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FOREWORD

DOES A NON-EXTREME ANSWER TO EXTREMISM EXIST?

Jeffrey Levicki*

Extremist organizations surround us, often in subtler ways than we might expect. Extremism can be marches through the streets,¹ tweets that multiply through the Twittersverse,² or a quieter, pervasive narrative that slowly seeps into everyday discourse.³

The law seems like a perfect avenue to push back on extremism. Yet, we must ask serious questions about what means the law possesses to achieve those ends, and if the law should be involved at all. Regulation may suppress visible extremism, but it may merely drive hate underground, not eradicate it entirely.

Our *Journal of Law Reform* Symposium, titled *Alt-Association: The Role of Law in Combatting Extremism*, explored those complicated questions.⁴ Over the course of several days, culminating in the Symposium itself, speakers and field experts from around the country delved into how extremist organizations operate in society. These groups may be regularly identifiable from their actions, but the internet has led to many subtler forms of extremism being able to proliferate across the nation and beyond. Websites like Facebook and Twitter have struggled to contain hate groups' use of their sites to spread information.⁵ When those social media sites are successful, alternatives like Gab, a censorship-free platform, are there to take their place.⁶ Even the online chat forums of apps and

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1. See, e.g., Maggie Astor, et al., *A Guide to the Charlottesville Aftermath*, N.Y. TIMES (Aug. 13, 2017), <https://www.nytimes.com/2017/08/13/us/charlottesville-virginia-overview.html>.

2. See Yifang Wei, et al., *Identification of Extremism on Twitter*, IEEE/ACM INT'L CONF. ON ADVANCES IN SOC. NETWORKS ANALYSIS AND MINING, 1251–55 (2016).

3. See, e.g., Doug Criss & Tina Burnside, *The Editor of an Alabama Newspaper Is Calling for the Return of the Ku Klux Klan's Infamous Night Rides*, CNN BUSINESS, <https://www.cnn.com/2019/02/19/media/alabama-newspaper-klan-trnd/index.html> (last updated Feb. 20, 2019, 8:33 AM) (reporting that newspaper editors, empowered by President Trump's rhetoric, feel comfortable openly calling for the return of the KKK).

4. *Announcing JLR's Fall 2018 Symposium: "Alt-Association: The Role of Law in Combatting Extremism"*, U. MICH. J. L. REFORM, (Sept. 3, 2018) <https://mjlr.org/2018/09/03/announcing-jlrs-fall-2018-symposium-alt-association-the-role-of-law-in-combatting-extremism/>.

5. See James Titcomb, *Why Facebook, Twitter, and YouTube Are Unable to Halt Extremism and Hate Online*, TELEGRAPH (June 5, 2017, 5:10 PM), <https://www.telegraph.co.uk/technology/0/social-medias-war-terror-floundering/>.

6. Kianna Gardner, *Social Media: Where Voices of Hate Find a Place to Preach*, CTR. FOR PUB. INTEGRITY (Aug. 30, 2018), <https://publicintegrity.org/federal-politics/social-media-where-voices-of-hate-find-a-place-to-preach/>. Gab is an online site with a 3,000 character message limit that has been called a "safe haven" for Neo-Nazis. See, e.g., Kevin Roose, *On Gab, an Extremist-Friendly Site, Pittsburg Shooting Suspect Aired His Hatred in Full*, N.Y. TIMES

games, such as Discord, have been used by those on the fringes to spread rhetoric.⁷

Perhaps due to this online capacity, the number of hate groups rose again for the third consecutive year in 2017.⁸ According to the Southern Poverty Law Center, 954 hate groups are now operating around the United States, clustered predominantly on the coasts and in the South. There is no one denomination to categorize these organizations. From the continued existence of the Ku Klux Klan to ACT for America or the Nation of Islam, anti-other sentiment wears many faces.

Just how we should go about identifying hate remains somewhat of a mystery. Even more complicated is the question of how we should handle hate groups once there is agreement that a group should be classified that way. Labeling these groups as extremists has useful symbolism and demarcates the organizations for anyone researching them. Yet, the use of that extremist label is not so clear cut, as Anna Williford argues in her insightful piece on the topic in this Issue.⁹ Classifying all people within those groups as radicals marks them as “different” and “not one of us”. This runs the risk of pushing those groups further away, as well as reinforcing the siege narrative that underpins many hate groups.¹⁰

Should we choose to label groups, we must recognize the potential that those labels are nothing more than ineffective stigmatizations as Rebecca Marston analyzed in her reaction piece following the Symposium.¹¹ Focusing on the topic of tagging select people within the justice system as gang members, Marston reasons that the indiscriminate and overbroad application of the gang label is problematic. Rather than delineating true potential issues within the penal system, it separates and divides down often racial lines and aggravates any existing tensions. By seeking to classify prison-

(Oct. 28, 2018), <https://www.nytimes.com/2018/10/28/us/gab-robert-bowers-pittsburgh-synagogue-shootings.html>.

7. Henry Fernandez, *Curbing Hate Online: What Companies Should Do Now*, CTR. FOR AM. PROGRESS (Oct. 25, 2018, 9:01 AM), <https://www.americanprogress.org/issues/immigration/reports/2018/10/25/459668/curbing-hate-online-companies-now/> (For example, Alt-Right members discussed plans and events in Charlottesville within a Discord chat group called Anticom, using the app because of its privacy and anonymity features.).

8. Liam Stack, *Over 1,000 Hate Groups Are Now Active In The United States, Civil Rights Group Says*, N.Y. TIMES (Feb. 20, 2019), <https://www.nytimes.com/2019/02/20/us/hate-groups-rise.html>. (drawing on data from the Southern Poverty Law Center, which tracks hate group activity annually and reported that the number of hate groups identified rose from 784 in 2014 to 954 in 2017).

9. See Anna Williford, *Blurred Lines: What is Extremism?*, 52 MICH. J. L. REFORM 937 (2019).

10. See *id.* at 943-44.

11. Rebecca Marston, *Guilt by Alt-Association: A Review of Enhanced Punishment for Suspected Gang Members*, 52 MICH. J. L. REFORM 923 (2019).

ers into neat boxes, officials are at best ineffective and at worst deepening a rift by trying to suppress it.¹²

Yet, eschewing labels and tolerating hate speech carries its own risks. As University of Michigan Law Professor Leonard Niehoff posits in his article, the worthwhile goal of protecting free speech at all costs bears a substantial burden that is borne by the people targeted by hate speech who typically are minorities already within society.¹³ Still, as Professor Niehoff recognizes, restricting free speech in the name of combatting extremism runs the risk of becoming extremism in itself.

During the Symposium, the idea of promoting, not restricting, open and free speech was consistently raised, and as keynote speaker Sammy Rangel put it, “people with extremist views are not irredeemable.”¹⁴ Mr. Rangel’s own background lends credence to his views and stresses that stigmatizing hate groups may not result in people leaving them. Lessons are learned through understanding, not vitriol, but such words are easier expressed than acted on when hate is affecting people’s lives.

Still, if we are to combat extremism effectively, it is essential to involve community members at every stage of the process, or so argued speakers Kimberly Buddin and Rana Elmir of the American Civil Liberties Union (ACLU) of Michigan.¹⁵ The law has a disproportionate impact on minority communities, and what starts out as well-intentioned efforts to combat hate, can rapidly travel down the road of discrimination and separation, like the experiences of too many Muslim Americans in the wake of 9/11.¹⁶

Even if we want to use the law to fight back against hate, panel speakers believed that courts are not ready and equipped to play the role of caretaker. Recent history indicates that the court system may give protection to white supremacists under the auspices of free speech, but other hate groups do not come close to that level

12. *Id.* at 927–31.

13. Leonard M. Niehoff, *Policing Hate Speech and Extremism: A Taxonomy of Arguments in Opposition*, 52 MICH. J. L. REFORM 859 (2019).

14. Umich Law, *MJLR Lunch Keynote: Sammy Rangel*, YOUTUBE, (published on Apr. 12, 2019), <https://www.youtube.com/watch?v=LmX-yBxj74I> (providing video of Sammy Rangel’s keynote address for the “Alt-Association” Symposium hosted by the Michigan Journal of Law Reform).

15. For an example of this viewpoint, *see, e.g.*, Rana Elmir’s participation in the University of Michigan Law Journal of Law Reform Symposium Panel on defining extremism. Umich Law, *MJLR Panel 1: Defining Extremism*, YOUTUBE (published Apr. 12, 2019), <https://www.youtube.com/watch?v=CbH40AqGakQ>.

16. *See, e.g.*, Jenee Desmond-Harris, *9 Devastating, Revealing Stories Of Being Muslim In Post-9/11 America*, VOX (Sept. 11, 2016), <https://www.vox.com/2016/9/11/12868452/muslim-americans-islamophobia-9-11>.

of deference.¹⁷ With judges who are often unrepresentative of the communities they oversee, there can be a lack of understanding by the judiciary as to what challenges their communities are facing .

Perhaps it is good if the courts are not yet ready to lead a battle against extremism. After all, it remains unclear what the word even means. To ask the ACLU is to get a vastly different answer to that of the Southern Poverty Law Center.¹⁸ It is hard to formulate the question without knowing which principles to work from, with the question of free speech versus freedom from hate becoming an ever-more hotly contested battle with each passing year.

The efforts started within the law to combat hate groups have been innovative and sometimes effective, but the implementation of policies and laws are often quite different from their intended consequences. The theory of how law and policy should coexist and thrive together can be founded on ideals, yet when met with reality, the underlying assumptions driving the policies are too broad to stand the test of actuality.

The key could be to allow as many different approaches to address the problem as possible, as replicated on a micro scale by the Symposium's Design Jam.¹⁹ Touching on everything from education to law enforcement and, of course, social media, Symposium participants and speakers brainstormed and presented solutions to extremism that were all vastly different, but with their own potential to achieve worthwhile ends.

These different answers might be the way forward. After many outstanding Symposium speakers, perhaps the only thing we know is that there is so much left to figure out. By encouraging creative thought and pushing the boundaries of what the law and policy can do to combat hate groups, we have the best possible chance to reach the lofty goal of eliminating hate.

This Issue of Volume 52 of the *Michigan Journal of Law Reform* lays out some of the critical questions raised by extremism and offers approaches as to the how we should proceed. Ideas such as

17. Niehoff, *supra* note 13, at 896 (“The Court’s protective approach toward such central matters of conscience has long offered shelter to movements we associate with the political left.”).

18. Compare *Frequently Asked Questions About Hate Groups: How Does The SPLC Categorize Hate Groups*, SOUTHERN POVERTY L. CTR., (Oct. 4, 2017) <https://www.splcenter.org/20171004/frequently-asked-questions-about-hate-groups#category>, (explaining how the SPLC categorizes hate groups) with *Q&A: The Myth of “Radicalization”*, ACLU, <https://www.aclu.org/other/qa-myth-radicalization> (last visited Apr. 13, 2019) (arguing that the various attempts to define “radicalization” are based on the incorrect assumption that religious beliefs and practices correlate with a propensity towards violence).

19. See *Design Jams*, U. MICH. SCH. INFO., <https://www.si.umich.edu/icareers/employers/how-create-campus-presence/campus-recruiting/design-jams> (last visited Apr. 13, 2019) (describing what a design jam is).

those presented in these pages and outlined at the Symposium may be the foundation of the next steps in combatting extremism. Symposia like these are essential to the *Journal of Law Reform's* mission, providing an annual opportunity to focus on a single topic at a deep level and help push the scholarship in the area forward. Throughout this issue, the novel ideas of our speakers, and the reactions and thoughts they elicited, bring fresh viewpoints to an important and timely debate as we, as a nation, determine how best we can combat hate.²⁰

20. The *Journal of Law Reform* would like to thank all of the participants and speakers who contributed to the Alt-Association: The Role of Law in Combatting Extremism Symposium, including keynote speaker Sammy Rangel; Defining Extremism Panel Speakers David Dinielli, Yazier Henry, Rana Elmir, Javed Ali; Responding to Extremism panel speakers George Selim, Kimberly Buddin-Crawford, Alex Kirshner, Phyllis Gerstenfeld; Springboard Conversations speakers Stephanie Sanders, Nora Krinitsky; and to Don Herzog and Leonard Niehoff for their invaluable assistance in organizing the Symposium.

