

REVIVING A NATURAL RIGHT: THE FREEDOM OF AUTONOMY

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America in the early twenty-first century is a place where oppressive state constitutional amendments discriminate against millions of gay Americans; where compassionate end-of-life choice is illegal in 49 states and where the one state where it is legal is being sued by the U.S. government; where hundreds of thousands are arrested yearly and tens of thousands are in prison for private possession or use of marijuana and the federal government successfully sues to prevent a state from allowing the use of medical marijuana; where a woman's right to maintain control over her own reproductive decisions hangs by a thread; and where religious freedom is under relentless attack.

Whatever became of the ideal that represented the very foundation of the Founders' and Framers' political theory – “free[ing] the individual from the oppressive misuse of power, [and] from the tyranny of the state?” How can it be that Tocqueville's warning of a “wholly new species of oppression . . . [where] the democratic government, acting in response to the will of the majority . . . create[s] a society with a network of . . . [rules] that none can escape,” has indeed come to pass in modern-day America?

This article explores the historical foundations of the individual right of equality and free choice on matters of natural private concern (collectively, “freedom of autonomy”) in America, looks at several present-day applications, and concludes that meaningful steps must be taken – by encouraging greater awareness among lawmakers and courts of original meanings of the constitutional terms “liberty,” “property,” “privileges,” and “immunities,” and perhaps even through constitutional amendment – to revive this most basic right from an overbearing government. Now is the time for change in America.

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