, 258-260.

³³⁵ Flynn elaborates on this in depth in *Sartre and Marxist Existentialism* (Chicago: The University of Chicago Press, 1984), 109-115.

³³⁶ See Flynn, *Sartre, Foucault 2*, 258-260. However, it is worth noting that for Sartre in CDR, being able to consciously direct our praxis takes practice and experience using the dialectical method. Thus, the two thinkers’ views on agency and freedom may not be as distant as Flynn argues. Brian Seitz, for example, argues that there are distinct similarities in Sartre’s and Foucault’s conceptions of freedom. Seitz says that for Sartre, freedom is not a freedom of “disembodied intentions” but of conditioned possibilities. These conditioned possibilities can be considered relations, or freedom manifesting itself in the form of a resistance. Seitz comments, “If freedom is intimately associated with resistance, resistance is itself a network of

on ethics because if freedom is to play a role in ethical practice, it must be developed and participated in.

1.3 Grounds for Rejecting the Theory of Rights

The last comparative issue bears directly on the normative dimensions of their thought that will be explored in the rest of the Chapter. Both Sartre and Foucault reject a moral or political theory of rights, although they reject it for slightly different reasons. Chapters One and Two discussed how the Sartrean and Foucauldian subjects are significantly different from the view of the subject rooted in the thought of Kant or Mill. While Kantian and Millian thought provide two different forms of moral justification for behavior, both thinkers' philosophies are used to justify an ethical system of rights. For Kant, human's rational capacities make them worthy of inherent dignity and respect. Thus a common ethical route taken is to introduce a system which places limits on behavior in order to protect the dignity of each individual. Utilitarian reasoning is also used to justify a system of rights. In a utilitarian framework, introducing guaranteed protections to each individual allows them to flourish, be happy, and leads to the greatest good for the greatest number. While the normative principle for introducing rights is different in these two cases, they both result in a moral framework in which each person is entitled to certain basic protections. Limitations are placed on everyone's behavior in order to ensure these basic protections for each rights-holder.

relations, i.e. freedom is nothing other than sets of relations that constitute the subject's situation, and this is as true for Foucault as it is for Sartre," (98). See Brian Seitz, "Sartre, Foucault, and the Subject of Philosophy's Situation," *Sartre Studies International* 10.2 (2004): 92-105.

Both Sartre and Foucault reject theories of rights. Sartre rejects rights because he associates them with violence done against disadvantaged people. This is because of his strong emphasis on class as an untranscendable element of the practico-inert. Sartre argues that rights introduced in any given society have the tendency to be used to trump any claims for other types of freedom. In Sartre's view, rights are introduced into society by the rule-makers, that is to say, those who hold political power. The rights are introduced in order to benefit the upper class and reinforce the status quo. Those in lower classes are then blamed for not taking advantage of rights to which they never had concrete access to begin with.³³⁷ Rights are interpreted to be timeless and ahistorical and thus do not seek to make any changes to the practico-inert.³³⁸ This rejection of a rights-based approach is partially due to Sartre's deep concern with the exploited and disadvantaged people.

For example, a commonly accepted moral right is the right to education.³³⁹ In the United States, our legal system reflects this in the form of a legal right to free public education from kindergarten through high school. Additionally, through merit and government aid or loans, it is argued that students can further their education after high school with proper academic diligence. This is portrayed as an equalizer that entitles

³³⁷ In his earliest ethical writings, *Notebooks for an Ethics*, Sartre says, "There has never been a violence on earth that did not correspond to the affirmation of some right," (177). See *Notebooks for an Ethics* (Chicago: University of Chicago Press, 1992), 177-186. See also Flynn, *Sartre Foucault 2*, 240.

³³⁸ Sartre, *A Plea*, 245-247.

³³⁹ See for example, Michael Katz, "Is There a Right to Education? A Philosophical Analysis Through U.S. Lenses," in *Education, Democracy and Moral Life* (Springer, 2009), 31-45. Katz bases his analysis on Joel Feinberg's conception of a child's right to an open future, in which children must retain certain opportunities so that they can grow to be autonomous adults. See Joel Feinberg, "The Child's Right to an Open Future," found in *Philosophy of Education: An Anthology*, edited by Randall Curren (Oxford: Wiley-Blackwell, 2007).

each person to the same initial resources, and then allows everyone who is willing to invest the time and effort to study at a public university for a cost that is manageable with government aid and loans. However, many states fund public schools through property taxes. This means that the public schools in poor (often minority) neighborhoods have significantly less funding than neighborhood schools located in areas with expensive property. Free public schooling, which is portrayed as giving everyone an equal start, actually gives those who can afford to live in upper class neighborhoods significant advantages. When students who must attend public schools in poorer areas do not have the grades or tests scores to get into college, or if they are admitted to college but do not have the academic skills to succeed, they are then blamed for not properly taking advantage of their right to education. Clearly the argument to be made is that there should be changes in the ways that schools are funded so that everyone truly has an equal right to education, not necessarily that this right should disappear. But Sartre's point is that these new changes will be introduced by those in a position of power who have no real desire to change the status quo. Rights function within the practico-inert realm and will always reflect a given society's social hierarchies.

In Foucault's view, rights are introduced into a society that is governed by a certain form of rationality and particular power mechanisms. This means that the rights will be intended to shape a certain type of subject, not protect a subject that already exists. The introduction of rights reinforces existing social norms and run the risk of discouraging the type of active critical reflection that Foucault believes is an important practice of freedom. For example, in *Society Must be Defended*, Foucault says:

I have been trying...to show not only that right is an instrument of domination...but also how, to what extent, and in what form right...serves as a vehicle for and implements relations that are not only relations of sovereignty, but relations of domination.³⁴⁰

Foucault does not argue that rights are inherently good or bad, but that they are often thought to be protecting universal features of human beings. For Foucault there are no such features, and the rights granted will always be reflective of that society's power strategies and will produce a thinking, speaking, acting subject. A rights-based ethics or political system runs the risk of imposing forms of normality that can be stifling of freedom and limit possibilities if they are perceived as universal.³⁴¹

For example, in Chapter Two I introduced Mill's basic right to be left alone as long as one is not harming anyone else. In modern political and moral discourse, this is known as the right to liberty.³⁴² If I have a right to liberty, this right places obligations on other individuals not to interfere with my behavior unless I am causing harm. While rights-based theorists claim that this is an inherent right that is protecting human beings and allowing their innate nature to flourish, Foucault on the contrary argues that this right is introducing categories for normality aimed at *producing* a certain type of subject. The subject to be produced through a right to liberty is one who functions well on one's own, is generally self-sufficient and responsible without interference from the state, and

³⁴⁰ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France 1975-1976*, translated David Macey (New York: Picador, 1977), 26-27.

³⁴¹ Flynn comments that Foucault believes that "rights must also be seen as an apparatus of domination in a society that appeals to the 'normalizing' sciences to 'produce' individuals that are themselves the products of power relations even as they exercise that power as links in a chain that acts on them as well," *Sartre, Foucault 2*, 232.

³⁴² The importance of the right to individual liberty (a version of Mill's no-harm-to-others principle) is defended by prominent rights theorists such as Joel Feinberg in *The Moral Limits of Criminal Law Vol. 1. Harm to Others* (Oxford: Oxford University Press, 1984). See also Phillip Pettit, "Law and Liberty," in *Legal Republicanism: National and International Perspectives*, edited by Samantha Besson and José Luis Martí (Oxford: Oxford University Press, 2009), 39-59.

makes one's own decisions based on his or her individual desires and not based on coercion. Foucault argues that we must recognize that rights are creating subjects, not protecting existing subjects. This is not inherently bad, but has the potential to be dangerous.

For example, consider at-will employment contracts. At-will employment contracts allow companies or organizations to fire a person for no cause or bad cause, without leaving this person any options to contest his or her termination. These contracts are often argued to be morally justifiable because of the moral right to liberty: no one should place limits on what kind of a contract a company and employee want to freely enter in to.³⁴³ At-will employment contracts leave working individuals with no job security or protection against unfair termination. Some people who enter into these contracts are desperate for work and are willing to accept any position. Thus, the right for individuals to freely enter into an employment-at-will contract can lead to benefits for companies and businesses, while rendering workers limited in their options. Foucault would not necessarily take a stand against at-will employment contracts, but would caution us to remember that employment-at-will contracts emerge among power relations and are introduced to produce a certain type of subject: in this case, a subject who values the individual freedom to enter into desired contracts over collective bargaining power and job security.

With these important differences between Sartre and Foucault in mind, I will now explore ethics in each philosopher's thought as it relates to their theories of

³⁴³ See for example, Richard Epstein, "In Defense of Contract at Will," *University of Chicago Law Review* 51.4 (1984): 947-982. In this piece, which sets the tone for the employment at-will debate in Business Ethics literature, Epstein argues that freedom of contract is an integral component of the right to liberty.

subjectivity. I show how we can draw from important concepts in their thought and offer alternatives to traditional utilitarian or deontological approaches that may include the introduction of rights. I begin with textual examination of each thinker's lectures to introduce the philosophical concepts, then introduce my own insights to construct a model for an orientation and commitments.

2 Sartre and Ethical Subjectivity

Sartre's visions of ethics, that is to say, the question of how we ought to live, is interwoven with his political vision. Ethics and political philosophy are considered different, though related, disciplines in traditional philosophical discussion. Ethics, the speculation on how an individual is to live, is kept theoretically distinct from the political, which focuses on how society should be arranged to meet demands of justice. However the distinction between ethics and political philosophy is blurred in Sartre's thought. As we discuss his moral writings we see that for Sartre, being is automatically being-in-the-world and being-with-others, so being an ethical person and being a person involved in building a more just society are inseparable.

Philosophical literature on Sartre's post-CDR ethics comes from Thomas Anderson,³⁴⁴ Robert Stone and Elisabeth Bowman,³⁴⁵ and Kristian Klockars.³⁴⁶

³⁴⁴ Thomas Anderson, *Sartre's Two Ethics: From Authenticity to Integral Humanity* (Chicago: Open Court, 1993).

³⁴⁵ Robert Stone and Elisabeth Bowman, "Sartre's *Morality and History*: A First Look at the Notes for the Unpublished 1965 Cornell Lecture Notes," in *Sartre Alive*, edited by Ron Aronson and Adrian Van den Hoven (Detroit: Wayne State University Press, 1991), 53-82. Also "Dialectical Ethics: A First Look at Sartre's Unpublished 1964 Rome Lecture Notes," in *Inquiries Into Values*, edited by Sander Lee (Lewiston: Edwin Mellen Press 1988), 335-362.

³⁴⁶ Kristian Klockars, *Sartre's Anthropology as a Hermeneutics of Praxis* (Farnham, UK: Ashgate Publishing, 1998).

Anderson traces Sartre's ethical thought through the entirety of Sartre's career, detailing his earlier "ethics of authenticity" as well as Sartre's later shift in focus to integral human needs in *The Rome Lecture* (RL) and *The Family Idiot*.³⁴⁷ Anderson provides groundbreaking explanatory work and also argues that Sartre's later ethics is a significant improvement over the ethics he presents earlier in his career. My analysis is different from Anderson's because I focus only on Sartre's ethics compatible with his later model of the subject, include Sartre's lectures *Morality and History* (MH) and *A Plea*, and offer a model strengthened with my own insights for an ethical mode of being that can be used in contemporary discussions of ethics.

Robert Stone and Elisabeth Bowman offered the first, and currently some of the only, presentations of *Morality and History* (MH) and *The Rome Lecture* (RL) to the public. As both lectures are currently unpublished, Stone's and Bowman's analyses provided important exegetical work that made Sartre's arguments in these two lectures accessible for the first time. I will rely on Stone's and Bowman's exegetical work for my discussion of MH. My project will go beyond their work because I identify key common concepts in Sartre's lectures that connect them, strengthen Sartre's discussion with my own insights, and show how his ethical thought can be applied.

Kristian Klockars presents a reconstruction of a normative framework derived from Sartre's later ethical thought that goes beyond exegesis. Klockars includes RL, MH, and *A Plea* in his analysis. In his reconstructive project, he argues that for Sartre, morality concerns values chosen by concrete individuals in their praxis. This means that

³⁴⁷ Jean-Paul Sartre, *The Family Idiot 1: Gustave Flaubert 1821-1857*, translated by Carol Cosman (Chicago: University of Chicago Press, 1981).

morality is necessarily inscribed in history, and moral reflection must always include a diagnosis of one's social and historical situation. Klockars interprets Sartre as saying that the question of morality "concerns our possibilities *to reflectively take the conditions revealed into account in our praxis.*"³⁴⁸ Normative ethical commitment, in Klockars' interpretation of Sartre, is based on a conscious attitude of reflection toward one's own condition and using this reflection in one's praxis. Ethical reflection should include deciphering the impact of a specific value to social reality and deciding which values are justified in historical praxis.³⁴⁹ I am in agreement with Klockars' evaluation of *A Plea* and agree that critical historical reflection is an integral component of Sartre's later ethical thought. My project will go beyond Klockars' because I detail how active empathy and invention are also an integral part of Sartre's later ethics, and show how Sartre's thought can be used to approach contemporary moral problems. As my focus throughout this section is to introduce the key concepts from Sartre's later lectures on ethics that are important for the model of ethical subjectivity I suggest, I will rely primarily on a close reading of primary texts. I will draw on the work completed by Anderson, Stone and Bowman, and Klockars when appropriate.

2.1 Morality and History: The Experience of the Ethical

*Morality and History*³⁵⁰ (MH) is a set of lecture notes that was prepared for Cornell College students, although Sartre canceled the lecture at the last minute to protest the United States' involvement in Vietnam. This attitude is illustrative of his own

³⁴⁸ Klockars, *Sartre's Anthropology*, 168. Klockars' emphasis.

³⁴⁹ *Ibid.*, 171-177.

³⁵⁰ All quotes from *Morality and History* are found in Stone's and Bowman's analysis.

personal ethical and political commitments. MH is worth examining for my purposes because Sartre discusses our experience of the normative and how ethics manifests in praxis, and alludes to the possibility of moral norms that transcend historical epoch. The important concepts introduced in this lecture include the influence of the experience of morality on our possibilities and the necessity for subjects to use their freedom and autonomy to look beyond existing practico-inert moral norms.

Sartre begins with an account of the phenomenological structure of the ethical.³⁵¹ Sartre offers the important insight that the normative is a human experience that offers us possibilities for our projects. Norms are, Sartre says, widespread and pre-reflexive social structures that aim at regulating human relationships. Sartre argues that all norms pose determinate ends to be pursued and present these determined ends as “unconditionally possible.”³⁵² “Unconditionally possible” means whatever the conditions may be. This does not mean that the norm will always be realized or that it is always historically possible. But norms have a compelling force on us because they present themselves as commands we are to follow, no matter what. Sartre appeals to the example of a survey of young female schoolchildren. Asked if they believed that lying should be morally condemned, 95% said yes. When questioned if they themselves lie, 90% of them admitted that they do, in fact, lie. Sartre believes that this is evidence that we want the moral ideal to exist even if we consistently fail to live up to it. The existence of the unconditionally possible means that the opportunity to be a moral person remains open to us at all times.³⁵³

³⁵¹ By “the ethical” in this discussion, Sartre means the existence of norms, mores, and values in any given historical society.

³⁵² Sartre, MH, Found in Stone and Bowman, “Sartre’s *Morality and History*,” 64.

³⁵³ *Ibid.*, 65.

Sartre says we live norms and values easily when the practico-inert favors the realization of these norms. It is in difficult cases that he argues our “moral comfort” is upset. Sartre gives the example of a husband and wife in a Puritanical society. The wife has been diagnosed with cancer and will be dead within a year. The husband alone knows the truth about her condition and experiences moral conflict regarding whether or not to tell her. Knowing that her death will come within a year would mean that the strict relationship of deference between them would be upset. The man would have to “invent” a new relationship with his wife. The man chooses to lie to his wife to maintain their current way of life until her death, choosing a practical way out of the moral conflict in order to avoid the difficult task of “self-invention.”³⁵⁴ As Sartre argues, the man’s failure to invent a new relationship with his wife makes him a “man of repetition,”³⁵⁵ that is to say, one who lets his behavior be determined by practico-inert norms. The man chooses repetitive praxis instead of inventive praxis.

Invention or inventive praxis is emphasized throughout the lecture. Sartre argues that the structure of the ethical is founded on the “moment of invention” which is present in all praxis.³⁵⁶ The moment of invention is when human consciousness restructures the given field of possibilities in a light of a future end. It is human praxis, which first, destructures an impossibility confronting us in the present moment and simultaneously restructures the given field into a field of possibilities for achieving the end. Invention, Sartre says, is the moment present in all human action that reveals the susceptibility of all things to rearrangement into new hierarchies according to a chosen

³⁵⁴ Stone and Bowman, *“Sartre’s Morality and History,”* 67.

³⁵⁵ Sartre, MH, found in Stone and Bowman, *“Sartre’s Morality and History,”* 67.

³⁵⁶ Stone and Bowman, *“Sartre’s Morality and History,”* 68

human end. “Invention as a fundamental moment of praxis qualifies all work as the transformation of the impossible into the possible by the modification of present conditions of possibility based on the goal to be realized.”³⁵⁷ All human actions have an ethical moment, Sartre says, even if the result of the actions when they become historical praxis are not the intended result.³⁵⁸

To illustrate how one uses the unconditionally possible in order to restructure the present, Sartre uses the example of Pierre Brossolette, a member of the French socialist party who jumped out a window to his death after one session of being tortured. Sartre says that because Brossolette feared he may talk after being tortured once, he sought death in order to achieve the unconditional possibility of silence. Unlike the Puritan who chose to lie to his wife, Brossolette uses his autonomy to invent:³⁵⁹

At this level, the true meaning of unconditionality is revealed: it is the possibility in me of producing myself as an autonomy which affirms itself by dominating external circumstances instead of being dominated by them; or, if you prefer, it is the possibility of producing myself as a pure subject of interiority.³⁶⁰

Sartre calls this an “ethical radicalism” in which the historical agent integrates the entirety of his praxis into the means to achieve the chosen end:

Ethics envisaged as a determination of activity appears at first as an essential but provisional moment of all praxis: indeed praxis tears itself away from the given—that is, from the present conditions—by transcending it toward a nonbeing from which praxis returns to the given in order to invent its own conditions of possibility. In this moment of invention, praxis posits its goal as unconditional.³⁶¹

³⁵⁷ Sartre, MH, quoted in Stone and Bowman, “Sartre’s *Morality and History*,” 68.

³⁵⁸ As Stone and Bowman comment, “Sartre calls this double process *invention*—a necessary moment of praxis that is specifically ethical. Invention is that moment of historical praxis generally that can lend to any particular project its aspect of unconditional possibility. Of course, given the encounter with matter and the practico-inert, the project may also fail.” See “Sartre’s *Morality and History*,” 68.

³⁵⁹ Stone and Bowman, “Sartre’s *Morality and History*,” 70.

³⁶⁰ *Ibid.*

³⁶¹ Sartre, MH, found in Stone and Bowman, “Sartre’s *Morality and History*,” 71.

By striving to create oneself in accordance with a norm one conceives as unconditionally possible, for example, as one who does not lie or does not speak under torture, the fundamental inventive moment has the same structure. Subjects attempt to be “pure subjects of interiority” who control external circumstances rather than being determined by them. This is reflective of the robust sense of freedom Sartre grants to individual agency.

There are three important concepts to derive from Sartre’s discussion in MH. First, morality offers us existential possibilities. It presents us with a conception of a good person and allows us the possibility of becoming that good person. We want this possibility to remain open for us even if we fail to live up to the standard. Second, Sartre advocates for inventive praxis rather than repetitive praxis, urging us to pursue new values beyond those of the practico-inert realm. Third, praxis has an inventive moment because of the nature of human beings’ forward-looking conscious experience. We rearrange our present possibilities as a means for achieving the future goal. However, practico-inert societal moralities are not sufficient on their own and often reflect the seriality embedded in the practico-inert. Consequently, we must look elsewhere for ethical ideals that transcend existing practico-inert structures.

2.2: The Rome Lecture: Integral Human Need and Mutual Freedom

The second lecture which offers content for an ethical foundation is Sartre’s *Rome Lecture*, which introduces ethical ideals that transcend specific societies. In RL, Sartre argues that at the heart of every societally specific practico-inert value system, there is a striving towards a “true ethic,” that is to say, a nonalienated morality that

transcends individual systems. This is a morality based on what Sartre describes as universal human needs. Sartre argues that human beings in every historical context have certain universal needs in common and, based on this empirical fact, we can derive a universal moral value: the fulfillment of needs.³⁶² Sartre states that a “true ethic” must go beyond the given moral rules of any particular society. “The true ethic establishes and dissolves the alienated moralities, in that it is the sense of history, i.e. the refusal of all repetition in the name of the unconditional possibility of making man.”³⁶³ The true ethic cannot be repetitive social systems which merely solidify the given prejudice of one’s day into codified rules for behavior.

Sartre argues that ethics is not grounded in an external absolute. It must, instead, simply refer back to ourselves—human beings—and to what we all have in common.³⁶⁴ The commonality found in the depth of human reality is “integral humanity” and Sartre says that it is rooted in human needs. “The root of morality is in need, that is, in the animality of man. Need posits man as his own end.”³⁶⁵ Sartre argues that in our most basic interaction with our environment the possibilities for praxis are interpreted and organized around meeting our needs. When these things are not met, our conscious activity is always directed at fulfilling them.³⁶⁶ Sartre says that fulfillment of need, as the “true ethic,” is actually at the heart of all alienated moralities. Individual systems of morality become alienated because of the practico-inert.³⁶⁷

³⁶² Sartre, RL, 29.

³⁶³ Ibid.

³⁶⁴ Sartre writes, “Still it is necessary to find at the most profound depth of human reality, that is, in its very animality, in its biological character, the roots of its ethico-historical condition,” (RL, 99).

³⁶⁵ Ibid., 100.

³⁶⁶ Ibid., 98.

³⁶⁷ Ibid., 100.

According to Sartre, historical agents should strive to work together for a society in which as many people have their needs met as possible, and this will allow them to invent new ends. This enables the achievement of the second moral ideal: the mutual recognition of freedom. Sartre says that when basic needs are fulfilled, human beings can maximally utilize their own freedom and direct it at ends other than fulfilling needs. But the mutual freedom ideal is only actualized through cooperation with others:

There will be no integral man as long as the practico-inert alienates man, that is, as long as men, instead of being their product, are only the products of their products, as long as they do not unite into an autonomous praxis which will submit the world to the satisfaction of their needs without being enslaved and divided by their practical objectification. There will be no integral man as long as each man is not totally a man for all men.³⁶⁸

Here it is clear that in order to avoid alienation of the practico-inert that leaves humans existing only in a series, it is imperative that we join together to work to satisfy physical, social, and emotional needs to enhance the possibilities for everyone. Sartre says that the ethical individual must recognize in others our common integral humanity. When we do this, we are able to relate to each other through communal goals and collective praxis rather than through seriality. We also recognize and enable each other's freedom to pursue creative praxis. We understand that our individual projects are susceptible to interpretation by others. If we want our free praxis to have the meaning we want it to have, these meanings are dependent on others for their recognition. Our social possibilities come to be alongside others and we gain possibilities through recognizing each other's mutual freedom. Thus, the mutual recognition of freedom is a moral ideal to be pursued alongside integral humanity.

³⁶⁸ Sartre, RL, 100.

Sartre argues that we should establish a “pure unconditioned norm” which is not alienated by the practico-inert. Sartre suggests that this morality is found in solidarity with exploited people because they seek a “future beyond the system.”³⁶⁹ Sartre then makes a bold call for “subhuman” agents, that is to say, those who live in a society with alienated morality, to overthrow systems in order to become fully human and produce a future that will enable autonomous, integral, and whole humanity.³⁷⁰ He describes such a society as one in which individuals would unite in communal praxis to dissolve the practico-inert as soon as it is formed. In this society humans use cooperative action to produce themselves autonomously rather than being produced by the oppressive economic systems and alienated moral norms of the practico-inert.³⁷¹

While RL introduces some normative ethical content for properly aligning our inventive praxis, the work also has some serious deficiencies in terms of constituting a completed ethics. By establishing human needs as a foundation for ethics, Sartre offers a convincing alternative to theories which ground morality in absolute, eternal essences, such as Kant or Mill, and those that lead to complete subjectivism or relativism. However, there are also several weaknesses.³⁷² For example, Thomas Anderson argues that while Sartre identifies integral humanity as the unconditioned future goal, human

³⁶⁹ Sartre, RL, 142.

³⁷⁰ Ibid.

³⁷¹ Ibid., 143.

³⁷² Stone and Bowman introduce several criticisms in “Dialectical Ethics.” They argue that Sartre is disappointingly abstract on central questions such as the nature of the social structures he envisions and concrete practices that would bring them about. Further, the full conceptual implications of “making ourselves fully human” are unclear. Stone and Bowman are also in agreement with Anderson that this “pure unconditioned norm” which Sartre speaks of is incompatible with the rest of his social thought, in which all of our possibilities are conditioned. See “Dialectical Ethics,” 356.

beings inevitably must give integral humanity structured conditions.³⁷³ Communal praxis that dissolves *all* practico-inert structures is not possible, as CDR shows that the practico-inert is a necessary part of the structure of human experience.

While it does not constitute a structured ethics all on its own, the RL formulates two consistent ethical commitments: a dedication to fulfilling universal human needs and a commitment to acknowledging one another's mutual freedom. In order to fill in the remaining pieces, though, we must also incorporate the third lecture, *A Plea to Intellectuals*. In this lecture, Sartre speaks directly to our interaction with existing practico-inert structures. Additionally he articulates what is demanded of us as individuals if we are to engage in autonomous, inventive praxis directed toward the true ethic.

2.3 A Plea to Intellectuals

A Plea to Intellectuals (A Plea) consists of three lectures delivered by Sartre at Tokyo and Kyoto in September-October of 1965, thus given after both MH and RL. *A Plea* is directed at a very specific demographic among society: experts of a practical knowledge, who become consciously aware that they are supposed to be uncovering universalist knowledge, but who simultaneously represent the ideologies through which they were academically trained. Sartre's discussions in the lecture actually represent his

³⁷³ Anderson is especially critical of Sartre's claim that the goal of morality is to dissolve practico-inert structures as soon as they form. He comments: "Human needs themselves set conditions, for they are given structures of the universal human condition and their satisfaction comes only by attaining their proper objects" within the practico-inert field. See *Sartre's Two Ethics*, 166.

overall vision of subjectivity, the practico-inert (especially seriality and class-being), and offer normative content that is applicable beyond the examples he discusses.

Sartre defines intellectuals as trained or academically-oriented professionals, such as doctors, lawyers, engineers, scientists, and academics who also speak out publicly on issues of public moral concern.³⁷⁴ Contemporary intellectuals, according to Sartre, are predefined in their being by the jobs they pursue. The pursuit of a job as a technician of practical knowledge submits students to a “specific structuration of the field of their possibilities, of studies to be undertaken, and at the same time, a *destiny*.”³⁷⁵ The training they take on is presented as universal and objective, but the individuals are inevitably instilled with ideologies and educated to preserve tradition. They are trusted by the dominant class to reinforce values that are to its benefit and reject the values of the lower economic classes.

Sartre argues that technicians of practical knowledge eventually become aware of what he calls a “fundamental contradiction” regarding their status in society. This contradiction is threefold: First, the technicians have likely been humanists their entire lives and will profess that all human beings deserve equal respect and opportunity. However the technicians themselves are living proof that all human beings do *not* have equal opportunities, as they occupy privileged positions many never have access to. Second, these professionals are charged with seeking universal forms of knowledge, but they can only do so within an obedience to an ideology and political policy.³⁷⁶ Third, technicians are supposed to find what is useful for all, not just one social group.

³⁷⁴ Sartre, *A Plea*, 230.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*, 242.

However, the reality is that their profession operates within the practico-inert field of scarcity and relations defined by the pursuit of profit, so the knowledge gained is used only to benefit the dominant class at the expense of disadvantaged people.³⁷⁷ As Sartre points out, these individuals come to a turning point and do one of two things: either accept the dominant ideology and adapt themselves to it, or become intellectuals who call into question the very system that creates intellectuals such as themselves.³⁷⁸ At this point, Sartre says, intellectuals investigate themselves first, as an attempt to rid themselves of their contradictions. But doing so requires an investigation of the ideologies, structures, options, and praxis of the society of which they are the products.³⁷⁹

Sartre argues that intellectuals should use the dialectical method to investigate their own contradictions. The dialectic will uncover what the intellectuals are in their specific historical moment in relation to the specific systems that have created them.³⁸⁰ In the critical exploration of themselves and the world, intellectuals will, Sartre argues, perceive many things that are in contradiction with the ideologies upon which they have been educated. “[H]e will perceive *that man does not exist*.”³⁸¹ By this, Sartre means that intellectuals will perceive that a universal humanism does not currently exist. Sartre now introduces the idea of ethics as a task to be taken up. Intellectuals will come to grasp “man as *a task*....an intellectual who achieves self-awareness necessarily comes to see both his own singularity and its adumbration of man, as the distant goal of a

³⁷⁷ Sartre, *A Plea*, 242-243.

³⁷⁸ *Ibid.*, 246.

³⁷⁹ *Ibid.*, 247.

³⁸⁰ *Ibid.*, 251.

³⁸¹ *Ibid.*, 250.

practical and daily enterprise.”³⁸² Intellectuals will grasp the subhuman and realize that the human is an ongoing, distant goal toward which they must strive. Sartre argues that intellectuals in their unique positions are obligated to be involved in the issues of their time:³⁸³

[H]e labours in order that a social universality may one day be possible where all men will be *truly free*, equal and fraternal, certain in his knowledge that one day, and not before, the intellectual as a species will disappear, and men will at last acquire practical knowledge in liberty and harmony.³⁸⁴

It is unclear whether Sartre believes the time will actually happen or whether it merely an ideal. Be it is as it may, Sartre believes the place of the intellectual is at the side of those most exploited in society.³⁸⁵

In order for intellectuals to know their contradictions, Sartre argues, they must remove themselves from their situations and immerse themselves in the experiences of those who have not had access to the same life privileges. “It follows that if he wishes to understand the society in which he lives, he has only one course open to him and that is to adopt the point of view of its most underprivileged members.”³⁸⁶ Sartre makes the controversial argument that members of the exploited class are characterized by an “objective intelligence” that is a product of their viewpoint of society.³⁸⁷ If intellectuals adopt the viewpoint of individuals who endure a multitude of different types of violence, they can see themselves from below, truly understanding the ambiguity of their positions.³⁸⁸

³⁸² Sartre, *A Plea*, 250. Sartre’s emphasis.

³⁸³ *Ibid.*, 254.

³⁸⁴ *Ibid.*, 251.

³⁸⁵ *Ibid.*, 255.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*, 258

In order to struggle against the ideologies that have created intellectuals and act as a vehicles for helping exploited people, Sartre suggests that intellectuals practice two things: perpetual self-criticism and a concrete and unconditional alignment with the actions of the underprivileged classes. First, regarding the perpetual self-criticism, Sartre writes:

He must strive to remain aware that he is a petty-bourgeois breaking out of his mold, constantly tempted to renourish the thoughts of his class. He must remind himself that he is never secure from the danger of lapsing into universalism.³⁸⁹

And second, regarding the alignment with the underprivileged, Sartre says:

The role of the intellectual is thus not to judge an action before it has begun, nor to urge that it be undertaken, nor to supervise its development. On the contrary, it is to *join it in mid-course* in its elemental forms, to integrate himself in it, participate in it physically, allow himself to be captured and borne along by it, and only then, to the extent that he judges it necessary, to decipher its nature and illuminate its meanings and possibilities.³⁹⁰

The work of intellectuals should be accompanied by constant critical self-reflection and active participation alongside the most exploited members of one's society.

Sartre recognizes that the implications of his talk go beyond the current discussion, stating that “on closer inspection we find that the intellectual's contradictions are *inherent in each one of us and in the whole society.*”³⁹¹ He argues that the contradictions he has discussed in a very narrow context are at play in much larger interactions. He continues, “Our ends are robbed from all of us—we are all means towards ends which escape us, ends which are fundamentally inhuman; we are all torn

³⁸⁹ Sartre, *A Plea*, 261.

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*, 265.

between objective thought and ideology.”³⁹² What is unique about the intellectual is that most people lack a reflective consciousness of their own situation.

In *A Plea*, we see the reoccurring themes from Sartre’s account of subjectivity, as well as some new normative commitments. First, his discussion of how the intellectual becomes educated into a contradiction shows the relationship between ideology, institution, and how these form individuals’ possibilities. Second, his strong emphasis on the exploited classes returns to his discussion of class in CDR. Third, we see a return to the themes of the *Rome Lecture*: we currently live in a society with alienated morality that produces subhumans, whose integral human needs are not being met.³⁹³ *A Plea* is also important because it presents us with a *method*: we are called to first look inward at ourselves into our own contradictions. Only afterwards can we ethically respond. Ethical action must be preceded by ethical self-introspection. Klockars, for example, argues that the take away from *A Plea* is that intellectuals must combine an ethical concern about universal values with a concrete social and historical diagnosis of their current situation.³⁹⁴

Examination of these three lectures by Sartre provides us with the ethical concepts needed to outline of a mode of being that is relevant for ethical living in the present. In MH Sartre emphasizes how the normative influences our possibilities and the importance of using human freedom and autonomy to transcend societally specific moral norms. In RL, Sartre introduces commitment to the ethical ideals of integral humanity and mutual freedom, which are foundational to being human in all historical

³⁹² Sartre, *A Plea*, 265.

³⁹³ Ibid.

³⁹⁴ Klockars, *Sartre’s Anthropology*, 177.

time periods and thus are not practico-inert norms. In *A Plea*, he shows how the exercise of freedom and autonomy and the mutual freedom and integral humanity ideals should be applied in a concrete example, emphasizes the need for critical reflection, and he offers a method for this reflection. I now use this background discussion to introduce a structured model for a mode of ethical being in the present based on Sartrean thought.

2.4 Sartrean Ethical Subjectivity

I argue that a model of ethical subjectivity can be constructed on the basis of Sartre's discussions, although he does not explicitly put it this way. The "mode of being" I suggest is grounded in an orientation of critical historical reflection, active empathy with the vulnerable, and invention. While the ethical orientation has primacy, it is accompanied by ethical commitments to integral human needs and mutual freedom, which are best achieved through communal, group praxis.

First, the ethical orientation is characterized by critical historical reflection. The entirety of CDR was a critical reflection on how Sartre believes humans are made within history. This point is again emphasized in *A Plea*, in which Sartre emphasizes the need for intellectuals to be critically aware of themselves and the forces that made them. Intellectuals, who he believes all occupy a place of privilege in society, must maintain a constant awareness of the advantages they have. However, he does not limit the mandate to reflect only to intellectuals, arguing that we can find the intellectual's contradictions inherent in all of us, to the extent that most people lack a reflective consciousness of their situation.³⁹⁵ Critical historical reflection must include reflection on our own

³⁹⁵ Sartre, *A Plea*, 265.

“constituent contradiction.” This means uncovering discrepancies between our professed beliefs about ourselves and the world, on the one hand, and the way the world actually is, on the other.

For example, in *A Plea* Sartre returns to the example of racism, which he discussed in detail as a practico-inert discourse in CDR. He shows how racism infiltrates the thoughts of even the most educated and well-intentioned individuals. He says:

[R]acism is a concrete everyday attitude, and consequently a man can sincerely hold anti-racist opinions of a universal type, while in his deepest recesses, under the influence of his childhood, he remains a racist—so that one day he will involuntarily behave like one in ordinary life.³⁹⁶

In this situation the ethical orientation requires an admission that we have biases and a willingness to identify them and the conditions which have led to them. The task of reflection also requires the realization that our own experiences of the world are not universal, and that others may have very different perceptions of the same practico-inert structures depending on how they have experienced them.

Second, the ethical orientation requires active empathy with those who Sartre considers exploited. These can be marginalized or disadvantaged people in any society. Sartre focuses his analysis on the economically exploited, due to his focus on class being. I suggest that we seek active empathy with the *vulnerable* rather than the “oppressed” or “poor.” By vulnerable, I mean people who are more susceptible to being harmed by others and whose economic, educational, vocational, physical, and intellectual possibilities are more limited by practico-inert structures. Actively empathizing with vulnerable people rather than limiting it to the economically exploited still encompasses those who are economically disadvantaged while also making room

³⁹⁶ Sartre, *A Plea*, 249.

for other ways that people are rendered vulnerable in a given society. Vulnerable people in the United States include, but are certainly not limited to, the intellectually or physically disabled, the elderly or terminally ill, undocumented immigrants, minority ethnic groups, children, especially those in foster care, victims of violence and abuse, and the homeless. Sartre explicitly calls for a direct alignment with the *experiences* of the exploited or vulnerable. Thus, part of the ethical orientation is to actively seek out opportunities to gain insight into the experience of people who are rendered vulnerable by the practico-inert structures in any society. At the same time, the ethical orientation requires acknowledgement that we can never fully understand what it is like to be in their place.

Third, the ethical orientation requires a general attitude and orientation toward invention, which requires exercising freedom. The concept of invention serves a two-fold purpose in Sartre's ethical thought. First, invention is utilizing one's free consciousness to look beyond practico-inert structures and imagine new possibilities for arranging our environment, envisioning practices or structures in which fewer people are rendered vulnerable. Second, invention requires a willingness to choose possibilities that may be a direct rupture with the choices we have made in the past which affirmed practico-inert morality. This requires creativity, courage, and a willingness to upset our own moral comfort.

Recall Sartre's example in *Morality and History* of the man who failed to "invent" a new relationship with his wife. Letting his wife know that she had a terminal diagnosis would have forced him to take on the burden of caring for her in her final year. The potential rearrangement of the possibilities this man would have had to endure was

unbearable for him. This can be translated into a broader social context. Taking up different practico-inert structures as a concrete future goal, we have to “invent” by restructuring our given field into new possibilities. This can be very uncomfortable if existing practico-inert structures already benefit us. In these situations we may be tempted to “lie to our spouses,” so to speak. For Sartre, we are obligated as ethical subjects to use our autonomy and freedom to envision ways we could meet human needs within existing practico-inert structures. In addition to inventing ourselves by pursuing new ends, we must “invent” a new relationship with each other within the realm of historical possibility.

The ethical orientation of critical historical reflection, active empathy, and invention is accompanied by ethical commitments to integral humanity and mutual freedom, which we are best achieved through communal group praxis. In *RL* and *A Plea* it is clear that a dedication to integral human needs is at the root of Sartre’s ethical commitments. We can extrapolate the basic needs that would fall into this category, as Sartre himself fails to do so. It is clear that integral human needs for Sartre include access to basic material resources, educational opportunities, health care, economic stability, and respect and recognition of oneself as a free human. With regard to the second ethical commitment of mutual freedom, the ethical agent must be committed to recognizing and enabling the other’s freedom and realizing that one’s freedom is interwoven with the freedom of others. Our own projects are susceptible to be interpreted by others, so the mutual recognition of the meaning of what we do enables our own freedom.³⁹⁷ Our possibilities to realize the meaning intended in our actions

³⁹⁷ Klockars emphasizes this point. See *Sartre’s Anthropology*, 177-179.

depend on the meanings and significations of the action in relation to other persons and on their recognition of our projects. We gain possibilities for everyone when we make room for the freedom of others.

The commitments to integral humanity and mutual freedom are best actualized in the historical world through “group praxis.” In CDR, Sartre argues that the most active response to the feebleness and impotency of a series is for individuals to bond together to form a group. Group formation allows individuals to have more control over the practico-inert forces that condition their existence. Members of groups remain ontologically distinct individuals; however they are not as isolated as members in a series because they are united through common goals.³⁹⁸ A pledged group is a group which is deliberately chosen by individuals who make a pledge to one another to uphold the common praxis of the group. Sartre calls the pledged group “the victory of man as common freedom over seriality.”³⁹⁹ The primary characteristic of a pledged group is that individuals come together freely and make a pledge to each other reciprocally. “I give my pledge to all the third parties of forming the group of which I am a member, and it is the group which enables everyone to guarantee the statute of permanence to everyone.”⁴⁰⁰ Through the pledge, each member agrees to limits on his or her practical freedom, but these limits ensure proper utilization of resources for the group as a whole. The formation of a pledged group allows individuals to engage in collective praxis and move beyond seriality. In order to build a society which reflects Sartre’s ethical ideals

³⁹⁸ Sartre, CDR, 377.

³⁹⁹ *Ibid.*, 437.

⁴⁰⁰ *Ibid.*, 421.

of integral humanity or mutual freedom, it is imperative that individuals intentionally choose to bond together and direct their praxis toward shared ends.

Sartrean ethical subjectivity as a mode of being-in-the-world requires several things from us at the level of our individual actions and at the level of our approaches to public policy. At the level of our individual existential project, Sartrean ethical subjectivity, first, commits us to critical historical reflection on ourselves, or an investigation in our own contradictions. Second, it requires active participation alongside those who are vulnerable in order to understand their experience of the world. Third, it requires the courage to invent by looking beyond practico-inert moralities. Fourth, it demands a willingness to use our freedom and autonomy to break from our personal pasts and choose new possibilities in the present. Fifth, it calls us to recognize that we gain possibilities through our interactions with others, and that our actions influence others' possibilities. Last, it requires a commitment to meeting integral human needs and recognizing mutual freedom within our historical moment.

Sartrean ethical subjectivity can also serve as a philosophical framework for evaluating the worthiness of public policies or ethical practices. This means when we are morally evaluating a public policy, we must, first, approach the policy in its historical singularity rather than at the universal or abstract level. Second, we should examine how this practice is shaping discourses, ideas, and the practical field of options that comprise the field of possibilities. Third, we should ask if this policy is practico-inert and contributing to seriality or if it renders individuals vulnerable. Fourth, we must be willing to envision creative solutions that go beyond existing practico-inert structures

and look beyond practico-inert moralities. Fifth, we must make sure our policies are compatible with the ideals of integral human needs and mutual freedom.

In this section I have offered a model for an ethical subjectivity derived from the ethical concepts Sartre offers in his post-CDR lectures. It is a mode of being characterized by an orientation of critical reflection, active empathy, and invention. It is characterized by the commitments to integral human needs and mutual freedom, which should be pursued through pledged group praxis. I now turn to Foucault's discussion of historical practices of ethics.

3 Foucault and Ethical Subjectivity

Foucault's philosophy includes little normative content, as Foucault was more interested in uncovering than legislating. However, when he was questioned about ethics, there are common themes in Foucault's answers that can provide an ethical foundation to build on. I argue that through his discussion of historical practices of care of the self in the Hellenistic period as well as *parrhesia* or truth-telling in Ancient Greek and Roman life, Foucault provides a window to see how ethics functioned historically in relation to the truth and as a practice of caring for self and others. While Foucault does not explicitly advocate that any view is better than another, I argue that his historical exploration itself calls us to understand how ethics relates to truth and caring for others in our own epoch, and this should inform our contemporary moral reasoning.

Ethical subjectivity in Foucault has become a topic of discussion in recent philosophical literature. The most comprehensive analysis of a model of ethical subjectivity in Foucault comes from Colin Koopman who presents a model of

Foucauldian self-transformation as an ethical orientation. Koopman argues that Foucault offers a vision of ethics which is oriented towards self-transformation in the sense of reworking and re-creation of the self. Koopman also identifies two implicit ethical commitments: care of self and a philosophical way of life.⁴⁰¹ While I do not argue that Foucault explicitly advocates for commitments to care of self and the philosophical way of life, I do think that these commitments are compatible with, and in the spirit of, Foucault's thought. However, we must be careful to apply them through the context of his ethical orientation and in the context of our contemporary epoch's framework of truth.

In a 1980 interview with Michael Bess, when questioned about ethics, Foucault replied that ethical practice should rely on “*refusal, curiosity, and innovation.*”⁴⁰² This is the ethical orientation that, in my view, Foucauldian ethical subjectivity requires: refusal as a critically reflective practice, curiosity as a critical ontology of ourselves, and innovation as a general openness to change and transformation. The ethical subjectivity model I suggest requires the commitments to care of self and the philosophical way of life in our epoch characterized by biopower and mechanisms of security, although Foucault does not explicitly advocate for them. To unpack these orientation and commitments, we must look at two different lecture series that Foucault gave at the end of his life: *The Government of Self and Others* and *The Courage of Truth*.

⁴⁰¹ Koopman, “Formation and Self-transformation,” 530.

⁴⁰² Foucault, “Power, Moral Values, and the Intellectual,” interview by Michael Bess, *History of the Present* 4 (1988): 13.

3.1 *The Government of Self and Others*

In *The Government of Self and Others* (GSO), Foucault studies the relationship between politics and philosophy in Ancient Greece and Rome, and early Christianity. He focuses on the concept of *parrhesia*, which can be translated as “frank-speech” or “truth telling.” By posing the question of what it means to govern oneself and others in the Ancient world, Foucault looks to uncover “how truth-telling, the obligation and possibility of telling the truth in procedures of government can show how the individual is constituted as a subject in relationship to self and the relationship to others.”⁴⁰³

Reviewing the different forms of *parrhesia* that Foucault discusses will serve three objectives. First, it will show how morality was linked to telling the truth in different historical epochs, setting up a background for a discussion of how this link functions today. Second, it will show how Foucault describes historical truth-telling as a process of self-transformation, which is an important part of his ethical orientation. Third, a descriptive looking back can help illuminate what is at stake for a prescriptive going forward.

In late Antiquity and the first two centuries BCE, Foucault says there was a development of a technique of telling the truth in which one could not properly care for oneself without a relationship to another person. The role of this person was to tell the truth.⁴⁰⁴ Truth-telling (*parrhesia*) is situated within a:

[M]eeting point of the obligation to speak the truth, procedures and techniques of governmentality, and the constitution of the relationship to self. Truth-telling by the other, as an essential component of how he governs us, is one of the essential

⁴⁰³ Foucault, GSO, 42.

⁴⁰⁴ *Ibid.*, 43.

conditions for us to be able to form the right kind of relationship with ourselves that will give us virtue and happiness.⁴⁰⁵

Telling the truth was not about revealing timeless metaphysical facts about ourselves or the world, but had to do with the way one related to self and others in processes of government. Thus, according to Foucault's interpretation, the Ancients possessed an awareness of the historicity of ethics.

For example, Foucault looks at the relationship of *parrhesia* to democracy, arguing that the "good *parrhesia*" of the 4th century Greece BCE is exemplified in the figure of Pericles as presented in Thucydides' *History of the Peloponnesian War*.⁴⁰⁶ During this time period, good *parrhesia* required four "poles": the pole of democracy, the pole of ascendancy, the pole of a rational *logos*, and the pole of courage. Democracy was required so all people could speak freely and take part in decision making. For good *parrhesia*, the speaker needed some level of authority or superiority over others to get them to listen. The third pole required a rational *logos*, for the one who rose to a level of ascendancy in order to speak and exercise power over others must present a discourse of truth. Last, *parrhesia* required moral courage, because when *parrhesia* took place in a democracy, it was bound to be met with opposition. Thus, the one who spoke the truth must have courage in the face of opposition.⁴⁰⁷ The *parrhesiast*, in a good democracy, must be one who sees the truth, is capable of telling it, is devoted to the general interest, and is reliable and honest.⁴⁰⁸

⁴⁰⁵ Foucault, GSO, 45.

⁴⁰⁶ Thucydides, *History of the Peloponnesian War*, translated by Rex Warner (London: Penguin Books, 1972).

⁴⁰⁷ Foucault, GSO, 173-174.

⁴⁰⁸ The person who exemplifies this good *parrhesia* is Pericles. Through personal merit Pericles is able to rise to the level of ascendancy as a military commander into a model *parrhesiast*. He wanted others to know that a democracy should not be a city that benefits the most powerful,

The next stage of *parrhesia* Foucault examines is the philosophical *parrhesia* through a focus on Plato's *Seventh Letter*. Foucault explains that there was a deterioration of the connection between democracy and *parrhesia*, insofar as democracy, which allowed everyone to speak equally, came to narrow the space where *parrhesia* could be practiced. *Parrhesia* was in danger of being indistinguishable from flattery. This is why, Plato argues, philosophers must come to power.⁴⁰⁹ It is to be noted that the type of philosophy advocated for was not a transmission of knowledge, but rather "a mode of life, a way of being, a practical relationship to oneself through which one elaborates oneself and works on oneself."⁴¹⁰ This mode of being was characterized by taking part in an active philosophical task (*ergon*). According to this task, the philosopher should be concerned with the affairs of the city and the governing of others.

Foucault says that Plato's *Seventh Letter* poses the question of the reality of philosophy.⁴¹¹ Foucault argues that philosophy was not a form of truth-telling that legislated. Philosophy was not meant to prescribe a type of government or particular rules for conduct, but to function in relation to whatever political system was already operative in a society. If philosophy intervened in politics, it was to help those who govern and those who were governed to learn to care for themselves and others. By first turning their gazes inward and knowing themselves, rulers were then able to perceive

but a city administered in the general interest. Pericles exemplifies someone who is able to identify the public interest, express it in speech, have his fellow citizens see and understand it clearly, and be sufficiently persuasive to his fellow citizens so that they obey him. See GSO, 179-180.

⁴⁰⁹ Foucault, GSO, 217.

⁴¹⁰ *Ibid.*, 219.

⁴¹¹ *Ibid.*, 228.

things like the foundations of a concept of justice.⁴¹² Importantly, philosophy was viewed as a constant work performed on the self:

[T]he test of philosophy in politics directs us to this: the reality of philosophy is found in the relationship of self to self. And it is indeed in setting out the problem of the government of self and the government of others that philosophy, here, in this text, formulates its *ergon*, at once its task and its reality.⁴¹³

The self described in this passage does not refer to an unchanging metaphysical reality, but a subject that is constantly produced and transformed. The task and reality of philosophy was to perform work on oneself and to become more balanced and reflective when governing oneself and others.

In his historical analysis in GSO, Foucault demonstrates that telling the truth functioned alongside ethical practices. The process of telling the truth necessarily involved interaction with and help from others. The philosopher played a role of exposing and assisting others to come to decisions on their own, not through legislating or prescribing. The idea was not to demonstrate that something was morally right or wrong or true or false, but instead to change social and cultural attitudes and behaviors through the practice of truth-telling. Foucault does not advocate for a return to these practices, but his historical insight enables us to envision ethics as an ongoing process of transformation and reflection, in which people participated alongside the political practices in one's epoch. The relationship between *parrhesia* and caring for the self, as well as a different vision of what a philosophical life is, can again be found in *The Courage of Truth*.

⁴¹² Foucault, GSO, 232-234.

⁴¹³ *Ibid.*, 255.

3.2 The Courage of Truth

In *The Courage of Truth* (CT) Foucault begins with the assertion that at the end of the 4th century and beginning of the 5th century in Athens, there was a political climate that no longer allowed for public *parrhesia*. Then, *parrhesia* became a matter of work on the individual prince's soul. With the help of a philosophical counselor, the prince aimed to establish a relationship with the truth that allowed him to have knowledge of how to govern himself and others well. It was through practices of *parrhesia* that the prince potentially became capable of ethical differentiation in his ruling life. "[T]hrough true discourse, one can instill in it the ethos which will make him capable of grasping the truth and of conducting himself in conformity with this truth."⁴¹⁴

The question of *ethos* was always posed, according to Foucault's interpretation, alongside the question of how to access the truth. The *parrhesiastic* standpoint:

[T]ries to bring the question of truth back to the question of its political conditions and the ethical differentiation which gives access to it; which constantly and always brings the question of power back to the question of its relation to truth and knowledge on the one hand, and to ethical differentiation on the other; the standpoint, finally, which constantly brings the question of the moral subject back to the question of the true discourse in which this moral subject constitutes itself and to the question of the relations of power in which this subject is formed.⁴¹⁵

Ethics, in the sense of how to live, was a problem that had to be contemplated and posed alongside the existing framework of truth and power. This point is crucial to the ethical mode of being I suggest.

⁴¹⁴ Foucault, CT, 61.

⁴¹⁵ *Ibid.*, 68.

Foucault then presents his interpretation of *The Apology*, in which he argues that Socrates' message before his death was to encourage the citizens of Athens to take care of themselves:

By encouraging you to take care of yourselves I am useful to the whole city...It is in the city's interest to protect the true discourse, the courageous veridiction which encourages citizens to take care of themselves...Through his concern about himself, this leads him to concern himself with others.⁴¹⁶

According to Foucault, the entire theme of the *Apology* is linked to a theme of care, both for oneself and for others. But this care involved a relationship to a truth that was produced within a set of conditions that justified what counted as true. One must care for one's own soul by contemplating how one's soul was linked to the truth.⁴¹⁷ The Socratic discourse focused on presenting an account of what is good in how one lives and was an "organizing and formative principle of one's mode of life."⁴¹⁸

Foucault then turns to a different form of *parrhesia* that can be found in the philosophical life practiced by the Cynics. The Cynic life was characterized by intentional poverty, begging, and roaming. This "mode of life," as Foucault calls it, was for the Cynics the condition of the possibility of telling the truth.⁴¹⁹ With Cynicism, the mode of life itself made space for the truth to be told. Making the truth was to be visible in one's behavior. "Cynicism makes life, existence, *bios*, what could be called an alethurgy, a manifestation of truth."⁴²⁰ One's concrete and material life such as one's body, dress, and general conduct was intended to give witness to the truth.

⁴¹⁶ Foucault, CT, 90.

⁴¹⁷ *Ibid.*, 113.

⁴¹⁸ *Ibid.*, 146.

⁴¹⁹ *Ibid.*, 171.

⁴²⁰ *Ibid.*, 172.

According to Foucault, the Cynics took the Greek principles for a “true life” and took them to their extreme. The “true life” in Ancient Greek thought could be characterized according to four principles. First, the true life was unconcealed, in the sense of a way of being that does not hide its intentions and aims. Second, the true life was unalloyed, that is to say, without mixture of good and evil, pleasure and suffering, vice and virtue. Third, the true life was a straight life, or a life lived within norms and principles of conduct. And fourth, the true life was unchanging, a life without disturbance or corruption.⁴²¹ Foucault does not believe that Cynicism broke with this concept of a true life, but rather, took these themes “to their extreme consequence, as an extrapolation of the themes of the true life rather than as external to them.”⁴²² The Cynic life was still based on the four themes of Greek truth, but they took these themes and lived them to the extreme:

The Cynic game shows that this life, which truly applies the principles of the true life, is other than the life led by men in general and by philosophers in particular. With this idea that the true life is an other life, I think we arrive at a particularly important point in the history of philosophy, certainly in the history of Western ethics.⁴²³

The Cynic interpretation of the unconcealed life was a life lived concretely and materially in front of others.⁴²⁴ The unalloyed life under the Cynic interpretation was characterized by a real material poverty without possessions. It was an active poverty that sought more than just lack of concern for wealth.⁴²⁵ The straight life, for the Cynics, was a life that conformed to the principles of nature, embracing animality and

⁴²¹ Foucault, CT, 220-225.

⁴²² *Ibid.*, 228.

⁴²³ *Ibid.*, 244.

⁴²⁴ *Ibid.*, 253.

⁴²⁵ *Ibid.*, 258-259.

others types of brute existence. These three changes in the unconcealed, unalloyed, and straight life are what Foucault calls the “Cynic reversal.” The last characteristic of a “true life” as an unchanging or incorruptible life, took the form of a sovereign life. The sovereign was a philosopher king who by nature cared for others, to the extent that he would be willing to sacrifice himself for others.⁴²⁶ Foucault calls this the Cynic scandal, which was not a refutation of the Greek conception of a good life, but rather took the Greek principles to their extreme and lived them openly.

This form of life will look not only to change oneself, but also the world, all of humanity. The aim of Cynic life, according to Foucault, is not just to say what the world is in its truth:

Its aim, its final aim, is to show that the world will be able to get back to its truth, will be able to transfigure itself and become other in order to get back to what it is in its truth, only at the price of a change, a complete alteration, the complete change and alteration in the relation one has to self.⁴²⁷

In this passage we see that the Cynic life was an ethical process of self-creation and being-in-the-world. To tell the truth meant to supervise others, to watch what others do and think, and to watch over all of humanity. Since each person is part of humanity, this was an aspect of caring for both the self and others simultaneously.⁴²⁸ This is what a Foucauldian analysis makes possible for us today—we cannot recover the Cynic life, but we can formulate a mode of ethical self-transformation for us, in our current framework of truth and power.

In CT, we see important themes for how Foucault sees the orientation of an ethical life, although he does not advocate that we simply return to Greek or Cynic

⁴²⁶ Foucault, CT, 278-279.

⁴²⁷ *Ibid.*, 315.

⁴²⁸ *Ibid.*, 310-312.

practices. From this discussion of the different forms that *parrhesia* took throughout historical periods, it is evident that Foucault sees a link between how we should live and our epoch's relationship for receiving and telling the truth. In each period, he sees *parrhesia* as requiring courage and willingness to change. He presents us with different models for being an ethical subject, showing that ethics was a transformational way of life. He shows that the political conditions for telling the truth varied in particular time periods in relationship to the rational principles governing each epoch. In the next section, I will use this historical exploration to suggest a set of ethical commitments that can be considered Foucauldian if we take care to apply them within the framework of Foucault's orientation. I will begin by briefly examining secondary literature on the ethical subject in Foucault before offering my own model.

3.3. Foucauldian Ethical Subjectivity

While Foucault's ethical framework is more abstract and implicit than Sartre's, the concept of Foucauldian "ethical subjectivity" has received much attention in recent Foucault scholarship. For example, recent work comes from Justen Infinito,⁴²⁹ Lynne Huffer,⁴³⁰ Mark Kelly,⁴³¹ Nancy Luxon,⁴³² and Colin Koopman.⁴³³ Infinito, Kelly, Luxon, and Koopman all offer similar analyses that describe a Foucauldian ethical

⁴²⁹ Justen Infinito, "Ethical Self-Formation: A Look at the Later Foucault," *Educational Theory* 53.2 (2003): 155-171.

⁴³⁰ Lynne Huffer, "Foucault's Eros: For an Ethics of Living in Biopower," in *A Companion to Foucault*, 436-453.

⁴³¹ Mark Kelly, "Foucault, Subjectivity, and Technologies of the Self," in *A Companion to Foucault*, 510-525.

⁴³² Nancy Luxon, "Ethics and Subjectivity: Practices of Self-Governance in the Late Lectures of Michel Foucault," *Political Theory* 36.3 (2008): 377-402.

⁴³³ Koopman, "The Formation and Self-Transformation."

orientation. Infinito, for example, suggests that Foucauldian ethical subjectivity involves creating an environment that encourages experimentation of the self, an awareness of oneself as a product of one's historical moment, and an attitude or disposition to critique.⁴³⁴ I agree that this is an integral part of the ethical orientation we find in Foucault and we will see evidence of this in the model I suggest. I will go further in arguing for a set of commitments in our epoch of biopower. Kelly argues that ethical subjectivity for Foucault is a type of self-constitution which focuses on recovering the Greek conception of "care for yourself" rather than the modern concern with "know yourself." Kelly argues that modern practices of ethics are focused on attempts to ground them in a scientific truth about ourselves. Foucault suggests an ethics that recovers a practice of creating oneself as a work of art rather than following maxims based on scientific truths that we believe have revealed standards of behavior.⁴³⁵

Luxon, for her part, argues that Foucault's lectures on *parrhesia* offer a model of "expressive subjectivity" composed of practices of self-governance. Expressive subjectivity is a body of practices that do not refer to any binding external order.⁴³⁶ She argues that we can draw from Foucault's lectures on *parrhesia* a mandate for an "ethical steadiness" or point of reference for ethical practice, precisely because ethics can never be achieved once and for all. If our relationships to each other and to the social issues of our time are to have an ethical steadiness, they require commitment to certain discourses and self-practice.⁴³⁷ The model I suggest below is not in conflict with any of the aforementioned models and is compatible with their insights. My model will go further,

⁴³⁴ Infinito, "Ethical Self-Formation," 168.

⁴³⁵ Kelly, "Foucault, Subjectivity," 517-521.

⁴³⁶ Luxon, "Ethics and Subjectivity," 379.

⁴³⁷ *Ibid.*, 398-399.

however, in that I systematically offer an ethical orientation and commitments, and specify how these are applicable in our current epoch of biopower and mechanisms of security.⁴³⁸

Let us return to Foucault's discussion of ethics as "refusal, curiosity and innovation." When the questioner pressured Foucault because his answer was too vague, Foucault responded:

I'm not a prophet. I'm not an organizer. I don't want to tell people what they should do. I'm not going to tell them: "this is good for you, this is bad for you!" I try to analyze a real situation in its various complexities, with the goal of allowing refusal, and curiosity, and innovation.⁴³⁹

I believe these sentiments characterize Foucault's ethical orientation. When Foucault says that ethics should rely on "refusal," I argue that he is referring back to his assertions that we must not accept our current social or political landscape as inevitable. One should not accept any contemporary practice or claim to truth without first submitting it to scrutiny. This does not necessarily mean that our current political landscape is "wrong" or necessarily bad, but that we should not accept it as inevitable. When Foucault discusses *parrhesia* as it functioned in Plato's *Seventh Letter*, he said that philosophers helped those who governed turn their gazes inward in order to first know themselves. By doing so, they were able to independently envision foundations for

⁴³⁸ Huffer's analysis is unique as she makes an effort to directly connect Foucault's conception of ethics to our epoch of biopower. She proposes a "Foucauldian ethics of eros as a transformative thinking-feeling of life in biopower," (438). Huffer suggests a Foucauldian ethical subjectivity characterized by a mode of living which is an uncertain, embodied, and disruptive encounter with other subjects. She calls this an "erotic retraversal" which is an "ethical, self-transformative, self-undoing labor that exposes the Cartesian 'I' to its own limits as rational subject," (451). Ultimately she grounds this subjectivity in certain modes of sexuality. Limiting ethical self-formation to different sexual practices, however, has limited application for conversations in applied ethics and our general relationships with others. See "Foucault's Eros."

⁴³⁹ Foucault, "Power, Moral Values, and the Intellectual," 13

concepts of justice regarding how politics should operate, and then direct that knowledge outwards, to govern others. This serves as a historical example of refusal. Refusal as an orientation pertaining to our relationships with others means that we must not tell others what to do, but help them see the contingency and lack of necessity in our practices. In the following passage from *The Politics of Truth*, Foucault argues that we should never complacently accept our own certainties. I suggest this passage exemplifies the attitude of refusal:

Never consent to be completely comfortable with your own certainties. Never let them sleep, but never believe either that a new fact will be enough to reverse them. Never imagine that one can change them like arbitrary axioms. Remember that, in order to give them an indispensable mobility, one must see far, but also close-up and right around oneself. One must clearly feel that everything perceived is only evident when surrounded by a familiar and poorly known horizon, that each certitude is only sure because of the support offered by unexplored ground. The most fragile instant has roots.⁴⁴⁰

Drawing from this passage, we can extrapolate refusal to mean a willingness to challenge our assumptions, while simultaneously realizing that we cannot instantly reverse them. They should be mobile and subject to revision, but we also must acknowledge that they are part of who we are. Additionally, we must be willing to look outward, at our social landscape, as well as inward, at ourselves.

We can connect Foucault's talk of "curiosity," with the critical ontology of ourselves that he introduces in "What is Enlightenment?" As we recall, Foucault suggests that we make inquiries into the following questions: "How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own

⁴⁴⁰ Michel Foucault, *The Politics of Truth*, translated by Lysa Hochroth and Catherine Porter (Los Angeles: Semiotexte, 1997) 127.

actions?”⁴⁴¹ He is careful not to advance the point of view that this historical ontology could give us complete and definitive knowledge of ourselves and our historical limits, as it is impossible to objectively remove ourselves from our current way of thinking.⁴⁴² Foucault shows that by posing these questions for different historical epochs, we can reveal the contingency of how we currently think, speak, and act. We can identify particular shifts, for example, the shift to strategies of biopower and discipline in the recent past, to understand how those concepts may still be influencing our mode of subjectivity today. Curiosity is important to the Foucauldian ethical orientation because there is no normative looking forward without a descriptive looking back.⁴⁴³

Foucauldian “innovation” is primarily characterized by a general orientation towards transformation. In his discussion of the reality of philosophy in the ancient world, Foucault reveals a time when philosophy functioned as an ongoing work on the self:

The reality of philosophy is its practice... That is to say, it is the relation to self, in the work of self on self, in the work on oneself, in this mode of activity of self on self that philosophy’s reality will actually be demonstrated and attested.⁴⁴⁴

I argue that the attitude of innovation should look to recover the sentiment of philosophy as a practice and work on ourselves. This includes a willingness to perform

⁴⁴¹ Michel Foucault, “What is Enlightenment?” found in *The Foucault Reader*, edited by Paul Rabinow (New York: Randomhouse, 1984), 49.

⁴⁴² *Ibid.*, 47.

⁴⁴³ Koopman argues that Foucauldian ethical subjectivity must include an orientation that takes the form of historico-critical reflection on the present, in which the critique of who we are is a historical reflection on the limits imposed on our possibilities and experimentation with the possibility of transcending them. He views Foucault’s most valuable contribution to contemporary ethics as the idea that there is no such thing as a normative looking forward without a descriptive looking back. We are likely to fail at remaking ourselves if we do not understand the conditions under which we have been made in the first place. See “Formation and Self-Transformation,” 531-538.

⁴⁴⁴ Foucault, CT, 242.

this work in order to be different. It requires a realization that self-transformation is never achieved once and for all, but is ongoing. We cannot recover the practices of the Greeks, because we live in an epoch of biopower and mechanisms of security. We can, however, adopt a general orientation toward innovation and self-transformation that was present during this time and is in line with the spirit of Foucault's philosophy.

In his analysis of Foucauldian ethical subjectivity, Koopman argues that a Foucauldian orientation requires a general disposition towards transformation. He argues that there are two different forms of transformation in Foucault's portrayal of historical *parrhesia*: a social transformation and an individual transformation. On the social level, *parrhesia* is portrayed not as a transmission of the knowledge that social practices are unjust, but "rather transforming our conceptions of justice such that we can come to recognize certain practice as possibly unjust."⁴⁴⁵ *Parrhesia* as a political practice of truth-telling does not reveal what is true or false about society but, rather, "transforms the conditions of the possibility of showing something to be true or false."⁴⁴⁶ On the level of individual transformation, Koopman argues that *parrhesia* "functions to reflexively effect transformations in our selves: one way of taking care of ourselves."⁴⁴⁷ Through critical examination of our assumptions about what is true, we exhibit a willingness to become different if this is where our investigation leads us. Koopman argues that this is a process of ongoing transformation and reworking of the self.

The mode of being with Foucauldian roots that I suggest, therefore, is characterized by an orientation of a courageous refusal to accept practices as inevitable

⁴⁴⁵ Koopman, "Formation and Self-Transformation," 536.

⁴⁴⁶ *Ibid.*, 536.

⁴⁴⁷ *Ibid.*, 537.

or immediately assume them good or bad, by a curious attitude that results in a historical ontology of ourselves, and by an orientation toward transformation and innovation that is never achieved once and for all. I argue that this mode of being should also include ethical commitments, even though Foucault did not explicitly advocate for them himself. These should include caring for others as part of care of self and a philosophical life of truth-telling in our epoch of biopower and mechanisms of security. In congruence with the explicitly Foucauldian ethical orientation, these commitments must be “innovative” to the extent that we allow flexibility and openness to change in their application. I define care of self as a commitment to one’s own well-being, as well as caring about the well-being of others alongside ourselves. By first turning our gaze inward, we can help others see the lack of necessities in their landscape without telling them what to do. I will define the philosophical way of life as a commitment to recovering philosophy as an ongoing process of working on oneself, characterized by a courage to live the truth. Discussing how these commitments could potentially operate in contemporary society will bring them into greater clarity.

Recall that biopower refers to a set of controls that were introduced when Western society came to conceive of human beings as a species with a body that could be mastered and manipulated. Biopower is the underlying rational justification behind many of our current medical and disciplinary practices. Mechanisms of security refer to disciplinary mechanisms that were introduced on the basis of this new understanding of biopower and aimed at making changes in the norm at the level of populations. The question, then, is the following: what do commitments to “care of self” and the “philosophical way of life” entail for us in the epoch of biopower? In what follows I

make some suggestions for answering this question, keeping in mind that these commitments must be flexible in their application. This is my own development of Foucauldian concepts rather than a view for which Foucault himself explicitly advocated.

Foucault's historical analyses showed that historically care of self included practices performed to make one capable of receiving and knowing the truth. He demonstrates that in different periods knowing the truth included a duty to supervise others, watch what others do and think, and watch over all of humanity. As each person was part of humanity, one cared for self and others at the same time.⁴⁴⁸ I argue for a commitment to care of self in our epoch which focuses on how practices of biopower and mechanisms of security affect our possibilities. We should strive to understand the categories of normality and abnormality through which we form beliefs about ourselves and our relationships with others. We should acknowledge how new practices of biopower or discipline will create categories for normality and abnormality. This ethical commitment includes a dedication to exploring how our practices affect our possibilities and a commitment to changing our behavior when appropriate. It also includes a commitment to helping others see these changes in possibilities as well. This does not mean telling others what they should do, but assisting people in reaching the relevant knowledge to decide for themselves. I argue that care of self as a practice requires this to be an active, intentional process that we perform alongside others. This view is not explicitly Foucauldian, but is opened by his historical analyses and can be applied within the context of his ethical orientation.

⁴⁴⁸ Foucault, CT, 310-312.

The second commitment I argue is made possible by Foucault's analyses is a philosophical way of life in our current epoch. As Koopman argues convincingly, the practice of *parrhesia* does not consist in demonstrating that something is morally right or wrong or true or false, but instead in influencing social and cultural attitudes and behaviors through the practice of truth-telling.⁴⁴⁹ Foucault focuses on the Cynic version of the true life, which was a manifestation of the self, a physical model of truth, and speech spoken with conviction and persuasion.⁴⁵⁰ The aim of the Cynic life was to "transfigure itself and become other in order to get back to what it is in its truth, only at the price of a change, a complete alteration, the complete change and alteration in the relation one has to self."⁴⁵¹

Although we cannot return to the Cynic life of truth in our current ways of thinking and doing, I suggest our contemporary mode of ethical being strive to recover philosophy as a work on ourselves, and rediscover life as a manifestation of the truth in our doing and being. In our epoch of biopower and mechanisms of security, this would mean bearing the truth of our possibilities, maintaining a reflective awareness of how we become subjects through these practices, and a willing acceptance to become different through changes in these practices. Additionally, the courage to tell the truth requires speaking out appropriately in the proper contexts when a practice is changing categories for normality and potentially stifling possibilities for certain groups. For us, this means bearing witness to the truth of how medical and disciplinary practices are shaping the field of possibilities in our epoch.

⁴⁴⁹ Koopman, "Formation and Self-Transformation," 537.

⁴⁵⁰ Foucault, CT, 314.

⁴⁵¹ *Ibid.*, 315.

The model I have suggested is intended to serve as a guideline for creating oneself as an engaged historical agent in our epoch, based on Foucauldian thought. The following table will help organize explicitly what comes from Foucault and what I add that is not explicitly present in Foucault's work.

Orientation or Commitment	Explicitly Foucault's	Engels' Addition
Orientation: Refusal	<ul style="list-style-type: none"> Refusal of necessities in our social and political landscape. 	<ul style="list-style-type: none"> We should refuse many necessities about ourselves and our own possibilities without submitting to scrutiny.
Orientation: Curiosity	<ul style="list-style-type: none"> We should perform a critical historical ontology of ourselves that explores how we are constituted as subjects of knowledge, power, and our own actions. No normative looking forward without a descriptive looking back. 	<ul style="list-style-type: none"> This critical historical ontology must explore how we are constituted as subjects through practices of biopower and mechanisms of security. Must explore how changing these practices will change the conceptual framework through which we emerge.
Orientation: Innovation	<ul style="list-style-type: none"> Ongoing willingness for change and self-transformation. Recognition that historical ontology of ourselves reveals new possibilities. 	<ul style="list-style-type: none"> There must be flexibility and openness in our ethical commitments.
Commitment: Care of Self	<ul style="list-style-type: none"> Historically people cared for ourselves when they took up a relationship with the truth. We can care for others alongside ourselves by helping them seek the relevant knowledge to decide for themselves. 	<ul style="list-style-type: none"> Care of self necessitates exploration of how our possibilities are shaped by our epoch of biopower and mechanisms of security. Caring for others requires helping them see as well. This should be an active, intentional process.
Philosophical way of life	<ul style="list-style-type: none"> Shows that philosophy previously functioned as a practice and work of self on self. Implicitly advocates a historically relevant 	<ul style="list-style-type: none"> Maintaining a reflective awareness of how we become subjects through biopower and mechanisms of security.

	relationship with telling the truth.	<ul style="list-style-type: none"> • Actively willing to become different through the changes of these practices. • Commitment to speak up and speak out appropriately in the proper contexts when a practice is changing categories for normality. • Willingness to illuminate models of thinking and acting that were previously closed off or unexplored.
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An ethical mode of being with Foucauldian roots demands several things of us at the level of our individual subjectivity and at the level of public policy. In terms of our individual actions, it requires, first, refusing to accept that our social and political landscape is inevitable. Second, it requires we recognize ourselves as historically situated, socially constructed beings. We are called to critically examine how mechanisms of power have influenced the possibilities for being subjects, including biopower. As Foucault shows through his historical analyses, ethical practices emerge alongside an epoch's justificatory framework for truth. Third, it requires practicing freedom through a general willingness to become different through reflection and practice. Fourth, it requires that we care about others' possibilities alongside our own and recognize that we gain or lose possibilities through interaction with each other. Fifth, in our personal reflection and social interaction it requires a willingness to expose new models for thinking and acting that were previously unexplored or considered impossible.

When using Foucauldian ethical subjectivity as a philosophical approach to evaluating public policy, it should affect our analysis as follows: First, we must descriptively look back in order to normatively look forward, which means considering the historical context of a practice. Second, we must ask how a particular practice is changing discursive practices, establishing categories for normality and abnormality, and creating a conceptual framework through which subjects form a conception of self and others. Third, proposed solutions or changes should be innovative and flexible. Fourth, the method should take care to recognize that ethical responses arise alongside our epoch's practices and framework of truth. Fifth, the method should seek primarily to uncover and expose new ways of thinking or responding rather than legislating.

A Foucauldian ethics, even with my alterations, will always appear to be lacking to some because of its general openness and absence of fixed, straightforward commitments. But this is a fundamental characteristic of Foucault's philosophy. Foucault does not tell us what to do, but through his work, he offers us the philosophical tools to decide for ourselves. This is how I interpret the commitments to care of self and philosophical way of life: Foucault does not say that we must adopt these principles or tell us how to adopt them, but his analyses and ethical orientation provide us with the tools to make the argument ourselves.

4 Sartre and Foucault Compared

Both Sartre and Foucault present us with the philosophical groundwork for creating ourselves as engaged historical agents in our own epoch. For both thinkers, ethical subjectivity is primarily characterized by an emphasis on orientation rather than

commitments. The key similarities of this orientation are, first, critical, historically-situated reflection, second, the theme of ethics as a “task,” and, third, invention or innovation, which requires moral courage.

First, as I have demonstrated in both thinkers, ethical subjectivity requires an orientation of critical historical reflection. This includes a refusal to accept the conventional moral norms of one’s epoch without submitting them to scrutiny. The ethical orientation requires critical reflection on how historical and social condition—such as discourses, materiality, conceptual frameworks, institutions, and economic systems—have structured our possibilities for being subjects at all. It requires an understanding that being ethical is historically situated. For both thinkers this critical reflection is related to freedom. For Sartre, it is a product of intentional, free praxis, and for Foucault, it is an empirical practice of freedom, or what he calls a critical ontology of ourselves.

The second commonality between the two thinkers’ ethical orientation is the general theme of ethics as an ongoing “task” rather than mere moral speculation that results in a set of maxims that is settled once and for all. By task, I mean a piece of work or project that we are obligated to take up. For both the task can never be achieved and then abandoned, but is an ongoing process. In *A Plea*, Sartre writes that the intellectual, when becoming cognizant of one’s contradictions, will grasp:

[M]an as *a task*...an intellectual who achieves self-awareness necessarily comes to see both his own singularity and its adumbration of man, as the distant goal of a practical and daily enterprise.⁴⁵²

⁴⁵² Sartre, *A Plea*, 250. Sartre’s emphasis.

In grasping the goal of humanity as a *task*, we reorganize our current possibilities as a means for pursuing the task. Foucault's discussion of task is more implicit than an actual mandate to pursue a particular task. But his analyses enables us to recall a time in which the *ergon*, or task of philosophy was considered a mode of life, in which the philosopher was concerned with the affairs of the city and the governing of others.

Recall this passage:

[T]he test of philosophy in politics directs us to this: the reality of philosophy is found in the relationship of self to self. And it is indeed in setting out the problem of the government of self and the government of others that philosophy, here, in this text, formulates its *ergon*, at once its task and its reality.⁴⁵³

Here Foucault presents the ethical as an ongoing task. When this is put in the context of how he conceived of his own philosophical task to expose the contingency of the present, we see a commonality with Sartre.

The third similarity is a focus on invention and transformation that includes exercising freedom. Sartre emphasizes that ethics requires a courage to invent, upset our own moral comfort, and look beyond existing practico-inert structures. Invention is both an invention of a system other than the current practico-inert system and a restructuring of our own personal possibilities. By reinventing the practico-inert, we reinvent ourselves. Foucault, too, shows a general attitude of innovation or self-transformation. Foucault speaks of a courage to think something different than we thought before. He also offers us a window into a time when one had to make oneself different in order to be capable of receiving the truth. Thus, both thinkers share the view that ethical orientation should involve a willingness and courage to exercise freedom, become different, and transform oneself.

⁴⁵³ Foucault, CT, 255.

There are also two primary differences in the thinkers' ethical orientations. The first difference is the scope of the historical reflection. For Sartre, critical historical reflection examines the dialectical interaction between praxis and the practico-inert, while, for Foucault, critical historical reflection is characterized by identifying historical breaks. This is important because Sartre thinks that there is a pattern in the way we interact with history, while Foucault believes it to be characterized by rupture. Thus, according to Foucault, we should not look to uncover commonalities between our present and previous epochs. This should not be confused with Foucault's argument that our own ways of thinking and doing are historically specific. But it means we cannot look to the past ways of thinking and doing to understand our own. We can contrast our present with previous periods, but we cannot characterize it in its specific features. This is why care of self and philosophical way of life cannot be recovered in the present in the same way they were practiced in the past. As we saw, Sartre's vision of commitments, while they will interact with historically specific practico-inert structures, have more constancy throughout history.

The second difference concerns the criteria for invention in each thinker's orientation. The variation is primarily due to the differences between the two philosophers' views on freedom and agency. For Sartre, since praxis is free and has primacy over the practico-inert, invention can look beyond existing practico-inert categories and imagine a future with different structures. More importantly, because of our intentional praxis, we can rearrange our possibilities in the present in such a way that we can potentially use the practico-inert to our advantage. Invention can involve a direct break or rupture from our own personal past, which is possible given the robust sense of

agency that Sartre grants to praxis. For Foucault, we cannot objectively reflect on our current *episteme*, because it is our blind spot, so to speak. Consequently we are not in a position to envision a future that transcends our historical limits. Invention is primarily about new modes of governing ourselves, relating to others and the relationship we choose to have with telling the truth in our epoch. While it requires a general willingness and courage to become different, we do not have the same degree of freedom and control over the conditioning forces that offer us possibilities for thinking, doing, and being.

While we see several shared principles in each philosopher's ethical orientation, at the level of commitments there is a more direct divergence in views. This is primarily because Foucault does not explicitly advocate for any commitments, and his ethical orientation cautions against assuming any point of view to be a privileged one. Foucault stands firm on his point that the task of philosophy should be to uncover rather than to legislate, and the philosopher should not advocate for any particular ethical or political system over another. While Sartre rejects an inherent human essence, he does argue for universal human needs and for a strong duty for those in positions of privilege to advocate for vulnerable people. More importantly, the robust sense of human freedom that he retains even in his later period leads to the recognition of mutual freedom as an important ethical commitment.

As will be exemplified in the next two Chapters, using a Sartrean or Foucauldian ethical subjectivity model to analyze contemporary issues in applied healthcare ethics will not entail doing away with current debates, which rely on a system of moral rights. Because ethical subjectivity is historically situated, we have to work with existing

models that structure our political and moral thinking. The Sartrean and Foucauldian analyses will, however, make us critically aware of the dangers of relying *only* on rights-based justifications. Sartrean and Foucauldian analyses can complement rather than replace existing discussions in healthcare ethics.

Conclusion

In this Chapter I have traced Sartre's and Foucault's position on ethics throughout their later lectures. I have shown that their visions for ethical subjectivity are primarily characterized by a similar orientation, and diverge on the nature of ethical commitments. Both offer normative content based on a critical, historical reflection and an active engagement with the specific historical practices of our epoch. They diverge on important points regarding the freedom that is possible in self-formation and the content of our ethical commitments. Specifically, Sartre's vision requires commitment to vulnerable human beings and political participation based on his vision of mutual freedom and human needs. Foucault's vision is more flexible and warns against assuming any point of view as an inherently privileged point of view or any political system as inherently desirable.

In the next two Chapters I show how these models of ethical subjectivity can be applied to issues being discussed in contemporary healthcare ethics. I will show how Sartre's and Foucault's ethical visions provide two separate and unique models for innovative conversations in ethics. Because healthcare is interwoven with basic human needs and foundational human issues concerning life and death, healthcare practices are distinctly subject-forming. Thus, the models introduced in this Chapter are especially

fruitful for contributing to conversations in healthcare. In Chapter Four, I will apply the Sartrean model and in Chapter Five the Foucauldian model. In each Chapter I will begin by showing how the ethical subjectivity model is different from the approaches in applied ethics that are rooted in Kant or Mill. I will rely on the comparative work I did in Chapters One and Two, and bolster the previous discussion with more focus on Kant's and Mill's normative conclusions. After showing how each of these models could contribute to an applied ethics debate, I will conclude by emphasizing the originality of each approach and making suggestions for continuing the use of social, historical, ethical subjectivity in future conversations in ethics, especially healthcare ethics.

Chapter Four: Sartrean Ethical Subjectivity and Conscience-based Refusals in Healthcare

Introduction

In Chapter One, I presented Sartre's vision of a dialectical, spiraling subjectivity that is characterized by socially, historically, and materially situated possibilities. In Chapter Three, I examined his post-*Critique of Dialectical Reason* lectures on ethics, and suggested a model for an ethical mode of being, or ethical subjectivity, consistent with his views. This included an ethical orientation characterized by critical historical reflection, active empathy, and invention, in addition to ethical commitments to mutual freedom and integral humanity. I showed that, for Sartre, these ideals are best actualized through communal praxis, which Sartre refers to as pledged group praxis. I showed that this normative model has implications both for individuals and for approaching public policy. In this Chapter, I will show how the model I developed in Chapter Three can offer an alternative to contemporary approaches to healthcare ethics that are rooted in the deontological and utilitarian thought of Kant or Mill, respectively. To do so, I will evaluate a contemporary issue of public concern through the Sartrean framework, showing the contrast it offers to how the debate is currently framed.

Conscientious objection or conscience-based refusals (CBRs) in healthcare refers to the controversial practice of healthcare providers (HCPs) refusing to perform procedures or provide services because doing so would conflict with their core moral beliefs. This has become a growing issue of concern and debate in terms of law, healthcare facility policy, professional codes of ethics, and employer rules. Many states in the US have "conscience clauses" which exempt healthcare providers (HCPs) from

lawsuits or employer disciplinary action if they refuse to perform certain medical procedures because doing so would violate moral principles they consider key to their identities.⁴⁵⁴ This issue gained media attention and public awareness in incidents involving pharmacists who refused to fill emergency contraception prescriptions due to their moral beliefs that life should be respected at the fertilization of an egg. With the passage of the Affordable Care Act (ACA) in 2010, the issue again rose to public awareness when many religious employers or religiously affiliated healthcare centers argued that the government requirements for HCPs and employers were too strong and would force individuals to act against their core moral beliefs. Thus, conscience-based refusals (CBRs) are a controversial issue in public discourse and in applied medical ethics literature, and are a pressing moral concern of our time.

The debate about CBRs in the healthcare ethics literature is generally set up in one of the three following ways: The first approach to the debate frames the issue as a conflict regarding competing claims to the right to liberty. In this framing of the debate, a HCP's freedom to act in accordance with his or her conscience is weighed against a patient's right to choose legal, medically appropriate treatments or procedures. Literature in this field of the debate focuses on the importance of a right to conscience and freedom of religion in a liberal society and the importance of respecting the moral integrity of HCPs, weighed against the importance of patient autonomy. The second way the philosophical debate is framed is in terms of role morality and professionalism.

⁴⁵⁴ Conscience clauses, or "right of refusal" laws, notably allow pharmacists to refuse to fill prescriptions for abortifacient drugs, including birth control, if filling the prescriptions would conflict with their religious beliefs. Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Maine, Mississippi, South Dakota, Tennessee, and Washington have all enacted conscience clause laws. See Claire Marshall, "The Spread of Conscience Clause Legislation," *Human Rights* 39.2 (2013).

These arguments focus on whether HCPs voluntarily give up their right to conscience or liberty when they freely choose to work in the field of healthcare. This literature focuses on the acceptability of role morality in general and on what role morality requires in a field like healthcare in which personal well-being and life and death are at stake. The third approach to the debate about CBRs focuses on giving an account of the nature and function of conscience, and what role, if any, it should play in the delivery and practice of medicine.

These debates generally result in commentators arguing for one of three positions: conscience absolutism, the incompatibility approach, or a compromise approach. Conscience absolutism argues that HCPs are not morally or legally required to perform actions that violate their conscience, nor are they obligated to refer the patient to a willing provider. Incompatibility approaches argue that refusing to perform procedures due to personal moral beliefs is a serious default on HCPs' professional obligations. Simply put, if HCPs do not want to perform a job task, they should get another job. Compromise approaches, the most popular in the literature, attempt to forge a middle ground between these two extremes. These approaches argue for the allowance of some CBRs as long as a HCP's refusal does not result in excessive harms or burdens to a patient. These arguments seek to maintain the primacy of patient care while also arguing that the right of conscience and moral integrity are important for HCPs.

In this Chapter I will show how the Sartrean model of ethical subjectivity I constructed in Chapter Three can be used to morally evaluate this issue of public concern. I will make a case for what Sartrean ethical subjectivity demands of individual

healthcare providers as well as showing how a Sartrean analysis could be applied at the level of policy. Drawing on Sartre's vision of social, historical, and materially situated subjectivity, along with the model of ethical being-in-the-world I developed in Chapter Three, I show how this practice shapes the possibilities of both HCPs and patients, and how this should affect our moral approach. I explain why none of the current approaches are properly accounting for the subject-forming dimension of CBRs and how this should influence our response. Conscientious objection in healthcare is not just a debate about whether to prioritize a HCP's right to conscience or the well-being of patients, nor is it only a matter of role morality or professionalism. Possibilities for subjectivity emerge through healthcare practice and patient/provider interaction.

Thus, the objectives of this Chapter are as follows: 1) to differentiate the Sartrean ethical subjectivity model I introduced in Chapter Three from contemporary approaches to applied ethics, 2) to show how conscience-based refusals (CBRs) are currently approached in the philosophical literature, 3) to elucidate how CBRs affect both patients' and healthcare providers' (HCPs) possibilities, 4) to use the Sartrean model of ethical subjectivity to argue what is required of individual HCPs, and 5) make recommendations for public policy based on this analysis.

1 Sartrean Ethical Subjectivity versus Contemporary Deontological and Utilitarian Approaches

I will begin with a brief overview of the contemporary deontological and utilitarian rights-based approaches to applied ethics and will highlight the important differences with Sartre's account. Specifically, I show that Sartre's account takes into consideration how subjects' possibilities are shaped by practices, instead of only

focusing on protecting an existing subject. In Chapters One and Two I introduced Kant's and Mill's visions of the subject. Kant's subject is characterized by objective rationality, an ahistorical "noumenal self," and the freedom to obey or disobey the universal moral law. Mill's subject is characterized by autonomy, the ability to flourish when generally left alone, and fulfills its purpose when using faculties of reason to lead a self-determining life. Both philosophers posit a universal, ahistorical vision of human nature that transcends historical epoch. Consequently, they also introduce systems of morality that are intended to be universal and ahistorical as well.

Kant's ethical thought is characterized by his three formulations of the Categorical Imperative. Because Kant believes that all human beings have universal faculties of reason, he believes them to be capable of deducing and following the moral law through the use of reason alone. Morality, for Kant, is not found in our experience of the world, but derivable from our universal capacity to reason. The Categorical Imperative is formulated by Kant in three different ways. First, one should act only according to a maxim that is universalizable and does not lead to a logical contradiction.⁴⁵⁵ Second, each person should treat other human beings as ends in themselves, and never only as a means to an end. As autonomous decision-making agents, human beings should be treated as fellow decision makers, not as things or tools.⁴⁵⁶ Third, each person should act as both a legislator and follower of the moral law. In other words, human beings bring morality into the world through our capacity to reason, and are simultaneously bound to obey the moral law.⁴⁵⁷

⁴⁵⁵ Immanuel Kant, *Grounding for the Metaphysics of Morals*, translated by James Ellington (Indianapolis: Hackett, 1981), p. 30.

⁴⁵⁶ *Ibid.*, 36.

⁴⁵⁷ *Ibid.*, 38.

A common extrapolation of Kant's thought in contemporary ethics, including in healthcare ethics literature, is the introduction of rights to protect each individual. These approaches are often referred to as "patient-centered" deontological approaches and focus on implementing Kant's second imperative. In this context, "moral patient" refers to a being worthy of moral concern, not just to a medical patient. Kant's second formulation of the Categorical Imperative is that human beings, as inherently worthy of respect, should not be treated as a means only. Because human beings possess universal powers of reason and choice, they are entitled to certain protections. Each individual has a right not to be used purely for others' benefit. For example, individuals cannot *use* another's body, labor, or talent without that person's consent. Rights involve placing limits on the behavior of everyone in order to protect the interests of the rights-holder. Rights usually introduced under a deontological framework include, but are not limited to, the right to life, to liberty, to bodily autonomy, to freedom of speech, to privacy, to be compensated for one's work, and to property.

For example, a modern approach to deontological rights come from Robert Nozick.⁴⁵⁸ Nozick focuses his argument on the grounds that each person, as an autonomous decision-making agent, has the capacity to shape one's own life in accordance with one's own plans, goals, and meaning. This capacity, according to Nozick, means that there are constraints on the ways we can treat beings who have the ability to shape their own lives. These constraints take the form of rights granted to the moral patient. Nozick focuses on negative rights and the limits of the state to interfere with individuals' ability to shape their own lives.⁴⁵⁹ Another notable deontological

⁴⁵⁸ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books Publishers, 1974).

⁴⁵⁹ *Ibid.*, 50-51. Nozick argues for a strong libertarian view with very limited state intervention.

rights-based approach comes from Hillel Steiner.⁴⁶⁰ Steiner argues that human beings, as self-determining ends in themselves, have two original rights: to unencumbered self-ownership and an equal share of initially unowned things. The right to self-ownership entitles one to, among other things, be paid for one's labor, and the right to equal share of unowned things is used to justify a distributive economic system.⁴⁶¹

Mill's ethical thought is not based on universal moral laws derivable from reason alone, but rather on the consequences that lead to the best results for the most people. Actions are morally good when they lead to consequences that make the most people happy or lead to their well-being.⁴⁶² Mill argues in favor of formulating rules for society that result in more happiness for more people. He suggests shaping our "conduct by a rule which all rational beings might adopt with *benefit to their collective interest*."⁴⁶³ This argument is now referred to as "rule-utilitarianism" and introduces rules for society that, if followed by everyone, lead to the greatest good for the greatest number. As we saw in Chapter Two, Mill believes that human beings are most happy when they are generally left alone. Thus, he argues for a vision of justice based on negative liberty and the no-harm-to-others principle. The basic idea is that everyone is left alone as long as they are doing no harm to others. When individuals are allowed to flourish without interference, they develop character and individuality.

Mill's thought can also be extrapolated into defense of a system of moral rights.⁴⁶⁴ In this view, rights are not introduced to protect humans as ends in themselves,

⁴⁶⁰ Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994).

⁴⁶¹ *Ibid.*, 236-252.

⁴⁶² John Stuart Mill, *Utilitarianism*, edited by George Sher (Hackett: Indianapolis, 2001).

⁴⁶³ *Ibid.*, 53.

⁴⁶⁴ See for example, David Lyons "Utility as a Possible Ground for Rights," *Nous* 14.1 (1981): 17-28.

but because they are *instrumental* in realizing certain desirable ends. Mill himself says that when we refer to something as a person's right, "we mean that he has a valid claim on society to protect him of possession of it, either by the force of law or by that of education and opinion."⁴⁶⁵ These rights are grounded in general utility, or the happiness they create for society as a whole.⁴⁶⁶ When two rights appear to be in conflict, it is necessary to frame the moral evaluation in terms of which right produces more utility. If a right to free speech conflicts with a right to life, we must ask if a general right to life leads to greater utility than free speech.

One notable modern defense of a utilitarian account of rights comes from Richard Brandt,⁴⁶⁷ who argues on the basis of rule-utilitarianism. Brandt makes room in his account for both positive and negative rights, arguing that moral agents ought to follow "moral principles, the acceptance of which in society would maximize expectable utility."⁴⁶⁸ This is to be accompanied by an emphasis on following the "utility maximizing code" over producing utility in particular situations. This allows for the concept of "a right" that cannot be overridden by marginal additions to individual welfare. To argue that individuals have rights, according to Brandt, is to:

[S]ay that the most desirable moral code for the society would require that one refrain from interfering with others' doing certain things, and positively to enable them to do them, sometimes when so doing will not maximize expectable utility in a particular situation.⁴⁶⁹

⁴⁶⁵ Mill, *Utilitarianism*, 53.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ Richard Brandt, "Utilitarianism and Moral Rights," *Canadian Journal of Philosophy* 14.1 (1984): 1-19.

⁴⁶⁸ *Ibid.*, 3.

⁴⁶⁹ *Ibid.*, 4.

In other words, in utilitarian theory, rights are introduced to serve a function.

Individuals are either prohibited from performing certain acts against others, or required to treat others in a certain way, because these prohibitions or requirements maximize utility. For example, the right not to be tortured is introduced because even if torture could lead to increased utility in a particular situation, a societal rule against torture leads to greater happiness for society as a whole. Examples of negative rights are the right to freedom of speech and the right to privacy. Examples of positive rights for Brandt are the right to healthcare and the right to education. In sum, utilitarian rights-based approaches are founded on the idea that the best consequences for the most people are produced when people are protected by rules or rights.

The key conceptual difference between Kant's and Mill's models is that for deontological approaches to rights, the rights are in place to protect intrinsic human ends, such as Kant's respect for inherent dignity or Nozick's duty not to interfere with a being who shapes his or her own life. By contrast, in utilitarian approaches to rights, rights are introduced as instrumental for human welfare. Thus, utilitarian approaches to rights justify the existence of rights as instrumental to increased human happiness, not as protecting humans as ends in themselves. This brief discussion of rights as they are justified by both deontological and utilitarian ethical frameworks is only meant as a background against which I discuss Sartre's views. I will discuss the key differences between Sartre's approach and deontological and utilitarian rights-based theories because these theories currently dominate much of the discussion in healthcare ethics.⁴⁷⁰

⁴⁷⁰ There are also recent trends in feminist care ethics that are adding an important voice to contemporary healthcare ethics and bioethics, especially when it comes to standards in patient care. See for example, Margaret Little, "Why a Feminist Approach to Bioethics?," *Kennedy Institute of Ethics Journal* 6.1 (1996): 1-18, and Mary Buchbinder, et al., "Reframing

The debate about CBRs in healthcare in particular is framed as a conflict between patients' and providers' rights: a patient's right to bodily autonomy versus a provider's right to liberty or freedom of conscience.

Sartrean ethical subjectivity is a model for subjects as moral agents to create themselves according to an ethical orientation and ethical commitments. It is a model both for how we as agents should orient ourselves in the world, as well as how we are obligated to treat others. However, this model recognizes that human beings are historically situated, that is to say, they exist in a given historical, social, and material field of possibilities. Thus, we cannot completely dismiss rights claims because of the role they play in our society: the concept of rights supports our legal system and patients' and providers' rights help guide discussion in biomedical ethics. At the same time, Sartre explicitly rejects relying *only* on a moral theory of rights because of the way that rights are used to trump other claims for freedom. Sartre's deep concern for the vulnerable led him to the observation that rights are often introduced by the most powerful in society and then used to blame vulnerable people for failing to take advantage of rights to which they never actually had access to begin with. Ethical subjectivity, then, requires attention to this importance concern, that we be willing to question systems of rights and do not assume that rights-based language is the "be-all and end-all" of ethics.

Second, rights-based theories are moral patient centered: they focus on what treatment human beings are entitled to as beings worthy of moral concern. Sartrean ethical subjectivity is also concerned with the development of moral agency and what it

Conscientious Care: Providing Abortion Care when Law and Conscience Collide," *Hastings Center Report* 46 (2016): 22-30.

means to be ethical subjects, which includes, but is not limited to, how we treat others. For example, Sartrean ethical subjectivity focuses on the orientation of our conscious experience and existential possibilities, and the framing of our ethical reflection, not just the protections each person is entitled to. Thus, Sartrean ethical subjectivity puts more focus on the development of the moral agent than the rights of moral patients.

Third, we have the following contrast: deontological and utilitarian rights-based approaches to ethics are interested in protecting or legislating the liberal subject and introduce constraints on behavior as a means of doing so. Sartrean ethical subjectivity, by contrast, recognizes that we become subjects with possibilities through our experiences and the interplay of our free consciousness with the given situation. Thus, for Sartre, ethics is a process of building oneself in reference to an orientation and recognizing that we affect the possibilities of others, rather than protecting or legislating an existing self. We are subjects to be protected, but also subjects that *emerge*.

At the level of commitments, Sartre's commitment to the mutual recognition of freedom has commonalities with Kant's assertion that we recognize each other as autonomous decision-making agents. Sartre argues that mutually recognizing each other's freedom leads to increased freedom for everyone. However, for Sartre, the mutual recognition of freedom is important because the meaning of our projects is dependent upon the freedom of others for recognizing our projects and the meanings we want them to have. Thus, Sartre's vision of mutual freedom is grounded in our interdependence with each other and the fact that we interact with others through communal meanings. The meaning of our own projects is dependent upon others who interpret those projects. This matters because if we want our projects to have the

meanings we intend, we are reliant on others to recognize this meaning. At the same time, the meaning of others' projects is dependent upon us, who will recognize that meaning. Thus, Sartre's view is not that a universal rationality or power of self-legislation guarantees that we are all entitled not to be used only as a means. Rather, he emphasizes that the interdependence of our existential projects require that we recognize the freedom of the Other.

Sartre's commitment to integral human needs holds commonalities with Mill's view of utility. For example, Mill would likely have no problem with Sartre's commitment to integral humanity, because having fundamental needs met for as many people as possible will increase utility and lead to more happiness overall. Sartrean-inspired conclusions regarding contemporary ethical problems will not always be in conflict with Kantian or Millian conclusions. The difference I would like to highlight is that both the utilitarian and deontological approaches, which are often extrapolated into moral rights, primarily focus on protecting the liberal subject, while for Sartre, the key focus is the development of the moral agent, which includes recognizing how our praxis affects the given field of possibilities of others. Thus, Sartrean ethical subjectivity is not necessarily meant to replace the current discussion, but to add to the conversation by taking into account Sartre's view of human nature.

In the following discussion, I will demonstrate how (CBRs) in healthcare are currently being discussed in healthcare ethics literature before moving on to what a Sartrean analysis can add to the debate.

2 Conscience-Based Refusals in Healthcare: Overview and Current Approaches

Conscience based refusals (CBRs) are currently one of the most debated moral issues related to healthcare delivery in the United States. The issue is both timely and important. A 2007 study showed that 40 million people in the United States (1 in 7) find themselves under the care of healthcare providers (HCPs) who are undecided or believe they do not have to disclose information about medically available treatments if they find them morally objectionable.⁴⁷¹ The standard definition of conscientious objection in healthcare that is used in the literature comes from James Childress, who defines it as a refusal to comply with a medical request based on personal moral or religious reasons.⁴⁷² Contemporary medical ethicist Mark Wicclair echoes this notion, confirming that conscientious objection occurs when providers refuse to perform an action or provide a service because it goes against their core personal moral beliefs.⁴⁷³

Common examples of CBRs include doctors or nurses who refuse to perform legal abortions, including in cases of severe fetal abnormality. A second example refers to pharmacists who refuse to fill prescriptions for emergency contraception (EC) because of moral beliefs that life begins at the fertilization of an egg. A third refers to doctors who refuse to put suffering patients into unconscious, pain-free states until passing away, otherwise known as palliative sedation, because doing so could hasten

⁴⁷¹ Holly Lynch, *Conflicts of Conscience in Healthcare: An Institutional Compromise* (Cambridge: MIT Press, 2008), 6.

⁴⁷² James Childress, "Civil Disobedience, Conscientious Objection, and Evasive Non-compliance: A Framework for the Assessment of Illegal Actions in Healthcare," *Journal of Medicine and Philosophy* 10 (1985): 68.

⁴⁷³ Mark Wicclair, *Conscientious Objection in Health Care: An Ethical Analysis* (Cambridge: Cambridge UP, 2011), 5.

patients' deaths. As physician-assisted death (PAD) for terminal patients (also known as Death with Dignity) is now legal in several states,⁴⁷⁴ this accounts for a growing number of CBRs. Other, though rarer, CBRs include providers refusing to prescribe artificial contraceptives, perform sterilizations, or offer fertility treatment for gay or lesbian couples.

2.1 Conscience-Based Refusals: Rights-Based and Deontological Approaches

In contemporary philosophical discussion, there are several different debates surrounding CBRs. One approach is to evaluate the phenomenon in terms of two conflicting rights: a provider's right to conscience (often argued as a component of a right to liberty or a right to religious freedom) and a patient's right to choose or refuse treatment. In this framework, what is at stake are two different rights-claims that are binding on others: HCPs' right not to be coerced into acting in ways that go against their core moral or religious beliefs, and a patient's right to access legal, safe, medically accepted procedures of his or her choosing. An example of a rights-based approach comes from Thomas May,⁴⁷⁵ who seeks to clarify and delineate the nature and scope of a HCP's right to conscience. May argues that a liberal society such as the United States should be concerned with protecting an individual's moral conscience. HCPs, in May's view, do not forfeit the right to conscience simply because they are HCPs.⁴⁷⁶

⁴⁷⁴ Death with Dignity is legal in Oregon (1998), Washington (2008), Vermont (2013), California, (2015), and Colorado (2016). See Hastings Center Bioethics Briefings, "Physician Assisted Death," accessed 12/28/2016, <http://www.thehastingscenter.org/briefingbook/physician-assisted-death/>.

⁴⁷⁵ Thomas May, "Rights of Conscience in Health Care" in *Social Theory and Practice* 27.1 (2001): 111-128.

⁴⁷⁶ *Ibid.*, 116.

May argues that a right of conscience in health care should be legally permitted and morally permissible when the refusal is framed around the type of procedure requested, not a moral judgment of the patient. Specifically, May argues that conscience-based refusals are justified when “the type of activity required is inconsistent with the professional’s understanding of her role as a health care professional.”⁴⁷⁷ May uses the example of physician-assisted death (PAD) as a “type” of activity that a reasonable HCP would find incompatible with professional role, because it arguably violates the principle of non-maleficence, the do-no-harm principle. May ultimately argues that liberal society demands respect for a robust right to conscience for the provider, arguing that:

[W]e need to recognize both the obligations of health care professionals to frame the evaluation of the effects of treatment on the patient’s quality of life in terms of the patient’s values, and the right of the professional to frame her role as a healthcare professional in the context of her own values.⁴⁷⁸

In May’s rights-based approach, he frames the argument in terms of what rights should be protected for the liberal subject, and which rights should override the other.

Another commentator framing the debate in terms of conflicting rights is Renee Mirkes,⁴⁷⁹ who argues that conscience is “an inalienable requirement to human dignity”⁴⁸⁰ and examines what she calls a conflict between religious liberty and sexual liberty. Mirkes discusses CBRs in the context of HCPs being prohibited from discriminating against gay and lesbian patients. She argues that in cases of non-emergent assistance, providers should have a right to refuse gay and lesbian patients

⁴⁷⁷ May, “Rights of Conscience,” 116.

⁴⁷⁸ Ibid.

⁴⁷⁹ Renee Mirkes, “Conscience and Competing Liberty Claims,” *Ethics and Medicine* 29.1 (2013): 23-39.

⁴⁸⁰ Ibid., 29.

certain services, such as fertility counseling, based on beliefs that gay lifestyles are inherently immoral.⁴⁸¹ According to Mirkes, requiring providers to perform these services if they are morally opposed to them discourages providers from staying in medicine, suppresses personal autonomy, and fosters callousness in providers that makes it harder to empathize with patients. She argues for dialogue rather than coercion, and asserts that forcing HCPs to act against their consciences will harm both patient and provider. She argues that providers will suffer from moral injury and patients will not receive the best care because HCPs will be resentful about treating them and unable to properly do their jobs.⁴⁸²

There are also approaches that look to solve the problem using straightforward deontological reasoning without the introduction of rights. Two recent deontological approaches to solve the problem actually come to different conclusions. Brian Burke⁴⁸³ and Bernard Dickens⁴⁸⁴ both draw on Kantian philosophy in order to argue for their respective views. Burke argues that the loss of a HCP's freedom of conscience simultaneously results in a breakdown of patient autonomy. Trust and mutual respect are the cornerstone of the patient/provider relationship. If a HCP is required to violate his or her conscience beliefs, there is a "moral inequality" between the two individuals. Kant's universalizability requirement demands, in Burke's application, that both patient and provider be granted equal respect for their values. "Forcing a physician to violate his

⁴⁸¹ Mirkes, "Conscience and Competing," 25.

⁴⁸² *Ibid.*, 32.

⁴⁸³ Brian Burke, "The Loss of Physician's Freedom of Conscience will Result in the Breakdown of Patient Autonomy within the Doctor-Patient Relationship," *The Linacre Quarterly* 76.4 (2013): 417-426.

⁴⁸⁴ Bernard Dickens, "Legal Protection and the Limits of Conscientious Objection: When Conscientious Objection is Unethical," *Medicine and Law* 28 (2009): 337-347.

conscience breaks this bond of trust and indicates an inequality of freedom within the relationship, thus destroying the foundation for the principle of autonomy.”⁴⁸⁵ In Kantian ethical thought, all moral duties apply to all agents equally. Consequently, Burke argues that a mutual respect of each other’s autonomy means HCPs and patients must respect each other’s value systems equally.⁴⁸⁶

Dickens, for his part, argues that conscience-based refusals by providers are not justified on Kantian grounds. According to Dickens, conscience-based refusals violate Kant’s imperative that patients should not be treated as means to an end. Conscientious objection is unethical if healthcare practitioners treat patients only as means to their own spiritual ends.⁴⁸⁷ According to Dickens, HCPs refusing to provide contraceptive or abortion services based on their religious beliefs constitutes using them as a means to their spiritual ends. “[I]f healthcare providers’ principal goal is promoting their own spiritual worth through the offer of care to those in need, they may be using sick, dependent people instrumentally.”⁴⁸⁸ In the disagreement between Dickens and Burke, we see that Kantian philosophy that relies on universalizability and inherent respect for the individual may lead people to two different conclusions about the moral permissibility of CBRs.

2.2 Conscience-Based Refusals and Professionalism

Apart from arguments that frame the debate in terms of competing claims to the right to liberty, others argue that the key point is the demands of professionalism: HCPs

⁴⁸⁵ Burke, “The Loss of Physician,” 418.

⁴⁸⁶ *Ibid.*, 420.

⁴⁸⁷ Dickens, “Legal Protection” 337.

⁴⁸⁸ *Ibid.*, 346.

agree to perform certain practices as part of professional role, and refusing to perform these services is a default on their professional obligations. For example, Joseph Meaney, Marina Casini, and Antonio Spagnolo⁴⁸⁹ argue that the debate should not be viewed in terms of equal, competing claims to right to freedom, because HCPs have obligations that go beyond those of ordinary individuals given the nature of their professions. Doctors in particular, they argue, are gatekeepers to many services and products that are vital to other human beings' health.⁴⁹⁰ Meaney, Casini, and Spagnolo argue that only under a specific set of circumstances should CBRs be tolerated: "[W]hen the objection is based on principles that are fundamental to the medical profession and the legal system."⁴⁹¹ This does not provide protection for objections based on a HCP's religious beliefs, but does include objections based on principles such as "respect for human life," which Meaney, Casini, and Spagnolo argue is an integral principle of medicine.⁴⁹² Thus, CBRs based on respect for the right to life for human beings is a "properly grounded appeal to conscience that can be justified as ethically, medically, and legally sound."⁴⁹³ Consequently, they argue that HCPs are justified in conscientiously objecting to abortion and PAD, as long as their objection is motivated in a value fundamental to the medical profession, in this case, respect for life.⁴⁹⁴ While Meaney, Casini, and Spagnolo come out strongly in favor of professionalism, they also

⁴⁸⁹ Joseph Meaney, Marina Casini, and Antonio Spagnolo, "Objective Reasons for Conscientious Objection in Healthcare," *The National Catholic Bioethics Quarterly* 12.4 (2012): 611-620.

⁴⁹⁰ Meaney, Casini, and Spagnolo, "Objective Reasons," 616.

⁴⁹¹ *Ibid.*, 611.

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.*

⁴⁹⁴ *Ibid.*, 620.

argue in favor of allowing a broad range of refusals, so long as they are, in the HCPs' minds, based on principles integral to the practice of medicine.

A stronger version of professionalism comes from Julian Savelescu,⁴⁹⁵ who advocates for the importance of HCPs performing job tasks required by the roles they freely take on. Savelescu argues that a HCP's conscience should not be allowed to interfere with medical care. In Savelescu's view, all HCPs should be made aware of their responsibility to provide all legal and beneficial care. HCPs who compromise the care of their patients to satisfy their conscience should be disciplined. Savelescu argues that a failure to provide all legal and beneficial services to patients is a failure to perform a HCP's essential role and a default on professional obligations. If HCPs do not want to perform the services their jobs demand, Savelescu argues, they should quit. When it comes to professional role, legality is more important than each individual's personal view of morality.⁴⁹⁶

2.3 The Nature of Conscience and Moral Integrity in Healthcare

Another important discussion in the literature has to do with the nature and functioning of conscience and moral integrity. For example, Morten Magelssen gives a strong defense of the importance of moral integrity in healthcare and society in general. Magelssen defines moral integrity as "having an internally consistent set of basic moral ideas and principles, and being able to live and act in accordance with these."⁴⁹⁷ Moral

⁴⁹⁵ Julian Savelescu "Conscientious Objection in Medicine," *British Medical Journal* 332 (2006): 294-297.

⁴⁹⁶ *Ibid.*, 297.

⁴⁹⁷ Morten Magelssen, "When Should Conscientious Objection be Accepted?" *Law, Ethics, and Medicine* 38 (2012): 18.

integrity, on Magelssen's account, concerns moral beliefs we consider integral to our identity. Making moral decisions is what makes us who we are, for better or for worse. When one acts against his or her conscience, it has been shown to lead to burnout, fatigue, and general emotional exhaustion.⁴⁹⁸ Magelssen argues that moral integrity is important because, first, it benefits not only the possessor but the people the possessor of moral integrity interacts with. Second, society has a special opportunity for promoting moral integrity, and this is especially true when delivering a public good like healthcare. Third, as the profession of healthcare is of central importance to society, and HCPs are often faced with difficult moral dilemmas, moral integrity is especially important for the smooth functioning of healthcare. Thus, preserving HCPs' moral integrity is important for the public good.⁴⁹⁹

In an attempt to reframe the issue, Natasha Morton and Kenneth Kirkwood⁵⁰⁰ give an account of the nature and function of conscience to argue that there must be some tolerance for CBRs in healthcare. Morton and Kirkwood, like Magelssen, assert that conscience plays an important role in healthcare, and that it is contradictory to ask healthcare professionals to act in accordance with their conscience in some cases but not others. Conscience, they say, is a mental process that alerts an individual to potential violations of his or her values, and attempts to prevent these violations by persistently badgering the individual until the violations are remedied or the person becomes desensitized to the alerts of his or her conscience.⁵⁰¹ Core moral beliefs, which may or

⁴⁹⁸ Magelssen, "When Should Conscience," 19.

⁴⁹⁹ *Ibid.*

⁵⁰⁰ Nathasha Morton and Kenneth Kirkwood, "Conscience and Conscientious Objection of Healthcare Professionals: Refocusing the Issue," *HEC Forum* 21.4 (2009): 351-364.

⁵⁰¹ *Ibid.*, 352.

may not have religious origins, are beliefs which take a central role in the identity of an individual. If a person is coerced to act against those core beliefs, it leads to moral distress, which is one's conscience serving its role by inflicting distress. Coercing people to act against conscience can be harmful to individuals in the long run, as they learn to simply "turn off" their conscience or become immune to its effects.⁵⁰²

Morton and Kirkwood argue that this phenomenon is particularly undesirable for HCPs, as conscience plays an important role in the decisions providers make each day. Ethical health care delivery relies on the judgment of individuals who must often make difficult decisions in the heat of the moment. Additionally, Morton and Kirkwood present an objection to the argument that HCPs who do not want to perform certain services should simply not go into medicine to begin with. This is problematic, in their view, because conscience grows, develops, and changes as a person experiences new things, and individuals entering the medical profession at a young age cannot fully conceive of all the ways they might morally object to a practice later on.⁵⁰³ Additionally, medical practices change over time and new procedures become legal or accepted. In a multi-cultural society like the United States, the values that a provider develops over time will inevitably lead to conflicts with a patient's values. Morton and Kirkwood do not argue that this leads to the conclusion that HCPs have an unrestricted right to conscience. Rather, they suggest that HCPs receive ongoing trainings and education on examining, defending, and correcting HCPs' values.⁵⁰⁴

⁵⁰² Morton and Kirkwood, "Conscience," 354-355.

⁵⁰³ *Ibid.*, 360.

⁵⁰⁴ *Ibid.*, 362.

2.4 Solutions: Conscience Absolutism, Incompatibility, or Compromise

Commentators on the issue generally advocate for one of three approaches to how the issue should be approached in the public realm. These three positions have been labeled the incompatibility approach, the conscience absolutism approach, and compromise approaches. The incompatibility approach argues that individuals who are not willing to provide a healthcare service should simply choose another profession. This claim is based on professionalism, and argues that refusals to provide all legally permitted goods and services that a professional is competent to perform is incompatible with that worker's professional obligations.⁵⁰⁵ Conscience absolutism, on the other hand, claims that providers have no obligation to provide a service that violates their conscience, nor do they have the duty to refer patients to other providers. Robert Orr, for example, argues that not only do HCPs have a strong right to refuse, they are additionally under no obligation to refer if they feel that a referral would make them complicit in an act that fundamentally violates their conscience.⁵⁰⁶ Orr argues that these include, but are not limited to, abortion, contraception, sterilization, assisted reproductive technologies, end of life care, genetic research, and prisoner interrogation.

A third approach in the literature, which is the most popular approach, takes a middle ground between conscience absolutism and the incompatibility approach. These accounts are consequentialist and generally argue that CBRs should not result in harms

⁵⁰⁵ See Julian Savulescu, "Conscientious Objection in Medicine," *BMJ* 332 (2006); Robert Card, "Conscientious Objection and Emergency Contraception," *American Journal of Bioethics* 7.6 (2007): 8-14, as well as J.Paul Kelleher, "Emergency Contraception and Conscientious Objection," *Journal of Applied Philosophy* 27.3 (2010): 290-304.

⁵⁰⁶ Robert Orr, "The Physician's Right of Refusal: What Are the Limits?," *Christian Bioethics* 18.1 (2012): 1-11.

or burdens to the patient beyond an acceptable limit. This position focuses on the consequences of the actions and how CBRs can potentially harm patients. If a patient will suffer unreasonable harms or burdens as a result of the HCP's refusal, then the provider has a moral obligation to perform the act. However if there is another provider who can perform the act or service without resulting in severe harm of the patient, the provider is justified in refusing.⁵⁰⁷ Magelssen, for example, argues that conscience-based refusals should be tolerated when all of the following conditions are met: providing care would seriously damage the HCP's moral integrity by constituting a serious violation of a deeply held conviction, the objection has plausible moral or religious rationale, treatment is not considered an essential part of the HCP's work, the burdens to the patient are acceptably small, and measures are taken to reduce the burdens to the patient and to colleagues. The claim for the CBR's justification is strengthened, according to Magelssen, when the objection is founded in medicine's values and when the medical procedure in question is new or of debated moral status.⁵⁰⁸

We see from this discussion that the most common way of framing the debate is in terms of competing freedom claims between HCPs and patients. Solutions offered take the form of balancing the competing claims to liberty (in order to prevent or reduce potential patient harm) or in terms of the obligations of professionalism. I argue that these approaches are insufficient on their own for several reasons. First, framing the issue in terms of competing rights claims assumes that the liberal conception of

⁵⁰⁷ See Julie Cantor and Kenneth Baum, "The Limits of Conscientious Objection: May Pharmacists Refuse to Sell Emergency Contraception?," *The New England Journal of Medicine* 351.19 (2004): 2008-2012. See also John Davis, "Conscientious Refusal and a Doctor's Right to Quit," *Journal of Medicine and Philosophy* 29.1 (2004): 75-91, as well as Wicclair, *Conscientious Objection*, and Lynch, *Conflicts of Conscience*.

⁵⁰⁸ Magelssen, "When Should Conscientious," 19.

subjectivity is correct. Thus, these approaches do not discuss the way that CBRs shape a field of possibilities for becoming subjects. Second, discussing the issue in terms of HCPs' right to liberty or right to conscience does not include a moral analysis of the content of their refusal and the nature of the act they refuse to perform. Framing the debate around the right to conscience or liberty ignores criteria for judging the actual moral content of HCPs' refusals. An argument that everyone's conscience be respected equally is ultimately grounded in an ethical subjectivism in which everyone's moral beliefs are equally worthy of consideration. This leads to classic undesirable consequences of moral subjectivism or relativism, in which we have no solid ground to make moral claims that are binding on others. Lastly, the competing rights claims approach does not recognize that patients are in positions of vulnerability and that HCPs have additional duties when serving in a role as gatekeeper to medical services.

Framing the issue purely in terms of a matter of professionalism is also insufficient. The argument that HCPs should perform actions that are required by their jobs does not account for the important role that conscience plays in healthcare and the importance of HCPs maintaining reflective awareness of moral standards in a field such as healthcare. History is rife with examples of medical professionals engaging in abhorrent tasks because they were taking orders for their jobs. For example, doctors participated in experiments in Nazi Germany, HCPs in the United States have performed experiments on intellectually disabled patients without their consent, and HCPs participated in drafting the guidelines for the United States' "enhanced interrogation program," now known as torture, of terrorist suspects. What is legal and what is moral do not always coincide, and the argument that HCPs must perform all legal procedures,

such as advanced by Savelescu, could lead to the undesirable consequence of HCPs failing to speak out against practices like torture or experimentation without consent. It seems clear, then, that it is important for HCPs to have a moral compass and conscience that accompanies it, rather than performing acts *only* because their jobs demand it. Lastly, professionalism does not introduce any criteria for judging the moral acceptability of the job tasks to which HCPs potentially object.

The analysis that I develop below will be different from the traditional discussion in several ways. First, the previous approaches rely on the viewpoint of protecting the moral rights of the liberal subject, without recognizing that subjectivity is being formed through healthcare practices and CBRs. I demonstrate how we can take a new starting point of analysis when evaluating the issue through the lens of Sartre's view of human essence. Second, I make a case that the social, historical, and material context in which CBRs take place must be taken into consideration. Third, I argue that HCPs should approach their professional role not on the basis of straightforward deontological or utilitarian reasoning, but on the basis of an ethical, inventive subjectivity. Fourth, I introduce standards for judging the professional tasks of HCPs, or healthcare praxis, based on Sartre's ethical commitments, the goals of medicine, and the principles of healthcare. Fifth, I make recommendations for public policy based on a commitment to mutual freedom and integral human needs, but only after situating these commitments in the specific context of liberal society in which this problem occurs.

3 Conscience-Based Refusals and Sartrean Spiraling Subjectivity

In this section, I show how CBRs are subject-forming for both HCPs and patients. As patients are heavily dependent on their providers for obtaining care, the refusal of a HCP to assist or perform a procedure can severely limit a patient's practical and economic possibilities. As patients rely on HCPs for receiving care that is vital to their physical, emotional, and mental well-being, they are vulnerable in relation to HCPs. If patients feel that they are morally judged or viewed negatively by HCPs, this can influence the patient's perception of self and general experience of healthcare. At the same time, HCPs' possibilities are affected when they are coerced to act against their conscience. I show that according to Sartre's view of subjectivity and freedom, conscience, as a facet of our continuously dialectical subjectivity, emerges over time and in response to experiences and relationships. As Sartre shows in *Morality and History*, the experience of morality is subject-forming. Being coerced to act against one's conscience has effects on HCP's conception of self, their perceptions of patients, and attitudes toward their careers.

I also discuss how CBRs are related to the practico-inert and the potential seriality that accompanies it. I show how some CBRs are the result of practico-inert beliefs and why this is generally harmful in healthcare. I also show how professional codes of ethics can become practico-inert and resistant to moral progress and medical advancement. I argue that CBRs run the risk of contributing to seriality if HCPs are consequently estranged from patients or their colleagues. Additionally, I show that CBRs can render patients especially vulnerable, as HCPs are the gatekeepers to medical services and treatments. To demonstrate the alternate viewpoint, I show that coercing

HCPs to act against their consciences can also lead to seriality and feelings of interchangeability and isolation. I will use the example of physician-assisted death (PAD), as this is currently a growing issue of debate. Six states now allow PAD as a legally available option for patients, and this is a procedure about which many HCPs have strong moral beliefs.

3.1 Healthcare Providers and Their Possibilities

The first way that the issue of CBRs is subject forming is that CBRs are made in light of HCPs' core moral beliefs, that is to say, beliefs that are integral to their self-identity. Recall that, in *Morality and History*, Sartre discusses the role of moral norms in subject-formation. In this text, he says that the existence of the norm offers a vision of how to be a good, moral person. He draws on the example of a survey of schoolchildren in which the majority admitted to lying even though they also thought that lying should be condemned.⁵⁰⁹ The existence of the moral standard means that the possibility of being a moral person remains open at all times. HCPs have moral beliefs with different origins. If we consider HCPs' decision processes in light of Sartre's views in MH, HCPs interpret these norms as unconditionally possible—standards they are to follow no matter the conditions.⁵¹⁰ This includes conditions from social pressure such as professional role. From a Sartrean framework, when HCPs feel pressure to act against their conscience because of social circumstances, this leads to moral anguish.

⁵⁰⁹ Jean-Paul Sartre, *Morality and History*, excerpts found in Robert Stone and Elizabeth Bowman, "Sartre's Morality and History: A First Look at the Notes for the Unpublished 1965 Cornell Lecture Notes," in *Sartre Alive*, edited by Ron Aronson and Adrian Van den Hoven (Detroit: Wayne State University Press, 1991) 60.

⁵¹⁰ *Ibid.*, 61.

We want norms to exist even if we fail to live up to them because they offer us a clear picture of right and wrong. Thus, as long as the possibility of conforming to the norm remains open, the possibility of being moral remains open as well.

If we follow Sartre's view of the subject, we could say that HCPs have an image of themselves, a project, which they use to organize their current possibilities. Most HCPs believe certain moral principles to be integral to their jobs. Commonly accepted goals of healthcare endorsed by contemporary ethicists and members of the medical community include the alleviation of suffering, the prolongation of life, the promotion of well-being, and the prevention of disease.⁵¹¹ Additionally, there are strongly supported principles for healthcare ethics: the principle of non-maleficence (do no harm), the principle of beneficence (patients should be benefitted and healed), the principle of autonomy (patients' self-determination should be respected) and principle of justice (no patient is given unfair preference over another).⁵¹² HCPs, especially those who go through long periods of education and training, see their profession as integral to their personal identity. Consequently, they will not easily separate a professional role morality from their personal integrity and beliefs. The actions they take in the present (including potentially refusing job tasks) are a product of a vision they have of themselves as upholders of the principles of medicine. They may view a practice such as PAD as incompatible with their core project. It is often the case that those HCPs who are morally opposed to helping a patient obtain PAD believe that the procedure violates

⁵¹¹ Rosemary Tong, *New Perspectives in Healthcare Ethics: An Interdisciplinary and Crosscultural Approach* (New Jersey: Pearson Education, 2007), 61-65.

⁵¹² Tom Beauchamp and James Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, 1994), 38.

the medical principle of non-maleficence or that it runs contra to the goal of healthcare to preserve and prolong life.

As Sartre's vision of subjectivity shows us, the possibilities for our ideal self, or project, are presented to us by our situation and the practico-inert. For example, HCPs' projects may come from historically conceived goals of medicine, the codes of the American Medical Association, or their educational training. In other situations, the core beliefs of one's project are rooted in values that are unrelated to the practice of medicine and are instead rooted in religious tradition, spiritual belief, or cultural norm.⁵¹³ While these norms are often not given as much standing in healthcare ethics literature, they can be equally compelling for individuals who are committed to these norms and view them as unconditionally possible.

The second way that CBRs are subject-forming for HCPs is that conscience itself is a component of subjectivity. Conscience is a function of consciousness that develops and progresses through time, experience, and relationships. Many HCPs do not necessarily come to the table with fully formed moral beliefs about these practices, but form their viewpoints over time and in reaction to situations that arise while they are on the job.⁵¹⁴ As human consciousness is always free to take up a place, one's moral compass is similarly molded as one encounters new experiences and situations. For example, an experience with a terminal man who is in extreme pain and who can clearly communicate his reasons for wanting to end his life early through PAD can lead to a change in an HCP's moral beliefs. While previously the provider may have wanted to

⁵¹³ This is the case in the argument from Renee Mirkes, regarding HCPs' right to refuse to offer gay patients sexual health advice or to help lesbian couples with in-vitro fertility treatments.

⁵¹⁴ On this point I am in agreement with Morton and Kirkwood, "Conscience and Conscientious Objection."

reaffirm the simplicity of the principle “do no harm,” through the experience with the patient, the provider may come to believe that the patient being able to retain his autonomy in the face of a terminal diagnosis was the best way to avoid harming him. Sartre’s view of subjectivity allows for the possibility of change and transcendence in our overall project in relation to new experiences.

The third way that CBRs are subject-forming is related to HCPs being forced to act against their conscience. This can lead to moral injury or general feelings resentment. HCPs may feel a lack of freedom and limited in their possibilities for acting in their professional role. Some studies have shown that HCPs who are coerced to act against their conscience often feel resentful toward their fellow providers and patients for putting them in situations when they have to act against their conscience. For example, two different studies of surveys of nurses showed that nurses felt resentment toward physicians for making them act in ways that violated their conscience.⁵¹⁵ This included incidents such as assisting in an abortion, but also incidents such as refusing to treat patients who could not pay or did not have insurance. Some nurses said they thought physicians ordered them to treat patients without fully informing patients of the risks and benefits of procedures. Recall that Sartre argues that seriality, a form of group-think in which individuals receive ideas passively, occurs when individuals are loosely grouped together and have no core unifying bond. In order for healthcare to serve as a form of group praxis and not a series, there must be cooperation and shared goals between providers. When HCPs refuse to perform services that are required by their jobs

⁵¹⁵ See Marie Hilliard “Affordable Health Care: The Nurse, the Poor, and the Vulnerable,” *The National Catholic Bioethics Center Quarterly* Spring (2014): 47-52, and Hanna Tuveesson, Mona Eklund, and Christine Wann-Hansson, “Stress of Conscience among Psychiatric Nursing Staff in relation to Environmental and Individual Factors,” *Nursing Ethics* 19.2 (2012): 208-219.

and pass on the task to a fellow provider, this can lead to alienation, isolation, and the thwarting of group praxis. When HCPs are forced to perform actions that they feel are morally wrong against their will, this also makes them feel interchangeable, atomic, and lacking genuine human bonds, all factors that contribute to seriality.

3.2 Patients and Their Possibilities

CBRs also affect patients' possibilities. HCPs refusing to provide patient care can affect patients' practical, economical, physical, emotional, and intellectual possibilities. First and foremost, patients come to HCPs because of physical ailments or medical predicaments. HCPs' cooperation, or lack thereof, affect patients' possibilities for treatment. Even referring a patient to another provider can result in a serious change in the patient's options for treatment.

Healthcare in the United States takes place in the context of scarcity and the practico-inert. The high financial costs of healthcare in conjunction with the private insurance system already leave many patients with extremely limited options for care. Private health insurance plans limit available providers, prescriptions, and procedures that patients can access. Thus, referring a patient to another provider can lead to delays in care or difficulty finding another provider who is covered by the insurance plan. Some patients with financial limitations or physical disabilities rely on public transportation to travel to and from healthcare facilities, making referral difficult and burdensome.

Patients receiving the healthcare services they need is integral to their physical possibilities, which in turn open many other possibilities. Patients are already in a

position of vulnerability when meeting with the provider. They are suffering from an undesirable condition and are seeking help from trained professionals who are the gatekeepers to the services they need. Seriously ill or terminal patients may have significant difficulty communicating and understanding their treatment options. They are even more dependent on HCPs to make all available options known to them and to provide these services if patients make the informed decision to choose them. When a HCP refuses a patient's request for a medically accepted procedure, this can severely affect the patient's physical, emotional, and practical possibilities.

For example, PAD usually consists of either a provider removing life-sustaining treatment or a provider prescribing a medication that will painlessly end the patient's life. While the physician must prescribe the lethal drug for the patient, the patient is the one who administers the fatal dose. In all six states, to qualify for PAD patients must have a diagnosis of less than six months to live.⁵¹⁶ Patients seeking PAD are almost always in extreme discomfort or pain and simply wish to die in a way that is dignified and on their own terms. They seek to retain some sense of freedom and control over the way they end their lives. These patients are often bedridden, receiving care from a primary provider covered by their insurance plans, and have difficulty moving or being transferred without pain. If a HCP in a state with legal PAD fails to inform terminal patients of their legal options to use PAD to end their lives, or if the HCP informs patients that they have a legal right to this service but the physician will not perform it, this makes terminal patients, whose options are already very limited, even more constrained in their remaining possibilities. Not being able to find a HCP to assist with

⁵¹⁶ *Hastings Center Bioethics Briefings*, "Physician Assisted Death."

the procedure can prolong their suffering and pain. We see here that patients, already in a position of vulnerability, can become even more vulnerable through CBRs.

3.3 Intersubjective Possibilities: The Meeting of Patient and Provider

Sartre argues that our encounters with others give rise to intersubjective possibilities, which are also social possibilities, through which individuals realize themselves as objects for others. The look of the other puts us in a position in which our possibilities are inevitably changed. Before encountering the other, we conceived of ourselves as free subjects for whom the world is at our disposal. In a direct encounter with another person, what was once an environment there for me becomes an environment that is also there for the Other.⁵¹⁷ This causes a rearrangement in our interpretation of our environment. What I originally perceive as there for me is also there for others.

Through the process of the medical examination, patients are studied as scientific objects. HCPs must, by nature of their professions, scientifically diagnose the patient's condition. In an examination, patients cannot help perceiving themselves as objects. The HCP's approach can make the difference between perceiving oneself as a specimen and perceiving oneself as a free, autonomous human. Several characteristics improve the patient/provider encounter and make patients feel less like objects and more like fellow subjects. Vital to this process is an establishment of trust. In a successful patient/provider relationship, patients must trust that HCPs are giving them the best, most accurate information about their health that they can. They trust the provider not to

⁵¹⁷ Jean-Paul Sartre, *Being and Nothingness*, translated by Hazel Barnes (New York: Philosophical Library, 1956), 340-345.

divulge personal, sometimes embarrassing or extremely private information unless medically necessary. Patients trust their provider to offer them the available services vital to their well-being. Patients trust that HCPs will inform them of the potential risks and benefits of the available procedures. Lastly, patients trust HCPs to respect their right to choose their own course of treatment after they have been informed of the options, risks, and benefits. Patients must feel that the HCPs respects them as fellow free decision-making subjects. In turn, for HCPs to perform their jobs most effectively, patients must respect their professional advice.

For example, a terminally ill woman may have trusted her family physician for her whole life and assume that the physician will, as in the past, inform her of all of her treatment options once she has a terminal diagnosis. She will also trust the physician to respect her autonomy to make her own informed decision about what treatment is best for her, after getting the physician's input and advice. If the physician fails to tell the patient about her legal right to PAD, or else refuses to assist her if the patient chooses this procedure, the patient will, in her most vulnerable condition, lose trust and respect for her provider.

Another strain on the relationship of trust and respect between patients and providers is a HCP introducing moral judgments about the patient's character or behavior that are not related to the patient's health. When patients feel their personal choices judged by providers' personal, non-medically related beliefs, the mutual trust and respect between the two individuals breaks down. Patients are vulnerable in relation to providers and a negative judgment about the patient can significantly affect their perception of self. The patient may feel shame, anger, or embarrassment.

From the contrary perspective, when HCPs feel that patients are asking for treatments that violate their core moral beliefs, providers may resent patients for putting them in a position in which they are being asked to act against their conscience. They may feel a lack of their own freedom, which may affect the way they view patients. They may perceive themselves as objects, whose autonomous ends have been taken away from them. As previously mentioned, HCPs have expressed resentment and frustration when forced to act in ways they perceive as morally impermissible.⁵¹⁸ This could lead to a loss of desire to offer the patient the best care or, as also mentioned, a disconnect between their conscience and their conscious life as HCPs. If their conscience becomes weakened or “turned off,” so to speak, HCPs may not be inclined to speak out when seeing a patient being mistreated or in another ethically concerning situation.

This discussion shows that CBRs take place within a web of individuals’ possibilities and that both the act of refusing and the act of performing services against one’s conscience are subject-forming. Thus, solutions to the problem must consider the effects that allowing HCPs to refuse or coercing them to act against their conscience have on the possibilities of HCPs, patients, and the patient/provider relationship. In the next section, I will discuss what Sartrean ethical subjectivity as presented in Chapter Three implies for HCPs in their professional roles.

⁵¹⁸ See Hilliard, “Affordable Health Care,” 48-49.

4 Sartrean Ethical Subjectivity and Conscience-Based Refusals

In this section I provide the normative analysis, arguing what ethical subjectivity requires of providers. First, HCPs are obligated to perform critical reflection on why they hold the beliefs that they do, and what conditions have engendered them. Because some beliefs are more rationally justified than others, ethical subjectivity demands that we critically examine where our beliefs come from. Second, I argue that HCPs should attempt to empathize with their patients, who are, by definition, in positions of vulnerability and highly dependent on HCPs for their care. Third, the ethical mode of being requires that HCPs be willing to potentially break from their past forms of thinking and doing, what Sartre calls “to invent.” This may require rearranging their possibilities in the present in light of a new future goal, which could include a rethinking of their professional role.

I show that framing the debate in terms of competing rights to liberty ultimately leads to a moral subjectivism about the nature of the acts the HCPs either provide or refuse. Ultimately I argue that the goals pursued should be integral human needs and mutual freedom through the communal praxis of medicine. Ethical subjectivity for providers in relation to CBRs must consider several things. First, it must consider how healthcare can be considered a form of group praxis, to the extent that it is a profession dedicated to healing, curing, comforting, and benefitting sick or injured human beings. It must explore how HCPs as members of a pledged group of medicine must orient their ethical reasoning according to Sartre’s guidelines of reflection, empathy, and invention. Last, it must show how the Sartrean commitments to integral humanity and mutual freedom should be reflected in the group praxis.

4.1 Healthcare as Pledged Group Praxis

In Chapter Three, I showed that in *The Critique of Dialectical Reason* (CDR), the formation of groups is portrayed as a potential way for people with common needs to bond together to combat against scarcity and increase the ability of more people to meet basic human needs. I showed that integral humanity and mutual freedom are most efficiently pursued through communal praxis. The most basic social collective that Sartre identifies, discussed significantly in Chapters One and Three, is a series. In a series, individuals remain alone and atomic, and have no united purpose or cause. In such a grouping, people often interpret themselves as interchangeable and dispensable, as individuals bound to and controlled by the practico-inert.⁵¹⁹ HCPs who see themselves united with other workers only as members of an institution with no chosen communal goals tend to remain in a series. Seriality can increase the alienating factors of the practico-inert. This is exemplified in a workplace in which individuals are primarily motivated by a paycheck and feel no connection to the purpose of the organization. HCPs are usually motivated by a deeper dedication to human welfare and, thus, can and should move beyond seriality to group praxis.

As mentioned in Chapter Three, Sartre argues that the most active response to the febleness of a series is for individuals to bond together to form a group. Group formation allows individuals to have more control over the practico-inert forces that condition their existence. Members of groups remain ontologically distinct individuals; however they are not as isolated as members in a series because they are united through

⁵¹⁹ Jean-Paul Sartre, *The Critique of Dialectical Reason Volume 1 : A Theory of Practical Ensembles*, translated by Alan Sheridan-Smith (New York : Verso, 2004), 256-270.

common goals.⁵²⁰ A pledged group is a group that is deliberately chosen by individuals who make a pledge to one another to uphold the common praxis of the group. Sartre calls the pledged group “the victory of man as common freedom over seriality.”⁵²¹ The primary characteristic of a pledged group is that individuals come together freely and make a pledge to each other reciprocally.⁵²² Through the pledge, each member agrees to limits on one’s practical freedom, but these limits at the same time maximize the proper use of resources for the group as a whole. If we conceive of the profession of healthcare as a pledged group, HCPs can overcome serial relations and commit to common goals.

However, the concept of a pledged group makes one wary that if individual responsibility is deferred to the group, this may lead to unquestioned praxis. This could amount to nothing more than slavish obedience to workplace rules, professional codes, or a boss’s orders. I previously mentioned the shortcomings of relying on professionalism alone for determining HCPs’ moral responses. Because what is legal is not always aligned with what is moral, we must include the standards for reflecting on the worthiness of a pledged group’s praxis. These standards are found in Sartre’s commitments to mutual freedom and integral humanity. Sartre argues that the ultimate moral goal of group praxis should be for people to have as many of their needs met in order to be fulfilled as human. This maximizes their practical options for freedom and identity formation.⁵²³ Practical freedom cannot be fully realized if there is not fulfillment

⁵²⁰ Sartre, CDR, 377.

⁵²¹ *Ibid.*, 437.

⁵²² *Ibid.*, 421.

⁵²³ Jean Paul Sartre, *The Rome Lecture Notes: May 1964 at the Instituto Gramsci*, translated by Elizabeth Bowman and Robert Stone, accessed September 7-20, 2015, at the Bibliothèque nationale de Paris.

of needs, which can only come about through cooperation with others. Recall the following passage from *The Rome Lecture Notes*:

There will be no integral man as long as the practico-inert alienates man, that is, as long as men, instead of being their product, are only the products of their products, as long as they do not unite into an *autonomous praxis* which will submit the world to the satisfaction of their needs without being enslaved and divided by their practical objectification. There will be no integral man as long as each man is not totally a man for all men.⁵²⁴

Here it is clear that in order to avoid the alienation of the practico-inert that leaves humans existing only in a series, it is imperative that we join together into groups that work to satisfy physical, social, and emotional needs to enhance the practical possibilities for everyone. The consequence of *The Rome Lecture Notes* on the pledged group is that the group must consistently make sure their praxis is in line with the promotion of the mutual recognition of freedom and integral humanity. This will avoid situations in which HCPs participate in practices that clearly violate these commitments, such as experimentation without informed consent or torture.

Sartrean ethical subjectivity demands that HCPs see their actions in healthcare as directed at the ends of group praxis aimed at integral humanity and the mutual recognition of freedom. This means that identification with role is acceptable to the extent that each person places limits on his or her own freedom in order to achieve progress together. In addition to Sartre's commitments to integral needs and human freedom, we can rely on the principles for healthcare ethics and established goals of medicine. These principles and goals are not in conflict with Sartre's commitments to integral humanity and the mutual recognition of freedom. They are specifically tailored to the values and issues that are most important in the context of healthcare.

⁵²⁴ Sartre, RL, 135.

4.2 Ethical Orientation: Reflection, Empathy, and Invention

In the previous Chapter, I argued that Sartrean ethical subjectivity requires an ethical orientation of reflection, empathy, and invention. In this section, I show what this orientation demands of HCPs in reference to CBRs in healthcare. The ethical orientation necessary for Sartrean subjectivity has implications for how HCPs should conceive of their professional roles and the importance of acting in accordance with their conscience. Ethical subjectivity requires the role of providers be understood as part of a communal, group praxis and that conscience align with the goals of patient care, integral humanity, and mutual freedom, rather than with practico-inert moral norms or each individual's subjective beliefs.

First, the Sartrean ethical orientation demands that HCPs should critically reflect on their own moral beliefs and where they come from. When serving in the role as gatekeepers to many medical services, HCPs should critically reflect on whether the core moral beliefs they apply at their jobs are grounded in the best medical care for patients. They should consider whether the moral beliefs that they hold are in line with the chosen goals for healthcare as group praxis. Identification with role, often considered a tenet of bad faith, is morally appropriate when one identifies one's role with communal group praxis aligned with the important ethical commitments. Thus, I am not advocating for a strict professionalism in which professional obligations take precedence over individual moral beliefs in all circumstances. Rather, identification with role is appropriate when one serves as a member of a pledged group with properly aligned

praxis dedicated to commitments to integral humanity and mutual freedom. This is true of the profession of healthcare.

In *A Plea to Intellectuals*, Sartre explicitly argued that professionals have the obligation to critically examine the ideologies behind their education and training. They must uncover, in his words, their own “constituent contradictions.”⁵²⁵ In this context, HCPs should, individually and with other providers, reflect on their own beliefs and their origins. They should reflect on the healthcare goals such as the preservation of life in order to see if these principles have become practico-inert in their application.⁵²⁶ Beliefs or principles become practico-inert if the professed principles are no longer serving their originally intended purposes or are becoming counterproductive to these purposes. Recall that Sartre considers “antipraxis” the inertia embedded in the practico-inert that “replies” to praxis. Because human praxis is projected onto the practico-inert, the results of human action can become alienated from their original intentions. “Counterfinalities” occur when the antipraxis results in the direct opposite of the agent’s conscious intentions.⁵²⁷ Critical historical reflection must include identifying potential counterfinalities in the way the principles of medicine are being applied.

For example, modern medical technology can keep people alive long after their quality of life has deteriorated. Consequently, the “preservation of life” is no longer always in the best interest of the patient. Another example is the principle of non-maleficence (“do no harm”). As the definition of “harm” may vary from patient to

⁵²⁵ Jean-Paul Sartre, *A Plea to Intellectuals*, found in *Between Marxism and Existentialism*, translated by John Matthews (London: Verso, 1974), 265.

⁵²⁶ For example, there have been revisions to the Hippocratic Oath and the Patient Bill of Rights in the past 15 years.

⁵²⁷ Sartre, CDR, 193.

patient, there must be some flexibility in the application of this principle to avoid harming him or her. A HCP refusing to provide palliative sedation, in which a patient is put into an unconscious pain-free state until death, because the provider believes that it will violate the principle of non-maleficence, is an example of a principle no longer serving its intended purpose. In this case, a desire to do no harm actually results in the direct opposite of the acting agent's intentions, with the outcome that the patient is put through unnecessary pain. Both critical examination of one's own personal principles and collective reflection on the principles that have traditionally governed the practice of medicine are necessary for ethical subjectivity.

The critical reflection should be a collaborative process between HCPs and not simply the responsibility of one individual on his or her own. Even reflecting on one's personal ideals can be helped by the insight of peers who work in the same profession but may have different viewpoints. Thus, the personal critical reflection should take place with the help of one's colleagues and through rigorous discussion of competing points of view. It is important that these peers also work as HCPs so that individual providers' beliefs can be discussed in the context of the ends and goals of medicine and healthcare as group praxis. The critical reflection can also include uncovering one's implicit biases. Studies have shown that despite openly confessed beliefs to racial and gender equality, HCPs have shown tendencies to discriminate against African American patients or be less likely to take female patients' pain seriously.⁵²⁸ Engaging in honest critical reflection with other HCPs can help individuals identify biases that they may not be able to recognize on their own.

⁵²⁸ See, for example, Chloe Fitzgerald, "A Neglected Aspect of Conscience: Awareness of Implicit Attitudes," *Bioethics* 28.1 (2014): 24-32.

Critical reflection also should take place at the institutional level and the principles that have traditionally grounded healthcare ethics. It should be asked if the procedures in question are based on the goals and ends of the healthcare practice or on practico-inert beliefs and moralities. Practico-inert moralities are those that are dependent upon culture, institution, or religion rather than on the “true ethic” grounded in integral humanity. For example, principles such as non-maleficence and the goal of the preservation or prolongation of life should be collectively reflected upon in relation to new laws and procedures. This prevents the principles from becoming practico-inert and having effects that are not in line with their original intentions. Codes of ethics should be reworked to reflect new technologies, new legally available procedures, and changing societal attitudes about practices such as PAD or artificial contraception. This way, HCPs in training will be educated in objectives that reflect group consensus, or pledged group praxis, and this education will lead to achieving shared goals.

Part of the uncovering of the conditions that have led to HCPs’ own beliefs, including potential contradictions, includes active empathy with the vulnerable. As patients come to them for treatment, healing, and comfort, they are vulnerable in relation to providers. Some patients are even more vulnerable: those who are economically disadvantaged, those who do not have health insurance, those who are terminal or seriously ill, or those facing a challenging health situation such as an unintended pregnancy. While the constraints of the field do not always allow it, HCPs should make active efforts to spend time with these patients if possible, and to attempt to see things from their point of view. They should also acknowledge that they cannot truly know what it is like to be in these patients’ positions or to have their experiences. Active

empathy with patients can help HCPs with critical reflection on their own beliefs. It may lead to changes in the way HCPs view the acceptability of certain procedures, such as PAD. Attempting to empathize with vulnerable patients will also help develop the provider's conscience in ways that make caring for the vulnerable an integral part of the HCP's project. This will prevent feelings of moral apathy or moral injury when performing services they may have qualms about.

The last characteristic of the Sartrean ethical subjectivity is a willingness to invent. In *Morality and History*, Sartre talks specifically about the difficult task of invention, the task of ethics: the willingness to be different and to potentially break with one's personal past, at the level of individual praxis, or collective history, at the level of group praxis. While moral integrity and consistency are necessary qualities for HCPs given the demanding nature of their jobs, ethical subjectivity demands a willingness to restructure one's beliefs if the critical, intersubjective reflection reveals inconsistencies or new knowledge. Invention also requires recognizing one's freedom to pursue new ends and to restructure one's praxis accordingly. Simultaneously, it is important that moral invention be accompanied by a moral compass and steady conscience. While conscience can reflect practico-inert beliefs, conscience plays an important role in moral life, especially in the context of healthcare. Thus, the willingness to invent must also include conscientious adherence to some ethical commitments, rather than simply being willing to change on a whim.

Moral invention that is properly guided by conscience in a Sartrean framework requires that HCPs restructure their praxis around the ethical commitments to mutual freedom and integral human needs. These Sartrean commitments are compatible with

the traditionally held goals of healthcare and the principles of healthcare ethics. In the next section, I will show that the Sartrean ethical commitments would require in most cases that HCPs be willing to perform procedures for patients that are collectively agreed to be rooted in the goals of medicine and principles of healthcare ethics.

4.3 Ethical Commitments: Mutual Freedom and Integral Human Needs

In this section I argue that the commitments to mutual freedom and integral human needs imply that HCPs should perform legal, safe, medically-accepted procedures as part of the professional roles they freely assume. First, I argue that mutual freedom requires that patient autonomy be placed above providers' right to freedom of conscience because patients and providers do not occupy equal roles of power, and vulnerability must be considered. Second, building on the discussion of group praxis in Chapter Three, I show that integral human needs are best able to be met through communal, goal-oriented praxis, rather than seriality. Thus, HCPs should see their actions in their broader context, as they relate to the overall goals of healthcare as a form of group praxis. Throughout this discussion, it is important to remember that integral humanity and mutual freedom must be pursued contextually within the given historical, social, and material field of possibilities.

The ideal of the mutual recognition of freedom is based on the idea that, as human being with free praxis, we simultaneously recognize others are free beings who interpret our projects. Thus, our freedoms are intertwined with the freedom of others and all should be respected and promoted. We should acknowledge the meaning others want to give to their projects as we want the same for ourselves. Making room for the

freedom of others increases everyone's freedom. Initially, it may appear that the commitment to the mutual recognition of freedom entails that HCPs and patients should respect each other's decisions in the patient/provider relationship equally. According to this line of argumentation, patients should respect HCPs' right to refuse just as HCPs should respect the patient's decisions about treatment. However, positions of vulnerability are important to recognize when pursuing the mutual freedom ideal. Patients are in a position of vulnerability and HCPs freely take on roles as gatekeepers to healthcare services for vulnerable people. Part of recognizing one's own freedom as a member of the healthcare profession is realizing that constraints and responsibilities come alongside serving in a specific role and upholding group praxis. Thus, HCPs agree to limits on their own freedom when they take on the roles that they do. This position flows from Sartre's discussion in *A Plea* of the increased responsibility that comes with having access to higher levels of education and experiences that build awareness.

The second moral ideal is integral humanity. This should be used as the general standard for shaping the group praxis of healthcare. I suggest that group praxis for a pledged group of healthcare can be further evaluated according to the generally accepted goals of healthcare, as well as commonly accepted principles for healthcare ethics. These goals and principles are consistent with Sartre's vision of integral humanity and will both introduce a framework for evaluating human needs and exclude abhorrent medical practices from becoming acceptable group praxis. As mentioned, commonly accepted goals of healthcare endorsed by contemporary ethicists and members of the medical community include the alleviation of suffering, the prolongation of life, the

promotion of well-being and the prevention of disease.⁵²⁹ All of these goals are consistent with Sartre's vision for human fulfillment and freedom. Praxis can be further evaluated in terms of its conformity with heavily supported principles for healthcare ethics, the principle of non-maleficence (do no harm), the principle of beneficence (patients should be benefitted and healed), the principle of autonomy (patients' self-determination should be respected) and principle of justice (no patient is given unfair preference over another).⁵³⁰ These principles are compatible with achieving integral human needs through healthcare as group praxis. If any of these principles are being violated, it is likely that the goals of healthcare are not being met, so that praxis is not in line with the fulfillment of integral human needs. An identification of needs that are foundational (needs which constitute our integral humanity) include access to sufficient food, clean water, shelter, and general physical well-being; but also love, social worth, and emotional fulfillment.

Evaluating group praxis in light of these healthcare goals and principles clearly excludes practices such as participating in drafting guidelines for torture, for example, which is not in conformity with any of the accepted goals of healthcare. It is also an evident violation of the principle of non-maleficence. If practices that violate these norms or commitments become legal, such as the US torture program, it is important that HCPs have the moral right to refuse. This would give a healthcare provider sufficient ground to refuse to participate in such a practice, in spite of some cultural or institutional pressure. In such situations, it is important for the provider to have a well-functioning conscience. I am not suggesting that the goals of medicine and healthcare

⁵²⁹ Tong, *New Perspectives in Healthcare Ethics*, 61-65.

⁵³⁰ Beauchamp and Childress, *Principles of Biomedical Ethics*, 38.

principles serve as a substitute for individual responsibility or provide some type of rule-book for properly aligned praxis. I am rather arguing that these principles are compatible with Sartre's vision of fulfilling integral humanity, so that they can serve as a foundation for evaluating the overall praxis of healthcare as a communal, pledged group. It is important, as already emphasized, that the principles themselves and their application to newly available procedures and laws be continuously discussed and reflected upon in order to avoid becoming practico-inert.

In addition to pursuing human fulfillment through healthcare goals and principles, praxis can further be evaluated by whether or not it gives rise to reciprocal interactions of trust and respect. The relationship between one's conscience and this particular version of fulfilling human needs requires that HCPs should evaluate the goals of group praxis in relation to this framework. This should also be implicit in HCPs' collective processes of reflection. Healthcare as a form of group praxis is best achieved when there is cooperation and agreement among providers. The very real effects of seriality have the potential to do great harm in a healthcare setting where life and death are constantly at stake. It is unrealistic to consider that professionals will see eye to eye on every issue. But the importance of critical reflection, discourse, and shared goals will deliver the best patient care. This process can help providers develop their conscience so that they will not feel moral apathy or the isolation and interchangeability that comes with seriality.

As demonstrated through my discussion of Sartre's view of freedom in Chapter One, exercising freedom as a HCP means navigating within a set of constraints. These constraints come from the practico-inert healthcare system itself, pressure from other

HCPs, the necessities of respecting patient autonomy, and responsibilities for upholding communal praxis as a member of the pledged group of healthcare. Engaging in critical reflection on one's own core beliefs, making deliberate attempts to empathize with patients, and working cooperatively alongside other HCPs to properly align group praxis and deliver the best patient care are all practices of freedom within the constraints. The constraints simultaneously limit and enable freedom. Thus, while being coerced to act against one's conscience can lead to feelings of determinism or impotency, developing one's conscience alongside other providers and in relation to delivering patient care allow HCPs to direct their praxis toward freely chosen communal goals.

5 Implications for Public Policy

The previous discussion elucidated the conceptual issues at stake, how CBRs affect patients' and HCPs' possibilities, and what ethical subjectivity requires of HCPs who freely choose to practice medicine. To conclude, I will make suggestions for public policy based on this analysis. I focus on the important role that conscience plays in subjectivity and in medical practice, in addition to demonstrated harms that come with being forced to act against one's conscience. I make suggestions for policy regarding education, communication and discourse between providers, and best patient care. I suggest that part of medical education should be helping students develop a sense of moral conscience and how to apply it throughout their careers. I recommend that there be consequences for experienced HCPs who refuse patients legal and medically-accepted procedures based on personal moral beliefs that are not grounded in medicine as group praxis.

First, medical training and education should include the development of conscience and honest discussion of scenarios that HCPs will face when they choose to pursue the practice of medicine. This training often takes place for physicians or other long-term professionals who study for many years. Nurses, especially LPNs and RNs who only take on one or two years of professional training before licensure, respectively, are often not fully prepared for the scope of job tasks they will encounter. They also have not had many experiences to develop their conscience in relation to situations and ethical dilemmas that may arise on the job. The studies in which HCPs have reported the greatest level of frustration regarding being forced to act against conscience are studies of nurses.⁵³¹ As providers who generally must “take orders” from superiors in order for care to be efficiently delivered, nurses are at the highest risk of moral stress. More focus on ethics and conscience in education, and regular communication between nurses and physicians can help remedy this.

Second, there should be a requirement for a consistent reflection on and revision of the ends and goals of healthcare by leadership of the American Medical Association and other government bodies that are essentially responsible for determining the collective goals of the profession. This should include discussion and discourse about how values such as “do no harm,” “preserve life,” etc. should be practiced in relation to changing societal norms and the ongoing legalization of controversial procedures, such as PAD and emergency contraceptives. The reflection process should recognize that concepts such as harm have a normative dimension and that perceptions of harm change.

⁵³¹ See Hilliard “Affordable Health Care” and Tuveesson, Eklund, and Wann-Hansson, “Stress of Conscience.”

At the same time, the changes will have on patients' and providers' possibilities also have to be recognized.

Third, it is outside the scope of this discussion to present an argument about whether or not highly contentious procedures, such as abortion and PAD, are acceptable praxis for healthcare as a pledged group. Abortion is one of the most divisive issues in US society, and purely elective abortion is divisive among HCPs of all different roles. PAD is legal in six states, but still illegal in 44, and there are still many HCPs who argue that this practice violates the principles of non-maleficence. For these procedures in which there is not yet consensus among HCPs or medical personnel of all levels, there should be some tolerance for CBRs if they can be done without harming patients or placing limits on their possibilities. Communal group praxis should take generally precedence over individual beliefs. However in difficult cases when there is still debate among medical professionals whether a procedure should be part of group praxis, some accommodations for providers should be made at the institutional level. If these procedures are collectively determined to be within the scope of the ends and goals of healthcare, providers should recognize that upholding these commitments overall are most important for group praxis. However, the importance of communicating this information among HCPs cannot be overstated. The communication makes the differences between HCPs feeling moral anguish and lack of freedom, isolation and seriality, and feeling that they are participating in intentional, freely chosen, communal praxis.

Lastly, in order to enforce the pledged group praxis, there need to be consequences enforced for HCPs who fail to uphold the collective praxis, considering

the ways in which HCP refusals can potentially alter patients' possibilities and lead to patient harm. Importantly, employer sanctions or consequences are only justifiable if the previous three recommendations are met. These consequences should not immediately include termination, but should instead be directed first of all at education and reform, with emphasis on the importance of upholding patient autonomy and the communally decided praxis. In line with Sartrean ethical subjectivity, these policies must recognize that changing procedural norms will affect patients' and providers' possibilities. Thus, opportunities for training, discussion, and education should be implemented in order to help facilitate the concerns of providers. Strategies employed should reflect that moral invention may require creative processes in order to instill a healthily functioning conscience while simultaneously upholding group ends. Consideration of how individual job tasks are part of broader pledged group ends—rooted in mutual freedom and integral humanity—must be front and center in all of HCPs' moral deliberation.

Conclusion

In this Chapter I have shown how a Sartrean analysis provides a fruitful alternative to approaches that discuss healthcare ethics issues in the context of competing rights or duties. Through the example of CBRs, I have shown that decision-making in a healthcare context is subject-forming and contributes to the existential projects of both patients and providers. I have shown that refusing to perform a procedure and being coerced to act against conscience both have effects on HCPs' and patients' possibilities. Therefore, the moral depth of the issue goes beyond protecting the rights of the liberal subject or simply maximizing utility, as we saw in accounts that

were rooted in the traditions of Kant or Mill. Additionally, I have suggested evaluating the practices in question on the basis of Sartre's ethical commitments as well as the ends of medicine and principles of healthcare, rather than arguing that each individual's personal moral view holds equal weight, regardless of its rational justification.

More than any other line of employment, healthcare is vital to societal actualization of integral human needs. From ensuring basic nutrition, vaccines and routine check-ups and screenings, alleviating pain and suffering of illness and injuries, curing when possible or healing when there is no cure—all of these practices contribute to the pursuit of integral humanity and mutual recognition of freedom. Advancing these goals requires cooperation and collective group praxis between providers. The Sartrean analysis shows that there is more at stake in CBRs than just competing claims to the right to liberty. A robust ethical analysis must take into consideration how these practices are creating possibilities for being subjects. Actions or policies rooted in Sartrean ethical commitments will put mutual freedom and integral human needs as the primary moral goals.

In the final Chapter, I will show how the Foucauldian model of ethical subjectivity that I developed in Chapter Three can be applied to an issue in healthcare ethics. I will present an analysis that considers a contemporary medical practice—mandatory HPV vaccination—as a strategy of biopower. I will show how the practice is shaping the field of possibilities for being subjects and what Foucauldian ethical subjectivity involves in terms of mandating the vaccine. I will illustrate how the Foucauldian analysis is unique from traditional deontological and utilitarian approaches.

I will then conclude by making suggestions for how Sartrean and Foucauldian views can continue to contribute to discussions in healthcare ethics.

Chapter Five: Foucauldian Ethical Subjectivity and the HPV Vaccine Controversy

Introduction

In Chapter Two, I presented Foucault's argument that subjectivity is constituted by discursive practices, strategies of power, and practices of the self. I showed that biopower and mechanisms of security are power strategies that operate in our present epoch and affect our modern framework for truth. In Chapter Three, I suggested a model of Foucauldian ethical subjectivity based on an ethical orientation of refusal, curiosity, and innovation, coupled with ethical commitments to care of self and the philosophical way of life. In this Chapter, I will show how a Foucauldian investigation can be applied to an issue in contemporary healthcare ethics, and how the analysis that it offers is different from traditional deontological or utilitarian approaches in mainstream applied ethics literature.

For this task, I will examine the administration and controversial mandate of the human papillomavirus (HPV) vaccine in the United States, in order to show how a Foucauldian analysis provides insights beyond those of a traditional deontological or utilitarian analysis. HPV is the most common sexually transmitted infection in the United States and worldwide. Approximately 79 million U.S. residents are currently infected with HPV and about 14 million people become newly infected each year. Approximately 4,000 women die each year from cervical cancer caused by HPV.⁵³² Since 2006, a vaccine has been available and recommended for young females and since

⁵³² Center for Disease Control and Prevention, "Genital HPV Infection: Fact Sheet," accessed January 5, 2017, <http://www.cdc.gov/std/HPV/STDFact-HPV.htm>.

2009 for young males.⁵³³ There has been proposed legislation in several states to mandate the vaccine for girls entering middle school.

Despite the potential benefit of preventing several different cancers, the push for mandatory vaccination for HPV is met with some opposition. Some are concerned that because the HPV vaccine is fairly new, the long term side effects of the vaccine are unknown, and that the public benefit of the vaccine is exaggerated. Additionally, some see the vaccine as an intrusion by the state into the decision-making process of teenagers, who could abstain from sexual activity, and an intrusion on parental autonomy regarding healthcare decisions for their children.⁵³⁴ Some stronger opponents argue that vaccines for sexually transmitted infections (STIs) condone or even encourage teenage sex, and give a false sense of security against other STIs. Proponents of the vaccine argue that a mandate is the only way to achieve herd immunity, which is the idea that if the majority of the population is vaccinated for a disease, those who cannot be vaccinated due to age or weakened immune systems are still protected because the spread of the disease is contained. Proponents argue that the benefits of the vaccine outweigh potential side effects or concerns about teenage sexual behavior.⁵³⁵ Thus, there is currently a public debate about whether the vaccine should be mandatory, if it should also be mandatory for males, when it should be administered, and who should be targeted to receive it.

⁵³³ Center for Disease Control and Prevention, "HPV Vaccine: Questions and Answers," accessed January 5, 2017, <http://www.cdc.gov/vaccines/vpd-vac/hpv/vac-faq.htm>.

⁵³⁴ Monica Casper and Laura Carpenter, "Sex, Drugs, and Politics: the HPV Vaccine for Cervical Cancer," *Sociology of Health and Illness* 30.6 (2008): 893-895.

⁵³⁵ Xian Wen Jin, et al., "Human Papillomavirus Vaccine: Safe, Effective, Underused," *Cleveland Clinic Journal of Medicine* 80.1 (2013): 49-60.

Literature on mandatory vaccination generally frames the conversation as a conflict between an individual or parental right to liberty and utilitarian concerns about what is best for the population as a whole. Those who argue in favor of vaccine mandates claim that the benefits that come with establishing herd immunity against a disease outweigh a parent's right to refuse to have their children vaccinated as part of a general right to liberty. Those who oppose vaccine mandates appeal to the importance of parents' rights to choose and refuse medical treatment for their children, and point out that all vaccines come with associated risks. The conversation about HPV vaccination in philosophical literature is framed in terms of whether HPV is harmful and contagious enough to warrant overriding the parental right to liberty for utilitarian reasons.

In this Chapter I show how Foucault's views on subjectivity as well as the model for ethical subjectivity I constructed in Chapter Three can be used to contribute to the conversation about this issue of public concern. I show why none of the current approaches are properly accounting for the subject-forming dimension of HPV vaccination and how taking this into account can be beneficial for formulating our response. I show that this practice shapes the possibilities for youth who are targeted to receive the vaccine and for their parents who must make the decision whether or not to vaccinate. I argue that the issue of mandatory HPV vaccination is not only a debate between parental autonomy weighed against the benefits to the population as a whole. Possibilities for subjectivity, new strategies of power, and new categories for normality and abnormality emerge alongside this new medical procedure and mechanisms for implementing it.

For this task, I use two concepts introduced by Foucault. I examine the HPV vaccine as a strategy of “biopower” and the potential mandate as an accompanying “mechanism of security.” The analysis will show that mandating the vaccine has the potential to change the possibilities for adolescent subjects and the relationships they have with their family members and peers. Those who support mandating the vaccine must take these issues into consideration in order to understand the motivations and concerns of opponents so that we have an inclusive debate about the issue. I make recommendations for providers, public health officials, and public policy, suggesting that the HPV vaccine can be implemented routinely side by side with other sexual health practices in order to benefit the health of both adolescents and adults, while taking into consideration how such practices will affect their field of possibilities.

I begin by showing how the Foucauldian model that I introduced in Chapter Three is different from traditional utilitarian or deontological approaches which rely on the vision of the liberal subject. I then introduce the HPV vaccine and the controversy surrounding it, as well as how mandatory vaccination is typically approached in applied ethics literature. I show why framing the debate as a conflict between individual liberty and social welfare does not sufficiently capture all that is at stake in vaccination practices and HPV vaccination in particular, which is spread through behavior rather than casually. I then proceed with the Foucauldian analysis, interpreting the HPV vaccine as a mechanism of biopower that is shaping the possibilities for human subjects. To do so, I appeal to Foucault’s analysis of the smallpox vaccine in 19th century Europe and the discourses and concepts that emerged alongside it. By applying his analysis of

the smallpox vaccine, I show how similar concepts are operative today in the debate about the HPV vaccine.

I then proceed to the normative analysis. In Chapter Three, I argued that refusal refers to an attitude of rejection of inevitabilities, both in our social landscape and our own possibilities. I argued that curiosity refers to framing our ethical deliberation in terms of certain background questions, primarily asking how we are constituted as subjects of power, knowledge, and our own actions. I argued that innovation refers to an ongoing willingness to change and transformation. In terms of commitments, I argued that care of self requires recognizing the link between ethics and truth, caring for others alongside ourselves, and helping others have the relevant information or thought processes to decide for themselves. I argued that the philosophical way of life requires retaining reflective awareness of how we become subjects through biopower and mechanisms of security. I also argued for a commitment to exposing ways of thinking, speaking or acting that were previously closed off or unexplored. To conclude the Chapter, I elucidate what this orientation and commitments imply for providers, public health officials, and policy makers. I show that Foucauldian ethical subjectivity requires recognizing how HPV vaccination is affecting categories for normality and abnormality and potentially changing relationships. I make suggestions for policy, including outreach strategies, which both recognize these concerns and meet parents and adolescents on their own terms.

Thus, the objectives of this Chapter are as follows: 1) to differentiate Foucault's ethical subjectivity model from traditional ethical models rooted in the thought of Kant and Mill, 2) to show the current controversy surrounding the HPV vaccine as well as

how mandatory vaccination is approached in the philosophical literature, 3) to use Foucault's concepts of biopower and mechanisms of security to help elucidate how the HPV vaccine influences subjectivity, using his discussion of historical smallpox vaccination as a contrast model, 4) to use the Foucauldian model of ethical subjectivity to argue how public health officials and providers should approach HPV vaccination, and 5) to make recommendations for public policy and refocusing the debate based on this analysis.

1 Foucauldian Ethical Subjectivity versus Deontology and Utilitarianism

In Chapter Four, I discussed two different ethical frameworks based on the thought of Kant and Mill. I also showed how Kantian and Millian thought are used to justify moral or political rights. The first, based on Kant, is a deontological approach in which rights are introduced to protect the inherent dignity of each human being. Kant argues that human beings have universal faculties of reason, and thus are capable of both legislating and following the moral law. Most important for contemporary moral thought is his argument that each person should treat other human beings as an ends in themselves, and never as only a means to an end. As autonomous decision-making agents, human beings should be treated as fellow decision makers, not as things or tools.⁵³⁶ As mentioned, this is often extrapolated into a rights-based framework in which human beings, as possessors of universal powers of reason and choice, are entitled to certain protections. Rights involve placing limits on the behavior of everyone in order to protect the interests of the rights-holder. One of the most important rights

⁵³⁶ Immanuel Kant, *Grounding for the Metaphysics of Morals*, translated by James Ellington (Indianapolis: Hackett, 1981), 36.

supported by a deontological framework with respect to healthcare ethics is the right to bodily autonomy and the right to choose or refuse treatment.⁵³⁷

The second approach, based on Mill, is utilitarian insofar as rights serve an instrumental purpose and are introduced in order to produce utility. Mill's ethical thought, rather than being based on universal moral laws derivable solely from reason, is instead based on consequences that lead to the best results for the most people. Actions are morally good when they lead to consequences that make the most people happy or lead to their well-being.⁵³⁸ This argument is now referred to as rule-utilitarianism and introduces rules for society that, if followed by everyone, lead to the greatest good for the greatest number. As we saw in Chapter Two, Mill believes that human beings are most happy when they are generally left alone. Thus, he argues for a vision of justice based on negative liberty and the no-harm-to-others principle. As we saw in Chapter Four, Mill's thought can also be extrapolated into defense of a system of moral rights.⁵³⁹ In this view, rights are not defended as ends in themselves, but because they are *instrumental* in realizing certain desirable ends.⁵⁴⁰ These rights are grounded in general utility, that is to say, the happiness they create for society as a whole. When two rights appear to be in conflict, we must weigh which right produces more utility for everyone. In a utilitarian approach to rights, the right to bodily autonomy of the individual can be overridden by broader concerns for the health of the population. I discuss Foucault's key differences with deontological or utilitarian rights theories because these theories

⁵³⁷ See Thomas Beauchamp and James Childress, *The Principles of Biomedical Ethics* (Oxford: Oxford University Press, 2012).

⁵³⁸ John Stuart Mill, *Utilitarianism*, edited by George Sher (Indianapolis: Hackett, 2001).

⁵³⁹ See for example, David Lyons "Utility as a Possible Ground for Rights," *Nous* 14.1 (1981): 17-28.

⁵⁴⁰ Mill, *Utilitarianism*, 53.

currently dominate the mainstream conversation in healthcare ethics. In the case of mandatory vaccination in healthcare, the debate is framed as a conflict between a parental right to liberty versus utilitarian concerns regarding societal welfare and disease control.

An approach based on Foucauldian ethical subjectivity is significantly different. First, Foucault does not argue that rights-based approaches to ethics are necessarily bad, but that they have the potential to be dangerous when assumed to be self-evident, timeless, or immune from questioning. Foucault would emphasize that rights introduced will present certain behavior or characteristics as desirable and will *produce* subjects in the sense of modifying the ways that subjects think of themselves and others. The right to bodily autonomy or the overriding of rights in the interest of societal welfare will produce or emphasize certain categories for normality. Practices that exercise control over bodies and behavior will establish a norm and categorize subjects accordingly. Second, rights-based theories are focused on the appropriate treatment of moral patients, or morally considerable human beings. Foucauldian ethical subjectivity is primarily concerned with the development of the individual self. Refusal, curiosity, and innovation are orientations in which one refuses to accept many characteristics of oneself as inevitable, one attempts to understand oneself in one's unique historical moment, and one is generally willing to change and think something different than one thought before. Third, both deontological and utilitarian rights-based approaches to ethics are interested in protecting or legislating the liberal subject and introducing constraints on behavior as a means of doing so. Foucauldian ethical subjectivity, by contrast, recognizes that we become subjects with possibilities through the discursive

frameworks and strategies of power present in our epoch. Thus, ethics is a process of building oneself in reference to an orientation and recognizing that our practices affect the possibilities of others, rather than protecting an existing self.

At the level of commitments, the commitments with Foucauldian roots that I introduced include care of self and the philosophical way of life. The most explicit difference between Foucauldian ethical subjectivity and deontological or rights-based approaches is that Foucault is more interested in uncovering than legislating—he does not believe there are ethical maxims that transcend historical epoch or that it is the philosopher’s job to tell others what kind of political system or laws they should have. Rather, a commitment to care of self and the philosophical way of life includes helping others have the relevant knowledge to decide for themselves. It also includes illuminating ways of thinking and doing that may have been previously unexplored in order to create new possibilities for ourselves and others.

In a recent work on Foucault and his position regarding rights, Ben Golder⁵⁴¹ argues that for Foucault, there is an ambivalence to rights. Golder’s analysis is very useful in terms of elucidating Foucault’s views on rights, which occasionally seem indecisive. A brief discussion of his study will make Foucault’s views more clear and lend support for an ethical approach that goes beyond moral rights. As discussed in Chapter Three, Foucault argues in *Society Must Be Defended* that rights-discourse “serves as a vehicle for and implements relations that are not only relations of sovereignty, but relations of domination.”⁵⁴² However, there are also times when

⁵⁴¹ Ben Golder, *Foucault and the Politics of Rights* (Stanford: Stanford University Press, 2015).

⁵⁴² Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France 1975-1976*, translated David Macey (New York: Picador, 1977), 26-27.

Foucault talks about the importance of rights, specifically in his advocacy for gay rights in the late 1970s and early 1980s. In Golder's interpretation, Foucault sees rights as at the same time emancipatory and regulatory, liberating and constraining. This is because rights can serve as tools to enlarge, expand, or protect the sphere of possible actions for subjects. At the same time they can also serve as vehicles for strategies of power that establish those subjects in communities in particular ways and regulate them within existing forms of power.⁵⁴³ Golder characterizes Foucault's view as follows: "[I]f ...[rights] are sometimes effective in redirecting and remaking power relations, they nevertheless do so by fabricating and then regulating the very subjects who claim to rely upon them."⁵⁴⁴ Golder convincingly appeals to several of Foucault's interviews during his activism on behalf of gay rights to support this view. For example, in a 1982 interview, Foucault said:

I think we should consider the battle for gay rights as an episode that cannot be the final stage...because a right, in its real effects, is much more linked to attitudes and patterns of behavior than to legal formulations...That in the name of respect of individual rights someone is allowed to do as he wants, great! But if what we want to do is to create a new way of life, then the question of individual rights is not pertinent... [the notion of gay rights] has been very useful, but it limits us.⁵⁴⁵

Foucault's critique of the movement on behalf of gay rights was a critique of a tendency to identify or isolate a "gay identity" which would then be protected with similar rights as those protecting heterosexual relationships. While this may enhance the sphere of practical actions for gay individuals, Foucault was wary that it also introduced

⁵⁴³ Golder, *Foucault and Rights*, 91-92.

⁵⁴⁴ *Ibid.*, 103.

⁵⁴⁵ Foucault, "The Social Triumph of the Sexual Will," in *The Essential Works of Foucault 1954-1984 Vol. 1, Ethics Subjectivity and Truth*, translated by Robert Hurley, edited by James Faubion (New York: New Press, 2000), 157-158.

a constrained view of what homosexual relationships were supposed to be. Foucault was interested in creating new types of relationships that are open to change and innovation rather than being constrained by existing sexual norms. He says:

Rather than arguing that rights are fundamental and natural to the individual, we should try to imagine and create a new relational right that permits all possible types of relations to exist and not to be prevented, blocked, or annulled by impoverished relational institutions.⁵⁴⁶

With this statement, Foucault suggests the possibility of “relational rights” or rights which allow for different types of relationships to exist rather than rights that control or regulate conduct to such an extent that it constrains the relationships we can have with each other. Golder argues that Foucault sees rights as an available political means to contest dominating power relations and open up spaces for resistance and freedom. At the same time, rights “reveal their contingency and availability for political resignification, they will not for this reason alone always and necessarily present the best possible means for the contestation of power relations.”⁵⁴⁷

From this discussion it is clear that Foucault considers rights as political tools that exist in a web of power relations. While they can serve as useful tools for opening a field of action in which subjects will have more room to creatively construct their own identities and relationships, they can equally often constrain or regulate behavior in such a way that only limited or specific identities and relationships are allowed to develop. As Golder comments, “Rights are political mechanisms that both produce and threaten the space of freedom.”⁵⁴⁸ The implications that this has for discussions of ethics is that while rights may serve as useful tools for legislating society and moral rights can serve

⁵⁴⁶ Foucault, “Friendship as a Way of Life,” in *Essential Works of Foucault Vol. 1*, 136.

⁵⁴⁷ Golder, *Foucault and Rights*, 112.

⁵⁴⁸ *Ibid.*

as useful tools for ethical discourse, rights are only useful if they are not overly constraining or stifling of freedom or of our relationships with each other. Rights may serve the useful function of promoting the individual's freedom, but they have the potential to be dangerous if they are assumed to be inherent and the "be-all and end-all" of political or moral discourse. Foucault's example with the gay rights movement elucidates this point quite well: while a right to sexual freedom enabled new types of relationships and new possibilities for gay people, fighting for gay rights also introduced the danger of forcing gay relationships to conform to existing categories for "normal" relationships. The implications of this view for my project is that when we employ moral rights language, this should not be the sole discourse used. Rather, our analysis must go deeper and examine whether relying on rights is not also limiting possibilities for who we become and what type of relationships we establish with one another.

In terms of mandatory vaccination, this discussion does not entail that we should do away with rights talk or dismiss the debate regarding the proper balance of individual liberty weighed against the health of populations. We must work within the conceptual frameworks and rational justifications that operate in our epoch. Rather, a Foucauldian analysis should *add* to the conversation rather than replacing the current discussion, and bring lucidity so that we are aware of what new practices, new laws, or new "rights" entail. A Foucauldian analysis will draw attention to the ways that medical practices are affecting the possibilities for subjectivity, affecting frameworks for truth, and affecting our relationships with each other. This analysis will identify spaces of freedom in these possibilities and relationships. This will allow us to see the full scope of what is at stake

and provide a more robust foundation for approaching issues in healthcare. It will also show the shortcomings of relying only on utilitarian or deontological approaches.

2 HPV Vaccination: Overview and Current Approaches

2.1 HPV: Overview and Current Debate

HPV is a serious medical concern both in the United States and worldwide. It is so common that nearly all sexually active men and women will get at least one type of HPV at some point in their lives. There are over 100 strains of the virus, two of which have been linked to 70% of cervical cancer in females. HPV can be transmitted through sexual intercourse or sexual activity, and occasionally can be transmitted from a mother to a baby during delivery. Each year about 360,000 men and women develop genital warts resulting from HPV, 12,000 women develop cervical cancer, and 4000 of them die.⁵⁴⁹ High risk HPV types are found in about 3.4% of women tested and detected in virtually all cervical, vaginal, and vulvar cancers.⁵⁵⁰ Women who do not die from cervical cancer often must still go through painful surgeries to remove portions of their cervix. Genital warts caused by HPV are often difficult and painful to treat.⁵⁵¹ In addition to causing uncomfortable warts and cancer, there is a financial cost of treating HPV: roughly 16 billion dollars each year.⁵⁵²

⁵⁴⁹ Center for Disease Control and Prevention, "Genital HPV Infection: Fact Sheet," accessed January 5, 2017, <http://www.cdc.gov/std/HPV/STDFact-HPV.htm>.

⁵⁵⁰ National Cancer Institute, "A Snapshot of Cervical Cancer," accessed January 5, 2017, <http://www.cancer.gov/aboutnci/servingpeople/cancer-statistic/snapshots>.

⁵⁵¹ Center for Disease Control and Prevention, "Genital HPV Infection: Fact Sheet."

⁵⁵² Center for Disease Control and Prevention, "Incidence, Prevalence, and Cost of Sexually Transmitted Infections in the United States: CDC Fact Sheet," accessed January 5, 2017, <http://www.cdc.gov/std/stats/STI-Estimates-Fact-Sheet-Feb-2013.pdf>.

The development and approval of the HPV vaccine in 2006 was seen as an opportunity to significantly decrease the rate of infection. Since rates of HPV are higher in the age group of 14 through 24, the recommendation is to vaccinate females before the onset of sexual activity, when it is unlikely that they have been previously exposed to the virus.⁵⁵³ The Center for Disease Control and Prevention recommends that, in order to be maximally effective, the series of vaccination should be given to adolescents at around 11 to 12 years of age. In 2009 the vaccine was also approved and recommended for adolescent males, recommended for 11 and 12-year-old boys.⁵⁵⁴ In addition to protecting males against genital warts and cancers, vaccinating males reduces the spread of the disease to females.

Late in 2006, states began considering legislation that would mandate vaccination for girls entering middle school. Although the initial development of legislation saw little controversy, this changed when Texas governor Rick Perry signed an executive order in 2007 requiring the HPV vaccine for girls entering middle school. This order was later revoked by the Texas state legislature. Since then, 24 states have considered legislation that would mandate the vaccine, although those measures have only passed in Virginia and the District of Columbia.⁵⁵⁵

Four common concerns have been raised about the mandated administration of the HPV vaccine. The first is that the potential health benefit for the public that would come from mandating the vaccine is not sufficient to warrant an intrusion on parents'

⁵⁵³ Center for Disease Control and Prevention, "Incidence, Prevalence, and Cost."

⁵⁵⁴ Center for Disease Control and Prevention, "HPV Vaccine: Questions and Answers," accessed January 5, 2017, <http://www.cdc.gov/vaccines/vpd-vac/hpv/vac-faqs.htm>.

⁵⁵⁵ National Conference of the State Legislatures, "HPV Vaccine," accessed January 1, 2017, <http://www.ncsl.org/issues-research/health/hpv-vaccine-state-legislation-and-statutes.aspx>.

and adolescents' right to liberty, including the right to refuse treatment. Second, there is the concern that because the vaccine is fairly new, there are not enough data to ensure its safety. Initial studies suggest the vaccine is safe. The Vaccine Adverse Event Reporting System has found no serious systemic reactions apart from those that are common to almost every other vaccine.⁵⁵⁶ However opponents are concerned that the long term effects of the vaccine, if there are any, are not yet known. Since HPV is not casually transmitted like other diseases for which children are traditionally vaccinated, many parents believe that an equally effective alternative to a vaccine that has potential side effects is to practice abstinence.⁵⁵⁷ There is a significant gap between parents who are in favor of mandatory TDAP (tetanus, diphtheria, and pertussis) vaccine and those in favor of mandatory HPV vaccine,⁵⁵⁸ suggesting that many hold the view that HPV can be avoided through methods other than vaccination. It can also indicate that many do not understand that HPV is a serious threat. The third concern is that the vaccine gives adolescents a false sense of security in terms of avoiding other STIs. In other words, the knowledge that they are protected from one sexually transmitted disease may lead some adolescents to erroneously believe they are protected from other STIs like HIV. Fourth, the strongest opponents are concerned that mandating a vaccine for an STI condones or even encourages sexual behavior in adolescents.⁵⁵⁹

⁵⁵⁶ Jin, et al., "Human Papillomavirus," 52-53.

⁵⁵⁷ Maggie Hendry, et al., "'HPV? Never Heard of it!': A Systematic Review of Girls' and Parents' Information Needs, Views, and Preferences about Human Papillomavirus Vaccination," *Vaccine* 31.45 (2013): 5163.

⁵⁵⁸ Casper and Carpenter, "Sex, Drugs, and HPV," 895. A 2007 poll showed that just 44% of polled parents were in favor of mandatory vaccination, while 68% were in favor of mandatory TDAP (tetanus, diphtheria, and pertussis) vaccine.

⁵⁵⁹ Rob Stein, "Cervical Cancer Vaccine Gets Injected With a Social Issue: Some Fear a Shot for Teens Could Encourage Sex," *Washington Post*, October 31, 2005, accessed January 15, 2017, <http://www.washingtonpost.com/wpdyn/content/article/2005/10/30/AR2005103000747.html>

Those who argue in favor of making the vaccine mandatory assert that disease rates do not fall unless vaccines are made mandatory. They also argue that routine administration is necessary for establishing herd immunity, and this is only achieved through vaccine mandates. This is an argument supported by historical and modern evidence of disease control through vaccination, including smallpox elimination. A number of child vaccines have been mandatory in schools for a long time, and such requirements have been successful in preventing infectious diseases. Even those who are not eligible for the vaccine get protection through herd immunity because the spread of the disease is contained.⁵⁶⁰ Proponents assert that any misguided perceptions that individuals are also protected against other STIs can be avoided by proper education about the vaccine. In general, they argue that the potential public health benefits outweigh potential concerns about teenage sex.⁵⁶¹

2.2 Vaccination: Philosophical Literature

In philosophical literature, the debate about mandatory vaccination is usually framed as a conflict between a right to liberty and utilitarian concerns regarding the well-being of the overall population, or as a conflict between individuals' competing right to life. Heta Hayry and Matt Hayry,⁵⁶² for example, argue that there are conflicting rights claims on both sides of the debate. They use the example of the New York 1947 smallpox vaccine program in which eight million people were successfully protected

⁵⁶⁰ Vaccines.gov, "Community Immunity ('Herd Immunity')," accessed January 1, 2017, <http://www.vaccines.gov/basics/protection/index.html>.

⁵⁶¹ Gillian Haber, Robert Malow, and Gregory Zimet, "The HPV Vaccine Mandate Controversy," *Journal of Pediatric and Adolescent Gynecology* 20.6 (2007): 325-331.

⁵⁶² Heta Hayry and Matti Hayry, "Utilitarianism, Human Rights, and the Redistribution of Health Through Preventative Medical Measures," *The Journal of Applied Philosophy* 6.1 (1989): 43-51.

against the disease, but four people died as a result of receiving the vaccine. Hayry and Hayry argue that the four people who died had a *prima facie* right to life that was arguably violated when they were coerced to receive the vaccine that caused their deaths. At the same time, they argue that the eight million people who were successfully inoculated had an equally valid claim to a right to life and without the vaccination program many more would have died.⁵⁶³ Thus, they argue, the problem cannot be solved solely by appealing to rights. Our decision must include a “rough and ready utilitarian calculus.”⁵⁶⁴ Because far more people would have died if the mandatory vaccination program had not been implemented, Hayry and Hayry argue that we must resort to a utilitarian calculus, which is clearly in favor of the vaccination program.⁵⁶⁵

Mark Navin also makes an argument in favor of mandatory vaccination that he argues goes beyond the traditional debate weighing claims to liberty and public health. He introduces two additional moral reasons mandatory vaccination is justified: the principle of fairness and concern for vulnerable persons.⁵⁶⁶ Navin argues that refusing to vaccinate one’s children amounts to free-riding upon a public good that others have created. Herd immunity, he argues, is a public good comparable to clean air or national security. Like in the case of clean air or national security, you cannot prevent people who do not pay their fair share from benefitting from herd immunity. Thus, a fair scheme for contributing to the public good is needed, and the only fair scheme for paying the cost of herd immunity is for everyone who can receive a vaccine to do so. If

⁵⁶³ Hayry and Hayry, “Utilitarianism,” 50.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ *Ibid.*

⁵⁶⁶ Mark Navin, “Resisting Moral Permissiveness About Vaccine Refusal,” *Public Affairs Quarterly* 27.1 (2013): 70.

one refuses to participate in fairly sharing the costs, Navin argues that he or she is a free-rider, or one who treats others with insufficient impartiality in pursuit of one's own interest.⁵⁶⁷ The second reason that refusing vaccination is immoral, in Navin's view, is that it fails to show concern for the vulnerable. Vulnerable people, in Navin's definition, are those who lack reasonable means to avoid becoming infected. This includes infants who are not old enough to be vaccinated for infectious diseases, as well as those with weakened immune systems who cannot handle receiving a vaccine. Navin concludes that refusing to have oneself or one's child vaccinated constitutes negligence or insufficient effort to prevent oneself from harming others.⁵⁶⁸

A similar argument is made by Angus Dawson,⁵⁶⁹ who looks to solve what he calls the "Prevention Problem." The Prevention Problem, as presented by Dawson, is the tension that arises because the risks of mandatory vaccination are carried by the individual, but the benefits of mandatory vaccination come at the level of populations. Thus, the argument goes, given the unequal distribution of the risks and benefits, mandatory vaccination is unethical because it unfairly coerces individuals to put themselves at risk of harm for no individual benefit.⁵⁷⁰ Dawson argues that the "Prevention Problem" can be solved because herd immunity benefits each person individually. This is because no vaccine is 100% effective, so that people who are vaccinated can still be infected with the disease. However, the establishment of herd immunity means that the spread of the disease is contained. The relief from worrying about being infected by a serious contagious disease because of herd immunity is a

⁵⁶⁷ Navin, "Resisting Moral Permissiveness," 72-73.

⁵⁶⁸ *Ibid.*, 75-76.

⁵⁶⁹ Angus Dawson, "Vaccination and the Prevention Problem," *Bioethics* 18.6 (2004): 515-530.

⁵⁷⁰ *Ibid.*, 516.

significant benefit to each individual. Thus, Dawson argues, there is no conflict between the risk of harm being undertaken by the individual and the benefits reaped at the level of populations.⁵⁷¹

Robert Field and Arthur Caplan⁵⁷² offer an ethical framework for balancing competing values and determining when vaccine mandates are acceptable. Those who oppose mandates, they say, appeal primarily to the value of individual autonomy. Proponents of mandates rely on the values of beneficence, utilitarianism, justice, and non-maleficence.⁵⁷³ Field and Caplan offer a framework for balancing these values, which is the interest of public policy. The interest in autonomy, they argue, is most compelling when the objector would pose no harm to others. But the respect for autonomy declines as the risk of potential harm grows. This means that when the disease becomes more dangerous and deadly, utilitarian concerns begin to hold more weight than autonomy. Thus, if the disease is mild, autonomy should reign supreme, but the more dangerous the disease, the more utilitarian concerns should take precedence. Field and Caplan specifically address the HPV vaccine under this framework. They argue that because the harm HPV poses can be prevented through means other than vaccination (safe sex or abstaining from sex), and because the disease is not spread casually, HPV does not meet a high enough threshold of harm to override respect for autonomy.⁵⁷⁴

⁵⁷¹ Dawson, "Vaccination," 525-527.

⁵⁷² Robert Field and Arthur Caplan, "A Proposed Ethical Framework for Vaccine Mandates: Competing Values and the Case of HPV," *Kennedy Institute of Ethics Journal* 18.2 (2008): 111-124.

⁵⁷³ *Ibid.*, 114-115.

⁵⁷⁴ *Ibid.*, 121-122.

Heidi Malm⁵⁷⁵ discusses mandatory HPV vaccination specifically within the context of immigration justice. Recently the HPV vaccination was added to a required list of vaccines that immigrants must receive before they are allowed to enter the United States on certain VISAs. Malm accepts Navin's justifications for supporting vaccine mandates, which were the principle of fairness and concern for the vulnerable. Malm argues that because HPV is not spread casually, neither of these two principles justify mandatory HPV vaccination. First, she argues that there are other ways for people to pay their "fair share" in order to benefit from the public good. For example, abstinence and safe-sex practices would be equal ways of paying one's fair share for preventing the spread of HPV. Malm argues that the same goes for concern for the vulnerable: someone who is concerned about vulnerable people who cannot be vaccinated for HPV can use behavioral control in order to prevent oneself from spreading the virus to vulnerable people.⁵⁷⁶ Thus, while she accepts Navin's basic principles for justifying mandatory vaccination, Malm argues that the fact that HPV is not spread through casual contact means that it does not meet the thresholds introduced by Navin.

The discussion in the philosophical literature provides an important conversation about the balance of claims to liberty and autonomy weighed against public health and overall social welfare. Because the right to liberty plays a key role in political life in the United States, an ethical analysis of mandatory vaccination must include discussion of the nature and scope of the right to liberty and when it can be overridden in the interest of public health. The Foucauldian analysis I present below is not meant to serve as a

⁵⁷⁵ Heidi Malm, "Immigration Justice and the Grounds for Mandatory Vaccinations," *Kennedy Institute of Ethics Journal* 25.2 (2015): 133-148.

⁵⁷⁶ *Ibid.*, 142-143.

replacement for this philosophical discussion, but as a supplement to it. What becomes clear in the following discussion is that vaccination and disease control in general are subject-forming experiences. As the HPV vaccine is linked to sexuality, administered in adolescence rather than infancy, and for a disease that is not easily contagious or casually transmitted, it has subject-forming implications that go beyond normal childhood vaccinations. Because HPV does not meet a high enough threshold of possible harm for traditional justifications for vaccine mandates, providers and public health officials must include new strategies for implementation and new lines of argumentation in order to reach consensus.

The analysis that I develop below will be different from the traditional discussion in several ways: First, approaches discussed above rely on the viewpoint of protecting the moral rights of the liberal subject, without recognizing that subjectivity is being formed through the practice of vaccination. I demonstrate how we can take a new starting point of analysis when we do an evaluation through Foucault's vision of subjectivity, especially as it relates to biopower and mechanisms of security. Second, I make a case for an approach to HPV vaccination that is not based on straightforward deontological or utilitarian reasoning, but emphasizes the importance of ethical, inventive subjectivity. Third, I introduce recommendations for how providers and public health officials should approach the administration of the HPV vaccine that acknowledges how medical practices are formative of subjectivity. Fourth, I make recommendations for public policy based on commitments to care of self and the philosophical way of life, but situate them in the specific context of liberal society in which this problem occurs. I emphasize that conversations about HPV vaccination and

strategies for its implementation do not have to result in antagonistic competing rights claims.

3 Vaccination and Subjectivity: The Case of Smallpox

As I have previously shown, Foucault argues that the possibilities for becoming subjects are shaped by discursive practices, strategies of power, and practices of the self. One of the most important strategies of power that characterizes our contemporary epoch is biopower. Recall that biopower is a specific strategy that solidified its foundation when Western societies discovered the fundamental biological fact that human beings are a species. Biopower can be viewed as a tool to explore the mechanisms through which some basic biological features of humans as a species were discovered as susceptible to mastery and manipulation. Foucault describes biopower as the “numerous and diverse techniques for achieving the subjugation of bodies and the control of populations”⁵⁷⁷ and “the set of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power.”⁵⁷⁸ Mechanisms of security, which are disciplinary mechanisms aimed at the level of populations, included vaccine mandates and enforced quarantine, among others.⁵⁷⁹

Another Foucauldian concept at play in mandatory vaccination initiatives is “normalization.” Recall that normalization is the positing of an optimal model to which

⁵⁷⁷ Michel Foucault, *The History of Sexuality, Volume 1*, translated by Robert Hurley (New York: Vintage, 1978), 140.

⁵⁷⁸ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (STP), translated by Graham Burchell (New York: Palgrave Macmillan, 2007), 1.

⁵⁷⁹ Foucault, STP, 2.

people in their movements and actions are required to conform. Normalization is present in disciplinary, medical, and other social practices that intend to alter subjects in order to bring them in line with a specific standard. It is a prescriptive norm that determines that which is normal and consequently also that which is abnormal.⁵⁸⁰ Normalization acts through imposing homogeneity on subjects, while at the same time individualizing them. This takes place through measuring differences between subjects and then determining levels of normality.⁵⁸¹ Because mandatory vaccinations are intended to create a norm of immune bodies that stop the spread of disease, they involve the establishment of a norm and a subsequent attempt to bring the population in line with this norm.

Many of the new mechanisms of security introduced alongside biopower relied on the new idea of preventative medicine, including herd immunity. Herd immunity, the crux of mandatory vaccine arguments, is a clear example of a mechanism of biopower. Individual human subjects are vaccinated in order to prevent the spread of disease to the overall human population. Herd immunity then allows a proliferation of life through protection of individual subjects by prescribing a norm for these same individuals in order to benefit the species. In his lecture series *Security, Territory, and Population* (STP), Foucault specifically discusses the smallpox vaccine in 18th and 19th century Europe and how this vaccine introduced a new framework for thinking and speaking about disease and disease control. This included new categories of normality, new ways that subjects thought about themselves and others, and new ways that behavior was

⁵⁸⁰ Foucault, STP, 56-57.

⁵⁸¹ Michel Foucault, "Body/Power," In *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, edited by Colin Gordon (New York: Vintage, 1980).

controlled. Thus, the introduction of the smallpox vaccine created a new framework for thinking, speaking, and doing.

In Foucault's interpretation, smallpox vaccination is particularly interesting because, for the first time, statistical instruments made it possible to think of the phenomena of smallpox purely in terms of calculated probabilities. These calculations led to vaccination being integrated into mechanisms of security. In addition to Foucault's analysis, I will appeal to a comprehensive study on smallpox eradication in 18th and 19th century London by Anne Hardy, whose findings support and supplement Foucault's analysis.⁵⁸² Foucault argues that when it became possible to think about smallpox through calculable probabilities, smallpox was no longer apprehended as a "prevailing disease" in the sense of a disease that is associated with a particular place and a particular group of people.⁵⁸³ Previously, smallpox was identified with the poor, the unclean, or those inhabiting a certain area. Quantitative analysis enabled the possibility to predict rates of smallpox. It became possible to calculate the likelihood of smallpox cases arising. Smallpox was then considered a "distribution of cases in a population circumscribed in time or space."⁵⁸⁴ Foucault argues that four new concepts came into play with methods of smallpox vaccination: *case*, *risk*, *danger*, and *crisis*.

Cases of smallpox did not refer to a specific individual case, but rather to the result of an ability to measure when smallpox may breakout within a short time period or in a specific portion of the population. As studies of smallpox showed, the disease was likely to arise among specific individuals at a specific time.⁵⁸⁵ Data revealed that

⁵⁸² Anne Hardy, *Smallpox: The Epidemic Streets* (Oxford: Oxford University Press, 1993), 118.

⁵⁸³ Foucault, STP, 59-60.

⁵⁸⁴ *Ibid.*, 60.

⁵⁸⁵ *Ibid.*

areas where many people lived in small houses were ripe for smallpox outbreaks.⁵⁸⁶ Contemporary scientific knowledge about smallpox suggests that cases of smallpox were easily detected because the presence of the disease was obvious. Symptoms for smallpox began approximately 12 to 14 days after exposure to the virus. The symptoms began with fever or vomiting, followed by a development of a rash two to three days later.⁵⁸⁷ It would then be apparent that a certain group of individuals who had occupied the same space were likely infected with smallpox. A case of smallpox was clearly visible and identified through the lesions which were publicly understood to be a symbol of disease and death.⁵⁸⁸

The second concept that arose from the mathematization and study of smallpox, according to Foucault, is *risk*. Through the analysis of the distribution of cases of smallpox came the possibility of identifying the extent to which specific groups or individuals were at *risk* of dying from smallpox or susceptible to being cured. For the first time, it was possible to calculate the risk of death specific to an age group, a profession, or a particular milieu. For example, it was shown that individuals who lived in towns rather than in the country were more at risk for contracting smallpox. Additionally, infants, the weak, and the elderly were more likely to die from the disease.⁵⁸⁹ The poor shared a disproportionate risk as they often lacked the same hygiene standards as the wealthy, were more likely to live in close quarters, and were generally

⁵⁸⁶ Hardy, *Smallpox*, 130.

⁵⁸⁷ Center for Disease Control and Prevention, "Smallpox Disease Overview," accessed January 15, 2017, <http://emergency.cdc.gov/agent/smallpox/overview/disease-facts.asp>.

⁵⁸⁸ *Ibid.*

⁵⁸⁹ Foucault, STP, 61.

less educated about proper practices for prevention, such as vaccination, hygiene, and handling of the disease.⁵⁹⁰

Third, Foucault argues that the new methods of calculation allowed the determination that risk is not the same for all individual ages, conditions, or places, so that zones of higher or lower risk could be established. This led to an ability to identify what can be considered *dangerous*. For example, an analysis of risk showed that it was dangerous to be less than three years old, more dangerous to live in a town than the country, and dangerous to live in close quarters where there was sharing of clothing, space, and living items.⁵⁹¹

Fourth, Foucault shows that the ability to calculate cases, risks, and dangers involved with smallpox gave rise to the notion of *crisis*. The term refers to the sudden worsening, acceleration or spread of the disease that could be associated with a specific time and place. A crisis would not fall within the category of epidemic, but would refer to increasing disease rates that were considered unstoppable unless “effectively checked by either an artificial or an enigmatic natural mechanism.”⁵⁹² A crisis was a case of smallpox that worsened or began to spread.

These four new notions of *case*, *risk*, *danger*, and *crisis* gave rise to a new field of application and techniques of power, including a series of interventions from the state which differed significantly from previous methods of dealing with a disease. Previous interventions sought only to nullify the disease in every subject and then to prevent contact between those infected and those who were not. In contrast, interventions

⁵⁹⁰ Hardy, *Smallpox*, 130.

⁵⁹¹ Hardy, *Smallpox*, 130; Foucault, STP, 61.

⁵⁹² Foucault, STP, 61.

utilizing vaccination considered the sick and healthy as a whole, and then identified a probable morbidity given the demographic to which they belonged. These mechanisms established a normal expectation of the population being affected and how many could die from the disease. Thus, there arose in the 18th century, as a result from gathering statistics, the idea of a “normal” morbidity from smallpox.⁵⁹³ The technique then applied was an attempt to reduce excessive rates, such as in those regions or groups that fell above the normal rate of smallpox for that demographic, and bring these regions or groups in line with the normal rate.⁵⁹⁴ The intention of establishing a norm led to the passage of laws which mandated vaccination, and, in England, to the establishment of medical stations where appointed medical officers enforced vaccination laws.⁵⁹⁵

Along with a new mechanism of normalization, the introduction of *case*, *risk*, *danger*, and *crisis* led to the development of a new discursive framework that affected human subjects. Because of the new methods used to deal with the disease, for the first time, subjects understood themselves as being vulnerable to a “case” of smallpox, as being at a higher “risk” in terms of the demographic or categories to which they belonged, as being in “danger” of dying from the disease, and as susceptible to being swept away by a “crisis” of the disease. It created a framework for understanding whether one fell in line with a normal rate of smallpox. These changes were part of a broader power strategy that eliminated the disease, but also had effects on the way subjects understood the disease and their relation to it.

⁵⁹³ Foucault, STP, 62.

⁵⁹⁴ *Ibid.*, 63.

⁵⁹⁵ Hardy, *Smallpox*, 126.

Foucault's detailed discussion of smallpox vaccination provides a convincing example to support his views about the relation between medical practices, normalization, and the possibilities for subjectivity. New concepts emerged for understanding disease control. Consequently, there was a rearrangement of different variables in the environment and in the human body. Human subjects' bodies and behavior as well as the physical environment were regulated and controlled based on this new knowledge and these new concepts. New categories for normality and abnormality were introduced. A new conceptual framework for understanding one's health and the health of others emerged. Public health officials were able to think about smallpox and disease control in terms of the wellbeing of an overall population.

This discussion of how smallpox created a new framework for thinking, speaking, and acting with respect to smallpox can now shed light on how the HPV vaccine may be affecting possibilities for thinking, speaking, and acting in the present. To do so we must first identify several key differences between HPV and smallpox. First, HPV is hidden. While smallpox vesicles were visible, immediately identifying a subject infected with the disease, HPV may go unnoticed or undetected even by the subject who is infected. Second, HPV is spread through sexual intercourse, while smallpox was spread through casual contact in shared space. Third, HPV is more harmful and deadly to one gender, while smallpox was equally deadly to both. Females are at more risk for complications resulting from HPV. Consequently, the vaccine offers more protection to females. The reason why males are vaccinated is to contain the spread of the disease to females. With these differences in mind, let us now use the model of Foucauldian ethical subjectivity to analyze HPV vaccination.

4 Ethical Subjectivity and HPV Vaccination

4.1 Ethical Orientation: Refusal, Curiosity, Innovation

In Chapter Three, I argued that a Foucauldian ethical orientation is characterized by refusal, curiosity, and innovation. I argued that refusal refers to an attitude of rejection of inevitabilities, both in our social landscape and our own possibilities. I argued that curiosity refers to framing ethical deliberation in terms of certain background questions, primarily asking how we are constituted as subjects of power, knowledge, and our own actions. I argued that innovation refers to a disposition of ongoing willingness to change and transformation. Now that we have discussed how the control of disease through vaccination can affect possibilities for subjectivity, let us use this ethical orientation to discuss the HPV vaccine.

With regard to refusal, I argued that the ethical orientation mandates that we not accept our social and political landscape as innate, and acknowledge the contingency and lack of necessity in our practices. Refusal requires a willingness to challenge our assumptions, while simultaneously realizing that we cannot instantly reverse them. Refusal with respect to HPV vaccination requires that we acknowledge that there is more at stake in the debate than an abstract conversation about individual liberty and social utility. We should accept the possibility that there are other ways of approaching vaccination that go beyond traditional mandates for school, employment, or immigration. At the same time, we must acknowledge that the debate between competing values of parental autonomy and public health cannot be easily dismissed, because these competing values are part of the framework for our moral and political

discourse. Thus, we must accept that our current way of thinking about vaccination is only one of several possibilities, while simultaneously acknowledging that we cannot simply transcend or think outside of the current framework.

Curiosity, as we recall, refers to framing ethical deliberation in terms of certain background questions, primarily asking how we are constituted as subjects of power, knowledge, and our own actions. In “What is Enlightenment?” Foucault suggests that we make critical inquiries into the following questions: “How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own actions?”⁵⁹⁶ Foucault shows that, by posing these questions for different historical epochs, we can reveal the contingency of how we currently think, speak, and act. To elucidate how we can do this with respect to HPV, let us recall the concepts of *case*, *risk*, *danger*, and *crisis* in Foucault’s discussion of the smallpox vaccine. For each concept, we will ask the question of whether we can speak of case, risk, danger and crisis in terms of HPV. Showing how these categories may or may not apply in the case of HPV will help illuminate what is uniquely at stake with HPV in contrast to other diseases which have been controlled through vaccination.

First, can we speak of “cases” HPV? It is debatable whether or not HPV can be considered a case analogous to that which Foucault identifies as a case of smallpox. Cases of smallpox were easily detected because the presence of the disease was starkly visible. Many people who have or are exposed to HPV never know it, because symptoms are not always present. They may be infected with the virus while never

⁵⁹⁶ Michel Foucault, “What is Enlightenment?,” found in *The Foucault Reader*, edited by Paul Rabinow (New York: Randomhouse, 1984), 49.

manifesting the traditional symptoms. An HPV infection may take years to form genital warts or decades to develop into cancer. It is not always possible to isolate a case and thus accurately predict those who will manifest symptoms. Another reason why cases of HPV are more difficult to identify than cases of smallpox is that HPV is more prevalent among persons who engage in unprotected sexual activity or sex with multiple partners. It is thus not limited to people who occupy a certain environment, as smallpox was often transmitted to those who occupied the same space. Since sexual contact is a condition for the virus to spread, it is not clear when cases will arise, who has HPV and, due to the intimate nature of its transmission, who is transmitting it to others.

Second, can we speak of HPV “risks”? Research about HPV has led to the ability to calculate who is at higher risk of contracting HPV and at a greater risk of dying from diseases caused by HPV. Government agencies are able to conduct studies that examine the prevalence of HPV and its likelihood to lead to cancer. These calculation processes allow us to predict how drastically cases of cervical cancer will decrease if the vaccine is made mandatory. For example, it has been shown that women with lower education and higher poverty experience a higher rate of HPV-associated cancer, most likely due to lack of proper sexual education and accessibility to regular pap smears and screening.⁵⁹⁷ Identification of at-risk populations lead public health providers to associate certain subjects with the disease. In turn, adolescent subjects may also conceive of themselves as being “at risk” or associate risk with sexual behavior. It also leads adolescent subjects to perceive the risks to their well-being associated with behavior.

⁵⁹⁷ Jessica Kahn, Dongmei Lan, and Robert Kahn, "Sociodemographic Factors Associated with High-risk Human Papillomavirus Infection," *Obstetrics & Gynecology* 110.1 (2007): 93-94.

Third, can we speak of “danger” of HPV? The ability to identify the risk of contracting HPV allows us to calculate the danger of the disease. In many states that do not require the vaccine, there are educational materials in both schools and healthcare centers that discuss the risk of HPV, which can lead subjects to understand that it can be dangerous to have unprotected sex. While for the smallpox vaccine danger was associated with a specific location or age demographic (being under three years old or living in a town), in the case of HPV the danger is linked to gender, as the virus is more deadly to females. In addition, females may also perceive HPV as a potential danger associated with sexual assault. However, the hiddenness of HPV and the perception that it is possible to avoid the disease through practicing safe sex or abstinence makes the sense of danger less immediate than the sense of danger that accompanied smallpox. There is also no exposed graphic sign analogous to smallpox vesicles to accompany HPV which would cause individual subjects to feel the same public sense of danger or fear.

Last, can we speak of a “crisis” of HPV? The notion of crisis that accompanied the mathematical calculation of smallpox is harder to detect with HPV. The sense of crisis could possibly refer to an increase of cases of HPV in a shared social setting, such as college campuses or in low-income communities where women do not have access to regular cervical screening. However, much like cases of HPV, crises are much harder or even impossible to identify. Due to its hidden nature and the process by which it is transmitted, identifying a crisis requires an intrusive investigation of very private and personal behavior. Additionally, because HPV is not a disease that is spread by people

simply occupying the same space, it is more difficult to establish if a rate of HPV is accelerating or spreading at an unusual pace.

Identifying how we might speak of case, risk, danger, and crisis in relation to HPV is a way of using concepts related to disease control that emerged in the past and understanding how the concepts operating today are similar or different. This is an important part of framing our ethical reflection in the orientation of curiosity. Another way of analyzing how we are constituted as subjects of power relations is to identify forms of normalization and their potential effects. There are at least three different forms of normalization present in the push for mandating the HPV vaccine. First, the support for mandatory vaccination seeks to establish as a norm both elimination of individual cases and prevention for the sake of the population at large through herd immunity. The practice of herd immunity reaffirms the medical norm of individuals being vaccinated for a disease that might represent a greater risk or harm to other members of the population than to those receiving the vaccine. This is the case when males are vaccinated, even though the disease is more deadly and harmful to females. There is resistance from some people who argue against the principle of herd immunity, asserting that they or their children should not be required to receive medical procedures for the sake of others. This resistance is even stronger if they feel that their children are being required to get the vaccine in order to prevent the spread of the disease among those who engage in promiscuous or unsafe sex.

The second form of normalization concerns the individual. Regular childhood vaccines have become a standard for children's health. They are viewed and understood as a requirement for health. It is part of a normalization process that attending school

where a large number of children easily spread illnesses to one another is a place where mandatory vaccines are required. A mandate for HPV vaccination, however, establishes the principle that one should be vaccinated for a disease that is not spread casually. Normalization then distinguishes individuals by the extent to which they follow the overall rule of being vaccinated for a non-casually transmitted disease. A boundary is established between normal or abnormal bodies: normal bodies conform to vaccination against non-casually spread diseases, abnormal bodies are not vaccinated and must rely on behavioral strategies alone (such as abstinence or safe sex practices) to protect themselves from the disease or to avoid communicating it.

A third form of normalization consists in the fact that mandating the HPV vaccine can also potentially affect behavioral norms. A worry or concern from those who oppose mandatory or routine vaccination is that it establishes adolescent sexual activity as a norm to the extent that individual behavior is evaluated by a whole group, and such an evaluation tends to rely on an implicit rule to be followed. Thus, the worry of some who oppose the vaccine is that by establishing an assumption of sexual activity and thus setting a norm, mandatory or routine vaccination transforms the “normal” body that could instead be protected through other traditional strategies of STI prevention.

The last component of Foucauldian ethical orientation is the attitude of innovation, that is to say, an ongoing willingness to change and self-transformation. In Chapter Three I argued that the attitude of innovation should look to recover the sentiment of philosophy as a practice and work on ourselves. This includes being willing to challenge one’s assumptions and experiment by looking beyond them. In his analysis of Foucauldian ethical subjectivity, Koopman argued that there are two different forms

of transformation in Foucault's portrayal of historical *parrhesia*: a social transformation and an individual transformation. On the social level, *parrhesia* is portrayed as transforming our societal conceptions of justice so that we may come to recognize certain practices as unjust.⁵⁹⁸ On the level of individual transformation, Koopman argues that *parrhesia* functions to effect transformations in ourselves and our own conception of truth.⁵⁹⁹ Through critical examination of our assumptions about what is true, we exhibit a willingness to become different if this is where our investigation leads us.

This general attitude of innovation and disposition toward transformation can aid in our approach to HPV vaccination. The attitude of innovation is relevant in terms of HPV vaccination because, as I have shown, HPV does not meet the threshold for traditional justification of compulsory vaccination. Additionally, the age at which the vaccine is administered and its link to sexual behavior means that it brings with it a different set of concerns. This means that providers and public health officials must be aware of the new potential concerns and must be willing to meet people on their own terms in order to avoid those concerns. For example, initial studies show that the concern that the HPV vaccine leads to an increase in sexual behavior in adolescents is unfounded. But this does not mean that parents' concerns regarding teenage sexuality in relation to the vaccine should be dismissed or criticized. Rather, these concerns must be responded to in a way that meets parents on their own terms in relation to their own beliefs. Innovation also requires bringing new ways of talking about vaccination and

⁵⁹⁸ Colin Koopman, "The Formation and Self-Transformation of the Subject in Foucault's Ethics," in *A Companion to Foucault*, edited by Christopher Falzon, Timothy O'Leary, and Jana Sawicki (Chichester: Wiley-Blackwell, 2013), 536.

⁵⁹⁹ *Ibid.*, 537.

strategies for bringing adolescents and their parents to the table. Innovation requires recognizing that some of the traditional moral justifications for mandatory vaccination will not hold the same weight in the discussion of HPV. I will provide an example of these strategies throughout my discussion of the ethical commitments to care of self and the philosophical way of life below.

The ethical orientation of refusal, curiosity, and orientation, then, enables a more holistic approach to looking at the issue of HPV vaccination. It acknowledges the current frameworks we use for thinking about vaccination and also shows the shortcomings of relying only on such analyses. It appeals to a critical historical ontology of our vaccination practices in order to understand how vaccination shapes our field of possibilities in the present. Last, it is open to the possibility of creating new strategies for targeting recipients of the vaccine and for talking about the vaccine to adolescents and their parents.

4.2: Ethical Commitments: Care of Self and Philosophical Way of Life

In Chapter Three, I argued for a commitment to care of self in our epoch which focuses on how practices of biopower and mechanisms of security affect our possibilities. I argued that we should strive to understand the categories of normality and abnormality through which we form beliefs about ourselves and others. We should acknowledge how new practices of biopower or discipline create categories for understanding ourselves, and how this will affect others. This does not mean telling others what they should do, but helping people reach the relevant knowledge to decide

for themselves. Care of self also involves establishing appropriate relationships with others and considering caring for others as a component of caring for oneself.

First, care of self with regard to vaccination requires taking seriously the ways that disease control takes place within a web of human relationships. In the case of smallpox, mass vaccination and elimination of disease could not be achieved without the cooperation of families to vaccinate their children. In 19th century London vaccination programs, parents had to be educated and convinced to make the journey to the vaccination stations to get their infants vaccinated and had to be informed of the importance of revaccinating in three years.⁶⁰⁰ Without the vital communication to parents and family members about the benefits and necessity of the smallpox vaccine, herd immunity could not be established and the vaccine could not be successful in containing the disease.⁶⁰¹

Controlling the spread of HPV also necessitates cooperation between family members. This means that parents must be properly educated about the vaccine and the proper method for receiving it if they so choose. It has been shown that physician recommendation is vital to parents choosing to vaccinate.⁶⁰² Familial relationships between parents and children as well as relationships between parents and medical providers are an integral part of the administration of the vaccine. However, the process can also bring about changes in those relationships. Adolescents may view themselves

⁶⁰⁰ Hardy, *Smallpox*, 121.

⁶⁰¹ *Ibid.*, 123.

⁶⁰² Susan Rosenthal, et al., "Predictors of HPV Vaccine Uptake among Women Aged 19–26: Importance of a Physician's Recommendation," *Vaccine* 29.5 (2010): 890-895. Also, Dionne Stephens and Tami Thomas, "Cultural Values Influencing Immigrant Haitian Mothers' Attitudes Toward Human Papillomavirus Vaccination for Daughters," *Journal of Black Psychology* 39.2 (2013): 156-168, as well as Casper and Carpenter, "Sex, Drugs, and Politics," 890.

and understand themselves differently as subjects and as sexual beings. This can lead to changes in family relationships, relationships with peers, and romantic or sexual relationships. As Foucault argues, relationships exist only through various power mechanisms and strategies of biopower are necessarily intertwined within familial relationships. He writes:

There are not family type relationships, and then over and above them, mechanisms of power; there are not sexual relationships with, in addition, mechanisms of power alongside or above them. Mechanisms of power are an intrinsic part of all these relations, and in a circular way, both their effect and cause.⁶⁰³

In this passage we see that exploring how new power strategies affect our possibilities means exploring how they will affect our possibilities in our relationships with others.

A key relationship that is affected is between parent and child. The importance of parental approval and recommendation for the vaccine has been proven by several studies, especially recommendations and approvals from mothers, even when women were old enough to choose to be vaccinated without their mother's consent.⁶⁰⁴ This shows the extent to which adolescents associate the control or alteration of their body with familial approval and relationships. Because of laws mandating the vaccine or requiring discussion of the vaccine with parents, parents of adolescents may consider risks to their child's health that they did not previously anticipate or even consider. They may also consider their children as potentially sexually active for the first time.

⁶⁰³ Foucault, STP, 2.

⁶⁰⁴ Beth Auslander, Marina Catalozzi, and Susan Rosenthal, "Sexually Transmitted Infections (STIs) and the Developing Adolescent: Influences of and Strategies to Reduce STI Acquisition," *Handbook of Adolescent Health Psychology* (New York: Springer, 2013): 565-579. Also Megan Roberts, et al., "Mother-daughter Communication and Human Papillomavirus Vaccine Uptake by College Students," *Pediatrics* 125.5 (2010): 982-989. Annie-Laurie McRee, et al., "Mother-daughter Communication about HPV Vaccine," *Journal of Adolescent Health* 48.3 (2011): 314-317.

Studies in general have shown that in 50% of cases, mothers who reported that they do not believe their teenage daughters have had sex were incorrect, as their daughters privately admitted to having sex.⁶⁰⁵ This gap may be linked to the 45% of mothers who do not think their daughters are at risk for HPV.⁶⁰⁶ This statistic suggests that many parents do not fully understand how common HPV is in the overall population. It also suggests that many parents fail to see the “big picture,” to the extent that even if their teenage daughters are not currently sexually active, the vaccine will protect their children later in life. Current studies show that there is no evidence that the vaccine leads to an increase in sexual behavior.⁶⁰⁷ However it is important that the results of these studies are properly communicated to parents by their medical providers. Roughly half of mothers reported that they were likely to use the topic of HPV vaccination as a potential opportunity to talk with their daughters about sex. This indicates there is a need for more communication.⁶⁰⁸

Familial relationships are not the only relationships that are shaped and formed by mechanisms of biopower or normalization. Surveys of both male and female

⁶⁰⁵ Nicole Liddon, et al., "Maternal Underestimation of Child's Sexual Experience: Suggested Implications for HPV Vaccine Uptake at Recommended Ages," *Journal of Adolescent Health* 53.5 (2013): 674-676.

⁶⁰⁶ Natoshia Askelson, et al., "The Birds, the Bees, and HPVs: What Drives Mothers' Intentions to Use the HPV Vaccination as a Chance to Talk about Sex?," *Journal of Pediatric Health Care* 25.3 (2010): 166. This 2011 study showed that 45% of mothers do not think their daughters are at risk for HPV.

⁶⁰⁷ Erica Marchand, Beth Glenn, and Roshan Bastani, "HPV Vaccination and Sexual Behavior in a Community College Sample," *Journal of Community Health* 38.6 (2013): 1-5. Also Robert Bednarczyk, et al., "Sexual Activity–Related Outcomes after Human Papillomavirus Vaccination of 11 to 12 Year-Olds," *Pediatrics* 130.5 (2012): 798-805. Also Liddon et al., "Maternal Underestimation."

⁶⁰⁸ Askelson, et al, "The Bird and the Bees," 166.

adolescents show that there is a link between vaccine uptake and peer acceptance.⁶⁰⁹

Knowing that many of their peers have received the shot shapes their perspective of how normative the vaccine is. In other words, if a teenager recognizes that many of his or her peers have received the shot, he or she will perceive it as an implicit rule to be followed. This could potentially lead to categorizing oneself or one's peers as normal or abnormal. This is not bad in and of itself, but must be recognized in the conversation.

Second, care of self as an ethical commitment also means emphasizing the importance of caring for others alongside caring for oneself. Currently, vaccine outreach strategies emphasize to parents the importance of vaccines for prevention of disease to their own child. The effects that vaccinating have on others should also be an important part of the conversation. Vaccine outreach approaches in general should emphasize to parents the importance of establishing herd immunity for vulnerable members of the population. Parents, understandably, think primarily about the health and well-being of their own children before others. Providers and vaccine advocates should help parents understand the broader social implications of not vaccinating and understand the importance of assuming a small risk in order to protect others. If parents or adolescents perceive themselves as taking steps to care for others through vaccination, this can add an important dimension to their choice. Public health and outreach initiatives could focus on the important social function of herd immunity and how our possibilities for our own health are intertwined with the health of others. These outreach measures are important for the HPV vaccine in particular, because the

⁶⁰⁹ Jennifer Allen, et al., "Stage of Adoption of the Human Papillomavirus Vaccine among College Women," *Preventive Medicine* 48.5 (2009): 420-425.

most dangerous health threat is to only one half of the population—women—and the other half may not see a need for it.

Outreach methods could emphasize that even though boys are at a lower risk of developing severe complications from HPV, they can choose to receive the vaccine as a way of caring for others alongside oneself. Male uptake for the vaccine is still very low, as studies indicate that only approximately 2% of males eligible are vaccinated. This is due primarily to lack of education about the vaccine or because parents fail to realize that their sons are now eligible for it.⁶¹⁰ Given the hidden nature of HPV, many adolescent males are not even aware that they could contract the virus. Similarly to female adolescents, adolescent male willingness to get the vaccine was often closely linked to parental approval. In addition to emphasizing the important benefits it can have to their own health, outreach methods directed at male adolescents can emphasize the importance of establishing herd immunity to protect both themselves and females who are at higher risk of serious complications.

Framing the conversation about HPV vaccination this way could help parents and adolescents come to a decision on their own rather than the conversation being presented as an antagonistic conflict between parental/individual autonomy and government coercion. Presenting vaccination as a tool for caring for others could affect attitudes and encourage parents and adolescents to look at the way their possibilities are intertwined with others without being perceived as an intrusion. The commitment to care of self, then, requires helping others have the relevant knowledge to decide for themselves. This means respecting that the introduction of a new norm will lead to new

⁶¹⁰ Paul Reiter, et al., "HPV Vaccine and Adolescent Males," *Vaccine* 29.34 (2011): 5597.

categories of normality and abnormality. It also requires properly acknowledging the web of relationships that are affected by HPV vaccination, and emphasizing how vaccination can be a form of caring for others alongside oneself.

As we recall, philosophical *parrhesia* does not consist in demonstrating that something is morally right or wrong or true or false, but instead in influencing social and cultural attitudes and behaviors through the practice of truth-telling. The philosophical way of life includes recovering philosophy as a process of work performed on the self. In our epoch of biopower and mechanisms of security, this would mean bearing the truth of our possibilities, maintaining a reflective awareness of how we become subjects through these practices, and a willing acceptance that we may become different through changing these practices. Additionally, the courage to tell the truth requires the courage to speak up and speak out appropriately when a practice is changing categories for normality. For us, this means bearing witness to the truth of how medical and disciplinary practices are operating in our epoch and being willing to illuminate new models of thinking, speaking, and acting.

The philosophical way of life in relation to the potential mandate of the HPV vaccine requires recognition that a medical norm introduces new categories of normality and abnormality, and that these new categories inevitably affect subjects' perception of self and relationships with others. It also requires helping reveal how and why this vaccine introduces a new strategy of power and, more than other vaccines, has a possibility to affect our perception of the truth about ourselves and others. For example, while smallpox vaccination necessitated control over bodies, the vaccine had no intimate link to sexuality like the HPV vaccine. The very fact that there is a

disagreement on whether adolescents should rely on safe sex methods rather than a vaccine in order to control the disease indicates that the conflict is about the behavior and alteration of the body. This is not only true from the perspective of parents, but also from the perspective of children, as they may see parental insistence that they must get the vaccine as an attempt to control their own body and their behavior. Additionally they may feel that their parents assume or expect them to have sex even if they do not encourage it. The situation is different from vaccines that are targeted towards easily communicable diseases, which are viewed by many parents and health providers as a requirement or normal standard for health. By contrast, the HPV vaccine is viewed in connection with intimate behavior—engaging in sexual activity or abstinence—that adolescents do not see in a uniform way.

Because the vaccine is not spread casually and because the disease it prevents is not always harmful and does not always lead to cancer, the outreach methods used for traditional vaccines such as MMR (measles, mumps, rubella) and TDAP (tetanus, diphtheria, and pertussis) may not work for HPV. In the discussion of HPV in the philosophical literature, we saw that the traditional model for justifying mandatory vaccination weighs the parental right to liberty against utilitarian concerns. Both Field and Caplan and Malm argued that HPV is not harmful enough to warrant overriding patient or parent autonomy. This means that the approach taken by policy makers and public health workers when talking about HPV vaccination must be different, and this is where Foucauldian philosophical way of life can play a role.

For example, the Maine Public Health Department recently developed an immunization outreach toolkit for normal childhood vaccines, as a response to an overall

decline in vaccination rates. The health department study found that messages intended to be scary or pushy were not effective at motivating parents to have their children receive routine childhood vaccinations, nor were messages that framed parental decisions as either “good” or “bad.” Instead, the messages that were most effective were those which emphasized the importance of vaccination for overall health and wellbeing. They also found that parents from different locations, communities, and education levels made decisions about their children using different methods and put different levels of trust in certain types of sources. In a multicultural democracy like the United States, individuals from different backgrounds put trust in different sources that they believe are reliable conveyors of truth. If ethics functions in relation to an operative framework of truth, there are different sources and authorities that different groups rely on.

For example, the Maine initiative found that middle-age, college-educated, upper middle-income parents with small families tended to make their decisions based on their own analysis and interpretation of existing evidence. Young, high-school educated, low-income parents with large families tended to trust advice of leaders in their family or community with similar life experiences to their own.⁶¹¹ This meant that different strategies could be used to target families depending on how they tended to make decisions. For example, when targeting the first group, Maine public health officials recommend an email series from an expert source with the opportunity for parents to give their own feedback and ask their own questions. Additionally they found that newspaper Op-Eds by healthcare experts had a positive effect. For the second group,

⁶¹¹Maine.gov, “Maine Immunization Outreach Education Toolkit,” <https://www1.maine.gov/dhhs/mecdc/infectious-disease/immunization/providers/documents/immunization-outreach-toolkit.pdf>, 6.

they found “Good Neighbor” peer to peer campaigns sharing information to be helpful. With this strategy, they enlisted the help of parents who supported vaccination to talk to their neighbors about the benefits of immunization. As this group of parents were more likely to trust the advice of people from their own communities who they perceived as having similar experiences, they were more receptive to hearing information about vaccination from their trusted neighbors.⁶¹² These creative outreach strategies helped frame the benefits of vaccination in terms that parents would understand and from sources that they trusted.

Outreach efforts in the spirit of the philosophical way of life should strive to work within the sources that each group considers trustworthy. The Maine immunization outreach initiative was for standard childhood vaccines such as TDAP and MMR that are spread casually and not linked to sexuality. Thus, a similar targeted outreach campaign for HPV must integrate the identified concerns when presenting the information to parents and adolescents. A similar “Good Neighbor” campaign might not work due to the link between HPV and sexuality. An alternative would be for public health initiatives to recruit individuals who have had their children vaccinated to invite their neighbors or community members to a group discussion about the vaccine where a trained professional would lead the meeting but would have the “endorsement” of trusted community members. This could include testimony from neighbors or community members as part of the discussion. A 2012 study showed that a determining factor in mothers’ attitudes toward the HPV vaccine were the mothers’ own experiences. If mothers had personal experience with HPV or other STIs or had a friend or family

⁶¹² Maine.gov, “Immunization Outreach Toolkit,” 9.

member who had HPV or cervical cancer, this influenced the favorable perception of the vaccine.⁶¹³ Thus, stories from neighbors that help mothers and adolescents realize that HPV infection could affect them or someone they care about will likely correlate with a willingness to have their children vaccinated.

In another example, Focus on the Family is a conservative Christian organization that emphasizes family values rooted in abstinence until marriage and faithfulness after marriage as the primary mechanism of HPV and general STI prevention. However, Focus on the Family issued a statement publicly supporting universal access to the HPV vaccine, but opposing a vaccine mandate. In their public statement, they suggest parents and adolescents take into consideration the fact that one can become infected with HPV through sexual assault and that even if their children remain abstinent until marriage, they may marry someone who is already infected.⁶¹⁴ Thus, while not wavering from their message of promoting abstinence until marriage, Focus on the Family still encourages parents and adolescents to be realistic in their decision and take all possible variables into consideration. The organization recognizes the very real benefits that HPV vaccination can have. This shows that the vaccine can be accepted even by parents with strong feelings about teenage sexuality if presented in a way that acknowledges their concerns but emphasizes real benefits for even those who do choose to abstain from sexual activity. Commitment to the philosophical way of life means meeting people on

⁶¹³ Anne Griffieoin, et al., "Perspectives on Decision Making About Human Papillomavirus Vaccination Among 11- to 12-Year-Old Girls and Their Mothers," *Clinical Pediatrics* 51.6 (2012), 3.

⁶¹⁴ Focus on the Family, "Position Statement: HPV Vaccine," accessed January 24, 2017, http://media.focusonthefamily.com/topicinfo/position_statement-human_papillomavirus_vaccine.pdf, 2.

their own terms in order to enable them to decide for themselves. It involves helping people see what is at stake through their own lens before making a decision.

When parents and adolescents freely choose to participate in HPV vaccination based on their own interpretation of the risks and benefits, the issue will no longer be perceived as a conflict between public health and a right to individual liberty. All vaccine programs work better when there is cooperation from parents and children, as evidenced in the history of smallpox vaccination and in modern disease control. When parents and children discuss the issue and come to a decision together on their own terms, there is room for freedom which may have otherwise been stifled or denied. Foucauldian freedom is an empirical practice. Medical practices, such as vaccination, can be freedom enabling when approached in the spirit of the philosophical way of life.

5 Implications for Public Policy

As has been emphasized, a Foucauldian analysis is more about uncovering than legislating. I will identify policy recommendations that I believe are in the spirit of a Foucauldian critique. What is distinctly Foucauldian about the recommendations is that policies reflect vaccination as a subject-forming issue that is shaping the field of possibilities for thinking, speaking, and doing.

As a first recommendation, a Foucauldian analysis can help us refocus the debate, which is not just a matter of whether to place greater weight on individual liberty or societal welfare. First, discussion should recognize that the HPV vaccine is a form of biopower and entails a form of normalization—establishing what is normal and abnormal. It is not a neutral medical procedure. Second, while biopower introduces

power over bodies, not all forms of biopower are detrimental, and some of them can lead to the eradication of deadly diseases, such as smallpox, or the containment of diseases like measles, mumps, rubella, tuberculosis, and diphtheria, which are all prevented through usual child vaccines. In these cases, an alteration of bodies cannot be equated with harm. Third, when new forms of biopower and normalization occur, adolescents should be part of the conversation so that they are included in the decision-making process, instead of being subjected to it. Fourth, parents, who are legally and morally responsible for adolescents have to be part of the conversation and the decision-making process so that the biopower and the normalizing process are not external anonymous forces, but are recognized and discussed.

As HPV is potentially added to regular vaccine schedules, a second recommendation is that it is important to include options. In the 10 years that the HPV vaccine has been available, rates of HPV in sexually active females age 14-24 decreased from 11% to 4%.⁶¹⁵ This rate could be brought down even lower if uptake for the vaccine increases. Research of disease spread and control consistently shows that a 90% vaccination rate is needed to achieve herd immunity. The only way to achieve a 90% vaccination rate is to make a vaccine mandatory. If HPV is added to a regular vaccine schedule, it is important that it include an option to opt-out, as the disease is controllable through behavior. The vaccine must also be implemented only alongside other mechanisms of prevention and control, and with a reflective awareness of how vaccines can affect subjects.

⁶¹⁵ Laurie Markowitz, et al., "Prevalence of HPV after Introduction of the Vaccination Program in the United States," *Pediatrics* February 2016, <http://pediatrics.aappublications.org/content/pediatrics/early/2016/02/19/peds.2015-1968.full.pdf>.

A third recommendation is to have a rigorous campaign to address parental concerns in terms parents and adolescents are receptive to. I mentioned four main concerns from those who oppose a mandate for the vaccine, and these concerns should influence our discussion of public policy. The first one is that the overall benefit to the public is not sufficient to intrude on parental autonomy in the decision making process. This concern could potentially be countered if parents better understood the high risk of HPV and that HPV can lead to cancer. There are still a large number of parents who do not completely realize how common HPV is and how harmful it can potentially be, or how costly it is. In terms of the public health benefit, there is an enormous benefit that comes from establishing herd immunity against a disease which could eventually lead to a severe reduction or complete eradication of it. This again emphasizes the need for proper communication between providers, parents, and patients. The second concern was that the vaccine is fairly new, so that the long term effects are still unknown. However, now that the vaccine has been available for ten years, it can hardly be called a new vaccine. If more adolescents receive the vaccine and its safety continues to be demonstrated, this concern should subside. It should also be emphasized that the vaccine is not intended to serve as an alternative to safe sex practices, but should be implemented alongside them. The third concern was that the HPV vaccine gives adolescents a false sense of security over STIs. This concern can be mitigated if it is emphasized to adolescents that the vaccine does not protect against a large number of other STIs, including other very serious ones such as HIV. Studies have shown that a

very small subset of girls perceived themselves as overall at less risk for STIs.⁶¹⁶ Here again, proper education of those receiving the vaccine (as was demonstrated with the smallpox vaccine) is extremely important. The fourth concern was that the vaccine condones or encourages sexual behavior in teenagers. Several studies suggest that this concern has, so far, been unwarranted.⁶¹⁷ However, it is important for providers to communicate these data as well as for parents to share them with their children to ensure that this does not become a cause for concern in the future.

In addition to potentially adding HPV vaccination to the regular vaccine schedule, other public health initiatives should focus on giving parents and adolescents the best, most accurate information possible in order to help them reach a decision on their own. They should also frame the discussion in terms that parents are receptive to and from sources that parents and adolescents trust. This could mean presenting the information differently to parents of different regions or socioeconomic and educational statuses, such as the outreach strategies used in Maine, in which parents were targeted based on the sources of information they trusted to influence their decisions.

Conclusion

In this Chapter, I have shown how a Foucauldian analysis can be used to contribute to a debate within healthcare ethics. Through the example of HPV vaccination, I have shown that vaccination is a strategy of biopower that shapes the field of possibilities for parents and their children. Thus, the moral depth of the issue is

⁶¹⁶ Tanya Mullins, et al., "Adolescent Perceptions of Risk and Need for Safer Sexual Behaviors after First Human Papillomavirus Vaccination," *Archives of Pediatrics and Adolescent Medicine* 166.1 (2012): 86-87.

⁶¹⁷ See especially Marchand, Bednarczyk, and Liddon, "HPV Vaccination."

greater than a debate about whether we should place greater value on individual liberty or utilitarian concerns. This does not mean that literature weighing the right to liberty and utilitarian benefits are not useful, but that Foucauldian ethical subjectivity based on an orientation of refusal, curiosity, and innovation, as well as commitments to care of self and the philosophical way of life can add something unique to the discussion: a focus on how subjects are produced through this strategy of power and how this vaccine contributes to new conceptual frameworks, discourses, and ways of relating to others.

A Foucauldian analysis shows what is at stake in vaccination strategies in general and in the case of the HPV vaccine in particular. The HPV vaccine and mechanisms of enforcement are strategies of biopower that affect adolescents, parents, and the human species as a whole. The traditional model of weighing the potential harm of the disease against the right to liberty does not produce a satisfactory result because the disease can be contained through behavior. Traditional arguments focusing on free loading on the public good of herd immunity or protecting the vulnerable are insufficient, not only because HPV is controllable through means other than vaccination, but also because this framing of the debate focuses too narrowly on legislating existing subjects and not on how subjects are being produced.

The commitments to care of self and the philosophical way of life illuminate possible responses to this issue that take heed of the fact that identities and relationships are constantly being shaped by power relations. This means that the strategies we employ for targeting individuals to receive the HPV vaccine, for talking about HPV vaccination with parents and adolescents, and for doing outreach about the vaccine must take into consideration how these strategies are producing a field of possibilities for the

development of relationships. The process of helping others decide for themselves should also take into consideration the sources of information that different groups trust and help frame the risks and benefits of the vaccine by appealing to what is important to them. When this is the approach taken, HPV vaccination can serve as an affirmation of life that enables and produces new possibilities and spaces of freedom, rather than a regulating mechanism that constrains or causes conflict.

To conclude this dissertation, I will review what we have learned from Sartre's and Foucault's views of subjectivity in previous Chapters regarding how social practices shape our field of possibilities, and how our freedom acts as a negotiation with constraints in this given field. I will make suggestions for how the ethical subjectivity models can continue to make contributions to future discussions in ethics, especially healthcare ethics.

Conclusion:

I began with the task of illustrating Sartre's and Foucault's argument that human subjectivity is constituted through history, sociality, and materiality. I then used their later lectures on ethics to construct a model of ethical being in the world, or ethical subjectivity, that is characterized by critical historical reflection and invention. Lastly, I showed how their views provide a fruitful analysis of issues in healthcare ethics. I will conclude by reviewing the key points of each Chapter and making suggestions for the continued use of Sartrean and Foucauldian views in future conversations in healthcare ethics and the related field of bioethics.

In Chapter One, I demonstrated the progression and improvement of Sartre's views on subjectivity and freedom from *Being and Nothingness* (BN) to *The Critique of Dialectical Reason, Volume 1* (CDR). I highlighted the key changes in his transition from the nihilating subject that he portrays in BN to the dialectical, spiraling subject we find in CDR. I showed that, in CDR, the spiraling subject includes a material bond of praxis to matter, is mediated by its environment rather than being capable of transcending it, has a passive dimension to the self, and is alienated from its freedom. I illustrated the different "layers" of the social and historical conditions, or practico-inert, that Sartre argues shape our field of possibilities: physical objects imprinted with human meaning, language, deeply engrained ideas, social institutions, class-being, and societally specific moral norms. I showed that our freedom operates in response to these layers, so they both limit and enable our freedom. Contrasting Sartre's spiraling subject with Kant's ahistorical "noumenal self" showed Sartre's key points of divergence from the Kantian subject: specifically, the subject in Kantian thought possesses a robust sense

of autonomy and, for Kant, the key aspects of subjects' identities are independent of social, historical, and material influences.

In Chapter Two, I traced Foucault's vision of subjectivity through his three axes: the axis of things, the axis of behaviors, and the axis of practices of the self. In Foucault's axis of things, we saw that Foucault argues that there are changing historical standards for truth, or, rules governing speaking and acting that determine what is accepted as true. In his axis of behavior, I illustrated Foucault's concept of power, understood as a complex strategical situation in a society. I used his studies of disciplinary power and biopower to elucidate how conduct is controlled, observed, and classified in order to establish different categories of normality and abnormality. My focus on biopower, or the set of controls that accompanied a new understanding of human life processes, emphasized an important moment in our recent historical past that Foucault believes is shaping our subjectivity today. For his third axis, I presented his historical analysis of care of self and his exploration of the ways that subjects perform practices on themselves in order to become a certain type of subject. I showed that freedom in Foucault's thought, like in Sartre's, is limited and enabled by social and historical conditions, and takes the form of resistance and critical reflection. Comparing Foucault's views on subjectivity to the views of John Stuart Mill articulated the uniqueness of Foucault's view from the classic liberal conception. The example of the modern War on Drugs in the United States illustrated the key differences between Foucault and Mill: Mill argues for an inherent human nature grounded on autonomy and choice, which flourishes through lack of interference, while Foucault rejects a universal human nature, arguing instead that human nature emerges through the discourses,

practices, and power strategies of one's time. Mill's no-harm-to-others principle could be a historically specific guideline, but Foucault would caution us to be aware of its limits.

In Chapter Three, I showed the key differences between Sartre's and Foucault's views on subjectivity: dialectic versus rupture, the degree of freedom granted to human agency, and their different reasons for rejecting a theory of rights. Through examination of each thinker's later lectures on ethics, I developed a model of "ethical subjectivity" in each thinker. For Sartre, this consists of an ethical orientation that is critically reflective, actively empathetic, and inventive. This is accompanied by ethical commitments to mutually recognizing each other's freedom and to meeting integral human needs. For Foucault, ethical subjectivity involves an orientation of refusal of inevitabilities, a critical inquiry into ourselves in our historical moment, and a general orientation towards transformation. I suggested what Foucauldian commitments of care of self and the philosophical way of life could mean for us today in our epoch of biopower, acknowledging that Foucault himself does not explicitly advocate for these commitments. I argued that care of self requires recognizing the link between ethics and truth, caring for others alongside ourselves, and helping others have the relevant information or thought processes to decide for themselves. I argued that the philosophical way of life requires retaining reflective awareness of how we become subjects through biopower and mechanisms of security, and a commitment to exposing new ways of thinking about or approaching the subject-forming practices of our time. I illustrated that both thinkers advocate for an approach to ethics that includes critical

historical reflection, the theme of ethics as an ongoing “task,” and a sense of creativity or invention that requires exercising freedom.

In Chapter Four, I applied the Sartrean views to a current issue in healthcare ethics: conscience-based refusals. I showed that in the philosophical literature, conscience-based refusals are generally approached as a conflict between a provider’s right of conscience and a patient’s right to choose treatment. I used the Sartrean model to present an alternative analysis. Specifically, I showed that conscience-based refusals are subject-forming and shape the praxis of patients and providers. I argued that healthcare should be seen as a form of group praxis aligned with Sartre’s commitments to mutual freedom and integral human needs. I suggested that Sartrean ethical subjectivity demands that individual healthcare providers critically reflect on the beliefs they individually hold. It also requires ongoing collective reflection on the goals of medicine and the principles of healthcare ethics. I showed that ethical subjectivity requires that providers attempt to actively empathize with their patients who are in positions of vulnerability. I argued that they must be willing to potentially break with their pasts if the critical reflection shows this to be needed. Most often, Sartrean ethical subjectivity requires that providers perform tasks that are collectively agreed to be within the bounds of the goals of medicine, the principles of healthcare ethics, and Sartre’s ethical commitments to the mutual recognition of freedom and integral human needs. I made recommendations for public policy that included education for providers and regular reflection and revision on medical codes of ethics. I also recommended that providers should generally be required to perform procedures that are collectively determined to be within the bounds of the group praxis, although there should be some

tolerance for conscience-based refusals regarding highly contentious procedures without current collective consensus.

In Chapter Five, I analyzed mandatory HPV vaccination and the surrounding controversy through the Foucauldian framework. I began by showing how mandatory vaccination is generally approached in the healthcare ethics literature: a conflict between the individual/parental right to autonomy versus utilitarian concerns for the welfare of the population. I examined the HPV vaccine as a mechanism of biopower and showed that its administration is particularly subject-forming because of the link to adolescent sexuality. I used Foucault's discussion of the smallpox vaccine to show how historical disease control introduced a new framework for subjects to think about themselves and others and affected relationships between various individuals. I demonstrated that the HPV vaccine shapes the possibilities for youth who are targeted to receive the vaccine and for their parents who must make the decision whether or not to vaccinate. I argued that Foucauldian ethical subjectivity requires that we acknowledge how the vaccine has the potential to shape the categories for normality and abnormality and affect relationships. Additionally, it requires that providers and public health officials provide parents and adolescents with the relevant knowledge to decide for themselves. I made recommendations for public policy that included suggestions for refocusing the public debate, the option to opt-out if HPV vaccine is added to regular vaccine schedules, and a targeted outreach campaign that met concerned parents on their own terms.

There are many ways that Sartre's views on subjectivity, freedom, and ethics can continue to be developed in conversations in healthcare ethics and the related field of bioethics. Sartre's view of subjectivity focuses on how our praxis interacts with the

material world, leaves its traces, and comes back full circle to restrict our future possibilities. His ethical views emphasize a critical historical reflection on ourselves, active empathy with the vulnerable, the recognition of each other's freedom, and the meeting of human needs. Overall, he maintains a robust sense of agency that is always unconditionally free, but also thoroughly conditioned. Our free praxis is always limited and influenced by our environment and by others. These views have potential for application and development in debates that focus on the actions and choices of individual agents, such as healthcare providers and individual patients.

For example, one area in which Sartre's views could be useful is in conversations surrounding models for the patient/physician relationship. There are currently several competing models in the healthcare ethics literature for a patient/physician relationship that properly balances honoring patients' choices with advocating for their well-being. At stake in these discussions is how physicians should properly use their medical expertise and knowledge while still respecting patients' autonomy. Often, what a patient values is not necessarily in line with living a healthy life. The most commonly advocated model in the literature is known as the deliberative model. In this model, the physician makes an attempt to understand patients' values and what is important for them, but will criticize those values if the physician thinks they are counterproductive to leading a healthy life. The physician will use value-laden language to make recommendations about what the patient should do in order to lead a healthy life.⁶¹⁸ In this model, the provider seeks to both understand the patient's values and potentially change those values if they are incompatible with their health. At the same time,

⁶¹⁸ Ezekiel Emanuel and Linda Emanuel, "Four Models of the Physician-Patient Relationship," *Journal of the American Medical Association* 267.16 (1992): 1-13.

patients are given full disclosure about all possible treatment options and make the decision about their care. The deliberative model seeks to avoid paternalism, in which physicians selectively present information to patients in order to guide them to what the physician thinks they should do. The deliberative model is also intended to avoid the other extreme in which physicians simply bend to the patient's demands and reinforce unhealthy lifestyle choices without giving advice based on their medical knowledge. The aim of the deliberative model is not coercion, but for the physician and patient to "deliberate" the options together and ideally come to a mutual conclusion that is in the best interest of the patient.

Sartre's view of a dialectical, spiraling subjectivity could help inform or modify the deliberative model. Sartre argues that individuals form their identities through a forward looking project. Considering patients as having "projects" that their healthcare needs fit into can inform the deliberative model. A Sartrean analysis would explore how different sources of conditioning influence patients' values, how subjects perceive of their own health, and how patients from different backgrounds view different types of medical care. A Sartrean analysis of subjectivity would look to understand how influences, such as cultural practices, class-being, seriality, and positions of vulnerability, shape patients' projects and influence how they interpret their possibilities during the medical encounter. The results of such reflection could lead to better communication and understanding between patient and provider. A physician understanding the social, cultural, and material influences on a patient's project could greatly aid in both understanding that patient's values and directing the patient down a path to living a healthier life.

Another related area in which Sartre's views have implications is the issue of informed consent. Obtaining consent from a patient prior to treatment or participation in research is now considered one of the most important ethical concerns in the practice of medicine and research. For genuine informed consent, the person must be provided with all of the relevant information in the appropriate context.⁶¹⁹ One of the most highly debated areas with respect to consent has to do with individuals in positions of vulnerability. The question at stake is whether vulnerable individuals are actually giving their full consent for treatment or participation in a study. For example, researchers have been known to recruit participants for research trials outside of homeless shelters, where homeless individuals are offered money in exchange for their participation. There is a debate as to whether the homeless individuals who agree to participate in the study actually gave their consent or were coerced. In another example, there is controversy surrounding wealthy couples who recruit surrogates from developing countries and pay them sums of money to carry their children to term for them. Some ethicists question whether these surrogates are actually giving consent or feel compelled to do so because of a lack of other meaningful options.⁶²⁰ Other times, it is necessary to perform medical research on vulnerable populations, such as those in developing countries, because a particular disease or condition is isolated to that area. Determining if there has been true

⁶¹⁹ See Louis Brunetti, "Informed Consent," in *A Physician's Guide to the Legal and Ethical Aspects of Patient Care*, edited by Louis Brunetti and Lance Stell (Charlotte, NC: Carolina Medical Center, 1994).

⁶²⁰ See Mary Lyndon Shanley, "Surrogate Mothering and Women's Freedom: A Critique of Contracts for Human Reproduction," *Signs* 18.3 (1993): 618-639.

consent from these individuals can be difficult because of cultural differences, language barriers, illiteracy, and poverty.⁶²¹

Sartre's spiraling subject in CDR, with its key focus on how material circumstances limit the possibilities for the projects of vulnerable individuals, hold significance for the debate surrounding consent. Sartre emphasizes how circumstances such as material scarcity and seriality form a passive dimension of self and can make choices or thoughts almost "ours" without them fully being ours. In Sartre's view, individuals whose possibilities are very limited by practico-inert structures interpret their possibilities as restricted and determined. Consequently, exploitation and vulnerability blur the lines of consent. Sartre's example of the woman who works at the Dop shampoo factory and the limited material and intellectual tools she had to construct her project shows that behind many vulnerable people's choices there is a set of practico-inert constraints. Sartre's views have relevance for distinguishing between free, intentional, praxis and those choices made as a result of seriality or alienation. We could use Sartre's views on subjectivity to analyze the various conditioning factors that may go into participants' decisions to "consent" to treatment or to participate in a study. A Sartrean analysis would question whether these vulnerable individuals, such as the homeless or women who agree to be surrogates, were participating in freely chosen praxis or felt determined or forced by circumstances. A Sartrean ethical response would attempt to create conditions where individuals could freely choose to participate in a project as praxis, rather than feeling determined or forced by the practico-inert.

⁶²¹ See Solomon Benatar, "Justice and Medical Research: A Global Perspective," *Bioethics* 15.4 (2001): 333-340.

Foucault's views on subjectivity, freedom, and ethics also have many possibilities for contemporary application. Foucault's views are useful for showing what is at stake in any practice related to disease control or with respect to any health-related mechanisms in which behavior or bodies are being controlled or altered and norms are being established. Foucault's thought has implications for fields such as neuroethics, pregnancy and childbirth, aged care, and disability ethics.

For example, neuroethics is an emerging field of bioethics related to new brain imaging technology. Brain imaging technology is now commonly used in both research and medical practice, and it raises issues concerning mental privacy, diagnostics, and predicting behavior. This new brain imaging technology allows us to observe the human mind in new ways. Eventually, we will likely be able to identify brain states that correspond to a patient's every thought. As this technology continues to progress, providers will be able to isolate "normal" brain images or brain images that correspond to certain desirable thought processes. These increasing opportunities for identifying exactly how our neuro-processes work will inevitably introduce new categories for normality and change how we conceive of "mental health" and "normal brain states."⁶²² The question that will arise is whether there should be medical or behavioral interventions for individuals who display brain images that are deemed abnormal or unhealthy. Interventions could be aimed at changing both bodies and behaviors in order to bring the brain images in line with "normal" brain states. An ability to closely map

⁶²² See Amihud Gilead, "Can Brain Imaging Breach Our Mental Privacy?," *Review of Philosophy and Psychology* 6.2 (June 2015): 275-291. Also Charles Whitehead, "The Neural Correlates of Work and Play: What Brain Imaging Research and Animal Cartoons Can Tell Us about Social Displays, Self-Consciousness, and the Evolution of the Human Brain," *Journal of Consciousness Studies* 15.10-11 (2008): 93-121.

how our physical processes correlate with the behavior, moods, emotions, and choices could lead to a categorization of our every thought as normal or abnormal.⁶²³

A Foucauldian approach to this issue would pay close attention to how new concepts are emerging for understanding how our brain processes work and how this will affect how subjects understand themselves or others as normal or abnormal. It would also be concerned with whether or not brain imaging is too narrowly confining the types of subjects we can be or the kinds of relationships we can establish with one another. The Foucauldian ethical subjectivity would focus on helping people have the relevant knowledge to make a decision about how to respond to this new technology and the new body of knowledge and truth that will emerge alongside it.

Another area of debate within contemporary medical ethics where Foucault's views would be useful concern practices related to pregnancy, labor, and childbirth. In our epoch of biopower, scientific studies of the progression of pregnancy have introduced a "normal" amount of time a pregnancy is allowed to progress beyond its due date before healthcare providers will suggest using artificial hormones to induce labor. A new understanding of optimal averages for labor progression has also led to a "normal" amount of labor time before providers will recommend a cesarean delivery. This has become an area of heated debate within the ethics of childbirth and delivery: opponents of such measures argue that while an average or "optimal" delivery date can be isolated, all women's bodies work differently and providers are too quick to use artificial measures to induce pregnancy. Additionally, opponents argue that cesarean delivery rates are far too high and many could be prevented if the providers led the labor

⁶²³ See Davi Johnson, "How Do You Know Unless You Look? Brain Imaging, Biopower and Practical Neuroscience," *Journal of Medical Humanities* 29.3 (2008): 147-161.

progress naturally. Their argument is that the identification of an “optimal” or “ideal” delivery date or labor time excludes far too many women from the category of “normality” and leads to unnecessary medical interventions in the process of labor and delivery. Proponents of these measures argue that these medical interventions, even if some times unnecessary, prevent health problems that can occur in infants and women when pregnancies are carried past their due date or prevent complications during delivery that occasionally result in fetal or maternal death.⁶²⁴

A Foucauldian approach to this debate would focus on how the optimal medical norm now shapes the experiences of subjects. For example, some women have expressed regret in retrospect and communicated that they viewed their birthing experiences as less than ideal because the “abnormal” progression of labor or delivery resulted in medical intervention. Others communicated pressure from providers for artificial induction or cesarean delivery that they later felt were unnecessary. Some indicated that these experiences changed the feelings they had toward their infants or to their partners in early months.⁶²⁵ Confining birthing experiences into tightly defined categories of “normal” and “abnormal” have effects on the concepts women use to categorize their birthing experiences. As I have emphasized, Foucault would not necessarily take a stand for or against the use (or perceived overuse) of artificial induction or cesarean delivery, but would caution us to remember that everything has the potential to be dangerous. All newly discovered knowledge and accompanying norms

⁶²⁴ See Sylvia Burrow, “On the Cutting Edge: Ethical Responsiveness to Cesarean Rates,” *American Journal of Bioethics* 12.7 (2012): 44-52.

⁶²⁵ Mary Regan and Katie McElroy, “Women's Perceptions of Childbirth Risk and Place of Birth,” *Journal of Clinical Ethics* 24.3 (2013): 239-252. See also, Jane Clare Jones, “Idealized and Industrialized Labor: Anatomy of a Feminist Controversy,” *Hypatia: A Journal of Feminist Philosophy* 27.1 (2012): 99-117.

create new experiences for subjects. His thought reminds us to question the inherent necessity of our practices and consider whether there are new ways to respond to the practice.

What I have outlined here are just a few ways that Sartrean and Foucauldian thought could continue to be developed in contemporary discussions in healthcare ethics. The views that I have outlined in this dissertation also have implications for other areas of ethics, political philosophy, and law. Sartre argues that all of our free praxis inevitably has effects that outlive or go beyond our original intentions, often coming around full circle to restrict our possibilities. This means that we could apply his dialectical model of subjectivity to analyze the unintended effects of any new practice and how it will influence the practico-inert field of possibilities. Foucault's views, too, have application outside the domain of healthcare. One example we saw was the War on Drugs. Processes of normalization are also operative in all educational settings, from preschools to universities, or any setting where optimal levels are established and subsequent methods of evaluation are introduced. We can also use a Foucauldian lens to evaluate the effects of any norm introduced at the level of populations.

Sartre and Foucault, each in his own way, challenge some of traditional ethical philosophy's deepest assumptions about human subjectivity. Both also present unique views on ethics that introduce a mode of being for an engaged historical agent. While the views derived from their ethical writings may not constitute a complete ethical theory to approach contemporary moral problems, the inclusion of their voices in the ongoing conversation can add depth and unique perspective to conversations about contentious ethical and social practices of our time.

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