

## BOOK REVIEW

### *Hate Speech in Asia and Europe: Beyond Hate and Fear*

Eds. by Myungkoo Kang, Marie-Orange Rive-Lasan, Wooja Kim, and Philippa Hall, London and New York: Routledge, 2020<sup>\*†</sup>

Shinji HIGAKI<sup>\*\*</sup>

The issue of regulating hate speech poses many challenges. First, to resolve the problem of hate speech, we must reconcile opposing objectives. Regulating hate speech requires abridging the freedom of speech. Whereas freedom of speech is a fundamental right to maintain a democratic society, combating racism is vital for the protection of human dignity and equality. For that reason, it is extremely difficult to strike a balance between freedom of speech and combating racism. As Erik Bleich observed, “[a]t the heart of this debate lies a fundamental dilemma for liberal democracies: how can we balance the core values of preserving freedom while limiting the harmful effects of racism?”<sup>1</sup>

Second, as some contributors to this volume have noted (e.g., p. 7), “hate speech” is a complex term that includes many forms of expression,<sup>2</sup> and no clear definition of “hate speech” exists. In addition, although hate speech is a global phenomenon, hate speech varies by country or region because its practice depends on the social or historical context.

For the above two reasons, while the problem of hate speech is common to many liberal democratic countries, their responses vary.<sup>3</sup> The present volume tackles this issue by comparing

\* 206 Pages, ISBN 9781032238104

\*\* Professor, Faculty of Law, Doshisha University

Email: shigaki@mail.doshisha.ac.jp

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1 Erik Bleich, *The Freedom to Be Racist?: How the United States and Europe Struggle to Preserve Freedom and Combat Racism*, p. 3 (Oxford University Press 2011).

2 Shigenori Matsui identified at least four forms of hate speech:

The first type is the advocacy or incitement of illegal violence, such as homicide or physical attacks, against members of an identifiable group. The second is the defamation, vilification, or insult against members of an identifiable group. The third is the incitement or promotion of discrimination against members of an identifiable group. The fourth is the promotion of hatred against members of an identifiable group.

Shigenori Matsui, *The Challenge to Multiculturalism: Hate Speech Ban in Japan*, UBC L. REV. 49(2), pp. 427, 462 (2016).

3 Yuji Nasu & Shinji Higaki, Introduction, in *Hate Speech in Japan: The Possibility of a Non-Regulatory Approach*, p. 1 (Shinji Higaki & Yuji Nasu eds., Cambridge University Press 2021).

Asia and Europe. It consists of two sections: “Current state of hate speech,” (sections 2 to 6) which analyzes current trend in hate speech in Korea, Japan, and France, and “Countering and reforming hate speech,” (sections 7 to 10) which reveals “how hate speech can be countered by their interaction of social movements and international law” (p. 4).

The perpetrators and targets of hate speech differ from country to country. In chapters 2 and 4, the contributors note that in Korea, most hate speech is aimed at women and sexual minorities. Myungkoo Kang, Jaejin Lee and Sojeong Park overview the research on hate speech in professional journals in Korea from 1999 to 2017 and identify five features. They note that “while there has not yet been very much professional research, over 60 % of the existing research is composed of researches that approach the problem from a legal perspective” (p. 8) and emphasize the need for diverse approaches to this problem in Chapter 2. In Chapter 4, Hyojin Jeong and Younghan Cho discuss misogynistic hate speech, which is the most problematic form of hate speech in Korea. They focus not only on blatant hate speech but also on routine, mundane, and habitual hate speech, what has recently been called “microaggression.”<sup>4</sup> They show that habitual forms of expression constructed through the mainstream news media reproduce misogynistic values, and as a result, the mainstream news media have become the catalyst for online hate speech.

In Chapter 3, Jackie J. Kim-Wachutka focuses on a group of patriotic women in Japan who restore historical “truth.” Their speech includes “the message of excluding the ‘inferior’ others as a way of achieving a ‘consanguineous’ national identity” disguised “as defending and sustaining one’s culture and tradition” (p. 37). Kim-Wachutka notes that, as this example shows, recent hate speech in Japan has become “more subtle and difficult to recognize” (p. 37).

Humor, especially atomic humor, and jihadist radicalization have become serious problems in France. As Tino Bruno shows in Chapter 5, an expression considered humorous in one country can be interpreted as hate speech in another country. Thus, it is quite difficult to define the boundaries between hate speech and humor in the globalized world. In Chapter 6, Laura Ascone claims that although hate speech plays a crucial role in the strategies of terrorist groups, little attention has been paid to communication from a purely linguistic perspective.

In Japan, most people have not been interested in the hate speech issue until recently, and the Diet has been reluctant to regulate it, even though the Japanese government ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1995. However, the number of xenophobic groups has increased rapidly since the early 2000s and so have anti-Korean rallies and demonstrations. The most significant case is the Kyoto Korean school case, which subsequently triggered a nationwide debate about whether and how the Japanese government should regulate hate speech. Ayako Hatano analyzes how strategic human rights litigation used in this case succeeded and its impact.

The Japanese government responded to the situation by enacting the Hate Speech Elimination Act in 2016, the first statute to prevent hate speech in the country, although the Japanese government has been reluctant to regulate hate speech. One question came to mind: “[W]hat made the Diet pass the law?” (p. 113). In Chapter 8, Naoto Higuchi tackles this question by detailing the policy process for enacting the law. He also tackles the question: “[W]hat has changed with the enactment of the law?” (p. 113).

In many countries, online hate speech has become a pressing issue in recent years. Several chapters refer to online hate speech. Chapter 9 focuses on this issue through an analysis of Philippine case law following U.S. case law, which adopts the “marketplace of ideas” theory. Under

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4 See, e.g., Derald Wing Sue, *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation* (Wiley 2010); Gina C. Torino et. al., *Microaggression Theory: Influence and Implication* (Wiley 2018).

this approach, “there is generally no prohibition against hate speech” (p. 132). However, Gemmo Bautista Fernandez calls for the application in the Philippines of an approach based on international human rights laws such as the International Covenant on Civil and Political Rights, which supports the regulation of online hate speech to balance the rights of the speaker and the object of the expression. Fernandez criticizes the U.S. approach for affording “a higher degree of tolerance for expressions that amount to hate speech” (p. 139).

As mentioned above, each country deals with hate speech in a different way. However, there are two models for analysis in general: the U.S. model, which hesitates to regulate hate speech, and the European model, which favors a regulatory approach.<sup>5</sup> Most books on this issue focus on the United States, European countries, or the comparison between them, but this volume tackles the subject from a comparative Asia-Europe perspective. Few English-language volumes have analyzed Asian countries, and “no attempt [has been made to provide] a comparative approach to Asia and Europe” (p. 2). However, Asian countries, such as Japan, adopt a unique model to resolve this problem.<sup>6</sup> It would be useful to discuss how Asian countries deal with it. It should also be noted that this volume analyzes hate speech through various lenses such as law, linguistics, media and cultural studies, sociology, and so on. Therefore, this volume both stimulates academic discussion and provides significant information to the public to address this problem.

This volume makes a significant contribution to the literature. For my part, I hope to further the inquiry through my own comments on related theoretical issues. First, because this volume is based on the international workshop titled “Beyond Hate & Fear: How Do Asia and Europe Deal with Hate Speech?” increasing the numbers of contributors is understandably difficult. However, when analyzing hate speech problems, it is essential to consider the perspective of each country’s legal system. This volume has chapters on international law, but it lacks chapters on domestic law such as constitutional law, the penal code, and the civil code.

Second, although this volume attempts to compare the Asian countries’ approach with the European approach, the fact is that different Asian countries adopt different approaches. For instance, the Japanese approach is basically similar to the U.S. model, in contrast to European approach. However, it differs from that of other Asian countries. In other words, it is unclear exactly what one means when one refers to the “Asian context.” Therefore, it would be preferable for some chapters to have compared Asian countries with other Asian countries. In addition, the chapters do not explain why they attempt to compare Asia and Europe, but not the United States. Since the U.S. doctrine of freedom of speech has affected many countries, it would also have been better to have a chapter referring to the U.S. model in sufficient detail and comparing it with that of Asian countries.

Third, this volume stands out by referring to hate speech on the internet. Various actors, including not only nations and international society, but also private companies, such as digital platformers, are involved in this problem. Whether we can or should regulate digital platformers has become a serious problem, particularly in recent years. Nevertheless, this volume does not focus enough on the latter issue.

As Myungkoo Kang, one of the editors, notes, “[i]n Asia, research on hate speech is now at the beginning stage” in comparison to Europe and the United States. However, Asian laws on hate speech can suggest new perspectives. Therefore, it is valuable to compare Asian hate speech law and European law in the area. This volume brings meaningful insight by introducing both topics and showing “the future direction of hate speech studies,” which “does not necessarily mean support for freedom of speech or strict regulation on hate speech” (p. 3).

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5 Nasu & Higaki, *supra* note 3 at p. 3.

6 See, e.g., Shinji Higaki, The Hate Speech Elimination Act: A Legal Analysis, in *supra* note 3 at p. 237.

As the chapters emphasize, hate speech is a global phenomenon that affects many countries. However, there is no one best solution to balance freedom of speech and anti-racism so far. The comparative analysis among various countries is a highly suggestive effort, and we can learn much through this volume.