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FREEDOM OF THOUGHT?

By Frederick Schauer

Abstract: *Freedom of thought is often explicitly protected in constitutions and human rights documents, and even more often employed as a rallying cry against state tyranny. It is not so clear, however, just what freedom of thought is, what it would be to threaten it, and how, if at all, it differs from basic liberty or freedom. This essay seeks to analyze the idea of freedom of thought, to pose some skeptical questions about its alleged independent existence, and to ask, again with a skeptical mindset, what it is to protect it and why its protection should be so commonly valued.*

KEY WORDS: freedom of thought, freedom, freedom of expression, liberty

I. Freedom of Thought: Factual Claim or Normative Ideal?

Like world peace and free chocolate, freedom of thought appears to be an unqualified human good—something to which it would be difficult to object. The Universal Declaration of Human Rights, for example, announces that "[e[veryone has the right to freedom of thought," and the philosophical literature takes freedom of thought as a virtue whose acceptance spans the diversity of philosophical perspectives.[1] But the very fact that freedom of thought, especially when expressed in that abstract form, seems so unobjectionable should serve as a warning. If freedom of thought is so self-evidently good, then why, it might be asked, should we worry about it? And if we do worry about it, then what kinds of threats to freedom of thought motivate the worry? A close examination of the ways in which freedom of thought might be threatened reveals that it is not obvious just what freedom of thought is, nor what, if anything, the idea of freedom of thought adds to traditional understandings of personal autonomy or liberty. When we dig beneath the surface of the common homage to freedom of thought, we may discover that freedom of thought may be less of a distinctive virtue than is often assumed, and that at least some part of the common celebration of the virtues of freedom of thought may be misleading. Or so I shall suggest here.

[1] "If there is any one proposition that commands general agreement among theorists and practitioners of the penal law, it is that judicial punishment ought not to be inflicted for private thoughts … " (Alan Brudner, *Punishment and Freedom: A Liberal Theory of Penal Justice* [Oxford: Oxford University Press, 2009], 108, as quoted in Gabriel Mendow, "Why Is It Wrong to Punish Thought?" *Yale Law Journal* 127, no. 8 [2018]: 2342–86, at 2345, with Mendlow observing that "It's a venerable maxim of criminal jurisprudence that the state must never punish people for their mere thoughts …"). And see also Harold Laski, *Authority in the Modern State* (New Haven, CT: Yale University Press, 1919), 22, announcing that "[f]reedom of thought, then, the modern state must regard as absolute; … ," and George Sher, "A Wild West of the Mind," *Australasian Journal of Philosophy* 97, no. 3 (2019): 483–96, concluding (484) that "the realm of the purely mental is best regarded as a morality-free zone. Within that realm, no thoughts or attitudes are either forbidden or required."

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A nineteenth-century German folk song, *Die Gedanken Sind Frei*, (the thoughts are free), popularized in the United States by Pete Seeger and other folk singers in the 1950s and 1960s, and allegedly often sung by resisters in and out of the concentration camps in the Nazi era, is at the same time both profound and potentially inconsequential. In insisting that one's thoughts are immune from whatever pressures might be brought to bear on external behavior, the song has come down to us as a testament to the limits of tyranny. But if the sentiments behind the common reception of the song's meaning are sound, then it remains a mystery why so many political programs, political slogans, human rights documents,[2] and philosophical arguments believe it necessary to reaffirm and attempt to protect freedom of thought. Deferring for the time being the growing possibility that psychotropic, surgical, electronic, and other technological advances might increase the possibility of literally changing an agent's thoughts, and putting aside as well the possible technological techniques by which external forces might now or in the future actually know what I am thinking without my exhibiting any external manifestations of my thought, it appears that freedom of thought is simply a characteristic of the human condition. External compulsion in one form or another might force me to *say* things I do not believe, or might make me *do* things that are inconsistent with my deeper thoughts, beliefs, desires, and preferences, but the basic lesson of *Die Gedanken sind Frei* is that thoughts simply *are* free from external coercion and external knowledge. And if that is so, then there seems little need to worry about freedom of thought, less need to protect it, and perhaps even less need to celebrate it. It just is—a fact that we should relish at the same time that we are happily confident that it cannot be altered. And if that is so, then a *principle* of freedom of thought, as a normative or prescriptive idea, may perhaps be less consequential than is often assumed.[3]

This is not to claim that our thoughts are entirely or even substantially of our own independent making. We think as we do about what cars to buy,

[2] See, most prominently, Article 18 of the 1948 Universal Declaration of Human Rights, which states that "Everyone shall have the right to freedom of thought, conscience, and religion." Article 9 of the European Convention on Human Rights repeats the same language. And Article 13 of the American Convention on Human Rights, adopted by the Inter-American Specialized Conference on Human Rights in 1969, guarantees the "freedom of thought and expression." For influential endorsements of the idea of freedom of thought as a moral goal, see Seana Valentine Shiffrin, *Speech Matters: On Lying, Morality, and the Law* (Princeton, NJ: Princeton University Press, 2014), 79–82; Gabriel S. Mendlow, "Why Is It Wrong to Punish Thought?" Meir Dan-Cohen, "Harmful Thoughts," *Law and Philosophy* 18, no. 4 (1999): 379–405, at 379, notes the "inviolability" of thoughts, but the label is agnostic as between the descriptive claim that thoughts are unreachable as a matter of physiology and the normative claim, which is Dan-Cohen's focus, that thoughts ought to be treated as immune from state restriction.

[3] This conclusion is similar to that in Mendlow, "Why Is It Wrong to Punish Thought?" Mendlow, although focusing largely on the reach of the criminal law as a matter of (moral) criminal law theory, and not, as I do here, on freedom of thought as a putative political, moral, legal, or constitutional right, recognizes the difficulties with the standard platitudes about freedom of thought, but then defends, contrary to my argument here, a distinct thought-based moral principle marking one of the boundaries of the criminal law.

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what beer to drink, what clothes to wear, and what restaurants to patronize, among countless other topics, because of the messages we receive from advertising, from other sources of argument and information, and from the actions of those whose behaviors we observe and whom we seek to emulate.[4] And so too with our thoughts about which political candidates to support, one context among many in which our thoughts are a product of what we see and hear and how we process what we see and hear in light of our antecedent (and also externally influenced) preferences, hopes, fears, and desires. Indeed, even our more abstract thoughts can hardly be conceived of as totally or even substantially distinct from the external influences on the content of those thoughts. Are we utilitarians, Kantians, or Rawlsians? Are we vegetarians, vegans, carnivores, or omnivores? Do we think that Claude Monet was a better painter than Jackson Pollock, or vice versa? And what of our thoughts about pictures of dogs playing poker, or Elvis on velvet? Do we believe that God exists, or not? Do we think that the music performed by the Vienna Philharmonic is preferable to the music performed by Led Zeppelin? And so on ad infinitum.

These examples are designed to illustrate the seemingly self-evident conclusion that our thoughts are persistently and inevitably the product of what we see, hear, read, and experience, and thus are the consequence of our countless interactions with the external world. It could hardly be otherwise, even as we acknowledge that something in us—whatever that might mean—operates on these various external stimuli and influences in a way that makes it possible to talk about our *own* views, preferences, values, ideas, beliefs, and, of course, thoughts. And thus to talk about our own *minds*.

At the extreme, we do worry about the phenomenon of external influence, and increasingly so in light of modern technology. We worry about propaganda, which at the extreme we call "brainwashing"; but some of those worries are as much about government action that prohibits the communication of alternative messages at the same time that government is promoting its own. But if we set aside those forms of government messaging that are coupled with government restrictions on nongovernmental or antigovernmental messaging, and if we set aside literal mind control by use of drugs or yet-to-be-developed technological devices,[5] then the worry

[4] And, of course, from observing those actions of others that we seek to avoid.

[5] Mendlow, "Why Is It Wrong to Punish Thought?" does not set them aside, and bases his defense of a categorical moral prohibition on criminalizing pure intent on the notion of *mental integrity*, the extreme form of which is the use of "a mind-altering drug in order to disrupt your criminal intentions" (ibid., 2368). For Mendlow, punishing (but not necessarily otherwise restricting [ibid., 2379]) for intentions (or other thoughts) is analogous to using pharmacological or technological means to change one's thoughts, but I resist the notion that there is—the theory of the criminal law aside, and the theory of punishment *qua* punishment aside—some profound difference between highly effective means of persuasion, especially where the target understands that she is being persuaded, and sanctioning someone for their thoughts, or making it more difficult or costly to have some thoughts rather than others.

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about propaganda seems to be a worry about message monopolization. If the state (or some other dominant messager) owns or controls the major sources of information and ideas—the media of mass communication—and if it uses those sources to overshadow all other messages,[6] then there seems cause for concern in the same way that we are concerned about political candidates with far greater financial resources using those resources to exert a non-equal influence on voter choice, a phenomenon sometimes denigrated with the accusation of "buying" an election.[7] But of course wealthy and powerful advertisers of consumer products also exert a non-equal (compared to their less wealthy competitors) influence on consumer choice, and even non-wealthy communicators with substantial repositories of social capital—Mother Teresa, Nobel Prize winners, victims of horrific crimes or disasters—may also have outsize influence on what others think and believe. I *think* that beer is a good accompaniment to watching a sporting event on television, and I think it admirable to offer my financial support to public television, but such thoughts are at least partly a product of the quantity and persuasiveness of the messages I receive, and even the persuasiveness of such messages is a function of the panoply of rhetorical and other techniques employed by those who wish to influence my thoughts. Yet we rarely hear complaints that advertising, subliminal advertising aside, is a threat to freedom of thought or freedom of the mind, even as we often lament the way in which advertising influences consumer choices, often in a socially suboptimal way.[8] The very idea of freedom of thought,

[6] This was very much the enduring message of George Orwell's *1984*, but it is important to consider just why the alarmist message of *1984* was alarming, and just what features of the superstate—Oceania—featured in the book produced that alarm.

[7] Some years ago, there was a flurry of interest in the claim that government speech, which it was argued had the potential to drown out private speakers, ought to be constrained by the free speech principles embodied in the First Amendment. See Mark G. Yudof, *When Government Speaks: Politics, Law, and Government Expression in America* (Berkeley, CA: University of California Press, 1983); Steven Shiffrin, "Government Speech," *UCLA Law Review* 27, no. 3 (1980): 565–655. But for a skeptical view, see Frederick Schauer, "Is Government Speech a Problem?" *Stanford Law Review* 35, no. 2 (1983): 373–86. As a matter of existing positive law, the speech of government has never been considered to raise free speech problems, a conclusion embodied in such Supreme Court cases as *Meese v. Keene*, 481 U.S. 465 (1987), and *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015). When presidents condemn the Ku Klux Klan or praise the American automobile industry, for example, we do not hear criticism of such government speech, even while recognizing that some citizens will disagree with the message. But when government messages *endorse* a particular religion or religious point of view, the Establishment Clause of the First Amendment comes into play, prohibiting at least some forms of government speech that would be constitutionally permissible with respect to any topic or point of view other than religion. See *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); Jesse H. Choper, "The Endorsement Test: Its Status and Desirability," *Journal of Law and Politics* 18, no. 2 (2002): 499–536; Shari Seidman Diamond and Andrew Koppelman, "Measured Endorsement," *Maryland Law Review* 60, no. 3 (2001): 713–60.

[8] Among the most enduring justifications for a principle of freedom of speech is the idea, inherited from John Milton (*Areopagitica* [1644]) and then John Stuart Mill (*On Liberty* [1859]) and then Oliver Wendell Holmes (*Abrams v. United States*, 250 U.S. 616, 630 [1919] [dissenting opinion]), that a regime of freedom of speech—the marketplace of ideas—is facilitative of the identification of truth, the exposure of falsehood, and the increase of human knowledge. See Joseph Blocher, "Institutions in the Marketplace of Ideas," *Duke Law Journal* 57, no. 4 (2008):

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therefore, presupposes a degree of mental independence that I do not wish to challenge here, and which goes to the heart of questions of free will and personal identity.

Still, it is often said that the state, in particular, should not tell us what to believe, and thus what to think. Yet the state, or at least the states with which I am most familiar, urges[9] us not to smoke (even when buying and using cigarettes is legal), to exercise frequently, to be careful with what we eat, to wear seatbelts, to refrain from texting while driving, to conserve energy, and to treat our fellow citizens with respect without regard to their race, religion, national origin, gender, or sexual orientation. Now it is true that these examples involve the state telling us what to *do*, but insofar as there is a belief or thought lurking behind these actions, the state, is also telling us what to think, just as Martin Luther King was telling people what to think when he urged people to judge others based not on "the color of their skin but on the content of their character."

When we think about such examples, we recognize that the category of propaganda is an amorphous one, and that the label "propaganda" (and "brainwashing" even more so) is theory-laden and pejoratively evaluative, such that a multiplicity of messages attracts the label of "propaganda" only when it is thought by those wielding the label that the message is a bad one or that the sender of the message is in some way to be feared. Those who object to the widespread American ownership and use of guns are prone to describe the messaging of the National Rifle Association as "propaganda," but would rarely, if ever, say the same of the messages about racial equality coming from the NAACP, or the messages about respect for animals coming

821–89; Jill Gordon, "John Stuart Mill and the Marketplace of Ideas," *Social Theory and Practice* 23, no. 2 (1997): 235–49. Implicit in this theme is the view that the truth of a proposition has substantial explanatory force in determining, for a population, which propositions will be accepted and which rejected. But the lesson of a great deal of modern research in cognitive and social psychology is that various other attributes of a proposition—the charisma or authority of the agent uttering the proposition; the frequency with which the proposition is uttered; the extent of rhetorical or technological enhancement of the proposition; the extent to which a proposition is consistent or inconsistent with an audience's prior beliefs; the extent to which a proposition reinforces an audience's normative commitments; and much more—compete with and often dominate the truth of a proposition in determining acceptance or rejection of a proposition. For summaries of the relevant research, and application to legal and philosophical questions about freedom of speech, see Daniel Ho and Frederick Schauer, "Testing the Marketplace of Ideas," *New York University Law Review* 90, no. 4 (2015): 1160–1228; Frederick Schauer, "Free Speech, the Search for Truth, and the Problem of Collective Knowledge," *SMU Law Review* 70, no. 2 (2017): 231–52.

[9] The common phrase, "Don't tell me what to do," is typically used against those whose tone is one of giving orders rather than of giving advice. But is there a difference among "Don't smoke," "You shouldn't smoke," "I advise you not to smoke," "I urge you not to smoke," and "If I were you, I wouldn't smoke"? Perhaps there are differences among these, differences that might be measured in terms of how much the particular locution recognizes (or not) that the final decision is to be made by the recipient. But if "I were you, I wouldn't smoke" represents the extreme of such acknowledgment, then the difference between that and "Don't smoke" may only be one of tone, or only about the potential sanctions that might be imposed upon the subject for noncompliance.

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from the SPCA. In addition, the category of propaganda seems limited to those messages that come in large quantities, especially when compared to the messages that take the opposite point of view. The advertising of the tobacco industry is, to some, propaganda, but not so for the opposed warnings from the Surgeon General of the United States or the American Medical Association.

Thus, when we worry about propaganda, or its virtual synonym "indoctrination,"[10] we worry about massive messages for bad ideas coming from disapproved (by the users of the label) communicators that are unlikely to be successfully countered by equivalently massive (or effective) messages for the opposed good ideas. But all of this is to say only that although there are many influential sources of both good ideas and bad ideas, the idea of freedom of thought appears to attempt to identify something beyond the mere fact of external influence on human thoughts. Or, to put it differently, the idea of freedom of thought appears to presuppose some strong sense of free will and personal identity, and a concern about freedom of thought is a concern about the pressures or sanctions that might be brought to bear on the thoughts that this free will and personal identity produce.

Thus, even though our thoughts are at least partly the product of external infuences, freedom of thought appears to surface as a normative prescription principally when the influences on our thinking are unknown to us, or in some other way circumvent our presupposed rational capacities. Back when people worried about subliminal projection—the transmission of messages for such a brief period that the messages were below the threshold of conscious awareness[11]—the concern was that people were being influenced by messages of which they were unaware.[12] And although advances in technology and psychology have made it ever easier for people's thoughts and behaviors to be influenced in countless ways,[13] a norm or principle of freedom of thought cannot plausibly be marshaled against the full range of techniques of persuasion. However lamentable it may be that our thoughts are increasingly subject to external influence, even to external

[10] Thus, *Webster's New Universal Unabridged Dictionary* (New York: Simon and Schuster, 2d ed. 1983) gives as one of the definitions of "propaganda," "any organization or movement working for the propagation of particular ideas, doctrines, practices, etc.," and another as "any systematic, widespread, deliberate indoctrination or plan for such indoctrination: now often used in a derogatory sense, connoting deception or distortion." Perhaps the latter comes closer to now-common usage.

[11] See Thomas Albert Bliss, "Subliminal Projection: History and Analysis," *Hastings Communications and Entertainment Law Journal* 5, no. 2 (1983): 419–41.

[12] For a well-known critique of the use of various psychological practices to influence consumer preferences without the knowledge of those consumers, see Vance Packard, *The Hidden Persuaders* (New York: R. McKay Co., 1957).

[13] See, prominently, Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New York: Penguin Books, 2009). What makes this widely-discussed book an example of the phenomenon described in the text is the extent to which it is less about helping people improve their own decisions as it is about assisting individuals and institutions in influencing the decisions of others.

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influences of which we are largely or completely unaware, a principle of freedom of thought, whether embodied in positive law or not, is not realistically the corrective to this ever more-widespread phenomenon. If at some point the technology may be such that Kantians can be made to become utilitarians without their knowledge or consent, or that thoughts can simply be implanted in people's minds in the same way that kidneys can be implanted or transplanted into their bodies, then there will indeed be cause for concern. Short of that, however, the *fact* of freedom of thought, as embodied *in Meine Gedanken sind Frei*, presupposes a degree of human agency and rationality that a *norm* of freedom of thought can hardly be expected to influence. And to the extent that we do worry about external influence, that worry appears to be a broader one about deprivation of autonomy and agency, and only instrumentally and secondarily about freedom of thought as such.[14] Perhaps the idea of freedom of thought is thus chiefly a restatement of the idea of autonomy; but that entirely plausible conclusion would not take us very far in explaining why freedom of thought, and not autonomy *simpliciter*, appears to be the object of so many claims of political theory and so many instantiations in positive law.

II. Autonomy and Freedom of Thought

Closely related to the idea that our thoughts, however much they may be externally influenced, are in the final analysis our own is a line of argument that has long been a part of the philosophical literature on freedom of speech, or, more commonly these days, freedom of expression.[15] In a highly

[14] And that is why the view that *punishment* for thoughts is objectionable (see note 5, and Mendlow, "Why Is It Wrong to Punish Thought?") must be based on a theory of just what punishment is, why to *punish* someone for engaging in some behavior is different from other forms of sanction for engaging in that behavior, and why punishment is different from other ways of coercion. This essay is not the place to engage with a theory of punishment, but it is worth noting that at least some of the argument here resists the widespread notion that punishment is importantly different from other forms of behavioral control.

[15] Influenced by long-standing British usage and by the language of the American First Amendment ("Congress shall make no law … abridging the freedom of speech, …"), the traditional label for the right under discussion is freedom of *speech.* But because that right is commonly understood in most liberal democracies to encompass art, music, parades, demonstrations, rallies, flag waving, flag burning, armband wearing, picket sign carrying, and silent protests, among others, none of which would be considered "speech" in ordinary language, the more common contemporary locution, seen in most modern human rights documents and many modern constitutions as well, is freedom of *expression.* Just as "freedom of speech" may be underinclusive, however, "freedom of speech" may be overinclusive, including almost any way in which we might non-communicatively express ourselves, including how we dress, how we wear our hair, where we live, what professions or avocations we pursue, and with whom we choose to associate. See Frederick Schauer, "Must Speech Be Special?" *Northwestern University Law Review* 78 no. 5 (1984): 1284–1306. If "freedom of expression" is not therefore to be a synonym for or to collapse into a principle of general liberty, it seems best to refer to freedom of *communication*, even while recognizing that not all forms of communication —think about the communications between two parties to produce a legal contract, or the communication of a testator in a last will and testament—are even covered by a principle of freedom of communication.

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influential 1972 article,[16] Thomas Scanlon argued that a distinct principle of freedom of expression, one that would protect acts whose consequences would otherwise justify regulation, can be grounded in the right of autonomous agents as listeners (or readers) to have unfettered access to all of that information and those arguments that the listener might deem relevant in deciding what to *do.* For the state to interfere with that access, Scanlon argued, would interfere with the ability of people as autonomous agents to make the final decisions about their behavior, including the decision, at times, to violate the law.

Scanlon subsequently retreated from his position in ways that are not relevant here,[17] but what *is* relevant is his argument that the right to freedom of expression is not so much a right of the speaker as it is a right of the listener, such that the creation of speakers' rights is merely instrumental to listeners' rights to the unfiltered (by the state) universe of ideas, arguments, and information bearing on listeners' decisions about what to do.[18]

A variant on Scanlon's position has recently been offered by Seana Shiffrin.[19] Shiffrin, defending what she describes as a "thinker-based" justification for freedom of speech,[20] argues that part of being a moral agent consists

[16] Thomas Scanlon, "A Theory of Freedom of Expression," *Philosophy and Public Affairs* 1, no. 2 (1972): 204–26.

[17] See T. M. Scanlon, "Comment on Baker's Autonomy and Freedom of Speech," *Constitutional Commentary* 27, no. 2 (2011): 319–25; T. M. Scanlon, Jr., "Freedom of Expression and Categories of Expression," *University of Pittsburgh Law Review* 40, no. 4 (1979): 519–50.

[18] In addition to Scanlon, see David A. Strauss, "Persuasion, Autonomy, and Freedom of Expression," *Columbia Law Review* 91, no. 2 (1991): 335–71. Seana Shiffrin argues that listener-based theories, while valuably explaining some aspects of, and foundations for, freedom of speech, fail to explain too large a range of intuitions and accepted legal doctrine to serve as the exclusive or even principal basis for a free speech principle. Shiffrin, *Speech Matters*, 82–85. But without taking a position on whether listener-based accounts should figure exclusively, somewhat, or not at all in justifying a free speech principle, I nevertheless leave open the possibility that much of legal doctrine, and many of the intuitions that may be based on that doctrine, are mistaken, as is, possibly, the idea of a justifiably distinct principle of free speech at all.

[19] Seana Valentine Shiffrin, "A Thinker-Based Approach to Freedom of Speech," *Constitutional Commentary* 27, no. 2 (2011): 283–307, and in revised form in Shiffrin, *Speech Matters*, at 79–115.

[20] Other arguments for freedom-of-thought-based justifications for a principle of freedom of speech include Charles Fried, *Modern Liberty: And the Limits of Government* (New York: W. W. Norton, 2007), 95–123; Dana Remus Irwin, "Freedom of Thought: The First Amendment and Scientific Method," *Wisconsin Law Review* 2005, no. 6 (2005): 1479–1534; Christina E. Wells, "Reinvigorating Autonomy: Freedom and Responsibility in the Supreme Court's First Amendment Jurisprudence," *Harvard Civil Rights—Civil Liberties Law Review* 32, no. 1 (1997): 159–96. Arguments for the relationship between freedom of thought and freedom of speech can be traced to Benedict de Spinoza's *Tractatus Theologico-Politicus*, ch. XX (R. H. M. Elwes trans., New York: Dover, 1951 [1670]), which, anticipating "Die Gedanken sind Frei" by centuries, observed that "If men's minds were as easily controlled as their tongues, every king would sit safely on his throne." And on Spinoza's conjunction of freedom of thought and freedom of speech, see Martha Womack Haun, "Spinoza on Freedom of Thought and Speech," *Free Speech Yearbook* 16, no. 1 (1977): 47–53; Edward I. Pitts, "Spinoza on Freedom of Expression," *Journal of the History of Ideas* 47, no. 1 (1986): 21–35. It is noteworthy that Spinoza's concerns with the freedoms of thought and conscience were devoted almost exclusively to questions of religious belief. But whether religious belief is in some way different from, say, moral or social or political belief, is itself a religious question, and not one I feel competent to address.

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in having access to the views of others in order best to decide what to do and how to live one's life. And insofar as Shiffrin's argument is in part an argument from community—speech is how we relate to, connect to, and deliberate with the other members of our community[21]—her arguments, albeit powerful, are less relevant to the idea of freedom of thought. But if her arguments are seen in a less communitarian cast, they can be understood as based on the idea that moral agents must be able (and allowed) to think as they please, and that the speech of others is an essential *input* into developing one's own thoughts and ideas. Seen in this light, Shiffrin's claims are indeed freedom-of-thought-based arguments for freedom of speech, for it is the agent's freedom to think as she pleases that grounds the agent's right to those arguments and data that would enable that agent to formulate her thoughts, to decide what to think, and, ultimately, to decide what to do.

But now two difficulties arise. First is that, for Shiffrin, freedom of thought is largely a premise and not a conclusion. If freedom of thought is the basis, for Shiffrin as well as for Scanlon and others, of a right to freedom of expression, we still should ask about the basis for that premise. Why is freedom of thought especially valuable, and how, if at all, is it different from general liberty, personal autonomy, and the freedom simply to do as one chooses?[22] And if we evaluate the question whether freedom of thought as a premise is sound, we find ourselves in the same place we did in the previous section, wondering, futuristic technology aside, what it is, if anything, that distinguishes the idea of freedom of thought from the idea of freedom *simpliciter*. Put more broadly, an often-asserted but rarely defended dimension of the freedom of thought literature is that there is some important difference between a principle of freedom of thought, on the one hand, and principles of liberty or autonomy, on the other. If freedom of thought is largely synonymous with liberty or autonomy, therefore, there is little to

Note that the claim that some idea of freedom of thought or freedom of the mind justifies a right to freedom of speech or expression is different from the claim that freedom of thought and freedom of speech are largely the same thing, and different from the claim that the two are naturally conjoined in a way that is deeper than one being instrumental to the other. See, for example, Adam J. Kolber, "Two Views of First Amendment Thought Privacy," *University of Pennsylvania Journal of Constitutional Law* 18, no. 5 (2016): 1381–1423.

[21] For related ideas about the collective aspects of a free speech principle, see Joshua Cohen, "Freedom of Expression," *Philosophy and Public Affairs* 22, no. 2 (1993): 207–63; Robert C. Post, "Participatory Democracy and Free Speech," *Virginia Law Review* 97, no. 3 (2011): 477–89; James Weinstein, "Participatory Democracy as the Central Value of American Free Speech Doctrine," *Virginia Law Review* 97, no. 3 (2011): 491–514.

[22] Thus, Shiffrin says that "the foundation of free speech protection is that freedom of speech is necessary for the development and maintenance of the self *qua* thinker, for freedom of thought, and for discharging other aspects of our moral relations." Shiffrin, *Speech Matters*, 80. But although it is difficult to deny that thinking is intrinsically a part of being, we need more explanation of how that aspect of being might be threatened, or how that aspect of being is relevantly different from those aspects of being that are largely concerned with doing.

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fault in the idea that freedom of expression can facilitate or expand an agent's informational or experiential base and thus foster that agent's autonomy. But it is less clear, again, what it is that the idea of freedom of thought adds to a broader concept of autonomy itself.

The second difficulty is that it is not clear how the inputs into thinking that come from propositions offered by others are relevantly different, at least for free speech purposes, from the countless other ways in which we gain insight and information. The fodder for our thoughts—the fodder that we process in order to produce what we tend to call "thoughts" —comes, to be sure, from what others say and write, but it also comes from what we see, what we experience, what we do, and what we are. Without more in the way of explanation and argument, it is hard to understand why what others *say* is especially—and the "especially" is crucial in attempting to ground a principle or right that is different from a right to liberty or autonomy *simpliciter*—important for developing our own thoughts as compared to the other components of our experiences, perceptions, and sources of knowledge. And although the lack of distinctiveness of the speech of others in informing our thoughts might not be fatal to thinking that speech is indeed important, it is crucial—not only for Scanlon, for example, but also for the idea of a freedom of speech as a distinct or special right—that the importance of speech is something other than its admittedly important place in the full panoply of human actions, experiences, and perceptions.[23]

In some sense, this last observation is more of an aside when our principal concern is, at least as it is here, with freedom of thought and not with freedom of expression. The problems just noted are problems with using freedom of thought as the grounding for freedom of speech, at least if we consider freedom of speech as a right that generates special protection beyond that which liberty in general might provide. But if we are examining freedom of thought itself, then whether freedom of thought can provide the basis for a right to freedom of speech is largely peripheral. Still, the difficulties with using freedom of thought to ground freedom of speech—-principally, the failure of the idea of freedom of thought to explain what is special about the inputs of speech when compared to the universe of inputs that inform and create our thoughts—are suggestive of a deeper difficulty with freedom of thought itself. That difficulty is highlighted by the familiar charge that some action by government or other powerful entity is engaging in "thought control," or "mind control," or is setting itself up as

[23] Scanlon notes that heightened or special protection is a necessary condition for recognizing a *right* to freedom of speech ("A Theory of Freedom of Expression," 204): "The doctrine of freedom of expression is generally thought to single out a class of 'protected acts' which it holds to be immune from restrictions to which other acts are subject." This structural aspect of what it is for there to be a right to free speech (and, *en passant*, what it is for there to be a right of any kind) is developed in Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge: Cambridge University Press, 1982), and, more recently and at greater length and depth, in Frederick Schauer, "Free Speech on Tuesdays," *Law and Philosophy* 34, no. 2 (2015): 119–40.

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the "thought police."[24] But the actions that prompt such charges are typically actions that attempt to control what people say or write, or to regulate people's access to written and printed information, often in the context of claims of censorship by or of primary and secondary schools, colleges and universities, and libraries. Yet those who are taking the actions that prompt charges of thought control ordinarily justify those actions by reference to the behavioral *consequences* of people having access to certain information and ideas. In other words, the actions that are the subjects of such charges are actions based on what are viewed to be the *outputs* of, and not the inputs into, thoughts. The stereotypical officers of the so-called thought police rarely if ever claim that they are interested in thoughts as such, but instead insist that they are interested in preventing or controlling conduct. They argue, setting aside for the moment whether those arguments are empirically or philosophically sound, that access to certain arguments or information will cause (probabilistically and not deterministically) people to engage in certain forms of antisocial conduct. They might deny that they want to control thoughts for their own sake, but rather wish to control (or forestall) the intents, desires, and motivations that produce antisocial conduct. And when understood in this way, we can see that those who appear on the surface to be focused on controlling the inputs into people's thoughts are often—perhaps always—concerned not with the inputs into thought but with the outputs of thought. And it is to that concern that we now turn.

III. Of Harmful Thoughts and Harmful Acts

As we have seen, Scanlon and Shiffrin both focus on the inputs to thought, and thus on the argument that freedom of thought is the freedom of access to the information and ideas by which people formulate their own ideas, thoughts, plans, and decisions. But the argument may prove too much. If the freedom of thought is about the freedom of individuals to think as they will, then that freedom is, on the current state of technological knowledge, a basic fact of the human condition that needs no legal, political, or moral principle to support it. But if, more plausibly, freedom of thought is about unimpeded access to the information and arguments that will help agents to decide what to think, then the principle would seem to encompass the full range of observations, information, and experiences with which we formulate and refine our thoughts. In a word, everything. Perhaps the way in which our experience of the world is filtered through, and illuminated by, the thoughts and speech of others makes those thoughts and that speech highly valuable, but that is not yet to say that it is in some way more or especially valuable,

[24] The phrase "thought police" comes originally from Orwell's *1984*, but Orwell's Thought Police (Thinkpol) were mainly concerned with what was *said*, as are those who now wield Orwell's phrase in political and social debate. See, for example, Tammy Bruce, *The New Thought Police: Inside the Left's Assault on Free Speech and Free Minds* (New York: Random House, 2001).

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and thus not yet to say that it provides a solid foundation for treating the speech of others as more important than what the speech is about—a differential that is necessary, to repeat, to justify a distinct right or a distinct political principle. And so although a vision of communitarian or deliberative democracy might provide special protection for those communications through which we learn from and connect with our fellow citizens,[25] the idea of special protection for thoughts as such remains elusive.

Rather than pursuing further the problems with believing that a principle of freedom of thought can tell us much about which *inputs* to thought should be specially protected, we can turn to the more common concern among those who rely on ideas of freedom of thought with the *outputs* of thought, and thus with the way in which restrictions on those outputs serve as restrictions on the thoughts themselves. Speech is indeed one of those outputs, and thus we can see why various human rights documents[26] are so inclined to conjoin freedom of speech with freedom of thought. That conjunction, however, raises the question whether there is anything about thoughts that justifies protection of the thoughts *as thoughts* beyond protection of the behaviors, including but not limited to communicative behaviors, that those thoughts might produce.

Let us start with the seemingly obvious proposition that thoughts are different from actions, even the actions that embody what thoughts are thoughts about. Thus, there is a distinction between thinking about going to the gym and going to the gym, just as there is a difference between thinking about a sexual assault and committing one.

Because having a thought differs from engaging in the action that the thought is a thought about, we can direct our attention to the relationship between the thought and the action—between, say, thinking about the desirability of bank robbery and robbing a bank. And one thing we can say about this relationship is that people who think that bank robbery is desirable—who have the thought that bank robbery is desirable—are more likely to rob banks than are people who do not have that thought. Assuming that there are no involuntary[27] bank robberies, having the thought that bank robberies are desirable (or necessary, or the like) is a necessary condition for committing a bank robbery.

Although having a positive thought about committing a bank robbery is a necessary condition for actually committing one, it is plainly not a sufficient condition, and that is where the problems arise. Although people who believe (think) that banks ought to be robbed (or that this bank ought to

[25] See note 21.
[26] See note 2.
[27] I recognize that some people may commit bank robberies under duress (threats or other forms of coercion), or because of desperate financial need, and so on. But even such people have positive thoughts, however produced, about bank robberies before they commit them. I thus use "involuntary" in a non-moralized sense. There are involuntary muscular contractions, but there are not involuntary bank robberies.

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be robbed) are more likely to rob banks than people who do not so believe,[28] the percentages are low, both for bank robberies and for most other crimes. That is, most people who have positive thoughts about bank robberies do not rob banks. Still, the thought that banks ought to be robbed is in an important sense a harmful thought, in that having that thought is a probabilistic indicator, even if a weak one, of the act that the thought is a thought about.[29]

So thinking that bank robberies are desirable is a harmful thought in the sense that it probabilistically increases the likelihood of harmful acts. The thought itself is not harmful, but the thought raises the probability of a harmful action. If there is a base rate probability for bank robberies for the population at large, then that subset of the population with the thought that bank robberies are desirable is more likely, even if still unlikely, to commit bank robberies than a randomly selected member of the entire population.

One common conception of the idea of freedom of thought holds that possessors of such harmful thoughts ought to be allowed to indulge those thoughts—to remain unpunished for having those thoughts—because they probably will not commit the acts that the harmful thoughts are harmful thoughts about.[30] Only when the harmful thought ripens into harmful action, it is said, is it appropriate to sanction the possessor of the harmful thought.[31] But now a difficulty arises, because in many instances it has long been common for the law to punish or restrict people for engaging in

[28] Imagine that Jones is on trial for committing a bank robbery. The prosecution offers as evidence the testimony of one of Jones's friends that she heard Jones say, "I think bank robbery is a good way to make a lot of money with not much effort." Defense counsel objects, saying that this statement does not show that Jones committed the robbery. Under the existing law of most common law jurisdictions, the evidence will be admitted, not because it establishes by itself that Jones committed the bank robbery with which he is charged, but because, in probabilistic or Bayesian fashion, the likelihood that Jones committed the bank robbery is greater with this evidence than without. See *Federal Rules of Evidence*, Rule 401.

[29] By "probabilistic indicator," I mean only that the indicator makes some conclusion more likely than without the indication, even if that conclusion remains highly unlikely.

[30] Often the inferential chain is complex. For example, people who possess child pornography are often prosecuted (constitutionally permissibly—see *New York v. Ferber*, 458 U.S. 747 [1982])—because such possession is thought to be either indicative of, or causal of, child molestation by the possessor. Assuming that possession of child pornography is good evidence of thinking about child pornography, and assuming (controversially) that thinking about child pornography is some (but not necessarily good) evidence of thinking about child molestation, it remains true that those who think about child molestation will not necessarily, and perhaps even not probably, engage in actual child molestation. And that is why prosecutions for possessing child pornography commonly attract the charge of thought control. See Clay Calvert, "Freedom of Thought, Offensive Fantasies, and the Fundamental Human Right to Hold Deviant Ideas: Why the Seventh Circuit Got It Wrong in *Doe v. City of Lafayette, Indiana*," *Pierce Law Review* 3, no. 2 (2005): 125–59; Eric M. Freedman, "Digitized Pornography Meets the First Amendment," *Cardozo Law Review* 23, no. 6 (2002): 2011–17; CBC News, "Canada's Porn Law Close to 'Thought Control,'" April 27, 1999, available at www.cbc.ca. See generally Carissa Byrne Hessick, ed., *Refining Child Pornography Law: Crime, Language, and Social Consequences* (Ann Arbor: University of Michigan Press, 2016). Still, in the language of evidence law, possessing child pornography appears to be *probative* of child molestation.

[31] See R. A. Duff, *Criminal Attempts* (Oxford: Oxford University Press, 1996), 390. This is the general tenor of, for example, Douglas N. Husak, *Overcriminalization: The Limits of the Criminal Law*

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preparatory acts, even though those preparatory acts might still not produce the final acts for which the preparatory acts are preparatory. For example, we punish possession of burglar tools as an independent crime, even though some people who are guilty of that crime might not commit a burglary.[32] So too with punishing people for possessing large amounts of illegal narcotics, not as possessors but as traffickers, on the theory that anyone with such a quantity is likely to sell it unlawfully, even though they have yet to do so.[33] And so too, more controversially these days, with respect to some dimensions of criminalizing conspiracy and with criminalizing various acts that are criminalized as preparatory to threats on the security of the nation.[34] In all such cases, the justification for prohibition comes from the way in which the act that someone has actually committed increases the probability that they will commit some further harmful act, even as there remains the possibility that those who engage in the preparatory acts might still not engage in—might decide not to engage in—the ultimate harmful acts.[35]

Now let us conduct a thought experiment. Assume that engaging in some preparatory action A increases the likelihood of some harm H with a probability of p. And thus we can say that the expected harm (EH) of A is the

(Oxford: Oxford University Press, 2008); Douglas N. Husak, "Drug Proscriptions as Proxy Crimes," *Law and Philosophy* 36, no. 3 (2017): 345–66.

[32] See, for example, *New York Penal Law*, §140.35 (McKinney 2010). It appears that every state except one has or has had such laws. See Paul A. Clark, "Do Statutes Criminalizing Possession of Burglary Tools Reduce Crime?" *Capital University Law Review* 42, no. 4 (2014): 803–60. Indeed, the crime of possession of burglary tools is commonly a part of larger discussions about incomplete crimes and inchoate crimes generally, a topic that includes questions about the criminalization of intent and motive and the criminalization of attempts. See Kimberly Kessler Ferzan, "Inchoate Crimes and the Prevention/Punishment Divide," *San Diego Law Review* 48 (2011): 1273–96; Douglas N. Husak, "The Nature and Justification of Nonconsummate Offenses," *Arizona Law Review* 37, no. 1 (1995): 151–83.

[33] See Florida Statutes 893.135 (2018), which provides that the threshold for the trafficking offense, for cocaine, is 28 grams.

[34] For examples and analysis, see Stefanie Bock and Findlay Stark, "Preparatory Offences," University of Cambridge Faculty of Law Legal Studies Research Paper Series, no. 64 (October 2018).

[35] Preparatory crimes should be distinguished from indicative or proxy crimes, in which people are punished for having committed some act on the theory that committing that act—an act that is often not itself unlawful—probabilistically indicates that they have committed some other act, one that is in fact illegal. For example, mothers of deceased babies who had not reported the birth were once prosecuted for infanticide, sellers of books and magazines without covers were prosecuted for defrauding distributors, and those who travel abroad with substantial quantities of unreported cash are penalized as if they were money launderers, even though in such cases the relationship between the proxy crime and the wrong for which it is a proxy is only probabilistic. See Pyotr Bystranowski, "Retributivism, Consequentialism, and the Risk of Punishing the Innocent: The Troublesome Case of Proxy Crimes," *Diametros* 53, no. 1 (2017): 26–49; Frederick Schauer, "Bentham on Presumed Offenses," *Utilitas* 23, no. 4 (2011): 363–79. In many contexts, the probabilistic nature of both preparatory and proxy offenses invites us to treat them similarly (see Frederick Schauer, *Profiles, Probabilities, and Stereotypes* (Cambridge, MA: Harvard University Press, 2003), but in the context of the specific question of freedom of thought the difference between probabilistic predictions of future behavior and probabilistic determinations of past acts is crucial.

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product of the likelihood of the harm—p—and the magnitude of the harm H. And now assume that having some thought T increases the likelihood of some harm (H') with a probability of p'. Thus, the expected harm (EH') of the thought is the product of H' and p'.

The question, then, is whether we can justify treating T differently from A when EH' is equal to or greater than EH—whether we can justify treating a thought differently from an action when the expected harm from the thought is equal to or greater than the expected harm of the action. Should a putative principle of freedom of thought immunize harm-producing thoughts from restriction under circumstances in which harm-producing actions are not so immunized, and in which the expected consequences of some harm-producing thoughts are equal to or greater than the expected consequences of some harm-producing actions?[36]

When the question is put in this form, it is not obvious that the answer is no, generations of paeans to freedom of thought notwithstanding. Putting aside again the possibility that the state might literally be able to control an individual's thoughts, the idea of freedom of thought is typically deployed against restrictions of acts and not of thoughts. But what is it about some acts but not others that inspires concerns about freedom of thought? Why is it that preparatory acts are commonly sanctioned but that sanctions for having preparatory thoughts are so often resisted. One possibility, as just discussed, is that restricting a host of preparatory acts, and not just preparatory thoughts, fails to respect the thoughts—the autonomy—of the agent who might not commit the ultimate act. When we punish the possessor of burglar tools or large quantities of drugs that it might be legal to possess but not to sell, we deprive agents of the ability to change their minds and thus to "control" their thoughts.[37] But if this concern is sound, then it is a concern about preparatory acts as much as it is about preparatory thoughts, and is thus not distinctively about thoughts at all. Perhaps the law, whether criminal law or tort law or some other form of regulatory law, should not punish the creation of risk at all. But if we try to control risk-creation even when the risks are not realized, or even before the risks are realized (think about the laws against speeding, or laws restricting the possession of explosives or fully automatic weapons), then, again, it is not apparent why the

[36] It is common in criminal law debates about punishing attempts and intentions to resist this assumption, and to argue that there is a class of thoughts that is largely inconsequential. See R. A. Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Oxford: Hart, 2007), 102–4. Duff's conclusions about the inertness of a category of thoughts (but not all thoughts), conclusions that are challenged by the probabilistic account I offer here, are also challenged in Mendlow, "Why Is It Wrong to Punish Thought?" And see also, paralleling Duff's resistance to the efficacy (and thus the culpability) of supposedly "mere" thoughts, Larry Alexander and Kimberly Kessler Ferzan (with Stephen Morse), *Crime and Culpability: A Theory of Criminal Law* (New York: Cambridge University Press, 2009), 197–216; Federico Picinali, "A Retributive Justification for Not Punishing Our Intentions Or: On the Moral Relevance of the 'Now-Belief,'" *Law and Philosophy* 32, no. 4 (2013): 385–403.

[37] See Seana Valentine Shiffrin, "Methodology in Free Speech Theory," *Virginia Law Review* 97, no. 3 (2011): 554.

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risks created by the existence of harmful thoughts should be treated differently from the risks created by the existence of a wide range of harmful acts in general.

Thoughts have consequences. And thus the problem for an account of freedom of thought lies in explaining why consequential thought should be treated differently from consequential action when the likelihood and severity of the two are the same. As Gabe Mendlow puts it, writing in the context of the limits of the criminal law and less about the idea of freedom of thought as a right, "certain thoughts are every bit as dangerous, wrongful, and provable as actions we readily criminalize."[38] It is true that people can change their minds, but it is also true that people can refrain from committing the further acts that preparatory acts are preparatory to. Perhaps both our law and our political and moral theory should resist punishing for anything except realized harmful acts.[39] That is a plausible conclusion, supported by plausible arguments. But there is no reason to believe that an independent principle of freedom of thought adds anything to these arguments, nor is there reason to believe that an independent principle of freedom of thought adds anything to the more general, and at the very least plausible, arguments for liberty in general.

IV. Is It Just About Freedom (or Liberty) in General?

Many of the distinctive liberties enshrined in human rights documents and protected by statutes and constitutions add a layer of heightened protection that augment that offered to individuals by liberty in general. Freedom of speech is a good example. A general principle of liberty, perhaps one modeled after the conclusions in Chapter One of John Stuart Mill's *On Liberty*, would protect the individual against state efforts to regulate conduct that does not cause harms to anyone other than the agents themselves. But a robust principle of freedom of speech, of the kind seen in most industrialized democracies in the twenty-first century, protects some communicative acts, not because they are harmless, but despite the harm they may cause. Chapter Two of *On Liberty* is best read not as an instantiation of Chapter One, but as a separate argument for the protection of activities not protected by the conclusions in Chapter One.[40] This is most obvious in American law, which is extreme, even by the standards of other industrialized liberal democracies, in its protection of harmful libel,[41] harmful

[38] Mendlow, "Why Is It Wrong to Punish Thought?"

[39] See Markus Dirk Dubber, "Toward a Constitutional Law of Crime and Punishment," *Hastings Law Journal* 55, no. 3 (2004): 509–72.

[40] See Frederick Schauer, "On the Relationship Between Chapters One and Two of John Stuart Mill's *On Liberty*," *Capital University Law Review* 39, no. 3 (2011): 572–92.

[41] American libel law prohibits public officials and (broadly defined) public figures from recovering in libel actions in which they can prove with "convincing clarity" not only that what was said about them was false, but that it was said with actual knowledge or actual suspicion of its falsity. This approach, more speaker and press protective than that present in any other

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slander, harmful intentional infliction of emotional distress,[42] and harmful incitement to racial hatred and violence.[43] But similar principles prevail elsewhere, even if in less extreme form. And the lesson of this is that a principle of freedom of speech does not just duplicate or instantiate a principle of general liberty, but adds something to it, something that liberty *simpliciter* does not provide.

So too with many versions of principles of freedom of religious belief. Insofar as such principles are interesting and important only when they protect the religious practices that flow from religious beliefs, those principles once again add an additional layer of protection beyond what a principle of liberty standing alone provides. A principle of liberty might not protect the freedom to engage in harmful discrimination, for example, but this is precisely the issue at the heart of many contemporary controversies about religious freedom.[44]

Against this background, we can understand a robust principle of freedom of thought, especially one formulated as parallel to (or closely conjoined with) the freedoms of speech and religion, as similarly providing an additional layer of protection beyond the protections that might be provided by some putative background principle of freedom, or liberty, or of autonomy. Conceptually, therefore, a *principle* of freedom of thought would need to be something more than simply a *component* of autonomy. If it were that, and only that, then freedom of thought as a component of autonomy could not be the foundation of a distinct principle of freedom of thought, which is what is presupposed by most references to freedom of thought. On closer analysis, however, it is not at all apparent what such a principle would do. And if there are things that such a principle would do, it is also not apparent whether it would be good for it to do so. Autonomy itself may not be a self-evident good,[45] but even if it is, freedom of thought may not add very much, if anything, to the basic idea of autonomy itself.

Perhaps more importantly, most versions of a background or baseline principle of general liberty protect a wide range of *actions* against state

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country (see Frederick Schauer, "The Exceptional First Amendment," in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff [Princeton, NJ: Princeton University Press, 2005], 29–56), owes its origins to *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). But its bite can be seen most clearly when applied to protect plainly false and plainly harmful negligently published accusations. See *Ocala Star Banner Co. v. Damron*, 401 U.S. 295 (1971).

[42] See *Snyder v. Phelps*, 562 U.S. 443 (2011).

[43] See *Brandenburg v. Ohio*, 395 U.S. 444 (1969). And so too with racial insult and intimidation. See *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

[44] For example, the increasing conflict between demands to be free from discrimination on the basis of sexual orientation and the claims that offering services to same-sex couples (as, for example, a wedding cake for a same-sex couple, see *Masterpiece Cakeshop. Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 [2018]) would infringe the religious liberty rights of the provider.

[45] A prominent and powerful rejoinder to much of the contemporary celebration of autonomy is Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism* (Cambridge, UK: Cambridge University Press, 2012).

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control. A robust principle of freedom of thought would, similarly, provide a degree of protection not otherwise provided by a principle protecting, even if only presumptively or defeasibly, the freedom of action. Explaining what that principle would do, and whether it is good that it should do it, remains the unfulfilled challenge for defenders of an independent principle of freedom of thought.

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