

Study analyzes U.S., European free speech traditions, suggests inevitable clashes

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Americans take great pride in the tradition of free speech. Enshrined in the Constitution, the tradition is quite different than those of Europe and

other parts of the world, which not only provide different histories but the possibility for clashes on what is and is not permissible speech. Such disagreements are especially likely when the largest arbiters of speech today, social media platforms, are almost exclusively controlled by American companies following their own legal traditions, a University of Kansas scholar argues in a new publication.

Harrison Rosenthal, doctoral candidate in law and journalism, analyzed two concepts of free speech from ancient Greek traditions and how Europeans adopted one while Americans adopted another. He wrote how those traditions evolved to the point today where American companies are imposing those traditions throughout the world and the conflicts that result for his study, published in the *International Journal for the Semiotics of Law*.

Rosenthal examined the traditions of parrhesia and isegoria. Parrhesia is the philosophy that individuals have license to say what they please, often through provocative or unpopular discourse, without fear of retribution from the state, he wrote. That tradition from which American practices descend differs from isegoria, or the right to voice one's opinion, more common in European and other traditions. The American tradition is often held up as being for the good of society as a collective, or a state composed of empowered citizens, whereas isegoria was aimed at being for the good of each individual. In ancient Greece, isegoria was granted to male citizens when reaching adulthood and after passing a character and fitness test to speak freely, including criticizing leaders, according to Rosenthal.

"When we talk about First Amendment issues, free speech and protecting speech, I think this is a great way to frame it, by looking at how the world's first great democracy viewed free speech," Rosenthal said. "We don't have that type of character and fitness exam. I argue, because of that, anyone can say what they please. We're not insulating

people or licensing them to speak. In some ways that's good. In other ways it's not."

In the study, Rosenthal noted how those traditions have evolved in both European and American societies. In Europe, citizens are now allowed to speak freely, but certain types of speech are not allowed. The most prominent example is Holocaust denial, which is banned and punishable in Germany and France. America's free speech tradition was born from colonialism, in which England sought to limit speech critical of the Crown, which eventually manifested in the attitude of even unpopular speech being allowed without government reprisal, Rosenthal wrote.

"Our free speech permissiveness was born of colonial suppression. Because of that, we've enshrined it in our Constitution and in our jurisprudence," Rosenthal said. "The Supreme Court has regularly extended protections of free speech to a point, that I argue, goes too far."

He points out that one of the Supreme Court's most ardent defenders of free speech protections, Hugo Black, was a former member of the Ku Klux Klan. Naturally, a person with such views would fight for robust protections of all manner of speech, Rosenthal said. Such extensions of protected speech can result in an intolerant minority pushing out a tolerant majority in society, he wrote.

The differing traditions have led to today, where those largely controlling who can speak and how they can do so are social media companies and giant technology corporations. The most prominent of those are not only American, they are concentrated in Silicon Valley, one small section not representative of the rest of the nation and not always knowledgeable of other cultural and legal traditions, Rosenthal said. Because of that, the current era would be a good time to re-examine American free [speech](#) traditions. Rosenthal argued they should be examined not necessarily because they merit criticism—they in fact have

contributed a great deal to the freedom of the press, religion and democracy around the world—but to prevent conflict.

There is currently debate raging in the United States about protections for social media companies. Elected officials from across the political spectrum have offered criticism of social media giants and their legal protections. Facebook, as one example, has had conflicts with what content it allows on its platforms in the United States versus other countries, including whether photos of breastfeeding mothers would be allowed, or if the iconic "napalm girl" photo from the Vietnam War should be allowed under the company's child nudity policies. Rosenthal concluded that differing traditions in the United States and other parts of the world have led to a point where powerful American corporations are attempting to export their cultural and legal philosophies around the world, which should call for a re-examination of those traditions and prepare society for disagreements between the traditions.

"If we don't understand the differences in these approaches to [free speech](#) and try to export our philosophies to other countries that don't share our sociohistory, there are inevitably going to be clashes," Rosenthal said. "I think we're going to see a perennial struggle. Facebook, Twitter, YouTube and the like are corporate persons that want to maintain their cultural control. But, since they are based in the U.S., they're not always going to understand what is permissible and what is not in other parts of the world."

More information: Harrison Michael Rosenthal. Speech Imperialization? Situating American Parrhesia in an Isegoria World, *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* (2020). [DOI: 10.1007/s11196-020-09801-x](https://doi.org/10.1007/s11196-020-09801-x)

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