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Comment: The Project of Freedom

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Brenna Rosen's Note, *Supported Decision-Making and Merciful Health Care Access: Respecting Autonomy at End of Life for Individuals with Cognitive Disabilities*, advocates for greater autonomy in making critical decisions about end-of-life care for people with disabilities.[1] Ms. Rosen's outstanding Note illustrates how supported decision-making may expand access to treatment and promote greater autonomy in medical decision-making for persons with disabilities. She offers a valuable path to creating a more equitable world that balances important legal and ethical protections for people with cognitive disabilities while maximizing their autonomy and independence.[2]

Ms. Rosen's Note recognizes that legal structures have the capacity both to stifle individual autonomy and to nurture it. She thoughtfully advocates for the latter approach. Supported decision-making[3] is a legal tool that can expand autonomy and

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1. *See* Brenna M. Rosen, *Supported Decision-Making and Merciful Health Care Access: Respecting Autonomy at End of Life for Individuals with Cognitive Disabilities*, 80 WASH. & LEE L. REV. 555 (2023).

2. *See id.* at 599.

3. Supported decision-making is an agreement that an adult with a disability may enter into with others the adult chooses that "enable[s] the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, where the adult wants to work, without impeding the self-determination of the adult." TEX. ESTATE CODE § 1357.002(3). Supported decision-making agreements may be formal or

Ms. Rosen makes a compelling case for how it can protect the rights of persons with cognitive disabilities while affording them greater freedom in making critical decisions about compassionate use and end-of-life care. Her Note asks us to think about how law can be *better*. This Comment briefly explores how Ms. Rosen's Note fits within the body of scholarship that recognizes that laws should be structured in a way that maximizes human freedom and autonomy and advocates for reforms to achieve these goals.

The world we inhabit is not as free or as equitable as it should be or could be. Although the United States places great value on freedom, the project of freedom is far from complete. Laws and the structures they create, as well as social policy, do not always make us freer. Rather, they reflect human decisions,[4] and the inescapable, and sometimes uncomfortable, truth is that systems of law are, and have been, tools of oppression.[5]

Consider mass incarceration in the United States.[6] The rise of life without parole.[7] The use of solitary confinement and

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informal. *See* Nina A. Kohn, Jeremy A. Blumenthal & Amy T. Campbell, *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN STATE L. REV. 1111, 1121 (2013). An adult with a disability may have one supporter or multiple supporters. *Id.* at 1123. Supporters facilitate decision-making by "gathering information, weighing health-care options, and communicating decisions to others." Rosen, *supra* note 1, at 582.

4. *See* THE FEDERALIST NO. 51, at 253, 254 (James Madison) (Dover Publications, Inc., 2014) ("But what is government itself but the greatest of all reflections on human nature?").

5. *See* STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 3–5 (2018) (describing how democratically elected governments can subvert democracy through legal means); RICHARD ROTHSTEIN, THE COLOR OF LAW xii (2017) (explaining that segregation was a result of "scores of racially explicit laws, regulations, and government practices combined to create a nationwide system of urban ghettoes, surrounded by white suburbs"); JAMES Q. WHITMAN, HITLER'S AMERICAN MODEL: THE UNITED STATES AND THE MAKING OF NAZI RACE LAW 29–69 (2017) (discussing the development of Nazi law and the Jim Crow laws in the United States, as well as U.S. immigration law); Brandon Hasbrouck, *Reimagining Public Safety*, 117 NW. U.L. REV. 685, 696–99 (2022) (discussing the carceral state).

6. *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW (2010); FRANKLIN E. ZIMRING, THE INSIDIOUS MOMENTUM OF MASS INCARCERATION (2020); Shima Baradaran Baughman & Megan S. Wright, *Prosecutors and Mass Incarceration*, 94 S. CAL. L. REV. 1123 (2021); Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899 (2019); John F. Pfaff, *Why the Policy*

appalling prison conditions.[8] The extraordinary difficulty that innocent people in prison face when they challenge their convictions.[9] Prison systems that make it more difficult for families to remain in communication with incarcerated loved ones and sustain family bonds.[10] The death penalty.[11] The

Failures of Mass Incarceration Are Really Political Failures, 104 MINN. L. REV. 2673 (2020); Dorothy E. Roberts, *The Social and Moral Costs of Mass Incarceration in African American Communities*, 56 STANFORD L. REV. 1271 (2004).

7. *See* BRANDON L. GARRETT, END OF ITS ROPE: HOW KILLING THE DEATH PENALTY CAN REVIVE CRIMINAL JUSTICE 168–73 (2017); ASHLEY NELLIS, SENTENCING PROJECT, STILL LIFE: AMERICA'S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 7 (2017), https://perma.cc/PG4Q-MGJD (PDF).

8. *See generally* KERAMET REITER, 23/7: PELICAN BAY PRISON AND THE RISE OF LONG-TERM SOLITARY CONFINEMENT (2016); Keramet Reiter, *Supermax Administration and the Eighth Amendment: Deference, Discretion, and Double Bunking, 1986–2010*, 5 U.C. IRVINE L. REV. 89 (2015); Eli Hager, *My Life in the Supermax*, THE MARSHALL PROJECT (Jan. 8, 2016, 7:15 AM), https://perma.cc/KGP8-SSQK; Jensen v. Shinn, No. CV-12-00601, 2022 WL 2911496 (D. Ariz. June 30, 2022); Debbie Elliott, *DOJ: Alabama Prisons for Men Are Unconstitutional Because Staff Abuse Inmates*, NPR (July 23, 2020, 6:05 PM), https://perma.cc/R6TC-5WHA.

9. *See generally* BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011); DANIEL MEDWED, BARRED: WHY THE INNOCENT CAN'T GET OUT OF PRISON (2021); Shinn v. Ramirez, 142 S. Ct. 1718 (2022); Lincoln Caplan, *The Destruction of Defendants' Rights*, NEW YORKER (June 21, 2015), https://perma.cc/Y2E9-DWC6; Alexandra Klein & Brandon Hasbrouck, *The Supreme Court Is Poised to Make It Even Harder to Challenge Wrongful Convictions*, THE NATION (Oct. 11, 2022), https://perma.cc/J6AQ-2M8M; Leah Litman, *The Supreme Court Just Gutted Another Constitutional Right*, SLATE (May 23, 2022, 2:30 PM), https://perma.cc/C4W7-FWLU.

10. *See generally* Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 COLUM. J. RACE & L. 517 (2022); Shira Hoffer, *Mother or Money? The Exorbitant Cost of Phone Calls from Jail*, HARV. POL. REV. (Jan. 15, 2022), https://perma.cc/K5LA-VFG2; Rosalie Chan & Belle Lin, *The High Cost of Phone Calls in Prisons Generates $1.4 Billion a Year, Disproportionately Driving Women and People of Color into Debt*, BUS. INSIDER (June 30, 2021), https://perma.cc/8DSZ-W9TU; Shannon Sims, *The End of American Prison Visits: Jails End Face-to-Face Contact and Families Suffer*, THE GUARDIAN (Dec. 9, 2017), https://perma.cc/F8XD-35JN.

11. *See generally* JOHN D. BESSLER, THE DEATH PENALTY AS TORTURE: FROM THE DARK AGES TO ABOLITION (2017); CAROL S. STEIKER & JORDAN M. STEIKER, COURTING DEATH: THE SUPREME COURT AND CAPITAL PUNISHMENT (2016); John D. Bessler, *What I Think About When I Think About the Death Penalty*, 62 ST. LOUIS U. L.J. 781 (2018); David Dolinko, *How to Criticize the Death Penalty*, 77 J. CRIM. L. & CRIMINOLOGY 546 (1986); Corinna Barrett

ever-expanding corporate and government surveillance apparatus that continues to erode privacy and autonomy in the name of convenience and dubious security.[12] Legal structures like guardianships can condemn a person to a "civil death" without adequate oversight.[13] States have been proposing and passing laws intended to prevent trans people from accessing vital medical care.[14] New state laws have been aimed at preventing students from learning information that state legislators deem too divisive and excluding books from school

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Lain, *Three Observations About the Worst of the Worst, Virginia-Style*, 77 WASH. & LEE L. REV. ONLINE 469 (2021); Alexandra L. Klein, *The Beginning of the End: Abolishing Capital Punishment in Virginia*, 77 WASH. & LEE L. REV. ONLINE 375 (2021); Carol S. Steiker & Jordan M. Steiker, *The American Death Penalty and the (In)Visibility of Race*, 82 U. CHI. L. REV. 243 (2015).

12. *See generally* DANIELLE K. CITRON, THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, IDENTITY, AND LOVE IN THE DIGITAL AGE (2022); SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM (2018); Neil M. Richards, *The Dangers of Surveillance*, 126 HARV. L. REV. 1934 (2013); Chris Gilliard & David Golumbia, *Luxury Surveillance*, REAL LIFE (July 6, 2021), https://perma.cc/X52Z-S29Q; Alfred Ng, *Data Brokers Raise Privacy Concerns—But Get Millions from the Federal Government*, POLITICO (Dec. 21, 2022, 4:30 AM), https://perma.cc/23VV-22JW.

13. *See generally* Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 WASH. L. REV. 581 (2016); NAT'L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION (2022), https://perma.cc/K8X2-MFK5 (PDF); DISABILITY RTS. TEX., OVERCOMING CIVIL DEATH: A REPORT ON NEEDED LEGAL REFORMS FOR PEOPLE SEEKING RESTORATION OF RIGHTS (2022), https://perma.cc/3UL5-QPYD (PDF); Heidi Blake & Katie J.M. Baker, *Beyond Britney: Abuse, Exploitation, and Death Inside America's Guardianship Industry*, BUZZFEED (Sept. 17, 2021, 1:02 PM), https://perma.cc/857S-N5JU; Patrick Michaels, *Who Guards the Guardians?*, TEX. OBSERVER (July 6, 2016, 9:00 AM), https://perma.cc/9X8R-UTXH.

14. *See generally* Jessica Matsuda, Note, *Leave Them Kids Alone: State Constitutional Protections for Gender-Affirming Healthcare*, 79 WASH. & LEE L. REV. 1597 (2022); *Alabama Legislature Votes to Ban Gender-Affirming Medical Care for Transgender Youth*, NPR (Apr. 7, 2022, 5:40 PM), https://perma.cc/ZZK2-3UYB; Brooke Migdon, *Oklahoma 'Millstone Act' Seeks to Ban Gender-Affirming Care Under Age of 26*, THE HILL (Jan. 5, 2023, 12:03 PM), https://perma.cc/DAF9-HMJU; Devan Cole, *Arkansas Becomes First State to Outlaw Gender-Affirming Treatment for Trans Youth*, CNN (Apr. 6, 2021, 6:56 PM), https://perma.cc/SN5E-WK2C; Marie-Amélie George, *False Claims of Protecting Children Are Fueling Anti-Trans Legislation*, WASH. POST (July 6, 2021, 6:00 AM), https://perma.cc/Q4VW-JDVD.

libraries.[15] The refusal to remedy past racial injustices in the name of indifference, colorblindness, or out of fear of taking on hard projects.[16] Constitutional rights that are read out of existence through narrow, formalistic approaches that focus on

15. Daniel Golden, *Muzzled by DeSantis, Critical Race Theory Professors Cancel Courses or Modify Their Teaching*, PROPUBLICA (Jan. 3, 2023, 7:03 AM), https://perma.cc/H7JD-Q2QU; Andrew Atterbury, *'Positively Dystopian': Florida Judge Blocks DeSantis' Anti-Woke Law for Colleges*, POLITICO (Nov. 17, 2022, 3:52 PM), https://perma.cc/SQ64-Q2ZH (last updated Nov. 17, 2022, 5:55 PM); Allyson Waller & Kevin Reynolds, *The Push to Ban Books in Texas Schools Spreads to Public Libraries*, TEX. TRIB. (Dec. 20, 2021, 6:00 AM), https://perma.cc/L274-ZSBC; Matt Papaycik, *New Law Allows Florida Parents to Contest School Library Books, Reading Lists*, WPTV (Mar. 25, 2022, 12:20 PM), https://perma.cc/GN5N-CCCK (last updated March 25, 2022, 3:28 PM); Anthony Izaguirre, *Florida Blocks High School African American Studies Class*, AP (Jan. 19, 2023), https://perma.cc/7G6Y-QBB7.

16. *See* McCleskey v. Kemp, 481 U.S. 279, 315 (1987) (acknowledging evidence of racial disparities in capital sentencing and asserting that "if we accepted McCleskey's claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty"); Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 747–48 (2007) (rejecting public school attempts to remedy past segregation as a form of racial discrimination); Shelby County v. Holder, 570 U.S. 529, 556–57 (2013) (striking down the preclearance coverage formula of the Voting Rights Act of 1965 despite numerous congressional findings that the formula was necessary to protect voting rights); Carliss Chatman & Marisa Jackson Sow, *The Disregarded Canary: On the Plight of Black Women Voters*, NW. UNIV. L. REV.: OF NOTE (Sept. 3, 2020), https://perma.cc/FSP5-2VY5 ("As performed, the Constitution and its Reconstruction Amendments have never lived up to the bargain for Black women voters and citizens. Instead, the nation continues to subject Black women to extreme duress that renders them without power and without choice."); Franita Tolson, *"In Whom Is the Right of Suffrage?": The Reconstruction Acts as Sources of Constitutional Meaning*, 169 U. PA. L. REV. ONLINE 211, 215 (2021) ("The Court has ignored Section 2, the Guarantee Clause, and related federal statutes like the Reconstruction Acts in assessing the scope of congressional power to assess these violations, a question that was front and center in the *Shelby County* case."); Randall Kennedy, *Colorblind Constitutionalism*, 82 FORDHAM L. REV. 1, 8 (2013) (observing that colorblind approaches "raise[] the question of why the lingering destructive consequences of past racial wrongs do not count as emergencies that justify the use of racially selective measures"); Brandon Hasbrouck, *The Antiracist Constitution*, 102 B.U. L. REV. 87, 103 (2022) (asserting that "some of the most egregiously racist cases have involved the Court resting on constitutional colorblindness to establish why it will not attempt to deal in reasoning or remedies focused on race"); Theodore R. Johnson, *How Conservatives Turned the 'Color-Blind Constitution' Against Racial Progress*, THE ATLANTIC (Nov. 19, 2019), https://perma.cc/9E8F-4XWG.

what was relevant in 1789 but fail to do much in 2023.[17] A Supreme Court that is increasingly willing to eradicate laws that were intended to remedy past wrongs and protect individual rights.[18]

I am not listing these examples to produce despair, even though it is hard not to feel despair when thinking about a never-ending, always expanding list of injustices. There is hope. Law may be prone to abuse but it can also be an extraordinary tool for good. Professor Joshua Fairfield has explained that "[l]aw *is* language, a special kind. It is language that states how we have decided to live together."[19] Law can make it possible to live in a freer world—or an unjust world.[20] Law is what we make it. Sticking with Professor Fairfield's argument, the language we choose to use can be structured in a way that is aimed at protecting the dignity, autonomy, and freedom of all.[21]

Injustice is not a problem that can be solved with some grand unifying theory.[22] Instead, we have to assess whether the laws we create and the legal frameworks they include are doing what we want them to. Creating stale legal environments, freezing the law in some static, perceived perfection, or eliminating laws that expand opportunities for

17. *See* Weems v. United States, 217 U.S. 349, 373 (1910) ("Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality."). *See also generally* Mitchell N. Berman, *Originalism Is Bunk*, 84 N.Y.U. L. REV. 1 (2009); Joshua Zeitz, *The Supreme Court's Faux 'Originalism'*, POLITICO (June 26, 2022, 7:00 AM), https://perma.cc/ABY6-8Y2Z.

18. *See* Nina Totenberg, *The Landmark Voting Rights Act Faces Further Dismantling at the Supreme Court*, NPR (Oct. 4, 2022, 5:00 AM), https://perma.cc/LE3S-Z3QA; Amelia Thomson-DeVeaux, *The Supreme Court Is on the Verge of Killing the Voting Rights Act*, FIVETHIRTYEIGHT (Oct. 3, 2022, 6:00 AM), https://perma.cc/9ZLC-K8NR; Rebecca Nagle, *The Supreme Court Case That Could Break Native American Sovereignty*, THE ATLANTIC (Nov. 8, 2022), https://perma.cc/WW6W-QZER.

19. JOSHUA A.T. FAIRFIELD, RUNAWAY TECHNOLOGY: CAN LAW KEEP UP? 3 (2021).

20. *See* Hasbrouck, *The Antiracist Constitution*, *supra* note 16, at 125–26; Dorothy E. Roberts, *The Supreme Court 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 122 (2019).

21. *See* FAIRFIELD, *supra* note 19, at 251.

22. *See id.* at 249.

freedom is hostile to the project of a society that allows autonomy and freedom to flourish. The project of trying to figure out how to use law to build a freer society probably will not end even if everything I listed above is addressed. The problems of 2023 will not be the same as the problems of 2123.[23] Law evolves, language evolves, human society evolves.[24]

The solution is to engage with the project of freedom and use law to develop and sustain structures that facilitate autonomy and growth. In the realm of incarceration and punishment, for example, some progress has been made, but not nearly enough.[25] People in positions of authority can recognize that pursing policies that lead to mass incarceration is a *choice* and that they can make different choices to try and undo those harms.[26] We should question our reliance on life sentences and long-term incarceration because they make our society less free[27] and because they produce static environments that fail to honor and nurture the potential for human growth and change.[28] Legislators and judges can recognize that the death penalty is antithetical to human dignity, impossible to fairly apply, rife with error and racial bias, and ultimately pointless.[29]

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23. At least I hope so.

24. *See Weems*, 217 U.S. at 373 ("Time works changes, brings into existence new conditions and purposes."); FAIRFIELD, *supra* note 19, at 75 ("Law must respond to human needs. It is a human system and responds to human concerns.").

25. *See* Nazgol Ghandnoosh, *U.S. Prison Decline: Insufficient to Undo Mass Incarceration*, SENTENCING PROJECT (May 19, 2020), https://perma.cc/8BU8-9BBQ.

26. *See* Brandon Hasbrouck, *The Just Prosecutor*, 99 WASH. U. L. REV. 627 (2021); Paul Butler, *The Prosecutor Problem*, BRENNAN CTR. FOR JUST. (Aug. 23, 2021), https://perma.cc/9CF3-RBDD.

27. *See* Raff Donelson, *The Inherent Problem with Mass Incarceration*, 75 OKLA. L. REV. 51, 53 (2022).

28. *See* Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. U.L. REV. 315, 322–23 (2021); Jacob Bronsther, *Nonfatal Death Sentences*, 75 OKLA. L. REV. 7, 19 (2022).

29. *See* Furman v. Georgia, 408 U.S. 238, 289–90 (1972) (Brennan, J., concurring); State v. Gregory, 427 P.3d 621 (Wash. 2018) (en banc); Alexis Hoag, *Valuing Black Lives: A Case for Ending the Death Penalty*, 51 COLUM. HUM. RTS. L. REV. 983 (2020); *Virginia Becomes 23rd State and the First in the South to Abolish the Death Penalty*, DEATH PENALTY INFO. CTR. (Mar. 24, 2021), https://perma.cc/P9ZV-YTLZ.

Courts must do better. Consider these examples. In 2020, the Supreme Court held that the Sixth Amendment requires a jury to reach a unanimous verdict in state criminal trials.[30] The Court emphasized that states' decisions to permit nonunanimous jury verdicts was motivated by racial discrimination.[31] And yet, a year later, the Court decided that this rule should *not* apply retroactively,[32] even though denying retroactivity meant forcing people to endure convictions that originated from a fundamentally unfair and racially biased system.[33] To make matters worse, the Court *also* eliminated the "watershed exception" for retroactivity, which was meant to apply when Supreme Court precedent articulated a new rule of criminal procedure that was integral to fundamental due process rights,[34] because it offered "false hope to defendants" because the Court had always rejected "watershed status for new procedural rule after new procedural rule."[35] Eliminating future remedial opportunities adds insult to the injury of being convicted by an unconstitutional jury verdict.

And yet, when the Supreme Court of Oregon was confronted with the same issue in *Watkins v. Ackley*,[36] it decided that the same considerations the Supreme Court of the United States had ignored meant the rule had to apply retroactively.[37] *Watkins* recognized that the project would not be an easy one, but that fundamental fairness required nothing less.[38]

How can courts do better? Courts should recognize that, when interpreting the Constitution and laws, "a principle, to be vital, must be capable of wider application than the mischief

30. Ramos v. Louisiana, 140 S. Ct. 1390, 1397 (2020).

31. *Id.* at 1394.

32. Edwards v. Vannoy, 141 S. Ct. 1547, 1551 (2021).

33. *See id.* at 1577–78 (Kagan, J., dissenting).

34. *See* Teague v. Lane, 489 U.S. 288, 311 (1989) (explaining that new rules of criminal procedure should apply "retroactively if it requires the observance of 'those procedures that . . . are implicit in the concept of ordered liberty'" (quoting Mackey v. United States, 401 U.S. 667, 693 (1971))).

35. *See Edwards*, 141 S. Ct. at 1560.

36. 523 P.3d 86 (Or. 2022).

37. *See id.* at 103.

38. *Id.*

which gave it birth."[39] They should assess whether threats to freedom and dignity are risks people "should be forced to assume in a free and open society."[40] Judges can recognize that "formalistic reasoning has no place in the interpretation of the broad and stirring Clauses of the Fourteenth Amendment."[41] Courts can recognize, as Oregon Supreme Court Justice Richard Baldwin wrote in his concurring opinion in *Watkins*, that historic wrongs are capable of judicial redress and to remain silent in the face of those wrongs is to "undermine[] the integrity of our judicial system and reduce[] public confidence in our laws and our system of justice."[42] The project of building a freer world is not an easy one, but it is work worth doing.

Ms. Rosen's Note is part of this project. She advocates for expansion of supported decision-making because it "ensures that individuals with cognitive disabilities are their own decision-makers and preserves their right to self-determination."[43] Ms. Rosen's Note builds upon scholarship addressing relational autonomy.[44] Supported decision-making enhances autonomy because its structure parallels human relationships.[45] As Ms. Rosen explains, most people prefer to make difficult decisions about living, dying, and medical treatment by consulting with the people who are important in their lives.[46] Ignoring this important relational dimension may deny people the opportunity to nurture relationships that are core to human existence and growth and the opportunity to grow and shape their lives according to their values.

Ms. Rosen's Note also crafts a careful ethical balance. People with cognitive disabilities are vulnerable and have been

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39. Weems v. United States, 217 U.S. 349, 373 (1910).

40. Smith v. Maryland, 442 U.S. 735, 750 (1979) (Marshall, J., dissenting).

41. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 212 (1989) (Blackmun, J., dissenting).

42. *Watkins*, 523 P.3d at 109 (Baldwin, J., concurring).

43. Rosen, *supra* note 1, at 582.

44. *See id.* at 562–63.

45. *See* NAT'L COUNCIL ON DISABILITY, *supra* note 13, at 60–61 ("One interviewee described supported decision making as 'what really good family and friends do. It's having conversations with each other about needs and wants and coming to a decision with their help when needed.'").

46. Rosen, *supra* note 1, at 565–66.

exploited in unethical and immoral medical trials.[47] Ms. Rosen thoroughly analyzes how supported decision-making can facilitate informed consent and protect patients.[48] The legal framework she describes can improve autonomy for vulnerable populations by facilitating greater choice in critical medical decisions.[49] It is a flexible structure centered around maximizing autonomy and freedom, and a worthwhile contribution to the project of a freer world.

A person's status may change over time and people should have the right to maximize their autonomy and learn and grow from their experiences. Legal structures must encourage autonomy and growth, rather than producing a static environment that prevents people from challenging external controls imposed upon their lives.[50] Law can create legal structures that sustain an individual's right to live according to their values. As Ms. Rosen writes, "[i]f an individual is capable of valuing, the wishes stemming from those values should dictate how the individual ought to be treated."[51] By protecting those values, Ms. Rosen's Note advises us how the law can be a stronger tool for the project of freedom. The choice of whether to use that tool is ours.

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47. *See, e.g.*, Michele Goodwin, *Vulnerable Subjects: Why Does Informed Consent Matter?*, 44 J.L. MED. & ETHICS 371, 376–77 (2016) (children with cognitive disabilities at Willowbrook deliberately infected with hepatitis to permit researchers to study the disease and develop a vaccine); Lorraine Boissoneault, *A Spoonful of Sugar Helps the Radioactive Oatmeal Go Down*, SMITHSONIAN MAG. (Mar. 8, 2017), https://perma.cc/3PFS-J38C (children with mental illness and cognitive disabilities recruited to a "Science Club" and were fed radioactive oatmeal and milk); *see* Alexandra Minna Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities—And Lasted into the 21st Century*, THE CONVERSATION (Aug. 26, 2020), https://perma.cc/G7QV-2YAG.

48. Rosen, *supra* note 1, at 602–03.

49. *Id.* at 606.

50. *See* DISABILITY RTS. TEX., *supra* note 13, at 11 (discussing legal restrictions on people under guardianships' ability to retain legal assistance to challenge the guardianship).

51. Rosen, *supra* note 1, at 567.