Preventing terrorism and countering extremism in the United Kingdom: Policy content, conflict and confusion

Clive Walker

Clive Walker

Preventing terrorism and countering extremism in the United Kingdom: Policy content, conflict and confusion

Abstract

Within the field of counter-terrorism, competition between the policies of 'Prevent' and 'Counter Extremism' has emerged in the UK since 2006. The result is a 'policy spiral', in which two policies spin around each other to produce several unresolved challenges: content of uncertain fairness or effectiveness; conflict between policies and with other policy fields (especially community integration); and general confusion over implementation. The policy discourse began with 'Prevent', which was announced in 2006 as one element of the UK Government's CONTEST (Countering International Terrorism) strategy. 'Prevent' is a bold initiative but entails complexity in meaning and potential confrontation in delivery. Successive governments and operational agencies, such as the police, local authorities, and educational establishments, have struggled to make sense of the policy and to render it a success. However, an official review in 2011 marked the determination to persist with the struggle, as reinforced by a legal duty to implement which was enacted in 2015. Added to these unresolved problems within 'Prevent', the perceived growth of extremism, which is recognised as a social ill whether as a forerunner to terrorism or not, fostered the additional policy discourse of 'Counter Extremism'. That second policy agenda has become even more challenging to understand and delineate. It has a protean capacity for interference and confrontation. This paper will plot and seek to unravel the spiral in these UK policies up to 1 January 2018.

Introduction

The thesis of this paper is that, within the field of counter-terrorism, competition between the policies of 'Prevent' and 'Counter Extremism' has emerged in the UK since 2006. Both fall within the general theme of countering violent extremism (CVE) which has been advocated as an essential policy for all states at international level.[1] The result is a 'policy spiral', in which two policies spin around each other to produce several unresolved challenges: content of uncertain fairness or effectiveness; conflict between policies and with other policy fields (especially community integration); and general confusion over implementation. The policy discourse began with 'Prevent', which was announced in 2006 as one element of the UK Government's CONTEST (Countering International Terrorism) strategy. 'Prevent' is a bold initiative but entails complexity in meaning and potential confrontation in delivery. Successive governments and operational agencies, such as the police, local authorities, and educational establishments, have struggled to make sense of the policy and to render it a success. However, an official review in 2011 marked the official determination to persist with the struggle, as reinforced by a legal duty to implement which was enacted by Part V of the Counter Terrorism and Security Act 2015.[2] Added to these unresolved problems within 'Prevent', the perceived growth of extremism, which is recognised as a social ill whether as a forerunner to terrorism or not, fostered the additional policy discourse of 'Counter Extremism'. That second policy agenda has become even more challenging to understand and delineate. It has a protean capacity for interference and confrontation. My paper will plot and seek to unravel the spiral in both elements of UK policy, but will initially consider the justifications for CVE interventions.

Why should states intervene to counter violent extremism?

A liberal society views it as emblematic that minority views, even if patently mistaken, offensive or unpopular, must be tolerated.[3] The touchstone for state repression should be a palpable link to tangible harm (which, for terrorism, means politically motivated violence), rather than arguments based on distaste engendered by the speech. So why should liberal democracies seek to intervene in alien cultures or

---

[1] See UNSCR 2178 of 24 September 2014, arts.10-11.

[2] See Blackbourn, J. and Walker, C., 'Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015' (2016) 79 *Modern Law Review* 840; Barrett, D., 'Tackling radicalisation' [2016] *European Human Rights Law Review* 530.

[3] See *Lingens v. Austria*, App. no. 9815/82, Ser.A 103 (1986), para.41.

attempt to change people's dark hearts? Three retorts to the classical liberal stance of non-interference may arise.[4]

One reason is that prevention is better than cure. Why await the dire consequences of terrorism if its potential perpetrators can somehow be discouraged? Pre-emption is of course characteristic of many counter terrorism provisions, whether special crimes, extra surveillance powers, executive restraints,[5] or, now, CVE programmes. Certainly, the idea that full freedoms should be accorded to terrorist suspects just because they cannot be convicted was dulled after 9/11. The caveat to this first argument is to determine how remote should be the suspicion against the individual so as to justify state intervention.

Second, the attention to CVE is a reaction to what might be termed, 'neighbour terrorism'.[6] Thus, in the contemporary phase of terrorism, the risk is from our neighbours. So, in the United Kingdom, the London bombings on the 7 July 2005 were carried out by British citizens brought up in Leeds. The implication is that our 'neighbour terrorists' must be engaged with, understood, and persuaded. They cannot be detained for ever or shown the exit door of deportation or be disowned through deprivation of citizenship.[7]

Third, the advent of the foreign terrorist fighter ('FTF') phenomenon has exacerbated terrorism risk because of substantial numbers and also the involvement of young adherents.[8] These factors give rise to two rationales related to CVE. One is the official belief that the adherence to terrorist ideology is not deeply set. Thus, while no serious effort was mounted by the UK government to seek to eradicate centuries of Irish nationalism as an ideology, the shallower adherence to *jihadi* ideologies gives hope that de-indoctrination can be achieved. The further point is that young vulnerable people should be safeguarded by the state against the lure of terrorism, just as they are safeguarded against criminal gangs, sexual activities, and drug-taking.

---

[4] See also Abdullah, W.A., ‚Merits and limits of counter-ideological work against terrorism' (2017) 28 *Small Wars & Insurgencies* 291.

[5] See Walker, C.P., *The Anti-Terrorism Legislation* (3rd ed., Oxford University Press, Oxford, 2014) chaps.6, 7.

[6] Walker, C., ‚Neighbor terrorism and the all-risks policing of terrorism' (2009) 3 *Journal of National Security Law & Policy* 121. See also Briggs et al., R., *Bringing It Home: Community-Based Approach to Counter-Terrorism* (Demos, London, 2006); Coolsaet, R. (ed.), *Jihadi terrorism and the Radicalisation Challenge in Europe* (Ashgate, Aldershot, 2008).

[7] See Walker, C., ‚The treatment of foreign terror suspects' (2007) 70 *Modern Law Review* 427; Pillai, S. and Williams, G., ‚Twenty-first century banishment' (2017) 66 *International & Comparative Law Quarterly* 521.

[8] See Al Qaeda Sanctions Committee, *Analysis and Recommendations with regard to the Global Threat from Foreign Terrorist Fighters* (S/2015/358, New York, 2015); Anderson, D., *The Terrorism Acts in 2015: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (Home Office, London, 2016) Annex 2 (by Walker, C.).

In conclusion, the policy of CVE is in principle correct and worthwhile. But how should it be designed and delivered as a legitimate and effective initiative?

What is the 'Prevent' policy?

As mentioned above, the official discourse on CVE in the UK started in 2006 with the 'Prevent' initiative. 'Prevent' represents part of the wider strategy called CONTEST (Countering International Terrorism)[9] which contains four work-streams:

- Pursue: to stop terrorist attacks
- Protect: to strengthen our protection against terrorist attack
- Prepare: where an attack cannot be stopped, to mitigate its impact.
- Prevent: to stop people becoming terrorists

The doctrine of 'Prevent' reflects the argument that 'a long-term effort would be needed to prevent another generation falling prey to violent extremism of the [Al-Qa'ida] ideology.'[10] However, 'Prevent' entails complexity in meaning and potential confrontation in delivery with the liberal values such as freedom of thought, conscience, religion, and expression.

The initial iterations of 'Prevent' were marked by the non-legal and experimental nature of the programme.[11] The sectors which were subjected to the most scrutiny were, first, local communities who are co-opted as active partners. The proposition that community involvement might prevent terrorism assumes that terrorism seeks resonance within Muslim-heritage communities and therefore that community-based partners can strive to reduce that appeal, can identify sources of disaffection, can aid those at risk, and can bolster police legitimacy through consensual action.[12]

The second area of work concerned mosques, madrassas, and Islamic-related charities. Eventually, much of this work has been taken up as a regulatory exercise by the Charity Commission. While its initial

---

[9] Home Office, *Countering International Terrorism* (Cm 6888, London, 2006), as revised annually.

[10] Omand, D., *Securing The State* (London: Hurst & Co, 2010) p.101.

[11] See Walker, C. and Rehman, J., „Prevent" responses to jihadi terrorism' in Ramraj, V.V. et al., *Global Anti-Terrorism Law and Policy* (2nd ed, Cambridge University Press, Cambridge, 2012); Thomas, P. *Responding to the Threat of Violent Extremism –Failing to Prevent* (Bloomsbury, London, 2012); Skoczylis, J., *The Local Prevention of Terrorism* (Palgrave Macmillan, 2015).

[12] See Heath-Kelly, C., ‚The geography of pre-criminal space: epidemiological imaginations of radicalisation risk in the UK Prevent Strategy, 2007–2017' (2017) 10 *Critical Studies on Terrorism* 297.

responses were weak,[13] a change of management and the bolstering of powers through the Charities (Protection and Social Investment) Act 2016 have produced more stringent regulation at least for those mosques, madrassas, and groups which register as charities. Religious schools have also been subjected to stricter scrutiny following the alleged infiltration in Birmingham in the 'Trojan Horse' affair.[14]

Another sector to come under scrutiny has been prisons.[15] There are around 130 or so imprisoned *jihadis*, who are in a position to subvert other Muslim prisoners and most of whom will be released after an average term of imprisonment of around five years. Various de-indoctrination programmes have been attempted,[16] but the latest despairing idea is that the *jihadis* cannot be reformed and so must be segregated in secure units, as advocated by a report in 2016 by Ian Acheson, *Summary of Main Findings of the Review of Islamist Extremism in Prisons, Probation and Youth Justice*.[17] Containment is a *sine qua non* for serving prisoners but is not a reassuring policy for managing the risk of released prisoners.

The fourth affected sector arises from the susceptibility to extremism of the supposedly impressionable student populations at schools and universities. These institutions are urged to take seriously the risks of extremism and to vet carefully outside speakers and access to the internet. However, interventions require delicacy given the purpose of education and given that universities retain a legal duty to promote free speech for outside speakers under the Education (no.2) Act 1986, section 43. Nevertheless, guidance has been issued to universities, and these ideas also have spread to schools.[18]

---

[13] See Walker, C., ‚Terrorism Financing and the Policing of Charities: Who pays the price?' in King, C., and Walker, C. (eds), *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Ashgate, Farnham, 2014).

[14] See Kerhsaw, M., *Investigation Report: Trojan Horse letter* (Birmingham City Council, Birmingham, 2014); Clarke, P., *Report into allegations concerning Birmingham Schools arising from the 'Trojan Horse' letter* (2014-15 HC 567); Wilshaw, M., *Letter to Secretary of State for Education* (Advice Notice) (14 October 2014); House of Commons Select Committee on Education, Extremism in Schools (2014-15 HC 473) and *Government Response*, (Cm.9094, London, 2015); *Monzoor Hussain and others*, National College for Teaching and Leadership, 30 May 2017.

[15] See Silke, A. (ed.), *Prisons, Terrorism and Extremism* (Routledge, Abingdon, 2014).

[16] See Jones, C., ‚Managing extremist. offenders' (2015) 62 *Probation Journal* 172; CAGE, The *'Science' of Pre Crime* (London, 2016).

[17] (Ministry of Justice, London, 2016). For implementation, see Prison (Amendment) Rules 2017, SI 2017/576.

[18] For impacts, see HEFCE, *Implementation of the Prevent duty in the higher education sector in England: 2015-16* (London, 2017); Busher, J. et al, *What the Prevent Duty means for Schools and Colleges* (Coventry University, 2017); Bell, L. and Greer, S., ‚Counter-terrorist law in British universities: a review of the „prevent" debate' [2018] Public Law 84.

Alongside these social or institutional initiatives is individualised intervention which is mainly delivered through 'Project Channel'.[19] Extremists or people at risk of extremism should be identified by the police, educational bodies, communities, mosques, or even parents and then referred for social intervention in the forms of counselling and engagement in approved activities such as counselling or educational involvement. Though a non-security label is put upon the project and any enrolment must be consensual, there arise dangers of loose labelling, net-widening, and implicit threat of sanctions.

All of these five themes remain core elements of 'Prevent' today, especially after the Home Office's *Prevent Strategy* review paper in 2011 which sought to shed some of the wider ambitions around community integration.[20] The *Prevent Strategy* paper reformulated 'Prevent' as comprising only the need to: '(i) Respond to the ideological challenges of terrorism …; (ii) prevent people from being drawn into terrorism …; and (iii) work with sectors and institutions where there are risks of radicalization ….'.[21] But it did not resolve other major problems.

The first problem is ideological. The attempt to develop counter-narratives to terrorism has often involved reference to 'British values',[22] defined as encompassing 'democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs', or calls for the death of British armed forces.[23] These ideas have remained unconvincing and uncertain as to meaning. There is often confusion between extremism and radicalisation, but their meanings are unclear and their causative link to terrorism is unproven.[24] In liberal theory, the bounds of acceptable behaviour should reach their limits where extremism is linked to violence. Any leap from terrorism linked to violence towards extremism linked to religious or cultural values should be rejected as a basis for state interference in private lives.

Second, there remains a lack of transparency in the delivery of 'Prevent'. For example, in Project Channel, while there are published guidelines, few details have appeared about working practices, and still fewer about outcomes.[25]

---

[19] Home Office, *Channel: Supporting individuals vulnerable to recruitment by violent extremists* (London: 2010), *Channel Duty Guidance* (2015).

[20] Home Office, *Prevent Strategy* (Cm.8092, London, 2011).

[21] *Ibid.* para.3.21.

[22] See Research, Information and Communications Unit, *Understanding perceptions of the terms 'Britishness' and 'Terrorism'* (Home Office, London, 2010).

[23] Home Office, *Prevent Strategy* (Cm.8092, London, 2011) Annex A.

[24] Home Affairs Committee, *Radicalisation* (2016-17 HC 135) paras.18, 19.

[25] The Home Office has responded to this criticism: Home Office, *Individuals referred to and supported*

Third, the audit of achievements is also deficient. It remains unclear as to what should be the performance indicators and who is measuring them. The Prevent Oversight Board, set up in 2011, is chaired by the government and meets in secret.[26]

Fourth, the broadest problem is legitimacy. For many years, the policy was not even grounded in any legal instrument, but at least that deficiency has been addressed with the passage of the Counter Terrorism and Security Act 2015 ('CTS Act 2015'). In Chapter 1 of Part V, section 26 imposes on specified public authorities a general 'Prevent' duty, namely, to have due regard to the need to prevent people from being drawn into terrorism. Next, Chapter 2 of Part V deals with 'Support etc. for people vulnerable to being drawn into terrorism', essentially a reference to the Channel Programme. The government subsequently issued multiple guidelines[27] which will inevitably be tested and revised over time as to meaning, performance, accountability, and oversight. One important example is the judicial decision in *Butt v Secretary of State for the Home Department*[28] which upheld aspects of the 'Prevent' guidance but with the important proviso that the court would approve 'Prevent' activities only where they dealt with extremism creating a risk of violence. Tangible effort has also ensued; for example almost 550,000 frontline staff have attended 'Prevent' training to identify those vulnerable to radicalisation.'[29] Finally, 'Prevent' is meant to be a task shared by all but the CTS Act 2015 is confined to public authorities. Given the shrinkage of the public sector why not impose the same duty on employers or retailers or communication service providers? Ongoing criticisms of extremist materials hosted by social media companies suggest that extended duties are nigh.[30] Nevertheless, the CTS Act 2015 should be welcomed as the initiation of a process of legitimisation and professional rigour.

In conclusion, the period from 2006 to 2017 witnessed a policy spiral with archetypal attributes of frenzied output and constant confusion. An attempted correction occurred in 2011 but many underlying contradictions have not been resolved. Hence, another review of 'Prevent' was commenced in 2016 and was expected to be concluded in 2017.

---

through the Prevent Programme, April 2015 to March 2016 (Statistical Bulletin 23/17, London, 2017).

[26] See Home Office, *Prevent Duty Guidance* (London, 2015), para.25.

[27] See https://www.gov.uk/government/publications/prevent-duty-guidance.

[28] [2017] EWHC 1930 (Admin) para.30.

[29] Cabinet Office, *National Security Strategy and Strategic Defence and Security Review 2015: First Annual Report 2016* (London, 2016) para.2.25.

[30] See Walker, C., ,The war of words with terrorism: An assessment of three approaches to Pursue and Prevent' (2017) 22 *Journal of Conflict and Security Law* 523.

In the meantime, the fundamentals of the policy were challenged following the major terrorism attacks in the first half of 2017 – at the Westminster Bridge, the Manchester Arena, and London Bridge and Borough Market.[31] Even the Mayor of Manchester, Andy Burnham, had (when previously Shadow Home Secretary) dismissed the policy as 'so toxic now that I think it's got to go.'[32] UN Special Rapporteurs have likewise been highly critical[33] though other analysts have presented a more positive picture.[34]

What is the counter-extremism policy?

At the very point when the CTS Act 2015 has mandated a more legitimate and accountable 'Prevent' policy, the CVE enterprise has begun to veer off into another spiral towards an additional counter-extremism agenda. This development represents a further indicator that 'Prevent' is still an immature policy with uncertain impact which can be treated as almost irrelevant to the counter-extremism agenda[35] but that, at the same time, FTFs and the exchange of extremist views and even terrorism logistical information via social media represent a substantial and enduring risk which impel additional official responses. It might be argued that counter-extremism should be distinct from counter-terrorism since terrorism represents just one potential harm arising from extremism,[36] but the failure to distinguish this new spiral from the old one remains problematic.

The perils of policy ventures into 'extremism' may be illustrated by experience in Germany. The recent decision of the Second Senate of the German Federal Constitutional Court in the case of the *National-demokratische Partei Deutschlands* ('NPD')[37] considered the propo-

---

[31] See Anderson, D., *Attacks in London and Manchester March-June 2017: Independent Assessment of MI5 and Police Internal Reviews* (Home Office, 2017).

[32] Perraudin, F., ‚Andy Burnham calls for „toxic" Prevent strategy to be scrapped' *The Guardian*, 9 June 2016. 'Toxic' was also the verdict of the Home Affairs Committee, *Radicalisation* (2016-17 HC 135) para.55.

[33] See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Fifth Annual Report* (A/HRC/31/65, 2016); Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland* (A/HRC/35/28/Add.1, 2017) p.3 et seq. See further United Nations High Commissioner for Human Rights, *Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism* (A/HRC/33/29, 2016).

[34] See Sutton, R., *Myths and Misunderstandings* (Henry Jackson Society, London, 2016); Frampton, M. et al, *Unsettled Belonging* (Policy Exchange, London, 2016); Khan, S., *The Battle for British Islam: Reclaiming Muslim Identity from Extremism* (Saqi, London, 2016); Joint Committee on Human Rights, *Counter Extremism* (2016-17 HL 39/HC 105) para.50; Joint Committee on Human Rights, *Counter-Extremism: Government Response to the Committee's Second Report of Session* 2016–17 (2016-17 HC 756) p.5.

[35] Joint Committee on Human Rights, *Counter Extremism* (2016-17 HL 39/HC 105) para.42.

[36] Joint Committee on Human Rights, *Counter-Extremism: Government Response to the Committee's Second Report of Session* 2016–17 (2016-17 HC 756) pp.3, 8.

[37] 2 BvB 1/13, 17 January 2017. See also *Nationaldemokratische Partei Deutschlands v Germany*, App. no.55977/13, 4 October 2016; Michaelis, L.O., *Politische Parteien unter der Beobachtung des Verfassungsschutzes. Die Streitbare Demokratie zwischen Toleranz und Abwehrbereitschaft* (Nomos, Baden Baden 2000).

sed banning of the NPD as a political party under Article 21(2) of the Federal Basic Law (*Grundgesetz*). However, it was decided that any ban must be justified on the basis of proof of more than an extremist ideology. Here, the NPD lacked specific and weighty indications that it had any realistic chance of successful implementation of its plans. In addition to Article 21, the administrative banning of other groups is allowed and much more often invoked under the Law Governing Associations 1967 *(Gesetz zur Regelung des öffentlichen Vereinsrechts (VereinsgesetzI)* which reflects the potential for bans under article 9(2) of the Basic Law, as amended in 2001 to cover extremist religious based groups.[38] It follows that German bans on associations are not primarily based on notions of violence or terrorism but on the threat from political extremism. By section 3 of the 1967 Law an association can be banned (echoing the words of article 9) if 'the competent authority established by decree that its aims or its activity contravene the criminal law or that they are directed against the constitutional order or against the idea of international understanding' At the Federal level, there were 18 right wing group bans up to 2016,[39] 15 Islamist bans (including Islamic State in 2014[40] but not Al Qa'ida[41]) and 6 foreigner group bans since 1990 (including the PKK).[42] Several groups have challenged bans under the 1967 Act[43] but the courts have been unsympathetic, including in the case of the Hizb ut Tahrir.[44]

The NPD and Hizb ut Tahrir decisions in Germany might be compared with proscription orders under the UK Terrorism Act 2000, Part II. Its greater emphasis on 'terrorism' as the crucial factor is reflected by the fact that over 50 (not 15) Islamist groups have been banned while, conversely, it took until 2017 for National Action to become the first right-wing proscribed group.[45] Conversely, demands to ban

---

[38] See *Kalifatstaat* (BVerwG6A4.02, 27 November 2002, confirmed by 1 BvR 536/03 2 October 2003); *Kalifatstaat v Germany*, App. no.13828/04, 11 December 2006; *Kaplan v. Germany*, App. no.43212/05, 15 December 2009; Zöllner, V., 'Liberty dies by inches' (2004) 5 *German Law Journal* 469.

[39] For impacts, see Federal Ministry of the Interior, *2016 Annual Report on the Protection of the Constitution Facts and trends* (Berlin, 2017). See for lists: http://www.verfassungsschutz.brandenburg.de/media fast/4055/Verbotene%20rechtsextr%20Org_Juli_14.pdf; https://www.verfassungsschutz.de/de/arbeitsfelder/af-rechtsextremismus/verbotene-organisationen-rechtsextremismus.

[40] https://www.verfassungsschutz.de/de/arbeitsfelder/af-islamismus-und-islamistischer-terrorismus/verbotene-organisationen-islamismus.

[41] Prosecutions have occurred under s.129a of the German Criminal Code (StGB). See Kretschmer, B., 'Criminal Involvement in Terrorist Associations – Classification and Fundamental Principles of the German Criminal Code Section 129a StGB' (2012) 13 *German Law Journal* 1017).

[42] https://www.verfassungsschutz.de/de/arbeitsfelder/af-auslaenderextremismus-ohne-islamismus/verbotene-organisationen-auslaenderextremismus.

[43] See *Support of a terrorist organisation* (BVerwG 1 C 26.03, 15 March 2005; *Naturalisation in spite of PKK Declaration* (BVerwG 5 C 21.06, 22 February 2007); Gerlach, J., *Die Vereinsverbotspraxis der Streitbaren Demokratie. Verbieten oder nicht-verbieten?* (Extremismus und Demokratie 22, Nomos, Baden-Baden 2012); Baudewin, C., 'Das Vereinsverbot' (2013) 16 *Neue Zeitschrift für Verwaltungsrecht* 1049.

[44] *Hizb ut Tahrir v Germany*, App. no.31098/08, 19 June 2012.

[45] Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2016, SI 2016/2138.

Hizb ut Tahrir[46] (or the Muslim Brotherhood)[47] have been serially re-
buffed because their linkage to engagement in terrorism is unproven,
albeit that the condemnation of National Action was based on indirect
promotion of terrorism (under the Terrorism Act 2006, section 21).
This foundation in violence as a basis for UK legal suppression, even
if tenuous, sometimes is preferable to the German stance albeit that it
is understandable in historical terms and contained, unlike in the UK,
by reference to a written constitution.[48] The German policy encoun-
ters various difficulties. First, the aims of a political party are to be
judged from its stated aims or the behaviour of adherents (those who
support it even if not all are members), a test which is difficult to apply
to fissiparous or informal groupings which reflect 'leaderless jihad'.[49]
Second, the application of the test for political parties, 'specific and
weighty indications of success', still affords much encouragement to
intolerance and risk. Thus, the NPD ban failed despite attracting 6000
members, some regional elected representatives, and a physical com-
munity at Jamel.

Despite doubts about the ideological or juristic settings an additional
counter-extremism agenda has duly emerged in the UK. It commenced
with the establishment of the 'Tackling Radicalisation and Extremism
Taskforce' in 2013 in response to the murder of Lee Rigby in Wool-
wich.[50] Its report, *Tackling Extremism in the UK*, was short on detail
but called for a substantial agenda against 'Islamist extremism'.[51] An
Extremism Analysis Unit was established in the Home Office in 2015
to develop relevant policies.[52] Then, a Counter-Extremism Bill was
announced (but not fully drafted) in the opening of Parliament on 27
May 2015.[53] The main elements of the Bill were to involve: Banning
Orders against groups; Extremism Disruption Orders against indivi-
duals; and Closure Orders against premises.[54]

---

[46] See Hansard (HC) vol.472, col.588W (19 February 2008), Tony McNulty; vol.553, col.768 (22 November 2012), Mark Harper; vol.588, col.1044 (22 November 2014), James Brokenshire; vol.613, col.313 (13 July 2016), John Hayes.

[47] Cabinet Office, *Muslim Brotherhood Review* (2015-16 HC 679); Hansard (House of Commons) vol.603 col.127w 17 December 2015; House of Commons Foreign Affairs Committee, *'Political Islam', and the Muslim Brotherhood Review* (2016-17 HC 118).

[48] For the working definition of 'extremism', see http://www.bmi.bund.de/EN/Topics/Security/Extremism/extremism_node.html.

[49] See Sageman, M., *Leaderless Jihad* (University of Pennsylvania Press, Philadelphia, 2008).

[50] See *R v Adebolajo and Adbowale* [2014] EWCA Crim 2779; Intelligence and Security Committee, *Report on the intelligence relating to the murder of Fusilier Lee Rigby* (2014-15 HC 795).

[51] (Cabinet Office, London, 2013).

[52] May, T., ,A new partnership to defeat extremism' 23 March 2015, https://www.gov.uk/government/speeches/a-stronger-britain-built-on-our-values.

[53] Hansard (House of Commons) vol.596 col.31.

[54] Cabinet Office and Prime Minister's Office, *Queen's Speech 2015* (London, 2015) paras.62-63.

The subsequent *Counter-Extremism Strategy* paper ('CES Paper') in October 2015[55] embellished four pillars: counter-ideology measures; targeting both violent and non-violent extremism; supporting moderate Muslims; and building a more cohesive society. But still no draft Bill appeared, and the continued inability to deliver a definition of 'extremism' curtails the emergence of specific legal measures. The foggy definition of 'extremism' proposed therein was that:

> '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.'[56]

With the exception of the latter sub-clause, disagreements over the application of 'fundamental values', such as whether prisoners should have voting rights[57] or homosexuals should be able to marry or order cakes,[58] are as much the diet of democratic debate as they are the fodder for extremists. Thus, the proposed progression from suppressing violent extremism to suppressing political, religious or cultural extremism increases the dangers of state repression based on a vague causal connection to terrorism which should be depicted as 'gibberish'.[59] The conclusion of the Joint Committee on Human Rights was that 'The Government gave us no impression of having a coherent or sufficiently precise definition'.[60]

Consequently, the official approach latterly tends to favour softer forms of implementation. Thus, various elements of the agenda have been addressed in a fragmented way, and three inquiries have followed. First, a review of the role of Sharia law is being undertaken.[61] Second, a wider review was published in December 2016 regarding community cohesion policies – *The Casey Review: A Review into Op-*

---

[55] (Cm.9148, London, 2015). See Dawson, J., *Counter Terrorism Policy* (House of Commons Library Briefing Paper CBP 7238, London, 2016); Joint Committee on Human Rights, *Counter Extremism* (2016-17 HL 39/HC 105).

[56] (Cm.9148, London, 2015) para.9. Judges have also struggled to manufacture a definition: *Begg v BBC* [2016] EWHC 2688 (QB).

[57] See *Hirst v United Kingdom*, App. no. 74025/01, 6 October 2005; Hansard (House of Commons) vol.517 col.921 3 November 2010.

[58] See *Lee v McArthur* [2016] NICA 55.

[59] Gearty, C., ‚Is attacking multiculturalism a way of tackling racism – or feeding it?' [2012] *European Human Rights Law Review* 121, 125.

[60] Joint Committee on Human Rights, Counter Extremism (2016-17 HL 39/HC 105) para.108. See further Lowe, D., ‚Prevent strategies: the problems associated in defining extremism: the case of the United Kingdom' (2017) 40 *Studies in Conflict & Terrorism* 917.

[61] (Cm.9148, London, 2015) para.48. The review was established in May 2016 under Professor Mona Siddiqui: https://www.gov.uk/government/consultations/independent-review-into-sharia-law-call-for-evidence/independent-review-into-the-application-of-sharia-law-call-for-evidence.

portunity and Integration.[62] It adopted a style typical of policy spirals – light on research or appreciation of contiguous policy formations but heavy on avowals. The general recommendations included teaching British values, laws and history in schools, with British values around the rule of law also to be enshrined in public life via an oath for holders of public office. How this will affect extremism, which overwhelmingly relates to non-office holders, is not explained nor is there reflection on how oaths of office have operated in Northern Ireland.[63] The *Report* admitted that 'Extremism is a subjective concept' but then simplistically claimed that a more integrated society would reduce extremism.[64] At least the *Report* does acknowledge and endorse the work under 'Prevent' but then has nothing to say about how it should link to counter-extremism.[65] The third review was into the funding of 'extremism' by the Home Office Extremism Analysis Unit. Its report was suppressed to protect personal identities and national security so just a bare summary was disclosed in July 2017.[66] It pointed to the main source of funding as being small anonymous public donations rather than largesse from foreign states. Aside from some groups fraudulently portraying themselves as charities the 'extremists' are not accused of any legal wrong and so the only legal proposal is to impose rules on charities to declare overseas funding. Otherwise, the responses relate to greater public awareness at home and diplomatic representations abroad. There is no attempt to define 'extremism', no explanation as to why the focus is fixated on Islamic-related groups alone, and no justification for why the state should be hostile to 'deeply conservative forms of Islam'. The casual or causative links between these mosques and political violence were not revealed nor were contra-indications of the risks.[67]

The latest policy spiral was indicated in the *Conservative and Unionist Party Manifesto 2017, Forward, Together: Our Plan for a Stronger Britain and a Prosperous Future*.[68] Defeating extremism is still on the agenda and still includes the possibility of new criminal offences but the only concrete idea (which alone appeared in the Queen's Speech in June 2017)[69] is for a Commission for Countering Extremism – in other

[62] (DCLG, London, 2016).
[63] Elected Authorities (Northern Ireland) Act 1989; Police (Northern Ireland) Act 2003. See Walker, C., 'Elected representatives and the democratic process in Northern Ireland' (1988) 51 *Modern Law Review* 605.
[64] (DCLG, London, 2016) paras.9.16, 9.27.
[65] *Ibid*. chap.10.
[66] Written Ministerial Statement HCWS 39, 12 July 2017, Amber Rudd.
[67] Compare Wilson, T., *Foreign Funded Islamist Extremism in the UK* (Henry Jackson Society, London, 2017).
[68] (2017) p.55.
[69] Hansard (House of Commons) vol.626 col.36 21 June 2017.

words, a circumspect promise of further deliberation about potential action.

The implied criticism of the counter-extremism agenda is that despite a decade of twists and turns within the policy spiral 'Prevent' remains inadequate as the sole instrument of counter-ideology against terrorism. Yet, rather than repairing 'Prevent', especially via the CTS Act 2015, the politicians repeatedly prefer eye-catching initiatives which re-energise the spiral of confusion around meaning, mission, and measurement. This criticism does not betoken that a policy of counter extremism should never found any state response even in a mature and stable democracy such as the UK.[70] Ideas around 'militant democracy'[71] suggest that a timely response can help to avert constitutional crisis. Today, almost all countries are 'militant' when it comes to terrorism and are required to be so by international legal requirements. Restrictions have been heartily endorsed by the European Court of Human Rights which has even adduced a new principle of 'living together'[72] by which pluralism can trump liberal tolerance. But in the realms of extreme speech rather than violent action, engagement in education and speech acts through regulation and providing platforms for ideal speech situations[73] are preferable approaches for furthering the values of liberal democracy. Opening up discourse should be the chosen path for state activity against extremism.

Conclusions

Two basic values need to be secured for countering violent extremism. One is constitutionalism[74] which is a precept for the state and requires respect for individual rights, 'accountability', and clear laws. The second basic value is trust which is an attribute to be secured for the community respondents to the state, above all, through their involvement.[75]

---

[70] Compare Heinze, E., *Hate Speech and Democratic Citizenship* (Oxford University Press, Oxford, 2016).

[71] See Lowenstein, K., ‚Militant democracy and fundamental rights' (1937) 31 *American Political Science Review* 417, 638; Sajo, A. (ed), *Militant Democracy* (Eleven International Publishing, Utrecht, 2004); Ferejohn, J., and Pasquino, P., 'The law of exception' (2004) 2 *International Journal of Constitutional Law* 210; Thiel, M (ed.), *The 'Militant Democracy' Principle in Modern Democracies* (Ashgate, Aldershot, 2009); Walker, C., ‚Militant speech about terrorism in a smart militant democracy' (2011) 80 Mississippi *Law Journal* 1395; Bligh, G., 'Defending democracy' (2013) 46 *Vanderbilt Journal of Transnational Law* 1321; Bourne, A.K., and Bertoa, F.C., 'Mapping "militant democracy"' (2017) 13 *European Constitutional Law Review* 221.

[72] *SAS v France*, App. no.43835/11, 1 July 2014, paras.118-122.

[73] See Habermas, J., ‚Towards a theory of communicative competence' (1970) 13 *Inquiry* 360.

[74] See Walker, C., *Terrorism and the Law* (Oxford University Press, Oxford, 2011) chap.1; Stanford, B. and Ahmed, Y., ‚The Prevent Strategy: The human rights implications of the United Kingdom's counter-radicalisation policy' (2016) 6 *Questions of International Law* 35.

[75] Local variation is advocated by Mastroe, C., ‚Evaluating CVE: Understanding the Recent Changes to the United Kingdom's Implementation of Prevent' (2016) 10 *Perspectives on Terrorism* 50.

On the basis of those two values, 'Prevent' could be refined to serve counter-terrorism. By contrast, it remains doubtful whether counter-extremism is worthwhile as a distinct extra counter terrorism programme which could be delivered as a constitutionalised or trustworthy adjunct to 'Prevent'. Extremism and counter-extremism should be addressed, but as social, educational, and political issues rather than as counter-terrorism issues.

Content