

Reassessing Autonomy

"The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives." This familiar definition of autonomy, articulated by Joseph Raz almost thirty years ago, still expresses the common view of autonomy in general, and particularly in the law. Adopting this definition, legal scholars often view autonomy as welfare-increasing. Accordingly, the generic perception of autonomy is that more is better.

This article challenges this common view of autonomy in the law in light of recent studies in the fields of psychology and behavioral economics that expose some of the negative implications of possessing significantly high levels of autonomy. Making decisions positively influences people's ability to fulfil their needs and desires, and generally increases their sense of control over their lives. Yet the process of making decisions also creates costs. The decision maker has to acquire information about each of the relevant alternatives and weigh them against each other. Furthermore, psychologists describe the "costs of regret," whereby people tend to continue thinking about the alternatives they did not choose, and in particular wonder whether one of the repudiated alternatives would have made them happier. As the level of autonomy increases, so do the costs that it creates. Applying these insights to the process of decision-making in situations regulated by law, the article argues that in certain legal situations, current legal practices favor maximizing autonomy even when it reduces social welfare.

Having laid down the theoretical framework, the article turns to examine its implications in several areas in the law, for example: medical malpractice and specifically the doctrine of informed consent; compensation for loss of opportunity; family law and specifically the recent change in Illinois' Marriage and Dissolution of Marriage Act, which offers divorcing parents a wide array of options for dividing parental responsibility. Conducting a cost-benefit analysis of these examples, and others, the article argues that situations in which the legislator tried to maximize individuals' welfare by increasing the number of options available to them, may eventually result in an overall reduction in social welfare. Increasing the number of alternatives may increase the length and material cost of decision-making in addition to reducing individuals' happiness. The article suggests ways to limit autonomy so as to reach its optimal level in such cases.