

THE LIMITS OF LIBERAL INCLUSIVITY: HOW DEFINING ISLAMOPHOBIA NORMALIZES ANTI-MUSLIM RACISM

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ABSTRACT

Responding to recent calls made within the 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 counterterrorism initiatives from the government management of controversies within Islam. Instead of repeating the mistakes of the governmental adoption of the International Holocaust Remembrance Alliance (IHRA)'s 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 April 23, 2018, the All-Party Parliamentary Group on British Muslims (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 a “legally binding” one.² In both the United Kingdom and the United States, political mobilization for such a definition is growing, particularly among Muslim advocacy organizations. Although no government agency has adopted any such

1 All-Party Group on British Muslims (@APPGBritMuslims), Twitter, April 23, 2018, 12:29 p.m., <https://twitter.com/APPGBritMuslims/status/988454757084909568>. The call was circulated only via Twitter; it was not disseminated elsewhere, either online or in print.

2 All-Party Parliamentary Group on British Muslims [hereafter APPG on British Muslims], *Islamophobia Defined: Reporting on the Inquiry into a Working Definition of Islamophobia*, 2018, 1–72, 27, <https://static1.squarespace.com/static/599c3d2febbd1a90cfd8a9/t/5bfd1ea3352f531a6170ceee/1543315109493/Islamophobia+Defined.pdf>.

definition, UK political 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 on British Muslims’ 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.”⁶ 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.”⁷ This reading, which emerges from “Critical Muslim Studies,” holds that “Islamophobia can perhaps be defined as the disciplining of Muslims by reference to an antagonistic Western horizon.”⁸

In the face of such momentum, I suggest here that well-intentioned efforts to develop a legally binding definition suitable for governmental adoption may 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 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.⁹

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 United Kingdom.

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 government’s ill-fated adoption of the International Holocaust Remembrance Alliance’s (IHRA) definition of

3 The APPG on British Muslims’ 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,” *Guardian*, March 20, 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): 108–25, at 111, <https://columbialawreview.org/wp-content/uploads/2016/11/November-2016-11-Beydoun.pdf>.

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

6 APPG on British Muslims, *Islamophobia Defined*, 11.

7 Narzanin Massoumi, Tom Mills, and David Miller, “Islamophobia, Social Movements and the State: For a Movement-Centred Approach,” in *What is Islamophobia? Racism, Social Movements and the State*, ed. Narzanin Massoumi, Tom Mills, and David Miller (London: Pluto Press, 2017), 3–32, at 8.

8 Salman Sayyid, “Out of the Devil’s Dictionary,” in *Thinking through Islamophobia: Global Perspectives*, ed. Salman Sayyid and Abdool Karim Vakil (London: Hurst & Company, 2010), 5–18, at 15.

9 This aspect further develops arguments first articulated in Rebecca Ruth Gould, “Is the ‘Hate’ in Hate Speech the ‘Hate’ in Hate Crime? Waldron and Dworkin on Political Legitimacy,” *Jurisprudence* 10, no. 2 (2019): 171–87.

antisemitism in 2016. Yet the problems with such definitions and with their application become more apparent with every censorious exclusion of Israel critics from the public sphere.¹⁰ My past work documenting the harms of censoring Israel-critical speech following the government's adoption of the IHRA's definition has led me to regard the campaign for a government-backed definition of Islamophobia with reservations.¹¹ The example of the adoption of the IHRA definition shows how government-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 promote equality for Muslims within Muslim-minority societies.

Among the most pressing, yet most obscured, issues 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."¹² Proposals underway to adopt a government-supported definition of Islamophobia in order to facilitate the criminalization of anti-Muslim speech risk normalizing this securitized 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 we resist falling into "the trap of regarding Islam monolithically."¹³ 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. When it uses a definition of Islamophobia to facilitate the censorship of Islamophobic speech, the state adopts the mantle of defining Islam while 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 counterterrorism 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 definitions 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

10 Anshuman 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 Anshuman A. Mondal, "The Shape of Free Speech: Rethinking Liberal Free Speech Theory," *Continuum* 32, no. 4 (2018): 503–17.

11 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*, published ahead of print, August 18, 2018, <https://doi.org/10.1177/1743872118780660>; Rebecca Ruth Gould, "The IHRA Definition of Palestinians: Defining Antisemitism by Erasing Palestinians," *Political Quarterly*, published ahead of print, July 28, 2020, <https://doi.org/10.1111/1467-923X.12883>.

12 "If We Want to Stop Islamophobia, We Have to Challenge the Laws that Enable It," (blog post), CAGE, November 22, 2018, <https://www.cage.ngo/if-we-want-to-stop-islamophobia-we-have-to-challenge-the-laws-that-enable-it>.

13 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, no. 1 (2012): 54–81, at 76.

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 do so in what follows by examining how two specific theorists—Chantal Mouffe and Eric Heinze—reconcile the mandate of free speech with liberal democracy. I focus on Mouffe and Heinze because they usefully straddle a range of different political positions. Both, notably, are critics of political liberalism. Equally, their shared interest in agonistic deliberation as a foundation for democracy illustrates how an emphasis on free speech can promote rather than suppress minority rights.

In her political theory of democracy, Mouffe introduces the concept of agonistic pluralism as an alternative to the liberalism of John Rawls and Jürgen Habermas. Although pluralism is widely recognized as normative within modern political theory, this concept has a foundational status for Mouffe, who understands it as the “defining feature of modern democracy.”¹⁴ Mouffe argues that pluralism is constitutive of contemporary democracy. For Mouffe, a state is either plural, in the sense of being comprised of individuals with conflicting aims, backgrounds, 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 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.”¹⁵ Bauböck and Mouffe together help us understand the entangled relationship between pluralism and democracy. On Mouffe’s account, a state populated by like-minded citizens who follow the same creed will be unable to sustain democratic legitimacy because it would lack the necessary difference that makes deliberation possible. This is the case even when free speech is nominally enshrined in law. Mouffe’s concept of agonistic pluralism is thus both *constitutive of* democracy and *prior to* it.

Mouffe views 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.”¹⁶ Yet at the same time, the pluralism Mouffe values so highly is given at least nominal recognition in generalized 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 maximize pluralism without compromising state security, or citizens’ right to equal representation. Mouffe’s concept of agonistic pluralism is premised on the existence 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. Thus, while liberal democratic theorists may encourage pluralism, Mouffe makes clear that pluralism without active dissent is democratically empty. Although Mouffe does not single out free speech as a condition for her concept of

14 Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 19.

15 Rainer Bauböck, “Global Justice, Freedom of Movement and Democratic Citizenship,” *European Journal of Sociology* 50, no. 1 (2009): 1–31, at 16.

16 Mouffe, *The Democratic Paradox*, 19.

democracy, the right to dissent is a type of freedom of expression, a fact that highlights the importance of free speech for Mouffe's agonistic pluralism.

The link between free speech and democratic legitimacy is more forcefully outlined by legal theorist Eric Heinze, who considers free speech to be constitutive of democracy in much 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. As Heinze writes, "Voting remains derivative of something more foundational, something constitutive of it. It derives from, as a formalized procedure for, expression within public discourse," more simply termed free speech.¹⁷ He reasons that the "non-viewpoint punitive expression within public discourse" is "even more primordial than voting"; it "cannot legitimately be regulated for the sake of democracy because it signally *constitutes* democracy."¹⁸ 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 favored concept, and argue that democracy cannot be conceptualized apart from it.

In this article, I draw on the insights of Mouffe regarding pluralism and Heinze regarding 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 might have symbolic meaning, but it would lack political value due to the absence of public disagreement. Under such hypothetical conditions, freedom of expression is reduced to a mere ornament of civility rather than the foundation of political existence. A state can easily uphold the citizen's prerogative of free expression when all citizens agree with each other. The proposed definitions of Islamophobia and antisemitism present a radically different scenario: they bring into focus ineluctable differences that cannot be rationalized away through enlightened deliberation. Although it comes under greater stress the more diverse society becomes, a state's ability to uphold free speech *in a pluralistic context* is sine qua non for its democratic legitimacy. A state acquires democratic legitimacy by maximizing the scope for political difference through fostering pluralist norms. Such a state must also permit forms of public discourse that challenge its existence and legitimacy. Further, it must permit forms of public discourse that challenge its pluralist commitments, including the bigotries of xenophobic discourse.

Hateful speech (more commonly called "hate speech") has increasingly become a battleground for democratic legitimacy in pluralistic societies.¹⁹ The harms that are associated with 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 often adjudicated

17 Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford: Oxford University Press, 2016), 47.

18 Heinze, *Hate Speech and Democratic Citizenship*, 47 (emphasis added).

19 As noted by Katharine 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." Katharine Gelber, "Hate Speech—Definitions and Empirical Evidence," *Constitutional Commentary* 32, no. 3 (2017): 619–29, at 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." Katharine Gelber, "Incitement to Hatred and Countering Terrorism: Policy Confusion in the UK and Australia," *Parliamentary Affairs* 71, no. 1 (2018): 28–49, at 31n3. I take these reservations further by forming a copula that ensures that "hate" is not treated separately from "speech."

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 in shaping public opinion and in fostering hateful speech must never escape scrutiny. Whether or not we adopt the premises of Mouffe and Heinze, their shared focus on the role of agonistic deliberation in constituting democracy offers a means of reconceptualizing 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 good for democracy? The recent political turbulence and occasional censorship attending the adoption of a definition of antisemitism on which the definition of Islamophobia is explicitly based illustrates in amplitude the dangers of government-backed definitions.

On December 12, 2016, the United Kingdom became one of the first governments in the world to formally adopt a controversial definition of antisemitism proposed by the IHRA, which is an intergovernmental body founded in 1998 to “strengthen, advance, and promote Holocaust education, remembrance, and research worldwide.”²⁰ Neither the definition nor the process of its adoption was subjected to parliamentary scrutiny (arguably a key 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.²¹ Amid these censorious acts, few voices have spoken out in defense 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’s definition is its presumptive stigmatization of views on Israel that are not necessarily motivated by racial animus. Marked by a clear political slant, the IHRA’s definition in effect excludes many Jewish points of view, especially those that are distant from or hostile to Zionism. While many critiques of this definition have been aired in recent years, its lessons for the comparative study of group-specific definitions of racism have been undertheorized. One lesson we can take from this example while deliberating on a definition of Islamophobia is that the tensions that have emerged in connection with the IHRA definition are

20 “IHRA 2020 Ministerial Declaration Adopted in Brussels,” International Holocaust Remembrance Alliance, January 19, 2020, <https://www.holocaustremembrance.com/press-releases/ihra-2020-ministerial-declaration-adopted-brussels>.

21 The fullest legal engagement with this document to date has been Hugh Tomlinson, “In the Matter of the Adoption and Potential Application of the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism,” Free Speech on Israel, March 8, 2017, <https://freespeechonisrael.org.uk/ihra-opinion/#sthash.kft5TkDo.dpbs>. See also Sir Stephen Sedley, “Defining Anti-Semitism,” *London Review of Books*, May 4, 2017, 8.

likely to appear in connection with any group-specific definition of racism. Such definitions are useful only when they address the systematic structures and social norms within which such bigotry is normalized. Dismantling the processes through which racial and religious hatred is constituted will neutralize the power of prejudice more effectively than any act of banning can achieve.

Having examined the politics of definitions from the point of view of their implications for democratic governance, I offer an immanent critique of recent efforts to define Islamophobia that is informed by the history of Muslim integration into Muslim-minority societies. As noted above, any legal definition begins by considering the role of the state in defining its object. Muslim scholars such as Abdullahi Ahmed An-Na'im have argued that the very idea of an Islamic state is a contradiction in terms, because a genuinely Islamic understanding of the state cannot be assimilated into modern bureaucratic structures.²² Legal scholar Wael Hallaq has developed this argument further. Hallaq criticizes the projection of the nation-state onto classical Islamic political formations. In Hallaq's view, "any conception of a modern Islamic state is inherently self-contradictory."²³

An-Na'im's argument has helped scholars challenge the postures adopted by regimes such as Saudi Arabia and Iran, which commit human rights violations while claiming to represent a certain kind of Islam. Hallaq's argument concerning the impossibility of achieving Islamic governance is explicitly made 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."²⁴ While these arguments have been influential within Islamic Studies, 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. As Hallaq maintains, "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."²⁵ In contrast to the *sharī'a* in its historical meaning, which "did not—because it was not designed to—serve the ruler or any form of political power," the modern state can only serve itself.²⁶ Hallaq recognizes contemporary nation-based sovereignty as a state's primary mechanism of self-preservation and, by implication, as the means through which the state surveils its citizens.

Democratic legitimacy requires that all citizens be represented in lawmaking. 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.²⁷ In order to be legitimate, a governmental definition of Islamophobia would need to be able to reasonably claim to represent *all* Muslim citizens within this definition. The heterogeneous constitution of the modern pluralist state makes such representation impossible. In consequence, any governmental definition of Islam (or of Islamophobia) would be illegitimate because

22 Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008). An-Na'im's argument is also developed in his Carl Heinrich Becker Lecture. Abdullahi Ahmed An-Na'im, "Shari'a and the Secular State in the Middle East and Europe," in *Carl Heinrich Becker Lecture der Fritz Thyssen Stiftung 2009* (Berlin: Fritz Thyssen Stiftung, 2009), 105–40.

23 Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), xi.

24 Hallaq, *The Impossible State*, xiii.

25 Hallaq, 72.

26 Hallaq, 72.

27 For one statement of this position from a free speech perspective see James Weinstein, "Hate Speech Bans, Democracy, and Political Legitimacy," *Constitutional Commentary* 32, no. 3 (2017): 527–83.

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 advocates for a government-backed definition on the grounds that “[a]dopting 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.”²⁸ The report’s call for a “legally binding definition,” suggests that the benefits of “identifying a widespread phenomenon” and “sending a positive message” were deemed to outweigh the dangers registered in these pages.²⁹ 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 United Kingdom have welcomed the reifying influence of a governmental definition. Among the most outspoken and articulate of the groups who have raised necessary yet—for the government—uncomfortable questions is CAGE. CAGE describes itself as “an independent advocacy organisation working to empower communities impacted by the War on Terror.”³⁰ In responding to the APPG on British Muslims’ call for evidence, CAGE argued 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.”³¹ Overall, CAGE’s substantive and detailed response to the call for evidence effectively exposes what they refer to as the “strong stench of Islamophobia” in British government policies relative to Muslims.³²

In its response to the APPG on British Muslims’ report, CAGE noted that 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.”³³ From the viewpoint of CAGE, governmental efforts to define Islamophobia are best treated with skepticism as long as the more basic structural phobias introduced by the War on Terror remain unaddressed. Asim Qureshi, research director of CAGE, was quoted as stating in response to the report, “If the definition of Islamophobia cannot hold those in power to account for their role in manufacturing Islamophobia, then it is inadequate.”³⁴ Unsurprisingly, although CAGE submitted written evidence to the APPG on British Muslims as part of its Islamophobia inquiry, CAGE’s evidence was not engaged with or referenced in the report.

Any assessment of a democracy’s success in protecting minority groups—and thereby in upholding its pluralist mandate—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 potentially—be understood to

28 APPG on British Muslims, *Islamophobia Defined*, 32.

29 The call for a “legally binding definition” is repeated in APPG on British Muslims, *Islamophobia Defined*, 17, 30, 32, 42, 43, although the precise type of legal obligation envisioned is never reflected on.

30 “About Us: Striving for a World Free of Injustice,” CAGE, accessed May 8, 2020, <https://www.cage.ngo/about-us>.

31 CAGE, “CAGE Response to a Call for Evidence on a ‘Working Definition of Islamophobia/Anti-Muslim Hatred’” (London: CAGE, 2018), 9, https://www.cage.ngo/wp-content/uploads/2018/06/CAGE-Response-to-Working-Definition-of-Islamophobia_Anti-Muslim-hatred.pdf.

32 CAGE, “CAGE Response to a Call for Evidence,” 9.

33 CAGE, “If We Want to Stop Islamophobia.”

34 CAGE, “Discussions around the Definitions of Islamophobia Skirt the Real Issues We Need to Address,” Press release, November 29, 2018, <https://www.cage.ngo/discussions-around-the-definitions-of-islamophobia-skirt-the-real-issues-we-need-to-address>.

have consented to be defined in the way presupposed by 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 racism, 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.³⁵ 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.³⁶ Were the proposed governmental definition of Islamophobia to be ratified as law (as the APPG on British Muslims' report advocates), it would 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."³⁷ 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 anti-semitism share 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 on British Muslims, the cross-government Anti-Muslim Hatred Working Group, has proposed to define Islamophobia as an ideology "similar in theory, function and purpose to racism."³⁸ As does CAGE, critical race theorist Khaled Beydoun recognizes the role of government policies in fostering Islamophobia. Beydoun even incorporates governmental complicity into his definition of Islamophobia as an attitude "rooted in understandings of Islam as civilization's antithesis and perpetuated by government structures and private citizens."³⁹ He also goes beyond the APPG on British Muslims report in examining the intersection of Islamophobia and the War on Terror.⁴⁰ However, Beydoun's contribution to the definition of Islamophobia is 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 ("government structures"), and by an inadequate contextualization of Islamophobia within a more structural account of anti-Muslim racism.

35 Ronald Dworkin, foreword to *Extreme Speech and Democracy*, ed. Ivan Hare and James Weinstein (Oxford: Oxford University Press, 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?"

36 Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012).

37 Weinstein, "Hate Speech Bans," 532. Given that pluralism is as foundational for democracy as the citizen's prerogative of dissent, I do not 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 impugns the legitimacy of downstream laws.

38 Allen, *Islamophobia*, 190.

39 Beydoun, "Islamophobia," 111.

40 Khaled A. Beydoun, "War on Terror, War on Muslims," in *American Islamophobia: Understanding the Roots and Rise of Fear* (Oakland: University of California Press, 2018), 92–124.

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 governmental definitions of group-specific bigotry. Definitions developed by believers to describe and define themselves are *intrinsic*. They acquire legitimacy simply through usage. Governmental definitions ought to be subject to different criteria. They are *extrinsic*, and are intended 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 toward specific religious communities. Within any 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 contested.

As the APPG on British Muslims' 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, MP Anna Soubry, who later co-authored the Islamophobia report, cut her ties with Muslim Engagement and Development (MEND), a group that has fighting Islamophobia as its primary mission, because, as she explained to the press, it did not "have the best of reputations."⁴¹ 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 stigmatizing 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. The three major Abrahamic religions—Judaism, Christianity, and Islam—each admit of such diversity in doctrinal and other realms, that all efforts at definition are bound to be contested, by gatekeepers and by dissenters. Historically, monotheistic religions have often embraced exclusive definitions, but pluralist states are compromised 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 perspective, religions can be *thickly characterized*; they cannot be comprehensively defined. To the extent that we define religions by contrasting them with what

41 Quoted in Iram Ramzan and Andrew Gilligan, "MPs Ditch Meeting with Muslim Group Mend over Islamist Claims," *Times*, October 29, 2017, <https://www.thetimes.co.uk/article/mps-ditch-meeting-with-muslim-group-mend-over-islamist-claims-rqxqnos05>. Further background is provided in a report by the Henry Jackson Society, which has the clear aim of discrediting MEND. Tom Wilson, *MEND: "Islamists Masquerading as Civil Libertarians"* (London: Henry Jackson Society, 2017), <http://henryjacksonsociety.org/wp-content/uploads/2017/10/HJS-Mend-Report.pdf>.

they are 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 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 more usefully aim for what Clifford Geertz has described as “thick description” in the context of ethnographic fieldwork than aspire to generate finalizing definitions for legal ends.⁴²

While individuals may align with specific political ideologies, the ascription of a religion to individuals 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. Believers may seek self-definition 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*, religious community, or the broader Islamic concept of *ahl al-dhimma*, protected people). Notably, however, such restrictive definitions were confined to minority religions, not to Islam; their net effect was to reify the communities under consideration. Even when 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 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 members of a religion should be prosecuted as a hate crime when it involves otherwise criminal violence or destruction to a person or property based on the characteristics associated with members of a religion. There is also scope for criminalizing anti-religious bigotry in the context of anti-discrimination legislation.⁴³ To the extent that they pertain to material harms, neither hate crime nor anti-discrimination legislation need infringe on freedom of expression. But when bigotry is expressed purely discursively because it is grounded in racist stereotypes and relies on fictions concerning 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. Such an approach counters a tendency to identify the source of bigotry in the victim by recognizing the origin of the prejudice in the bigot. By permitting hateful speech that does not result in material harms, a pluralistic democracy can reveal how bigoted discourse is disconnected from reality and thereby sever any perceived link with the ostensible target of animus more effectively than it might by criminalizing such expression.

The above pertains to bigotry against people perceived to belong to certain races. But what of hostility toward 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

42 Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 3–30. This point is further developed in Rebecca Ruth Gould, “Does Defining Racism Help Overcome It? Thick Descriptions in Lieu of Thin Definitions,” in *Antisemitism, Islamophobia, and the Politics of Definition*, ed. David Feldman and Marc Volovici (London: Palgrave MacMillan, forthcoming).

43 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 American Law Journal*, no. 12 (2005): 41–66.

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 freedom for Muslims within that state to define themselves as they choose. Here we see how free speech violations threaten pluralistic legitimacy and vice-versa. Such maneuverings limit the autonomy of individual Muslims, particularly in Muslim-minority societies such as the United Kingdom, 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, below I examine the recent history of governmental efforts to counter Islamophobia within the United Kingdom. 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.”⁴⁴ Although the APPG on British Muslims is not solely focused on defining Islamophobia, this is 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 on British Muslims abruptly cancelled their plans to attend an Islamophobia Awareness event sponsored by MEND on the grounds that the group did not “have the best of reputations,” as quoted above.⁴⁵ The earlier All-Party Parliamentary Group on Islamophobia was also derailed because of its affiliation with this same group (when it was called iENGAGE).⁴⁶

The basis for the MP’s recusal remains obscure. News reports suggest that it was linked to Tom Wilson’s report for the Henry Jackson Society, *MEND: “Islamists Masquerading as Civil Libertarians.”* The society describes the report as “demonstrate[ing] that MEND meets the Government’s own definition of extremism—even while local authorities, police, teachers and MPs have been working with the organisation.”⁴⁷ Moreover, according to the report (which is strikingly hostile toward its subject), “Mend [*sic*] and its employees and 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.”⁴⁸ The terms highlighted here reveal a pronounced tendency to police the boundaries of Islam, such that only “liberal” Muslim groups that reject “intolerance” and support “counter-extremism” are deemed worthy of support. Pluralistic democratic legitimacy requires a much more inclusive approach than that proposed by the Henry Jackson Society and apparently internalized by the APPG on British Muslims. A pluralistic democracy will inevitably include among its members

44 House of Commons [United Kingdom], Register of All-Party Parliamentary Groups [as at 28 September 2017], <https://publications.parliament.uk/pa/cm/cmallparty/170928/british-muslims.htm>.

45 For a detailed account see Chris Allen, *A Momentous Occasion: A Report on the All Party Parliamentary Group on Islamophobia and its Secretariat* (Birmingham: Institute of Applied Social Studies, 2011), <http://conservativehome.blogs.com/files/appgislamophobia-allen-2011-2.pdf>. For a summary of Allen’s prolific work on Islamophobia and a discussion of the definition, see Allen, *Islamophobia*, 187–92.

46 Allen, *A Momentous Occasion*, 21–23.

47 Wilson, *MEND*.

48 Wilson, *MEND*, 81 (emphasis added).

individuals who are neither liberal nor tolerant, yet whose speech is as deserving of protection as anyone else.

The internal differences given in Wilson's report as a reason for the government to distance itself from MEND illustrate why a democratic state should refrain 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. According to this standard, a government that intervenes in such affairs by refusing to align with certain groups on reputational grounds and in response to media pressure is made less democratic by virtue of such intervention. The government's adoption of the IHRA definition provides ample evidence concerning how government involvement in defining prejudice against a religious community can work to that community's detriment. Many Jewish organizations and Jewish individuals have voiced their opposition to the IHRA definition, even as their objections have gone ignored, by the conservative-leaning Board of Jewish Deputies, which spear-headed the IHRA adoption and, following their lead, the government itself.⁴⁹

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 Wilson's report) is to propagate a "good" versus "bad" Muslim paradigm that further entrenches the securitization matrix that is implicated in the production of Islamophobia.⁵⁰ 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 report by the APPG on British Muslims itself curiously evades any serious discussion of sectarianism within Islam, simply asserting, "it would be misleading to interpret Islamophobia as a tool that can capture, together with the issues of racialisation, issues of sectarianism."⁵¹ 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 on British Muslims, Soubry's decision to sever ties with MEND is a sectarian gesture, however it was intended. Soubry is within her rights as a private citizen to decide which Muslim groups to affiliate with or distance herself from, just as the Henry Jackson Society 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 the Henry Jackson Society 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 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,"⁵² within British society while refusing to

49 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.

50 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: Three Leaves Press, 2005).

51 APPG on British Muslims, *Islamophobia Defined*, 41.

52 David Cameron, "Extremism" (speech, Ninestiles School, Birmingham, UK, July 20, 2015), <https://www.independent.co.uk/news/uk/politics/david-cameron-extremism-speech-read-the-transcript-in-full-10401948.html>. Cameron delivered this speech prior to the government's introduction of enhanced Prevent legislation.

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 Islam rather than allowing it to flourish on its own terms, as a pluralistic democracy must do. While government neutrality on all issues is neither possible nor desirable, pluralist democracy lives and dies according to its ability to maintain government neutrality toward religion.

Two approaches are inevitably brought into conflict by 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 on British Muslims declares its support for this agenda specifically regarding the curtailment of the citizen’s prerogative of free expression when it states, “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.”⁵³ In the second instance, the British state claims to protect Muslims whom it surveils by proposing to criminalize Islamophobia, notwithstanding the state’s own 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 concerning the hypocrisy of liberal states that claim to protect Islam while also criminalizing 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 on violence directed against Muslims (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, often in the name of its protection. When sympathetic politicians engage in such scrutiny, it may appear favorable and intended to reinforce Islam’s positive qualities. It 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 to protect Islam disproportionately surveil Muslims, even while categorizing Islam as a religion they must protect.

MAKING ISLAMOPHOBIA ATTRACTIVE

Having discussed how a governmental definition of Islamophobia would compromise democratic legitimacy and place Muslim communities under further surveillance, I now consider how the potential harms of hate speech regulations limit efforts to challenge and oppose racism. A 2006 article by Mark Steyn, “The Future Belongs to Islam,” published in the Canadian magazine

⁵³ APPG on British Muslims, *Islamophobia*, 37.

Maclean's offers a case in point.⁵⁴ The article became the subject of a complaint to the Canadian Human Rights Commission filed by the Canadian Islamic Congress. Steyn made a series of claims that, in the words of the commission, were “obviously calculated to excite discussion and even offend certain readers, Muslim and non-Muslim alike.”⁵⁵ No less disturbing than the article 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.⁵⁶ Lacking any clear community mandate, the Canadian Islamic Conference was dissolved in 2014, yet it presented itself to the Canadian Human Rights Commission as the authorized representative of all Muslims.

As among British Muslims, in which context, 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.⁵⁷ 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 identity-based understandings of representation due to its decentralized structures of authority: there is no priesthood or clerical class, let alone a pope licensed to speak *ex cathedra*. The fact that, in order to exonerate Steyn’s article, the Canadian Human Rights Commission had to determine that “the views expressed . . . when considered as a whole and in context, are not of an extreme nature, as defined by the Supreme Court”⁵⁸ testifies to the compromises with democratic legitimacy entailed in Canadian hate-speech legislation. Although on this occasion the commission chose to uphold the citizen’s prerogative of free expression, the commission’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 United Kingdom’s subsequent approach to policing forms of Islam deemed to be “extremist” from the point of view of the counterterrorism matrix.

Although the Canadian Human Rights Commission ultimately ruled against the complainer, damage was done, both to the cause of freedom of expression and to the cause of freedom to practice religion. It is difficult to demonstrate harm in the case of speech suppression because the damage is often not expressed in material form. Yet, it is clear that the Canadian Islamic Conference 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

54 Mark Steyn, “The Future Belongs to Islam,” *MacLean’s*, October 20, 2006, <https://www.macleans.ca/culture/the-future-belongs-to-islam/>.

55 Canadian Islamic Congress v. Rogers Media Inc., at 4 (Canadian Human Rights Commission, June 25, 2008), quoted in “Human Rights Complaint against Maclean’s Dismissed,” *Globe and Mail*, June 28, 2008, <https://www.theglobeandmail.com/news/national/human-rights-complaint-against-macleans-dismissed/article18452636/>. Although the decision was widely reported and quoted in the Canadian press and law blogs at the time, the unpublished decision is no longer publicly accessible.

56 Elmasry and Habib v. Roger’s Publishing and MacQueen (No. 4), 2008 BCHRT 378, at ii, 1, <http://bccla.org/wp-content/uploads/2012/03/2008-BCCLA-Argument-Elmasry-Decision.pdf> (accessed October 14, 2019).

57 Kenan Malik, “Fear, Indifference and Engagement: Rethinking the Challenge of Anti-Muslim Bigotry,” in *Islamophobia: Still a Challenge for Us All*, ed. Farah Elahi and Omar Khan (London: Runnymede Trust, 2017), 73–77, at 74, <https://www.runnymedetrust.org/uploads/Islamophobia%20Report%202018%20FINAL.pdf>.

58 Canadian Islamic Congress v. Rogers Media Inc., quoted in “Human Rights Complaint against Maclean’s Dismissed.”

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 favor of governmental definitions of Islamophobia is in fact an admission of weakness and an endorsement of Muslims' subordinate status within Muslim-minority states.

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 Muslim citizens by the War on Terror. They are willing to tacitly permit surveillance by the government in exchange for the government's commitment 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, the trade-off calls to mind the management of religious minorities in early Islamic empires, wherein non-Muslims (Christians, Jews, Zoroastrians) were granted limited rights as long as they agreed to follow restrictive behavioral and dress codes, and to refrain from blaspheming Islam.⁵⁹ In a more contemporary context, the impulse to define religious difference calls to mind Kenan Malik's characterization 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."⁶⁰ The proposed governmental definition of Islamophobia is the most recent expression of this mode of public policy making. Muslim organizations that concentrate their advocacy efforts on persuading the state to censor Islamophobic speech inevitably 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 (RRHA), drawn up shortly after the London bombings of July 2005, exemplifies this 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,"⁶¹ the legislation reads. With such a formulation, the legislation defines "religious hatred" as a form of expression that is subject to criminal sanctions.⁶² Among the side effects of this conflation is a focus on (Islamist) terrorism (the backdrop

59 In the extensive literature on the "people of the book" within Islamic history that delineates these sociological dimensions in greater detail, key works include the following: Mark Cohen, *Under Crescent and Cross: The Jews in the Middle Ages* (Princeton: Princeton University Press, 1994); Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003); Milka Levy-Rubin, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence* (Cambridge: Cambridge University Press, 2011). For a case study of these discriminatory regulations, see Rebecca Ruth Gould, "Wearing the Belt of Oppression: Khāqānī's Christian Qaṣida and the Prison Poetry of Medieval Shirvān," *Journal of Persianate Studies* 9, no. 1 (2016): 19–44.

60 Malik, "Fear, Indifference and Engagement," 76.

61 Racial and Religious Hatred Act, 2006, c.1, § 1 (Eng.), <https://www.legislation.gov.uk/ukpga/2006/1/schedule/data.xht?view=snippet&wrap=true>.

62 This provision is discussed and critiqued in S. Chehani Ekaratne, "Redundant Restriction: The U.K.'s Offense of Glorifying Terrorism," *Harvard Human Rights Journal*, no. 23 (2010): 205–21, at 212; Gelber, "Incitement to Hatred and Countering Terrorism," 33–34.

against which the RRHA was created) as an ideology, rather than as a mode of violence, and an assumption that the best way of 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.”⁶³ Government efforts to broaden the meaning of terrorism are related to the drive 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 propagated by media coverage, most problematically from the point of view of democratic legitimacy, it is also entailed in the RRHA. Without naming Islam, the legislation criminalizes 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.”⁶⁴ Another Prevent guidance document registers 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.”⁶⁵ 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. As long as they fall under the rubric of “extremist,” such views, according to this government policy, should be 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.”⁶⁶ Echoing Cameron’s 2015 speech, this definition blurs analytically distinct boundaries while nationalizing ideological warfare as the defense of “British values.” Elided from this equation are the “British values” that encompass 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” are epitomized by “mutual respect and tolerance of different faiths and beliefs”?⁶⁷ Worst of all, why embed such loaded language in legislation? The

63 Conor Gearty, “Human Rights in an Age of Counter Terrorism,” in *War on Terror: The Oxford Amnesty Lectures*, ed. Chris Miller (Oxford: Oxford University Press, 2013), 83–98, at 85.

64 H. M. Government, *Prevent Duty Guidance*, 2015, at 6 (UK), http://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf.

65 This specific formulation is scrutinized in Conor Gearty, *On Fantasy Island: Britain, Europe, and Human Rights* (Oxford: Oxford University Press, 2016), 206.

66 *Prevent Duty Guidance*, 6.

67 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, no. 2 (2017): 123–42.

government's definition of extremism leaves these questions unresolved, resulting in a state discourse that is concerned above all to protect the status quo, even at the cost of denying its own history.

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-Muslim 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, "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."⁶⁸

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 further criminalizing hateful speech on the grounds of its religious content or for perceiving Islamic discourse as more dangerous than that of white supremacist bigotry.

It can be argued that, far from countering Islamophobic prejudice, such confusing provisions within the RRHA legitimate passive racism and anti-Muslim bigotry. 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 bigoted. 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 a state's legislation rather than entrust it to criminalize views that are in fact reinforced and legitimated by its War on Terror?

CONSTRAINING THE STATE'S MONOPOLY ON VIOLENCE

Taking proposals for a governmental definition of Islamophobia as a case study, I have considered the ways in which suppressing 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 United Kingdom's relationship with its Muslim citizens, a government definition of Islamophobia could never reach a democratically legitimate consensus among the group targeted for protection. Just as right-wing bigots homogenize 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

⁶⁸ Racial and Religious Hatred Act 2006, c. 1, schedule § 29J (England & Wales), <http://www.legislation.gov.uk/ukpga/2006/1/contents> (amending the Public Order Act 1986, c. 64).

the MPs involved in drafting the proposed definition cut their ties with MEND in response to negative media coverage.

Populist political pressure—some of which is 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, 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 presupposes 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 the state's 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; reconceptualizing free speech as intrinsic to the pluralist mandate and as a necessary component of minority rights can help with 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.”⁶⁹ 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 offense 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, *hateful speech derives its power from governmentality*. A government that targets Islam for suspicion (including “non-violent” extremist Islam, as per the 2015 revised version of the Prevent strategy) has no legitimate authority to define Islam for the purposes of its protection, and any such efforts should be regarded 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 government 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

⁶⁹ Gelber, “Hate Speech,” 626.

manifested alongside homophobia.⁷⁰ 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. The strategies include more representation of individuals from minority groups within government, compulsory education concerning other societies and cultures for all members of society, and revising the government's counterterrorism legislation 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.

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⁷⁰ See James Renton and Ben Gidley, eds., *Antisemitism and Islamophobia in Europe: A Shared Story?* (London: Springer, 2017).