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A Thinker-Based Perspective on Free Speech and Fake News

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Abstract: Since the 2016 US Presidential election, the topic of fake news has become extremely prevalent on a global scale. However, the recent issue of disinformation manufactured by malevolent agents has given rise to new potential problems that have led to harmful consequences. Such problematic consequences have led various government institutions to respond in a variety of ways. Given the problematic consequences of these types of actions, should governments intervene by regulating or prohibiting fake news? To answer this question, I present Seana Shiffrin's unique theory regarding the value of free speech. Within this account, Shiffrin's follows an autonomy type theory of freedom of speech that emphasizes the central role of participants in speech and cognition. From this theory, Shiffrin gives a clear unique account about the value of speech. In other words, Shiffrin argues that freedom of speech should focus on thinkers themselves and protecting their freedom of thought. Notably, I believe the benefits to this thinker-based theory rival those of other competing theories. More importantly, she is able to draw a distinction between sincere and insincere speech. With the potential dangers that fake news poses to the free development and operations of the thinker's mind, Shiffrin's compelling view leaves open the possibility that fake news is regulable because insincere speech lacks the value that other speech encompasses.

Geoffroi G. Castro

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Section 1) Introduction

Without a doubt, free speech is a crucial element to the success of democracies. The ability to express and speak our mind in a public setting is an important factor that draws the line between a democratic state to an authoritarian one. Indeed, the public would not be able to live freely in a democracy without the freedom of the press or having the ability to criticize the government. However, online social media has played an increasingly important role in communication as to how we obtain information and news within our public sphere. This prevalent presence of social media raises the issue of whether or not it is ever permissible for governments to intervene in this emerging channel of communication.

One case that has stirred this discussion further has been the recent issue of online information manufactured by malevolent agents. The recent prevalence of online disinformation and misinformation has given rise to new problems that have led to harmful consequences. This effect has become a serious issue that has raised the attention of several government institutions. To prevent the spread of what has been popularized as “fake news” government institutions have responded by enacting legislations or public policies enforcing its regulation. In this case, the legislation has so far focused on removing the content or punishing those responsible for posting the information. Such actions have prompted many groups and human rights organizations to object that these are violations of free speech or that they at least set a precedent for it. In their view, governments should not have the power to regulate or silence voices in a public sphere like the internet.

Given this growing conflict, ethical questions must be asked regarding the extent to which free speech should protect online communication. Additionally, should there be limitations to how the state regulates this channel of communication? Arguably, speech and expression refer to the ability to express thoughts and feelings by any articulate method of

communication. One method for an individual to articulate their thoughts and feelings is through social media and the internet. However, we must ask if there are types of online communication such as disinformation that warrant regulation from the government. What are the justifications for a state to regulate online speech activities in certain cases? To answer such questions, I will take an approach that focuses on the morality of the situation. As such, I will not spend a lot of time regarding the legality or practicality of the situation. Nevertheless, I will address practical concerns regarding the government's ability to regulate fake news.

In any case, there have been several different theoretical accounts of freedom of expression within the literature that have attempted to explain the value of free speech. As part of my argument, I will argue that the most compelling theory that is best suited to address complex issues of free speech is Seana Shiffrin's thinker-based approach to freedom of speech. Within this account, Shiffrin follows an autonomy type theory of freedom of speech that emphasizes the central role of participants in speech and cognition. In other words, Shiffrin argues that freedom of speech should focus on the *thinkers* themselves and protect their freedom of thought. My aim will be to highlight how Seana Shiffrin's thinker based account is not only a worthwhile, compelling theory of free speech, but also how it succeeds in addressing this ongoing issue of fake news. In short, my position will be to argue that such an account is able to justify the regulation of fake news, while still faithfully protecting the fundamental values of free speech that many argue would be lost.

Before I begin, I will explain the layout of this paper. Firstly, I will begin by introducing the concept of fake news. Within this section, I will present a definition of fake news that is representative of the situation and explain how it is problematic in society. Secondly, I will introduce Seana Shiffrin's thinker-based account to free speech. In establishing Shiffrin's

theory, I explain why her theory is the most compelling account of free speech. By elaborating on the value of free speech in this account, I will, thirdly, present Shiffrin's argument against lying and explain how it presents a harm to this value. Fourthly, I will apply this core idea of lying and apply it to this contemporary case of fake news. Indeed, my position will be that Shiffrin's argument is able address the moral concerns regarding the conflict between fake news and free speech. Finally, I will take the time to address the substantive and pragmatic concerns one may have with allowing the government to regulate fake news.

Section 1(a). What is fake news?

Typically, most people would consider fake news to be false information that masquerades as news, especially when the author is consciously aware about the false value of the contents. However, fake news has been described in many different forms. For instance, fake news can be described as individuals intentionally or unintentionally posting or sharing stories or articles in their social media that are misleading. Moreover, there are articles of satire and parody that are made deliberately to mislead people but for entertainment purposes. For this reason, a definition of fake news will be necessary to accurately represent the moral conflict between the government regulation of online communication and respecting free speech. Unfortunately, there is not yet a consistent definition of the concept among the scholarly literature. The term itself comes loaded with several different political meanings and interpretations. Nevertheless, I will attempt to formulate a clear and representative definition to able to understand the complexity of the moral situation.

Within the scholarly literature, the definition of fake news has varied from one schools of thought to another. Alcott & Gentzkow (2017), leading scholars on the subject, have taken the general and broad approach in their research and operationalization of fake news. In contrast,

other authors have decided to take a narrower approach and divide fake news into different relevant categories. For instance, First Draft News formulated a typology of “seven distinct types” of false content that include: satire/parody, misleading content, imposter content, fabricated content, false connection, false context, and manipulated content (Wardle, 2017). To make sense of these different approaches, Tandoc et al. (2017) have argued that these definitions involve degrees of “falsity and deception.” Examples of manipulation and fabricated content with the intent to harm would be considered high on these axes, while news parody and misleading content would be in the low end.

For the purposes of this paper, I will attempt to focus on categories of fake news that are high on the level of deception, facticity, and have the intent to mislead in order to serve a political or monetary agenda. In addition, I will limit my focus to only online communication on the internet and social media. The reason for this limit is that social media and the internet are emerging channels of communications in which the government has no prior precedent or history of regulation. As such, there is an ambiguity as to how to proceed ethically. A point that I will later address in my paper is that many of the fake news incidents originate from online sources of communication. With these conditions, I argue that the best definition of fake news that captures this focus comes from researcher Edda Humprecht in a communications research journal. Accordingly, Humprecht (2018) defines fake news as, “Online publication of intentionally or knowingly false statements of facts that are produced to serve strategic purposes and are disseminated for social influence or profit” (p. 3). In effect, this definition best represents the type of online disinformation that is the main source of the conflict between free speech and government regulation of online communication.

Understandably, some will disagree with my narrow focus on the subject and respond that no definition of fake news should exclude other types of general cases. I disagree with this point since instances of news parody or satire for entertainment purposes should not fall under the same government regulatory scope as intentional fabricated contents with political agendas. Further, no reasonable individual would want the government to have such broad regulatory control over a spectrum of different categories of online communication. In any case, I will address this point later within my paper. For now, I will assume this definition to illustrate the moral situation. Additionally, while some scholars may disagree with using the term “fake news,” I will continue to refer to this definition by its popular name for conciseness and consistency. With this definition in mind, I will proceed by addressing why fake news is problematic in our society.

Section 1(b). Why is fake news a problem?

With the concept of fake news established, it will be important to go into why it is a large problem in our society. With the introduction of the internet and social media there has been a shift or change in the standards of news information from seeking truth objectivity to click bait subjectivity. As a result, to paraphrase Ted Koppel, news has transformed from being “objective and dull” to “subjective and entertaining,” with off-the-cuff opinions replacing the “old-fashioned concept of reporting” (Hawkins, 2017). This makes it difficult for consumers to determine what news sources are reliable.

Before the introduction of the internet and social media, it was much easier to differentiate what was and what was not truthful information. One of the reasons why it was considerably easier to detect news was that information was typically consumed through a limited central source such as newspapers, television, and radio. Given these limited venues of

information, it was much easier to hold accountable news sites for spreading deliberate false information and propaganda. For example, if a newspaper published a lie about a celebrity or politician, then they could have been held accountable by being sued for libel or slander in that situation with the added consequence of having to publish a retraction. Moreover, these news sites are held to a higher standard, since journalists must always check all their sources and stand by a universal code of ethics in journalism.

Notably, fake news can be extremely effective on any citizen as it amplifies our psychological behaviors and makes us extremely gullible. One of these behaviors that make fake news seem trustworthy is confirmation bias. Confirmation bias is already an established behavior that makes us prone to be more decisive and tribal against each other. Indeed, political ideologies will tend to follow news that associate with their beliefs. However, in the case of fake news, it becomes more threatening because if a false news report coincides with our bias, we are more likely to believe it than the actual news. According to Joseph Pierre (2017) from *Psychology Today*, consuming information with “fake news” is like “confirmation bias on steroids...” Additionally, he added that other psychological behaviors like “cognitive dissonance,” the “backfire effect,” and the “Dunning-Kruger Effect” are relevant to the issue of fake news. According to cognitive dissonance theory, there is a tendency for individuals to seek consistency among their cognitions (i.e., beliefs, opinions). Similarly, the backfire effect suggests when those opinions and views are challenged by contradictory evidence, beliefs become strengthened and reinforced. The Dunning-Kruger effect suggests that the acceptance of fake news originates from a combination of poor self-awareness and low cognitive ability which, results in one overestimation of capabilities.

The unaccountability and effects of fake news have led to some taking the opportunity to gain an advantage in their interests. In this situation, I am referring to political opponents and rival nations using fake news to harm their adversaries. During the Cold War, the Soviet Union ran a propaganda campaign of misinformation in which they deliberately but subtly tried to publish false stories to form a conspiracy that AIDS were a creation by the U.S. that resulted from secret military experiments (Qiu, 2017). As ridiculous as it may sound, it succeeded in creating tension, paranoia, and divisiveness among the U.S. and other nations. Dr. Thomas Boghardt, a military and intelligence historian described the strategy as an approach of disinformation that is basic, but “works” (Qiu, 2017). In the age of social media, these types of propaganda campaign are still occurring and are even more effective with the feasibility and commutative spread ability that social media offers. Additionally, Facebook has admitted that up to 126 million people saw Russian-bought ads intended to sway the 2016 U.S. election (Isaac & Wakabayashi, 2017). A 2018 study found that fake news had at least significant role in reducing voter support of Hillary Clinton on Election Day (Gunther et al., 2018). To emphasize, there is a consensus among the political science literature that fake news can be utilized as a political strategy of disinformation and misinformation to gain influence on social media or achieve political agendas (Lazer et al., 2017).

More recently, a report sent to the U.S. senate concluded that Russia had authorized a campaign of online disinformation that was designed to polarize the US public and interfere in elections by creating distrust of US institutions in African American and Hispanic voter’s populations voters and persuading to “boycott elections or follow the wrong voting procedures.” Moreover, the campaign focused equally in “spreading sensationalist, conspiratorial, and other forms of junk political news and misinformation to voters across the political spectrum.”

(DiResta et al., 2018). Shockingly, the report also states that this campaign of online disinformation continued even after being caught interfering in the 2016 election (DiResta et al., 2018). Given this information, it is evident how effective a political opponents method of propaganda and misinformation can be utilized through fake news.¹

With this in mind, fake news can lead to serious harm in a variety of different ways. The most prominent obvious harm that people attribute to fake new relates to democratic participation. In this case, malevolent agents with ulterior political motives publish and distribute online false information to certain groups to influence voter opinion on certain candidates in each election. Perhaps the most publicized example of this situation occurred in the 2016 Presidential election between candidates Donald Trump and Hillary Clinton. As mentioned before, the malevolent agent suspected here would be Russian intelligence and programmed bots (Howard et al, 2018). Additionally, other democratic sovereign states have recently accused fake news for affecting their elections. Hambrecht (2018) concluded that across four different western countries, fake news strategically targeted different politically polarized communities with different issues. With the growing number of autonomous states with electoral systems reporting the occurrence of fake news, it does not appear that this epidemic will decrease in future years.

Although fake news has been derided for influencing democratic elections, it affects have also led to other dangerous consequences as well. To elaborate, online disinformation that has maliciously targeted certain groups or people has resulted in physical harms being committed.

¹ Not only are rival nations like Russia resorting to methods of distorting information for their political interests, but party partisan and ideological groups/ individuals are also committing to these acts in their posts and shares, whether knowingly or unknowingly. Indeed, according to an Oxford study conducted that focused on sites known for publishing misinformation, they found over 48,000 Facebook and 14,000 Twitter accounts that tend to post false information, with far-right groups producing the most fake news (Whittaker, 2018). Regardless, the result has had the same effect of negatively affecting citizens in a society. As it can be seen, without the ability to hold accountable fake news, there seems to be no incentive for political opponents or rival nations to not use this as a strategy for political interests.

These harms are caused by uninformed denizens that were influenced to act by false information read online. Types of actions that have resulted in these harms include threats, harassment, or physical violence. The best example of such a harm caused by fake news would be the conspiracy theory of Pizzagate. This debunked theory that was prevalent during the 2016 presidential election suggested that democratic candidate Hillary Clinton and several other high-ranking officials of the Democratic Party were involved in human trafficking. More specifically, there was alleged child sex ring that that involved the Washington D.C. restaurant Comet Ping Pong. Within a relatively short time, this conspiracy spread all over social media is partly credited to Russia accounts and political opponents (Rob, 2017).

In particular, this conspiracy theory resulted in a man from North Carolina to formulate a belief that this information was authentic and objectively true. This belief resulted in him traveling to Comet Ping Pong to investigate this conspiracy and firing a rifle inside the restaurant, which endangered the lives of many innocent people. Alongside this fact, the restaurant owner and staff began to receive several death threats by individuals who believed the fake news to be true. These examples of the Pizzagate case exemplify how fabricated false content that was formulated with a malicious intention can influence people to act in harmful manners that result in physical consequences. There are cases of Pizzagate that have had the same effect that have led to similar problematic cases. Indeed, fake news has led individuals to act harmfully towards others. For these reasons, fake news poses a harmful problem toward society.

Section 1(c). Government intervention and the moral situation.

In establishing this general problem that fake news has presented for society, I will narrow this general problem to focus on addressing whether governments should intervene to address this issue. That is to say that while there are multiple parties that may be involved in

providing a solution to this problem, my central focus will be on examining whether governments should be involved in this solution. To prevent the spread of this epidemic and eliminate the dissemination of fake news, several government institutions have chosen to respond with legal measures by enacting legislation or public policies that are intended to regulate fake news. Specifically, these legislative actions and policies are designed to reduce the prevalence of fake news as they have defined it. While there are several types of relatively non-controversial actions that governments can take, such as actions of compelled disclosure or labeling (rating) the content, there are a particular set of actions that will raise controversy.

In detail, there are two types of possible actions that a government can take when regulating speech that may raise controversy. The first type of action consists of regulating the speech itself such as the removal of the content. The second type of action consists of the prosecution of the agent that generated and published the fabricated false content. This type of action would range from forcing to pay a specific fee to imprisonment depending the country. The accountable agent would be prosecuted on either an individual level or a more abstract level like prosecuting the technological company that is responsible for the social media platform. To illustrate, Philosopher Alvin Goldman suggested that, “One [action] consists of attempts to eliminate or reduce these kinds of postings, especially on platforms with a readership in the multimillion range [while the] ... second is to take punitive action against some actor – either the purchaser of the Facebook ad or Facebook itself” (Goldman, 2017, p.13). In continuing forward, I will refer to the former action as category (A) type regulation and the latter as category (B) type regulation.

With this categorization in mind, several different government bodies have pursued one or both method types to prevent the spread of fake news. In regards to the category (A),

Germany's Network Enforcement Act, which was passed in 2017, imposes fines of 50 million euros or U.S. dollars to social media tech companies if they fail to remove "illegal content" within 24 hours upon receiving a complaint (Haciyakupuglu et al., 2018). Democratic countries such as France have followed suit in this precedent by drafting legislation enabling candidates or political parties to bring an immediate halt, by court order, to the publication of information deemed to be false within three months of a national election (Fighting 'fake news' with the law, 2018). Both Category A cases exemplify more of a focus on reducing the effect that a fake news publication may have on large groups.

In contrast, category (B) responses are more interested in holding accountable the agent that published the false news information. In this category, sovereign countries such as Italy have proposed taking limited measures of only having agents, who have been proven guilty, of facing comparable fines that have been directed towards social media companies. In addition, the U.S. has further proposed that the companies also be required to disclose relevant information regarding the agent(s) that place the fake news post in their media platform (Haciyakupuglu et al., 2018). In the case of U.S., the purpose of this requirement is to be able to gather credible evidence about who created the false information and, ultimately, hold them accountable. At the same time, however, other countries have taken more extreme measures in their regulation of fake news. Rather than focusing on the social media tech company, some countries have focused on holding individual agents responsible with harsher punishments. Indeed, countries such as Malaysia, Brazil, and the Philippines have gone so far as to propose and enact legislation that subject convicted proven criminals to large hefty fees or imprisonment time for more than three years ("Fighting 'fake news' with the law", 2018). Regardless, both types of responses showcase how governments are responding to this current political issue.

In any case, the responses by these governments in countering fake news has prompted several critics and human rights organizations to object and criticize these forms of actions as violation of freedom of expression. In particular, Germany's new law has caused media and human rights organizations to be to oppose the law since it first appeared in draft form. The Global Network Initiative, which is comprised of nongovernmental organizations, academics, investors, and companies committed to free expression and privacy online, said the law would be "described as a measure to combat hate speech and disinformation online, but its potential impact would be broader censorship of the internet" ("Proposed German Legislation Threatens Free Expression Around the World, 2017"). At the same time, countries such as the Philippines and Malaysia, have passed legislation that with similar criticism and scrutiny. Clarissa David, communications professor at the University of the Philippines, has argued that, "There is no demand for new legislation against fake news in the population of these countries [...] The demand seems to be coming from politicians who feel slighted by some story that went viral"(Tani,2018).

While there are practical or specific reasons that many advocates are against regulation, there is an underlying moral reason that motivates these advocates to react harshly against the government's actions. In this case, the moral reason is upholding the ideal to protect all human individuals' right to freely speak their thoughts and opinions. Intuitively, we would never allow governments to unjustly regulate or prosecute individuals for speaking or expressing themselves, especially in online communication. However, the moral conflict between fake news and free speech is raised when we must ask if it would ever be permissible for governments to regulate or intervene in situations such as fake news. Is there any valid justification for governments to intervene? Does the type of regulation (A or B) matter in terms of justifiably regulating online

speech? Given that social media and the internet are emerging channels of communication, there has not yet been a precedent set to address this contemporary problem. I have already established there is valid concern to be had with fake news given the problematic effects it has on society. At the same, however, there is a justified fear that if governments begin to regulate online communication, violations of free speech will occur. As a result, there is an ambiguous moral conflict present between protecting the value of free speech but also resolving the problem of fake news.

Accordingly, the best account of free speech should be able to adequately address and resolve this moral conflict. In this case, I will argue that Seana Shiffrin's thinker-based account of free speech is not only a compelling view of free speech, but also one that can address this problem. More specifically, Shiffrin's view leaves open the possibility that lies are regulable because insincere speech lacks the value that other speech encompasses. My intention will be to apply Seana Shiffrin's argument against lying to the problem of fake news and address the concerns raised by critics over this situation. Not only does this position uphold the value of free speech but it also recognizes the problems that deliberate deception such as fake news may have on our channels of communication.

Section 2) The Thinker-Based Account to Free Speech

In having established a particular problem with fake news, I will now shift focus to presenting philosopher Seana Shiffrin's theory of free speech. In *Speech Matters*, Shiffrin introduces her unique theory regarding freedom of speech. Within this account, Shiffrin follows an autonomy type theory of freedom of speech that emphasizes the central role of participants in

speech and cognition². In essence, Shiffrin (2014) takes the position that at the core of all fundamental interests of, free speech resides as a uniting element that is the development and maintenance of oneself qua *thinker* and one's ability to engage in moral relations with other thinkers (p. 80). In other words, this account of speech puts the center of attention around speaker and listener alike as *thinkers* themselves and recognizes their freedom of thought, communication, and moral agency. For the rest of this section, I will elaborate on Shiffrin's thinker-based account and argue that it is the most compelling account of free speech.

To begin, there are many well-known theories of free speech that emphasize and single out different reasons and interests for the protection of speech against censorship.³ Indeed, these interests and reasons have ranged from the promotion of the truth arguments to the need of public discourse and deliberation in democracies.⁴ Yet, while there is merit to using these different interests as a single exclusive foundation for the protection of speech, I argue that one of the unique features of Shiffrin's theory is that it builds a foundation of free speech on a unification of different reasons and interests. That is to say that there is something valuable in considering the interests and reasons as vastly different in their justifying force but are nonetheless equal in justifying activities of speech and expression in which an autonomous individual is motivated to appreciate freedom of speech (Shiffrin, 2011, pp. 84-85). From this view, a comprehensive unified approach can be argued to free speech that prioritizes valuing and

² Free Speech theorists such as Brison (1998), Baker (2011), Easton (1995) Strauss (1998), Thomas Scanlon (1972), and Dworkin (1996) argue for a general value of autonomy that maximizes individuals to self-rule, self-develop, or exercise some type of rational/intellectual capability. Given this value, the position is against government censorship or regulation of communication, as it can negatively influence autonomy by preventing individuals from receiving specific arguments, thoughts, or opinions that are relevant to making autonomous decisions.

³ See Schauer (1982).

⁴ In this case, protecting free speech allows us rational agents to discern and identify which opinions and spoken information can be valued as fact or truth, while also determining which information can have valued as false or misconceived. This discovery or inquiry of truth can only be made possible when all opinions, thoughts, and expressions are allowed to be presented. Furthermore, for democratic theories, See Meiklejohn (1948); Post (2011); Weinstein (2011).

respecting the mind of the individual and its operation. In other words, by focusing on respecting the individual and their intellectual interest as an autonomous thinker, we can establish a stable foundation that unifies and connects the fundamental interests we have to free speech.

Accordingly, Shiffrin further establishes this point in stating that:

“My claim is that the interests and needs of the underlying thinker presupposed by all of those theories underwrite a freedom of speech protection that unites these seemingly disparate approaches and yields a fairly broad justificatory foundation for the freedom of speech protection” (Shiffrin, 2014, p. 85).

For other theories to disregard the autonomy of the individual’s mind and freedom of thought would seem counterintuitive since they must already presuppose that the autonomy of the individual and their capacity to express and listen to thoughts is fundamentally valuable to the various distinct versions of expression. For instance, promotion of truth arguments would not work or succeed if they openly discredit and minimize the importance of an individual as a thinker. To explain, the individual has an underlying interest in discovering the truth that extends beyond a direct specific reason for obtaining the truth. In this case, the individual has an interest in formulating “true beliefs about themselves, including the contents of their mind, and the features and forces of the environment from which [the individual] emerges and interacts.” (Shiffrin, 2011, p. 291) To remove or ignore this interest would result in having an incomplete understanding of promoting the truth. Naturally, this reasoning can apply to other non-truth-related speech arguments where the value of the autonomy of the agent is presupposed. Thus, in taking an approach that values the development and free operation of the individual's mind, a cohesive unified theory of free speech can be established that takes into account different interests that relate to speech and expression by using autonomy as the unifying element.

To further expand on this idea that individuals are autonomous thinkers by accepting that individual humans have the significant capacities to fulfill intellectual need that relate to being to being rational, emotional, moral, and perceptual agents (Shiffrin, 2014, p. 86). For Shiffrin (2014), obtaining, developing, and exercising these capacities amounts to the core of what we value and find significant about ourselves (p. 86). Indeed, while these capacities may be present in other non-human entities, we develop these capacities in a uniquely reflective and conscious way that forms from our agency. No other species or animal deliberately develops or consciously exercises the capacities as rational humans do.⁵ Given that these capacities are central to our autonomous agency, we must find it necessary for government, society, and individuals to respect and support these capacities and the value they hold. Therefore, Shiffrin argues, we must inquire the conditions that yield for a substantial theory of free speech that can succeed in this task.

In order to understand what conditions are necessary to respect and support an autonomous thinker's capacities, we should also take into account their "core" fundamental interests that are tied and connected to these capacities. Accordingly, Shiffrin identifies and lists some of the important and fundamental interests that rational autonomous agents have when it comes to our capacities for thought and deliberation of practical judgement, and moral relations:

- a. A capacity for practical and theoretical thought.
- b. Apprehending the truth.⁶
- c. Exercising the imagination⁷.
- d. Becoming a distinctive individual.

⁵ As can be seen, a case can already be built with Shiffrin's theory against fake news since her theory of free speech excludes non-rational individuals such as Russian bots on social media.

⁶ This fundamental interest can be associated with promotion of truth or "marketplace of ideas" type interests, in which free speech is defended as the only mechanism for truth acquisition (Goldman 2017; *Abrams v. United States* 1919; Milton 1644). Now, the best method in which society will succeed in aiming for the truth is to allow all opinions and thoughts to be heard freely to compete with other thoughts and opinions for evaluation and criticism.

⁷ This fundamental interest refers to an interest for individuals to express themselves through artistic activities such as the arts, publications of fiction, music, film etc.

- e. Moral agency.
- f. Responding authentically.
- g. Living among others.⁸
- h. Appropriate recognition and treatment.⁹

Of course, this list of fundamental interests is not an exhaustive list of fundamental interests but, nevertheless, highlights some of the key ones that are separate, independent and distinct from the specific interests regarding our own self-interests, projects, and desires in a given situation (Shiffrin, 2011, p. 291). While some of these interests are self-evident, others require and are offered more detailed explanation. For example, the ability to exercise one's imagination (fundamental interest c.) is an important interest to the thinker since it allows any rational individual the opportunity to exercise their creativity to create new artistic works (Shiffrin, 2014, p. 86). More often than not, artists, fiction writers, and filmmakers will have such an intellectual interest that helps develop their perceptual capacities and create great bodies of work. Each interest mentioned enhances the agent's self-development, knowledge (of oneself, others, the environment etc.), opportunities to develop intellectual capacities and the "intellectual prerequisites" of moral relations (Shiffrin, 2011, 291). As it can be seen, these fundamental interests are vital components that help understand the intellectual conditions for autonomous thinker to develop and operate their mind freely.

With this in mind, Shiffrin (2014) argues that in order to respect and support the capacities and interests of the autonomous thinker, it is necessary to have "protected opportunities" to speak and think freely (p. 88). In other words, free speech and expression are essential to the appropriate development and functioning of thinkers and their intellectual

⁸ This fundamental can refer to democratic-based reasons that emphasize that speech is important to the public discourse, public deliberation and self-governance. See Meiklejohn (1948); Post (2011); Weinstein (2011).

⁹ Fundamental interests (e), (f) and (h) refer to autonomy-based interests of being recognized as equal, autonomous, rational agents. Moreover, free speech is a manifestation of individual autonomy. See Scanlon (1972); Dworkin (1992); Strauss (1998).

interests. The reason being that the communicative abilities of speech and expressions are the only “public avenues” in which one can precisely claim their individuality. To put it in another way, speech and expression are the only methods in which an autonomous thinker can be able to successfully represent the contents on their own mind and thoughts to be able to distinctly represent themselves to others. Without the ability to speak or express ourselves, how would an individual be able to sincerely express their thoughts, personality, creativity, moral and political views to others? In this case, it seems that communicating the contents of our mind is the only method in which we can further our interest of being recognized by other individuals. At the same time, speech and expression improves our social and moral development since communicating with others outside our minds allows us to appreciate and recognize others different perspectives and ideas, while also taking them into consideration when forming our own beliefs (Shiffrin, 2014, p. 88). As Shiffrin (2014) argues, communication, “makes possible complex forms of social life that demand specialization and epistemic cooperation” (p. 89).

An important point to keep in mind is that Shiffrin’s argument is asserting an intrinsic value here by claiming the importance of distinguishing our individuality and engaging in moral and social relations as autonomous thinkers.¹⁰ The intrinsic value here is that expressing and listening to thoughts and opinions is valuable in its own right, as it allows ourselves to autonomously distinct from one another. As Shiffrin (2014) clarifies, “it is important in itself that one be known as the distinctive individual one is. It is also essential for one to be fully respected by others and therefore able to engage in full moral relations with others” (p. 89). From the moral agency and duty perspective, we cannot begin to respect and treat others as autonomous

¹⁰ Similar to other deontological arguments, this approach argues that speech is important to protect because speech in itself is good and valuable. In other words, this perspective would argue that speech is inherently valuable with an explanation that relates to its own sake and requires no further justification or contingent fact besides its fundamental reason.

individuals without access to their thoughts and content of their mind at their own choosing. For instance, consider a situation in which thinker (1) is at moral or political disagreement with thinker (2). In order to be able to escape this deadlock and reach a peaceful settlement or compromise, both individuals need to be able authentically understand and respect where the other is coming from. However, to get to that point of mutual respect requires that we be able to communicate with one another authentically and share both our perspectives. While there is certainly the good consequence of maintaining peace in this example, the intrinsic value of this communication between the two ways of acquiring mutual respect for one another as autonomous thinkers require communication. Even if no agreement came about, the intrinsic value of these two individuals communicating with each other would exist. Nevertheless, this perennial value between the two individuals is the point Shiffrin is trying to emphasize in her argument.

The complexity of mental thought and content prevents anyone (unless you have telepathy) to be able to discern, identify, or recognize the thoughts and ideas of individuals without explicit external and linguistic representation/articulation. In this case, externally communicating complex thoughts or ideas is the only way in which they can be fully formulated or realized. As Shiffrin states, “some thoughts may only be fully identified and known to themselves if made linguistically or representationally explicit” (Shiffrin, 2014, p.89). Indeed, how could a philosopher ever be able to articulate and externalize their profound complex theory without oral, written, or symbolic speech? Even a mime is expressing some form of communication with their hand movements. In detail, Shiffrin’s key point is that “rational human thinkers need access to other thinkers under conditions in which their mental contents may be known with some degree of precision....” (Shiffrin, 2014, p. 90).

In addition, if the mental contents in our mind are the source to our individuality and developing our moral and social relations, then anything that prevents us from communicating those contents to others would severely hinder or disrupt our intellectual capacities and development (Shiffrin, 2014, pp. 89-91). In an example that loosely mirrors Shiffrin's solitary confinement situation, imagine a situation in which an individual's plane crashes into a deserted island with no life on it. As the only survivor of the plane crash, the person spends the next twenty years alone without any social interaction. As a result, this person that was forced into isolation will suffer from mental and emotional conflict that will make them to begin, "progressively losing their grip on reality, suffering hallucinations and paranoia; maybe become psychotic" (Shiffrin, 2014, p.90). In a sense, such isolation is a result of an absence from "bilateral communication" and social interaction (Shiffrin, 2014, p. 91). Similarly, while not as extreme as this isolation example, restricting freedom of speech and expression bears a similar disruption of our intellectual capacities and interests. Hence, it is necessary for us as thinkers to have a broad far-ranging access to the ability to authentically externalize and make known of our mental content in order to properly development ourselves as individuals and improve our social and moral relations.

As such, any form of legal or government regulation must be consistent with the protection of the free development and operation of the thinker's mind. In particular, Shiffrin mentions three main ways in which governmental or legal regulation may be inconsistent with this protection. Firstly, the most obvious inconsistency of legal or government regulation that attempts to remove or ban either the activities/materials necessary for the free development and operation of the thinker's mind or simply banning that freedom itself. The second inconsistency is that of action, effects, and materials of legal or government regulation that interfere with the

free development and operation of the thinker's mind. Lastly, the rationale behind legal or government regulation must also be consistent with the protection of the thinker's mind (Shiffrin, 2014, pp. 92-93). Hence, this theory prioritizes the individual thinker's intellectual interest in the protection of the free development and operation of their mind.

In short, Seana Shiffrin formulated an autonomy type theory of freedom of speech that focuses on the thinker and their intellectual interests. Indeed, Shiffrin takes the normative approach of protecting freedom of thought. Specifically, the protection of the free development and operation of the thinker's mind. Ideally, free speech is essential to the development, functioning, and operation of thinkers. Moreover, speech plays an integral role in developing our capacity for moral agency since in order to respect others we are required to understand and recognize their perspective as autonomous individuals. Without a doubt, Shiffrin's theory makes a compelling case as to why we should intrinsically value free speech. Having established this theory of free speech, I will now move forward in arguing why it is the most compelling account of free speech.

Section 2b) Why the thinker based-account is so compelling?

Before moving on to Shiffrin's argument against lying, I would like to take the time to briefly discuss why Shiffrin's account of free speech should be taken seriously among different competing accounts. Primarily, a distinguishing feature to immediately take notice in Seana Shiffrin's unique thinker-based account is that it resembles similar deontological arguments for justifying freedom of speech.¹¹ In particular, Shiffrin's account closely follows an autonomy-based theory that emphasizes an intrinsic aim to protect speech in order to promote the development and free operation of the mind and the intellectual fundamental interests for all

¹¹ For more info on deontological ethics, see Alexander and Moore (2007).

individuals. Indeed, this thinker-based approach presupposes that the autonomous individual agent “fundamentally matters” and that a “well-functioning system of social cooperation and justice” requires that it’s “citizens, by and large, have active, well-developed moral personalities” (Shiffrin, 2014, pp 85, 92). In any case, I will make the strong claim that this approach is a compelling theoretical account of freedom of speech. No question, this thinker-based approach is able to unify the different interests of contemporary speaker-based, listener-based, truth-based, and democratic-based arguments to understand why speech is valuable on multiple levels (Shiffrin. 2014, 84). In the following section, I will have two objectives in mind in order to successfully assert this claim that Shiffrin's account is a compelling account of freedom of speech I will: (1) introduce different unique features of Shiffrin’s theory that makes it appealing and (2) defend this account against the standard objections that may pose a challenge to Shiffrin.

Accordingly, I will begin to explain and defend some of the compelling features of Shiffrin’s thinker-based account. Firstly, I will explain how this account has a universal applicability that is comparable to a human right of free speech. Unquestionably, the thinker-based account succeeds in fulfilling this condition as it based on intuitive, non-contingent factors that do not rely on institutional justifications. In this case, Shiffrin’s (2014) identification of foundation and central interests of moral agents, which are separate from their immediate desires or projects, are uncontroversially applicable to all human beings (p. 88). It is an unchanging fact that we all require self-development, exercising our intellectual capabilities, and ‘earning’ with others in communication and moral relations. Such a fact exemplifies that if every human has an intrinsic value to exercise and develop as autonomous moral agents, then we should allow, encourage, and make available the opportunities for all human individuals, regardless of

location, to exercise and develop their intellectual interest as thinkers and prevent any regulatory institution that prohibits that interest.

Further, this thinker-based theory is more apt to give broad and direct free speech protection to a wide range of different instances of expression or speech (Shiffrin, 2011, p. 299). Unlike democratic theories of free speech, Shiffrin's value of speech is not grounded on the basis of contingent institutional rationales.¹² Under Shiffrin's thinker-based view, free speech is valuable on such a universal scale because it focuses on the relationships and self-development that we all have toward each other and such a fact can extend to the most private of conversations. Of course, Shiffrin's theory also acknowledges at the same time why governments should also uphold free speech. According to Shiffrin (2014), "Freedom of speech is a precondition of fostering moral agency, which in turn is a presupposition of functioning governments of equals—a commitment even the sparsest liberal theories affirms" (p. 81). Moreover, Shiffrin (2014) is quick to add that the authentic meaningfulness and operation of the "democratic polity" is dependent on citizens having generally "strong and independent capacities for thought" (p. 92). As a result, Shiffrin's argument succeeds on multiple levels (institutional and moral), which further adds to its universality as a human right.

Nevertheless, there is a potential worry to this theory that limits this account as a human right. Under this account, Shiffrin's account may be interpreted as supporting a form of elitism by over-intellectualizing what speech and expression means to people (Blasi, 2011, pp.110-112). The primary focus of this theory rests on individuals having intellectual interests and capacities that require development and free operation. However, this intellectual focus on thinkers appears to be overly rational and will result in only taking seriously highly deliberate forms of articulate

¹² In a sense, an argument of free speech that relied on only democratic concepts would fail to succeed on a universal scale since its instrumental explanation of free speech would omit areas where no democratic body exists

speech. Such a consequence would exclude those individuals whose priorities are not based on intellectual interests and, even worse, exclude those individuals who are mentally disabled from thought (e.g., children and mentally disabled). How can one argue, as a result, that free speech is a human right if it that excludes protecting certain kinds of people simply because they expression or speech is not sophisticated enough?

This objection, I say, misinterprets Shiffrin's classification of the "thinker". For one thing, Shiffrin's theory does not demand that individuals should be highly intellectual, philosophical beings who are on a journey of knowledge and thought. Instead, Shiffrin is advocating for the position that all human beings have fundamental interests to develop their capacities and to have the opportunity to articulate their thoughts and content of their mind, no matter how simple minded or lowbrow. To put it another way, Shiffrin does not want to restrict her classification of thinkers to only discursively cognitive individuals. As she explains, "all such thinkers have interests in developing the capacities they possess, in having opportunities to externalize their mental content both to determine what they endorse and affiliate with and to allow themselves to be understood by others and in having access to the thoughts of others." (Shiffrin, 2014, p.102). Thus, the thinker-based account argues for fundamental elements that originate and apply to all human beings, regardless of origin or intellectual differences. The universal applicability of Shiffrin's theory is more than enough compelling evidence to demonstrate that it is compatible with a human right.

Secondly, I argue that Shiffrin's thinker-based account is able to address the issue of content discrimination. Content discrimination refers to regulation that targets messages or acts of speech based on its content. This type of regulation is problematic because it allows the government the opportunity to insert their own bias, values, and judgments when evaluating

controversial acts of speech. In the case of fake news, governments would regulate online information on personal views of the content or to serve a political agenda such as silencing political opponents. Therefore, it seems safe to say that any account of free speech should address whether governmental authority should be expected to evaluate cases of speech with an objective mind-set and avoid the problem of content discrimination.¹³ This conclusion seems to follow with has been established since, in the Supreme Court case of *Ashcroft v. American Civil Liberties Union* (2004), the Court said that “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” Additionally, Justice Robert Jackson in *West Virginia State Board of Education v. Barnette* (1943) stressed the point that “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in ... matters of opinion....”

In our case, Shiffrin addresses this problem by building a strict criterion to restrict government regulation of speech. To repeat, Shiffrin (2014) focuses on three cooperative principles that are based on the protection of the free operation and development of the mind (p. 92). Accordingly, these principles restrict the government from:

- (1) Banning or attempting to ban free development and operation of a person’s mind of those activities or materials necessary for this free development and operation
- (2) promulgating legal materials or otherwise acting in ways may objectionably interfere with the free development and operation of a person’s mind;
- (3) Acting on any rationale for the materials, or the activity, may be inconsistent with valuing this protection.

In a general sense, this theory would not permit the regulation of speech based on reasons of content, since such a step would interfere with the free development and operation of the mind.

¹³ Larry Alexander (2005) introduced this as the concept of evaluative neutrality, which refers to the idea that when considering whether a certain activity or set of activities should be protected under a right, the examiner should remain impartial, objective, and unbiased when deciding.

As Shiffrin (2014) explains, “this view makes no important distinction, at the foundations, between speech about aesthetics, one’s mental condition and treatment, one’s regard for another, one’s sensory perception, the sense or lack thereof of the existence of a God, or one’s political beliefs” (pp. 92-93). Under these principles, no government should be able to regulate speech or expression for reasons that focus on the contents of one’s beliefs or thoughts. In other words, content discrimination would impede on the authentic development and operation of the thinker’s mind.

With this conclusion in mind, a possible objection to the thinker-based approach is that, without features such as content discrimination, this theory will be overly restrictive on the regulation of speech, especially in cases in which we intuitively think speech ought to be regulated such as preventing harm. To this objection, I reply that Shiffrin’s theory would allow government intervention to be permissible under conditions and reasons that would have the potential to conflict and violate other values, particularly those regarding autonomy. To illustrate, consider an individual in a public place speaking out against corn dealers who starve the poor. Under the thinker-based account, government intervention would only be permissible if the speaker called to arms an angry mob to directly harm any corn dealers they come across by. The thinker-based account would allow for appropriate limitations to free speech and for governments to intervene under two possible reasons. The first notable reason would be that the speech was a direct instigator of harm. Such expression would go against respecting others’ autonomy and developing moral relations with one another. If the speech had focused instead been articulated as an explanation on an opinion such as explaining how the labor and product of corn dealers leads to economic inequality, then government intervention would not be permissible.

The second possible reason would be that such speech had the intend to manipulate individual's thoughts and actions. In this case, the speaker was fully aware that corn dealer does not starve the poor, but, nonetheless wanted to create chaos by manipulating people's actions to an "angry mob, ready to explode" (Mill, 2017). As Shiffrin stated in her reply to critics, some forms of thought control may take the form of speech (e.g. hypnotic, bombarding, etc.). The thinker-based view would explain why that form of speech would not fall under the free speech protection but, rather, why that speech could be limited (Shiffrin, 2011, p.419). In this case, the speaker is actively trying to interfere in a manner that is inconsistent with any of fundamental interests mentioned by Shiffrin such as sharing ideas or beliefs and evaluating to form an opinion. Nevertheless, these actions of regulation remain consistent with addressing the problem of content discrimination since it does not target the content of the speech or expression.

Thirdly, one of the compelling features about Shiffrin's thinker-based account is that it is able to adequately address the dispute between listener-oriented approaches and speaker-oriented approaches to free speech. There is a prominent dispute regarding whether a right of free speech is meant to protect listeners or speakers.¹⁴ A right of a listener would make the valid claim of free speech that, listeners have a right to focused to receive messages/opinions or access ideas without governmental interference. In contrast, a right of a speaker would be asserting free speech claims on behalf of the speaker. In this case, the dispute regarding this distinction is determining whether speakers have free speech rights. Surprisingly, there are many accounts of free speech who would say that freedom of speech protects listeners, not speakers.

For Shiffrin, this conflict seems bewildering since both of these approaches alone neglect key fundamental interests that we intuitively think would be relevant to free speech, but

¹⁴ For a more in-depth look at this dispute, see Kendrick (2017).

nevertheless cannot be addressed when choosing to take either approaches by itself. For instance, listener-based theories insist that listeners have a right to “access information” and obtain useful content from others. However, this approach fails to explain why we should protect activities of speech that is neither useful to the listener nor are they important to access since it is redundant, incoherent, ill-informed, or repetitive information (Shiffirin, 2014, p.83). At the same time, speaker based approaches, which maintain that the speaker has an interest in having the ability to articulate and communicate their ideas, cannot explain why listeners may have an interest in accessing such communication. As a result, both approaches alone, Shiffirin (2014) thinks, seem to be “objectively partial and mysterious” when considering the concepts of free speech (p. 83). Certainly, there does not seem to be substantial reason to suggest that both approaches inherently contradict each other. For this reason, Shiffirin argues for a unifying and central theory that can adequately address the interests of both speakers and listeners.

Unsurprisingly, Shiffirin’s thinker-based account is able to take this unifying approach and recognize the multiple different interests involved in different cases of free speech. Indeed, Shiffirin’s (2014) approach would not attempt to “focus predominantly on either side of the speaker-listener relationship, but rather on the thinker’s interest as such” (p. 95). To put it another way, this refusal to formulate a dichotomy between speakers and listeners allows Shiffirin to converge these different interests into a comprehensive view that is able to consider them as individual interests. In order for individuals to understand, develop, and endorse beliefs, ideas, or thoughts, we need to have the free ability to “externalize” those thoughts and “identify them as particulars” to evaluate them. As Shiffirin (2014) explains, “some thoughts may only be fully identified and known to themselves if made linguistically or representationally explicit” (pp. 89-90). At the same time, however, in order to fully accept ideas and thoughts as true beliefs, we

need to have insight into other individual's beliefs and thoughts as a way to compare and contrast their differences. Shiffrin (2014) is on point when she says that, "we need the help of others' insight and beliefs, as well as, their reactions and evaluative responses to our responses" (p. 90). In a Millian-type manner, we can only reject false beliefs when we allow them to be expressed and be evaluated by ourselves and others.¹⁵ Of course, Shiffrin does not take this truth benefit reason for this position but instead argues that it will further assist us in the development and free operation of our intellectual capabilities. Thus, this central approach of unifying both speaker and listener interests only adds further weight to the value of Shiffrin's theory.

Finally, the thinker-based account is able provide a satisfactory answer to the issue of under-inclusivity and over-inclusivity of different activities of speech or expression. Given the amount of different activities that would be categorized as speech, there is an ongoing dispute as to what is the exact range of the type of activities that should be protected under free speech. The type of activities that could be considered free speech can widely vary from a range of political speech to various art forms. Notably, Shiffrin's theory proves to be extremely successful on this front since it takes the position of being applicable to the widest range of activities of speech or expression. As she states:

The mental contents that figure in the thinker's well-functioning as such include not only implicit and explicit theoretical and practical reasoning but also the emotions, non-discursive thoughts, images, sounds, and other perceptions and sensations, as well as the workings of the imagination." (Shiffrin, 2014, p. 81)

Significantly, unless there was substantial reason to say otherwise, this theory does not limit the type of activities to only traditional items would be considered speech by a human agent.

Although this result may be true, the more compelling point in Shiffrin taking this wide stance is

¹⁵ See Mill, J. S. (1859).

that she is able to justify these vastly different activities under the theoretical premise that we must support our intellectual capabilities (e.g., rational, emotional, moral, perceptual, and sentience etc.) (Shiffrin, 2014, p.86). From there, she posits a non-exhaustive, but sufficient to display the point, list of conditions (a-f) in which every human individual “qua thinker” has a specific interest that develops these capacities (Shiffrin, 2014, p 86). Naturally, these conditions she asserts can unify and explain how a wide range of different speech activities can support the thinker-based idea of the free operation and development of the mind.

With this position of inclusivity in mind, there are two objections that attempt to argue that Shiffrin’s position is either too narrow or too broad to justify protecting different activities of speech. The first objection is a weak one in which it argues that by focusing on the development of the thinker, it neglects protecting speech that has no connection to thinker-oriented needs, namely, protecting the access to the speech of those who are deceased and no longer meet the qualifications of the thinker (e.g., Shakespeare) . In this case, Shiffrin argues from listener-based standpoint, that these situations there are activities of speech or expression that still give relevant “insight, perspective, and information,” that is to be conveyed, even after death. Indeed, how can we make progress in theater arts, science or philosophy without understanding the “history and information contained within the historical perspectives” (Shiffrin, 2011, p.431)? The thinker-based account addresses this concern further by establishing that it can protect the speech of the deceased on the basis that thinkers qua speakers have an interest or moral duty to communicate with future generations and contribute their thoughts and beliefs even after death. In other words, the artist does did not only produce magnificent artworks to communicate certain themes to only individuals during the time they are alive, but also to future generations after their death. Admittedly, Shiffrin (2011) concedes that regulation

or restrictions on disturbing the intellectual property of the speech of the dead, but such a consequence does not pose a significant challenge to the theory (p. 431).

The second objection, which originates from James Weinstein, is much stronger and focuses on the over-inclusivity of activities of speech. To explain, Weinstein's argument is a much stronger response to Shiffrin's account since it raises the concern regarding dilution. In effect, the wide domain of activities that Shiffrin's account protects will eventually result in generating two problems. Firstly, Weinstein (2011) objects to the thinker-based account on the grounds that it does not provide a stronger form of protection for "political speech and, in particular, for incendiary speech and other forms of dissent" that relate to the public discourse" (pp. 384-385). In other words, this broad protection of free speech will lessen the importance and distinction of protecting certain kinds of speech such political speech. The second concern Weinstein (2011) had about the over-inclusivity of free speech was that it would broadly protect activities of speech that we would intuitively not prefer to protect such as harassing speech or types of dangerous scientific research that would be harmful to society (Weinstein, 2011, pp. 390-393). In contrast, these two concerns regarding dilution would be avoidable if one were to accept a more "modest theory" that highlighted specific "core" types of speech that would as more secure than types of activities that were considered less than the core types of speech (Shiffrin, 2011, p.426). Such a modest approach would avoid having to protect counterintuitive types of speech since it would be distinguished as not part of the core types of speech.

To address Weinstein's first point, there is no denying that the thinker-based account does not endorse the idea of prioritizing certain core types of speech as political speech. Certainly, Shiffrin would concede to this point since she argues that activities of speech should encompass equal "foundational protection." In other words, there should not be a "lexical

hierarchy of value between” the different activities of speech, “nor should the protections for some depend dominantly on their playing an instrumental role in securing the conditions for the flourishing practice of another” (Shiffrin, 2011, p.285). Indeed, the thinker-based account explains how different activities of speech (whether they be political or not) satisfy the conditions in which individuals can differently cultivate their intellectual capabilities.

This resolve to remain neutral and give equal protection to other forms of speech, I argue is the correct decision since the alternative position of giving greater protection to political speech creates substantial problems for any theory of free speech. For one thing, taking the position that political speech should be given higher protection assumes the idea that activities of speech and expression can be divided into categories of expression and speech based on content. This categorization creates two substantial problems. The first problem is that there is no substantial justifiable basis to establish definitive lines that can adequately separate different categories of activities from one another. An important point to realize is that activities of speech that were once-characterized as non-political can become relevant to the political discourse in an instant and equally non-relevant a moment later. That is to say that we cannot establish definitive categorization lines since it will constantly fluctuate and overlap on multiple occasions. Moreover, Larry Alexander (2005) makes the crucial point that categorizing different types of speech and giving greater value over one category of speech vs another will inevitably lead to some authority inserting their own values as to what activities of speech garner higher protection (pp. 141-142). The result will most likely generate a violation of evaluative neutrality. Hence, Weinstein’s concern to the thinker-based account would only generate substantial problems for the theory.

The second concern Weinstein had about the over-inclusivity of free speech was that it would protect activities of speech that we would intuitively not prefer to protect such as harassing speech or types of scientific research that would be harmful to society (Weinstein, 2011, pp. 390-393). To address the harassment claim, Shiffrin argues that these types of speech activities might be distinguished as a non-consensual communicative relation. While Shiffrin's account may endorse the idea that individuals should be able to express themselves, it does not allow individuals to invade the privacy or command/force other individuals to engage with them against their interests. To allow such actions would be inconsistent with respecting the other individual's autonomy since thinkers will have an interest in maintaining "a sphere of privacy" at times in order to avoid intrusions by others that may interrupt their "mental agenda." (Shiffrin, 2011, p. 434). For example, college students needing focus on their studies will want to go to the library in order to maintain a sphere of privacy to avoid distractions. Now, if someone at the library starts to play an electric guitar directly at the individual at full volume, then that would be situation in which such speech would not be protected as it would be non-consensual. Similarly, if individual 1 was personally harassing individual 2 and they'd ask individual 1 to stop, then there is substantial evidence to reduce individual 1's speech as it infringes on individual 2's interest in "maintaining a sphere of privacy" (Shiffrin, 2011, p. 435).

Nonetheless, Shiffrin concedes the point that if individual 1 were to engage in a public setting forum and make outrageous offensive remarks about individual 2, individual 2 would not have a substantial claim to limit individual 1 speech because individual 2 is not being forced to listen to those remarks. While this point may appear to exhibit a problem in the theory itself, this fact is entirely consistent with the current accounts of how governments manage speech in open

forums and public forum. To illustrate, in public protests, people are able freely make offensive remarks about political candidates and others who disagree with them.

To address the scientist example, Shiffrin concedes the point that if a scientist were interested in researching the formula for how to make a deadly toxin, the thinker-based account would prevent the government from creating a law that would forbid anyone from making this formula explicitly known on the basis that they are concerned that “terrorist groups may gain access” (Shiffrin, 2011, p.436). While Shiffrin (2011) concedes this point and realizes the fear of such a consequence, she points out a greater worry of uncontrolled government regulation based on “fears, safety, or other matters” (p. 436). To further stress Shiffrin’s point, this objection that we should restrict individual’s liberty in order to prevent potential harm to society is very concerning as it can be universally applied to restrict any type of action under such a view. Consider the relevant example of the internet. Under Weinstein’s rationale, governments should either restrict access to the internet of citizen users or monitor all conversations made in internet in order to address the concern that citizens are communicating with terrorist organizations to attack from within a nation state. Indeed, I agree with Shiffrin that there are cases in which we have to rely on the “good judgment” of citizens (both listeners and speakers) to determine when to express potentially harmful information and how to act or use such information responsibly. (Shiffrin, 2011, p.436) This same standard can be equally applied to political speech, which Weinstein advocates for, since there are cases in which access to some political speech will also potentially lead to harmful consequences (e.g., the newspaper publishing top-secret government information). This further proves the case that there does not seem to be any substantial difference between political speech and other types of speech. For these reasons, I do not think there is a substantial claim to suggest that Shiffrin’s theory suffers from over-inclusivity or

under-inclusivity. Hence, the thinker-based account is able to justify its equal wide-range of protection for free speech.

Seana Shiffrin formulated an autonomy type theory of freedom of speech that focuses on the thinker and their intellectual interests. Indeed, Shiffrin takes the normative approach of protecting freedom of thought. Specifically, the protection of the free development and operation of the thinker's mind. I argued that that there are attractive features to this theory that make it compelling among competing theories. In having established this theory as a compelling theory of free speech, I will now move forward to present Shiffrin's argument against lying and applying it to the conflict of fake news.

Section 3) The Argument Against Lying

In the previous section, I have argued for and endorsed a unique position of free speech by Seana Shiffrin that asserts freedom of speech as an utmost important intrinsic value to individual thinkers. Chiefly, speech and expression is integral for us as individuals to understand with one another and fulfill the moral duties that require such understanding. At the same time, we must also maintain protected channels that render reliable communication possible. For this reason, unchecked and persistent government intervention or regulation of speech would almost certainly obstruct this value. However, even in this robust theory of free speech, there are cases in which regulation and government intervention of speech may be reasonably permissible. Specifically, Shiffrin, in Chapter 4 of *Speech Matters*, makes the modest claim that insincere and deliberate lies are not protected by a right of free speech. In other words, legal regulation and condemnation of lies would remain consistent with the value of free speech traditions. In this section, I will elaborate on this argument by explaining the distinctive wrongness of lies. From there, I will demonstrate how a right of free speech would not be threatened by the legal

regulation of lies. The objective will be to make clear Shiffrin's key points in order to make a compelling case that her argument holds merit and can be applied to the conflict between fake news and free speech.

To begin, I will introduce Shiffrin's characterization of a lie and explain why it is distinctively wrong to the *thinker*. In accordance, we can characterize a lie as an "intentional assertion by A to B of a proposition P" that meets certain conditions:

1. A does not believe P, and
2. A is aware that A does not believe P, and
3. An intentionally presents P in a manner or context that objectively manifests A's intention that B is to take and treat P as an accurate representation of A's belief (Shiffrin, 2014, p.12).

In detail, speaker A not believe in proposition P and is completely aware that they do not believe in it. Nevertheless, person A deliberately communicates P to person B in a "manner or context"¹⁶ in which B is to credit P as an accurate representation of A's beliefs (Shiffrin, 2014, p.12).

Rather than a portrayal of an accurate representation, this communication of a lie can be described as transmitting a "false representation" of the conscious mental contents, beliefs, or thoughts of speaker A. ¹⁷ To illustrate a clear cut case, consider a conversation between two individuals named Politician T and Citizen K. In this conversation, K asks T whether T had an extramarital affair during their elected term. While consciously knowing that he/she did have an affair, Politician T decides to answer the question by stating that T did not have an extramarital affair during their elected term. Indeed, as with all cases of lies, it is the "utterance" of the insincere proposition that results in misrepresenting the contents of the speaker's mind to others.

¹⁶ With "manner or context", there will be cases in which telling lies may be justified given the context. Shiffrin refers to these cases as cases of "suspended context", in which circumstances in which a lie does not require speaker A to be sincere about their lies. A classic example of a suspended context would be when a parent is telling their child a false but entertaining fable or story (Shiffrin, 2014, pp.16-28).

¹⁷ Frankfurt (1992).

To clarify this point, the act of telling a lie is not co-extensively dependent on falsely persuading or formulating false beliefs with anyone. There may be cases in which the speaker does not have the aim to insert a false belief in others but is simply trying to avoid or confront the truth. In fact, Shiffrin draws an important distinction between lies and deceptions.¹⁸ While both share their unfaithful “commitment to truthful understanding”, the central attribute of a lie does not depend on person B being falsely persuaded by proposition P (Shiffrin, 2014, p.13). As Shiffrin states, “it is very odd to think that whether a speaker lies hinges upon the persuasiveness of the speaker or the credulity of the listener.” A perfect example of this point is the well-known fable story of The Boy Who Cried Wolf. In this example, a speaker keeps lying to an audience to a point that results in the listeners no longer believing any claim the speaker makes. Despite both the speaker and the listener now fully aware that these pathological claims will remain untrue and will not be persuaded by them, these claims would still be classified as lies since they are still false assertions meeting all the conditions of a lie. As Shiffrin (2014) explains, a lie would be a “falsification presented in a context that objectively conveys that the statement is to be taken as a true representation of the speaker’s beliefs...” (p. 15). Regardless of intent or the success of deception, lies are asserted in a context where they are meant to be taken as a true belief of the speaker. Thus, we can say that the characterization of the lie does not depend on the intent to deceive nor its success.¹⁹

¹⁸ With deception, cases can be further broken down to morally relevant forms of deception and morally non-relevant forms of deception. As Shiffrin (2014) states, “not all mistake inferences by an observer or listener involve deception in the moral relevant sense” (p. 21). Morally relevant cases involve conscious effort to influence the contents of a listener or allows for “false impression of the facts. “In the case, the moral wrong is that is it a violation of duty of causing individuals to form false beliefs based on “behavior, communication, and omission.” (p. 22). This form of deception is intentional and attempts to disrupt the epistemic contents of the listener’s minds.

¹⁹ This point is important keep in mind that this argument does not focus on the consequences that occur after the lie has been communicated. Rather, Shiffrin is focusing on the harm in itself of speaking the lie. This is a crucial point to remember when considering Shiffrin’s takes a deontological intrinsic position to speech that's avoids a type of consequentialist harm.

With this distinction made, lies bear a particular special type of wrongness that abuse and impair our reliability on the mechanisms that allows us to communicate as thinkers. To repeat, speech and expression are the only mechanisms in which we can make precise direct communication of our mental contents. As Shiffrin (2014) notes, we lack direct access to the contents of one another's minds" (p. 9). Without violating the autonomy of others, the only moral method of retrieving these epistemic contents from others is through direct communication or testimony (i.e., speech).²⁰ However, these methods are "fragile" mechanisms of communication that entail an authentic and accurate representation of people's mental content (Shiffrin, 2014, p.25). Accordingly, these mechanisms are essential and must be safeguarded "if we are to understand and cooperate with one another to achieve our mandatory moral ends [and fundamental interests]" (Shiffrin, 2014 p.118). Indeed, these mechanisms of communication allow us to function as moral agents and fulfil our moral and political duties.²¹

Now, if we allow our method of communication to be misused by lying, it would compromise our "rational basis" to support mutual dependence of testimonies or communication with others (Shiffrin, 2014, p. 117). Deliberately lying in these types of settings threatens the "trust and reliance on others testimonies," This trust and reliance can be described as a mutual epistemic dependence that allows us to perceive the facts and knowledge of the world while forming moral beliefs about it. As a result, lying impedes upon this mutual epistemic cooperation

²⁰ This claim is consistent with Shiffrin's (2014) view that speech is the only precise method of retrieving these contents since other methods such as reading facial expressions, observing behavior, and making inferences give us only "rough" and semi-accurate pictures of one's thoughts (p. 10). According to Shiffrin, speech is the only authoritative epistemic source of one's mind that triumphs above others since the speaker is the only one to have the ability to directly access their own mind.

²¹ As Shiffrin (2014) notes, the political process requires that in order to be able to respond to what an opposing or other side believes is right, we need to be able to fully understand and be clear on that sides opinion/belief to give an "appropriate response" to it (p.9). Moreover, moral situations are complex, unclear, and demand that we take into account thoughts and sentiments of those involved, which requires some form of communicative knowledge on their part (pp. 9-10).

that we as thinkers require to develop and express our thoughts. Particularly, these actions are even more alarming in situations where listeners have to rely on the testimonies of individuals with exclusive information, such as individuals who are in a position of higher authority (Shiffrin, 2014, p. 131). For instance, as a student in a classroom, I am epistemically dependent on my teacher to relay accurate information of a particular subject. At the same, the teacher will also be dependent on my testimony in many situations such as receiving feedback in order to improve their teaching methods. Unfortunately, if we allowed deliberate lies and misrepresentation to be a part of mechanisms of communication, it would hinder this mutual dependence by deteriorating and reducing the reliability of accessing accurate representation of one's information and mental contents. As Shiffrin (2014) states, "if universalized, one's maxim [of lying] transforms a mechanism for exclusively conveying the truth into mechanism for conveying both the false and the true" (p. 23). From a societal standpoint, lying deteriorates and "disrespects the collective interest of maintaining reliable channels of communication" (Shiffrin, 2014, pp. 23-24).²²

Although this point displays how lying is antithetical to mutual communication, I would like to further add that there are individual interests that are violated when a speaker engages in the act of lying. Firstly, the liar wrongs their recipient or listener by not treating them as an "equal partner" in their channel of communication (Shiffrin, 2014, p. 24). Clearly, this point focuses on the interest of listeners in speech. This point is consistent with Shiffrin's view that we must treat each other as autonomous moral thinking agents. While this point suggests that Shiffrin's is neglecting the interests of the speaker, Shiffrin's second point takes into

²² For Shiffrin (2014), possessing moral agency and "acquiring" our moral duties exert a lexical priority above other things (p. 26). As a result, even if a lie were committed for a morally good end, it would risk "damaging one moral priority to secure another" (p. 25).

consideration the speaker is equally wronging themselves when they lie. As the second point suggests, the liar wrongs themselves in that they isolate themselves from having a moral relationship of “rational communication and justified beliefs” with the listener/recipient (Shiffrin, 2014 p. 24). In this case, the liar is not only deteriorating a relationship between a particular individual, but they are also isolating themselves from society by asserting a proposition that damages the rational basis to trust the speaker. In reexamining the Boy Who Cried Wolf case, the speaker’s constant lie led to the entire community isolating and losing complete rational trust in the speaker. Given these various reasons, it is clear that lying can be associated with a troubling type of wrongness that is present from multiple levels. Primarily, these reasons showcase how lying entails several wrongs that are harmful and incompatible with what makes speech so important to the thinker.

This incompatibility and harm that lying has to free speech suggests that a theoretical case can be made that the legal regulation or condemnation of lies by the government may be permissible and consistent with the values of free speech (Shiffrin, 2014, p.117). Now, it is important to mention that the focus here is on insincere and deliberate lies. Shiffrin (2014) is clear on excluding cases in which a speaker is sincerely communicating their belief, despite it being completely false (p. 117). At the same, there will cases that will not be included since they are either not deliberate (e.g., “spontaneous utterances”) or are justified in the context (Shiffrin, 2014, p.119). Indeed, none of these mentioned exceptions suggests that they undercut or devalue the importance of speech in society. However, these exceptions do not suggest that “pure lies”, which involve no intent or success of deception, are excluded. For Shiffrin (2014), these types of lies are equally guilty of abusing the mechanisms of communication and reducing any reason to rely on it (p. 116).

With that said, I will now explain how the regulation of lies would remain consistent with the value of free speech. Firstly, I would like to defend the position that there is a present and particularized harm to free speech that follows when a lie is told. As mentioned before, a speaker's deliberate and insincere lie injures our "collective testimonial framework" in creating doubt and reducing our reliance on others testimonial speech and expression. In this case, there is a collective harm present that contaminates and poisons our only resource and tool to communicate properly as thinkers, which is critical to "sustaining a functional moral and political culture" (Shiffrin, 2014, p.136). Additionally, there is a particularized individual harm inflicted towards the justified testimonial trust relationship between the speaker and their listener(s). Without a doubt, any sustainable relationship that involves communication between individuals is built on a form and exercise of trust. For Shiffrin, "such betrayals of that trust would seem to wreak special damage on the relationship and its meaning" (Shiffrin, 2014, p. 136). While these harms may not be particularly observable or measured empirically, we can make reasonable predictions of such causes and consequences. In fact, we often accept that governments will take preemptive regulatory action based on reasonable predictions such as in cases of noise reduction. Despite there being no empirical evidence that a particularized harm is present, noise regulations are often legitimate actions to allow individuals to speak to others "without distortion, strain, or intermittent interruption" and to maintain a reliable scheme of communication. (Shiffrin, 2014, p. 138).

Secondly, I will elaborate on how the regulation of lies would not be based on content. During my introduction of evaluative neutrality, I described how regulation by content-discrimination would directly conflict with freedom of speech and expression. While this fear and concern is understandable, the regulation of lies, in its correct general form, is not based on

content. In this case, the correct form would be to have regulation be based on the insincerity and deliberate misrepresentations by speakers. As Shiffrin (2014) explains, regulation of lies would be to “prohibit a speaker from presenting something she believes to be false as though she believed it to be true” (p.126). In other words, the sincerity of the speaker when making a false claim determines whether it ought to be regulated or not. For instance, reconsider the conversation between Politician T and Citizen K. If Politician T was sincere in their false assertion and truly believed it, then it shouldn’t be regulated. However, if the speaker was insincere and knew that the lie was false, then that would merit some regulation by the authorities (Shiffrin, 2014, pp.126-130). As such, what is being regulated isn’t the content of lie itself, but rather the speaker’s mental stance and insincere motivations.²³ Such a motivation or stance can be guilty of misusing and distorting the important but fragile channels of communication that we as thinkers rely on to both transmit and accept the mental contents of others opinions and beliefs. Thus, we have good reason to believe that the regulation of deliberate lies would not prompt content-discrimination or the problems that follow from it.

Thirdly, I would like to address the possible general concern that if governments were to regulate lies, it would consequently hinder the value that false speech has to offer to individuals.²⁴ With this concern, I argue that this value of false speech does not apply directly to the cases of deliberate lies and insincere misrepresentation of the truth. To explain, I agree that it is important to allow individuals to express their thoughts and opinion, even if it’s false.

However, this value of false speech only applies when the individuals are sincere in the opinions

²³ Of course, the wrongness of Politician T’s deliberate misrepresentation may be made more aware given contexts such as if the lie was directed towards a larger audience of constituents or it involved an important policy decision. Nevertheless, each situation in which Politician T deliberately misrepresented a belief falls under the authority of regulation.

²⁴ See Chapter 2 of *On Liberty* (Mill 1859)

and thoughts that they believe. Again, deliberate misrepresentation of the truth not only devalues testimonies and reliability but injures our ability to trust one another (Shiffrin, 2014, p.142-143). Having insincere and deliberate false opinions and thoughts leads to distrust and cynicism of both sides in an argument that make it difficult to be open-minded and willing to listen in “good faith” to your opponent (Shiffrin, 2014, pp.143-144). This is especially concerning in situations where the speaker has exclusive access to particular information, it is much more difficult to reveal the truth if the public is limited in their knowledge and can’t confirm nor respond to the truth of the lie (Shiffrin, 2014, p.140).²⁵For these reasons, no concern should exist over the regulation of deliberate insincere lies and the value of false speech.

Nonetheless, while Shiffrin’s (2014) argument is able perfectly to capture how the regulation of lies would be consistent with free speech on theoretical level, she refuses to take the argument further to directly endorse the legal regulation of lies (p.118). The pertinent point for this refusal is that of the “pragmatic concerns” that surround such regulation and the open possibility of government abuse by it. The regulation of lies leaves open the possibility that criminal penalties will be abused by government authorities and police to selectively prosecute and censor individuals (Shiffrin, 2014, p. 123). Even worse, such a possibility creates the threat of reducing sincere speech under fear of prosecution. These concerns prevent her from making the endorsement that governments should regulate insincere and deliberate lies on a general level. Instead, Shiffrin suggest an alternative that in order to protect our rational basis for relying on communication for mutual epistemic dependence, some “disclosure rules” are justifiably

²⁵ While some may argue that insincere and deliberate lies hold an instrumental value to further good moral ends, the same may be said about other regulable forms of deceit such as intentional defamation or fraud. In truth, regardless of its benefits, insincere lies distinctively undermine the ability to rely on communication for fundamental needs (Shiffrin,2014, p.153).

necessary to differentiate insincere and sincere speech.²⁶ That is to say that if someone wished to speak insincerely, they would need to disclose this either openly through communication or some other “well-understood mechanism of disclosure” (Shiffrin, 2014, p. 133).

However, Shiffrin leaves open the possibility that the legal regulation of condemnation of lies can be made on a narrower level or specific domain. To elaborate, it can be argued that any assessment regarding the legal regulation of lies should be determined on a case-by-case basis since the threat of the pragmatic concerns will vary depending on several factors. As she states, the “...scrutiny of legal regulation of lies should be far more focused on the specifics of their design, namely whether the particular factual circumstances raise credible concerns about government abuse” (Shiffrin, 2014, p. 118). That is to say that the design of the laws and its application in regulating insincere lies will determine whether there should be concerns over government abuse or censorship (Shiffrin, 2014, p. 123). For this reason, we should not make sweeping general claim to reject any legal regulation of lies. With this in mind, I will now argue that the aforementioned predicament of fake news is such a case in which the harm of insincere and deliberate misrepresentation is particularly problematic and the pragmatic concerns may be minimal. I will now apply Shiffrin’s argument against lying to the conflict between fake news and free speech and address the concerns that may linger over this specific domain.

Section 4) Fake News and Free Speech

Formerly, I have presented Shiffrin’s argument that the regulation of lying is theoretically consistent with the value and traditions of free speech. As explained, free speech is integral to the

²⁶ Shiffrin provides a non-exhaustive list of well-understood mechanisms include “deploying a sarcastic tone, evidently exaggerating in ways that indicate parody or irony, publishing under the rubric of fiction, performing in a play or other theatrical setting, or otherwise speaking in a context that is culturally understood not to all for somber testimonial speech” (Shiffrin, 2014, p.134).

free operation and development of our minds. As thinkers, speech and expression are the only precise tools in which we can communicate, through testimony, our mental contents in order to be successful moral agents and fulfill the various fundamental interests. For this reason, sincerity is an essential quality for both speakers and listeners to have in order to rely on this mutual epistemic dependence. Insincere and deliberate misrepresentation reduce, deteriorate, and interfere with our rational basis for relying on these important channels of communication. I will argue that fake news shares these same qualities of insincere lying that reduce our reliability and trust on a developing but increasingly used channel of communication: The Internet/Social Media. In previous sections, I have described that these types of harmful actions have incentivized governments to intervene and create policies that call for the regulation of fake news. In spite of the mentioned pragmatic concerns, I will apply Shiffrin's argument here and make the case that the regulation of fake news would be consistent with the values and traditions of free speech.

In this section, I will apply Shiffrin's framework of the argument to the case of fake news. My objectives will be to, first, establish that social media and the internet are becoming increasingly important channels of communication. Secondly, I will explain how my definition of fake news is congruent with Shiffrin's characterization of insincere and deliberate misrepresentation. Third, I will argue that fake news is not only harmful to free speech, but that the regulation of lying, in its correct form, is consistent with a right of free speech. While the different forms of fake news may appear to be unusual forms of testimonies, I will give grounds for how each follow a similar format as an assertion of lying. Later on, I will defend this position by responding to the strong objections one may have to the regulation of fake news and address the significant pragmatic concerns that have already been mentioned.

To begin with, I will explain how social media and the internet are forming into central channels of communication that we, as thinkers, rely on. While relatively new and more unconventional than other forms of communication, the internet has become an increasingly used form of communication that is being used by more and more people every day. According to a recent study by the Pew Research Center, about two-thirds of American adults (68%) say that they at least occasionally get news on social media (Smith & Anderson, 2018). Additionally, the European Commission stated that, in 2018, European internet users that engage in various online activities, 72% percent used it as a source for reading news online (Digital Economy and Society Index (DESI), 2018). This recent evidence seems to be consistent with Shiffrin's key idea that communication is an important precise tool for us to epistemically receive information with one another.

In fact, not only are social media and the internet becoming channels of communication to receive news, but they're increasingly growing into a reliable and trusted form of communication to retrieve information such as news. Indeed, a substantial majority of surveyed individuals feel that the internet had them better informed about national news (75%), international news (74%), and pop culture (72%) (Purcell & Rainie, 2016). The study goes on to further say that 76% of online adults say access to the internet has made average Americans better informed, while just 8% saying it has made them less well-informed (Purcell & Rainie, 2016). Unsurprisingly, this growing trust of social media and the internet to receive news information is becoming a competing source against other well-established channels of communication. As of August 2017, the percentage gap between those Americans who report getting news online and those who reported getting their news on television was just a share only 7 percentage points lower. This percentage gap is striking since the gap in early 2016 between

the two news platforms was a 19-point difference (more than twice as large) (Bialik & Matsa, 2017).

Already, we can see that social media and the internet are forming into one of the main sources of communication in which people receive news. For instance, the American Federal Election Commission found that only 18% of all Americans cited the internet as their leading source of news about the 2004 Presidential elections (The Internet and Campaign, 2004). However, the Pew Research Center found that by the 2016 American Election, that number rose to 65% in which Americans stated an internet-based source as their leading source of information for the election (Mitchell et al., 2016). On a more general level, the American Press Institute 2015 found that, among millennials, on 24 separate news and information topics probed, Facebook was the No. 1 gateway to learn about 13 of those, and the second-most cited gateway for seven others (“How Millennials Get News,” 2015). With all this evidence, the point is clear: social media and the internet are an increasingly important channel of communication that are being used by and relied upon by individual thinkers alike.

With that said, I would like to make the stronger case that not only is the internet becoming more used and relied upon for news and information gathering, but also that the internet is essentially growing to become one of the most significant channels of communication that promotes the fundamental interests, goals, and capabilities of the thinker. To explain, the thinker-based account established that as individuals, we have multiple fundamental interests beyond the basic self-interests that derive from our intellectual capabilities as moral agents. Now, the internet has made it possible to freely realize these fundamental interests without barricades or delays. If I as a thinker am intellectually interested in apprehending the truth, the use of an online search bar will quickly assist in this need. If I have an intellectual interest in

exercising my creative abilities, the internet has provided the greatest amount of freedom possible to publish any work of art, opinion piece, or information to the public without restrictions by third party sources. As social beings with a fundamental interest in living among other social individuals, social media has enabled us to engage and communicate within seconds of each other regardless of time/location. While I could go on further and list several non-exhaustive ways in which the internet has assisted, the point is clear: the internet and social media have enabled us the most out of all communicative mechanisms to pursue the core fundamental interest of thinkers. Undoubtedly, this is an important channel of communication that utilizes speech and expression in its most genuine form.

However, these unrestricted features also emphasize the “fragile nature” of this particular channel of communication. Given the fact that the internet is still relatively new as compared to other channels, there is a lack of regulation or formal code of ethics to prevent any malevolent agent to exploit it for their purposes. Any misuse or exploitation of this “fragile” mechanism of communication would certainly limit the authenticity and accurate representation of people’s mental content (Shiffrin, 2014, p. 25). In accordance with Shiffrin’s view (2014), I agree that the internet and social media must be safeguarded “if we are to understand and cooperate with one another to achieve our mandatory moral ends [and fundamental interests]” (p. 118). Thus, when it comes to the internet and social media, we must accept that it is a channel of communication that is significantly important to the thinker to fulfill their interests but must also be safeguarded against its fragile nature.

With the internet becoming an increasingly significant but fragile channel of communication for the thinking agent, we must now consider whether fake news follows a similar type of distinctive wrongness as lying. In earlier sections, I have demonstrated the

growing presence of fake news in the age of the internet. However, I will now justify how fake news fits with Shiffrin's framework and characterization of a lie. As mentioned before, a lie can be characterized as an "intentional assertion" of proposition P to B by individual A, who does not believe P, and is aware that they do not believe P, but, nonetheless, intentionally presents P in a manner that B is to take and treat P as an accurate representation of A's belief. While this framework of a false testimony suggests that lying is practiced only in direct conversations, I maintain that fake news also follows a similar format. Regardless of the platform in which an assertion is made, individuals will form beliefs based on another person's presentation of the truth. As an example, individuals that read news articles either in print or online will form a belief that is held on the basis of the reporter's testimony. With social media, when we circulate headlines through our news feeds, we will be presented with several headlines that are based on testimonies of others. In accordance with Shiffrin's theory, social media and the internet have positioned thinkers to have contact with multiple propositions at once that are based on testimonies of individuals that we must assume are sincere representations of those individual's beliefs.

Unfortunately, fake news has empowered deliberate insincere false testimonies to co-exist in this domain. As you recall, I defined fake news to be "Online publication of intentionally or knowingly false statements of facts..." (Humphrecht, 2018, p. 3). On an epistemological level, these publications are "false assertions" that are intentionally presented as true by someone online. However, these assertions carry unique elements that make them different from the common forms of false testimony. Specifically, fake news can be broken down into two types of testimonies: *Primary False Testimony* and *Secondary False Testimony*. Uncontroversially, primary false testimonies follow the framework of a lie closely in that an individual (B) is

initially presented a false belief asserted by individual (A). To illustrate, this type of false testimony is where an individual (or bot) knowingly publishes a false article or statement that is intentionally directed towards to an individual or larger audience online. In contrast, secondary false testimonies differ in that the false assertion does not originate from individual A.²⁷ Rather, this “intentional assertion” of a false proposition to B by A originates from individual C as the primary source. This is not uncommon in cases of fake news, since internet-made concepts such as “retweeting” or “sharing” have allowed others to forward someone else’s content and publish it as their own original testimony. An example of this form of testimony can be described when an individual, knowing that it is false, deliberately shares towards a targeted listener audience false data statistics that they found online in a context that assumes it represents their actual belief. In either case, there is a speaker present that does not believe P, and is aware that they do not believe P, but, nonetheless, intentionally presents it in a manner that is treated as an accurate representation of the speaker’s belief.

While this second form may arguably seem unqualified to be associated with the framework of a false assertion, the internet has epistemically changed the norms in which listeners accept both types of assertions as original testimonies. In fact, epistemologist Regina Rini (2017) argued that although Secondary False Testimony is a “bent form” of testimony, it still shares similar aspects that play a role in the transmission of fake news. As Rini states, “The epistemic relationship between testifier and testimony is ambiguous, as we haven’t yet settled on a norm [on social media] whereby sharing entails assertion. Nevertheless, many of us treat social media sharing as if it were ordinary testimony, at least until something goes wrong” (Rini, 2017).

²⁷ While secondary false testimonies would seem to fit well with Shiffrin’s assertion, different epistemological accounts of testimony would argue that they are unusual and are difficult to categorize as an assertion since the connection between the speaker and their testimony is so detached. See; Rini (2017).

To elaborate on this point, it is important to consider that fake news in all its forms violates epistemic norms that are usually present in direct forms of false claims. In particular, there are several cases of fake news in which individuals have ignored the rational norms of being responsible thinking agents and suspended belief in order to believe absurd stories that normally would not be accepted under normal circumstances. For instance, if someone were to conversationally claim that several high-ranking officials of the political party were part of an alleged child sex ring that involved a pizzeria restaurant, the claim would be less inclined to rationally be believed. But, if the same claim were produced on the internet, individual's rationale to suspend belief on a ludicrous story would be reduced. Even after this false online conspiracy was debunked publicly, The Economist and YouGov surveyed data that 46% Trump Voters continued to believe the false conspiracy theory (Frankovic, 2016). As I've already mentioned in previous sections, there are psychological factors present in these cases that assist in dampening our intellectual capabilities to discern the truth. The evidence suggests that, while fake news does not follow a similar format to a typical case of a false assertion, it does formulate false beliefs just the same (perhaps even more successfully). Generally speaking, we have established that in all cases of fake news there is (A) speaker present with an intention to misrepresent their beliefs, and (B) there is an audience present willing to accept the false assertions as original sincere testimonies.²⁸ Therefore, we can generally accept that fake news, in all its forms, satisfies the characterization of a lie.

By establishing this connection between fake news and lying, we can naturally assume and apply the distinctiveness wrongness that follows just the same. To reemphasize, lying entails

²⁸ To clarify, Primary or Secondary False Testimonies would not include cases where the speaker sincerely publishes, shares, or posts a false proposition, not knowing that's its false. In these cases, the speakers are not trying to misrepresent their beliefs to others.

a type of wrongness that deteriorates the value of speech for both listening and speaking thinkers. Similarly, this type of wrongness can be seen in the case of fake news. From the individual standpoint, the relationship between the speaker and the audience and their interests is violated when fake news is produced. The individuals that are being targeted by fake news are not being treated as an equal partner in this relationship of communication, but rather they are manipulated as a means to an end. Indeed, reconsider the fact that the Russian Internet Research Agency targeted minority communities in an effort to create racial tension and conflict. This example not only attempts to violate the equal partner relationship between the speaker and the listener, but also has a motive to violate this same relationship among listeners by inserting mistrust and false conflict. At the same time, those speakers who are deliberate and insincere in spreading fake news equally wrong themselves by isolating themselves from having a relationship with the listener built on trust, rational communication, and justified beliefs. In this case, the fake news speakers are not only deteriorating a relationship between their targeted audience, but they are also isolating themselves to ever trust such a speaker. Markedly, it is unlikely that instigators of fake news such as Russia will be able to regain or achieve any level of trust with other target sovereign nations after such actions.

The most compelling point that showcases the wrongness of fake news is that it severely compromises our “rational basis” to support mutual dependence of testimonies or communication from anyone on the internet. As thinkers, the internet has provided us with the opportunity to speak and engage with multiple opinions and thoughts in an instant. However, this communicative mutual relationship requires a “good faith” approach of sincerity that is built on trust and reliance. Unfortunately, fake news has generated a problem that threatens that trust and reliance on others testimonies in online communication. The insertion of fake news as part of our

communication in social media and news feeds deteriorates and reduces the reliability of our access to accurate representation of one's belief. In effect, a pollution of fake news will inevitably change the approach into to how we address each other in the internet. Specifically, fake news will force us to take a "bad faith" approach in which we assume that any claim or individual on the internet is subject to have an intent to deceive and manipulate. Such an approach will be inconsistent and contradictory to the thinker-based goals and fundamental interests that we have as human beings. Indeed, when we consider the wrong associated with fake news to society, I concur with Shiffrin (2014) that these cases "disrespect the collective interest of maintaining reliable channels of communication," especially one as important as the internet (pp. 23-24).

A point to emphasize in this argument is that lying, if universalized, transforms a mechanism for exclusively conveying the truth into mechanism for conveying both the false and the true. Although some may criticize this concept from Shiffrin of universality and the impact that one lies can have on general level, it cannot be denied that social media and internet have made it realistically possible for a single false news article to reach a substantial quantity of people within the internet. This impact by fake news has already been felt by individuals. While the use of social media and the internet has been at an increasing rate, a study by Statistica found that, out of the 3,500 that surveyed, the share of North Americans that trust in social media has declined to 34% whereas 65 % of respondents stated that they trusted traditional media to provide general news and information (Edelman, 2018). Such evidence seems to align with the view that fake news is changing the way we utilize one of the most important growing channels of communication. It should come as no surprise then that critics of fake news will associate it with adding further to the growing concepts of polarization and tribalism in our society today.

For this reason, fake news and its dissemination seem to be in direct conflict with our intellectual and moral interests as thinkers.

In earlier sections, I raised the question whether it would be permissible for governments to regulate fake news on the internet. Critics and human rights organizations have mentioned that, such regulation would violate and be inconsistent with freedom of speech. However, from the thinker-based point of view, the regulation of fake news does not have to be inconsistent with the value of free speech. In fact, government regulation of fake news would instead be consistent and promote free speech. As mentioned previously, fake news produces several wrongs that are harmful to the thinker. Mainly, fake news has injured the “collective testimonial framework” on the internet and social media by creating doubt and reducing our reliance on others testimonial speech and expression. This massive spread of disbelief has made it difficult for any individual with a sincere opinion or thought to not be associated with a malicious purpose or false narrative, even with credible sources. At the same time, the aim of fake news has not only inflicted harm on the testimonial trust relationship between the speaker and their listener(s), but also aimed to harm the relationship between listeners with each other as well. This intentional abuse by fake news damages our reliability and rational trust to use these tools for speech and expression. As intellectual thinking beings, the internet is a resource and tool that enhances speech and expression to fulfill fundamental interests that are critical to the individual’s self-development and to “sustaining a functional moral and political culture” (Shiffrin, 2014, p.136). From this perspective, we can understand that fake news directly aims to injure the instrumental value that is speech by (1) diminishing its reliability in a growing important channel of communication and (2) reducing and deteriorating the relationships of trust we have with one another. Contrary to

what critics may say about government intervention, fake news in reality is inconsistent with the value of free speech and expression.

With this point in mind, we can make the further case that government intervention and regulation of fake news would not be inconsistent with free speech, but instead promote the value of free speech. A point that is often misunderstood is that any right of free speech supposedly only entails a prohibition of government to act. However, a right may also entail the government to act in order to promote the value or meaning of such a right. Larry Alexander argued that rights can be categorized as having positive and/or negative obligations (Alexander, 2005, pp.4-6). While negative obligations impose restrictions on actions that reduce liberties that are protected under a human right, positive obligations entail individuals giving goods or services to others. In this particular case, freedom of speech can also be a positive right since governments would be required under such a right to promote or provide the means by which individuals can speak or express themselves. Again, we often accept that governments will take preemptive regulatory action to allow individuals to speak to others “without distortion, strain, or intermittent interruption” and to maintain a reliable scheme of communication (e.g., noise control in public forums) (Shiffrin, 2014, p.138). Therefore, we cannot always assume that free speech entails prohibition of government regulation, but instead would entail the regulation of certain kinds of speech.

I argue that the government regulation of fake news would fulfil this positive obligation towards free speech. As realized, fake news has an intentional purpose to injure the value that speech offers to the individual thinker and to society overall by diminishing the rational trust and reliance in a significantly important channel of communication. In addition, such speech is actively attempting to manipulate and exploit the testimonial relationships of trust and respect

that we have for each other as speakers and listeners. Similar to other types of speech that is regulated, fake news is distorting, interrupting, and putting a significant strain on maintaining a reliable mechanism of communication to allow sincere speech and expression to be accepted. For these reasons, we can accept that government regulation should act and intervene in the situation of fake news to protect speech and promote it. A key point to remember is that, similar to the lying case, regulation of fake news neither focuses on the truth value of the speech nor does it discriminate on content since it is centered on the deliberate misrepresentation and sincerity of the speaker. While this situation may still appear unusual, consider the situation of traditional new media communication. If the newspapers or television news allowed for any columnist or reporter to intentionally make up ridiculous or absolutely false stories to a large audience, it would reduce the credibility and reliance on these channels.²⁹ Unfortunately, the internet, in its fragile unrestricted nature, lacks the same sort of internal regulation to prevent such contamination. It is no surprise that despite the decrease in use, these old channels of communication are still held with greater trust than the internet and social media. Thus, we can conclude that the regulation of fake news does not have to be inconsistent/impermissible with the value of free speech, but instead can be designed as a strong commitment to protect such a value.

Section 5) Substantive and Pragmatic Concerns Over the Regulation of Fake News

In taking this controversial position, there are admittedly some concerns that need to be addressed regarding the regulation of fake news. These concerns can be categorized into two types of concerns: substantive or pragmatic concerns. As I briefly touch upon before in my discussion of Shiffrin's argument for the regulation of lying, pragmatic concerns relate to the

²⁹ From a general point of view, this claim is true. However, it must be dodged that from an individual standpoint, different traditional news media differ in trust depending on the person's preferences.

concerns that regulation would give the government too much power which would lead to government abuse (Kendrick 2018). In contrast, substantive concerns focus on the concerns and critiques over the theory and application itself. In this final section, I will defend this controversial position against the key persuasive objections and concerns. Firstly, I will try to address the substantive concerns over the regulation of fake news. While I have already addressed some substantial objections in defending the thinker-based account of free speech and the general regulation of lying, there are still two unaddressed substantive concerns saying the regulation of fake news should be left to the individual to determine and not government intervention. Furthermore, I will respond to the possible chilling effect criticism that is argued to arise if regulation of fake news was permissible. Secondly, I will address the pragmatic concern on whether the regulation of fake news will lead to governmental misuse or censorship of free speech. Overall, I will argue that neither type of concern has any substantial ground to reject government intervention and regulation of fake news.

The most prominent substantive concern that comes to mind when considering whether the government regulation of fake news is justified on the thinker-based account relates to the individual's responsibility to discern from sincere speech to deliberate insincere misrepresentation. In this context, while this position accepts the harmful wrong that fake news commits to the thinker, the burden of responsibility for filtering out fake news content should only be left only to the individual and not the government. From this perspective, individuals should hold epistemic responsibility when they decide to observe and inform themselves on the internet. As thinkers, we must be able to utilize our intellectual capabilities to evaluate the source and content of the information we receive and determine whether it is reliable. In fact, this position would go on to further suggests that it would be ill-conceived to assume that an entire

channel of communication is generally reliable and trusted. In reality, thinker's individuals should assess the reliability and trust of a source of content on a case by case basis. For instance, an individual who is confronted with fake news on the internet should make an educated assessment of its reliability to be trusted as a source of information based off several factors such as the content, speaker, or rational. Indeed, these types of actions would align more with an epistemic virtues character.

At the same time, the thinker-based account should not endorse the government or state to take the responsibility for filtering out fake news, even if it has the pure intention to maintain the internet as a reliable channel of communication. The problem with government action in having this responsibility is that it would be highly intrusive to the individual in determining what they consider to be reliable or trustworthy. Such type of action would be considered as legal prohibition or regulation that abnormally shapes the conditions of free speech. Normally, these conditions of free speech are shaped by individual efforts mentioned previously or through some form of moral prohibition. To shape these condition under legal enforcement would be intrusive to the ideal of maintaining an authentic form of communication. As Kendrick notes, "The state's involving itself in your sincerity across all the spheres of your life would seem to stand in some tension with at least the "free part of the ideal of free and authentic communication" (Kendrick, 2018). To emphasize, this form of intrusion by the government will reshape the internet as an artificial channel of communication that is counterintuitive to Shiffrin's ideal of authenticity. Therefore, we should refrain from making permissible the regulation of fake news, even under the thinker-based account, for its intrusiveness behavior to the free operation and development of the mind.

In response to this concern, I argue that the problem of fake news does require government intervention in order for the internet to remain an authentic channel of communication for both speakers and listeners. This objection raises the point that the conditions of free speech for communication are usually self-regulated by individuals through some form of epistemic evaluation or moral prohibition. However, I disagree with this point's suggestion that the internet is a normal form of communication. Instead, the internet is an unusual channel of communication in which the traditional forms of self-regulation are not effective. As mentioned before in previous sections, fake news has violated and escaped traditional forms of individual epistemic evaluation for reasons that can be attributed to psychological factors. To reemphasize, factors such as "confirmation bias" "cognitive dissonance," the "backfire effect," and the "Dunning-Kruger Effect" have been found to negatively influence how we accept information on the internet. Equally effective are political factors such as partisan affiliation that either increases or decreases the chances of accepting a testimony on the internet.³⁰ Most importantly, there is a lack of epistemic resources or time available for the average thinker to put in the effort to evaluate every post or news article on the internet. With the plethora of constant news waves being put forth, it is almost impossible for anyone to carefully evaluate each information for its reliability. In regards to this impossibility, Regina Rini (2017) explained that:

"We take others' words for it when we just don't have the time to go out and investigate claims for ourselves. Social media sharing is the same. There is so much information available, and only so much time to conduct inquiries. In an epistemically non-ideal world, given our temporal and cognitive limitations, it simply makes sense to trust others, even when we antecedently know that this will sometimes lead us astray."

³⁰ In "Fake News and Partisan Epistemology," Rini (2017) elaborates further on this idea by arguing that partisanship is consistent with epistemic virtue.

Indeed, the limitations imposed by the internet has positioned individuals to inadvertently rely on and trust the testimonies of others. On an epistemic level, these factors highlight that the individual is not responsible for failing to discern whether fake news is true or not.

If we cannot use individual means to differentiate the problem of fake news, can societal or moral prohibition achieve it any further? Unfortunately, we cannot rely on moral norms or institution to scrutinize deliberate insincere misrepresentations online. For one thing, these norms or institutions found normally in situations of free speech are non-existent on the internet. In this case, part of the problem is that these platforms on social media and the internet lack any form of “infrastructure” to provide a norm of moral accountability. That is to say, that social media or the internet had allowed and empowered individuals to be not be held informally accountable for any of their actions. The result is that individuals tend to be less morally considerate of their actions on the internet. As Rini (2017) argues in a solution to fake news, “better norms, facilitated by wise institutions, are what will stop fake news exploiting gaps in otherwise reasonable norms of communication and belief.” While I sympathize with Rini’s point, I am skeptical that these norms are likely to occur or form naturally on their own. Nevertheless, as of now, there is no form of protection to prevent individuals or groups from abusing this trust and misleading multiple people on numerous occasions. Thus, we cannot rely on either self-individual evaluation or informal forms of moral prohibition that usually accompany free speech to assist with dealing with this problem.

Moreover, I disagree with the point that government regulation of fake news would be characterized as “intrusive” and would conflict with a free and authentic channel of communication. The problem with this point is that it frames the issue as violating the natural authenticity of communication. However, I argue that this point exaggerates government

intervention as reducing the authenticity of speech. While this argument may hold more weight to it on a more general legal regulation of lies, it lacks that same effect on smaller cases such as fake news. An important point keep in mind is that the regulation of fake news, if done properly, is designed to promote sincerity by reducing acts of insincere deliberate misrepresentation of information on a reliable source of communication. Such actions by the government should be seen as maintaining the internet's authenticity rather than a curtail of it. In fact, government restrictions and regulations are often placed in order to provide the best form of communication accessible for everyone. For instance, the American Federal Communication Commission (FCC) implements and enforces several laws intended to regulate multiple channels of communication across all 50 states (*“What We Do”*, 2018). One type of action by the FCC is to make accessible speech for Americans with disabilities such as deaf, hard of hearing, speech disabled and deaf-blind. While this form of action may be seen as intrusive in regulating speech, it not reducing the authenticity of it but rather promoting its reliability to individuals who otherwise would not be able to access this form of speech. Likewise, the regulation of fake news would similarly be designed to increase accessibility and reliability. Therefore, this regulation of fake news should not have associated as an intrusion on the authenticity of speech. More generally, the lack of individual and moral prohibitions suggests that government intervention will be one of the only resources to prevent the insincerity of fake news.

The second prominent substantive concern regarding the regulation of fake news pertains to the “Chilling Effect.”³¹ As Kendrick describes, the chilling effect is a free speech principle that states that speakers and listeners alike who face strict scrutiny or liability by government

³¹ While the chilling effect is generally associated as a pragmatic concern, I agree with Kendrick that, from the thinker-based perspective, because the chilling effect would leave a substantive impact on us engaging in a free and authentic channel of communication. As Kendrick (2018) states, “This [effect] would seem to be a substantive harm to the free speech values Shiffrin endorses.”

regulation will remain silent under the uncertainty or fear of the accuracy in their information and the fallibilities of the law that they will face (Kendrick, 2018). From an individual point of view, it will be unclear as to when insincerity and sincerity is permissible or impermissible under such a rule of law. Furthermore, governments are not perfect and will make mistakes on multiple cases when implementing or applying laws to individuals. Even if the government were perfect and made no mistakes, the concept and operation of this type of regulation would remain unclear to individuals. In both cases, the regulation of fake news would encourage individuals to refrain from speaking under fear of government action. The result is that valuable true sincere speech will be “chilled” and damage the free and open channels of communication that are advocated by Shiffrin. From the thinker-based account, this action will render the importance of speech as significantly reduced in developing the fundamental interests. For this reason, the regulation of fake news would instead present a harm to speech rather than a benefit to speech

In response to this second concern, I argue that the rationale for the chilling effect is problematic and not sufficient enough reason to reject the regulation of fake news. Firstly, the chilling effect is problematic in that it proclaims unpredictable and immeasurable consequences to a type of regulation that has never been implemented before. In this case, the chilling effect is asserting an ungrounded prediction of the consequences that will likely happen if the regulation of fake news took place. With this objection, I am skeptical that such a regulation would ultimately reduce the amount activity that occurs on the internet. But if we accepted that such a consequence would occur, despite all the advancements in social sciences, it would be impossible, to empirically determine if speech was reduced as a result of regulation. Even Kendrick (2014) agrees that this rationale leads to an empirical uncertainty since it would be

impossible to measure the impact of chilling on online speech that would occur as a result of regulation (p. 1277).

Nevertheless, an important point to further consider is that from the thinker-based account, future consequences would not negate the wrong that occurs when fake news is asserted. The chilling effect focuses on unpredictable harms that may or may not occur in future rather than the wrongful harm of fake news that empirically deteriorates our reliability in the internet. Certainly, it is odd for an objection to focus on the harms to future potential speakers rather than to the harms both listeners and speakers may now face (Kendrick, 2014, p.1277). To put it another way, this position would argue that the protection of harmful speech by a deliberate and insincere liar is justified under the rationale that it is important to prevent future speakers from keeping silent. As Kendrick elegantly says, “This approach essentially says to such speakers that You’re lucky there are so many nice speakers out there who actually deserve protection. To keep from chilling them, we will tolerate you” (Kendrick, 2014, p. 1277). For this reason, the chilling effect is not sufficient to justify the rejection of the regulation of fake news.

Moreover, I would like to emphasize that the distinctive wrongness of fake news creates a type of reverse-chilling effect. In this case, I argue that a similar outcome to the chilling effect could occur if no form of regulation was present to minimize the dissemination of fake news. To elaborate, we already established in Shiffrin’s argument that fake news will ultimately deteriorate a reliable form of communication that we use to fulfill our fundamental interests. If everyone begins to spread false news and not be held accountable, then everyone will begin to distrust each other and their sources of information no matter where the sources come from. In other words, listeners will distrust and label everything as “fake news” without engaging with the source or idea behind it. The result would be that speakers would find it pointless to combat this

distrust and ultimately decide to remain silent and refrain from speaking. In effect, a chilling effect would occur just the same. Under these circumstances, the substantive concern of the chilling effect is rationally problematic and not sufficient to reject the regulation of fake news.

With this in mind, I will now focus my attention on addressing the pragmatic concern regarding the regulation of fake news. Ultimately, the underlying core of any such pragmatic concern will always be that such type of regulation would, as Shiffrin (2014) explains, “grant the government an unthinkable vast amount of power, power that would, in turn, reignite valid concerns about government abuse” (p. 130).³² As we already established, a general regulation of lies would prove to be too strong of an enforcement to be considered permissible. Nevertheless, it is possible that a narrower and specific form of regulation that is grounded in a specific domain will avoid these worries over government abuse. To demonstrate a related law that has avoided this problem, the Stolen Valor Act of 2013, which prohibited making false statements about receiving military honors or award, is a form of narrow regulation that is generally accepted in the U.S.³³ Additionally, the FCC’s Fairness doctrine, was a type of U.S. policy that required speakers in television and radio to present fair and balanced coverage of controversial issues of interest to their communities, including by devoting equal airtime to opposing points of view.³⁴ Primarily, one of the reasons this form of regulation did not raise any concern over government

³² To briefly explain the importance of addressing the pragmatic concerns in free speech, Joshua Cohen, in “Freedom of Expression”, made two important points about facts of reality that need to be considered when address government power. One of the first unfortunate facts of reality is the Fact of Bias, which claims that individuals will generally tend to have confused and conflicting opinions about what they would prefer over with what they should choose and what is best (Cohen, 1993). Indeed, this correlates with what we know about cognitive bias and fake news, in which people on the internet will prefer stories that either validate their points or align with their ideology/viewpoint. In addition, there is another unfortunate fact known as the Fact of Power, which states that those with power will use whatever advantages are made available to them to silence/reduce anyone that disagrees with them (Cohen, 1993). With these two unfortunate facts of reality in mind, there is a fear and worry that anyone with the power of regulation will be able to decide what messages or content should be regulated based on their personal values that a result in unfair reasons, opinions, and bias.

³³ “Pulp. 113–12”; H.R. 258. (2013).

³⁴ “FCC, 395 U.S. 367.” (1949).

abuse of power for about 40 years was that the policy was limited in single domain of licensed radio and television broadcasters. In view of these examples, I contend that the regulation of fake news is a particular case that can be grounded in a narrow scope and limitations in order avoid of government abuse of power.

Admittedly, while the regulation of fake news is consistent with the value of free speech, the penultimate factor that will determine whether pragmatic concerns over government abuse of power should be raised will be determined by the design and structure of the law itself. As Shiffrin (2014) notes, "...scrutiny of legal regulation of lies should be far more focused on the specifics of their design, namely whether the particular factual circumstances raise credible concerns about government abuse" (p.118). Although I concur with Shiffrin's reasoning, I will maintain that the regulation of fake news would be able to address structural or implementation issues that would raise concerns of government abuse. In order to further this point, I will address two important structural issues that might raise pragmatic concerns over fake news.

One possible pragmatic issue with legal regulation of fake news would be that it would be far too vague in its implementation and unable to provide a fair notice to individuals in what is being regulated. In detail, speakers may be placed in a tough situation where it is difficult for them to determine whether or not they are in a context to speak insincerely without being found culpable for publishing fake news (Kendrick, 2018). Such outcomes may exist in cases of institutional design flaws where the government has ill-defined fake news and does not provide a thorough explanation as how one is held culpable. For example, Taiwan, Malaysia, and the Philippines have been heavily criticized for vaguely defining fake news on a broad scope. There's no question that defining fake news as "Spreading rumors that is sufficient to undermine peace and order via the internet," will present problems of uncertainty and scope ("What Is Fake

News and How Does It Affect Asia?” 2019).³⁵ More specifically, the result would generate fear that such legal prohibition of a vague concept would not provide a fair notice to citizens to avoid persecution. From the thinker-based account, a lack of notice would lead to undermining the internet as a free and authentic communication that is advocated by lack of respect toward citizens (Kendrick, 2018). But even without thinking it from Shiffrin’s perspective, this design flaw would present the pragmatic concern that such unrestricted government power would lead to abuse.

In response to this worry, I argue that restrictions can be placed on laws that would address these problems of fair notice and vagueness of fake news regulations. To address vagueness, laws could be designed to establish a concrete and explicit definition of fake news that mirrors the definition we’ve established. Having a precise definition would avoid have uncertainty about the vague concepts involved. In fact, the more democratic government states such as France and the U.S.³⁶ have taken this explicit approach to define fake news and associating with the electoral process and false sponsored content and commercial advertising. In addition, these countries have been explicit to disinclude activities such as parody or satire. Similarly, countries have also made strong efforts to address concerns over fair notice for citizens. For instance, Germany’s The Network Enforcement Act (NetzDG) established a stringent procedure in which those (providers or social media companies) accused of generating fake news are notified of a complaint against them of a complaint³⁷. Depending on the content, those accused have either 24 hours to respond and delete the “illegal” content or 7 days after checking the complaint. At the same time, France passed a fake news law that was explicit to its

³⁵ “The Social Order Maintenance Act.” (2018).

³⁶ See Honest Ads Act (2017); “Proposition relative à la lutte contre la manipulation de l’information,” (2018).

³⁷ See “Network Enforcement Act (Netzdurchsetzungsgesetz, NetzDG).” (2017).

denizens that they would monitor and regulate online disinformation during election cycles only (Fiorentino, 2018). These empirical examples enforce the point that pragmatic concerns of government abuse need not arise if restrictions and limitations about the scope of power are explicitly placed on fake news regulation. Indeed, it is no surprise then that, despite criticism from advocates of free speech, citizens have generally approved of stringent but limited regulations. Since its implementation in 2017, Germany's regulation has been shown to have overwhelming support with 87% of Germans said they approve of the policy (Holmes, 2018). Thus, regulation on fake news, if designed properly, does not have to need to raise concerns over government abuse.

On a final note, I would like to address the pragmatic issue on whether the type of regulation matters in terms of justifiably regulating online speech? As you may recall, I established that there are only two types of possible actions that a government can proceed when regulating speech. More specifically, Type A regulation would focus on removing the speech itself, while Type B regulation consists of the prosecution of the agent that generated and published the fabricated false content. While the purpose this paper is not to establish a correct method of law enforcement, I will briefly mention which seems to be more consistent with the thinker-based value of free speech. In this case, both type A and type B regulations would seem to be compatible with the value of free speech. With type A regulation, these forms of government actions focus on the speech itself and removing the content from the platform. Clearly, this type of action would be compatible with the thinker-based account since it focuses on the distinctive wrongness of false assertion and how it reduces our reliability and trust. Therefore, it seems to make sense to eliminate and remove the false assertion that entered this channel of communication. At the same time, the thinker-based account focuses on the sincerity

of the speaker and their deliberate intent to misrepresent their beliefs. Hence, type B regulation would seem to be compatible as well, since it focuses on holding accountable the individual agent(s) for their actions.

However, it is important to keep in mind that both types of regulations can be taken to extreme measures that are not consistent with Shiffrin's theory. Type A regulations could focus on removing all and any future assertions made by the speaker. Likewise, Type B regulations could consist of punitive damages that would entail going beyond simple fines such as imprisonment or humiliating the agent with a "mark of shame" to prevent them from speaking again. One possible way to explain why these extreme measures are wrong is because it concludes that the agent is irredeemable or incorrigible from these acts of lying and as a result must be barred from speaking again.³⁸ However, this conclusion would contradict the thinker-based account since it would reject the idea that anyone is far from being redeemed. In brief, one of the fundamental interests for any thinker is to develop and improve upon their moral life by forming and building moral mutual relationships with others individuals (Shiffrin, 2014, p. 51). Isolating someone and preventing them from ever speaking again will negate the possibility of redemption. As Shiffrin emphasizes:

³⁸ A somewhat related pragmatic sub- issue that needs to be addressed is whether governments should be limited in terms of how they enforce regulation on different types of false testimony or fake news. As you may recall, I characterized the types of possible testimonies on fake news as either *Primary False Testimony* and *Secondary False Testimony*. With primary false testimonies, I do not see concern with governments using both A or B types of regulation to target direct false assertions made by its originator. However, several pragmatic problems emerge over the use of Type B regulation for secondary false testimonies. One particular problem is that while this is a form of false testimony, I would argue that it would become difficult and unclear as to whether the government should hold accountable individual C's deliberate false assertion when individual A is the one that originally produced it. To illustrate this situation, imagine that liar (X1) knowingly and insincerely creates a false proposition P1 and publishes it online. Now, imagine that another liar (X2) comes into contact with P1 and decides to share it or repost it as their own, knowing that it is false. Again, consider that another liar (X3) notices P1 and decides to act similarly to (X2). Now consider that this is done 6 times. If the government discovered that P1 was being published online deceitfully and wanted to regulate it, should they use Type B regulation to hold accountable liars X1, X2, X3, X4, X5, and X6 for regulation. Unfortunately, such a type of action would seem to generate too much concern for abuse given how many parties they could hold accountable for a single lie. With the power of the internet, this worry is even greater since hundreds of people could be involved in spreading the false proposition P1. For this reason, while there may be exceptions to this rule such as when bots may be involved, I would generally limit secondary false testimony of fake news to Type A regulation. It is important to recognize that government states have attempted to avoid this issue altogether by holding accountable not individual's sources, but the providers and social media companies themselves that have passed fake news.

A peaceful avenue to social and moral reconciliation and redemption always be open to even to those who have strayed, that even those who engage in wrong remain members of the moral community... and that the availability of this opportunity should not be confined to those who have fully repented, in large part because achieving such repentance and recognition is usually a process that requires assistance from others (Shiffrin, 2014, pp.37-39).

Regardless of the liar's attempt to degrade the internet as a reliable channel of communication, the liar should not be shunned from communication as they can still contribute to the conversation and further improve the mutual epistemic cooperation endorsed by Shiffrin. Equally important, communication and social interaction are vital for the liar to pursue their fundamental interests such as improving their moral character. If governments were to take extreme measures from either type A or B regulation of fake news mentioned, then it would eliminate the possibility of any individual to have redemption and isolate them from these opportunities. For this reason, governments should refrain from taking extreme measures in regulating fake news. In any case, there is no general answer to which type of regulation is preferable over the other. In reality, Shiffrin's key point that such "assessments" should be determined on a case-by-case basis regarding the threat of extreme measures and pragmatic concerns is critical here.

Ultimately, any concern that arises will depend on the circumstances and design of the law. As Shiffrin (2014) points out, the design of the law, the "particular factual circumstances" involved, and their application will fundamentally determine whether concerns about government abuse should arise (p. 118). Nevertheless, this section of the paper has sought to prove that there is no substantive concern to object to the regulation of fake news as a threat to free speech under the thinker-based account. As has been argued, the regulation of fake news is not only compatible with the value of free speech, but may also promote it. Moreover, while pragmatic concerns of government regulation of fake news must always be taken seriously, I

argue that these concerns can be (and have been) addressed with pragmatic solutions and application. Under these circumstances, there is no reason to warrant a universal rejection of the regulation of fake news.

Section 6) Conclusion

All things considered, the significant impact that fake news can have on the internet and social media has promoted government states across the world to take regulatory action to minimize the harm that fake news has on their targets. Many human rights and international organizations have protested that such government regulatory response would violate the value and traditions of free speech. As a result, a unique moral conflict can be realized regarding this problem between free speech and fake news. In this inquiry, I argued that there is a compelling account of free speech present that can resolve this issue. In this case, I presented Shiffrin's Thinker-based account of free speech, which emphasizes that humans are autonomous thinkers with a unique capacity to be rational, emotional, moral, perceptual, and anything else that pertains to the free operation and development of the mind. More specifically, there are core fundamental interests that are connected to developing these capacities that promote our individuality and further our moral relations with each other. Now, speech is an essential role in this development and operation since it is one of the only tools in our disposal to express these interests. For this reason, the thinker-based account would limit censorship of speech in order to prevent obstructing the value that speech has to the thinker.

With this in mind, the thinker-based account also argues that lying presents a distinct and harmful wrong to speech by discrediting our reliability on the trusted channels of communication. In particular, the deliberate and insincere misrepresentation of one's beliefs forms a type of distinctive wrong that is found on multiple levels, both individual and societal.

Similarly, fake news follows this type of characterization that harms the thinker by compromising our “rational basis” to support mutual dependence of testimonies or communication from anyone on the internet.in this manner. However, this harm is particularly concerning considering that the internet and social media are gradually becoming not only reliable forms of channels of communication, but can also be presented as the most important channels of communication to the thinker. Moreover, the internet has empowered fake news to amplify this wrong and render it more impactful. These reasons show that government regulation of fake news would not be conflicting with the free speech values as suggested, but in fact may be seen as way to promote these values. Indeed, there seems to be no substantive reason to object that fake news regulation would harm free speech under the thinker-based account.

Unfortunately, there are pragmatic concerns of potential government abuse present that need to be taken seriously when considering whether or not governments should have this power.

Nevertheless, I have shown that these concerns can be addressed with pragmatic solutions and, thus do not entail a general rejection of the regulation of fake news. In fact, when we are considering whether a particular government should introduce a law that regulates fake news, we should steer away from using arguments about the value of free speech and, instead, focus more on the relevant pragmatic arguments such as the design, structure, and implementation of such a law.

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