

A RAWLSIAN APPROACH TO DE-SECURITIZATION

Valentin STOIAN-IORDACHE*

Abstract

Practices of contesting security have been identified by several authors, such as Claudia Aradau, Florent Blanc or Matt McDonald in actions ranging from protests against the Iraq war, Roma people cleaning up trash, the re-shaping public discourse on security and judicial contestation of national security policies. The paper first criticizes the practices of contesting security that the literature has uncovered by focusing on their insufficiently deliberative character. It argues that securitization theory, as originally formulated by the Copenhagen school, opposed the logic of security to the logic of deliberation. Thus, the paper concludes that these practices include a type of non-public reasons which a real deliberative democracy would exclude.

Alternatively, the paper looks to the concept of public reason as formulated by political theorist John Rawls as a better understanding of how de-securitization should proceed. It argues that only public reason-giving practices, such as judicial contestation can amount to a true de-securitization.

Keywords: securitization, Rawls, Copenhagen school.

Introduction

The meaning of the term security, as well as its normative legitimacy and strategies to achieve or escape it has been the subject of a significant level of contestation in recent literature. From an analytical point of view, the very understanding of the term “security” is highly debated, as well as the explanation of the emergence of security phenomena. From a normative point of view, the controversy is more muted, but the crux of the matter under debate is whether using the standard means of security policy helps or harms marginalized groups such as immigrants, sex workers or nomadic communities.

* Researcher dr. within National Institute for Intelligence Studies, valentin.stoian@animv.ro..

The discourse of security institutions understands the idea of “security” as a “state”, in which threat is absent. The probability that threats might be actualized has to be evaluated and then the most significant potential threats need to be removed. At the same time, critical academic work identifies resistance to security with a set of practices by marginal groups, who are either directly; threatened by security policies or who, for reasons of institutional ideology, critically engage with the security apparatus. Yet, similarly to the discourse generated by security institutions, practices of resistance suffer from a flaw which this article aims to expose and criticize.

The article will offer a Rawlsian account of de-securitization, grounded in the idea of public reason and deliberative democracy. It argues that emancipation and resistance practices as described by the literature suffer from the same weakness that the discourse of security institutions: an insufficiently deliberative character caused by the use of private rather than public reasons. Alternatively, if emancipation is supposed to fulfil the promise its original proponents made, then it must not exhibit the same weaknesses as that which it opposes.

The account of emancipation which the article supports relies on John Rawls’ idea of public reason. John Rawls (1996: 224) describes public reason as both a characteristic of the relationship of the state to the individual and as a set of guidelines of inquiry which apply to citizens generally, but particularly strong to public officials, candidates for public office and above all, constitutional judges. The key element of the latter conception is the prohibition of using non-public reasons (reasons which are grounded in particular comprehensive doctrines which begin from premises which not all members of society could accept) when arguing for a public policy which will coercively be imposed on all.

The first section carries out a review of the literature on moral reasons for de-securitization and of practices associated with opposing and contesting security. It argues that while there are compelling moral reasons for de-securitizing (exiting the logic of security), practices associated with doing so have many times carried on the same non-deliberative approach that security discourse is engaged in. Rather than contest security by dialogically undermining its discursive bases, practices of resistance and emancipation have followed the same use of non-public reasons as practices and discourses of security.

The second section outlines the idea of public reason as described by John Rawls in *Political Liberalism* and the *Idea of Public Reason Revisited*. According to Rawls, the duty to use only public reason is incumbent on officers of government, while the exemplar of public reason in a society is its

judicial body entrusted with interpreting the constitution. The prohibition of non-public reasons as grounds for argumentation is especially emphasized in this section, as well as the idea of the Supreme Court as an exemplar of public reason. The section places security, understood as the Schmittian politics of exception in direct opposition of the notion of public reason.

The third section outlines, through an analysis of policy document, laws and public statements, as well as two pieces of grey literature, the process of securitization of corruption in Romania. The fourth constitutes a case study of two Romanian Constitutional court decisions which removed critical parts of security legislation. The first eliminated intelligence services from participating in criminal investigations while the second struck down a highly ambiguous article on the law of national security. The Constitutional Court is analysed as a public-reason based de-securitizing actor and its arguments for striking down the laws as an example of judicial public reason.

Is securitization desirable and if yes, how?

The literature on securitization and de-securitization has gradually moved towards the overwhelming position that securitization theory has a clear normative approach and that de-securitization is normatively desirable. Roe (2012) summarizes the literature on securitization and de-securitization and identifies three main approaches to the normative justification of de-securitization: the process approach, the outcome approach and the indeterminate/utilitarian approach. According to the first, securitization is undesirable because issues should be dealt with, as much as possible, through the means of normal politics, as opposed to silence and speed, which leads to decisions being taken by a privileged elite of security professionals (Roe 2012: 252). On this view, normal politics is understood as deliberative and open, subjecting controversial issues to debate and allowing time to have all voices heard.

This approach seems to have textual support in the Copenhagen school's main text: *Security a new framework for analysis*, as well as in other works published by Ole Waever. The authors of *Security a new framework for analysis* present two definitions of politicization, leaving ample place for ambiguity on their understanding of its opposite. On the one hand, they define the existence of a continuum from non-politicized to securitized, claiming that: *any public issue can be located on the spectrum ranging from non-politicized [...] through politicized (meaning the issue is part of public policy, requiring government decision and resource allocations or, more rarely, some other form of communal governance) to securitized (meaning the issue is presented as an*

existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure) (Waever et al. 1998: 23).

While, only six pages later, they understand the politicized situation as: *"Politicization means to make an issue appear to be open, a matter of choice/something that is decided upon and that therefore entails responsibility, in contrast to issues that either could not be different (laws of nature) or should not be put under political control (e.g.* a free economy* the private sphere, and matters of expert decision)* (Waever et al. 1998: 29).

Waever seems to offer support for the deliberative understanding of politics in his 2011 article, where he argues that "the theory has a Schmittian concept of security and an Arendtian concept of politics" (Waever, 2011, 470). According to Waever: *"Hannah Arendt (1958, 1968, 2005) insisted that politics is productive, irreducible and happens among people as an unpredictable chain of actions....Therefore, the definition of securitization shapes every usage of the theory and entails this Arendtian concept of politics, because the theory places power in-between humans – not least through the central role of the audience – and insists on security being a quality not of threats but of their handling, that is, the theory places power not with 'things' external to a community but internal to it"* (Waever, 2011, 468).

The second approach to justifying de-securitization quoted by Roe (2012) is that favoured by Claudia Aradau (2003, 2008), Jeff Huysmans (1998a, 1998b, 2006) and Didier Bigo (2002). Similarly to Waever, these authors link security politics to the work of Carl Schmitt (or, alternatively to that of Giorgio Agamben) and his description of the political in terms of friend and enemy. They fault securitization for creating exclusionary logics, eliminating migrants and other undesirables from the proper scope of the political community. Given her understanding of security as "barred universality", Aradau (2004, 2008) criticizes securitization, but also the Welsh school view of emancipation, for perpetuating an exclusionary logic. Similarly, Huysmans (1998a, 1998b, 2006) argues in favour of de-securitization on philosophical grounds. He understands "security" in wide sense, as a technique of government meant to define the "us" versus the "them", through the production of subjects whose minds are infused with Hobbesian images of death being permanently near. He relies on the Schmittian nature of security, which is populated by distinctions between friend and enemies to argue in favour of de-securitization as the normatively preferred strategy. Huysmans quotes the history of racism and exclusionary policies in the West as arguments to reject any form of othering and to favour universality as the normatively desirable strategy. Finally, Bigo (...) looks at the formation of the practices and discourses of the "managers of unease" (the security

professionals entrusted with handling the issues of security) and criticizes the instantaneity intrinsic in the model of securitization that the original Copenhagen school proposes. According to Bigo (...), the fact that security practices and discourses are entrusted to security professionals who are socialized in exclusionary logics, poses a significant threat to the universalist promise of contemporary liberal democracies.

Finally, the utilitarian approach argues that securitization or de-securitization are desirable according to the effects they produce. Thus, in the view of Rita Floyd, some problems such as environmental issues are better dealt within a security framework, while for others, the logic of normal politics is best appropriate. Floyd (2007a, 2007b, 2010, 2015) offers a utilitarian-inspired theory of securitization, where a specific act of securitization is normatively justified if it meets five conditions: the existence of an objective existential threat, right of referent objects to defend themselves or to defensive assistance (where human beings are by definition entitled to protection, while the other sectors have to be proven to help with the realization of human needs, right intention for securitization, overall higher good from securitization, more security as opposed to insecurity being produced from the particular securitization) (Floyd 2015: 123).

While there seems to be a consistent agreement in the literature that de-securitization is normatively desirable, the varieties of contesting security seem endless. Most authors discuss the appropriate strategies to de-securitization, while fewer focus on what lies at the opposite end from security. Both groups believe that contesting security is helpful and even necessary, but disagree on how exactly this is to be done. This article evaluates some of these proposed de-securitizations but finds them wanting given their insufficiently deliberative character, thus making them closer to practices of security.

Claudia Aradau (2004, 2008, 2015) criticizes both the practice of securitizing the plight of the excluded (such as trafficked women) and the Welsh school's idea of equating emancipation with security. Alternatively she sees emancipation in practices such as anti-war protests under the banner "not in my name" (2004), meetings of sexual workers which adopted a declaration of rights (2008) and communal rubbish collection in a Roma camp in France (2015). While protesting the declaration of war in Iraq under the "not in my name banner" or demanding the rights of sex workers could be seen as deliberative forms of contestation, they fail to engage and criticize the securitizing discourse they aim to challenge. Aradau (2008:191) argues correctly that "Politics out of security starts from a shedding away of particularity, from a suspension of classification and representation", yet the

practices that she outlines as doing so fail in their assumed goal. Aradau's exemplars of de-securitization only look to affirm and challenge the framing of a discourse, but are unsuccessful in engaging the premises and logics of inference that securitizing speech undertakes. Rational debate on shared premises is impossible if contestation is nothing but a battle of discourses struggling to offer different frames to the same reality.

A similar weakness is exhibited by the practices outlined by a long series of other studies. Matt McDonald (2015) looks at how pro-refugee NGOs in Australia contested security through reshaping the discourse on it and framing the desirable policy goals as the "human security" of migrants rather than the security of Australians from migrants. Piazza (2015) describes how student groups resisted the introduction of biometric cards by framing the discourse on them as discourses of control, racist-based anthropometry, corruption of childlike innocence and Nazism. Similarly, Rygiel (2011) outlines the way in which pro-migrant NGOs contest the discursive exclusion of migrants from the Calais "jungle". She argues that a form of universal citizenship-based articulation of grievances achieves the integration of excluded migrants in form of community and contests their Agamben-ian banishing from the political community. A similar articulation of contestation in the Calais "jungle" is found in Rigby and Schlembach (2013) who focus on migrant protest and universalism-based formulation of claims.

Finally, de-securitizations that involve a "high politics" approach are described by Balzacq, Depauw and Leonard (2015) and Blanc (2015). The first look at how an EU directive was changed to allow intra-EU arms trade, thus taking away licensing rights from national governments, while the second analyse legal challenges to the US Patriot Act and indefinite detention in the Guantanamo Bay prison camp. However, none of these studies focus on the express arguments which were invoked in favour of the de-securitizing approach, with the limited exception of the ideas invoked by lawyers of Guantanamo bay detainees that international law should also apply in war (Blanc 2015: 78).

The idea of public reason

In his two classic works, *Political Liberalism* and *The Idea of Public Reason Revisited*, John Rawls grapples with the Rousseau-ian problem of how can citizens, who are equally free, at the same time be bound by coercively imposed laws. To complicate matters, he also introduces the notion of reasonable pluralism (the fact that citizens share different comprehensive doctrines). His answer is a version of political liberalism, understood as a

political as opposed to a moral conception of justice, which is supported by an overlapping consensus - the fact that the society's common political conception is supported by reasons internal to each comprehensive doctrine. Public reason is, then, the way that democratic citizens need to relate to each other politically in such a society.

Overall, the idea of public reason could be defined as the way in which citizens in a liberal society and especially officers of government have to argue for decisions that are to be coercively imposed. Rawls demands that they must argue from reasons and use rules of inference that everybody can accept. Therefore, he excludes aspects such as the private reasons of churches and associations from public debates. These, while they can be invoked to bolster an argument, cannot form the ground for a justification of coercively imposed measures.

John Rawls does not offer a concrete and explicit definition of the term "public reason" in any of his works on the topic. Alternatively, he discusses the idea of public reason as a way in which a society "puts its ends in an order of priority and makes its decisions accordingly" (Rawls 2005[1993], 212), or "a relationship of persons within the basic structure of the society in which they are born and in which they normally lead a complete life" (Rawls 2005[1993], 216). Further, while eschewing what public reason actually is, Rawls defines it according to what it does, as it "specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood" (Rawls 1999, 132). Finally, Samuel Freeman describes public reason as "it involves a set of shared considerations which count as good reasons in public deliberation and argument about laws and their interpretation, among reasonable and rational democratic citizens who endorse different fundamental values" (Freeman 2004, 2027).

Rawls then proceeds to give his best description of what public reason actually entails when he describes the duties that are incumbent on citizens as "they should be ready to explain the bases of their actions to one another in terms each could reasonably expect that others might endorse with their freedom and equality" (Rawls 2005[1993], 218) and "Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms" (Rawls 1999, 136) or, alternatively, "Public justification is

not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept” (Rawls 1999, 155).

Further, Rawls limits the scope of public reason to aspects of constitutional essentials (crucial aspects over which a society has to make decisions) and to political deliberations by citizens and especially, officers of government. While citizens, in the private deliberations or in the deliberations held by private associations, are exempt from the duty of public reason, Rawls argues that “but the ideal of public reason does hold for citizens when they engage in political advocacy in the public forum, and thus for members of political parties and for candidates in their campaigns and for other groups who support them [...] the ideal of public reason not only governs the public discourse of elections insofar as the issues involve those fundamental questions, but also how citizens are to cast their vote on these questions” (Rawls 2005[1993], 215). Alternatively, in order to hold elected officials to the duty of public reason, citizens should, in Rawls’ view, think “they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact” (Rawls 1999, 135).

Rawls contrasts the use of public reason with the appeal to non-public reasons, which he defines as “corporate bodies, as well as individuals, need a way of reasoning about what is to be done. This way of reasoning is public with respect to their members, but non-public with respect to political society and to citizens generally. Non-public reasons comprise the many reasons of civil society and belong to what I have called the “background culture”, in contrast with the public political culture” (Rawls 2005[1993], 220). Further, in the later text, Rawls distinguishes between the background culture and the non-public political culture: “the background culture includes, then, the culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies. In addition, the non-public political culture mediates between the public political culture and the background culture. This comprises media—properly so-named—of all kinds: newspapers, reviews and magazines, television and radio, and much else” (Rawls 1999, 134n13). Thus, Rawls exempts from the requirements of public reasons the internal debates of associations, universities and professional societies, as well as media.

The exemplar of public reason is, according to Rawls, a country’s supreme judiciary institution (he refers to the Supreme Court of the United States). Rawls argues that, in the case of judicial decisions, the requirements of public reasons are strictest. He argues for this claim by quoting Ackerman’s

five principles of constitutionalism and especially the distinction between the constitution as higher law and ordinary law and the claim that “a democratic constitution is a principled expression in higher law of the political ideal of a people to govern itself in a certain way. The aim of public reason is to articulate this ideal” (Rawls 2005[1993], 232). Further, Rawls describes the Supreme Court as a bulwark for the constitution in front of “transient majorities” and maintains that, unlike other institutions, public reason is the only reason that the Supreme Court exercises. Unlike citizens, who, with the exception of constitutional essentials, are allowed to vote based on their more comprehensive doctrine, the justices of the Supreme Court must “have no other reason and no other values than the political” (Rawls 2005[1993], 235). The justices, in Rawls’ view, “cannot, of course, invoke their own personal morality nor the ideals and virtues of morality generally [...] they must appeal to the political values they think belong to the most reasonable understanding of the public conception and its political values of justice and public reason” (Rawls 2005[1993], 236). Finally, by interpreting the constitution in a way in which all find it acceptable, the justices also give public reason “vividness and vitality in the public forum” (Rawls 2005[1993], 237).

Conclusion

The paper argued that classical literature on securitization and de-securitization privileges non-deliberative forms of contesting security. Alternatively it looks to judicial forms of de-securitization as considerably more desirable. The paper employs the concept of public reason, as developed by John Rawls could represent the key to a normatively acceptable form of contesting security.

The article analyses the literature on the normative character of securitization and agrees with those arguing in favour of the claim the securitization theory is a normative theory. Then it critiques the forms of contestation proposed in the literature and argues that these are not deliberative and that they fail to meet their own standards. Finally, the work focuses on Rawls’ philosophy as a source of inspiration to argue for a public-reason inspired theory of de-securitization.

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