

BOOK NOTE

Faith in Public Debate, by Esther Janssen. Intersentia, 2015. Pp. 637. \$118.00 (hardcover).

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“Should a pastor or imam be able to compare homosexuality with criminality or disease?” muses Esther Janssen in the introduction of *Faith in Public Debate*, a comparative constitutional study of hate speech laws in France and the Netherlands. While Janssen’s interest, like many writers who take on the topic of hate speech, is the boundary between protection of the right to free speech and protection of the rights of minorities, her approach is novel in both its scope and its narrowness. It is the first comparative international study of such laws in France, the Netherlands, Europe, and the United Nations. Janssen narrows her analysis by proposing tools to enhance consistency within the existing regulatory approaches to hate speech, but does not provide a single, ultimate answer.

Janssen begins her work with a comprehensive grounding of the different theories and rationales that underpin the right to free speech and the restriction of hate speech. She examines U.N. legal documents and cases from the European Court of Human Rights to determine what state obligations exist and what lessons in consistency such law provides. In both international and European human rights law, she determines that there is a patchwork of standards and a lack of coherency—the legal orders show different notions of hate speech in different documents and vary in their implementation and normative force. For instance, in determining whether speech meets the standard of “inciting speech,” as required for criminalization by the U.N. International Convention on the Elimination of All Forms of Racial Discrimination, the agreement itself contains no uniform standard for forms of expression that should be restricted. National courts and legislatures must determine the degree of risk, the likelihood and imminence of violence, and the directness of the threat. A commonality in the U.N. and European legal instruments she examines is the reference

to the importance of freedom of expression, which indicates that any restrictions on hate speech must be strictly construed.

The most significant part of Janssen's work focuses on French and Dutch law. Janssen provides an in-depth examination of each country's drafting history of free speech and hate speech legislation, case law, immigration policies, and the role of civil society associations in hate speech cases. She finds that both countries criminalize hate speech on the basis of race and religion, but value utterances concerning race and utterances concerning religion differently. In France, negative utterances about religions and their figures, tenets, dogmas, institutions, and practices are permitted, but the same is not true of utterances about racial groups. French case law requires impermissible utterances concerning religion to constitute a personal and direct attack against a "designated group," which suggests that an expression must designate the entire group as opposed to members of the group to be prohibited. For instance, in the Mohammed cartoons case, a judge found the cartoons permissible because the cartoons "formed part of the public debate about the criminal acts committed by fundamentalists in the name of Islam," as opposed to speech directed at all Muslims. Moreover, French law does not recognize the existence of national minorities and as a result, certain minorities, such as the Corsicans, are not considered a group protected by hate speech bans. French law also requires that an utterance targets persons specifically, and therefore general racist or xenophobic statements are not criminalized.

In the Netherlands, negative utterances concerning religious groups must "unmistakably" refer to a particular group, but the same criterion does not apply to hate speech made on the basis of race. The Dutch standard also seems to be more protective of certain religious groups: although Nazi symbols and trivialization of the Second World War or the Holocaust are punishable forms of incitement, even when there is no explicit statement made about a particular group, the law includes a stricter and more explicit standard to show hate speech against Muslims. Janssen suggests that this may be because certain religions are not simultaneously considered hallmarks of racial and ethnic identities in the law. Moreover, while the Netherlands recognizes the existence of minorities in its law, this seems to result in less protection of individuals that belong to a minority group.

In conclusion, Janssen offers several suggestions, based on her examination of French, Dutch, European, and international law,

which might improve consistency in hate speech regulations. She recommends an intersectional approach that recognizes the connection between race and religion as a way to demarcate speech which negatively impacts the *adherents* of a religion, as opposed to speech which criticizes the *convictions* of a religion. She proposes that to ensure existing hate speech laws are more effectively enforced, antiracist organizations could be given the power to initiate criminal prosecutions. She believes that clarifying whether all citizens have the same degree of freedom of expression—for instance, expressions of politicians in positions of power may qualify as abuse of rights sooner than those of other citizens—can further consistency. She also suggests that more consistency can be obtained when hate speech bans prohibit expression due to its inherent harm and not only when the expression incites violence. Janssen sees her suggestions not as ready-made solutions, but rather as a starting point to improve restrictions on hate speech bans and to provide an impetus for further study. By emphasizing the dangers of uncertain and inconsistent legal rights, Janssen furthers the hate speech debate and illuminates how to more thoughtfully balance the right to free speech with the rights of victims of hate speech.

Esther Janssen received her doctorate from the University of Amsterdam and currently serves as legal counsel for a Dutch law firm specializing in media and information law.