The Limits of Liberal Inclusivity: How Defining Islamophobia Normalises Anti-Muslim Racism

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Abstract: Responding to recent calls made within UK Parliament for a government-backed definition of Islamophobia, this article considers the unanticipated consequences of such proposals. I argue that, considered in the context of related efforts to regulate hate speech, the formulation and implementation of a government-sponsored definition will generate unforeseen harms for the Muslim community. To the extent that such a definition will fail to address the government's role in propagating Islamophobia through ill-considered legislation that conflates Islamist discourse with hate speech, the concept of a government-backed definition of Islamophobia appears hypocritical and untenable. Alongside opposing government attempts to define Islamophobia (and Islam), I argue that advocacy efforts should instead focus on disambiguating government counter-terrorism initiatives from the government management of controversies within Islam. Instead of repeating the mistakes of the governmental adoption of the IHRA definition of antisemitism by promoting a new definition of Islamophobia, we ought to learn from the errors that were made. We should resist the gratuitous securitization of Muslim communities, rather than use such definitions to normalize compliance with the surveillance state.

Keywords: Islamophobia, Islam, British Muslims, hate speech, free speech, regulation, racism, terrorism, ideology, politics of language

On 23 April 2018, the All-Party Parliamentary Group (APPG) on British Muslims issued a call for evidence "to facilitate the adoption of a working definition of Islamophobia that can be widely accepted by Muslim communities, political parties, and the Government."[1] In between this call and the release of the report, the mandate switched from a call for a "working definition" into a call for "legally binding" one.[2] In both the UK and the US, political mobilization for such a definition is growing, particularly among Muslim advocacy organizations. Although no government agency has adopted any such definition, political

This article owes a great deal to exchanges with Riz Mokal, Asim Qureishi, and Eric Heinze, none of whom are implicated in the views expressed here.

[1] This call was circulated on the APPG's Twitter account (@APPGBritMuslims), and is archived at https://twitter.com/APPGBritMuslims/status/988454757084909568. It was not published elsewhere online or in print.

[2] All Party Parliamentary Group on British Muslims, *Islamophobia Defined - The inquiry into a working definition of Islamophobia* (2018), 27. Page references to this report will henceforth be given parenthetically.

parties have.[3] Many formulas for defining Islamophobia have been proposed. These include "the presumption that Islam is inherently violent, alien, and inassimilable"[4] and that it is "an ideology similar in theory, function and purpose to racism…that sustains and perpetuates negatively evaluated meaning about Muslims and Islam."[5] Most recently, *Islamophobia Defined,* the report that resulted from the APPG's Islamophobia inquiry, has proposed the following definition: "Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness" (11). Finally, another approach, closer to the spirit of this article yet less frequently engaged by mainstream media, identifies "the state, and more specifically the sprawling official 'counter-terrorism' apparatus' as "absolutely central to the production of contemporary Islamophobia—the backbone of anti-Muslim racism."[6] A related account suggests that "Islamophobia can perhaps be defined as the disciplining of Muslims by reference to an antagonistic Western horizon."[7]

In the face of such momentum, I argue here that well-intentioned efforts to develop a legally binding definition suitable for governmental adoption will have the negative effect of bringing Muslims further under governmental surveillance. Past government efforts to regulate speech targeting other minorities and religions indicate that a governmental decision to back a definition of Islamophobia with the coercive force of the law will do more harm than good, to Muslims specifically, and for society generally. Finally, and most crucially, I

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[3] The APPG definition of Islamophobia was adopted by the UK Labour Party and the Liberal Democrats in March 2019 (see Frances Perraudin, "Labour formally adopts definition of Islamophobia," *The Guardian* [20 March 2019] https://www.theguardian.com/politics/2019/mar/20/labour-formally-adopts-definition-islamophobia).

[4] Khaled A. Beydoun, "Islamophobia: Toward a Legal Definition and Framework," *Columbia Law Review Online* 116 (2016): 111.

[5] Chris Allen, *Islamophobia* (Farnham: Ashgate, 2010), 190

[6] Narzanin Massoumi, Tom Mills, and David Miller, "Islamophobia, Social Movements and the State: For a Movement-centred Approach," *What is Islamophobia?: Racism, Social Movements and the State,* ed. Narzanin Massoumi, Tom Mills, and David Miller (London: Pluto, 2017), 8.

[7] Salman Sayyid, "Out of the Devil's dictionary," *Thinking Through Islamophobia: Global Perspectives,* ed. S. Sayyid and AK Vakil AK (London: Hurst & Company, 2010), 15.

argue that the adoption of such definitions on behalf of any religion or minority group for the purpose of censorship compromises a state's democratic legitimacy.[8]

By way of elucidating the intersection between anti-Muslim racism and the policing of controversial speech, I consider here the relationship between government-led efforts to *protect* vulnerable minorities and government-led efforts to *persecute* them (which also involves viewing them as inherently suspect, and placing Islamic discourse under disproportionate scrutiny). I examine how these two agendas, incompatible as they appear on the surface, actually reinforce each other. Beyond considering the mutual reciprocity of efforts to ban Islamophobia and to heighten government surveillance of Muslim communities, I also consider their convergence in post-9/11 liberal democracies such as the UK.

None of the proposals for a governmental definition of Islamophobia that have been aired to date have taken account of the lessons that should have been learned from the governmental adoption of the so-called IHRA definition antisemitism in 2016. Yet the problems with such definitions and with their application become more apparent with every successful act of censoring and excluding Israel critics from the public sphere.[9] My past work documenting the harms of censoring Israel-critical speech following the government's adoption of the IHRA definition has led me to regard the campaign for a government-backed definition with doubt.[10] The example of the IHRA adoption shows how government-

[8] This aspect further developments arguments first articulates in Rebecca Ruth Gould, "Is the 'Hate' in Hate Speech the 'Hate' in Hate Crime? Waldron and Dworkin on Political Legitimacy," *Jurisprudence* (2018, available through Online First at https://www.tandfonline.com/doi/full/10.1080/20403313.2018.1552468).
[9] Anshuman A. Mondal's documentation of the uneven attention given by government to antisemitic as compared to Islamophobic speech sheds light on some of these issues. See his "The shape of free speech: rethinking liberal free speech theory," *Continuum* 32.4 (2018): 503-517.
[10] Rebecca Ruth Gould, "Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech," *Law, Culture and the Humanities* Online First: https://doi.org/10.1177/1743872118780660.

sponsored censorship inevitably undermines the fight against racism, while marginalizing dissidents and further entrenching the boundaries of permissible speech.

I outline in these pages why and how such definitions pose a greater threat to civil liberties than appears at first sight, and scrutinize the (mostly unexamined) assumption that legal definitions protect the communities they are intended to benefit. I begin by discussing the problem intrinsic to defining a religious tradition as internally diverse as Islam, and consider the risk that homogenizing definitions pose to Muslims in a pluralistic society. I then turn to the anti-democratic implications of censoring speech, and examine the government's contradictory position in this regard. I conclude by suggesting more effective means through which the government can combat racism and Islamophobia, and equalize the opportunities of Muslims within Muslim-minority societies.

Among the most pressing, yet most obscured, issued in the debate around defining Islamophobia for legal purposes is how the government's "sifting of Muslims" transpires amid "a highly securitised discourse around Islam."[11] Proposals underway to adopt a government-supported definition of Islamophobia in order to facilitate the criminalisation of anti-Muslim speech risk normalizing this securitised discourse under the guise of protecting Muslims. There are many reasons to support efforts to define Islamophobia for the purpose of *critiquing* (in contrast to banning) public discourse, provided that we resist falling "in the trap of regarding Islam monolithically."[12] More dangerous and less helpful are efforts to give any such definition government backing, or otherwise aligning an adopted definition with the coercive force of the law. In using a definition of Islamophobia to facilitate the censorship of Islamophobic speech, the state would ascribe to itself the mantle of defining Islam while

[11] CAGE, "If we want to stop Islamophobia, we have to challenge the laws that enable it," https://www.cage.ngo/if-we-want-to-stop-islamophobia-we-have-to-challenge-the-laws-that-enable-it (22 November 2018).

[12] Mohammad H. Tamdgidi, "Beyond Islamophobia and Islamophilia as Western Epistemic Racisms: Revisiting Runnymede Trust's Definition in a World-History Context," *Islamophobia Studies Journal* 1.1 (2012): 76.

evading the most injurious and impactful type of Islamophobia: that fostered by the government itself, through a range of securitizing policies, most notoriously in the UK context, Prevent (legislation introduced in 2006 as part of a wider counter-terrorism strategy and updated in 2015 in section 26 of the Counter-Terrorism and Security Act). While definitions can be useful in identifying harms, when used to silence controversial speech, government-backed definition undermine democratic governance. A democratic state, I argue, must uncompromisingly uphold the citizen's free speech prerogative rather than engage in the invidious task of defining Islam. Since pluralistic democracy ought not to police the boundaries of Islam, it therefore also ought not to give its backing to any definition of Islamophobia that presupposes a definition of Islam. Instead it should actively oppose anti-Muslim racism, and refrain from targeting Muslims as racial, cultural, and religious others.

Pluralism, Free Speech, Democracy

Before arguing that a definition of Islamophobia is inconsistent with pluralistic democratic legitimacy, it is necessary to unpack these concepts. I will do so through by examining how two specific theorists—Chantal Mouffe and Eric Heinze—reconcile the mandate of free speech with liberal democracy; others could have been chosen. In her political theory of democracy, Mouffe introduces the concept of agonistic pluralism as an alternative to the liberalisms of John Rawls and Jürgen Habermas. Although pluralism is widely recognised as normative within modern political theory, this concept has a foundational status for Mouffe, who understands it is as the "defining feature of modern democracy."[13] Mouffe argues that pluralism is constitutive of the meaning of contemporary democracy. For Mouffe, a state is either plural, in the sense of being comprised of individuals with conflicting aims, background, and beliefs, and hence democratic, or it is not a democracy at all. Mouffe further rejects a model of democracy (entailed to her mind in both

[13] Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 19.

Rawlsian and Habermasian liberalism) that makes differences among citizens politically irrelevant by relegating areas of potential conflict to the "sphere of the private." Mouffe's account of democracy reinforces Rainer Bauböck's claim that "the question of who must be included as a citizen in order to achieve democratic legitimacy cannot itself be answered by democratic decision."[14] Rephrasing Bauböck, I suggest that it is not so much "democratic decision" that must be jettisoned in the delineation of citizenship as majoritarianianism, the form of mob rule known to antiquity as ochlocracy. Mouffe's concept of agonistic pluralism is both *constitutive of* democracy and *prior to* it. On Mouffe's account, a state populated by like-minded citizens who follow the same creed will be unable to sustain democratic legitimacy, even when free speech is nominally enshrined in law.

Mouffe frames her project of agonistic pluralism as radical because it questions "the objective of unanimity and homogeneity, which is always revealed as fictitious and based on acts of exclusion" (19). Yet at the same time, the pluralism Mouffe values so highly is given at least nominal recognition in generalised terms in most contemporary liberal democratic states. Few democratic theorists reject pluralism, or argue for its diminution. The major challenge within democratic political theory is to maximise pluralism without compromising state security, or citizens' right to equal representation. Although Mouffe does not single out free speech as a condition for her concept of democracy, the right to protest can be considered a subset of this right. Mouffe's concept of agonistic pluralism is premised on the availability of protest, for an agonistic public sphere requires that opposing viewpoints can be freely expressed, in public forums and through all modes of public discourse.

The link between free speech and democratic legitimacy is more forcefully outlined by legal theorist Heinze, who considers free speech to be constitutive of democracy in much

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[14] Rainer Bauböck, "Global justice, freedom of movement and democratic citizenship," *European Journal of Sociology* 50.1 (2009): 14.

the same way that Mouffe understands pluralism to be its condition of possibility. Heinze argues that the citizen's prerogative of free public expression is the only distinctively democratic value, from which all other democratic values derive, including voting rights. With respect to pluralism, Heinze notes that the "pluralist worldview… [is] a distinctive, but only recent political form on either side of the Atlantic."[15] While Mouffe and Heinze consider the forms of democracy they endorse to be emergent rather than established, both thinkers insist on the foundational status of their favoured concept, and argue that democracy cannot be conceptualised apart from it.

This analysis draws on the insights of Mouffe in regard to pluralism and Heinze in regard to free speech, while also broadening their implications. I link both approaches in an effort to develop a solid foundation for pluralist democratic legitimacy that does not use government-backed definitions of racism to censor controversial (or even racist) speech. In a society wherein everyone thinks the same way, follows the same religion, or adheres to the same ideology, free speech may have symbolic meaning, but it would lack political meaning due to the absence of public disagreement. Under such hypothetical conditions, free speech is reduced to mere instrumentality. Any state can protect free speech when all citizens agree with each other. The proposed definition of Islamophobia (and antisemitism, along with definitions of other bigotries) presents however with a radically different scenario: the ineluctable difference, that cannot rationalized away through enlightened deliberation. Although it poses greater challenges the more diverse society becomes, a state's ability to uphold free speech *in a pluralistic context* is itself an indicator of its democratic legitimacy. A state acquires democratic legitimacy by maximizing the scope for political difference through fostering pluralist norms. Such a state will also permit forms of public discourse that challenge the existence and legitimacy of the state.

[15] Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford: Oxford University Press, 2016), 186.

Hateful speech (more commonly called “hate speech”) has increasingly become a battleground for democratic legitimacy in pluralistic societies.[16] The harms caused by such speech have often been used to justify the suppression of controversial or offensive speech. Adapting and broadening the frameworks offered by Mouffe and Heinze, I here examine hateful speech pertaining to Muslims and involving stereotypes of Islam in an effort to scrutinize the implications for democratic legitimacy of legally suppressing such speech. While hateful speech is generally adjudicated in the abstract, anti-Muslim racism has a unique place in the hate speech debate, due to its unfortunate ubiquity across Europe, North America, and Oceania. However the question is examined, the role of the state should not be ignored. Whether or not we adopt the premises of Mouffe and Heinze, their shared focus on the relevance of agonistic deliberation to constituting democracy offers a means of reconceptualising free speech such that its exercise promotes rather than suppresses minority rights.

Defining and Countering Hateful Speech

Is defining racism effective in countering hateful speech? Central to the function of definitions is boundary creation, the policing of the borders of what is and is not permissible and the exclusion of that which is deemed impermissible. Inevitably, government sponsored definitions will silence those who disagree with its mandates. The question then to pose is to what extent does this inhibit democratic deliberation, and what level of inhibition is tolerable in a democracy? The political turbulence attending the adoption of an earlier definition of antisemitism, which has been used repeatedly to silence contrary views rather than to engage with or rebut them, illustrates in amplitude the dangers of government-backed definitions.

[16] As noted by Katherine Gelber, the use of “hate” to index hate speech is problematic because “it implies that the defining feature of hate speech is virulent dislike of a person for any reason” (“Hate Speech—Definitions and Empirical Evidence,” *Constitutional Commentary* 32 [2017]: 627). Gelber elsewhere notes that “the use of the term ‘hate’ to categorise ‘hate speech’…implies that any expression of antipathy or dislike towards any target is substantively the core of the phenomenon” (“Incitement to Hatred,” 31). I take these reservations further by forming a copula that ensures that “hate” is not treated separately from “speech.”

On 12 December 2016, the UK became the one of the first governments in the world to formally adopt a controversial definition of antisemitism proposed by the International Holocaust Remembrance Alliance (IHRA), an intergovernmental body founded in 1998 to "strengthen, advance, and promote Holocaust education, remembrance, and research worldwide."[17] Neither the definition nor the process of its adoption were subjected to parliamentary scrutiny (arguably among the most important criteria for democratic legitimacy). Along with the definition's contentious content, these procedural failures have contributed to numerous ongoing violations of freedom of expression. The cancellation of events seen as potentially offensive to supporters of Israel, inquiries into controversial social media postings, and censoring of publications by academics on the topic of Israel/Palestine are just some of the more measurable ways in which the debate around Israeli policies has been constrained by the definition.[18] Amid these censorious acts, few voices have spoken out in defence of freedom of expression. Most institutions and most individuals in positions of authority have not hesitated to compromise on free speech when under pressure to conform to the government's (convoluted) policy.

Among the problematic aspects of the IHRA definition is its presumptive stigmatization of views on Israel that are not necessarily motivated by racial animus. Marked by a clear political slant, the definition in effect excludes many Jewish points of view, especially those are distant from Zionism. While many critiques of this definition have been advanced, one lesson we can take from this example while deliberating on a definition of Islamophobia is that the flaws identified in connection with the IHRA definition are intrinsic to any group-specific definition of racism. Such definitions are useful only when they focus

[17] This description is taken from the IHRA website: https://www.holocaustremembrance.com/ (accessed June 14, 2019).

[18] The fullest legal engagement with this document to date has been Hugh Tomlinson QC, "In the Matter of the Adoption and Potential Application of the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism" (http://freespeechonisrael.org.uk/ihra-opinion/). Also see Sir Stephen Sedley, "Defining Anti-Semitism," *London Review of Books* 39.9.4 (2017): 8.

on the systematic structures and social norms within which such bigotry is normalised. Dismantling the processes through which racial and religious hatred is constituted will neutralize the power of prejudice more effectively than any act of legal banning can achieve.

Having examined the politics of definitions from the point of view of their implications for democratic governance, I will now turn to an immanent critique of recent mobilizations for a definition of Islamophobia, that is informed by the history of Muslim integration into Muslim-minority societies. Muslim scholars such as Abdullahi Ahmad An-Na'im have argued that the very idea of an Islamic state is a contradiction in terms, because the Islamic understanding of the state cannot be assimilated into modern bureaucratic structures.[19] Legal scholar Wael Hallaq has developed this argument further. Hallaq criticizes the projection of the nation-state onto scholarship on classical Islamic political formations. In Hallaq's view, "any conception of a modern Islamic state is inherently self-contradictory."[20]

Na'im's argument has helped scholars challenge the Islamic postures adopted by regimes such as Saudi Arabia and Iran, which commit human rights violations while claiming an Islamic identity. Hallaq's argument concerning the impossibility of achieving Islamic governance is made explicitly with reference to modern theories of the state. In Hallaq's view, "modern forms of globalization and the position of the state in the ever increasing intensity of these forms are sufficient to render any brand of Islamic governance either impossible or, if possible, incapable of survival in the long run."[21] While the relevance of these arguments for Islamic political theory has been recognized, less attention has been given to how the impossibility of Islamic governance pertains to the internal logic of secular European states seeking to represent the political prerogatives of their Muslim citizens.

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[19] Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shariʿa* (Cambridge: Harvard University Press, 2012). An-Na'im's argument is also developed in his Carl Heinrich Becker Lecture, *Shari'a and the Secular State in the Middle East and Europe* (Berlin: Fritz Thyssen Stiftung, 2009).
[20] Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), xi.
[21] Hallaq, *The Impossible State*, xiii.

Hallaq maintains that "for Muslims today to seek the adoption of the modern state system of separation of powers is to bargain for a deal inferior to the one they secured for themselves over the centuries of their history" (72). In contrast to the *sharīʿa* in its historical meaning, which "was not designed to—serve the ruler or any form of political power," the modern state can only serve itself (72). Hallaq recognises contemporary nation-based sovereignty as a state's primary mechanism of self-preservation, and by implication, the means through which it surveils its citizens.

Democratic legitimacy requires that all citizens are represented in law-making. It entails, above all, consent, however mediated. For a government act to be legitimate, there must be a plausible basis for assuming that the procedure from which the action arises was consented to by those most directly affected by it, and that they have opportunities to meaningfully contest the laws they are expected to obey.[22] A proposed governmental definition of Islamophobia would need to be able to reasonably claim to represent *all* Muslim citizens. The constitution of the modern pluralist state makes such representation impossible. In consequence, any governmental definition of Islam (or of Islamophobia) would be illegitimate because the criteria imposed by representation and consent in order to attain to legitimacy are impossible to satisfy in a pluralistic state.

In *Islamophobia Defined*, the APPG on British Muslims advocated for a government-backed definition on the grounds that "Adopting a definition of Islamophobia not only identifies a widespread phenomenon, but sends a positive message to all those communities and individuals who suffer from it" (32). Given the report's call for "legally binding definition," it appears that the benefits of "sending a positive message," and "identifying a

[22] For one statement of this position from a free speech perspective see James Weinstein, "Hate Speech Bans, Democracy, and Political Legitimacy," *Constitutional Commentary* 32 (2017): 527-583.

widespread phenomenon" were deemed to outweigh the dangers noted here.[23] Yet the report does not consider how, in defining a group as vulnerable, and in enshrining that group's characteristics in law, the state further increases that group's vulnerability by placing it under more extensive surveillance.

Not all Muslim groups in the UK have welcomed the reification entailed in a governmental definition. Among the most outspoken and articulate of these groups is CAGE, a group that describes itself as "an independent advocacy organisation working to empower communities impacted by the War on Terror."[24] In responding to the APPG's call for evidence, CAGE argued that that the government's use of counterinsurgency methods and tactics to treat the "wider [Muslim] population as an enabler and supporter of insurgency and terrorism" illustrates how "institutionalised Islamophobia is linked to the erosion of the rule of law."[25] Overall, CAGE's substantive and detailed response to the call for evidence effectively exposes the "strong stench of Islamophobia" of British government policies relative to Muslims.[26]

In their response to the APPG report, CAGE noted how the 'War on Terror' has ushered in "a raft of counter-terrorism legislation…and policies such as PREVENT, which reinforce securitised narratives about Islam, and compel public sector workers to implement a discriminatory approach to Muslims, which has seen children as young as four criminalised."[27] From the viewpoint of CAGE, governmental efforts to define Islamophobia are best treated with scepticism so long as the more basic structural phobias introduced by the War on Terror remain unaddressed. As Asim Qureshi, Research Director of CAGE, stated in

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[23] The call for a "legally binding definition" is repeated on pp 17, 30, 32, 35, 42, and 43, although the precise type of legal obligation envisioned is never reflected on.
[24] CAGE website (last accessed June 14, 2019).
[25] "CAGE response to a Call for Evidence on a Working Definition of Islamophobia/Anti-Muslim Hatred," p. 9 (last accessed June 14, 2019)
[26] "CAGE response," p. 9.
[27] CAGE, "If we want June 14, 2019 to challenge the laws that enable it."

a cautious statement released in response to the APPG on British Muslims Islamophobia report: “If the definition of Islamophobia cannot hold those in power to account for their role in manufacturing Islamophobia, then it is inadequate.”[28] Unsurprisingly, although CAGE did submit written evidence to the Islamophobia inquiry, their evidence was not engaged with or referenced in the report itself.

Any assessment of democratic legitimacy must consider how government involvement affects those on the margins of the protected group as well as those within that group’s mainstream. We should also ask whether all members of the protected group can reasonably—even if only symbolically—be understood to have consented to be defined in the way presupposed within the definition. Race and gender-based discrimination are readily identifiable on grounds that are relatively (if not absolutely) easy to specify. Hateful discourse that targets more amorphously constituted groups, for which membership is determined by a system of beliefs, pose greater challenges to the state’s aspiration to democratic legitimacy. A pluralistic democracy must oppose, but it must also avoid censoring, purely discursive speech.

Legal theorist Ronald Dworkin helpfully distinguishes between downstream laws, that target hate crimes, and upstream laws, that target hate speech.[29] Jeremy Waldron further develops this distinction, while drawing a conclusion the opposite of my own as regards hate speech. While downstream laws in Dworkin’s formulation are “enacted” by the political process, upstream laws “affect” the political process.[30] Were the proposed governmental definition of Islamophobia to be ratified as law (as the APPG report advocates), it would

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[28] CAGE, “Discussions around the definitions of Islamophobia skirt the real issues we need to address,” https://www.cage.ngo/discussions-around-the-definitions-of-islamophobia-skirt-the-real-issues-we-need-to-address (29 November 2018).

[29] Ronald Dworkin, ‘Foreword’ in I. Hare and J. Weinstein (eds.), *Extreme Speech and Democracy* (Oxford: OUP, 2009) v-ix. For a more extended discussion of this distinction as it relates to hate crime and hate speech, see Gould, “Is the ‘Hate’ in Hate Speech the ‘Hate’ in Hate Crime?”

[30] Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012).

necessarily be in the form of an upstream law that, in the words of Jeremy Weinstein, could "potentially annihilate the legitimacy of downstream antidiscrimination laws."[31] As such, identitarian group-based definitions of racism pose unique challenges to most accounts of pluralistic democratic representation.

Although they differ both as regards their internal logic and substantive content, both the definition of Islamophobia that has been recommended for adoption and the adopted definition of antisemitism share in common a classification that is both excessively broad (in that they extend to ideational characteristics, belief systems, and political alliances) and excessively narrow (in that they exclude members of the community whose views may not match up with the definition). Democratic legitimacy is violated in both respects.

Chris Allen, a scholar of hate studies who has written prolifically on Islamophobia, and who served as a member of an earlier iteration of the APPG, the cross-government Anti-Muslim Hatred Working Group, has proposed to define Islamophobia as an ideology "similar in theory, function and purpose to racism."[32] Like CAGE, Beydoun recognizes the role of government policies in fostering Islamophobia, and even incorporates governmental complicity into his definition of Islamophobia as "rooted in understandings of Islam as civilization's antithesis and perpetuated by government structures and private citizens."[33] Beydoun also goes beyond his British counterparts in examining the intersection of Islamophobia and the War on Terror.[34] However, Beydoun's contribution to the definition of Islamophobia is also constrained by his failure to address the issue of free speech directly, by a conflation of the attitudinal ("Islam as civilization's antithesis") with the infrastructural

[31] James Weinstein, "Hate Speech Bans," 532. Given that pluralism is as foundational for democracy as the citizen's prerogative of dissent, I don't follow Weinstein in making the legitimacy of antidiscrimination laws *conditional* on the absence of speech regulation. I do however agree that the undemocratic implementation of upstream laws potentially impugn the legitimacy of downstream laws.
[32] Allen, *Islamophobia*, 190.
[33] Beydoun, "Islamophobia: Towards a Legal Definition," 111.
[34] See chapter 4 of Beydoun, *American Islamophobia*: "War on Terror, War on Muslims" (92-124).

("government structures"), and by an inadequate contextualization of Islamophobia within a more structural account of anti-Muslim racism.

Having discussed the proposed governmental definition of Islamophobia from the standpoint of democratic legitimacy, the second half of this article will develop an epistemological account of the limitations of all governmental definitions of group-specific bigotry. Definitions developed by believers to describe and define themselves are *intrinsic*. They acquire legitimacy simply through usage. Governmental definition ought to be subject to different criteria. They are *extrinsic*, and factor in what it means to define others in a certain way for others. The legitimacy of extrinsic definitions, by contrast with intrinsic ones, is undermined when they infringe on the rights of others. Every believer is entitled to define themselves and their religion as they see fit; occasionally, a pluralist state must define religious communities for instrumental ends. The two types of definitions should not be conflated. Because there can be no transhistorically valid extrinsic definition of a religion, it follows that there can be no transhistorically valid extrinsic definition of animosity towards specific religious communities. Within the pluralistic democratic state, legal definitions of religion (like those of ideologies that oppose them) will always carry significant risks and potentially negative consequences, for adherents of those religions, particularly on its fringes, or whose affiliation is otherwise a matter of contestation.

As the APPG Islamophobia report illustrates, the exclusivity of group-specific definitions is further exacerbated when the government becomes involved. The number of Muslim groups excluded through this report is striking, as is the negative pressure faced by APPG members in prior years for associating with Muslim groups deemed to lie beyond the pale of mainstream Islam. At one point in her advocacy on this issue, the MP and co-author of the Islamophobia report, Anna Soubry cut her ties with with Muslim Engagement and Development (MEND), a group whose primary mission relates to Islamophobia, because, as

she explained to the press, it did not "have the best of reputations."[35] Such media-driven exclusions reveal structural problems of representation within the law as well as within democracy. While any definition of racism may have heuristic value by encouraging or stigmatising certain discursive norms, when used as instruments of coercion, and aligned with the force of the law, group-specific definitions of racism may inhibit the development of an egalitarian ethos in relation to the groups targeted for protection.

Definitions erect borders around concepts that otherwise overlap. While the borders they create impart cognitive coherence, the identities they capture undergo simplification when they are constrained to fit narrow definitions. Religions in particular confound most reasonable attempts at definition. This point is borne out through the examples of efforts to define the three major Abrahamic religions: Judaism, Christianity, and Islam. Each admits of such diversity in doctrinal and other realms, that all efforts at definition are bound to be contested, by gatekeepers as well as by dissenters. Historically, monotheistic religions have often embraced exclusive definitions, but pluralist states cannot gain by such border policing of identities. While *aspects* of each of these religions can be captured within the pluralist state, the selection process—which considers some characteristics more relevant than others, and defines groups according to these values—is necessarily hierarchical, political, and affected by bias.

From a pluralistic and democratic perspectives, religions can be *thickly characterised*; they cannot be comprehensively defined. To the extent that we undertake to define a religion by contrasting it with what it is not, we are engaging in theology, not legal or political reason. No extrinsic verbal formulation—whether a simple sentence or a book-length report—can

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[35] Quoted in Iram Ramzan and Andrew Gilligan, "MPs ditch meeting with Muslim group Mend over Islamist claims," *The Times* (29 October 2017). Further background details are given in a report by the Henry Jackson Society which has the clear aim of discrediting MEND: Tom Wilson, *Mend: "Islamists Masquerading as Civil Libertarians* http://henryjacksonsociety.org/wp-content/uploads/2017/10/HJS-Mend-Report.pdf (accessed 14 June, 2019).

definitively capture what it means to identify as Jewish, Christian, or Muslim (or to belong to any other religion). In each case, the range of valid meanings exceeds the scope of any definition. We might therefore more usefully aim for what Clifford Geertz has described as "thick description" in the context of ethnographic fieldwork than aspire to generate finalizing definition for legal ends.[36]

While individuals may align with specific political ideologies, the ascription of a religion to an individual automatically fixes our sense of the communities to which they belong, the identities to which they can lay claim, and the activities they may engage in. Religions may well seek self-definition, and believers may seek definitions for the purposes of clarifying their faith. No pluralist state, however, can define religions for everyone, for legal ends, without undermining its democratic legitimacy. It may be objected that a range of pluralist non-Western states, including a range of Islamic empires, did formalize definitions of the religions that operated within their polity (for example through the Ottoman concept of *millet*, or the broader Islamic concept of *dhimma*). Notably however, such restrictive definitions were confined to minority religious, not to Islam; their net effect was to reify the communities under consideration, and if the negative consequences of such reification were not always in evidence, they remained a perpetual possibility and a source of anxiety. Also worth noting is how this definitional framework created a basis for discrimination against non-Islamic religions, which was then as now was justified under the rubric of "protection."

From the premise that a pluralist democracy cannot definitively define religions, it follows that bigotry against a specific religion cannot be defined for legal purposes. Bigotry should be identified and criminalized for legal purposes in connection with hate crime

[36] Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973) 3-30.

legislation.[37] But when bigotry is expressed discursively, because it is grounded in racist stereotypes and relies on fictions concerning of the object of contempt, any justification for its censorship is inherently subjective. The specific content of bigotry's fabrication is incidental to its definition; if it conforms to an identifiable pattern that is both predictable and devoid of evidence, it is reasonable to describe that attitude as bigoted, regardless of the object of its animus, or the bigotry's content. The foregoing counters a tendency to focus on the victim of bigotry by relocating the source of the prejudice in the bigot. Certain forms of identity politics, for example, fall into the trap of reifying the bigotry to which minorities are subject, rather than exposing its disconnect from reality. By permitting hateful speech that is not directly linked to conduct, a pluralistic democracy can reveal that bigoted discourse is disconnected from reality, and thereby sever any perceived link with the ostensible target of animus.

The above pertains to bigotry against people perceived to belong to certain races. But what of hostility towards religions? We can arrive at a plausible definition of such hostility only through a workable and widely-accepted definition of what Islam (or Judaism or Christianity) is. Here the problems begin. For a pluralistic democracy cannot define a religion. Yet any definition of Islamophobia presupposes a definition of Islam. While believers may define these concepts in the ways that make the most sense to them, the moment the state becomes involved in mandating or even preferring certain definitions over others is the moment when a government-backed definition of Islamophobia begins to pose a threat, not only to free speech, but also to what it means to be Muslim within that given state. Here we see how free speech violations threaten pluralistic legitimacy and vice-versa. Such manoeuvrings limit the autonomy of individual Muslims, particularly in Muslim-minority

[37] For a discussion of how hate crime legislation can be used to oppose anti-Muslim racism, see Jason A. Abel, "Americans under Attack: The Need for Federal Hate Crime Legislation in Light of Post-September 11 Attacks on Arab Americans and Muslims," *Asian Law Journal* 12 (2005): 41-66.

societies such as the UK, to define Islam for themselves and on their own terms. They also compel such individuals to align with specific Muslim groups and specific versions of Islam.

Regulating Islam

In order to illustrate how a definition of Islamophobia could be harmful to Muslims, I will examine the recent history of governmental efforts to counter Islamophobia within the UK. The APPG on British Muslims was formed in July 2017, with the aim of informing "Parliament and parliamentarians of…the aspirations and challenges of British Muslim communities" and of investigating "the forms, manifestations and extent of prejudice, discrimination and hatred against Muslims in the UK."[38] Although the APPG is not solely focused on defining Islamophobia, this appears to be a large part of its mandate. This group has been haunted by definitional ambiguity from its inception. Following public pressure, six MPs affiliated with the APPG abruptly cancelled their plans to attend an Islamophobia Awareness event sponsored by MEND on that grounds that, as quoted above, the group did not "have the best of reputations."[39] An earlier APPG on Islamophobia was also derailed due to their affiliation with this same group (when it was called iENGAGE).[40]

The basis for the MP's recusal remains obscure and therefore difficult to assess. News reports suggest that it was linked to a report by the Henry Jackson Society (HJS) entitled *MEND: "Islamists Masquerading as Civil Libertarians.*" According to HJS, this report argues that "MEND meets the Government's own definition of extremism–even while local authorities, police, teachers and MPs have been working with the organisation." According to the report, which is unsurprisingly hostile towards its subject, "Mend and its employees and

[38] "Register of All-Party Parliamentary Groups [as at 28 September 2017]" https://publications.parliament.uk/pa/cm/cmallparty/170928/british-muslims.htm.
[39] For a detailed account see Chris Allen, "A Momentous Occasion: A report on the All Party Parliamentary Group on Islamophobia and its Secretariat," available at: http://conservativehome.blogs.com/files/appgislamophobia-allen-2011-2.pdf . Allen's prolific work on Islamophobia is summarized in his Islamophobia, with a discussion of the definition on pp. 187-192.

volunteers have on numerous occasions attacked *liberal* Muslim groups and *Muslims engaged in counter-extremism*, and on occasion, Mend volunteers have expressed *intolerance* towards other Muslim denominations" (emphasis added).[41] The phrases highlighted here reveal a pronounced tendency to police the boundaries of Islam, such that only "liberal" Muslim groups which reject "intolerance" and support "counter-extremism" are deemed worthy of inclusion within British society. Pluralistic democratic legitimacy requires a much more inclusive approach than that proposed by HJS and apparently internalised by the APPG on British Muslims. A pluralistic democracy will necessarily include among its members individuals who are neither liberal nor tolerant, yet whose speech is as deserving of protection as anyone else.

The internal differences given in the HJS report as a reason for the government to distance itself from MEND are, according to the argument made here, precisely why a democratic state should refraining from endorsing any definition of Islamophobia that would legitimate one specific Muslim group while delegitimizing others. Within a pluralist democracy, the authority to address internal differences within Islam is best left to Muslims themselves. A government that intervenes in such affairs, by refusing to align with certain groups due to their reputations, is, according to this standard, made less democratic by virtue of such intervention. The government's adoption of the IHRA definition of antisemitism provides ample evidence concerning how government involvement in defining prejudice against a religious community can work to that community's detriment. Many Jewish organisations and Jewish individuals have voiced their opposition to the definition, even as

[41] Tom Wilson, *MEND: "Islamists Masquerading as Civil Libertarians*" (London: Henry Jackson Society, 2017), 81.

their objections have gone ignored, by the conservative-leaning Board of Jewish Deputies which spearheaded the IHRA adoption and, following their lead, the government itself.[42]

Whatever their purportedly extremist views, MEND has a legitimate place within the Muslim community. To prefer a "liberal" Muslim group over a group guilty of "intolerance" (to borrow the language of the HJS report) is to propagate a "good" versus "bad" Muslim paradigm that further entrenches the securitization matrix which is implicated in the production of Islamophobia.[43] Private groups are entitled to divide Islam in this way, just as other groups and individuals are entitled to disagree with such divisions, but a pluralistic government has no such entitlement. The APPG report itself curiously evades any serious discussion of sectarianism within Islam, and simply asserts that "it would be misleading to interpret Islamophobia as a tool that can capture, together with the issues of racialisation, issues of sectarianism" (41). This caveat is untenable, however, because once Islam is defined by a definition of Islamophobia, sectarian divisions inevitably follow. Given her role within the APPG, Soubry's decision to sever ties with MEND can reasonably be interpreted as a sectarian gesture, however it was intended. Soubry is certainly within her rights as a private citizen to decide which Muslim groups to affiliate with or distance herself from, just as HJS is legally permitted to publicly denounce MEND within a pluralistic democracy. But when the state chooses sides, as any definition of Islam or Islamophobia would compel it to do, it also necessarily excludes many Muslims.

Beyond what it reveals concerning alliances between government and certain special groups (in this case with HJS and against MEND), this exclusion illustrates broader dynamics. The problem here is not rooted in the specific groups that a state aligns with or disavows; rather it is tied to the very principle of selectivity from the point of view of

[42] At least three UK Jewish groups have been outspoken in their opposition to the IHRA definition: Free Speech on Israel, the Jewish Socialists Group, and Jewdas.

[43] For further on this pattern within Islamophobic thought, see Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (New York: Pantheon, 2005).

pluralistic democratic legitimacy. A democracy that endorses freedom of expression and which supports Islam in terms appropriate for a pluralistic state must refrain from elevating certain types of Islam over others. Contrary to then-Prime Minister David Cameron's insistence that the government would "actively encourage the reforming and moderate Muslim voices,"[44] within British society while refusing to engage with "extremist groups and individuals," a pluralistic democracy must not simply cater to liberal Islam, or to Islam that avoids extremism and reflects British values. Viewpoint-punitive expression on the part of the government constrains the scope of Islam rather than allowing it to flourish on its own terms, as a pluralistic democracy would do. While government neutrality on all issues is neither possible nor desirable, liberal democracies have a long-standing tradition of insisting on government neutrality towards religion.

Two approaches are inevitably brought into conflict by the UK governmental efforts to regulate and protect Islam. In the first instance, the state endorses certain kinds of Islam over others in an effort to assimilate Islam to British cultural norms, and to continue the War on Terror. The APPG report on Islamophobia declares its support for this agenda specifically in regard to the curtailment of the citizen's prerogative of free expression when it states that "qualifications to the exercise of free speech abound…for example, in counter-terrorism legislation, including statements that encourage, either intentionally or recklessly, the commission of terrorist acts and which 'glorify' acts of terrorism" (37). In the second instance, the British state claims to protect Muslims whom it surveils by proposing to criminalise Islamophobia, notwithstanding its substantial contributions to this form of bigotry. While CAGE's public statements cited above have exposed the government's contradictory stance, academic specialists of Islamophobia have had curiously little to say

[44] A transcript of this speech, delivered in Birmingham prior to the government's introduction of enhanced Prevent legislation, is available at: https://www.independent.co.uk/news/uk/politics/david-cameron-extremism-speech-read-the-transcript-in-full-10401948.html.

concerning the hypocrisy of liberal states that claim to protect Islam while also criminalising its departures from liberal norms on the grounds of securitization. The tension between these two views is evident in Soubry's call for a definition of Islamophobia, as well as in the stances of Muslim organizations, including the Muslim Council of Britain, asking the government to formally endorse definitions that stigmatize certain Muslims.

A definitional framework leads us to focus on Islam as a religion, when it would be more productive to focus on anti-Muslim racism (in the case of discrimination) and anti-Muslim violence (in the case of hate crimes) and on neutralizing the discursive and material power of such expressions of bigotry. The definitional framework situates the legal system within a victim-blaming epistemology, whereby any offense against a religious community is turned into an occasion for scrutinizing this community, even in the name of its protection. When engaged in by sympathetic politicians, the scrutiny may appear favourable and intended to reinforce Islam's positive qualities. It is would be a mistake however to take comfort in the simulated benevolence of the neo-liberal state. Even David Cameron had positive words for Islam in his paternalistic 2015 speech on extremism that set the stage for future government policy on British Muslims, including Prevent. As I have argued here, regardless of how such a rapprochement might appear to support the integration of Muslims into European societies, it can be harmful to Muslims minorities in the long run, particularly when the same agencies mandated protect to Islam disproportionately surveil Muslims, even while relating to Islam as to a religion they must protect.

Making Islamophobia Attractive

Having discussed how a governmental definition of Islamophobia might compromise democratic legitimacy, I now turn to considering how the potential harms of hate speech regulations in relation to efforts to challenge and oppose racism. An article published in the Canadian magazine *Maclean's* under the title "The Future Belongs to Islam" (2006) offers a

case in point.[45] This article became the subject of a complaint to the Canadian Human Rights Commission (CHRC) filed by the Canadian Islamic Congress (CIC). "The Future Belongs to Islam" made a series of provocative claims that, in the words of the CHRC, were "obviously calculated to excite discussion and even offend certain readers, Muslim and non-Muslim alike."[46] More disturbing than the article, however, is the complaint against it, which qualifies the complainant as someone who is empowered to complain "on behalf of all Muslim residents of British Columbia," notwithstanding that, as founder of the Canadian Islamic Congress, he has no such representative status according to any Islamic institution or tradition.[47] Lacking any clear community mandate, the CIC was dissolved in 2014, yet it presented itself to the CHRC as the rightful representative of all Muslims.

As among British Muslims, where, in the words of Kenan Malik, "what is deemed an 'offence to a community' refers in reality to debates within communities," this case exemplifies the basic challenge of communal representation in the democratic pluralist state.[48] No individual Muslim can legitimately complain "on behalf of all Muslim residents," any more than can individual Christians or Jews, or women or men, complain on behalf of the communities to which their identities are attached. In fact, Islam as a religious system provides even less support for identitarian-based understandings of representation due to its lack of a priesthood or clerical class, less alone a pope licensed to speak *ex cathedra*. The fact that, in order to exonerate the *Maclean's* article, the CHRC had to determine that "the views expressed…when considered as a whole and in context, are not of an extreme nature, as

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[45] Mark Steyn, "The future belongs to Islam" (20 October 2006), available at: https://www.macleans.ca/culture/the-future-belongs-to-islam/ (accessed June 14 2019).
[46] Available at the website of the Canadian Media Lawyers Association: http://www.adidem.org/images/1/15/Habib_v._Roger%27s_Publishing_Ltd_and_Macqueen%2C_Canadian_HRC_Descision.pdf (accessed May 15, 2019).
[47] Elmasry and Habib v. Roger's Publishing and MacQueen (No. 4), 2008 BCHRT 378, at ii and 1. Available at the website of the British Columbia Civil Liberties Association http://bccla.org/wp-content/uploads/2012/03/2008-BCCLA-Argument-Elmasry-Decision.pdf (accessed June 14, 2019).
[48] Kenan Malik, "Fear, indifference and engagement: Rethinking the challenge of anti-Muslim bigotry," *Islamophobia, Still a challenge for us all*, Farah Elahi and Omar Khan, eds. (London: Runnymede Trust, 2017), 74.

defined by the Supreme Court" in itself testifies to the compromises with democratic legitimacy entailed in Canadian hate speech legislation. Although on this occasion it chose to uphold the citizen's prerogative of free expression, the CHRC's reasoning and procedures remain problematic. Far from protecting controversial speech, this precedent creates a legal justification for future attempts to censor materials deemed to be "of an extreme nature," and additionally resonates with the UK's subsequent approach to policing forms of Islam deemed to be "extremist" from the point of view of the counter-terrorism matrix.

Although the CHRC ultimately ruled against the complainer, damage was done to the cause not only of freedom of expression but also to the freedom to practice religion. It is difficult to demonstrate harm in the case of suppression of speech because the damage in question is rarely materially evidenced. Yet, it is clear that the CIC might instead have concentrated their legal advocacy work on the actual disenfranchisement of Muslims, and on their persecution by government agencies and the security state brought about by the transnational War on Terror. Such cases of misdirected advocacy in the name of protecting Islam suggest that the mobilization by some Muslim organizations in favour of governmental definitions of Islamophobia is in fact an admission of weakness and an endorsement of Muslims' subordinate status within the pluralist state.

Muslim organizations that promote the criminalization of hateful Islamophobic speech often do this as part of a trade-off that involves ignoring the harms done to Muslims citizens by the War on Terror. They are willing to tacitly permit surveillance by the government in exchange for the government's agreement to penalize those who make statements deemed offensive to Islam. Such a trade-off is undemocratic, as well as a dangerous bargain from a Muslim point of view, which may well undermine their security over the long term. Ironically, it calls to mind the management of religious minorities in early Islamic empires, wherein non-Muslims (Christians, Jews, Zoroastrians) were granted limited

rights so long as they agreed to follow restrictive behavioural and dress codes, and to refrain from blaspheming Islam. In a more contemporary context, the impulse to define religious difference calls to mind Kenan Malik's characterisation of the neoliberal state as one that manages diversity by "putting individuals from minority communities into particular ethnic and cultural boxes, defining needs and aspirations by virtue of the boxes into which people are put, and allowing the boxes to shape public policy."[49] The proposed governmental definition of Islamophobia is the most recent expression of this mode of public policymaking. Muslim organizations that concentrate their advocacy efforts on persuading the government to censor Islamophobic speech necessarily surrender their democratic rights as citizens in exchange for neoliberal protections.

Conflating Terrorism and Hateful Speech

The strongest argument against a governmental definition of Islamophobia lies with the government itself. UK government policy and legislation in relation to Muslims conflates religious incitement with the propagation of hate speech. The Racial and Religious Hatred Act of 2006 (henceforth RRHA), drawn up shortly after the London bombings of July 2005, exemplifies such conflation. "A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred,"[50] the legislation reads. With such a formulation, the legislation defines "religious hatred" as a form of expression that is subject to criminal sanctions.[51] Among the side-effects of this conflation is a focus on (Islamist) terrorism (the backdrop against which RRHA was created) as an ideology, rather than as a mode of violence, and an assumption that the best way of

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[50] Taken from the section "Hatred against persons on religious grounds"; available at: https://www.legislation.gov.uk/ukpga/2006/1/schedule/data.xht?view=snippet&wrap=true .

[51] This provision is discussed and critiqued in S. Chehani Ekaratne, "Redundant Restriction: The U.K.'s Offense of Glorifying Terrorism," *Harvard Human Rights Journal* 23 (2010): 212, and Gelber, "Incitement to Hatred and Countering Terrorism: Policy Confusion in the UK and Australia," *Parliamentary Affairs* 71 (2018): 33-34.

combating it is to wage ideological warfare on certain varieties of Islam. Human rights advocates have criticized this ideological turn, with Conor Gearty noting that the "evolution of the term 'terrorism' from describing a kind of violence to a morally loaded condemnation of the actions of subversive groups regardless of the context of their actions—or even sometimes their non-violent nature….is a movement in language that operates wholly in favour of state authorities."[52] Government efforts to broaden the meaning of terrorism are related to its efforts to broaden the meaning of Islamophobia. In both cases, broadening the definition extends the remit of the state and enhances its coercive powers.

While the association between terrorism and Islam is widespread among the public and is also evidenced in media coverage, most problematically from the point of view of democratic legitimacy, it is also entailed in the RRHA. Without naming Islam, the legislation criminalises the propagation of religious hatred on the grounds of its association with incitement to violence. This association recalls the guidelines drafted by the government to assist in the implementation of Prevent. One formula that features in such guidance runs as follows: "non-violent extremism…can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit."[53] Another Prevent guidance document notes this change in policy, while repeating the same formula: "the Prevent strategy was explicitly changed in 2011 to deal with all forms of terrorism and with non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit."[54] In both the RRHA and the Prevent guidelines, the definition of dangerous discourse is purposively extended to cover a wide range of perspectives, and to encompass views which are not *prima facie* supportive of violence. So long as they fall under the rubric

[52] Conor Gearty, "Human rights in an age of counter terrorism," *War on terror: The Oxford Amnesty Lectures*, ed. Chris Miller (Oxford: Oxford University Press, 2013), 85.
[53] "Prevent duty guidance" 6, available online at: http://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf .
[54] This specific formulation is scrutinized in Conor Gearty, *On Fantasy Island: Britain, Europe, and Human Rights* (Oxford: Oxford University Press, 2016), 206.

of "extremist," such views, according to this government policy, can be appropriately sanctioned and suppressed. Of course, views are not "extremist" in the abstract; they necessarily have substantive content. In the understanding of the government as well as in the popular imagination, the substantive content of extremism overlaps with Islam.

Aware perhaps that "extremism" may seem impossibly vague, the government has (predictably) offered a definition. According to the Prevent duty guidance, 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."[55] Echoing Cameron's 2015 speech, this definition blurs analytically distinct boundaries while nationalizing ideological warfare as the defence of "British values." What if British values were also shown to include racism, contempt for the poor, colonialism, homophobia, and sexism? Generations of scholarship support such characterizations, even though these flaws are not uniquely British. Is the scholarship on British colonialism, austerity, homophobia and misogyny "extremist"? Why assume without demonstration that "British values" include "mutual respect and tolerance of different faiths and beliefs"?[56] Worst of all, why embed such loaded language in legislation? The government's definition of extremism leaves these questions unresolved, resulting in the appearance of a state that is concerned above all to pretext the status quo, even at the cost of extending equality to all citizens.

Further contributing to an impression of double standards in regards to Muslims, the section of the RRHA that protects freedom of expression focuses on the protection of anti-Islamic sentiment without extending comparable protections to the expression of non-violent Islamic belief. In terms that, considered in the context of the War on Terror, clearly evoke (and render immune from prosecution) criticism of Islam, the legislation stipulates:

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[55] "Prevent duty guidance," 6.

[56] This dimension of the legislation is critiqued in Suke Wolton, "The contradiction in the Prevent Duty: Democracy vs 'British values'," *Education, Citizenship and Social Justice* 12.2 (2017): 123-142.

> Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

By contrast, no provision within the RRHA protects Islam from being vilified through its association with violent incitement and hate speech. This would appear to be a textbook case of prejudice inscribed within the law, since the free expression of anti-Muslim sentiment is protected by this legislation, which has as its primary purpose the censorship of hateful speech that speaks in the name of religion, and which the government has already associated with Islamic discourse. No explanation is given for why hateful speech should be further criminalised on the grounds of its religious content, or why Islamic discourse is perceived as more dangerous than white supremacist bigotry.

It can be argued that, far from countering Islamophobic prejudice, such confusing provisions within the RRHA legitimate passive racism. Equally, it is at least arguable that the claims made in the Prevent guidance concerning "British values" stem from nationalist prejudice regarding the superiority of British culture to other cultures that is itself generative of bigotry. What if "Islamic values" were demonstrably shown to represent an improvement over "British values"? Once again, generations of scholarship can be drawn on in support of such a view. Would such a position be deemed "extremist"? Why should a government that enshrines a double standard of suspicion against Islam into its legislation be trusted to protect this religion through a legal definition of Islamophobia? Would it not be more sensible to critically scrutinize the Islamophobic dimensions of government laws rather than to criminalise views that are in fact reinforced and legitimated by the government's War on Terror?

Constraining the State's Monopoly on Violence

Taking proposals for a governmental definition of Islamophobia as a case study, these pages have considered the ways in which supressing hateful speech compromises pluralistic democratic legitimacy. I have argued that many well-intentioned advocacy efforts to protect Muslims from Islamophobic views fail to acknowledge the government's role in propagating Islamophobic discourse. Even had the domestic War on Terror not already compromised the UK's relationship with its Muslim citizens, a government definition of Islamophobia could never reach a democratically legitimate consensus among the definition of the group targeted for protection. Just as rightwing bigots homogenise Muslims as a unified demographic, so do definitions of Islamophobia impose a false unity on a diverse community. It is unacceptable for democracies to micromanage conflicts within Islam, nor should states align with certain Muslim groups while excluding others, as occurred when MPs who were closely involved in drafting the proposed definition cut their ties with MEND in response to negative media coverage.

Populist political pressure—some of which rooted in bigotry, and some of which is simply driven by self-interest—can all too easily compromise the democratic legitimacy of pluralist democracies. Once such legitimacy is undermined, then there is practically no democracy left to defend, because non-democracies do not willingly consent to being shaped by their citizens. A state that operates through censorship creates the conditions for violence. The genre of political reasoning that is linked to contemporary debates around free speech presuppose the state's democratic legitimacy. Because the modern state is uniquely entrusted with a monopoly on violence, and imposes its norms through coercive means, all citizens should be wary of gratuitously amplifying its coercive capacities. Endowing the state with the authority to discriminate among different kinds of Islam empowers the state and disempowers Muslims, and potentially leads to further violence.

The argument advanced here has relevance beyond Muslim communities, for identifying and rectifying the harms inflicted on vulnerable communities. In seeking to establish a clear understanding of hateful speech, Gelber suggests that we rely on "a conception of hate speech as speech that is directed at historically identifiable minorities" because only such speech "discursively enacts discrimination that is analogous to other forms of systemic discrimination."[57] The qualifier "historically identifiable minorities" importantly signals that hateful speech cannot apply to groups that have not suffered from historical discrimination. If a member of a group not known to be discriminated against is offended by a given statement, there are no grounds to classify that expression as hateful speech; equally, the mere taking of offence by an historical minority does not render a discourse hateful speech. In order to meet the bar for government sanction, it must be demonstrated that such speech can inflict substantial harm.

Historical discrimination generally refers to state policy, as endorsed by legislation, ratified by government, and adopted, tacitly or explicitly, by public bodies. Gelber's formulation can therefore be rephrased. Hateful speech is "speech that is directed at historically identifiable minorities" *who have historically been discriminated against by the state*. In the absence of state persecution, such minorities would not be vulnerable targets for hate speech. Government policy makes minorities likely targets of hateful speech in the first place. The power of hateful speech derives from the disenfranchisement, state-sanctioned discrimination, and legally codified racism that ethnic and sexual minorities have endured throughout history. Far from existing in opposition to it, *hate speech derives its power from governmentality*. A government that targets Islam (including "non-violent" extremist Islam, as per the 2015 revised version of the Prevent strategy) for suspicion has no legitimate

[57] Gelber, "Hate Speech," 626. Notably, it appears that women (a demographic majority in most countries) would be excluded from this definition.

authority to define Islam for the purposes of its protection, and any such efforts should be regarding with suspicion. Inasmuch as Islamophobic discourse derives its power from government policies and practices, the fight against Islamophobia should prioritize opposition to those policies, rather than tacitly consenting to them in exchange for “protection” by a discriminatory state.

The actions of the UK and the US governments in this arena in recent decades provide ample grounds for being wary of allocating to it the authority to define Islam and Islamophobia, not least due to the harm that is likely to accrue to Muslims through such definitions. Bigotry is intersectional: antisemitism often accompanies Islamophobia, and misogyny frequently is manifested alongside homophobia.[58] Hence, the strategies we develop to overcome Islamophobia are relevant to resisting all forms of racism, and the means of addressing anti-Muslim racism have bearing on other vulnerable communities. These means include: more representation of individuals from minority groups within government, compulsory education concerning other societies and cultures, and rethinking the government’s counter-terrorism legislation so as to disambiguate it from the persecution of Islam. Most importantly, it involves abolishing Prevent, an agglomeration of policy and legislation that unjustifiably criminalizes Muslims. It means developing a school curriculum that recognizes the diversity of Islamic culture across its historical and contemporary manifestations, and which embraces this heterogeneity as part of its pluralistic democratic mandate, rather than seeking to discriminate among the many varieties of Islam.

[58] See James Renton and Ben Gidley, eds. *Antisemitism and Islamophobia in Europe: A Shared Story?* (Springer, 2017).