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Criminalising (Hateful) Extremism in the UK: Critical Reflections From Free Speech

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Abstract
The UK has a comprehensive arsenal of counter-terror law. The Terrorism Act 2000, for example, outlaws the membership of a proscribed terror group, as per s.11; and support for a proscribed terror group, as per s.12. The legislation also criminalises the preparation of terror attacks, such as possession for terrorist purposes, as per s.57; and the collection of information, as per s.58. Following the 7/7 terror attacks in London in 2005 the UK passed the Terrorism Act 2006 outlawing, for example, the encouragement of terrorism, including the glorification of terrorism, as per s.1; and the dissemination of terrorist publications, as per s.2. But the UK's existing counter-terror legislation does not seem to go far enough in deterring violent extremism that falls short of terrorism. In February 2021, therefore, the UK's independent Commission on Countering Extremism suggested further legislative reform to this area. In the UK there is freedom of expression, guaranteed by Article 10(1) of the European Convention on Human Rights (ECHR). However, Article 10(2) of the ECHR permits a necessary interference with speech on the grounds of the prevention of disorder and crime. Indeed, historically, liberalism, which underpins much of human rights law, has also permitted limitations on the freedom of expression. Are the Commission's proposals to curtail further the free speech of extremists compliant with the jurisprudence on free speech and the philosophy of liberalism upon which much of the law of human rights is grounded? Without being able to assess the Commission's suggested reforms within every element of free speech, this piece examines many of its important facets, such as the responsibility of the rights-holder, the speaker, and the certainty upon which the law limiting the free speech is authorised. The findings of this piece are that the proposals of the Commission respect the UK's law on free speech and its related theories of liberalism.

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Introduction

The UK has sought to strike an appropriate balance between liberty and security for many years. The temporary Prevention of Terrorism (Temporary Provisions) Act 1974 ceased with

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a permanent statute, the Terrorism Act 2000. This criminalises, for example: the membership of a proscribed terror group, as per s.11; and support for a proscribed terror group, as per s.12. The legislation also outlaws the preparation of terror attacks, such as possession for terrorist purposes, as per s.57; and the collection of information, as per s.58. However, the rapid expanse of the Internet, and its inroads ever more into the daily lives of individuals, has posed fresh and more pressing challenges of countering terrorism.

The Internet is a swift, inexpensive and anonymous medium for the indoctrination, radicalisation, recruitment and training of individuals, as well as a vital source for terror funding. To combat the growing influence of the Internet on terrorism, such as the prevalence of social media platforms like YouTube, Facebook, Instagram and Twitter, the UK passed the Terrorism Act 2006. This outlaws, for example, the encouragement of terrorism, including the glorification of terrorism, as per s.1; and the dissemination of terrorist publications, as per s.2. But these legislative responses were arguably not sufficiently preventative of harms that were extreme, but non-violent, since, in 2015, the UK government was forced to publish, for the first time, a *Counter-Extremism Strategy*. In it, the government claimed that previously society had been too tolerant of Islamist and Far-Right ideology, particularly that which had attacked traditional British values of democracy, human rights and the Rule of Law.

Following the *Counter-Extremism Strategy*, the UK government went further in limiting terror speech: s.12 of the Terrorism Act 2000 has now been amended by s.1 of the Counter-Terrorism and Border Security Act 2019 outlawing the mere expressions of support for a proscribed organisation; and the same statute introduces a new offence of obtaining or viewing terrorist material over the Internet, as per s.3. But, again, these reforms do not seem to go far enough in limiting speech that is extreme, but non-violent, as the UK's independent Commission on Countering Extremism has recently suggested further legislative reform to this area. Where do these new proposals fall within the discourse of human rights and the law on freedom of expression in particular?

In the UK there is free speech, guaranteed by Article 10(1) of the European Convention on Human Rights (ECHR), but the freedom has its foundations much earlier in the liberal tradition of, say, John Locke's *A Letter Concerning Toleration*, 1689; and John Stuart Mill's *On Liberty*, 1859. The latter called for the protection against the tyranny of the

prevailing opinion and feeling; against the tendency of society to impose its own ideas and practices as rules of conduct on those who dissent from them (Mill, 1991, p.9). So, expression, even that described as extreme, *prima facie*, should be tolerated. But of course speech is not, and has never been, unfettered. Mill, for example, qualified liberties to prevent harm to others (Mill, 1991, p.14). Moreover, within human rights law discourse, speech has never been unlimited, as per Article 10(2) of the ECHR, for example, which permits a lawful interference by the state for the necessary prevention of disorder and crime. The right to freedom of expression is also qualified by the reference to 'responsibility', in Article 10(2) of the ECHR, which imposes a duty on the rights-holder, the speaker, to exercise restraint in the enjoyment of the freedom. This academic piece assesses the Commission's legislative reforms in the light of these issues of human rights law, and the liberal philosophies which underpin it, such as Mill's 'harm principle', and finds that they are well grounded in the discourse of rights.

However, curtailments of free speech by the state must also, according to Article 10(1) of the ECHR, be 'prescribed by law'. This means *inter alia* that the state's interference with freedom of expression must possess sufficient certainty. Are the Commission's proposals clear and unambiguous? Will these further limitations on free speech in the UK make the boundary between permissible and impermissible expression (more) opaque? A further finding of this piece is that the proposals of the Commission comply with this facet of human rights law.

Modern challenges: the Internet, a platform for extremists?

The exercise of free speech in contemporary society is far reaching, compounded by the explosion of online activity. But, with the seemingly limitless scope of this freedom, there are corresponding human rights challenges in return. In a 2020 poll it was revealed that 40% of Black, Asian, and Minority Ethnic (BAME) Britons had experienced or witnessed racial violence; 45% had experienced or witnessed racial abuse (Hope Not Hate, 2021, p.7). Much of the encouragement for this violence and abuse will have had its origins in the Internet. The Internet is the perfect platform for extremists (see, for example, Rudner, 2017). It is

inexpensive, fast, instantaneous, anonymous and, unlike the traditional print media, permits those intent on hate to control the narrative. It allows for the limitless collection and sharing of extremist propaganda, across multiple devices, such as home computers and mobile devices. Extremists can indoctrinate, radicalise, recruit and train new members within closed communities and/or chat rooms, through the media of sermons, instructional videos, blogs, social media, such as Twitter, Facebook and Instagram, and interactive websites. Indeed, extremists intent on sharing information can do so privately through heavily encrypted messaging services such as WhatsApp and Telegram (Waterson, 2019). Like WhatsApp, Telegram is a free, cross-platform app offering secure messaging, but also allows users to use a 'self-destruct option,' where messages can be deleted as soon as they are viewed by the recipient (Lowe, 2020, p.3). The Internet also affords extremists the valuable opportunity to raise funds. The transnational nature of the web permits hate speech, which has been shut down in one country, to simply find a host in another (Renieris, 2009, p.676). In recent years the UK's Parliamentary Home Affairs Committee has claimed that the use of the Internet to promote radicalisation and terrorism is 'one of the greatest threats that countries including the UK face' (House of Commons Home Affairs Committee, 2016, p.11).

There is a particular concern about the online activities of the Far-Right (who are generally anti-immigration, anti-Islam and in Europe, anti-EU), not least the extreme Far-Right (who are anti-Semitic, homophobic, racist, and advocate white supremacy and the violent overthrow of liberal democracies) (Lowe, 2020, pp.1-2). In March 2019, there were multiple shootings by Brenton Tarrant, at two Mosques in Christchurch, New Zealand, killing 50 people, which Tarrant livestreamed for 17 minutes on Facebook. The original footage was removed by Facebook after an hour, but problematically it was repeatedly re-uploaded by other users (Waterson, 2019). Indeed, the online extreme right narrative has proved popular with the young: 15% of young people and 20% of young male respondents to a May 2020 poll in the UK believed the official account of the Nazi Holocaust was a lie and the number of Jews killed by the Nazis during World War II had been exaggerated on purpose (Commission for Countering Extremism, 2021, p.20). The extreme Far-Right, Feuerkrieg Division (FKD) was officially proscribed in the UK in July 2020 (Counter Terrorism Policing, 2020). After the government's announcement to proscribe the FKD, it was discovered that the leader of the

group was a 13-year-old boy from Estonia. FKD, an international group that largely existed online until February 2020 (Home Office, 2021), was created in late 2018. The FKD's aim was to overthrow the liberal democratic system by bringing about a race war through individuals carrying out acts of mass murder (de Simone, 2020). The group's ideology promoted the idea that society would collapse into racial warfare – thus opening the way for the creation of a neo-Nazi state – and that this process should be accelerated through terrorist activity (de Simone, 2020).

Of the social media platforms, there has been a major effort by many companies such as Facebook to deplatform extremists, but this has led to many Far-Right activists simply moving to unmoderated 'Alt Right' sites (Hope Not Hate, 2021, p.8). These platforms include 'chan sites' such as 4chan and 8kun. Several violent Far-Right attacks in recent years have been linked to 'chan culture', not just in the case of attackers uploading manifestos, final messages and livestreams to chan sites themselves, but in the widespread community support exhibited where violence can be both trivialized and glorified (Crawford et al., 2021, p.1). Commonly, this is manifested in the visual culture present on chan sites, particularly memes. Memes are fertile opportunities for the distilling and spreading of extreme anti-Semitic, anti-Muslim and misogynistic beliefs under the guise of humour and irony (Hall, 2021, p.16). The surrealist cartoon-like style of such memes is not only intentionally ironic and trivializing, it provides users with a degree of inherent deniability (Crawford et al., 2021, p.6). Ahead of his terror spree in New Zealand in 2019, Brenton Tarrant, for example, posted on 8chan's '/pol/' board that 'I will carry out an attack against the invaders', and posted a manifesto as well as links to his Facebook livestream video of the attack (Baele at al., 2021, p.65).

Indeed, events in the last couple of years or so, such as the Covid-19 pandemic precipitating national lockdowns, have hastened the demise of many traditional Far-Right groups, permitting younger, more tech-savvy activists to thrive. There has seen a move to a 'postorganisational' Far-Right, with more fluid online networks such as chan sites and a rise in conspiracy theories (Hope Not Hate, 2021, p.8). The latter has included the 'QAnon Conspiracy', that the former US President Donald Trump was waging a secret war against an international cabal of satanic paedophiles (Amarasingam & Argentino, 2020); the 'Incel' movement, a collection of involuntary celibate men cohering around misogyny, claiming that,

as men, they have been relegated to the margins of society (Hoffman et al., 2020); and the origins of covid. Covid, for example, has been blamed by the Far-Right on a 'Zionist Occupied Government' (ZOG), where so called Jewish elites secretly preside over, and rule various aspects of, society (Basit, 2020); the Chinese state (Kalil, 2021); and the 5G mobile telephone network (Home Office, 2021). What is the UK doing to counter this growth of extremism and the Far-Right narrative in particular?

Counter-terror limits on free speech in the UK: 'Pursue'

The UK's strategy for countering terrorism is 'Contest'. Contest has several strands: 'Pursue', to stop terrorist attacks; 'Prevent', to stop people becoming terrorists or supporting terrorism; 'Protect', to strengthen the UK's protection against a terrorist attack; and 'Prepare', to mitigate the impact of a terrorist attack (HM Government, 2018, p.8). (The principles of Contest mirror those enshrined in several other international and regional counter-terrorism strategies, such as those of the United Nations (United Nations, 2006) and the Council of the Europe (Council of Europe, 2005).) For reasons of word length, since one of the objectives of this piece is to examine the proposals of the Commission on Countering Extremism for further legislative reform to the UK's existing statutes countering terrorism and extremism, which are an element of the Pursue strategy of Contest, analyses of the other parts of Contest, such as Prevent, are not undertaken here.

The prosecution of suspected terrorists for violating the criminal law are elements of 'Pursue'. The UK's principal counter-terror statute is the Terrorism Act 2000. This outlaws, for example, membership of a proscribed terrorist organisation, supporting a proscribed terrorist organisation and uniforms of a proscribed terrorist organisation, as per ss.11, 12 and 13 respectively. To be proscribed, an organisation must satisfy the criteria within s.3(4): the Secretary of State for the Home Department has the power to ban a group only if they believe the group 'is concerned in terrorism'. This includes circumstances where a group prepares for terrorism, or promotes or encourages terrorism (including the unlawful glorification of terrorism). The Terrorism Act 2000 contains other offences which may be engaged to

criminalise terror speech: possession for terrorist purposes, s.57; the collection of information, s.58; and the incitement to commit acts of terrorism overseas, s.59.

Following the 7/7 terror attacks in London in 2005 the UK enacted the Terrorism Act 2006. Section 1 introduced a new offence of 'encouragement of terrorism'. Section 1(1) applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism. Furthermore, the mental element of the offence, according to s.1(2), is – a person either (i) intends members of the public to be directly or indirectly encouraged or (ii) is reckless as to whether members of the public are directly or indirectly encouraged. So the offence need not require intention, only recklessness. For the purposes of indirectly encouraging terrorism, this includes every statement which—glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences, as per s.1(3). Section 1(5) also says that it is irrelevant (a) whether anything relates to the commission, preparation or instigation of one or more particular acts of terrorism or of acts of terrorism generally; and, (b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence. So the encouragement can be vague and a risk that a person was in fact encouraged is not required. If a person distributes, sells, gives, shares etc the direct or indirect encouragement of terrorism, they are committing an offence contrary to s.2 of the Terrorism Act 2006, the 'dissemination of terrorist publications'. Section 3 outlaws the encouragement and dissemination via the Internet. Other relevant limitations on speech include: the Counter-Terrorism and Border Security Act 2019 which amends s.12 of the Terrorism Act 2000, in outlawing the expression of an opinion or belief that is supportive of a proscribed organisation. And s.3 of the Counter-Terrorism and Border Security Act 2019 amends s.58 of the Terrorism Act 2000, by making it a criminal offence merely to obtain or view terror material over the Internet.

Authorities in the UK may wish to regulate the promotion of extremist material without charging a person with a terror offence: they may wish to prosecute someone contrary to s.5 of the Public Order Act 1986, for example. This contains provisions which criminalise the use of threatening or abusive words or behaviour, or disorderly behaviour, or the display

of any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress. This offence can be racially or religiously aggravated. Then there is s.1 of the Malicious Communications Act 1988. Here a person sends either an indecent or grossly offensive electronic communication with the intention of causing distress or anxiety. (A breach of s.1 of the Malicious Communications Act 1988 was what happened when a man in the UK supported the Far-Right terror shootings of Brenton Tarrant in New Zealand on social media (Grierson & Dodd, 2019).) Section 127 of the Communications Act 2003 is a similar offence to s.1 of the Malicious Communications Act 1988. Furthermore, whilst there has been an offence of inciting racial hatred for a while, as per s.17 of the Public Order Act 1986, the statute has been amended to include an offence of inciting religious hatred, as per s.1 of the Racial and Religious Hatred Act 2006. The Public Order Act 1986 was further amended by s.74 of the Criminal Justice and Immigration Act 2008, in outlawing hatred on the grounds of sexual orientation. There are therefore many criminal offences which the state can employ against those engaging in hate speech, including via the Internet. Is further criminalisation needed to address extremism?

Criminalising extremism in the UK

In 2015 it was widely reported that the UK was publishing a Counter-Extremism Bill. This Bill was never published, though its content was widely reported. Reports suggested the introduction of civil orders: Banning Orders for extremist organisations who sought to undermine democracy but fell short of proscription (Morris, 2013); Extremism Disruption Orders to restrict people who sought to radicalise young people (Morris, 2013); and Closure Orders, a power for the police and local authorities to close down premises used to support extremism (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.26). Although these orders were civil in nature, breach of them was going to be a criminal offence.

The UK government said there would be strong safeguards to ensure these powers were only used in the most serious cases. They would be designed so that they could only be

used where it was necessary to prevent the activities of groups and individuals who posed a clear threat to the safety of individuals or society more generally (HM Government, 2015, pp.33-34). And they would be subject to a high level of judicial scrutiny; any action would need to be approved by the High Court (HM Government, 2015, p.34). The UK government signalled its intention to enact some, if not all, of these proposals a year later, in 2016, in a Counter-Extremism and Safeguarding Bill but this, too, was never published.

Commenting on the proposals in 2016, the Parliamentary Joint Committee on Human Rights (JCHR) said that it was unclear what problem the new legislation was designed to combat. The promotion of extremist views was already the subject of a comprehensive list of criminal offences (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.26). So the government should not legislate, least of all in areas which impinge on human rights, unless there was a clear gap in the existing legal framework. The current counterterrorism and public order legislation formed an extensive legal framework for dealing with people who promoted violence. The government had not been able to demonstrate that a significant gap in this framework existed (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.5). Moreover, it would be deeply concerning to allow any government the power to effectively ban speech which merely had the potential to lead to harmful activity, by way of a civil order (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.27). The obvious concern was that such orders could be used as a means to avoid having to make a criminal case to the requisite standard of proof (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.27).

The significance of free speech

Rights of humans, with corresponding duties on others to secure these rights, are a relatively modern phenomenon; an obvious example being the *Universal Declaration of Human Rights*, 1948. But, conceptually, rights principles date back much earlier. The classical liberal, John Locke, for example, was famous for declaring that humans had natural rights to life, liberty and estate which civil society could not deny without consent (Locke, 1988, pp.350-351). Locke was also explicit in his recognition of freedom of speech, albeit in professing one's

religious beliefs. In 1689, in *A Letter Concerning Toleration*, Locke famously said (Locke, 2019a, p.60), "Liberty of conscience is every man's natural right, equally belonging to dissenters as to themselves; and that no body ought to be compelled in matters of religion either by law or force." The classical liberal tradition continued to recognise the significance of free expression 100 years after Locke, in the 18th Century writings of Jean-Baptiste Say, for example, who was a strong advocate of the freedom of the press (Blanc & Tiran, 2018, p.296).

Later, John Stuart Mill in *On Liberty*, 1859, said that the sole end for which mankind was warranted, individually or collectively, in interfering with the liberty of action of any of their number, was self-protection. That the only purpose for which power could be rightfully exercised over any member of a civilised community, against their will, was to prevent harm to others. Their own good, either physical or moral, was not a sufficient warrant (Mill, 1991, p.14). In particular, Mill said that there was an appropriate region of human liberty. It comprised, first, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological (Mill, 1991, p.16). No society in which these liberties were not, on the whole, respected was free (Mill, 1991, p.17).

The significance of free speech pervades liberal discourse. The greatest political philosopher of the 20th Century was perhaps John Rawls. In *A Theory of Justice* Rawls considered what individuals in the 'original position' would choose as principles of justice for the basic structure of society (Rawls, 1971, p.11). Rawls believed two principles of justice would be chosen in the original position. The first of these principles, the 'liberty principle', which was more important than the second, the 'difference principle (Rawls, 1971, p.61), was, each person was 'to have an equal right to the most extensive basic liberty compatible with a similar liberty for others' (Rawls, 1971, p.60). That is, each person would have the maximum amount of liberty without interfering with the similar liberties of others (Rawls, 1971, p.64). These 'basic liberties' included political freedoms, such as speech, assembly, conscience and thought (Rawls, 1971, p.64).

Why is free speech considered so important? John Locke, for example, in *An Essay Concerning Human Understanding*, 1689, welcomed the positive effect the principle had on social cohesion (Locke, 2014, p.491), "Speech being the great bond that holds society together, and the common conduit whereby the improvements of knowledge are conveyed from one man, and one generation to another." Indeed, Locke also blamed a lack of toleration on wars: it was not the diversity of opinions that caused conflict, but the refusal of toleration to those that were of different opinions (Locke, 2019a, p.63). And Mill claimed that individuals needed protection against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them (Mill, 1991, p.9). This is linked to another justification for freedom of speech, from the argument of democracy. For Mill, 'liberty of the press' was one of the securities against corrupt or tyrannical government (Mill, 1991, p.20). We may further link the argument of democracy to the free speech principle of the 'marketplace of ideas'. In the UK's highest court, the House of Lords (as it was then called), for example, in *Regina v Secretary of State for the Home Department, Ex parte Simms* [1999] UKHL 33, Lord Steyn (para 26) said that freedom of speech, being 'the lifeblood of democracy', was reliant on the free flow of information and ideas. Later, in *Regina (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15, the House of Lords said (para 28),

> "The fundamental rationale of the democratic process is that if competing views, opinions and policies are publicly debated and exposed to public scrutiny the good will over time drive out the bad and the true prevail over the false. It must be assumed that, given time, the public will make a sound choice when, in the course of the democratic process, it has the right to choose."

The above could be linked to John Stuart Mill's principle of truth: Mill said we can never be sure that the opinion we are endeavouring to stifle is a false opinion; it may possibly be true (Mill, 1991, p.22). And those who desire to suppress speech are not infallible: they have no authority to decide the question for everyone else and exclude everyone else from the

means of judging for themselves (Mill, 1991, p.22). Dismissing the powers of others to decide for the individual is an argument in favour of the autonomy of the person (Campbell, 2006, p.147).

Furthermore, for Mill, it was as indispensable to enable 'average human beings' to attain the mental stature which they were capable of (Mill, 1991, p.39). There are therefore many reasons to respect the expression of individuals: from the inviolability and integrity of the person, in encouraging personal autonomy and mental improvement, to the collective benefits of protection from an all-powerful state in a liberal democracy. The significance of free speech in liberal theory is reflected in the law of human rights which it underpins.

The law of free speech in the UK

In modern human rights documents freedom of speech is protected by Articles 19 of the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR), which both decry limitations on expression. There is also regional human rights law such as the ECHR, which is applied directly in UK law by virtue by the Human Rights Act 1998. Article 10(1) of the ECHR is freedom of expression.

What 'speech' does the law in the UK protect? Without specifically identifying the limitations of free speech, the courts have implied that the purview of securing free speech is wide. As per the case of *Handyside v United Kingdom* (Application no. 5493/72), for example, the European Court of Human Rights (ECtHR) said that (para 49), subject to Article 10(2), the right was applicable not only to information or ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed the State or any sector of the population. Such were the demands of that pluralism, tolerance and broadmindedness without which there was no democratic society.

Indeed, even in the area of states' attempts to curb speech that offends, it is important to note that international and regional human rights law demands that speech, even of an extremist nature, should not be arbitrarily curtailed. With the growing Islamist terror threat after 9/11, the United Nations Security Council (UNSC), in 2005, passed Resolution 1624 'condemning in the strongest terms the incitement of terrorist acts and repudiating attempts at

the justification or glorification (apologie) of terrorist acts that may incite further terrorist acts'. But this resolution does oblige states to have regard to Articles 19 of the UDHR and ICCPR. Indeed, the United Nations Counter-Terrorism Committee Executive Directorate (UNCTED), in its global survey of the implementation of UNSC Resolution 1624 by member states, in 2016, was keen to stress that the powers exercised by states should not be used for illegitimate aims such as the suppression of political dissent or the advocacy of controversial beliefs or views (United Nations Counter-Terrorism Committee Executive Directorate, 2016, p.8). Otherwise, the consequences could have the opposite effect of leading to greater radicalisation.

Types of speech deserving of particular protection in the UK

Political speech is afforded greater protection by the law. Mill identified 'liberty of the press' as one of the securities against state corruption and tyranny, it will be recalled. In *New York Times Co v Sullivan* (1964) 376 US 254, for example, the Supreme Court of the United States (SCOTUS) said (p.277),

> "[Every] citizen has a right to criticise an inefficient or corrupt government without fear of civil as well as criminal prosecution. This absolute privilege is founded on the principle that it is advantageous for the public interest that the citizen should not be in any way fettered in his statements, and where the public service or due administration of justice is involved he shall have the right to speak his mind freely."

Although this principle is reflective of American jurisprudence, it was endorsed by Lord Kinkel in the UK's House of Lords in *Derbyshire County Council v Times Newspapers Limited* [1993] UKHL 18. The judge said that (p.8), while this decision was related most directly to the provisions of the US Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them were no less valid in the UK.

Another area of speech accorded greater protection in the UK is adult education. Section 43 of the Education (No. 2) Act 1986, for example, contains a responsibility on those governing colleges and Universities to take such steps as are reasonably practicable to ensure

that freedom of speech within the law is secured for members, students and employees. Furthermore, s.202 of the Education Reform Act 1988 also contains provisions on academic freedom and provides that University Commissioners should have regard to the need to 'ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions'.

Prima facie the law recognises free speech as being absolute. Article 10(1) of the ECHR is the right to freedom of expression. And, whilst the right can be legitimately infringed, it can only be done so if it is necessary in a democratic society, for specific objectives such as either national security or the protection of health and morals, as per Article 10(2) (see more below). Moreover, the interference with expression must be 'prescribed by law', meaning that, not only must the curtailment have lawful authority (outlawing the incitement of racial hatred, for example, is authorised by the Public Order Act 1986), it must have sufficient certainty.

Prescribed by law

Certainty in the law is a key criterion of constitutional law, within the broader concept of the Rule of Law, especially so in countries like the UK where there is no written constitution and Parliament is legislatively supreme (Jowell, 2019). Legal certainty is also a significant principle of human rights norms. Indeed, Article 7 of the ECHR is 'no punishment without law'. Thus, a vague and uncertain law violating free speech could contravene Article 7 of the ECHR as well as Article 10. Certainty in the law is also a fundamental principle across the range of legal philosophy, from natural lawyers such as Lon Fuller to legal positivists such as Joseph Raz. Legal clarity was essential to Fuller's 'inner morality of law' in his book of (roughly) the same name, *The Morality of Law* (as well as principles of non-retroactivity, non-contradiction, non-constancy through time etc): for Fuller, clarity represented one of the most essential ingredients of legality (Fuller, 1969, p.63); it was 'a serious mistake' for the busy legislative draftsperson to delegate their task of drafting the law to the courts (Fuller, 1969, p.64). For Raz, because the law had the objective of guiding human behaviour, it must be clear (as well as stable, open, prospective etc) (Raz, 1997,

p.196). And (Raz, 1997, p.196), "An ambiguous, vague, obscure law is likely to mislead or confuse at least some of those who desire to be guided by it." Such ideas are shared by the courts in the application of the principle of 'prescribed by law' to cases on free speech. In *Feldek v Slovakia* (Application No. 29032/95), for example, the ECtHR said (para 56),

> "A norm cannot be regarded as 'law' unless it was formulated with sufficient precision to enable the citizen to regulate their conduct: they must be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action may entail."

The degree to which the courts will enforce the principle of legal certainty in respect of free speech is context specific. So in the area of public morals, for example, where societal attitudes are forever changing, the courts are prepared to give the state considerable latitude. For example, in *Muller v Switzerland* (Application No. 29032/95) the applicant had been prosecuted for breaching the Swiss Criminal Code for producing three obscene paintings at an art exhibition. The ECtHR rejected the applicant's submission that the word 'obscene' was too vague to enable the individual to regulate their conduct. The ECtHR said (para 29), "The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague…criminal law provisions on obscenity fall within this category."

However, in other areas of free speech, such as the political sphere, the courts are much less deferential and therefore more demanding of legal certainty in proscribing individual speech: *Gaweda v Poland* (2004) 39 EHRR 4. Here the Polish authorities refused a registration of the title of a periodical, *The Social and Political Monthly – A European Moral Tribunal*, because it had not complied with the registration rules in s.20 of the (Polish) Press Act 1984. Noting that the press plays an essential role in a democratic society, the ECtHR ruled that the (Polish) statutory registration rules had lacked precision and so were an unlawful violation of Article 10 (para 43). These fundamental principles reflective of the law on free speech in the UK will inform many of the later assessments of attempts to limit extremism.

The UK's Counter-Extremism Strategy

In 2015 the UK government published its *Counter-Extremism Strategy*. In the Foreword to the Strategy, the then Prime Minister, David Cameron, said (HM Government, 2015, p.5),

> "Our success is underpinned by our distinct, British values – the liberty we cherish, the rights we enjoy and the democratic institutions that help protect them…Alongside our values, we have together forged an increasingly inclusive identity…This is precious, and we must build on it still further. One of the greatest threats we face is the scourge of extremism from those who want to divide us…In the past, I believe governments made the wrong choice. Whether in the face of Islamist or neo-Nazi extremism, we were too tolerant of intolerance, too afraid to cause offence…But the stakes are now rising…The…sophisticated efforts of extremists to groom and radicalise young British people demands a response of a different magnitude."

The then Home Secretary, Theresa May, said that where extremism takes root and our values are undermined the consequences are clear. The social fabric of our country is weakened. Violence goes unchallenged. Women's rights are fundamentally eroded. There is discrimination on the basis of gender, race, religious belief or sexual orientation. There is no longer equal access to the labour market, to the law, or to wider society. Communities become isolated and cut off from one another. Intolerance, hatred and bigotry become normalised (HM Government, 2015, p.10). And a range of extremists in the UK promote hatred of others and justify violence, even if they do not act violently themselves (HM Government, 2015, pp.10-11). When you look in detail at the backgrounds of those convicted of terrorist offences, it is clear that many of them were first influenced by what some would call non-violent extremists (HM Government, 2015, p.21).

It will be recalled that the UK government had pledged to introduce legislation on extremism: a Counter-Extremism Bill, in 2015, and a Counter-Extremism and Safeguarding Bill, in 2016. These statutes were going to introduce civil orders, to disrupt those who had radicalised individuals, especially the young, where the extremists had fallen short of

advocating violence. Failure to comply with the orders would have been a criminal offence. These Bills were never published. So it falls on the *Counter-Extremism Strategy* to provide us with a definition of extremism in the UK ((HM Government, 2015, p.9),

> "Extremism is the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist."

The strategy claims that these values are under attack from extremists operating at a pace and scale not before seen (HM Government, 2015, p.9).

Critiquing the UK's Counter-Extremism Strategy

It will be recalled that the JCHR had expressed concern at the UK government's attempts to introduce a new civil order regime to counter-extremism; the JCHR was unconvinced about a gap in the existing law to introduces the measures, for example. Of course these measures would have been reliant on a definition of the term 'extremism'. In the absence of the proposed Bills, the JCHR naturally equated the government's definition of extremism in the strategy with the term to be adopted in the new civil offences. Of particular concern to the JCHR was the lack of specificity in the strategy's definition of extremism: defining 'our fundamental (British) values' would be difficult, for example (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.24). And efforts to root British values in concepts like democracy may initially sound appealing, but this, too, would prove problematic: the nature, and even the notion, of democracy may itself be subject to legitimate political and philosophical debate by students and others (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.27). The author of this article describes himself as a Critical Legal Scholar, therefore he regularly attacks established values such as the Rule of Law. Of the many interpretations of the Rule of Law, a common one is 'equality before the law' (see Dicey, 1982). But, historically, has the law been equal in its application? For this author, the law has been applied inequitably, to the detriment of women, people of

colour, the Working Class etc (Turner, 2019). Is this extremist? (But of course this author's free speech is protected by academic freedom.) The JCHR also said the extent to which a lack of 'mutual respect and tolerance of different faiths and beliefs' could or should be deemed unlawful was likely to prove deeply contentious (House of Lords House of Commons Joint Committee on Human Rights, 2016, pp.3-4). The Committee concluded that that if extremism was to be combated through legal mechanisms, such as civil orders, clarity as to the definition of extremism was essential (House of Lords House of Commons Joint Committee on Human Rights, 2016, pp.3-4). If not, any legislation would be likely to prove unworkable and/or counterproductive (House of Lords House of Commons Joint Committee on Human Rights, 2016, p.24).

The JCHR's conclusions have natural consequences for the free speech implications of countering extremism. It will be recalled that the right to expression has several rationales, including protection from corrupt and tyrannical government and a broader appeal in terms of individual autonomy and self-expression. *Prima facie*, therefore, human rights law confers an absolute right on individuals to free speech; so legitimate infringements on expression must be *inter alia* prescribed by law, meaning that there cannot be an absence of lawful authority for the curtailment and/or the law prescribing the speech must be clear, certain and unambiguous. The JCHR's findings about a lack of specificity for the UK's definition of extremism surely draws into question the government's intentions to prevent the harm through a civil order regime of Banning Orders, Extremism Disruption Orders and Closure Orders, on the grounds of human rights law?

In addition to the JCHR's criticisms of the government's *Counter-Extremism Strategy*, there are similar concerns expressed by the Commission for Countering Extremism. The Commission for Countering Extremism was established in March 2018, to support and provide the UK government with 'impartial, expert advice on the tools, policies and approaches needed to tackle extremism' (Commission for Countering Extremism, 2021, p.32). The Commission believes the government's *Counter-Extremism Strategy* is 'insufficient and too broad' (Commission for Countering Extremism, 2021, p.3), adding further support to the claim that these preventative measures to disrupt extremism would have unnecessarily violated the law on certainty within free speech.

The qualification of free speech

Theorising limitations on free speech

Freedom of expression is not unlimited, even for John Stuart Mill. It will be recalled that Mill had said that the only purpose for which power could be rightfully exercised over any member of a civilised community, against their will, was to prevent harm to others. Their own good, either physical or moral, was not a sufficient warrant (Mill, 1991, p.14). But extremism does cause harm, mental as well as physical: recall Theresa May's comments in the *Counter-Extremism Strategy*. Mill also said that the only freedom which deserves the name was that of pursuing our own good in our own way, so long as we did not attempt to deprive others of theirs, or impede their efforts to obtain it (Mill, 1991, p.17). Extremism, whilst an exercise of individual speech, is indeed an attempt at depriving the same right to others, censoring others through intimidation and fear. Mill also said that it was the duty of governments and of individuals to form the truest opinions they can; to form them carefully, and never impose them upon others unless they were quite sure of being right (Mill, 1991, p.23). Far-Right conspiracy theories such as QAnon and the origins of covid etc lack fact. So, according to Mill, 'fake news' such as these would be undeserving of free speech protection. And for Rawls, whilst the liberty principle, of which free speech was a key component, was essential, liberty was not absolute. Since citizens of a just society were to have the same basic rights (Rawls, 1971, p.61), speech that went beyond the equal rights of others was not permitted.

Lawful limitations on free speech

Human rights law does accept limitations on free speech, too. For example, Article 19(2) of the ICCPR is qualified by Article 19(3),

> "The exercise of the [right] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For

the protection of national security or of public order (ordre public), or of public health or morals."

Indeed, Article 20 of the ICCPR also states: '(1) Any propaganda for war shall be prohibited by law (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.' Regionally, Article 10(1) of the ECHR is also qualified by Article 10(2), for the necessary purposes of eg national security, public health and morals, and, particularly, prevention of disorder and crime. In *Erbakan v Turkey* (Application no. 59405/00), for example, the ECtHR said (para 56), "As a matter of principle it may be considered necessary in certain democratic societies to sanction…forms of expression which spread, incite, promote or justify hatred based on intolerance." Thus, the ECtHR in *Vejdeland v Sweden* (Application no. 1813/07) ruled that (para 54) a domestic Swedish conviction of the applicants for distributing leaflets at a secondary school with homophobic statements, including linking HIV and AIDS and paedophilia with homosexuality, was not a disproportionate interfence with Article 10. Like Article 19(2) of the ICCPR, there is also an express duty to act responsibly within the right of free speech, as per Article 10(2).

Article 17 of the ECHR, prohibition of abuse of rights, is particularly interesting. It is perhaps a human rights law expression of one of John Stuart Mill's caveats to free speech stated above, that is, we do not deprive others of the same right (Mill, 1991, p.17). Indeed, John Locke, many years before Mill, said (Locke, 2019a, p.58), "No opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated by the magistrate."

The general purpose of Article 17 is to prevent individuals or groups with totalitarian aims from exploiting in their own interests the principles enunciated by the ECHR. In *Norwood v United Kingdom* (Application no. 23131/03), for example, the applicant was a member of the British National Party. Between November 2001 and January 2002, the applicant displayed in the window of his first-floor flat a large poster. The poster depicted New York's Twin Towers in flames after 9/11, accompanied by the words 'Islam out of Britain – Protect the British People'. He was prosecuted. Norwood challenged his subsequent

conviction on the grounds of it being a disproportionate interference with Article 10(1) of the ECHR. The ECtHR dismissed his application (para 4). To equate the whole of Islam with the 9/11 attacks was in fact an abuse of Article 10, as per Article 17; it denied the rights of others and ignored the fundamental values of the ECHR such as tolerance, social peace and non-discrimination. The ECtHR upheld a domestic Russian conviction in a similar case, *Ivanov v Russia* (Application no. 35222/04), on the same grounds, Article 17, where the applicant had expressed hatred against Jews rather than Muslims. Holocaust denial does not qualify for protection either: *Garaudy v France* (Application no. 65831/01).

Speech is not absolute in other areas of the law, too. In addition to the criminal limitations outlined above, public authorities are required by by s.149(1) of the Equality Act 2010 to abide by the Public Sector Equality Duty. This requires authorities to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. A protected characteristic, as per s.149(7), includes: gender reassignment, race, religion or belief and sexual orientation.

Legislative Reforms Proposed by the Commission for Countering Extremism

Following its previous criticism of the UK government's *Counter-Extremism Strategy*, it is perhaps no surprise, therefore, that the Commission for Countering Extremism has produced reports of its own. In one of its reports the Commission has proposed to take a rights-based approach to countering extremism which balanced competing rights and ensured a proportionate response (Commission for Countering Extremism, 2019, p.8). The Commission said that previous attempts to introduce counter-extremism legislation had failed because they had not done this (Commission for Countering Extremism, 2019, p.8). And there had been little discussion of the victims of extremism and their experiences; how extremists targeted them and the resulting abuse, harassment and denigration of their rights (Commission for Countering Extremism, 2019, p.8). This had had a chilling effect on victims' willingness to

speak out (Commission for Countering Extremism, 2019, p.8). In apparent reference to Article 17 of the ECHR, the Commission also said that human rights law explicitly prevented totalitarian, extremist groups from exploiting freedoms to weaken the very ideals and values of a democratic society (Commission for Countering Extremism, 2019, p.8). And if the UK was to be successful in reducing the extremist threat, then it must focus on challenging hateful extremism (Commission for Countering Extremism, 2019, p.3). The country's response to violent extremism and terrorism was robust and effective, but violent extremism required a different strategy (Commission for Countering Extremism, 2019, p.6). The Commission defined hateful extremism as (Commission for Countering Extremism, 2019, p.6),

> "Activity or materials directed at an out-group who are perceived as a threat to an in-group motivated by or intending to advance a political, religious or racial supremacist ideology: a. To create a climate conducive to hate crime, terrorism or other violence; or b. Attempt to erode or destroy the fundamental rights and freedoms of our democratic society as protected under Article 17 of Schedule 1 to the Human Rights Act 1998 ('HRA')."

In early 2021 the Commission published a review of the law on hateful extremism, *Operating With Impunity Hateful Extremism: The Need for a Legal Framework*, examining whether existing statutes had adequately dealt with the harm (Commission for Countering Extremism, 2021). The Commission concluded that further legislation was required, since the nature and scale of extremist activity that was currently lawful in Britain was 'shocking and dangerous' (Commission for Countering Extremism, 2021, p.9). Moreover, UK laws were failing to keep pace with the growing, evolving, and modern-day threat of hateful extremism, despite the existence of both a 'Prevent' and a *Counter-Extremism Strategy* (Commission for Countering Extremism, 2021, pp.10-11).

Some extremist groups are caught by the legislation on proscription. It will be recalled that the Home Secretary has the power to proscribe an organisation under s.3(4) of the Terrorism Act 2000, if they believe that the group is concerned in terrorism. (It is therefore an offence to be a member of a proscribed terror organisation, as per s.11 of the Terrorism Act

2000, for example.) This has captured some extreme Far-Right groups, such as National Action and Sonnenkrieg Division. However, the Commission said that proscription failed to capture those organisations who had shared and promoted the same ideologies but fell short of concerned in terrorism, despite helping to create a climate that was conducive to it (Commission for Countering Extremism, 2021, p.14). These included extremist groups such as Combat 18, the Order of Nine Angles and the British National Socialist Movement.

In regards to the reform of the existing law, the Commission recognised that glorifying terrorism was not unlawful as long as it had avoided encouraging the commission, preparation, or instigation of acts of terrorism (Commission for Countering Extremism, 2021, p.10). Thus, praising the actions and ideology of terrorists such as the 9/11 hijackers or the Christchurch attacker Brenton Tarrant to a wide audience, could be legal (Commission for Countering Extremism, 2021, p.10). Furthermore, a person could intentionally stir up racial hatred, so long as they had avoided being threatening, abusive or insulting (Commission for Countering Extremism, 2021, p.10). So forming a Far-Right extremist group, which persistently praised the actions of Adolf Hitler and encouraged members to spread Holocaust denial material and antisemitic conspiracy theories could also be lawful (Commission for Countering Extremism, 2021, p.10).

Critiquing the Commission's Legislative Reforms on the Grounds of Free Speech

In assessing the Commission's legislative proposals the significance of free speech in a liberal democracy cannot be overlooked, but liberal theory and the law which it underpins has long circumscribed certain forms of speech.

With free speech comes responsibility

First, it will be recalled that Holocaust denial, for example, does not qualify for human rights law protection: *Garaudy v France*. We no longer, if we ever did, live in a 'state of nature', where individuals exercised anarchic freedom, to do and say whatever they liked, in the absence of restraint (see, Rousseau, 1984, p.77); we live in a civil society, in which to claim the protection of the state from the anarchy of others, we must accept its rules and

responsibilities. To deny responsibility within the discourse of rights, such as free speech, is to therefore condone acceptance of the benefits of living in a democratic state, such as social welfare, without accepting the corresponding personal civic obligations (Glendon, 1991, p.14). It would be hypocritical, for example, for a person to insist on the principle of trial by jury, as an example of a human right to fair trial, then refuse to serve on a jury when asked (Etzioni, 1995, p.96). Within the right of free speech, as per Article 10 of the ECHR, the liberty carries a corresponding obligation on the right holder to 'responsibility', as per Article 10(2). Thus, denying the Holocaust, for example, is not a responsible exercise of free speech. (A lack of responsibility is perhaps another way of expressing an abuse of rights, as per Article 17 of the ECHR.) Indeed, responsibility can be read into the free speech ideals of John Locke (Locke, 2014, p.496), "Propriety of speech is that which gives our thoughts entrance into other men's minds with the greatest ease and advantage; and therefore deserves some part of our care and study."

On the face of it, further criminalisation, along the lines suggested above by the Commission for Countering Extremism, would surely satisfy the free speech limitation of curtailing expression that was an abuse of responsibility. But what about the detail of the Commission's proposals?

Certainty within the Commission's proposals

Curtailments on freedom, especially those that engage the criminal law, must respect principles of the Rule of Law. The law guides human behaviour so, not only must rights infringements be open and prospective, they must command sufficient certainty. Specifically, limitations on free speech in the UK must be 'prescribed by law', as per Article 10(2) of the ECHR. First, it will be recalled that the Commission for Countering Extremism had previously rejected the UK government's definition of extremism in its *Counter-Extremism Strategy*, because of its lack of specificity. So it is gratifying that the Commission's proposals have not drawn on this definition as a foundation for its reforms to the criminal law.

Strictly speaking, 'prescribed by law' dictates sufficient certainty within each criminal offence. It is doubtful that the revised offences recommended by the Commission above, such as reform to the existing offence of encouragement of terrorism, are lacking clarity in broad

terms to be incompatible with Rule of Law principles. However, this writer does struggle with the idea that at present a person can be glorifying terrorism but not encouraging the commission, preparation or instigation of acts of terrorism. For the offence of encouragement of terrorism, as per s.1 of the Terrorism Act 2006, there is no need to show intention on the part of the speaker that another person be encouraged: only that the former was reckless. Recklessness requires foresight of a risk but carrying on regardless. So the Commission presumably believes there are instances where terrorism is glorified, which requires attention, even though a person has not adverted to the risk of encouragement?

Moreover, as additions to existing legislation in this area, there must come a point when the ordinary citizen, being overwhelmed with the breadth and reach of the criminal law, is simply unclear about the boundaries between lawful and unlawful speech? Understanding the offences simply then becomes the preserve of the lawyer, not the ordinary citizen. However, to note the opinion of the ECtHR in *Feldek v Slovakia* (Application No. 29032/95) (para 56), "A norm cannot be regarded as 'law' unless it was formulated with sufficient precision to enable the citizen to regulate their conduct: they must be able – *if need be with appropriate advice* – to foresee." The law in this area is certainly dense and inaccessible. But to the writer of this piece, who is an academic lawyer, he can work through the vagaries of it (though not without some difficulty, to be honest), so for the rules on certainty in free speech this arguably would be sufficient.

In the Commission's defence, they are keen to preface their proposals with free speech considerations in mind; they are only targeting the 'worst and most dangerous extremist activity that is currently taking place in Britain', not legitimate, offensive and dissenting speech (Commission for Countering Extremism, 2021), p.1). So efforts to restrict hateful extremism should neither be disproportionate nor restrict content and behaviours that fall outside (Commission for Countering Extremism, 2021, p.13). For the Commission, other criteria influencing criminalisation would be intent, evidence of serious or persistent behaviour, evidence of promoting a supremacist ideology, and evidence of activity that is creating a climate conducive to terrorism, hate crime or violence or activity in breach of Article 17 (Commission for Countering Extremism, 2021, p.15). In any subsequent legislative reform, perhaps these further qualifications such as intent should be expressed in the law,

rather than the 'serious mistake', to draw on Lon Fuller (Fuller, 1969, p.64), for them to be read in by the courts, or indeed subject to prosecutorial discretion?

Furthermore, it is noteworthy that the Commission does in fact recognise other approaches to countering hateful extremism rather than the coercion of the criminal law: relying solely on legal measures to disrupt hateful extremism is an 'incorrect approach', so both legal and non-legal interventions are required. In their *Challenging Hateful Extremism* report, the Commission identifies the importance of building a whole society response. It is imperative that a range of interventions are used to engage and support different individuals, especially young people who have been drawn into extremism. They require counselling or conflict mediation rather than legal interventions (Commission for Countering Extremism, 2021, p.15). So the Commission's implication that 'Prevent', as a sub-strategy of Contest, should not be overshadowed by another Contest sub-strategy, 'Pursue', with the latter's emphasis on criminalisation, is to be welcomed.

Conclusion

Free speech is the essence of liberal democracy; it is no surprise, therefore, that the principle deserves significant attention in John Stuart Mill's polemic *On Liberty*. The concept of the 'marketplace of ideas', coupled with state neutrality, is an important safeguard against a corrupt and tyrannical government; moreover, free speech promotes individual self-expression and augments personal autonomy. But the right has never been absolute: even Mill accepted limitations on individual freedom where it had caused harm to others.

Following the recent terror shooting in Christchurch, the then British Home Secretary, Sajid Javid, said that online platforms had a responsibility not to do the terrorists' work for them (Gayle, 2019), "This terrorist filmed his shooting with the intention of spreading his ideology…Allowing terrorists to glorify in the bloodshed or spread more extremist views can only lead to more radicalisation and murders." But further criminalisation in this area to prevent terrorism and protect victims works both ways: disregarding individuals' rights to free speech can also compromise security. UNCTED, in its global survey of the implementation of UNSC Resolution 1624 by member states, in 2016, was keen to stress that the powers

exercised by states should not be used for illegitimate aims such as the suppression of political dissent or the advocacy of controversial beliefs or views. Otherwise, the consequences could have the opposite effect of leading to greater radicalisation. So the new offences proposed by the Commission for Countering Extremism to curtail hateful extremism must be necessary and proportionate.

Moreover, criminal limitations on freedom of expression must be 'prescribed by the law'. Outside of government there seems to be little enthusiasm for the definition of extremism in the UK's *Counter-Extremism Strategy* being the foundation for further criminalisation in this area, because of a lack of specificity. It is gratifying, therefore, that the Commission has not proposed new offences with this definition in mind, so its reforms to the existing criminal law warrant consideration. The Commission has illustrated a gap in the area of hateful extremism, where existing legal measures, such as the encouragement of terrorism and inciting racial hatred, are not engaged.

In themselves the Commission's proposals are compliant with human rights norms because they facilitate responsible speech, as per Article 10(2) of the ECHR. And for the purposes of guiding human behaviour do further statutory reforms blur the line between permissible and impermissible speech? The proposals appear not to contravene principles of the Rule of Law, such as legal certainty, but are they accessible to the ordinary citizen? However, with the Commission relying on Article 17 of the ECHR, the prohibition on the abuse of rights, which is perhaps another way of reflecting responsibility within free speech, the foundation for regulating other areas of hateful extremism through the criminal law is strengthened. Indeed, the number of proposed new offences is only very small. And, with the threat from hateful extremists in this area increasing, and a genuine risk that their legally tolerated hate speech creates a culture for others to engage in more serious forms of extremism, such as violence, the reforms are arguably necessary and proportionate in limiting rights of free speech.

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