



LUND
UNIVERSITY

Australia's securitization of boat refugees

- A critical discourse analysis of the Australian Migration Act.

Johanna Hamark Kindborg

Avdelning för Mänskliga Rättigheter
Historiska Institutionen
Kurskod: MRSK61
Termin: Hösten 2014
Handledare: Christopher Collstedt och
Rouzbeh Parsi
Omfång: 10581 ord



Abstract

According to international law, under the Convention Relating to the Status of Refugees (CRSR), refugees have the right to seek asylum in the host country they arrive to. However, there are many democratic states today that view it as their privilege to select which refugees who have the right to enter their territory. In order to do research on this subject I will use Norman Fairclough's critical discourse analysis to give a more complex view of power relations in the Australian society today. With assistance of Fairclough's three-dimensional model, I will examine Australia's Migration Act. The focus of the thesis is determined by asking which norms that are the underlying factor for the attitude toward immigration in Australia. I will therefore examine in what way refugees are portrayed in the Australian Migration Act and the political debate. The discourse of security will also be examined in the Act and a further investigation will be made on what way this phenomenon affects refugees in Australia. When these questions are asked to the primary material I will use Seyla Benhabib's perspective on political membership and her theorization of *the others* and I argue that the Australian Migration Act generates an image of refugees as a threat against Australia's security.

Key concepts: *Boat refugees, Designated persons, Detention center, Human Rights, Immigration, Membership, Migration Act, Security, Society, The others.*

Abstrakt

Enligt internationell rätt, under konventionen relaterad till status av flyktingar (CRSR), så har flyktingar rätt att söka asyl i det mottagande landet. Däremot, så är det idag många demokratiska stater som ser det som deras privilegium att välja ut vilka flyktingar som är berättigade att komma in på deras territorium. För att undersöka detta ämne så kommer jag att använda Norman Faircloughs kritiska diskursanalys för att granska de komplexa maktpositionerna som existerar i det australiensiska samhället idag. Med assistans av Faircloughs tredimensionella modell så kommer jag att granska den australiensiska migrationslagen. Fokuset i uppsatsen är bestämd utifrån vilka normer som ligger till grund för attityden gentemot migration i Australien. Därför så kommer jag granska hur flyktingar representeras i migrationslagen och den politiska debatten. Diskursen kring säkerhet kommer även att bli granskad i lagen och en vidare undersökning kommer att göras kring hur detta fenomen påverkar flyktingarna. När jag undersöker dessa frågeställningar i relation till primärmaterialet så kommer jag använda Seyla Benhabib's teori om politiskt medlemskap och hennes perspektiv av *de andra* och jag argumenterar för att den australiensiska migrationslagen framställer en bild av flyktingar som ett hot mot Australiens säkerhet.

Nyckelord: *Båtflyktingar, Frihetsberövade personer, Flyktingläger, Mänskliga Rättigheter, Immigration, Medlemskap, Migrationslagen, Samhälle, De andra.*

Table of Contents

Acronyms	4
1 Introduction	5
1.1 Background	6
1.2 Problem formulation, aim and questions	8
1.3 Material and Restrictions	9
1.3.1 Introducing the Migration Act 1958	9
1.3.2 Secondary Material	11
2 Theory and Method	13
2.1 Theory of political membership	13
2.2 Method: Fairclough's Critical Discourse Analysis	15
2.2.2 Fairclough's three-dimensional framework	16
Figure 1.1 <i>Fairclough's three-dimensional model</i>	17
3 Earlier research	19
4 Investigation and Analysis	22
4.1 Text analysis of the Migration Act 1958	22
4.2 Mapping the political discourse of the Migration Act 1958	25
4.3 The historical context of the underlying norms for the attitude behind the Migration Act 1958	28
5 Discussion	31
6 Conclusion	33
References	34

Acronyms

ASIO	Australian Security Intelligence Organization
CDA	Critical Discourse Analysis
CRC	The Convention on the Rights of the Child
CRSR	The Convention Relating to the Status of Refugees
ICCPR	International Convention on Civil and Political Rights
ISS	International Security Studies
OPCAT	The Optional Protocol to the Convention against Torture
UDHR	The United Declaration of Human Rights
UNHCR	The United Nations High Commissioner for Refugees
UN	United Nations

1 Introduction¹

To be a refugee, defined by the United Nations (UN) Convention Relating to the Status of Refugees (CRSR), article 1(2), is a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²

The number of refugees has increased tremendously the past few years according to The United Nations High Commissioner for Refugees (UNHCR). In 2012 there were approximately 45.2 million people forcibly displaced on grounds that follows under the CRSR article 1. This is according to UNHCR the largest number in 18 years.³ The CRSR is a legal binding treaty that exists for the protection of refugees. This means that those states that have ratified the convention are obliged to protect refugees located on the state's territory. According to international law it is never acceptable for a state to deny refugees to apply for asylum.⁴ Under article 1(2) in CRSR member states of the convention has the obligation to protect refugees that come from a country regarded as highly dangerous to return to. Therefore, it is a state's obligation not to send back refugees to their home countries if they will be faced with life-threatening treatments. However, some democratic states today are regarding refugees as a threat per se towards the country's security.

One of these democratic countries is Australia and they are one of the founders and member state of the CRSR. Therefore, it is interesting to use Australia in context to the topic of this thesis since the country is one of the democratic states today that claim that immigration should be seen as a security issue. Since the year 2013, the new government in Australia has attempted to push

¹ I would like to thank Billy Chia-Lung Tai, Human Rights Law adviser at The Cambodian Human Rights Action Committee (CHRAC), for providing information regarding Australia's immigration policy and the process of the bill *Migration and Maritime Powers Legislation Amendment*, which will contribute with new changes to the Migration Act.

² United Nations Convention Relating to the Status of Refugees (CRSR), 1951, p. 14 (Retrieved: 2014-11-17).

³ The United Nations High Commissioner for Refugees (UNHCR), 2013, Snapshot report, p. 5 (Retrieved: 2014-09-25).

⁴ United Nations Convention Relating to the Status of Refugees (CRSR), 1951, p. 4.

through a new legislation that would deny some of the state's obligations towards the CRSR. The interesting aspect of this phenomenon is to investigate how Australia is legitimizing this event?

The investigation in this thesis will therefore consist of an examination of extracts from the latest version of the Australian Migration Act 1958, published 2014. This will be examined with assistance of Fairclough's three-dimensional framework in critical discourse analysis. The aim of this examination is to analyze the underlying norms that lay as foundation for the Australian attitude towards immigration. I will also examine how refugees are portrayed and how the discourse of security is presented in the Migration Act and which consequence this has for the refugees. I will use Benhabib's theory regarding the right to political membership in order to support my research questions and I will use her theorization of *the others* in order to examine the historical context that lay as foundation of the underlying norms for the attitude toward immigration and refugees. In the discourse in the Australian Migration Act regarding boat refugees the most common represented names for boat refugees are illegal non-citizens, designated persons or refugees. Therefore, when I refer to an illegal non-citizen, designated person, asylum seeker, refugee or boat refugee in context to Australia, I refer to a person who is detained in one of the detention centers in the Pacific. When talking about refugees in a non-Australian context I will refer to the general definition of a refugee according to the CRSR.

1.1 Background

In order to understand Australia's current immigration policy it is relevant to give an overview of the most influencing historical events in Australia's immigration policy. It is relevant to understand the main factors of the development in order to be able to examine the underlying norms of the changes that have recently been made in the Migration Act. Therefore, in this part of the thesis you will be brought to a historical journey with narrative events of the Australian immigration policy. I have above presented the international definition of the status of refugees according to the CRSR. Having made this clear, I will now continue to present some historical events in Australian immigration policy in order to make a clearer understanding for the underlying norms to the refugee issue, which will be further examined in the chapter Investigation and Analysis.

The immigration policy in Australia has not always been as restrictive as it is today. Before 2001, Australia was a country where immigration flourished. Since 1788 Australia has been dependent on immigration and after the World War II the Australian attitude was very open-

mind to immigration from Europe, as long as it was according to the White Australian Policy. This policy was built on the idea that the government had the right to select which immigrants who could cross the border and become a political member of the country. The selecting process was based on grounds like race and work skills. During the drafting process of the Universal Declaration of Human Rights in 1948, Australia was one of the countries that were resisting the recognition of any general rights for asylum for refugees. This resistance was based on the belief that people should not have the opportunity to enter another country without an invitation, even if they were facing persecution in their home country. Australia would not agree with the UN of the duty to provide all refugees asylum and was only willing to recognize the individual right of a person to seek and enjoy asylum. The purpose of this was to make sure that refugees seeking asylum would not use asylum as a legitimate reason for entering the country.⁵

The political discourse of restricting the immigration flow was already current before 2001. Nevertheless, the terrorist attack towards the World Trade Center in September 11, 2001 in USA became a starting point for the Australian state to take action and restricting the migration flow. The cause of this was that the attitude toward immigration changed because of the war against terrorism. There was a shifting of refugees arriving to Australia from being Asian to being Middle East and Afghanistan oriented. This affected refugees in the sense that Australia stood by the USA in the war against terrorism, which made Australia more suspicious against the refugees arriving from the Middle East and Afghanistan. Therefore, it made the urge to protect the state borders even more important. During this time it was held an election in Australia and the immigration policy was high on the political agenda. The result was that the public majority voted for a more restricted immigration policy.⁶

During the election an incident occurred in late August 2001. The Norwegian vessel boat *M.V Tampa* rescued 433 asylum seekers from a sinking ship called *Palapa* outside of the Australian coast. After several days the captain of Tampa made an attempt to land on Australian shore and also requested medical attention since a huge amount of the passengers were ill. In response the Australian government never permitted an entry on Australian territorial waters and the captain was threatened with heavy human trafficking penalties set out by the Migration Act.⁷ After several weeks at sea the Tampa was advised by the Australian government to get in shore in some of the islands of Indonesia. However, they were not instructed what to do with all the

⁵ Brennan, Frank (2007) "Tampering with Asylum: A Universal Humanitarian Problem", Australia: Queensland Press, p. 1-2.

⁶ Graeme, Hugo (2002) "Australian Immigration Policy: The Significance of the Events of September 11", *International Migration Review*, Vol. 36, No. 1, p. 37-40.

⁷ Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", *Maryland Journal of International Law*, Vol. 25, No. 1, p. 356-357.

passengers on board the ship. This was the first time, but not the last, that the Australian government decided not to receive boat refugees.⁸

In connection with this event the former Prime Minister John Howard held a speech on September 1, 2001, regarding the solution to maintain Australia safe from looming threats from the outside. The government had agreed to the solution that all refugees on the *M.V Tampa* could be processed in a developing country, such as Indonesia and not in Australia.⁹ During this time the Australian government, Nauru and New Zealand made an agreement that the refugees' claim to asylum was going to be processed within developing countries acting as third parties. This meant that refugees were sent to islands in the Pacific Ocean that would act as a third party and Nauru was one of them. Therefore, boat refugees were sent to detention camps in the developing countries, which resulted in that the refugees were obliged under that country's jurisdiction and not Australian jurisdiction.¹⁰ This led to a foundation of a policy called *the Pacific Solution*. The aim of the policy was to make legitimate grounds for the state to send boat refugees to a third party for further processing of asylum. Another aim of the Pacific Solution was to secure Australian territory from external threats.¹¹

1.2 Problem formulation, aim and questions

I want to investigate the concept of security and the fact that the concept, in many cases, is preferred to be used in the context of immigration. This means that immigration often is seen as a security issue rather than a humanitarian issue. Therefore, the essay will be using Australia as an example in order to demonstrate that the security perspective is preferred to be used in immigration policy and how Australia legitimize this phenomenon. The purpose of this essay is to analyze the discourse of how refugees and the concept of security are presented in the Australian Migration Act. The hypothesis will therefore be that the Migration Act is replicating a view of refugees as a threat against Australia's security. The main focus of this essay will therefore be targeted on how boat refugees in the Pacific Ocean are handled by the Australian government.

⁸ Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", p. 361.

⁹ Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", p. 367.

¹⁰ Dale, Gregory (2007) "Appealing to whom? Australia's 'Appellate Jurisdiction' over Nauru", *The International and Comparative Law Quarterly*, Vol. 56, No. 3, p. 652.

¹¹ Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", p. 368.

However, it would be of interest to examine the discourse of the Australian state's view of boat refugees' and their human rights. So in order to do research on the subject there will be a use of a critical discourse analysis to examine the Australian Migration Act. With support from Norman Fairclough's three-dimensional framework I will make an observation of the discourse in the Migration Act and also within the political debate regarding the Act. The theoretical perspective that will be used is Seyla Benhabib's theory. This theory will be used as a tool to analyze the underlying norms of the attitude towards immigration and refugees in the sociocultural context.

In order to narrow down the research and maintain the focus I will apply three research questions. The research questions are addressed to both the Australian Migration Act and the political debate in 2014 regarding the discourse of the Migration Act:

- How are refugees portrayed in the Australian Migration Act and the political debate?
- How is the discourse of security presented in the Australian Migration Act and in what way does it affect the refugees?
- Which are the underlying norms of the attitude toward immigration in the discourse of the Australian Migration Act?

The presented material in the next chapter is of essence in order to be able to answer the research questions.

1.3 Material and Restrictions

1.3.1 Introducing the Migration Act 1958

The primary material in this essay is the latest version of the Australian Migration Act 1958, also called the Act. This version was published November 2 in 2014 and has therefore not been fully used in practice yet. Therefore, it is difficult to see the outcome of this updated version of the Migration Act. However, since the essay will not investigate the outcome of the Act it will be possible to use the Act as a foundation for my research regarding the underlying norms of the attitude toward refugees and the portrayed identity of refugees as well as how security is presented and used. The Migration Act is divided into two volumes, where the first volume concerns the persons in question, which is the refugees and asylum seekers and the second volume concerns more the Australian government's and the officers', working in the detention



centers, actions and obligations toward immigration. Since the Migration Act is a document consisting of 401 pages the focus will be narrowed down to only treat the most relevant sections for this research. The parts that I will investigate are division 3, 6, 7 and 9 since the focus will be laid on non-citizens as designated persons. To have been attributed the status of a designated person means that the person has to be detained.

Therefore it is of interest to look closer at the chapters regarding designated persons in order to see how refugees are portrayed. The chosen divisions in the Migration Act are also concerning refugees and the national security in Australia. Therefore, it is of relevance for the research question regarding how the discourse of security is presented in the Act and in what way it affects the refugees. For the concept of security to be understood correctly I will have to complement this chapter in the Migration Act with the understanding of security with the books *The Evolution of International Security Studies* and *Security: A New Framework of Analysis*. The authors of these books, Barry Buzan and Ole Waever are one of the most successful researchers in the field of security studies and therefore it is of high relevance to use their knowledge about security in this essay. When only using their perspective of security it could become inaccurate since different states use the concept of security differently and their definition may not be applied on all states. However, I consider this not to be an issue since I will examine Australia's view of security and thereafter apply Buzan and Waever's theory of security accordingly.

When examining the Migration Act I have chosen not to use paragraphs or the article number in the extracts that will be presented in the analysis. This decision is initiated by the thought that it will not be of relevance to print out all the different paragraphs or article numbers that the Migration Act consist of. On the contrary I believe that it would contribute to an even greater confusion.

However, the document is not designed for the public to use, since it is written in a highly legal language which could be difficult to understand. It is a quite extensive document and the power relation between the Australian state and the designated persons, which are the refugees, are quite visible throughout the document. It shows that the state has a great power to do anything to secure the national borders. This power relation has a large effect on the refugees. Even the factor that the document is written in a difficult legal language and terms makes the power relation evident. In order to give a greater understanding of this power relation there will be a research on the legitimacy of the Australian state's behavior towards the refugees in chapter Investigation and Analysis.

While writing this essay a bill called “Migration and Maritime Powers Legislation Amendment”¹² was approved by the majority of the senate in the Australian government in December 5, 2014. This bill contributes with new changes to the Migration Act and according to the left wing liberal newspaper the Guardian, the immigration Minister Scott Morrison is now the most powerful man within the area of migration issues in the Australian government.¹³ However, in order to fit the purpose of this essay the focus will be placed on the Migration Act and not the bill 2014. However, the bill is a part of the foundation of the political debate, in 2014, regarding the Migration Act and will therefore be mentioned in some of the political contexts under subchapter Mapping the political discourse of the Migration Act 1958. It would have been of interest to investigate the bill and the changes it contributes with to the Migration Act more extensive but this subject could be examined in future research.

Under Fairclough’s second dimension discursive practice I will use newspaper articles in order to be able to present the ongoing Australian political debate regarding the Migration Act. The articles that have been chosen are, “Scott Morrison’s response to claims of refugees’ molestation, self-harm is immoral, unjust” written by Nick Feik and published by *the Sydney Morning Herald*. The articles published by *the Guardian* is “Refugee settlement in Cambodia ‘a dodgy deal’, says Sarah Hanson-Young” written by Kate Hodal, and “Senate gives Scott Morrison unchecked control over asylum seekers’ lives” written by Ben Doerthy. There will also be one article used from *the Australian*, written by Gillian Triggs “Australian-born boy Ferouz remains all at sea”. I will also examine a speech held in the congress by the Senator for the green party, Sarah Hanson-Young, which will be examined further below in subchapter Mapping the political discourse of the Migration Act 1958. The speech is a reaction towards the immigration Minister’s proposal to the alterations in the Migration Act. The critique of using articles from media newspapers are that they may be biased on their different political orientations. Since I have chosen not to implement the same amount of articles from all of the newspapers it could be that the representation of one political side could be prioritized and more uplifted.

1.3.2 Secondary Material

The most important secondary material for this essay is peer-reviewed journals and academic books. Since I have chosen to narrow down my research of international security studies to focus solely on Australia as the given context, there will be a diversity of authors that focus their peer-

¹² The Parliament of the Commonwealth of Australia, House of Representatives (2013-2014) *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, pp. 112 (Retrieved: 2014-12-28).

¹³ Doerthy, Ben, “Senate gives Scott Morrison unchecked control over asylum seekers’ lives”, *The Guardian* (Retrieved: 2014-12-04).

reviewed journals or academic books on Australia and immigration. Authors that have written about Australia and their immigration policy or the refugee issue is: Don McMaster, Mary Crocks and Asadeh Dastyari, Frank Brennan, Peter D. Fox and Gregory Dale. These authors' peer-reviewed journals and academic books are also presented under the chapter Earlier Research. Hugo Graeme's peer-reviewed journal "Australian Immigration Policy: The Significance of the Events of September 11" from 2002 is discussing the terrorist attack of 9/11, World Trade Center in USA as a breaking point of the changing attitude toward refugees in Australia. According to Graeme, the attitude towards refugees seeking protection in Australia has shifted because the majority of the refugees started to come from the Middle East.¹⁴ This article is of use for the investigation under subchapter The historical context of the underlying norms for the attitude behind the Migration Act 1958.

In order to get a reality-based view on the situation for the refugees in the Pacific Ocean outside of Australia, I will use a recent published document from UNHCR and also use the United Nations (UN) Convention Relating to the Status of Refugees (CRSR). The document from UNHCR is a snapshot report from 2013 that regard the situation for the boat refugees in the detention camps on the Pacific Islands.¹⁵ The CRSR is used in order to give a brief overview of the concept of refugees and also present what rights and responsibilities that are entitled to the convention.¹⁶ I will use Seyla Benhabib's theory regarding the right to political membership in her book *The rights of others*¹⁷ in order to support my own argumentation in the chapter Investigation and Analysis.

¹⁴ Graeme, Hugo (2002) "Australian Immigration Policy: The Significance of the Events of September 11", *International Migration Review*, Vol. 36, No. 1, p. 37-40.

¹⁵ The United Nations High Commissioner for Refugees (UNHCR) Snapshot report 2013, (Retrieved: 2014-09-25).

¹⁶ United Nations (UN) Convention Relating to the Status of Refugees (CRSR) 1951, (Retrieved: 2014-11-17).

¹⁷ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge: Cambridge University Press.

2 Theory and Method

2.1 Theory of political membership

The theory that will be used in this essay is a theory that concerns people's right to political membership. When we speak about membership in this thesis it will be with a connection to a state or to be a part of a societal community. In order to understand the concept of membership there will be a usage of Seyla Benhabib's theory concerning membership in her book *The rights of others*. This theory examines the relation between humanitarian international law and democratic state sovereignty and their connection to the concept of membership.

Benhabib's view on membership is that it needs to become a more permanent condition for humans. In order to achieve this she suggests that the status of newcomers should be decriminalized and that their rights need to be given back. A person that stands outside the social order is often seen as illegal and does in many cases fall under the category of a criminalized status.¹⁸ In other words this means that the view of newcomers' status and identities in society has to change. However, in practice the modern world could be experienced differently and Benhabib claims that the universal hospitality has been replaced by states' self-interests. It is now more important with sovereignty for states rather than the international human rights order, which have led to that states are viewing immigration as a security threat rather than a humanitarian issue.¹⁹

Benhabib argues that a new framework must be developed in order to change the dialectic of rights and identities within the framework of migratory movements.²⁰ Therefore, she claims that the right-based discourse should be viewed as follows:

If I am able to justify to you why it is right that you and I should act in certain ways, then I must respect your capacity to agree or disagree with me on the basis of reasons which equally apply to us both. But to respect your capacity for communicative freedom – to accept or reject on the basis of reasons – means to respect your capacity for personal autonomy. Human rights, or basic rights, then, are the norms that would undergird and enable the

¹⁸ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 168.

¹⁹ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 173-177.

²⁰ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 128.

exercise of your personal autonomy.²¹

In the context of discourse this means that we have a moral obligation to include those who cannot enter into discourse with us. In order to do this it is important not to criminalize *the others*, to provide a correct representation in its own language and to secure their right to due process and to independent guidance.²²

Benhabib argues that the missing element in former scholar, when it comes to the discussion regarding membership, is the connection between human rights and political membership. States may possess certain criterion for becoming a member of its political and societal community but sovereign democratic states can however not deny anyone membership for infinity.²³ Benhabib claims that the right to political membership is a human right since rights should be seen as communicative freedoms. So according to Benhabib this would mean that even if you are stateless you have human rights and you should not have to be dependent on a representation by the state in order to be entitled to your human rights. However, to criminalize the status of stateless people and foreigners means that their human rights are restricted since they have no right to their social and political rights of association and representation. Therefore, to decriminalize their status is of great importance to achieve a universal justice.²⁴

In democratic states today a gap exist between *us and the others*, where *us* is defined by the people living in a democratic state and has a full membership to the citizenship rights and *the others* is defined by the people outside the state that are not included to take part of the citizenship rights. *The others* are created by the democratic state mechanism, where everything outside the democratic state is alien and everything that is different is viewed as *the other*. This phenomenon occurs within the democratic state because there is a collective consensus or identity which becomes *we the people* and everything that opposes this collective identity is alienated. Therefore, a *we and them* perspective is created. Benhabib does not advocate totally open borders but she proclaims a world with porous borders that does not keep out the alien.²⁵

In order to break the norms of *us and them*, Benhabib proclaim that we need to focus on democratic iterations. With democratic iterations she means “complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and

²¹ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 132-133.

²² Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 140.

²³ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 135-139.

²⁴ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 50-51, 167-168.

²⁵ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 220-221.

political institutions, as well as in the association of civil society.”²⁶ So democratic iterations imply that the idea of universal human rights claims is a complex process that needs to be tested and challenged in the public argumentation, that is, in the political, legal, and societal sphere. Democratic iterations have to be constantly repeated in order to be able to include alienated and excluded persons into the discourse. That the democratic iterations need to be repeated do not mean that it is static in every new context it occur in. It is on the contrary constantly changing depending on which context it is used in. The author claims that in many cases marginalized groups or individuals that are excluded are not invited into the public discourse. Therefore, the concept of citizenship has to be reconstructed through democratic iterations in order to include all persons to the public debate.²⁷

It is the view of the collective identity as static that creates the outsiders as a threat to states and their common identity. Therefore, it becomes easier for states to “close the doors” to the outsiders so they cannot destroy the already existing collective identity. This is based on what Benhabib refers to juris generative politics, which means “the individual who is the subject of rights is assumed to have some kind of fixed identity which precedes the entitlement to the right in question, but what is frequent neglected is the exercise of rights themselves and the practice of political agency can change these identities.”²⁸ In this meaning political practice has the power to change identities accordingly to advantage of the state. However, there are the democratic citizens themselves that is, through legislation and discursive, defining themselves and it is an ongoing process. The excluded persons on the contrary can never be a part of the decision making about inclusion and exclusion. Therefore it is important with democratic iterations in order to change the political institutions so that excluded and alienated persons can be invited to the discourse and take part of it.²⁹

2.2 Method: Fairclough’s Critical Discourse Analysis

The methodological framework will help me to examine the primary material, which is the Australian Migration Act 1958, published in 2014. In order to make a decent analysis there is a necessity for an explanation of the method that will be used in this essay, which is a Critical Discourse Analysis (CDA). Norman Fairclough’s framework of a three-dimensional model will therefore be used. This method has been chosen in order to give a more complex view of the

²⁶ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 179.

²⁷ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 178-179, 212.

²⁸ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 168-169.

²⁹ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 177-179.

functioning of power relations in society. According to Fairclough any text makes its own contribution to shaping the society and culture. The structure of CDA is that language in the sense of social and institutional relationships and identities are established by the language practice and the selection of structure. While the constitution of language is constructed by social and personal needs.³⁰

I will analyze the order of discourse of a social institution by examining the Australian Migration Act. This means that the order of discourse within the social institution could be referring as the order of discourse of the society as whole, since the society is structuring the order of discourse in the various social institutions. So when making an analysis of the order of discourse in a social institution and apply the functions of *representation, identity and relation* in the analysis the outcome will be what given ideology the Migration Act is carrying and the given identity of the status of refugees. The power relation will be revealed by examining the change of the Migration Act as a social institution. The changing relationship of power is the determined factor for the structure of discourse in a given order of discourse. In other words the changing relationship of power is thereby one aspect of controlling the order of discourse.³¹

2.2.1 Fairclough's Three-dimensional framework

Any type of discourse, also included media discourse, has two important complementary focuses which are 1) Communicative events and 2) The order of discourse. These two perspectives have a huge relevance for the three-dimensional model that is presented in figure 1.1 below. The communicative events are according to Fairclough the analysis of relationships between three dimensions. These three dimensions are *text, discursive practice* and *sociocultural practice*. Analysis of text consists by an examination of both linguistic and textual organization. This means that both vocabulary and grammar but also the way of how sentences are put together and the overall structure is examined. Therefore, both the sentence and form is examined in analysis of text. Another important aspect of the analysis of text is that representations, identities, and relations are used as a function when examining the meaning of a text. The aim of these functions is to bring out the underlying factors behind the text. An example of this would be if the text carrying a certain ideology or what kind of relationship it is between the writer and reader and also what role identities has in the text.³²

³⁰ Fairclough, Norman (1995) *Media Discourse*, p. 2-12.

³¹ Fairclough, Norman (1989) *Language and Power*, p. 30.

³² Fairclough, Norman (1995) *Media Discourse*, p. 55-58.

Discursive practice in the communicative event is more focused on the text consumption and the process of text production. It is in discursive practice that the text consumption and production have a more institutional character. This means for example that newspapers are a part of people’s everyday life and routines. It is also here in this dimension that you can see how people interpret text. The discursive practice functions as a moderator between the dimension of text and sociocultural practice.³³ The dimension of sociocultural practice is dependent of the given context. There are three aspects that can be differentiated in sociocultural practice, which are economic, political and cultural.³⁴ In this essay the sociocultural practice will use Australia and its immigration policy as context.

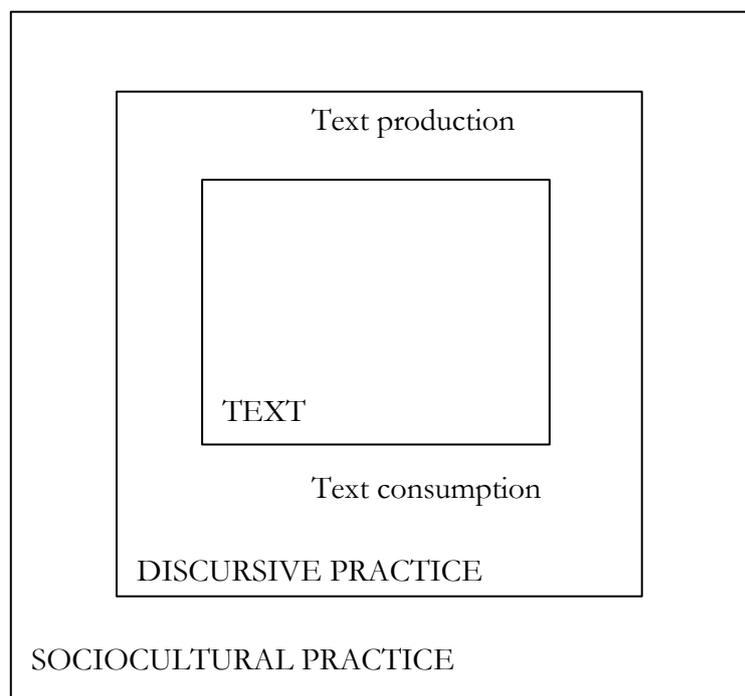


Figure 1.1 “Fairclough’s three-dimensional model for critical discourse analysis (1992b:73)”³⁵

Fairclough’s three-dimensional model presents a framework of how to work with critical discourse analysis. The dimension of *text* in the model will in this paper examine the language use and the representation, identity and relation in the Australian Migration Act. The dimension of *discursive practice* involves the production and consumption of the text. This means that in this next step of the model an examination of the thought behind the production of the text is being made and also what effect it has on the society. In order to make this examination I will use the order of discourse to analyze the discourse of the Migration Act in the Australian political debate in

³³ Fairclough, Norman (1995) *Media Discourse*, p. 58-59.

³⁴ Fairclough, Norman (1995) *Media Discourse*, p. 62.

³⁵ Fairclough, Norman (1995) *Media Discourse*, p. 59.

2014. In the third dimension *sociocultural practice* I will examine the Migration Act in the given context. The context that will be used in this dimension is the underlying norms for the attitude towards immigration and refugees.

According to Fairclough it is not necessary to use all three steps in the model and you can therefore choose which one of these to use accordingly to your research.³⁶ However, I will use all three dimensions, since they are all important for the result. In order to examine the underlying social and political norms and identities behind the text I will lay more focus on the use of different concepts in the text, such as refugee and security, rather than the grammar and vocabulary use. In the third dimension I will use Benhabib's theory of political membership and *the others*, since it will be a great contribution to find the underlying norms that have been developed through out the historical context.

³⁶ Fairclough, Norman (1995) *Media Discourse*, p. 57-62.

3 Earlier Research

The materials that have been selected for this chapter have been chosen on purpose to give a broader view and understanding of the context that this essay will examine. I have selected this scientific research because it concerns Australia's view on refugees' and their human rights versus state sovereignty. This is of value for the upcoming analysis in the essay. The most common questions that I have encountered in the former research are if the Australian government's action toward boat refugees is legitimate? And how can it be possible that state sovereignty can be prioritized before the international human rights?

The first article that I will present is "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", written by Peter D. Fox. This article gives a review of the Tampa incident in 2001 and gives a brief overview of the Pacific Solution that was the result of the Tampa incident. The article is written from a judicial perspective that examines the Australian actions towards boat refugees. It also examines the relation between international law conventions, such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC) and Optional Protocol to the Convention against Torture (OPCAT), and Australia's claim to sovereignty rights. The article has a critical view of the Australian government's actions towards boat refugees. The author therefore proclaims the international human right conventions. The article is published in year 2010 and it is therefore quite recent in time.³⁷

The second source that will be presented is Mary Crocks book *Future Seekers II: Refugees and Irregular Migration in Australia* written in 2006. The main question is how to give protection to all people that are deprived of their human rights? This dilemma is discussed through the book in the context of refugees and irregular migration in Australia. The author discusses the conditions in the detention camps for refugees in the Pacific Ocean and is questioning the asylum process in the detention camps. The author argues that any other place would be a better condition than the detention centers and criticize why not the asylum process are being made onshore in Australia.³⁸

³⁷ Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution"", *Maryland Journal of International Law*, Vol. 25, No. 1.

³⁸ Crocks, Mary; Saul, Ben; Dastyari, Asadeh (2006) *Future Seekers II: Refugees and Irregular Migration in Australia*, Marrickville: Shoutwood Press, p. 3-11.

In Don McMaster's book *Asylum seekers: Australia's response to refugees*, the author claims that it is our responsibility to inform refugees about the conditions they will face in the host country they arrive to. The main purpose of the book is to show that present policies need to conclude more proactive bi- and multilateral responses rather than stubborn, obstructionist and militaristic policies. He uses the condition of refugees in Australia as a context and he criticizing the attitude and views of the public majority and the state toward refugees in Australia. The author believes that there is a need that the refugees' stories must be told, especially by themselves.³⁹

The book was published in 2002 but even so the book feels quite modern in its writing. The book was printed just before the detention centers were built and the main focus is on how the Howard government was violating the refugees' human rights by constructing the detention centers. The root cause of the displacement of refugees in Australia is due to that asylum seekers in Australia are categorized as illegal immigrants. This means that the illegal immigrants have broken the law according to the Australia's refugee policy and therefore the refugees should be treated accordingly, as criminals. The author argues that the attitude towards non-European people who seek asylum in Australia results in discrimination and violation of the peoples' human rights because they are seen as *the others*. Therefore, the author means that Australia's immigration policy is made of racist assumptions that are based on the fear of uncontrolled immigration. The immigration policy therefore controls who is entitled to enter and take part of the Australian community and the policy also decides who should be excluded.⁴⁰

Frank Brennan in his book *Tampering with Asylum: A Universal Humanitarian Problem* has a different view of immigration and state sovereignty comparing to the other authors. For Brennan immigration does not have to be a complex situation and he claims that the resolution to secure a country's sovereignty would be if all kind of movement of persons requires a valid visa application. Therefore, the author claims that people movement over sovereign borders should not be acceptable. He uses Australia as an example to legitimize his theory. In this view Brennan's theory is quite different from the other authors. He describes the Australian generosity when it concerns open borders and receiving refugees in the past. However, the author digs deeper into the history of Australia's immigration policy and the development of it. He claims that the Australian government has failed in the past years to be one of the leading countries to receive asylum seekers. Therefore, the author suggests that Australia should implement methods from democratic states in Europe since they are more harmonized toward its laws and policies

³⁹ McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, Australia: Melbourne University Press, p. ix.

⁴⁰ McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, Australia: Melbourne University Press, p. 189-191.

with asylum. The main aim of this book is to give an assessment of a more fair go and quicker process for the neediest refugees, even for the boat refugees who arrive uninvited.⁴¹ Throughout the book you get the feeling that the author is Australian himself which made it difficult to see him objective since he occasionally defends the Australian government's actions toward refugees.

The common pillar that we encounter in the previous research is the Australian government's protection of their sovereignty and their resistance of boat refugees' right to enter the country. The earlier research presents to us the understanding that most democratic state sovereignty outweighs excluded people's human rights. In order to understand this phenomenon I will examine the concept of security and the history of the Australian immigration policy. Therefore, I will analyze whether or not the Australian government's actions towards the refugees are legitimate. Seyla Benhabib's theory will contribute to the examination process of Australia's legitimacy towards the international human rights. The author presents democratic iterations as a new idea that should be used in democratic states in order to include excluded people into the societal community through political public debate. This theory will be useful for the search of the answers to the research questions.

⁴¹ Brennan, Frank (2007) *Tampering with Asylum: A Universal Humanitarian Problem*, p. 1-17.

4 Investigation and Analysis

Fairclough's first dimension in his model is discussing the intertextuality of any text. The dimension of text examines both the vocabulary and grammar as well as how the sentences are shaped. In this section I want to discuss the elements of representation, identities and relations of the textual analysis in order to bring out the underlying norms behind the text. These functions will help me to recognize if the examined text carries out a certain ideology.⁴² The Australian Migration Act is built on the understanding of the refugee issue and it is a platform for the Australian government to take actions towards immigration. The Migration Act is based on an historical context of immigration but it is however presenting a new definition and a new discourse about refugees that will be discussed below in subchapter Mapping the political discourse of the Migration Act 1958.

4.1 Text analysis of the Migration Act 1958

The updated version of the Migration Act brings a new aspect within the international order. The Australian government has made an historical change of the meaning of immigration policy by interpreting the CRSR with its own understandings that benefits the country. In order to give one man and one man only, the personal responsibility for all decisions concerning immigration is a construction of a new power instrument that we have never seen in any democratic state before. Throughout the whole Migration Act it is referring to that:

If the Minister thinks that it is in the public interest to do so, the Minister may grant a person to whom this section applies a visa of a particular class (whether or not the person has applied for the visa). [...] The Minister does not have a duty to consider whether to exercise the power [...], whether he or she is requested to do so by any person, or in any other circumstances. [...] The power [...] may only be exercised by the Minister personally.⁴³

⁴² Fairclough, Norman (1995) *Media Discourse*, p. 55-58.

⁴³ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 251.

The new power instrument is that the immigration Minister himself has the personal right, but no duty, to make all decisions regarding immigration in the country.

According to Fairclough's model the function of representation is carrying an ideology behind the text. The representation in the Migration Act is a more accepting view of national security. The discourse of security threat within the international order is described as something that has to consist of a specific certain criteria. The specific criteria are that "the issue is presented as an existential threat."⁴⁴ So there is a distinction between a normal threat and a security threat and it is this specific criterion that decides whether or not the threat is a security- or a normal threat. By balancing the existential threats against each other it will determine which security threat that is of most priority. A security threat does not always need to exist in order to be prioritized. From the traditional scholar security is described as states and nations survival. Therefore, to legitimize states' use of violence in order to manage existential threats, security has been used as the key of mobilizing the state. This means that security gives the ability to states to bend the boundaries and rules when it comes to protection of their nation.⁴⁵

By examining the Migration Act's use of the concept of security in relation to immigration it becomes clear that boat refugees are seen as a threat against Australia's security. It becomes even clearer when the Act is uttering that "the Minister considers, on reasonable grounds, that: (i) the non-citizen is a danger to Australia's security".⁴⁶ There is however no reasonable grounds expressed in the Act, which shows that the state is bending the boundaries and rules in order to protect their national security. The Migration Act is referring the concept of security to section 4 in the *Australian Security Intelligence Organization Act 1979* (ASIO). However, the definition of security in section 4 in ASIO is quite diffuse and incomprehensible. The Migration Act on the other hand is describing security threats in relation to immigration as follow:

The Minister must cancel a visa held by a person if: a) there is an assessment made by ASIO for the purposes of this section; and b) the assessment contains advice that ASIO suspects that the person might be, directly or indirectly, a risk to security (within the meaning of section 4 of the ASIO Act); and c) the assessment contains a recommendation that all visas held by the person be cancelled under this section; and d) the person is outside Australia.⁴⁷

So the Migration Act is basing its definition on a Security Act where the definition of security is incomprehensible. It is also not clear what the Migration Act means with a risk to security and how one single person could be a danger to the country's national security. However, the last

⁴⁴ Buzan, Barry; Waever, Ole; Wilde, Jaap (1998) *Security: A Framework of Analysis*, p. 24.

⁴⁵ Buzan, Barry; Waever, Ole; Wilde, Jaap (1998) *Security: A Framework of Analysis*, p. 21-24.

⁴⁶ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 60.

⁴⁷ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 147-148.

point of this extract is referring to boat refugees, since the Act is referring to persons that are outside Australia. Therefore, boat refugees are a threat against Australia's security according to the law.

The function of identities will be focused on the identities of refugees in the Migration Act. The use of the language and discourse regarding refugees within the Act is presenting an underlying view of the image of the status of refugees. The document is presenting a designated person as

a non-citizen who: a) has been on a boat in the territorial sea of Australia after 19 November 1989 and before 1 September 1994; and b) has not presented a visa; and c) is in the migration zone; and d) has not been granted a visa; and e) is a person to whom the Department has given a designation by: (i) determining and recording which boat he or she was on; and (ii) giving him or her an identifier that is not the same as an identifier given to another non-citizen who was on that boat; and includes a non-citizen born in Australia whose mother is a designated person.⁴⁸

The Act continues to describe what it means to be a designated person and what conditions that applies. "A designated person must be kept in immigration detention. [...] A designated person is to be released from immigration detention if, and only if, he or she is: a) removed from Australia [...] or, b) granted a visa /.../."⁴⁹ The text continues with

If a designated person is not in immigration detention immediately after commencement, an officer may, without warrant: a) detain the person; and b) take reasonable action to ensure that the person is kept in immigration detention [...] If a designated person escapes from immigration detention after commencement, an officer may, without warrant: a) detain the person; and b) take reasonable action to ensure that the person is kept in immigration detention /.../.⁵⁰

The image that is presented here of designated persons are that they must be kept in a detention center and this shows us that the status of refugees is similar to the status of criminals. In Australia asylum seekers are seen as illegal which means that they have broken the law by trying to get onshore Australian land by boat. To be categorized as illegal indicates the same as being a criminal and refugees can therefore be treated accordingly.⁵¹ It is difficult not to resign refugees the same status as criminals when the constitution is presenting them as detainees and should

⁴⁸ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 234.

⁴⁹ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 235.

⁵⁰ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 236.

⁵¹ McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, p. 190.

therefore be imprisoned in the detention centers. In doing so the public may think that refugees are an actual threat against the national security. This assumption is confirmed when it is expressed later on in the Act that “A detainee must not escape from immigration detention. Penalty: Imprisonment for 5 years.”⁵²

However, under section 194, article 194 and 195 in the Act, is presenting that a detainee may apply for a visa. Nevertheless, a detainee cannot apply for a visa on several grounds. Some of these grounds are

on being refused immigration clearance; or [...] after being prevented from leaving a vessel [...]; or because of a decision the Minister has made personally [...] to refuse to grant a visa to the person or to cancel a visa that has been granted to the person [...]; or has entered Australia after the 30 August 1994 /.../.⁵³

In this section of the text the relation between Australia’s obligations towards the human rights can be interpreted. According to article 14 in the UDHR “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.⁵⁴ So in other words the conclusion that can be drawn from this is that Australia’s Migration Act is interpreting the concept of persecution which is violating some refugees’ human rights when not providing them with the right to seek asylum. The relation between the government of Australia and the human rights regarding asylum seeking and refugees has dissolved after the changes of the Act.

According to Fairclough’s model the Migration Act as a social institution shows that the attitude of the majority of the public opinion sees the refugee issue as a problem. This phenomenon will however be further discussed under the subchapter Sociocultural discourse. Under the next headline there will be an examination of the order of discourse and how various different discourses has the potential to create a new discourse.⁵⁵

4.2 Mapping the political discourse of the Migration Act 1958

In this part of the essay an inter-discursive of other discourses regarding the Migration Act will be presented. This means that in this section there will be a discussion about the order of

⁵² Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 258.

⁵³ Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, p. 249-250.

⁵⁴ Universal Declaration of Human Rights (UDHR), (Retrieved: 2014-12-09).

⁵⁵ Pinto, Paula Campos (2011) ”Between the lines: A critical discourse analysis of disability policy in Portugal”, *Disability Studies Quarterly*, Vol. 31 Issue 3, Publisher: Society for Disability Studies, p. 7-8.

discourse. Therefore, a further examination will be made of the ongoing Australian political debate in 2014 regarding the Migration Act. The aim of viewing the political discourse is to get a greater understanding of what the Australian political order, that represents the public opinion, considers of the genera of the Act. So in this section there will be an analysis of the relationship and discourse between policy makers and the social public. The discourse that will be examined is the discourse of the Migration Act that lays as a foundation for the political debate. Since the Act has been developed during a long period of time it has become a product for the debate. Therefore, the Migration Act is creating a new order of discourse within the political debate.⁵⁶

Just before the bill “Migration and Maritime Powers Legislation Amendment” with new changes to the Migration Act passed, Senator Sarah Hanson-Young for the green party held a speech in the congress where she accused the immigration Minister for being a sociopath. The discourse of the speech is very accusing and Hanson-Young is pointing out that only a sociopath would have the heart to keep children detained in detention centers even when having the knowledge that the children are exposed to abuse and rape. The Senator also accuses the Minister for using the detained children as a brick in his political game and of neglecting the conditions for the detainees in order to get the changes to the Migration Act to pass. According to Hanson-Young, the Minister needed evidence that the new resettlement program, that aims to send refugees to developing countries, is a better solution than to keep the detainees in the detention centers.⁵⁷ The Migration Act are presenting that a child born in Australia by a mother classified as a designated person, also are classified as a designated person. This means that these children cannot ever seek asylum in Australia and they will be born without any nationality, which is against the child convention (CRC).⁵⁸

Hanson-Young is also criticizing the new resettlement program which aim is to send refugees placed in detention centers to developing countries, such as Cambodia. The greens, labor and various human rights organization opposes the new resettlement agreements that the immigration Minister has a positive attitude to. The approach of the new resettlement program is that registered refugees at the UNHCR in Indonesia can no longer seek asylum or resettlement in Australia. According to the CRSR the refugees that have been listed under UNHCR should be entitled to have the benefits of the refugee convention.⁵⁹ The immigration Minister’s response to this is that Hanson-Young’s attempt to stop this resettlement is pointless and that “she will go

⁵⁶ Fairclough, Norman (1989) *Language and Power*, p. 19.

⁵⁷ Senator Sarah Hanson Young’s speech in the congress, Published: 2014-12-04. (Retrieved: 2014-12-05).

⁵⁸ Triggs, Gillian (2014) “Australian-born boy Ferouz remains all at sea”, *The Australian* (Retrieved: 2014-11-21).

⁵⁹ United Nations Convention Relating to the Status of Refugees (CRSR), 1951, p. 16.

over there, she will whinge and complain like she always does and people will ignore her as they should”.⁶⁰

The Minister’s response to Senator Hanson-Young shows the current discursive battle in the political debate. The discursive battle is between the immigration Minister’s disclaim of any allegations of right violations by the state toward refugees and everyone else that claims differently. For example allegations toward a lack of state action regarding abuses and sexual harassments of children in detention centers have been made. The Minister opposes all allegations even if there are a number of witness reports from doctors, NGOs and an organization called Save the Children that is working on the site with the children. The Minister’s response to this is a three and a half pages “Intelligence report” that would confirm that these allegations is false. The document is claiming that the children in the detention centers are being learned to self-harm in order to be a part of a plot against the Australian government. However, according to the newspaper the Sydney Morning Herald this intelligence report is created by the abusers themselves.⁶¹

This shows, according to Benhabib’s theory, that the designated persons should be a larger part of the discourse that affects their lives in order to be capable to change their situation. Therefore, their voices and representation of the refugees should be more involved in the political debate. Democratic iterations would therefore be an invitation that would open up the opportunity for marginalized and excluded people to participate in the discourse regarding their lives.⁶² However, the discourse regarding refugees within the Migration Act is presenting an image of them as criminals. This prevents the refugees from being invited to the political discourse. The Senator Hanson-Young is however representing the refugees and especially the detained children in the detention centers by speaking of them in the congress.⁶³

According to Fairclough the discursive practice is the production and consumption of any text.⁶⁴ So the production of the Migration Act according to the newspaper the Guardian has made the immigration Minister himself the most powerful man within the area of migration, in the Australian government.⁶⁵ The bill “Migration and Maritime Powers Legislation Amendment” that contributes with new changes of the Migration Act has created a large debate within the international order. To give the Minister all the power to personally control refugees’ lives is a

⁶⁰ Hodal, Kate, “Refugee settlement in Cambodia ‘a dodgy deal’, says Sarah Hanson-Young”, *The Guardian* (Retrieved: 2014-11-21).

⁶¹ Feik, Nick, “Scott Morrison’s response to claims of refugees’ molestation, self-harm is immoral, unjust”, *The Sydney Morning Herald* (Retrieved: 2014-11-21).

⁶² Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 212.

⁶³ Senator Sarah Hanson Young’s speech in the congress, Published: 2014-12-04

⁶⁴ Fairclough, Norman (1995) *Media Discourse*, p. 58-59.

⁶⁵ Doerthy, Ben, “Senate gives Scott Morrison unchecked control over asylum seekers’ lives”, *The Guardian* (Retrieved: 2014-12-04).

very rare thing to do. If the public opinion in society wants to give asylum to asylum seekers then the new Migration Act will give the immigration Minister the privilege to grant asylum for the seekers. Nevertheless, even if the Minister has all the control of the refugees' lives, he could have the possibility to grant them asylum visas. However, according to the Guardian the general attitude towards refugees still remain and as long as the attitude remain it will be in the public's interest to get rid of the "problem". So the immigration Minister could instead of granting visas prevent asylum seekers and refugees to entering Australian territory or send them back without any specific criterion.⁶⁶

According to the discourse in the Migration Act such specific criterion could be a threat against Australia's security. The Act evidently describes refugees as a security threat and the ISS are legitimizing that states can bend rules and boundaries in order to protect their nation against security threats. However, does this mean that the discourse regarding immigration as a security threat in the Migration Act is legitimate?

The ideology behind the Migration Act is leaning more towards the ideology of the right wing politics since they are proclaiming immigration as a security threat. However, the political discourse seems to be leaning more towards the human rights perspective. The concept of security has become less military centric and is today discussed in for example the media and politics. It went from being a traditional theory that only concerned military activity to become a more humanitarian concern, for example societal security, human security or food security and other.⁶⁷ To make general allegations toward refugees being imprisoned in detention centers, waiting for their resettlement, that they could be a security threat against the Australian citizens everyday life is to make people guilty of crimes they have not committed without an assessment in a judicial process.⁶⁸ According to Benhabib, even if designated persons kept in the detention centers are stateless, in the sense that they are not invited to participate in the nationhood of Australia and they cannot return to their home countries because of various reasons, they are still entitled to the human rights.⁶⁹

4.3 The historical context of the underlying norms for the attitude behind the Migration Act 1958

⁶⁶ Doerthy, Ben, "Senate gives Scott Morrison unchecked control over asylum seekers' lives", *The Guardian* (Retrieved: 2014-12-04).

⁶⁷ Buzan, Barry; Hansen, Lene (2011) *The Evolution of International Security Studies*, p. 187, 1-2.

⁶⁸ Vasek, Lanai, "Don't release refugees before security clearance, says Marion Le", *The Australian* (Retrieved: 2014-11-21).

⁶⁹ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 50-51.

According to Fairclough the sociocultural discourse is a space to speak about which norms, values and view of humankind that are the underlying factors to the description of refugees in the Act. It is in this part that an examination of how truthful the document is in its representation and description of the refugees. The sociocultural discourse shapes the production and interpretation of text.⁷⁰ Therefore, I will examine the underlying norms that are the foundation for the attitude toward immigration in Australia.

Democratic states have a tendency to collectively define their nationhood. This means that there is a created mentality of the state and its citizens as *we the people*. This thought of a collective nation creates in itself a common identity of *we the people*. Then everything that is outside the collective identity is being viewed as alienated and foreign, since it is different to the common identity. This creates a separation between *us and them* and *the others* are often categorized as something undesirable, since they may destroy the common identity. Then everything that is on the outside of the common identity of the nationhood is seen as a threat and it does not matter who it is on the other side. It could be a refugee, a guest worker or an asylum seeker, a child, a woman or a man.⁷¹

In Australia the stereotypical image of refugees as *the others* started in the beginning of the nineteenth century when a discriminatory policy, called the White Australian policy, came into force. The targeted goal was Asian oriented refugees and they became Australia's *the others*. The White Australian policy was officially ended in 1973 but at this time the policy had normalized the racist attitude towards *the others*.⁷² Otherness is more acknowledgeable in today's societies but it is however not always accepted. The detainees in the detention centers in the Pacific are an extreme example that shows that *the others* are not accepted.⁷³ However, it was first after the terrorist attack of September 11, in the USA, that Australia's restriction of the immigration policy had its starting point. The reasons for this were that Australia supported the USA government in the war against terrorism. This affected the Australian immigration since the majority of refugees seeking for protection in Australia started to stream in from the Middle East, especially from Afghanistan and Iraq.⁷⁴

From the time when USA, with support from Australia declared war against terrorism in the Middle East the security in the Middle East became even more fragile. The most common way for refugees to escape from their home countries was with boats. Shortly after the attack in September 11, Australia started to refuse the entry of refugees arriving by boat. The government

⁷⁰ Fairclough, Norman (1989) *Language and Power*, p. 25.

⁷¹ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 178-179.

⁷² McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, p. 6-7.

⁷³ McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, p. 171.

⁷⁴ Graeme, Hugo (2002) "Australian Immigration Policy: The Significance of the Events of September 11", p. 37-39.

claimed that the reason was that terrorists could get into Australia and infiltrate the country. Another reason was to decrease trafficking with refugees, in other words people smuggling. During this time there was an ongoing election, where the immigration policy was high on the agenda. Even if Australia refused the entry of boat refugees and was highly criticized for it internationally and by the more progressive side of politics, such as the green party, the conservatives won the election in the end. The conservatives were the forefront on the political agenda of restricting the immigration policy and the party had the majority of the public opinion. These historical events have contributed with a much harsher attitude toward refugees, which have resulted in a much more restricted Migration Act. Since the attitude have developed through time it has been normalized within the society and it has therefore become perfectly normal to keep out *the others* and to view refugees as a security threat rather than a humanitarian issue.⁷⁵ Nevertheless, when passing and implementing the bill “Migration and Maritime Powers Legislation Amendment” in 2014, which contributes with changes to the Migration Act, the civil rights and international treaties will become inadequate in Australian immigration policy.

According to Benhabib’s theory, more porous borders is not a threat against a nations security, it is rather a greater enrichment for all spheres in a nation. Since a nation is built on its political members values, identities and norms it would be enriching if there is a cultural diversity that would open up various perspectives and understanding. To diminish the already set identity of *us and them* there has to be cultural diversity in a country in order to change the attitude of *the others* as something undesirable and destructive.⁷⁶

⁷⁵ Graeme, Hugo (2002) “Australian Immigration Policy: The Significance of the Events of September 11”, p. 38-40.

⁷⁶ Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, p. 120-121.

5 Discussion

To use the concept of security in relation to boat refugees is creating an unbalanced power relation between the Australian immigration policy and the international human rights. By examining the Migration Act it becomes clear that the government and especially the immigration Minister do not follow the obligations towards the CRSR. This has a destructive effect on the refugees', especially the detained refugees', since their human rights are being deprived. The public attitude in Australia towards refugees has also a great impact on the deprivation of their rights. By sending them to detention centers in the Pacific creates a stereotypical image of them as dangerous and similar to criminals. According to international human rights law any person that have not been proven guilty in court are innocent until the opposite has been proven. However, by giving refugees status that determines them as illegal put them in an indeterminate state.

The Australian government has made loopholes within the international law by interpreting the CRSR on their own terms. The interpretations that have been made are for example that a non-citizen have not the possibility to claim asylum if the person in question is not located on Australian territory. Therefore, the ASIO makes sure to prevent boat refugees to enter Australian waters so that they will never have the possibility to claim asylum in Australia. This is a major and severe loophole that Australia has neglected within international law. This investigation has showed that Australia made its own interpretation of the human rights conventions. The outcome of this may be that other democratic states will follow the lead of Australia. This phenomenon will affect marginalized people, like refugees, that are already in need of protection and stability.

The Australian government actions toward refugees have had negative effects on them since they are looked upon as a security issue rather than a humanitarian issue. To see refugees as a problem rather than an asset for the country has created negative effects such as human rights violations. Benhabib's theory regarding political membership and her solution with democratic iterations is a good thought. However, the issue with democratic iteration is that democratic states have to be open for it, but when a state is passing a Migration Act that will prevent asylum for a lot of refugees the state does it with some kind of purpose and are therefore well aware of the exclusion the state is creating. Therefore, it becomes impossible for democratic

iterations to be exercised if the state that it should be exercised in is not willing to include *the others*.

6 Conclusion

By examining the Migration Act and following the ongoing political debate about this issue you get a clear image that the persons in question, the refugees, designated persons and asylum seekers, have little saying in the ongoing discourse even if it is their lives that are being affected. According to a human rights perspective the refugees should have a larger saying when it comes to decisions regarding their own lives. One way of involving marginalized groups into the discourse is through democratic iterations but as long as the stereotypical underlying norms of the refugees as criminals exist they could never be involved in the discourse. Therefore the attitude towards this issue has to change both publicly and institutionally in order to change Australia's human rights violations toward refugees.

The concluding endnote for this essay will be that security is a contributing factor for exclusion of marginalized people, such as refugees. To make immigration a security threat is, in many cases, a violation against the human rights of refugees, since it prevents their right to seek asylum. The discourse in Australia's Migration Act is based on an attitude built on the perspective of *us and them* which have through time been normalized within the society. In the discourse of text regarding the Migration Act it produces an image of refugees as criminals when using the terms detainee and illegal non-citizens. The Act also expresses that detained persons in detention centers have had their freedom diminished. The discursive practice of the political debate regarding the Migration Act reveals the unbalanced power relation between the majority of the public opinion, that are represented by the immigration Minister and *the others* which are represented by refugees. The concept of security is being used as a tool to maintain the power of the nation-state. This investigation has showed that the historical sociocultural context has had a great influence to how refugees and security is regarded in Australia today.

References

Primary Material:

Doerthy, Ben, “Senate gives Scott Morrison unchecked control over asylum seekers’ lives”, *The Guardian*, Published: 2014-14-04. <http://www.theguardian.com/australia-news/2014/dec/05/senate-gives-scott-morrison-unchecked-control-over-asylum-seekers-lives> (Retrieved: 2014-12-04)

Feik, Nick, “Scott Morrison’s response to claims of refugees’ molestation, self-harm is immoral, unjust”, *The Sydney Morning Herald*, Published: 2014-11-21. <http://www.smh.com.au/comment/scott-morrisons-response-to-claims-of-refugees-molestation-selfharm-is-immoral-unjust-20141120-11q8bo.html> (Retrieved: 2014-11-21)

Hodal, Kate, “Refugee settlement in Cambodia ‘a dodgy deal’, says Sarah Hanson-Young”, *The Guardian*, Published: 2014-11-19. <http://www.theguardian.com/australia-news/2014/nov/19/refugee-settlement-cambodia-dodgy-deal-hanson-young> (Retrieved: 2014-11-21)

Office of Parliamentary Counsel (2014) *The Migration Act 1958*, Australia: Canberra, pp. 424. [file:///C:/Users/Johanna/Downloads/C2014C00769VOL01REC01%20\(1\).pdf](file:///C:/Users/Johanna/Downloads/C2014C00769VOL01REC01%20(1).pdf) (Retrieved: 2014-12-04)

Senator Sarah Hanson Young’s speech in the congress, <https://www.youtube.com/watch?v=IACpF6Nth6s&feature=youtu.be>, Published: 2014-12-04. (Retrieved: 2014-12-05)

Triggs, Gillian, “Australian-born boy Ferouz remains all at sea”, *The Australian*, Published: 2014-10-24. (Search on the link of the web page through google in order to get passed the subscription for the magazine) <http://www.theaustralian.com.au/business/opinion/australianborn-boy-ferouz-remains-all-at-sea/story-e6frg9if-1227100275612> (Retrieved: 2014-11-21)

Secondary Material:

Books:

Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge: Cambridge University Press

Brennan, Frank (2007) *Tampering with Asylum: A Universal Humanitarian Problem*, Australia: Queensland Press

Buzan, Barry; Hansen, Lene (2011) *The Evolution of International Security Studies*, Cambridge: Cambridge University Press

Buzan, Barry; Waeber, Ole; Wilde De, Jaap (1998) *Security: A Framework of Analysis*, London: Lynne Rienner Publisher Inc

Crocks, Mary; Saul, Ben; Dastyari, Asadeh (2006) *Future Seekers II: Refugees and Irregular Migration in Australia*, Marrickville: Shoutwood Press

Fairclough, Norman (1989) *Language and Power*, Harlow: Longman

Fairclough, Norman (1995) *Media Discourse*, New York: St Martin's Press Inc

McMaster, Don (2002) *Asylum Seekers: Australia's Response to Refugees*, Australia: Melbourne University Press

Journals:

Dale, Gregory (2007) "Appealing to whom? Australia's 'Appellate Jurisdiction' over Nauru", *The International and Comparative Law Quarterly*, Vol. 56, No. 3

Fox, D. Peter (2010) "International Asylum and Boat People: The Tampa Affair and Australia's 'Pacific Solution'", *Maryland Journal of International Law*, Vol. 25, No. 1

Graeme, Hugo (2002) "Australian Immigration Policy: The Significance of the Events of September 11", *International Migration Review*, Vol. 36, No. 1

Pinto, Paula Campos (2011) "Between the lines: A critical discourse analysis of disability policy in Portugal", *Disability Studies Quarterly*, Vol. 31 Issue 3, Publisher: Society for Disability Studies

Other material:

The Parliament of the Commonwealth of Australia, House of Representatives (2013-2014) *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, pp. 112. http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r5346_first-reps/toc_pdf/14209b01.pdf;fileType=application%2Fpdf#search=%22legislation/bills/r5346_first-reps/0000%22 (Retrieved: 2014-12-28)

The United Declaration of Human Rights (UDHR), <http://www.un.org/en/documents/udhr/index.shtml#a13> (Retrieved: 2014-12-09)

The United Nations High Commissioner for Refugees (UNHCR), 2013, Snapshot report, https://www.humanrights.gov.au/sites/default/files/document/publication/snapshot_report_2013.pdf (Retrieved: 2014-09-25)

United Nations (UN) Convention Relating to the Status of Refugees (CRSR), 1951, <http://www.unhcr.org/3b66c2aa10.pdf> (Retrieved: 2014-11-17)