



How to define and tackle Islamist extremism in the UK

Maaha Elahi and Julian Hargreaves



The
Royal
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of
Justice

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Abstract

This article presents a legal and public policy analysis of *Shakeel Begg v British Broadcasting Corporation*, a British libel case brought before the High Court in 2016. *Begg v BBC* provides a lens through which current debates on extremism and counter-extremism in the UK may be analysed. More specifically, the authors use their analysis of the case to address criticisms levied against the UK Government's counter-extremism strategy, including the conceptualisation and definition of "Islamist extremism". The article offers two main contentions. First, that the judgment in *Begg v BBC* has been undervalued by politicians and policymakers in the UK, as well as by scholars, journalists and other commentators. Second, that Lord Justice Haddon-Cave's judgment in *Begg v BBC* provides a useful framework for those wishing to define, identify and tackle Islamist extremism, and extremism of any kind, in the UK and elsewhere.

Keywords: counter-terrorism, definition, extremism, Islamist, policy

Introduction

This article presents a legal and public policy analysis of *Shakeel Begg v British Broadcasting Corporation* (hereafter *Begg v BBC* or *Begg*). *Begg v BBC* is a British libel case brought before the High Court in 2016. The case involved an imam, Shakeel Begg, and an allegation of extremism made against him by Andrew Neil who at the time was a senior BBC journalist and broadcaster.

Begg v BBC provides a lens through which current debates on extremism and counter-extremism in the UK may be analysed. More specifically, the authors use their analysis of the case to address criticisms levied against the UK Government's counter-extremism strategy, including the conceptualisation and definition of "Islamist extremism".

The article offers two main contentions. First, that the judgment in *Begg v BBC* has been undervalued by politicians and policymakers in the UK, as well as by scholars, journalists and other commentators. Second, that Lord Justice Haddon-Cave's judgment in *Begg v BBC* provides a useful framework for those wishing to tackle Islamist extremism and extremism of any kind in the UK and elsewhere.

In sum, the authors conclude that the checklist approach taken by Haddon-Cave in his judgment provides a useful method by which "Islamist extremism" may be defined and, as a result, identified and tackled. Further, a checklist approach could be developed and applied when defining, identifying and tackling other forms of extremism, including the manifestations of far-right ideologies.

The article opens with introductory remarks setting out the general context: the UK's counter-extremism strategy, various criticisms of it and recent debates around the right to freedom of expression. Following these, a short section establishes a theoretical framework using a well-cited academic work on the construction of concepts within the social sciences¹ alongside more unusual source material; a recent popular study of the usefulness of checklists.² A legal analysis of *Begg v BBC* follows these sections. Further remarks address the criticisms of the judgment in *Begg* and the legacy of the case in the UK courts. Later remarks suggest ways in which a checklist approach might be applied to a future definition of "far-right extremism". The discussion first turns to extremism and the UK Government's attempt to counter it.

The UK Government's counter-extremism strategy

The development of counter-extremism within British politics throughout the last decade and a half may be traced from early mentions of "extremism" in a counter-terrorism strategy launched by the UK Government following the 2005 London bomb attacks³ through to the publication of *Operating with Impunity - Hateful extremism: The need for a legal framework*, a report by the Home Office-funded Commission for Countering Extremism.⁴

Since 2003, the UK Government has further developed its long-term strategies for countering terrorism within which has been nested the countering of extremism.⁵ In the Government's own words, and as public debates gathered pace, "[t]he principal current terrorist threat is from

1 Giovanni Sartori, "Guidelines for Concept Analysis," in *Social Science Concepts: A Systematic Analysis*, ed. Giovanni Sartori (London: Sage, 1984), 15-85.

2 Atul Gawande, *The Checklist Manifesto: How to Get Things Right* (London: Profile, 2011).

3 HM Government, *Countering International Terrorism: The United Kingdom's Strategy* (London: Her Majesty's Stationery Office, 2006).

4 Commission for Countering Extremism, *Operating with Impunity - Hateful Extremism: The Need for a Legal Framework* (London: Commission for Countering Extremism/Home Office, 2021).

5 HM Government, 2006.

radicalised individuals who are using a distorted and unrepresentative version of the Islamic faith to justify violence.”⁶

As is well-rehearsed elsewhere, the UK Government’s counter-terrorism strategy CONTEST has four strands: Prevent, Pursue, Protect and Prepare. Recent legislative developments include section 26 of the 2015 Counter-Terrorism and Security Act that imposes a statutory duty on educational institutions to have “due regard to the need to prevent people from being drawn into terrorism”.⁷

As hinted above, the UK Government has sought to tackle terrorism by addressing extremist ideology – the perceived root problem of violent extremism.⁸ The term “extremism” appeared in an early iteration of CONTEST, the UK Government’s counter-terrorism strategy, published in the wake of the 2005 bomb attacks in London. Whilst the report did not offer a definition of “extremist” or “extremism”, the terms were used to describe acts of terrorism and the drivers of such acts.⁹ In essence, the strategy defines “extremism” as both an ideology and as the manifestations of that ideology.

“Extremism” appears as “violent extremism” and “violent extremist ideology” in early iterations of the Prevent strategy.¹⁰ It appears throughout a later version of the Prevent Strategy published in 2011.¹¹ Again, “extremism” is defined as the “driver for terrorism”;¹² broadened to include “right-wing extremism”, referred commonly to as “far-right extremism”.¹³ The UK Government split responsibility for countering extremism between the Home Office (under Prevent) and, was what at the time, the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities). In an appendix to the Prevent strategy published in 2011, readers were presented with a definition of “extremism” that has remained central to the UK Government’s thinking and policymaking for over a decade:

Extremism is vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.¹⁴

Following the murder of British bombardier Lee Rigby in London on 22 May 2013, the Government established the Extremism Task Force. In 2013, it published a short but influential report.¹⁵ The report confirmed the UK Government’s definition of “extremism” and reaffirmed its ambition to counter it, mainly through the exercise of existing legislation and powers. In 2015, the UK

6 HM Government, 2006, 1.

7 Counter-Terrorism and Security Act, 2015, c.6 (Eng.); HM Government, *Prevent Duty Guidance: For Further Education Institutions in England and Wales* (London: Her Majesty’s Stationery Office, 2015); HM Government, *Prevent Duty Guidance: For Higher Education Institutions in England and Wales* (London: Her Majesty’s Stationery Office, 2015).

8 HM Government, *Counter-Extremism Strategy* (London: Her Majesty’s Stationery Office, 2015).

9 HM Government, *Countering International Terrorism*, 5-9.

10 HM Government, *The Prevent Strategy: A Guide for Local Partners in England: Stopping People Becoming or Supporting Terrorists and Violent Extremists* (London: Her Majesty’s Stationery Office, 2008).

11 HM Government, *Prevent Strategy* (London: Her Majesty’s Stationery Office, 2011).

12 HM Government, *Prevent Strategy*, 3.

13 Benjamin Lee, *Overview of the Far-Right* (Lancaster, England: Centre for Research and Evidence on Security Threats (CREST)/Lancaster University, 2019).

14 HM Government, *Prevent Strategy*, 107. For a considered application of the definition, see Sara Khan, *The Battle for British Islam*, (London: Saki Books, 2016.)

15 HM Government, *Tackling Extremism in the UK (December 2013): Report from the Prime Minister’s Task Force on Tackling Radicalisation and Extremism*. (London: Her Majesty’s Stationery Office, 2013); David Anderson, “Extremism and the Law” (Lecture, Middle Temple Hall, London, 18 March, 2019).

Government launched its Counter Extremism Strategy.¹⁶ The UK Government announced two Counter-Extremism Bills during this time, neither of which ended up on the statute books.¹⁷ (Anecdotally, Parliamentary draftsmen were unable to define “extremism” in a way that could trigger criminal liability.) In 2017, the Queen’s Speech included the announcement of the establishment of the Commission for Countering Extremism.¹⁸

Whilst the UK Government’s initial stated aims for the Commission were ambitious – to stamp out *all* forms of extremism - the Commission proceeded with a more measured and practical approach, stating its aims were to identify extremism and advise the government.¹⁹ In 2019, the Commission published a statistical summary of responses to its call for evidence,²⁰ a series of academic paper and a report.²¹ The report introduced (or more accurately, reintroduced) the concept of “hateful extremism”, intended as a more accurate and useful sub-definition of “extremism”. The Commission defined “hateful extremism” as:

Behaviours that can incite and amplify hate, or engage in persistent hatred, or equivocate about and make the moral case for violence;

And that draw on hateful, hostile or supremacist beliefs directed at an out-group who are perceived as a threat to the wellbeing, survival or success of an in-group;

And that cause, or are likely to cause, harm to individuals, communities or wider society.²²

This definition of “hateful extremism” was later amended in 2021 and is now defined as:

Activity or materials directed at an out-group who are perceived as a threat to an in-group motivated by or intending to advance a political, religious or racial supremacist ideology:

a. To create a climate conducive to hate crime, terrorism or other violence; or

b. Attempt to erode or destroy the fundamental rights and freedoms of our democratic society as protected under Article 17 of Schedule 1 to the Human Rights Act 1998 (‘HRA’).²³

¹⁶ HM Government, *Counter-Extremism Strategy*.

¹⁷ Mark Townsend, “Theresa May’s Counter-Terrorism Bill Close to ‘Sinking Without Trace’”, *The Observer*, 29 January, 2017, <https://www.theguardian.com/politics/2017/jan/29/theresa-may-counter-terrorism-bill-sinking-without-trace-extremism-british-values>.

¹⁸ 783, Parl. Deb. (6th ser.) (2017) cols. 5-7 [Queen’s Speech].

¹⁹ Anderson, *Extremism and the Law*, 3; Commission for Countering Extremism, “Extremism Commissioner Confirms Plans for 2018,” *Commission for Countering Extremism*, 15 March, 2018, <https://www.gov.uk/government/news/extremism-commissioner-confirms-plans-for-2018>.

²⁰ Commission for Countering Extremism, *Statistical Summary of Responses from Our Call for Evidence* (London: Commission for Countering Extremism/Home Office, 2019a), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819185/Call_For_Evidence_Summary.pdf; Benedict Wilkinson and Armida van Rij, *Commission for Countering Extremism’s Call for Evidence: Report 1: Public Understanding of Extremism*. London: The Policy Unit at King’s College London, 2019; Benedict Wilkinson, Armida van Rij and Kirstie Hewlett, *Commission for Countering Extremism’s Call for Evidence: Report 2: Tactics and Harms*. London: The Policy Unit at King’s College London, 2019).

²¹ Commission for Countering Extremism, “Commission for Countering Extremism publishes further eight academic papers on extremism,” *Commission for Countering Extremism*, 31 July, 2019, <https://www.gov.uk/government/news/commission-for-countering-extremism-publishes-further-eight-academic-papers-on-extremism> (Accessed 21 July 2022). [All commissioned academic papers from this series are available at:

<https://www.gov.uk/government/organisations/commission-for-countering-extremism>; Commission for Countering Extremism, *Challenging Hateful Extremism* (London: Commission for Countering Extremism, 2019), <https://www.gov.uk/government/publications/challenging-hateful-extremism>.

²² Commission for Countering Extremism, *Challenging Hateful Extremism*, 6.

²³ Commission for Countering Extremism, *Operating with Impunity - Hateful Extremism: The Need for a Legal*

The Commission’s definitions of “hateful extremism” draw from two main sources. First, J.M. Berger’s influential book *Extremism* in which “extremism” is defined as:

“[t]he belief that an in-group’s success can never be separated from the need for hostile action against an out-group.”²⁴

Second, the *A Shared Future* report published in 2018 by a commission on extremism and social cohesion convened by the Mayor of Greater Manchester following the terrorist attacks in the city on 22 May.²⁵

It should be noted that, despite the Commission’s commendable intention to provide a clearer and more precise definition of “extremism”, there is little evidence to show theirs has received widespread support within the UK Government or among counter-extremism practitioners.

Debates on freedom of expression

Further context for the present study is provided by recent debates centred on human rights and civil liberties. Two aspects are relevant. First, there have been several academic and policy studies following creation of the statutory Prevent duty for educational institutions and two notable legal cases (both discussed below) where the legality, legitimacy and proportionality of the UK Government’s attempts to tackle non-violent extremism on university campuses have been contested.²⁶ Second, there have been recent political and public debates on the protection and regulation of free speech. These include those in relation to the Online Safety Bill, legislation to create a regulatory framework to control technology companies and the distribution of harmful online content, and the Higher Education (Freedom of Speech) Bill, legislation to protect academic freedom in higher education institutions and student unions.²⁷ Taken together, these debates highlight the apparent tensions that exist along a spectrum of positions held by individuals and groups wishing to assert, either in online or educational spaces, their liberty to protect, encourage, tolerate, criticise, limit, or even cancel the right to freedom of expression held by others. From all this emerges two pertinent questions: what now counts as “extremism” (or, more specifically in this case, “Islamist extremism”) and how, if at all, should we tackle it? The discussion now turns to the theories that help to frame the present study.

Framework (London: Commission for Countering Extremism/Home Office, 2021), <https://www.gov.uk/government/publications/operating-with-impunity-legal-review>.

24 J.M. Berger, *Extremism* (Cambridge, MA: MIT, 2018), 44.

25 Greater Manchester Preventing Hateful Extremism and Promoting Social Cohesion Commission, *A Shared Future* (Manchester, England: Greater Manchester Combined Authority, 2018), <https://www.greatermanchester-ca.gov.uk/what-we-do/communities/preventing-hateful-extremism-and-promoting-social-cohesion-commission>.

26 See, inter alia, Ian Cram and Helen Fenwick, “Protecting Free Speech and Academic Freedom in Universities,” *The Modern Law Review* 81, no. 5 (2018): 825–873; Steve Greer and Lindsey Bell, “Counter-Terrorist Law in British Universities: A Review of the ‘Prevent’,” *Public Law* January (2018): 84-105; Ben Stanford, “The Multifaceted Challenges to Free Speech in Higher Education: Frustrating the Rights of Political Participation on Campus,” *Public Law* no.4 (2018): 708-724; Helen Fenwick and Daniel Fenwick, “Prevent, Free Speech, ‘Extremism’ and Counter-Terror Interventions: Exploring Narratives about Chilling Expression in Schools,” *Public Law* October (2020): 661-679.

27 *Online Safety Bill*. 2022. (HC Bill 21, 2022-23); *Higher Education (Freedom of Speech) Bill*. 2021. (HC Bill 12, 2021-2022).

Theoretical considerations

In a recent study of right-wing extremism and radicalism,²⁸ Carter applies a theoretical framework informed by well-cited guidelines to the formation of concepts in the social sciences.²⁹ Following Carter's application of Sartori's guidelines, the present study seeks to define "Islamic extremism" for the purposes of delimiting the concept (i.e. determining what it is and, crucially for this discussion, what it is not), and allowing robust comparisons with other forms of extremism (e.g. Carter's model of right-wing extremism).

According to Sartori, clear thinking requires clear language and, in turn, "a clear language requires that its terms be explicitly defined".³⁰ When considering the definition of terms, Sartori distinguishes between "declarative" definitions (i.e. simple declarations of meaning, such as might be found in a dictionary) and "denotative" definitions (i.e. definitions that describe terms with more precision, clarity and depth than their declarative counterparts).³¹

According to Sartori, denotative definitions, his preferred kind, perform three functions. First, they establish boundaries of the object being defined. Second, they manage group membership by deciding which object or objects are referred to by a term. Third, they manage "marginal entities" by identifying which objects are to be referred to by the term and which are not.³²

When defining terms, Sartori warns against trivial characteristics, vagueness and ambiguity and prescribes a three-step process to safeguard against these potential weaknesses. Paraphrasing Sartori's words, the successful definition of a concept is achieved by:

1. establishing the characteristics of the concept;
2. determining the concept's referents (i.e. the thing it stands for or denotes); and
3. making sure that the term used for the concept is understood by all.³³

In attempting to address the challenge of defining "Islamist extremism", the authors of the present study consider Sartori's theoretical framework, guidelines and practical advice to, "first, collect a representative set of definitions; second, extract their characteristics; and third, construct matrices that organize (sic) such characteristics meaningfully."³⁴ The matrix relied on here is the list of criteria, or indicators, formulated by the judgment handed down by Haddon-Cave in *Begg*.

Finally, and following Carter, the present study applies Sartori's "minimal definition" approach by considering all defining characteristics and excluding the accompanying properties.³⁵ Put simply, the authors advocate a process of defining "Islamist extremism" where characteristics that are deemed vital (e.g. violence) are divided from those that are not (e.g. social conservatism).

The present study also draws on a recent popular study of checklists.³⁶ Gawande advocates the use of checklists as a tool to manage the complexity of science and the natural world. Gawande's checklist approach builds on Gorovitz and MacIntyre's philosophical model of scientific error.

28 Carter, E., "Right-Wing Extremism/Radicalism: Reconstructing the Concept," *Journal of Political Ideologies* 23, no. 2 (2018): 157-182, <https://doi.org/10.1080/13569317.2018.1451227>.

29 Sartori, *Guidelines for Concept Analysis*, 15-85.

30 Sartori, *Guidelines for Concept Analysis*, 22.

31 Sartori, *Guidelines for Concept Analysis*, 30.

32 Sartori, *Guidelines for Concept Analysis*, 41.

33 Sartori, *Guidelines for Concept Analysis*, 30.

34 Sartori, *Guidelines for Concept Analysis*, 41.

35 Sartori, *Guidelines for Concept Analysis*, 79.

36 Gawande, *The Checklist Manifesto*.

According to Gorovitz and MacIntyre, errors are driven either by ignorance (i.e. the limits of natural science) or ineptitude (i.e. the “wilfulness of negligence of the natural scientist”).³⁷

Following, Gorovitz and MacIntyre, Gawande argues that the use of checklists “builds on experience and takes advantage of the knowledge people have but somehow also makes up for our inevitable human inadequacies.”³⁸ According to Gawande, checklists are useful for the types of complex tasks found typically across the medical, construction and aviation industries. Checklists that aid, for example, the completion of complex, multi-stage medical procedures, tend to limit individualistic approaches that are more prone to error and bias. Although not technically a checklist in the truest sense of the term, or as imagined by Gawande, Haddon-Cave’s judgment, and the list of indicators he offered in it, are available as criteria or conditions against which the characteristics of individuals and their actions may be cross-referenced for the purposes of completing a complex task; in this case, the task of identifying and tackling Islamist extremism, and for the avoidance of errors and biases whilst doing so.

Criticisms of the UK Government’s counter-extremism strategy

Purported errors and biases are central to the numerous criticisms of the UK Government’s counter-extremism strategy. Condemnation has focused on its lack of utility as a policy tool; on the alleged uncertainties around the concept of “extremism” and its current official definition; and on the purported Islamophobia at the heart of it all.

In a well-argued and withering attack, Walker describes counter-extremism as an example of a “policy spiral” which in his words is:

a policy which lacks clear initial purpose or subsequent direction, progression, control and reflection. A policy spiral is therefore susceptible to unresolved contradictions or gaps, dramatic direction changes, and uncertain outcomes. As a result, policy spirals arise from inexact and contested meanings, objectives, and mechanisms which generate dynamics of suspicion as much as persuasion.³⁹

Walker argues that counter-extremism policy formation has lacked:

the internal stability which can be acquired through solid agenda-setting, policy formulation, and decision making, or through supportive structures to implement and refine the policy.⁴⁰

Walker posits that “uncertain borders” between Prevent and counter-extremism policies have created conflict rather than mutual reinforcement and argues that “extremism remains a dubious basis for state coercion.” According to Walker, attempts to demarcate “extra policy territory” with attention to right-wing extremism, and other variants of racism and sexism are frustrated by being captured already in by the legal definition of “terrorism” or in existing legislation such as the Public Order Act 1986 or Racial and Religious Hatred Act 2006.⁴¹ The authors of the present article concur.

Considering the UK Government’s official definition of “extremism”, Lord Anderson, former Independent Reviewer of Terrorism Legislation, argued that the imprecise nature of the definition

37 Samuel Gorovitz and Alasdair MacIntyre, “Toward a Theory of Medical Fallibility,” *The Hastings Center Report* 5, no. 6 (1975): 13-23, <https://www.jstor.org/stable/3560992>.

38 Gawande, *The Checklist Manifesto*, 13.

39 Clive Walker, “Counter-Terrorism and Counter-Extremism: The UK Policy Spiral,” *Public Law*, (2018): 725-747, Available at SSRN: <https://ssrn.com/abstract=3278296>

40 Walker, “Counter-Terrorism and Counter-Extremism”, 1.

41 Walker, “Counter-Terrorism and Counter-Extremism”, 1-6.

of “extremism” makes it unsuitable for “criminal or coercive sanctions.”⁴² However, Lord Anderson accepts that the emphasis on democracy and the rule of law makes it more suitable for public bodies with a civic duty to defend foundational liberties and values. Again, the authors concur.

The presence of the term “fundamental British values” in official definitions of “extremism” has attracted other similar criticism.⁴³ In sum, the list of “fundamental British values” offered across counter-terrorism and counter-extremism strategy documents (i.e. democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs) are neither particularly nor peculiarly British. Further, they work merely to establish a rather circular logic where infraction from fundamental British values is the problem perceived and adherence to them the solution proposed.⁴⁴ (Applying the same logic, few ophthalmologists would prescribe better vision as a cure for poor eyesight.)

Academics have maintained a vociferous attack on UK counter-extremism policy and the basic assumptions underlying consideration of “extremism” in any form.⁴⁵ Recent examples include work drawing on anti-racism and decolonial theory that reduces concerns about extremism to a “moral panic” and argues that counter-extremism “designates the boundaries of what ‘normal and healthy models’ of political subjectivity ought to be.”⁴⁶ Summarising sentiment found elsewhere, counter-extremism has been denounced as “the betrayal of liberal democratic constitutionalism.”⁴⁷ The UK Government’s efforts to counter extremism have been described as “riddled with problematic processes.”⁴⁸

Research questions

The criticisms summarised above, and the many others like them, have created a prima facie case against both “extremism” (as a term, concept and organising principle) and counter-extremism (as a British policy programme). In response, the authors revisited Haddon-Cave’s published judgment in *Begg v BBC*. The judgment remains distinctive because it sought to establish a working checklist of criteria with which one might identify, with a reasonable degree of accuracy and certainty, the presence of “Islamist extremism”.

In returning to Haddon-Cave’s judgment, the authors are guided by a series of questions pertinent to future policymaking in this field. First, to what extent has the judgment of Haddon-Cave in the case of *Begg v BBC* been undervalued by scholars, lawyers and policymakers interested in Islamist extremism? Second, and more generally perhaps, to what extent might a greater reliance on *Begg v BBC* help the UK Government develop more sure-footed policy and legislation for countering extremism in the UK? Third, to what extent are the principles inherent within the

42 Anderson, *Extremism and the Law*, 7.

43 Julian Hargreaves, “Towards a Cure for Prevent? Building Resilience to Religious and Political Forms of Violence within British Muslim Communities,” *Journal of Muslims in Europe* 7, (2018): 190-210, <https://doi.org/10.1163/22117954-12341372>.

44 Hargreaves, “Towards a Cure for Prevent?,” 194.

45 Arun Kundnani, *The Muslims are Coming! Islamophobia, Extremism, and the Domestic War on Terror* (New York, NY: Verso, 2014); Tahir Abbas, “Implementing ‘Prevent’ in Countering Violent Extremism in the UK: A Left-Realist Critique,” *Critical Social Policy* 39, no. 3 (2018): 396-412, <https://doi.org/10.1177%2F0261018318819001>; Rob Faure-Walker, “Teachers as Informants: Countering Extremism and Promoting Violence,” *Journal of Belief & Values* 40, no. 3 (2019): 368-380, <https://doi.org/10.1163/22117954-12341372>. Julian Rivers, “Counter-Extremism, Fundamental Values and the Betrayal of Liberal Democratic Constitutionalism,” *German Law Journal* 19, no.2 (2019): 267-300, <http://dx.doi.org/10.1017/S2071832200022690>.

46 Tarek Younis, “The Psychologisation of Counter-Extremism: Unpacking PREVENT,” *Race & Class* 62, no. 3 (2020): 37-60, <https://doi.org/10.1177%2F0306396820951055>.

47 Younis, *The Psychologisation of Counter-Extremism*, 54.

48 Alice Martini, Kieran Ford and Richard Jackson, *Encountering Extremism*, (Manchester, England: Manchester University Press, 2020): 5-6.

creation of Haddon-Cave’s “checklist” criteria for the identification of “Islamist extremism” transferrable to other forms of extremism (particularly, far-right extremism)?

The case of *Begg v BBC*

Mr Shakeel Begg, the Chief Imam at Lewisham Islamic Centre, claimed damages against the BBC for libel. Under tort law, libel is the defamation of a person through a permanent form of communication. Defamation is the publication of a statement that has caused, or is likely to cause, serious harm to a person’s reputation. Begg claimed damages on the basis of a statement made during a broadcast of the “Sunday Politics” current affairs television programme on BBC1 on 3 November 2013. During this episode, well-known British journalist and broadcaster, Andrew Neil, posed the question, “Are mosques doing enough to counter extremism?” Mr Neil interviewed a guest from the Muslim Council of Britain (MCB). Begg complained of the following words spoken by Neil during that interview:

*The East London Mosque, which you personally and the MCB closely associated with (sic), it’s also the venue for a number of extremist speakers and speakers who espouse extremist positions. This year Shakeel Begg, he spoke there and hailed jihad as “the greatest of deeds”. In 2009 the mosque hosted a video presentation by somebody described by US security as an Al-Qaeda (sic) supporter. You had another speaker there who in the past had described Christians and Jews as “filth”. You’ve had a jihadist supporter of the Taliban there. Why do you do nothing to stop extremism, extremists like that, at this mosque with which you’re associated with?*⁴⁹

The programme was watched by over 838,000 people and was subsequently viewed on streaming sites including YouTube and the BBC’s own i-Player platform. The BBC admitted that the words forming the basis of Begg’s claim had been broadcast and that they were, on the face of it, defamatory.

However, despite these admissions, the BBC pled the defence of justification, meaning that they held their remarks concerning the East London Mosque and Begg to be substantially true. The legal test for a defence of justification, as per *Rothschild v Associated Newspapers*, is whether the defendant can prove that the allegation made in the words complained of is “substantially true.”⁵⁰

The BBC’s defence relied on Begg’s previous speeches and utterances in which, it was argued, he espoused extremist views. Begg denied being an extremist speaker in the ways described by the BBC.

Lord Justice Haddon-Cave’s judgment

Haddon-Cave analysed nine examples of words spoken by Begg and concluded that the BBC’s defence of justification was successful. In determining this, Haddon-Cave provided a definition of extremism.

What is “extreme” is, by definition, something which is not “moderate”. Thus, “*extremist*” Islamic positions can be seen in contra-distinction to “moderate” or “mainstream” Islamic positions. Dr Wilkinson usefully defines moderate Islam (sic) as essentially those ideas, doctrines and worldviews consensually agreed by Shia and Sunni Islamic Law Muslim

⁴⁹ Sunday Politics, “03/11/2013”, *BBC One*, 60 minutes, 3 November, 2013, <https://www.bbc.co.uk/programmes/b03fd0k3>.

⁵⁰ *Rothschild v Associated Newspapers* [2013] EWCA Civ 197; *Defamation Act*, 2013, c.26 (Eng.).

scholars, mainstream Salafi scholars and Muslims, generally to constitute the essential doctrines, teachings and spirit of Islam, according to Qur'an and Sunna, applied in such a way as to be suitable for the context of contemporary Britain. I agree with this as a general working definition.⁵¹

Having spent time studying the Qur'an and Milestones by Sayyid Qutb,⁵² an Islamist theorist and prominent member of the Egyptian Muslim Brotherhood in the 1950s and 1960s,⁵³ Haddon-Cave proposed a list of ten extremist Islamic positions (or signs thereof, hereafter indicators or conditions) which might be used to determine the likelihood of a person espousing Islamic beliefs which might be described as extreme.⁵⁴ In essence, the indicators offer a set of criteria that determine the likelihood of Islamist extremism being present. According to Haddon-Cave's exact words, indicators of "Islamist extremism" include:

First, a 'Manichean' view of the world, which divides the world strictly into 'Us' versus 'Them' is a central tenet of violent Islamic extremism. The world is divided into the right kind of Muslim and the wrong kind of Muslim (including moderate Sunni Muslims, all Shia Muslims), and everyone else. The ultimate agenda of violent extremists is to overthrow democratic states (including Muslim democratic states) and the creation of a global Islamic State with the imposition of a primitive and literal interpretation of *Shari'a* law by force;

Second, the reduction of *jihad*, which means striving in God's cause, to *qital* (armed combat, also referred to as the "Lesser Jihad"). This interpretation dismisses the peaceable meanings of jihad (the 'Greater Jihad') and gives *jihad* an exclusively violent meaning which it does not have;

Third, the ignoring of the established Islamic doctrinal conditions for the declaration of armed *jihad* (*qital*). This includes support for terrorist insurgency, leaderless jihadist attacks or the waging of aggressive war against another country or people all of which cannot be lawfully *qital* under Islamic doctrine;

Fourth, the ignoring of the established Islamic regulations governing the conduct of armed *jihad*. This includes supporting the use of excessive violence, attacks on civilians, indiscriminate 'suicide' attacks or the torture or murder of prisoners.

Fifth, advocating *qital* as a universal individual religious obligation. The majority of scholars from early to modern times deem *qital* to be a collective religious obligation unless one is directly under attack.

Sixth, an interpretation of *Shari'a* law that requires breaking the 'law of the land'. This is contrary to *Shari'a* law which requires individuals to obey to law of the land unless the latter specifically requires them to break *Shari'a*.

Seventh, the classification of all non-Muslims as unbelievers (*kuffar*). Islamist extremists believe there are irreconcilable differences between belief and unbelief.

Eighth, the extreme *Salafist* Islamism position that the precepts of Muslim faith negate and supersede all other natural ties (such as those of family, kinship and nation).

51 *Shakeel Begg v British Broadcasting Corporation* [2016] EWHC 2688 (QB), [117].

52 Sayyid Qutb, *Milestones*. 1964. Reprint, Delhi, India: Islamic Book Service (2011).

53 John Calvert, *Sayyid Qutb and the Origins of Radical Islamism* (New York: Columbia University Press, 2010).

54 Haddon-Cave's judgment draws heavily on the work of Matthew Wilkinson, particularly his distinctions between Islam, Islamism and Islamist extremism. See, Matthew Wilkinson, *Genealogy of Terror: How to Distinguish between Islam, Islamism and Islamist Extremism* (London: Routledge, 2018).

Ninth, the citing or referring with approbation of the legal opinions (*fatwa*) of Islamic scholars who espouse extremist views or extremist Islamic ideologues.

Tenth, any teaching which expressly or implicitly, encourages Muslims to engage in, or support, terrorism or violence in the name of Allah.⁵⁵

Haddon-Cave held that the defence of justification applied having considered quotes from Begg such as “take some money and go to Palestine and fight, fight the terrorists, fight the Zionists in Palestine if you want to do this”. Haddon-Cave noted that Begg had used the words of extreme Islamic scholars to encourage hatred towards states not ruled in accordance with Allah’s revelation. He considered Begg’s justification of violence as an obligation (in Begg’s view, something akin to fasting in Ramadan, which is often viewed as an obligatory act of worship for Muslims). For these reasons and others, Haddon-Cave held that the BBC was justified in labelling Begg as an extremist.

Criticisms of the judgment in *Begg v BBC*

Despite the importance of the *Begg* judgment, it has not attracted a wealth of legal and academic commentary. Notwithstanding this relative dearth, and as might be expected given the widespread scepticism around attempts (i.e. any attempt) to identify and counter extremism, the judgment has attracted criticism.

Some have argued that Haddon-Cave’s engagement with the Qur’an – not widely regarded as a source of English law – threatened the limits of justiciability.⁵⁶ Ostensibly, the consideration of religious principles by the court is incompatible with the secular nature of the judiciary. Historically, the judiciary was filled with religiously literate Victorians and Edwardians who sat in cases involving strong religious elements. The increasingly secular nature of British society has meant that judges are now less qualified to judge on such matters; a point acknowledged in *R. v. Chief Rabbi, ex parte Wachmann*.⁵⁷

However, the Supreme Court in *Shergill v Khaira* held that the courts should engage with questions of disputed religious doctrine if it is necessary in determining civil claims, such as the enforcement of private rights or obligations or reviewable matters of public policy that depend upon religious issues. On this basis, and given the general lack of religious expertise at the bench, Haddon-Cave’s engagement with the Qur’an seems sensible, probably wise, and perhaps even necessary. In legal terms, to enforce the private tortious right to be free from defamation, unless justified, Haddon-Cave was required to engage with disputed religious doctrines.

Some might agree with Professor Robert Gleave, an expert called to give evidence in *Begg v BBC*, that what is “Islam” and “Islamic” is a matter of personal theological commitment and cannot be determined by academic research or theological Islamic scholarship.⁵⁸ However, the definition and checklist engage with ideas that are fundamentally against Islam as it is commonly understood. Therefore, whilst the day-to-day practice and expression of Islam may not be homogenous, it is highly likely that a rejection of its fundamental or core values would, in most cases, represent a rejection of Islam as a whole.

⁵⁵ *Begg v BBC*, [118-128].

⁵⁶ Aidan Wills, “Case Law: *Begg v BBC*, Imam Fails in ‘Extremist Islamic Speaker’ Libel Claim – Aidan Wills,” *Entertainment Law Review* 28, no. 2 (November 2016): 68-72,

<https://inform.org/2016/11/18/case-law-begg-v-bbc-imam-fails-in-extremist-speaker-libel-claim-aidan-wills/>.

⁵⁷ *R. v. Chief Rabbi, ex parte Wachmann*, 1992, 1 WLR 1036.

⁵⁸ *Begg v BBC*, [82].

As well as reading the Qur'an and Milestones by Sayyid Qutb, Haddon-Cave took the benefit of two experts, the aforementioned Gleave and Wilkinson: the former an expert on Islamic legal matters, the latter an expert on Islam, education and law. In court, both focused on Begg's speeches rather than on the topic of Islamist extremism more generally. Haddon-Cave pointed out that their perspectives differed.⁵⁹ Given this, the authors of the present study concede that further religious and legal expertise may be required to develop Haddon-Cave's approach and definition.

Critiquing Haddon-Cave's definition of "Islamist extremism"

Further criticisms have targeted Haddon-Cave's definition of "extremism" and "Islamist extremism."⁶⁰ Haddon-Cave defined "Islamist extremism" by contrasting it with "moderate Islam". Doing so, it may be argued, sets a low threshold for extremism.

For example, if Islamist extremism is anything beyond what is agreed consensually by Shia and Sunni scholars, as Haddon-Cave posits, matters on which the two religious disagree might constitute extremism. One major issue here is that there is much on which Sunni Muslims and Shia Muslims disagree but which is still within mainstream Islam. For example, Shia and Sunni Muslims pray in a different manner. Shia Muslims and Sunni Muslims disagree on the Prophet Muhammad's successor. The Shia celebration of Ashoura (the anniversary of Husayn ibn Ali) risks being defined as an act of extremism given it is not also celebrated within the Sunni tradition. Only Shia Muslims engage in self-flagellation to mourn the loss of Husayn ibn Ali. Discrepancies among Muslims in relation to the recognition of Sufism and Ahmadiyyaism suggest belonging to one of these sects could also be defined as extremist.

One solution to this issue might be to define "Islamist extremism" by first considering all that is *not* agreed *among* mainstream Shia or Sunni scholars. Another might be to focus on beliefs that are not present in mainstream Shia or Sunni traditions but *only* when aggressive, violent or oppressive in nature.

Haddon-Cave defines moderate Islam as encompassing "the essential doctrines, teachings and spirit of Islam, according to the Qur'an and Sunna."⁶¹ Arguably, this fails to consider the discrepancy between Shia and Sunni Muslims in the levels of importance attached to the Sunna (the example set by the Prophet Muhammad as recounted in hadith from which is derived the bulk of Shari'a law). Sunni Muslims are more likely than Shia Muslims to stress the primacy of the Sunna.⁶²

On the one hand, extracting a useful definition of "Islamist extremism" from Haddon-Cave's indicators may only be possible if very careful consideration is given to Islam's various sects and interpretations. On the other hand, a more empathetic approach to Haddon-Cave's lack of an in-depth, nuanced knowledge of Islam may be of practical use. We know Shia and Sunni populations make up around 97 percent of the global Muslim population.⁶³ Whilst we know that Sufi practices have a presence within both Shia and Sunni traditions, there are no reliable figures concerning the proportion of Muslims globally practising Sufism (whether exclusively or alongside other forms of Islam). Similarly, groups such as Druze, Kharijites and the Nation of

⁵⁹ *Begg v BBC*, [78-81].

⁶⁰ Wills, Case Law: *Begg v BBC*.

⁶¹ *Begg v BBC*, [117].

⁶² James Moore, "The Sunni and Shia Schism: Religion, Islamic Politics, and Why Americans Need to Know the Differences," *The Social Studies* 106, no. 5 (2015): 226-235, <https://www.tandfonline.com/doi/full/10.1080/00377996.2015.1059794>.

⁶³ "Mapping the Global Muslim Population," Pew Research Center, accessed 20 July, 2020, <https://www.pewforum.org/2009/10/07/mapping-the-global-muslim-population/>.

Islam may defy easy categorisation as Sunni or Shia but are relatively small in number. Given all this, constructing mainstream Shia and Sunni branches of Islam as “moderate Islam” may lack scholarly precision and nuance but is hardly irrational.

Other criticisms point to his apparent disregard for the UK Government’s own definitions of “extremism”,⁶⁴ and the unnecessary distinction made between definitions suitable for civil law and policy. On the other hand, Haddon-Cave also appeared to swerve UK Government’s rather troublesome concept of “British values”, preferring instead the term “contemporary Britain”: a less problematic, less normative, more inclusive label. Again, Haddon-Cave’s overall strategy, including avoidance of the UK Government’s definitions, appears sensible.⁶⁵ It could be argued that a departure from the UK Government’s official “extremism” definition, and Haddon-Cave’s *de novo* approach (i.e. his attempt at a brand new definition), represented judicial interference threatening the established separation of powers between executive, judicial and legislative state functions.⁶⁶ On the other hand, it might be argued that Haddon-Cave was required to innovate given the imprecision of the available legal and policy tools. Further, the present authors argue that the ends – a more precise definition of “Islamist extremism”, rooted in Islam itself, with an adaptable list of indicators and demonstrably capable of providing legal precedent and analytic power – justify the means.

Critiquing Haddon-Cave’s indicators of “Islamist extremism”

Despite its apparent utility, Haddon-Cave’s list of ten indicators has also been targeted by criticism. From his judgment, it is unclear if his intention was to offer a definitive list or a working definition capable of amendments and adjustments. The authors of the present study would support the latter approach. Whilst an in-depth analysis of all ten of Haddon-Cave’s indicators is beyond the scope of this article, remarks on three support an overall defence of his judgment.

Considering Haddon-Cave’s first descriptor, Walker describes the “Manichean” world view as “vague”.⁶⁷ However, and with all due respect to Walker (a leading figure in the study of counter-terrorism legislation), decades of social psychological studies have established that in-group/out-group dynamics (asserting “them and us” or, as in this context, “good Muslims” and “bad Muslims”) are known to drive stereotyping and prejudice.⁶⁸ We might also consider Berger’s academically robust definition of “extremism” as quoted above. “Manichean” is not the conventional academic term, but the meaning is clear enough – a stringent form an in-group/out-group bias – and the general principle rests on almost a century of sound research within social psychology.

Considering the fifth descriptor, Haddon-Cave’s inclusion of the conditions, regulations and obligation of *qital* in his list demonstrates the exceptional nature of Islamic extremism. *Qital* has no equivalent in the conceptualisation of far-right extremism. Haddon-Cave’s inclusion of it implies an entirely reasonable proposition: different types of extremism require different definitions. Arguably, a universal definition of “extremism” (i.e. one that is capable of conveying the specific nature of different forms of extremism, as per Sartori) is neither achievable nor desirable.

64 Anderson, *Extremism and the Law*.

65 In her book, *The Battle for British Islam*, Sara Khan also deviates from the official definition of “extremism” in stating that, for her, extremism can “often include undermining the rule of law and democracy

66 See also *Shamima Begum v Secretary of State for the Home Department* [2021] UKSC 7 (at [134]), where the Court of Appeal was criticised by the Supreme Court for making its own assessment of national security requirement (i.e. and not relying on the UK Government’s assessment).

67 Walker, “Counter-Terrorism and Counter-Extremism”, 10. See also, Clive Walker and Oona Cawley, “The Juridification of the UK’s Counter Terrorism Prevent Policy,” *Studies in Conflict & Terrorism*, 45, no.11 (2022): 1004-1029, DOI: 10.1080/1057610X.2020.1727098.

68 John F. Dovidio et al, *The SAGE Handbook of Prejudice, Stereotyping and Discrimination*, (London: Sage, 2010).

Walker argues, entirely reasonably, that only Haddon-Cave's tenth descriptor – the encouragement of terrorism or violence – justifies state sanction. He argues that the suppression of non-violent extremism “increases the dangers of state repression based on a vague causal connection to terrorism”.⁶⁹ Alternatively, unless one defines “state repression” so widely as to include the availability of civil law remedies, such dangers in the specific circumstances of *Begg v BBC* were entirely absent. Despite being accused of extremism, a serious charge, Begg faced no criminal sanctions, no consequences beyond reputational damage and no apparent state repression.

Despite the strengths of Haddon-Cave's judgment, it is not perfect. In his eighth descriptor, Haddon-Cave posits that extremism is present where a Muslim identity supersedes “family, kinship and nation”. This is imprecise. The concept of *ummah* – a single, universal brotherhood or sisterhood – is prominent in mainstream Islam.⁷⁰ Many devout Muslims feel closer to the *ummah* than a country of birth or residence,⁷¹ not all are extremists. Further, converts (or reverts, as they are sometimes known) may experience and accept broken family ties and not be extreme in any obvious sense. Arguably, when it comes to satisfying the conditions for Islamist extremism, an attachment to the *ummah* may be necessary (i.e. in terms of establishing a “them and us” dynamic) but remains far from sufficient given the vast majority of Muslim people who feel part of a global “family” are not extremist in any sense. Haddon-Cave might have noted this.

Haddon-Cave might have qualified some of his indicators to a greater extent. For example, the term *kuffar*, as per his seventh descriptor, has been used commonly by Muslims to describe non-Muslims and may be used (albeit less conventionally) in non-derogatory ways. Its presence, even as a form of abuse, does not necessarily signify Islamist extremism. (In the same way that not all white perpetrators of racism adhere to far-right ideologies.) There should be further clarification on the relationship between use of the term and extremism; for example, viewing a *kuffar* only as an enemy, or using the term to justify violence.

Notwithstanding these limitations, overall, the indicators are sound. Further, many imply adherence to mainstream Islam as a solution to Islamist extremism. This is refreshing given the UK Government has been far louder on “bad Islamic ideology” than on “good Islam”.⁷² Haddon-Cave's judgment offers an approach that is both progressive and practical. In sum, it avoids negative, monist interpretations of Islam and adopts a more positive, assets-based approach, considering all that is good within Islam rather than problematising it. Wills describes the checklist as “labels of opinion rather than tangible descriptors”.⁷³ The present authors would argue respectfully that his conclusion is inaccurate for all the reasons set out above.

The legacy of *Begg v BBC*

A brief look at two cases citing *Begg v BBC* demonstrates the legal utility and legacy of Haddon-Cave's judgment and checklist approach. In *A Local Authority v A Mother, A Father, J (A Child) (by her child's guardian)* the Family Court sought to determine, for the purposes of child protection,⁷⁴ whether a mother had extreme tendencies having followed her husband to an ISIS-controlled region of Syria. Citing *Begg v BBC*, the court held that the mother had used the term “kuffar” in a derogatory way, had expressed support for previous terrorist actions, including the Charlie Hebdo murders, and celebrated the forceful imposition of Shari'a law in democratic societies (“the khilafah [a ruler of a Muslim community] will rule over everyone”). In other words, she held

69 Walker, “Counter-Terrorism and Counter-Extremism”, 11.

70 *The Qur'an*, trans. Mohammed A. S. Abdel Haleem (Oxford: Oxford University Press, 2010), 49:10.

71 Peter Mandaville, *Global Political Islam* (London: Routledge, 2011).

72 HM Government, *Counter-Extremism Strategy*.

73 Wills, Case Law: *Begg v BBC*.

74 *A Local Authority v A Mother, A Father, J (A Child) (by her child's guardian)* [2018] EWHC 2054 (Fam).

a “Machinean” world view as per Haddon-Cave’s first descriptor and, on that basis, could be described as an extremist.

A second case citing *Begg v BBC – A Local Authority v HB, MB, ML and BL (By their Children’s Guardian)* – applied Haddon-Cave’s checklist to conclude that a mother travelling to an area of Turkey near the Syrian border (allegedly to persuade her husband to return to the UK) was *not* an extremist.⁷⁵ The court stated that there was no direct evidence to suggest the mother held extremist views or had been a member of an organisation espousing extremist ideologies (as per Haddon-Cave’s ninth descriptor).

The discrepancy in the outcomes of these cases suggests that Haddon-Cave’s checklist is robust as both legal sword and shield although further cases are required to test this hypothesis. Further, these applications suggest the checklist is useful in cases where issues more serious than an individual’s reputation – such as the custody of a child – are being decided by a court. Again, further cases are needed to evaluate broader, weightier applications. Finally, any argument that Haddon-Cave’s definition sets a low threshold for the identification of extremism is surely weakened if we consider its application in a serious and complex case, with a significant amount of evidence, in which a person is found *not* to be extremist.

The case of *Butt v Secretary State for the Home Department*

The case of *Butt v Secretary State for the Home Department* has prompted further reflection on the concept of “Islamic extremism” and the UK Government’s attempts to tackle it.⁷⁶ Dr Salman Butt challenged the inclusion of his name on a Home Office press release in legal action involving private and public law claims against the Secretary of State for the Home Department (hereafter SSHD). The Home Office’s press release described Butt as being “on record as expressing views contrary to British values”, referred to “hate speakers” on university campuses and stated that the Prevent duty is about “protecting people from the poisonous and pernicious influence of extremist ideas that are used to legitimise terrorism.”⁷⁷ In an initial hearing, the High Court found that a reasonable person reading this would assume that Butt was labelled as a hate speaker with extremist ideas.

Butt sued the SSHD for libel. In response, the SSHD advanced the defence of honest opinion (under Section 3 of the Defamation Act 2013). An important difference between the *Butt* and *Begg* cases is that, in the latter, the defence of justification was advanced rather than honest opinion. The defence of honest opinion is applied a) where the statement is an opinion and b) where an honest person could have held this opinion on the basis of any fact existing at the time or anything asserted to be a fact in a relevant publication. Crucially for the present study, for the defence to apply, the statement must be recognisable as opinion rather than fact. On this basis, *Begg* was not considered in Butt’s libel action: the courts did not have to consider whether the description of Butt as an extremist was true.

Despite this significant difference, the judgment in *Butt* is useful when considering *Begg* and defining “Islamist extremism”. According to the Court, the extremist label essentially involved a two-stage process. The first stage was to assess the appellant’s “on the record” views about matters touching on religious, social, political and moral issues. The second stage was to compare

⁷⁵ *A Local Authority v HB, MB, ML and BL (By their Children’s Guardian)* [2017] EWHC 1437 (Fam).

⁷⁶ *Dr Salman Butt v Secretary State for the Home Department* [2017] EWHC 2619 (QB) per Nicol J/ and [2019] EWCA Civ 933 per Sharp LJ. For analysis of the case, see inter alia, Emma Webb, *Wolves in Sheep’s Clothing*, (London: Henry Jackson Society, 2018); Fenwick and Fenwick, “Prevent,” 661-679; Clive Walker and Oona Cawley, “Juridification”, 1004-1029.

⁷⁷ For a full copy of the press release (since deleted), see *Dr Salman Butt v Secretary State for the Home Department* [2019] EWCA Civ 933 [2].

that assessment to the “yardstick” of British values. The Court said:

“The whole exercise was inevitably highly value-laden particularly where the reader was not given an exhaustive definition of the yardstick of such values and where the partial definition was itself open textured.”⁷⁸

This concession by the Court is important for two reasons. First, it confirms that the UK Government engages in exercises where an individual is assessed against a metric of extremism that is not fully defined and within a framework that is considered vague. Second, it suggests that this approach is likely to cause uncertainty for legal professionals and other practitioners. There is further evidence here to support the authors’ position that a single “yardstick” (i.e. a single, universal definition of “extremism”) is inappropriate when considering different forms of extremism and that the lack of an agreed definition of “Islamist extremism” risks continued inconsistency and, therefore, unfairness.

Haddon-Cave’s clearer, more detailed definition and his use of indicators offer a partial, but nevertheless substantial, solution. (As argued, academics and Islamic leaders would be needed to complete his work and ensure the practical utility of any future framework.)

In his public law claim, Butt argued that the Prevent duty guidance for England and Wales and the Higher Education Prevent Duty Guidance were unlawful, as they breached his right to freedom of expression as protected by Article 10 of the European Convention on Human Rights (ECHR).⁷⁹ However, permission for judicial review (a public law hearing) was withheld on the basis that there was no interference with Article 10 rights.

Butt appealed the decision to the Court of Appeal. The Court found that the High Court had not erred in their finding that there was no breach of Article 10 and the guidance was not *ultra vires* (i.e. not unlawful). Mr Justice Ouseley’s statement that “There is no need for a more specific definition of ‘extremism’” is of particular relevance.

Butt’s appeal was partially successful on the grounds that paragraph 11 of the Higher Education Prevent Duty Guidance breached the duty to ensure freedom of speech under section 31(3) of the 2015 Counter-Terrorism and Security Act. Paragraph 11 stated that when deciding whether or not to host a particular speaker, relevant higher education bodies (RHEBs) should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event.

The Court found that this guidance was not sufficiently balanced against statutory duties to ensure freedom of speech. Further, the Court held that well-educated readers, even those with knowledge of their other statutory duties, might perceive the Prevent guidance to be the most pertinent. Alternatively, readers might assume mistakenly that the guidance represented a balance of statutory rights. Subsequently, the Court recommended the Government redraft their guidance for RHEBs.

The Court of Appeal judgment in *Butt* lends further support to Haddon-Cave’s approach. The judgment shows the courts accept that duty-holders require clear, authoritative guidance on matters of extremism. Further, making informed decisions based on multiple statutory duties and vague, or even conflicting, government guidance is likely to increase uncertainty. Echoing this,

⁷⁸ *Dr Salman Butt v Secretary State for the Home Department* [2019] EWCA Civ 933 per Sharp LJ.

⁷⁹ HM Government, *Prevent Duty Guidance: For Higher Education*; Article 10 of the European Convention on Human Rights.

the Joint Commission on Human Rights described the current official definition of “extremism” as lacking coherence and precision, as well as being “unworkable” in law, and criticised the inconsistencies in advice from the UK Government’s Home Office and Department for Education.⁸⁰ At the very least, a clear definition of “Islamist extremism” and a framework of specific indicators for it, and for various other forms of extremism, would be useful for those within the education sector.

Some may argue that the judgment in *Butt* raises a challenge to the use of Haddon-Cave’s indicators on the basis that, following the UK Government’s placing of Prevent on a statutory footing, they are not sufficiently focussed on the specific matter of a person being drawn into terrorism. For example, it was held in *Butt*:

“If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it.”⁸¹

In other words, tackling non-violent extremism was held to be lawfully within what Prevent permits but only where a person risks being drawn into terrorism.⁸²

Fenwick and Fenwick argued that a reliance on *Butt* might help address the lack of clarity with which “extremism” is defined and applied in the education sector and that linking extremism to all forms of radicalisation and terrorism risks negative misrepresentations of Prevent.⁸³ In response, the present authors argue that the use of indicators remains an appropriate method by which the presence of “Islamic extremism” may be determined in order to undertake a subsequent assessment of whether a person is likely to be or has been drawn towards terrorism. The use of indicators offers Prevent practitioners and duty-holders effective means by which a step-by-step, case-by-case approach to identifying Islamist extremism may be achieved.

The case of *R (Ben-Dor) v University of Southampton*

Another recent case demonstrates the importance of context when consideration is given to whether or not someone is an extremist. *R (Ben-Dor) v University of Southampton* involved a claim concerning the infringement of human rights in relation to the cancellation of an academic conference on the legality of the existence of Israel under international law.⁸⁴ The conference was cancelled following concerns about the conference organisers’ anti-Israeli stance and the likelihood of protestors targeting the event. Professors challenged the decision of the University to withdraw its permission.

According to the facts of the case, the withdrawal of permission was on the basis that the event would give rise to an unacceptably high risk of disorder and that there was insufficient time to put adequate safety measures in place to ensure good order was maintained. The court found this to be a proportionate interference of Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) rights as protected by the ECHR.⁸⁵

80 Joint Commission on Human Rights, *Counter-Extremism: Second Report of Session 2016-17*, (London, House of Lords/House of Commons, 2016).

81 *Dr Salman Butt v Secretary State for the Home Department* [2019] EWCA Civ 256 [150].

82 Cram and Fenwick, “Protecting Free Speech,” 825-873.

83 Fenwick and Fenwick, “Prevent,” 661-679.

84 *R (Ben-Dor) v University of Southampton* [2016] EWHC 953 (Admin).

85 For a detailed legal analysis of Article 10 ECHR rights in various contexts, see Buyse, Antoine, “Dangerous Expressions: The ECHR, Violence and Free Speech,” *The International and Comparative Law Quarterly* 63, no.2 (2014): 491-503. <https://www.jstor.org/stable/43301613>

Following *R (Ben-Dor)*, the authors accept that Haddon-Cave’s definition and indicators do not capture the full essence of considerations in relation to all situations of identifying and tackling extremism. The indicators are intended to assist only with the question of whether or not someone is likely to be an extremist. In circumstances where this question requires an answer, other considerations will invariably be applied, such as the wider context in which the beliefs or behaviours are observed, whether someone’s human rights are protected, or whether interfering with such rights is a proportionate means of achieving legitimate aims such as the maintenance of public safety or a particular level of security given the likely costs involved.

Admittedly, Haddon-Cave’s indicators do not engage with such assessments but could be made readily available for those who do regularly or, as argued, for those seeking to determine the presence of Islamist extremism on a case-by-case basis.⁸⁶

Recent academic and policy analyses

Several recent academic and policy analyses of extremism and counter extremism following the *Begg* case are relevant to the present article. A report by the Henry Jackson Society into the charitable sector employed a composite definition of “Islamist extremism” drawing on the UK Government’s definition, legal precedents from *Begg* and *Butt* and guidance from the Charity Commission.⁸⁷ As Justice Ouesely did in *Butt*, Webb posited the importance of considering and challenging those who reject violence but advocate “democratic participation with illiberal and extremist ends in mind.” One possible issue for those seeking the practical application of a definition of “Islamist extremism” is that determining “illiberal” motivations is highly subjective and risks labelling, for example, non-extremist political opponents as “extreme”.

A report by The Heritage Foundation relied on the UK Government’s definition of “extremism” and a summary definition of “Islamism” with three key tenets: the belief that sovereignty lies with God, not man; the division of the world into *dar al-harb* (lands of Islam) and *dar al-kufr* lands of unbelief; and the belief that Muslims must restore a caliphate under Islamic law.⁸⁸ Whilst the report mentions the term “Islamist extremism” only once, Simcox’s detailed analysis is framed by his implied, and perfectly sensible, definition of it (in effect, “Islamism” plus “extremism”). However, while this definitional approach is highly appropriate for expert readers, it may be less so for non-experts seeking, for example, accessible guidance on how to quickly identify extremism in a school, university or prison.

So far, the authors have argued that *Begg v BBC* has been undervalued. Addressing the remaining research questions, we now argue for its wider potential to help define, identify and tackle far-right extremism and how a checklist approach might provide a surer footing for the UK Government’s counter-extremism strategy.

Carter’s definition of “right-wing extremism”

Carter’s attempt to define “right-wing extremism” (from where the present article borrows its theoretical framing) demonstrates how a checklist approach helps those seeking to establish

⁸⁶ For detailed analyses of Prevent, free speech in higher education and debates on tackling non-violent extremism on campuses, see Cram and Fenwick “Protecting Free Speech, 825-873, Greer and Bell, “Counter-Terrorist Law,” 84-105 and Stanford, “The Multifaceted Challenges to Free Speech,” 708-724.

⁸⁷ Webb, “*Wolves in Sheep’s Clothing*”.

⁸⁸ Robin Simcox, *Understanding and Defeating Islamism in the United Kingdom: Special Report No.226, June 1 2020*, (Washington DC, The Heritage Foundation, 2020). For further in-depth discussion on political Islam, see House of Commons Foreign Affairs Committee, ‘*Political Islam*’, and the *Muslim Brotherhood Review: Sixth Report of Session 2016–17*, London: House of Commons, 2016.

more specific definitions of “extremism” given its many forms in contemporary society.⁸⁹ For reasons that are clearly and cogently set out in her article, but are beyond the limits of the present one, Carter’s reconstruction of “right-wing extremism” from fifteen studies on the subject published between 1992 and 2009 includes five components all with “denotational power” (and similar in essence to Haddon-Cave’s indicators): the strong state or authoritarianism, nationalism, racism, xenophobia, anti-democracy or anti-establishment rhetoric.⁹⁰ For Carter, this definition manages to “seize the object”,⁹¹ and to “identify the referents and delimit right-wing extremism/radicalism from other ideologies”.⁹² For her, and the present authors, specific definitions need be neither rigid nor unchanging. As Carter notes, not all previous definitions contained all five components and many also contain a sixth, populism. For example, populism was regarded previously as a political style rather than as an ideology and often excluded from attempts to define right-wing or far-right extremism. However, as populism became more often embraced by right-wing extremists, it became more often included in academic definitions.⁹³ (If Carter’s framework were to be adopted by policymakers and practitioners, it would probably require further amendments including an additional indicator relating to violent behaviours and the encouragement or justification of violence.)

This point highlights the key advantages of using “checklists” of components, indicators or specified criteria to define discreet forms of extremism: they provide the basis for detailed definitions (as per Sartori’s concept of “denotativeness”) and the necessary specificity (describing what is within and without definitional boundaries) whilst remaining more adaptable than fixed and more general definitions of “extremism” such as that used currently by the UK Government.

Conclusions

The article has made a case for the judgment in *Begg* by setting out three core positions. First, *Begg v BBC* has been undervalued by scholars, lawyers and policymakers. Despite academic criticisms, Haddon-Cave’s judgment continues to demonstrate its worth in the UK’s law courts. Second, a more specific definition of “Islamic extremism” is capable of addressing the weaknesses inherent within the UK Government’s reliance on a more general definition of “extremism” and the rather vague concept of “British values”. A more specific definition allows for a more coherent and consistent legal and policy approach to the identification of Islamist extremism and a reduction of the harms caused by it. Third, the use of a simple definition alongside a checklist of indicators is a highly appropriate method by which to define “Islamist extremism”. A similar approach has been used to define “right-wing extremism”, as discussed, and has also been applied effectively in other contexts. For example, the International Holocaust Remembrance Alliance’s working definition of “antisemitism” proceeds with a simple definition (essentially, hatred toward Jews) and offers examples as illustrations.⁹⁴ Whilst some of the examples have been controversial,⁹⁵ the definition has been adopted widely, including by the UK Government.⁹⁶

89 Carter, “Right-wing Extremism/Radicalism”.

90 Carter, “Right-Wing Extremism/Radicalism”, 168.

91 Sartori, “Guidelines for Concept Analysis”, 26.

92 Carter, “Right-Wing Extremism/Radicalism”, 175.

93 Carter, “Right-Wing Extremism/Radicalism”, 173.

94 “About the IHRA Non-Legally Binding Working Definition of Antisemitism”, *International Holocaust Remembrance Alliance*, accessed 17 August 2022,

<https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

95 BBC News, “Labour Anti-Semitism ‘Caveats’ Criticised,” *BBC News*, 5 September, 2018,

<https://www.bbc.co.uk/news/uk-politics-45415967>.

96 House of Commons Library, “UK Government’s Adoption of the IHRA Definition of Antisemitism,” *House of Commons Library*, 2018,

<https://commonslibrary.parliament.uk/uk-governments-adoption-of-the-ihra-definition-of-antisemitism/>.

Whilst academic and policy research into extreme forms of Islam has hardly been hindered by a lack of an agreed definition, ongoing debates within the criminal justice sector demonstrate the need for greater conceptual clarity and a higher degree of confidence among those applying the term. For example, there were calls in 2020 for the police to replace the label “Islamist” with “faith-based” when describing terrorism or extremism.⁹⁷ More recently, similar calls have been made by the National Association of Muslim Police.⁹⁸ Arguments against the use of “Islamist extremism” are rational: Muslim non-experts might, and do, assume that Islam is being criticised when they encounter the term and perceive discrimination. This is hardly surprising given the concept’s official formulation (i.e. as a type of Islamism offending British sensibilities). One obvious practical answer is to consider the relationship between Islamist extremism and Islam, and then to consider how the degradation of Islam impacts British society.

If the label “Islamist extremism” is to remain in circulation – and a recent threat update by MI5 and leaked information from an official review of Prevent both suggest it might⁹⁹ – a clearer definition will enable those using it to describe more precisely what is meant and, as stated previously, what is not meant by the term. This has implications for fairness, procedural justice and improved community relations.

Based on all of the above, the authors, therefore, recommend an open-minded return to *Begg v BBC* and the adoption of Haddon-Cave’s framework when defining “Islamist extremism” and other forms of extremism. An appropriate new definition of “Islamist extremism” would begin, arguably, with the consideration of positions found outside mainstream or moderate Islam taking Wilkinson’s definition of “moderate Islam” as a starting point. It would continue with a checklist of indicators or conditions that can be revisited and adjusted over time. An appropriate list might include (as per Haddon-Cave’s judgment):

- the presence of a strong in-group/out-group mentality (as per Berger);
- a desire to impose *Shari’a* by force;
- a limited and exclusively violent interpretation of *jihad* that ignores Islamic doctrinal conditions;
- advocating *qital* as a universal individual religious obligation;
- a view that *Shari’a* requires laws of the land to be broken;
- a construction of all non-Muslims as *kuffar* (where *kuffar* is applied exclusively to denote an enemy for the purposes of violence or its justification);
- a construction of *ummah* that denotes all non-Muslims as an enemy (for the purposes of violence or its justification);
- citing or referring with approval the legal opinions of Islamic scholars who espouse extremist views or extremist Islamic ideologies; and

97 Dominic Kennedy, “Police May Drop ‘Islamist’ Term when Describing Terror Attacks,” *The Times*, 20 July, 2020, <https://www.thetimes.co.uk/article/police-may-drop-term-islamist-when-describing-terror-attacks-7pjsf8pn7>

98 “National Association of Muslim Police Calls for Updating Counter Terrorism Terminology: Press Release, Monday, November, 2022,” National Association of Muslim Police, 2022, <https://www.muslim.police.uk/news>

99 “Director General Ken McCallum gives annual threat update” *Mi5* [official website], 2022, <https://www.mi5.gov.uk/news/director-general-ken-mccallum-gives-annual-threat-update> ; Jessica Elgot and Vikram Dodd, “Leaked Prevent review attacks ‘double standards’ on far right and Islamists,” *The Guardian*, 16n May, 2022, <https://www.theguardian.com/uk-news/2022/may/16/leaked-prevent-review-attacks-double-standards-on-rightwingers-and-islamists>

- teaching which explicitly or implicitly encourages Muslims to engage in or support violence in the name of Allah.

Defining “Islamic extremism” more precisely requires the consideration of recent cases citing *Begg* and further engagement from experts like Gleave and Wilkinson, including from British Islamic scholars. It would also require the consideration of more recent academic research. Whilst far from trivial, meeting the challenge of defining “Islamist extremism” has much to offer the UK Government and other state agencies; not least, greater conceptual certainty and greater coherence and consistency across counter-extremism policy and practice.

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