Securitization, Terror and Control: towards a theory of the breaking point[1]

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This is an Accepted Manuscript of an article published in Review of International Studies in 2012. Available here.

Full citation: Bright, J. 2012. Securitization, Terror and Control, *Review of International Studies*, 38(4), 861-879.

Abstract

Securitizations permit the breaking of rules: but which rules? This article argues that any given security situation could be handled by a variety of different "rule breaking" procedures, and that securitizations themselves, whilst permitting rule breaking in general, do not necessarily specify in advance *which* rules in particular have to be broken. This begs the question: how do specific threats result in specific rule breaking measures?

This paper explores this question through reference to "control orders", an unusual legal procedure developed in the UK during the course of the war on terrorism. Once applied to an individual, a control order gives the government a meticulous control over every aspect of their life, up to and including deciding on which education qualifications they can take. Despite this control, individuals under the regime remain technically "free": and have frequently used this freedom to abscond from the police who are supposed to be watching them.

How did a security policy which controls a suspect's educational future, but not their physical movements, develop? This article aims to answer this question, and in so doing present a re-evaluation of the mechanisms through which the effects of securitization manifest themselves.

Introduction

On the 18th of September 2007 a resident of the UK was refused permission to attend college to study for qualification in biology, on the grounds that it could potentially enable him to handle substances which could be used in a terrorist attack. This ability to deny people access to education formed part of the provisions of a 'control order', a legal device which emerged out of the context of the war on terror, and which provided the UK's Home Secretary with a wide ranging control over the lives of certain individuals.

While control orders are in many senses an exceptional legal procedure, they nevertheless appear a typical example of 'securitization', a by now familiar concept which describes both the discursive construction of exceptional threats, and how this construction creates a type of politics which permits actors to break rules or restraints which normally apply[2]. In this case, the threat of terrorism which these individuals are deemed to embody overrides certain rights such as liberty, or the right to a fair trial.

However, on closer inspection, two problems with this account emerge. The first is that, while the rights of those detained have in many ways been violated, control orders were nevertheless conceived as a more moderate replacement for a previous policy of outright detention without charge, which had been found in contravention of Britain's human rights obligations. Control orders therefore do not represent the absolute triumph of security concerns over rights, but rather a kind of uneasy compromise between them. The second problem is that of the 45 people detained under the act since 2005, seven managed to abscond from their order. The policy, in other words, fails to provide the level of security one would expect for such an exceptional situation.

How did such a paradoxical security tool, which pretends to control the educational future of a suspect, yet nevertheless allows them relatively easy escape, develop? Securitization theory would prompt an initial focus on the process of (discursive) construction of the terrorism threat. However, whilst this clearly provided grounds for the production of anti-terror policy in general, there is nothing about that threat which requires control orders in particular to emerge: they represent just one possible rule breaking procedure out of many. This leads to a question. Even if we accept that securitization allows rules to be broken, which rules are then chosen, and why?

The aim of the present article is to answer this question, and thus provide securitization theory with conceptual means for connecting successful securitizations to concrete outcomes. It is structured as follows. Part one gives a brief overview of securitization literature, placing the focus on the outcomes of successful securitizations, an area which up until now has remained somewhat understudied in the literature, and examining the types of rules which securitization can break. Part two returns to the example of control orders, in order to examine in more detail how a process of rule breaking occurs. I show how the eventual rules which were broken depended firstly on the

disaggregation of the particular rules involved (such as the right to liberty), and secondly on a three way negotiation between securitizing actor and two audiences. This process served to channel the force of the politics of threat by weighing both the value of rules against the value of security, and the value of different rules against each other. The outcome, rather than a simple overriding of all rules, was that securitization moves towards the weakest rule in an overall rule structure: the breaking point.

The effects of securitization

'Securitization' is a concept developed primarily by Barry Buzan, Ole Waever and Jaap de Wilde[3], the principle members of what would come to be known as the 'Copenhagen School'[4]. Their aim was to try and move beyond an ongoing debate about the true "meaning" of security, by creating a common conceptual language which could be used for the discussion of a variety of otherwise very different security situations[5]. Instead of the nature of a specific threat, they argued that the way threats are discursively presented and tackled should be regarded as the core feature of security (prompting Huysmans to label this the 'linguistic turn' in security studies[6]). In particular, security situations could be identified by their creation of a special kind of politics linked to crisis and emergency, which enables (and, indeed, requires) certain actions which would otherwise be deemed unacceptable. In particular, by speaking security, an actor

> *'...has claimed a right to handle the issue through extraordinary means, to break the normal political rules of the game'*[7]

The construction of threats which enables the allocation of this rule breaking power, is, for Buzan, Waever and de Wilde, the essence of security.

Within securitization theory, as it has come to be known[8], the construction of threats take place following what Buzan et al. call a 'grammar of security', which consists of the construction of 'a plot that includes existential threat, point of no return, and a possible way out'[9]. The importance of the particular issue, and hence the possibility of rule breaking action, is created through its location within this plot. The plots themselves are formulated by 'securitizing actors', who declare that the particular issue constitutes an emergency, and should thus be securitized (what the authors call a 'securitizing move'[10]); the audience to this move can either accept or reject this declaration, and thus decide whether the issue is securitized.

Michael C. Williams called securitization 'one of the most innovative, productive and yet controversial avenues of research in contemporary security studies'[11]. As such, it has generated a large body of follow up literature, including some substantial critiques. However, the majority of these have so far focussed on the approach of securitization to threat construction. Two areas have

been of particular focus[12]: the internal mechanics of the theory, in particular the difficulty of identifying the audience to any given security declaration, and the extent to which these audiences need to accept declarations for them to be successful[13]; and the scope of the theory, in particular whether it can really be extended to study the whole process of how a society constructs threats, or whether other less intentional and less immediate dynamics should also be considered[14].

This article seeks to move beyond these lines of argument, by focussing instead on what happens next. Assuming a threat is successfully constructed, how does this translate into the breaking of rules? This area, while comparatively understudied in the literature, is of increasing importance, with authors such as Balzacq, Léonard and Kaunert and Salter starting to comment on the means by which securitization results in specific outcomes once achieved[15].

The manner in which the normal rules of the game are broken following a successful securitization is unclear in the original formulation of the theory. As several scholars have pointed out, in the Copenhagen School's initial work, no actual action (e.g. a policy output) is even required for a securitization to be considered successful[16]. Salter highlights the following crucial passage:

> *'We do not push the demand so high as to say that an emergency measure has to be adopted, only that the existential threat has to be argued and gain enough resonance for a platform to be made from which it is possible to legitimize emergency measures'*[17]

This definition, as Salter notes, creates problems when it comes to distinguishing between successful and failed securitizations. A failed securitization and a successful one which nevertheless produces no policy outcome will manifest themselves in the same way, as resonance 'is simply too unstable a category to really evaluate', he argues[18]. For this reason, in practice many applications of securitization theory have taken the appearance of actual rule breaking procedures as the ultimate indicator of successful securitization. However, even assuming there is an outcome, the mechanism by which this occurs is left undefined in the initial theory, or at least compressed into the moment of securitization: in the framework, accepting a definition of existential threat and the proposed 'possible way out' appear to be one and the same action.

This underdefinition is problematic for the theory of securitization. Empirical research has shown that a security situation can be generally accepted, yet individual rule breaking procedures which purport to tackle it still rejected. It would be difficult to claim, for example, that the threat of terrorism has not been securitized in many Western countries following the attacks of 9/11. Yet a huge variety of different policies have been proposed to tackle this threat: not all have been accepted[19]. Buzan and Waever themselves have defined terrorism as a 'macrosecuritization'[20], a security threat which can connect to a huge range of more specific policies. But this raises the question of how this connection occurs, and how some policies succeed whilst others fail. This

question returns to the original puzzle proposed at the beginning of this article: how were the specific set of rules which are broken by control orders chosen over others?

Before examining how one rule is broken rather than another, however, it is useful to examine in more detail what types of rules can be broken in the first place. What are these 'normal political rules of the game' which securitization enables actors to break? Buzan et al. offer the following series of examples of powers that an actor can claim through securitizing:

> *'secrecy, levying taxes or conscription, placing limitations on otherwise inviolable rights, or focusing society's energy and resources on a specific task'*[21]

They do not by any means intend this list to be exhaustive. The founding idea of securitization is that no issue is, *ipso facto*, a security threat, but that anything could be constructed as one; it follows therefore that any type of rule could potentially be implicated in a securitization. This is something which is borne out in practice: in empirical studies which have applied the theory, the form that rule breaking takes can vary widely. As its authors intended, the framework has created a broad church, unifying an impressive range of different subjects: HIV/AIDS, the Tiananmen square massacre, European migration, UN security council decisions, cyber security, as well as the more traditional security studies subject of interstate war[22].

A review of this literature identifies two broad ways of regarding rules which can be broken by securitization: rules as restraints to action, and rules as behaviours. The crucial difference between these two categories is the roles of securitizing actor and audience. In the case of restraints, it is the securitizing actor themselves whose action is liberated: they legitimate the breaking of rules which they themselves will break. In the case of behaviours, the securitizing actor is trying to motivate the actions of the audience, rather than justify their own conduct. Hence, rather than something which can be determined as part of a general characteristic of security, it is the structure of the rule in question which determines the role of the securitizing actor, and the extent to which the audience is required to accept their particular declaration.

Breaking Restraints

Perhaps the most obvious way securitization manifests itself is through breaking rules which limit what certain actors are allowed to do. This can occur in several senses. Legally speaking, governments might invoke constitutional rights to declare a state of emergency in which the entire legal order ceases to apply. In this respect, as many authors have pointed out, securitization has close parallels with the work of Carl Schmitt on the concept of sovereignty[23]. Depending on the form of the constitution, the actor with the right to suspend the order may simply do so by declaring security as the reason (Schmitt's work focussed specifically in Article 48 of the 1919 Weimar constitution). In this type of securitization, there is no genuine audience, or at least no empowering one. The securitizing

actor must follow an internal grammar to fulfill the conditions of their legal declaration, but has no obligation to convince anyone that their reasoning is sound.

However, as several scholars have complained[24], this is not an accurate reflection of how much security policy is pursued, especially in non-authoritarian regimes. The idea of a complete suspension of an entire legal order is simply improbable in most contemporary Western democracies. Of more relevance, therefore, is the notion that securitization can also legitimate temporary derogation from certain types of rules, or even just interference with them[25]. For example, the Copenhagen School point to the securitization of a principle of human rights as justification for humanitarian intervention, and thus the suspension of sovereignty[26]. The institution of sovereignty is not destroyed for good, just suspended for long enough to deal with the particular issue at hand. In these circumstances, securitization may or may not require an audience, depending on the structure of the rule being derogated from. If the securitizing actor faces oversight (e.g. from a supreme court), then the relevant audience is that which provides this oversight (as Balzacq argues, the relevant audience is the one that empowers the given action[27]); if the relevant rule is structured in such a way as to already contain exceptions for security, then the action will be more or less self authorising.

Furthermore, restraints need not solely be legal in character. Securitization can simply enable an actor to do things which previously seemed politically impossible (but which nevertheless would be perfectly legal). Deployments of military force, for instance, often require the conviction of the public and members of the legislature that they are a legitimate choice, even if they are not necessarily illegal in and of themselves. Reference to a security threat can provide this[28]. In these cases the act becomes dependent on the authorisation of an audience, as the implication is that the securitizing actor is bound by the expectations of some group (e.g. public opinion, legislature). Only by changing the view of this group can they act in the way they want to. This has strong connections with certain theories of public policy construction: securitization can create the conditions under which previously impossible policies become legitimate[29].

Finally, rules can also be broken in the way actors decide on what actions are legitimate (rather than just legitimating new actions). Successful securitizations create a specific kind of closed, political behavior, which works to ‘silence opposition’ and unify a particular audience around a common goal[30]. By implication, therefore, actors become liberated not only in the type of action they take, but the means through which they can take it (for example, legislation could be passed quickly, with minimal debate). Issues can also be silenced entirely, which can be a very effective political tactic[31].

The restraint breaking effect of securitization is where the theory is at its most immediate (though, as Wilkinson has noted, securitization can also be used to legitimate action retroactively[32]). When there is no relevant audience, rules can be suspended and martial law declared in an instant. Even when there is an empowering audience, the nature of the grammar of security declaration will mean that their response (to accept or not) must come as soon as possible. Here the intentionality of

securitization is also clear. Actors will declare a security emergency to achieve a specific effect: the legitimate suspension of the legal order, or to make acceptable some action which would otherwise be deemed impermissible.

Changing Behaviour

When securitization breaks restraints, the securitizing actor is the one performing security. That is, an actor demands the right to take an action (through securitizing), and then takes it. However, securitization can also be used to *exhort* action: a securitizing actor can use security to convince others to act. This mobilizing power of security is distinct from the function of legitimating the breaking of restraints[33], though it might occur in tandem (as the action of the audience is not only exhorted but justified[34]). In this case, securitization is not only dependent on the assent of the audience: the audience is the performing actor, those who the securitizing actor is calling upon to take action. The securitizing actor can still emerge from the state (and could be calling on other states[35]), but does not have to: it could be a bottom-up exhortation for the state to take action, might involve little or no claim on a state at all, or may even, in the case of revolution, cast the state as the threat itself, and take action against it[36].

In this case, the "rules" being broken are established patterns of behavior which, in the view of the securitizing actor, need changing in order to resolve the issue at hand. The kind of action proposed by environmental securitization, for example, is not legally problematic. Nevertheless, changing the way societies consume resources is an enormous challenge which would require both individual and collective sacrifices[37]. This second type of rule breaking points to what has often been regarded as the "positive" effects of securitization[38]. When critical security studies as a field began, one of the hopes was that the driving energy of security could be redirected towards "positive" goals. For example, by creating an inclusive concept of "human security", human rights could be defended through securitization. However, it also has its negative aspects. Securitization can serve to create a kind of antagonistic politics, which appears implicit in the Copenhagen School's claim that desecuritization represents the 'optimal long range solution'[39], though the reasoning for this remains underdeveloped in the theory. Society is not just mobilized through security; it can be mobilized *against* a particular group, which in a way aids the construction of a unified identity[40].

Here, the intentionality of securitization is clear in only some circumstances. Actors deploying security in order to exhort action may do so with the type of action they want to see in mind. However, as Williams argues, other factors such as images can also slowly convince people to take action, even if those relaying those images have no particular interest in that action taking place. The immediacy of securitization is also less obvious here. Conviction may happen immediately, may happen slowly, or may not happen at all.

Control Orders: finding the breaking point

The previous section identified the scope of securitizations: the possible rule breaking effects that can result from a successfully declared securitization. I argued that a wide variety of different types of rules can be broken by securitization, and it is the structure of the individual rule which determines the roles of actor and audience.

However, what still remains unclear is how, amongst all possible effects, one or more is eventually produced as the outcome of a successful securitization. In the following section, I want to answer this question by tracing the process of the construction of control orders legislation: examining how the securitization came about, outlining the variety of different rules which could have been broken, and analyzing the ways in which securitizing actors and audiences decided on the eventual outcome. The example of control orders is intended to be a 'revelatory case': that is, it is intended to bring into focus previously understudied social dynamics[41]. From this case, some more general conclusions about the process of rule breaking which follows a securitization will be drawn.

Securitization and Liberty

The securitized issue which produced control orders as a policy response can be separated into two parts. Firstly there is the general threat of 'terrorism', something to which the UK was historically accustomed to, but which gained new meaning and significance following the attacks of September 11th. Terrorism, as a 'securitization' can be linked to many different issue areas (as I outline above, it has been classified by the Copenhagen School as a 'macrosecuritization'). While relevant to the emergence of control orders, it is not the aim of this paper to consider how terrorism was constructed as a security threat. Suffice to say that I consider it obvious that, both before 9/11 but especially afterwards, terrorism constitutes an area of policy in which states regularly intervene, and furthermore consider to be a security priority.

Of more immediate relevance to the construction of control orders is the securitization of a certain category of foreign terror suspect in the UK immediately following 9/11. The security services suspected a certain number of individuals currently within the UK of posing an imminent threat, a definition which the government accepted. Nevertheless, they regarded it as impossible to tackle them using the current criminal justice system: based not only on the scarcity of hard evidence, but also on the difficulty of admitting certain types of surveillance evidence in UK legal proceedings, combined with the general desire of the security services not to have to reveal their surveillance processes in court in order to pursue prosecution. They also argued that they were unable to deport them, based on respect for the 1997 "Chahal" ruling of the European Court of Human Rights, which proscribed deportation to any country where the deportee might face torture.

The response to the threat of these individuals was contained in the 2001 Anti-Terror, Crime and Security Act [ATCSA], certain provisions of which derogated explicitly from the European Convention of Human Rights [ECHR], by allowing the UK's Home Secretary to issue orders for these individuals to be detained indefinitely without bringing a specific charge, and with only a minor procedural review process which removed most of the rights normally enjoyed by the accused under UK law. These orders were allowed if the Home Secretary 'reasonably (a) believes that the person's presence in the United Kingdom is a risk to national security, and (b) suspects that the person is a terrorist'[42]. Cases were heard by the Special Immigration Appeals Committee [SIAC], a court established to deal with immigration matters that was used to this type of atypical legal procedure[43]. Between 2001 and 2005, 16 men were detained under the act, all foreign nationals[44].

The construction of this securitization shows that several different types of rule might be broken in order to deal with the issue at hand: the legal restraint of the 1997 Chahal ruling; the way the security services interact with the UK criminal justice system; or certain fundamental rights these individuals normally enjoyed which act as restraints on the way the government can behave towards them. The first two of these rules resisted the force of the securitization, but not the final category: rights to due process were interfered with through use of the SIAC, and the right to liberty was expressly derogated from. An initial observation is therefore simply that securitization does not just push actors and audiences to weigh the merits of security threats against individual rules, but also the strength of different rules against each other. If it is accepted that some rules must be broken then the specifics of the threat itself become somewhat immaterial: the question is which rule is strongest.

However, in 2004 the House of Lords declared ATCSA to be incompatible with the 1998 Human Rights Act (which is the UK's transposition of the ECHR). They accepted that there was a state of emergency, and furthermore that the government should have a reasonable margin in deciding the existence of such an emergency[45]. However they found fault with the policy on the grounds that it was both disproportionate (the threat these men posed did not justify the removal of their liberty) and discriminatory (it applied only to foreign nationals), and thus incompatible with article 5 of the ECHR[46].

Securitization here works in an interesting way. The securitization which lead to ATCSA had been accepted by the legislative for three years before the judiciary finally rejected it. When they did, their rejection was based not on a desecuritization of the issue, but simply on a reinforcement of certain types of rules that had been broken: in this case two rights under the ECHR. The right to physical liberty, in this case, proved particularly strong, and the security threat in question did not justify its breaking.

Furthermore, one of these rules (discrimination) was broken as a consequence of pursuing the above securitization, but was not a central part of the legislation (that is to say, ACTSA did not need to be discriminatory to function). This serves to show how meshed into structures of rules contemporary security policy is: any given piece might violate a variety of different rules.

The Disaggregation of Liberty

Part IV of ATCSA came with a built in 'sunset clause': parliament was required to vote to renew it on a yearly basis. The Law Lords ruling on ATCSA came in December 2004, three months before the next deadline in March 2005, when the policy would now expire. A response was therefore needed quickly. Faced with this decision, the government had three options: abandon their securitization to failure, and deal with the prisoners through the normal rules of the game; ignore the ruling, and risk almost certain prosecution; or devise a new solution.

The government chose the third option, outlining a new policy little over a month later, in January 2005[47]: a system of special detention powers known as 'control orders'. These orders, which came into being in March 2005 as part of the Prevention of Terrorism Act, were defined as 'an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism'[48]. Those subject to them were not imprisoned, but nevertheless had a huge array of restrictions placed on their daily lives, including curfews, obligations to report to the police on a daily basis, prior checks on visitors to their houses, a ban on group meetings and restrictions on access to the internet[49]. The legal process, though taken away from SIAC, remained essentially the same[50]. Enforcement, meanwhile, was to be provided through a mixture of police surveillance and electronic tagging.

The use of this type of surveillance is important for the way this securitization affected the rules concerned. In particular, it allowed a sort of "disaggregation" of individual rules. Rather than liberty being an all or nothing right, individual liberties could be considered piecemeal. In the end, control orders permitted a certain type of liberty, whilst nevertheless stripping away many of the things normally associated with a free human life; but this disaggregation allowed the government to argue that this type of procedure would not require derogation from the ECHR under article 5.[51]

The idea of non-custodial sentences supported by electronic tagging was not a new one in UK law. Britain already relies heavily on the technology for parolees and bailed prisoners, with over 50,000 individuals electronically tagged in the year leading up to the imposition of control orders[52], and their use 'has mostly been accepted by the probation and social work staff on whose professional territory it has impinged'[53]. The extension of tagging to terrorists subjects was also not a new idea. The 2003 'Newton Report' made by the Privy Counsellor Review Committee criticized the application of detention without trial, and recommended a number of potential other solutions, including the imposition of 'restrictions' which fall short of outright detention[54]. This idea was repeated in 2004 by a review of the Joint Committee on Human Rights in their report on the SIAC process. In their 2004 response to the Newton report, the Home Office rejected the idea of using electronic tagging of

terrorists, arguing that it would not provide sufficient security[55]. Less than a year later, they changed their mind.

How does the above impact on the theory of securitization? Firstly, it emphasizes the fact that security policy is not formed on a blank slate: previous choices in the area over which rules can be broken must be taken into account. This to some extent repeats a now familiar critique of the original formulation of securitization theory, that it was not attentive enough to the context within which securitizations take place[56]. However previous choices are not quite the same as context: they represent previous negotiations between the same securitizing actor and audience, not just the environment in which they operate. They will therefore close off specific paths, and reinforce particular understandings of the problem; in this case, the government understood from an earlier empowering audience (the judiciary) that some exceptional action could be legitimate, just not action which lead to the outright suspension of liberty. We can see here that the 2004 ruling did little to alter the way in which the threat of terrorism was constructed: it merely altered the way in which different types of rules were weighed against it, and against each other.

Secondly, it says something about the ways in which policy is formed to tackle securitized issues once constructed. The fact that a new policy was formed so quickly is consistent with the idea of a security threat which needs to be tackled urgently by any means necessary. What is perhaps interesting for studies of securitization is that while the theory seems to point towards the potential acceptance of new and radical ideas, in the end the solution developed was based strongly on existing practices in other areas, and had in fact previously been rejected. Faced with a "plot" that included "a point of no return", but not a "possible way out", the government was forced to adopt any idea available. Securitization, it could be argued, leads to a certain desperation in policy areas where the immediate solution to the security problem is unclear.

The adoption of control orders legislation (as part of the 2005 Prevention of Terrorism Act) was highly controversial. The government presented the case in exactly the way the theory of securitization would lead us to expect, arguing 'that the potentially catastrophic scale of a modern terrorist attack pointed inexorably towards the need for pre-emption'[57]. This line of argument was however not wholly successful. Although the bill passed, it attracted strong opposition from within the governing Labour party, from opposition parties, and from human rights groups such as Justice, Liberty and Amnesty International, and the eventual vote was won by a very small margin. Two reflections can be drawn from this short but vitriolic debate.

The first is that, as an empowering audience to the securitization, the legislative nevertheless participated itself in the formation of the bill, thus shaping the overall outcome. By outlining points of resistance, and winning concessions, they did not just accept or reject a securitizing move, but helped "channel" the force of the securitization, and thus helped decide the way in which rules would eventually be broken as a result.

The nature of the debate and these concessions was as much about the procedure for putting in place a control order as it was the specifics of the order itself (and one of the most important sticking points, eventually conceded by the government, was the need for judicial review of individual orders). Charles Clarke, Home Secretary at the time, set out the problem as follows:

> *... whether it is done by the Home Secretary or a judge, the people of the United Kingdom will be better protected if we have a regime of control orders that deals with the people in question...the question that then arises is whether a Minister—the Home Secretary, in this case—is in a better position to make that assessment [whether a control order should be enacted] than a judge. I argue that the Minister would be in a better position to make the assessment...However, I also accept the argument that, in the case of deprivation of liberty, the penalty is so great that judicial involvement is required. That is the basis of the argument that I make.*[58]

Clarke's argument is essentially that a subject's rights to due process could be reduced if the penalty against him was also reduced. Here in other words we can see again the strength of rules being weighed not just against security but against each other, and also the way their disaggregation facilitates this weighing process, allowing them to be traded piecemeal.

The second reflection concerns the procedural means used by the government in their presentation of the bill, in particular the way in which very limited time was allowed for debate. As outlined above, restraints exist in terms of the way policy is formed, not just the type of policy which is legitimate. The restraints do indeed seem to have been broken here, in a fashion that was called 'grotesque' by shadow Attorney General Dominic Grieve[59]. However, there is a distinction to be drawn between a process which allows itself to be subverted, and one which protests against such treatment. As Menzies Campbell of the Liberal Democrats put it:

> *All legislation is important, but surely no legislation is more important than legislation that might have the effect of depriving the individual citizen of his or her liberty.*[60]

In other words, while the securitized nature of the bill provided plausible grounds for haste, it also provided equally plausible grounds to complain about that haste: the nature of the bill, whilst pertaining to security, also altered the very structure of the legal system in the country. Though the difference here is a matter of hours, it is nevertheless significant that the parliamentary debate took up all the time it was allowed in the commons, whilst the House of Lords held one of its longest ever sessions[61]. While these audiences were in the end unable to prevent breaking of the rules in this area, they did not accept the breaking as legitimate either.

Channelling the Effects of Securitization

A final point of significance about control orders is that the form they took developed significantly following their adoption. In one particularly striking example, already referred to above, a control order subject known as AE was refused permission to attend a local college to follow AS-level courses in either biology or chemistry (a high school level course normally taken by students between the ages of 16 and 18). AE's stated aim was to begin studies which would allow him to attend medical school. Permission was refused on the grounds that:

> *Attendances of AS level courses in Chemistry and Human Biology would present national security concerns relating to access to materials and opportunities to develop understanding and knowledge in areas that could be used for terrorist-related activities*[62]

The control being exercised here is of a very particular type: over one potential future of one particular individual. Not the blunt instrument of prison, but a particular encircling, a closing down of certain paths. The logic of threat politics, codified within the act, has thus been extended into the minutiae of everyday life. Taking the qualification would lead AE down a path where both medical school and terrorism were possibilities. The risk of terrorism meant that medicine was closed off to him (he was later given permission to attend an AS Level English class).

This type of educational restriction, with the aim of controlling future development, was not specifically foreseen by the act, but rather developed through use. Presented with the technological capacity to apparently exercise control over the future of the individual, the government extended a security logic into the training he could take and the type of person he could become. Control orders, in other words, became what Balzacq calls an 'instrument of securitization': something that defines how public action is directed towards specific threat images[63]. They do not so much break rules in themselves, as formalize the procedure for the breaking of specific rules in individual cases. The securitizing actors, threats and audiences are now precisely defined: the actor is the Home Secretary, the threat is any (future) person who they suspect of posing a terrorist threat, the audience the judge who reviews their petition. Once in place, they not only control the individual in question, but provide further, even more specific securitization instruments, as the individual must ask the Home Secretary for permission to engage in almost any type of societal interaction. The restriction of the AS level course is therefore not the result of one securitization, but multiple nested securitizations, each one digging down into a more specific area of life, overriding a more specific rule. The presence of this tool of securitization has given the Home Secretary a meticulous, fine grained control not only over what these individuals do, but what they can become.

Another cause of developments to control orders have been the continual legal challenges to the system, mounted by lawyers of the various men involved. A variety of different cases heard in UK

courts have brought rulings quashing individual control orders, changing the maximum curfew time, and altering rules on forced relocations. In a particularly significant case in June 2009, the Law Lords ruled that control orders breached article 6 of the ECHR (right to a fair trial), because those subject to control orders were not allowed to know the allegations against them. From this point on, all control orders would require disclosure of 'sufficient information about the allegations…to enable [the subject of the order]…to give effective instructions to the special advocate' (though any evidence lending support to the allegations could still be kept secret[64]). This lead to the revocation of two control orders, after the government decided that it would rather release the detainees than disclose the necessary information[65]. These developments show the process going in reverse. Once legislated, control orders began to violate a variety of different rules: in considering these piecemeal, judges have slowly reinforced individual ones, thus pushing back on the limits of what these orders achieve.

These developments highlight both the flexibility and granularity of this type of securitization: how rules come to be disaggregated, and how securitizations are channelled towards different breaking points. Rather than a bundle of rights, liberties can be considered individually: the right to choose a place of residence, the right to communicate with the outside world, the right to gain employment, etc. Each one is weighed against the potential security benefits, some strengthening, some rupturing.

However, set against this notion of advanced control are the number of notable problems with the orders. The most obvious of these is that, of the 45 individuals placed under a control order, seven successfully absconded. Other detainees have gone to lengths to demonstrate the ease with which they could potentially escape[66]. Electronic tags were not applied in all instances, and in at least one case a subject was able to remove his tag. When commenting on the escapes, the scheme's independent reviewer said that the government 'did not have the resources to monitor everyone on a control order 24 hours a day'[67].

A second problem concerns the claim that these control orders really preserved, at least to some extent, the "liberty" of the individual. While they were of course physically free (at least for the non-curfew period), interviews with those who have undergone the orders highlight the psychological impact of being controlled in such a way, unable to meet people, unaware of the charges against you, and unconscious of how much longer the condition might persist for[68]. There is also the crucial issue of the family of the accused who, occupying the same premises, in a sense suffer the same fate (e.g. regular searches, restrictions on guests). Apparently, while a right to liberty has prevailed in a certain technical, legal sense, the way these individuals experience their lives has not been improved, and in fact may well have got worse. Cerie Bullivant, an individual placed under a control order which has since been quashed, highlights the impossibility of living any type of normal life in that sort of situation:

> *"…one of the liaison officers said that he felt that it would have been good for me to get out and go and get a job doing something else as the control order*

> *completely dominated my life. The irony is that I could not get a job without Home Office permission and I would have to find an employer who would not mind the Home Office calling him and asking if he knew I was a terrorist"*[69]

The securitization which generated control orders has therefore been channelled, somewhat paradoxically, into a rule breaking policy which significantly impedes on the course of the individual's life, yet permits him relatively easy escape if they so desire.

Conclusion

The Labour party, which introduced control orders, lost power in 2010, and the new government formed by Conservative and Liberal Democrat parties swiftly moved to review the system. In January 2011, a new package of "terrorist prevention and investigation measures" were announced, which propose a number of modifications to the control orders system, but also left many key features untouched[70]. At the time of writing, these proposals were in the process of going through the legislature, and will themselves no doubt be subject to continual judicial review as well. In other words, the process of channelling towards future breaking points seems set to continue.

Control orders, as I mention above, were intended to be a "revelatory case": something which serves to highlight the process by which securitized issues result in rule breaking. It is always difficult to draw general conclusions from one specific case in one specific context, and indeed there are some factors which mean that the dynamics control orders case is unlikely to be generalisable to all types of security situation. Most importantly, it occurred in a non-authoritarian system, with strong institutions for considering individual acts of rule breaking. The process of channelling and shaping of securitizations relied on the existence of these institutions. In an authoritarian regime, the executive almost by definition has fewer empowering audiences to deal with, and the rules by themselves are hence much weaker.

However, there are also good reasons for suspecting that control orders are not a unique piece of security legislation. They formed part of the war on terror, which has been responsible for a huge range of policy outputs around the world. They are based on the extensive use of surveillance technology, technology which is spreading to many different types of security policy. Finally, perhaps most importantly, they were pursued through domestic political machinery, a phenomenon which is becoming increasingly common in many societies as the lines between internal and external security are blurred. It seems likely therefore, that any conclusions based on this case will have resonance in other security situations.

From this specific story, therefore, two concepts emerge which are important for the theory of securitization. The first is that of disaggregation. The initial formulation of securitization presented rules (both as restraints and behaviors) as all or nothing affairs. Either they remained solid in the face

of securitization (in which case the securitization failed) or they broke. The story outlined above, however, presents a much more nuanced picture. Yes, rules can be suspended: but they can also be derogated from, or merely interfered with. Furthermore, importantly for contemporary security policy, new surveillance technology is permitting their *disaggregation*: it allows them to be considered piecemeal, rather than as a whole. Liberty especially becomes not just a distinction between incarceration or freedom, but a long list of potential freedoms, some of which can be suspended whilst others can remain intact.

This concept points to a need to reconsider the problematic definition of "success" and "failure" in the theory. Were control orders the result of a successful securitization? This is a very difficult question to decide with the currently available conceptual language. There clearly has been rule breaking action: emergency measures have been adopted, as the original formulation has it. However these measures were not the ones originally proposed by the securitizing actor, and do not outright "break" rules in most cases, so much as interfere with them. Furthermore, the evolution of the measure has not proceeded either by securitizing or desecuritizing the original issue, but rather through constructing nested securitizations (in the case of individual educational restrictions) and reinforcing of specific rules (in the case of judicial review), changes which have served to change the scope of rules broken in interesting ways. This securitization, in other words, cannot be declared completely successful. Nevertheless to classify it as a failure, and therefore define control orders as somehow outside the scope of security policy, would limit the range of the overall theory of securitization dramatically. This adds further weight to the argument made by Salter for the need for more nuance in the definition of success and failure in securitization. Salter proposes a four point scale: issues first become part of political debate, then become securitized, then the proposed solution is accepted, then emergency powers accorded[71]. To this scale one might add the extent to which any particular rule is broken. In terms of legal rules such as rights, this might run from interference to derogation, to outright suspension.

The second concept, related to disaggregation, is that of channelling. The type of securitization described above occurs within an institutional framework: while the declaration of security does allow for the breaking of some rules, this rule breaking itself takes place within the boundaries of wider rule structures. In this case, legislative and executive decisions are always open to later judicial review. As I show above, these institutional frameworks mean that, rather than a simple act of declaration/acceptance, actor and audience engage in a multi-stage process of weighing different rules, or even different parts of different rules. At each stage, certain understandings are reinforced and certain paths are closed off. This process serves to channel the power of securitization towards rules perceived as less important, or more flexible. Here we can see that *physical* liberty was the most important rule, reinforced both by the ACTSA decision, subsequent argument over legislation, and further judicial review. Other characteristics of "being free", such as the right to apply for a job, or choose education, were interfered with, to the extent that those under the scheme had little practical use for their liberty, unless they wished to abscond. It is this process of channelling, not just the initial

threat construction, which shaped the eventual outcome of securitization, and thus served to decide on the "breaking point".

[1] I would like to thank Adrienne Héritier, Pascal Vennesson, Andrew Neal, Conor Little, Patrick Herron, Guilherme Vasconcelos Vilaca and two anonymous reviewers, all of whom provided insightful comments and criticisms on earlier drafts of this paper. A previous version was also presented at the SGIR 7th Pan-European International Relations Conference in Stockholm, September 2010. Many thanks to all those who attended the panel and contributed to the debate, especially the discussant Anna Leander.

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[5] Buzan et al., *Security*, p.2

[6] Jef Huysmans, *The Politics of Insecurity: Fear, migration and asylum in the EU* (London: Routledge, 2006), p.8

[7] Buzan et al., *Security*, p.24

[8] Thierry Balzacq, ed, *Securitization Theory: How Security Problems Emerge and Dissolve* (London: Routledge, 2011)

[9] Buzan et al., *Security*, p.33

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[15] In this regard see Thierry Balzacq 'The Policy Tools of Securitization: Information Exchange, EU Foreign and Interior Policies', *Journal of Common Market Studies*, 46 :1 (2008), pp.75-100, Sarah Léonard and Christian Kaunert, 'Reconceptualizing the audience in securitization theory', in: Thierry Balzacq (ed) *Securitization Theory*, pp.57-76, Mark Salter 'Securitization and desecuritization: a dramaturgical analysis of the Canadian Air Transport Security Authority', *Journal of International Relations and Development*, 11:4 (2008), pp.321-349, and Mark Salter 'When securitization fails', in: Thierry Balzacq (ed) *Securitization Theory*, pp.116-131.

[16] See Alan Collins 'Securitization, Frankenstein's Monster, and Malaysian Education', *The Pacific Review*, 18:4 (2005), pp.567-588, Paul Roe 'Actor, Audience(s) and Emergency Measures: Securitization and the UK's Decision To Invade Iraq', *Security Dialogue*, 39:6 (2008), pp.615-635, and Salter, 'When securitization fails'

[17] Quotation from Buzan et al., *Security*, p.25. For a discussion see Salter, 'When securitization fails', p.121

[18] Salter, 'When securitization fails', p.121

[19] Salter, 'When securitization fails', pp.116-117

[20] See Barry Buzan 'Will the 'global war on terrorism' be the new Cold War?', *International Affairs*, 82:6 (2006), pp.1101-1118, and Barry Buzan and Ole Waever 'Macrosecuritization and security constellations: reconsidering scale in securitization theory', *Review of International Studies*, 25 (2009), pp.253-276

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[28] See Balzacq, 'The Three Faces of Securitization', p.185, Roe, 'Actor, Audience(s) and Emergency Measures'

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[33] R. Floyd, 'Towards a consequentialist evaluation of security: bringing together the Copenhagen and the Welsh Schools of security studies', *Review of International Studies*, 33 (2007), pp.327-350. See especially p.343.

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[35] Buzan and Waever 'Macrosecuritization and security constellations', p.258

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[37] For other examples of motivation see J. Vaughan, 'The Unlikely Securitizer', Ven Bruusgard and Åtland, 'When Security Speech Acts Misfire'

[38] For a discussion see Elbe, 'Should HIV/AIDS be Securitized?', Floyd, 'Towards a consequentialist evaluation of security'

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[46] Walker, 'Keeping control of terrorists', p.1407

[47] See House of Commons Hansard debates for 26 Jan 2005, pt4, Column 305

[48] Walker, 'Keeping control of terrorists', p.1411

[49] Walker, 'Keeping control of terrorists', p.1412

[50] Walker, 'Keeping control of terrorists', p.1409

[51] See House of Commons Hansard debates for 28 Feb 2005, pt21, Column 691. I should note that the 2005 Prevention of Terrorism Act did also include provisions for a second type of 'derogating' control order, which would include greater

restrictions and would violate article 5 rights. For the purposes of clarity, however, I have omitted derogating orders from this discussion, as to date no such order has been made. See Lord Carlile of Berriew, *Fifth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, (London: The Stationery Office, 2010), p.6

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[56] See e.g. Balzacq, 'The Three Faces of Securitization', Ciuta, 'Security and the problem of context'

[57] Nellis, 'Electronic Monitoring', p.267

[58] See House of Commons Hansard debates for 28 Feb 2005, pt21, Column 691

[59] See House of Commons Hansard debates for 28 Feb 2005, pt8, Column 650

[60] See House of Commons Hansard debates for 28 Feb 2005, pt8, Column 653

[61] Walker, 'Keeping control of terrorists', p.1408, footnote 86

[62] See judgment in the case of AE vs Secretary of State for the Home Department, [2008] EWHC 1743 (Admin)

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