ISSN 2965-1557
http://doi.org/10.1590/2965-1557.038.e202633755

Original Article

Revista de Filosofia Aurora

PUCPRESS

periodicos.pucpr.br/aurora

Shiffrin's Thinker-Based Theory of Freedom of Speech: Foundations, Implications, and Challenges

A teoria do pensador de Shiffrin sobre a liberdade de expressão: fundamentos, implicações e desafios

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How to cite: BRESOLIN, Keberson. Shiffrin's Thinker-Based Theory of Freedom of Speech: Foundations, Implications, and Challenges. *Revista de Filosofia Aurora*, Curitiba, v. 38, e202633755, 2026. DOI: https://doi.org/10.1590/2965-1557.038.e202633755

Abstract

This essay examines the Thinker-Based Theory of Freedom of Speech, proposed by Seana Shiffrin, which grounds freedom of expression in the subject's condition as an autonomous thinker. Unlike traditional approaches centered on the speaker, the listener, democracy, or the pursuit of truth, Shiffrin shifts the normative axis toward the constitutive interests of the agent, arguing that speech is indispensable for the development of the mind, moral agency, and life in community. The first part of the article presents the theoretical foundations of her view, highlighting the capacities and interests that

[1] Fonte de financiamento: Fundação de Amparo à Pesquisa do Estado do Rio Grande do Sul (FAPERGS).

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compose the normative core of the thinker's condition. Next, I discuss critiques from contemporary authors who question the theory's excessive abstraction, the practical insufficiency of its criteria, and its exclusive emphasis on sincerity. Finally, I argue that, although Shiffrin's theory restores the dignity of the autonomous agent and offers an innovative model, it faces important limitations in light of contemporary dilemmas such as hate speech, misinformation, and the algorithmic mediation of communication.

Keywords: Freedom of Expression. Thinker-Based Theory. Autonomy. Sincerity. Democracy.

Resumo

Este artigo analisa a Thinker-Based Theory of Freedom of Speech proposta por Seana Shiffrin, que fundamenta a liberdade de expressão na condição do sujeito como pensador autônomo. Ao contrário das abordagens tradicionais, centradas no falante, no ouvinte, na democracia ou na busca da verdade, Shiffrin desloca o eixo normativo para os interesses constitutivos do agente, defendendo que a expressão é indispensável ao desenvolvimento da mente, da agência moral e da vida em comunidade. A primeira parte do artigo apresenta os fundamentos da teoria, destacando as capacidades e interesses que compõem o núcleo normativo da condição de pensador. Na sequência, são discutidas críticas de autores contemporâneos que questionam seu caráter excessivamente abstrato, a insuficiência prática de seus critérios e a ênfase exclusiva na sinceridade. Por fim, eu busco demonstrar que, embora a teoria de Shiffrin resgate a dignidade do agente autônomo e ofereça um modelo inovador, ela enfrenta limites importantes diante de dilemas atuais, como discurso de ódio, desinformação e mediação algorítmica da comunicação.

Palavras-chave: *Liberdade de Expressão. Teoria do Pensador. Autonomia. Sinceridade. Democracia.*

Preliminary Considerations

The question of free speech remains central in contemporary political and legal philosophy, yet dilemmas about its normative foundation persist. Traditional approaches have yielded important insights but struggle to justify protection for speech that lacks immediate political or epistemic payoff. Against this backdrop, Chapter 3 of *Speech Matters* (2014) advances Shiffrin's Thinker-Based Theory, which grounds free speech in the subject's condition as an autonomous thinker. The shift is ambitious. On this view, virtually any externalization of thought merits protection as integral to moral agency. That claim forces a re-examination of the legitimate limits of expression in plural democracies.

The relevance of this study lies in the fact that Shiffrin's proposal figures among the most original recent attempts to reconceptualize freedom of speech in a non-consequentialist key. By placing the thinker at the center, she redefines the contours of constitutional protection of speech and, more deeply, the very notion of autonomous agency and life in a moral community. On this view, the present work seeks to highlight the originality and ambition of her formulation, showing how the Thinker-Based Theory organizes a defense of free speech that departs sharply from the more common parameters of the debate.

The aim of this article is to explicate the normative foundations and institutional implications of Seana Shiffrin's Thinker-Based Theory of Freedom of Speech, emphasizing how it structures a defense of expression grounded in the centrality of the reflective mind. The analysis seeks to show to what extent this perspective enhances clarity, coherence, and scope when compared with traditional frameworks, while also examining its consequences for contemporary debates. Although the arguments of leading critics are considered, the primary objective is to uncover the conceptual architecture that sustains Shiffrin's near-absolute conception of free speech and to explore its implications for institutional design and democratic life.

Methodologically, the article unfolds in three parts. The first presents the theoretical foundations of the Thinker-Based Theory, addressing both the shortcomings that Shiffrin identifies in conventional approaches and the positive normative core she advances, centered on the constitutive interests of the agent as a thinker. The second examines critiques from authors such as T. M. Scanlon, Vincent Blasi, and Mary Kate McGowan, who question its monistic character, practical applicability, and reliance on sincerity. The final section develops an interpretative synthesis, assessing the theory's contributions and its limitations in light of contemporary challenges, especially within media-saturated and algorithmically mediated societies.

1. The Thinker-Based Theory

1.1 Theoretical Foundation: The Shortcomings of Traditional Approaches and the Turn to the Thinker-Based Theory

Shiffrin begins with a critique of traditional formulations, speaker-based, listener-based, truth-based, and democracy-based, highlighting their structural insufficiencies. She claims that "any one of these approaches seems objectionably partial and mysteriously so" (Shiffrin, 2014, p. 83), meaning that

they fail to explain, in a transparent and satisfactory way, why certain cases receive (or ought to receive) free speech protection while others do not.

In listener-based theories such as those of Scanlon and Strauss, freedom of speech is grounded in the audience's right to access information, but this model leaves important gaps since it does not explain why redundant or repetitive messages or even private expressions like diaries deserve protection. Speaker-based theories, such as Baker's, show an inverse limitation by linking the value of speech to self-expression and thus failing to explain why coercive practices like brainwashing or mind control violate freedom of speech. As Shiffrin observes, both speaker-based and listener-based models struggle to clarify why such efforts represent violations of free expression (Shiffrin, 2014, p. 83). Theories that associate free speech with democracy or with the pursuit of truth also face difficulties in justifying protection for forms of interpersonal dialogue or non-discursive art. In all these perspectives, the same limitation remains: they understand protection as dependent on instrumental or epistemic value, overlooking that the true reason to protect speech lies in preserving the formative process through which each person develops as an autonomous thinker.

Theories that associate freedom of speech with democracy or with the pursuit of truth, such as those of Meiklejohn, Post, and Cohen, also fail to explain why interpersonal exchanges or non-discursive art deserve protection. As Shiffrin remarks, these theories struggle to defend everyday dialogue and abstract artistic expression, even though such forms play a decisive role in shaping the thinking self (Shiffrin, 2014, p. 84). By focusing only on the instrumental value of speech, they ignore that expression has an intrinsic formative function essential to autonomy. Shiffrin also points out that eclectic or piecemeal theories reproduce familiar inconsistencies, since they combine distinct principles without resolving how they fit together when they conflict. Lacking clear criteria of priority, these hybrid frameworks remain unstable and fail to sustain a coherent justification for the robust protection of free speech.

The way forward is to acknowledge the presupposition shared by all accounts: a developed thinker capable of speaking, listening, deliberating, acting (2014, p. 85). If a thinker is always "behind the scenes," the theory's unity must be sought at that source. Reasoning from the standpoint of the thinker promises greater comprehensiveness and coherence.

The originality of Shiffrin's proposal does not consist merely in reorganizing familiar justifications, but in relocating the normative foundation of freedom of speech. Instead of treating it as a means to external ends, she conceives it as the direct expression of the condition of rational and autonomous agents. Scanlon observes that Shiffrin broadens the range of interests at stake in free speech, including the value speech holds for the speaker as well as dimensions closer to the needs of the listener, such as the acquisition of true beliefs. As he notes, "Shiffrin's account is interestingly different, helpfully reminding us that speakers also have interests concerned with the importance of speech for them" (Scanlon, 2011, p. 331). Thus, the Thinker-Based Theory proves innovative for integrating, within a single normative framework, interests that were traditionally treated separately, thereby unifying individual expression with reciprocal access to others' reasons.

On this view, according to Shiffrin, the protection of freedom of speech serves primarily to safeguard individuals' ability to form, revise, and communicate their own judgments without undue interference (Shiffrin, 2014, p. 115). The normative core of the theory both enables the circulation of

content and protects the internal process of elaboration and critical revision of thought. Freedom of speech thus emerges as a condition for reflective autonomy and for the moral authenticity of the agent.

1.2 Normative Core: Capacities and Interests of the Thinker

Shiffrin's case has two strands. First, sincere and free expression plays a unique, though not exclusive, role in developing the mind and personality of each agent *qua* thinker. Second, opportunities for sincere, open communication are essential to discharging reciprocal duties, including supporting one another's full development as thinkers, and to governing as equals (2014, p. 90). In this dual formulation, freedom of speech emerges both as a formative good, tied to the self-development of the thinker, and as a political-normative requirement, tied to communal life and the practice of governing among equals.

Building on this, Shiffrin identifies three fundamental considerations for composing the normative core of her theory of freedom of speech. First, she begins with the idea that we are "individual human agents" endowed with a set of rational, emotional, moral, perceptual, and sentient capacities that "overlap and exert influence upon one another." Second, she maintains that the possession and exercise of these capacities constitute "the core of what we value about ourselves." Finally, she argues that the unique combination of these faculties, in their particular forms of development and exercise, together with physical attributes, is what makes us "the distinctive individuals that we are within our shared historical and social milieu." From this threefold consideration, Shiffrin extracts a decisive normative implication: by asking which social and legal conditions are necessary to respect these capacities, we arrive at a robust theory of freedom of speech that inseparably encompasses both the freedom of thought and the freedom of communication "with oneself and with others" (Shiffrin, 2014, pp. 85-86).

According to Shiffrin, in order to understand the social and legal conditions required to respect human capacities, it is necessary to identify the "core interests of the thinker as such" (2014, p. 86), that is, the fundamental interests of each individual as a rational, moral, and social agent. These interests outline what it means to be an autonomous thinker. Enumerated in a non-exhaustive fashion, they form the normative nucleus that grounds freedom of speech as an indispensable condition for human flourishing.

1. "*A developed capacity for practical and theoretical thought*": the interest in developing the capacity for practical and theoretical thinking, responsive to reasons, facts, and to the distinction between the true, the false, and the unknown.
2. "*Apprehending the truth*": the interest in believing and understanding true things about oneself, one's mind, and the environment in which one lives.
3. "*Exercising the imagination*": the interest in intellectually exploring the nonexistent and the impossible, broadening one's grasp of the future, the past, and of possibilities.
4. "*Moral agency*": the interest in acquiring relevant knowledge, character traits, and intentions necessary to act in accordance with the requirements of morality.
5. "*Becoming a distinctive individual*": the interest in developing a singular personality, with traits, emotions, and reactions that differentiate each person in the social milieu.
6. "*Responding authentically*": the interest in forming beliefs and judgments freely and authentically, without being "scripted by forces external to the person."

7. "*Living among others*": the interest in living in community with other autonomous agents, a condition for the development of the self, of knowledge, and of morality.
8. "*Appropriate recognition and treatment*": the interest in being recognized and treated in a morally adequate way by others (Shiffrin, 2014, pp. 86-87).

These interests function not as contingent preferences, but as normative conditions whose fulfillment depends on opportunities for expression and communication. Speech is therefore the primary vehicle through which these capacities are realized, since it provides the most accurate way for a person to become known as the individual she is before others (Shiffrin, 2014, p. 88). As McGowan notes, Shiffrin views speech as valuable because it grants "access to the content of individuals' minds," which is essential for the existence of a moral community (McGowan, 2016, p. 539). Emphasizing the subject's interests as a thinker thus broadens the normative scope of free speech, situating expression within the intersubjective practices through which persons form themselves and recognize one another.

Before proceeding, it is important to note that Shiffrin's conception of freedom of speech extends beyond articulate or discursive communication to include non-discursive forms such as art, music, and emotional or imaginative expression. What matters is not the medium but its role in externalizing thought. Emotions and imaginative processes are as vital to autonomy as reasoning, for they disclose aspects of individuality that cannot emerge in silence. For this reason, she unites freedom of thought and communication under the same category of *freedom of speech*, encompassing both "speaking to oneself" and "speaking to others" (Shiffrin, 2014, p. 81). All expressive forms (political, artistic, or intimate) possess equal value because they sustain the same constitutive function in realizing autonomy and enabling mutual recognition within moral life (Shiffrin, 2014, p. 94).

Individuality cannot remain confined within itself. The realization of autonomy depends on the ability to share one's inner world with enough nuance to be understood and reciprocated. Communicating thought is part of what allows the self to take shape, since it brings ideas to the surface where they can be examined, questioned, and refined through contact with others. Shiffrin observes that developing a complex mental life requires expressing portions of what we think, because only by setting some distance between ourselves and our thoughts can we truly evaluate and reshape them. Some ideas, she explains, become fully intelligible only when articulated in language or in another representational form, and this process of expression "may render possible the formation of new sorts of thoughts" that could never emerge in the narrow space of inner reflection (Shiffrin, 2014, p. 90). External representations thus help sustain what memory cannot preserve and ensure the continuity of reflection through time.

The Thinker-Based Theory also sustains that the formation of true beliefs is inseparable from dialogue. The passage from private cognition to justified belief depends on making thought "representationally explicit," transforming it into a commitment that can be examined and answered by others. In this shared space of reasons, "others' insights and beliefs" serve as counterweights that correct and refine our own judgments, ensuring that the process of thinking remains open and self-corrective. Shiffrin insists that only where individuals can "respond with precision" to one another does the mind preserve its integrity and autonomy. This dialogical structure, which allows ideas to circulate and be tested, forms the moral and epistemic foundation of freedom of speech. She illustrates

this vividly when observing that rational human beings "need access to other thinkers" whose mental contents can be known and reciprocally engaged, for the absence of such interaction leads to deterioration. The psychological collapse of prisoners in solitary confinement (marked by despair, anxiety, and the atrophy of emotional and social capacities) reveals how isolation corrodes the very conditions of thought (Shiffrin, 2014, pp. 90–91). Freedom of speech, therefore, is not merely a political safeguard but the condition that keeps reason alive through recognition, reciprocity, and response.

Freedom of speech is a condition of possibility for psychic integrity and rational functioning. Evidence from involuntary solitary confinement starkly illustrates the point: deprived of access to others, prisoners deteriorate mentally and emotionally (2014, pp. 90-91). When recognition and response are denied, sociality unravels and rational grip falters. Blocking the circulation of expression corrodes the bases of rationality and moral life: "a sort of solitary confinement outside of prison but within one's mind" (2014, p. 91).

Accordingly, Shiffrin links the normative architecture of free speech to two symmetrical requirements: the broad availability of "externalization" of mental contents in an "unscripted" and "authentic" manner, and the correlative right to receive the expressions of others. This makes expression a constitutive condition of self-regulation and coordination with others, for only where there is mutual circulation of reasons can the fine-tuning between belief and reality occur. Hence, protection against "unchosen interference" is not peripheral but part of the core of mental autonomy, preserving the process through which we form, test, and revise judgments without heteronomous distortion. As the author summarizes, "free speech is essential to the development, functioning, and operation of thinkers" (Shiffrin, 2014, pp. 90-91). And given that moral agency requires perspective-taking and responsiveness to the singularities of others, the same freedom provides the infrastructure for citizens to acquire the capacity to deliberate and to discharge reciprocal duties with adequate information.

From a political standpoint, freedom of speech deserves protection not only as a moral right but also as a condition for justice and social cooperation. Shiffrin, drawing on Rawls, recalls that a stable and well-ordered society depends on citizens capable of forming a conception of the good and a sense of justice, capacities that require open conditions for learning and revision. Within this framework, "open, unrestricted channels of communication" (Shiffrin, 2014, p. 92) are not ornaments of democracy but the infrastructure that enables practical judgment and collective deliberation. As Howard observes, the value of these channels lies in preventing their subversion, since obstructing people from expressing what they genuinely believe undermines the very basis of moral and civic life (Howard, 2019, p. 100). The political and legal demand for protecting expression therefore arises from the convergence between personal autonomy and the institutional prerequisites of justice among equals.

Shiffrin appeals to Rawls to associate freedom of speech with the development of moral personalities capable of sustaining a just order of cooperation, but she does not elaborate in depth on how she conceives this relation. It is relevant, however, to mark the distance from democratic theories of free speech. For authors such as Meiklejohn, Sunstein, and Post, the central point is that speech is justified primarily by its role in self-government, insofar as it secures the functioning of public discourse and collective deliberation. Post synthesizes this perspective by stating that "democracy serves the value of self-determination by establishing a communicative structure within which the varying

perspectives of individuals can be reconciled through reason" (1991, p. 290). Unlike democratic theories that ground free speech in collective self-government, Shiffrin's approach begins with the individual as an autonomous thinker whose need to externalize and share thought sustains both rationality and moral life. Democracy thus arises as a secondary effect of this deeper condition. On this basis, she envisions "a principled and strong form of protection for political, religious, artistic, and dissenting speech" (Shiffrin, 2014, p. 93).

On this basis, Shiffrin advances her analysis by proposing answers to the fundamental questions surrounding the Thinker-Based Theory: Why, within this framework, should freedom of speech be considered special? And if special, to what extent is its distinctive constitutional status justified? She organizes her response in three main directions, aiming to show that the value of expression not only accompanies but grounds the very constitution of the autonomous thinker.

Shiffrin begins by asking why constitutional protection of freedom of speech usually takes a negative form, preventing interference rather than imposing positive duties like education or mental health programs. She explains that the judiciary is more capable of defining and enforcing negative rights, whereas positive measures demand broader legislative design and political consensus (Shiffrin, 2014, p. 107). This distinction does not lessen the moral value of speech; instead, it reinforces the idea that censorship and thought control must be subject to a protection "staunch, foundational, targeted, and highly visible," since their suppression endangers the "free operation of the mind" (Shiffrin, 2014, pp. 94, 109).

A second concern involves distinguishing between state and private censorship. Shiffrin argues that a thinker-based theory supports moral protection against both, though the Constitution rightly focuses on the state, whose "size" and "ubiquity" make it the most serious threat (Shiffrin, 2014, pp. 108–109). She concedes, however, that this rationale weakens where "private entities control vast resources," approaching a form of "corporate dictatorship" (Shiffrin, 2014, p. 108). From this reasoning emerge three limits for a free speech regime consistent with the interests of the thinker: i) the state must not ban or obstruct "the free development and operation of a person's mind" (Shiffrin, 2014, p. 92); ii) it must avoid measures that, by intent or effect, hinder individual mental growth; iii) and it cannot appeal to vague notions of order to silence protest, since "the abrogation of freedom of speech is self-undermining" (Shiffrin, 2014, pp. 110–111). Within this framework, any restriction on expression strikes directly at autonomy, confirming that the protection of speech and the preservation of democratic life stand or fall together.

The third question asks why speech deserves stronger constitutional protection than other autonomous activities such as personal relationships or professional choices, which also contribute to self-development. Shiffrin argues that speech has distinctive features because it creates what she calls a "workshop-like space" in which individuals can explore their own ideas, test them, and reshape aspects of the self (Shiffrin, 2014, p. 114). Through language it becomes possible to advance a thought provisionally, to say "maybe" or "for now," without fixing it as a final conviction. This capacity for reflexive experimentation has no equivalent in other domains of human action, for speech alone allows thought to move between hesitation and affirmation, between exploration and commitment. As Shiffrin explains, "speech is special because it is a uniquely specific mechanism for the transmission of mental contents and their discussion, evaluation, development, and refinement" (Shiffrin, 2014, p. 114). In this

sense, expression does not simply manifest autonomy but sustains it continuously, making reflection, revision, and moral growth possible within both personal and collective life.

2. Some Critical Considerations

Having examined the foundations of Shiffrin's theory of freedom of speech, it becomes necessary to confront her proposal with some of the most relevant criticisms. T. M. Scanlon (2011) offers one of the most attentive readings of the thinker-based approach and identifies a fundamental difficulty in its conceptual structure. He argues that Shiffrin's attempt to unify all justifications for free speech under the idea of "the free development and operation of [one's] mind" risks becoming "unhelpfully monistic and high-minded" (Scanlon, 2011, pp. 330–331). Instead of clarifying the value of expression, this pursuit of unity may obscure the diversity of reasons involved in communicative practices, which include epistemic, political, affective, and pragmatic dimensions. As Scanlon notes, "a theory that tries to account for all of these reasons by appeal to our interest in self-development seems unhelpfully monistic" (Scanlon, 2011, p. 331).

Secondly, Scanlon questions the indeterminacy of the legal boundaries of free speech when the normative basis is defined so broadly. If the protected value is ultimately the free development of the mind, where exactly are the limits of the constitutional right to speech? The breadth of the foundation risks inflating the scope of the State's positive duties, blurring the line between desirable policies and constitutional requirements. He points out that, taken seriously, Shiffrin's theory could imply that the right to free speech would demand, for example, "public schooling, the Freedom of Information Act, longer opening hours of public libraries, and public access to the Internet" (Scanlon, 2011, p. 333). The issue, for him, is not to deny the relevance of these social goods, but to ask whether it is freedom of speech that juridically demands them, or whether they are instead connected political values.

A third criticism by Scanlon concerns the tension between freedom of thought and freedom of speech. Although Shiffrin emphasizes the role of expression in shaping our cognitive capacities, her argument appears to rest more on the freedom to think than on the freedom to speak. As Scanlon observes, "it is not clear that the best approach to the latter is the best approach to the former as well" (Scanlon, 2011, p. 335). This overlap, while philosophically appealing, weakens the theory's ability to define precise normative limits. Thought is absolute and immune to coercion, whereas speech is relational and subject to conflicts of interest. When both are merged under "the free development and operation of [one's] mind" (Scanlon, 2011, p. 328), their boundaries blur, making it difficult to determine when the State should refrain from interference and when it may legitimately regulate expression.

Finally, Scanlon stresses the need for a theory of free speech to offer normative guidance sensitive to the diversity of expressive contexts. The mere fact that all forms of speech are externalizations of mental content is insufficient to guide legal decisions. In this regard, "the fact that all of these forms of speech involve the externalization of the contents of one's mind is too general to be a helpful guide" (Scanlon, 2011, p. 334). For a theory to be useful, it must account for the difference in weight between political, religious, philosophical speech, private insults, or criminal orders, as well as the different risks of overregulation or partisan capture when the State exercises restrictive power.

Blasi raises two reservations that help refine the discussion. The first concerns who truly benefits from a theory that places "thinking" at the center of free speech. He notes that traditional autonomy-based arguments apply more evenly, since "all persons benefit from having their autonomy respected, and benefit in roughly similar ways" (Blasi, 2011, p. 310). Shiffrin's emphasis on thinking, however, risks narrowing the reach of protection, favoring groups whose activity depends directly on intellectual reflection, such as scholars, artists, or students. As Blasi asks, "why should we believe that persons other than intellectuals, reformers, students, and artists would benefit directly, in a manner that bears on their personal autonomy, from a First Amendment that is designed to place the emphasis on thinking rather than speaking and/or listening?" (Blasi, 2011, p. 312). The concern, distinct from Scanlon's critique of abstraction, lies in the practical inequality that arises when the moral value of expression is tied too closely to the cognitive life of a privileged few.

Blasi adds that Shiffrin's non-consequentialist approach raises a heavier burden of justification, since it must show that the cognitive capacities she privileges are essential for everyone. "Because she is making a non-consequentialist argument, Shiffrin has a more demanding burden of persuasion on this point than Mill" (Blasi, 2011, p. 312). The abilities she values appear, however, to benefit mainly reflective or imaginative individuals, which makes the theory less inclusive than models grounded in broader ideas such as dignity or consent. As with Scanlon's critique, Blasi suggests that the theory's claim to universality risks overlooking the diversity of ways in which people exercise and need freedom of expression.

Blasi's second reservation questions whether offering a "foundational" basis for free speech is a genuine virtue. He doubts that the developmental capacities highlighted by Shiffrin automatically justify prioritizing speech over other freedoms, asking why those capacities should be viewed as "more foundational" or more important than rights tied to narrower interests (Blasi, 2011, p. 314). In his view, a framework built around specialized protections may be institutionally wiser, since it occupies a "narrower footprint" and therefore imposes fewer social costs (Blasi, 2011, p. 315). Blasi also challenges Shiffrin's critique of consequentialism, noting that classic arguments associated with Madison's concern for avoiding political transgression and Holmes's attention to social adaptation still possess strong "normative appeal" and empirical grounding (Blasi, 2011, p. 316). The suggestion is that a theory of free speech does not necessarily gain strength by expanding its philosophical foundation; in some cases, a more focused approach may offer equal or greater justificatory force with lower institutional burden.

Finally, Blasi challenges Shiffrin's rejection of hierarchies of value and contingencies, which leads her to propose a simpler and more uniform model of protection for free speech. While recognizing the strategic attractiveness of simplicity, he argues that a theory cannot rest merely on this formal appeal but must functionally justify its superiority. "The First Amendment is strong medicine that needs, like antibiotics, to be rationed. That makes me suspicious of foundationalism and attracted to an instrumentalist approach that emphasizes priorities and practicalities" (Blasi, 2011, p. 317). Whereas Scanlon fears that an overly abstract theory may inflate the normative field, Blasi points out that the promise of unity risks turning the First Amendment into a medicine of indiscriminate application, precisely when what is needed is institutional caution and prudence.

From a broader perspective, McGowan interprets Shiffrin's Thinker-Based Theory of free speech in connection with other chapters of *Speech Matters* and acknowledges the strength of linking

moral justification with legal treatment. Once "we are clear about why we value speech enough to protect it," she observes, "we see that lies are not valuable in the relevant way" (McGowan, 2016, p. 538). For Shiffrin, only sincere communication deserves protection, since "speech provides the only precise mechanism by which one's mental contents may be conveyed directly to others" (Shiffrin, 2014, p. 10).

To clarify this distinction, McGowan turns to Chapter 1, *Lies and the Murderer Next Door*, where Shiffrin defines a lie as "an intentional assertion by A such that A does not believe P [...] and A intentionally presents P as an accurate representation of A's belief" (Shiffrin, 2014, pp. 12–13). Deception, by contrast, concerns the *effect* on the listener, since "deception must impart a false belief to the listener whereas lying need not" (Shiffrin, 2014, p. 19). McGowan accepts that this conceptual distinction is coherent but argues that it is too narrow for the moral and legal questions that matter in practice, because "many other utterances that are not lies" can equally manipulate understanding and distort belief (McGowan, 2016, p. 538).

The critique takes shape in the example of the misleading nonlie. McGowan shows that it is possible to deceive without lying in Shiffrin's technical sense:

> Suppose, for example, that someone asks me whether I have any children and, intending to mislead I respond, 'I have a cat.' What I said is misleading, but it is not a lie […] what I have done is morally wrong for exactly the same reason that lying is wrong and my utterance is not properly afforded any free speech protection for the exact same reason that lies are not protected" (McGowan, 2016, p. 538-539).

The crucial difficulty may be formulated as follows: if the justificatory value in Chapter 3 lies in the sincere testimony of mental content, why should lying alone and not also other forms of insincerity or intentional deception fall outside the scope of protection? Notably, in Chapter 1 Shiffrin herself acknowledges falsifications that do not qualify as lies within "justified suspended contexts" (such as fiction or etiquette), since in such cases there is no intention to present what is said as a genuine belief: "Falsifications offered within a justified suspended context do not fit the characterization of lies" (Shiffrin, 2014, p. 18).

At the legal level, McGowan identifies an additional tension that emerges when comparing the theses of Chapter 3 with those of Chapter 4, *Lying and Freedom of Speech*. She notes that Shiffrin does not exclude lies from the scope of the First Amendment by labeling them "outside the domain," but rather by claiming they lack free speech value, which results in intermediate scrutiny: "Because the lie as such has no free speech value, strict scrutiny seems inappropriate [...] I would favor a modified version of intermediate scrutiny" (Shiffrin, 2014, p. 154). McGowan calls this "curious, perhaps even contradictory," because, according to her, saying that there are no free speech reasons against regulating lies appears functionally equivalent to placing them outside the protective scope (McGowan, 2016, pp. 539-540). Shiffrin, however, is explicit in saying that she is "fairly skeptical" of the thesis that certain regulations are wholly outside the First Amendment's domain (Shiffrin, 2014, p. 154).

In Chapter 4 of *Speech Matters*, Shiffrin clarifies that the justification for regulating lies does not concern their *content* but the *mental state* of the speaker and the misuse of the testimonial channel. As she explains, "to regulate the lie is to regulate deliberate misrepresentation […] the predicate of the regulation is […] the speaker's mental state […] not that the content of the speech is false" (Shiffrin, 2014, p. 126). The reason, she adds, is that insincere but seriously presented statements "interfere with our […] ability to transmit our mental contents" (Shiffrin, 2014, p. 127). McGowan acknowledges the

coherence of this approach but argues that it remains incomplete. If the harm derives from the corruption of testimonial trust, then the theory must also explain why only *lies* lose protection while other insincere or misleading utterances do not. As she observes, "perhaps the explicit nature of lies damages testimonial trust more than misrepresenting nonlies do […] she certainly ought to say more" (McGowan, 2016, p. 539). Given "the highly inferential way that communication and language use function," McGowan concludes that focusing solely on explicit lies requires further justification (McGowan, 2016, p. 539). The critique exposes a gap between Shiffrin's moral insight and her legal application: the theory lacks a workable criterion to distinguish lies from other deceptive forms of speech that equally undermine trust and communicative integrity.

McGowan's critique reveals that the strength of Shiffrin's theory depends on drawing clearer boundaries between lying and other deceptive uses of language, as well as on developing legal standards capable of recognizing sincerity without confusing it with truthfulness. Shiffrin maintains that political speech has no *ex ante* privilege over other mental domains, since "thoughts about political affairs are […] no more and no less central […] than thoughts about one's mortality or one's friends" (Shiffrin, 2014, p. 93). McGowan accepts this premise but notes a problematic consequence: the same criterion that protects sincere expression could also encompass *sincere but criminal* speech, such as threats or price-fixing agreements. She remarks that even statements like "I want him dead" or "I will raise my prices if you raise yours" satisfy the sincerity condition while remaining clearly regulable (McGowan, 2016, p. 539). Although Shiffrin later distinguishes individual from commercial speech, McGowan contends that sincerity alone cannot serve as an operative legal criterion, since many forms of harmful or coercive expression meet that standard yet demand restriction.

Final Considerations

Shiffrin's thinker-based approach is an original, non-consequentialist grounding of free speech: it treats expression as constitutive of mind and moral agency. The gain is dignity; the cost is breadth. Three limits remain salient: a tendency toward cognitive individualism; under-specification for media-saturated environments where sincerity can amplify harm; and a pull toward near-absolutism that risks eclipsing equality and non-discrimination. The upshot is not rejection but refinement: clearer criteria for sincerity-based exclusions, a more explicit account of perlocutionary harms, and a framework that balances autonomy with the ecologies of recognition on which democratic life depends.

One concern may be called cognitive individualism. By privileging the authentic externalization of mental contents as the central criterion of expression's value, Shiffrin risks reducing language to a kind of mirror of the individual mind. Speech is not merely an interior reflection; it is also a shared normative practice, loaded with rules, conventions, and social effects that escape the control of the speaker. As Scanlon observes, "the fact that all of these forms of speech involve the externalization of the contents of one's mind is too general to be a helpful guide" (Scanlon, 2011, p. 334). The mere fact that a belief is externalized does not guarantee that communication fulfills a formative function or benefits common life. By insisting on this point, the theory risks obscuring the public dimension of language, one that does not reduce to the individual's mind but involves reciprocal expectations, standards of reliability, and modes of recognition.

This limitation becomes more evident when we consider the perlocutionary effects of speech. The theory presumes that by opening channels of communication we secure the adequate formation of the thinker. Yet in social practices what matters is the impact that speech produces upon others and the public space in which it circulates. Matsuda shows, in her analysis of racist speech, that "tolerance of hate speech is not tolerance borne by the community at large. Rather, it is a psychic tax imposed on those least able to pay" (Matsuda, 1989, p. 2336). She further notes that victims of hate speech suffer immediate and devastating effects, such as visceral fear, rapid heartbeat, breathing difficulties, nightmares, post-traumatic stress disorder, hypertension, psychotic episodes, and even suicide. The harm is not merely conceptual, for words wound, provoke withdrawal, humiliation, and exclusion. Delgado and his colleagues reinforce this point in defining certain speech acts as "words that are used as weapons to ambush, terrorize, wound, humiliate, and degrade" (Delgado et al., 2018, p. 1). What becomes clear is that the sincere externalization of thought may, paradoxically, be the most brutal form of discursive violence, as it confers legitimacy upon prejudice by presenting it as mere authentic opinion.

In this light, Shiffrin's emphasis on sincerity deserves scrutiny. Her thesis that "reliable, sincere speech enables sophisticated forms of self-understanding, knowledge of others and of the world, moral agency, and personal relations of trust" (Shiffrin, 2014, p. 186) reveals a normative fragility. Sincerity does not prevent harm (in hate speech or in fake news) and may, in some cases, intensify it. The normative naivety lies in assuming that the moral value of expression is exhausted in the transparency of the individual mind, whereas what truly matters is how speech affects ecologies of trust and structures of recognition.

A second limitation concerns the institutional design of the theory. Shiffrin acknowledges that some forms of speech, such as commercial or corporate communication, deserve weaker protection because they are not directly linked to the individual mind (Shiffrin, 2014, pp. 98–102). Yet if this distinction is accepted, it is reasonable to ask why sincere but socially harmful expressions, like misinformation amplified by algorithms, should enjoy full constitutional protection. Shiffrin suggests that "environmental pressures" can weaken the authenticity of corporate speech (2014, p. 99), but she seems to overlook that individual speech is also exposed to powerful social and technological forces that shape thought and intention. In the digital environment, this problem becomes evident: the logic of echo chambers (Jamieson; Cappella, 2008; Nguyen, 2020; Bresolin, 2024) shows how seemingly personal opinions gain collective strength through algorithmic repetition, influencing perception and deepening polarization. What emerges is not simply individual expression, but a feedback process that turns sincere beliefs into instruments of division and manipulation. The elegance of Shiffrin's framework contrasts with its limited capacity to address these contemporary dilemmas, since discourse today circulates within systems of technological control and informational asymmetry that profoundly alter its moral and epistemic significance.

A third issue to be emphasized is the risk of overweighting freedom of speech when it is conceived as a unified and virtually absolute principle. By privileging mental externalization as its normative foundation, Shiffrin reduces the margin for recognizing the coexistence of other equally central constitutional values, such as equality, dignity, and non-discrimination. As a result, in real conflicts freedom of speech tends to prevail almost unconditionally, overshadowing the seriousness of

the harms it may inflict upon other rights. Hate speech and disinformation illustrate this problem vividly: they are not merely epistemic threats but direct violations of the psychological integrity, citizenship, and social belonging of entire groups. If freedom of speech is conceived as an absolute value, it risks obscuring the very purpose of fundamental rights, which is to secure a common life in which freedoms do not destroy one another. A theory that assigns disproportionate weight to a single right, even one as central as this, loses the capacity to provide adequate normative criteria for balancing freedom of expression with the protection of vulnerable subjects.

Finally, by not differentiating rigorously between thought and expression, Shiffrin risks absolutizing a right that, in concrete societies, must coexist with others. Coexistence here means recognizing that speech is not exhausted in the individual mind but unfolds as a performative act that affects others, produces effects, and often imposes psychic and social costs upon those who are its targets. The individual is not merely an isolated thinker but a subject constituted within a social space that transmits to them marks, beliefs, and structures of power that cannot easily be overcome by the authenticity of expression alone. Living in society, therefore, requires accepting the burden of delineating what can and cannot be said, not to annul freedom, but to preserve it from its own degradation, that is, from becoming an instrument of violence and oppression under the guise of autonomy.

Data availability statement

The main focus of this article is contributions of a theoretical or methodological nature, without the use of empirical data sets. Therefore, in accordance with the journal's editorial guidelines, the article is exempt from being deposited in SciELO Data.

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Editores responsáveis: Léo Peruzzo Júnior e Jelson Oliveira.

RECEBIDO: 09/11/2025
APROVADO: 04/02/2026

RECEIVED: 11/09/2025
APPROVED: 02/04/2026