



# Freedom of Thought in Political History

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## 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; Giordano-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 polities 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

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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