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Academic Appointments

- *Full Professor of Government*, Department of Government, Dartmouth College, as of July 1, 2021
- *Associate Professor* (with tenure) Department of Government, Dartmouth College, as of July 1, 2007
- *Assistant Professor*, Department of Government, Dartmouth College, July, 2001 to June, 2007
- *Postdoctoral Research Fellow*, Department of Political Science, Boston College, January-June, 2001
- *Gifford Research Fellow*, School of Philosophical and Anthropological Studies and School of Divinity, University of St. Andrews, 1999-2001
- *Lecturer*, Department of Political Science, Boston University, 1998
- *Head Tutor*, Foundations of Legal Studies Program, Brown University, 1998

Qualifications

- Ph.D. Political Science, Brown University, 1999
- A.M. Political Science, Brown University, 1995
- D.Phil. Social and Political Thought, University of Sussex, 1995
- M.A. Political Studies, University of Manitoba, 1992
- B.A. (Double Honors) Political Studies and Philosophy, University of Manitoba, 1991

Current Research

Freedom of Thought: First of the Liberties (book project)

- This book project provides a comprehensive treatment of the nature and value of freedom of thought. It offers sustained analysis of the central features of this key freedom, illuminating various pressures and threats to freedom of thought and offering ways creatively to address them. The book's topics include: the political history of freedom of thought; freedom of thought as a basic liberty; violations of freedom of thought; freedom of thought in relation to cognate freedoms of speech, conscience, religion, and association; the importance of freedom of thought in democratic deliberation; freedom of thought in education; legal accommodations

for freedom of thought; and protection of freedom of thought from dangers posed by new technologies, state surveillance, social and political pressures, and self-imposed diminution.

“Freedom of Thought and Democratic Repair” (working paper)

“The Priority of Freedom of Thought” (working paper)

“Freedom of Thought as a Check on Deliberative Demands” (working paper)

“Education, Indoctrination, and Freedom of Thought” (working paper)

“Freedom of Thought, Religion, and Liberal Neutrality” (working paper)

“The Spirit of Democracy” (working paper)

“Spirit in Political Theory” (working paper)

Publications

· Books

Ethical Autonomy: The Rise of Self-Rule (New York: Oxford University Press, 2020).

The Liberal Conscience: Politics and Principle in a World of Religious Pluralism (New York: Columbia University Press, 2006; paperback edition, 2008).

- Winner, Best Book Award, North American Society for Social Philosophy, 2006

· Refereed journal articles

“Freedom of Thought 2322,” *Political Theory*, Vol. 51, No. 1 (2023), pp. 234-36.

“Can Islam Transform Liberalism?” *Politics, Religion & Ideology*, Vol. 19, No. 3 (2018), pp. 285-304.

“Freedom of Thought as a Basic Liberty,” *Political Theory*, Vol. 46, No. 3 (2018), pp. 405-25.

“The Origins of Autonomy,” *History of Political Thought*, Vol. 37, No. 2 (2016), pp. 216-37.

“Moral Character for Political Leaders: A Normative Account,” *Res Publica*, Vol. 19, No. 4 (2013), pp. 317-33.

“The False Right to Autonomy in Education” *Educational Theory*, Vol. 62, No. 1 (2012), pp. 107-24 (part of journal’s special “Educational Rights Symposium”).

“*The Liberal Conscience: An Overview*,” and “*The Ascendant Liberal Conscience: A Response to Three Critics*,” *Critical Review of International Social and Political Philosophy*, Vol. 14, No. 4 (2011), pp. 505-07, 521-29.

"Heteronomous Citizenship: Civic Virtue and the Chains of Autonomy," *Educational Philosophy and Theory*, Vol. 42, No. 1 (2010), pp. 73-93 (part of special issue on "Toleration, Respect, and Recognition").

"Demanding Deliberation: Political Liberalism and the Inclusion of Islam," *Journal of Islamic Law and Culture*, Vol. 11, No. 2 (2009), pp. 92-110.

"Deliberate and Free: Heteronomy in the Public Sphere," *Philosophy & Social Criticism*, Vol. 35, Nos. 1-2 (2009), pp. 183-213 (part of special issue on "Religion in the Public Sphere").

"The Battle for Liberalism: Confronting the Legacy of Theocracy," *Critical Review*, Vol. 19, No. 4 (2007), pp. 565-75.

"Political Theory and the Conduct of Faith: Oakeshott on Religion in Public Life," *Contemporary Political Theory*, Vol. 4, No. 1 (2005), pp. 63-82.

"A Liberalism of Conscience," *Journal of Political Philosophy*, Vol. 11, No. 4 (2003), pp. 369-91.

"Institutions of Conscience: Politics and Principle in a World of Religious Pluralism," *Ethical Theory and Moral Practice*, Vol. 6, No. 1 (2003), pp. 93-118.

"How Ought Liberal Democracies to Treat Theocratic Communities?" *Ethics*, Vol. 111, No. 2 (2001), pp. 302-43.

"The Secret Chain: Justice and Self-Interest in Montesquieu's *Persian Letters*," *History of Political Thought*, Vol. 22, No. 1 (2001), pp. 84-105.

"A Paradox Reconsidered: Written Lessons from Plato's *Phaedrus*," *Educational Philosophy and Theory*, Vol. 30, No. 3 (1998), pp. 259-73.

"Anchoring Political Preferences: The Structural Bases of Stable Electoral Decisions and Political Attitudes in Britain," *European Journal of Political Research*, Vol. 33, No. 3 (1998), pp. 285-321 (with Alan S. Zuckerman [lead author] and Laurence E. Kotler-Berkowitz).

"Principled Separation: Liberal Governance and Religious Free Exercise," *Journal of Church and State*, Vol. 38, No. 3 (1996), pp. 595-619.

"Blameless, Constructive, and Political Anger," *Journal for the Theory of Social Behavior*, Vol. 25, No. 3 (1996), pp. 257-74.

· *Book chapters*

"Religious Pluralism and Freedom of Conscience," in *International Meetings in Political Studies, Vol. I: From Arrábida to Cascais - 1993-2002* (Lisbon, Portugal: UC Editora, 2022) (revised version of chapter for *Pluralism Without Relativism* edited volume).

"Freedom of Thought in Political History," in *The Law and Ethics of Freedom of Thought, Volume 1: Neuroscience, Autonomy, and Individual Rights*, ed. Marc Jonathan Blitz and Jan Christoph Bublitz (Cham, Switzerland: Palgrave MacMillan, 2021), pp. 1-25.

"Legal Exemptions for Religious Feelings," in *Religious Exemptions*, ed. Kevin Vallier and Michael Weber (New York: Oxford University Press, 2018), pp. 74-96.

"Demanding Deliberation: Political Liberalism and the Inclusion of Islam," in *Citizenship, Identity, and Education in Muslim Communities: Essays on Attachment and Obligation*, ed. Michael S. Merry and Jeffrey Ayala Milligan (New York: Palgrave Macmillan, 2010), pp. 45-61 (revised version of *Journal of Islamic Law and Culture* article).

"Heteronomous Citizenship: Civic Virtue and the Chains of Autonomy," in *Toleration, Respect, and Recognition in Education*, ed. Mitja Sardoc (Malden, MA: Wiley-Blackwell, 2010), pp. 68-88 (reprinted from *Educational Philosophy and Theory* article).

"Religious Pluralism and the Liberty of Conscience," in *Pluralism Without Relativism: Remembering Sir Isaiah Berlin*, ed. João Carlos Espada, Marc. F. Plattner, and Adam Wolfson (Lexington Books and Rowman & Littlefield, 2007).

"A Liberalism of Conscience," in *Minorities within Minorities: Equality, Rights and Diversity*, ed. Avigail Eisenberg and Jeff Spinner-Halev (New York: Cambridge University Press, 2005), pp. 41-63 (reprinted from *Journal of Political Philosophy* article).

· *Law review articles, short articles, book reviews, and encyclopedia entries*

"Does Hate Speech Violate Freedom of Thought?" *Virginia Journal of Social Policy & the Law*, Vol. 29, No. 1 (2022), pp. 1-30.

Review of Kent Greenawalt's *When Free Exercise and Nonestablishment Conflict*, *Political Science Quarterly*, Vol. 133, No. 4 (2018), pp. 769-70.

"Minorities and Citizenship," *Hokkaido Law Review*, Vol. 63, No. 5 (2013), pp. 143-57 (published in Japanese).

Review of Andrew March's *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, *Politics and Religion*, Vol. 4, No. 1 (2011), pp. 192-95.

"Civil Religion," *SAGE Encyclopedia of Political Theory* (London: SAGE Publications, 2010).

Review of J. Caleb Clanton's *Religion and Democratic Citizenship: Inquiry and Conviction in the American Public Square*, *Notre Dame Philosophical Reviews*. 2009.04.19
<<http://ndpr.nd.edu/review.cfm?id=15865>>

"Politics, Philosophy, and Liberty of Conscience: A Reply to Three Critics," *Social Philosophy Today: Race and Diversity in the Global Context*, Vol. 24 (2009), pp. 201-08.

Review of Charles Fried's *Modern Liberty and the Limits of Government*, *Ethics*, Vol. 117, No. 3 (2007), pp. 555-60.

"Across the Divide," *Dartmouth Alumni Magazine*, July/August, 2006, pp. 26-27.

"The Mohammed Caricatures: Liberalism vs. Islam?" *openDemocracy.net*, March 2, 2006
<http://www.opendemocracy.net/faith-europe_islam/liberalism_3320.jsp>

Review of Paul Weithman's *Religion and the Obligations of Citizenship*, *Notre Dame Philosophical Reviews*. 2003.06.05 <<http://ndpr.nd.edu/review.cfm?id=1373>>

Review of *Religious Conscience, the State, and the Law: Historical Contexts and Contemporary Significance*, ed. John McLaren and Harold Coward, *University of Toronto Quarterly*, Vol. 71, No. 1 (2001-02), pp. 141-42.

Review of Robert Audi's *Religious Commitment and Secular Reason*, *The Philosophical Quarterly*, Vol. 52, No. 206 (2002), pp. 134-37. Reprinted as, "Should We Strike a 'Theoretical' Equilibrium?" in *The Forum*, Vol. III, Nos. 1 & 2 (2001), pp. 13-15.

Book Note on Franklin I. Gamwell's *Democracy on Purpose: Justice and the Reality of God*, *Ethics*, Vol. 111, No. 4 (2001), pp. 841-42.

Review of Stuart Hampshire's *Justice is Conflict*, *The Philosophical Quarterly*, Vol. 51, No. 203 (2001), pp. 271-74.

"Immanuel Kant," "Montesquieu: *Lettres persanes*," "Heresy," and "Tacitus: *Annales*"; entries for *Censorship: A World Encyclopedia*, ed. Derek Jones (London and Chicago: Fitzroy Dearborn, 2001).

Book Note on Jan Narveson's *Moral Matters*, *Ethics*, Vol. 107, No. 3 (1997), pp. 537-38.

"A Grave Irony": review of John E. Seery's *Political Theory for Mortals: Shades of Justice, Images of Death*, *The Review of Politics*, Vol. 59, No. 2 (1997), pp. 401-03.

Honors and Prizes

- Jerome Goldstein Award for Distinguished Teaching, Dartmouth College, 2010
- Jack E. Thomas 1974 Family Fellowship, Dartmouth College, 2007-08
- John M. Manley Huntington Memorial Award for Newly Tenured Faculty, Dartmouth College, 2007
- Walter and Constance Burke Junior Faculty Research Award, Dartmouth College, 2001-07
- Rockefeller Faculty Scholar, Nelson A. Rockefeller Center, Dartmouth College, 2003-04, 2004-05, 2005-06
- Junior Faculty Fellowship, Dartmouth College, 2005
- Dartmouth College Student Assembly Profiles in Excellence Teaching Award
- Fellow and Member, United College of St. Salvator and St. Leonard, University of St. Andrews, 1999-2001
- Brown University President's Award for Excellence in Teaching
- Brown University Graduate Council Research Fellow, 1998
- Stanley J. Bernstein Dissertation Fellow, 1997
- Brown University Faculty Scholar Award, 1997
- Political Science Prize for Outstanding Graduate Student Research, 1996
- Recognition of Students with Alternate Learning Styles, 1996

Invited Lectures and Conference Appearances

Roundtable Participant: Author Meets Critics panel (Eric Cheng's *Hanging Together*), American Political Science Association Annual Meeting, September 2, 2023.

Conference Paper: "The Spirit of Democracy," American Political Science Association Annual Meeting, September 2, 2023.

Panel Chair: "Democratic Theory and Chinese Political Thought," American Political Science Association Annual Meeting, September 2, 2023.

Panel Discussant: "Philosophy and Current Public Issues," American Political Science Association Annual Meeting, September 1, 2023.

Panel Chair and Discussant: "Regimes, Constitutions, and Institutions," New England Political Science Association Annual Meeting, April 21, 2023.

Conference Paper: "The Spirit of Democracy" New England Political Science Association Annual Meeting, April 21, 2023.

Invited Participant: "Freedom, Controversy, and Respect on Campus: Advancing Liberal Arts Inquiry in Contested Times," College of the Holy Cross, April 18-20, 2023.

Panel Chair: 4th Annual Moral and Political Philosophy Workshop, Dartmouth College, Hanover, NH, April 14, 2023.

Conference Paper: "Freedom of Thought and Democratic Repair" American Political Science Association Annual Meeting, September 17, 2022.

Panel Chair: "Social Media, Regulation and the Limits of Free Speech," American Political Science Association Annual Meeting, September 17, 2022.

Panel Discussant: "Pandemic Political Theory," American Political Science Association Annual Meeting, September 16, 2022.

Roundtable Participant: Author Meets Critics panel (Eric MacGilvray's *Liberal Freedom*), American Political Science Association Annual Meeting, September 16, 2022.

Conference Paper: "Can Freedom of Thought Edify Democracy?" New England Political Science Association Annual Meeting, April 29, 2022.

Conference Paper: "Does Hate Speech Violate Freedom of Thought?" Association for Political Theory Annual Meeting, University of Massachusetts, Amherst, MA, November 12, 2021.

Panel Chair and Discussant: "Liberalism and Tradition: Education, Economy, Empire," American Political Science Association Annual Meeting, October 3, 2021.

Conference Paper: "Does Hate Speech Violate Freedom of Thought?" XI Braga Meetings on Ethics and Political Philosophy, University of Minho, Braga, Portugal, June 10, 2021.

Invited Participant: "Respecting, Protecting, and Fulfilling Freedom of Thought: Consultation for the UN Special Rapporteur on Freedom of Religion or Belief," Ralph Bunche Institute for International Studies, New York, NY, June 2, 2021.

Conference Paper: "Does Hate Speech Violate Freedom of Thought?" New England Political Science Association Annual Meeting, April 24, 2021.

Panel Chair and Discussant: "Legislative Power and Democracy," New England Political Science Association Annual Meeting, April 23, 2021.

Panel Facilitator: "The Limits of Equality," Association for Political Theory Annual Meeting, November 10, 2020.

Panel Discussant: "Globalization, Cosmopolitanism, and Borders," American Political Science Association Annual Meeting, September 13, 2020.

Conference Paper: "Does Hate Speech Violate Freedom of Thought?" American Political Science Association Annual Meeting, September 12, 2020.

Panel Chair: "Normative Political Epistemology," American Political Science Association Annual Meeting, September 11, 2020.

Invited Participant: Intercollegiate Political Union Debate, "Resolved: Sign the *Harper's* Letter" (debate vs. Robert Post), Tuesday, September 8, 2020.

Invited Participant: Workshop on Amy Gais's *Bound by Belief: Rethinking Liberty of Conscience in Early Modern Political Thought*, Washington University in St. Louis, St. Louis, MO, October 18, 2019.

Panel Chair: "Populist Movements and Paradoxes of Citizenship," American Political Science Association Annual Meeting, Washington, D.C., August 30, 2019.

Panel Chair: "Origins of Nationalism," American Political Science Association Annual Meeting, Washington, D.C., August 30, 2019.

Invited Participant: Workshop on Adriana Alfaro Altamirano's *The Belief in Intuition: Personality and Authority in Henri Bergson and Max Scheler*, Georgetown University, Washington, D.C., August 28, 2019.

Conference Paper: "Freedom of Thought in Political History," New England Political Science Association Annual Meeting, Portland, ME, April 27, 2019.

Panel Discussant: "Of Law and Lies: Rhetoric and Classical Political Thought," New England Political Science Association Annual Meeting, Portland, ME, April 27, 2019.

Panel Chair: "Contemporary Ethical Problems in Politics," New England Political Science Association Annual Meeting, Portland, ME, April 26, 2019.

Commentator: 2nd Annual Moral and Political Philosophy Workshop, Dartmouth College, Hanover, NH, November 3, 2018.

Panel Chair: "Populism, Liberalism, and Democracy," American Political Science Association Annual Meeting, Boston, MA, August 31, 2018.

Panel Chair: "Sovereign and Non-Sovereign Modes of Political Community," American Political Science Association Annual Meeting, Boston, MA, August 31, 2018.

Conference Paper: "Education, Indoctrination, and Freedom of Thought," New England Political Science Association Annual Meeting, Portsmouth, NH, April 21, 2018.

Panel Chair and Discussant: "Statecraft and Leadership," New England Political Science Association Annual Meeting, Portsmouth, NH, April 20, 2018.

Conference Paper: "The Priority of Freedom of Thought," American Political Science Annual Meeting, San Francisco, CA, August 31, 2017.

Panel Discussant: "Freedom and 'The Market' in Late Modern and Contemporary Thought," American Political Science Annual Meeting, San Francisco, CA, August 31, 2017.

Commentator: Workshop on Economic Justice, Dartmouth College, Hanover, NH, August 3, 2017.

Conference Paper: "The Priority of Freedom of Thought," New England Political Science Association Annual Meeting, Providence, RI, April 22, 2017.

Panel Chair and Discussant: "Dialogues with Religion and the Bible: From Spinoza to Habermas," New England Political Science Association Annual Meeting, Providence, RI, April 21, 2017.

Conference Paper: "Freedom of Thought as a Check on Deliberative Demands," American Political Science Annual Meeting, Philadelphia, PA, September 2, 2016.

Panel Chair and Discussant: "Concentrated Power and Democratic Institutions," American Political Science Annual Meeting, Philadelphia, PA, September 1, 2016.

Conference Paper: "Freedom of Thought as a Basic Liberty," New England Political Science Association Annual Meeting, Newport, RI, April 23, 2016.

Conference Paper: "Legal Exemptions for Religious Feelings," New England Political Science Association Annual Meeting, Newport, RI, April 22, 2016.

Panel Chair and Discussant: "Human Rights and Non-Human Nature," New England Political Science Association Annual Meeting, Newport, RI, April 22, 2016.

Invited Lecture: "Equal Freedom of Thought: The Significance of Muslims' Religious Feelings," Amsterdam Centre for Inequality Studies, University of Amsterdam, Amsterdam, Netherlands, February 25, 2016.

Invited Lecture: "John Stuart Mill, Autonomy, and Individuality," Faculty of Social and Behavioral Sciences, University of Amsterdam, Amsterdam, Netherlands, February 24, 2016.

Invited Lecture: "Freedom of Thought as a Basic Liberty," Paul Scholten Centre for Jurisprudence, University of Amsterdam, Amsterdam, Netherlands, February 23, 2016.

Invited Participant: "Workshop on Religious Education in a Democratic Society," McGill University and Université de Montréal, Montreal, QC, Canada, January 29-30, 2016.

Panel Chair and Discussant: "Religion and the Demands of the Civic Order," Southern Political Science Association Annual Conference, San Juan, Puerto Rico, January 8, 2016.

Conference Paper: "The Idea of Ethical Autonomy," Southern Political Science Association Annual Conference, San Juan, Puerto Rico, January 7, 2016.

Conference Paper: "Political Liberalism and the Inclusion of Islam," International Symposium on Islamophobia: Race, Religion, Liberalism, Institut national de recherche scientifique (INRS), Montreal, Canada, October 30, 2015.

Conference Paper: "Freedom of Thought," Association for Political Theory Annual Conference, Boulder, CO, October 24, 2015.

Roundtable Participant: Author Meets Critics panel (Jacob T. Levy, *Rationalism, Pluralism, and Freedom*), American Political Science Association Annual Meeting, San Francisco, CA, September 3, 2015.

Conference Paper: "Ethical Autonomy," American Political Science Association Annual Meeting, San Francisco, CA, September 3, 2015.

Conference Paper: "Legal Exemptions for Religious Feelings," Religious Accommodation conference, Bowling Green State University, Bowling Green, OH, April 17, 2015.

Panel Respondent: Author-meets-critics panel on *Ethical Autonomy: The Rise of Self-Rule* (book manuscript draft), New England Political Science Association Annual Meeting, New Haven, CT, April 25, 2015.

Panel Discussant: "Ancient Tyranny," Tyranny and Totalitarianism: Past, Present, and Future conference, Dartmouth College, Hanover, NH, September 27, 2014.

Panel Discussant: "Liberalism, Group-Differentiated Rights, and Individual Autonomy," American Political Science Association Annual Meeting, Washington, D.C., August 31, 2014.

Conference Paper: "The Origins of Autonomy," American Political Science Association Annual Meeting, Washington, D.C., August 29, 2014.

Panel Discussant: "Political Theories in Historical Context," New England Political Science Association Annual Meeting, Woodstock, VT, April 26, 2014.

Conference Paper: "Ethical Autonomy," New England Political Science Association Annual Meeting, Woodstock, VT, April 25, 2014.

Commentator: Autonomy Workshop: Autonomy in Ethical and Political Theory, Dartmouth College, Hanover, NH, November 15, 2013.

Panel Discussant: "Religion and Politics beyond Church and State," American Political Science Association Annual Meeting, Chicago, IL, August 30, 2013.

Panel Chair and Discussant: "The Liberal Tradition," New England Political Science Association Annual Meeting, Portland, ME, May 3, 2013.

Conference Paper: "Can Muslims Transform Liberalism?" New England Political Science Association Annual Meeting, Portland, ME, May 3, 2013.

Conference Paper: "Freedom of Thought," New England Political Science Association Annual Meeting, Portsmouth, NH, April 27, 2012.

Panel Discussant: "Religion vs. Secularism," New England Political Science Association Annual Meeting, Portsmouth, NH, April 27, 2012.

Conference Paper: "Freedom of Thought, Religion, and Liberal Neutrality," Religious Toleration after 9/11 conference, University of Colorado, Boulder, CO, April 13, 2012.

Invited Lecture: "Minority Group Membership and Challenges of Ainu Citizenship," Hokkaido University School of Law / Center for Ainu & Indigenous Studies, Hokkaido University, Sapporo, Japan, March 29, 2012.

Invited Lecture: "Liberal Autonomy," Kobe University Law School, Kobe, Japan, March 26, 2012.

Panel Discussant: "Political Obligation and Legitimacy," American Political Science Association Annual Meeting, Seattle, WA, September 3, 2011.

Panel Chair: "Secrecy, Transparency, Truth and Politics," American Political Science Association Annual Meeting, Seattle, WA, September 1, 2011.

Conference Paper: "Can Muslims Transform Liberalism?" Islam in the Public Sphere conference, University of Washington, Seattle, WA, June 17, 2011.

Panel Chair: "Political Theory: Religion," New England Political Science Association Annual Meeting, Hartford, CT, April 25, 2011.

Panel Discussant: "Political Theory: Pluralism," New England Political Science Association Annual Meeting, Hartford, CT, April 25, 2011.

Conference Paper: "Liberal Autonomy," Personal Autonomy, Political Philosophy & Democracy conference, Dartmouth College, Hanover, NH, November 10, 2010.

Panel Chair and Discussant: "Rethinking Foundations of Agency and Order," American Political Science Association Annual Meeting, Washington, D.C., September 3, 2010.

Conference Paper: "What Should a Democratic Leader Be Willing to Do?" American Political Science Association Annual Meeting, Washington, D.C., September 3, 2010.

Conference Paper: "Moral Leadership: A Call for Character," Canadian Political Science Association Annual Meeting, Montreal, Quebec, June 3, 2010.

Panel Discussant: "20th Century Political Thinkers," Canadian Political Science Association Annual Meeting, Montreal, Quebec, June 3, 2010.

Conference Paper: "What Should a Democratic Leader Be Willing to Do?" New England Political Science Association Annual Meeting, Newport, RI, April 24, 2010.

Panel Discussant: "Religion and Liberalism," New England Political Science Association Annual Meeting, Newport, RI, April 23, 2010.

Conference Paper: "The Dark Heart of Critical Citizenship," American Political Science Association Annual Conference, Toronto, Canada, September 4, 2009.

Panel Chair: "Governmentality and Biopolitics," American Political Science Association Annual Meeting, Toronto, Canada, September 3, 2009.

Invited Participant: "The Nature and Limits of Liberty," Liberty Fund Conference, Philadelphia, PA, June 4-7, 2009.

Conference Paper: "The Dark Heart of Critical Citizenship," New England Political Science Association Annual Meeting, Portland, ME, May 9, 2009.

Panel Discussant: "Theory: Rights, Capabilities, Capacities," New England Political Science Association Annual Meeting, Portland, ME, May 9, 2009.

Keynote Address: "The Liberal Conscience: Politics and Principle in a World of Religious Pluralism," De Philosophia Graduate Student Annual Conference, University of Ottawa, Canada, March 28, 2009.

Conference Paper: "Including Islam: Political Liberalism and the Promise of Legitimacy," American Political Science Association Annual Conference, Boston, MA, August 30, 2008.

Invited Participant: "Moral Responsibility in War," Liberty Fund Conference, Philadelphia, PA, June 5-8, 2008.

Invited Lecture: "The Liberal Conscience: Politics and Principle in a World of Religious Pluralism," Yale University, New Haven, CT, April 28, 2008.

Panel Discussant: "The Individual and Society," New England Political Science Association Annual Meeting, Providence, RI, April 26, 2008.

Conference Paper: "Demanding Deliberation: Political Liberalism and the Inclusion of Islam," New England Political Science Association Annual Meeting, Providence, RI, April 26, 2008.

Invited Participant: "Fresh Thinking for Liberal Education," Teagle Foundation Meeting, Desmond Tutu Education Center, Graduate Theological Seminary, New York, NY, March 27-28, 2008.

Conference Paper: "Demanding Deliberation: Political Liberalism and the Inclusion of Islam," Islam & Liberal Citizenship conference, Yale University, New Haven, CT, December 6-7, 2007.

Panel Chair: "Arendt and Modern Politics," American Political Science Association Annual Meeting, Chicago, IL, September 1, 2007.

Panel Discussant: "Multiculturalism and Justice," American Political Science Association Annual Meeting, Chicago, IL, September 1, 2007.

Invited Participant: "Liberty and the Enforcement of Morality," Liberty Fund Conference, Philadelphia, PA, August 16-19, 2007.

Panel Respondent: Plenary panel on *The Liberal Conscience*, North American Society for Social Philosophy Annual Meeting, Millersville, PA, July 12-14, 2007.

Panel Respondent: Author-meets-critics panel on *The Liberal Conscience*, New England Political Science Association Annual Meeting, Boston, MA, April 27-28, 2007.

Conference Paper: "Demanding Deliberation: Political Liberalism and the Inclusion of Islam," Islam and Muslim Citizenship in Non-Muslim Liberal Democracies conference, Michigan State University, East Lansing, MI, April 20-21, 2007.

Invited Lecture: "Deliberate and Free: Autonomy and Heteronomy in Political Deliberation," Political Philosophy Workshop, Brown University, Providence, RI, March 8, 2007.

Conference Paper: "Deliberate and Free: Autonomy and Heteronomy in Political Deliberation," American Political Science Association Annual Meeting, Philadelphia, PA, September 2, 2006.

Invited Lecture: "The Liberal Conscience: Politics and Principle in a World of Religious Pluralism," Nelson A. Rockefeller Center for Public Policy and the Social Sciences, Dartmouth College, Hanover, NH, May 8, 2006.

Conference Paper: "Advancing Liberalism: Progressing Beyond Autonomy," American Political Science Association Annual Meeting, Washington, D.C., September 1, 2005.

Conference Paper: "Liberal Evolution: Progress Beyond Autonomy," New England Political Science Association Annual Meeting, Portland, ME, April 29, 2005.

Panel Chair: "Political Civility," American Political Science Association Annual Meeting, Chicago, IL, September 2, 2004.

Conference Paper: "Inspiring Civility: The Promise of Liberalism," American Political Science Association Annual Meeting, Chicago, IL, September 2, 2004.

Roundtable Participant: "Political Civility and the Public Sphere," Canadian Political Science Association Annual Meeting, Winnipeg, Canada, June 5, 2004.

Conference Paper: "Engaging Conscience: The Appeal of Liberalism," New England Political Science Association Annual Meeting, Portsmouth, NH, April 30, 2004.

Panelist: Public Forum entitled, "The Culture Wars" (live radio broadcast), New England College, Henniker, NH, March 26, 2004.

Panel Chair and Discussant: "Thomas Hobbes in Contemporary Political Theory," American Political Science Association Annual Meeting, Philadelphia, PA, August 31, 2003.

Panel Chair and Discussant: "Explaining Ideational Change," New England Political Science Association Annual Meeting, Providence, RI, May 3, 2003.

Invited Participant: "Liberty and Law in a World of Sovereign States," Liberty Fund Conference, Toronto, Canada, October 17-20, 2002.

Conference Paper: "Inspiring Liberal Reason: The Challenge of Theocratic Minorities," Minorities within Minorities: Equality, Rights & Diversity conference, University of Nebraska, Lincoln, NE, October 4-5, 2002.

Conference Paper: "Political Acidities: Argument and Rhetoric in Political Theory," American Political Science Association Annual Meeting, Boston, MA, August 31, 2002.

Conference Paper: "A Liberalism of Conscience," American Political Science Association Annual Meeting, Boston, MA, August 30, 2002.

Panel Chair: "Liberty of Conscience," American Political Science Association Annual Meeting, Boston, MA, August 30, 2002.

Invited Lecture: "Racial Hate Speech and Its Proscription," California State University, Chico, April 11, 2002.

Invited Lecture: "The Legacy of Theocracy: Discord in the Public Realm," The Boisi Center for Religion and American Public Life, Boston College, Chestnut Hill, MA, September 25, 2001.

Invited Lecture: "Political Theory and the Conduct of Faith: Oakeshott on Religion in Public Life," Michael Oakeshott Association Inaugural Conference, London School of Economics and Political Science, U.K., September 3-6, 2001.

Panel Discussant: "Liberalism at Its Limits," New England Political Science Association Annual Meeting, Portsmouth, NH, May 4-5, 2001.

Invited Lecture: "Liberalism and the Liberty of Conscience," Seminar in Philosophy & Religion, Boyd-Orr Building, University of Glasgow, U.K., November 30, 2000.

Lecture Series (as Gifford Research Fellow): "Theocracy: Conscience, Conflict, and the Promise of Liberalism," St. Salvator's College, University of St. Andrews, U.K., October 23, 24, 26, 30, 31, and November 2, 2000.

Panel Discussant: "The Problem of Divine Authority," Gifford Bequest International Conference (Natural Theology: Problems and Prospects), Aberdeen, U.K., May 26-29, 2000.

Conference Paper: "Religious Pluralism and the Liberty of Conscience," Arrábida 1999 conference (Pluralism Without Relativism: Remembering Sir Isaiah Berlin), Arrábida Convent, Portugal, October 4-8, 1999.

Conference Paper: "Theocratic Community and the Liberty of Conscience," Nationalism, Identity, and Minority Rights conference, University of Bristol, U.K., September 16-19, 1999.

Conference Paper: "Theocratic Communities and Liberal Democracies," Religion, Violence, & Conflict conference, University of Stirling, U.K., September 8, 1999.

Conference Paper: "The Legacy of Theocracy: Discord in the Public Realm," Northern Political Theory Association conference, University of St. Andrews, U.K., September 1-3, 1999.

Conference Paper: "How Ought Liberal Democracies to Treat Theocratic Communities?" American Political Science Association Annual Meeting, Boston, MA, September 5, 1998.

Conference Paper: "The Theocratic Challenge to Liberty," American Political Science Association Annual Meeting, Washington, D.C., August 30, 1997.

Panel Chair: "Science, Ideology, Institutions," American Political Science Association Annual Meeting, Washington, D.C., August 30, 1997.

Panel Discussant: "Strategies and Social Movements," American Political Science Association Annual Meeting, Washington, D.C., August 31, 1997.

Panel Discussant: "Rational Planning and Nietzschean Doubts," New England Political Science Association Annual Meeting, New London, CT, May 2, 1997.

Conference Paper: "The Secret Chain: On Justice and Self-Interest in Montesquieu's *Persian Letters*," Northeastern Political Science Association Annual Meeting, Boston, MA, November 14, 1996.

Panelist: Public Forum entitled, "Separation of Church and State: Understanding the Boundary," Barrington Public Library, Barrington, RI, March 28, 1996.

Conference Paper: "Blameless, Constructive, and Political Anger," Northeastern Political Science Association Annual Meeting, Providence, RI, November 12, 1994.

Professional Memberships

Member, American Political Science Association (Division Chair for Normative Political Theory [Division 3], 2012-13; Annual Conference Program Committee, 2012-13; Member-at-Large, Human Rights Section, 2018-20; Best Dissertation Award Committee, Human Rights Section, 2018-19, 2019-22 [Committee Chair, 2021, 2022]).

Member, American Philosophical Association

Member, American Society for Political and Legal Philosophy

Member, Association for Political Theory

Member, International Conference for the Study of Political Thought

Member, New England Political Science Association (Section Chair for Political Theory, 2002-2003; Executive Council, 2004-2006, 2016-18; Annual Conference Program Chair, 2006)

Member, Philosophy, Politics, and Economics Society

Member, Editorial Board, *Ethical Theory and Moral Practice* (appointed in 2014; reappointed in 2021)


Member, Editorial Board, *American Political Science Review* (appointed in 2024)

Referee Service

American Journal of Political Science, *American Political Science Review*, *Australasian Journal of Philosophy*, *British Journal of Political Science*, *Canadian Journal of Philosophy*, *Constellations*, *Contemporary Political Theory*, *Ethical Theory and Moral Practice*, *Ethics*,

European Political Science Review, Inquiry, Journal of Ethics & Social Philosophy, Journal of Moral Philosophy, Journal of Philosophical Research, Journal of Political Philosophy, Journal of Politics, Journal of Social Philosophy, Law, Culture and the Humanities, Philosophical Quarterly, Philosophical Review, Philosophy & Social Criticism, Political Psychology, Political Research Quarterly, Political Studies, Political Theory, Politics & Gender, Politics and Religion, Polity, Res Publica, Review of Politics, Security Studies, Social Theory and Practice, Studies in Christian Ethics

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This is Exhibit B referred to in the
 affidavit of Lucas Swaine
 sworn before me, this 26th
 day of April 2024

 A COMMISSIONER, ETC

Sworn remotely by Lucas Swaine in the city of Hanover, NH
 with commissioner Joanna Shaw in the city of Toronto, ON.

JOANNA KATHLEEN SHAW,
 a Commissioner, etc., Province of Ontario,
 for LEWIN & SAGARA LLP,
 BARRISTERS AND SOLICITORS.
 Expires October 16, 2026.

LS 

Freedom of Thought as a Basic Liberty

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Abstract

Freedom of thought has been lauded in political theory and celebrated in human rights discourse. But what kind of freedom is it? I propose that freedom of thought deserves status as a basic liberty, given the significance of thought to human life, the fundamental importance of freedom of thought in establishing and sustaining crucial rights and freedoms, and the value of being able to develop and experience one's thoughts without undue influence from others.

Keywords

liberty, thinking, thought, liberalism, human rights

Is freedom of thought a basic liberty? Notable statements in the liberal canon suggest that it is, and a number of prominent international declarations and resolutions voice the idea that something special graces freedom of thought. But the nature of freedom of thought remains unclear; and it is far from obvious that freedom of thought merits status as a basic liberty, alongside cardinal and established freedoms of expression, religion, conscience, and association.

I examine whether freedom of thought should be considered a basic liberty, in this article. I begin by noting the centrality of thinking to human life, following which I elaborate a set of important views that emphasize the significance of freedom of thought. I consider subsequently the place of

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freedom of thought in liberal political theory and in human rights discourse, examining prominent statements within those traditions. I move then to assess whether freedom of thought is distinguishable with respect to other key liberties, following which I employ my findings to consider whether freedom of thought merits status as a liberty of the basic kind. In the course of analysis, I give reason to hold that freedom of thought is indeed special and distinctive. I propose that freedom of thought deserves status as a basic liberty, given the significance of thought to human life, the fundamental importance of freedom of thought in establishing and sustaining crucial rights and liberties, and the value of being able to develop and experience one's thoughts without undue interference from others.

The Importance of Thought

Thinking is a deeply important part of human life. Reflection and cogitation sparkle in the realm of thought, and it is in thinking that ideas take shape. Thinking connects to action, conditioning behavior and contributing to the generation of outward activity. People's social and political exchanges involve and imply thoughts. When people air their opinions, they employ their mental faculties, their expressions often reflecting the ideas and views they possess. Thinking matters also when one disengages from conversation. People spend a considerable amount of time alone with their thoughts; some of this may be taken up in rumination or imagination, some spent evaluating desires and assessing goals.

Thinking reveals additional significance when one considers what it might be like not to think at all. It is common enough for authors to decry the lack of careful thought in democratic majorities, or to bemoan citizens' disuse of their mental capacities. But critics chide the public for not thinking well, or enough, or about the right things; or they voice concern about citizens drawing unjustified or false conclusions and circulating them as though the points were warranted and true. The critics' concerns are not that citizens do not think at all. To be devoid of thought would be not to exist as a social being, in a normal, human sense of the word. Literally not to think would be to sleep-walk dreamlessly through life; it would be to suffer exile from the fellowship of mankind, as Philoctetes might say, marooned without even the quiet company of one's mind.

The Idea of Freedom of Thought

Like thinking itself, the idea of freedom of thought proves to be a weighty concern garnering support from many points on the political spectrum. Rosa

Luxemburg remarks that freedom is “always the freedom of one who thinks differently.”¹ Charles Fried touches upon the importance of freedom of thought in his heady discussion of “liberty of the mind.”² The American founders laud the importance of freedom of thought: Benjamin Franklin endorses it in a notable aphorism, contending that without freedom of thought there can be “no such thing as wisdom.”³ More emphatic still is Thomas Jefferson’s sweeping declaration that he has “sworn upon the altar of god [*sic*], eternal hostility against every form of tyranny over the mind of man.”⁴ The statement reflects Jefferson’s antagonism towards illegitimate coercion and fear of reprisal, both of which powerful rulers have deployed to control populations and to silence dissent.

One finds freedom of thought eulogized in the liberal tradition, most notably in prominent philosophical statements on the nature of the central liberties. Consider, for example, John Stuart Mill’s treatment in *On Liberty*. Mill invokes freedom of thought at the outset, mentioning it in his delineation of the appropriate realm of human liberty. As Mill describes it, that sphere includes

the inward domain of consciousness, demanding liberty of conscience in the most comprehensive sense, liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological.⁵

This domain comprises the “first” realm of human freedom, Mill proposes.⁶ His description does not imply that liberty of thought is identical to liberty of conscience, nor does it suggest that the latter encapsulates the former. To the contrary, Mill’s depiction suggests a difference between freedom of thought and freedom of conscience, that the two are not identical liberties. Also noteworthy is his recognition of freedom of sentiment, a freedom that, he suggests, manifests qualities different from that of opinion. The distinction is sensible: how one thinks or feels about something can be different from the opinion one holds on the subject, and both are distinguishable from what one opines to others, a point that Mill appears to have understood quite well.⁷

The freedom to express and publish opinions, Mill reflects, might “seem to fall under a different principle [than liberty of thought]” because it involves conduct that often concerns others.⁸ However, Mill adds that the freedom to express and publish opinions is “practically inseparable” from freedom of thought, and “almost of as much importance as the liberty of thought itself.”⁹ His statements are highly provocative, especially given Isaiah Berlin’s portrayal of Mill as the “greatest champion” of liberty and the founder of modern liberalism.¹⁰ In the first place, to say that freedoms of thought and speech are

practically inseparable is not to propose that those freedoms are analytically or logically indistinguishable. Second, Mill claims that freedom of thought is more important than the freedom to express and publish opinions; this gives reason to think that, for Mill at least, the respective freedoms are indeed divisible analytically, whether they may be distinguishable in practice. Third, and perhaps most interestingly, Mill proposes that at least some features or forms of freedom of expression, if not all of them, are less important than freedom of thought. For the liberal champion of freedom of speech, this is a noteworthy statement, indeed.¹¹

Mill's discussion of freedom of thought owes a debt to the work of Wilhelm von Humboldt, who, in *The Limits of State Action*, emphasizes the significance of freedom of thought to free inquiry and enlightenment. Humboldt warns that "pernicious results [arise] from restrictions on freedom of thought," noting that free inquiry is imperative for "our whole manner of thinking, and even acting."¹² While the use of reason arouses doubt in an inquiring mind, intellectual investigations can be part of enlightening and liberating experiences.¹³ The power and value of thinking are generally more important than the particular results or conclusions one reaches in thought, Humboldt suggests—and one should not suppose that further ideas or truths depend necessarily on established conclusions.¹⁴ That outlook tends to stifle inquiry and bring it to a halt; this prompts one to appreciate why freedom of thought is "so vital," with anything that diminishes it being "so fatal."¹⁵ And while Humboldt praises the "self-reliance and firmness [of] the inquiring thinker," he submits that freedom of thought and enlightenment are not "for a few only"; instead, they spread their purpose and worth across the body politic.¹⁶ A well-formed society should allow "complete" freedom of thought, he concludes: so doing can improve "the mind and character of [an] entire nation," extending beneficial results "even to [the] humblest individuals."¹⁷

John Rawls adds further important statements on freedom of thought to the liberal catalog. Like Mill, Rawls suggests that freedom of thought is central to the basic structure of a just society. In *Political Liberalism*, he proposes that one should include freedom of thought as part of what he calls a "fully adequate scheme of basic liberties."¹⁸ Rawls is clear that freedom of thought counts among the basic liberties—he places it first on the list—and he suggests that the basic liberties jointly hold the status of a primary good.¹⁹ Freedom of thought does not appear to be a political liberty for Rawls, however. One infers this from his comment that "the equal political liberties and freedom of thought" have a special role in securing "the free and informed application of the principles of justice, by means of the full and effective exercise of citizens' sense of justice, to the basic structure of society."²⁰ Rawls draws a nearly identical distinction nearby in the text: he proposes that "the

political liberties and freedom of thought” have an essential role in specifying a “just political procedure,”²¹ maintaining that the constitution of a well-ordered democracy must guarantee freedom of thought in order for political liberties to be exercised in a “free and informed” manner.²²

Rawls’s account of the basic liberties includes requirements of representative democracy and protections for freedom of speech, freedom of the press, and free association.²³ Freedom of thought and liberty of conscience figure prominently in Rawls’s argument, however; this coheres with his case in the revised edition of *A Theory of Justice*, wherein Rawls emphasizes the “high place [that] must be accorded to liberty of conscience and freedom of thought.”²⁴ He clarifies this position by proposing that, from the perspective of the “constitutional convention,” arguments for equal liberty of conscience support regimes “guaranteeing moral liberty and freedom of thought and belief, and of religious practice, although these may be regulated as always by the state’s interest in public order and security.”²⁵ One notes Rawls’s allowance that government may potentially or actually regulate freedom of thought, even though he does not describe exactly how regulation of that kind might proceed.

Rawls extends these positions in his 1993 essay “The Law of Peoples,” arguing in favor of a measure of liberty of conscience and freedom of thought for peoples around the globe.²⁶ In his subsequent book-length treatment of the subject, he contends that the basic human rights include “a sufficient measure of liberty of conscience to ensure freedom of religion and thought.”²⁷ These freedoms are not irreducibly liberal or particular to Western tradition, Rawls maintains; neither are they “politically parochial,”²⁸ and any decent society must respect them.²⁹

Rawls’s discussions of freedom of thought, and of closely related liberties and rights, track larger trends and developments in international human rights discourse. His standpoint on freedom of thought fits with language expressed in Article 18 of the 1948 *United Nations Declaration of Human Rights* (UDHR), for instance, which proposes that

everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.³⁰

The UDHR places freedom of thought in close proximity to freedom of conscience. Article 18 includes direct mention of freedom of religion, as well, suggesting that the three freedoms are meaningfully distinguishable even if they are all subsumed under one single right. The language of the UDHR

neither expressly requires nor conveys the sense that the three freedoms are identical; nor does Article 18 indicate that either freedom of conscience or freedom of religion, respectively, covers freedom of thought. With Mill and Rawls, Article 18 implies to the contrary: that the three freedoms are meaningfully different from each other in at least some respect. One notes furthermore that the language of Article 18 proposes that the right in question "includes" the freedom to change one's "religion or belief"; so it is not obviously exhausted by modifications of that kind, and freedom to hold a variety of thoughts, or to change them, could reasonably be argued to be covered under the UDHR.

The UDHR's affirmations have generated subsequent United Nations provisions reiterating the importance of freedom of thought. For example, Article 18 of the International Covenant on Political and Civil Rights (ICCPR) maintains that the right to freedom of thought, conscience and religion includes freedom "to manifest [one's] belief in worship, observance, practice and teaching," and it provides that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."³¹ The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*³² (EAFIR) follows the ICCPR. It affirms, in the second paragraph of its preamble, that the UDHR and the International Covenants on Human Rights "proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief."³³

I wish to emphasize three points that emerge from the analysis to this point. First, freedom of thought enjoys strong support in the philosophical statements of Humboldt, Mill, and Rawls. Not only is freedom of thought included on their lists of basic liberties, often it is mentioned first. Second, United Nations declarations and covenants repeatedly affirm the value of freedom of thought, striving to convey the sense that something valuable and distinctive graces that freedom's nature. Third, while these factors may give presumptive reason to think that freedom of thought is a highly important liberty, they do not establish that it is a basic liberty. The canonical declarations are helpful and suggestive but they do not give clear reason to hold that freedom of thought is a liberty of the basic kind. Freedom of thought could prove superfluous, for instance, were it subsumable entirely under other well-established liberties. Another possibility is that freedom of thought is only of minor significance. A further prospect is that freedom of thought lacks content: it might turn out to be only a putative liberty, one that speakers invoke for rhetorical purposes but which, upon examination, connotes nothing special or distinctive.

What Does Thinking Include?

I have thus far outlined a *prima facie* sense of the importance of freedom of thought and noted the prominence of that freedom in canonical statements in political theory. It serves at this point more precisely to define what one might mean by “thought” and “thinking,” for the sake of clarity. So doing helps to bring the idea of freedom of thought into focus alongside associated rights and liberties. An appropriate definition of “thinking” enables one to consider possible distinctions between freedoms of thought, conscience, expression, and religion, furthermore, a step useful for illuminating the qualities of freedom of thought itself.

For purposes of analysis, I define “thinking” as “mental activity,” and I shall use “thinking” and “thought” interchangeably. This definition is purposefully broad. It encompasses a wide range of mental phenomena: examples of thinking include deliberation, imagination, belief, reflection, reasoning, cogitation, remembering, wishing, sensing, questioning, and desiring. According to this definition, thinking runs the gamut: it can be directed toward a wide variety of objects, and it may be more or less rational or imaginative. This conceptualization allows that some thoughts may be about social or political phenomena; that others have a more interpersonal focus; that thoughts may or may not be religious; and so on.

The definition I provide is unadorned and unremarkable. It appears appropriate and apt for philosophical and legal analysis of freedom of thought, furthermore; the definition does not mark out an uncommon understanding of “thinking,” and neither does it bias the analysis in favor or against freedom of thought turning out to be a basic liberty. The conception of thinking that I employ is broader than Martha Nussbaum’s, because it includes “imagination” and “sensing” under its rubric.³⁴ I do not object to Nussbaum’s distinctions between thinking, imagining, and sensing; my account does not depend on the denial of those distinctions. The case that I furnish could in principle exclude sensing or imagining from what counts as thinking without affecting the structure of the argument. But a broader allowance is useful for bringing the parameters of freedom of thought clearly into view.

Naturally compatible with the idea of thinking as mental activity is the observation that thoughts often coincide with outward physical action. Thinking and acting regularly go hand-in-hand: people often think and act in concert, with activities in the two spheres operating in combined and cooperative ways. Even so, I limit discussion in the first instance to the “inward domain of consciousness” that Mill describes.³⁵ This is because situations in which thoughts manifest in action raise independent moral and political considerations. Cases in which individuals both think and act risk confusion because they involve

other liberties pertinent to the outward acts that the individuals perform. A person's outward actions broach spheres of movement, of expression or association, and so forth, drawing in related rights and liberties in those respects.

To clarify the analysis, three qualifications are in order. First, I exclude cases in which people express their thoughts to others.³⁶ This exclusion covers spoken language, written messages or tracts, artistic works, publications, and any other expressive acts presented to others or performed with the intention of reaching other people after some period of time.³⁷ I set these examples aside because they do not represent instances of thought alone. Examples in which people communicate with others and express their views, or where people make their opinions known publicly, involve issues of freedom of expression that pull focus away from thinking and from whether freedom of thought is a basic liberty. In listing deliberation as a form of thinking, therefore, I mean to include only intrapersonal deliberation. This coheres with Philip Pettit and Michael Smith's suggestion that "thinking itself is a kind of intrapersonal conversation,"³⁸ but it may be noted that intrapersonal deliberation remains just one form of thought, on the conception that I employ here. This analytical strategy serves an important heuristic purpose; and whereas some may question whether any crisp distinctions separate thought from other forms of human activity, the broader case that I marshal in favor of freedom of thought as a basic liberty should prove compatible with, and affirmable within, a variety of philosophical views.

Second, it is important to distinguish between a person's thoughts and the manner in which others gain familiarity with them. One needs generally to rely upon another's speech, emotional expressions, or other outward acts—phenomena other than the person's thinking per se—in order to draw inferences about their thoughts. But one should not confuse thinking itself with the phenomena used to infer or to ascertain it, and this is important to keep in view for the present study.

Third, there is a difference between the question of whether freedom of thought is a basic liberty, on one hand, and what criteria or conditions must be met in order to make someone capable of thinking, or of thinking well, on the other. Important though the latter questions happen to be, one must not be sidetracked by them. I do not dispute that people need language, communicative capabilities, a history of interpersonal association and agency, and a relatively rich environment in order to become capable of various forms of thought. But I set these points aside because the conditions do not obviously remain necessary for a person to engage in thinking, once he or she has become capable of thought, and answering the question whether freedom of thought is a basic liberty does not appear to necessitate treatment of just what capabilities people may require in order to think effectively.

Is Freedom of Thought Distinctive?

In order to gain purchase on the issue of whether freedom of thought is a distinctive liberty, it serves to consider whether that freedom has a robust and separate set of qualities when compared against other liberties that people commonly affirm. I mean to pick out liberties that are broadly acknowledged and upheld in scholarly literature, and which are largely uncontroversial. This investigative strategy is useful variously, not least because thought is elusive and hard to see. Thinking is easily overlooked when one sets it against more prominent and visible practices of expression, association, movement, and so forth. And it is plausible that whether freedom of thought deserves status as a fundamental liberty depends partly on the extent to which it is distinguishable from established and accepted liberties of the basic kind.

I have noted that freedom of thought has close connections to a variety of established freedoms, each of whose political and legal significance proves foundational to constitutional democratic orders. Freedom of thought and liberty of conscience are often mentioned in same breath; both appear to be linked to freedom of religion, and each one connects to freedom of expression. These freedoms are quite plausibly interdependent in practice. For instance, it is hard to see how a society could reliably institute and guarantee religious freedom without protections for freedom of speech or liberty of conscience. And scholars often suggest that, as a political and legal matter, people need these freedoms together, along with cognate freedoms of association, of petitioning government, of the press, and so on, in order to generate stable and well-functioning democracies. Freedoms of religion, conscience, and expression tend to come bundled, it seems, such that societies must develop protections for them as a group, if any of the freedoms are to flower.

At a more involved level of observation, one notes that writers have often muddled discussions of freedom of thought with more commonly recognized basic liberties. The problem is evident in J. B. Bury's *A History of Freedom of Thought*, which, for all its merit, jumbles freedom of thought with related freedoms of expression, conscience, and religion.³⁹ Justice Benjamin Cardozo provides another example, running together freedoms of thought and speech in a famous and influential United States Supreme Court decision.⁴⁰ I do not know quite what accounts for this tendency. Perhaps writers lump freedom of thought in with cognate freedoms because, as a political or legal matter, freedom of thought has seemed relatively secure when some combination of freedoms of expression, conscience, association, and religion are guaranteed. Another possibility is that freedom of thought has been overlooked because thought is subtle and difficult to see.⁴¹ One can add to this the fact that people

gain familiarity with others' thoughts through speech and behavior, for which there already exists an established moral discourse of rights and liberties. These factors could account in part for the neglect of freedom of thought, or for what Neil Richards describes as the "relatively little attention [given] to the processes by which speakers develop their ideas."⁴² Whatever the reasons for failing to give freedom of thought its due, writers appear not even to have looked to see whether or how this freedom might be a distinctive liberty in its own right. And here it may be noted that one cannot take for granted that guarantees for other basic freedoms suffice to protect freedom of thought, just as one should not suppose that close correlation between two phenomena implies that they are identical. Freedom of thought might not be a liberty that is as easy to grasp as the others, but one cannot fairly assume that the various qualities of this liberty are completely covered by other freedoms, nor is it sensible to decline to give freedom of thought the discrete analytical treatment that it deserves.

Consider how freedom of thought relates to freedom of expression. Even though the two are closely linked, freedom of thought appears different, sufficiently so to leave it unable to be fitted within the framework of free speech theory.⁴³ The central reason for this is that one can think a wide variety of thoughts without ever expressing them. People are capable of thinking things that they do not disclose to others, and this marks a decisive difference between thought and expression. Bury suggests that people wish naturally to express their thoughts to others;⁴⁴ that is a fair point, but it does not hold for all the thoughts people generate. Furthermore, whether someone wishes to state or otherwise to convey what he or she desires, believes, imagines, assumes, feels, expects, or remembers, the thoughts themselves are different from their expression. These considerations scuttle attempts to subsume, as a conceptual matter, freedom of thought under freedom of expression.

The idea of freedom of thought is special. It captures the sense of being able to engage in mental activities without legal penalization for one's thoughts, and without undue incursion into one's mental life. This marks off a further difference between the respective freedoms of thought and speech. The latter is commonly understood to consist in the ability to engage in discussion, to air opinions, to express views artistically or through deployment of symbols, and so forth, without facing legal punishment for so doing, or without having the expressive acts undermined (e.g., newspapers confiscated, artwork destroyed). Alexander Meiklejohn makes an impressive attempt to include freedom of thought within the protections of the First Amendment,⁴⁵ but no realistic freedom-of-speech concern exists in cases in which nobody desires, attempts, or performs an expressive act, whereas freedom-of-thought concerns can and do obtain in precisely those circumstances.

Thought and action may go naturally together, but in situations in which no speech act has been attempted and none is quashed, no display of opinion made or even desired, nothing said and things only thought, freedom of speech theory is silent.

To illustrate the point, consider Mill's complaint regarding situations in which people are permitted only to hold opinions "in secret."⁴⁶ Even in conditions in which people cannot speak freely, a liberty to generate and to hold opinions appears different and distinctive because people could have that freedom whether they were permitted to express themselves. I do not mean to say that one should expect people to think especially well when they live in constant fear of reprisal for discussing forbidden topics or for airing unapproved views. It is difficult to inform one's thoughts without the freedom to express oneself and to exchange information; and freedom of thought is important in order for one to form something to express in the first place.⁴⁷ But those are independent issues with their own philosophical contours.

Other basic freedoms are more readily distinguishable from freedom of thought. Consider how freedom of thought compares to freedom of conscience, where one understands conscience to be a capacity to bond with notions of what is right and good.⁴⁸ First, the variety of mental activity included under the rubric of thought is considerably broader than that which pertains to conscience. Thinking encompasses a broad range of moral and non-moral beliefs and desires, along with imaginings, remembrances, and so forth, and many instances of thought may not be constitutive of conscience or its affirmations. This gives cause to hold that freedoms of thought and conscience are, respectively, meaningfully distinct. Second, one can inform or persuade a person's conscience in ways qualitatively different from merely changing someone's thoughts. Not all modifications to a person's thoughts are alterations to their conscience, and the hallmark ability of conscience to bond to ideas of what is right and good distinguishes it from forms of mental activity that thinking includes. Third, while individuals can act against the dictates of their consciences, they may face significant emotional or cognitive obstacles in their attempts to do so. Acting contrary merely to what one thinks, in contrast, need not be an especially difficult task; this is yet another way in which thought and conscience are distinguishable. Finally, with regard to direct differences between freedom of thought and freedom of conscience, the latter involves external action in a way that the former need not. An important part of freedom of conscience is the ability to act, or to refrain from acting, based on one's conscientious commitments, whereas that is not an essential element of freedom of thought.

Like freedom of conscience, freedom of religion consists partly in the ability to engage in outward activities, and it, too, can be distinguished from

freedom of thought. Part of freedom of religion is the ability to believe in such things as otherworldly powers without facing persecution for those affirmations. However, freedom of religion also encompasses protections for worshipful practices and other outward behavior understood as part of religious expression. Furthermore, while some forms of thinking may be religious in nature, not all thinking has that quality. For instance, a person's opinion of a political official might possess no religious qualities if the opinion were neither derived from any religious idea or belief, nor composed of any essentially religious content.⁴⁹ One can distinguish freedom of thought from freedom of association, furthermore, and more readily still. Freedom of association consists in the ability of people to congregate, with outward actions being one of that freedom's central concerns. The individual capability of forming, expressing, or improving one's thoughts may of course benefit from associational liberty, and perhaps even depend upon it, but that is again a separate consideration. Finally, one notes that Part III of the ICCPR seeks to distinguish between these various freedoms, giving separate mention to freedom of thought, conscience and religion (Article 18); to the right "to hold opinions without interference" (Article 19); to the right of peaceful assembly⁵⁰ (Article 21); and to the right to freedom of association (Article 22).

Freedom of Thought as a Basic Liberty

I have to this point argued that freedom of thought can be distinguished from closely related freedoms of expression, conscience, religion, and association. This does not suffice to show that freedom of thought qualifies as a basic liberty, however. The freedom to drive a motorized vehicle is different from any of the aforementioned liberties and yet one would hardly call that liberty basic. What is needed is an argument to the effect that freedom of thought warrants recognition as a basic liberty, given its distinctive qualities and in keeping with its purported esteem.

A key reason for holding that freedom of thought enjoys the "status of substance" of a basic liberty is that freedom of thought appears critically important for a person's enjoyment of other basic liberties and rights.⁵¹ Indeed, it is difficult to conceive of any rights or liberties whose very meaning and enjoyment do not involve thinking, or which do not depend otherwise on complex mental activity in some critical way. Security and subsistence rights appear this way, as do related basic liberties. Humboldt's reflections on the centrality of freedom of thought are helpful on this front: he contends that freedom of thought, and the enlightenment it produces, are "the most efficient of all means for promoting security."⁵² Humboldt might overstate his case, but it is sensible to suppose that freedom of thought plays a key role in

the promotion of security, that it is necessary for the enjoyment of other rights and liberties, and that it is part of a minimally decent human existence. To be clear, one could have some subsistence rights in place without protecting freedom of thought. For example, government could respect a basic right of freedom from assault in situations in which someone has no thought at all.⁵³ But that would not rise to the level of meaningfully enjoying freedom from assault. Merely shielding people from physical attack, without also protecting freedom of thought, would be to treat them more like sheltered animals than as human beings. It is therefore reasonable to propose that freedom of thought is a basic liberty, and one that is constitutive, if not solely and entirely so, of cognate basic liberties and the enjoyment thereof.⁵⁴

To exemplify, consider a scenario in which a country's public officials punish citizens found to have contrarian political ideas or antisocial sentiments. In a society with punishments for thought, each of the freedoms of expression, association, and religion would be severely stunted, the more dramatically so the greater the assault on freedom of thought, *ceteris paribus*. Sanctions on contrarian or unapproved thoughts would hamper citizens' moral and intellectual development. Punishments of that kind would make it all the more difficult for people to reckon with their various thoughts, impeding their ability to decide for themselves how to proceed. The limitations would risk rendering people's expressions inauthentic, furthermore, undermining the meaningfulness of discourse. Sanctions on thought would also deaden civil society, whose many secondary associations would be hampered by fear of the ideas and views they might produce. After all, were such associations to generate incorrect thoughts in their membership, the citizens could be subject to prosecution even if their behavior were not out of line. This example shows how freedoms of speech, association, conscience, and religion all depend on freedom of thought: undercutting freedom of thought diminishes other vital freedoms.

Rawls's reflections on the significance of basic liberties are also instructive, helping further to establish that freedom of thought is a liberty on which other rights and liberties heavily depend. I have already described how, in Rawls's view, freedom of thought is a basic liberty that is partly constitutive of a primary good.⁵⁵ Rawls reflects that the significance of any basic liberty depends on "whether [the liberty] is more or less essentially involved in . . . the full and informed and effective exercise of the [two] moral powers."⁵⁶ On the account of moral powers that Rawls provides, freedom of thought qualifies as a highly important basic liberty. First of all, an individual cannot form, revise, or pursue a conception of the good without thinking, because each element of that moral power irreducibly includes thought on the part of the individual who has it. Conceptions are held in the mind, after all, and an

individual's pursuit of her conception of the good logically entails more or less well-conceived values and ends. Second, to the extent that others may be capable of interfering with one's thinking, and so able to hamper one's pursuit of the good, so conceived, it appears reasonable to suppose that the first moral power essentially involves freedom of thought. Third, the capacity for a sense of justice—the second moral power, according to Rawls—implies at least working familiarity with notions of right and wrong, a familiarity that cannot be achieved or maintained without thinking. People employ a variety of forms of thought in developing a sense of justice and coming to appreciate its moral weight. Fourth, parties external to an individual can incapacitate that person's thinking, thereby hampering the individual's capacity to develop a sense and understanding of justice.⁵⁷ The possibility of wrongful interference in one's moral thinking adds weight to the notion that freedom of thought enjoys special value. Each of these considerations affords greater credence to the idea that freedom of thought is highly substantial, and that this freedom merits status as a basic liberty.

Further support for the idea that freedom of thought qualifies as a basic liberty issues from the fact that existing rights, which protect other basic liberties, do not provide adequate security for freedom of thought. For instance, free speech guarantees prove inadequate in this regard.⁵⁸ The example of the society that punishes citizens who have undesirable thoughts prompts one to see how this is so. That society might simultaneously defend the right of its citizens to express a broad range of statements and views; it simply prosecutes people found to have pernicious or wayward ideas. Such a society could be willing to tolerate a great deal of speech and expression but still aim to probe or to change people's thoughts, in combination with levying penalties for ideas or beliefs deemed unacceptable. An approach of that kind may be unpalatable but it is not obviously irrational. Government officials might find it efficacious to focus on people's thinking, proceeding on the operating principle that mental activities are wellsprings of various social and political ailments. They may suppose that methods calibrated to alter citizens' thoughts could assuage social ills spanning from citizen disengagement and apathy to antisocial behavior and subversive action. Such efforts might even be made to try to dissolve rebellious or revolutionary ideas before they take hold in the citizenry. To treat the diseases afflicting their society, the idea might be, state institutions should go after the root cause—the thinking—instead of focusing energies on citizens' speech acts, which are symptomatic of underlying problems.

The idea of political authorities attempting to punish people for what they think might seem merely hypothetical and farfetched. However, punishments for thought have in many times and places been available to courts and councils, and to ruling authorities generally. For instance, in England it was

formerly the case that thinking of regicide was a punishable offense.⁵⁹ The Treason Act of 1351 made it a treasonable offense to “compass or imagine” the death of the King, his wife, or his eldest son and heir.⁶⁰ The language of the Treason Act operated for a considerable period; in the latter half of the eighteenth century, William Blackstone came to say that its words were meant to be “declatory.”⁶¹ Jeremy Bentham vigorously attacked what ultimately became the revised Treasonable Practices Act,⁶² proposing that it was unsound to make illegal people’s mere imaginings.⁶³ However, as John Barrell points out, even “imagining [the King’s death] in a weak sense” was argued to suffice for treason in England, in the 1790s.⁶⁴ Further examples protrude from the former Soviet Union, spurting from under the heel of Stalinist repression during the latter half of the 1920s and in the Great Purge of 1936–1938. Robert Tucker describes Stalin’s preoccupation with rooting out *dvurushniki* (“two-faced people”) from party ranks: a *dvurushnik* outwardly professed party loyalty but was believed to hold antiparty sentiments or ideas, and thus was determined to be insufficiently enthusiastic for Stalin and his leadership.⁶⁵

Lest one suspect that only freedom of speech guarantees do not adequately shield freedom of thought, it may be observed that freedoms of association, religion, and conscience are similarly limited. Mechanisms for protecting each of those important liberties cannot protect key elements of thinking. Government might allow citizens freely to associate and to worship as they please, for instance, but still use its coercive and persuasive powers to try to modify people’s thoughts, employing various invasive or excessive means to do so. Officials might attempt to change people’s thinking by invading their mental life and quashing unpalatable thoughts at the source, so that people do not even wish to associate or worship with others in ways deemed undesirable, and indeed so that the population may not much want to associate in groups at all.⁶⁶

It might be objected that freedom of thought cannot qualify as a basic liberty because it is impossible to violate it. Consider how freedom of thought fares in comparison to freedom of association, for example. The objector may note that there are clear and multiple ways in which to abrogate the latter freedom: by shutting down meeting places illegally, by breaking up peaceful organizations for sinister political reasons, and so forth. Thinking is different, it appears. There is no way in which to interfere with what people think, strictly speaking, no way to breach the walls of that inner citadel.⁶⁷ As such, the objector may state, there is little cause to believe that freedom of thought proves substantial and meaningful. Any putative freedom that is by its nature inviolable, in the sense that nothing could be done to undermine or to abrogate it, is a liberty that warrants no real concern.

The problem with this objection is that it vastly overestimates the protected nature of the inner realm of thought. There appear to be numerous ways in which to abrogate freedom of thought and multiple categories of action in which such violations can occur. It is beyond the scope of this analysis to provide a complete register of freedom-of-thought violations, but one can offer some notable kinds of examples. First, it seems possible to violate people's freedom of thought in investigative procedures, as where parties inquire excessively about someone's beliefs or try wrongfully to force an individual to disclose what she is thinking. If there are improper ways in which to investigate people's thoughts, there are plausibly freedom-of-thought violations that inquiring parties can commit. Belief modification is a second category in which parties appear able to violate others' freedom of thought. Violations in this area may occur when people employ invasive psychological or medical procedures to try profoundly to alter someone's thoughts or ways of thinking. To the extent that belief-modification procedures can effectuate extreme changes in people's thinking, or be implemented wrongly or without subjects' consent, a second way in which to violate freedom of thought emerges.

Third, it seems that public officials can abrogate freedom of thought by imposing sanctions on people based merely on the thoughts that the individuals in question happen to have. That is, there are at least prospective violations of freedom of thought when officials mete out punishments just for what one believes, or merely for the ideas or desires one has, and when one has engaged in no problematic outward action whatsoever. The idea of people receiving punishment for their thoughts alone may not be especially palatable in modern democratic life. But it appears no less to be a risk in pluralistic social and political conditions. And there is special cause for concern, here, given ongoing worries about terroristic and other kinds of malfeasance, along with official efforts to root out those who sympathize with terrorist groups, and given new technologies under development that may assist in inferring people's thoughts independent of their speech or behavior.⁶⁸

Conclusion

Freedom of thought is a distinctive and basic liberty, a key star in the constellation of freedoms that democracies enshrine. I have described the fundamental importance of that freedom, in this article, analyzing a series of differences between freedom of thought and cognate liberties. I have not addressed the question of how best to protect freedom of thought; neither have I considered in detail how often or in what ways this liberty can be violated by government agencies or by private parties. The treatment I provide allows that freedom of

thought might legitimately be regulable by government, furthermore, in at least some respects, as is the case for other basic liberties. Whether there is a right to freedom of thought—and, if so, what kind of a right it may be—is another topic that I have not scrutinized. The idea of a right to freedom of thought raises questions requiring further analysis. However, the case that I generate furnishes groundwork with which to address these matters anew. And the finding that freedom of thought is a basic liberty lends weight to the notion that a right to freedom of thought exists, one ready for recognition and inclusion among the cardinal values of democratic life.

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Notes

1. "Freiheit ist immer nur Freiheit des anders Denkenden," as she suggests; see Rosa Luxemburg, *Die russische Revolution*, in *Politische Schriften*, Vol. 3 (3 vols.), ed. and intro. Ossip K. Flechtheim (Frankfurt: Europa Verlag Wien, [1922] 1968), 106–41, at 136.
2. Charles Fried, *Modern Liberty and the Limits of Government* (New York: Norton, 2007), 95–123, 160, 167.
3. Benjamin Franklin, "Silence Dogood, No. 8," in *The Papers of Benjamin Franklin*, Volume 1 (41 vols., as of 2014), ed. Leonard W. Labaree, Whitfield

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- J. Bell, Helen C. Boatfield, and Helene H. Fineman (New Haven, CT: Yale University Press, [1722] 1959), 27.
4. Thomas Jefferson, "To Dr. Benjamin Rush" (letter of September 23, 1800), in *Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (New York: Cambridge University Press, 1999), 28–30, at 29.
 5. John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Co., [1859] 1978), 11. Cf. Wilhelm von Humboldt, *The Limits of State Action*, ed. J. W. Burrow (Indianapolis, IN: Liberty Fund ([1791–1792/1850] 1993), 66–68.
 6. Mill, *On Liberty*, 11.
 7. *Ibid.*, 87.
 8. *Ibid.*, 11.
 9. *Ibid.*, 11–12.
 10. See Isaiah Berlin, "John Stuart Mill and the Ends of Life," in *Four Essays on Liberty* (New York: Oxford University Press, 1969), 173–206, at 173, 174.
 11. See Mill, *On Liberty*, 11–12; cf. 15–52, *passim*.
 12. Humboldt, *Limits*, 66. Cf. 69, where Humboldt argues that it is wrong to "restrict freedom of thought."
 13. Humboldt, *Limits*, 66–67.
 14. *Ibid.*, 67.
 15. *Ibid.*, 67.
 16. *Ibid.*, 66, 67.
 17. *Ibid.*, 68.
 18. John Rawls, *Political Liberalism*, expanded edition (New York: Columbia University Press, [1993] 2005), 334.
 19. Rawls, *Political Liberalism*, 308; see also 178–82 ff.; cf. Rawls's early discussion of "liberty of thought" in "Distributive Justice," in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, [1967] 1999), 130–53, at 138.
 20. Rawls, *Political Liberalism*, 334–35.
 21. *Ibid.*, 336.
 22. *Ibid.*, 337.
 23. *Ibid.*, 335.
 24. John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, [1971] 1999), 187. Here as well, one notes how Rawls's language implies that liberty of conscience and freedom of thought are different in nature. In "Distributive Justice," Rawls states that a just constitutional democracy will require "liberty of the person and political equality as well as liberty of conscience and freedom of thought" (138).
 25. Rawls, *Theory*, 186.
 26. John Rawls, "The Law of Peoples," in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 41–82, at 63.
 27. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 65.


28. *Ibid.*, 65.
29. *Ibid.*, 64–65, 62–70, 74–75.
30. G.A. res. 217A (III), UN Doc A/810 at 71 (1948), Article 18. Cf. *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221.
31. G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), Part III, Article 18.
32. G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/51 (1981).
33. *Ibid.* Cf. the *Cairo Declaration on Human Rights in Islam*, August 5, 1990, U.N. GAOR, World Conference on Human Rights, 4th Session, Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993), Articles 10, 11, 18, 20.
34. See Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000), 78–79; see also 80.
35. Mill, *On Liberty*, 11.
36. Cf. *ibid.*, 28.
37. Cf. T. M. Scanlon, “A Theory of Freedom of Expression,” *Philosophy & Public Affairs* 1 (1972): 204–26, at 206.
38. Philip Pettit and Michael Smith, “Freedom in Belief and Desire,” *Journal of Philosophy* 93 (1996): 429–49, at 447.
39. See J. B. Bury, *A History of Freedom of Thought* (New York: Henry Holt, 1913), especially 233–53.
40. See *Palko v. Connecticut*, 302 U.S. 319, 326–27 (1937). In delivering the opinion of the Court in *Palko*, Cardozo refers to “freedom of thought, and speech” as a single freedom; his statement is often misquoted. Cardozo writes, “[o]f that freedom [i.e., freedom of thought, and speech] one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom” (326–27). *Palko* was reversed and overruled in *Benton v. Maryland*, 395 U.S. 784 (1969).
41. Cf. Eberhard P. Deutsch, “Concept of Freedom of Religion in American Constitutional Philosophy,” *Georgetown Law Journal* 28 (1940): 487–99. Deutsch claims that while religious liberty is juridical, freedom of thought is “purely metaphysical” (487).
42. Neil M. Richards, “The Puzzle of Brandeis, Privacy, and Speech,” *Vanderbilt Law Review* 63 (2010): 1295–1352, at 1348.
43. See, e.g., *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002); *Stanley v. Georgia*, 394 U.S. 557 (1969); cf. Martin H. Redish, “Freedom of Thought as Freedom of Expression: Hate Crime Sentencing Enhancement and First Amendment Theory,” *Criminal Justice Ethics* 11 (1992): 29–42. Redish attempts to “rationalize judicial protection of freedom of thought with the text of the First Amendment” (34). Cf. also Amy Adler, “Inverting the First Amendment,” *University of Pennsylvania Law Review* 149 (2001): 921–1002.
44. Bury (1913), 8.
45. See Alexander Meiklejohn, “The First Amendment Is an Absolute,” *Supreme Court Review* 1961 (1961): 245–66. Meiklejohn proposes that a citizen “may not

- be told what he shall or shall not believe" (257; see also 258), but he does not indicate how that important stipulation can be subsumed coherently under First Amendment theory.
46. Mill, *On Liberty*, 87.
 47. Cf. Richards, "Puzzle of Brandeis," 1299, 1342.
 48. See Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2006), 47.
 49. Cf. Robert Audi, *Religious Commitment and Secular Reason* (New York: Cambridge University Press, 2000), 70, 71, 73; Swaine, *Liberal Conscience*, chap. 2.
 50. Cf. generally John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* (New Haven, CT: Yale University Press, 2012).
 51. See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, second edition (Princeton, NJ: Princeton University Press, [1980] 1996), 67; cf. 19–22, passim. The phrase "status of substance" is Shue's.
 52. Humboldt, *Limits*, 67.
 53. This occurs in cases in which government provides defense to comatose people who are near death, for instance. Cf. Shue, *Basic Rights*, 67–69 ff.
 54. Cf. Shue, *Basic Rights*, 67.
 55. Rawls, *Political Liberalism*, 308; see also 178–82 ff.
 56. Rawls, *Political Liberalism*, 335. The two moral powers are the capacity for a conception of the good, and the capacity for a sense of justice, respectively.
 57. Cf. Pettit and Smith, "Freedom in Belief," 444–46 ff., 448.
 58. Cf. Redish, "Freedom of Thought."
 59. Cf. "Evidence Against the Queen of Scots," in *Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors, from the Earliest Period to the Present Time, Vol. 1* [A.D. 1163–1600] (21 vols.), ed. William Cobbett and David Jardine (London: T. C. Hansard, 1809), 1456–57.
 60. Parliament of England, 25 Edward III St. 5 c. 2 (1351). The text of the statute reads as follows: "*compaser ou ymaginer la mort nostre seigneur le roy.*" See John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide 1793–1796* (New York: Oxford University Press, 2000), 32.
 61. William Blackstone, *Commentaries on the Laws of England, Vol. 1* (4 vols.) (Oxford: Clarendon Press, 1765–1769), 86. See Barrell, *Imagining the King's Death*, 32.
 62. Parliament of England, 36 George III c. 7 (1795).
 63. See Barrell, *Imagining the King's Death*, 584–86. Bentham expressed his view in a letter to the *Morning Herald*; see Bentham, *The Works of Jeremy Bentham, Vol. 10* (11 vols.), ed. John Bowring (Edinburgh: William Tait, 1838–1843), 320–21. Barrell submits that the letter "is not good legal argument" because Bentham ignored the fact that "regicidal imaginings must be manifested by an overt act before they become high treason" (2000, 584).
 64. See Barrell, *Imagining the King's Death*, 269–70; cf. 213–16, 583–93.

65. Robert Tucker, *Stalin in Power: The Revolution from Above, 1928-1941* (New York: Norton, 1992), 310; cf. 165, 307–8. Tucker proposes that “while no real counterrevolutionary activities were going on, and no terrorist conspiracies were being hatched against Stalin, there was a slender reality base for his obsessions with double-dealers: the private thoughts and attitudes of many party people were at variance with the official views they uttered when they spoke in public” (308). Cf. Chalmers A. Johnson, *Communist Policies toward the Intellectual Class: Freedom of Thought & Expression in China* (Westport, CT: Greenwood Press, 1973).
66. A society that protects freedom of religion or freedom of conscience could still fail adequately to protect freedom of thought, given that not all forms of mental activity are intimately connected to, or expressions of, religious or conscientious commitment.
67. Cf. Pierre Hadot, *The Inner Citadel: The Meditations of Marcus Aurelius*, trans. Michael Chase (Cambridge, MA: Harvard University Press, 2001).
68. See, e.g., the United States Department of Homeland Security’s research program in “Future Attribute Screening Technology” (FAST), http://www.dhs.gov/sites/default/files/publications/Future%20Attribute%20Screening%20Technology-FAST-508_0.pdf (accessed September 12, 2016); https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_st_fast.pdf (accessed September 12, 2016).

Author Biography

Lucas Swaine is associate professor of Government at Dartmouth College. He is the author of *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2006), and of articles in numerous academic journals. Swaine is currently completing a book-length project on the nature and place of autonomy in liberal democracies. His article “The Origins of Autonomy” was published in a recent issue of *History of Political Thought*.

This is Exhibit C referred to in the
 affidavit of Lucas Swaine
 sworn before me, this 26th
 day of April 20²⁴

 A COMMISSIONER, ETC

Sworn remotely by Lucas Swaine in the city of Hanover, NH
 with commissioner Joanna Shaw in the city of Toronto, ON.

JOANNA KATHLEEN SHAW,
 a Commissioner, etc., Province of Ontario,
 for LEWIN & SAGARA LLP,
 BARRISTERS AND SOLICITORS.
 Expires October 16, 2026.

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CHAPTER 1

Freedom of Thought in Political History

Lucas Swaine

INTRODUCTION

Despite the fundamental importance of thinking to so many facets of human existence, freedom of thought has not received its due in political and intellectual history. Thinking is highly significant in its own right, a noiseless fixation of burgeoning and developed political orders. But freedom of thought has not adequately been recognized or articulated even though it figures prominently in the development of Western democracies. Freedom of thought proves highly significant when one considers whether political officials should be able to call people to account for their thoughts. It matters also when individuals are pressured to disclose what they are thinking. And freedom of thought is especially salient in situations in which people are punished for what they believe. Freedom of thought poses challenges for present and future practices of liberal democracies, with questions about how to handle people's thinking, in political and legal realms, extending back through Christendom to the ancient courts of Athens.

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This chapter charts the progress of freedom of thought in the history of Western intellectual and political life. I argue that freedom of thought is a special and distinctive liberty, one that has been misunderstood and often infringed. I propose furthermore that freedom of thought warrants a more comprehensive articulation and better protection in democratic societies. I begin with a rudimentary account of the nature and significance of thought, following which I consider fundamental questions about freedom of thought that emerge in received accounts of Socrates' trial and punishment. I move then to discuss the place of thinking and of freedom of thought in Christianity, analyzing the centrality of moralized thoughts in the Bible and in the development of Christendom. I consider subsequently key statements on thought and thinking offered by political theorists in the modern era. Several of those statements help to advance our understanding of freedom of thought, but they leave its nature and its value opaque. I conclude with a brief discussion of theoretical and practical challenges to freedom of thought in modern democracies, describing prospects for better articulation of that value and outlining new ways in which to strengthen and defend it.

THE SIGNIFICANCE OF THOUGHT

Human beings are thinking creatures with complex mental interiors. We use speech and behavior to involve ourselves in the world around us, our thoughts exteriorized in the languages we speak and reflected in the outward acts that we perform. But thought is different from conduct, and much of our mental life we neither express to others nor attempt to put into action. A general conception of "thinking" as "mental activity" facilitates this basic distinction. It allows one to differentiate between thought and conduct, and it accommodates a broad array of mental processes under the rubric of thinking. The idea of thinking as mental activity makes space not only for cogitation and deliberation, but also for feeling, desiring, intending, believing, imagining, and other kinds of activity of mind. This understanding has the benefit of simplicity, it allows for distinctions among different kinds and forms of thinking, and it does not overemphasize the reasonableness or the rationality of the human animal.

One's thoughts are not immediately accessible to others: Thinking is elusive and opaque, its details shadowy in comparison with visible conduct. We gain familiarity with the thoughts of others indirectly and

imperfectly. And yet these difficulties do not diminish people's concern to try to fathom others' thoughts. For thinking proves highly meaningful for understanding and explaining human behavior. It is in thinking where people reckon what is right and wrong, where they wonder, imagine, desire, and decide for or against courses of action.

Thinking is also morally important. It can prompt or inhibit morally better or worse behavior. What one thinks can factor into whether someone's conduct counts as a particular form of action. Thinking also matters morally even when thoughts are not joined with any outward action at all. When someone discloses what they believe, feel, or desire, others may consider the person morally better or worse, depending on what and how the person seems to think about things. Speech or conduct may testify to a clear conscience or a guilty mind, for instance, with judgments about someone's thoughts becoming judgments about that person's moral character.

People occasionally join their judgments about others' thoughts with worries about safety or wellbeing. Moral and prudential concerns about thinking often exist in combination, intertwined with people's communication and conduct. One can extrapolate these points to peoples and populations. In form and in content, people's thinking matters to nearby others, it contributes to the success or failure of associations and communities, and it is a fixation of social, educational, and religious institutions. These factors support the conclusion that thinking matters both for political stability and for the very legitimacy of a political order.

THE ROLE OF THINKING IN THE TRIAL OF SOCRATES

Social and political concern with thinking has a long history. It can be traced through time along a central axis of political philosophy, back to the trial of Socrates. The legend of Socrates is established and entrenched. It is well known that he was charged with impiety and with corrupting the youth of Athens, crimes for which he was found guilty and sentenced to death. Plato's famous account of the ordeal depicts a striking confrontation between a thoughtful individual and social and political authority. But key aspects of the story reveal the centrality of thinking itself in Socrates' trial and punishment, with Socrates' thoughts serving as a significant contributory basis for his accusation, conviction, and execution.

Consider the importance of thinking as a basis for Socrates' indictment and punishment, according to received accounts of his trial. There has been scholarly controversy over whether Socrates was indicted for his beliefs or for his failure to worship Athens' gods in the right ways (Burnet, 1924, 5; Burnyeat, 1997; Giordiano-Zecharya, 2005; Vlastos, 1991). But one can see in surviving reports of Socrates' trial social and political concern for what Socrates thought, not just for what he said or otherwise did in terms of outward worship. First of all, the accusation of impiety represented a distinct charge against him, to which was added the indictment that Socrates had corrupted the youth (Plato, *Apology*, 24b-c; cf. Xenophon, *Memorabilia*, 1.1.1). Plato relates that the charge of impiety was leveled first against Socrates, sprung by "old accusers" from earlier days (Plato, *Apology*, 18b-c). Second, in criticizing the impiety indictment, Socrates pressed his antagonist Meletus to clarify whether he stood accused of worshipping other gods or no gods at all (Plato, *Apology*, 26b-c; Xenophon, *Apology*, 24; cf. Burnyeat, 1997). Supposing that Socrates was called to account because he did not worship Athenian gods according to local custom, or because he failed to do so in a sufficiently reverential manner, the question remains as to exactly how, or in what ways, Socrates demonstrated impiety. Even if Socrates were a nonstandard Apollonian, as Myles Burnyeat has suggested (Burnyeat, 1988, 18; Reeve, 2000; Woodruff, 2000), that would leave open which roles or aspects of Apollo Socrates might have revered (Hedrick, 1988; Reeve, 1989; Plato, *Apology*, 35c-d; Xenophon, *Apology*, 11; Xenophon, *Memorabilia*, 1.1.2; Diogenes Laertius, *Lives*, 2.42, 2.44), how he went about worshipping or esteeming Apollo, and whether he questioned others pointedly about orthodox practices and ideas regarding Apollo or other Athenian gods (cf. Diogenes Laertius, *Lives*, 2.21, 2.31, 2.38, 2.42, 2.45).

Third, whether Socrates suggested or revealed to others various of his thoughts on the gods of Athens, or on customary worship and reverence, the accusation of impiety has clear implications for Socrates' thinking. This is because the language reportedly used to address Socrates' impiety "encompasses all behavior that shows proper acknowledgement of the existence of the gods," as C. D. C. Reeve puts it (Reeve, 2000, 28; Plato, *Apology*, 26b-d, 29a, 32d, 35c-d; Xenophon, *Memorabilia*, 1.1.5; Diogenes Laertius, *Lives*, 2.40). Socrates' thoughts are implicated, here, because he would not have merely followed customary or traditional practices "unthinkingly" (Kraut, 2000, 13-17), and, if all of his speech and behavior with respect to the gods had been orthodox, Socrates would

not have been charged with the crime of impiety, so described (Bremmer, 1998; Nussbaum, 1985).

Fourth, it may be noted that each of the two accusations against Socrates is logically and conceptually distinct from what Socrates allegedly said to others, and both accusations are distinguishable also from how Socrates spoke prior to his appearance in court and during his trial. In addition, whether Socrates' alleged impiety was implicit in his practice of questioning others or supposed to have contributed to the debasement of Athens' youth, the charge of corrupting the youth appears to be a concern separable from the impiety accusation. Socrates' denunciation for impiety is distinct, it is described as having been asserted first, and it entails disquietude about what Socrates was believed to have thought—it does not simply concern what he uttered or otherwise did. These factors testify to the social and political significance of Socrates' thinking, as a putative basis for his being put on trial and, subsequently, as a contributing factor in his conviction and execution.

The conclusion that Socrates' thoughts were significant factors in his accusation and trial does not diminish the notion that his speech and conduct were important, too. Socrates was clearly in jeopardy for what he said and for how he acted, given the manner in which he reportedly questioned people and appreciating how he riled important figures and influenced the youth of Athens in unpopular ways (cf. Filonik, 2013, 54–57, 80–81). But these considerations, like the fact that Socrates often used his mind and his voice together, do not diminish the distinct and particular importance of his thinking in his trial and punishment. One can coherently affirm that Socrates' thoughts, speech, and conduct all mattered in their own right.

I have considered the tale of Socrates' trial and punishment as others have conveyed it. However, it should be noted that received understandings are partial and fragmentary, and quite imperfect. Our familiarity with the historical Socrates is transmitted through a small set of recorded statements and historical recollections, a considerable portion of which comes from Plato and Xenophon (Filonik, 2013, 32). There is real question as to the extent to which Plato presented a stylized or embellished Socrates in his early dialogues (Filonik, 2013, 57–58; Ralkowski, 2013, 1–19; Waterfield, 2013). It may be noted that Plato assigned great importance to thoughts and ideas in his political theory, with contemplation and other forms of thought playing major roles in the ideal city that he imagined (see generally Plato, *Republic*). But even if the historical Socrates

did not speak or act exactly as he has been portrayed, the significance of thinking in Socrates' courtroom and jail-cell discussions was not lost on raconteurs or their contemporaries. Otherwise, they would have been very unlikely to have produced or reiterated the stories that they did replete with the nuance and interest related specifically to thinking and to Socrates' utilizations of various kinds of thought. This suggests that Plato and Xenophon, and their respective interlocutors, well appreciated not only the importance of thinking but also basic differences between speech and thought (cf. Plato, *Apology*, 21b; Euripides, *Hippolytus*, 612; Avery, 1968; Aristotle, *Rhetoric*, 1416a).

Not only was thinking a highly significant factor in the tale of Socrates' legal ordeal. The story also prompts one to consider the broader question of whether Socrates should have been called to account for what or how he thought. In addition, the accounts raise important questions regarding the extent to which Socrates' thoughts ought to have weighed in the balance, during his trial and punishment. It stands to reason that many of Socrates' thoughts were linked motivationally to how he spoke or acted, or they were tied in other ways to his outward conduct. But some of his thoughts, presumably, Socrates never expressed to others. And various elements of Socrates' thinking may not have influenced his speech or his behavior, or they might simply have been thoughts that Socrates never attempted to put into action. After all, even supposing that Socrates did not say anything privately that he would not say publicly (*Plato, Apology*, 33b), that does not logically imply that he disclosed to others the entire contents of his mind. The point is bolstered by Socrates' comments on people who shamefully express their feelings in attempts to sway the jury; he implies that people should keep such expressions to themselves (cf. *Plato, Apology*, 34c-35b). What is more, it stands to reason that Socrates may not have voiced other thoughts he had until he was drawn into the court of Athens and pressured to do so. His stated reluctance to defend himself in court is plausibly an example of a thought of this kind; so are the thoughts he had on what he took apparently to be the difficulty of defending himself, or of persuading others of his innocence (*Plato, Apology*, 18c-19a).

The tale of Socrates raises monumental questions. It stirs up concerns regarding freedoms of speech and association, religious liberty, freedom of conscience, procedural justice, and rightful forms of punishment. The story prompts one also to ponder fundamental questions regarding the treatment of people's thoughts in political and legal contexts. Should

political or legal authorities be able to call people to account for their thoughts? Ought powerful institutions to be permitted to pressure people to disclose their beliefs, religious, or otherwise, along with associated ideas, feelings, notions, desires, or opinions, in courts of law or in other formal settings? Should people be able formally to be accused, tried, or convicted of crimes based primarily, even solely, on what they may think or not-think? Is it acceptable to hold individuals accountable for their thinking, even if the thoughts in question are not connected to speech or conduct, or if the thoughts may never be put into action? And what sort of political or legal frameworks ought to be employed to address such questions?

THOUGHT, THINKING, AND CHRISTIANITY

The social and political relevance of thinking has extended well beyond the courts of ancient Greek city-states. Cultures and communities across the globe show concern with the interior life of their membership. Thinking proves salient in central domains of complex societies: It is highly important in education, law, commerce and trade, artistry and innovation, and collective action. Religion is another sphere in which people's thoughts, broadly construed, have mattered to communities and their worldly authorities. One can see why this might be so. Social and political concerns have often been entangled with religiosity, with people's religious beliefs and practices in numerous cases transformed into political and legal issues.

Western political orders took religious routes in their progression toward constitutionalism and liberal democracy. Christianity blazed the path, with thinking proving essential in its course, in some nonobvious ways. Early Christian affirmations laid heavy weight on thinking, setting foundations not just for spiritual concern about people's thoughts, but also for observation, intervention, and correction. I do not propose that Christianity countenances persecution of people for their thoughts, much less that it requires or commands it. However, the Bible clearly indicates that thoughts themselves can be evil. Concerns about wicked thoughts have fuelled wayward and improper investigation of people's thinking, under a false sense of the requirements of Christian doctrine. On many occasions, this has led to persecution of those found to have unapproved beliefs, desires, ideas, and imaginings.

The Bible provides that God is neither indifferent to people's thoughts nor concerned merely with salutary affirmations. It specifies that thoughts can be sources of good or of evil, identifying some thoughts themselves as having a good or an evil nature. Statements to this effect can be found in each Testament and they are hardly of passing importance. For example, the Book of Genesis explains that, prior to the Flood, the imaginings, intentions, and inclinations of human beings were evil. God observed the great wickedness of humanity during this period: He saw "that every imagination of the thoughts of [one's] heart was only evil continually" (Genesis 6:5). The concern has not abated. The Decalogue begins and ends with commandments directly pertinent to a person's thoughts: respectively, not to affirm any other gods than God Himself, and not to be covetous of what others have (Exodus 20:3, 20:17). Solomon's proverbs include the admonishment to "[l]ust not after [a strange or evil woman's] beauty in thine heart; neither let her take thee with her eyelids" (Proverbs 6:25). And the vision of the Prophet Isaiah reproves the wicked to "forsake [their] way, and the unrighteous man his thoughts: and let [them] return unto the LORD, and he [sic] will have mercy upon [them]; and to our God, for he [sic] will abundantly pardon" (Isaiah 55:7). In the New Testament, the Gospel of Matthew elaborates that thoughts can be wicked and that various ways of thinking can defile a person. Jesus is said to have remarked that "out of the heart proceed evil thoughts, murders, adulteries, fornications, thefts, false witness, blasphemies" (Matthew 15:19; see 15:17-20; cf. 9:4). And thoughts are clearly implicated in Jesus' admonishment that "whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart" (Matthew 5:28; see 5:27-30 ff.; cf. Proverbs 23:7).

The Old and New Testaments clarify that not just outward acts are good or evil: One's thoughts can have those qualities, too. This includes what goes on in one's mind or, figuratively, in one's heart (i.e., with respect to one's feelings or emotions). The Bible describes cases in which thoughts themselves are evil, where thinking is iniquitous per se and thoughts alone are wicked. Evil thoughts need not be joined in speech or outward conduct, in order to be wicked, although iniquitous thoughts may be accompanied by speech or outward behavior, or they may be made manifest in evil action. Nor are wicked thoughts identical to the acts that may involve or imply the thoughts in question. Thoughts themselves are their own concern.

The Bible teaches that there are various kinds of iniquitous thoughts and numerous evil ways of thinking, suggesting that these can crop up in one's fields of desires, imaginings, intentions, beliefs, and affirmations. One gathers furthermore that thoughts or feelings may lead to further thoughts that are iniquitous, inasmuch as evil thoughts can come "out of the heart," given that the heart thinks only in a figurative sense. In addition, wicked acts appear to be connected to various thoughts, desires, imaginings, or ideas that are evil in themselves (e.g., adultery and its connection to lust). One is called upon to forsake iniquitous thinking, to abandon evil thoughts and inclinations and to steer clear of wayward desires, and to return to God, to repent and to ask for forgiveness, and to acquire God's mercy. One ought to follow Jesus' guidance and endeavor earnestly to be "perfect, even as your Father which is in heaven is perfect" (Matthew 5:48; Luke 10:27).

The power of these Biblical statements is reinforced by God's omniscience. It is written that God knows all the truths of the world. David's charge to Solomon, in the Old Testament, directs Solomon to serve God "with a perfect heart and with a willing mind: for the LORD searcheth all hearts, and understandeth all the imaginations of the thoughts" (1 Chronicles 28:9). Psalm 44 states that God knows "the secrets of the heart" (Psalms 44:21), and Psalm 139 indicates that God knows one's words before one speaks them (Psalms 139:4; see 139:1-4). The Gospel of Luke maintains that nothing is or can be concealed from God, and that all will be revealed to Him: "nothing is secret, that shall not be made manifest; neither any thing hid, that shall not be known and come abroad" (Luke 8:17). This is reinforced by the proclamation in John's First Epistle that God "knoweth all things" (1 John 3:20; cf. Matthew 9:4, 12:25; Luke 9:47, 11:17). God's omniscience seems clearly to cover knowledge of one's thoughts, broadly construed, including knowledge of whether those thoughts are righteous or sinful, what makes them so, and how one shall be judged for them.

I do not argue that it is incorrect to specify some thoughts as good or evil. It stands to reason that thinking can be wicked, even if the thoughts are never made manifest in speech or in outward action. Certain kinds of thoughts can be morally wrong to entertain, or to mull over, or to have in one's mind, just as it may be sinful to think about particular topics in certain ways (Swaine, 2020). Nor do I contend that the Bible is hostile to freedom of thought: There is good reason to believe that the Bible affirms freedom of thought and liberty of conscience alike. What I do

propose is that spiritual and earthly authorities utilized Biblical teachings on evil thoughts to investigate thinking and to sanction people found to have ungodly beliefs and desires. This is especially evident in historical treatments of heresy in Christendom. Biblical statements on evil thoughts contributed to the investigation and sanctioning of heretics, with treatment of heresy raising systematic and widespread concerns for freedom of thought.

Early Christians set themselves earnestly to the task of clarifying true doctrine and determining correct elements of faith. People's thoughts were implicated closely in these developments, particularly with regard to the identification of heresy and in efforts to eliminate it. The term "heresy" (derived from the Hellenistic Greek "hairesis") did not originally have pejorative connotations; it denoted "choice" or "[something] chosen," and it was used to describe someone's decision to join a particular religious order or school of thought (Swaine, 2001, 1045). However, over time heresy came to represent theological error and sin. With Constantine's conversion and the establishment of Christianity as the religion of Roman Empire, the Church became able to work in tandem with secular authorities to extirpate heresies. Emperors convened ecumenical councils that defined Christian doctrine and laid structure for excommunication of nonconformists. This began with the First Council of Nicaea, in A.D. 325. Ecumenical councils subsequently developed orthodoxy through antiquity and across the Middle Ages: Correct beliefs were clarified, incorrect ideas repudiated, canon laws delivered, and heresies distinguished, defined, and attacked. Heretics were both anathematized and excommunicated, allowed neither to meet with nor to talk to fellow Christians (Swaine, 2001, 1045).

The Third Lateran Council of 1179 condemned as heretics the Cathars and the Waldensians, two sizeable groups whose religious beliefs and practices were seen as a threat to both religious and secular order. Authorities thoroughly persecuted the sects, attempting to obliterate the offending beliefs and practices. In 1215, the Fourth Lateran Council laid down requirements of at-least yearly confessions to one's priest, and of penance, empowering priests to absolve their parishioners of their sins. The Fourth Lateran also expanded godly rule and instructed secular princes with a variety of directions. It condemned all heretics, defining penalties and forms of disenfranchisement for heresy, and it advised crusaders that they should prepare themselves for action. Pope Innocent IV subsequently issued his papal bull *Ad extirpanda* to sharpen the orders. It decreed

that torture may be used to force confession, setting the stage for execution of the recalcitrant and unrepentant at the hands of secular authorities (Swaine, 2001).

The Inquisition thrived in this framework. One finds numerous cases of freedom-of-thought violations in inquisitors' procedures and practices. To take one example, the medieval inquisitor Bernard Gui strove to pin down the beliefs of alleged heretics, warning of terrible punishment for those who resisted his inquiries (see Lea, 1887b; Walsh, 1987, 50–88). Such interrogations generally proceeded under the rubric of a purpose to expunge heretical views from Christian politics and communities. J. B. Bury suggests that inquisitors' motivations were, in many instances, based in the profound conviction that those who did not believe certain dogmas would be punished eternally. This, in turn, led naturally to persecution, according to Bury, given that the inquisitors imagined they faced "enemies of the Almighty" (Bury, 1913, 52, 53; see 51–71). And there was a kind of public rationale for engaging in such endeavors: Some who privately doubted or disbelieved accepted theological views would "[feign] to acknowledge the truth of the ideas which they were assailing," putting themselves and their communities at grave risk (Bury, 1913, 134, 136–139, 148–149, 162–163; see Walsh, 1987, 61–64; cf. Foucault, 2014, 125–161). The tendency to employ violative investigative techniques to inquire into people's thoughts was hardly limited to the Inquisition, of course. The incorrigible heretic Bartholomew Legate learned as much firsthand in the early 1600s. English religious authorities hauled Legate before the Consistory Court, plying him with questions to determine whether he held "various pestilent opinions" (Bury, 1913; cf. Rawls, 1999a, 182–183). Once the Court reached its determination, it relinquished Legate to secular authorities, who burned him alive.

The Inquisition operated in many regions and over a considerable period of time, causing terrible damage to countless individuals and communities. The form, manner, and extent of inquisitors' investigations were multiply problematic, as were the harsh sanctions meted out to their more unfortunate victims. In the first place, even if one were to grant that inquisitors had proper authority to investigate the thoughts of potential heretics, it is very hard to say that they had adequate reason to be concerned with the mere beliefs of people within the societies they inspected. For instance, one finds no plausible cause for inquisitors to pry into the thoughts of "Conversos" after they no longer even attempted to practice Judaism (see Lea, 1887b, 63–64; cf. Lea, 1887a,

555–556; Lupovitch, 2010, 100; Monter, 1990, 23–26 ff.; Walsh, 1987, 151–154). More generally, it seems evident that there was no sufficient reason for investigating the thoughts of supposed heretics. And if that were not enough to qualify such investigations as significant violations of freedom of thought, the threshold is surely passed when one learns that subjects could meet with severe punishment for being unwilling to accede to inquisitors' requests, for refusing to disclose their thoughts or declining to cooperate with the inquisitorial trials otherwise. Threats of punishment—very credible ones, at that—were levied even against those accused heretics who were simply unreceptive to having corrections made to their beliefs (see Lea, 1887a, 541).

Inquisitorial examples may be ghastly but they help to illuminate why interrogation practices can be deeply morally wrong, and they suggest why latter-day investigative methods, similar in their form, manner, or extent, might violate freedom of thought in several different ways. First of all, such investigations can produce highly adverse psychological and emotional effects in their subjects, proving extremely unsettling for the people who undergo them. Psychological and emotional trauma can result from interrogations in which people are probed and pressed to disclose their thoughts, especially when the subjects understand that penalties await anyone who is not adequately cooperative or forthcoming. Because it is so difficult to demonstrate sincerity regarding what one says one desires or does not desire, or believes or does not believe, even those wishing to satisfy interrogators are susceptible to ordeals. What is more, the extent of questioning, if it is too broad, can reach into private or emotionally sensitive areas for the individual under investigation, causing humiliation and producing painful, lasting effects (cf. Walsh, 1987, 168). Traumatic results may also be exacerbated if the person whose thoughts are investigated is prodded to address topics, or to reveal information, to which he or she has a conscientious objection to discussing or disclosing, although not only thoughts covered by conscience would matter here.

One can identify several key freedom-of-thought concerns in the development of the religious sphere of Christendom; but it should be noted that similar issues have arisen in secular realms, too. For example, England's Treason Act of 1351 made it high treason to "compass or imagine" the death of the king, his wife, or his eldest son and heir (Parliament of England, 25 Edward III St. 5 c. 2 (1351); Barrell, 2000, 32). This meant that even just thinking of regicide could be severely punishable, tantamount to *lèse-majesté* (cf. Cobbett, 1809, 1456–1457). Such

examples complement the historical trajectory that I have charted, in which thinking and freedom-of-thought issues have been salient. The broader set of examples suggests the importance of freedom of thought, and it recommends viewing that freedom as a discrete liberty with its own conceptual contours, one that is not simply covered under freedom of speech or enveloped by other rights and liberties. The cases I have mentioned lead one to hold that freedom of thought has distinctive and special value, that it is possible to violate that freedom, and that it can be seriously wrong to do so (see Swaine, 2018a, 2018b).

FREEDOM OF THOUGHT IN THE MODERN ERA

I have noted the significance of thinking and of freedom of thought in early Western political history and proposed that freedom of thought is an important and meaningful liberty. I cannot offer here a detailed account of the significance of freedom of thought in the development of the world's many complex political orders, democratic or otherwise. One can distinguish a slowly growing appreciation of freedom of thought through the modern era and into the present, both in the discourse of social and political theory and in terms of the expansion of that freedom under political and legal institutions. But the progress of freedom of thought has not been linear. Its story is one of qualified movement, of partial advancement in some areas and setbacks in others, not of categorical or unreserved success. Operating in the subterranean regions of social and political life, freedom of thought has often been misconstrued, overlooked, threatened, or violated, with scant articulation as a value unto itself.

Theoretical treatments of freedom of thought have proven fractional and scrappy, across the centuries, with contributions scattered across a miscellany of philosophical works and political declarations. One finds limited concentration on freedom of thought in the works of such figures as John Locke, Pierre Bayle, Benjamin Constant, and the American Founders. Wilhelm von Humboldt and John Stuart Mill offered eloquent paeans in the Nineteenth Century (Humboldt, 1993, 66–69; Mill, 1978, 11–12, 15–52). Freedom of thought was given notable mention after the Second World War, in the United Nations Declaration of Human Rights. According to Article 18 of the UDHR, “[e]veryone has the right to freedom of thought, conscience and religion” (G.A. res. 217A (III), UN Doc A/810 at 71 (1948), Article 18; cf. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S.

No. 5; 213 U.N.T.S. 221). John Rawls expanded briefly upon the notion, arguing that freedom of thought should be included as part of a “fully adequate scheme of basic liberties” (Rawls, 2005, 308, 178–182 ff.). But there remains no systematic articulation of freedom of thought, no clear and thoroughgoing analysis of its nature and importance. Political and legal discourse lacks a proper sense of how freedom of thought can be violated, as well as protected and cultivated; of whether there is a right to that freedom and, if so, what kind of a right that might be. Questions endure also as to exactly why freedom of thought is worth protecting; what the threats to freedom of thought encompass; what practices and values support that freedom (Shiffrin, 2010–2011, 283); and what key liberties freedom of thought supports, in turn.

One might object that existing theoretical treatments of freedom of thought have actually shown that there is little need to protect that so-called freedom. The reason to think so, one might propose, is that freedom of thought is by its nature the kind of liberty that cannot be violated. Consider Locke’s influential claims in *A Letter Concerning Toleration*, which have provided groundwork for this conclusion and served as a basis for subsequent understandings. Locke proposes that a person “cannot be compell’d” to believe anything through the use of outward force (Locke, 1689, 7). Only “Light and Evidence” can modify people’s opinions, he maintains, and such light “can in no manner proceed from corporal Sufferings, or any other outward Penalties” (Locke, 1689, 8). His points appear to cover the faculty of human understanding in general, offering a sense of freedom of thought that includes religious beliefs as well as people’s opinions more broadly. But it is far from obvious that force cannot successfully be used to change people’s beliefs, or their opinions, or their thinking or their thought-processes more generally. Locke conveys a specious understanding of the nature of freedom of thought, when it comes to the use of force and the changeability of thoughts, and this, too, proves highly relevant to understandings of freedom of thought itself.

In the first place, it is plausible that “duly proportioned” force (Locke, 1689, 7) can indeed modify people’s beliefs, as Jonas Proast noted in his reply to Locke in 1690. Such force might be applied against people otherwise unwilling to go to church, for example, compelling them to sit in pews and to listen to preachers (Proast, 1690, 11, 12–14, 16–19, 23). It is one thing to say that coercive measures should not be used for

such purposes and another to claim that such measures cannot be effective (cf. Locke, 1689, 6–9, 13, 27, 45–47, 56–61). Important to consider here are such factors as the coercive techniques employed against subjects, whether thinking is to be modified using direct or indirect means, and whether the plan is to change people's thoughts immediately or over time (Swaine, 2006). Communist and fascist regimes have imparted to humanity the terrible lesson that "corporal sufferings," combined with other heavy-handed courses of action, can indeed produce profound and lasting changes in people's mental lives. Coercive frameworks can be used to effectuate serious changes in people's thinking, to alter their minds with so-called reeducation, and to facilitate such measures with drugs and medical techniques.

The capability of using force to alter people's thoughts is not the same as the ability to coerce people to believe something in particular (cf. Locke, 1959, 322–323). But the former seems to be a proficiency that powerful authorities have developed and deployed. As such, Locke's insistence that force is powerless to change opinion proves inaccurate, at least when taken generally. This conclusion casts a pall on subsequent statements about freedom of thought. Consider, for instance, Constant's remarks on the "absurdity of any attempt by society to control the inner opinions of its members" (Constant, 2003, 103). He declares:

There is no such possibility. Nature has given man's thought an impregnable shelter. She has created for it a sanctuary no power can penetrate. (Constant, 2003, 103)

Constant's point is correct, so far as it goes, but one must be careful not to overdraw conclusions or to extrapolate beyond what is warranted. It is reasonable to suppose that authorities cannot control all of a person's opinions, much less order and manage each of the opinions of every member of an entire society. The human mind cannot be directed in that way, and modifying someone's personal views is not the same as strictly controlling the formation of their opinions. In addition, Constant argues quite plausibly that opinions and reasoning cannot be changed by the immediate application of force, at least not in the way that authorities might desire. Even so, there are three qualifications to keep in perspective. First, it appears possible for powerful parties to change people's thinking over time. For example, societies may use the power of the law to disallow a cultural or religious practice, thereby leading people

ultimately to forswear the proscribed practice. Second, authorities can damage people's mental faculties. That may not be a way of controlling opinions, strictly speaking, but humans can degrade and destroy others' capabilities, adversely affecting or even extinguishing their processes of reasoning, their emotions, their imaginative capabilities, and so on. These considerations lead one to conclude that the human mind is not as impervious to external force as Constant's statements might lead one to believe.

Third, while Constant takes an admirable stand against those who would attempt to control others' opinions and views, it remains possible for authorities to persecute people for their thinking. This point Constant seems ultimately to acknowledge, despite his apparent ambivalence on the subject (Constant, 2003, 104; cf. Constant, 1988, 112, 130–126). He decries government's attempt to make itself seem praiseworthy for "allow[ing] us to think what seem[s] reasonable to us" (Constant, 2003, 451). "But how could they stop us doing so?" he demands (Constant, 2003, 451; cf. Constant, 1988, 20–26). Constant is correct to suggest that clumsy threats of violence do not alter people's views of what is reasonable: that sort of coercion cannot be expected to change one's mind in the way that the threatening party might desire. But more systematic strategies and defter techniques can transform people's understandings of what is reasonable, or their conceptions of reasonableness itself, especially when those techniques are used in combination and over lengthier periods of time. When powerful actors are able to threaten, frighten, torment, defame, injure, jail, traumatize, propagandize, manipulate, or gaslight people, and when they can do so in environments over which they have considerable control, they can effectuate many changes in subjects' views, reworking thoughts and thought-processes in a variety of ways.

Factors such as these prompt one to reconsider prominent statements on freedom of thought in the American tradition. Thomas Jefferson's words in "A Bill for Establishing Religious Freedom" are important touchstones in this respect. Jefferson claims there that "Almighty God hath created the mind free," and that "free it shall remain [by being made] altogether insusceptible of restraint" (Jefferson, 1950). God is Lord of both body and mind, Jefferson writes, and He "chose not to propagate [His plan] by coercions on either" (Jefferson, 1950). Once the Virginia Assembly passed Jefferson's bill into law, James Madison wrote to Jefferson to relay the good news, stating in his letter: "I flatter myself

[that we] have in this Country extinguished for ever the ambitious hope of making laws for the human mind” (Madison, 1786).

Jefferson’s insistence on freedom of the human mind is admirable and one agrees that there are important ways in which the mind is insusceptible of restraint. Even so, that does not mean that people cannot degrade others’ thinking or infringe their freedom of thought. Similarly, to agree that the mind cannot be restrained, in some particular respects, is not necessarily to concede that people are incapable of using coercive measures and other techniques to alter opinions or beliefs, or to change or even to extinguish various kinds of thoughts. I have suggested that parties can violate freedom of thought by interfering with people’s thinking and their thought-processes, and I have argued that it is possible to breach freedom of thought by going too far in investigating thought or by punishing people for their thoughts alone (Swaine, 2018a, 2018b). It may be observed that Jefferson implies that it would be wrong for people to violate God’s decision to make the human mind free (cf. Swaine, 2020, 208–211). He does not, however, stipulate that disrupting the design of God would be the only thing wrong with trying to tyrannize over the human mind; Jefferson’s formulation allows that interference in people’s thoughts could be wrong for other reasons, too.

Jefferson might not have drawn precisely these distinctions, of course. But he offers special building-blocks for an expanded understanding of the nature and value of freedom of thought, especially where he contends that “the opinions of men are not the object of civil government, nor under its jurisdiction” (Jefferson, 1950). The statement resonates with the American Founders’ affirmation of the existence of a right to freedom of opinion. By the late Eighteenth Century, many Americans held freedom of opinion to be an inalienable natural right: Opinions were seen as “sacrosanct because they were understood to be non-volitional,” as Jud Campbell puts it (Campbell, 2017, 280; see generally 280–287). This was to the Founders a freedom-of-thought concern, Campbell maintains, because they understood freedom of opinion to be “at its core a freedom against governmental efforts to punish people for their [non-volitional] thoughts” (Campbell, 2017, 281). The burgeoning view was indebted to the work of Francis Hutcheson, who, in his *Inquiry into the Original of Our Ideas of Beauty and Virtue*, proposed that people have a “Right of private Judgment” that cannot be alienated because “we cannot command ourselves to think what either we our selves, or any other

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Person pleases” (see Campbell, 2017, 281, 287 n. 189; Hutcheson, 2004, 186, 187, cf. 38, 87, 118–119, 189, 192–193, 194).

These are keen and important ideas, and there is reason to hold that people should not use force to try to modify others’ affirmations, to change their judgments, or to alter their faculties (Swaine, 2006, 62–63 ff.). However, supposing that opinions are not subject to commands, and that one cannot think whatever one (or anyone else) pleases, it does not follow that there is a right to freedom of opinion or a right to freedom of thought. Nor does it mean that either right would be inalienable in the sense described here. It is puzzling to think that one might have a right to something, even to something interior and personal about oneself, on the grounds that it is not subject to anyone’s command. If nobody has command or control over anyone’s opinion, perhaps nobody has a right to their own private judgment or to their faculty of forming opinions. Alternatively, others might have a claim, perhaps even an equal claim, to one’s private judgments or to one’s faculties, such as they may be. But it stands to reason that people can be at least partly responsible for the formation of their thoughts and their opinions, and for the ways in which they have modified their capabilities, altered their judgments, and so forth, to arrive at the views that hold (see Swaine, 2020, chap. 3, *passim*).

A new jurisdictional argument with a sounder justificatory basis could be developed to limit the presumed right of authorities to interfere with people’s thoughts or to investigate or to punish thinking. A jurisdictional argument of this kind could serve as part of a broader, integrated case supporting a rights-based claim for freedom of thought, as well (Swaine, 2018b). Such argumentation might also prove consistent with Jefferson’s and other Founders’ views on providential matters, if not strictly depending upon Jefferson’s understandings of the will or the design of God in that respect.

CONCLUSION

Western liberal democracies have developed and protected an extended range of rights and freedoms. They have engendered pluralism and toleration, religious freedom and respect for liberty of conscience, and a working understanding that citizens should not be punished for their thinking, that so-called thoughtcrime is an abomination (Orwell, 1961, 19, 23, 44, 52, 103, *passim*). Contemporary democratic citizens seem

also to appreciate that it is possible for government to use disproportionate means to investigate thoughts, siding with Constant in rejecting such “inquisitorial nosiness” (Constant, 2003, 104). In the United States, freedom of thought has been able to survive under the armor of the Constitution and its First, Fourth, and Fifth Amendments. These protections, such as they are, have been complemented by a patchwork of related practices and laws, along with key constitutional provisions such as the need for overt acts to establish certain forms of criminal action (U.S. Const. art. III, § 3, cl. 1).

However, freedom of thought faces a variety of pressing concerns in key spheres of democratic life. Problems for freedom of thought emerge in such domains as education, free expression, criminal law, immigration, deliberation, and technology. To take the latter as an example, current technologies used to monitor and surveil citizens are being deployed in ways that suppress thinking and put freedom of thought in jeopardy (Sangiovanni, 2019, 56–61, 82–83; Shaw, 2017). Researchers have also recently innovated special interfaces that “extract and deliver information between brains” and allow “direct brain-to-brain communication” (Alegre, 2017, 231–233; Blitz, 2010; Jiang et al., 2019, 1; Lighthart et al., 2020). This generates various difficulties, including concerns about people gaining new ways to investigate others’ thoughts beyond acceptable boundaries. And both government institutions and nongovernment researchers have been working to develop ways of inferring people’s thoughts without relying on subjects’ speech or outward behavior (Blitz, 2017; Cohen, 2020; Mack, 2018; Swaine, 2018a, 425 n. 68). Related concerns are emerging for patients’ freedom of thought in medical research (Lavazza, 2018), and there have been freedom-of-thought controversies in prominent court cases regarding forcible administration of psychotropic medications (*Washington v. Harper*, 494 U.S. 210, 1990; *Sell v. United States*, 539 U.S. 166, 2003; Gallagher, 2016; Winick, 1989). In each of these areas, novel technologies promise to provide exciting new abilities for individuals and for government agencies; but they also facilitate freedom-of-thought violations, and they carry with them the dark prospect of degrading this vital liberty.

Other long-standing and largely accepted democratic institutions have contributed to the corrosion and degradation of freedom of thought. They must be buffered and restrained for the sake of protecting both freedom of thought and other cognate rights and liberties. For instance, freedom of thought is threatened by a variety of allowances afforded

to political officials in their formal and informal capacities as interrogators (Swaine, 2018b). Compulsory testimony requirements continue to operate without a clear understanding of the nature and importance of freedom of thought, too. Even the very institution of the subpoena deserves fundamental reconsideration—regarding which bodies may issue subpoenas, for what purposes, what officials may ask or require of people called to testify, and when and whether individuals may be punished for noncompliance. Freedom of thought is at risk in each of these areas. These problems are part and parcel of creeping encroachments and of insufficient attention paid to ways in which authorities and institutions can go too far in investigating people's thinking or penalizing those who refuse to disclose their thoughts (Newman, 2019; Swaine, 2018a, 2018b). And continuing government interest in people's thoughts, joined by the ever-present specter of government punishing people for their thoughts alone, contributes further to the degradation of the full value of freedom of thought.

The survival of freedom of thought is crucial for vibrant public and private life, for healthy intellectual culture, and for the advancement of free societies. Effective democracy and rightful governance, and indeed the very legitimacy of a political order, quite plausibly depend on freedom of thought. This special freedom must be elevated and drawn out of the subterranean areas of democracy, emerging to flourish in the discourse of contemporary rights and liberties. With broader articulation, freedom of thought can become a fuller part of the living tapestry of democratic values, intertwined with other rights and freedoms and strengthening the liberal-democratic panoply.

The act of bringing freedom of thought to light, of giving it more complete philosophical and legal expression, can assist in solving primal questions raised at the outset of Western political thought. Should political or legal authorities be able to hold one to account for one's thoughts? Is it right or fair to pressure people to disclose their ideas, feelings, or beliefs, and to penalize them if they refuse to comply? Ought people to be able to be accused or convicted of crimes, based simply on thoughts they have, or which they may lack? We need more than just a Delphic sense of what the answers to such questions may be.

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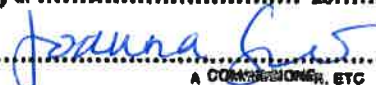
I FREEDOM OF THOUGHT IN POLITICAL HISTORY 25

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This is Exhibit D referred to in the
 affidavit of ... Lucas Swaine
 sworn before me, this ... 26th
 day of ... April 20²⁴

 A COMMISSIONER, ETC

Sworn remotely by Lucas Swaine in the city of Hanover, NH
 with commissioner Joanna Shaw in the city of Toronto, ON.

JOANNA KATHLEEN SHAW,
 a Commissioner, etc., Province of Ontario,
 for LEWIN & SAGARA LLP,
 BARRISTERS AND SOLICITORS.
 Expires October 16, 2026.

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United Nations

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Agenda item 74 (b)

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Freedom of religion or belief

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, in accordance with General Assembly resolution 75/188.

* The present report was submitted after the deadline in order to reflect the most recent information.

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Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed

Freedom of thought

Summary

In the present report, the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, examines the theoretical scope and potential violations of the first right in article 18 (1) of the International Covenant on Civil and Political Rights: freedom of thought. Drawing on international jurisprudence, scholarship and the perspectives of diverse stakeholders, he first examines four proposed attributes of this right: (a) freedom not to disclose one's thoughts; (b) freedom from punishment for one's thoughts; (c) freedom from impermissible alteration of one's thoughts; and (d) an enabling environment for freedom of thought.

Second, the Special Rapporteur examines potential violations of the right across seven diverse fields: torture or cruel, inhuman or degrading treatment or punishment; surveillance; coercive proselytism, anti-conversion and anti-blasphemy efforts; intellectual freedom and education; existing and emerging technologies; mental health; and conversion practices. Finally, the Special Rapporteur makes key recommendations to multilateral, State and various non-State actors on how to respect, protect and fulfil the right to freedom of thought. In particular, he encourages the United Nations human rights system to further clarify the freedom's scope and content, including through a general comment.

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I. Introduction¹

1. For many, the pronouncement by René Descartes, “I think, therefore I am”, speaks to the essentiality of “freedom of thought” for the dignity, agency and existence of the human being. As expressed in article 18 of the Universal Declaration of Human Rights, article 18 (1) of the International Covenant on Civil and Political Rights, and article 1 (1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, freedom of thought is recognized as one of three distinct, but equal rights² within the right to freedom of “thought, conscience and religion” or belief.

2. Freedom of thought, along with one’s conscience and belief, is regarded as part of one’s *forum internum* – a person’s inner sanctum (mind) where mental faculties are developed, exercised and defined. The drafting history of the Universal Declaration of Human Rights suggests that some delegates, including the Lebanese delegate, Charles Malik, considered free exercise of these faculties as essential for protecting “the human person’s most sacred and inviolable possessions”, which enable people to “perceive the truth, to choose freely and to exist”.³ Purposely named as the first right in article 18 of the Declaration, freedom of thought was characterized by the French delegate, René Cassin, as “the origin of all other rights”.⁴

3. Drawing on diverse philosophical and historical traditions, ranging from the Enlightenment to Chinese philosophy and the pro-science sentiments of the Union of Soviet Socialist Republics, several delegates emphasized that freedom of thought extends beyond religious matters, and also protects political, scientific and philosophical thought.⁵ Notably, drafters of the Universal Declaration highlighted the suppression of “free thinkers”, scientists and dissidents as paradigmatic violations of the freedom.⁶ Yet, although drafters briefly debated what “freedom of thought” encompasses, they did not expand upon it in the formulation of the Declaration.

4. Articles 4 and 18 of the International Covenant on Civil and Political Rights confirm the right’s significance, ascribing it absolute protection, even during public emergencies.⁷ Consequently, and unlike *forum externum* (external realm) freedoms that are subject to State limitations, if prescribed by law and necessary to protect public safety, order, health or morals, or the rights of others, States legally cannot ever interfere with freedom of thought. Despite its proclaimed importance and absolute nature, the right’s scope and content remain largely underdeveloped and poorly understood. The right receives scant attention in jurisprudence, legislation and scholarship, international and otherwise. With one possible exception,⁸ the Human Rights Committee has not yet considered freedom of thought when claimants have alleged violations of the right, choosing instead to analyse cases under other human

¹ The Special Rapporteur is grateful for the excellent research undertaken for the present report by Rose Richter, Christine Ryan, Jennifer Tridgell, Ben Greenacre and Alexandra Ziaka. He also thanks his junior researchers and summer fellows for their contributions.

² Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion (HR/GEN/1/Rev.9 (Vol. I), p. 204, para. 1).

³ E/CN.4/SR.14, p. 3.

⁴ E/CN.4/SR.60, p. 10.

⁵ E/CN.4/SR.7, p. 4; and submission from Jan Christoph Bublitz.

⁶ See, e.g., E/CN.4/SR.60 and E/CN.4/SR.60/Corr.1, p. 10 (Union of Soviet Socialist Republics and Lebanon).

⁷ Human Rights Committee, general comment No. 22 (1993), paras. 1 and 3. See also Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression (CCPR/C/GC/34, para. 5); and A/HRC/31/18, para. 17.

⁸ See CCPR/C/78/D/878/1999.

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rights provisions.⁹ The European Court of Human Rights similarly sidesteps engagement with the freedom.¹⁰ While the freedom is recognized in more than 100 national constitutions, the formulation and regulation thereof are not consistent.¹¹

5. Increasingly, commentators and rights holders who are drawing attention to this “forgotten freedom”¹² highlight significant pressures facing freedom of thought, both existing and emerging, the implications of which are not always understood. Stakeholders report, for example, that State and non-State actors use problematic practices to alter thoughts, including through re-education programmes, torture, coercive proselytism, anti-conversion measures and involuntary treatment for purported mental health conditions.

6. Others emphasize major developments in digital technology, neuroscience and cognitive psychology that could potentially enable access to the very content of our thoughts and affect how we think, feel and behave. Despite their nascent nature, commentators note that the advancing design and increasingly widespread use of these technologies raise pertinent questions for policymakers, among others, about how to protect *forum internum* rights, including freedom of thought.

7. The present report explores what “freedom of thought” means as a universal human right and endeavours to provide practical guidance to rights holders and duty bearers on how to respect, protect and promote it. To that end, the Special Rapporteur draws on jurisprudence and the research and perspectives of diverse stakeholders. The report does not conclusively resolve debates over what constitutes “thought” or “freedom of thought”, but rather is the first attempt to comprehensively articulate the right’s content and scope in the United Nations system.

II. Activities of the Special Rapporteur

8. From mid-July 2020 to mid-July 2021, the Special Rapporteur addressed 56 communications to States and non-State actors, expressing his concern over violations of freedom of religion or belief. The Special Rapporteur undertook several follow-up activities to his previous reports on combating antisemitism (A/74/358); gender-based violence and discrimination in the name of religion or belief (A/HRC/43/48); the 2030 Agenda for Sustainable Development (A/75/385); the relationship between freedom of expression and freedom of religion or belief (A/HRC/40/58); countering Islamophobia/anti-Muslim hatred (A/HRC/46/30); and his country visits to Sri Lanka (A/HRC/43/48/Add.2) and Uzbekistan (A/HRC/37/49/Add.2). He collaborated with the Office on Genocide Prevention and the Responsibility to Protect on implementing the United Nations Strategy and Plan of Action on Hate Speech, as well as with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. He worked with the Office of the United Nations High Commissioner for Human Rights, the Office on Genocide Prevention and the Responsibility to Protect and the United Nations Alliance of Civilizations to advance the Global Pledge for Action by Religious Actors and Faith-Based Organizations to Address the COVID-19 Pandemic in Collaboration with the United Nations,¹³ and with the Ralph Bunche Institute for

⁹ Twice, the Human Rights Committee deemed it unnecessary to consider freedom of thought after finding a violation of freedom of expression: see CCPR/C/84/D/1119/2002, para. 7.4; and CCPR/C/64/D/628/1995, para. 10.5.

¹⁰ See, e.g., *Riera Blume and Others v Spain*.

¹¹ See <https://www.wisdomperiodical.com/index.php/wisdom/article/view/310>.

¹² See https://brill.com/view/journals/ejcl/8/2-3/article-p226_226.xml?rskey=7hFYVs&result=98, pp. 2–3.

¹³ See <https://www.ohchr.org/Documents/Issues/Religion/GlobalPledgeAction.pdf>.

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International Studies of the City University of New York on a follow-up project arising from his visit to Uzbekistan. As an observer, he attended meetings of the International Contact Group on Freedom of Religion or Belief and of the International Religious Freedom or Belief Alliance. He also continued to engage various actors promoting freedom of religion or belief, including the International Panel of Parliamentarians for Freedom of Religion or Belief and the Minority Rights Group.

III. Methodology

9. To inform the present report, the Special Rapporteur held 7 online round-table consultations and 11 online bilateral meetings with key stakeholders from all five geographical regions. In response to his call for submissions, he received and reviewed submissions from 35 civil society entities, 14 individuals, 12 States, 4 multilateral organizations and 3 national human rights and equality bodies. Reflecting diverse and multifaceted interests in the freedom of thought, participants included rights holders; human rights defenders; civil society; leaders of all faiths and none; psychologists; neuroscientists; policymakers; lawyers; scholars; the media; digital technology companies; intergovernmental and international organizations; and States. The Special Rapporteur extends his deepest gratitude to all who provided their time and insights.

IV. Conceptual framework

10. International law does not define “thought”. The travaux préparatoires for article 18 of the Universal Declaration of Human Rights, article 18 (1) of the International Covenant on Civil and Political Rights, and article 14 (1) of the Convention on the Rights of the Child,¹⁴ are silent on the concept. Some claim that the drafters purposefully left its meaning vague so that our understanding of the right could evolve with scientific developments. Consequently, scholars intensely debate how narrowly to interpret the concept of “thought” in international human rights law and, therefore, the scope of protection afforded to “freedom of thought”.

11. What constitutes “thought” not only lacks legal precision, but also scientific and philosophical consensus. Neuroscientists generally agree that thoughts are created when billions of neurons (nerve cells) in the brain – connected by trillions of synapses – fire together.¹⁵ But the consensus ends there. Some neuroscientists distinguish “thought” from other cognitive processes, including emotion, based on the primary part of the brain engaged. Others emphasize the complex, highly interrelated nature of anatomical aspects of the brain that support cognitive functions, comparing efforts to “trace a thought from beginning to end” to “asking where the forest begins”.¹⁶

12. Many stakeholders treat “thought” as an individual process and/or product of thinking.¹⁷ For instance, legal scholar Nita Farahany considers “thought” as a cognitive “product” with “rich” or “substantive” content, thereby distinguishing it from “lower” outcomes of cognition including emotions, inclinations or preferences.¹⁸ Others reject this conceptual distinction, asserting that emotions are an

¹⁴ E/CN.4/1984/71, paras. 13–33.

¹⁵ See <https://www.scientificamerican.com/article/mind-aglow-scientists-watch-thoughts-form-in-the-brain/>.

¹⁶ See <https://engineering.mit.edu/engage/ask-an-engineer/what-are-thoughts-made-of/>.

¹⁷ See <https://www.merriam-webster.com/dictionary/thought>; and submissions from the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and from Jan Christoph Bublitz.

¹⁸ Consultation on psychology and neuroscience.

integral part of thought processes, by making a mind more inclined to think one thing over another.¹⁹ Meanwhile, some scholars contend that “thought” includes an individual’s mental capacity to “reason”, while others emphasize that thoughts also arise from spontaneous, associative and creative thinking.²⁰

13. Some experts ostensibly have distinguished between conscious and unconscious thought. Psychologist Daniel Kahneman, for example, proposes two modes of thinking: “fast” (automatic, intuitive and largely unconscious) and “slow” (deliberate, analytical and consciously effortful), arguably distinguishing between non-agentic (non-controlled) and agentic (self-controlled) thought.²¹ Memory – ostensibly “consolidated” thoughts – could also entail either conscious or unconscious recollection.²² Others contend that conscious thought is not entirely agentic: it often cannot be inhibited, suspended or terminated while unfolding.²³ Therefore, some experts submit that “freedom” of thought is not about “free” control over one’s own thoughts, but rather ensuring autonomy to develop thoughts, free from impermissible influences.²⁴

14. Many Humanists define “thought” as simultaneously a private mental experience (whether as a product or process) and a skill that can and should be cultivated through creating an enabling environment.²⁵ Like many skills, they argue, critical thinking skills must be “taught and given the freedom and opportunity to develop”, including through educational curricula.²⁶

15. Linguists often debate whether language shapes thoughts or is merely a vehicle for expressing one’s thoughts. Relativists generally believe that thoughts emerge from one’s internal dialogue, using the same grammar as one’s native language.²⁷ On the other hand, universalists contend that languages share the same underlying structure, possessing superficial differences that do not affect cognitive processes.²⁸ From this perspective, language is separate from and irrelevant to human thought.²⁹

16. Increasingly, stakeholders submit that “thought” is not simply limited to what is inside one’s mind, but encompasses so-called “extended cognition” or “external thinking”.³⁰ They theorize that certain objects (e.g., diaries, notebooks) or aspects of one’s “digital footprint” (e.g., Internet search histories, smartphone contents) may constitute “thought”, rather than being solely expressions of one’s thoughts. Furthermore, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression suggests that certain aspects of an individual’s digital footprint, including online searches and viewing content, constitute expressions of private “thought”.³¹ Supporting “extended thought” theories, studies indicate that some people, including persons experiencing dementia, use social media

¹⁹ See <https://press.princeton.edu/books/paperback/9780691000671/a-spinoza-reader>.

²⁰ See, e.g., <https://www.christofflab.ca/wp-content/uploads/2017/10/Doshi2012.pdf>, p. 1.

²¹ See <https://us.macmillan.com/books/9780374533557>.

²² Submission from Antoon De Baets.

²³ See https://www.blogs.uni-mainz.de/tb05philosophie/files/2013/04/Metzinger_M-Autonomy_JCS_2015.pdf, p. 270.

²⁴ See <https://www.worldcat.org/title/un-covenant-on-civil-and-political-rights-ocpr-commentary/oclc/1037676229?referer=di&ht=edition>, p. 412.

²⁵ Submission from Humanists UK.

²⁶ Consultation with Humanists International.

²⁷ See <https://www.worldcat.org/title/explorations-in-linguistic-relativity/oclc/746930056>, pp. 25–44.

²⁸ See <https://www.worldcat.org/title/rethinking-linguistic-relativity/oclc/33047146>.

²⁹ See https://monoskop.org/images/2/20/Pinker_Steven_The_Language_instinct_1995.pdf, p. 60.

³⁰ See <https://www.frontiersin.org/articles/10.3389/frai.2019.00019/full>; submissions from Jubilee Campaign, Susie Alegre, Jan Christoph Bublitz, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe; see also <https://www.ida.liu.se/~729A10/mtrl/Rowlands.pdf>.

³¹ A/HRC/47/25, para. 66.

or smartphones as an external substitute for memory, and not necessarily as a tool for sharing or expressing thoughts.³² The Special Rapporteur observes that extending the absolute protection of freedom of thought to certain forms of expression raises complications in various scenarios, including within the justice system. Irrespective of whether these items are deemed *forum internum*, they already receive qualified protection under the right to privacy.³³

V. Legal framework

17. Though freedom of thought is recognized by several international human rights instruments,³⁴ its core attributes and scope are unclear. This is complicated by rhetorical inconsistency, where some use “freedom of thought” interchangeably with other rights, and where *forum internum* rights are closely intertwined, such as thought and belief.

A. Freedom of thought and freedom of expression

18. While freedom of thought is absolute, freedom of expression can be limited. But the distinction between “thought” and “expression” in international law is not always clear. Thought and expression are conceptually and practically distinct, yet they engage in a perpetual feedback loop in which expression is a vehicle for exchanging and developing thoughts, and thoughts feed expression.

19. For the United States Supreme Court, “[t]he right to think is the beginning of freedom, and [...] speech is the beginning of thought”.³⁵ The Supreme Court of Canada also observes that when we speak of “thinking aloud [...] in many cases, our thoughts become choate only through their expression”.³⁶ From this perspective, restricting an individual’s freedom of expression may stifle the process of developing thoughts. Therefore, some suggest that “expressions of thought” fall under freedom of thought’s absolute protection,³⁷ but this may unduly expand its scope and alter the conditional nature of freedom of expression.

20. Article 13 (1) of the American Convention on Human Rights differs from article 18 (1) of the International Covenant on Civil and Political Rights, rather protecting a hybrid “right to freedom of thought and expression”. The Inter-American Commission on Human Rights interprets this right to include the freedom to voice and disseminate ideas and freedom to receive information without unlawful or unjustified interference. However, freedom of thought is ostensibly not absolute under article 13 (2) of the American Convention on Human Rights.

³² See <https://www.cambridge.org/core/journals/journal-of-the-american-philosophical-association/article/abs/is-having-your-computer-compromised-a-personal-assault-the-ethics-of-extended-cognition/AD3872F46DFB86C0A949A9C9BD9A15EEC>.

³³ General Assembly resolution 75/176, thirteenth preambular para.

³⁴ Article 18, Universal Declaration of Human Rights; article 18 (1), International Covenant on Civil and Political Rights; article 14 (1), Convention on the Rights of the Child; article 1 (1), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; article 9, Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); article 13 (1), American Convention on Human Rights; article 22, ASEAN Human Rights Declaration; article 30 (1), Arab Charter on Human Rights; article 9 (1), African Charter on the Rights and Welfare of the Child.

³⁵ See <https://supreme.justia.com/cases/federal/us/535/234/>, p. 253.

³⁶ See <https://www.canlii.org/en/ca/scc/doc/2001/2001scc2/2001scc2.html#par25>, para. 108.

³⁷ See https://intersentia.com/docs/CHRI_R_2012_01.pdf, pp. 80–82.

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B. Freedom of thought and freedom of opinion

21. Thought and opinion are distinct freedoms, enshrined in articles 18 (1) and 19 (1) of the International Covenant on Civil and Political Rights, respectively. Their precise delineation is difficult since both fall within the *forum internum*, and some courts and commentators consider that opinion is a type of “thought”. The drafters of the Covenant spent little time elaborating on why and to what extent they differ; they merely commented that “thought” and “opinion” were not identical, yet close in meaning and complementary.³⁸ Notably, the Special Rapporteur on the right to freedom of opinion and expression observes that freedom of opinion is “closely connected” to freedom of thought within *forum internum*, and this “internal process (thought and opinion)” interacts “with the external (expression)”.³⁹ Several interlocutors emphasize that freedom of opinion depends on protecting freedom of thought,⁴⁰ since “[t]hought is a process, while opinion is the result of this process”.⁴¹

C. Freedoms of thought, conscience and religion or belief

22. The travaux préparatoires for the Universal Declaration of Human Rights indicate that freedom of thought extends beyond thought on matters of conscience, religion and belief, noting that freedom of religion is “only one form of freedom of thought”.⁴² The Human Rights Committee further clarifies that freedom of thought extends beyond “religious” thought alone⁴³ and encompasses thought “on all matters”.⁴⁴ This includes, according to one Committee member, thoughts “considered offensive or illegitimate by authorities or public opinion”,⁴⁵ leading some scholars to describe freedom of thought as the “right to hold deviant ideas” even if harmful acts themselves are criminalized.⁴⁶

23. Regional jurisprudence also establishes that freedom of thought protects more than religion or belief-based thought. For example, according to the European Court of Human Rights, “thoughts” could include one’s intention to vote for a political party⁴⁷ and choosing the name for one’s child.⁴⁸

24. The Special Rapporteur notes that religious and non-religious people alike may cherish freedom of thought as a vehicle for reason, the search for truth and individual agency, engaging both freedom of religious choice (namely, the right to have, adopt or change religion or belief, and to interpret one’s religion or belief) and “freedom from religion” to think freely on all matters without the influence of religion or belief systems. In the Beirut Declaration on Faith for Rights, it is further stressed that freedom of religion or belief cannot exist without freedom of thought.⁴⁹ Within

³⁸ A/2929, para. 123.

³⁹ A/HRC/47/25, para. 33; and A/HRC/44/49/Add.2, para. 11.

⁴⁰ See, e.g. submission from Associação Nacional de Juristas Evangélicos (ANAJURE); see also https://www.researchgate.net/profile/Christoph-Bublitz/publication/261950057_Freedom_of_Thought_in_the_Age_of_Neuroscience/links/55e5d32008aec74dbc74db32/Freedom-of-Thought-in-the-Age-of-Neuroscience.pdf, p. 4.

⁴¹ See <https://www.worldcat.org/title/international-bill-of-rights-the-covenant-on-civil-and-political-rights/oclc/7464593>, p. 217.

⁴² See e.g., A/C.3/SR.127, p. 395 (Philippines).

⁴³ CCPR/C/SR.1162, paras. 40, 43.

⁴⁴ Human Rights Committee, general comment No. 22 (1993) (HR1/GEN/1/Rev.9 (Vol. 1), p. 204, para. 1).

⁴⁵ CCPR/C/106/D/1786/2008, p. 17.

⁴⁶ See https://scholars.unh.edu/unh_lr/vol3/iss2/3/.

⁴⁷ See <http://hudoc.echr.coe.int/eng?i=001-78984>, para. 76.

⁴⁸ See <http://hudoc.echr.coe.int/eng?i=001-3751>, para. 2.

⁴⁹ A/HRC/40/58, annex I, para. 5.

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religion, people may think critically about what religion calls for in how we live life and in giving full effect to religious practice, including worship, observance and teaching.

D. Attributes of the right to freedom of thought

25. Beyond absolute protection,⁵⁰ relatively little is clear about the right's core elements or "attributes". Below, the Special Rapporteur maps four possible attributes of the right based on international human rights jurisprudence and commentary: (a) not being forced to reveal one's thoughts; (b) no punishment and/or sanctions for one's thoughts; (c) no impermissible alteration of one's thoughts; and (d) States fostering an enabling environment for freedom of thought.

1. Freedom not to reveal one's thoughts

26. In discussing freedom of thought in its general comment No. 22, the Human Rights Committee asserted that, "[i]n accordance with articles 18 (2) and 17[of the International Covenant], no one can be compelled to reveal his thoughts"⁵¹ implying that "mental privacy" is a core attribute of freedom of thought. The right not to reveal one's thoughts against one's will arguably includes "the right to remain silent", without explaining such silence.⁵² Meanwhile, United States courts recognize that an individual's right to privacy encompasses mental privacy.⁵³

2. Freedom from punishment for one's thoughts, real or inferred

27. That States must never punish or sanction people for their mere thoughts, including beliefs, desires, fantasies and unexecuted intentions, is widely considered to be an attribute of freedom of thought. Such protection is predicated on the principle that everyone is free to think whatever they wish within their inner mind. Since any limitation on *forum internum* is impermissible, States or non-State actors may violate this attribute when they punish an individual for their thoughts, regardless of whether those thoughts were accurately identified or not. Nonetheless, as technological advances increase the possibility of accurately decoding or inferring one's inner mind accurately, clear parameters and protections for *forum internum* rights need urgent consideration.

3. Protection from impermissible alteration of thought

28. Several commentators contend that freedom of thought protects against alteration of one's thoughts, in particular circumstances. This is a complex matter to delineate because, in reality, our thoughts are perpetually influenced by others. Parents entice their children to eat healthily, companies persuade consumers to buy their products through glossy advertising, and policymakers use "nudges" to influence citizens' behaviour towards desired outcomes, including for organ donation, nutrition and environmental conservation.⁵⁴ These specific examples may not often evoke human rights concerns, but they nonetheless raise questions about what

⁵⁰ Human Rights Committee, general comment No. 22 (1993) (HRI/GEN/1/Rev.9 (Vol. 1), pp. 204–205, paras. 1 and 3). See also Human Rights Committee, general comment No. 34 (2011) (CCPR/C/GC/34), para. 5; and A/HRC/31/18, para. 17.

⁵¹ Human Rights Committee, general comment No. 22 (1993) (HRI/GEN/1/Rev.9 (Vol. 1), p. 205, para. 3).

⁵² CCPR/C/106/D/1786/2008, p. 17.

⁵³ *Long Beach City Employees Assn. v. City of Long Beach* (1986); *Stanley v. Georgia* (1969).

⁵⁴ See <https://www.diva-portal.org/smash/get/diva2:818442/FULLTEXT01.pdf>

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constitutes “mental autonomy”. Ultimately, scholars propose three categories of impermissible alteration of one’s thought that could violate freedom of thought.

(a) Coercion

29. While article 18 (2) of the International Covenant on Civil and Political Rights protects against “coercion which would impair [the] freedom to have or to adopt a religion or belief [of choice]”, the drafting history of the Covenant suggests that this protection includes freedom from certain forms of “psychological”⁵⁵ influence, which legal scholars interpret to include coercive alteration of thought.⁵⁶ Scholars equally assert that because “thought” is part of the process through which individuals generate a belief or religious conviction, its coercive alteration could have derivative protections under article 18 (2) of the Covenant. Similarly, the Human Rights Committee has held that freedom from coercion protects freedom of conscience, which, like thought, is an absolute freedom not explicitly mentioned in article 18 (2).⁵⁷

30. There is no single definition of “coercion” within international human rights law. Across national jurisdictions, definitions vary but generally include: use of force, or an express or implied threat that puts the victim in immediate and reasonable fear of the consequences, thereby compelling the victim to act contrary to their will.⁵⁸ In examining coercion claims, the Human Rights Committee has affirmatively considered that threats of violence or penal sanction,⁵⁹ as well as restrictions on access to education, medical care, employment or participation in public life, are coercive acts that contravene article 18 (1) and (2) of the Covenant.⁶⁰

31. Importantly, architects of the Covenant reasoned that coercion “should not be construed as applying to moral or intellectual persuasion”.⁶¹ Similarly, drafters of the Universal Declaration of Human Rights and the Special Rapporteur on the right to freedom of opinion and expression do not consider that unavoidable ordinary social influences, such as persuasion, are impermissible interferences, with the latter observing that “in reality human beings are influenced constantly in their thought [...] by others”.⁶² Stakeholders further observe that the freedom does not “shield the individual from the thoughts of others”.⁶³ Thus, the exact point at which persuasion becomes coercion requires a case-by-case assessment, with consideration of context and subject.

(b) Modification

32. “Modification” of thought – the changing of an individual’s thoughts through direct alteration of brain chemistry or brain function – is another example of an attempt to alter an individual’s thoughts that may violate article 18 (1) of the Covenant when not the product of free and informed consent. Unlike coercion, modification occurs irrespective of the victim’s awareness of the use or threat of force.

33. Today, treatments such as deep brain stimulation and transcranial direct current stimulation are regularly used to modulate brain activity and thoughts for medical treatment. Although not currently used on humans, optogenetics might one day allow

⁵⁵ E/CN.4/SR.319, p. 3.

⁵⁶ Submission from Jan Christoph Bubltz.

⁵⁷ CCPR/C/79/Add.6, para. 7.

⁵⁸ See, e.g., [https://cite.case.law/pdf/1551665/State.v.Darlington,1531nd.1\(1899\).pdf](https://cite.case.law/pdf/1551665/State.v.Darlington,1531nd.1(1899).pdf), p. 3.

⁵⁹ CCPR/C/78/D/878/1999, para. 7.2.

⁶⁰ Human Rights Committee, general comment No. 22 (1993) (HRI/GEN/1/Rev.9 (Vol. 1), p. 205, para. 5).

⁶¹ A/2929, para. 110.

⁶² A/HRC/47/25, para. 34. See also A/67/303, para. 26.

⁶³ Submission from ADF International.

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for alteration, removal or transferral of one's memories by using light to control individual neurons.⁶⁴

34. Consuming psychoactive substances could also modify one's brain chemistry and structures, causing some scholars and advocates to argue that forcibly administering such substances may violate freedom of thought.

(c) **Manipulation**

35. A growing body of legal scholarship supports the claim that freedom of thought includes freedom from manipulation. While modification bypasses psychological processes to directly alter biological function, manipulation engages and controls psychological processes. Some scholars define manipulation of thought as "interference with the processes of understanding" to induce the formation of "biased mental models [...], knowledge and ideologies", or a form of "cognitive mind control".⁶⁵ Stakeholders point to power differentials as a key factor in establishing and wielding manipulative control over a person's thoughts.⁶⁶ From their perspective, in certain situations where an "influencer" exploits power asymmetries vis-à-vis a "victim" to alter their thoughts, this may violate the latter's freedom of thought.

36. Legal scholars contend that mental influences, which involve "conscious and uncoerced processes" such as persuasion, are prima facie but not necessarily legitimate.⁶⁷ Case-by-case assessments of whether certain practices impermissibly manipulate one's thoughts could consider, among other factors:

(a) **Consent.** Did the rights holder, whether explicitly or tacitly and where they have capacity to do so, consent to the practice? Was that consent free and informed?

(b) **Concealment or obfuscation.** Would a "reasonable person" be aware of the intended influence? For example, if the content is an advert or government campaign, is it clearly attributable, labelled or otherwise evident as such? During content curation or moderation, is the user clearly notified when and why certain content was removed or displayed?

(c) **Asymmetrical power.** Is there an imbalance of power between the influencer and the rights holder? Does the influencer exercise this power to promote a certain narrative to the exclusion of others? Is this done in a limited, transparent and consistent manner, which the recipient can readily change or appeal?

(d) **Harm.** Some commentators point to "harm" in intent or effect to distinguish permissible "influence" from impermissible "manipulation". However, others contend that it is not always necessary to prove "harm" to establish the latter. Rather, it is an aggravating factor. If the influence undermines one's rational decision-making, it may impair freedom of thought even if the desired result is a commonly held good.

37. These factors are non-exhaustive and may change in relative importance depending on the specific case, especially where members of certain groups typically receive extra protections for thought processes, such as persons with mental disabilities or children, given their evolving capacities. For example, one may prioritize the consideration of "power imbalances" for digital content filtering that

⁶⁴ See <https://doi.org/10.1007/s11569-020-00377-1>, pp. 209–212.

⁶⁵ See <https://journals.sagepub.com/doi/10.1177/0957926506060250>, p. 1.

⁶⁶ See <https://www.mendeley.com/catalogue/5a54e92e-2b7e-3deb-8ea7-0d71b3c886b5>, p. 138.

⁶⁷ See https://www.researchgate.net/publication/257695713_Crimes_Against_Minds_On_Mental_Manipulations_Harms_and_a_Human_Right_to_Mental_Self-Determination, p. 368.

influences children's thoughts, but require "harm" to establish impermissible influence within parent-child relationships.

38. Children's heightened brain plasticity increases their vulnerability to coercive alteration of their thoughts. Recently, the Committee on the Rights of the Child urged State parties to identify, define and prohibit digital practices that "manipulate or interfere with" children's freedom of thought, including "automated systems or information filtering systems" that can "affect or influence children's behaviour or emotions".⁶⁸

39. The Charter of Fundamental Rights of the European Union, article 5 (1) of the American Convention on Human Rights and various national constitutions, including those of Serbia and Switzerland, protect the "mental integrity" of individuals,⁶⁹ which some interpret as a right against "significant, non-consensual interference with one's mind", including manipulation.⁷⁰ Relevant courts have not yet elaborated on this point.

4. An enabling environment for free thought

40. The Special Rapporteur recalls that United Nations treaty bodies have developed a tripartite understanding of State responsibilities for human rights – namely, obligations to respect, protect and fulfil rights, entailing both negative duties (of restraint) and positive obligations.⁷¹ Several stakeholders further claim that States have positive obligations towards freedom of thought, akin to other rights, including a duty to create an enabling environment for the freedom.⁷² However, it is uncertain what this would entail.

41. Some postulate that facilitating societal or institutional conditions to make someone capable of "thinking" in the first place, are not necessarily legal obligations under freedom of thought.⁷³ Others warn against empowering States to determine what the "ideal" conditions for free thought are and warn that States may use this purported legal "obligation" to justify authoritarian control over channels of communication and information, such as enacting mass propaganda and re-education campaigns.⁷⁴ In any event, States parties presently have positive legal obligations arising from other human rights, which could significantly further the enjoyment of freedom of thought.

42. **Freedom to access information and communication.** Under freedom of thought, there is potentially a legal basis for claiming that States are obliged to provide access to information and communication. In *Nurbek Toktakunov v. Kyrgyzstan*, the Human Rights Committee found that the "right to freedom of thought and expression includes the protection of the right of access to State-held information", endorsing the claimant's (previously rejected) request for government death penalty statistics.⁷⁵ Interestingly, this verdict reflects both the formulation and

⁶⁸ Committee on the Rights of the Child, general comment No. 25 (2021) on children's rights in relation to the digital environment (CRC/C/GC/25), para. 62.

⁶⁹ See <https://fra.europa.eu/en/eu-charter/article/3-right-integrity-person>. see also www.constituteproject.org/constitution/Serbia_2006.pdf?lang=en

⁷⁰ See, e.g., https://link.springer.com/chapter/10.1007/978-3-030-69277-3_8; <https://www.frontiersin.org/articles/10.3389/frai.2019.00019/full>; and <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2996&context=articles>.

⁷¹ See <https://www.ohchr.org/documents/publications/factsheet15rev1en.pdf>, p. 5.

⁷² Submissions from ANAJURE and from deMens.nu. Consultations on legal framework and on intellectual freedom.

⁷³ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2124014, p. 10.

⁷⁴ Consultation on intellectual freedom.

⁷⁵ CCPR/C/101/D/1470/2006, para. 7.4.

the Inter-American Court of Human Rights interpretation of article 13 of the American Convention on Human Rights (“freedom of thought and expression”).⁷⁶

43. Arguably, looking beyond providing access to specific information to developing an information environment conducive to critical thinking, the Committee on the Rights of Persons with Disabilities asserts that “without access to information and communication, enjoyment of freedom of thought [...] for persons with disabilities may be seriously undermined and restricted”.⁷⁷ Therefore, it concludes that States parties should promote assistance and support for them, including Internet access and alternative modes and methods of communication (e.g., easy-to-read formats). While not specifically considering freedom of thought, the former Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, highlights that journalists are necessary for the functioning of any democratic society, in providing individuals and society alike “with the necessary information to allow them to develop their own thoughts”.⁷⁸

44. Furthermore, a former judge of the European Court of Human Rights argues that access to information is a prerequisite for freedom of thought, since “every person who is ill-informed [or lacking necessary information] cannot think freely”. Therefore, destroying public sources of information, including mass media, propaganda and censorship (e.g. book-burning campaigns), could undermine the freedom.⁷⁹ The Special Rapporteur also observes that “free thinkers” value the free flow of ideas and information, for whom insufficient information or plurality of sources – especially in educational settings – could violate freedom of thought.⁸⁰

45. **The right to education.** The Committee on the Rights of the Child observes that the right to education “draws upon, reinforces, integrates and complements” freedom of thought,⁸¹ while others postulate that education enables children to develop the cognitive skills necessary to fully enjoy their freedom of thought, including how to protect themselves from thought manipulation and to think critically for themselves.⁸² Consequently, States must direct education to “development of the child’s personality, talents and mental [...] abilities to the fullest potential”,⁸³ and the right to education can “only” be enjoyed “if accompanied by the academic freedom of staff and students”.⁸⁴ Moreover, the State may have obligations to facilitate child leisure and rest. Research indicates that playing “performs a significant role” in brain development, particularly in early years, and that without sufficient rest, children lack the “mental capacity for meaningful participation or learning”.⁸⁵

46. **The right to cultural life and science.** The United Nations Educational, Scientific and Cultural Organization (UNESCO) emphasizes that freedom of thought

⁷⁶ *Gomes Lund et al v Brazil*, para. 197.

⁷⁷ Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility (CRPD/C/GC/2), para. 21.

⁷⁸ A/HRC/20/17, para. 3.

⁷⁹ See https://intersentia.com/docs/CHRLR_2012_01.pdf, pp. 82 and 87. See also www.ala.org/advocacy/bbooks/frequentlychallengedbooks.

⁸⁰ Submission from Humanists UK.

⁸¹ Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (HRI/GEN/1/Rev.9 (Vol. II), p. 385, para. 6).

⁸² Consultation with Humanists International; submission from Association européenne pour la défense des droits et des libertés (ASSEDEL); see also <https://unesdoc.unesco.org/ark:/48223/pf0000244676>.

⁸³ Committee on the Rights of the Child, general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (CRC/C/GC/17), para. 27.

⁸⁴ Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education (HRI/GEN/1/Rev.9 (Vol. I), p. 70, para. 38).

⁸⁵ Committee on the Rights of the Child, general comment No. 17 (2013) (CRC/C/GC/17), paras. 9 and 13.

“enable[s] cultural expressions to flourish within societies”, and the Committee on Economic, Social and Cultural Rights emphasizes that the right to take part in cultural life is “intrinsically linked” to freedom of thought.⁸⁶ In addition, the Committee outlines that the right to benefit from scientific progress includes “development of the critical mind and faculties associated with doing science”.⁸⁷ Thus, States must take positive steps to advance science (development) and to protect and disseminate scientific knowledge and its applications (conservation and diffusion).⁸⁸ States should also promote research on “biological, mental and social aspects of ageing” and on “ways of maintaining functional capacities and preventing and delaying the start of chronic illnesses and disabilities”,⁸⁹ including neurodegenerative conditions.

47. **The right to health.** As mental health has many implications for an individual’s inner mind, State obligations – negative or positive – to ensure the highest attainable standard of mental health could affect freedom of thought in various ways. Under the right to health, positive obligations include providing “adequate treatment and rehabilitation for children with mental health and psychosocial disorders while abstaining from unnecessary medication”.⁹⁰ States must also ensure against the application of coercive medical treatments, barring “an exceptional basis” for treating mental illness;⁹¹ and simultaneously protect and assist persons with mental disabilities (e.g., enabling them to live with their families, if they wish).⁹²

VI. Key findings

48. Often, the absolute nature of freedom of thought – coupled with what some argue is a narrow scope of protection – has made it difficult to envisage just how and when this right may be violated, thereby undermining its practical application. This section explores views of diverse stakeholders, working in seven different yet intersecting fields, regarding key trends and isolated incidents where State or non-State policies or practices could potentially violate freedom of thought.

A. Torture or cruel, inhuman or degrading treatment or punishment

49. Stakeholders submit that psychological torture could coercively alter or manipulate a victim’s thoughts through a process generally known as “personality disruption”, which causes a victim’s “learned or structured personality traits [to] fall away”.⁹³ Experts report that this can occur where certain practices, such as prolonged isolation, threats of sexual violence or constant humiliation, affect an individual’s

⁸⁶ United Nations Educational, Scientific and Cultural Organization (UNESCO), Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble (2005). See also Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life (E/C.12/GC/21), paras. 19 and 55 (c).

⁸⁷ Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020) on science and economic, social and cultural rights (E/C.12/GC/25), para. 10.

⁸⁸ *Ibid.*, para. 14.

⁸⁹ Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the economic, social and cultural rights of older persons (HRI/GEN/1/Rev.9 (Vol. I), p. 35, para. 42).

⁹⁰ Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (CRC/C/GC/15), para. 39.

⁹¹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health (E/C.12/2000/4), para. 34.

⁹² Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities (HRI/GEN/1/Rev.9 (Vol. I), p. 23, para. 30).

⁹³ See <https://www.justsecurity.org/77115/the-mendez-principles-beware-crossing-the-line-to-psychological-torture/>.

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interpersonal processes, perception of control, and individual and group identity. Consequently, a victim's ability to control their thoughts and emotions is impaired.⁹⁴

50. Experts assert that this form of torture may also engender a state of "learned helplessness" or dependence, coercively altering one's thoughts towards oneself and others.⁹⁵ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment notes that depending on the degree, severity and type, "undue psychological pressure and manipulative practices may [...] amount to inhuman or degrading treatment", including where certain techniques are used over a lengthy period or against vulnerable individuals (e.g., children or persons with psychosocial disabilities).⁹⁶

51. Experts also report that physical torture can modify brain structures that are critical to thinking, including the hippocampus, amygdala and prefrontal cortex, whether through blunt trauma or prolonged stress. The latter floods the brain with cortisol, the primary stress hormone, which may also compromise the brain's normal physiological functioning.⁹⁷ According to the Inter-American Court of Human Rights, the conditions created by deprivation of human contact or proper light cause "depression [...] and] damage on the psychological system and the glands [of the] brain, [as well as affecting...] the body's hormonal structures".⁹⁸

B. Surveillance that infers thought

52. Scholars and rights activists contend that surveillance technologies deployed in "counter-terrorism" and national security apparatuses threaten freedom of thought, where they purport to reveal one's thoughts through inference, or where those thoughts result in sanctions, including incarceration. Rooted in the idea that one can identify "extremist thinking" and intervene before it manifests, many States digitally surveil citizens by intercepting telecommunications, monitoring Internet traffic, and collating and cross-referencing public and private data, including from social media or government records.

53. Material leaked by Edward Snowden indicates that the "Five Eyes" intelligence alliance (United States of America, United Kingdom of Great Britain and Northern Ireland, New Zealand, Canada and Australia) exhaustively intercepts multiple aspects of individuals' digital footprints,⁹⁹ including private records that arguably may allow them to make inferences about thought. The Government of China reportedly uses biometrics, digital surveillance and personal data for behavioural analysis for identifying "extremist" or "unhealthy thought" in their populace before it can manifest.¹⁰⁰

54. Research suggests that individuals modify their behaviour when they know that they are subject to surveillance,¹⁰¹ including through self-censorship. Some suggest that when surveillance thoroughly infiltrates rights holders' digital lives, they not only censor what they write, but also censor with whom they associate, what they read and,

⁹⁴ See <https://onlinelibrary.wiley.com/doi/abs/10.1111/cpsp.12064>, p. 173.

⁹⁵ See <https://scholarship.law.georgetown.edu/facpub/2214/>, p. 350.

⁹⁶ A/71/298, para. 44.

⁹⁷ See <https://www.hup.harvard.edu/catalog.php?isbn=9780674743908>, p. 160.

⁹⁸ See https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf, para. 329.

⁹⁹ See <https://www.amnesty.org/en/latest/campaigns/2015/03/10-spy-programmes-with-silly-codenames-used-by-gchq-and-nsa/>.

¹⁰⁰ See https://www.hrw.org/sites/default/files/media_2021/04/china04.11_web_2.pdf, pp. 13 and 23–25; see also communication AL CHN 14/2020.

¹⁰¹ See <https://catalogofbias.org/biases/hawthorne-effect/>

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ultimately, alter what they think.¹⁰² Invasive digital surveillance may particularly subvert the thoughts of specific groups. It is reported that targets with a prior history of torture and persecution, regardless of whether they were in a safe country, “would suffer PTSD-like symptoms” upon learning they were targets of digital surveillance.¹⁰³

55. Moreover, an increasing range of inchoate offences raise concerns for freedom of thought. Legislative provisions for inchoate crimes regarding terrorism and “extremism” allow authorities to prosecute individuals without proving their correspondingly grave and guilty act (*actus reus*), shifting “seamlessly from the criminalization of acts of terrorism to the criminalization of extremist thoughts and belief”.¹⁰⁴ For example, some States have adopted legislation or issued directives that seek to criminalize individuals who access any online content which may be of use to a person committing or preparing acts of terrorism.¹⁰⁵

C. Proselytism, anti-conversion and anti-blasphemy efforts

56. The Special Rapporteur has received reports that certain coercive forms of proselytism infringe upon freedom of thought. Although these stakeholders distinguish between “mild” and “aggressive” coercion, they consider both phenomena capable of impairing freedom of thought. In one reported case, it was alleged that some faith-based organizations use “mild forms of coercion”, by making the provision of humanitarian aid conditional on aid recipients’ conversion to another religion.¹⁰⁶ In one possible example of “aggressive coercion”, sources report that non-State actors in Pakistan have kidnapped members of religious or belief minorities, especially Hindu girls, to convert them to Islam.¹⁰⁷

57. The Special Rapporteur has received reports that anti-conversion (i.e., anti-apostasy) laws in several States, including Bhutan, India, Maldives, Nepal and Sri Lanka, and coercive proselytism practices might alter or penalize individuals for their “inferred” thoughts (based on their protected actions in manifesting their religion or belief).¹⁰⁸ In 2020, as many as 21 countries still criminalized apostasy, including 12 countries where apostasy was a capital offence.¹⁰⁹

58. Some contend that anti-conversion measures infringe upon the *forum internum*, including freedom of thought and freedom to hold or change religious or belief convictions.¹¹⁰ Notably, article 18 (2) and (3) of the International Covenant on Civil and Political Rights protect both one’s rights to have or to adopt a religion or belief of one’s choosing without coercion; and to manifest one’s religion or belief.

¹⁰² See <https://lawcat.berkeley.edu/record/1127413/files/fulltext.pdf>, pp. 164 and 169.

¹⁰³ See <https://www.vice.com/en/article/pa5d9g/what-constant-surveillance-does-to-your-brain>.

¹⁰⁴ A/HRC/43/46/Add.1, para. 24; and A/HRC/33/29, para. 61. See also, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=5394&context=mlr>, p. 863.

¹⁰⁵ See, e.g., <http://www.legislation.gov.uk/ukpga/2000/11/section/58>; <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:32017L0541&id=6>; http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=f&cn=1867060801&table_name=loi; <https://wetten.overheid.nl/jef1.3:c:BWBR0001854&boek=Twede&titeldeel=V&artikel=134a&z=2021-07-01&g=2021-07-01>

¹⁰⁶ See <https://www.ajol.info/index.php/jrht/article/view/211102>, pp. 217–219; and <https://academic.oup.com/isq/article/60/4/636/2669512>, p. 640.

¹⁰⁷ See <https://www.ohchr.org/Documents/Issues/Women/WRGS/HumanitarianSettings/CommonwealthInitiativeFreedomReligionPakistan.docx>; and communication AL PAK 2/2016.

¹⁰⁸ See https://www.worldwatchmonitor.org/wp-content/uploads/2018/05/Anti-Conversion-Laws_eBook-1.pdf, pp. 4–8; and submission from Christian Solidarity Worldwide, A/75/385, para. 16.

¹⁰⁹ See https://www.worldwatchmonitor.org/wp-content/uploads/2018/05/Anti-Conversion-Laws_eBook-1.pdf, p. 20.

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Promoting acceptance of a community's specific religious doctrine or their moral vision, while avoiding the use of coercive means, does not impinge upon others' rights and therefore does not constitute grounds for criminal sanctions.¹¹¹

59. Along with anti-apostasy laws, stakeholders express concern that anti-blasphemy laws often erode freedom of thought of religious or belief minorities, including atheists and dissenters.¹¹² These laws reportedly criminalize and censor the free expression of individuals' thoughts out of fear of reprisals and restrict their access to and circulation of materials, including free and open Internet access,¹¹³ which can facilitate critical thinking. For instance, it is reported that Qatar criminalizes "doubts" in Islamic teaching.¹¹⁴ The Special Rapporteur recalls that freedom of religion or belief protects individuals, not religions, and reiterates calls for all States to repeal anti-blasphemy and anti-apostasy laws since they undermine both freedom of religion or belief and the ability to have healthy dialogue and debates on a wide range of human concerns, including religion or belief.¹¹⁵

D. Intellectual freedom and education

60. The Special Rapporteur has received several reports that various States and non-State actors have been engaging in practices that undermine intellectual freedom and critical thinking – two phenomena that may depend on and contribute towards freedom of thought. Reportedly, in at least 32 States, religious or ideological instruction is mandatory for students in all or most State-funded schools, with no secular alternative,¹¹⁶ including in the form of collective worship or religious instruction, school chaplaincy programmes or missionary interventions. Opting out of these mandatory programmes in public schools is reportedly challenging or unavailable in certain contexts, including in cases where religious exemptions (which can carry social and professional stigma) may be noted on children's academic records; have age requirements in lieu of parental approval; or, occasionally, require that a child's alternative religion or belief is affirmed first (e.g., with a "certificate of atheism").¹¹⁷ It is also reported that some education systems are grounded in ideologies that dissuade critical thinking and independent thought altogether.

61. Furthermore, some States reportedly violate freedom of thought and other rights where they attempt to coercively alter – or even punish – thought deemed harmful to national security, such as so-called "deradicalization" and "re-education" programmes.¹¹⁸ Even though current research offers no clarity on the ability of these programmes to

¹¹¹ Submission from ADF International.

¹¹² Consultations with Humanists International and with religious or belief communities.

¹¹³ See <https://economictimes.indiatimes.com/news/international/world-news/pakistan-seeks-to-block-us-based-website-of-minority-ahmadis/articleshow/80390217.cms?from=mdr>.

¹¹⁴ See https://fot.humanistsinternational/countries/asia-western-asia/qatar/#Expression_of_humanist_values_and_critical_thinking.

¹¹⁵ A/72/365, para. 28; see also A/HRC/40/58, annex II, commitment XI.

¹¹⁶ Algeria, Bangladesh, Bahrain, Belarus, Brunei Darussalam, Comoros, Croatia, Egypt, Eritrea, Ghana, Iraq, Iran (Islamic Republic of), Kenya, Lebanon, Malaysia, Maldives, Mauritania, Morocco, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, Yemen, Zimbabwe. Consultation with Humanists International.

¹¹⁷ Consultation with Humanists International; submissions from Turkey and from the Norwegian Helsinki Committee.

¹¹⁸ A/HRC/31/65, paras. 44–46; and CCPR/C/78/D/878/1999, para. 3.2.

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successfully change one's thoughts,¹¹⁹ what is clear is that States must ensure that these programmes do not amount to coercion under article 18 (2) of the Covenant.

62. The Special Rapporteur is concerned, for example, about reports that Sri Lankan "reintegration centres" could violate human rights,¹²⁰ and that the Government of Ethiopia detains political prisoners in "rehabilitation camps", where they are forced to endure political indoctrination, poor living conditions and agonizing physical activities with the purported goal of altering their thoughts.¹²¹

63. Furthermore, rights monitors highlight the detention of ethnic Uighurs and other ethno-religious minorities in "re-education" camps in China's Xinjiang Uighur Autonomous Region,¹²² which the Government of China reportedly promotes in order to "wash brains" and "cleanse hearts" of "extreme religious ideologies".¹²³ Civil society organizations report that many detainees are forced to attend weekly meetings where they must memorize and recite pro-Chinese policy documents and take Chinese language classes.¹²⁴ Some claim that China indoctrinates religious minorities during regularly imposed "home stays", by promoting official government policies and warning them of the dangers of "pan-Islamism", "pan-Turkism" and "pan-Kazakhism".¹²⁵

64. Stakeholders also highlight cases of individuals who are restricted from engaging in certain educational content, which could inhibit critical thinking, such as attempts by the Government of Hungary to restrict the research projects of several academic institutions,¹²⁶ or scholars and students that are "disappeared", incarcerated or otherwise targeted for their academic pursuits.¹²⁷ Reportedly, some States have restricted scholars' activities under the auspices of the COVID-19 pandemic, such as by increasing control over digital communication and attacking those who contest State narratives on the pandemic.¹²⁸ Some observe that particular subjects in schools, such as history, science (including evolution and sex education) and religion or belief, are often those that are restricted or imposed.

65. Interlocutors express concern over several State practices that could pressure students and scholars, dissidents and human rights defenders, among others, to self-censor their expression to avoid sanctions such as financial hardship, violence or arrest. Such treatment might not coercively alter or sanction their thoughts, but rather limits expression of their thoughts, including through academic papers, social media posts or attending protests. This restricted flow of information could potentially affect an individual's critical development of thought. For instance, Chinese university

¹¹⁹ See <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315387420-8/deradicalization-ddr-stig-jarle-hansen?context=ubx&refId=f0f94fac-5c52-4330-85fd-12079d138488>; and <https://journals.sfu.ca/jd/index.php/jd/article/view/33>, p. 3.

¹²⁰ Communication OL LKA 3/2021, pp. 9–12.

¹²¹ See <https://www.hrw.org/news/2018/10/20/mass-arrests-brainwashing-threaten-ethiopias-reform-agenda>; and <https://www.justice.gov/eoir/page/file/1247841/download>.

¹²² CERD/C/CHN/CO/14-17, para. 40; communication CHN 21/2018; see also <https://forhumanists.international/download-the-report/>, p. 96; and submission – Crimean Tatar Resource Center.

¹²³ See <https://www.jpolarisk.com/wash-brains-cleanse-hearts/>. See also <https://web.archive.org/web/20181010124647/http://www.xjpcsc.gov.cn/1009/4028e49c665347630166588b8cf40001001.html>.

¹²⁴ See https://www.hrw.org/sites/default/files/media_2021/04/china0421_web_2.pdf, pp. 25–27; and <https://www.jstor.org/stable/pdf/10.13169/islastudj.5.2.0175.pdf>, p. 180.

¹²⁵ See <https://www.hrw.org/news/2018/05/13/china-visiting-officials-occupy-homes-muslim-region>.

¹²⁶ See <https://www.hrw.org/news/2019/07/02/hungary-renews-its-war-academic-freedom>.

¹²⁷ See <https://www.scholarsatrisk.org/action/scholars-in-prison-project/>, and <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>.

¹²⁸ See <https://pen-international.org/news/pen-international-case-list-2020/>; <https://www.scholarsatrisk.org/resources/free-to-think-2020/>; and <https://link.springer.com/article/10.1007%2Fs40656-020-00354-7>.

purportedly reveal information: including one's sexuality,¹³⁷ political preference¹³⁸ or even criminality.¹³⁹ The accuracy and, in some cases, the scientific basis of these technologies is heavily contested. Nonetheless, some argue that irrespective of whether these technologies violate mental privacy, they can and do still result in punishment for inferred thought.¹⁴⁰ For example, Chinese authorities reportedly deploy "emotion detection" technologies to infer "criminal" states of mind among the public, which could lead to administrative or criminal sanctions.¹⁴¹ Moreover, several corporations and educational institutions allegedly utilize biometric data to infer the thoughts of their employees and students, respectively. Technology that monitors employee brain activity in workplaces is already proliferating, and some scholars postulate that employees might be punished for inferred thoughts, such as thoughts on unionizing.¹⁴²

70. Recent research indicates that result rankings from Internet search engines have a dramatic impact on consumer attitudes, preferences and behaviour – potentially even modifying their very thoughts. For example, five experiments in the United States and India have illustrated the power of search rankings to alter the preferences of undecided voters in democratic elections, noting that many users choose and trust higher-ranked results over lower-ranked results. Research shows these practices could have a significant impact on the users' decision-making processes, including among undecided voters, showing that they can lead to shifts in voting preferences by 20 per cent or more.¹⁴³

71. Reportedly, Facebook has claimed that tweaking content on individuals' "newsfeeds" could transfer emotions from person-to-person,¹⁴⁴ and that their predictive marketing could identify when children feel "insecure", "worthless" and "need a confidence boost".¹⁴⁵ In Kenya, finance applications allegedly have mined their users' mobile phone data to predict when they were most vulnerable to predatory credit offers.¹⁴⁶

72. Technology could disproportionately affect certain groups based on protected characteristics (e.g., race, gender or religion or belief), including where it utilizes artificial intelligence trained on data that reflects and perpetuates existing societal discrimination, thereby affecting when and how their inferred thoughts are scrutinized. For instance, one 2018 study found that certain emotion recognition technologies erroneously assessed black faces as expressing anger in twice as many instances as white faces; and disproportionately assigned them negative emotions generally.¹⁴⁷

2. Microtargeting

73. Microtargeting is the use of (often large volumes of) personal data gathered from digital footprints to tailor what individuals or small groups see online. While traditional advertising is mainly informative, modern advertising draws on techniques

¹³⁷ See <https://www.gsb.stanford.edu/faculty-research/publications/deep-neural-networks-are-more-accurate-humans-detecting-sexual>, p. 250.

¹³⁸ See <https://www.nature.com/articles/s41598-020-79310-1>, p. 4.

¹³⁹ See <https://archive.ph/N1HVc>

¹⁴⁰ Submission from Access Now.

¹⁴¹ See <https://www.article19.org/wp-content/uploads/2021/01/ER-Tech-China-Report.pdf>

¹⁴² Submission from Nita Farahany.

¹⁴³ See <https://www.pnas.org/content/112/33/E4512>.

¹⁴⁴ See <https://www.pnas.org/content/111/24/8788>

¹⁴⁵ See <https://www.theguardian.com/technology/2017/may/01/facebook-advertising-data-insecure-teens>. See also <https://www.bbc.co.uk/news/technology-58570353>.

¹⁴⁶ See <https://septemberpublishing.org/product/reset/>.

¹⁴⁷ See <https://phys.org/news/2019-01-emotion-reading-tech-racial-bias.html>

such as microtargeting and advances in behavioural sciences to examine links between emotional responses and decision-making and play on subconscious desires.¹⁴⁸ This concerns some scholars who believe the technique can be used to manipulate thoughts by exploiting predicted thought patterns to incentivize certain behaviour and effectively “silo” groups, preventing them from seeking and exchanging information.

74. One study of 3.7 million people suggests that targeting individuals with “psychologically tailored advertising” could significantly alter their decision-making compared to “traditional” advertising and “covertly exploit” data to persuade them to take action against their own best interests.¹⁴⁹ The Special Rapporteur on freedom of religion or belief joins the Special Rapporteur in the field of cultural rights in emphasizing that such power “to influence individual choices”, including through the targeted and tailored repetition of the same message across multiple media platforms, raises serious concerns for freedom of thought.¹⁵⁰

75. Many stakeholders also air concern about reports that political parties and consultancies manipulate electoral voters’ thoughts through the use of microtargeting (including of disinformation), thereby influencing political outcomes.¹⁵¹ The Constitutional Court of Spain has ruled that the constitutional principle of “ideological freedom” – which scholars interpret as an amalgam of freedom of thought and opinion – was threatened by political microtargeting,¹⁵² implicitly agreeing with Spain’s Ombudsman that microtargeting could “modulate, or even manipulate, political opinions”.¹⁵³ In the European Union, parliamentarians and civil society actors are calling for the inclusion of a broader ban on surveillance-based targeted advertising in their Digital Services Act.¹⁵⁴

3. Neurotechnology

76. Previously, scholars considered our minds as “a sanctuary no power can penetrate”.¹⁵⁵ While neurotechnology advances hold tremendous promise for treating certain medical conditions, including neurodegenerative diseases such as Alzheimer’s and dementia, many are concerned about the use of neurotechnology to violate mental privacy.¹⁵⁶ Using non-invasive techniques to record brain activity, brain-computer interfaces could already be used in real-time to deduce certain thoughts, including spatial intentions (e.g., controlling prostheses or video games),¹⁵⁷ imagined speech (speech that is thought about, but not expressed), or handwriting.¹⁵⁸ Neuroimaging technology (e.g., brain scans) is also used to infer thoughts, including abstract thought, with one recent study reporting up to 91 per cent accuracy in identifying

¹⁴⁸ A/69/286, para. 29.

¹⁴⁹ See <https://www.pnas.org/content/114/48/12714>.

¹⁵⁰ A/69/286, paras. 28 and 32.

¹⁵¹ See https://www.jstor.org/stable/26372808?read-now=1&refreqid=excelsior%3Aca88f5421a7e0750f146cf1be6c07b7c&seq=1#page_scan_tab_contents.

¹⁵² See <https://tm.coe.int/t-pd-2020-02/rev-political-campaigns-en-2-/1680a0bf4b>, pp. 12–13, and fn. 58.

¹⁵³ See <https://link.springer.com/content/pdf/10.1007/s12027-020-00633-7.pdf>, p. 597.

¹⁵⁴ See <https://edri.org/our-work/can-the-eu-digital-services-act-contest-the-power-of-big-techs-algorithms/>.

¹⁵⁵ See https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/861/Constant_0452_EBk_v6.0.pdf, p. 92.

¹⁵⁶ Consultations on technology and on psychology and neuroscience; see also <https://www.frontiersin.org/articles/10.3389/fnins.2018.00082/full>.

¹⁵⁷ See <https://www.bbvaopenmind.com/en/technology/innovation/video-games-controlled-by-thoughts/>.

¹⁵⁸ See <https://www.nature.com/articles/s41586-021-03506-2>; and <https://www.nature.com/articles/s41593-020-0608-8>.

suicidal thoughts.¹⁵⁹ While the capability of neurotechnology to reveal thought might be impressive within tightly controlled laboratory conditions, the accuracy is far lower in the real-world, at present, and it is allegedly unable to passively “decode” thoughts that researchers have not predefined.

77. While neuroscience’s ability to reveal thought will likely increase in accuracy over time, experts are concerned that, irrespective of accuracy, technology can be used to sanction inferred thoughts. Neuroimaging is reportedly already deployed in some circumstances to detect whether a stimulus is familiar to a person, for determining one’s fitness to stand trial, or for so-called “lic detection”, despite the heavily contested accuracy of such technology.¹⁶⁰ An Indian court accepted a form of neuroimaging as evidence that a defendant lied about their memories regarding a murder, and subsequently handed down a life sentence.¹⁶¹ In 2019, several forensic psychiatrists claimed neuroimaging data could “feasibly” help to determine the likelihood of recidivism.¹⁶²

78. The Special Rapporteur also highlights reports that neurotechnology can already modify or manipulate thoughts inside the brain. Magnetic stimulation of the brain may alter moral reasoning, while electrical stimulation is touted as a possible treatment for depression.¹⁶³ Optogenetics could one day allow for the modification, removal or recovery of memories: to date, researchers have reportedly created artificial memories in mice, which they could recall in a comparable manner to genuine memories.¹⁶⁴ Although these techniques have not been adapted to humans yet, the possibility that optogenetics or other technologies may one day achieve this level of control over our thoughts merits serious consideration.¹⁶⁵

79. Experts broadly agree that contemporary legal frameworks are unprepared for emerging predictive and neurotechnologies and their implications for freedom of thought, among other rights.¹⁶⁶ They advocate human rights compliance for such technologies and caution against knee-jerk legislation that prohibits all forms of thought alteration, which might stymie legitimate persuasion or medical innovation.

F. Mental health

80. Several stakeholders suggested that some tools for “treating” people with intellectual, cognitive or psychosocial disabilities are abused in ways that may violate freedom of thought. For example, psychotherapies, shock treatments, lobotomies and forced medication – some of which the medical community has denounced – reportedly have been used to coercively alter the thoughts of individuals, forcibly reveal thoughts (beyond legitimate therapeutic purposes), punish “inferred” thoughts, or even physically modify brains, in separate or cumulative violations of the freedom.¹⁶⁷ According to a court in the United States, psychosurgery is a “drastic means of affecting human behaviour”, notably impairing one’s abstract reasoning

¹⁵⁹ See https://nocklab.fas.harvard.edu/files/nocklab/files/just_2017_machlearn_suicide_emotion_youth.pdf.

¹⁶⁰ See <https://link.springer.com/article/10.1007%2Fs12152-020-09438-4>.

¹⁶¹ See <https://lawandbiosciences.files.wordpress.com/2008/12/beosruling2.pdf>, para. 105.

¹⁶² See <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0217127>.

¹⁶³ See <https://www.pnas.org/content/early/2010/03/11/0914826107>; <https://www.frontiersin.org/articles/10.3389/fnhum.2016.00355/full>; and <https://www.sciencedirect.com/science/article/abs/pii/S0006322313001364>.

¹⁶⁴ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7592289/>.

¹⁶⁵ See <https://www.frontiersin.org/articles/10.3389/fnhum.2020.00041/full#h9>

¹⁶⁶ Consultation on technology.

¹⁶⁷ Consultation on efforts to change thoughts.

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ability, capacity for “new learning” and memory.¹⁶⁸ In *Rennie v Klein*, another court concluded that the plaintiff’s forced medication violated the “emerging right of privacy” including the “right to protect one’s mental processes from governmental interference”.¹⁶⁹

81. For people with certain mental conditions, one individual submits that treatment for mental health is necessary for “restoring” one’s freedom of thought (e.g., if one experiences delusions).¹⁷⁰ Yet, with concern, the Special Rapporteur highlights reports that bias, prejudice and discrimination, contrary to article 2 of the International Covenant on Civil and Political Rights, often make certain groups more susceptible to forced treatment. In the European Union,¹⁷¹ the United Kingdom¹⁷² and the United States,¹⁷³ racial or ethnic minorities reportedly experience disproportionately high rates of compulsory admission, seclusion or heavy medication. According to the World Health Organization (WHO), individuals are mostly institutionalized because of a “serious likelihood of immediate or imminent danger” and their “need for treatment”.¹⁷⁴ A former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has expressed concern over subjectivity of the “dangerousness” criteria, because those decisions are “often based on inappropriate prejudice, rather than evidence”.¹⁷⁵

82. Some civil society members campaign to minimize or abolish forced treatment for mental health conditions, while others emphasize that it remains necessary in limited circumstances. The Human Rights Committee, in its general comment No. 35 (2014), observes that the practice may be “necessary and proportionate” to protect “the individual [...] from serious harm or preventing injury to others”,¹⁷⁶ but only as “a measure of last resort”, applied for the “shortest appropriate period of time” and accompanied by “adequate procedural and substantive [legal] safeguards”.¹⁷⁷ The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment emphasizes that forced treatment is open to abuse and may constitute arbitrary detention, but withholding forced treatment also may amount to cruel, inhuman or degrading treatment or punishment.¹⁷⁸

G. Conversion practices

83. The Special Rapporteur acknowledges that everyone has some form of sexual orientation or gender identity, which can be an intrinsic part of an individual’s identity.¹⁷⁹ The Special Rapporteur further echoes his colleagues’ concerns regarding conversion practices, which are not only ineffectual, but also harmful and undermine

¹⁶⁸ See https://socialchangenyu.com/wp-content/uploads/2017/12/Jay-Alexander-Gold_RLSC_4.2.pdf, pp. 207 and 210.

¹⁶⁹ See <https://law.justia.com/cases/federal/district-courts/FSupp/462/1131/2142341/>.

¹⁷⁰ Consultation on legal framework.

¹⁷¹ See https://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf, pp. 61–75.

¹⁷² See https://www.cqc.org.uk/sites/default/files/documents/count_me_in_2010_final_tagged.pdf, p. 22; and [thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30027-6/fulltext](http://thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30027-6/fulltext), p. 1.

¹⁷³ See https://omh.ny.gov/omhweb/resources/publications/aot_program_evaluation/report.pdf, pp. 13–16.

¹⁷⁴ See https://ec.europa.eu/health/sites/default/files/mental_health/docs/who_resource_book_en.pdf, p. 49.

¹⁷⁵ A/HRC/35/21, para. 64.

¹⁷⁶ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (CCPR/C/GC/35), para. 19.

¹⁷⁷ *Ibid.*

¹⁷⁸ CAT/OP/27/2, paras. 9 and 15.

¹⁷⁹ A/HRC/35/36, para. 2.

human rights. Stakeholders submit that these conversion practices, though ineffectual, could violate freedom of thought as they attempt to coercively alter or punish the thoughts of lesbian, gay, bisexual and transgender individuals.¹⁸⁰

VII. Good practices

84. The Special Rapporteur notes that several States have taken steps to recognize, protect and fulfil the right to freedom of thought. Among others, the constitutions of Azerbaijan, Iraq and Kyrgyzstan explicitly protect the freedom¹⁸¹ and at least eight other States protect freedom of thought through its relationship with other rights such as freedom of religion or belief, privacy or freedom of expression.¹⁸² Chile and Spain have proposed “neurorights” legislation,¹⁸³ although some express concern that Chile’s model would inhibit neurotechnology innovation in prohibiting commerce of “neurodata” (data obtained from the brain).¹⁸⁴

85. Several States worldwide have undertaken efforts to protect against coercion in the provision of mental health treatment.¹⁸⁵ WHO and the European Commission jointly publish good practices to empower people with mental illness or degenerative cognitive conditions, promote social inclusion and combat stigma concerning mental health.¹⁸⁶

86. The Special Rapporteur notes efforts to promote communication and plurality of information sources, including the “Swiss Digital” strategy, in Switzerland, and the activities of the Independent Broadcasting Authority of Mauritius.¹⁸⁷ To facilitate communication between diverse communities, Iraq promotes minority languages throughout its public education system, several States conduct interfaith workshops, and Doha International Centre for Interfaith Dialogue provides a platform for some religious or belief minorities to voice their beliefs.¹⁸⁸

87. Several major digital technology companies have made efforts to: (a) increase users’ control over the collection, storage and use of their personal data; (b) tackle disinformation by linking to reputable news websites, fact-checking or suggesting that users read entire articles for context; and (c) allow users to check why they are viewing specific content. Some social media companies have established advertisement archives and libraries, which facilitate some external scrutiny.¹⁸⁹ Whether to ensure legal compliance or not, some digital technology companies, including Google, have increased safety measures for children, such as banning online targeted advertising for children based on their age, gender or interests, or deactivating the feature that automatically plays suggested videos.¹⁹⁰

¹⁸⁰ Submission from GIN-SSOGIE, NPC; consultation with religious or belief communities; see also A/HRC/44/53.

¹⁸¹ Submissions from Azerbaijan, Iraq and Kyrgyzstan.

¹⁸² Submissions from Andorra, Cambodia, Israel, Mauritius, Peru, Poland, Qatar and Switzerland.

¹⁸³ See <https://www.senado.cl/noticias/neuroderechos/proteccion-los-datos-neuronales-en-la-constitucion-pasara-a-comision-mixta>; see also <https://www.reuters.com/article/us-global-tech-rights-idUSKBN28D3HK>.

¹⁸⁴ Consultation on psychology and neuroscience.

¹⁸⁵ E.g. Italy, Finland, Norway and Sweden. See, e.g., A/HRC/44/48, para. 13; and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7032511/>.

¹⁸⁶ See https://www.euro.who.int/__data/assets/pdf_file/0009/128088/Factsheet_MNII_Empowerment.pdf.

¹⁸⁷ Submissions from Switzerland and Mauritius.

¹⁸⁸ Submissions from Iraq and Qatar.

¹⁸⁹ A/HRC/47/25, para. 68.

¹⁹⁰ See <https://blog.google/technology/families/giving-kids-and-teens-safer-experience-online/>.

88. In tackling the rising tide of disinformation, the European Democracy Action Plan condemns “information influence operations” and the European Commission is considering various deterrents for perpetrators, including sanctions.¹⁹¹ Some media outlets have conducted media literacy programmes to teach children and adolescents about thinking critically when reading news and to appreciate high-quality news content, thereby tackling the effects of disinformation.¹⁹²

89. Within the educational sphere, the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools of the Organization for Security and Cooperation in Europe guide the preparation of public school curricula teaching about diverse religions and beliefs and promote critical thinking.¹⁹³ Critical thinking is also a core principle of the #Faith4Rights toolkit.¹⁹⁴ The educational outreach programmes of UNESCO are aimed at fostering children’s critical thinking in assessing and responding to extremist online content.¹⁹⁵

90. Finally, the Special Rapporteur highlights the efforts of several local, regional and international civil society organizations, human rights defenders, and leaders of all faiths and none, to monitor and report on practices that could violate freedom of thought. For instance, Humanists International produce an annual “Freedom of Thought” report.

VIII. Conclusions

91. In the words of one scholar, “[t]o lose freedom of thought is to lose our dignity, our democracy and our very selves”.¹⁹⁶ Many consider that the freedom is not only fundamental, but also foundational as the matrix of most freedoms, including conscience, religion or belief, opinion, and expression. Freedom of thought is simultaneously “profound and far-reaching”. It protects thoughts on “all matters”, whether about conscience, religion or belief or other topics, and results in one’s beliefs, opinions and expressions, whether vocalized or not. This includes thoughts within a religion, and thoughts that are non-religious. The Special Rapporteur notes that infringements on the right could have a chilling effect upon expression, and vice versa.

92. This important yet poorly understood right faces current and emerging pressures, the full implications of which are still unclear and demand urgent attention from policymakers and beyond in protecting the right. Various State and non-State practices and policies – including “re-education” programmes, torture, coercive proselytism and anti-conversion efforts, forced administration of psychoactive and other drugs and forced treatment for mental health – may impermissibly alter or be used to sanction thoughts, including those of non-believers and dissenters. Some of those phenomena also may be used to force people to reveal their thoughts or physically modify their brains.

93. Ostensibly, modern technologies pose a global and multisectoral challenge for freedom of thought, given their increasingly ubiquitous and developing ability to infer one’s thoughts, even if this ability is currently relatively inconsistent and inaccurate. As the Special Rapporteur on the right to privacy warned, “[developing] technologies

¹⁹¹ See https://ec.europa.eu/info/sites/default/files/edap_communication.pdf, pp. 18 and 21.

¹⁹² See <https://www.timesnewsliteracy.co.uk/>; and <https://corporate.telegraph.co.uk/2021/03/17/the-telegraph-launches-media-literacy-programme-for-schools/>.

¹⁹³ See <https://www.osce.org/files/f/7/documents/c/e/29154.pdf>

¹⁹⁴ See <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>, p. 4.

¹⁹⁵ See <https://en.unesco.org/sites/default/files/policymakr.pdf>.

¹⁹⁶ See <https://www.frontiersin.org/articles/10.3389/frai.2019.00019/full>

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may reveal [...] the very thoughts of individuals in ways that previously were not possible".¹⁹⁷

94. While some consider that all "thoughts are free before being expressed",¹⁹⁸ emerging technologies are increasingly challenging this understanding. These nascent tools pose dilemmas about how to protect mental privacy, how to protect thoughts from impermissible manipulation and modification, and how to prevent these technologies from being used and abused to punish real or inferred thoughts, rather than an individual's conduct. Consequently, as this technological potential for mental interference grows, some scholars are pushing for concrete practices and policies to protect against the misuse and abuse of such technologies.

95. In exploring freedom of thought as set out in article 18 (1) of the International Covenant on Civil and Political Rights, the present report maps the perspectives of diverse stakeholders on what the right protects, potential violations and its relationship to other rights. In practice, efforts to protect the right to freedom of thought must overcome several obstacles, including such a dearth of international jurisprudence that it has been described as "the only human right without any real application".¹⁹⁹ Although freedom of thought is not frequently or widely invoked, the Special Rapporteur emphasizes that it does not lack importance and stands ready to rise to the complex challenges of the twenty-first century and beyond.

IX. Recommendations

96. **The Special Rapporteur recognizes that the right to freedom of thought is relatively underdeveloped in theory and practice compared with the freedoms of conscience and religion or belief in article 18 (1) of the International Covenant on Civil and Political Rights. For States as duty bearers and individuals as rights holders, further clarity on the legal content and scope of freedom of thought is desirable in supporting efforts to respect, promote and fulfil this fundamental right. The present report contributes to this continuing conversation, rather than marking its conclusion. To that end, the United Nations human rights system is encouraged to further engage on this topic, including by adopting a general comment.**

97. **In order to address pressing concerns over alleged violations of freedom of thought, the Special Rapporteur also makes the following recommendations. States are encouraged to:**

(a) **Review their legal and policy frameworks to ensure compliance with international human rights law, including rights that may affect an individual's freedom of thought, such as the prohibition on torture and cruel, inhuman or degrading treatment or punishment; freedom of opinion and expression, including access to information and communication; the right to privacy; and the right to health;**

(b) **Invite relevant stakeholders – including national human rights institutions, civil society (including leaders of all faiths and none), mental health practitioners, digital technology companies and members of vulnerable groups (e.g., children, persons with psychosocial disabilities) – to participate in public**

¹⁹⁷ A/HRC/37/62, annex, para. 5.

¹⁹⁸ See <https://www.worldcat.org/title/convention-europeenne-des-droits-de-lhomme-commentaire-article-par-article/oclc/468185397>, p. 354.

¹⁹⁹ Submission from Jan Christoph Bubltz.

consultations that canvass their views and concerns about protections for *forum internum* freedoms, including freedom of thought;

(c) Engage with the United Nations human rights system, where appropriate, in helping to clarify the legal content and scope of freedom of thought;

(d) Consider the capabilities of existing and emerging technologies to violate freedom of thought, and either adopt or update legal and policy safeguards to prevent such potential violations;

(e) Support national human rights institutions, civil society actors and human rights defenders in their efforts to monitor and report on purported violations of freedom of thought;

(f) Provide public education that facilitates the access of individuals to information and communication and that, consistent with the principles of freedom of enquiry and academic freedom, utilizes evidence-based reasoning, science, culture and an environment free from proselytism;

(g) Support a diverse and pluralistic media to provide access to different sources of information and means of communication, including by means of free and open Internet access.

98. Civil society should advocate that States review their legislation, practices and policies with the aim of increasing compliance with international human rights law, including existing obligations that could affect freedom of thought. Where possible, civil society could deliver trainings that develop individuals' critical thinking skills, especially for children, such as how to identify misinformation and/or disinformation.

99. Mental health professionals should firmly establish human rights as core values when prioritizing mental health interventions,²⁰⁰ including in relation to forced treatment.

100. Technology companies should:

(a) As part of their responsibilities under the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, consider how and to what extent their existing and emerging products, services or features might violate freedom of thought, including in the hands of third parties, assessing in particular any impact on vulnerable individuals and groups, such as children;

(b) Accordingly, adopt alternatives that are more compliant with international human rights law;

(c) Regularly publish transparency reports that outline the challenges faced in terms of compliance with freedom of thought, and subsequent action taken. For digital platforms, responses may encompass efforts to mitigate misinformation and/or disinformation, to provide detailed information to users on how and why content curation occurs and enable users to tailor their online experiences; and to develop and integrate "differential privacy"²⁰¹ or other privacy minded systems into their algorithms;

(d) Ensure that digital platforms facilitate independent research on the compliance of their products and processes with international human rights

²⁰⁰ A/HRC/44/48, para. 33.

²⁰¹ See <https://privacytools.seas.harvard.edu/differential-privacy/>.

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law,²⁰² such as by facilitating human rights impact assessments by independent actors;

(e) Neurotechnology companies should ensure a robust, privacy-focused and human rights-compliant framework for the collection, processing and storage of neurodata. Consistent with privacy, informed consent must lie at the heart of neurodata collection and the participant must be able to revoke and delete their stored data at any time. Where possible, raw data should be processed "on-device" and not uploaded to company or third-party servers.

²⁰² Human Rights Council resolution 47/23.

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