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The *Forum Internum* Revisited: considering the absolute core of freedom of belief and opinion in terms of negative liberty, authenticity and capability

Abstract

Human rights theory generally conceptualises freedom of thought, conscience, religion and belief as well as freedom of opinion and expression, as offering absolute protection in what is called the *forum internum*. At a minimum, this is taken to mean the right to maintain thoughts in one's own mind, whatever they may be and independently of how others may feel about them. However, if we adopt this stance, it seems to imply that there exists an absolute right to hold psychotic delusions. This article takes the position that this conclusion is ethically problematic from the perspective of psychiatric treatment and the rights of persons with psychosis. The article reflects on this particular challenge and sets forth an understanding of freedom in the *forum internum* that might apply to situations where for various reasons it is not, necessarily accurate to maintain that persons have an absolute right to their own thoughts. For the purpose of proposing such an understanding, the article engages with current debates within human rights theory and political philosophy and analyses discussions about psychotic delusions and the way in which involuntary treatment is justified. Based on this analysis, this article in turn conceptualises freedom in the *forum internum* as 'negative liberty', 'authenticity' and 'capability'. This article suggests that when *forum internum* is redefined as encompassing a right to certain internal capabilities, the right remains meaningful for persons with psychotic delusions as well.

Keywords

Freedom of belief and opinion, forum internum, delusions, psychosis, involuntary treatment, competence, capabilities approach

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1. Introduction

In spite of what we may think, human rights are not considered to be absolute in all respects, at least not in their legal form. Few legal human rights are in fact considered absolute in the sense that they cannot be circumscribed for any reason. The fulfilment of so-called derogable legal human rights on part of states can be suspended in ‘a state of emergency’. Yet, non-derogable human rights, like Article 18 on freedom of thought, conscience and religion of the International Covenant on Civil and Political Rights, also can sometimes be subject to limitation. In fact, most human rights can be justifiably circumscribed under certain conditions. This, as noted, is also the case with regard to freedom of belief and opinion.¹ As far as limitations to this freedom goes, they are justifiable on certain grounds with regard to the external dimension of this right, “the external realm of action” (Roberts 2016): the right to express beliefs and opinions. With regard to this dimension, called the *forum externum*, the right to freedom of belief and opinion can be restricted, among other reasons, in order to protect the rights and freedoms of others. By contrast, with regard to the *forum internum*, “the inner realm of the mind” (Roberts 2016), the right to belief and opinion is considered absolute in the sense that under no circumstances and for no reasons should it be restricted.²

Human rights theorists have drawn the borders of this *forum internum* in somewhat different ways. Yet, in general, they seem to share the view that its core consists of the freedom to hold thoughts and opinions silently ‘in one’s mind’. (Evans 2001, 52, 68, 72-74; Lerner 2006, 8; Nowak 1993, 314–315; Partch 1981; Scheinin 2000; Tahzib 1996, 25–26). When it comes to the freedom to hold opinions, the International Covenant on Civil and Political Rights (ICCPR), for example, declares in Article 19(1): “Everyone shall have the right to hold opinions without interference”. As it is formulated, the article does not allow for any restrictions regarding this part of the right. It is unconditional.

With regard to the right to freedom of religion or belief, it has become almost inconceivable in modern international human rights law to conceptualise this right without the dichotomy between the *forum externum* and the *forum internum* (Petkoff 2012, 184-185). This is reflected in the case law even if the two spheres are sometimes more taken for granted than clearly, explicitly delimited as to their meaning or scope (see, e.g., Danchin 2008, Slotte 2011, Slotte 2012). This especially applies to the *forum internum*, even if *forum internum* is generally taken by human rights theorists to encompass the right to freedom from indoctrination and the freedom not reveal what one believes in, the right to hold a religion or belief of one’s own choice and to change it, and the right not to believe. (See e.g. Tahzib 1996; Evans 2001; Taylor 2005; Bratza 2012; Peroni 2014; Slotte 2015, 110). Similarly, the European Court of Human Rights has affirmed in the recent case of *Eweida and Others v. the United Kingdom* that “Religious freedom is primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified.” (*Eweida and Others v. the United Kingdom*, 15

¹ In this article the expression “freedom of belief and opinion” refers to all human rights dealing with believing and thinking, including the right to freedom of thought, conscience, religion and belief, and the right to freedom of opinion and expression.

² The terms *forum externum* and *forum internum* usually figure in human rights discussions concerning the right to freedom of thought, conscience, religion and belief (Petkoff 2012, 184–185). In this article, however, the dichotomy is linked also to discussions of the right to freedom of opinion and expression, because the division between an external and an internal sphere of rights is also implicitly at play there. This dichotomy has been the subject of scholarly criticism highlighting its ideological biases and historical baggage. See, e.g., Danchin 2008, Slotte 2011, Petkoff 2012, Slotte 2012. In this article, we offer an additional unexplored critical perspective with regard to the idea of a *forum internum*.

January 2013, Nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 80).³

Yet, it is also worth noting that in another context, the meaning, scope and limits of the *forum internum* has been deemed practically insignificant, with Jan-Christoph Bublitz (2013) observing that “not even the outspoken and critical legal commentaries define its [forum internum] contours in more detail”. Especially when the right to hold opinions and thoughts in mind is understood as something akin to a moral ideal, for example, as individual autonomy discussed in moral philosophy (see, e.g. Christman 2015), there is less clarity as to what would actually be protected by the *forum internum* in the legal sense and in what cases courts could find that the forum internum of somebody has been violated.

1.1. Psychotic delusions as a challenge for the forum internum

Moreover, if one views the forum internum as including the right to hold thoughts and opinions, of whatever kind, in one's mind, then this view would appear to conflict with the fact that some people with psychotic delusions are legally subjected to involuntary psychiatric treatment and that antipsychotic medication may be used to mitigate their delusions, against their expressed wishes. The use of involuntary antipsychotic medication in certain cases of people with a psychotic disorder is justified in ethical guidelines for psychiatry and in mental health acts of many if not all countries, while in the case of individuals with milder mental disorders the involuntary use of medication is understood as unjustified paternalism (see e.g. Council of Europe 2004, article 28:1; Mielenterveyslaki 2001/1423, 22b; MI Principles 1991, Principle 11:6; WHO 2005.) The potential tension between the forum internum and the use of involuntary antipsychotic medication does not seem to be acknowledged, or commented upon, in international human rights covenants or the ethical guidelines of psychiatry. As well, the tension is not usually acknowledged in discussions of the ethics of psychiatry, even though, for example, Peele and Chodoff (2009, 211) discuss involuntary psychiatric treatment as something which may alter patients' thoughts, emotions and attitudes. Moreover, it seems that in Europe we do not find legal cases on the supranational level, focusing on the tension between the *forum internum* and the practice of involuntary antipsychotic medication. The tension is not resolved in legal cases tried in the United States, either. (See Stenlund 2013.)⁴

Delusions are commonly defined as false beliefs “based on incorrect inference about external reality that is firmly held despite what almost everyone else believes” (DSM-V 2013, 819). Delusions are seen as a core symptom of psychotic disorders together with hallucinations which, according to DSM-V (2013, 87), are “perception-like experiences that occur without an external stimulus”. Like all other mental disorders, psychotic disorders as well are, according to DSM-V (2013, 20–21), usually associated with significant distress or disability. Though the concepts of psychosis and delusion are extensively discussed topics in philosophy of psychiatry (see Bortolotti 2009; Heinimaa 2012; Radden 2011; Sass 1994), there is no clear agreement about the core of these concepts. For example, the status

³ To be kept in mind, however, is that the question of choice in matters of religion has been a debated issue in modern international human rights law since the establishment of the human rights regime under the United Nations (Evans 1997).

⁴ In the recent case of *Mockute v. Lithuania* (27 February 2018, Nos. 66490/09, paras. 126–131) the European Court of Human Rights held that there was an interference with the applicant's right to respect for her religion when psychiatrists tried, for example, to correct the patient's religious beliefs. However, the case seems to focus on the religious beliefs shared in community, not beliefs considered delusional. So, it is unclear whether and in what sense also delusional beliefs or thoughts are protected from the psychiatric intervention and how this kind of protection is meaningful if we take into account that an aim of psychiatric help is to cure the patient from the psychotic disorder and the delusions are understood as symptoms of that disorder.

of delusions as ‘beliefs’ is questioned in the discussions of philosophy of psychiatry (see Berrios 1991; Currie and Ravenscroft 2002; Stephens and Graham 2007).

When it comes to human rights discussions, again, there is no agreed on definition of what amounts to ‘religion’ or non-religious ‘belief’ within the international human rights framework (and indeed also not outside it). Indeed, no definitions have been attempted (see e.g. Gunn 2003; M D Evans 2001, 209). An inclusive approach to ‘religion’ and ‘belief’ is the favoured approach. For example, as the UN Human Rights Committee observes in its General Comment 22: “The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” (UN Human Rights Committee 1993). In fact, Helge Årsheim has argued that the various committees empowered to oversee the implementation of different key UN human rights treaties draw on partly different understandings of religion in their work (Årsheim 2014).

Likewise, the European Court of Human Rights has stated explicitly that it does not want to take a stand on what is or is not religion, nor on the legitimacy of particular beliefs (See e.g. Slotte 2015, 106-107). However, it is equally clear that the European Court of Human Rights has repeatedly affirmed that European human rights law protection does not cover everything and that the “right to freedom of conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance”. (See e.g. *Eweida and Others v. United Kingdom*, para. 81). Human rights theorists have criticized what they see as an emphasis on theoretical and intellectual coherence for its exclusivity and hence potential to exclude less well-known and uncommon life-views. (See e.g. Evans 1997: 290-292; Evans 2001: 63, 65, 75, 202; Ahdar and Leigh 2005; 124; Slotte 2015, 107-108.) Still, we can ask if some internally cogent and coherent psychotic delusions that are important to those who hold them could also be counted as beliefs (see Stenlund 2013). They would then fall within the scope of even such a narrower understanding of ‘religion’ and ‘belief’ for purposes of human rights protection.

Further, Stenlund’s (2013) analysis shows that in human rights law the concepts of opinion and thought together seem especially to cover most delusions. According to interpretation adopted by the European Court of Human Rights, the opinions expressed should have something to do with facts if expressing them conflicts with other people's rights. However, opinions held in one’s mind do not necessarily need to do so since they do not conflict with the rights of other people. Moreover, the ICCPR (1966, article 19:2) protects freedom of expression with respect to “information and ideas of all kinds” and we can suspect that this “all kinds” also applies to the concept of opinion since freedom of opinion is protected in the same article (19:1). Stenlund notes, for example, that a delusion that one is being persecuted seems to fulfil the criteria presented for the concept of opinion.

Stenlund (2013) points out that also ‘thought’ seems to be defined in such an inclusive fashion in human rights discussions that it includes most delusions. According to Tazhib (1996, 313), any conceivable kind of thought should be understood as ‘thought’ in a discussion concerning freedom of thought. According to Partsch (1981, 213) concepts of thought, conscience and religion together cover “all possible attitudes of the individual toward the world, toward society, and toward that which determines his fate and the destiny of the world, be it a divinity, some superior being or just reason and rationalism, or chance” According to Stenlund (2013), a delusional person’s attitude of having a special divine identity seems to be included in the concept of ‘thought’.

Thus, if there is an absolute right to keep opinions and thoughts in one's mind, and especially if thoughts can be of whatever kind, as has been suggested, for example, by both human rights theorists (see Partsch 1981, 213; Scheinin 2000, 6; Tazhib 1996, 131) and human rights treaty bodies

that monitor the implementation of human rights (see Human Rights Committee 1993), then there should also be an absolute right to hold so-called delusions.

The assumption that a person has the right to keep any kind of thought silently in his or her mind probably rests on the idea that holding opinions and thoughts in itself does not conflict with the rights of other people. However, those who draw this conclusion might be overlooking the many persons whose minds today are influenced by medication against their expressed wishes, as well as the fact that people with psychotic thoughts may need treatment (see, e.g., Scheinin 2000, 5–6; Rainey, Wicks and Ovey 2014, 412). Since the right to receive psychiatric treatment is not an absolute human right as a right in the *forum internum* is, prioritizing the former over the latter is theoretically inconsistent even though this kind of prioritization seems to be carried out in psychiatric practice (see Stenlund 2013). Actually, the current way of understanding the *forum internum* provides an excellent reason for arguing that involuntary antipsychotic medication should not be used in any case nor for any reason because it violates the patient’s absolute human rights. For example, this argument has been presented in antipsychiatric discussion (see e.g. Gosden 1997; Szasz 1990, 563). However, a person is referred to involuntary treatment when it is suspected that the psychotic disorder has caused the person a loss of insight, and that he or she possesses insufficient competence for making decisions concerning treatment. Though psychiatric practices may be in need of development, a total denial of the use of involuntary antipsychotic medication in treatment in the name of the *forum internum* might still neglect some patients’ needs and would be problematic therapeutically and ethically. It is also worth noting that many patients referred to involuntary treatment (though not all) are grateful afterwards that this was done (see Lönnqvist et al 2014, 741).

1.2. The purpose of the article

It seems that defining the core of forum internum along the lines sketched above will render it non-applicable if we take into account the full diversity of humanity, including its potential to be delusional (see more Stenlund 2013). This article revisits the concept of the forum internum for the purpose of seeking to develop an understanding of its core features which might also apply in situations where it would not necessarily be accurate to say that persons have an absolute right to hold their thoughts. Or as noted above, as the European Court of Human Rights phrases it, to maintain that this “aspect” of the right “to hold any religious belief and to change religion or belief, is absolute and unqualified”. With this purpose in mind, the article examines views put forward within human rights theory and political philosophy and analyses discussions about psychotic delusions and the way in which involuntary treatment is justified. The challenge which psychotic delusions present actually serves to further develop the theory concerning freedom of belief and opinion. Since freedom of belief and opinion should be the right of all human beings, the challenge presented by people with psychosis can help us to better understand what should be protected in an absolute way for us all.

In international law and, more broadly, human rights discussions, the term *forum internum* denotes a particular sphere which is taken to correspond to a particular aspect of ‘religion or belief’: it is the private sphere of beliefs (Petkoff 2012, 183). For the purposes of this article, *forum internum* signifies a way to get at a core element of the freedom of belief and opinion which every individual should enjoy in every situation. It is negative in nature in as much as here freedom of belief and opinion is about “not to be interfered with” rather than positively requiring “to be done to in certain ways” (see Feinberg 1973, 88).⁵ The following conceptual analysis identifies three views of freedom of belief and opinion: negative liberty, authenticity, and capability. As the table below indicates, each view

⁵ Except that the state has to ensure that people do not interfere with each other’s rights.

provides a different take on what the *forum internum* might mean, including if it were to be redefined. More specifically, what we focus on is the particular aspect of the *forum internum* encompassing the right to hold thoughts of whatever kind in one's mind (i.e., not such aspects as, for example, not to be forced to reveal one's opinions or beliefs, and which is also generally ascribed to this sphere).

Table 1. Defining freedom in the *forum internum* in terms of negative liberty, authenticity and capability

The view of freedom	Current definition	Redefinition	Problem of redefinition
Negative liberty	<i>Forum internum</i> protects the freedom to adopt and maintain thoughts in one's mind	<i>Forum internum</i> protects (in a negative sense) competence as cognitive capacities	Too narrow, but otherwise relevant
Authenticity		<i>Forum internum</i> protects authentic believing and thinking processes.	Too idealistic
Capability		<i>Forum internum</i> protects capabilities for thinking and believing.	Too unclear, but worth developing

In the following, we present these three positions by proceeding in the following manner. In doing so we do not exclude the possibility that there may be other possible ways of redefining freedom in the *forum internum* as well. In each section, we first describe the main features and general framework of the view on freedom as negative liberty, authenticity or, alternatively, capability. After this, we proceed to consider how the *forum internum* with regard to the aspect of the right to freedom of belief and opinion, which is the focus of this article, might be conceptualised on the basis of the described framework if we take people with psychotic delusions into account. We conclude by suggesting that the most promising of these three ways of understanding freedom in the *forum internum* is that which proceeds from the perspective of capabilities.

2. The *Forum Internum* and a Negative Right to Competence

In this section we present an understanding of what the *forum internum* encompasses in terms of rights if freedom of belief and opinion is understood in terms of negative liberty.

2.1. Freedom of Belief and Opinion in Terms of Negative Liberty

As noted above, the aspects of the right to freedom of belief and opinion that relate to the *forum internum* are understood to be absolute in nature, requiring that other actors (and states are the primarily duty-bearers here under international law) abstain from interfering. Further, the state is required to (positively) take steps to safeguard these aspects of the right, including preventing others from interfering, to the extent necessary.

When freedom of belief and opinion in general is conceptualised in terms of negative liberty, both the dimension of the *forum internum* and the dimension of the *forum externum* are understood in a negative sense. This approach accords with what can be viewed as the ‘classical’ understanding of the right to freedom of belief and opinion and where the right has been considered a political right that correlates with ‘negative’ obligations on part of the state and other actors, including other persons. The only ‘positive’ state obligation is to seek to ensure compliance (i.e. that people do not interfere with each other’s freedom of belief and opinion) via law and, if needed, by prosecuting those who break the law.

In general, freedom of belief and opinion understood in terms of negative liberty means that others should not interfere in concrete ways (either physical or biological) with a person’s beliefs and opinions, nor prevent a person from manifesting these beliefs. A person may subscribe to and practice his or her current beliefs and simultaneously choose to abstain from subscribing to or practicing other particular beliefs. Moreover, when freedom of belief and opinion is conceptualised in terms of negative liberty, some theorists identify the state and mainstream opinion as primary threats to the individual. Through restrictive legislation or forcible means, these may prevent minorities and individuals from believing as they wish and from manifesting these beliefs.⁶ When it comes to conceiving of the *forum internum* in terms of negative liberty, only certain chemical and physical manipulations of an individual’s mind (e.g., the involuntary use of mind-altering medication or surgery) could be deemed as an interference with it (see Nowak 1993, 341).

The view of freedom of belief and opinion as negative liberty seems to closely parallel such human rights discussions focusing, for example, as regards religion, on ‘substance’, on thoughts and ideas: that is, on ‘content’. Both appear to view the *forum internum* as mainly encompassing an absolute right to maintain thoughts (‘content’) in one’s mind, while the *forum externum*, in turn, has to do with the right to express those thoughts, beliefs and opinions in different ways.⁷

⁶ On negative liberty, see, e.g., Berlin (2005, 169–170) and Feinberg (1973, 7–15).

⁷ It is not a completely far-fetched interpretation, as core human rights treaties emphasise the right to adopt and hold opinions and beliefs, including those of a religious nature. See, e.g., ICCPR (1966), Article 18:1, which declares that freedom of thought, conscience and religion includes “freedom *to have* or *to adopt* a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. Article 19:1 of the ICCPR (1966) states that: “everyone shall have the right *to hold* opinions without interference” (italics ours). The verbs ‘to have’, ‘to adopt’ and ‘to hold’ seem to refer here to particular actions in relation to beliefs and opinions. See, e.g., Lerner (2006, 5–7) and Partsch (1981, 217).

2.2. Incompetence and the *Forum Internum*

If we take literally the view of the *forum internum* that emphasises the absolute right to maintain thoughts of whatever kind, in one's mind, it should lead us to conclude that persons have an absolute right to hold even psychotic delusions. If and when we find this conclusion problematic, we begin to contemplate the issue of incompetence. Competence signifies the abilities a person needs to make decisions: e.g., the abilities necessary for giving consent to treatment. According to Beauchamp and Childress (1989, 79), the concept of competence is "a precondition of being able to authorize autonomously". Autonomous action requires that the person is acting intentionally, with understanding and without controlling influences that might determine the action (Beauchamp & Childress 1989, 69). In the ethics of psychiatry and in mental health legislation, paternalistic interventions such as involuntary psychiatric treatment are usually considered justified if the person who needs treatment is not deemed sufficiently competent. This also means that the person's right to freedom of belief and opinion (in general) can be restricted. (See Beauchamp & Childress 1989, 79; Stenlund 2013).

Within theories of rights, we encounter discussions to the effect that certain capacities and competences such as the ability to make autonomous decisions and a certain level of rationality, are necessary for a person to be able to exercise his or her rights. Depending on the theory, this may even be taken as a prerequisite for identifying someone as a rights-bearer in the first place. (See e.g. Klasson Sundin 2016, 72–110).

For example, the question as to what degree competence is a prerequisite for being identified as a rights-holder arises acutely with regard to children, who depending on their age and stage of development are considered unable themselves 'to act on' their rights in all respects. Do they hold those rights even if they are dependent on someone else acting on their behalf? The Convention of the Rights of the Child acknowledges both the child's own agency and its need for direction and guidance on part of its parents. Simply put, this means that, as the child grows and its capacities evolve, it gains more independence as a subject of rights. Yet, at the beginning parents are key to exercising the rights of their children on their behalf. Consequently, a key focus of such discussions on children's rights has been what it would mean concretely to take into consideration "the evolving capacities" of children in relation to rights, including with regard to freedom of belief and opinion. Opinions differ. (See e.g. Klasson Sundin 2016, 111–134).

However, it is not clear how current human rights theory and human rights law views the issue of incompetence more particularly in relation to the *forum internum* more specifically. Is it possible that sufficient competence could be a prerequisite for enjoying an absolute right to maintain thoughts of whatever kind in one's mind? If this were the case, that right would not be a right held by incompetent individuals: an individual with psychotic delusions would not have a right to refuse mind-altering antipsychotic medication if he or she were incompetent to make such a decision. So it would not be a question of *restricting* the right (which in this case is unjustifiable given that we are talking about an 'absolute' right in the *forum internum*).

However, mental health legislation and ethical principles actually do claim that in cases of incompetence, freedom (in general) *might be* restricted or limited. They do not state that certain freedom rights are not applicable at all. (See, e.g., MI Principles 1991, General limitation clause; Kuosmanen 2009, 11, 13, 16-19; Kaltiala-Heino et al 2000.)⁸ It can also be asked how some human

⁸ For example, the MI Principles (*Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* 1991, General limitation clause) adopted by the United Nations do not mention that some human rights would not apply in cases of patients with psychosis. Instead, the MI Principles

beings could fall completely outside of the realm of rights which should belong to everyone. Does it follow from a person's incompetence that he or she does not hold rights that are generally considered absolute? If so, are these rights genuinely absolute?

2.3. A Negative Right to Competence for Incompetent Persons as well

The problem described from the viewpoint of negative liberty above could be avoided if we were to redefine instead what it means to have a right in the *forum internum* in terms of a negative right to competence. In this case, the contents of beliefs and opinions would not be the focus of protection in the same way as currently seems to be the case (when the contents are allowed to be of any kind). Instead, the focus of protection efforts would relate to the capacities needed for thinking and believing. When it comes to discussions that focus on the human rights dimensions of disability, Quinn and Degener (2002) seem to endorse this kind of redefinition since they have identified the *forum internum* as being about the "protection of the internal capacity for self-direction".

This definition also appears more applicable in the case of incompetent people. However, it applies to sufficiently competent individuals as well. If the *forum internum* encompasses a negative right to competence, it means that others, correspondingly, would be obliged not to interfere in concrete ways with another person's competence in order to reduce it. Moreover, an involuntary measure such as brain surgery could be absolutely prohibited if a significant risk existed that the person's ability to be competent would be destroyed. It would amount to an unjustified interference in the *forum internum* if surgery so manipulated a person's brain that this person could no longer process information or understand the consequences of his or her actions (even if post-surgery the person would be calm and easy to handle). Since this kind of absolute right seems to be both desirable and conceptually possible, we can say that it could be meaningful to redefine the *forum internum* in the manner in which we propose in this article.

However, as a purely negative right, the right to competence thus conceived would not include the right to receive support for one's competence. Moreover, measures that do not interfere with competence, but instead are intended to increase it (as may typically be the case when involuntary antipsychotic medication is used) could be considered justified even from the viewpoint of negative liberty. Furthermore, measures such as giving sedatives in order to promote treatment options could be defined as being used to restore someone's competence through treatment, even if it would not immediately improve competence and might even temporarily reduce it by making a person sleep deeply.

If the right to hold thoughts in one's mind were to be redefined as a negative right to competence, everyone would have the same right in this respect in the *forum internum* regardless of whether they were competent or not. Such an interpretation would actually contribute as well to the discussion of the rights of children, since, as noted above, the relationship between competence and rights also poses challenges with regard to children's rights. (See e.g. Langlaude 2007, 45–53, 101–104).

If the *forum internum* were taken to encompass a negative right to competence, all incompetent people would have this right. However, readjusting the focus in this way would seem

discuss limitations to rights in certain situations, which seems to imply that persons with mental illness are rights-holders and may also have rights in the *forum internum*. The Mental Health Act of Finland (see Mielenterveyslaki 2001/1423) also uses the expression "limitations on patients' fundamental rights during non-voluntary treatment and examination" in the title of chapter 4a, which includes, among other things, section 22b, which addresses the treatment of mental illness.

also to require that human rights law and human rights theory revisit the prevailing understanding of the various senses in which freedom of belief and opinion is an absolute right in the *forum internum*. The current understanding does not seem to entail (at least not explicitly) a negative right to competence.

2.4. Too Narrow a View?

Hence, from within a framework that conceptualises freedom of belief and opinion in terms of negative liberty, it seems possible to elaborate an understanding of what it means to have freedom of belief and opinion in the *forum internum* which is relevant for people with psychosis. However, the perspective of negative liberty on freedom of belief and opinion comes across as too narrow if it is taken to encompass freedom of belief and opinion as a whole, including as understood in human rights law. Certainly, as far as rights in the *forum internum* are negative in nature, the narrowness of the general framework does not directly pose a problem in this respect. However, if we also take into account that, as with other human rights, protection of freedom of belief and opinion in the *forum internum*, and indeed also in the *forum externum*, may require positive action, it seems that viewing this freedom purely in terms of a negative liberty leads to ignoring things that are relevant for many people with psychosis and also for other rights holders. For example, a person with psychosis may need help in order to manifest his or her beliefs and opinions and in order to live a life that is sufficiently in accordance with his or her values. Conceptualising freedom of belief and opinion solely in terms of negative liberty overlooks these needs.

Moreover, when addressing the question of competence we emphasize the cognitive dimension of the human mind. For example, we focus on asking if the individual understands the consequences of his or her actions. A person may possess these kinds of cognitive abilities even though he or she suffers from deep emotional and social problems and thus is willing to make even desperate choices. A so called standard approach to competence, which focuses on cognitive abilities, has also been challenged. For example, Widdeshoven et al (2017) suggest that an individual's competence should be understood as practical wisdom which includes not only knowledge but also emotion and values. Thus, we may ask if important spheres of the human mind are not taken into account if the *forum internum* is understood in terms of a standard approach to competence.

Thus, even though we have already encountered one important interpretation of what it means to have freedom of belief and opinion in the *forum internum*, we still need to further explore views that are more relevant in order to understand freedom of belief and opinion.

3. The *Forum Internum* and an Absolute Right to Authentic Beliefs

In this section, we reconsider the *forum internum* from the perspective of authenticity, which is a further possible way of comprehending freedom of belief and opinion. Can such an angle of approach provide more relevant frames for conceptualising rights in the *forum internum* than the viewpoint of negative liberty?

3.1. Freedom of Belief and Opinion in Terms of Authenticity

When freedom of belief and opinion is understood in terms of authenticity, the rights involved refer to one's being who one really is and the idea of being one's own person. At least, dimensions such as independence, self-fulfilment, reflectivity and the coherence of self-narration have been highlighted in discussions of the idea of authenticity. The way in which we interpret the meaning of authenticity in the context of human rights for the most part refers conceptually to the independence of the person

and to the authority of his or her attitudes, beliefs and opinions.⁹ When freedom of belief and opinion is understood in terms of authenticity, the *forum internum* seems to signify the right to hold one's own beliefs and opinions, which are themselves the results of an authentic believing and thinking process. Thus, freedom of belief and opinion signifies the right to be the author of one's beliefs. When freedom in the *forum internum* is understood in this sense, not only physically or biologically concrete interferences amount to a restriction of it (as would be the stance taken from the perspective of negative liberty) since psychological and social factors also may threaten it, even though it is difficult to strictly distinguish among physical, biological, psychological and social interferences. For example, psycho-social manipulation can be seen as a violation of the *forum internum* (see Beltran 2005; Evans 2001, 68; Nowak 1993, 314–315); if it is argued that manipulation interferes with the victim's "true self", then the freedom of belief and opinion seems to be understood in term of authenticity.

However, it seems that conceptualising freedom of belief and opinion in terms of authenticity rather than negative liberty per se is common in philosophical and psychiatric discourse. For example, Alexandre Erler and Tony Hope (2014) suggest that accounts concerning attaining the person's true self are needed in the context of mental disorders. In human rights law and human rights theory, the discussion might not explicitly be conducted to the same extent in terms of authenticity.¹⁰ Nevertheless, indoctrination is generally considered a clear-cut case of the violation of the right to freedom of belief and opinion in the *forum internum*. In other ways as well, authenticity seems to be a concern and psychological manipulation seen as a violation of the *forum internum*. (See Beltran 2005; Evans 2001, 68; Nowak 1993, 314–315.) Furthermore, that mental health laws in most if not all states allow the use of involuntary antipsychotic medication may imply that inauthenticity is not seen as worth protecting.

3.2. Psychosis as a 'Violator' of Freedom in the Forum Internum

In the discussion concerning the justification of involuntary treatment, it is sometimes suggested that a psychotic disorder is an alien power which makes a person inauthentic and distorts his or her beliefs. This person's distorted self develops distorted beliefs that are alien to the person's authentic self. Thus, psychosis violates, at least in a metaphorical sense, a person's *forum internum* right. For example, Thomas Gutheil (1980) describes the view of clinicians (in general), who, unlike legal scholars, point out that "psychosis is itself involuntary mind control of the most extensive kind and itself represents the most severe 'intrusion on the integrity of a human being'." Jonathan Glover (2003), for his part, notes how some major psychiatric disorders "can change the central core of a person". Some patients also experience psychosis as an inauthentic state. For example, comparing a psychotic experience with a religious one, Andrew Sims (1997) has suggested that in the latter case, the person has the feeling that he or she possesses free will. Luciane Wagner and Michael King note in their research that many people with psychotic disorders have regarded their disorder as something distinct from their being and that some find it difficult to understand the meaning of their thoughts. Erler and Hope (2014), in turn, refer to the experience of a person with bipolar disorder who saw the darkness as a stranger who "lodged within my mind" and as an "outside force that was at war with my natural self". When the authenticity of a person's beliefs and opinions is evaluated, the evaluation can focus, for example, on the person's own evaluation, stability and recalcitrance of the beliefs and

⁹ On the concept of authenticity, see, e.g., Oshana (2007), Guignon (2004), Brison (1996), Dworkin (1985, 353–359) and Scanlon (1972).

¹⁰ For example, when Karapuu (2011, 80–83) describes different ways of understanding freedom he does not present the view of freedom in terms of authenticity. See also Bublitz (2013, 240–242).

opinions, the person's ability to reflective self evaluation, or ability to create a coherent narrative of self. (See Stenlund 2014, 219–237.)

When psychosis is understood as an alien power which interferes with an individual's freedom in the *forum internum*, it is clear that psychiatric treatment can be seen as an intervention that liberates the psychotic person from this power. Even the use of involuntary antipsychotic medication is understood as liberation, not interference with freedom. From this point of view, there is no inconsistency between viewing the *forum internum* as encompassing an absolute human right, and the use of antipsychotic medication in involuntary treatment. The use of medication does not interfere with the person's *forum internum*; the psychosis does. According to Thomas Gutheil (1980, 327), while legal thinkers want to liberate patients from the chains of treatment, "the physician seeks to liberate the patient from the chains of illness". Kaltiala-Heino et al. (2000, 213) refer to the idea that the goal of involuntary psychiatric treatment is "to help a patient regain her/his rationality and true (psychological) freedom".

The view that psychosis is an alien power which violates the *forum internum* is connected with how the concepts of responsibility and paternalism are understood when dealing with psychotic individuals. When freedom of belief and opinion is understood in terms of negative liberty, psychotic persons are not necessarily considered responsible because they lack certain capacities necessary for competent decision making (e.g. the ability to understand the consequences of their actions and the ability to control their behaviour and actions). This view seems to be present in legislation (see Rikoslaki 2003/515, 4§; Tiihonen 2014). When freedom of belief and opinion is understood in terms of authenticity, responsibility is regarded differently. To be precise, the person with psychosis is seen as irresponsible not (only) because of his or her lack of capacities, but because the psychotic acts are alien: that is, they are the acts of someone or something else. Thus, they are not the person's own acts, for which he or she would be responsible. (See Radden 2011, 125–129; Fulford et al. 2006, 149–150, 481.) For example, when Jennifer Radden (2011, 125) reflects on the relationship between delusions and violence she points out that delusions may force a person into performing certain actions.

3.3. Too Idealistic a View?

What emerges here is a picture of authentic beliefs as being those which promote well-being or satisfy a relatively strict criterion of rationality. It is worth asking if humanity is here seen in a positive light that is too idealistic. If authentic beliefs do indeed promote well-being and, necessarily, are rational, we seem to be saying that to suffer, or to be irrational or bad, are always marks of madness or some other kind of inauthenticity. D. Meyerson (1998) has claimed that some views of authenticity ignore the dark side of humanity, and suggests that authenticity should be understood in the light of people's natural dispositions: an authentic person reflects natural dispositions in his or her behaviour. However, Meyerson points out that sometimes other more important values might conflict with authenticity. For example, the person might have a natural disposition to violence, but he or she ought not to act violently in what might be seen as an authentic way because other people would then suffer. Meyerson's position seems to express a more realistic view of humanity. From this standpoint, psychosis could be considered an authentic experience. However, this does not mean that the person should have a right to be psychotic or to act in a psychotic way.

If we adopt a view that destructiveness may also be authentic and if we accept the conclusion that a person may, at least in some cases, be the author of his or her delusions, we seem to face a problem concerning the *forum internum*. For, if freedom in the *forum internum* encompasses the right to authentic believing and thinking processes, it would follow that some people with delusions should also be left without involuntary antipsychotic medication in cases where they are seriously

incompetent. It would not be justified to promote competence if it could not be done without interfering with authentic thinking and believing processes. Since absolute rights should be defined in such a way that conflicts between them are conceptually impossible (see Feinberg 1973, 87), it seems that freedom in the *forum internum* cannot signify both authenticity and a purely negative right to competence (see section 2 above). Thus, as we suggested above in our discussion of freedom as negative liberty, defining freedom in the *forum internum* in terms of a negative right to competence rather than in terms of authenticity might be a better way to protect the individual with psychosis. Even though the concepts of both authenticity and competence are difficult to define and evaluate, competence seems to have clearer and more general requirements than does authenticity, and is more pertinent to law and legal thought.

4. *Forum Internum* and a Right to Certain Internal Capabilities

Since the view of authenticity does not seem easily applicable in connection with law and legal thought in the matter under discussion in this article, we want to suggest in this section that it might be more helpful to consider freedom of belief in terms of capability. In this case, *forum internum* protection is about safeguarding certain internal capabilities.

4.1. *Freedom of Belief and Opinion in Terms of Capability*

In current human rights discussions, all rights, whether civil and political or economic, social and cultural, are considered to be interdependent and interrelated. Moreover, all categories of human rights give rise to positive and negative obligations on the part of other actors. This goes for the right to freedom of belief and opinion as well. (See e.g. Whelan 2010.) Conceptualising freedom of belief and opinion in the *forum internum* in terms of capability underscores these aspects of human rights.¹¹ In light of the definitions of Martha Nussbaum (2011, x, 18–19) and Amartya Sen (2009, 228; 1999, 9–10), who developed the capabilities approach, freedom of belief and opinion can signify that the individual is capable of making choices concerning the belief he or she follows, as well as a way of life he or she considers valuable and which is worthy of human dignity.

Nussbaum (2011, 33–34) presents a list of central capabilities which are implicit in the idea of a life worthy of human dignity. When we look at the list we notice that freedom of belief and opinion, as we have broadly defined it for purposes of this article, touches on many of the capabilities it mentions. Freedom of belief and opinion deals first with capability in terms of the senses, imagination and thought, which signifies an ability to use the senses and to imagine, think and reason in a way informed and cultivated by an adequate education. It also signifies an ability to use one's thought and imagination in connection with experiencing and producing events and works of one's own choice, and an ability for speech, manifestations and exercise in political, artistic and religious contexts. Second, the capability to engage in practical reasoning is significant with regard to freedom of belief and opinion. This means a capability of forming a conception of what is good, and to engage in critical reflection when planning one's life. Third, the capability to engage in affiliation is also

¹¹ Martha Nussbaum (2006, 287) describes freedom of belief and opinion in the context of her capabilities approach, by noting that these rights should be understood not only in the negative sense (as demanding that others abstain from certain actions), since securing these rights is “an affirmative task”: “The right to political participation, the right to the free exercise of religion, the right of free speech – these and others are all best thought of as secured to people only when the relevant capabilities to function are present. In other words, to secure a right to citizens in these areas is to put them in a position of capability to function in that area.”

crucial, as is the capability to control one's environment. In addition, the capability to express one's emotions seems to play a significant role in freedom of belief and opinion. This means a capability to become emotionally attached to things and other people, to love, to grieve, and to experience longing, gratitude and justified anger as well as "not having one's emotional development blighted by fear and anxiety", as Nussbaum (2011, 33–34) expresses it. When freedom of belief and opinion is understood in terms of capability, the approach resembles the model of practical wisdom presented by Widdeshoven et al (2017), who emphasize the role of emotions and values in competence.

Those who defend the capabilities approach make a distinction between capabilities and functionings. According to Nussbaum (2011, 24–26), functionings are beings and doings which are the outgrowths or realizations of capabilities. However, capabilities are "spheres of freedom and choice", as Nussbaum puts it. Freedom in terms of capability is not the freedom to do something specific, but rather is the freedom to choose, which assumes an opportunity to select. According to Nussbaum, options are freedoms. Sen (2009, 235) describes this idea as follows: "The focus of the capability approach is thus not just on what a person actually ends up doing, but also on what she is in fact able to do, whether or not she chooses to make use of that opportunity." The capabilities approach also helps in understanding the problems of indoctrination and psychological manipulation for freedom of belief and opinion by focusing on the individual's capability for choice (see, e.g., Nussbaum 2008, 140–145; Nussbaum 2006, 298). This means that we don't need an idealistic view of "true selves" (section 3) in order to define indoctrination and psychological manipulation as violations of freedom of belief and opinion.

4.2. The Capabilities of the Individual with Psychosis

It seems that compared with the views of negative liberty and authenticity, the capabilities approach succeeds in raising certain issues that are deeply relevant for people with psychotic disorders. The view of freedom in terms of capability perhaps best recognizes the different influences of psychosis and medication. For on the one hand, a psychotic disorder may weaken a person's freedom of belief and opinion understood as capabilities. First, delusions influence the ability to function in the real world and engage in social relationships in a meaningful way. If a person's view of reality does not correspond to the way other people see it, it may be difficult for that person to choose a way of life which he or she sees as valuable. When an individual's distorted view of reality is not sufficiently shared by others, things simply do not turn out the way the person would like them to, since other people (and the world in general) do not act as he or she think they will. (See Bolton & Banner 2012, 94.)

Second, even though a psychotic disorder is a different challenge than mental impairment, it has been noted that in many cases psychosis may weaken an individual's cognitive abilities, such as reasoning skills and being able to pay attention and concentrate. According to Lauri Kuosmanen (2009, 11), these cognitive impairments hamper the realization of basic human rights. In cases where medication increases cognitive capabilities and mitigates delusions, medication could support the person's freedom of belief and opinion. However, certain effects of antipsychotic medication can also be problematic from the viewpoint of freedom of belief and opinion. Sihtij Kapur (2003) holds that antipsychotic medication can lower an individual's motivation as well as level of desire and pleasure. There is also a growing critical discussion regarding the negative effects of antipsychotic medication, which is relevant (though controversial in relation to so-called mainstream psychiatry) when discussing freedom of belief and opinion in terms of capabilities (see, e.g. Götzsche 2015; Whitaker 2016). Moreover, if the medication is administered by force and the person receiving it does not have the possibility of choosing whether or not to receive it, the experience might be humiliating for him or

her and might reduce his or her capability to be an active actor in treatment. Both of these outcomes constitute problems when it comes to the question of capabilities. (See Stenlund 2014, 288–291.)

On the other hand, psychosis may be associated with a psychotic person becoming more aware of life and feeling that his or her life has more meaning (see Kapur 2003, 13, 18; Roberts 1991). According to Fulford and Radoilska (2012), despite delusions and other psychotic experiences being significant symptoms of mental disorder, they may also sometimes be life-enhancing. Psychosis may also be experienced as a positive crisis which prompts a person to realize how pointless his or her life has been (Iso-Koivisto 2004, 84). These ‘psychotic capabilities’ may be meaningful in the context of capability with respect to one’s senses, imagination and thought, and would signify, among other things, an ability to use one’s imagination and thought in connection with experiencing reality. This does not mean that a person should be encouraged to experience psychosis, but it might mean that an approach which views psychotic disorder only as something negative and requiring treatment will not see other effects that the psychosis could have on an individual’s life.

4.3. Can There Be an Absolute Right to Certain Capabilities?

When freedom of belief and opinion is understood in terms of capability, it is unclear what the *forum internum* might signify and whether it encompasses an absolute right. When it comes to Nussbaum's list of capabilities, it seems that none of the central capabilities listed are defined as absolute, since according to Nussbaum (2006, 78) the list is open-ended and “subject to ongoing revision and rethinking”. Nussbaum also emphasizes that no single capability can be prioritized over others. This conflicts with the view that some absolute rights exist, as absolute rights are prioritized rights. It seems that in Nussbaum’s view, prioritizing some capabilities would weaken the position of others.

However, Nussbaum also highlights the role of certain liberties, namely, freedom of speech, freedom of association and freedom of conscience, and asserts that these have a “nonnegotiable place”. Thus, at the same time that the list of capabilities is open for amendment, some of it is non-negotiable. Since Nussbaum (2006, 342) also seems to claim that there should be something in persons which is inviolable, the idea that some absolute rights exist could probably be defended in the context of the capabilities approach (see also Stenlund 2017).

Nevertheless, because the capabilities approach persistently avoids prioritizing, it is unclear what these possible absolute rights could be. Since capabilities signify that the individual is capable of choosing a way of life that he or she values and which is worthy of human dignity, we can assume that absolute rights could deal with self-respect as well as the ability both to ascribe values and to value things.

When it comes to the *forum internum*, could it in terms of capabilities at least partly encompass the negative right to competence, as we suggested when discussing negative liberty? If the terms presented in the context of the capabilities approach were used, could it mean that if a person’s neuro-biological preconditions to engage in practical reasoning were intentionally destroyed, it would constitute a violation of an absolute human rights? In the context of the capabilities approach, this right could be widened to include capabilities to experience emotions, exercise one’s imagination and have relationships with others. These internal capabilities could be protected, at least in some sense, from the interference of other people. Even though the individual might have no right to hold a delusion, he or she would have a right to the internal capabilities that he or she uses when forming delusions. Thus, for example, in situations where delusions seriously weaken capabilities, measures which relieve psychotic symptoms but also seriously and permanently interfere with internal capabilities could not be used.

4.4. Too Unclear a View

Since the capabilities approach seems to be very unclear about whether rights can be absolute in nature and what these possible absolute rights would be, we cannot advance any further the suppositions presented above. When it comes to law, the meaning of rights and the idea of what is protected needs to be as clear as possible. Unlike in moral philosophy (where clarity is a welcomed characteristic as well), we need to know, for example, for what someone must be punished by law. The more clarity there is as to what the *forum internum* signifies in terms of rights, the greater the possibility also of safeguarding the *forum internum* rights of persons with psychotic delusions. For now, however, the lack of clarity presents a significant challenge to the capabilities approach. The law demands more clarity than the capabilities approach seems to offer, and therefore further discussion is needed.

The capabilities approach also lacks clarity concerning the relationship between capabilities and functionings. When it comes to capabilities which deal with participation and actively manifesting one's values, Nussbaum (2006, 171) clearly states that it would be dictatorial and illiberal to force people to function in these areas. People have to be capable of choosing whether, for example, they participate in political activity or express their religious ideas, or whether they prefer not to function in these ways. According to Nussbaum (2006, 79–80), people should also be able to choose whether they act in a healthy way or not. However, when it comes to internal capabilities such as practical reasoning and the ability to use the senses, to imagine and to think, it is a more challenging task to distinguish between capability and functioning. How could someone have the capability to engage in practical reasoning if he or she does not put his or her practical reasoning to use? What does it mean to be capable of imagining and thinking if a person does not imagine or think? Nussbaum (2011, 26; 2006, 172) recognizes these conceptual challenges but argues for the principle of promoting the “opportunity to plan life for oneself, and to achieve emotional health, but not to preclude choices citizens may make to lead lives that inspire fear or involve deference to authority”. According to Nussbaum, it is clearly only in the area of self-respect and dignity itself where functioning is needed. Nussbaum states that people should not be able to choose whether they are treated respectfully or not. This means that it should not be possible to lose respect. However, since it seems that self-respect is intertwined with all the central capabilities in one way or another, it is unclear what the limits of the concept of functioning are in terms of its serving as a goal.

it is unclear how widely functioning actually stretches as a goal.

Moreover, for some people such as children and people with severe mental impairments, Nussbaum (2006, 172–173) defines functioning as a goal. Thus, it seems that when it comes to the rights of people with psychotic disorders, in some cases functioning rather than capability might be the urgent goal. However, from the viewpoint of capabilities it seems unclear as to how far the capabilities of psychotic people can be protected compulsorily. The question also arises whether there is a “special application” of the capabilities approach: for example, for people with psychosis. On the other hand, functionings are goals only insofar as the protection of capabilities requires. In this sense, capabilities are defined as goals for everyone. Moreover, the list of central capabilities is the same for everyone, and thus in this sense the capabilities approach contains no “special applications” for different kinds of people. Everyone, including people with psychotic delusions, are viewed as rights-holders in the same way as everyone else. (See Nussbaum 2006, 98, 179, 184–186, 190.) It seems that despite its challenges, the capabilities approach might lead to better understanding of the *forum internum* because the view of humanity in the capabilities approach includes ‘dependency’ and ‘vulnerability’. According to Nussbaum (2006, 139, 221), there is a need to change the basic structure of society and view of humanity and to create a new form of liberalism which rejects, for example,

hierarchies between “normal” and atypically disabled citizens. Even though Nussbaum (2006, 88, 160) recognizes that people have a deep interest in choice, she states that a human being’s rationality and sociability grow and mature and, if time permits, decline. It is part of human life to be dependent and vulnerable.

5. Conclusion and Discussion

We have suggested that in certain foundational respects freedom of belief and opinion can be understood in terms of capability, whereby the *forum internum* can be understood as encompassing an absolute right to certain internal capabilities. By way of conclusion, we raise three conceptual issues which will serve to deepen our above analysis.

First, as a summary of the analysis we pose the question: with regard to the *forum internum*, at its core is it about primarily safeguarding the capabilities necessary for believing and thinking in the first place, rather than about protecting thinking and believing processes and the holding of thoughts? (Although these are aspects of it as well, as the clear prohibition on indoctrination in human rights law shows, for example.) However, further discussion is needed in order to better understand whether the absolute right in the *forum internum* signifies a right to competence or if we should understand it more broadly, such that the capacity to have emotions, imagination and affiliation is also protected in the negative sense of not being interfered with.

Second, our reconceptualising of the *forum internum* reveals that we are dealing with issues situated in a grey area between different views of freedom of belief and opinion. Namely, competence (as a requirement of negative liberty), sufficient authenticity and sufficient capability are not very far apart from each other and may even overlap. Is it possible that in crucial respects what we are attempting to capture by talking of the *forum internum* lies somewhere in this shared grey area? This lack of clarity can be seen as a challenge, since it is difficult to protect ‘something like that’ absolutely. However, if freedom in the *forum internum* were to be redefined as including a right to certain internal capabilities, this might be acceptable from the viewpoint of different views of freedom, since it might be possible to associate this definition with views of negative liberty, authenticity and capability.

Third, claiming that the *forum internum* encompasses an absolute right of this kind is a deeply value-laden act. When we define this kind of absolute right, we are dealing with the core of humanity: we are clarifying who belongs to the group of rights-holders with absolute rights. When freedom in the *forum internum* is redefined in order to cater as well to incompetent people, individuals with psychotic disorders are then recognized as part of humanity in a deeper sense than before.

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