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## **Prevent Strategies – Defining Extremism**

### **Prevent Strategies: The Problems Associated in Defining Extremism – The Case of the UK**

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#### **Abstract**

As the UK has placed some of its Prevent strategy on a statutory footing and is proposing to introduce a Counter-Extremism Bill, this article argues that a legal definition of extremism must be carefully drafted to provide legal certainty. The main recommendation is that all forms of violent and non-violent extremism comes under the definition, ensuring it is differentiated from activism. Activism may hold radical views counter to the mainstream opinion, but it is required in liberal democracies as it encourages healthy debate and can prevent the policing of thought in any government strategy or legislation.

#### **Key Words**

Extremism, Activism, Prevent, Islamism, Far-Right

## Introduction

Along with other Western liberal democracies, the UK has introduced strategies to prevent vulnerable people from being drawn into terrorism. Initially introduced in 2006 as part of the national terrorism strategy CONTEST, the UK's Prevent strategy has become bedevilled with controversy and suspicion. Part of the problem is the UK's initial Prevent strategies focused solely on violent Islamist extremism. In doing so it alienated the Muslim community and was seen as another layer of state surveillance on suspect communities. An amended version of the Prevent strategy was introduced in 2011 where all forms of extremism, be it violent or non-violent, to be considered as potentially influencing people to being drawn into terrorism. Following on from a Counter-Extremism strategy introduced in 2015, under section 26 of the Counter-Terrorism and Security Act 2015, the UK placed a statutory obligation on staff in certain public bodies to prevent people from being drawn into terrorism. This has caused consternation among staff as to what behaviour amounts to extremism and when they should get involved, if at all, in assisting the person they perceive as being drawn into terrorist activity.

One important part of the strategies in bringing about this consternation is the UK's definition of extremism. Although not a statutory definition, it is the only definition staff under the section 26 obligation and the courts have to work with. This article examines the definition contained in the 2011 Prevent and 2015 Counter-Extremism strategy documents producing a critique of the terms used in the definition, which are subjective, awkward and opaque. As result the current UK definition does not provide sufficient legal certainty. As the UK government is

looking to introduce legislation related to Prevent activities in the Counter-Extremism Bill during the 2016/17 parliamentary session, it is vitally important a definition of extremism is drafted that does provide sufficient legal certainty. In the analysis of the definition it is submitted that a distinction is drawn between non-violent extremism and activism where it is recommended that all forms of extremism are included in any strategic initiative or legislation related to Prevent work. The article concludes by submitting a suggested definition of extremism that would provide the required legal certainty, ensuring that individuals in society can still express radical views opposing accepted political and social norms without being considered an extremist who is being drawn into terrorism.

## **Early Prevent Strategies and Violent Islamist Extremism**

Following the killing of the Dutch filmmaker, Theo van Gough and the Madrid bombing in in 2004 and the London bombing in 2005, along with the UK, a number of states introduced Prevent strategies aimed at deterring vulnerable citizens being drawn into terrorism.<sup>1</sup> The aim of Prevent strategies was to introduce programmes to help citizens vulnerable to being drawn towards terrorism at a pre-criminal stage. Following these terrorist incidents the UK developed its first Prevent strategy as a strand of its wider counter-terrorism strategy CONTEST,<sup>2</sup> that was made public in 2006.<sup>3</sup> As European states' Prevent strategies were diverse<sup>4</sup> the European Union (EU) Commission attempted to have uniformity among its Member States stating as ideologies were varied and included extremism of different types, Prevent strategies should not focus on one religion and should include non-violent extremism.<sup>5</sup> The importance of this was emphasised by the EU Council who, a few days after the Commission's report stressed that Prevent policies must not exacerbate division.<sup>6</sup> As most early Prevent strategies, including the UK's, focused on

violent extremism linked to Islamist ideology,<sup>7</sup> the EU's recommendation got lost. Four years later the EU reinforced the point that radicalisation and extremism is not confined to any particular belief system or political persuasion, it is multifaceted and is not a process that necessarily leads to violence.<sup>8</sup>

Rather than diminish the threat, by linking Prevent to Islamist extremism it caused more problems for a number of states. By stating the principal threat the UK faced emanated from a distorted and unrepresentative interpretation of Islam, the first and later 2008 Prevent strategy focused solely on Islam and the UK's Muslim communities.<sup>9</sup> As a result many Muslims felt alienated by this, seeing Prevent as demonising them and holding all Muslims responsible for terrorism.<sup>10</sup> This created divisiveness within the UK, with many in the Muslim community rejecting the legitimacy of the 2008 Prevent strategy.<sup>11</sup> For Qureshi this approach gave the perception to some in the Muslim community that they are seen as the enemy within.<sup>12</sup> In relation to terrorist activity this is not the first occasion a section of the UK population felt this. During the 1968-1997 Irish Troubles mainland Britain sustained violent Irish Republican terrorist activity<sup>13</sup> during which the 1974 Birmingham bombing resulted in divisiveness where Irish Catholics and British born Catholics of Irish descent were treated as a suspect community.<sup>14</sup>

## **The UK's 2011 Prevent Strategy: Defining Extremism**

With the previous Prevent strategy being concerned solely with an Islamist ideology this led to the UK government's pre-occupation with a theological basis of radicalism. This was criticised by the House of Commons' Communities and Local Government Committee, who recommended a strengthening of, '...interaction and engagement with society, not only of

Muslims, but of other excluded groups'.<sup>15</sup> Further criticisms of Prevent found it was inherently flawed because it conflated policies of integration and cohesion with counter-terrorism policies making it ineffective in addressing extremism<sup>16</sup> and that Prevent was another layer of spying and surveillance of Muslim communities.<sup>17</sup> In 2010 the UK Coalition Government reviewed Prevent.<sup>18</sup> As a result of the review, and for the focus of this article, the term 'violent extremism' was abandoned and all forms of extremism are to be considered that could draw vulnerable people towards terrorism.<sup>19</sup> The three main objectives underpinning the changes in the 2011 Prevent strategy are:

1. Respond to the ideological challenge of terrorism and the threat faced by those who promote it;
2. Prevent people from being drawn into terrorism and ensure they are given appropriate advice and support;
3. Work with sectors and institutions where there are risks of radicalisation that need to be addressed.<sup>20</sup>

The 2011 Prevent strategy was categorical in saying the relationship between Prevent and Pursue (investigation and disruption of terrorist activity) must be carefully managed as Prevent is not a means for spying or for other covert activity.<sup>21</sup>

These changes may have come about due to the EU's recommendations especially those contained in the 2009 the EU Council's recommendations, but it is more likely due to the change of government following the 2010 General Election. This General Election divides two distinct

phases, pre-2010 where the first Prevent programme introduced by the-then Labour government and the 2011 version introduced by the Coalition (which did not include Labour Party politicians).<sup>22</sup> The 2011 programme is a result of the compromise between the two coalition partners, the Conservatives and Liberal Democrats, as the programme reflects tensions and different perspectives between these two political parties in national government.<sup>23</sup> This could explain the clumsiness seen in definition of extremism in the 2011 programme, which states extremism is:

‘...vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas’<sup>24</sup>

As will be examined below, some of the phrases in this definition are subjective, awkward and opaque. Although this definition is not in a UK statute, it is the only definition to determine if behaviour and ideologies are extremist. In determining this effectively legal certainty is required. By legal certainty, it is in the context of the legal principle in national and international law which holds that the law must provide those subject to it the ability to regulate their conduct.<sup>25</sup> Not only do staff in relevant public bodies have to apply this definition under a statutory obligation, both the UK’s lower and appeal courts have referred to the definition when determining if a person’s behaviour is extremist.<sup>26</sup> As case reports guide many public agencies’ actions, the importance of a clearly defined term for extremism cannot be overstated.

## Placing Prevent Strategy Obligations on a Statutory Footing

The UK is the first Western state to legislate certain Prevent obligations. Under section 26 of the Counter-Terrorism and Security Act 2015 staff at specified public bodies now have a statutory duty to prevent vulnerable people being drawn into terrorism. This is causing great consternation to many staff members of the specified bodies listed in Schedule 6 of the Act,<sup>27</sup> none more so than among staff employed in education. The main concern centres on uncertainty as to what level of behaviour or words expressed needs to be before determining if it is extremist and should be reported to their local Prevent police team. Teachers' fear of falling foul of section 26 has led to some referrals resulting in sensationalist national media coverage, portraying the work carried out by those involved in Prevent in a negative light. Recent examples include a 10 year old boy from Lancashire who wrote in school that he lived in a 'terrorist house',<sup>28</sup> a four year old boy from Luton who mispronounced 'cucumber' saying 'cooker-bomb' and drawing a man cutting something with a knife,<sup>29</sup> and on Merseyside an 8 year old boy who after learning of the plight of Syrian refugees said he wanted to fight terrorists.<sup>30</sup> The accelerant resulting in strident opinions decrying Prevent has been the section 26 requirement that authorities take preventative action. This has led to a general misunderstanding and uncertainty by many staff members in the authorities as to their statutory obligation and the primary purpose of Prevent. As a result, the education sector saw the formation of pressure groups such as 'Students not Suspects',<sup>31</sup> 'Educators not Informants',<sup>32</sup> and 'Education not Surveillance'.<sup>33</sup> The aim of these groups is the repeal of the section 26 requirement placed on education establishments. The National Union of Teachers 2016 annual conference debated this issue. Seeing the statutory



obligation as shutting down open debate about topical issues, the teachers perceived Prevent as creating suspicion and confusion. Arguing that Prevent disproportionately targets Muslims, they subsequently voted for the strategy to be withdrawn from schools and colleges.<sup>34</sup>

Similar views relating to UK higher education establishments were reported in the UK media over comments given by Oxford University's vice-chancellor, Professor Louise Richardson, who was critical of Prevent. She criticised the spread of safe-places where discussion of certain topics is banned in case they cause offence, saying universities are places to demonstrate to students how to confront speech one finds objectionable.<sup>35</sup> Further controversy over Prevent followed with the release of a report by the group Cage in 2016 regarding a model developed by two psychologists, Christopher Dean and Monica Lloyd that has been used as a basis to make the case for a section 26 intervention through the Prevent programme.<sup>36</sup> Following the publication of their research in 2015 that formed the Extremist Risk Guidance 22+ (ERG22) used in Prevent,<sup>37</sup> the accusation is the report is flawed due it not having an external or wider peer review and is 'unscrutinised science' that in Cage's view permits and legitimises the abuse of individuals and communities.<sup>38</sup> Regarding how ERG22 was used in Prevent to identify individuals vulnerable to being drawn into terrorism, it was not solely an advocacy group's findings that raised a cause for concern in how this guidance was being applied. In September 2016, the Royal College of Psychiatrists raised a similar issue. They reported the ERG22+ data relating to the guidance should be published and accessible, adding when research is completed it should be published and open to public scrutiny, '...whether its findings are considered positive or negative, unless there are compelling security reasons that prevent this.'<sup>39</sup> Both of these reports found their way into the UK media reflecting the criticisms surrounding ERG22+.<sup>40</sup>

As there were 2,311 referrals to Prevent in the year to June 2016 (an increase of 83% on the previous year),<sup>41</sup> due to suspicions relating to the role Prevent plays in countering terrorism and confusion as to what amounts to a display of extremist behaviour under the programme, it is important there is a clear and precise definition of extremism as the benchmark to guide all work carried out under Prevent.

## **Fundamental British Values**

Potentially the most controversial, subjective and awkward of the phrases contained in the definition is the term ‘fundamental British values’. Although referring to CONTEST as a whole, Gearson and Rosemont are critical of how the UK has implemented parts of CONTEST, including Prevent, in a pragmatic and reactive way. They say that as a whole CONTEST is suffering because it has not adopted a deeper ‘joined up’ or properly thought-through appreciation of what could and should be done to address the terrorist threat it faces.<sup>42</sup> The rise and influence of the group Islamic State in their self-proclaimed caliphate in Syria/Iraq,<sup>43</sup> the success of their terrorist cells outside Syria/Iraq and their use of various electronic communications to promote and influence people to join their cause<sup>44</sup> has resulted in many states having to review their counter-terrorism law and strategies. An example of reacting in a pragmatic and reactive way can be seen in the UK government’s Counter-Extremism Strategy published in 2015. In the document’s foreword the-then Prime Minister, David Cameron states the fight against Islamist extremism is, ‘one of the greatest struggles of our generation’ adding that the UK has in the past been too tolerant of intolerance.<sup>45</sup> The Counter-Extremism Strategy contains a variation of the extremism definition in the 2011 Prevent strategy document that does not refer to British values, but ‘our fundamental values’.<sup>46</sup> In the 2016 overview of the Counter-

Extremism Strategy the definition of extremism reverted to ‘fundamental British values’.<sup>47</sup> As the UK government is looking to introduce legislation related to countering extremism,<sup>48</sup> in order to reduce any uncertainty and confusion it is imperative there is consistency and clarification of the terms used in the definition.

This leads to the question, what are fundamental British values? Not only does this phrase immediately discount one of the states that makes up the UK, Northern Ireland, it is purely a subjective term. Due to the diversity of the UK population, what amounts to British values will vary from person to person based on factors such as their geographical location or the community and socio-economic conditions they live in. As stated in the Counter-Extremism Strategy, Britain has been built on a successful multi-racial, multi-faith democracy that is open, diverse and welcoming.<sup>49</sup> With such diversity in its population there will be a diversity of opinions as to what constitutes British values. Another problem is where terrorist ideologies go uncontested and are not exposed to free, open and balanced debate and challenge, it positions these ideologies as inferior and lacking when confronted by ‘British values’.<sup>50</sup> Should a person be highly critical of the UK’s foreign policy towards Muslim states in the Middle East, the conflict in Syria or legislation and policies related to targeting certain groups or communities in the UK, this could be perceived as challenging British values. As such, just this phrase can be divisive as such views could potentially be seen as a disassociation from Britishness and, as Martin states, become, ‘...to be understood as representing a potential problem for the future.’<sup>51</sup> The group Cage that supports those detained under terrorism legislation, sees using terms like ‘British values’ as an Orwellian concept that attacks basic rights, saying in relation to the definition of extremism:

“Our values” and “our way of life” is the language of alienation, designed to marginalise particular communities. The [UK] government is perpetuating the very same “us v them” narrative it denounces in its Prevent strategy’.<sup>52</sup>

Emphasising ‘British values’ can be counter-productive as Sedgewick points out where attempts at cohesion will fail if it is underpinned by integration that includes a neo-nationalist cultural agenda as this may increase support for messages that are radical in security terms.<sup>53</sup> Just this one phrase in the definition has the potential to undo both the Prevent and the Counter-Extremism Strategy’s primary objective.

## **Potential Problems with Rule of Law and Democracy**

The term ‘rule of law’ is one bandied about, certainly by politicians and this is reflected in the UK government’s documents related to Prevent and countering extremism,<sup>54</sup> but the term may not be as axiomatic as one may first think. For Elliott and Thomas the rule of law is one of the most elusive of constitutional principles where most people agree that it is a good thing while disagreeing as to what it means.<sup>55</sup> They add that:

‘...the rule of law is little more than a rhetorical device: someone might seek to add gravitas to their support for or criticism of a given legal provision by saying that it does or does not comply with the rule of law, but that is as far as it goes.’<sup>56</sup>

For Loveland the rule of law is not a legal rule, but a moral principle which means different things to different people.<sup>57</sup> Although Tomkins states it is only in legal philosophy that confusion

arises over the rule of law, he contends that in public law it has a clear meaning where the rule of law provides that the executive cannot do anything without there being a legal authority permitting its actions.<sup>58</sup> It is suggested the public law interpretation is applied to this legal principle as the rule of law not only imposes on citizens that their conduct must be within the parameters of the law, it also imposes on the state a duty that the conduct of its agencies also act within those parameters.

This leads to another contentious issue in the UK's democracy where the executive is the supreme lawmaker (except in matters of EU law).<sup>59</sup> Democracy is a taken for granted element of the UK constitution and has no single meaning<sup>60</sup> as there are differing conclusions about how democratic the UK actually is.<sup>61</sup> This debate has led to calls for changes to democratic processes in the UK, including the call for a written constitution that would achieve a special place in the legal system where any changes would be constitutional, not political issues thereby making it more difficult to alter it.<sup>62</sup> Democracy could be defined along the terms of a representative democracy involving the public selecting through elections people who will represent them and make decisions on their behalf,<sup>63</sup> as this differentiates a democracy from a theocracy or a dictatorship. Currently debates resulting in a divergence of legal and political reasoning as to what amounts to democracy and the rule of law makes it harder for those employed in authorities to determine if what they are witnessing amounts to a level of extremism where they should take action. As the UK government is looking to have a statutory definition of extremism, as is done with other legal definitions, sub-sections can be added to the section providing explanatory terms to phrases such as rule of law and democracy.

## The Importance of Differentiating between Non-Violent Extremism and Not-Violent Activism

In the 2011 Prevent Strategy, HM Government recognised the phrase ‘violent extremism’ was ambiguous and caused confusion adding that as the main aim of Prevent is to prevent people becoming terrorists or *supporting* terrorism, Prevent:

‘...will also require challenge to extremist ideologies which can be made to justify terrorism and intervention with some extremists who are moving into terrorism. Prevent is part of the government’s much larger toolkit designed to challenge extremism, extremist groups and terrorism’<sup>64</sup>

As a result the term ‘violent’ has been dropped in the definition of extremism. The 2015 Counter-Extremism Strategy provides examples of ‘non-violent’ extremism the UK Government sees as promoting or justifying actions that is contrary to UK values. These range from extremism justifying violence of extremist groups by glorifying their actions, promotes hatred and division, encourages isolation, offers alternative systems of law and rejects the democratic system.<sup>65</sup> In relation to defining what amounts to extremism when preventing people from being drawn into terrorism, along with the feeling of fear this causes, we are entering into an activity of anticipating the unknown. By including in extremist thought that does not directly advocate violence, it edges closer to widening the net of people who can come under the attention of authorities in relation to Prevent and it is a security practice that is concerned with anticipating an uncertain future.<sup>66</sup> If this is not addressed, once more this could result in creating divisiveness with other UK communities as well as deepening existing divisiveness Prevent has caused. It is

important that a clear line is drawn as to where extremist thought goes beyond what is considered to be acceptable norm. This can be achieved by differentiating between non-violent extremism and not-violent activism, where not-violent activism radical views can be held to be acceptable.

In his study on violent and non-violent extremism Schmid sees extremism as a ‘relational concept’. In answering what extremism is he says there needs to be a benchmark between terms such as ordinary, centrist when compared to the extreme fringe. Citing the example of Al Qaeda’s leader al-Zawahiri who disavowed the group Islamic State as ‘too extreme’, Schmid raises the point that those we consider extremists will call others extremist too.<sup>67</sup> In relation to extremist thought parameters have to be established of what is acceptable and what is not. In their study on extremism Bartlett, Birdwell and King point out political and social activism should be encouraged, albeit with certain democratic and pluralist parameters, as some forms of extremism:

‘...may represent a social threat if their message involves intolerance or even a long-term threat to the democratic order’<sup>68</sup>

They add some extremist views inciting violence or hatred against others on the basis of religion or race is both a security and social threat to be met with a judicial response.<sup>69</sup>

In determining when such views become a security and a social threat, previous studies on the subject reveal the points to be considered if views pose a threat. Sedgewick states where non-violent extremism supports violence (but does not encourage it), this is a security threat as it is relevant to the terrorists’ ‘supportive milieu’ and wider constituency requiring attention.<sup>70</sup> In

relation to the extreme Islamist narrative, the Salafist Sunni interpretation that influences terrorist groups such as Islamic State, the European Commission's Expert Group examined Salafist groups where they found only one specific interpretation, Salafism Jihadism focuses on the use of violence.<sup>71</sup> While Schmid's in-depth study of Salafism agrees with this point,<sup>72</sup> he adds the non-jihadist variant of Islamism is also incompatible with the core principles of liberal-democratic societies.<sup>73</sup> In reaching this conclusion Schmid's research found the non-violent Salafist Islamists are not willing to integrate into their host society, have a lack of respect for the constitution and laws of the democratic state where they are residents, no respect for universal human rights (women in particular) and incite others to jihad or glorify terrorists acts.<sup>74</sup> For Schmid:

‘...distinguishing between non-violent extremists who use only the “pen” and the “tongue” and violent extremists who use the “gun” and the “bullet”, becomes very problematic. Both types of Islamists are both parties to a common agenda as a study of their political programmes makes clear.’<sup>75</sup>

This led him to the conclusion that as Islamist extremism is a unitary phenomenon, both non-violent and violent extremism are ‘two sides of the same coin’.<sup>76</sup>

This is not solely applicable to Islamism, this analysis can be applied to the other forms of extremist ideologies. For example, in relation to the extreme far right there are groups in the UK such as National Action (formed 2013) and Britain First (formed 2011) who see themselves as political radicals not extremists. They promote themselves as non-violent organisations, yet actions by their members and those influenced by their narrative suggests otherwise. National



Action openly admit they are national socialists following a contemporary version of the Nazi ideology and actively encourage young people to join them.<sup>77</sup> In their statement of what they represent, regarding the use of violence National Action state they:

‘...only advocate legal violence, ie through the Law. Our ultimate aim of a white Britain can only ever be achieved through state power and the complicity of state institutions; Police force, Army, Intelligence Services, etc.’<sup>78</sup>

However actions by the group’s members contradicts this position. National Action’s website contains phrases such as ‘gas all traitors’ and ‘fight for your country’, which some of its members take literally. Evidence of the latter can be seen in the professionally produced National Action videos where one consistently hears comments by National Action spokesmen inciting and glorifying violence. An example is the video National Action produced in January 2016 filmed in Newcastle and posted on YouTube where the National Action speaker says, ‘A war is brewing. ... And we fight’ and a couple of members then attack a black man who was playing a saxophone.<sup>79</sup> How this self-professed non-violent group’s ideology is influencing its members to commit violence is exemplified with the conviction of one of its members, Zack Davies who in June 2015 was convicted of the attempted murder of Dr Bhambra, a Sikh. This was an unprovoked attack on Dr Bhambra who was shopping at a supermarket where Davies attempted to decapitate him. During the attack Davies shouted racist remarks and had with him a National Action flag. When asked by the police why he carried out the attack, Davies said it was because Dr Bhambra was an Asian.<sup>80</sup>

The group Britain First professes to not hold a Nazi ideology like that espoused by National Action and its website goes to great lengths to say any person, regardless of their race or religion can join the group saying:

‘Britain First is a loyalist movement: This means that if you are loyal to Queen and Country then you are welcome to join our organisation. “Race” does not feature in our policies or outlook in any way. Britain First is home to thousands of patriots from ethnic minorities from all over the world who share our defence of British values and our opposition to global Islamic jihad. The word “racism” was invented by a communist mass murderer, Leon Trotsky, to silence European opposition to “multi-culturalism”, so we do not recognise the validity of this made-up word.’<sup>81</sup>

This group is an extreme far right group who has acquired a para-military image that, runs training camps for its members who receive self-defence training and has pledged to take direct action against Islam.<sup>82</sup> As Britain First organise regular ‘Christian Patrols’, this questions if people from other religions would be accepted to join this group. Britain First’s messages influences individuals to carry out violent acts in its name. An example of this was in June 2016 when Thomas Mair shot and killed Jo Cox, a Labour Party Member of Parliament (MP), shouting ‘Britain First’ as he shot her. Due to the evidence of the influence of extreme far right ideology Mair was under at the time he killed her, the murder trial was dealt with as an act of terrorism.<sup>83</sup> Shortly after Jo Cox’s murder another female Labour MP was targeted by a person influenced by extreme far right ideology. John Nimmo, who admitted to being a Nazi, was convicted for making anti-Semitic death threats to Luciana Berger. One tweet said, ‘watch your back Jewish scum regards your friend the Nazi’. The tweet that caused Berger to fear for her own

safety was one sent three weeks after Jo Cox's murder saying she would 'get it like Jo Cox'. While there was no physical assault, this type of Internet trolling can cause great anxiety in the recipient and Nimmo was convicted of sending malicious communications, which due to the anti-Semitic nature of the correspondence, was classified as a hate crime.<sup>84</sup> The actions from groups like these demonstrate that violent and non-violent extremism are two sides of the same coin.

In Schmid's study on extremism he reaches a conclusion that is valid in relation to this argument. He sees in countering terrorism, preventing violent extremism is not enough adding:

'...all extremism - Islamist and other – ought to be prevented ... Governments should challenge and resist all extremism, whether it is violent or not, whether it is Islamist or not.'<sup>85</sup>

When analysing what amounts to extremism it is important to differentiate between legitimate political dissent and healthy radicalism, a political activism that society needs to reform and renew itself.<sup>86</sup> As Bartlett, Birdwell and King point out, radical thought that does not lead to violence should be encouraged within certain democratic and pluralist parameters as it can lead to people becoming engaged in political and community activity.<sup>87</sup> To help differentiate between views that are extremist and political activism the term 'non-violent' should be replaced by 'not-violent'. This will confirm that dissenting views of current political, constitutional and legal position is political activism, an activism that does not glorify or support violent action. As such it differentiates between extremism and activism, where not-violent activism is seen as opposing views (including strident opposing views) where the activist accepts that in a pluralist society

change can only be achieved through constitutional principles under the rule of law. In doing so, it will assist in deciding if a person's behaviour is activist or extremist. If it is extremist it could trigger a concern they are being drawn towards terrorism. By differentiating between non-violent extremism and not-violent activism the definition of extremism will be compatible with human rights legislation.

In an example relevant to the UK regarding the difference between activism and extremism is during the Irish Troubles and the actions of John Hume. Hume was the one of the founders and former leader of the political party, the Social Democratic Labour Party, which still has in its constitution that Northern Ireland's six counties come under the governance of the Irish Republic's Parliament in Dublin. This was also the aim of the Provisional IRA who was carrying out a terrorist conflict with the British government. Although this aim was not achieved, without the efforts of the radical activist John Hume (who accepted a pluralist society where change can be achieved through constitutional principles without the recourse to violence) especially in bringing the Provisionals and its political wing, Sinn Fein to the negotiations with the British government and the loyalists, it is unlikely the Good Friday Agreement that brought about peace in the Province would have been signed.<sup>88</sup> In fact it could be argued without Hume's involvement this terrorist conflict could still be ongoing.

## **Problems with Non-Violent Extremism's Compatibility with Human Rights**

### **Provisions**

In the Queen's Speech 2016 it was revealed that during the 2016/17 parliamentary session the UK government intends to introduce a Counter-Extremism Bill<sup>89</sup> with the primary

aim of the Bill being to help prevent people being drawn into extremism. To achieve this the Bill is expected to include:

1. Banning orders for extremist organisation who seek to undermine democracy or use hate speech in public places;
2. Disruption orders to restrict people who seek to radicalise young people;
3. Powers to close premises where extremists seek to influence others.<sup>90</sup>

In relation to the UK government's previous announcement regarding the introduction of a Counter-Extremism Bill in 2014, in his 2015 report, the UK's independent reviewer of terrorism legislation, David Anderson raised a number of concerns regarding a Counter-Extremism Bill.<sup>91</sup> In addition to issues related to the civil orders the UK government indicated will be in the Bill (which are the same as those announced in the 2016 version of the Bill), Anderson has concerns if a legal definition on non-violent extremism would be consistent with the European Convention on Human Rights (ECHR) in relation to the right to freedom of expression<sup>92</sup> and the right to freedom of thought conscience and religion.<sup>93</sup> He expanded on this point in his evidence to the UK Parliament's Joint Committee on Human Rights in 2016 when he said the UK is:

'...a democracy founded on principles of human rights ... and it seems to me absolutely essential that among those are freedom of conscience ... a freedom to express your religion, but that is subject to the rights and freedoms of others'.<sup>94</sup>

Similar concerns have been expressed by pressure groups. While the counter-extremist Quilliam Group acknowledges the safeguarding of children and young persons from extremist preachers

and teachers as being sensible and long overdue, the group have concerns over the potential criminalisation of thought, saying that banning viewpoints:

‘...creates a “forbidden fruit” syndrome, where charismatic recruiters can sweep in and draw up hatred’.<sup>95</sup>

Cage sees the policing of thought and belief systems as an Orwellian concept that attacks basic rights, saying in relation to the definition of extremism:

“Our values” and “our way of life” is the language of alienation, designed to marginalise particular communities. The [UK] government is perpetuating the very same “us v them” narrative it denounces in its Prevent strategy’.<sup>96</sup>

Regardless of their respective positions in relation to terrorism issues, there is credibility in their concern over the impact the definition of extremism and related provisions contained in the Bill will have on the freedom of expression and thought. Under the Human Rights Act 1998 not only must UK legislation be compatible with the ECHR, but public bodies must also act in a manner compatible with the ECHR.<sup>97</sup> As Bartlett, Birdwell and King’s study reveals, it is possible for people to read radical texts, be strongly opposed to western foreign policy, believe in Sharia law or hold nationalist views without supporting or glorifying violence in achieving the aims of these views.<sup>98</sup> Assessments as to whether views or beliefs are extremist or activist can be made by examining if they respect constitutional principles, respect universal human rights and respect for a pluralist society where changes can only be achieved through these processes and principles. As seen in the Court of Appeal decision in *Redmond-Bate v DPP*<sup>99</sup> where it was held that

freedom only to speak inoffensively is not worth having, these principles are ones UK courts will defend.

The courts role will be crucial to ensure rights are protected. As both freedom of thought, conscience and religion, and, freedom of expression are qualified rights state agencies can only interfere with them under an act prescribed by law when it is necessary to do so in a democratic society. The conditions when state agencies can do this is limited to certain conditions including preventing or detecting crime, or protecting the rights and freedoms of others. Regarding freedom of expression the state can also interfere with the right when it is in the interests of national security. The state can only apply these conditions when it is proportionate and necessary to do so. The judicial review process under the Human Rights Act 1998<sup>100</sup> (that incorporated the ECHR into UK law) will provide an important safeguard to protecting these rights in relation to activist views, thereby preventing any abuses by state agencies. As seen in in *Redmond-Bate*, UK courts take the role of protecting citizens' rights seriously. What is essential for all concerned parties is an acceptance of the requirement to balance the interests of national security with the protection of rights. Parity between these two interests is essential. It is just as important the state has the ability to protect its citizens from a distorted, extremist narrative espoused by extremist groups designed to recruit or influence individuals to their cause, as it is for citizens to have the ability to openly denounce government actions and policies or to criticise others' opinions or beliefs because this is a constitutional principle in a free society. It should be the duty of those in positions of authority to question with an individual the circumstances and credence of extreme views. If left unchallenged, this is the seed that can germinate in an individual being drawn towards terrorist activity.

## **Suggested Definition of Extremism**

Following the points raised here and in order to ensure legal certainty as well as minimising subjectivity and opaqueness, a suggested definition of extremism is:

‘Extremism, be it through violent or non-violent means, is a vocal or active opposition to the United Kingdom’s constitutional principles, the legal principle of the rule of law and the existence of a pluralist society that is manifested by advocating an intolerance of an individual’s rights and freedoms, and, different faiths and beliefs that encourages discord in society’

This definition can be included as an amendment to the 2011 prevent Strategy and the 2015 Counter-Extremism strategy as it will currently assist the judiciary and staff in the statutory bodies under section 26 of the Counter-Terrorism and Security Act in determining if a person’s behaviour is that of an extremist or an activist. At the time of writing, as the Counter-Extremism Bill is still in the consultation period and has yet to be published, now is the time for serious consideration be given to the drafting of a definition of extremism. It is important the definition is clear, providing legal certainty and is compliant with the requirements of the ECHR as it will underpin the provisions and powers granted to relevant public bodies contained in the Bill.

Sub-sections to the section providing the extremism definition in the Bill should be added clarifying what is meant by constitutional principles, rule of law and pluralist society. As the UK government has done with other statutes such as the Police and Criminal Evidence Act 1984 and the Regulation of Investigatory Powers Act 2000, it can issue a Codes of Practice to assist those with obligations under the Counter-Extremism Bill with a wider understanding of the terms



contained in the definition along with an explanation differentiating between what is meant by extremism and activism. This would assist practitioners in particular who struggle to recognise when a person's behaviour is sufficiently extremist to raise concerns that they are vulnerable to being drawn into terrorism.

## **Conclusion**

In attempting to deal with extremist behaviour at the pre-criminal stage, the UK's Prevent strategies have had a difficult journey. This was not helped by the earlier strategies focusing on violent extremism linked to Islamist ideology that created a divisiveness with the UK and as its Muslim community felt demonised and alienated. While the 2011 Prevent strategy along with the 2015 Counter-Extremism strategy included all forms of extremism, by introducing a statutory obligation on staff in public bodies to prevent people from being drawn into terrorism has compounded suspicions that Prevent is another layer of surveillance that due to the views and beliefs they hold brings individuals under the gaze of state authorities.

Part of the problem Prevent has had is with the current definition of extremism contained within the current Prevent and Counter-Extremism strategies. Although not a statutory definition, it is the only definition staff in public bodies and the judiciary are working from. The problem is in its present form the definition is subjective, awkward and opaque. This is evidenced by using terms such as 'fundamental British values'. As examined above, just this term is problematic as with being so subjective it is divisive and can lead to some communities disassociating themselves from Britishness.

In the need for a definition that provides legal certainty, it is important that all forms of extremism, both violent and non-violent, is differentiated with not-violent activism. As non-

violent extremism supports and glorifies the use of violence, both violent and non-violent extremists share a common agenda and as such it is recommended that all forms of extremism is prevented. Not-violent activism differs from non-violent extremism as activism does not support or glorify violence and accepts that change in a pluralist society can only be achieved through constitutional principles under the rule of law. An activist can have radical views denouncing government policy as well as being critical of societal norms. This ensures by recognising and accepting activism in a democratic state, any legislation, strategy or policy is compatible with the ECHR. It also demonstrates strategies and legislation are not about policing individuals who have radical, opposing thoughts and beliefs.

Although this work is critical of the UK's current definition of extremism, this is not a condemnation of attempts to try and prevent individuals with views and beliefs that challenge accepted political, religious or social norms being drawn into terrorist activity. It is submitted this analysis of the current extremism definition is to elucidate current problems and issues that has led to there being so many concerns, not just with what amounts to extremism but with Prevent as a whole. This critique of the definition of extremism has been carried out with a desire for this strategy to achieve its aim of helping those who are vulnerable or likely to be drawn into terrorist activity. It is important in liberal democracies there are opposing views, some of which are radical as this leads to healthy debate. This is activism and it is important that in any documentation it is stressed that activists, even those who are diametrically opposed to many current processes, institutions and state activities are not the target of Prevent. When the UK introduces its Counter-Extremism Bill, defining extremism will take on even greater importance

as, once more it is emphasised the difference between activists and extremists is activists accept the existence of a pluralist society in which change can be brought about through constitutional processes within the legal principle of a rule of law. This could apply to other states in determining extremist behaviour.

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