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RESEARCH ARTICLE

Freedom of Self-Expression

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Abstract

Freedom of self-expression is an elusive value. In ordinary political discourse, the value of self-expression seems obvious. But it is surprisingly difficult to specify freedom of self-expression without collapsing it into the value of freedom in general. And reducing freedom of self-expression to a special case of freedom of speech yields a Procrustean and under-inclusive account. This paper develops a novel account of freedom of self-expression which avoids both pitfalls. First, I show that the ubiquity of self-expression as a phenomenon is compatible with the normative distinctiveness of freedom of self-expression as a value. Second, I show that freedom of self-expression requires, at minimum, freedom from *content-based limitations on the exercise of personal style.* Third, I ground the moral significance of freedom of self-expression in two distinct interests: in *autonomy of self-definition*, and in *opportunities for recognition.* Ultimately, freedom of self-expression emerges as a distinct and coherent moral and political value.

Keywords: freedom; speech; expression; self-expression

I. Introduction

Freedom of self-expression is an elusive value. Its importance seems obvious. In ordinary political discourse, we frequently appeal to freedom of self-expression to explain why certain activities are especially valuable and why certain ways of interfering with people's freedom are especially harmful and wrongful. Appeals to freedom of self-expression are particularly salient in the context of *identity expression.* For example, if a Muslim or Jewish person is harassed in public because they[1] are wearing a hijab or a yarmulke—or if a transgender woman is refused service in a restaurant because she is wearing a dress—it is plausible to think that the relevant conduct is both harmful and wrongful, at least in part, because it restricts somebody's freedom of identity expression. Put differently, an explanation of what makes these actions harmful and wrongful which does *not* mention freedom of identity expression seems in that respect

*This paper does not purport to express the views (if any) of Ropes & Gray on freedom of self-expression or on any other topic discussed herein.

[1]This paper uses "they" as a gender-neutral third-person singular pronoun.

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incomplete. At the same time, freedom of self-expression does not seem limited to identity expression. For example, insofar as both sexual activity and artistic creation are valuable forms of self-expression, both *sexual expression* and *artistic expression* plausibly instantiate freedom of self-expression. But neither sexual activity nor artistic creation is straightforwardly reducible to identity expression. Likewise, there seem to be valuable forms of self-expression apart from identity expression, sexual expression, or artistic expression, such as emotional expression.

Together, these intuitive judgments suggest two things about freedom of self-expression. They suggest that freedom of self-expression is a *distinct value*, in the sense that there are reasons not to interfere with people's freedom of self-expression which are different from, and in some respect stronger than, the reasons there are in general not to interfere with people's freedom. And they suggest that freedom of self-expression is a *coherent value*, in the sense that core instances of freedom of self-expression share certain characteristics in virtue of which they instantiate a common value. On both counts, however, freedom of self-expression is open to doubt.

Consider first distinctness. A straightforward argument for the conclusion that freedom of self-expression is a distinct value begins with the premise that freedom of *expression* is a distinct value and adds the assumption that freedom of self-expression is a special case of freedom of expression. Clearly, this requires at least a provisional account of freedom of expression. Notwithstanding their many differences with respect to questions of justification, legal and philosophical theories of freedom of expression exhibit near unanimity in assuming that a necessary condition of exercising freedom of expression is *communicative intent.* T.M. Scanlon expresses the consensus view when he writes that freedom of expression protects only those acts which are "motivated by the intention to communicate to one or more persons some proposition or attitude."[2] Similarly, Joseph Raz understands freedom of expression as limited to "communication in public," where this encompasses "act[s] of symbolic expression undertaken with the intention that [they] be understood to be that by the public or part of the public."[3] American First Amendment law recognizes a similar intent requirement in the context of Speech Clause analysis.[4]

If freedom of self-expression is a special case of freedom of expression, and if freedom of expression is limited to freedom of intentional communication, then freedom of self-expression is presumably freedom of *reflexive communication:* the freedom to intentionally communicate "propositions or attitudes" *about* oneself.[5] And indeed, some instances of self-expression do fit that description. If a person dons a hijab or a yarmulke *precisely so as* to communicate the fact that they belong to a particular faith, that behavior instantiates both reflexive communication and

[2]T. M. Scanlon, *A Theory of Freedom of Expression* (1972), reprinted in T.M. Scanlon, The Difficulty of Tolerance 6-25 (2003).

[3]Joseph Raz, *Free Expression and Personal Identification*, 11 Oxford Journal of Legal Studies 303, 303 (1991).

[4]See, e.g., *Spence v. Washington*, 418 U.S. 405, 410-11 (1974) (finding symbolic expression protected speech only if "[a]n intent to convey a particularized message was present, and in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it.").

[5]*See, e.g.*, Joshua Cohen, *Freedom of Expression*, 22(2) Philosophy and Public Affairs 207 (1993) (defending an interest in communicating reflexive propositions about religious and political commitments which putatively obligate one to express them to others).

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self-expression. But not all instances of self-expression are motivated by communicative intent. Intuitively, even if a person is motivated by non-communicative considerations of comfort and habit, there remains an important sense in which they are engaged in identity expression whenever their conduct displays or reveals a religious, cultural, or gender identity. Likewise, restricting someone's freedom to engage in artistic creation intuitively burdens an important interest in self-expression independently of whether that person's creative activities are motivated by the intention of communicating something.[6] And only an idiosyncratic conception of sexual expression would entail that sexual activity is self-expressive only when motivated by the "intention to communicate to one or more persons some proposition or attitude."

The underinclusiveness of the reflexive communication model suggests that we need a broader conception of expression in order to understand freedom of self-expression. The most obvious candidate would be expression as *manifestation.* As a number of authors have pointed out, "expression" is ambiguous between communication and manifestation.[7] Under one plausible construal, a person manifests a given state of mind just in case their behavior *makes evident* that state of mind.[8] And a person's behavior makes evident a given state of mind just in case their behavior *is evidence* of that state of mind. Whether or not it is motivated by communicative intent, self-expressive behavior *does* manifest. All the aforementioned examples of identity expression involve behavior which furnishes evidence of the relevant identity. And insofar as artistic creation or sexual activity are self-expressive, presumably that is because certain states of mind are thereby made evident, whatever the agent's motivations might have been in so behaving.

The problem with analyzing freedom of self-expression as freedom of manifestation is that now the analysis appears to be *overinclusive.* For on the manifestation view, just about *anything* you do qualifies as self-expressive. After all, to qualify as intentional action in the first place, one's behavior must be intelligible as motivated by some combination of cognitive and conative attitudes. In that sense, *all* intentional actions manifest some mental content. But if all intentional actions are self-expressive, then it seems that any limitation on a person's freedom perforce limits that person's freedom of self-expression. And if any limitation on a person's freedom limits that person's freedom of self-expression, then it is difficult to see how freedom of self-expression could be distinct from the value of freedom in general. Drawing on this insight, Frederick Schauer concludes that self-expression is simply a non-starter from the perspective of justifying a special right to freedom of expression. For it

[6]Indeed, the communicative intent restriction on expressive conduct generates a number of well-known problems when we attempt to bring artistic expression within the fold of protected First Amendment speech. *See, e.g.*, Mark Tushnet, *Art and the First Amendment*, 35 Colum. J.L. & Arts 169, 204–207 (2012).

[7]There are a number of (non-equivalent) formulations of this distinction in the literature. *See, e.g.*, Jonathan Gilmore, *Expression as Realization*, 30(5) Law and Philosophy 517, 530 (2011) (contrasting "manifesting or revealing" a state of mind with "the content of a given mental state…[being] given a publicly accessible form (an utterance, gesture, inscription) with the intention that others be able to recognize that mental state from its manifestation"); Frederick Schauer, Free Speech: A Philosophical Inquiry 50–51 (1981) (contrasting expression *qua* "communication, requiring both a communicator and a recipient of the communication" with expression *qua* "any external manifestation of inner feeling"); Seana Shiffrin, Speech Matters: On Lying, Morality, and the Law 112–113 (2014) (contrasting expression *qua* "to display and to manifest" with expression *qua* "the transmission of content as well as the transmission of one's (presumed and often implicit) agreement or belief in that content.").

[8]Bruce Vermazen, *Expression as Expression*, 67 Pacific Philosophical Quarterly 196, 207 (1986).

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collapses freedom of expression into a general liberty principle.[9] Recognition of this fact "forces us to return to freedom of speech as freedom to communicate."[10]

To recap, we began with the intuitive judgment that freedom of self-expression is a distinct and coherent value. If we analyze freedom of self-expression as a special case of freedom of communication, we get an underinclusive account of freedom of self-expression. But if we reject the narrow conception of self-expression as reflexive communication in favor of the broader conception of self-expression as manifestation, then it seems we sacrifice distinctness. Moreover, there is at present no third conception of self-expression which could thread the needle.

Faced with this dilemma, one approach would be to sacrifice coherence for the sake of distinctness. Recall that freedom of self-expression is a coherent value just in case its core instances exhibit some unifying characteristics in virtue of which they instantiate the same underlying value. To this point, we have been assuming *arguendo* that freedom of self-expression is coherent in that sense. But perhaps the appearance of coherence is illusory. Perhaps there is no *single* underlying value which answers to the name "freedom of self-expression" and which explains intuitive judgments about the distinctive harmfulness and wrongfulness of various infringements on people's liberty. Nevertheless, it might still be true that for any *given* instance of self-expression, there is *some* value we can appeal to which explains why interfering with that conduct is distinctively wrongful or harmful. Judith Jarvis Thomson suggested that the right to privacy might have this "patchwork" structure.[11] Perhaps that's what's going on in the case of freedom of self-expression. On this proposal, some instances of "freedom of self-expression" are cases of reflexive communication. As such, they fall under traditional principles of freedom of speech. Other instances of "freedom of self-expression," such as non-communicative identity expression, might fall under a right to freedom of conscience or a right to equal status. And still other instances of "freedom of self-expression," such as sexual expression, might fall under rights to autonomy or privacy. This proposal would be revisionist, insofar as it would recast ordinary talk about "freedom of self-expression" as shorthand for a number of overlapping values. But at least it would preserve some of our core intuitions about distinctness.

I'd like to do better than that. In this paper, I propose a novel way of understanding freedom of self-expression under which freedom of self-expression emerges as a distinct *and* coherent value. My exposition of this view proceeds in three main steps.

First, I show that the ubiquity of self-expression as a phenomenon is compatible with the normative distinctiveness of freedom of self-expression as a value. Normative distinctiveness requires that only some *limitations* on people's freedom qualify as limitations on freedom of self-expression. But it does not require that only some actions be self-expressive. Even if *all* actions are to some degree self-expressive, freedom of self-expression can still be normatively distinguished from the value of freedom in general if there exists a distinct class of limitations on people's freedom which target people's behavior *qua* self-expression, or in its self-expressive *aspect*.

[9] As he puts it, "Because virtually any activity may be a form of self-expression, a theory that does not isolate speech from this vast range of other conduct causes freedom of speech to collapse into a principle of general liberty." Schauer, *supra* note 8, 52.

[10] *Id.* at 53.

[11] Judith Jarvis Thomson, *The Right to Privacy*, 4(4) Philosophy and Public Affairs 295 (1975).

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Second, I explain what it means to target conduct *qua* self-expression. Specifically, I show that a class of paradigmatic limitations on freedom of self-expression target conduct *under stylistic descriptions*: in the first instance, because of *how* the targeted person speaks, sounds, moves, or self-presents. And they do so on the basis of a certain *motivating reason*: namely, the consideration that it would be a "bad thing" if the conative states which the relevant exercise of personal style is taken to embody were widely adopted by others. In that sense, a class of paradigmatic limitations on freedom of self-expression consists of *content-based limitations on the exercise of personal style.*

Third, I articulate two fundamental interests which explain the intuitive wrongfulness of content-based limitations on the exercise of personal style. Whenever somebody is subjected to a content-based limitation on their exercise of personal style, they suffer a violation of a general interest in not being coerced on the basis of an illiberally non-neutral conception of the good life. But such a person also suffers a setback to two more specific interests. The first is an interest in *autonomy of self-definition*, which requires freedom from unreasonable interference with the content of one's persona. The second is an interest in *opportunities for recognition*, which requires the freedom to make one's desires, preferences, identities, and other interests available for recognition by others. Together, these interests lay the foundation for defending a right to freedom of self-expression.

By the end of this paper, I hope to have persuaded you of three basic claims. First, freedom of self-expression is a normatively *distinct* value. It doesn't collapse into a general liberty principle, because there are reasons not to interfere with people's freedom of self-expression over and above the reasons there are in general not to interfere with people's freedom. Second, freedom of self-expression is a *coherent* value. It protects against at least one specific way of interfering with personal freedom, whose instances are unified by a common structure and character. Third, it *matters* that freedom of self-expression is normatively distinct and coherent. Among other things, it matters for how we understand the connection between freedom of expression and discrimination. And it matters for how we understand the broader value of relational equality.

II. If self-expression is ubiquitous, can freedom of self-expression be distinct?

For freedom of self-expression to be normatively distinct from the value of freedom in general, there must be reasons not to interfere with people's freedom of self-expression which are distinct from, and in some respect stronger than, the reasons there are in general not to interfere with people's freedom. This in turn requires that not all *limitations* on people's freedom qualify as limitations on people's freedom of self-expression. However, normative distinctiveness does not require that only some *actions* be self-expressive. Even if self-expressiveness is a property that all actions possess to some degree, provided only some limitations on personal freedom target actions *on the basis of* their being self-expressive, limitations on freedom of self-expression can be distinguished from limitations on freedom in general.

First, a few words about how I'm understanding the general idea of limiting someone's freedom. At minimum, I take it that interfering with somebody's freedom involves raising the *costs* of certain actions. When it comes to social and political

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freedoms, certain costs and certain interfering agents are especially relevant. An especially relevant type of cost is a *social sanction*, where a social sanction is the denial of some social good and a social good is a good whose distribution falls under the scope of duties of justice. Plausibly, these include material goods like Rawlsian basic liberties, employment opportunities, wealth and income, housing, and health care, as well as more abstract goods like the social bases of self-respect, social inclusion, and the assurance of physical security. Likewise, an especially relevant type of interfering agent is an institution or social practice, or an individual *qua* participant in an institution or social practice, in contrast to an individual agent as such. Without getting bogged down in the details, I assume that relevant institutions and practices include both the Rawlsian basic structure and a broader set of informal norm-governed practices which have a more Hartian character.[12]

So construed, limitations on personal freedom can be individuated along three main axes. First, we can individuate limitations on personal freedom by the *set of behaviors* to which the relevant practice attaches social sanctions. Call this the *extension* of a limitation on personal freedom. Second, we can individuate limitations on personal freedom by the *descriptions under which* the relevant practice identifies conduct to-be-sanctioned. Call this the *intension* of a limitation on personal freedom. Third, we can individuate limitations on personal freedom by the *considerations in virtue of which* imposing social sanctions on the relevant behaviors under the relevant descriptions is taken to be justified from the internal perspective of the practice in question. Call this the *normative grounds* of a limitation on personal freedom.[13] Two practices that restrict the same set of actions can nevertheless be individuated if they operate under different intensions. Likewise, even two extensionally and intensionally equivalent practices of limiting people's freedom can in principle be individuated if they target the relevant conduct under the relevant descriptions for different motivating reasons.

To illustrate, consider the familiar contrast between time, place, and manner limitations on freedom of speech and content-based limitations on freedom of speech. Usually, time, place, and manner limitations restrict activities which communicate a variety of different contents and therefore can be individuated from content-based speech limitations on the basis of their respective extensions. But not necessarily. An ordinance forbidding demonstrations in the park between 6 and 9 pm might pick out only demonstrations by city employees in favor of collective bargaining. If so, that would certainly raise the suspicion that the ordinance is a content-based speech limitation masquerading as a time, place, and manner limitation. But it wouldn't *follow* from the fact that the ordinance covers only activities expressing a certain content that it is in fact content-based. For if the operative *description* under which the city identifies behavior to be sanctioned per the ordinance *really is* "any

[12]H.L.A. Hart, The Concept of Law (1961).

[13]As T.M. Scanlon points out, "an important component of our intuitions about freedom of expression has to do not with the illegitimacy of certain restrictions but with the illegitimacy of certain justifications for restrictions." Scanlon, *supra* note 3 at 10. *See also* Elizabeth S. Anderson & Richard H. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503 (2000) (arguing that an important dimension of normative assessment for state action involves scrutinizing the normative considerations on the basis of which that action is putatively justified, both in the equal protection context and as a matter of fundamental political morality).

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demonstration in the park between 6-9 pm,"[14] that would suffice to show that the ordinance is in fact a time, place, and manner limitation. In other words, content-based speech limitations are individuated from time, place, and manner limitations on the basis of their respective *intensions*.

At the same time, not all practices of limiting people's freedom under descriptions which pick out the relevant conduct on the basis of the content it is taken to communicate are "content-based speech limitations" in the morally relevant sense. In the morally relevant sense, a content-based speech limitation is the paradigmatically *wrongful* form of interference with free speech.[15] But ordinary criminal law contains many prohibitions which identify conduct-to-be sanctioned largely or even primarily on the basis of the content it is taken to communicate; think of price-fixing, speech in furtherance of a conspiracy, insider trading, and certain kinds of threats.[16] These prohibitions are not intuitively understood as limitations on freedom of speech, let alone paradigmatically wrongful limitations on free speech. This intuitive understanding reflects a judgment about their *normative grounds*. Absent special circumstances, we take it that the motivating justification for criminalizing speech in furtherance of a conspiracy is that the act of communicating the relevant content in the relevant circumstances is *so* inextricably intertwined with non-communicative conduct that the state is justified in criminalizing for non-speech reasons that effectively criminalizing the latter requires effectively criminalizing the former. By contrast, content-based speech limitations in the morally relevant sense are motivated by a different kind of consideration altogether: roughly, "that it would be a bad thing if the view communicated by certain acts of expression were to become generally believed."[17] And it is in virtue of targeting conduct *qua* communication of a certain content *because* of that motivating consideration that content-based limitations on free speech are taken to be the paradigmatically wrongful kind of free speech limitation.

Returning to freedom of self-expression, two implications are relevant. First, it's just not true that establishing the normative distinctiveness of freedom of self-expression requires demarcating a proper subset of "self-expressive" human actions. Although normative distinctiveness does depend on the premise that some but not all *limitations* on personal freedom are limitations on freedom of self-expression, this in turn does not depend on the premise that some but not all actions are self-expressive, because limitations on personal freedom can be individuated not only extensionally but also intensionally and by their normative grounds. Second, one way to individuate a class of paradigmatically wrongful limitations on freedom of self-expression would be to make explicit (1) a certain type of description under which these practices identify conduct to be sanctioned and (2) a certain type of consideration on the basis of which these practices sanction conduct taken to fulfill that description. Indeed, that

[14]As revealed by, for example, minutes from the City Council meeting at which the ordinance was promulgated, comments by officials charged with implementing the ordinance, and the like.

[15]Thurgood Marshall memorably expresses this idea in the context of American constitutional law: "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

[16]As Leslie Kendrick points out in *Free Speech as a Special Right*, Philosophy and Public Affairs 45(2): 98 (2017).

[17]Scanlon, *supra* note 3, at 10.

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will be my strategy. If successful, this strategy will reveal a self-expressive analogue to the familiar idea of a content-based speech limitation. For reasons that will become clear momentarily, I call this analogue a *content-based limitation on the exercise of personal style*.

A few words about the argument's scope before proceeding further. In what follows, I will not argue that *only* content-based limitations on the exercise of personal style qualify as limitations on freedom of self-expression. As with limitations on free speech, I take it that limitations on freedom of self-expression take many forms. Indeed, one general lesson of this paper is that there's a lot more work to be done mapping the topography of freedom of self-expression. Accordingly, this paper defends a more modest claim: one paradigmatically wrongful kind of interference with freedom of self-expression is a content-based limitation on the exercise of personal style. To vindicate that claim, I don't take a *definition* of self-expression to be required, in the conventional sense of necessary and sufficient conditions on the application of the concept.[18] What I do take to be required is the following. With respect to the type of description that guides content-based limitations on personal style, it must be independently plausible that behavior which fulfills that description is—in that respect, and for that reason—self-expressive. Otherwise, we can't be confident that content-based limitations on personal style are really limitations on freedom *of self-expression*. With respect to the normative grounds that motivate content-based limitations on personal style, it must be independently plausible that practices motivated by those grounds are indeed wrongful. Otherwise, we can't be confident that content-based limitations on personal style are really *wrongful*.

To establish these points, the rest of the paper will proceed as follows. Part III argues that a central range of paradigm cases of self-expression consist in the embodiment of an individual's conative attitudes in and through their exercise of personal style. If persuasive, this argument establishes an independently plausible connection between self-expression, conative attitudes, and personal style. Drawing on this point, Part IV argues that one paradigmatic case of wrongful interference with freedom of self-expression is a content-based limitation on the exercise of personal style. This consists in the attachment of social sanctions to people's behavior because of the conative attitudes their exercise of personal style is taken to embody, on the grounds that it would be a "bad thing" if those conative attitudes were widely adopted by others. Part V explains the wrongfulness of content-based limitations on personal style by identifying two fundamental human interests which are distinctively undermined by such practices. Finally, Part VI concludes with a few general lessons.

III. Self-expression, conative attitudes, and personal style

Consider again the proposal that self-expression is simply the *manifestation* of the agent's mental states. This proposal identifies a necessary condition of self-expression. If there's no description of a bit of behavior under which it manifests some states of mind, it's hard to see what could be meant by describing that behavior

[18]I will, however, give a necessary condition of being self-expressive (manifesting some mental content) and a sufficient condition of being paradigmatically self-expressive (conative embodiment).

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as self-expressive. However, intuitively paradigmatic instances of self-expression don't *just* manifest some of the agent's mental states. They manifest a certain *type* of mental state, and they do so in a certain kind of *way*.

Take a simple example. Suppose Frank opens the door of the fridge to get a beer. Frank's action could be described as manifesting a certain *cognitive attitude* (Frank's belief that there's beer in the fridge) or a certain *conative attitude* (Frank's desire for beer).[19] Arguably, Frank's action doesn't seem particularly self-expressive under either description. But as between the two, Frank's action appears to be more self-expressive—i.e., comes closer to the intuitive "core" of the idea of self-expression—when seen as a manifestation of the desire for beer than when seen as a manifestation of the belief that there's beer in the fridge. And this seems to reflect something deeper about the connection between self-expression and the conative domain. A person's conative attitudes—which include their identities, commitments, values, desires, preferences, and tastes—are colloquially described as "what make you tick." These attitudes are "what make you tick" because they are what *move you to act*. In that sense, conative attitudes comprise the core of a person's individual agency. For that reason, they also comprise the motivational core of a person's *personality*. Any rational and suitably positioned epistemic agent would believe that there's beer in that fridge. So it reveals very little of substance about someone's personality to describe them as having done something which manifests that belief. However, it does shed *some* light on Frank's personality to describe him as having done something which manifests a desire for beer. More broadly, if we step back and ask what makes Frank *Frank*, in the sense of what distinguishes his personality from that of others, the natural point of focus would be "what really makes Frank tick," i.e., his most integral conative attitudes.[20]

The intuitive judgment that a central range of paradigm cases of self-expression involve the manifestation of the agent's conative attitudes is confirmed by the categories of self-expression canvassed earlier. While they do not exhaust the category of self-expression, identity expression, artistic expression, and sexual expression stand out as particularly salient sub-categories. Moreover, each of these forms of self-expression fundamentally involves the expression of conative attitudes. Sexual activity is self-expressive in virtue of manifesting a person's libidinal desires, preferences, and tastes. Similarly, artistic creation is plausibly self-expressive in virtue of manifesting the artist's aesthetic tastes, preferences, and judgments of value, as well as their emotional states. And although the details are of course disputed, under any plausible conception of identification—whether in terms of one's higher-order

[19]I follow the standard view that cognitive attitudes are distinct from conative attitudes in virtue of their "directions-of-fit." Cognitive attitudes, such as belief, have a "mind-to-world" direction of fit: they are fulfilled just in case the way they represent the world "fits" the way the world is. Conative attitudes have a "world-to-mind" direction of fit: they are fulfilled just in case the world comes to be the way they represent it as being. The "direction of fit" metaphor is originally from G.E.M. Anscombe, Intention (1957).

[20]Which is not to deny that beliefs don't *also* figure centrally in many people's personalities. But at the level of attitude-type, conative attitudes on the whole seem to figure more prominently in the individuation of people's personalities than do cognitive attitudes. And when we take a closer look at those cognitive attitudes that do seem to figure centrally in some people's personalities—such as religious beliefs—this observation can itself be explained in large part by the fact that the relevant beliefs are intimately bound up with, and in some respects functionally analogous to, certain conative attitudes (such as commitment, valuation, or identification).

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desires,[21] descriptions under which one values oneself,[22] or motivationally efficacious self-ascriptions[23]—identifying *as* or *with* some characteristic or group involves a complex of conative attitudes toward that characteristic or group.

In short, a central range of paradigm cases of self-expression can be understood as such in part because they feature the manifestation of the agent's conative attitudes. However, some *ways* of manifesting conative states are intuitively more self-expressive than others. Mitchell Green observes that self-expression has an "adverbial dimension": "[I]t is not John's closing the door that expresses his anger, but rather that the closing is a *slam*."[24] In other words, what seems particularly important for self-expression is not so much "what" you do in a purely instrumental or goal-oriented sense but "how" you do it. More precisely, one type of description under which behavior appears particularly self-expressive characterizes behavior in terms of the "way" it is performed. And a characterization of behavior in terms of the "way" it is performed is a *stylistic* characterization.[25]

To be sure, just about any action-token is such that there's a particular *way* it's performed. So just about any action token could be picked out under a stylistic description. But it does not follow, nor is it the case, that stylistic descriptions of behavior are devoid of substantive content. On the contrary, one fascinating if undertheorized aspect of personal style is that it is structured in terms of a handful of *basic and immediate modalities*. These modalities are "basic," in the sense that more complex instances of personal style are typically parasitic on the exercise of the basic modalities.[26] And they are "immediate," in the sense that face-to-face interaction with another person involves in the first instance apprehending that person's behavior *qua* exercise of the basic modalities.

Specifically, consider three modalities of personal style: vocal style, corporeal style, and presentational style. (1) *Vocal style* is how a person speaks. This includes *verbal style*, a person's ways of choosing words, structuring sentences, use of formal or informal register, and so on.[27] Receiving a text from an unfamiliar number, we can often discern early in the conversation whether it's a close friend or a stranger by attending to characteristic patterns of verbal style. And even if we've never met somebody before, differences in verbal style often express a variety of facts about the person's occurrent states of mind (rushed or relaxed, content or agitated) and broader biographical story (class or geographic origin). But vocal style also includes what we might call *aural style*: a person's ways of producing sounds, insofar as this is under

[21]Harry Frankfurt, The Importance of What We Care About (1988) (analyzing identification).

[22]Christine Korsgaard, The Sources of Normativity (2010) (analyzing practical identities).

[23]Kwame Appiah, The Ethics of Identity (2007) (analyzing social identities).

[24]Mitchell Green, Self-Expression 35 (2011).

[25]Of course, others have noticed a connection between style and self-expression, albeit not in the context of elaborating a theory of *freedom* of self-expression. *See, e.g.*, Jenefer Robinson, *Style and Personality in the Literary Work*, 94 The Philosophical Review 228-229 (1985) ("Intuitively, my style of dress, work, speech, decision-making and so on is a mode or manner or way in which I dress, work, speak, and make decisions… [n]o less intuitively, my style of dressing, working, speaking and making decisions is typically an expression of (some features of) my personality, character, mind or sensibility").

[26]Think, for example, of a TikTok video depicting its maker singing (vocal style) and dancing (corporeal style) in costume (presentational style).

[27]Drawing on work in sociolinguistics, Ethan Nowak describes a number of ways in which differences in verbal style encode and express different social meanings. Ethan Nowak, *Sociolinguistic Variation, Speech Acts, and Discursive Injustice*, 73(4) The Philosophical Quarterly 1024-1044 (2023).

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their voluntary control. Paradigmatically, aural style includes an individual's intonation, voice quality, rhythm, and amplitude.[28] Even if the connection's bad and we can't quite make out *what* they're saying, we can often tell it's a friend who's calling just from the way their voice sounds on the phone.[29] Likewise, even if we don't speak a word of their language, we can often discern anger or elation in a stranger's voice just from the way it sounds. In these ways, and others, vocal style *as such* is expressive, over and above whatever semantic content it might bear. (2) *Corporeal style* includes a person's ways of gesturing and moving their body, again insofar as this is under their voluntary control. Looking for a friend in a crowded park, we can often pick them out based on their characteristic gait. Likewise, we can often tell from afar that someone is morose or joyful just from how they carry themselves. Finally, (3) *presentational style* includes a person's ways of presenting the physical form of their body. Of course, this includes ways of dressing one's body, decorating one's body (e.g., earrings, bracelets), and selectively modifying one's body (e.g., haircuts, tattoos). Like vocal style and corporeal style, presentational style can express both a person's individuality and a complex range of psychological states.[30]

To different degrees, all three modalities of personal style are prominent media of identity expression, artistic expression, and sexual expression. Consider first identity expression. Cultural, religious, and gender identities are frequently expressed through presentational style, most obviously through decisions about what to wear. But vocal style can also be a medium of identity expression, as when a choice of verbal style expresses a particular regional or cultural identity[31] or a decision to modify one's aural style expresses a change in one's gender identification.[32] Likewise, insofar as artistic expression is a form of self-expression, it often partakes of one or more of these modalities. Indeed, corresponding to each modality of personal style is a distinct art form. Poetry exploits the expressive potential of verbal style as such; vocal music exploits the expressive potential of aural style as such; dance exploits the expressive potential of corporeal style as such; and fashion exploits the expressive potential of presentational style as such. Finally, sexual expression in a broad sense encompasses all three modalities. It includes the acts of physical touch, movement, and vocalization that make up the sex act itself, along with a broader spectrum of courtship behaviors which feature significant elements of presentational style as well.

[28]Those aspects of vocalization subject to voluntary control are classed together as a speaker's "sociolinguistic style." *See, e.g.*, Penelope Eckert & John Rickford, Style and Sociolinguistic Variation (2001); Alexandra Jaffe (ed.), Stance: Sociolinguistic Perspectives (2009).

[29]"A voice is as distinctive and personal as a face. The human voice is one of the most palpable ways identity is manifested. We are all aware that a friend is at once known by a few words on the phone." *Midler v. Ford Company*, 849 F.2d 460, 469 (9th Cir. 1988).

[30]Indeed, we can understand personal style as manifesting certain *characteristic* states of mind—i.e., states of mind that are in some sense typical of the character of the individual agent. We can also understand personal style more broadly, as a mode of expressing a range of states of mind, some of which could be said to be "characteristic" of the agent in that strong sense and some of which might not be. In what follows, I understand personal style in that broader, more inclusive sense.

[31]For examples along these lines, see Nowak, *supra* note 289.

[32]For recent discussions of the connection between gender transitioning and sociolinguistic style, *see, e.g.*, Ann Cahill & Christine Hamel, Sounding Bodies: Identity, Injustice, and the Voice 71–72 (2021); Lal Zimman, *Transgender Voices: Insights on Identity, Embodiment, and the Gender of the Voice*, 12(8) Language and Linguistics Compass (2018).

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In short, a central range of paradigm cases of self-expression consists in the *manifestation via personal style of a person's identities, commitments, desires, preferences, and other conative states.* For brevity's sake, I will refer to stylistic manifestation as *embodiment.* If a central range of paradigm cases of self-expression involves conative embodiment, this suggests that a paradigm case of *interference* with freedom of self-expression would take the form of sanctioning people's conduct *qua* conative embodiment. The next section pursues that suggestion.

IV. What is a content-based limitation on the exercise of personal style?

In Part II, we saw that content-based limitations on free speech are individuated by their intension and by their normative grounds. Intensionally, content-based limitations on free speech identify conduct to-be-sanctioned on the basis of the beliefs, views, and other cognitive states that conduct is taken to communicate. And they do so for a specific reason: because of the consideration that "it would be a bad thing if the view communicated by certain acts of expression were to become generally believed."[33] In Part III, we identified a certain type of description under which a central range of paradigm cases of self-expression appear self-expressive: *qua* embodiment of the agent's conative attitudes. Putting these ideas together, we arrive at the idea of a *content-based limitation on the exercise of personal style.* Intensionally, content-based limitations on the exercise of personal style identify conduct to-be-sanctioned on the basis of the identities, desires, and other conative states that conduct is taken to embody. And they do so for a specific motivating reason: because of the consideration that *it would be a bad thing if the conative states embodied by that exercise of personal style were to become generally adopted.* My proposal is that limiting personal freedom under that *description* for that *reason* is the self-expressive analogue of a content-based speech limitation. If so, then content-based limitations on the exercise of personal style are one paradigmatically wrongful instance of a limitation on freedom of self-expression.

To flesh out this proposal, let's take a closer look at the intuitive examples of wrongful interference with freedom of self-expression touched on earlier. First, consider the family of social practices which coercively regulate *gender expression.* The first thing to notice is that many coercively enforced gender norms govern the exercise of *personal style.* Indeed, the connection between gender and personal style is perhaps Judith Butler's most enduring insight.[34] Specifically, many social contexts include social norms to the effect that presumptively male persons ought (not) to speak, move, gesture, or self-present in certain ways. Complementing these are social norms to the effect that presumptively female persons ought (not) to speak, move, gesture, or self-present in certain other ways.[35] The second thing to notice is that such

[33]Scanlon, *supra* note 48.

[34]References to personal style run throughout Butler's performativity account of gender in Judith Butler, Gender Trouble (1990). *E.g.*, "Gender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being" (34); "[G]ender is an identity tenuously constituted in time, instituted in an exterior space through a stylized repetition of acts. The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self" (191).

[35]In addition, many social contexts feature a higher-order social norm to the effect that one ought always to be clearly *legible* as either presumptively male or presumptively female, thereby proscribing nonbinary modes of personal style.

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practices of gender policing target certain exercises of personal style precisely because of an objection to the content of the conative attitudes which those exercises of personal style are taken to embody. This point becomes clear when we contrast social reactions to gender nonconforming behavior in contexts where sincerity of self-presentation is the norm with social reactions to gender nonconforming behavior in contexts where it is not. For example, if on an ordinary day a boy wears conventionally "feminine" clothing on the walk to school, he is significantly more likely to experience social sanctions than if he wears conventionally "feminine" clothing on Halloween night. This reflects a difference in conative embodiment. Wearing clothing conventionally associated with members of the opposite sex is not liable to be interpreted as embodying a meaningful degree of opposite-sex *identification* so long as it occurs in a "facetious" context like Halloween night, a school play, or a costume party. On the walk to school, however, it will invite such an interpretation. And that is precisely what makes it a warranted object of social sanctions from the internal perspective of gender policing—according to which it is indeed a "bad thing" for people to experience meaningful identification with members of the opposite sex.[36]

For similar reasons, both limitations on freedom of *sexual expression* and limitations on freedom of *religious expression* are productively understood as content-based limitations on the exercise of personal style. Consider first sexual expression. In a typical patriarchal society, one of the social norms governing males and females is the higher-order norm that one ought *never* to desire members of the same sex as sexual or romantic partners.[37] Within this ideological framework, to have that particular conative attitude is *itself* a kind of gender nonconformity, and so too is conduct expressive of that attitude. Moreover, coercive regulations of sexual expression target people's conduct in large part on the basis of its stylistic attributes. Often, it is precisely the way a person speaks,[38] the way a person moves,[39] and the way a person self-presents which "triggers" the application of heteronormative social regulations. And when the force of these social regulations is brought to bear, it is because the relevant exercise of personal style is taken to embody a desire for members of the same sex—which it would indeed be a "bad thing" for people to generally adopt. As with sex, so with religion. Again, consider a social practice of interfering with freedom of religious expression by denying social goods to hijab-wearing women or to yarmulke-wearing men. Clearly, such a practice targets people's conduct *qua* conative embodiment. It targets a certain exercise of presentational style *because* that exercise of personal style is taken to manifest a certain conative attitude: identification as Muslim or identification as Jewish. And the normative ground on which it does

[36]I've written in terms identification, but for many individuals a more phenomenologically apt term might be desire. *See, e.g.*, Sophie Grace Chappell, *Le bon Dieu n'est pas Comme ça: Transgender in Theory and in Experience* [Lecture], available at: <https://www.academia.edu/38273657/le_bon_dieu_nest_pas_comme_%C3%A7a_docx> ("You could want to have a woman's body: to be a woman not (or not just) sartorially or socially or psychologically but physically. Whatever else other people may want, and like I say there are probably all sorts of things, it seems to me that this last—the bodily want—is the real and most basic want, in me and in other trans women: to be physically a woman").

[37]For a recent discussion of how patriarchy and heteronormativity form part of the same comprehensive ideology, see Robin Dembroff, Real Men on Top: How Patriarchy Weaponizes Gender (2024).

[38]The film Do I Sound Gay? (2014) by David Thorpe explores voice and its connection to both sexual identity expression and sexual identity discrimination.

[39]In a segment of the 2008 film Examined Life, Judith Butler discusses the example of a young gay man thrown from a bridge in Maine because the way he walked was judged to embody same-sex desire.

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so is a substantive objection to the widespread adoption of that particular identification.

In Part I, we registered the intuition that gender expression, sexual expression, and religious expression could be understood as instances of a more general interest in freedom of self-expression. However, because the idea of freedom of self-expression was itself obscure, it wasn't clear what to make of that intuition. The concept of a content-based limitation on the exercise of personal style enables us to see why that intuition is sound. Of course, it is a further question what makes such practices distinctively harmful and wrongful. The next section defends an answer to that normative question. But first, I want to briefly consider how the idea of a content-based limitation on the exercise of personal style applies to a less sympathetic class of claimants.

Specifically, consider the social and institutional practice of attaching social sanctions to people's conduct because that conduct is deemed to be *sexual harassment*. One thing that's often overlooked about these practices is that they regulate people's conduct in large part under stylistic descriptions. A catcall is a *catcall* primarily because of the vocal style of the person calling; a leer is a *leer* primarily in virtue of the way somebody looks when they leer; the difference between harassing and non-harassing *gestures* is a function of corporeal style; and so on. Furthermore, it will be difficult to explain why a particular exercise of personal style qualifies as sexual harassment without making some assumptions about the content of the conative states thereby embodied: for example, that such-and-such conduct embodied *sexual desire* for a co-worker. To that extent, practices of sanctioning sexual harassment are formally guided by the same type of description as content-based limitations on the exercise of personal style. But absent special circumstances, we don't think that regulating sexual harassment interferes with people's freedom of self-expression in any morally serious sense. That judgment is explicable in terms of normative grounds. Needless to say, we don't interpret ordinary practices of sanctioning sexual harassment as motivated by the consideration that it would be a "bad thing" if sexual desire for one's co-workers were more widely adopted.[40] Instead, we understand these practices as motivated by non-expressive considerations concerning gender equality, physical and psychological safety in the workplace, and so on. Again, the parallel to free speech is illuminating. Regulating sexual harassment doesn't pose a self-expression problem for the same basic reason that criminalizing price-fixing doesn't pose a free speech problem. Each practice shares an intension with a paradigmatically wrongful form of limitation on freedom of expression—but differs crucially with respect to normative grounds.

V. What's wrong with content-based limitations on personal style?

By now, I hope the idea that there's such a thing as a limitation on freedom of self-expression is no longer obscure. Even if self-expression is ubiquitous, only a small subset of limitations on personal freedom are content-based limitations on the exercise of personal style. This shows that limitations on freedom of self-expression

[40]And if we *did* think that a particular instance of sanctioning sexual harassment was motivated by that bare, Puritanical consideration, this judgment would (I'll wager) elicit intuitions about freedom of self-expression.

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can be individuated from limitations on freedom in general, and in that sense are distinct at least as a purely descriptive matter. But we need to show that limitations on freedom of self-expression are also *normatively* distinct. In particular, we need to show that there are moral reasons not to impose content-based limitations on the exercise of personal style over and above the reasons there are in general not to interfere with people's freedom. Accordingly, this section identifies two fundamental human interests which are distinctively undermined by content-based limitations on the exercise of personal style. More precisely, these are *participant* interests in self-expression: i.e., interests in one's *own* self-expression not being curtailed by a content-based limitation on personal style.[41] The first is an interest in *autonomy of self-definition.* The second is an interest in *opportunities for recognition.*

As a general matter, the consideration that it would be a *bad thing* if a particular identity, desire, or preference were widely adopted is not a permissible basis on which to coerce people. Ronald Dworkin's "right to moral independence" can be seen as one interpretation of that principle in the context of free speech. The right to moral independence protects people from denials of social goods and opportunities motivated by the consideration that "[the injured party's] opinions about the right way for them to lead their own lives are ignoble or wrong."[42] Although Dworkin's use of the word "opinions" puts a cognitive spin on this principle, one's view about how best to lead one's life represents a fundamentally conative orientation to the world, in the sense that it reflects one's preferences and desires and one's higher-order identifications therewith. More broadly, the general interest in not being coerced on the basis of an illiberal substantive objection to one's evaluative perspective implies *a fortiori* a more specific interest in not being subjected to a content-based limitation on the exercise of personal style. However, precisely because that interest is so general, it fails to identify what is *distinctively* harmful and wrongful about interfering with freedom of self-expression.[43]

By contrast, an interest in *autonomy of self-definition* comes much closer to the mark. Broadly speaking, we all have an interest in autonomy of self-presentation. This requires "having a reasonable measure of control over the ways in which [we] can present [our]selves (and what is [ours]) to others."[44] Furthermore, an important component of one's self-presentation is one's *persona.* I take it that one's persona is constituted by the totality of mental states one is *intelligible* to others in a given social context as having.[45] One particularly important subset of one's persona is the totality of *conative states* one is intelligible to others as having *embodied* in a given context. As discussed, a person's identities, desires, commitments, and preferences are particularly important in interpersonal contexts because they comprise the motivational core of one's individual personality. And one's embodied conative states are particularly salient in interpersonal contexts because by definition they

[41]T.M. Scanlon distinguishes participant, audience, and bystander interests in freedom of speech in *Freedom of Expression and Categories of Expression* (1979), reprinted in T.M. Scanlon, The Difficulty of Tolerance 84-112 (2003).

[42]Ronald Dworkin, A Matter of Principle 353 (1986).

[43]Susan Brison mentions the non-specificity of autonomy arguments as part of her general critique of this approach to defending free speech in *The Autonomy Defense of Free Speech*, 108(2) Ethics 312–339 (1998).

[44]Andrei Marmor, *What Is the Right to Privacy?*, 43(1) Philosophy and Public Affairs 3, 3–4 (2015).

[45]*See* David Velleman, How We Get Along (2015) (discussing folk-psychological intelligibility in the context of arguing that social interaction can be rationally reconstructed in terms of improvisational acting).

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have been directly exhibited through certain ways of speaking, sounding, moving, and self-fashioning. Somewhat stipulatively, I will call an interest in autonomously shaping the content of one's embodied persona an interest in autonomy of self-definition.

Two points about one's embodied persona. First, its content will vary, potentially significantly, not just from context to context but from person to person, depending on the precise details of one's history of interactions with that person. For that reason, we could just as easily describe one's embodied persona as relative to given *relationships* rather than "contexts." Second, because of this connection between one's embodied persona and one's interpersonal relationships, an interest in autonomy of self-definition is inextricably intertwined with an interest in autonomously shaping the character and content of one's interpersonal relationships. As James Rachels pointed out in the context of privacy, different kinds of interpersonal relationships are partly constituted by the information it is reasonable and appropriate for the parties to have about one another.[46] To that extent, loss of informational privacy can be understood as a kind of loss of control over one's relationships. Perhaps even more so, different kinds of interpersonal relationships are constituted by the desires, identities, and preferences that it is reasonable and appropriate for the parties to express to one another. Hence, to deprive somebody of a reasonable measure of control over the content of their embodied persona is perforce to interfere with the character and content of that person's interpersonal relationships.

Specifying the interest in autonomy of self-definition explains the distinctive harmfulness and wrongfulness of content-based interference with the exercise of personal style. Returning to our earlier examples, consider somebody who identifies as Muslim, Jewish, or genderqueer who cannot safely use public transit while wearing a hijab, a yarmulke, or a dress. Clearly, this person suffers a setback to a variety of material interests connected with being denied that particular social good for *any* reason. In addition, this person suffers a setback to the various dignitarian interests that are undermined whenever one experiences invidious discrimination. Insofar as the relevant social practice operates specifically as a content-based limitation on the exercise of personal style, this person is deprived in particular of the opportunity to *define* their public persona and the terms on which they relate to others. They cannot relate to their neighbors, fellow community members, and co-citizens *as* a Muslim, Jewish, or genderqueer person without facing the prospect of incurring social sanctions. Depending on how pervasive the relevant social practice is, this disability may extend across multiple social spheres, from the workplace to public transit to social media to even the home. In the limit case, content-based interference with the exercise of personal style can prevent a person from socially "counting" as having the suppressed identity, desire, or commitment in the first place, insofar as the relevant ascription-conditions depend for their satisfaction on a threshold level of intelligibility to others.[47] Moreover, the normative grounds of content-based limitations on the exercise of personal style make this form of interference particularly *demeaning*. It attempts to substitute, by means of coercion, a collective judgment about which

[46]James Rachels, *Why Privacy Is Important*, 4(4) Philosophy and Public Affairs 323–333 (1975).

[47]A number of authors have discussed this general point, especially in the context of attributing social identities. *See, e.g.*, Asta, Categories We Live By: The Construction of Sex, Gender, Race, and Other Social Categories (2018); Miranda Fricker, Epistemic Injustice (2006).

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identities, desires, and preferences shall figure in that individual's public persona for the judgments of the individual whose persona is at stake.

However, an interest in autonomy of self-definition is not the only fundamental interest which is distinctively undermined by content-based interference with the exercise of personal style. Another is an interest in *opportunities for recognition.* As I understand it, recognition has a descriptive meaning and a normative meaning. Descriptively, to recognize another person's desire, preference, or identity is simply to *attribute* it: i.e., to recognize *that* they have it. Normatively, to recognize another person's identity, desire, or preference is to recognize that aspect of the person's psychology as giving rise to a morally significant interest.[48] This in turn means recognizing certain moral reasons in one's own practical deliberation—such as reasons to protect, or at least to refrain from gratuitously frustrating, that interest. As a general matter, I take it that recognition in the normative sense depends on recognition in the descriptive sense.[49] And recognition in both senses depends on having opportunities for self-expression. If a person is systematically "blocked" from engaging in behavior which manifests or makes evident a certain identity, desire, or preference, that person's opportunities for recognition will thereby be reduced. To be sure, there's not a one-to-one correlation between opportunities for expression and opportunities for recognition; among other things, a person can be recognized as having certain interests in social contexts where they have not directly expressed those interests. And at least in theory, a content-based limitation on the exercise of personal style could leave open ample alternative avenues for manifesting the relevant conative states through non-stylistic means (even if it is difficult to see how that would work in practice). Nevertheless, we can in general expect that content-based limitations on the exercise of personal style will reduce overall opportunities for descriptive and normative recognition of the conative attitudes whose embodiment is suppressed.

Evidently, the interest in opportunities for recognition is more contingent and empirical than the interest in autonomy of self-definition. In particular, although content-based limitations on the exercise of personal style *inherently* demean a person's autonomy of self-definition, they undermine a person's interest in opportunities for recognition only insofar as they actually "block" access to relationships of recognition. The interest in recognition is, nevertheless, fundamental. For one thing, under most plausible conceptions of respect, a necessary condition of respecting someone is recognizing that person's fundamental interests. To that extent, content-based interference with the exercise of personal style can reduce a person's access to interpersonal respect. Furthermore, it is a truism that recognition by others is often a psychological prerequisite of self-recognition. To that extent, content-based interference with the exercise of personal style can reduce a person's own self-respect, self-recognition, and self-understanding. On both points, sexual expression is perhaps the clearest illustration. Legal and social practices of sanctioning conduct which embodies a desire for same-sex intimacy have historically denied sexual minorities access to a multitude of relationships of recognition. The resulting isolation has contributed to various forms of psychological distress, which often reflect

[48] *See, e.g.*, Stephen Darwall, *Two Kinds of Respect for Persons*, 88 Ethics: 36–49 (1977); Nancy Fraser & Axel Honneth, Redistribution or Recognition? A Politico-Philosophical Exchange (2004).

[49] A point defended in Daniel Putnam, *Equality of Intelligibility, in* The Equal Society 91–111 (George Hull, ed. 2015).

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internalized lack of self-respect or self-understanding. Similar considerations apply to freedom of gender expression, in particular the recognitional costs to trans and nonbinary people of gender policing. Finally, although religious practitioners may be less vulnerable to denials of recognition than gender minorities or sexual minorities insofar as they are more likely to have a "built-in" network of recognition relationships in their homes and communities, the fact remains that content-based limitations on their exercise of personal style will significantly "shrink" the space available in civil society for public recognition.

In short, content-based limitations on the exercise of personal style are not just *intuitively* wrongful. They are wrongful because they undermine (at least) two fundamental human interests. The first is an interest in autonomy of self-definition. The second is an interest in opportunities for recognition. Together, these interests explain what makes content-based limitations on the exercise of personal style distinctively harmful and wrongful. For that reason, these interests lay a strong foundation for defending a *right* to freedom of self-expression.[50]

VI. Conclusion

Now is a good time to take stock. This paper began with a challenge to the very idea of freedom of self-expression. There is strong intuitive support for the idea that freedom of self-expression is a normatively distinct and coherent value. But if we analyze freedom of self-expression as a special case of freedom of communication, we end up with a Procrustean and underinclusive account of freedom of self-expression. And if we analyze freedom of self-expression as freedom of manifestation, then it seems we collapse freedom of self-expression into freedom *tout court*. My task in this paper has been to defend the intuitive judgment that freedom of self-expression is distinct and coherent, after all. To do so, I have made three main moves.

First, I showed that the ubiquity of self-expression is compatible with the normative distinctiveness of freedom of self-expression. Even if all actions are to some degree self-expressive, that doesn't mean that all limitations on freedom are necessarily limitations on freedom of self-expression, because only some limitations on freedom target conduct in its self-expressive aspect. Second, I showed that a paradigm case of a limitation on freedom of self-expression is a content-based limitation on the exercise of personal style. Third, I vindicated the intuition that content-based limitations on the exercise of personal style are distinctively wrongful by articulating

[50]Of course, to fully defend a right to freedom of self-expression—understood as implying at minimum a right not to be subjected to content-based interference with the exercise of one's personal style—it would be necessary to assess the costs to others of recognizing that right. Doing that task justice would exceed the bounds of this paper. However, two reasons to suspect that such a right could be defended are as follows. The most obvious reason stems from the normative grounds of a content-based limitation on personal style. If as a general matter there is a right not to be coerced just in virtue of the consideration that it would be a *bad thing* if one's desire, preference, or identity were more widely adopted, then *a fortiori* there is a right not to have one's exercise of personal style coerced for that reason. Second, how one speaks, sounds, moves, and dresses is a paradigmatically *self-regarding* activity; under that description, one's behavior has consequences for other people which are almost by definition indirect and intangible. To that extent, it is plausible to think that the costs to others of recognizing a right to freedom of self-expression do not defeat or outweigh the fundamental interests protected by such a right.

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the fundamental interests in autonomy of self-definition and opportunities for recognition.

If persuasive, this account shows that freedom of self-expression is a normatively distinct and coherent value. As emphasized, content-based limitations on the exercise of personal style are a distinct subset of limitations on freedom in general. And as we just saw, there are normative reasons not to subject people to that particular kind of interference over and above the reasons there are in general not to interfere with people's freedom. Hence, freedom of self-expression is *normatively distinct.* In addition, limitations on freedom of self-expression so construed exhibit a unifying structure: they attach social sanctions to people's conduct under a specific type of description, on the basis of a specific type of normative grounds. Moreover, all limitations on personal freedom which exhibit that unifying structure undermine the twin interests in self-definition and recognition. Hence, no "patchwork" of interests need be invoked. So freedom of self-expression is also *normatively coherent.*

It bears emphasis that this account of freedom of self-expression is only partial. First, even if a central range of paradigm cases of self-expression involves the exercise of personal style, it does not follow that all instances of self-expression involve the exercise of personal style. Second, freedom of self-expression plausibly has a positive aspect and a negative aspect. Although I have understood freedom of self-expression as freedom *from* a certain kind of interference, affirmative opportunities to engage in self-expression plausibly form part of this value as a whole. Third, within the domain of negative freedom of self-expression, we need not assume that the only kind of wrongful interference is *content-based.* For example, the *denial* of adequate opportunities for self-expression plausibly violates a negative right to freedom of self-expression even when the relevant practices are not guided by the intension and normative grounds which define a content-based limitation.[51] Fourth, although I have identified interests that all of us have in being free to express ourselves, it is plausible to think that we also have audience or bystander interests in living in a society where *others* are free to express themselves. These audience and bystander interests would need to be unpacked. Finally, this account has focused on identity expression and the expression of certain desires closely connected to one's identity. But artistic expression, emotional expression, and sexual expression beyond the expression of sexual identities per se are all important avenues of self-expression. One important question is how the idea of a content-based limitation on the exercise of personal style applies to these forms of self-expression, and more broadly where these forms of self-expression fit in an emerging taxonomy of freedom of self-expression.

These qualifications notwithstanding, I think it's a significant result that freedom of self-expression is a distinct and coherent value. In the space that remains, I want to underscore three general implications of understanding freedom of self-expression along the lines defended in this paper.

The first implication concerns the connections between gender expression, sexual expression, and religious expression. Contemporary American law and political

[51] *See, e.g.*, T.M. Scanlon, *Content Regulation Reconsidered* (1990), reprinted in T.M. Scanlon, The Difficulty of Tolerance 151–168, 159 (2003) ("It is common to state the constraints that make up the right of freedom of self-expression in two parts. Freedom of expression requires, first, that expression not be restricted on the basis of its content, and second, that it should not be restricted *too much*: any regulation should leave ample opportunity for (at least the valued forms of) expression").

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discourse tend to frame the rights of sexual minorities and gender minorities in terms of *equality*. Although there are scattered invocations of "sexual expression" and "gender expression," these ideas have remained largely peripheral.[52] This paper has specified one important respect in which the rights of gender minorities and sexual minorities involve freedom of expression. Specifically, these rights implicitly include claims to freedom from content-based interference with the exercise of personal style. Making that point explicit not only gives substantive content to the scattered invocations of "sexual expression" and "gender expression." It also suggests a deeper reframing of how gender minority rights and sexual minority rights are understood. In particular, it calls attention to the fact that universal interests in human freedom are implicated by the claims of gender and sexual minorities. To that extent, it reduces the analytical and political pressure to classify gender and sexual minorities as a "discrete and insular minority," and more generally to isolate queerness as a human phenomenon.[53] Finally, this analysis brings to light a commonality between the claims of gender minorities, sexual minorities, and religious adherents. Specifically, insofar as all three groups have legitimate claims to freedom from certain content-based limitations on the exercise of personal style, all three groups can lay claim to the common value of freedom of self-expression. One concrete implication is that the dominant framing of religious objections to queer-inclusive anti-discrimination laws in terms of freedom versus equality is at best incomplete. Insofar as there is any genuine conflict in principle between religious freedom and the rights of gender and sexual minorities, that conflict implicates fundamental interests in expressive liberty on "both sides."

The second, broader implication concerns the relationship between freedom of expression and identity discrimination. As constitutional scholar Kenji Yoshino has emphasized, there is a broad category of social practices which pressure people to conceal or downplay stigmatized characteristics.[54] He calls these practices "covering demands." From the perspective of American constitutional law, covering practices occupy a liminal space between identity discrimination and violations of free speech. Although they disproportionately burden members of protected classes, covering practices can be difficult to analyze as wrongful discrimination. Wrongful discrimination is typically understood as targeting traits that are "immutable" or otherwise difficult to change. But modifying an aspect of one's self-presentation—like any action—is inherently "mutable." Likewise, although covering practices inhibit people from manifesting certain traits, they don't necessarily inhibit people from intentionally communicating certain ideas. This makes it difficult to establish a free speech claim. Furthermore, although these particular challenges arise from parochial features of American law, they reflect a deeper problem of principle: where should we "fit" social practices of *stigma* in an ontology of rights violations? To a significant extent, the answer can be found in the idea of a content-based limitation on the

[52]Although it wasn't always so; as Carlos Ball describes, early gay rights cases foregrounded First Amendment speech and association claims. Carlos Ball, The First Amendment and LGBT Equality (2017).

[53]The contrast between "universalizing" conceptions of sexual minority status (under which same-sex desire in particular is a universal potential in all persons) and "minoritizing" conceptions of sexual minority status (under which same-sex desire is a property of a discrete, demarcated subset of the population) is explored at length in Eve Sedgwick, Epistemology of the Closet (1990).

[54]Kenji Yoshino, Covering: The Hidden Assault on Our Civil Liberties (2006).

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exercise of personal style. Unlike traditional conceptions of discrimination, content-based limitations on personal style are by definition targeted at conduct rather than traits. But unlike traditional conceptions of free speech violations, content-based limitations on personal style target conduct because of the desires or identities it embodies—not the beliefs or ideas it communicates. In short, the idea of a content-based limitation on the exercise of personal style better captures the "moral anatomy" of covering demands than traditional conceptions of either free speech or wrongful identity discrimination.[55]

Finally, the third and yet more general implication concerns the relationship between freedom of expression and *relational equality*. Recent years have seen an explosion of interest in the idea of relational equality.[56] Although the views differ in their details, the basic thought is that the value of equality is fundamentally about promoting certain kinds of equal relationships, such as relationships of equal respect, recognition, or power. Popular as this proposal may be, a significant worry about relational equality is that it lacks substantive normative implications.[57] What does it really mean to relate to somebody with equal respect or recognition, and how is that different from the formal injunction to simply treat people in accordance with whatever it is that morality requires? If this paper's account of freedom of self-expression is compelling, it demonstrates by example how the substantiveness objection to relational equality could be met. Simply put, the flesh-and-blood phenomenon of interpersonal relating consists in large part of the reciprocal expression and recognition of each person's desires, preferences, commitments, and identities. Although some of this expression takes the form of speech or non-stylistic manifestation, a great deal takes the form of embodiment. As we've seen, one negative implication is that interfering with somebody's freedom of self-expression inflicts grave relational harms, both in terms of self-definition and in terms of opportunities for recognition. One positive implication is that freedom of self-expression must play a central role in any fully developed theory of what it means for people to relate as equals.

[55]For example, consider *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981), in which the court rejected a race discrimination challenge brought to an employer grooming policy which proscribed braided hairstyles including cornrows. Whatever its legal status in American law, this grooming policy is plausibly seen as a prime example of a content-based limitation on the exercise of personal style. It denies a social good (employment) to persons on the basis of their exercise of presentational style. Moreover, on the assumption that Rogers' racial ancestry was already evident to her employer, it is plausible to interpret the employer's action as motivated at least in part by a substantive objection to certain conative states embodied in Rogers' choice of hairstyle: such as identification with, pride in, or affinity for her African-American heritage.

[56]*See, e.g.*, Elizabeth Anderson, *What is the Point of Equality?* 109(2) Ethics 287–337 (1999); Carina Fourie, Fabien Schuppert, & Ivo Wallimann-Helmer (eds.), Social Equality: On What it Means to be Equals (2014); Kasper Lippert-Rasmussen, Relational Egalitarianism: Living as Equals (2018).

[57]*See, e.g.*, Leslie Green, *Two Worries About Respect for Persons*, 120 Ethics: 212–231 (2010).

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