

# Legitimizing Illiberal Practices: Denaturalization in the United Kingdom

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## **Abstract**

This thesis studies the case of UK denaturalization law and 2014 Parliamentary debates on denaturalization to evaluate how governments gain acceptance and normalize illiberal policy. A brief discussion of the law is provided before the debates are broken down into arguments that call for government action through appeal to security concerns and arguments based on legal principle. These two types of argument combine to first gain enough political will that demands policy be made, and secondly to normalize denaturalization policy in the liberal system despite the policy's shortcomings. The thesis seeks to provide an example of how security policy is argued and accepted in a democratic legislative branch through focusing on British denaturalization law.

## **Introduction**

Denaturalization represents a major attack on human rights law and the UK's denaturalization practice wades into nefarious territory. The power vested in the Home Secretary is quite broad as the office can revoke citizenship when it "is satisfied that the deprivation is conducive to the public good" (Immigration Act 2014, 4A, b). As Home Secretary, Theresa May stripped 33 individuals of their citizenship (Parsons 2016), including two former Britons, Mohammed Sakr and Bilal al-Berjawi, who were subsequently killed by American drone strikes in Somalia (Woods 2013). In effect this absolves the UK of responsibility for the protection of certain classes of citizens. Such a policy entails the state revoking the rights to have rights (Kapoor 2015), and it has been likened to a return to medieval banishment (Macklin 2014). However, the United Kingdom's policy has been allowed to stand despite its apparent attack on liberal ideals and human rights. And as Independent Reviewer David Anderson QC notes, despite its notable strength in comparison to other Western democracies the UK's denaturalization policy has generated little controversy in comparison to weaker powers implemented in Australia, Canada and France (2016, 17). The policy goes against generally accepted norms set by other Western countries, and its compatibility with international law is somewhat controversial. So, in this thesis I ask the question: What explains British Parliament's acceptance of the UK's denaturalization policy? The central argument I will make is that the UK's denaturalization law is legitimated by being an illiberal practice that gains acceptance through liberal processes, namely Parliament. From this central claim, I will build two subsequent arguments that explain how this main argument functions. Prior, to delving into my arguments I will provide a brief history of denaturalization law that will aid my discussion of the Parliamentary debate on it. At first it may appear that these arguments are competing, however I will explain how they are complementary. First, I will argue that denaturalization gains acceptance in Parliament through the proponents focus on security concerns and the small number of individuals that the law will affect. Secondly, I will argue that acceptance is gained through proponents using various legal arguments for extending denaturalization powers such as legal precedence and the law's accordance with international law. So, first we have what appears to be a call for a need for drastic and immediate action, yet it is accepted and able to stand legally as proponents of the law devote attention to the legality of the law within the liberal framework of British legislative democracy.

## Literature Review

One way in which scholars argue the UK's denaturalization policy has gained acceptance is through the highly-legalized manner in which it has been formatted. Denaturalization is both debated and passed in British Parliament. And, illiberal policy, such as denaturalization, can be normalized through Parliament as it plays a large role in legitimizing laws, while proponents can simultaneously raise issues surrounding these laws in regards to staying within accepted liberal norms (Neal 2012, 264-265). Matthew Gibney also points to the liberal frames that the British government has purported to uphold through updating the denaturalization law. These include citizenship as a contract, a differentiation between citizenship seekers and holders, and citizenship equality (Gibney 2013, 652-653). Nisha Kapoor chronicles the UK's policy history in regards to legalizing the stripping of British citizenship, and she argues that this legalization process is part of a shift of emphasis from equal rights to eliminating a threat (2015). In the realm of international law, the UK is able to justify a policy that goes against international treaty by invoking the public good and using legal technicalities (Zedner 2016, 238). This group of scholars view the process in which denaturalization is formulated, through an elected and legitimate parliament, to be a feature of how it gains acceptance. However, there is some difference as to how scholars think of the way denaturalization comes to be within the UK. On one hand, there is an emphasis on the racial aspect of denaturalization presented by Choudhury (2017) and on the other hand Gibney (2013) points toward a more legalized process that de-emphasizes the racial aspect of the law. Gibney's explanation comes from more of a technical, legislative perspective while Choudhury's explanation deals more with how it comes to be in a social context.

The group of scholars who study denaturalization more in line with Choudhury view the UK's denaturalization policy as normalized through racializing and differentiating the other. Nisha Kapoor argues that as society has become more inclusive in terms of rights, there has also been a move to categorize an undesirable and often racialized group which does not receive protection from the state (2015, 106). Tufyal Choudhury adds a historical detailing of the UK's denaturalization policy while also emphasizing the racialized aspect that sets the stage for such laws to be invoked (2017). He argues that these policies have developed under a backdrop in which British Muslims have been forced to prove their loyalty to the state and the values it

represents (Choudhury 2017, 9). The legitimizing power here rests with the promotion of certain behavior linking you to the state as opposed to other, undesired behavior which detaches you from the state. Amir Saeed argues that no matter how much British Muslims try to be British the media has reinforced the idea that they are the Other (Saeed 2007). Scholars have also focused on how policy, such as Prevent, has transformed British Muslims into a ‘suspect community’ (Awan 2012) (Pantazis & Pemberton 2009). Choudhury argues that this occurs within the context of the shift toward preventing or pre-empting crime before it happens (2017, 13). If the goal is to prevent crime than expelling those who act against the interests of the state before they commit a crime becomes a legitimized tool. This group of scholars would likely expect an emphasis on the racialized aspect of race and religion in parliamentary debates, in which the British government argues it must protect the population from this dangerous element within society. While these considerations of race, religion and society’s treatment of minorities surely play a role in the legislation in this arena, it does not necessarily mean that these frames are effective in creating acceptance for law.

Another way in which these illiberal policies can be justified is through framing the issue as a security measure. Waever’s securitization makes the case that security is essentially a speech act, and once an actor invokes the word “security” it allows a certain set of tools to be used as a response (1995). In this vein, Flavia Giustiniani makes the case that states should reserve the right to strip citizenship in extreme circumstances as individuals who attack the state give up their attachment to the state (2016, 19). In the case of the UK’s denaturalization policy, specific mentions are made to the public good, and this evocative phrase then legitimizes the use of an illiberal practice. Alternatively, Alison Harvey counterargues that the UK’s policies specifically are an attack on nationality as a right, and as international human rights are universal they should not be restricted in such a way (2016). The focus from counterarguments tends to come from the perspective of focusing on human rights as something worth protecting. Thus, we see a tension between those who argue that states need to preserve the right to decide who is in and out, and those who focus on the human rights that the system is intended to protect.

In terms of security policy, two main academic schools exist to explain how an increasingly securitized state comes to be. On one side, we have the theory of exceptionalism and securitization and in contrast Bigo’s Paris School of security studies. We would expect to

see different arguments come from Parliament dependent on how much power the government has to set the exception in the form of security policy.

Much has been written and argued about so-called exceptional policies, and denaturalization would certainly appear to fit in the framework of an exceptional policy. Giorgio Agamben (1998, 2005) theorized bare life and the state of exception, and he argues that sovereign power sets the limit to which exceptional behavior can be taken to limit rights. Waever's securitization theory is a framework in which the state of exception is justified and gains acceptance. He argues that securitization happens when states and state elites are able to claim special rights in the name of national security (1995, 55). Here the sovereign is able to set exceptions in which they can limit the human rights of their citizens. For Agamben these justifications for the state of the exception turn away from democracy, rather than occurring through democratic processes. It has also been argued that the state of exception has moved into a permanent status where homo sacer, the potential to become bare life, exists in everyone, and "all life is bare life until class credentials prove otherwise" (Van Munster 2004, 152). This is a departure from democracy rather than a by-product of a liberal system, as it represents a concentration of power within the executive against the general public as a whole.

Opposing Agamben's state of exception is a group of critical security academics who argue that Agamben and his followers miss the small day-to-day mechanisms which occur within a liberal framework to create such illiberal policies. Also, the state of exception disregards the societal as a political force (Huysmans 2008, 165-183). Bigo and Guittet continue this strain of argumentation in an article discussing Northern Ireland and counterterrorism in which they critique Agamben's bare life by highlighting the importance that resistance within a liberal regime plays when it encounters the exception (2011, 493). Furthermore, these policies are not always agreed upon in a unified manner, even during debates in the UK sparked by the 9/11 attacks some members of Parliament and opposition groups emerged to stand up to a perceived illiberal attack on human rights (Huysmans 2004, 325). The lack of unity can be further seen in the devolution of sovereignty, where instead of unilateral action there are multiple "petty sovereigns (Butler 2004, 56). And, security policies are not formulated in an isolated response to a certain high-profile moment, 9/11 for example, rather law is cumulative and builds over time, and it is not as simple as the sovereign executive taking unilateral power (Neal 2012, 262). This is to say that the exception is no longer exceptional as it has become a normal feature of

legislating security (Neal 2012, 261). Bigo further argues that the state of exception is constrained as liberty and security are inherently tied together, and states promote (in)securitization, in which states demarcate who is within the secure boundaries (2015, 107-108). Jabri contributes to this discussion by arguing that the commonality between ‘exceptional’ counterterrorism policies is the targeting of “distinct and particular others” (2006, 51). Here the move toward illiberal policies is accepted through a target against a marginalized minority rather than a risk assessment of the entire population. This is a key feature to the legitimacy of an illiberal practice; the category of suspects must be highly specified to ensure the majority that only the margins are targeted (Scherrer 2009). The risk management aspect of the illiberal policy is rather hidden in a move to “control identities in the most invisible manner possible” as such to not breed resistance (Bigo 2006, 57). Choudhury places denaturalization policies in this move to a pre-crime security policy against a racialized Other (2017). Therefore, the important element of how the illiberal policy is justified comes into play, and in this strain of argumentation such illiberal policies work within a liberal system because they target a group that is outside of the community that is to be secured. Furthermore, as Andrew Neal explains through his evaluation of FRONTEX, security can be understood less as a unilateral sovereign, but more as a security continuum in which security policy is executed across a wide range of policy fields (Neal 2009, 352-353). These developments can be understood as illiberal practices within a liberal society, rather than Agamben’s world of unilateral sovereignty, (Bigo 2006, 51) and these illiberal policies meet pushback from the population (Bigo and Guittet 2011, 493).

Within the literature and debates we see these notions of normalization and legitimization of security policy by Bigo’s side and the invoking of the exception from Agamben, Waever and others’ perspective. Within the denaturalization debate we have some conceptions of how the law functions to strip certain citizens of their right to have rights, i.e. the legalese of such laws or the targeting of minority groups. However, certain links are missing between these two debates. With Bigo’s idea of illiberal policies within liberal systems we see generally how an illiberal law might develop to become accepted within a liberal system. But, there is little discussion on how, why and when the public and most importantly members of Parliament will become accepting of such illiberal practices: which circumstances and arguments most effectively legitimize illiberal laws. Within the second debate on denaturalization policy a link is missing to connect these policy’s strength to the nature of an illiberal policy embedded within a liberal system, and in this

case with the parliamentary process. A link between these two debates can help to explain how an illiberal practice becomes normalized, and how the UK's denaturalization policy gains acceptance and breeds little opposition in Parliament despite its seeming return to a type of medieval banishment.

### **Theoretical Framework**

As opposed to viewing the world purely through Agamben's invocation of the exception, if we view the world of security through the lens of Bigo's routines and processes a different set of effects can be further evaluated. These concepts boil down to Foucault's normalization, a process that develops "from and below a system of law in its margins and maybe even against it" (Foucault 2007, 56) So, this framework can explain how an illiberal policy in a seemingly paradoxical manner gains strength through normalization and acceptance within a liberal system. Within this framework, I will also argue that securitization through speech act is present to some degree. However, this is simply a step used in order to justify government action which then sets Bigo's routines and processes into motion allowing for illiberal policy to gain strength in a liberal system. In total, this frame uses Andrew Neal's theory on Parliament normalizing exceptional policy over time (Neal 2012), and it will use the denaturalization case to support this theory.

In order to gain acceptance for an illiberal policy such as denaturalization, first an ample concern must be present in order to justify the extension of such a law. With denaturalization, we see this in the recurring emphasis of the small number of very dangerous people that the law will actually effect. If the danger is presented as so strong, and the potential negative consequences of implementing the law so limited, Parliament will be much more likely to approve legislation that potentially conflicts with the liberal system which they seek to protect. Therefore, to garner enough attention on the security issue, it is useful to make a securitized speech act (Waever 1995). This initial alarm then allows for legal routinization and historical development of a law to occur, in which the concern of danger can be translated into legal code that makes the exceptional rather normal.

So, the next process in normalizing an illiberal policy in a liberal system is legal routinization. New exceptional practices are added on top of already existing law to build approval for illiberal practices through the power of the law (Bigo & Guittet 2011, 486). This

presents a small build-up of illiberal practice rather than one in which all illiberal powers are taken in a single act of unilateral sovereignty, as would be the case in a more Agambian world. Here the acceptance is gained over a process of time, and in turn exceptional illiberal laws are normalized in response to increased acceptance. As the law becomes normalized it does not appear particularly illiberal as compared to past iterations of the law. Acceptance can be seen in public opinion or lack of public outrage as the denaturalization law and security policy become normal. New laws that appear draconian don't seem so illiberal as they are only built on slight changes to the already generally accepted liberal system. With denaturalization, we see this in the arguments and long development of the law in which, both limits and expansions of the power are simultaneously developed (Gibney 2013).

In summary, this is a two-step framework to explain the development of illiberal security law. First, we have securitized speech acts which cause enough stir within the public and government to create the drive for government action. But, this is not the end of the story, and it is not as simple as the government being able to fully set the terms of the exception as in Agamben's theory. The second step is necessary to creating policy in a liberal system, and this is working within the terms of the system, in this case Parliament. The government cannot bend the law to its complete will, and it must work within to formalize security legislation. However, these processes can be used to gain acceptance and normalize policy that goes against the very liberal principles it argues that it protects. Within denaturalization law, we see this when proponents argue for the legality of an extension to the law that potentially causes statelessness.

## **Arguments**

My main guiding argument will be the UK's denaturalization policy effectively works because while it is an illiberal practice, it still passes and gains acceptance through the liberal system. So, the policy gains acceptance and legitimacy through liberal processes despite the fact that it is in contrast to many of the liberal ideals which it serves to protect. The main liberal process that the denaturalization law is subject to is the parliamentary process including debates and voting. My argument will be built through the lens of Bigo, and argue the strength of such a policy rests in the fact that it takes places in a wider liberal government rather than that it persists in spite of liberal values.



The two sub-arguments support the main argument by showing how public acceptance for such a policy comes to fruition. The first argument being: UK denaturalization gains acceptance in British Parliament through a call for an exceptional measure for a small number of dangerous individuals. This draws from the exceptionalism debate specifically from Waever's concept of securitization (1995). But this differs from exceptionalism as the process goes further in the second argument; UK denaturalization gains acceptance in British Parliament through the focus of proponents on the legality of the denaturalization which they propose, this drawing on the idea of Bigo's routines of legality (Bigo 2006).

### **Operationalization**

In order to find how the UK's denaturalization has gained acceptance in British parliament, I will have to look at the argumentation presented in the parliamentary debates of these broad immigration laws. Frequently occurring points, counterarguments and relevant issues that are not brought up will all be relevant to my study.

First, I have to define specifically what is an illiberal policy. An illiberal policy in this context can be seen as a suspension of the typical liberal values which a government seeks to uphold. Bigo has theorized this as the "ban-opticon" in which the exception becomes normalized (Bigo 2006, 47). So, an illiberal policy goes against the generally accepted liberal ideals accepted by those who constitute the state. With denaturalization, we see this in the way competing appeals to both liberal values and security are simultaneously made.

Also, important to the main argument is the concept of liberal processes. In this case, liberal processes take the form of parliamentary debate and voting, and the general build-up of the law over a long history in which rule of law and precedence are held in high regard. Another liberal process is the general liberal international regime in which treaties and agreements give more legitimacy to governments and the laws that they pass.

The term exceptional measure is closely linked to the idea of an illiberal policy, but it is more specific and descriptive. Here I utilize the concept of Waever's securitization and the speech act to identify what is an exceptional policy. Waever theorizes the speech act as a manner in which the 'state' names a security problem that then allows them to claim a right to act in the way they see fit (1995, 54). Security as a speech act is seen through the rhetoric of those who look to further extend security policies. In the case of denaturalization and this paper,

the language that proponents use to justify the need for a more powerful policy within Parliament will be an indication of a call for an exceptional measure.

I'll look for the process of routines of legality by evaluating the recent history and iterations of the specific denaturalization law. Evaluating both the manner in which the law has changed and how it is argued in Parliament will allow me to show how this law is accumulatively routinized through a process of legal and legislative means. The specific language of the law is an indicator of how the law is justified. Routines of legalization is a concept that is seen in this case by the accumulation of laws over a nearly hundred-year period. The denaturalization law has been routinized as such through the use of previous laws on the book and accordance with international law.

In terms of acceptance, I will look toward the parliamentary debate on the subject of denaturalization, specifically on the 2014 law. Here I will be looking for the arguments made by proponents and what type of reaction these illicit from other members of Parliament. Also, key to acceptance will be looking at the talking points of those who disagree and argue against the law. What arguments are they making and why are they not as effective in this case as those who are arguing for an increased power to denaturalize? And finally, acceptance can be seen in the votes on the denaturalization segment of the law.

### **Data Generation and Analysis**

In order to generate data, I will evaluate primary and secondary source documents. Firstly, I will look at the denaturalization laws in order to evaluate the processes of legalization and see how the law has been developed into a more illiberal law. The terminology and power of the law are important to decipher, in order to see if these laws have been built in an accumulative manner in which the power of the state grows over time.

Secondly, I will evaluate parliamentary debates that are publicly available, specifically on the 2014 expansion of the denaturalization law as it includes the government arguing for an extension of denaturalization. Furthermore, I've chosen the 2014 parliamentary debates as it represents the most controversial extension of the law in recent years as now British citizens can potentially be made stateless. This will provide an insight into the discussion surrounding such a power both in favor and against as the opposition looks to counter a clear increase in government power. It will allow me to evaluate how proponents seek to justify such a power, and in which

ways detractors frame the issue of protecting citizenship and limiting statelessness. Reoccurring arguments made by proponents point to the way in which members of Parliament accept denaturalization. Conversely, looking at the arguments from detractors in Parliament will give some insight into what type of arguments do not work to argue against an illiberal policy.

I will analyze this data through a sociological lens, so that I can evaluate these texts as a social product (Ruiz Ruiz 2009). Evaluating the laws and parliamentary debates as a social product allows me to discuss social structure surrounding the law and ask questions about why certain arguments are made and why they are effective (Ruiz Ruiz 2009, 11). Why and when are certain arguments brought up and why are other viewpoints or arguments not discussed? These and other questions probe into the context and social structures in which denaturalization and adjacent issues are discussed. I will analyze how denaturalization is discussed by members of Parliament primarily for the amendment, but also against it. The end goal of such an analysis is to see what the discussions surrounding these laws say about how illiberal laws are crafted, argued and agreed upon in a liberal system.

To get a fuller picture of the denaturalization debate I attempted to evaluate some civil society reaction to such laws. In order to do so, I looked at investigative reporting from The Bureau of Investigative Journalism, non-governmental organizations who have lobbied against the laws such as Reprieve, and think-tanks such as the Henry Jackson Society who argue in favor of the extension of such laws. Similar to analyzing the discussions in Parliament, I looked at how language is used to justify both sides of the argument, what arguments are made in the most prominent appearances by these organizations and if they coincide with debates made in Parliament. This analysis is not a main part of my thesis, but I include some mentions to these discussions such as a video debate from Al Jazeera English.

Overall, the method of discourse analysis is most useful to this project because it allows me to evaluate multiple arguments interacting with each other and leading to some agreement or justification. As I am looking to unpack how arguments are made and what are their results, a method that allows me to look at multiple discourses is necessary.

## **Object of Study**

In this thesis, I have chosen to study the UK's denaturalization law and specifically the 2014 parliamentary debate surrounding an extension to the law that lessens protections to

statelessness. I chose the UK as a case study as it's law on denaturalization is particularly strong and unique for a Western country (Anderson 2016, 17). I chose denaturalization as a policy field due to the gap in study into how exactly the UK's denaturalization policy has come to be an accepted feature of British law. UK denaturalization has been developed over a long period of time with a history dating back to 1914 and updates in 1918, 1948, 1981, 2002, 2006 and 2014. Thus, it is a case where we see long-term historical development of a law that is necessary to evaluating routinization and normalization. And specifically, the amendment presented in the 2014 Immigration Act provides a clear case in which an illiberal policy gains acceptance through the liberal practices of parliamentary process and debate. The United Kingdom's denaturalization policy and the debate surrounding it serve as a prime example to test the theory of initial securitized speech acts serving to propel security policy forward.

## **Empirical Analysis**

### **1. Background on Development of Denaturalization**

The denaturalization law of the United Kingdom has not simply sprung out of a reaction to terrorism concerns, rather it has developed over a long period and is based on and made possible by previous legislation on citizenship. Deprivation of citizenship was first formulated in The British Nationality and Status of Aliens Act, 1914. It has been subsequently updated in 1918, 1948, 1981, 2002, 2006 and 2014. Over the course of development into the most recent iteration of the law, the citizenship revocation subsection has gone under gradual change to expand the state's ability to revoke citizenship from an individual, and it has caused a fundamental shift in how British citizenship should be understood. This section will provide a brief rundown on the significant changes that UK denaturalization has gone through that lead us to the present-day amended 2014 law.

The baseline for denaturalization begins with the British Nationality and Status of Aliens Act, 1914. It reserves the government's right to revoke a certificate of naturalization when obtained by fraud or the person has been shown to "by act or speech to be disaffected or disloyal to His Majesty" (Section 7(1)). 1918 only saw minor changes to the law, so the next significant update did not occur until 1948 under the British Nationality Act. The significant change here being the addition of the phrase that the Home Secretary "shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that

that person should continue to be a citizen of the United Kingdom” (Section 20(5)). Including the public good as a concept serves as the introduction for denaturalization fully into one of a security concern. Next, a protection to statelessness is added with the British Nationality Act 1981, section 40(5b). However, this amendment was made after the United Kingdom submitted its reservation to the 1961 UN Convention on Statelessness which reserves the UK’s right to strip citizenship under the 1948 law (Macklin 2014, 15). The Nationality, Immigration and Asylum Act, 2002 includes two noticeable changes, an expanded section on the appeals process and a change from “may not” to “may by order deprive a person of a citizenship” (Section 4). This represents a small change from a negative “may not” to a positive “may” which slightly changes how the law reads and potentially applies. The 2002 law also shifted from a protection of the “public good” to protecting against “anything seriously prejudicial to the vital interests” (Section 4). With the Immigration, Asylum and Nationality Act 2006, this phrase returns to protecting the public good, allowing for the Home Secretary to deprive citizenship if they are “satisfied that deprivation is conducive to the public good” (Section 56(1)). Both phrasings are rather broad, however in the Immigration Act 2014, we see the return of the “seriously prejudicial” (66, 1(4A-b)) phrasing, which we will see later the government argues is stronger than the 2006 law. The Immigration Act 2014 also most notably lowers the protection against statelessness by including that deprivation is allowed “the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory” (66, 1(4A-c)). This brief history of denaturalization brings us to the most current law, and sets the stage for the two further sections on the arguments presented by proponents.

## 2. Proponents Arguing Exception

### a) Introduction

This section will center on the British Parliamentary debates on the denaturalization portion of the 2014 Immigration Act. The denaturalization section of the debate only makes up a small portion of the larger debate on this immigration law, however there is ample rhetoric to evaluate how denaturalization becomes accepted as British law. This section on proponent’s argumentation further breaks down into the three most used arguments in the 2014 debates used to claim a need to extend the government’s power to denaturalize certain citizens. The first

section is on the argument that there are dangerous individuals who must be, but cannot currently be denaturalized. Secondly, I will discuss the emphasis proponents place on the coordination of these individuals and how this also serves as a call to action. Finally, the most used argument used by proponents is the low numbers that this extension of the law will affect, and my final sub-section discusses the importance this serves to gaining acceptance.

### **b) Danger**

The focus on danger is reminiscent of Waever's speech act (1995, 54), and in the case of denaturalization this allows the supporters of extending denaturalization to define transnational terrorism in such a way as to justify stripping the citizenship of dangerous individuals. The argument here is fairly simple, there are individuals taking advantage of the liberty afforded to British citizens in order to hurt British society. Therefore, the government should reserve the right to remove what gives this person such an advantage, namely their British citizenship.

Proponents dedicate a significant amount of time to this type of argumentation. MP James Brokenshire opened the House of Commons Ping Pong Session of the 2014 Immigration Act by commenting on the danger present:

“There is a small but very dangerous number of individuals who, despite having taken an oath of loyalty to become a British citizen, seek to threaten the security of this country. Those same dangerous individuals seek to exploit a loophole in our legislation preventing us from removing their citizenship if it would render them stateless, even temporarily, while they reacquire their former nationality” (House of Commons 2014, Column 190).

As this is the opening statement of this session of debate on denaturalization it serves as an indication as to what proponents believe are their strongest points. Brokenshire mentions the small number of individuals that will be affected which will be discussed further in a following sub-section. There is the clear signal that there are some “very dangerous” individuals that make up society, and currently the British government is protecting them through weak legislation. By using the word “exploit” there is a sense that these dangerous individuals are overpowering the law and bending it to their advantage in order to upend social order. There is also an urgency to the danger that the government outlines with Brokenshire later describing it as “a real and current threat” (House of Commons Ping Pong 2014, Column 199). By framing it as a current issue, and by using arguments of legality which we will see in the third section, the government

blurs the line between “normal and exceptional times” (Neal 2012, 261). If the problem of terrorism is defined as such then denaturalization as a policy option becomes legitimated and open to debate and further legalization.

There are different academic opinions as to how this danger within denaturalization and general security policy is created from racialization (Choudhury 2017) (Kapoor 2015) and representation of Muslims in the media (Saeed 2007) (Whitaker 2002), however within the context of this study of parliamentary debate, the frame of Muslims specifically as dangerous is not meaningfully evoked. This is not to say that there is no racialized aspect to the promotion of danger that allows denaturalization as those who have been denaturalized are mainly Muslim men (Woods and Ross 2013). But, any specific mention of race or religion do not feature directly in the parliamentary debate on denaturalization. Rather, we see only a general idea of danger being presented that is not tied to any specific group. This general and vague attitude to details on who these individuals are will too be seen in the following section on coordination, and it ties into the final argument on the proponent’s frame regarding the small number of individuals affected by the law.

### **c) Coordination**

Parliamentarian’s focus on the coordination of those to be denaturalized has a similar effect to the attention paid to the danger of these individuals. By framing these individuals as a coordinated bunch, proponents elevate these individuals to a higher level of strategy and potential threat to the country. The unspecified number of “dangerous individuals” are repeatedly referred to as more than simply individuals in terms such as “cohort” and “cadre”.

This can be seen in Conservative MP Robert Buckland’s comments on denaturalization: “we are talking about only a very small cohort of people who pose a serious threat to the safety of the citizens we represent” (House of Commons 2014, Column 212). In this statement, a combination of the three arguments which I outline in this section are present. In regards to the emphasis on the coordination of this group, this frame works to compound the potential danger that is present. If they are not only dangerous but also working together than the action taken by the government should be even more firm.

MP Brokenshire also puts forth a similar argument to Buckland which points to this line of argumentation being an agreed upon strategy,

“the provision is about dealing with a small cadre of individuals who may have waived or surrendered their previous citizenship as a means of frustrating the Government’s attempts to guard our national security by using our existing deprivation powers” (House of Commons 2014, Column 197).

Here again we have the insinuation of coordination of the group, and there is also a noticeable lack of details to exactly who they are describing. Another interesting point to note is how the government frames these individuals as a nuisance who are “frustrating” the government. Here Brokenshire is referring to people who could not previously have their citizenship revoked as British citizenship was the only one that they possessed. So, if an individual renounced citizenship of another state after receiving British citizenship they could not have their citizenship revoked. Therefore, Brokenshire is crafting an image of these “individuals” as a coordinated and strategic group which is attempting to take advantage of British law in a thought-out manner. Overall, framing this as an issue of a group of people elevates the danger, in turn calling for swift action. However, as we see in the next section, the government still has to assure that the use of denaturalization will not be widespread and despotic in nature.

#### **d) Low Numbers**

Throughout the quotes presented thus far, the focus on the small number of individuals is a constant talking point. This emphasis on the low numbers that will be affected by the powerful law is slightly different than the arguments on danger and coordination. This frame represents a call to assure Parliament members that this law will not overstep boundaries and only be used to counteract the most dangerous people, for example a narrow minority (Scherrer 2009). In general, increased surveillance powers have not greatly disturbed the British public (Dahlgreen 2015), so if the number of people who can be effected is narrow then this hurts the opposition’s chances to cause an uproar in the public and thus create a stronger opposition to denaturalization.

One of the benefits related to arguing from the vantage point of denaturalization is that it is difficult to release precise numbers due to security concerns (Macklin 2014, 17-18). Here Conservative MP Mark Harper talks about the numbers who will have their citizenship stripped in advance of enacting the law:

“It is not possible to know in advance, but we are talking about very small numbers. We are talking about people who conduct themselves in a way that is seriously prejudicial to our



national interests. It is a small number of people, but it is a small number of people who mean to do us serious harm, but whom we are not able to prosecute.”

Again, we see the combination of the “small number of people” while reinforcing that they present a considerable danger to society. This signals that proponents of denaturalization are aware of the concerns that will be brought to the debate. They are simultaneously mitigating the power behind the law of denaturalization by emphasizing the low numbers of people that it will apply to while also pleading for its relevancy by playing up the danger this small number of individuals presents.

The emphasis on low numbers also combines with the argument presented that this power is not a devolvement into despotism. During the Ping Pong session of the House of Commons debate, MPs Brokenshire and Buckland both take the opposition’s point that denaturalization is despotic and could potentially be abused and exaggerate the opposition’s point to make it seem hyperbolic. The same argumentation occurs in a civil society debate that took place on Al Jazeera English. Robin Simcox of the Henry Jackson Society repeats arguments presented in Parliament that the law applies to “a very small amount of cases” (Al Jazeera English 2014, 4:27-4:30) and when countering the opposition, “I think this is getting way over the top, no one really believes, no one seriously thinks that the British government is going to start deporting foreign-born people en masse. It’s just fanciful, it just won’t happen” (15:26-15:39). The strategy of exaggerating and then belittling the concerns of the opposition is a risky strategy as it potentially alienates those who could be affected by the law, however within the debate in Parliament this element of the debate seems to side with the proponents. This is due to the fact that members of the opposition, for the most part, did not strongly oppose the denaturalization portion of the bill. As Dr. Huppert puts it during the third reading of the bill:

“We did have a debate about citizenship deprivation. It is a great shame that the shadow Home Secretary and the vast majority of her colleagues simply sat on their hands on this important issue. I pay tribute to those Labour Members who rebelled with many of us to oppose that” (House of Commons Third Reading, Column 1129).

So, the denaturalization portion of the bill simply did not generate enough discontent within Parliament to create meaningful opposition. Most notably the amendment passed by a vote of 295-16 after a third reading in the House of Commons (Third Reading 2014, Column 1130). This either shows the effectiveness of the arguments presented by proponents or perhaps

denaturalization was buried within the larger immigration bill, and thus opposition was spread thin on where to pick battles to oppose the bill.

This section on the argument of low numbers transitions into the next section on the government's focus on legality. By emphasizing the narrow breadth of denaturalization law the government straddles Agambian exceptionalism and Bigo's side of the routinization of the exception. The previous sections on danger and coordination show the government defining security through a speech act in which denaturalization becomes a legitimate policy option. However, this is a step in the process rather than the entirety of the story of how this security policy is enacted. The government still has to assure Members of Parliament that the legislation is not overreaching, and also that it is supported by British and international law. This process is the normalization of exceptional policy through democratic legislative means (Neal 2012). The next section will detail this routinization process which enables the government to normalize citizenship stripping through appeals to legal sensibility.

### 3. Focus on Legality

#### **a. Closing Loophole and Building Law**

With the 2014 update to denaturalization much of the concern presented by the government is of loopholes which individuals have previously taken advantage of in order to escape losing British citizenship. The closing of said loophole is framed as a strengthening of British law which can better protect society. By contrasting the supposedly weak 2002 and 2006 laws with the previously stronger law, they look to build upon law in a cumulative and routinizing manner. While in fact the 2014 amendment is quite a step further than any previous denaturalization law, through arguing precedence and weaknesses of previous law, the government are able to lower the gravity of denaturalization to a simple return to previous law rather than a step to limit human rights. In this section, I will focus on two different types of argumentation brought by the government that they base on previous law. Firstly, I will discuss the line of argumentation that the law will close an existing loophole, and secondly, I will write about how the proponents argue they are building upon previous law. While they seem to contradict each other they simultaneously work together similarly to the arguments of danger, coordination and the small numbers affected. The 'closing the loophole' argument elevates the

importance of the bill, while the building upon previous law argument works to lower the perceived damage to human rights concerns.

The loophole is an effective way in which to cause a sense of danger which the government should seek to fix. Brokenshire brings the point of a previous case in which the government struggled to denaturalize an individual:

“I argue that we have considered the matter carefully and framed the amendment appropriately to deal with the significant loophole that was created and that was highlighted by the al-Jedda judgment. We believe that it is important to close that off in the interests of national security” (House of Commons Ping Pong, 194).

The irony of this statement is that the defendant Hilal al Jedda, while the case perhaps highlights a loophole in the law when he won back his citizenship after appeal, was later stripped of his citizenship once again under the 2006 denaturalization law (Ross & Rudgard 2014).

Nonetheless, by highlighting a potential discrepancy in the law, proponents were able to effectively appeal for an extension of the law as an individual could under previous law theoretically have forfeited their second citizenship, and then contested that they could not lose citizenship as they would be made stateless. This argumentation makes the amendment seem urgently necessary so as not to cause an uncertain case such as al Jedda's. Interestingly, in 2002 the government justified the differential treatment before denaturalization law between dual nationals and those solely holding British citizenship by arguing that they wished to have all citizens subject to this law, but they were responsible to international treaties on statelessness (Gibney 2013, 648-649). Here we see the ambivalence toward concrete liberal principles with the government rather substituting what liberal ideal is most important based on what is most advantageous to preserving denaturalization law (Gibney 2013, 652-653). When normalizing policy, governments try to distance themselves from previous governments and present a new and different future (Neal 2012, 274), and this can be seen in the governments arguments on closing a loophole left by previous governments.

Other than closing a loophole within the law, proponents also use the discursive frame of building the law based upon historical precedence. This works to gain acceptance by promoting the idea of a logical, measured build-up as opposed to an abrupt change which has significant repercussions for human rights. The government's policy options are certainly constrained to a degree as it would not be feasible to allow any British citizen to have their citizenship stripped

(Gibney 2013, 648-649), but the 2014 update does represent a significant change to denaturalization and adds an unprecedented power to the British Home Secretary. But, by presenting a linear build-up, it marginalizes the power which they are looking to take. This can be seen in Brokenshire's statement on the government's power to remove citizenship when obtained by fraud:

“Many of the debates on this issue have focused on the use of the existing powers in the UK and overseas. I remind right hon. and hon. Members that the Home Secretary has long-standing existing powers to deprive a British national of their citizenship where that individual acquired it using fraud or where she is satisfied that doing so is conducive to the public good. Where fraud has been used, a decision can be made to deprive, which leaves a person stateless. Our proposals have built on the non-conducive powers to target a narrow cohort of naturalised Britons who are a real threat to our national security.”

Brokenshire compares the new power to the power to make an individual stateless when they obtained British citizenship by fraud. However, he glosses over the important difference between the two cases, the previous law consists of concrete evidence proving fraud, while proving someone is acting “seriously prejudicial to vital interests of the UK” is subjective. Supporters of denaturalization rather want to make these powers appear similar as to lower the standard for which the government can make someone stateless. When the law is associated with former law, it seems less illiberal and gains acceptance from those in Parliament as a reasonable way in which to prevent these dangerous individuals from inflicting harm on society. This dual discourse promoting the importance of the law while minimizing the impact that it has on the rights of citizens is key to normalizing a policy that in fact does significantly change people's citizenship rights. Further minimizing of the 2014 denaturalization extension can be seen through the government's arguments that denaturalization coincides with the international community and international human rights law.

#### **b. International Community**

Proponents often invoke the international community and other state's laws as a justification for the lack of protection for statelessness in the 2014 law. Proponents notably attempt to associate with the liberal international order and other liberal states as opposed to states with a poor record in the area of statelessness. This works to garner support for the bill by

assuring that international obligations are upheld, and that the UK remains in good standing with international partners. It also functions as a type of routinization of the exception as it works with international norms to create a sense of acceptability.

The opposition brings up the issue of the British government being able to preach to the world while not taking their own advice when Labour MP David Hanson states: “How can the British Government lecture others, or promulgate international law, when the Bill proposes the establishment of circumstances which, in my view, would break international requirements across the board? The Minister says that that is not the case, which is a view that we need to discuss” (House of Commons Ping Pong, Column 202-203).

This concern is largely regarding the UK’s commitment to protect statelessness, however the UK government submitted a reservation to the 1961 UN Convention on Statelessness thus preserving their power to revoke citizenship (Macklin 2014, 15). Therefore, the government can fall back on their accordance with international law despite not being held to as stringent protections.

Brokenshire makes this argument and assures that the law complies with international obligations:

“We are very clear that the provision is not arbitrary. It is a very focused and proportionate power that meets not only those requirements, but our obligations under the UN convention on the reduction of statelessness of 1961, and the declaration made by the UK when it ratified that convention in 1966. We have considered our international obligations very carefully. We believe that the provision absolutely complies with the obligations that we have set for ourselves” (House of Commons Ping Pong 2014, 193-194).

The government uses international law to garner support for denaturalization, and associating denaturalization with international law compliance legitimizes the policy. Outside the Parliament similar phrasing is used to ensure international obligations to statelessness are upheld, “the UK goes further than is necessary to honour our international obligations” (Brokenshire, 2014). This effectively counters the opposition’s previous argument that it does not comply with international law, and “further than necessary” implies that the law could go even further than it currently does to lessen protections against statelessness. So, the government leaves the door open to further extending the law by saying the current law goes “further than necessary to

honour international obligations”. This damages the opposition’s point, and it then has to change its argument to the UK should have better protections for statelessness which is more difficult than simply arguing that the proposed denaturalization law does not comply with international law.

Further than compliance with international law, proponents also argue that denaturalization is a power that other states also have at their disposal. This serves to prove that the UK is not an isolated Western case that can be compared to developing states with a lesser human rights reputation. Brokenshire evokes the laws of other states when he argues:

“However, other states do have the ability to render citizens stateless, and some have made protocols and reservations to that effect. Some people have sought to portray those states as somehow despotic... but I do not think anybody would regard countries such as Belgium or the Republic of Ireland as despotic, and those states have reserved powers to make citizens stateless” (House of Commons Ping Pong 2014, Column 197).

Here Brokenshire borrows the credibility of the two other states Belgium and the Republic of Ireland, while again dismissing the idea that the UK could be despotic. Outside of Parliament similar arguments are made to justify denaturalization through association with other liberal states, the government argues through previous European case law that when an individual has citizenship revoked outside of British territory they are not subject to British jurisdiction for European Court of Human Rights purposes (Brokenshire 2014, 3). By assuring compliance with European standards and other European states, denaturalization proponents associate UK denaturalization with positive elements such as compliance with human rights despite the bill’s flouting of these principles.

In general, by associating denaturalization with international law compliance, the government is able to garner support for denaturalization and allow it to become a normalized and routinized part of British law. This is done through the association to other liberal regimes and the liberal international order. Furthermore, by evoking human rights and the bill’s compliance with human rights, they place denaturalization positively with human rights despite the apparent contradictions in doing so. So, proponents make arguments that reinforce the normalization and routinization of denaturalization.

## Conclusion

At the outset of this thesis I set out to argue that denaturalization functions as an illiberal policy that gains acceptance through liberal processes. British Parliament normalizes exceptional or illiberal policy over time through the accumulation of parliamentary decisions and debates. To show how this acceptance is gained I broke down parliamentary debates into two sections, one detailing how Parliament generates a general sense of unease through their argumentation on the danger, coordination and small numbers of people the law targets. Secondly, the Parliament also argues through legal principles such as commitment to international law, building upon past laws and closing legal loopholes. This first line of argumentation serves to create political will, while the second then serves to normalize exceptional policy. The arguments presented by proponents of denaturalization provide insight into how exceptional policy becomes normalized and implemented in a liberal parliamentary system.

A better knowledge of how exceptional policy gains acceptance in Parliament should be a helpful step in crafting a better opposition to denaturalization and other similar policies. In the case of denaturalization and the 2014 extension of the law, the proponents' argumentation preempted much of the arguments from the opposition. While this shows the weak points of some opposition arguments, it allows for the opposition to craft stronger arguments more grounded in principles. For example, if proponents harp on how this law coincides with the UK's international obligations, it might be beneficial for the opposition to argue that the UK should work even harder to set an example of human rights standards that protects individuals from statelessness whenever possible. Furthermore, it might be effective to play to security concerns and question the efficiency of leaving these "very dangerous" individuals in countries where they are less easily held accountable for their actions. With this said, while the opposition in 2014 failed to take a stand on denaturalization, and this perhaps shows the effectiveness of the government in gaining acceptance and normalizing this policy, it does not mean that denaturalization must remain a normal feature of British life indefinitely.

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