

Democracy in Action? A Comparative Analysis of The US and Germany's Speech Law

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The United States maintains a right to free speech granted in the First Amendment of the [U.S.](#) Constitution. And Germany has a similar right to expression found in Article 5 of the German Basic Law. Both these countries express themselves as [democratic](#). A democracy is [defined](#) as “[A] system of government by the whole population or all the eligible members of a state, typically through elected representatives.” Democratic [ideals](#) include individual rights, government accountability, equality, justice and more. Recently, prosecutors in Germany arrested several persons for their online hate [speech](#). In contrast, the United States has been reluctant to prohibit or punish hate-filled speech online. Are more stringent restrictions on online hate speech and harassment weakening or strengthening democratic ideals?

The United States and Free Speech. The United States broadly protects speech in an effort to maintain a democratic institution based on debate and expression. Chief Justice Roberts [said](#), “As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” Under this understanding even if speech is hateful it should be protected to ensure there is open debate without the fear of government repercussion.

The United States has set its own limits on speech. Words intending to incite violence, harassment, defamation, et cetera, are not [protected](#) by the First Amendment. While the Supreme Court has been reluctant to rule directly on online hate speech, they have made rulings that highlight the [culture and understanding](#) of speech today in the United States. One being *Chaplinsky v. New Hampshire*, which established the Fighting Words Doctrine—prohibiting speech that provokes violence. Another was *Brandenburg v. Ohio* which protected the racist words of KKK member’s speech because it had not created a clear and present danger to anyone. Overall the United States has a foundation of believing free speech promotes and protects democratic

ideals by allowing for the minority to always be able to criticize the majority.

Germany and Free Speech. German Basic Law [outlines](#) that there is a right to freely express and share one's opinion as well as freedom of the press; but it does continue that "These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour." After World War II Germany's speech laws changed. Holocaust denial and Nazism is a crime in Germany to this day. Their Criminal Code outlines prohibited speech such as speech that would incite hatred towards specific groups—be that religious, ethnic, racial, and more. It also provides speech that would attack human dignity. Similarly to the US, there are laws that limit speech. In contrast, Germany is active in their pursuit to regulate speech, holding people accountable for more than the US laws would deem allowable. Those prosecuting the German citizens who were arrested for hate speech online say this [limitation](#) is for the promotion of democracy.

In the CBS [article](#) interviewing the prosecutors in Germany, it is cited that adding a touch of order protects democracy and discourse online. They feel they are making a difference in enforcing the restrictions on hate speech and harassment online. They see their options as doing nothing or prosecuting a crime. The article outlines a German politician's struggle with misinformation on the internet. A quote was falsely attributed to Renate Künast and soon heavy harassment from the internet ensued. Künast's reputation was harmed, and she sued to have the misinformation removed from the internet after Meta refused to do so. "This court said, in case of public servants, who have public offices and jobs, it's in the public interest that their personal rights are protected . . . [b]ecause otherwise no one would go for these jobs, you know? That would harm democracy."

United States & Germany: The Peoples Reaction. The United States and Germany have some mirroring similarities and some vast differences. Germany went from more restrictive speech law to developing into free speech versus the United States which was founded with the promotion that there would be an allowance for criticizing those in power, broadly allowing speech. Both are identified as democratic countries as of present and their approach and culture surrounding speech is opposing in some aspects.

In 2021, 45% of people felt [free](#) to express their views in Germany. This is in contrast to previous decades where more than two-thirds felt free to express their views. There are differing polls, such as in 2019 in Germany showing only [18%](#) felt comfortable sharing their views in public. In the United States, as of 2024, 25% of people, or one in four, think the right to free speech today is "very" or "completely" [secure](#). And according to the 2022 New York Times [Siena College Poll](#), 34% of Americans think they enjoy free speech: Thirty percent support free speech but believe that "... sometimes you have to shut down speech that is anti-democratic, bigoted or simply

untrue.” The polling data suggests this is due to the rise of political correctness on the internet.

Conclusion. There are complex and ever-changing elements to this debate on free speech and the promotion of democracy. The United States framework and culture surrounding speech when compared to Germany allows for a multitude of questions. Such as by allowing hate speech are we endorsing it? Is it in the spirit of a democracy to curtail speech online that we deem hateful? Who defines what is hate online and what is genuine criticism and how does that affect the legal enforcement of the law? There are many more questions and discussions to be had surrounding this important topic of freedom of speech and democracy.