

NO ONE'S HURT BUT ME: A FALSE PREMISE OF AUTONOMY

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Abstract: *This analytically oriented, theoretically, practically, and empirically grounded article examines the key premise of autonomy. Namely, acting upon one's will approved by law has eventual negative effects on individual concerned only while rest of society remains intact. The text critically evaluates the issue, claiming that legally permissible action has direct and indirect effects on individuals and society at three levels. First, realising one group's autonomy limits that of others. Autonomy operates as a trade-off: what is gained in one part of society is lost in another. Second, the realisation of autonomous choices impacts others' use of autonomy. Autonomy has spillover effects, positive or negative, depending on the nature of the choice at stake. And finally, too much autonomy in society is in tension with democracy that requires basic homogeneity of people also in morality. Current focus on autonomy neglects that morality is above all a societal value.*

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INTRODUCTION

Autonomy, or the 'ability to see oneself as the author of a moral law by which one is bound'¹ appears repeatedly in a discourse. It is also usually interpreted as *personal freedom*, or *freedom of the will*.² These definitions, however general and simplistic they may be, describe autonomy in philosophical (and legal) terms clearly. In other words, autonomy may appear to be the entitlement of an individual to determine one's own behaviour or to make independent decisions in society. However, the easiness of these definitions fails to fully capture a key aspect that needs to be considered in any

¹ Thomas Mautner, *The Penguin Dictionary of Philosophy* (rev edn, Penguin Books 1997) 53.

² Robert Edward Allen (ed), *The Concise Oxford Dictionary of Current English* (8th edn, Oxford University Press 1990) 73.

conception of the functioning of a society based on (mutual) cooperation and the common good.

This aspect is the question of influence, which is sometimes neglected in the context of the legally approved exercise of autonomy and is subject to relativisation in liberalism.³ The relativisation has proliferated into the case-law of the highest judicial instances. In the last decade, when deciding on the autonomy of individuals, many highest courts have avoided arguing about the consequences of autonomous choices on other individuals or society as a whole.

In the *Obergefell* judgment justice A. Kennedy, writing for the majority, claims that: 'With respect to this asserted basis for excluding same-sex couples from the right to marry, it is appropriate to observe these cases involve only the rights of two consenting adults whose marriages would pose no risk of harm to themselves or third parties'.⁴ The ECtHR asserts that legal recognition and protection of same-sex couples do not in any way threaten heterosexual couples in marriage or family formation, as well as their conception of marriage and family.⁵ In similar arguments, the Spanish Constitutional Tribunal argued in the same-sex marriage case that:

An acknowledged right to marry in favour of all persons, irrespective of their sexual orientation, means that each individual may marry persons of the same or different gender, which means that this exercise entails full acknowledgement of each one's sexual orientation. This does not affect the essential content of the right, because the possibility of same-sex persons entering into marriage does not denaturalize or transform this right, nor does it prevent heterosexual couples from freely deciding to marry or not to marry.⁶

When the Federal Constitutional Court adjudicated on the civil status law, it omitted any effects on third parties that the introduction of the third gender in the birth register may cause. The status of men and women under civil status law remains unaffected by the introduction of an additional registration option. This also applies to persons with variations in sexual development who, nevertheless, identify themselves as male or female, are registered accordingly, and wish to retain that registration. Simply introducing the possibility of an additional gender entry does not force anyone to identify with this additional gender. Enabling an additional gender entry increases the options available to people with a variation in sexual development that is not reflected in the entry as male or female, without depriving them of options previously offered by the law.⁷

³ See, e.g., John Christman, 'Autonomy in Moral and Political Philosophy' in *The Stanford Encyclopedia of Philosophy* (Spring 2025 edn, Stanford University 2025) sec 3.1 <https://plato.stanford.edu/entries/autonomy-moral/> accessed 30 October 2025.

⁴ *Obergefell v Hodges* (Supreme Court of the United States, United States, 26 June 2015) 576 US 644.

⁵ *Fedotova and Ors v Russian Federation* (European Court of Human Rights (Grand Chamber), France, 17 January 2023) Applications Nos 40792/10, 30538/14, 43439/14 [212]: '(...) Indeed, the recognition of same-sex couples does not in any way prevent different-sex couples from marrying or founding a family corresponding to their conception of that term. More broadly, securing rights to same-sex couples does not in itself entail weakening the rights secured to other people or other couples. The Government have been unable to prove the contrary'.

⁶ *Constitutional Court Judgment No 198/2012* (Constitutional Court of Spain – Tribunal Constitucional, Spain, 6 November 2012) [11].

⁷ 1 BvR 2019/16 (Federal Constitutional Court – Bundesverfassungsgericht, Germany, 10 October 2017) [51]. Although registration of sex in the birth certificate could fit more under the umbrella of identity rather than autonomy, the legislation adopted in the aftermath (Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag) (SBGG) strengthens the case for autonomy.

Also, the Supreme Court of Canada (SCC) in the Carter judgment, which prompted the legislator to adopt a law on assisted dying, did not elaborate much on the effects that may be caused by such an option on third parties and society as a whole.⁸

All these cases have in common that they have dealt with various autonomous choices. The general trend is that judicial bodies do not elaborate on the effects different choices may have. The courts' reasoning indirectly refer to the famous Mill's harm principle: 'that the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others'.⁹ Despite the ongoing trend, we argue, the implications on third parties and society should have been addressed before adjudicating in favour of the autonomy of petitioners.

In the paper, which is divided into four parts, the authors focus on the missing part in the reasoning of courts, namely, the consequences that the realisation of autonomy may cause. We claim that allowing one person to realise autonomy causes several implications for others, society, and democracy. We argue that one of the prevailing myths surrounding autonomy is the notion that its rightful exercise affects only the individuals pursuing autonomous choices, overlooking its broader impact on other members of society on three levels.

First, the realisation of autonomy of one group of persons in some cases narrows down the autonomy of other individuals in society. Autonomy functions as a trade-off value: what is gained in autonomy in one part of society is lost in autonomy in other parts. Second, the realisation of autonomous choices has a significant impact on the autonomy of others. Autonomy has a spillover effect on other individuals in a positive or negative way, depending on the nature of the choice that is at stake. And finally, too much autonomy in society is in tension with democracy, which requires basic homogeneity of people also in morality. The current focus on autonomy neglects that morality is above all a societal value. Although individual autonomy is a very important notion from many perspectives, such autonomy must be exercised in a certain general framework where society and its interests are relevant, too. The emphasis on the individual while neglecting the morality of society and/or the interests and rights of others is at odds with the history of autonomy (individualism)¹⁰ and is partly responsible for current crises of societies and democracies.¹¹

Three caveats are in order. First, the following sections are observational (descriptive) in nature. This means that our findings presented in the paper arise either from the case-law of supreme judicial instances or legislative practice. Second, our findings emerge from a pragmatic approach to morality, from the world as it is – therefore, we draw on several philosophical approaches, mainly philosophers that developed the notion of democracy and the common good. We take law application process as the vantage point in the discussion. Consequently, any libertarian theories of autonomy are irrelevant for our purposes because we think in practice such theories are in the minority and courts do not employ them in the reasoning. At the same time, a

⁸ *Carter v Canada (AG)* (Supreme Court of Canada, Canada, 6 February 2015) 2015 SCC 5.

⁹ John Stuart Mill, *On Liberty and Other Essays* (Oxford University Press 2015) 13.

¹⁰ For the history of autonomy and individualism in natural law theories see Martin Abel, 'Is Individualism the Intrinsic Quality of Natural Rights?' (2022) 2(1) *Ratio Publica* 6, 6-27.

¹¹ People have lost their broader vision, their lives have become 'flattened' in an individualistic society, and they no longer have a sense of higher meaning, something worth dying for. Compare, for example, Charles Taylor, *The Ethics of Authenticity* (Harvard University Press 2003) 2-4, who describes individualism as one of the commonly perceived malaises of modernity. Although it should be added that individualism is perceived here in the sense of egoism [i.e., negatively; although there are more definitions of individualism (Taylor 125-126 n 17)].

discussion on the effects of autonomy is very much needed. Third, we do not aspire to draw any specific normative conclusions from the findings. At the end of the paper, we propose different approaches to deal with the contested concept of autonomy. Before that, we find it appropriate to describe the principal subject of research – autonomy.

1. TWO DIMENSIONS OF AUTONOMY IN SELF-GOVERNMENT

Despite the definition provided in the introduction, autonomy remains a broad and ambiguously defined concept in terms of its potential content. Some scholars regard it as a vague ideal invoked by legal theory to support various arguments. However, these arguments are often based on more complex considerations that either transcend the notion of autonomy or are unrelated to it.¹² In other words, the term *autonomy* is sometimes employed – regardless of its substantive meaning – to lend argumentative weight to various claims and choices, particularly within the liberal conception of human rights. To avoid such simplification, and given the diversity of existing definitions, we find it necessary to articulate a more precise definition of autonomy for the purposes of this article.¹³ We mean the axiological distinction within the concept of autonomy, understood as a certain capacity for independent decision-making, and precisely, its division into *moral* and *personal* autonomy. The reason is our focus on a particular notion of autonomy that we want to explore further – the effects of personal autonomy on others and society.

Both types of autonomy share a common foundation: the notion of self-governance. The exercise of autonomy is always connected to ‘something analogous to an order or rule’.¹⁴ This *something* is manifested in personal motivations, which are inherently diverse within the context of autonomy. Its fundamental basis lies in the so-called *forum internum*. The key distinction between the two types of autonomy primarily concerns the necessary boundaries of social permissibility that apply (or not) to each other. In other words, the difference lies in their axiological objectification.

The first level, moral autonomy, ‘refers to the capacity to subject oneself to (objective) moral principles’¹⁵ and its foundation lies in the Kantian conception of (moral) duty. In other words, it stems from the idea of community rather than the pursuit of individual goals.¹⁶ Respect for the community’s moral rules – which define the limits of autonomy in this sense – is a necessary condition for morally autonomous behaviour; thus, it is not sufficient merely to follow the dictates of one’s *forum internum*. These internal convictions must be objectifiable in relation to the community. Nevertheless, the individual remains free to choose whether, and to what extent, to exercise autonomy. From a formal standpoint, moral autonomy can be considered a narrower subset of *personal autonomy* that has ‘conformed’ to social morality.

¹² David G Kirchhoffer and B J Richards (eds), *Beyond Autonomy: Limits and Alternatives to Informed Consent in Research Ethics and Law* (Cambridge University Press 2019) 18.

¹³ We do not find it necessary to engage with other scientific disciplines, such as sociology, which identifies several conceptions of autonomy that primarily differ in the quality of their realisation. But they are, for example: autonomy as freedom of choice, autonomy as agency, and autonomy as self-constitution. See Nathanaël Colin-Jaeger and Malte Dold, ‘Individual Autonomy and Public Deliberation in Behavioral Public Policy’ (2025) 12 *Humanities & Social Sciences Communications* 430, 2-3 <https://doi.org/10.1057/s41599-025-04708-z> accessed 30 October 2025.

¹⁴ Suzy Killmister, *Taking the Measure of Autonomy: A Four-Dimensional Theory of Self-Governance* (Routledge 2018) 19-20.

¹⁵ John Christman and Joel Anderson (eds), *Autonomy and the Challenges to Liberalism* (Cambridge University Press 2005) 2.

¹⁶ Christman and Anderson (n 15) 282.

Otherwise, we are referring to a second dimension of autonomy – *personal autonomy* – which is not necessarily grounded in moral principles. This form of autonomy is based on the individual's free will, also located within the *forum internum*, and does not require adherence to any objective moral framework. Personal autonomy is thus regarded as morally neutral.¹⁷

At this point, it is important to note that moral autonomy appears to be receding into the background, while a broader conception of personal autonomy is increasingly taking precedence. In a liberal democracy, autonomy is no longer strictly constrained by objective moral rules. Instead, it is restricted only by the state, which itself is bound by the principles of liberalism. Morality, and especially public morality, disappears from the notion of autonomy.¹⁸ As such, it is not reflected in the current case-law of courts when adjudicating on autonomy.¹⁹

The distinction between different types of autonomy is primarily a theoretical issue, but as we will show later, this difference in conceptual perception has significant practical implications. The false premise at the core of our discussion affects only the perception of autonomy in its broader sense, i.e., in personal autonomy. In its moral dimension, however, the impact of autonomy on society is a fundamental aspect, as it is rooted in the moral foundations of a given society and, as such, is universally accepted. Yet, in the current emphasis on personal autonomy, the question of its impact on others, as we suggest, recedes into the background. In the following sections, we explain why this influence should not be overlooked, regardless of the ideological underpinnings that guide the expansion or contraction of autonomy.

To avoid a 'straw man,' we intentionally frame the notion of autonomy in the following sections in *personal* terms²⁰ – that is, in a form typical of, and inseparable from, the liberal conception of human rights.

2. NARROWING DOWN AUTONOMY OF OTHERS AND AUTONOMY AS A TRADE-OFF VALUE

In this section, we argue that the realisation of autonomy of one group of people narrows down the autonomy of other individuals in society. Autonomy functions as a trade-off value: what is accomplished in autonomy in one part of society is lost in

¹⁷ Christman and Anderson (n 15) 2.

¹⁸ Kai Möller, *The Global Model of Constitutional Rights* (Oxford University Press 2015) 139. See in addition, K. Möller's assertion that ethical disapproval of a certain interest of another individual cannot be given any weight in the balancing exercise: in a society focused on personal freedom, harm to the autonomy of another person, which consists in disapproval of another person's lifestyle, is not morally relevant argument in balancing; *ibid.* 139.

¹⁹ At this point, we consider it necessary to note that the terms 'objective moral rules' and 'public morality' largely overlap in secular society and, at the same time, do not exist in their entirety within a globally objective framework (e.g., in isolation from religion it is impossible to speak of objective moral rules that apply to the whole world without distinction; objectivity is regionalised). What is considered moral in a given culture is therefore essentially a matter for that culture and belongs to objective moral rules. If these rules are enforced (or at least regulated) by the state, they become a matter of public morality. If some rules have no moral basis, they can only be referred to as rules, but without the moral attribute. If courts (or, more broadly, states) do not reflect the existence of 'objective moral rules' in their interpretation of autonomy, this does not change the fact that the moral aspect is still present, even if it is pushed into the background, since no choice can be value-neutral. And (also) therein lies, in our opinion, the problem that we develop in the text – the consequences of autonomy for society are not always consistently taken into account, even at the level of morality.

²⁰ Since moral autonomy is not characterised by a presumed neutrality, and hence not by a false premise, which we discuss on multiple levels in the paper.

autonomy in other parts. We begin by grounding our argument in insights of legal philosophy, and later expand it by considering its practical implications.

2.1 Values – The Essence of Autonomy

Using the example of selecting one of two identical cherries from a fruit bowl, Joseph Raz illustrates a key feature of autonomy: its essential connection to meaningful choice, which must involve a range of genuinely distinct alternatives. According to his view, choosing between two completely identical cherries does not constitute an autonomous choice, as no real difference exists between the options.²¹ In other words, for a choice to be considered autonomous, the alternatives must differ in a non-trivial way, and the individual must be aware of the distinction. While the analogy is not entirely precise,²² it serves to highlight other important features of autonomy and the conceptual challenges it presents.

The central issue here is fundamentally one of values, even if this is not immediately apparent. It arises from the nature of conscious choice: for an action to be autonomous, the individual must be aware that he/she is selecting among meaningful alternatives. Indeed, choice is inherently intertwined with values, one 'can be autonomous only if he believes that he has valuable options to choose from'.²³ Autonomy – whether in the moral or personal dimension – is not value-neutral in terms of its outcomes.²⁴ This logically stems from the fact that the realisation of autonomy involves an individual's awareness of making a choice and the execution of that choice in accordance with personal preferences – preferences that are, in turn, shaped by values. However, the role of values in relation to autonomy remains a contested issue in legal philosophy.²⁵ What, then, is the nature of the relationship between autonomy and values in the process of its realisation? Should it be understood as one of correlation, causation, or something else? Moreover, who is affected by the values embedded in autonomous behaviour – the autonomous individual alone, or also other members of society? If there is a meaningful relationship between autonomy and morality/values, then the claim that autonomy is socially neutral becomes difficult to sustain.

The answer to the above question regarding the relationship between autonomy and values appears contradictory on several levels. One view holds that autonomy exists independently of values, even though values are present in every act of choice. In this perspective, autonomy is realised regardless of whether option A is preferable to option B; it is exercised independently of the quality of the options available at the moment of choice. In this sense, autonomy is, as it were, 'blind to the quality of the options available'.²⁶ However, this should not be mistaken for value neutrality in the strict sense. Autonomy is often valued precisely based on how it is exercised. Following Raz's approach, values enter the process subjectively, within the act of choosing itself, and consequently, autonomy cannot be exercised meaningfully without them. At the same time, Raz considers only those instances of autonomy that are used for the good to be valuable.²⁷ Thus, values not only inform the choice but also emerge from it, allowing us

²¹ Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986) 398.

²² Raz's simile applies flawlessly if the person in the situation cannot choose not to cherry pick. For even the refusal to choose is a manifestation of autonomy; there is a qualitative difference between refusal and choice.

²³ Raz (n 21) 412.

²⁴ Killmister (n 14) 20.

²⁵ Consider, for example, the approaches of George and Raz, which are discussed in the lines below.

²⁶ Raz (n 21) 411.

²⁷ Raz (n 21) 381.

to assess whether autonomous behaviour has benefited the individual (i.e., a good choice) or, conversely, resulted in harm (i.e., a poor choice).

On the other hand, Raz also considers autonomy to be intrinsically valuable, regardless of the specific ends for which it is exercised; it is through the realisation of autonomy that individuals are able to function effectively in modern society.²⁸ In this sense, autonomy is regarded as a good in itself – a normative ideal. Nevertheless, the relationship between values and autonomy remains causal, even if autonomy appears materially 'blind' to the content of particular choices. Values condition autonomous decision-making, particularly with respect to the outcomes, which are central to the process of autonomous self-realization.

George's approach differs significantly from that of Raz, although there are points of convergence.²⁹ Most notably, George does not regard autonomy as a good in itself. While he acknowledges its value, he considers it to be instrumental rather than intrinsic. In his framework, autonomy possesses no inherent worth; it is valuable *only* as part of a broader moral structure – culminating in what he terms *practical reasonableness*.³⁰ Autonomy is essential within this structure, as it constitutes the final step in the execution of a rational decision. However, it cannot serve as the material justification for any action on its own.³¹ In George's view, when an individual is presented with options X and Y, autonomy lies in the mere fact of having the authority to choose. Substantively, however, the autonomous act encompasses both the choice of X and the choice of Y; what matters is not which option confers more autonomy, but which should be preferred based on a rational evaluation. There is no qualitative difference in the degree of autonomy associated with either choice. Values are also integral to this view, insofar as autonomy is conceived as a component of *practical reasonableness*. Here, too, the relationship between values and autonomy is causal, but even more strongly so, as it is difficult to conceive of a decision-making process grounded in integrity that is independent of values. Indeed, integrity itself is constituted by values; they are an inseparable part of it.³²

We argue that the connection between autonomy and values is evident in both major approaches within legal philosophy,³³ even if it is, at times, more difficult to discern.

²⁸ Raz (n 21) 394.

²⁹ E.g., on the question that autonomy is valuable if it tends to the good. But the conception of 'good' is a different concept for each of them.

³⁰ Robert P George, *Making Men Moral* (Oxford University Press 2002) 177-181. It represents a more advanced degree of free choice that considers the morality of the individual. The author notably distinguishes this concept from the notion of autonomy on two primary grounds: personal integrity and authenticity, which are essential components of practical reason. In his view, these are not inherently connected to autonomy – autonomous decision-making, by its nature, does not require authenticity or consistency with integrity. The essence of autonomy does not lie in the moral balancing of judgment; rather, it lies in the act of making a choice.

³¹ George (n 30) 179-181.

³² There are several views on the value framework of autonomy, two of which are outlined above. However, there is another approach that at first glance combines the two mentioned above (although on closer inspection it is different) – the view of the liberal perfectionist Wall. He considers autonomy to be both an instrumental and an intrinsic value, but as such he gives it a central position among other values (refuting the so-called pluralist objection, according to which autonomy is only one of many goods). For him, autonomy is a central component of a fully good life. See also Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge University Press 1998) 127-182.

³³ The term 'major approaches' does not refer to the authors mentioned above. Of course, there are other philosophers who develop autonomy (one is mentioned in the previous footnote), and we do not list them all in this article – among other things, it would exceed its scope. For the purposes of this article, we distinguish

Nonetheless, values – whether explicit or implicit – remain present and operative. This brings us to a critical, structural question for this paper: whose quality of life may be affected by the exercise of autonomy?³⁴ Is it only the individual making the choice, or also others? Could it even extend to the collective well-being of society as a whole?

On this point, views diverge. However, there is a broad consensus that autonomy functions in a *quid pro quo* framework: the autonomous selection of one course of action inherently entails the rejection of others based on a lack of preference. This position is widely accepted, even among otherwise dissenting perspectives.³⁵

2.2 From Theory to Practice

We want to demonstrate this observation by two examples from practice. The first shows the legal recognition of same-sex marriages in the US since the *Obergefell* case. Justice A. Kennedy, writing for the majority, assumed that:

The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons.³⁶

However, subsequent developments have proved him wrong. In the *Masterpiece Cakeshop* case, a Colorado baker refused to bake a wedding cake for a same-sex couple and faced a lawsuit for alleged discrimination. Similarly, in the *303 Creative LLC* case, a web and graphic designer refused to create a specific wedding website for a same-sex couple. Both petitioners were sued for refusing to create the service for same-sex couples celebrating their weddings. The cases ended before the US Supreme Court, which ruled in favour of the petitioners based on broadly understood freedom of speech and reversed the previous judgments (in both cases).³⁷

The second example concerns the UK legislative prohibition of various types of activities at clinics that perform abortions. Abortion on demand is a par excellence example of autonomy. On the other hand, protesting it, criticising it, dissuading women from having an abortion, and offering alternatives is also the realisation of personal autonomy. In the UK, the *Abortion Service (Safe Access Zones) Act* of 2024 prohibits almost all activities of opponents of abortion who realise their autonomy within 200 meters of the clinic (sections 4 and 5 of the Act) under the threat of criminal or administrative liability. Even silent prayer can lead to liability, or its status is uncertain.³⁸

approaches to autonomy according to the position of good in relation to it. We consider as primary only those in which, on the one hand, autonomy represents good in itself and, on the other hand, autonomy has the instrumental value described above. In our opinion, Raz and George are key 'modern' representatives of these main approaches, which often form the basis for further research – including those that do not belong to the indicated 'mainstream'.

³⁴ By the exercise of autonomy here, we do not mean instances where the exercise of one person's autonomy would cause visible (e.g., physical) harm to other persons. In other words, we focus on demonstrating a trade-off function for seemingly neutral measures.

³⁵ On the one hand George (n 30) 179-180; on the other hand, Raz (n 21) 398-399.

³⁶ *Obergefell v Hodges* (n 4).

³⁷ Even if the results may imply that both autonomies (same-sex marriages and freedom to provide service) can coexist, still the victory for free services was attained by high prices: lengthy and costly courts proceedings that both petitioners had to face.

³⁸ Emily Ottley, 'Silent Prayer vs Safe Access: The UK's Cautious Approach to the Regulation of Silent Prayer Outside Premises Providing Abortion Services' (Verfassungsblog, 2024) <https://verfassungsblog.de/silent-prayer-safe-access-zones/> accessed 30 October 2025.

The examples demonstrate that if the law gives protection for one set of choice that fulfils autonomy, it restricts the realisation of other choices that criticise or denounce persons who, according to this group, exercise their autonomy incorrectly or immorally.

The emphasis on protecting autonomy from majoritarian tyranny overlooks the fact that tyranny can also arise in the name of protecting autonomy. The claim that one's freedom should be protected by law is itself a claim to exercise coercive power over others.³⁹ Those who do not wish to participate in the celebration of same-sex unions or protesters against abortion may be further marginalised in public discourse or directly persecuted for expressing an opinion on realisation of autonomy of others. It is also normal: if the state allows or recognises the exercise of autonomy in law, then the scope for criticism is shrinking. Therefore, legally recognising the rights of some effectively diminishes the rights of others.⁴⁰

Building on the earlier discussion of the relationship between values and autonomous decision-making, we contend that by preferring a particular course of action, one simultaneously endorses the values associated with it. On its own, this would not necessarily present a problem. However, the reality of value trade-offs extends beyond the individual decision-maker. While pluralism is often invoked as the normative foundation of liberal autonomy, it does not offer protection in all practical contexts – particularly where selected human rights may be undermined by cultural or value relativism.⁴¹ Therefore, we suggest that the recognition of autonomy by law functions as a trade-off for other autonomies that may clash.

Once a realisation of autonomy is cemented in legislation or a court precedent, it becomes difficult to claim realisation of autonomy in terms of speech or action opposing that recognised autonomy. The realisation of the autonomy of one group reduces the autonomy of others, who either submit or have to undergo financially demanding and lengthy legal processes with uncertain results. In such cases, not only are rights at risk, but also the values that underpin them.

3. SPILLOVER EFFECT

In this part of the paper, we claim that the realisation of autonomous choices has a significant impact on the use of autonomy of others. The autonomy has spillover effect on other individuals in a positive or negative way depending on the nature of choice that is at stake.

The first case-study on spillover effects of autonomy is divorces and their impact on the child. The institution of divorce is a well-known example of the realisation of autonomy. Various authors mention different aspects of autonomy that are sought by

³⁹ Robert L Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' (1923) 38(3) *Political Science Quarterly* 470, 470-494 <https://doi.org/10.2307/2142367> accessed 30 October 2025.

⁴⁰ Another example from the American context is presented by former U.S. Supreme Court Justice A. Scalia when judicial protection of the rights of some reduced the rights of others; see Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1997) 43-44.

⁴¹ Moral pluralism and value relativism can result (but do not necessarily have to) in a kind of anomie, in which 'we cease to believe in the norms governing our social life, but have no alternative but to live by them nonetheless'. See: Charles Taylor, *Philosophy and the Human Sciences: Philosophical Papers: Volume 2, Philosophy and the Human Sciences* (Cambridge University Press 1985) 282. Given the variety of options available, modern people set their own goals and are not controlled by external factors, which threatens the sense of modern identity and loyalty to society, which is therefore in crisis; *ibid.* 281-282.

divorce: independence and retaking the control of one's life, breaking social barriers, strengthening personal agency, the right to exit without reason, self-mastery, etc.⁴²

Except for domestic violence, abuse, or other pathological phenomena, which constitute the minimum of current reasons for divorce, divorce has only negative consequences for children from marriage. Currently, the conditions for divorce are set very benevolently in most jurisdictions. By way of example, the Slovak Family Act requires that the relationship between spouses be seriously disturbed and permanently destroyed. However, in practice, courts gather minimal evidence, and the decision-making process is mechanical, leading to the realisation of autonomy and separation of adult spouses. Moreover, according to statistics from the Slovak Ministry of Justice for 2023, up to 70% of divorces were due to differences in character, opinions, or interests of the spouses. It is the most common reason for divorce, also in long-term studies, since information on divorce has been collected and made public.⁴³

The spillover effect of choice lies in the fact that, according to empirical research, children who experienced the divorce of their parents have more conduct and emotional problems, obtain lower academic test scores and school grades, and have more problems with social relationships. Divorce is also associated with weaker emotional ties with parents – especially fathers. These disadvantages appear to persist in adulthood. In particular, individuals who experienced parental divorce, compared with individuals who grew up with continuously married parents, attain lower levels of education, earn lower incomes, are more likely to have non-marital births, face a greater risk of becoming depressed, and exhibit poorer physical health. In addition, individuals who experienced parental divorce while growing up report more problems in their own marriages and are more likely to see their marriages end in disruption.⁴⁴

The realisation of the autonomy of the child's parents heavily impacts the child's autonomy by narrowing their prospects in life compared to children whose parents do not divorce. As a result, children who experience their parents' divorce often struggle to achieve the same level of autonomy as their peers from stable, long-lasting marriages. This inequality of autonomy results from disrupted parental contact, inconsistent care (material and psychological) support, or prolonged exposure to conflict between parents, all of which can hinder a child's ability to develop the sense of security necessary for truly independent decision-making.

Another case-study of the spillover effect of autonomy is voluntary euthanasia. Deciding on one's own life, including its end, is part of the right to self-determination, or the total freedom of the individual, which forms the core of autonomy.⁴⁵ We take a stance that euthanasia is morally wrong per se – it negates the premise that a life is a gift, has

⁴² See Ephrat Almog and Anat Herbst-Debby, 'Women Who Initiate Divorce Embrace Autonomy' (2025) 87(4) *Journal of Marriage and Family* 1, 1-22 <https://doi.org/10.1111/jomf.13080> accessed 30 October 2025; Diogo Lamela and Bárbara Figueiredo, 'Determinants of Personal Growth and Life Satisfaction in Divorced Adults' (2022) 30(1) *Clinical Psychology & Psychotherapy* 213, 213-224 <https://doi.org/10.1002/cpp.2770> accessed 30 October 2025; William J Doherty, 'Impact of Divorce on Locus of Control Orientation in Adult Women: A Longitudinal Study' (1983) 44(4) *Journal of Personality and Social Psychology* 834, 834-840 <https://doi.org/10.1037/0022-3514.44.4.834> accessed 30 October 2025.

⁴³ Ministry of Justice of the Slovak Republic [Ministerstvo spravodlivosti Slovenskej republiky], *Rozvody 2023 [Divorces 2023]* (Slovakia).

⁴⁴ See especially Paul R Amato, 'The Consequences of Divorce for Adults and Children' (2000) 62(4) *Journal of Marriage and Family* 1269, 1269-1287 <https://doi.org/10.1111/j.1741-3737.2000.01269.x> accessed 30 October 2025; Paul R Amato, 'The Consequences of Divorce for Adults and Children: An Update' (2014) 23(1) *Društvena istraživanja: Journal for General Social Issues* 5, 5-24 <https://doi.org/10.5559/di.23.1.01> accessed 30 October 2025.

⁴⁵ See 2 BvR 2347/15 (Federal Constitutional Court – Bundesverfassungsgericht, Germany, 26 February 2020) [208-211]; *Carter v Canada* (n 8) [66 et seq.]

always had an inherent value, and exercising euthanasia distinguishes between lives worthy of living and an unbearable life. St. Thomas Aquinas expresses a similar view, morally rejecting suicide for three reasons. 1. Suicide is contrary to the inclination towards naturalness. 2. Suicide harms society, as every individual is part of the community (this argument is taken from Aristotle's ethics). 3. Human life is a gift from God, and only God kills and gives life.⁴⁶

Taking a position on voluntary euthanasia is therefore, on the one hand, axiological, and society must deal with the answer to this issue – none of the possible choices (allowing euthanasia or banning it) is value-neutral. However, the value aspect of this issue is only one side of the coin. The other side is the negative consequences which, as we describe below, go beyond Aquinas' argument about the harm equivalent to the loss of a member of society.

The negative spillover effect here can be observed on two levels. First, in countries where active euthanasia is practiced, the criteria and conditions under which medically assisted dying is permitted are constantly expanding. Second, the number of people who decide to exercise their autonomy by dying is continuously on the rise.

A case study is Canada, where legislative regulation of active euthanasia has existed since 2016, when Parliament passed Bill C-14 known as the Medical Assistance in Dying Act (MAiD). Eligibility criteria to request medical assistance in dying were set to grievous and irremediable medical conditions that basically meant reasonable foreseeability of natural death. However, such criteria were relaxed after the Quebec Superior Court judgment in *Truchon* case. The revision of the MAiD in 2021 (Bill C-7) led to the introduction of more lenient criteria - serious and incurable illness, disease, and disability. From March 2027, the federal legislation would include mental illness as a condition to request dying.⁴⁷

Since its legalisation in 2016, in Canada, the average growth in deaths by euthanasia has skyrocketed by 43% each year, accounting currently for almost 5 % of total deaths in Canada. Similar numbers of steady growth exist in all countries where euthanasia is legally permitted, and statistics are made public.⁴⁸

These examples demonstrate the spillover effect of autonomy. If the realisation of autonomy is legally recognised, it leads to greater use. What was once considered an exception to be tolerated becomes, over time, part of everyday life. Thanks to the regular repetition of such behaviour (once considered an exception) and the evolution of social attitudes, the exception is no longer surrounded by negative evaluation. On the contrary. It begins to appear not only acceptable, but even attractive and desirable. The normalisation of exceptions can lead to collective acceptance, when practices that were once exceptional (and not preferred by society) are no longer questioned, but are quietly absorbed into the mainstream. We argue that increased social acceptance can remove stigma from a morally wrong action, although such acceptance does not diminish the

⁴⁶ Compare Thomas Aquinas, *Summa theologiae II-II*, q 64 art 5 and the corresponding commentary (Francisco de Vitoria, *Reflection on Homicide & Commentary on Summa Theologiae IIa-IIae*, q 64 (J P Doyle tr, Marquette University Press 1997) 169-171).

⁴⁷ As Canada argued in Carter, based on an affidavit by Belgian professor Montero, once active euthanasia is legally regulated, it becomes very difficult to maintain a strict interpretation of statutory conditions (*Carter v Canada* (n 8) [111]).

⁴⁸ E.g., in the Netherlands, the number of deaths rose from around 300 in 2003 to nearly 10,000 in 2024; see Regional Euthanasia Review Committees, *Annual Report 2023*. In Belgium the number went from 236 deaths (2003) to 3,423 deaths (2023). See Jacques Wels and Natasia Hamarat, 'Incidence and Prevalence of Reported Euthanasia Cases in Belgium, 2002 to 2023' (2025) 8(4) *JAMA Network Open*, 5 <https://doi.org/10.1001/jamanetworkopen.2025.6841> accessed 30 October 2025.

negative impact of the action itself. 'Fallacies do not cease to be fallacies because they become fashions.'⁴⁹

What is concerning, however, are the effects on others. The realisation of autonomy for one group (spouses, terminally ill people) has a major impact on others. To respect the autonomy of some significantly affects the autonomy of others. The choice is not neutral.

This fact was overlooked by the SCC in the *Carter* judgment that prompted federal legislators to introduce the MAiD. The SCC omitted to elaborate on the possible effects on others once federal legislation introduces voluntary euthanasia. Even though the SCC accepted vulnerability of people to end life in times of weakness as a legitimate aim in the test of proportionality, it denounced the argument put forward by Canada that everyone is potentially vulnerable (paras 87-88).⁵⁰ Especially, the trial judge did not find evidence of heightened risk for people with disabilities, unconscious bias of physicians, and inordinate impact on others as persuasive. On the other hand, an overwhelming emphasis was put on the informed consent and practice of Canadian doctors that substantially differs from jurisdictions with a permissive regime on active euthanasia. This approach was also endorsed by the SCC. The argument of slippery slope was denied based on evidence obtained by the trial judge and on the presumption that the safeguards in the legal regime would work effectively (para 120). Moreover, the SCC did not find a difference between assisted dying and legislation that allowed denials of lifesaving and life-sustaining treatment (para 115).

Such reasoning did not pay sufficient attention to the autonomy of others. Their autonomy has not been the focus for either the trial judge nor the SCC. All arguments that tended to invoke the spillover effect of autonomy were denied in a simple fashion: informed consent and good practice of Canadian doctors are panaceas that distinguish between vulnerable and non-vulnerable patients. In addition, the difference between assisted dying and denial of life-saving or life-sustaining treatment is paramount in terms of natural cause of action. While in the former, the person does not immediately die without the interference, in the latter the person dies.⁵¹

In contrast, the German Federal Constitutional Court, in a similar judgment dealt in detail with the risks of active euthanasia. It specifically mentioned the empirical fact that the decision to commit suicide is fragile (80% to 90% of people consider an unpremeditated suicide attempt as a mistake in hindsight).⁵² It further stated that alternatives to assisted suicide (palliative care) must always be available, general prevention must be promoted, and countermeasures must address the risk for autonomy that would lead to preference of death over life. The German court acknowledged that in

⁴⁹ Gilbert K Chesterton, 'Quote published in *Illustrated London News*' (19 April 1930) <https://www.chesterton.org/store/quotations-of-g-k-chesterton/> accessed 19 February 2026.

⁵⁰ The limitation cannot be too broad, it is not an excuse that the dividing line between some groups of persons (in the *Carter* case between the truly vulnerable/non-vulnerable) is too narrow and such a distinction was, according to Canada, unworkable in practice. General prevention for the protection of society as a whole was therefore not possible, according to the court.

⁵¹ For a more in-depth critique, see Benny Chan and Margaret Somerville, 'Converting the "Right to Life" to the Right to Physician Assisted Suicide and Euthanasia: An Analysis of *Carter v Canada* (Attorney General)' (2016) 24(2) *Medical Law Review* 143, 143-175 <https://doi.org/10.1093/medlaw/fww005> accessed 30 October 2025.

⁵² 'According to the expert third parties, the wish to commit suicide is typically motivated by a complex set of reasons. The wish to die is often ambivalent and prone to change. Empirical data shows that an unpremeditated decision to commit suicide – in case the suicide attempt fails – is, in hindsight, considered a mistake by 80% to 90% of affected persons. Thus, even where a wish to commit suicide appears to be a plausible decision that was taken following a weighing of the pros and cons, it is mostly limited in time and not permanent.' 2 BvR 2347/15 (n 45) [245].

some jurisdictions (the Netherlands, Oregon⁵³), social expectations and pressure to die have arisen due to the cost of long-term care and health care systems.⁵⁴ Another significant risk of suicide is psychological conditions (most notably depression).⁵⁵ For this reason, the legislator has a duty to protect life over freedom if an individual is exposed to influences that threaten their self-determination in the form of prevention and safeguards. Assisted dying must not become a semblance of normality. The court ordered the Federal Assembly to take the risks into account when adopting legislation. Despite this, the Federal Constitutional Court also emphasised the priority of individual autonomy over the common good by claiming that:

Measures of suicide prevention can be justified by the aim of protecting others – e.g., by seeking to prevent assisted suicide services from prompting copycat behavior or to curtail a strong pull on persons that are fragile in terms of self-determination and thus vulnerable. However, the aim of protecting others does not justify forcing the individual to accept that their right to suicide is effectively vitiated.⁵⁶

Both divorce on demand and euthanasia demonstrate that the legal recognition of the autonomy of some negatively affects the autonomy of others. The number of choices tends to grow and expand. What was considered an exception is, in fact, given the sense of normality, but without taking into account the consequences for others and society. If we understand divorce on demand and euthanasia as a wrong realisation of autonomy, then the spillover effect of autonomy is negative.

4. AUTONOMY, DEMOCRACY, AND THE (IN)NECESSITY OF HOMOGENEITY

This part of the paper examines the assertion that excessive emphasis on autonomy is in tension with democracy. For democracy to survive, it requires a certain degree of equality and homogeneity among citizens. By homogeneity, we mean common history, cultural background, shared values and virtues, religious affiliation (including so called cultural religion) and language of the citizenry.⁵⁷ Only then can one people create their own identity that distinguishes them from other nations and enables collective action. Equality and identity are linked. The thesis is independent and separate from our

⁵³ The situation in Oregon is following. The law regulating *de facto* assisted suicide – *Oregon's Death With Dignity Act* (DWDA) – is surrounded by a number of euphemisms. The state authority describes it as 'a permissive law that allows terminally ill individuals to end their lives by voluntarily administering a lethal dose of a drug expressly prescribed by a doctor for that purpose.' Accordingly, it is not a suicide, even less an assisted one – and therefore it is possible to have it covered by health insurance if the insurance company provides such option. The fact that the entire process takes place under the supervision of a certified physician (even though the lethal drugs are administered by the patient himself) is probably not enough to define assisted suicide according to the Oregon office – otherwise, at the very least, the entire process probably wouldn't seem so appealing to the suffering people. For more see: See Oregon Health Authority, *Death with Dignity Act FAQs* (Oregon, United States).

⁵⁴ In Oregon, the situation is even more specific in that healthcare is governed by the principle of cost-effectiveness, according to which the costs of certain treatment options for terminal illnesses are not covered, but expenses for assisted suicide, as described above, may be reimbursed. See 2 *BvR* 2347/15 (n 45) [257].

⁵⁵ In approximately 90% of suicides, the person who committed suicide had a psychological problem, especially depression (in approximately 40% to 60% of cases). Depression is difficult to detect even for doctors, but (depression) leads to a limited ability to consent in approximately 20% to 25% of people who commit suicide. See 2 *BvR* 2347/15 (n 45) [245].

⁵⁶ 2 *BvR* 2347/15 (n 45) [301].

⁵⁷ Although it is not our intention to name a specific example of a given country that fulfils the criteria, there are dozens of examples that were considered democratic and met the criteria at certain point in history of democracy: medieval Italian city-states, France, the United Kingdom and other European states during the 19th centuries or Western European Nation States until 70s of the 20th centuries.

two previous assumptions on autonomy. The relationship between individual autonomy and democracy can stand alone. Further text provides a glimpse into the thinking that democracy emanates from equality, homogeneity, and common morality. Moreover, the empirical studies suggest that more autonomy does not automatically improve individual and societal well-being. We suggest that the opposite is true.

When we talk about equality in democracy, we do not mean formal equality, such as we are all citizens of one state, we have the same rights and duties, etc. Democracy requires substantive equality (physical and moral quality, civic honour, virtues, etc.). Necessary homogeneity and equality have developed over time: from speaking the same language, professing the same religious dogma, through national and social unity, to the same morality. These notions were valued not only by the Founding Fathers of the American Constitution⁵⁸ but also by contemporary thinkers of democracy.⁵⁹ At the birth of modern nations, these values were understood as the complete antithesis to hierarchical aristocratic society.⁶⁰ Homogeneity and equality bind the people together in a positive way.

For democracy to flourish, it is important to establish a sense of membership among citizens. As J.H.H. Weiler puts it, 'without resonant fiction of relatedness (...) a real sense of membership is hard to come by'.⁶¹ And this relatedness (or belongingness), besides some obvious forms such as memory, language, and history, takes the form of social attitudes and morality.

Equality and homogeneity also have a negative dimension. The viability of democracy is also manifested in political power by the rejection of something foreign and unequal that disrupts the existing homogeneity. Schmitt goes even further in this regard when he says that 'democracy-because inequality always belongs to equality-can exclude one part of those governed without ceasing to be a democracy'.⁶² Unity and the resulting unanimity throughout the history of democracy were not a numerical value, but a social quality. Unity was defined as a collective state – enduring unity. If a conflict arose, it was never resolved by voting but by secession.⁶³ An example of heterogeneity disrupting the homogeneity of society was the departure of American settlers from new settlements. If inequality and heterogeneity persisted in a new community, the solution was not the

⁵⁸ See John Jay, 'Federalist No 2' in Alexander Hamilton, John Jay and James Madison, *The Federalist Papers* (1787-1788): 'With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.'

⁵⁹ Robert A Dahl, *Democracy and Its Critics* (Yale University Press 1979) 255-256.

⁶⁰ Pierre Rosanvallon, *Democratic Legitimacy: Impartiality, Reflexivity, Proximity* (Princeton University Press 2011) 27.

⁶¹ Joseph H H Weiler, 'To Be a European Citizen – Eros and Civilization' (Working Paper Series in European Studies, Special Edition, Spring 1998) 34 <https://aei.pitt.edu/8990/1/weiler.pdf> accessed 23 June 2026. See also the second, slightly different version of his work: Joseph H H Weiler, 'To Be a European Citizen – Eros and Civilization' (1997) 4(4) *Journal of European Public Policy* 495, 495-519 <https://doi.org/10.1080/135017697344037> accessed 30 October 2025.

⁶² Carl Schmitt, *The Crisis of Parliamentary Democracy* (MIT Press 1985) 9. When Schmitt speaks of 'those governed', he is referring to the part of society that disrupts the necessary degree of homogeneity. On the one hand, that is a somewhat harsh stance. On the other hand, even a democracy must have certain defence mechanisms that protect it.

⁶³ Rosanvallon (n 60) 24.

polarisation of local society, but the secession of part of the population and the creation of a new community further awest.⁶⁴

In J.J. Rousseau's theory of democracy, the general will is in fact homogeneity. According to him, the state is not based on a social contract but on homogeneity. Democratic identity rests on the equality of the governed and the governing. The general will aims at educating individual members of society. J.J. Rousseau notes that there is a transition from a natural state dominated by instinct to a civil state dominated by justice and morality. The general will brings practice and develop abilities, expands ideas, refines feelings, and elevates the soul, thus cultivating man.⁶⁵ The individual, by the social contract, loses his natural freedom and the right to everything that tempts him, in order to gain civil freedom and ownership of everything he has. Civil status also gives man moral freedom, which makes him the true master of himself - the impulse arising from lust is slavery, and obedience to the law is freedom.⁶⁶ In J.J. Rousseau's theory, those who did not sign the social contract should be considered foreigners among citizens. Residence for him constitutes consent; to dwell within a territory is to consent.⁶⁷

The democratic value of equality also influences public morality. The strict and regular morality of Americans, so admired by A. Tocqueville, had been facilitated by equality and institutions derived from it.⁶⁸ We assert that morality is a fundamental force that binds society together; cultural values transcend individual actions. In the words of the French revolutionist E. Sieyès: 'Morality is what should regulate all the ties binding men to one another, both in terms of their individual interests and their common or social interests.'⁶⁹

Morality, i.e., ideas (rules) of good living that persist in a given society (and which vary across cultures), are not just lofty abstract values that describe how things should be. On the contrary, they shape the identity of groups or individuals in a specific cultural area in such a significant way that they form an integral part of the identity of a given society or the personality of a given individual, regardless of whether these members of society conscientiously respect moral rules.⁷⁰ Morality requires freedom – in order to behave morally, it is not enough to simply respect moral norms; we must respect them not out of compulsion, but out of free choice,⁷¹ which underscores his procedural emphasis on the creation of moral rules. On the other hand, the reflection of moral standards in legislation is not necessarily a bad thing; quite the contrary.

Law is a specific expression of the morality of a particular polity. Morals arise from legislation, although they are not fully regulated by law, as the two overlap but remain distinct entities. Legal orders and constitutions are moral commitments and identity documents. Constitutions reflect the basic values of a polity and determine

⁶⁴ ... and even at the expense of economic decline. Rosanvallon (n 60) 26. The same approach resonates in the General Paoli's address to the people of Corsica: 'Corsicians, be silent. I am going to speak in the name of all. Let those who do not agree leave, and let those who do agree raise their hands.' Cited by Howard Schweber, 'Rousseau's Sovereignty and the Concept of Constitutional Identity' in Ran Hirschl and Yaniv Roznai (eds), *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity* (Cambridge University Press 2024) 25 <https://doi.org/10.1017/9781009473194.004> accessed 30 October 2025.

⁶⁵ Jean-Jacques Rousseau, *Discourse on Political Economy and The Social Contract* (Christopher Betts tr, Oxford University Press 1999) 59.

⁶⁶ Rousseau (n 65) 59-60.

⁶⁷ Schweber (n 64) 25.

⁶⁸ Alexis de Tocqueville, *Democracy in America* (Penguin Books 2010) 278.

⁶⁹ Emmanuel-Joseph Sieyès, *Political Writings* (Hackett Publishing 2003) 133-134.

⁷⁰ Jürgen Habermas, *Moralbewusstsein und kommunikatives Handeln* (Suhrkamp 1983) 118-119.

⁷¹ Jürgen Habermas, *Budoucnost lidské přirozenosti: Na cestě k liberální eugenice?* [The Future of Human Nature: Toward a Liberal Eugenics?] (Filosofia 2003) 69.

collective identity.⁷² When legislation weakens, morals decline. According to J.J. Rousseau, it is necessary to elevate people's opinion to refine morals.⁷³ The importance of law lies also in the fact that, for some authors, the law is the last socially legitimised institution in otherwise particularised societies.⁷⁴

Without regulation, morality disappears, even more quickly in a secular society. We find it appropriate to compare the loss of moral knowledge with the loss of knowledge about electricity, as outlined by other authors. It is clear that today there is a vast amount of knowledge about how electricity is produced and used, but in the past, this knowledge did not exist. 'What would happen if knowledge of electricity disappeared in this sort of way? Perhaps things would work for a while – sort of.'⁷⁵ Basic human activities such as travel and communication would be profoundly affected – not only by the lack of electricity, but also by the loss of knowledge about how to use it. The author links this to moral life. It is said that we have been living off the morals of past generations for more than 100 years, but we will not be able to draw on them forever. Moral rules are essential for social life (the actions of individuals, politics, education), but contemporary society has largely lost them. The essence of morality is not just restrictions, even if it seems so at first glance.⁷⁶

'Morality is not just conformity to what is regarded as proper, but is about building a life.'⁷⁷ Human life has a structure, and moral differences are part of it. Succumbing to the desire to escape moral rules is an eternal struggle and a hidden desire of human beings. Desire does not seek what is best for society (and, in principle, not necessarily for the individual who succumbs to desire) – it seeks what it wants, regardless of the consequences. That is why moral failure is so common. Free will gives us a choice, but in order to act morally, we need moral knowledge (to know how to distinguish between good and evil, right and wrong).⁷⁸ If moral foundations disappear from society, such distinctions will no longer be possible. For this very reason, the common good requires a candid willingness to legislate morality.⁷⁹ However, the decision to respect a given command/prohibition will ultimately always depend on the individual.

Furthermore, it is worth drawing attention to something else - the excessive fragmentation of society that the unrestricted extension of autonomy entails and which has the effect of making the necessary degree of social cooperation more difficult. Individual and public autonomy must exist in harmony for society to thrive. In J. Habermas's theory autonomy exists in the legal sphere in two forms: private and public. These two aspects must be mediated in such a way that one autonomy does not threaten the other.⁸⁰ A convincing conception of human rights, one that helps democracy to be an

⁷² Joseph H H Weiler, 'A Constitution for Europe? Some Hard Choices' (2002) 40(4) *Journal of Common Market Studies* 563, 569 <https://doi.org/10.1111/1468-5965.00388> accessed 30 October 2025.

⁷³ Rousseau (n 65) 156-157.

⁷⁴ Artur Kozak, 'Kryzys podstawności prawa' [The Crisis of the Foundations of Law] in O Bogucki and S Czepita (eds), *System prawny a porządek prawny* [The Legal System and the Legal Order] (Wydawnictwo Naukowe Uniwersytetu Szczecińskiego 2008) 53-55.

⁷⁵ Dallas Willard, 'The Disappearance of Moral Knowledge' in S L Porter, A Preston and G A Ten Elshof (eds), *The Disappearance of Moral Knowledge* (Routledge 2018) 378.

⁷⁶ Willard (n 75) 379.

⁷⁷ Willard (n 75) 379.

⁷⁸ Willard (n 75) 379.

⁷⁹ Adrian Vermeule, *Common Good Constitutionalism* (Polity Press 2022) 37.

⁸⁰ Jürgen Habermas, 'Über den internen Zusammenhang zwischen Rechtsstaat und Demokratie' [On the Internal Connection Between the Rule of Law and Democracy] in U K Preuß (ed), *Zum Begriff der Verfassung: Die Ordnung des Politischen* [On the Concept of the Constitution: The Order of the Political] (Fischer 1994) 298.

ideal, can only emerge from a mutual 'dialogue' of concepts (tradition v. modernity) that conflict with each other.⁸¹

However, this does not end with human rights. A society without dialogue and cooperation cannot function as a whole. In the absence of collective action, we speak of a democratic paradox. 'Modern democracy, under the hegemony of political liberalism, produces a freedom to and plurality of individual and collective identities' which, at the same time, threatens the very essence of democracy.⁸² Democracy must be nurtured and cultivated. The fragmentation of individual freedoms, the absence of a basic degree of (ideological/cultural/moral) homogeneity forming a collective identity, and the lack of equality hinder the necessary degree of cooperation essential for collective action.⁸³

Without cooperation, democracy is vulnerable and threatened by many negative phenomena, namely, populism. This ideology explicitly benefits from polarisation and portrays itself as restoring the people's will, representing people against the elite. The lack of cooperation between members of society, the absence of bonds between citizens, and insufficient homogeneity weaken democracy. By bonds between and among citizens, we mean strong and large families, associations, communities, party memberships, churches, charities, clubs, elections and referenda turnouts, shared values, and general trust within the citizenry. While these bonds are invisible and essential for democracy, they have been in decay for many decades in the West. Such a fact is not only recognised⁸⁴ but also measured⁸⁵ and subject to enhancement.⁸⁶

Populists respond to the crisis of democracy by strengthening 'popular sovereignty at the cost of constitutionalism.'⁸⁷ The negative effects of populism do not need to be described in detail. We aim to show that a certain amount of homogeneity in society is necessary, which is neglected in contemporary discourse on autonomy. Without it, society becomes polarised, particularised, and susceptible to democratic erosion.

In addition to its consequences for democracies, too much autonomy also has negative effects on people's happiness. According to several studies, greater choice leads to anxiety, regret, and even paralysis, rather than greater fulfilment.⁸⁸

⁸¹ Jiří Baroš, 'Krise právního konstitucionalismu a hledání alternativ' [The Crisis of Legal Constitutionalism and the Search for Alternatives] in P Dufek, J Baroš, S Bláhová, T Křepelová and P Taufar (eds), *Liberalní demokracie v době krize: Perspektiva politické filosofie* [Liberal Democracy in Times of Crisis: A Perspective from Political Philosophy] (Sociologické nakladatelství (SLON) 2019) 114-115.

⁸² Simon Bein, 'The Dysfunctional Paradox of Identity Politics in Liberal Democracies' (2022) 16 *Zeitschrift für Vergleichende Politikwissenschaft* 221, 228 <https://doi.org/10.1007/s12286-022-00522-y> accessed 30 October 2025.

⁸³ For more details, see, for example Michael J Sandel, *Democracy's Discontent: A New Edition for Our Perilous Times* (Belknap Press of Harvard University Press 2022) 107-116.

⁸⁴ Marc J Dunkelman, *The Vanishing Neighbor: The Transformation of American Community* (W W Norton & Company 2014).

⁸⁵ W Tanner, J O'Shaughnessy, F Krasniqi and J Blagden, *The State of Our Social Fabric: Measuring the Changing Nature of Community over Time and Geography* (Onward 2020).

⁸⁶ Jeppe Bay Lynggaard and Thomas P Boje, 'Civic Engagement Reimagined: The Roles of Citizenship, Civicness, and Civility' (2025) *Journal of Civil Society* 1, 1-18 <https://doi.org/10.1080/17448689.2025.2508191> accessed 19 February 2026.

⁸⁷ Cas Mudde and Cristóbal Rovira Kaltwasser (eds), *Populism in Europe and the Americas: Threat or Corrective for Democracy?* (Cambridge University Press 2012) 19.

⁸⁸ For the sake of simplicity, conclusions of the empirical research can be briefly summarised as follows. People are divided into two main groups – satisficers and maximisers. The first group is characterised by the fact that the number of available options for choice does not negatively affect them. If even just one of the available options is characterised by meeting their standards, the other options are no longer explored. On the

The emphasis on individual development and autonomy does not make people happier in Western societies either. In recent decades, we have witnessed an unprecedented expansion of autonomy, but this does not translate into more satisfied or happier lives for individuals. Positive psychologists have found that happiness levels have not changed over the past 50 years or have begun to decline due to deteriorating mental health.⁸⁹

CONCLUSION

In the last decade, the courts have increasingly relied in their reasoning on the claim that the extension of autonomy has no or minimal impact on others. As the article shows, such an argument is incomplete. Deciding on autonomy and expanding it to new dimensions carries the risk of reducing the autonomy of others, negatively influencing them, and ultimately weakening the basic fabric of democracy.

Neither J. S. Mill nor his commentators argue so far that society has no authority to limit the freedom of another. To the contrary, the presence of harm to others is a necessary and sufficient condition for the emergence of societal jurisdiction on rightful authority over some matters. Even the risk of harm to an individual or others is enough to move the matter from the province of liberty to the province of morality or law.⁹⁰

For these arguments, too, courts should be more cautious in deciding on expanding autonomy. J. Waldron claims that judicial process on rights adjudication often suffers from omitting evidence, rights, and interests of other members of society that do not participate in court proceedings. At the same time, rights adjudication involves a multifaceted character that courts are not built to take into account. And from this perspective, courts' rulings on rights might be tyrannical both in the omission and commission of the rights of others.⁹¹ Case-law on autonomy proves his case.

In our opinion, the emphasis on the right to privacy should be refocused on the classic notion of privacy – protection from the public or state authorities of various aspects of private life. This is, after all, where the concept of the right to privacy began its successful story.

Greater emphasis could also be placed on general welfare and the common good. If an individual decides to remain a member of a particular community, he or she must respect its rules regarding the formulation of general welfare.⁹² Alternatively, it is also possible to lean towards the so-called constitutionalism of the common good. Within this value-oriented approach, courts and other state institutions must bear in mind

other hand, the given number of options offered does not necessarily make their lives easier and the number of available options may be completely irrelevant to their inner satisfaction.

The second group – maximisers – reevaluate each (both potential and already made) choice several times, and due to the number of options, they are prone to a clinical form of depression, which was also confirmed in several research participants. Therefore, the variability of options can be significantly harmful to this group. For the sake of completeness, the research also distinguishes perfectionists as a subgroup of maximisers, but due to the nature of this article, it is not necessary to develop this further. For more details, see Barry Schwartz, *The Paradox of Choice: Why Less Is More* (HarperCollins 2004) 85-110.

⁸⁹ Michael Argyle, *The Psychology of Happiness* (Routledge 2001) 132-135.

⁹⁰ Piers Norris Turner, 'Harm' and Mill's Harm Principle' (2014) 124(2) *Ethics* 299. Similarly, in J.S. Mill's utilitarian theory there is no place for harmless wrongdoings, because such a category does not exist. If harm is understood extensively, there are no wrongdoings that are harmless; *ibid* 323.

⁹¹ Jeremy Waldron, 'The Core of the Case against Judicial Review' (2006) 115 *Yale Law Journal* 1346, 1348, 1380 and 1396.

⁹² *Jacobson v Massachusetts* (Supreme Court of the United States, United States, 20 February 1905) 197 US 11 [38-39].

the good of the community. The individual takes a back seat; the community prevails.⁹³ The common good can enter the dimension of autonomy and seeks to balance its potentially undesirable effects.

A return to the dimension of moral autonomy is also an alternative to explore. 'Freedom can only be in harmony with itself under certain conditions; otherwise it comes into collision with itself.'⁹⁴ For autonomy to be realised in its moral sense, it is not enough that this realisation does not bring a negative impact on others (if that is the case). In Kant's approach, it is not enough not to harm anyone, as understood in liberal society. Instead of the *neminem laedere, noli naturam humanam in te ipso laedere* (do not harm human nature in yourself) is more preferable.⁹⁵ Human nature is crucial; autonomy is to be used to promote and fulfil it, not to destroy it. In other words, autonomy is to serve to fulfil our true nature, by which we as human beings are fundamentally different from other living creatures. It is necessary that the result towards which the realisation of autonomy is directed can be described as moral in itself. In other words, where the result is generally immoral or unclear in terms of consequences to others and society, autonomy should not be extended.

These and certainly other alternatives are available to courts, legislatures, and other stakeholders who decide on the extent of autonomy. Our aim is not to lecture on alternatives, but we seek to prove a more delicate and modest issue: some autonomous choices when legally recognised bring negative consequences, which go unnoticed in many instances in the courts' case-law and legislation. The consequences involve not only other individuals but also societies. We suggest that they must not be ignored in the pursuit of making society more just.

⁹³ Conor Casey, 'Common Good Constitutionalism: An Introduction' in *Elgar Concise Encyclopedia of Legal Theory and Philosophy* (forthcoming 2024) 8 <https://ssrn.com/abstract=4883529> accessed 30 October 2025.

⁹⁴ Immanuel Kant, *Lectures on Ethics* (L Infield tr, Methuen & Co Ltd 1930) 123.

⁹⁵ Kant (n 94) 124.

