

# Freedom of Speech and Expression: An Overview of the Main Theories

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**Abstract - Abstract:** This paper provides a conceptual, philosophical, and legal analysis of free speech, a fundamental tenet of democratic society. We argue that a purely conceptual definition of free speech is insufficient, as it fails to account for expressive actions for example- silent protest, and the complex overlap between behavioral and communicative acts. The work first establishes a crucial distinction between the inherent moral right to free speech and its often-imperfect implementation as a legal right, highlighting the ongoing tension between what the law is and what it should be.

The core of the analysis explores the competing philosophical justifications for free speech. We examine the listener-centric autonomy framework, which posits that the primary harm of censorship falls on the citizen's right to receive information and think critically. This is contrasted with the speaker autonomy model, which views expression as essential for personal maturation, self-authorship, and the development of one's deliberative interests. Both approaches are critically assessed alongside their instrumental value for the marketplace of ideas and the functioning of a deliberative democracy.

Furthermore, the paper investigates theories of tolerance that see free speech as a mechanism for cultivating social self-restraint and a robust civic ethic. Finally, we explore the thinker-based theory, which unifies the interests of speaker and listener by framing free speech as essential for the development of individual moral agency and rational thought. Ultimately, the paper concludes that the legal protection of free speech is a complex, pragmatic compromise a perpetual negotiation balancing the need for open discourse against the state's duty to protect the dignity and safety of its citizens, fundamentally rooted in a suspicion of unchecked state power.

**Keywords:** Freedom Of Expression, Freedom Of Communication, FreeSpeech, Hate Speech, Impartial Observer, Autonomy, Democracy, Tolerance.

**Introduction** - This paper examines the complex philosophical and legal landscape of free speech, a cornerstone of modern democratic societies. While the terms "free speech," "freedom of expression," and "freedom of communication" are often used interchangeably, their scope is not confined to mere linguistic utterances. This work argues that defining free speech by conceptual analysis alone is insufficient, as it fails to account for expressive actions, such as painting or silent protest, that convey a message. The difficulty lies in cases where actions are simultaneously behavioral and expressive, making a clear distinction between the two nearly impossible. This challenge, as philosopher John Hart Ely noted, necessitates a move beyond simple definitions to a normative analysis that considers the fundamental values free speech is meant to uphold.

A central focus of this introduction is the crucial distinction between the moral and legal dimensions of free speech. I posit that moral free speech is an inherent natural

or human right, independent of any positive law. These right places a corresponding moral obligation on the state to protect it. In contrast, legal free speech refers to the specific laws and precedents enshrined in a nation's legal system, such as the First Amendment in the United States. I argue that these legal rights may not perfectly align with their moral counterparts; they can be flawed by either protecting too little speech for example- criminalizing blasphemy or too much speech for example-broadly protecting hate speech. This divergence highlights the ongoing tension between what the law is and what it should be.

Finally, this paper explores the different philosophical justifications for free speech, noting that these often lead to conflicting conclusions about its limits. Whether based on a rights-based framework, which views it as an inalienable moral right, or on instrumental concerns, such as the "marketplace of ideas" or the prevention of government overreach, the legal right to free speech is a complex and pragmatic compromise. Acknowledging that

a legitimate legal right may not perfectly mirror the underlying moral right, I conclude that the debate over free speech is, fundamentally, a negotiation about the kind of society we aim to create. It is a constant balance between upholding open discourse, protecting individual expression, and ensuring the dignity and safety of all citizens.

When the state censors a book or any form of expression, it's not just an act of control; it's a profound insult to the intelligence of its citizens. This form of censorship treats adults like children, assuming they lack the capacity to think critically and form their own opinions. The core principle at stake here is not merely the speaker's right to express an idea, but the listener's fundamental right to hear and deliberate. This listener-centric perspective is a powerful framework for understanding why free speech is essential in a democratic society. It posits that individuals, as autonomous agents, must be empowered to engage with a wide spectrum of ideas - even those that are controversial or challenging- without the government acting as a gatekeeper.

**Theories of Listener Autonomy:** The philosophical argument for listener autonomy, most notably advanced by thinkers like T.M. Scanlon, suggests that a state that censors persuasive speech fails to treat its citizens with respect. This is not about the abstract right of a deceased author, like Karl Marx, to have his work read. Instead, the primary harm of censorship falls on the living individuals who are denied the right to engage with that text and form their own opinions. The government's purpose behind a restriction is key here. As articulated by scholars like Rubinfeld and Alexander, a content-neutral restriction, such as a noise ordinance, is generally permissible because it doesn't aim to control the message itself. However, restrictions on viewpoint neutrality and content neutrality, where the government bans discussion on a topic or, even worse, a specific perspective on that topic are severe violations because they directly undermine a listener's right to receive a full spectrum of information. This principle explains why censorship is so damaging to an open society, as it prevents the intellectual and personal growth that comes from encountering diverse viewpoints. The harm lies not in the speaker's silenced voice, but in the listener's constrained mind.

**The Instrumental Value of Listening:** Beyond its non-instrumental, rights-based defense, listener autonomy also has a strong instrumental form. Allowing open discourse isn't just about respecting our right to choose; it's about creating an environment where we can learn and develop. As philosopher Joseph Raz suggests, the ability to listen to others' opinions is often more vital than the ability to express our own. This idea is perhaps most famously championed by John Stuart Mill in his work, *On Liberty*. Mill's defense of free speech hinges on the concept of human fallibility. He argues that we should always be open to the possibility that an opinion we consider wrong might

hold a grain of truth. Even if an idea is completely false, allowing its expression is valuable because it forces us to articulate and defend our own beliefs, deepening our understanding of why we hold them. Mill's argument is fundamentally for the listener, as he famously stated that the "beneficial effect" of a clash of views is on the "impartial observer." This is the essence of the marketplace of ideas metaphor, which suggests that in an open exchange, the best ideas will eventually prevail. While critics of this metaphor point to cognitive biases and the limitations of human reason, Mill wasn't naively claiming that free discourse guarantees truth. Rather, he argued it's the most effective method available for seeking truth, especially when compared to a system where a single authority dictates what is true. Mill's defense, however, isn't a blanket endorsement of all speech. He made a crucial distinction based on time and imminence, arguing that speech that poses an immediate danger, such as inciting a mob can be restricted because there is no time for public deliberation and rebuttal.

Ultimately, the freedom to listen, to engage with, and to challenge all ideas is a cornerstone of a truly free and intellectually vibrant society. The overarching benefit of this open discourse outweighs the potential costs, as it is the only way to ensure citizens can mature into informed, thoughtful, and engaged members of their community.

**Speaker Hypothesis:** In a shift away from justifications centered on the audience's right to receive information, many theorists are now rooting the right to free speech in the concept of speaker autonomy. This perspective argues that the freedom to speak is essential to our ability to be the "thoughtful authors of our own lives". We have a fundamental "expressive interest", a drive to articulate our beliefs, values, and identities. This interest isn't just about public communication; it's a private need for self-expression, which is why acts like writing in a diary deserve protection.

Beyond private expression, the act of public communication is also vital for personal growth. Engaging in dialogue helps us refine our beliefs and contributes to our "deliberative interest". As J.S. Mill argued, exposure to diverse viewpoints is crucial for our personal maturation and intellectual development. This idea isn't just for adults; children also benefit from the freedom to express themselves as they explore their identities and ideas. This provides a strong rationale for extending free speech protections to minors.

While some theorists use the term "speaker autonomy," others prefer the less prescriptive "speakers' capacities." This is to avoid a Kantian or "perfectionist" ideal that some political liberals find inconsistent with the state's neutrality toward different conceptions of a good life. Regardless of the terminology, this approach establishes a strong presumption against government interference with speech. The state has a negative duty to refrain from censoring

speech, particularly when it is based on viewpoint discrimination. To suppress one viewpoint while permitting another is a clear violation of a citizen's equal freedom of expression. This principle of equal treatment is fundamental to the speaker-centric justification for free speech.

Theories of free speech often grapple with its relationship to democracy, with numerous scholars arguing that a free exchange of ideas is essential for a healthy democratic society. This foundational link is explored through various arguments, moving from the philosophical to the pragmatic.

#### **Free Speech and Democracy: Three Main Arguments:**

One perspective is the non-instrumental defense, which views free speech not as a tool but as a fundamental human right. It argues that restricting a person's voice disrespects their dignity and status as a political agent. Citizens of a democracy have the right to participate in the laws that govern them, and to silence them is to treat them as passive subjects rather than equal participants. This view holds that free speech is a necessary precondition for treating individuals with the respect they are due.

Another perspective is the instrumental defense, which focuses on the positive outcomes free speech generates for democracy. From this viewpoint, free speech is a valuable tool for achieving specific democratic goals. For example, it helps to create a society of non-domination by fostering equal relationships among citizens. It also helps to produce better, more just, or publicly defensible outcomes by allowing for the rigorous vetting of ideas. The free exchange of ideas is considered "epistemically desirable" because it leads to greater knowledge and more rational decisions.

A third, highly influential perspective is that free speech is constitutive of democracy itself. This argument posits that free expression isn't just a tool or a right within a democracy; it is an inseparable part of what makes a democracy a democracy. As philosopher John Rawls suggested, to suppress free political speech is to, at least in part, suspend democracy. This view is central to the concept of deliberative democracy, which emphasizes open public discourse and reaching a consensus through the "unforced force of the better argument." The legitimacy of democratic decisions is seen as directly tied to the public debate that precedes them.

While these theories often focus on the unique relationship between free speech and democracy, some scholars, such as T.M. Scanlon and Robert Post, view this connection as a specific application of a broader principle: respect for individual autonomy and popular sovereignty. C. Edwin Baker and John Rawls link the right to free speech to the fundamental moral commitment to individual freedom and the development of one's moral faculties.

However, some academics argue that political speech deserves a higher level of protection than other forms of expression. They contend that legal safeguards for political

discourse should be strengthened to prevent government censorship of dissidents. This approach, while well-intentioned, raises questions about the balance between protecting political expression and other forms of speech, such as artistic, scientific, or personal expression.

**The Thinker-Based Theory of Free Speech:** Shifting from the democratic context, Seana Shiffrin's "thinker-based" theory offers a different framework for understanding free speech. She argues that the traditional approach, which separates the interests of the speaker, the listener, and the democratic citizen, is flawed. Instead, she proposes a unified theory where the ability to think, reason, and communicate are deeply intertwined.

Shiffrin's theory is built on two core, mutually reinforcing freedoms: freedom of thought and freedom of communication. She argues that free speech is essential for the "development, functioning, and operation of thinkers." Externalizing our ideas through speech or writing is often necessary for us to clarify them and gain a critical perspective. Moreover, communicating our ideas to others and receiving feedback is a crucial tool for refining our thoughts. These communicative processes are not limited to political discourse but encompass all forms of human inquiry and expression.

The second core tenet of her theory focuses on the essential role of communication in the exercise of our moral agency. According to Shiffrin, our ability to express our needs, feelings, and intentions authentically allows us to understand one another, collaborate on shared plans, and work through disagreements. Without precise and unambiguous communication, we couldn't effectively fulfill our social responsibilities. Furthermore, our ability to exercise normative authority to consent, waive rights, or make promises relies entirely on clear communication.

Therefore, our capacity to act as moral agents relies on safe and protected channels for expression. Free speech serves a critical function in safeguarding these channels by ensuring that individuals can express themselves without fear. Shiffrin's theory unites the protection of our individual intellectual development with the protection of our collaborative, moral interactions, offering a more complete justification for robust free speech protections.

**Theory of Tolerance:** In his 1986 work, legal scholar Lee Bollinger presents a compelling argument that protecting even deeply offensive speech is vital for nurturing a tolerant society. This consequentialist view sees free speech not as a simple right but as a social exercise that builds a "general social ethic" of tolerance. Bollinger argues that by forcing ourselves to tolerate speech we find abhorrent, like pro-Nazi rhetoric, we strengthen our capacity for self-restraint. He believes this practice of tolerating offensive speech is central to the function of free speech, as it hones our liberal sensibilities and, in turn, helps to restrict illegitimate state power. In essence, our resistance to censorship proves our strength as a liberal society, creating

a more resilient social fabric.

Building on this idea of self-control, philosopher Matthew Kramer offers a deontological justification in his work. Kramer's theory centers on the state's moral duty to foster citizens' self-respect and mutual respect. He argues that in a society where the government has successfully cultivated a populace with strong liberal-egalitarian values, bigoted or hateful speech will not be taken seriously. Instead, it will be seen as "execrable chirps that are to be endured with contempt." Kramer maintains that a state's response to illiberal ideologies should not be censorship, but rather a focus on creating a society with the moral fortitude to dismiss them. Both Bollinger and Kramer, from different philosophical standpoints, ultimately conclude that free speech is a tool for cultivating a more tolerant and ethically strong citizenry.

Beyond these theories of tolerance, the defense of free speech often rests on a profound suspicion of state power, a perspective that highlights the inherent danger of granting the government authority to regulate expression. This instrumental view posits that our primary motivation for safeguarding free speech is a pragmatic recognition that unchecked state power poses a grave threat to liberty. By denying the government the power of censorship, we make it harder for it to suppress political opposition, silence dissent, and enact unjust laws. This is not just a theoretical concern; it's rooted in historical precedent, as legal scholar G. Stone's comprehensive analysis shows that laws designed to prohibit "dangerous sedition" have been repeatedly misused to suppress legitimate anti-war protests and other forms of political dissent. This is often referred to as the "slippery slope" argument, where a small, seemingly justifiable restriction on speech creates a dangerous precedent for future abuses.

Some critics, however, point out a significant limitation of this instrumental view: it fails to explain why even the most trustworthy governments should uphold the right to free expression. This approach, which Cohen calls "minimalist," focuses solely on the pragmatic necessity of free speech as a safeguard against a dangerous government, rather than its intrinsic value. Despite this, instrumental concerns can be valuable when they support or expand upon non-instrumental viewpoints. For example, even if we have a moral duty not to engage in hate speech, the fear of government overreach might counsel against giving the state the power to regulate it.

A separate, critical perspective questions whether free speech is a truly unique and specially protected right. Joel Feinberg argues that it may just be an extension of a more general principle of liberty, where coercion always needs a special justification. If this is the case, then any legal protections for free speech are merely historical or practical, rather than based on a unique moral foundation. A second challenge for free speech proponents is demonstrating that it warrants a high level of legal protection even when it

causes harm. Theorists like Frederick Schauer, Larry Alexander, and Douglas Husak contend that it's difficult to justify this extraordinary protection, which undermines the notion of a special moral right to free speech.

However, scholars like Leslie Kendrick argue that opponents of a special right to free speech might be setting the bar too high. The interests that justify free speech such as autonomy and self-expression often overlap with those that justify other rights, like freedom of religion. This overlap doesn't necessarily diminish the importance of free speech. The fact that free speech shares a normative foundation with other important rights, as supported by the philosophical framework of John Rawls, does not make it any less important. It is part of a cluster of liberties essential for human flourishing. Thus, the debate over free speech remains unsettled, but a more nuanced understanding is emerging that acknowledges shared foundations while recognizing the specific importance of expression.

**Conclusion:** The philosophical and legal landscape of free speech is defined by a necessary and constant tension between competing values and justifications. This paper has demonstrated that the right to free expression cannot be reduced to a single, monolithic theory; rather, its robustness in a democratic society is supported by a confluence of listener-centric, speaker-centric, democratic, and pragmatic concerns.

From the perspective of the listener, censorship is understood as a profound insult to citizen autonomy, constraining the mind and violating the fundamental right to hear, deliberate, and form one's own opinions. In contrast, the speaker-centric view roots free speech in the individual's essential need for self-authorship, expression, and the development of their moral and deliberative capacities. The thinker-based theory successfully unifies these perspectives, showing that the freedom to communicate is inseparable from the freedom to think and function as an autonomous moral agent.

Instrumentally, free speech is upheld as the essential engine of a deliberative democracy and the best, though imperfect, method for seeking truth in a "marketplace of ideas." Crucially, the defense of free speech is also a powerful check on the state, a pragmatic safeguard against the abuse of power rooted in the historical reality that laws designed to curb dissent are inevitably misused. Furthermore, the theory of tolerance posits that the capacity to endure even offensive speech builds a vital social ethic of self-restraint.

In summation, the legal right to free speech remains a pragmatic compromise that rarely achieves perfect alignment with its underlying moral counterpart. The ongoing debate over its boundaries specifically, how to balance open expression against societal harms is not merely an academic exercise. It is, fundamentally, a defining negotiation over the character of the society we seek to create: one that fosters robust intellectual growth and democratic

participation while ensuring the equal respect, safety, and dignity of all citizens. The unsettled nature of the free speech debate is thus not a failure, but a sign of its enduring importance as a cluster of liberties essential for human flourishing.

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