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Combatting Hate Speech at the Local Level: A Comparison of East Asian and European Approaches

By Andrew Wolman*

Abstract: Although existing research on hate speech law and policy has focused on the national level, there have been relatively few studies of local government approaches to the issue. This paper takes a step toward filling this gap by comparing hate speech policies in three European cities (Graz, Barcelona and London) with those developed in four East Asian cities (Osaka, Kawasaki, Seoul and Bucheon). These cities were chosen for study because in each case local governments have explicitly engaged with the issue of anti-hate speech policy. For each city, I focus on the type of anti-hate speech policy that has been developed, the motivations behind it, the challenges and opposition faced, and where relevant the diffusion of local anti-hate speech policy to and from other jurisdictions. This research is the product of a review of primary documents and media commentary, supplemented in one case by an e-mail interview. I then analyse the common elements and notable differences between local anti-hate speech policies in the two regions and conclude with observations on the different forms that local anti-hate speech policy has taken and suggestions for further research.

Keywords: Hate Speech; East Asia; Europe; Freedom of Speech; Local Human Rights Policy

* Lecturer, City Law School, City, University of London. My thanks to the organizers of the 2nd International Workshop on Hate Speech in Asia and Europe: A Comparative Approach for providing me with the opportunity to present my paper, and to the workshop attendees for valuable comments and feedback.

I. Introduction

To date, comparative hate speech research has (with a few exceptions) most frequently focused on national or supranational-level regulation, often highlighting the perceived contrast between countries that choose to criminalise hate speech and countries that choose not to, often out of a desire to adhere to a broader conception of freedom of expression.¹ This emphasis on national-level governance is understandable, and reflects a broader tendency for scholars to focus on ‘higher’ levels of governance (such as national and international institutions), where policy documents are more readily available and subject to wider debate.² However, this strand of research sometimes ignores considerable local-level differentiation, as well as the importance of local governments to the level of human rights and freedom enjoyed by citizens on the ground.³

¹ See eg, Michel Rosenfeld, ‘Hate Speech in Constitutional Jurisprudence: A Comparative Analysis’ (2002-03) 24 *Cardozo L Rev* 1523; Claudia Haupt, ‘Regulating Hate Speech – Damned if you do and Damned if you don’t: Lessons Learned from Comparing the German and U.S. Approaches’ (2005) 23 *Boston Univ Intl L J* 299; Roger Kiska, ‘Hate Speech: A Comparison between the European Court of Human Rights and the United States Supreme Court Jurisprudence’ (2012-13) 25 *Regents Univ L Rev* 107; Dominick McGoldric and Thérèse O’Donnell, *Hate Speech Laws: Consistency with National and International Human Rights Law* (1998) 18 *Legal Studies* 453.

² See Noha Shawki, ‘Global Norms, Local Implementation-How are Global Norms Translated into Local Practice?’ (2011) *Globality Stud J* <<https://globality.cc.stonybrook.edu/?p=221>> accessed 9 December 2018; International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (2002) 42.

³ Conrad Mugoya Bosire, ‘Local Governments and Human Rights: Building Institutional Links for the Effective Protection and Realisation of Human Rights in Africa’ (2011) 11 *Afr Hum Rts L J* 147, 149 (‘local government functions are at the core of the realisation of certain basic and fundamental human rights obligations’).

This article takes a different approach, by comparing hate speech policy at the local level in Europe and East Asia. The term ‘hate speech’ as used here refers to ‘incitement and encouragement of hatred, discrimination or hostility towards an individual that is motivated by prejudice against that person because of a particular characteristic.’⁴ It should be noted, however, that this definition is highly contested, and in fact some academics question whether a widely accepted definition of hate speech is even possible.⁵ The term ‘policy’ is broadly defined as ‘a course of action (or non-action) taken by a government or legislature with regard to a particular issue’.⁶ At the local level, policies can be implemented through legislative processes, leading to the passage of ordinances.⁷ However, hate speech policies can also be implemented through various types of local executive or agency actions, or through the work of independent commissions.

This paper commences with a discussion of the potential reasons why local governments might want to develop a hate speech policy. This section engages with the recent research output on the localisation of human rights law, and decentralised governance. This is followed by two

⁴ European Union Agency for Fundamental Rights, *Hate Speech and Hate Crimes Against LGBT Persons* 1 (2009) <http://fra.europa.eu/fraWebsite/attachments/Factsheet-homophobia-hate-speechcrime_EN.pdf> accessed 17 April 2018. This definition includes not just verbal expressions, but also hateful content transmitted online or in printed form. Maxime Lepoutre, ‘Hate Speech in Public Discourse: A Pessimistic Defense of Counterspeech’ (2017) 43(4) *Social Theory & Practice* 851, 853.

⁵ See, ‘Interview with Robert Post’ in Michael Herz & Peter Molnar (eds), *The Content and Context of Hate Speech* (CUP 2012) 31. In principle, hate speech definitions can be based on a number of different criteria, ranging from type or amount of harm caused to intrinsic properties of the speech such as the kinds of words used or ideas conveyed. *Ibid.*

⁶ Christoph Knill & Jale Tosun, *Public Policy: A New Introduction* (Palgrave Macmillan 2012) 4.

⁷ See, generally Terence Daintith, ‘Law as Policy Instrument: A Comparative Perspective’ in Terence Daintith (ed), *Law as an Instrument of Economic Policy: Comparative and Critical Approaches* (de Gruyter 1988) While the legal framework and language for local law-making differs from country to country, a municipal ordinance can broadly be defined as a ‘rule, law or regulation that is enacted in a town or city’. *Black's Law Dictionary* (2nd Edition) <<http://thelawdictionary.org/municipal-ordinance/>> accessed 17 April, 2019.

sections examining cases of local hate speech policies in Europe and East Asia. In Europe, the cases studied focus on Graz, Barcelona and London, while in East Asia, policies from Osaka, Kawasaki, Seoul and Bucheon are examined. For each city, I focus on the type of anti-hate speech policy that was developed, the motivations behind it, the challenges and opposition faced, and where relevant the diffusion of local anti-hate speech policy to and from other jurisdictions. These case studies have been conducted through reviewing primary sources, media commentary, and in the case of Bucheon an e-mail interview to supplement publicly available material. The seven cities have been chosen for analysis because they are in each case cities that have particularly prominently engaged in local hate speech policy-making. In the Korean context, hate speech has yet to become a major policy concern at the local level; Seoul and Bucheon have been chosen therefore less because hate speech has been prominently addressed by these two localities, but rather because they are the only two municipalities to even consider the issue. In the case of Bucheon, the city council's consideration of a hate speech ordinance has not yet resulted in the act's passage, so the case study focuses more on the experience of civil society advocacy rather than actual policy implementation. To a certain extent, all the cities chosen for study are therefore somewhat exceptional: it is probably fair to say that most municipalities in both Europe and Asia have yet to undertake significant policy-making in the area of hate speech.

Finally, the article concludes with a discussion section that compares and contrasts hate speech policies in each region and discusses the possible reasons for patterns and policy divergences, followed by a brief conclusion. The paper is intended to provide a starting point for future research on local hate speech policy-making, along with a comparative analysis that can assist activists and policy-makers in the development of effective local approaches to hate speech.

II. Hate Speech Policy at the Local Level

A cursory examination of the political science literature around decentralisation and subsidiarity would show that there are good reasons why municipal governments might want to develop hate speech policies. At the most general level, one argument in favour of local hate speech policy-making (and of subsidiarity as a general principle of public policy) is that it allows different communities within a heterogeneous nation to implement those policies that are most appropriate to a particular community's policy preferences. Thus, communities with a strong human rights commitment are able to go beyond what their national governments feel comfortable embracing. For example, relatively progressive US cities such as San Francisco and Berkeley have enacted local policies to implement the Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW'), despite the US not being a party to the treaty.⁸ In the hate speech context, this means that the development of local hate speech policies would be more likely to ensure the desired level of policy implementation in cases where national-level policies are deemed to be inadequate. Barcelona may be an apt example of this with regards to hate speech, given its generally left-leaning political stance and status as one of Europe's earliest 'Human Rights Cities'.⁹

⁸ Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation', in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011) 101. Communities may also, of course, attempt to develop local policies that are antithetical to human rights norms, and in fact there have been a number of attempts to pass local anti-immigrant ordinances in the US in recent years. Many of these have been successfully challenged, however, for violating federal law. See, generally, ACLU, Local Anti-Immigrant Ordinance Cases, <<https://www.aclu.org/other/local-anti-immigrant-ordinance-cases>> accessed 17 April 2018.

⁹ Charlotte Berends et al (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (University College Roosevelt 2013) 35.

In addition to jurisdictional variation in policy preferences, there may also be jurisdictional variations in the level of perceived need for hate speech policy-making. For example, those communities with particularly significant minority populations who are targets of hate speech may feel that hate speech suppression is a greater priority than other jurisdictions in the same country that are more homogeneous. As discussed further below, Osaka and Kawasaki are good examples of this in the Japanese context, as they are known for being both a hotbed of nationalist protests and the hometown of many members of minority groups (and in particular ethnic Koreans). London may present a similarly strong need to control hate speech given its level of diversity.

Third, even where relevant local and national conditions or preferences do not diverge, local governments may still want to develop their own hate speech policies as a way to supplement those available at the national level, if actors at the national level are viewed as unable to effectively tackle the problem due to distance, resource constraints or other factors. According to Martin Landau, ‘redundancy serves many vital functions ... it provides safety factors, permits flexible responses to anomalous situations and provides a creative potential’.¹⁰ In the human rights context, there is evidence that the existence of redundant state and national anti-discrimination laws, each with their own complaint systems, boosts the total number of complaints, when compared to the situation where only one complaint mechanism is present.¹¹ This emphasis on local policies as a supplement to those at the national level can perhaps also be seen in London, where there is relatively little policy divergence between local and national authorities.

¹⁰ Martin Landau, ‘Redundancy, Rationality, and the Problem of Duplication and Overlap’ (1969) 29(4) *Public Administration Review* 346, 356.

¹¹ Andrew Wolman, ‘National Human Rights Institutions and their Sub-National Counterparts’ (2017) 6 *International Human Rights Law Review* 1, 21.

A final factor that could lead to the development of local hate speech policies may be a desire by local jurisdictions to ‘brand’ themselves as particularly welcoming localities, as a way to stand out from their peers and perhaps attract new inhabitants, businesses and tourists.¹² There is some evidence that this branding motivation has played a role in the establishment of ‘human rights cities’ over the past two decades.¹³

Despite these factors that might mitigate in favour of the development of local level hate speech policies, such policies have historically been relatively rare around the world. The United States was a partial exception in this regard, as several cities passed ordinances restricting various forms of hate speech in the first half of the twentieth century.¹⁴ In the wake of the 1992 US Supreme Court case of *R.A.V. v. City of St. Paul*,¹⁵ however, which declared a municipal anti-cross-burning ordinance to be unconstitutional on free speech grounds, municipal governments have faced strong legal restrictions on their ability to prohibit hate speech.¹⁶

Over the last few years, however, local governments seem to be taking a greater interest in the issue. In the United States, the renewed interest in local hate speech policy (outside the realm of still-prohibited restrictive ordinances) is perhaps a reaction to the degradation of public

¹² See, eg, Barbara Oomen, ‘Rights and the City: Does the Localization of Human Rights Contribute to Equality?’ in Marjolein van den Brink et al (eds), *Equality and human rights: nothing but trouble?, Liber amicorum Titia Loenen*, SIM Special no 38, SIM (2015) 404.

¹³ With respect to Nantes, see Berends et al (n 7) 85-102.

¹⁴ Joseph Tanenhaus, ‘Group Libel’ (1950) 35(2) *Cornell Law Review* 261, 284-85 (citing ordinances from Denver, Sacramento, Cincinnati, Omaha and Chicago prohibiting forms of hate speech, along with ordinances from Portland (Oregon) and Houston that mandate the denial of permits for particular forms of hate speech). At the time these were known as ‘group libel’ laws. See Note, ‘A Communitarian Defense of Group Libel Laws’ (1988) 101 *Harvard Law Review* 682, 684 (‘Group libel laws are statutes or ordinances that criminally punish racially or religiously bigoted expression.’)

¹⁵ 505 US 377 (1992) (USA).

¹⁶ Nathan Courtney, ‘British and United States Hate Speech Legislation: A Comparison’ (1993) 19 *Brooklyn J Intl L* 727, 758

discourse that has accompanied the rise of Trump and the alt-right.¹⁷ Thus, over the past two years, Fargo, North Dakota has created a hate speech task force, Orange County has launched a public campaign for a hate-free environment and Claremont, California has inaugurated a human rights commission with an objective of addressing intolerance and hate crimes.¹⁸ As discussed below, this increased interest in local hate speech policies has also been evident in Europe and East Asia. The remainder of this paper examines seven cities that have developed particularly notable hate speech policies: three in Europe (Graz, Barcelona and London), and four in Asia (Osaka, Kawasaki, Seoul and Bucheon).

III. Local Hate Speech Policies in Europe

While municipalities in the United States may be handicapped in their ability to pass restrictive hate speech ordinances due to the US Supreme Court's broad interpretation of freedom of expression, European cities would not generally face similar barriers. In most (if not all) European countries, it is constitutionally permissible to regulate hate speech, and there are already a number of provisions banning hate speech, either in narrow circumstances, such as with Holocaust denial laws,¹⁹ or more broadly with respect to offensive or denigrating speech based on characteristics such as race, religion or national origin.²⁰ On the other hand, the presence of national hate speech laws would in some cases reduce the incentive for cities to act themselves in the arena. Thus, where European cities have chosen to engage in hate speech policy-making, there

¹⁷ JoAnn Kamuf Ward, 'Challenging a Climate of Hate and Fostering Inclusion: The Role of U.S. State and Local Human Rights Commissions' (2017) 49 *Columbia Human Rights Law Review* 29.

¹⁸ *Ibid*

¹⁹ McGoldrick & O'Donnell, n 1 (456).

²⁰ Alexander Tsesis, 'Dignity and Speech: The Regulation of Hate Speech in a Democracy' (2009) 44 *Wake Forest Law Review* 497, 521.

has been a tendency to focus more on combatting a particular aspect of the problem. In this section, I examine three specific cases, in Graz, Barcelona, and London.

1. Graz

Graz, whose population of 325,000 makes it the second largest city in Austria, was one of the first European cities to develop its own policies to address hate speech. Due to its proximity to Austria's southern border, it includes significant minority populations from the former Yugoslavia. While its current mayor is from the conservative *Österreichische Volkspartei* (ÖVP), Graz City Council is also notable for its large contingent from the communist *Kommunistische Partei Österreichs* (KPÖ) party. Graz declared itself a 'Human Rights City' in 2001, upon the City Council's adoption of the Graz Declaration of Human Rights.²¹ In the following years, the city built up an administrative structure to protect human rights based around its anti-discrimination office and Human Rights Council.²² Throughout this process, the City closely partnered with the university-based European Training and Research Centre for Human Rights and Democracy in Graz (ETC Graz) in its human rights work, which included conducting anti-hate speech workshops.²³ The City also issued a number of declarations and documents condemning hate speech, such as its accession document to the European Coalition of Cities Against Racism in 2006, which condemned the use of hate speech in political discourse, along with its Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse.²⁴ It has also recently

²¹ Klaus Starl, 'Human Rights City Graz: Lessons Learnt from the First 15 Years' in Martha Davis et al, eds, *Human Rights Cities and Regions: Swedish and International Perspectives* (Raoul Wallenberg Inst 2017) 51.

²² Berends et al (n 10) 57.

²³ ETC Graz, Anleitung zum GEGENREDEN: How to Argue against Hate Speech, <<http://www.etc-graz.at/typo3/index.php?id=955>> accessed 8 December 2018.

²⁴ Starl (n 22) 53.

engaged in promotional work such as the production of short anti-hate speech films by the youth platform of the City's Human Rights Advisory Board.²⁵

The most prominent area of anti-hate speech policy in Graz has, however, centred on combatting hate speech in the political arena. Starting with the 2006-07 election cycle, the City also requested the Graz Municipal Human Rights Council (MHRC) to initiate a program of monitoring election campaigns in order to report upon and publicly oppose hate speech and discriminatory statements issued in the context of political campaigns.²⁶ These reports were then published once every fortnight during a period of six to eight weeks prior to an election. As the reports were the product of a non-judicial independent council, they were required to be politically neutral, and to avoid conclusions as to whether or not a candidate may have breached legal prohibitions on hate speech.²⁷ This reporting process has continued through the 2017 local elections, the final report for which identified 122 human rights relevant discourse strands, six of which were deemed problematic and one of which did not conform to human rights standards.²⁸

After the first round of election reporting in 2006-07, the Graz City Council decided to enact a sanctioning mechanism for political parties who were deemed to have engaged in political hate speech. Under this mechanism, the findings of the monitoring report are negotiated before an independent arbitration committee chaired by the president of the appellate court, which then has

²⁵ ETC Graz, *Annual Report 2017* (2018) 12.

²⁶ Starl (n 22) 54

²⁷ *Ibid*

²⁸ ETC Graz (n 26) 14.

the power to recommend that the City Council reduce subsidies (of up to €30,000) for the culpable political parties.²⁹

Although the Graz policy does not directly enforce or expand the pre-existing criminal law against hate speech in Austria,³⁰ it has in one case assisted law enforcement officers in obtaining a conviction through the compilation of a candidate's statements, which were then used as evidence by the criminal tribunal.³¹ This was the first example in Austria of a politician being convicted for hate speech used in the context of a political campaign.³² While there has reportedly been opposition to the monitoring of political hate speech on freedom of expression grounds, this has not led to any protests so far.³³ The city's experiences with hate speech policy-making have been disseminated in recent years with the support of regional actors, for example through the publication of a toolkit for addressing hate speech at the municipal level.³⁴

2. Barcelona

With a very diverse population of about 1.6 million inhabitants, Barcelona is the second largest city in Spain, and the capital city of the Autonomous Community of Catalunya.³⁵ It is governed by a City Council, composed of a mayor, governing council and plenary assembly.³⁶

²⁹ Ibid

³⁰ Austria has a number of national laws that directly or indirectly criminalise hate speech, most notably through article 283 of the criminal code and article 3 of the 1947 National Socialism Prohibition Act.

³¹ Appellate Court (OLG) Graz, judgment of June 30, 2009 (11 Bs 146/09t) (Austria).

³² Starl (n 22) 55.

³³ Berends et al (n 10) 72.

³⁴ ETC Graz et al, 'Combatting Racism and Hate Speech: Buildnig a Non-Racist Society', <http://www.eccar.info/sites/default/files/document/11_Toolkit-en_HateSpeech.pdf> accessed 8 December 2018.

³⁵ Ibid, 37.

³⁶ Ibid, 38.

Politically, Barcelona has long favoured left leaning leaders; its current mayor Ada Colau is a former housing activist who has been called the world's most radical mayor.³⁷ As is the case in Graz, the Barcelona city government has a relatively long history of involvement in human rights issues. It participated in the drafting of the European Charter for the Safeguarding of Human Rights in the City, and was one of the first municipalities to proclaim itself a 'human rights city'.³⁸ Since 1998, City has possessed an Anti-Discrimination Office, and more recently it has also established a Human Rights Ombudsman and a Human Rights Observatory, each of which now functions independently of the City government.³⁹

Starting in 2010, Barcelona has become more involved in addressing hate speech issues. While Graz has focused on hate speech in the political sphere, the Barcelona authorities have directed their energies at combatting hate speech online and in social media. In 2010, the City Council set up the anti-rumour citizen network to design and implement 'a citywide strategy against negative unfounded rumours which make living together in diversity difficult, based both on networking with different social agents and organisations, and on promoting the role of an active anti-rumour agent.'⁴⁰ To date, over 900 'anti-rumour agents' have been trained to combat unfounded rumours in their communities, and there have also been anti-rumour video and cartoon campaigns.⁴¹

³⁷ Dan Hancox, 'Is This the World's Most Radical Mayor?' *The Guardian* (26 May 2016) <<https://www.theguardian.com/world/2016/may/26/ada-colau-barcelona-most-radical-mayor-in-the-world>> accessed 8 December 2018.

³⁸ Berends et al (n 10) 35.

³⁹ *Ibid*, 44-5.

⁴⁰ Francesco Tarantino, 'The BCN Anti-Rumour Strategy and the BCN Anti-Rumour Network' (2014) EU-MIA Research Report 11.

⁴¹ Daniel De Torres et al, 'Cities Free of Rumours' (Council of Europe 2015) 30.

While it would be difficult to measure its efficacy, the anti-rumour network presents an innovative example of an attempt to combat hate speech not by punishing it, but rather by refuting it, arguing against it, and attempting to prevent hateful or slanderous rumours from being accepted as fact. This can be considered a form of ‘counterspeech’, which is sometimes advocated as the optimal way to combat hate speech, especially in jurisdictions such as the United States that have constitutional barriers to repressive laws.⁴² Several other cities in Spain and elsewhere in Europe have adopted their own versions of anti-rumour networks, inspired by the Barcelona template, which has been publicised internationally by both the Council of Europe and United Cities and Local Governments (UCLG), a transnational organisation of sub-national governments.⁴³

More recently, the Barcelona authorities have directed their energies at combatting hate speech online and in social media. In the wake of the 2017 Barcelona terrorist attack, the anti-rumours network was particularly active in addressing online hate speech, using infograms to encourage critical thinking about messages that include content that is insulting, manipulative or based on rumours or prejudices.⁴⁴ The city has also prepared a protocol for how to respond to hate

⁴² See, generally, Robert Richards & Clay Calvert, ‘Counterspeech 2000: A New Look at the Old Remedy for “Bad” Speech’ (2000) *BYU Law Review* 553. By relying on community agents, the anti-rumours network avoids placing the burden for engaging in counterspeech directly on the victims of hate speech, which is one of the common criticisms of counterspeech as an anti-hate strategy. Katharine Gelber, ‘Reconceptualizing Counterspeech in Hate Speech Policy (with a Focus on Australia)’ in Michael Herz & Peter Molnar (eds), *The Content and Context of Hate Speech* (CUP 2012) 206.

⁴³ Ibid; UCLG, ‘Barcelona – Anti-Rumours Network’ <<https://www.uclg-cisdp.org/en/news/latest-news/barcelona-anti-rumours-network>> accessed 8 December 2018.

⁴⁴ Ajuntament de Barcelona, ‘Sharing Efforts to Wipe Out Rumours and Hate Speech on Social Media’ (18 September 2017) <http://ajuntament.barcelona.cat/dretsiversitat/en/noticia/sharing-efforts-to-wipe-out-rumours-and-hate-speech-on-social-media>> accessed 8 December 2018.

speech on social networks, and encouraging people to report hate speech to the authorities in cases where it could violate the criminal law.⁴⁵

In 2017, the Barcelona City Council organised a conference on online hate speech.⁴⁶ This provided an avenue for furthering policy development through interactions between bureaucrats, advocates and academics. The municipal government further justified holding the conference by claiming that ‘the fact that cities constitute key places for citizen action and social innovation makes them ideal spaces for combatting the prejudices that underlie online hate speech’.⁴⁷ The main practical outcome of the conference was the establishment of the #Bcnvodi hashtag and online platform to disseminate the City’s anti-hate speech policies.⁴⁸ In addition to various informational and promotional material, the site provides practical advice for victims and links to resources to denounce online hate speech and receive legal assistance.

3. *London*

With one of the most diverse urban populations in the world, London has long been concerned with preserving inter-group comity.⁴⁹ In comparison with other major cities, however, local governance is relatively weak, with power divided up between a high profile mayor (who

⁴⁵ Ibid.

⁴⁶ According to Mayor Colau, the conference was intended to “empower citizens so that they are educated, alert, active and vigilant, and that they mobilise to combat hate speech”. Ajuntament de Barcelona, ‘In the Face of Hate Speech, Critical and Digitally Empowered Citizens’ (2 March 2017) <https://www.barcelona.cat/infobarcelona/en/in-the-face-of-hate-speech-critical-and-digitally-empowered-citizens_475567.html> accessed 8 December 2018.

⁴⁷ Ajuntament de Barcelona, Bcnvodi Conference Programme, <<http://ajuntament.barcelona.cat/bcnvsodi/en/conference/programme>> accessed 8 December 2018.

⁴⁸ See Ajuntament de Barcelona, #Bcnvodi at <<http://ajuntament.barcelona.cat/bcnvsodi/es>> accessed 8 December 2018.

⁴⁹ Mike Raco et al, *Dealing with Urban Diversity: The Case of London* (Utrecht Univ 2017) 9.

nevertheless lacks significant authority in most sectors), 32 borough governments, the Corporation of London (the sub-metropolitan authority in charge of the financial district called the City), the Greater London Authority, and the London Assembly.⁵⁰ Most policies affecting Londoners are still developed and implemented at the national level.

Among the metropolitan authorities, the Mayor's office has in recent years spoken out on hate speech issues most prominently. This is perhaps unsurprising given the background of current mayor Sadiq Khan as a human rights lawyer, as well as the significant amount of hate speech that he has faced as the first Muslim mayor of a major western capital city. Mayor Khan has also been faced with spikes of hate crimes during his tenure, in response to terrorist attacks and xenophobic sentiment stemming from the Brexit debate.⁵¹

Mayor Khan has focused on two issues in particular. The first is online hate speech. He has publicly advocated for large fines to be applied to tech platforms that failed to remove hate messages.⁵² More concretely, the Mayor's office set up the Online Hate Crime Hub in 2017 to work with victims to remove hate speech from the internet and prosecute those responsible.⁵³ As

⁵⁰ Ibid; Ben Worth & Mark Bennister, 'Rebels as Local Leaders? The Mayoralities of Boris Johnson and Ken Livingstone Compared' 3 <<https://www.psa.ac.uk/sites/default/files/conference/papers/2017/Rebels%20as%20Local%20Leaders%20Ken%20and%20Boris%20v3.pdf>> accessed 8 December 2018.

⁵¹ Sophia Sleight, 'Sadiq Khan Launches Crackdown on Brexit Vote Hate Crime' *Evening Standard* (8 July 2016) <<https://www.standard.co.uk/news/mayor/sadiq-khan-launches-crackdown-on-brexit-vote-hate-crime-a3291331.html>> accessed 8 December 2018.

⁵² Dave Lee, 'London Mayor Warns Big Tech on Hate Speech' *BBC* (12 March 2018) <<https://www.bbc.co.uk/news/technology-43367211>> accessed 8 December 2018.

⁵³ The Hub consists of 'specially trained officers who work with community groups, social media organisations, academic hate crime specialists and criminal justice partners to investigate online hate crimes, including abuse on Twitter and Facebook, and provide support for victims'. Mayor of London, 'Online Hate Crime Summit 2017' <<https://www.london.gov.uk/mopac/online-hate-crime-summit-2017>> accessed 8 December 2018.

of 27 July 2018, the programme had investigated 711 cases of online hate speech (63% of which involved racism), which led to five successful prosecutions, while 340 victims were referred for specialist support.⁵⁴ In many other cases, the abusive language was successfully removed from the internet.⁵⁵ Officers in the hate crime hub worked closely with the police, civil society groups, and social media providers in order to enhance their effectiveness in investigating and addressing complaints.⁵⁶ The Hub's experiences have recently inspired the UK government to establish its own online hate crime hub at the national level, run by the Ministry of Housing, Communities and Local Government.⁵⁷ The Hub's experiences have also been shared more broadly at the recent Online Hate Crime Summit.⁵⁸

The second issue that Mayor Khan has highlighted has been the need for increased reporting of hate speech and support for victims.⁵⁹ While noting the racial insults directed at him as a youth, Mayor Khan stressed that offensive playground name-calling should also be eradicated, as it can lead to greater race hate.⁶⁰ The Mayor's policing policy has included a number of measures to increase hate crime reporting, including the launching of a smart phone hate crime

⁵⁴ Mayor of London, Answer for Online Hate Crime Hub (2) (27 July 2018) <<https://www.london.gov.uk/questions/2018/1924>> accessed 8 December 2018.

⁵⁵ Thomas Triebel, 'The Evening Standard Takes a Look Inside the Met's Online Hate Crime Hub' *Evening Standard* (4 August 2017) <<https://www.standard.co.uk/news/crime/the-evening-standard-takes-a-look-inside-the-online-hate-crime-hub-three-months-on-a3603576.html>> accessed 8 December 2018.

⁵⁶ Mayor of London, Answer for Online Hate Crime Hub (1) (27 July 2018) <<https://www.london.gov.uk/questions/2018/1923>> accessed 8 December 2018.

⁵⁷ Mayor of London, Answer for Online Hate Crime Hub (4) (24 July 2018) <<https://www.london.gov.uk/questions/2018/1926>> accessed 8 December 2018.

⁵⁸ Mayor of London (n 54).

⁵⁹ Hannah Al-Othman, 'Sadiq Khan was a "Racist Abuse Victim" and Tells Londoners to Report Incidents' *Evening Standard* (30 June 2016) <<https://www.standard.co.uk/news/london/sadiq-khan-says-i-was-victim-of-racist-abuse-as-he-encourages-londoners-to-report-incidents-a3285391.html>> accessed 8 December 2018.

⁶⁰ Ibid

reporting app.⁶¹ He has also piloted a programme establishing Hate Crime Victim Advocates to help victims to recover and cope with their experiences.⁶² These efforts have focused on ‘hate crimes’, which is a category that is of course broader than ‘hate speech’.⁶³ However, in practice there appears to be considerable overlap in the concepts, as relatively few of the offences categorised as hate crimes by this programme have involved physical injury or property damage.⁶⁴

Perhaps unsurprisingly, Mayor Khan’s efforts to address hate speech and hate crime have been subjected to vociferous criticism from the far right.⁶⁵ According to two UK Independence Party (UKIP) representatives in the London Assembly, there is a ‘danger to freedom of speech which comes with the growing obsession with hate crime’.⁶⁶ Khan has also been singled out for online criticism by self-proclaimed ‘free speech’ activists from the US far right, perhaps taking their cue from President Trump’s criticisms of the mayor.⁶⁷

⁶¹ Mayor of London Office for Policing and Crime, ‘Hate Crime’ <<https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/our-priorities/hate-crime>> accessed 8 December 2018.

⁶² Ibid.

⁶³ According to the Met Police, a hate crime is ‘when someone commits a crime against you because of your disability, gender identity, race, sexual orientation, religion, or any other perceived difference’. Metropolitan Police, ‘What is Hate Crime’ <<https://www.met.police.uk/advice/advice-and-information/hco/hate-crime/what-is-hate-crime/>> accessed 17 April 2019.

⁶⁴ According to 2013 statistics, out of 2173 incidents prosecuted as hate crimes in London, 49 involved charges for assault with injury and 39 involved charges for criminal damage. The remainder were charged with harassment (73); causing public alarm, fear or distress (1640); assault without injury (366), and other public order offences (7). Mayor of London Office for Policing and Crime, ‘A Hate Crime Reduction Strategy for London 2014-2017’ (December 2017) 15 <https://www.london.gov.uk/sites/default/files/mopac_hate_crime_reduction_strategy.pdf> accessed 8 December 2018.

⁶⁵ Liam Deacon, ‘UKIP London Assembly Rep Vows to Fight Muslim Mayor’s Free Speech Crackdown’ *Breitbart* (17 September 2016) <<https://www.breitbart.com/europe/2016/09/17/ukips-london-assembly-rep-vows-fight-muslim-mayors-free-speech-crack/>> accessed 8 December 2018.

⁶⁶ Ibid

⁶⁷ See, eg, Douglas Murray, ‘The Hate Speech Temptation’ *National Review* (14 March 2018) <<https://www.nationalreview.com/2018/03/sadiq-khan-praises-hate-speech-laws>> accessed 8 December 2018; Brandon Morse, ‘London Mayor Boasts about London’s “Free Speech”, but UK YouTuber Going to

IV. Local Hate Speech Policies in East Asia

While hate speech laws are sometimes seen as underdeveloped at the national level in East Asia, in fact many countries in the region have legal provisions which could potentially be used to regulate hate speech.⁶⁸ Korea and Japan, however, have been reluctant to criminalise hate speech at the national level. Both countries are parties to the International Convention on the Elimination of all Forms of Racial Discrimination, although Japan in 1995 filed a reservation to article 4 (which requires the criminalisation of hate speech) asserting the primacy of Japanese Constitutional law.⁶⁹ While both states have strong protections of free speech in their constitution, the Korean constitution states specifically that '[n]either speech nor the press shall violate the honour or rights of other persons nor undermine public morals or social ethics'.⁷⁰ In recent years, however, the issue of hate speech has become more widely discussed in both countries, with potential responses discussed as a matter of both national and local policies. The following section examines four responses at the local level.

1. *Osaka*

In Japan, hate speech first emerged as a potent political issue in Osaka, the country's second largest city, which is known for its large populations of ethnic Koreans, Burakumin and Okinawans,

Jail over a Prank Destroys Him' *RedState* (26 April 2018) <<https://www.breitbart.com/europe/2016/09/17/ukips-london-assembly-rep-vows-fight-muslim-mayors-free-speech-crack/>> accessed 8 December 2018.

⁶⁸ Vitit Muntarbhorn, 'Study on the prohibition of incitement to national, racial or religious hatred: Lessons from the Asia Pacific Region' (2011) 5 <https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/StudyBangkok_en.pdf/> accessed 8 December 2018.

⁶⁹ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965) 660 UNTS 195.

⁷⁰ Constitution of the Republic of Korea (1948) art 21.

three groups that have sometimes faced discrimination in mainland Japan.⁷¹ Anti-Korean demonstrations became especially prominent with the rise of the Zaitokukai, a right-wing nationalist group which was founded in 2007 and has since 2010 organised increasingly provocative public demonstrations in opposition to the ethnic Korean community.⁷²

In the aftermath of a particularly virulent set of anti-Korean demonstrations in 2013, the question of how to effectively combat hate speech started to be debated in the local political arena, eventually leading to the Osaka City Council's enactment of an anti-hate speech ordinance on January 15th, 2016.⁷³ Pursuant to this ordinance, the city established a hate speech examination committee of scholars and lawyers to examine local hate speech complaints. If a particular incident was determined to constitute hate speech, then the identity of the perpetrator and a description of the incident would be posted on the City's web page, in an attempt to name and shame.⁷⁴ While this ordinance received considerable public attention, its implementation has been partially stymied by the city's fear that publicising the names of those responsible for hateful online videos would violate national privacy of communication laws. Instead, City authorities have simply revealed the offending account usernames.⁷⁵

⁷¹ See, John Lie, *Zainichi (Koreans in Japan): Diasporic Nationalism and Postcolonial Identity* (U Cal Press 2008); Steve Rabson, 'Being Okinawan in Japan: The Diaspora Experience' 10(12) *Asia Pacific Journal* 2 (12 March 2012) <<https://apjpf.org/2012/10/12/Steve-Rabson/3720/article.html>> accessed 8 December 2018; J Mark Ramseyer and Eric Rasmusen, 'Outcaste Politics and Organized Crime in Japan: The Effect of Terminating Ethnic Subsidies' (2018) 15(1) *J Empirical Leg Stud* 192.

⁷² Koji Higashikawa, 'Japan's Hate Speech Laws: Translations of the Osaka City Ordinance and the National Act to Curb Hate Speech in Japan' (2017) 19 *Asian-Pacific Law & Policy Journal* 1, 1.

⁷³ *Ibid.*, 2.

⁷⁴ Nichole Koontz, 'Japan and the Potential for National Hate Speech Legislation: An International Consideration of Possibilities' (2017) 16 *Washington University Global Studies Law Review* 345, 349.

⁷⁵ 'Lacking Direction from Tokyo, Japan's Municipalities Struggle to Implement Anti-Hate Speech Law' *Japan Times* (24 May 2018) <<https://www.japantimes.co.jp/news/2018/05/24/national/lacking-direction->

Interestingly, the passage of this ordinance has also been significant at the national level. It prompted debate within the Diet on the issue of hate speech, leading soon after to the enactment of Japan's first law on hate speech, which entered into force in May 2016.⁷⁶ In this respect, decentralised policymaking can be seen as fulfilling its oft-stated role as a 'laboratory for democracy' in the words of US Justice Louis Brandeis.⁷⁷ Many other municipalities throughout Japan also publicly pressed the national government to ban hate speech in the two years leading up to the passage of the national law.⁷⁸ In the end, however, the national anti-hate speech bill did not itself prohibit or punish hate speech, but rather called on local authorities to carry out educational anti-hate speech programmes, and has accordingly been criticised as weak.⁷⁹ As in other countries, hate speech activists have also met with opposition on grounds of free speech, along with some a reluctance by some in Japan to acknowledge the extent of the problem.⁸⁰

[tokyo-japans-municipalities-struggle-implement-anti-hate-speech-law/#.XAJZWpz7RPa](https://www.tokyo-japans-municipalities-struggle-implement-anti-hate-speech-law/#.XAJZWpz7RPa)> accessed 8 December 2018.

⁷⁶ Higashikawa (n 72) 4 (noting that the Osaka Ordinance 'had a great impact on the discussion of hate speech regulation, and, for the first time in Japan's history, it greatly encouraged Diet members to enact an act to curb discriminatory speech.')

⁷⁷ *New State Ice Co. v Liebmann*, 285 US 262, 311 (1932) (USA) (J Brandeis, dissenting).

⁷⁸ Shigenori Matsui, 'The Challenge to Multiculturalism: Hate Speech Ban in Japan' (2016) 49 *University of British Columbia Law Review* 427 (noting that Kunitachi was the first city to pass such a resolution in 2014).

⁷⁹ 'Make Hate Speech Law Stronger' *Japan Times* (10 June 2017) <<https://www.japantimes.co.jp/opinion/2017/06/10/editorials/make-hate-speech-law-stronger/#.W9QixtNKhPY>> accessed 8 December 2018. Despite the law's weakness, there has reportedly been a significant decrease in public hate speech rallies in Japan since its passage. 'A Year After Enactment of Hate Speech Law, Xenophobic Rallies Down by Nearly Half' *Japan Times* (27 May 2017), <<https://www.japantimes.co.jp/news/2017/05/22/national/social-issues/year-enactment-hate-speech-law-xenophobic-rallies-nearly-half>> accessed 8 December 2018.

⁸⁰ Drew Ambrose & Sarah Yeo, 'Kawasaki Hate Speech; The Rise of Japan's Far Right' *Al Jazeera* (2 Mar 2018) <<https://www.aljazeera.com/indepth/features/kawasaki-hate-speech-rise-japan-180227114204341.html>> accessed 8 December 2018 (citing the Japan First leader's objection that anti-hate speech laws violate freedom of speech and the national government's foreign affairs spokesperson's assertion that hate speech is already 'under control').

2. *Kawasaki*

In the wake of the passage of Osaka's local ordinance, contagion effects were notable not only at the national level, but also in other Japanese cities and provinces. In March 2018, Kyoto City began implementing guidelines to deter hate speech in public facilities, while Kobe and Nagoya debated passage of their own hate speech laws.⁸¹ Kyoto and Aichi Prefecture are also considering similar guidelines.⁸² Most importantly, Tokyo's city government has recently taken action with passage of a new hate speech law based on the Osaka template.⁸³

The city of Kawasaki, however, has been particularly active in developing hate speech policies, in part perhaps due to the high concentration of Koreans living in that city, and the need to protect them from abusive rhetoric.⁸⁴ In March 2016, for example, three Kawasaki residents of Korean descent shed light on racist abuse in the area by publicly seeking assistance and relief from their local Legal Affairs Bureau in response to hate speech which they claimed violated their human rights.⁸⁵

Upon the passage of the national hate speech bill on 24 May 2016, Kawasaki almost immediately became the site of right-wing protests against the new law, and against the local Korean community. On 30 May, the first such protest was denied a permit to use two public parks by the local authorities, who cited the new national anti-hate speech law as supporting their

⁸¹ 'Lacking Direction from Tokyo' *Japan Times* (n 75).

⁸² Ambrose & Yeo (n 80).

⁸³ 'All Governments Should Seek to Follow Tokyo's Hate Speech Law' *Asahi Shimbun* (8 October 2018) <<http://www.asahi.com/ajw/articles/AJ201810080018.html>> accessed 8 December 2018.

⁸⁴ Ambrose & Yeo (n 80).

⁸⁵ 'Korean Residents in Kawasaki Seek Relief, Prevention after Hate Speech Incidents' *Mainichi* (17 March 2016) <<https://mainichi.jp/english/articles/20160317/p2a/00m/0na/011000c>> accessed 8 December 2018.

decision.⁸⁶ This was followed by a preliminary injunction of the Yokohama District Court's Kawasaki Branch on 2 June, prohibiting the right wing group from protesting within 500 metres of a local Korean Residents' Association.⁸⁷ The decision also noted the high probability that the event would violate hate speech standards recently developed at the national level.⁸⁸ On 5 June, the protest eventually was set to take place in an area not covered by the city or court's decisions, however it was called off at the last minute due to violence between demonstrators and counter-protestors.⁸⁹

In November 2017, the City passed its own ordinance containing a set of official guidelines limiting the use of public facilities by persons or groups suspected of spreading hate speech.⁹⁰ This legislative initiative came at the behest of then-Mayor Norihiko Fukuda, who had promised to enact such an ordinance in his mayoral re-election campaign.⁹¹ However, it was also the result of civil society pressure, and in particular the work of the Kawasaki Network of Citizens Against Hate Speech, a network of 156 human rights groups that has protested against hate speech since

⁸⁶ Furuya Tsunehira, 'Can Laws Control Japan's Hate Epidemic' *Nippon.Com* (12 August 2016) <<https://www.nippon.com/en/currents/d00224/>> accessed 8 December 2018.

⁸⁷ Yokohama District Court, Kawasaki Branch, June 2, 2016, Hei 28 (wo) no 42 (Japan).

⁸⁸ Junko Kotani, 'Proceed with Caution: Hate Speech Regulation in Japan' (2018) 45 *Hastings Const L Q* 603, 617.

⁸⁹ Tsunehira (n 86).

⁹⁰ Higashikawa (n 72) 5, fn 19. This approach echoes a (now-repealed) ordinance passed by the Houston City Council 75 years earlier. See Tanenhaus (n 15) (citing Houston Code, c. 32, art. 5, § 1387 (1942): permits in public parks and facilities shall be denied for 'lectures, speeches, debates, and otherwise (that) in the opinion of the manager (or superintendent of parks) ... will tend to engender religious or racial antagonism')

⁹¹ 'Kawasaki Draws up Japan's First Local Guidelines to Prevent Hate Speech' *Japan Times* (11 November 2017) <<https://www.japantimes.co.jp/news/2017/11/11/national/social-issues/kawasaki-draws-japans-first-local-guidelines-prevent-hate-speech/#.W9QYGNNKhPY>> accessed 8 December 2018.

2016.⁹² According to the Kawasaki guideline, city officials will determine the probability of hate speech being spread based on online postings, past activities and a background check.⁹³ If necessary, they will then lay out limitations that vary from warning to conditional permission to outright rejection (as was deemed appropriate in the city's first use of the law with respect to a proposed rally in a public park).⁹⁴

The challenge in Kawasaki, as elsewhere in Japan, has been to ensure that their local ordinances are consistent with the freedom of speech guaranteed in article 21 of Japan's constitution⁹⁵ and the statutory duty not to deny the use of public authorities based on the content of an applicant's speech.⁹⁶ The Kawasaki guidelines attempted to deal with this issue by providing procedural protections to those suspected of hate speech and basing its definition of hate speech on that contained in the national Hate Speech Elimination Act.⁹⁷ Thus, the legislative approach towards hate speech that had been started at the local level (in Osaka) had influenced national legislation, which in turn directly influenced policies elsewhere at the municipal level, showing

⁹² Park Ju-young, 'Japanese Anti-Hate Speech Network, Online Activist to Receive Internet Peace Prize' *Korea Herald* (19 September 2018) <<http://www.koreaherald.com/view.php?ud=20180919000616>> accessed 8 December 2018. The Network was the first recipient of the 2018 Sunfull Internet Peace Prize, which is issued by a Korean foundation and honours 'individuals and organizations that make significant contributions to the prevention of cyberbullying, hate speech or human rights violations on the internet.' *Ibid.*

⁹³ Ambrose & Yeo (n 80).

⁹⁴ 'Make Hate Speech Law Stronger' (n 79).

⁹⁵ *Ibid*

⁹⁶ Local Autonomy Act, Law No. 67 of 1947, art. 244, para 1 (Japan). This act provides exceptions where public safety would be undermined or there is a risk that the life, body, or property of citizens would be infringed). Kotani (n 88).

⁹⁷ Higashikawa (n 73) 5, fn 19. In response to inquiries from city officials in Kawasaki and other cities, the Justice Ministry also provided specific examples of language that could constitutionally be considered hate speech. Reportedly, some protesters then adjusted their language to avoid the precise examples, while more politely conveying similarly odious sentiment. 'Make Hate Speech Law Stronger' (n 79).

how rapidly policy transfers can occur between administrative levels when issues such as hate speech attain a certain degree of political salience. Constitutional doubts remain, however, and to date the Kawasaki guidelines have not been formally used to reject an application to use public facilities.⁹⁸ On the other hand, City officials have successfully persuaded far right protesters to voluntarily cancel their rallies on several occasions, arguably showing the extra-legal impact of the new anti-hate speech norm.

3. *Seoul*

The issue of whether and how to regulate hate speech has also arisen in Korea in recent years. Hate speech discourse in Korea has to a certain extent addressed the protection of ethnic minorities, but this has not always been the focal point for public discussion. Rather, Korean anti-hate speech discussions have recently centred on hateful rhetoric against women, the LGBT community, and people from a particular region of Korea (such as Jeolla province), as well as the use of hate speech in the political arena, for example against the perceived politicisation of Sewol ferry disaster protesters.⁹⁹ To date, there have been no hate speech laws passed on the national level, although the National Human Rights Commission of Korea has investigated hate speech.¹⁰⁰ As is the case in other countries, there is an active debate over the consistency of hate speech laws and freedom of speech. Free speech is a right that is perhaps valued more in Korea because it is

⁹⁸ A civil society group dismissed the guidelines as ‘toothless’. ‘Lacking Direction from Tokyo’ *Japan Times* (n 75).

⁹⁹ See, generally, Claire Lee, ‘Korea Struggles to Enact Hate Speech Laws’ *Korea Herald* (28 December 2014) <<http://www.koreaherald.com/view.php?ud=20141228000346>> accessed 8 December 2018.

¹⁰⁰ Lee Seo-kyung & Lee Young-eun, ‘Prevalence of Hate Speech in the Korean Society’ *Hanyangian* (4 December 2012) <<http://www.hanyangian.com/news/articleView.html?idxno=800>> accessed 8 December 2018.

less secure. Korean progressives, for example, have long faced potential prosecution for speaking views seen as favourable to the North Korean regime.¹⁰¹

As Korea's largest city, with a high number of foreign and minority residents, one might expect Seoul to be at the forefront of local efforts to address hate speech, especially during the tenure of current mayor Park Won Soon, who is a former human rights lawyer and campaigned on an explicitly pro-human rights platform.¹⁰² In fact, there has been relatively little municipal action in the area. Early in Mayor Park's time in office, he attempted to pass a human rights charter, which would have broadly condemned discrimination without specifically addressing hate speech. However, the proposed charter was the subject of vigorous protests by conservative Christian groups, who were concerned that condemning sexual orientation-based discrimination would help legitimise homosexuality.¹⁰³ Mayor Park reacted by withdrawing the proposed charter, an outcome that was in turn protested by human rights activists.

In the wake of this debacle, Mayor Park has been reluctant to introduce new normative human rights documents. However, he has established the Seoul Human Rights Centre to develop and implement human rights policies within the city,¹⁰⁴ along with the Seoul Human Rights Ombudsperson Office to investigate complaints of human rights violations by the Seoul City government, and certain affiliated institutions.¹⁰⁵ Until recently, the city's human rights policy did

¹⁰¹ See Diane Kraft, 'South Korea's National Security Law: A Tool of Oppression in an Insecure World' (2006-07) 24 *Wisconsin International Law Journal* 24.

¹⁰² Andrew Wolman, 'Human Rights between the Local and Global; A Case Study of the Seoul Human Rights Ombudsperson' (2017) 18(1) *Asia-Pacific Journal of Human Rights & Law* 78, 85.

¹⁰³ 'Special Human Rights Charter of Mayor Park Won-soon' *The Donga Ilbo* (21 November 2014) <<http://english.donga.com/srv/service.php3?biid=2014112157568>> accessed 6 January 2019.

¹⁰⁴ Seoul Framework Ordinance on Human Rights (Enactment no 5367, 28 September 2012) art 11.

¹⁰⁵ *ibid* art 20(1).

not focus on hate speech, but that appears to have recently changed; the city's 2018-22 human rights plan notes that hate speech against women and social minorities represents one of the most serious human rights issues in the city, and recommends that it be addressed by a city as a priority.¹⁰⁶ It also calls for the adoption of speech guidelines for Seoul City employees that are based in part on recommendations from the National Human Rights Commission of Korea's report on hate speech.¹⁰⁷

Although Seoul does not have any general human rights or hate speech ordinances, it has since 2012 had an ordinance in place to specifically address the rights of students, called the Seoul Student Human Rights Ordinance. While the ordinance does not impose legally binding rules, it is used to influence policies adopted by local schools. In September 2017, the Seoul Metropolitan Council passed amendments to the Seoul Student Rights Ordinance to discourage the use of hate speech in city schools.¹⁰⁸ This amendment came in the wake of outcry regarding an incident of a teacher calling an ethnically Chinese student 'China' instead of his name, along with statistics showing the growth in student complaints related to abusive speech.¹⁰⁹ Despite its relatively narrow scope of application, the bill received considerable support from a broad network of civil

¹⁰⁶ Seoul City Government, 2018-22 Human Rights Plan' (2018) 11. The report notes that hate speech has only recently emerged as a significant issue in the city. Ibid.

¹⁰⁷ Ibid 144.

¹⁰⁸ 'Seoul's Reformed Student Rights Ordinance to Crack Down on Hate Speech' Korea Bizwire (12 September 2017) <<http://koreabizwire.com/seouls-reformed-student-rights-ordinance-to-crack-down-on-hate-speech/95064>> accessed 9 December 2018.

¹⁰⁹ Ibid.

society groups who have stated that they view it as a first step towards anti-hate speech laws that can apply at the national level and beyond the educational sector in Seoul.¹¹⁰

4. Bucheon

Although several Korean local governments outside of Seoul have passed human rights charters or ordinances, so far these documents have not focused on hate speech.¹¹¹ The most prominent efforts to pass an anti-hate speech law recently occurred in Bucheon, a city of 848,000 between Seoul and Incheon. Bucheon has a relatively high migrant population, and saw hate speech enter the public discourse in the wake of the 2016 distribution of Islamophobic leaflets in local apartment complexes.¹¹² In early 2017, Solidarity for Asian Human Rights and Culture, a local City Council member, the Bucheon Multicultural Network, and the Dongcheon Foundation (the pro bono wing of a major Seoul law firm) formed an executive committee to enact an anti-hate speech ordinance.¹¹³ The initial awareness and interest in local anti-hate speech legislation was heavily influenced by Bucheon's sister-city relationship with Kawasaki, which (as described above) had been a centre for hate speech policy debates in Japan.¹¹⁴ Yamada Takao, who was the

¹¹⁰ People's Society for Participatory Democracy, Press Release Welcoming the Passage of Amendments to the Seoul Student Human Rights Ordinance <<http://www.peoplepower21.org/Solidarity/1527055>> accessed 9 December 2018.

¹¹¹ In one survey from January 2014, 13 out of 17 upper level units of local government and 48 out of 227 basic units of local government had passed human rights ordinances. Korea Human Rights Foundation, 'Report on Local Government and Human Rights 2014' (August 2014) 218 <www.gwangju.go.kr/boardDown.do?boardId=BD_0000000468&seq=268736&fileLinkTp=F&fileLinkSeq=3> accessed 9 December 2018.

¹¹² Lee Wan, 'Activities to Protect Human Rights and Respect Diversity that are Jointly Conducted in the Local Community and Village', Presentation at Seoul Human Rights Conference 2017 (16 October 2017) <<https://shrcblog.files.wordpress.com/2017/10/2017-ec849cec9ab8-ec9db8eab68c-ecbba8ed8dbceb9fb0ec8aa4-ec9e90eba38ceca791-ecb59ceca285.pdf>> accessed 9 December 2018.

¹¹³ Ibid.

¹¹⁴ E-mail Interview with Lee Wan, Director of Solidarity for Asian Human Rights and Culture (27 December 2018).

director of the Kawasaki Citizens' Network against Hate Speech, made several visits to Bucheon to discuss the issue,¹¹⁵ including an appearance with other experts at an August 2017 forum on different strategies to deal with hate speech.¹¹⁶

By November 2017, this process led to the drafting of an anti-hate speech ordinance, which would have required the City to take measures to prevent hate speech, provide support to victims, and require the deletion of online hate speech.¹¹⁷ At the time, however, the draft bill received lukewarm support and was not formally introduced to the City Council.¹¹⁸ As with the earlier attempts to pass a human rights ordinance in Seoul, opposition was spearheaded by right-wing Christian groups, who vigorously criticised the law as being pro-Islamic and inappropriate for the Korean social context.¹¹⁹ The bill's backers intend to introduce a revised version of the ordinance for City Council consideration in 2019.¹²⁰

V. Comparison of European and East Asian Approaches

While the small sample of cities studied in this paper limits the generalities that can be drawn from any comparison, this study does nevertheless suggest certain interesting similarities and differences in local hate-speech policy making in Europe and East Asia.

¹¹⁵ Ibid.

¹¹⁶ Lee Wan, 'Activities to Protect Human Rights' (n 112).

¹¹⁷ Kim Jung-oh, 'No Indication of Ordinance' *Bucheon Maeil* (14 November 2017) <http://www.bcmaeil.com/bcmaeil/news.html?news_num=8730> accessed 9 December 2018.

¹¹⁸ Ibid.

¹¹⁹ E-mail Interview with Lee Wan (n 114); GMW Alliance, 'Bucheon City, Ordinance on Prevention of Abuse and Prevention of Discrimination and Measures: What is the Problem?' (24 October 2017) <<https://m.blog.naver.com/PostView.nhn?blogId=dreamteller&logNo=221124217200>> accessed 9 December 2018.

¹²⁰ E-mail Interview with Lee Wan (n 114).

One common theme that emerges quite clearly is that local hate speech policies do not tend to emerge purely at the local level as indigenous responses to local problems, without broader relevance. Rather, in both Asia and Europe, transnational and translocal networks have been quite influential in the development of local hate speech policies.¹²¹ In Europe, these networks have perhaps been more formal, such as the European Coalition of Cities Against Racism, which prompted Graz to develop anti-hate speech norms in its accession document, as well as the Council of Europe and UCLG, which have helped other cities learn from and emulate Barcelona's anti-rumour network. In East Asia, transnational networking has been less formal but still influential, as for example through the influence of the sister city relationship with Kawasaki on the development of interest in a local hate speech policy in Bucheon.

To locate this dynamic in the voluminous political science literature on policy transfer, these civil society networks can be characterised as non-state 'transfer agents', active in the 'horizontal' transfer of hate speech policy between municipal jurisdictions.¹²² While the research in this area has tended to focus on policy transfer between states, an increasing number of studies also have highlighted the presence of policy transfer, learning and convergence between local authorities.¹²³ The intra-regional nature of these transfers in the hate speech context is consistent with the general evidence that 'shared social and economic characteristics, similarities in

¹²¹ Translocal networks refer to networks of cities or other sub-national governments within the same country. See Judith Resnik, 'Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism' (2007) 57 *Emory LJ* 31.

¹²² See Diane Stone, 'Transfer Agents and Global Networks in the 'Transnationalization' of Policy' (2004) 11(3) *Journal of European Public Policy* 545.

¹²³ Sandra Nutley et al, 'Policy Transfer and Local Government Improvement Regimes' in Peter Carroll and Richard Common (eds), *Policy Transfer and Learning in Public Policy and Management* (Routledge 2013) 32.

institutional arrangements and strong cultural ties’ help facilitate policy transfer and convergence.¹²⁴

In both regions, there has also been significant ‘vertical’ policy transfer between the local and national level. This was most clear in Japan, where hate speech laws emerged first in Osaka, then influencing the national debate and national law-making, which in turn influenced policies in Kawasaki and elsewhere. However, one also saw the national government in the UK establish an online hate speech hub based on (and cooperating with) the London template, while in Korea the current Seoul city human rights plan relies on hate speech guidance developed by the National Human Rights Commission of Korea at the national level. In these cases, the policy transference seem largely to be cases of ‘emulation’ in Bennett’s four part typology of mechanisms of convergence, as opposed to the ‘elite networking’ at work in horizontal policy transfers.¹²⁵

At a more substantive level, it is also notable that in both the East Asian and European examples studied, municipalities have not engaged in criminalisation of hate speech. Rather, they have passed ordinances with civil law remedies or have engaged in promotional or priority-setting activities that do not require new legislation. This stands in contrast to the national level, where criminalisation of hate speech (or the lack of it) dominates the policy discourse, even while other policy options do exist. In some countries, the lack of local criminalisation undoubtedly stems from the fact that local governments would normally lack power to pass criminal ordinances. But this is not always a restriction: in Japan, for example, local authorities are permitted to impose

¹²⁴ Ibid

¹²⁵ Colin Bennett, ‘What is Policy Convergence and What Causes It?’ (1991) 21 *British Journal of Political Science* 215. In addition to emulation and elite networking, Bennett also identifies harmonisation through international regimes and penetration by external actors as potential mechanisms of policy convergence Ibid. However, these mechanisms seem less prominent in the hate speech context.

penalties of up to two years imprisonment and fines of up to 1 million yen in response to breaches of their ordinances.¹²⁶ In the UK, local government byelaws may create criminal offences punishable in magistrates' court, although they must be approved by the central government before they can come into force and cannot be used where an issue is already regulated by national-level legislation.¹²⁷ Nevertheless, whether for political or legal reasons (relating to potential constitutional conflicts in Japan and potential national-level pre-emption in the UK), the Japanese cities studied and London local authorities have refrained from passing hate speech ordinances or byelaws that include criminal penalties.

The preceding analysis also reveals certain differences between local hate speech policy-making in Europe and East Asia. Perhaps the most evident of these is in the basic objective of local policies. In European countries, there is already regulation of hate speech at the national level (generally some form of criminalisation), and often a high degree of social consensus on the normative desirability of anti-hate speech policy. Thus, the focus of local governments seems to be more centred on specific aspects or contexts of hate speech, such as the use of hate speech online or in social media (as in Barcelona and London) or in political campaigns (as in Graz). They also seem to engage more in improving monitoring and enforcement anti-hate speech policies, rather than developing or promoting new norms. Meanwhile, in Japan and Korea, which (until recently) lacked general hate speech regulation at the national level, local policy-makers have focused more on asserting the general principle that hate speech merits official condemnation and

¹²⁶ Local Autonomy Act (Japan) (n 96) art 14-3.

¹²⁷ Local Government Act (UK) 1972 s 235. See also, Office of the Deputy Prime Minister, 'Local Authority Byelaws in England: A Discussion Paper' (April 2006) 9 ('byelaws create criminal offences').

suppression, without concentrating on particular sub-issues (with the exception of the Seoul City Council's amendment that specifically condemned hate speech in schools).

Another difference is in the role of civil society networks in developing hate speech policy. In the East Asian examples studied, civil society groups have played important roles in pressing for local hate speech regulation (notable examples being the Kawasaki Network of Citizens against Hate Speech and the ad hoc group that lobbied for a Bucheon hate speech ordinance). European regulatory choices, on the other hand, seem to be more top-down products of progressive mayors or local governments, perhaps prompted in the Graz and Barcelona case by a desire to operationalise their commitment to being a 'Human Rights City'. In Europe, civil society groups have been primarily influential as implementation partners, the most notable examples being ETC Graz and the civil society groups that work with local government personnel in London's online hate crime hub. In Barcelona, too, the anti-rumours policy has been implemented largely outside the public sector, through the work of citizens who volunteer as 'anti-rumour agents'.

The paper also suggests a differing level of intensity in the opposition to local hate speech policy-making in Europe and East Asia.. Perhaps because Japan and Korea have not yet developed strong national anti-hate speech norms, local policy-making in these countries has been quite fiercely contested, including through public demonstrations in Kawasaki and Bucheon. In Korea, the Bucheon City Council in fact proved unable to pass an anti-hate speech law due to the intensity of public opposition, as was also the case with the Seoul mayor's earlier attempt to pass a human rights ordinance. In Europe, on the other hand, local hate speech policies have been opposed by somewhat marginal political forces, such as the representatives of UKIP in London, but have not been the subject of significant mainstream protest.

VI. Conclusion

As cities around the world become more and more diverse, maintaining social comity in the public sphere has inevitably become an important challenge. It is thus unsurprising that local governments in both Europe and East Asia have in recent years attempted to develop policies to combat hate speech. As this study shows, such policies can take on a number of different forms. Some cities have used their law-making powers to pass ordinances providing for civil penalties for political hate speech, naming and shaming offenders, or limiting access to public spaces for those engaging in hate speech. Other cities have used their existing programmatic authority to develop policies to monitor hate speech, assist in reporting it to relevant authorities, or to assist its victims.

To date, these local policies have received relatively little attention. This begins to fill this gap through a comparative analysis, and can be seen as a starting point for further examination of these important new issues. Potential further questions could include (for example) the following. Why do some local governments adopt hate speech policies while others do not? Why do different cities adopt different kinds of hate speech policies? How effective are local hate speech policies? How have local governments addressed the tension between hate speech policy and freedom of expression? This paper can also serve as a resource for local policy-makers and activists interested in the policy options for addressing hate speech at the local level, and the challenges that such policies may face.

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