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More Speech, Not Less

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By Amy Shepherd*

In early December 2016, the High Court heard a [test case](#) brought by Mr. Salman Butt, a British Muslim labelled an extremist in a [September 2015 press release by the Government's Extremism Task Force](#). The litigation challenges the legitimacy of the Government's 'Prevent' Strategy, which proscribes methods for identifying individuals allegedly expressing '[vocal or active opposition to fundamental British values](#).' The intent of 'Prevent' is ultimately to suppress the views of extremists, expression of which, according to 'Prevent,' puts society at risk of violent harm.

It has been [well-highlighted](#) that the 'British values' definition of extremism is of questionable compliance with international principles of legality, including non-discrimination. Mr. Butt's case highlights the stigmatising implications of using broad and vague terminology to identify 'dangerous' extremists. Since his challenge provides a valuable opportunity for judicial scrutiny of whether extremism-curtailed measures do or can comply with the rule of law, in anticipation of judgment this post reflects on whether the curtailment of so-called extremist speech can in any circumstance meet the legal standard of necessity under international human rights law.

Given the central importance of free expression to democracy, there is little scope for any restriction on extremist speech to be justified. The European Court of Human Rights increasingly [emphasises](#) the societal value in promoting tolerance, broadmindedness, pluralism and participation in public debate. Any restriction must take account of the [content and context](#) of expressions, [directly respond](#) to the harm to the State identified as likely to be otherwise inflicted and be at the [minimal adequate level](#) of severity.

It could be argued that restricting extremism respects the rights of all citizens to have access to a free and open democratic discourse – if silencing a minority serves to protect the very existence of public discourse. The particularly vocal nature of extremists, who often actively recruit to their cause with intensity and fervour, leading them to gain disproportionate prominence – coupled with the increased [danger of violent escalation](#) when one interpretation or discourse gains the 'upper hand' and stifles alternative voices – could justify greater intrusion into extremist speech. If running counter to liberal values, extremist expressions arguably [warrant little protection](#).

However, extremist views are precisely the kind of minority speech human rights law is designed to protect, and a secure democracy has no need to fear any disagreement with its precepts, nor even challenge its very foundation. As far as necessity is concerned, it is fallacious to assume that curtailing extremist speech negates existence of its underlying ideology and goals. Extremists may be willing to make superficial concessions in service of their aims, but ostensibly moderate speech may mask an uncompromising worldview that is shared only with select audiences. Restrictions on certain categories of extremist speech have no impact on these private conversations, dimming the urgency of restricting fundamental rights to protect.

Additionally, for some individuals, silencing extremist messages will exacerbate rather than alleviate potential damage. Suppression of extremist views can cause alienation and disaffection: [identified factors](#) in the road to radicalisation and terrorist violence. As noted above, focusing on eliminating extremist speech can take extremist conversations underground, preventing meaningful engagement with those most at risk of being radicalised by exposure to extremist material. Censorship also [gives credence](#) to claims by extremists that one of the most core freedoms of democracy is denied to those who argue against it, increasing the 'level' of extremism some individuals will be willing to subscribe to. And repressive action taken by the State against extremist speech [can feed](#) two dangerous illusions: that clashing with authority is a 'testament to truth,' and 'sinister attribution error,' whereby everything negative is construed as a plot. Overall, official narratives portraying extremism as an 'embedded problem' unhelpfully [promotes and reinforces false stereotypes, distorts public discourse, and fosters social divisions](#), all of which increase the likelihood of violence ultimately occurring.

Cumulatively, therefore, the need to and wisdom of silencing the voices of extremists to secure the nation appears seriously contraindicated. Legally, measures harming fundamental rights but failing to benefit anyone or to achieve the desired results are not reasonable, effective, or necessary. The 'Prevent' view that the UK must 'only give a platform to the right people' has disturbing echoes, and it is questionable whether it will withstand intense judicial scrutiny. It is strongly arguable that a better – and more legitimate – approach to counter-extremism would be to [teach people how to recognise extremist propaganda, understand when they are being manipulated, and identify poor arguments in order to build their resilience to hate-filled material](#). Fundamentally, effective counter-extremism needs more speech, not less.

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***Amy Shepherd** holds a degree in law from the University of Cambridge and an LLM in Public International Law and Human Rights from the University of Utrecht (Netherlands). Her research interests include: Freedom of Expression, Protest, Public Space and Extremism.

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