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BLURRED LINES: WHAT IS EXTREMISM?

Anna C. Williford*

The Michigan Journal of Law Reform Symposium, Alt-Association: The Role of Law in Combating Extremism (“the Symposium”), attempted to address the question of defining extremism. The Symposium aimed to provide a platform for filtering through the participants’ pre-conceived notions around extremism in order to challenge misconceptions about those labeled “extremist.” This word has been used time and time again in conversation, research, and even this paper without a concrete definition behind it. At the start of the Symposium, participants were asked to define extremism in their own words. The definitions produced were eye opening. For example, extremism was thought to be “ideas outside the established acceptable norms,” “an unwillingness to listen to an opposing point of view,” and “violence backed by ideology.” These definitions reflect a lot of our individual thoughts and how we live our everyday lives.

Through this exercise and throughout the day, it became clear that, assuming the law should regulate extremism, the road to implementation is complicated not only because of the protections under the First Amendment, but also the effects of mislabeling individuals or groups as “extremist.” In the end, progress can only come by being intentional with the language being used.

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INTRODUCTION

The word “extremism” can be tossed around in a variety of conversations, and with each utterance, its meaning fluctuates. The narrative surrounding extremism is controlled by those in a place of power and privilege, as they dictate to society what is normal and what is extreme. Depending on the setting, the response to this singular word is outrage, anger, confusion, and a variety of other emotions. This is a word so powerful that it can cause chaos, but what does it actually mean?

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The *Michigan Journal of Law Reform* Symposium, Alt-Association: The Role of Law in Combating Extremism (the Symposium), attempted to address the question of defining extremism. Throughout the Symposium it became clear that, assuming the law should regulate extremism, the road to implementation is complicated not only because of First Amendment protections, but also the effects of mislabeling individuals or groups as “extremist.” Therefore, progress can only come by being intentional with the language being used. Vocabulary needs to be narrowly tailored and explicitly defined for the context in which it is applied rather than allowing other assumed broad or inappropriate definitions. Intentionality of people, of vocabulary, and of the law, is only possible with a clear understanding of the situations in which extremism holds power.

I. DEFINING EXTREMISM

The courts are reluctant to provide a clear definition of extremism because it is intricately tied to our First Amendment rights. The First Amendment states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.”¹ These protections, particularly of association, which is a protection read into the First Amendment, and speech, can be intertwined with an individual’s belief systems.² Those belief systems can be trigger points for being labeled as an extremist.

For example, the Anti-Defamation League (ADL) defines extremism as “a concept used to describe religious, social or political belief systems that exist substantially outside of belief systems more broadly accepted in society.”³ The elements of the ADL’s definition of extremism mirror the protections outlined in the First Amendment. The difference is that while the First Amendment champions certain personal choices, the ADL demonizes them when they are outside the accepted norm. The United States Supreme Court chose to reaffirm the protections outlined in the Constitution, instead of regulating extremism.⁴

1. U.S. CONST. amend. I.

2. See *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

3. *Defining Extremism: A Glossary of White Supremacist Terms, Movements, and Philosophies*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/glossary-terms/defining-extremism-white-supremacy> (last visited May 5, 2019).

4. See, e.g., *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (affirming freedom of speech after declining to uphold a statute punishing a leader of the Ku Klux Klan after he

Because the courts have not put forth a definition, a significant portion of the understanding around extremism comes from various organizations that have dedicated resources to monitoring and identifying extremist groups and hate groups. In addition to the ADL, the Southern Poverty Law Center (SPLC), and the FBI, all of which were discussed at the Symposium,⁵ have each formulated their own definitions of extremism. Each definition is distinct, as each organization filters their ideas of extremism through their mission statements.

The SPLC argues that while not all extremist organizations are hate groups, all hate groups fall under the definition of extremism. Hate groups are distinct because they “vilify others” for their “immutable characteristics.”⁶ In contrast, the FBI focuses its efforts on violent extremism, which it defines as “encouraging, condoning, justifying, or supporting the commission of a violent act to achieve political, ideological, religious, social, or economic goals.”⁷ While each definition has overlapping elements, such as exclusion from the mainstream, the ambiguity between each definition poses a challenge for those who want to proceed with regulation.

The challenge of defining extremism extends to our daily lives. Symposium speakers and participants faced the complexity of defining extremism. The Symposium aimed to provide a platform for filtering through the participants’ pre-conceived notions around extremism in order to challenge misconceptions about those labeled “extremist.” This word has been used time and time again in conversation, research, and even this paper without a concrete definition behind it. At the start of the Symposium, participants were asked to define extremism in their own words. The definitions produced were eye-opening. For example, extremism was thought to be “ideas outside the established acceptable norms,” “an unwillingness to listen to an opposing point of view,” and “violence

made derogatory comments about minorities to a reporter at a Ku Klux Klan rally. The Court explained that the speech can only be limited by the government if it promotes “imminent lawless action and is likely to incite or produce such action.”); NAACP, 357 U.S. at 460 (affirming the freedom of association, explaining that the ability “to engage in association for the advancement of belief and ideas is an inseparable aspect” of our liberty interest).

5. Umich Law, *MJLR Panel 1 Defining Extremism*, YOUTUBE (Apr. 12, 2019), <https://www.youtube.com/watch?v=CbH40AqGakQ>.

6. *Frequently Asked Questions About Hate Groups*, S. POVERTY L. CTR. (Oct. 4, 2017), <https://www.splcenter.org/20171004/frequently-asked-questions-about-hate-groups#hate%20group>.

7. *Don't Be a Puppet: What is Violent Extremism?*, FED. BUREAU INVESTIGATION, <https://cve.fbi.gov/whatis/> (last visited May 5, 2019) (explaining some of the reasons for participating in these groups, such as shared ideologies, economic conditions, and political and social situations, which may play a role in the development of these organizations and impact the categorization).

backed by ideology.”⁸ These definitions reflect a lot of our individual thoughts and how we live our everyday lives.

If the law was to operate with some of these definitions in mind, like “an unwillingness to listen to an opposing point of view,” on any given day, every single person could be defined as an extremist. Each panelist acknowledged this problem, as an overbroad definition would apply to everyone. Alternatively, defining extremism brings forth questions of power and privilege. The power to define is a symbol of privilege. If defined today, the definition would simply reflect whoever is in the current majority. However, given our democracy, the people and ideas making up the “majority” are constantly shifting. One day the current majority could in fact reflect the minority, and then what happens? The ACLU exemplified awareness of shifting power dynamics by defending the Ku Klux Klan.⁹ They fought for the freedom of an organization the current social majority may not agree with. One day that fight may benefit those who really need those protections, whose views might reflect our own, and whose freedom is at risk.¹⁰

II. EXTREMISM AND THE LAW

Freedom is a powerful word and yet, in many instances, an abstract idea. Freedom of religion, speech, and association all meet at a crossroads when one explores the facets of extremism. Legally, extremism is often left untouched. Instead, elements surrounding extremism, such as violence, are addressed, as seen through increased civil litigation holding groups accountable for the conduct of its members.¹¹ Perhaps, courts are concerned with overstepping. Others might assume that courts and the legislature are unsure of how to address a problem that seems to spill into every aspect of the political landscape.

Courts’ current response to extremism is the result of balancing competing interests. “The courts have balanced the right of free expression and association on one hand with the right of society to

8. Definitions of Extremism, U. MICH. J. L. REFORM, in Ann Arbor, Mich. (Nov. 17, 2018) (on file with author).

9. Kimberly Buddin-Crawford, Policy Counsel, ACLU of Michigan, Panel, The Role of Law in Responding to Extremism at the University of Michigan Journal of Law Reform Symposium: Alt-Association: The Role of Law in Combatting Extremism (Nov. 17, 2018) (video on file with the Michigan Journal of Law Reform).

10. *Id.*

11. See, e.g., Brian Levin, *Extremism and the Constitution: How America’s Legal Evolution Affects the Response to Extremism*, 45 AM. BEHAV. SCIENTIST 714, 735-36 (2001) (revealing types of civil lawsuits against hate groups).

protect its citizens from violence and disruption on the other.”¹² The current solution is to address the action of a group, rather than working to eliminate a group or attack their association. The Supreme Court severely limited the government’s ability to outlaw organizations or criminalize membership where there is no connection to illegal activity.¹³ By addressing the action and context of that action, the Supreme Court established a standard all persons must follow despite their association with a group.

Wisconsin v. Mitchell provides a clear example of the extent the Court is willing to control a persons’ speech and association. There, a penalty enhancement law that punished an offender’s intentional selection of a victim based on their characteristics was upheld as constitutional.¹⁴ The Court explained that while a person would not be punished for their abstract beliefs, they could be punished for depraved motives.¹⁵ Although, speech and association are protected by the First Amendment, the Court clarified that using evidence of bias speech or association to establish elements of a crime, such as motive, was unprotected.¹⁶ In this case, a line was drawn when the belief became an action.¹⁷ The statute did not prevent people from expressing their views or punish them for doing so, but it allowed the motive to be addressed.¹⁸

This may be the closest the Court has come to addressing extremism head on.¹⁹ Critics of the decision assert that “punishing discriminatory crimes more severely than other crimes was merely a subtly disguised legalistic end run to punish disfavored thoughts.”²⁰ However, it is also the only appropriate means that the Court sees for addressing the issue. Bias-inspired conduct is “thought to inflict greater individual and societal harm.”²¹ Actions such as these are also thought to lead to higher rates of retaliation.²² One of the Court’s alternatives would be to label extremists groups within the law, however that would be problematic and a violation of the First Amendment.

12. *Id.* at 714.

13. *Id.* at 734.

14. *Wisconsin v. Mitchell*, 508 U.S. 476, 479–483 (1993).

15. *Id.* at 486–87.

16. *Id.* at 487.

17. *See id.*

18. *See id.* at 488–89.

19. *See generally* Levin, *supra* note 11, at 744–45 (recognizing the Courts limited interaction with hate crime laws and *Mitchell* as the Court’s categorical acknowledgment of the “severity of hate crimes”).

20. *Id.* at 745.

21. *Mitchell*, 508 U.S. at 487–88.

22. *Id.* at 488.

III. THE HARMS OF LABELS

Extremism, as a label, carries a weight of assumptions that is burdensome to all. The wide landscape of definitions has led to numerous organizations being grouped as extremist despite differences in their individual ideologies. The term is over-inclusive, haphazardly being applied to groups that function outside of broadly accepted norms. The ambiguity of the word “norm” leads to religious affiliations being categorized and demonized with affiliations motivated by racist beliefs. For example, the SPLC has included the Ku Klux Klan, the New Black Panther Party, and the Nation of Islam under the same umbrella of “extremist organizations,” despite the individual actions of the organizations.²³ Statistically, white supremacists, such as the Ku Klux Klan, are the most violent of these groups and are responsible for eighty-three percent of the extremist-related murders in the United States within the last decade.²⁴ On the other hand, in 2017 the ADL attributed only five murders to black nationalists, though not specifically those affiliated with the Nation of Islam or New Black Panther Party.²⁵ Yet, under the SPLC’s label, they are all equals.

Extremism is not limited to those who openly associate with a certain group. A desire to label extremism has invaded politics at every level, including the Presidency. In 2016, President Donald Trump, then Republican nominee, gave a speech on his proposed foreign policy approach.²⁶ The central theme was “America First.” To a crowded room and enthusiastic cheers, he recounted a history where “[America] saved the world . . . [t]hen we saved the world again.”²⁷ These sentiments were reinforced during his inaugural address where he then promised to “unite the civilized world against Radical Islamic Terrorism,” all in the name of America and promised efforts to make the country wealthy, proud, safe, and of

23. *Extremist Files - Groups*, S. POVERTY L. CTR. (Oct. 4, 2017), <https://www.splcenter.org/fighting-hate/extremist-files/groups?keyword=nation+of+islam>.

24. *With Hate in their Hearts: The State of White Supremacy in the United States*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/reports/state-of-white-supremacy> (last visited May 10, 2019).

25. Kennett Werner, *White Supremacists Committed Most Extremist Killings in 2017*, *ADL Says*, NBC NEWS (Jan. 18, 2018, 8:07 PM), <https://www.nbcnews.com/news/us-news/white-supremacists-committed-most-extremist-killings-2017-adl-says-n838896>.

26. See Donald Trump, Address at Mayflower Hotel in Washington D.C. (Apr. 27, 2016), in Ryan Teague Beckwith, *Read Donald Trump’s ‘America First’ Foreign Policy Speech*, TIME (Apr. 27, 2016, 1:37 PM), <http://time.com/4309786/read-donald-trumps-america-first-foreign-policy-speech/>.

27. *Id.*

course, “great again.”²⁸ In response, Richard Spencer, a white nationalist leader, said “Trump is a white nationalist, so to speak. He is alt-right whether he likes it or not.”²⁹ David Duke, former Grand Wizard of the Ku Klux Klan, tweeted in response to President Trump, “everything I’ve been talking about for decades is coming true and the ideas I’ve fought for have won.”³⁰ With such responses, some may argue that the country is living under a political agenda framed by white nationalist views paired with extremism.³¹ Without a clear definition, the President is subjected to the label of extremist for expressing his views because his ideology matches that of white nationalists, a label that carries a weighted meaning not only across the country, but internationally as well.³²

The effects of labeling are studied under the “labeling theory,” which focuses on how self-identity and behavior of individuals may be determined or influenced by terms used to describe or classify them.³³ Defining extremism, while arguably essential to protect society, runs the risk of casting an unnecessarily wide net and encompassing people who are not actually extremists in character. Labeling can bring assurance. Arbitrarily, people confuse a definition with the idea of a clear understanding.

Defining extremism might, under labeling theory, help eradicate the problem because it would allow problematic individuals to be identified and punished accordingly. In a haste for understanding and unity, the push to universally label seems essential. However, the impact of that label must be carefully considered.

Labeling can increase the likelihood of subsequent delinquency and cause persons to associate with those with whom they would not normally associate with because of a label pushed upon them. Labeling theory further contends that the acquisition of a label at an early age can be problematic for those navigating from adolescence to adulthood. In evaluating causal factors of crime, deviant groups often provide social shelter for criminals, encouraging collective rationalizations, definitions, and opportunities to further the deviant behavior.³⁴

28. Donald Trump, Inaugural Address in Washington, D.C. (Jan. 20, 2017), in *The Inaugural Address* (Jan. 20 2017), <https://www.whitehouse.gov/briefings-statements/the-inaugural-address/>.

29. Ryan Lenz & Booth Gunter, *100 Days in Trump’s America*, S. POVERTY L. CTR. (Apr. 27, 2017), <https://www.splcenter.org/20170427/100-days-trumps-america>.

30. *Id.*

31. *See id.*

32. *See id.*

33. *See* Prince Boamah Abrah, *Labeling Theory and Life Stories of Juvenile Delinquents Transitioning into Adulthood*, 63 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 179, 180 (2019).

34. *Id.*

This is what takes place when a person joins an extremist group. They find a group of persons who aid them in rationalizing their behavior. A study focusing on juvenile delinquents' transition to adulthood while labeled as "criminals" found that teenagers were aware of the stereotypes. They were aware of the beliefs that existed within their communities, or they may have made assumptions about their existence because of "their learned perception of what people think about criminals."³⁵ Upon receiving the label, persons may withdraw from interaction with conventional peers and move towards those who share the same stigma, building a group. Labeling predisposes offenders to commit a subsequent crime.³⁶ With extremists, there is a similar effect, though it may not necessarily lead to one engaging in illegal activity.

Labeling affects people in a variety of ways. In the early 2000s the hip-hop group Insane Clown Posse (ICP) organized a four-day festival for its fans.³⁷ It was full of enthusiasm, musical entertainment, and gang affiliates, according to the FBI. In 2011, the FBI labeled the entire fan base of ICP a gang, alongside members of the Bloods, Crips, and MS-13. This extraordinary step was taken after a string of crimes were committed by persons identifying as Juggalos, a name for the fans of ICP. While members of the Bloods, Crips, and MS-13 have a reputation that precedes them, the fans of ICP did not. However, once on the FBI's list, those individuals were stopped by police, added to gang databases, blocked from the military, placed on stricter forms of probation, suspended from school, and fired from their jobs.³⁸

In a 2014 lawsuit arising out of the FBI's labeling of ICP, the ACLU of Michigan argued that the case was "about abuse of government power and the right for one to express him or herself without fear of government harassment."³⁹ While the case was dismissed for lack of standing, the issue remains. These fans were effectively mislabeled. The government's label was overbroad and encompassed people who did nothing wrong. Under the labeling theory, this label could and did have a detrimental effect on their lives, simply

35. *Id.*

36. *See id.* at 180–81.

37. Justin Jouvenal, *March of the Clowns*, WASH. POST (Aug. 31, 2017), https://www.washingtonpost.com/sf/style/2017/08/31/the-fbi-labeled-insane-clown-posse-fans-a-gang-now-theyre-marching-on-washington/?noredirect=on&utm_term=.b2f213f5375b.

38. *See, e.g., id.* (explaining that a student at George Mason University was admittedly fired from her job because of the music she was listening to in her private life, in this case, ICP. At the time of the story, the Virginia Department of Corrections would only comment in saying that Juggalos were classified as "major gangs" in the state corrections system.).

39. *Id.*

because they were music fans. This is the problem with pinpointing a definition.

IV. MOVING FORWARD: REFORM

The First Amendment safeguards even the most offensive language.⁴⁰ Although those viewed as extremists benefit from these broad protections, it is important to remember that all persons benefit from these protections regardless of association. These protections cannot be curtailed because the “majority” may disagree with a group’s ideology. In order for the government to interfere with expression, the interference must be “necessary to achieve a compelling state interest” and “narrowly tailored to achieve that compelling interest.”⁴¹ By addressing only the action, the Court has created a “niche that protects the rights of extremists to peaceably associate and promote their views” focusing on their actions, rather than on who they are as a group and how that group identity motivates their actions.⁴²

Moving forward, reform is difficult. Change needs to take place on two timelines, the future and the immediate. Focusing on the future, the solution is not to create an operational definition of extremism for courts to utilize. Because of the effects of labeling and First Amendment protections, providing a concrete definition would only solidify the bondage created by the word “extremism.” Instead, to intentionally address extremism, the law will have to look beyond mere association. The law will have to be modeled after statutes such as the California gang enforcement law, which defines criminal street gangs, not merely by association, but by their illegal conduct.⁴³

Similarly, any proposed statute would have to address the actions taken by “extremist groups,” defined by their problematic radicalization or ideology. This solution is parallel to the call to make domestic terrorism a federal crime. However, terrorism as defined under the federal statute does not account for radicalization, ideology, or extremism. Without addressing the problematic ideology behind these groups, the gap between the law and what extremism is understood to be would remain.

40. See, e.g., *Snyder v. Phelps*, 562 U.S. 443 (2011) (funeral protests); *Texas v. Johnson*, 491 U.S. 397 (1989) (flag burning).

41. Levin, *supra* note 11, at 718.

42. *Id.* at 752.

43. See *id.* at 745.

In the immediate, if the word “extremism” must be used, it should be used intentionally, by narrowly defining it in the context it is being used. This does not render the definitions created by organizations such as the SPLC or ADL obsolete. It only limits the scope of their applicability. Those definitions act as a mechanism for understanding the work the organizations put forth. However, it should not be used to label persons across the board.

Extremism does not just exist on the margins of power.⁴⁴ It is dangerous when hate becomes a part of the mainstream. President Trump is in the mainstream, and for those who believe he is a white nationalist, his position of power represents a shift in the majority. Moving against that shift starts with individuals.

As the panelists at the Symposium emphasized, change can happen at the lowest levels because people are passionate enough to make a move.⁴⁵ Therefore, the immediate solution is for each of us to be intentional. Being intentional means speaking directly to the issue at every level, rather than hiding behind a label. It means identifying the problematic behavior and working to negate it. Most importantly, being intentional means deleting the word “extremism” from our vocabulary, because the chaos it causes adds nothing to the change society seeks.

44. Umich Law, *MJLR Panel 1 Defining Extremism*, YOUTUBE (Apr. 12, 2019), <https://www.youtube.com/watch?v=CbH40AqGakQ>.

45. *Id.*