

THE CAMBRIDGE HANDBOOK OF THE RIGHT TO FREEDOM OF THOUGHT

The right to freedom of thought features prominently in debates about emerging technologies including neurotechnology and AI, but there is little understanding of its scope, content or application. This handbook presents the first attempt to set out how the right is protected, interpreted and applied globally. Eighteen jurisdictions are examined along with chapters describing context-setting, interdisciplinary approaches, and close analysis of the right in relation to specific challenges and conceptual difficulties. Readers familiar with the right will discover fresh perspectives and those new to the right will learn how it is part of the matrix of rights protecting autonomy, dignity, and privacy.

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The Cambridge Handbook of the Right
to Freedom of Thought

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Edited by Patrick O'Callaghan , Bethany Shiner

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*Patrick dedicates this book to Carol and Liam.
Bethany dedicates this book to her beloved Mum, her very
patient partner and their joyful children.*

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Foreword

I am delighted to write a foreword to this ground-breaking comparative study of legal protections offered to the right to freedom of thought around the world, which covers an immensely significant gap in the scholarship on this subject. While the twenty-one deep-dives in the volume provide fascinating country and regional perspectives, they are book-ended by insightful interdisciplinary analyses that furnish a multidimensional perspective that contextualises and enriches our understanding of the country studies. As the editors of this volume note, this is also a timely publication, given the ongoing debates amongst scholars, human rights advocates and policymakers on how best to ensure that the freedom of thought is guaranteed in the digital age.

I have been looking forward with much anticipation for such a study from the scholars who have produced this volume, many of whom are part of the Freedom of Thought Network. I had the privilege of benefiting immensely from the expertise of many of them when I carried out research for the report on the freedom of thought that I presented to the UN in October 2021.¹ Highlighting in that report how sparse is our understanding of the freedom of thought in regard to both scope and content, I called on scholars and practitioners to explore the topic further. My own understanding of this important freedom has also continued to be enriched by emerging scholarship including those produced by various contributors to this volume. I am grateful for the various insightful critiques of my UN report offered by them, and I am happy to see some chapters in this volume build on the indicators suggested in that report to assess governmental and societal respect for the right to freedom of thought.

The right to freedom of thought is not only recognised in international law as a universal human right that is entitled to unqualified protection. It is also generally understood as ‘the basis and origin’ of all other rights and freedoms. The right safeguards autonomy and is crucial for spiritual and intellectual development and the exercise of human agency. It is indeed hard to imagine human and societal progress without the exercise of freedom of thought. The framers of the legal norm in the Universal Declaration of Human Rights of 1948 defended this right from a variety of perspectives. They drew on diverse historical, philosophical and religious or belief traditions. They further emphasised that freedom of thought extends beyond religious matters and also protects political, scientific and philosophical thought. The drafters

¹ Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed: Freedom of thought, UN Doc A/76/380 (5 October 2021), United Nations, Geneva. Available at www.ohchr.org/en/documents/thematic-reports/a76380-interim-report-special-rapporteur-freedom-religion-or-belief.

of the Universal Declaration also recognised both the intrinsic value and compound nature of the right and its overlaps with several other freedoms. However, these aspects have not been fleshed out in subsequent jurisprudence or scholarship, rendering the right a ‘forgotten freedom’. Thus, while over 100 national constitutions around the world recognise freedom of thought, there is no consistency in how the protections are formulated or regulated. This inconsistency perhaps reflects, as various scholars today note, that there is no agreement on what precisely constitutes ‘thought’, whether all ‘thought’ enjoys equal protection, or how far are any prerequisites for ‘thinking’ protected, or indeed the precise ways in which this freedom can be violated.

What is clear is that, in an age of democratic backsliding and shrinking spaces for dissent, it is no longer safe, if it ever was, to be complacent about protections for freedom of thought. To continue to assume that ‘thought is free’ or that it cannot be interfered with, or that the unqualified protection guaranteed by international law would be sufficient for the enjoyment of the right to freedom of thought, places all human rights at risk. Further, this right can be assaulted through both direct methods and subtle means. The former can include various ways of altering ‘mental furniture’ such as through the use of torture, administration of mind-altering drugs or erasure of memory or language. The latter can include surveillance or the deprivation of the essential tools and spaces necessary to develop thought, such as access to education or healthcare or the use of censorship and disinformation. Indeed, freedom of thought can possibly also be constrained by direct and indirect discrimination that results in the nullification or the impairment in the exercise or enjoyment of any human right. New and emerging technologies can alarmingly boost the potency of these repressive means in addition to introducing new forms of vulnerability or risk, especially through violation of the right to privacy and unlawful neurological interventions. Of course, it must be emphasised that artificial intelligence not only presents threats to freedom of thought but can also offer significant opportunities to enhance the exercise and enjoyment of this right.

Mitigating the risks and harnessing the positive potential for strengthening the capacity to exercise freedom of thought today will require robust methods to ‘operationalise’ this freedom in law and practice. As I have argued elsewhere,² for any human right, this will require delineating the attributes of the freedom, and identifying the legal and institutional frameworks and the policy processes that are necessary to ensure that duty-bearers respect, protect and promote this freedom. It will also require recognising or developing specific indicators that can measure the state of enjoyment of this freedom. These exercises require, as a prerequisite, a grounded assessment of how the right is understood, protected, exercised, enjoyed, experienced, abridged and violated around the world.

As a structured and focused comparative study of the law and practice on protections for freedom of thought in various jurisdictions around the world, this volume can make a significant contribution to help us shift towards operationalising the freedom of thought. In passing, I might add that this volume also offers a welcome shift from the largely Trans-Atlantic centrality of the scholarship on the subject so far. In carrying out a global review, the editors have thus captured multiple ways of conceptualising and protecting the right, as well as different levels of sophistication and maturity in the legal protections that are offered. Therefore,

² See paras 61–70, Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed: Elimination of all forms of religious intolerance, UN Doc A/75/385 (12 October 2020), United Nations, Geneva. See also Illustrative FORB Indicators, available at www.ohchr.org/en/documents/thematic-reports/a75385-interim-report-special-rapporteur-freedom-religion-or-belief.

in identifying several good practices as well as persistent and emerging challenges around the world, the volume promises to be an essential resource to scholars, human rights defenders and policymakers who are interested in enhancing our understanding of the freedom of thought and developing ways to guarantee this essential freedom to all.

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