



The Wall

The Right to Liberty and Security at the US–Mexico Border

Hanne Karlsson

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Author	Hanne Karlsson
Supervisor	Professor Helena Lindholm

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Abstract

The migration and refugee situation on the US–Mexico border has been heavily debated and caused a lot of controversy in the last couple of years, much as a consequence of the Trump administration’s immigration policy and promise of a wall along the border. This thesis, therefore, aims to analyze how migrants’ and refugees’ right to liberty and security was affected by the way the Trump–government portrayed them, and the phenomenon of migration, as a security threat. A special interest is paid to the detention and separation of families at the border. Through a critical discourse analysis, with support in the theoretical social-constructionist framework consisting of theories on (non)citizenship and securitization, the results show that through the portrayal of migrants and refugees as dangerous, illegal criminals the Trump administration managed to securitize the phenomenon of migration. Via multiple speech acts which refer to, and connect, migrants and refugees with negative attributes, the produced identities on the two sides of the border became clear: there was the ‘American victim’ and the ‘illegal alien’. The US government, during the Trump administration, thus affected the right to liberty and security on multiple levels: both in more moral humanitarian ‘soft’ ways, as well as through military enforcement actions – or, to put it in other words, both through symbolic and instrumental ways of operating. The right to liberty and security was breached on several different points through targeted policies (Zero Tolerance Policy and MPP), the creation of fear, collective punishment, and arbitrary mass detentions.

Word count: 18 771

Keywords: migration, US–Mexico border, migration, migrants, refugees, detention, asylum, (non)citizenship, securitization, social constructionism

List of Abbreviations

ACLU	American Civil Liberties Union
CBP	(United States) Customs and Border Protection
CDA	Critical Discourse Analysis
CIL	Customary International Law
DHS	Department of Homeland Security
DOJ	Department of Justice
FSA	Flores Settlement Agreement
ICCPR	International Covenant on Civil and Political Rights
ICE	(United States) Immigration and Customs Enforcement
IHRL	International Human Rights Law
HRW	Human Rights Watch
MPP	Migrant Protection Program
NIJC	National Immigrant Justice Center
OHCHR	Office of the High Commissioner for Human Rights
UAM	Unaccompanied Minors
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee

Table of Content

- 1. Introduction..... 8**
 - 1.1. Background..... 8
 - 1.2. Problem formulation..... 9
 - 1.2.1. Aim..... 10
 - 1.2.2. Research questions 10
 - 1.3. Definitions 10
 - 1.3.1. ‘Refugee’ and ‘migrant’ 10
 - 1.3.2. ICCPR: The right to liberty and security of person 11
 - 1.3.3. Refugee Convention and Protocol..... 11
 - 1.4. Limitations and disposition 12
 - 1.4.1. Limitations 12
 - 1.4.2. Disposition 12
- 2. Previous research 13**
 - 2.1. Non-citizens and human rights 13
 - 2.1.1. Theoretical and philosophical research on (non-)citizenship..... 13
 - 2.1.2. Legal research on (non-)citizenship and human rights 16
 - 2.2. Securitizing migration and criminalizing migrants at the US–Mexico border..... 18
 - 2.2.1. Detention centers..... 20
- 3. Theoretical framework and key concepts..... 23**
 - 3.1. Social constructivism..... 23
 - 3.1.1. The social construction of identities and human rights..... 25
 - 3.2. Key concepts..... 25
 - 3.2.1. (Non-)citizenship..... 25
 - 3.2.2. Securitization..... 27
- 4. Method 30**
 - 4.1. Critical Discourse Analysis 30

4.2.	Material.....	32
4.2.1.	Data collection.....	32
4.2.2.	The retrieved material	32
4.2.3.	Critical evaluation of the sources	34
4.3.	Methodological considerations.....	35
4.4.	Ethical considerations and positioning	36
5.	Results and analysis	37
5.1.	Securitization of migration and criminalization of migrant and refugees	37
5.2.	Distinction between ‘us’ and ‘them’	41
5.3.	Questioning the right to have rights	45
6.	Discussion.....	49
7.	Conclusion and further research.....	53
7.1.	Conclusion	53
7.2.	Further research	54
8.	References.....	55

List of Figures

Figure 1: Immigration Detentions, Average population. From ACLU, Human Rights Watch & National Immigration Justice Center (2020).....20

Figure 2: Securitization, Illustration based on Buzan, Waever, and Wilde (1998).....28

Figure 3: Securitization, illustration based on Haggmann (2018) and Sjöstedt (2017).....29

Figure 4: CDA, based on Fairclough (2013).....31

1. Introduction

1.1. Background

In recent years, the border politics in the global north has had a more explicit purpose of keeping migrants and refugees out and keeping the outer borders 'safe'. But what does this mean for – and how does it affect – the human rights for the migrants and refugees?

The border between the United States (henceforth US) in the north and Mexico in the south constitutes the busiest border in the world – with over one million people crossing it each day. The nearly 2,000-mile-long border is therefore quite unique both in regard to the amount of people and goods crossing it each day, but also the political scene it has developed into the last couple of years (Mazza, 2018, p. 34–5). Since the mid-1980s the US–Mexico border has been the subject of multiple political reforms and the place for military presence and policy realization. Through rough border security, dramatic deportations, and the beginning of the construction of a wall 670 feet wall (in the mid-2000s) has acted as a more comprehensive approach to migration in general through reforms with varying toughness. However, only Donald Trump has taken the further step to characterize the 'problem' of immigration to the US as one that can be addressed solely by more, and tougher, border security, comprehensive deportation strategies, and a concrete wall paid by Mexico (Mazza, 2018, p. 35).

During the 2016 election campaign, the now ex-president, Trump made a promise to build a wall on the US–Mexico border to stop the 'illegal' immigration onto US territory. At the time this promise sounded like somewhat out of a fiction – but roughly five years later the wall is more or less a reality. Along with the wall are thousands of people separated from their families and trapped on the border as a result of their attempts to enter the US and seek asylum. The conditions on the border have however received severe critique for being inhuman and 'prison-like', and multiple human rights organizations are calling them 'detention camps'. Much of the critique revolves around the fact that the conditions in these 'camps' are in violation with international human rights law on several accounts (Amnesty International, October 2018; Human Rights Watch, 11 July 2019). One particular immigration policy that surfaced from the Trump-administration was the 'Zero Tolerance policy' which received international criticism and condemnation. This as a result of the family separations that the policy caused – with thousands of children being separated from their parents. In addition to this the Migrant Protection Protocol (MPP) was launched by the Trump administration in late 2018 which aimed

at returning asylum seekers to Mexico awaiting the asylum process (American Immigration Council, 22 January 2021). Hence, the focus of this thesis will rest upon the right to liberty and security of person as portrayed in the ICCPR (this is further elaborated under definitions (1.3) and previous research (2.0)).

These inhumane conditions many migrants face at the border can be linked to the enforcement-like approach taken by several different actors acting on the border. The US Immigration and Customs Enforcement (ICE), which was established in 2003, has for example grown and is occasionally holding roughly 55,000 people a day. This growth in amount and scale can, according to the report published by the American Civil Liberties Union (ACLU), Human Rights Watch (HRW) and National Immigrant Justice Center (NIJC), be closely linked to the power takeover by the Trump administration in 2017 (ACLU, HRW & NIJC, 2020, p. 4). Many of these changes are founded in the rhetorical change towards migration which has created both a political, ethical, moral, and juridical challenge.

1.2. Problem formulation

The reinforced border politics and border security, with the intent of exclusion, has left millions of people in a vulnerable situation to be exposed to human rights violations. Multiple reports have testified to the different human rights violations that occur along the US–Mexico border in the custody of US agencies. Arbitrary and indefinite detentions, family separations, and detention of children has caught the eye of human rights organization and the world (Amnesty International, October 2018; ACLU, et.al, 2020). This, in turn, has sparked a debate regarding the connection between migration and the perception of (inter)national (in)security.

The border has become a symbol for the inside and outside, the belonging and not belonging, the citizen and the non-citizen as Schulze Wessel (2015) points out, the border does not only function as a mechanism for closure but also “perform the functions of connecting and opening, by virtue of which they establish contacts with the outside” (Schulze Wessel, 2015, p. 48). The global interconnectedness through globalization has thus generated both more openness and exchange, but in some areas developed into a more closed off and protectionist approach to the ‘outside’ – for example regarding the flow of people over international borders in migration purposes. The perception of ‘inside’ and ‘outside’ and the close connection between national citizenship and access to human rights has all been a part of the harshness of international border and the vulnerability migrants face (Chigudu, 2015, p. 5–6). The busy border between the US and Mexico has by some been described as a ‘justice free zone’ where the protection and implementation of human rights does not seem to be of priority (ACLU, et.al, 2020). The

priority has instead been focused upon the security of the borderlands with an incline of military presence and rougher immigration approaches (Peoples & Vaughan-Williams, 2010, p. 141). This national security approach makes for an interesting interpretation in terms of *securitization* of the border and the people crossing it, but also how this relates to international human rights law.

The main focus for this thesis will hence be upon how the Trump administration's construction of migrants and refugees, as a national security threat, affects their right to liberty and security at the US–Mexico border. Below I will concretize the aim of the thesis, the research questions, and definitions of concepts to further delimit the thesis.

1.2.1. Aim

The aim for this thesis is to contribute to the research surrounding the nexus between *migration*, *security*, and *human rights*, with a focus on the effects a tighter border, tinged with distrust, has on the human rights for migrants and refugees. Through the perspective of social constructivism, and the use of the key concepts *(non)citizenship* and *securitization*, I will therefore analyze how the construction of migration and profiling of migrants and refugees as a security threat affect their right to liberty and security – with an emphasis on family separations and detention. The situation on the US-Mexican border, during the Trump administration mandate, will constitute the case from which my thesis will take stance. To fulfill this aim I have formulated two research questions as stated below.

1.2.2. Research questions

- How did the Trump administration's construct migration as a security threat?
- How did this construction affect the right to liberty and security for migrants and refugees?

1.3. Definitions

1.3.1. 'Refugee' and 'migrant'

The reasons for leaving one's home vary from each and every case, and depending on your reason you are labeled differently. You might be labeled as a refugee, asylum-seeker or migrant. But these labels are not constant, but ever evolving. One might flee from the risk of human rights violations, but later become an asylum seeker, or migrant. This can be referred to as 'mixed migrant' which essentially means that one individual can have overlapping reasons for moving (van der Klaauw, 2009, p. 60). The UNHCR however has a stricter view and definition of the two terms and argue that 'refugee' and 'migrant' shall not be used interchangeably

(UNHCR, 16 March 2016). Therefore, I will refer to the people at the border seeking to come into the US as ‘migrants and refugees’ – this to be as inclusive as possible but still remaining aware of the issues regarding definitions and appurtenant rights.

1.3.2. ICCPR: The right to liberty and security of person

The right to liberty and security of person is referred to in both regional human rights conventions (for example in the European Charter on fundamental rights (European Convention on Human Rights, 2012) but also in international agreements such as the ICCPR. In our case the ICCPR is the convention of interest since both the states who are mainly involved (United States and Mexico) are parties to the convention and therefor remain obligated to ensure and protect the rights covered within it (UN Treaty Collections, n.d).

Article 9 of the ICCPR is of interest to us since it revolves around (arbitrary) detention and security. The full article is cited below.

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation (OHCHR, 1966).

1.3.3. Refugee Convention and Protocol

The Refugee Convention from 1951 and its complementary protocol from 1967 constitute two of the main documents in international human rights law relating to the rights of refugees. The

above mentioned documents contain multiple articles listing both individuals' rights in addition to states' obligation towards the governing of refugees. The part that is of the most interest to us is the non-refoulment principle concurrent with the obligation of receiving states not to penalize refugees for any breach of national immigration laws in their pursuit to seek asylum. The receiving state must therefore refrain from charging refugees with immigration or criminal offenses which somehow relate to their pursuit of seeking asylum and must not arbitrarily detain those who are seeking asylum (UN Convention Relating to the Status of Refugees, 1951). This will we further discussed and problematized under previous research in chapter [2.1.2](#).

1.4. Limitations and disposition

1.4.1. Limitations

The main limitation of this essay will be the time period I choose to focus on. The timeframe of interest in this essay will therefore be the years when the Trump administration (2017-2021) was in power. This mainly because of the rough enforcement tactics, political rhetoric and the extended border security that occurred during this period of time. I will further limit my analysis to focus on migrant and refugee families and family separations, and the problematic detention of migrants and refugees. To tackle this task the concepts of citizenship and state-sovereignty – in relation to migration – will be at the core of the theoretical framework when conducting the analysis. I will further delimit this thesis to focus upon one main right – and multiple minor rights which are included. This right is the right to liberty and security of persons which can be found in the ICCPR article 9. This right includes the right to not be the subject of arbitrary arrest or detention, and the right to take proceedings before a court without delay on the lawfulness of the detention, as mentioned above under definitions (UN General Assembly, 1966).

1.4.2. Disposition

In chapter two you will find a rundown of previous research relating to the topic of the thesis. Chapter three contains the theoretical framework and presents the identified key concepts. Next in chapter four the method of CDA, which will be used to conduct the analysis, is presented and explained. Included in this chapter is also the ethical and methodological considerations that have been taken during the formation and writing of this thesis. This is followed by chapter five where the results are presented along with the analysis of my findings. Ultimately, in chapter seven, the final conclusions are drawn followed by my suggestions for future research on the subject.

2. Previous research

The previous research, in the very broad field of migration, that is of interest to this thesis is the branch concerning migration in relation to security – more precisely border security and the construction of migrants and refugees as a security threat and the overall portrayal of migrants and refugees at international borders. Many authors have dealt with something of a paradox of globalization when it comes to creating flows of goods, but at the same time the creation of racial borders and boundaries (Fassin, 2011, p. 214). The creation of these borders and boundaries can be closely linked to the phenomenon of *securitization* of migration, migrants, and refugees. The term, of this process of social construction, was first coined by Ole Waever and then used and developed by many others (Buzan, Waever & de Wilde, 1998, p. 23-4; Castles, Haas & Miller, 2014, p. 198-9; Goldin, Balarajan and Cameron, 2011, p. 125). The theoretical stances of securitization will be further developed in the theoretical chapter as a key concept (3.2.2). Below I will explore some of the prominent researchers who have contributed to the scientific research regarding non-citizens and human rights, and securitization and/or criminalization of migrants – especially at the US–Mexico border. The previous research will be used when formulating the theoretical framework that will be used when analyzing the material.

2.1. Non-citizens and human rights

2.1.1. *Theoretical and philosophical research on (non-)citizenship*

Several authors have struggled with the notion of human rights for non-citizens. Franke (2008) states that “there is unavoidable tension between what is often identified as the inalienable right of all human individuals to claim respect and dignity as persons, regardless of place, and what is at least as often presented as the right of all sovereign peoples to safeguard their own states’ interests” (p. 262). One of the most influential and early critics of the modern human rights system was Hannah Arendt. In the book ‘The Origins of Totalitarianism’ (first published in 1951) Arendt criticizes the contradiction she notices within the system of human rights in a state-centric world order, when she argues that the international declaration of human rights argues that these rights are inalienable and universal and that the individual is the sovereign, but at the same time is put into the category of ‘people’.

man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference

to some larger encompassing order, when he disappeared again into a member of a people [...] the whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation [...] it gradually became self-evident that the people, and not the individual, was the image of man (Arendt, 1973, p. 291).

Stateless persons, or nonnationals, are therefore not only stripped of their national rights, but also of their human rights (ibid, p. 292). Arendt takes this argument to the very end when stating that the rightlessness of nonnationals “are not that they are deprived of life, liberty, and the pursuit of happiness [...] but that they no longer belong to any community whatsoever [...] that they are no longer equal before the law, but that no law exists for them” (ibid, p. 295–6). Their denationalization therefor leads to, not only deprivation of one’s political context, but also of your rights; you thereby lose your right to have rights. I will thus use Arendt’s original formulations and theories regarding statelessness and expand it to include both migrants and refugees as the point of reference.

The perception of national citizenship as something that legitimizes the right to have rights also puts the phenomenon of migration, which includes non-citizens, in sharp contrast to what is by many perceived as ‘legitimate’. Some argue that migration, and other cross-border activities, challenges both the national borders and the national identity and points out that a legitimate state has the right to self-determination; which includes the freedom of association and thereby non-association (Heath-Wellman & Cole, 2011, p. 13; Dembour & Kelly, 2011, p. 2–3). Heath-Wellman and Cole (2011) argue that legitimate states possess a “privileged position of moral domination over their self-regarding affairs” (p. 15). This illustrates how the link between the state (economic and political organization) and the nation (the community) is, in most cases, made up by citizenship. This, in turn, has brought attention to ‘issues’ in the globalized world regarding ‘dual citizenships’, ‘transnational consciousness’ and ‘dual loyalties’ as Castles, et.al (2014) points out (Castles, et.al, 2014, p. 64–7). All of the above mentioned factors play a role in the transnational migration in a globalized setting where many argue that this all has an impact on the national identity (ibid).

Castles, et.al (2014) further argue that the political dimension of international migration is the most important one because of the formation of the international arena – where sovereign states constitute the main structure. Because of this they argue that “international migration is intrinsically political and is almost inevitably an imagined or real challenge to the state

sovereignty” (Castles, et.al., 2014, p. 313). The link between national identity and citizenship is thus in turn closely linked to the notion of belonging and not-belonging.

Franke (2008), on the other hand, takes a more moral point of departure when closing in on the question of universality of human rights versus national borders and self-determination of sovereign states. Franke, who can be said to develop some of Arendt’s ideas, notes that the universality of human rights should (in theory) apply equally to everyone whether or not you are a citizen of a state or not. What then is stopping this from being realized? To Franke this is founded in both a lack of political will, insufficient articulation of the rights of displaced people¹, poor interpretation of the IHRL, and, most importantly according to Franke, the *discursive limits* that the current system poses which the international human rights regime is forced to align with (Franke, 2008, p. 262–3).

While Franke argues that these things have reaffirmed the national borders and the notion of belonging or not-belonging, Tonkiss and Bloom (2015) on the other hand argue that concepts like international migration and international human rights regime have meant that the significance of national citizenship has decreased due to the interconnection of globalization (Tonkiss & Bloom, 2015, p. 838–9). They therefore take a more post-national approach towards citizenship and argue that this is the current situation – while Franke might want this scenario, he acknowledges that the discursive limits pose a challenge for this to be real (Franke, 2008, p. 262–3). The state sovereignty – migration nexus is therefore debated and there is, so far, no consensus on either the present situation or the future (Chigudu, 2015, p. 6–7).

Some of the critique is founded in the fact that human rights are practically granted through your belonging to a national state – your citizenship. Essentially this means that those inside – those who belong to the nation state – must be distinguished from those who do not belong. This paradox is one of the great ones within the field of human rights since the modern idea of human rights are founded upon the foundation of universality and inalienability. Hamacher does however note, when discussing Arendt, that the loss of human rights “was programmed from the very beginning through their structural fusion with the citizen rights of nation-states” (Hamacher, 2014, p. 181). When losing one’s political context, one will, according to Arendt, automatically lose one’s *inalienable* human rights. Throughout her writings Arendt remains critical against the linkage between human rights and national sovereignty and argues that the

¹ Franke uses the term ‘displaced persons’ which in his meaning includes refugees, internally displaced persons and forced migrants (Franke, 2008, p. 262).

solution to this problem is a new way of looking upon national sovereignty and citizenship as a juridical-political concept of the ‘right to have rights’ (Birmingham, 2006, p. 36).

While Arendt’s philosophy regarding the rightlessness of non-citizens has been an important contribution, contemporary researchers have come to expand and develop these concepts to the challenges posed in today’s society. Bradley (2014), even though she appreciates Arendt’s contribution to the research, calls Arendt’s depiction of non-citizens (as stateless, rightless and as the ‘scum of the earth’) as anachronistic. This view is today thought of as something that might lead to the victimization and undermining of migrants and refugees’ actual rights (Bradley, 2014, p. 102–3; Stierl, 2019, p. 27–8). Instead of a “narrow focus on the refugee as stateless” Bradley wants to expand the conception of migrants and refugees to be a political actor (ibid, p. 103). International migration has developed and changed through both nature and location, but also through the institutions and legal provisions to include and grant migrants and refugees their rights. However, this does not solve the situation where migrants and refugees still lack a ‘legitimate membership’ of other countries – when forced to flee the dispatch country. In summary, Bradley stresses the importance of defining the status of migrants and refugees as a politically competent actor, rather than the Arendtian view of migrants and refugees as stateless and rightless (ibid, p. 122–3).

Below I will continue to present the previous research regarding non-citizens and human rights but take a more concrete legal position to present the juridical instruments which influence the rights of the migrants and refugees at the US–Mexico border.

2.1.2. Legal research on (non-)citizenship and human rights

Arendt’s famous political statement regarding the ‘right to have rights’ has evolved and become an integrated part of the critique against the current human rights system in relation to non-citizens. Edwards and Ferstman (2010) argue that citizenship is the ultimate right because it is the right that grants you access to all the other rights. Further they argue that non-citizens then become defined by, not what they are, but rather what *they are not* in a way that constructs ‘insiders’ and ‘outsiders’, or ‘those who belong’ and ‘aliens’ (Edwards & Ferstman, 2010, p. 5–6). While several of the articles within the UDHR relates to our case² the focus will lie upon the ICCPR and in particular the right to liberty and security of person which is found in article 9 – the right to not be arbitrarily detained is also included in this article. These rights shall – in

² Including article 2 (the universality of the rights), article 3 (the right to life and security), article 10 (right to a fair trial), article 14 (the right to seek asylum).

principle – apply to everyone independent of our status as (non)citizen (Amnesty, 21 October 2017; Edwards, 2011, p. 17–8). But, as mentioned in chapter [1.2](#) (problem formulation) article 2(1) of the ICCPR has stirred a debate regarding the level of interpretation of whether or not both the criteria must be met or if it is enough to fulfill one and thereby be a legitimate rights holder.

The US never ratified the 1951 Refugee Convention but has since accessioned the consecutive Protocol (from 1967) and is thus bound by both the Convention (article 2 to 34) and the Protocol. This entails multiple obligations on the receiving state (in our case the US) which includes the obligation to “not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence” as covered in article 31 (UN Convention Relating to the Status of Refugees, 1951). In addition to this, both international customary law, international treaty law and case law notes the prohibition of collective punishment through *collective expulsion* of migrants, refugees, and asylum seekers. The UNHRC has thus found that, even though the ICCPR lacks an explicit prohibition of collective expulsion, this falls under article 13 in regulating other aspects of expulsion of migrants and refugees such as the right to have one’s case reviewed individually by a competent authority. Further the UNHRC has found that policies that actualize collective expulsions might “amount to a crime against humanity” (International Justice Resource Center, n.d; ICCPR, 1966).

In an attempt to include non-citizens (including migrants and refugees), and strengthen their right to rights, the UNHRC has released several General Comments who are meant to clarify the confusion that the article 2(1) has caused. General Comment no. 15 (The Position of Aliens Under the Covenant³) and 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant⁴) are of interest in our case. The UNHRC points out that in multiple state parties not all ‘aliens’ are granted the rights that they should have access to – simply because their lack of citizenship. This is, according to the UNHRC, a violation of the non-discrimination clause and they urge states to provide non-citizens the rights they, according to international law, are entitled to (UN Human Rights Committee, 1986, §4). Among other things

³ Referring to the ICCPR.

⁴ Referring to the ICCPR.

the UNHRC states that “aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person” and that non-citizens “shall be equal before the courts and tribunals and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law” (ibid, §7). General Comment number 31 reaffirms the UNHRC’s position in this question when stating that “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power *or* effective control of that State Party” (emphasis added) and that this shall apply “regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (UN Human Rights Committee, 2004, §10).

While this is the position of the UN Human Rights Committee, not everyone has accepted this interpretation of the binding agreement. The United States did respond to General Comment 31 and rejected it, since it, according to the US, posed as an after–construction which entailed a greater responsibility for the US towards non-citizens on US territory. In their response the US argue that the General Comments “demonstrated indifference to the precise wording of this carefully negotiated text is unfortunate and serves to undermine the Committee’s persuasive authority” (U.S. Department of State, 27 December 2007).

2.2. Securitizing migration and criminalizing migrants at the US–Mexico border

The linkage between migration and the perception of (in)security has been well-researched over the past years with several different focuses – while some have looked upon the actors doing the act of securitization, others have researched the effect that the securitizing move have on migrants and migrants’ rights (Bourbeau, 2018, p. 83-4). In his article Bourbeau (2018) argues that the detention of migrants impinges on the securitization of migrants and refugees which leads to the (re)production and maintaining of certain social orders. Bourbeau further argues that the act of detention ensures that migrants and refugees pose a security threat and by locking them up you think of detention as the “established and commonsensical way to ‘deal with’ migration” (ibid, p. 90). One could say that the detention of migrants and refugees institutionalizes the inclusion-exclusion nexus.

Perhaps most disturbing is that the lines between immigration policy, criminal law, and counter-terrorism policies have become increasingly blurred while the judicial review process for immigration violations has become increasingly limited. This restricts the ability of unauthorized migrants to defend themselves legitimately against charges during the judicial

process and increases the likelihood of an unfavorable outcome compared to citizens – most notably deportation (Slack, Martínez & Whiteford, 2018, p. 123).

Above, Slack, Martínez and Whiteford (2018) point out one of the prominent debates in migration research: the connection between migration and (inter)national security. The US has grasped the approach which focuses upon effective border control and enforcement measures like *prevention through deterrence* – rather than the perseverance of the human rights of the migrants and refugees who are trying to cross the border (Slack, et.al, 2018, p. 123; Rubio-Marín, 2014, p. 2). The blurred line between the immigration policy and criminal law in the US has, according to Slack, et.al, had an upswing as a result of ex-president Trump’s xenophobia and all-over anti-immigration measures (ibid, p. 223).

The critique of the US custody measures and the mistreatment of migrants and refugees at the border, has been up for discussion in the writings of many scholars and is frequently referred to as the *criminalization of migrants*. (Abrego, Coleman, Martínez, Majivar & Slack, 2017, p. 708; Martínez, Slack & Hayman, 2013, p. 3). According to Abrego, et.al this refers to the dehumanizing experience many migrants face at the border. They argue that “in the midst of broader social criminalization of immigrants, especially under President Trump’s rhetoric and executive actions, the consequences for immigrants are likely to be dire” (Abrego, et.al, 2017, p. 702). One could say that while the securitization revolves around the broad phenomenon of migration, criminalization is more aimed at individual-based marginalization of migrants and refugees. This is demonstrated by the increase of migrant detentions during the Trump administration mandate period, as shown by the figure below. Figure 1 illustrates the

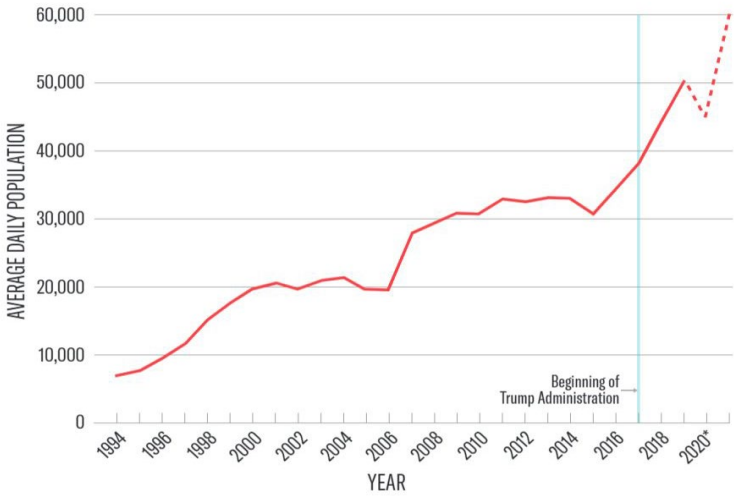


Figure 1: Immigration Detentions, average population. Retrieved from ACLU, Human Rights Watch & National Immigration Justice Center, 2020, p. 14.

immigration detention average daily population from the mid-1990s, and the accelerated rate of detentions since the Trump administration took office in 2017.

Several authors have also identified the dilemma that non-citizens are faced with in regard to using illegal ways into the country. The use of human traffickers or to trust drug smugglers are for some the last way in; which essentially might lead to greater criminalization and stigmatization from the social surroundings (Abrego, et.al., 2017, p. 702). Some research has focused upon the *dual identity* migrants and refugees (especially children) have been given a status as on one hand exploited, poor, and desperate and on the other hand as ‘predators in the making’. This dual identity, some argue, lead to a further legitimization of the marginalization of migrant and refugees (Sanchez & Zhang, 2020, p. 371).

Slack (2019) points out that different policies under the Trump administration, aimed at declining immigration flows, reach different levels of militarization of the borderlands. While family separations, through the ‘Zero Tolerance policy’ (where parents are charged for illegal entry and put in detention or prison, and are thereby separated from their children), can be considered a softer form of militarization, the multiple blockades, and the rapid deployment of military personnel at the border is one of the purest forms of militarization at the border during the Trump administration (Slack, 2019, p. 193–4). Slack suggests that the flow of capital and goods, which generally has been welcomed, has declined ever since the Trump administration prioritized the ‘systematic racism’ (which entail an increase of military exercises, a system for declining access to seek asylum, and detention of migrants and refugees) (ibid, p. 195).

The systematic measures in the Trump administrations (anti-)immigration policy has been identified as to possess both *symbolic* political and cultural expressive part, as well as more *instrumental* parts. The first can be said to represent how Trump, for example, talked about a certain situation or ‘issue’, or how he has made it look a certain way with military presence and high barriers. The second part Slack identifies as having a more material and humanitarian effect on the migrants and refugees, for example through the launch of the Zero Tolerance policy – which has led to the separation of thousands of families, many of whom are not yet reunited (Slack, 2019, p. 196; Monico, Rotabi, Vissing & Lee, 2019, p. 181–2).

2.2.1. Detention centers

One could say that the previous concepts presented above (the non-citizen debate and the notion of securitization) becomes realized through the detention centers along the border where migrants and refugees are being held. These facilities may mark the ulterior criminalization and

stigmatization of migrants and refugees when they are held for an unpredictable time. According to the Human Rights Watch report ‘In the Freezer’, from 2018, families with women and children are generally held in holding cells and forced to sleep on the floor. These cells are known to be freezing cold and are therefore usually referred to as *las hieleras* which translates to ‘the freezers’ (Human Rights Watch, 2018, p. 1, 7). Some argue that this is a part of the US deterrence strategy to scare migrants, refugees, and asylum seekers to ever come near the US border and a display of both sovereign and disciplinary power (Riva, 2017, p. 318–9).

The right to liberty and security, as formulated in article 9 of the ICCPR, applies to everyone and to all types of detention and deprivation of liberty and security; including immigration control policies as pointed out by Edwards (2011). Even though detention is accepted as a legitimate mean of state control, it is the *arbitrary* detention or deprivation of liberty that is prohibited under international law. To control whether or not an arbitrary detention or deprivation of liberty has occurred you need to examine the *reasonableness*, *necessity*, *proportionality*, and *non-discrimination* (Edwards, 2011, p. 20–1). In the *van Alphen v. the Netherlands* case from 1988 the UNHRC concluded that the interpretation of article 9 in the ICCPR must “include elements of inappropriateness, injustice, and lack of predictability” (van Alphen v. the Netherlands, 1988). Or, as stated in General Comment 35, the detention of migrants and/or refugees is arbitrary “in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security” and that this decision to detain someone must be based on a case-by-case basis and not “based on a mandatory rule for a broad category” (UN Human Rights Committee, 2014, §18).

The current governing national law in the US is heavily influenced by the *Flores Settlement Agreement* (FSA) which dates back to 1997 and related to the procedures of detention, treatment, and release of unaccompanied minors (UAM) by the US immigration and border authorities. Among other things, the agreement is supposed to favor the release of minors apprehended by the authorities or, for those not released, to quickly be transferred to a ‘non-secure’ and ‘state-licensed facility’. The compliance with these regulations has however been deficient since the DHS have argued that facilities that are non-secure and licensed do not exist and the authorities are therefore left with the choice of letting the whole family unit go or release the minors while the adults are in detention (Herman & Harrington, 2018, p. 109). During ex-president Trump the FSA was questioned, and the Trump administration proposed to end the

agreement which in theory could lead o indefinite detention of families, including minors (Reilly & Carlisle, 30 September 2019).

Previous research regarding the detention of non-citizens in the US has therefore largely been focused on the compliance with the FSA. Some argue that the Trump administration has had the goal “to close the door on migrant minor” through both policy and juridical changes – for example, the attempt to dismiss the FSA or to use the Covid-19 pandemic as a means to deny non-citizens (both minors and adults) correct and humane treatment in detention centers (Slack & Heyman, 2020, p. 336). Slack and Heyman therefor argue that the measures taken during Covid-19 “will serve as a dramatic precedent for limitations on human mobility, targeting the most vulnerable, and setting up future draconian restriction” (ibid, p. 338).

3. Theoretical framework and key concepts

The theoretical lens, through which the material will be analyzed, is based in a social constructivist tradition where the key concepts (non)citizenship and securitization will be used to precise the research and to best answer the research questions and fulfil the aim of the thesis. Below I will introduce the tradition of social constructivism (3.1) and further down explain the chosen key concepts (3.2).

3.1. Social constructivism

The term ‘social constructivism’ in the modern meaning was first coined by Berger and Luckmann in their book ‘The Social Construction of Reality: A Treatise in the Sociology of Knowledge’ first published in 1966. They argued that the “world of everyday life is not only taken for granted as reality by the ordinary members of society in the subjectively meaningful conduct of their lives. It is a world that originates in their thoughts and actions and is maintained as real by these” (Berger & Luckmann, 2011, p. 33). Adler (1997) argues that social constructivism lies between the agency and individualistic approach of *rationalism* and the holistic structuralist-focused *structuralism* (Adler, 1997, p. 321–2).

While this has been debated different tenets have been identified within the constructivist spectrum. Wendt (1999) points out that of the two most prominent views focuses on the structures of human association by shared ideas (somewhat of an idealist view) while others are leaning more against the power of social structures (a more holist or structural view) (Wendt, 1999, p. 1). Either way, it is a useful way of thinking in many fields because its capability to adopt and fit into multiple disciplines. Sterns, Pettiford, Diez and El-Anis (2010) describe social constructivism as an approach with some common key concepts, rather than an unambiguous theory (Sterns, Pettiford, Diez and El-Anis, 2010, p. 186). The social constructivist approach will therefore be used as a way of looking upon how the Trump administration constructs migration and portrays migrants and refugees at the US south border by using the theoretical concepts of *contrast*, *consciousness and ideas*, *language*, and *intersubjectivity*.

By *contrast* the idea is that an identity is constructed through “positioning themselves through the use of pairs of contrastive symbols” (Schwarz & Williams, 2020, p. 8). This can be done both on an individual level and on the group level (so-called group demarcation) where a hierarchy is set and contrasting attributes accentuated (ibid, p. 8). It is however important to note that theories on identity is a comprehensive field and we will focus on the portrayal of

identities (by the US onto the migrants and refugees) as well as the somewhat more self-constructionist production of a self-image for the US.

Consciousness and ideas are discussed by Berger and Luckmann as something that always is intentional and addressed towards objects (which include both external physical objects and internal subjective reality). They argue that among these different ‘realities’ the ‘reality of everyday life’ is the most important. This is where we interact with people face-to-face and where we share the experience of different objects or events. Berger and Luckman suggest that:

In the face-to-face situation the other is fully real. This reality is part of the overall reality of everyday life, and as such massive and compelling. To be sure, another may be real to me without my having encountered him face to face – by reputation, say, or by having corresponded with him. Nevertheless, he becomes real to me in the fullest sense of the word only when I meet him face to face (Berger and Luckmann, 2011, p. 44).

The ‘ideal’ goal for social constructivism is thus to “provide both theoretical and empirical explanations of social institutions and social change, with the help of the combined effect of agents and social structures” (Adler, 1997, p. 325). This ‘ideal’ constructivist approach is meant to incorporate and understand the mutual effect that the social external structures and the individual agency have on each other (ibid, p. 326). To understand this one has to pay attention to the *language* that is used in everyday life – which shapes our perception of the reality and gives meaning to objects. While some social constructivists merely acknowledge language as a “transmitter of norms and means of socialization” others suggest that language and discourse should be given more attention (this critique usually comes from the postmodern tradition) (Sterns, et.al, 2010, p. 201).

Language is the principal means by which an individual is socialized to become an inhabitant of a world shared with others and also provides the means by which, in conversation with these others, the common world continues to be plausible to him (Berger, 1966, p. 109). An important thing is however the possibility to experience objects and phenomenon that are neither here or now which is described, by Berger and Luckmann, as “different degrees of closeness and remoteness, both spatially and temporally”. This opportunity to generate focus and attention to things remote from the individuals here and now works as an “integration of marginal realities” (Berger & Luckmann, 2011, p. 116). At the center of this is language: as both “the foundation and the instrumentality of the social construction of reality” (Berger, 1966, p. 108). The way

everyone will perceive this ‘reality’ will however vary as it is both *subjective* and *intersubjective*. Intersubjectivity means the way our individual perceptions of the world are constructed through an intersubjective commonsense; which essentially means that the world is shared by others and our, somewhat, common understanding of the world (Berger & Luckmann, 2011, p. 37). The moral philosopher Stephen Toulmin suggested that intersubjectivity means that even though “each of us thinks his own thoughts; our concepts we share with our fellow-men” (Toulmin cited in Adler, 1997, p. 327). Adler thus argues that an object becomes real to us and to others when expressed and shared by others, and only then becomes ‘real’ – or in other words: an object becomes integrated with the world through the language that is used to describe it (Adler, 1997, p. 328).

3.1.1. The social construction of identities and human rights

How does the social construction of identities or application of attributes affect the accessibility to rights? The constructionist tradition is based in the belief, as mentioned above, that the social ‘reality’ is something that is both constructed and constructionist – which means that it is both affected by and affects its surroundings. This thesis will therefore take stance in the belief that, through social constructionist actions, an actor can ascribe certain attributes to themselves and to others which in turn normalizes that certain actions are taken when dealing with them. If, for example, migrants and refugees are ascribed to as being criminals, an actor can legitimize detention as an authorized punishment – since this is a regular applicable punishment within the criminal system. This will be further developed below when presenting the key concepts.

3.2. Key concepts

As mentioned earlier I will use some key-concepts to further specify the way I will use the social constructivist tradition. I therefore presuppose these concepts as to be social constructions and argue that they are part of the social reality because of their (re)production. The concepts that I have chosen are *(non-)citizenship* and *securitization*. Both of these relate to each other in the way migrants and refugees (as non-citizens of the US) are portrayed and dealt with as a security problem. These concepts will act as a support and indicate concrete aspects of the social constructionist through when the material will be analyzed later on. It then becomes important to draw attention to the different layers and theories behind each of these concepts – as shown below.

3.2.1. (Non-)citizenship

The notion of citizenship, or more important in our case, non-citizenship in relation to human rights has been a hot topic in the human rights debate: or to be more precise whether or not the

universality of human rights should be limited by citizenship (as mentioned both in the introduction chapter and previous research regarding article 2(1) in the ICCPR) and whether or not states have a sovereign right to limit human rights for people who are non-nationals? Should human rights be linked to the humanity (that human rights shall apply to everyone simply by being a human individual) or should the notion of national citizenship prevail over this? (Rubio-Marin, 2014, p. 5). Franke (2008) discusses Arendt's philosophical thoughts and argues that:

a primarily state-based international order, where identity and claims are rendered in terms of citizenship, lays the ground for national chauvinism and exclusionary politics, wherein highly particularist interpretation of rights become legitimate and moral disengagement with the citizens of other states and noncitizens in general becomes thinkable (Franke, 2008, p. 273).

The contradiction, or rather a catch-22 situation, that displaced persons face is founded in the fact that “human rights law as it is located within the territorial units made performable by the principle of state sovereignty” meaning that to gain access to these rights you have to be located within the system that you systematically are kept out of (Franke, 2008, p. 265). This structural fusion of citizens right as human rights, as previously argued by Hamacher (2014), may pose as one of the most substantial threats to the realization of human rights for migrants and refugees.

This participation in a political community or context is key to gaining the ‘right’ to have rights. Heisler (2005) points out that migration (whether national or international, voluntary or forced, legal or not) sits at the center of this since it drives questions like jurisdiction, relations between citizens and non-citizens, identity, belonging, human and institutionalized boundaries, etc. (Heisler, 2005, p. 667). These questions were brought to the attention of a broader public in step with the changes of the global context as well as the way citizenship is perceived (Castles and Davidson, 2020, p. 2). The change in global context, as Castles and Davidson put it, refers to the changes that globalization has brought which effects the international arena in ways that affect global relationships in several areas (ibid, p. 3–4). Further they argue that “globalization is characterized by new forms of inclusion in and exclusion from societal relationships” and that “people increasingly seek meaning through particularistic identities based on ethnicity, religion, regionalism or nationalism” which might explain why “the defence of local or sectional interest against globalizing forces may be based on cultural symbols connected with dignity and identity” (ibid, p. 6).

There are therefore several prevalent contradictions and problems within the notion of (non-) citizenship and the access to human rights. While, in theory, everybody should have access to the universal rights, this is blocked off by the exclusion from a political community that migrants and refugees are seeking to be a part of when trying to pass the border into the US. It is therefore of interest to investigate how the US (during the Trump administration) construct the insiders and outsiders, and how this construction in turn is legitimized and institutionalized through executive orders and policies.

3.2.2. *Securitization*

Another key concept that will be used is the international relations concept of securitization. This theory derives from the Copenhagen School (in the tradition of security studies) and deals with so-called *speech acts* which turns a political problem into a security issue. This, in turn, makes it possible to legitimize means and measures that otherwise would not be accepted as legitimate in order to deal with a certain issue (Buzan, Wæver & Wilde, 1998, p. 23–24). The act of securitization also entails a discussion regarding “*which* and *whose* interpretation of danger proposes the most truthful organization of reality” (Hagmann, 2018, p. 207).

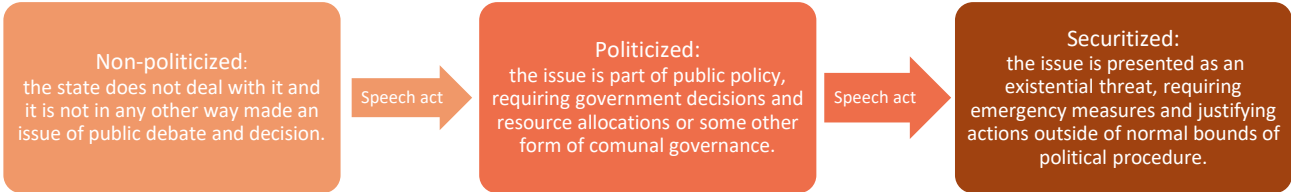


Figure 2: *Securitization, illustration based on Buzan, Waever and Wilde (1998)*

Above the issue in the securitized-box is defined as to present an *existential* threat – which has been the general perception in the field of security studies. But, as Hagmann notices, this fixation with existential threats and lethal forces constitutes a rather limited analytical framework for contemporary security research. Instead Hagmann suggests that the act of securitization might just as well create antagonist relations which pose as a less-than-existential threat (Hagmann, 2018, p. 205). Through Hagmanns reasoning ‘issues’ regarding migration might therefor be perceived as a security question – even if it does not pose as an existential threat with the possibility of being lethal.

While this illustration (figure 2) showcases a linear process on how an issue can go from non-politicized, to politicized to securitized⁵ it does not showcase it in detail. Some researchers have developed this securitizing move to be illustrated as a circular movement (figure 3) rather than a linear one (Hagmann, 2018, p. 209; Sjöstedt, 2017).

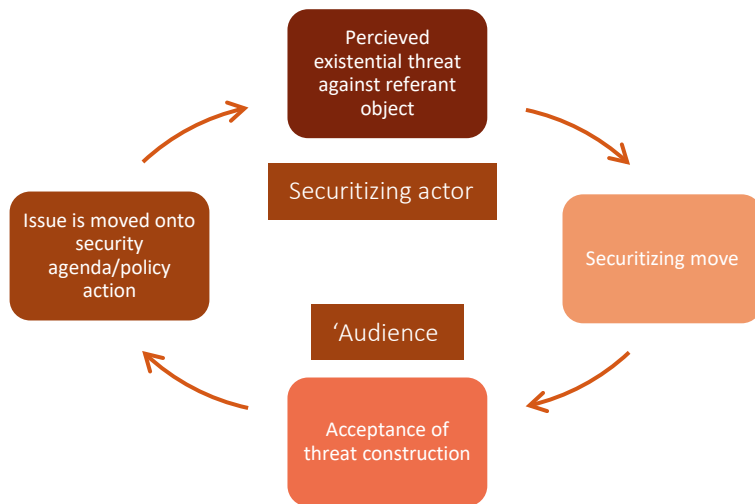


Figure 3: Securitization, illustration based on both Hagmann (2018) and Sjöstedt (2017).

As figure 3 illustrates, we can better understand how the act of securitization produces and *reproduces* structures and threats – not just in a linear way but in a circular manner. According to Hagmann (2018) securitization acts “identify who (or what) is a source of insecurity, who is affected by insecurity, and they define the nature of the relation between these threatening and threatened actors” (p. 202). For the (re)production of orders and structures to be successful the securitization move must be transformed from an individual’s interpretation of an issue to general public knowledge.

This transformation is usually referred to as a ‘speech act’ (as seen in figure 2) where both the mentioning of a threat and the association to a “broader understanding of who (or what) threatens whom and how” are a part of the (re)construction of a threat. Hagmann (2018) therefore argues that the act of securitization is both “a ‘relational’ or ‘positional’ process of international subjectification and subject-positioning” (ibid, p. 201). To know whether the act of securitizing a phenomenon has succeeded or not you can look upon the effects (or lack thereof) that it has had – i.e., if its framing of a ‘problem’ has had the effect that policymakers have taken it into consideration when providing responses (Hagmann, 2018, p. 207). If

⁵ An issue can also go from securitized to politicized to non-politicized.

successfully made, the move should have sparked action and created general knowledge about the issue.

In this thesis the focus will lie upon the securitizing move, i.e., the speech acts, through which the construction of migration, migrants and refugees are constructed as a threat. This will be made possible through the use of the previously mentioned notions of *consciousness/ideas*, *language*, and *intersubjectivity*.

4. Method

4.1. Critical Discourse Analysis

The concept of discourse analysis is broad and contains several different traditions, but the main common feature is that they study discourses in systematic manners. The different branches of discourse analysis are therefore founded in the way you study the discourse and what, if any, linguistic methods you use or whether or not a wider social aspect is considered. As a result of my theoretical point of department, which is highly influenced by the constructivist school, the Critical Discourse Analysis (CDA) is adequate since this too is taking stance in the relations between text, discursive and social practice and is seen as both constructing and constructed. This tradition of discourse analysis is associated with Norman Fairclough who has come to develop this branch since the late 1980's. In this tradition the focus lies upon the *dialectic relations* that discourses create and maintain – with a focus on the production and reproduction of social relations and power relations (Fairclough, 2013, p. 19–20). Winther Jørgensen and Phillips (2002) describe Fairclough's approach as something that “in the name of emancipation, [...]take the side of oppressed social groups” (Winther Jørgensen & Phillips, 2002, p. 64). I therefore find it suitable to use this method when analyzing the social conflict that the situation at the US–Mexico border pose (as described earlier in problem formulation, [1.1](#)) and the underlying dialectic relations that are present.

The method is based upon a three-dimensional method which includes *text*, *discursive practice*, and *social practice* (Bergström & Boréus, 2012, p. 375). Figure 3 below illustrates Fairclough's approach towards discourse analysis and how it is intended to be carried out.

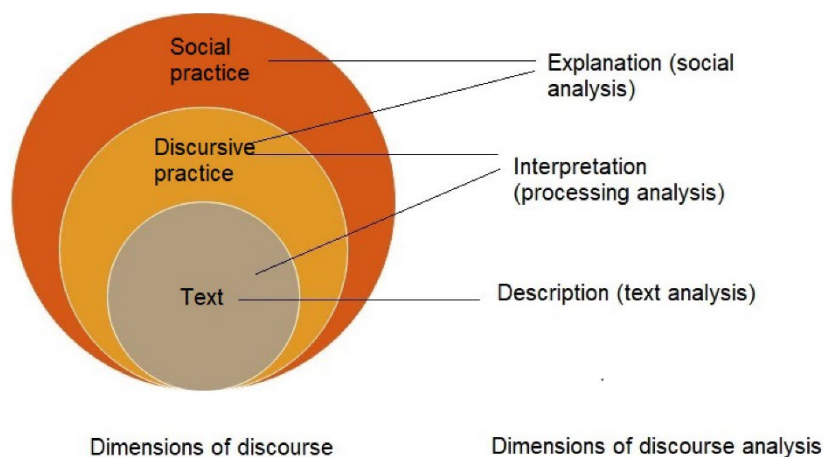


Figure 4: CDA, based on Fairclough, 2013, p. 133.

The goal when using this method is to analyze how “the link between sociocultural practice and text is mediated by discourse practice” (Fairclough, 2013, p. 132). This tradition within discourse analysis is highly linked to the social constructivist theory in that discourses, according to Fairclough, in nature are both *constitutive* and *constructed* (Bergström & Boréus, 2012, p. 374) – which is suitable in consideration of the thesis’ theoretical framework. This method was used when analyzing the selected material by following and identifying the way the text (material) related to the discursive and social practice.

The first dimension ‘text’ was analyzed through identifying different aspects of the texts through the use of modal verbs, transitivity and other words which had a constructing effect. I thus read through each text several times to mark out different words or phrases – the *modal verbs* (i.e., the words that describe the attitude towards something and the assertiveness behind it), words or phrases which transformed the text (*transitivity*⁶), and words or phrases (logics of equivalence) that had a constructing or portrayal effect of the different actors (both explicit and implicit). For example, the words such as *shall*, *will* and *must* were marked as they are modal verbs and therefore have a certain assertiveness behind them in relation to something else. The transitivity words which were marked out would consist of words linking migrants or refugees to criminals, or ‘Americans’ as the heroes or victims. These words and phrases could be *heroic*, *illegal*, *the greatest country*, *no right to be here*, etcetera.

The second dimension ‘discursive practice’ deals with the questions regarding the production of text, its distribution, and consumption with the goal of analyzing the different degrees of (re)production and/or transformation of discourse and power relations. Fairclough takes it so far as suggesting “that discursal practices are ideologically invested in so far as they contribute to sustaining or undermining power relations” (Fairclough, 2013, p. 62, 67).

The third dimension social practice might be the dimension which poses as the biggest obstacle. Since it is intended to put the analysis in a broader context this was done by identifying different interdiscursive elements in the material (by searching for connections to other discourses, for example terrorism). But, to take it one step further in the social dimension is hard due to the formation of the research aim and questions – since the main focus lies upon the discursive

⁶ I looked for *actors*, *actions*, and to some extent *circumstances* to determine if and how different processes were described and the comprehensiveness of it – i.e., whether an event is deliberate or agentless (Fairclough, 2013, p. 107)

elements. Thus, the effects that the speech acts might have had in a broader social reality is hard to determine. I have accordingly focused on how the right to liberty and security was affected by these speech acts, not how it might have had an effect in an even broader dimension.

Through the course of applying my chosen method onto the retrieved material, three themes have been identified and will thus pose as the subsections in this following chapter. The themes are *distinction between 'us' and 'them'*, *questioning the right to rights*, and *securitization and criminalization of migrants and refugees*. The themes and appurtenant findings will be further presented below and connected to the previous research and theoretical framework.

4.2. Material

4.2.1. Data collection

The collection of empirical data was conducted through briefing over the archived Trump administration White House page, the U.S. National Archive's Federal Register, and the archives of both the Department of Justice (DOJ) and the Department of Homeland Security (DHS). Through this process I have thus tried to follow the statements (speech acts), made by ex-president Trump, and looked upon how these statements have been transformed into enforcement action and/or policies.

This process was completed rather quickly since all of the material was archived and convenient to find. The fact that all of the material related to each other – in one way or another – made it easy to 'follow the trail' and include everything from presidential statements made at a press conference, to legal policies that different federal agencies must enforce. Below I will describe the collected material (4.1.2), conduct a critical evaluation of the sources and material (4.1.3), then present my chosen method (4.2), to finally give my perspective on any methodological (4.3) and ethical considerations taken in this study (4.4).

4.2.2. The retrieved material

The material that my critical discourse analysis will be founded upon consists of several different governmental policies, regulations, and statements from the Trump presidency. While some material was issued directly by the president (through executive orders for example) others are guidelines or regulations that different governmental border actors are regulated by. Below I will go through the material that will be used, what potential limitations they possess, and critically interpret different aspects of the different sources.

Former president Trump issued more than 400 policy changes in relation to immigration (Pierce & Bolter, 2020, p. 1) which means that only a few selected executive orders, political addresses

and/or remarks/speeches will be covered and subject to the forthcoming analysis. The selection of the relevant documents will be founded upon the relevance to the thesis when it comes to geographical area (the US south border) and scope (meaning more comprehensive documents will be prioritized). Based on these criteria three executive orders, two speeches by ex-president Trump, one policy, one presidential remark, one presidential proclamation, and one immigration policy review will constitute the material for the analysis.

A presidential executive order can be said to be a concrete form of presidential power in the format of a directive or order to federal agencies. These orders are not legislation but are hard to surpass since they can be changed either by the sitting president by creating another executive order to neutralize the former, or by the Congress which, in theory, could create legal regulations that might obstruct the realization of the order (American Bar Association, 25 January 2021). They are therefore important documents which showcase the president's will and/or ambition regarding a certain political area. The three executive orders that will be reviewed further are:

- Executive order 13767 'Border Security and Immigration Enforcement Improvements' (2017),
- Executive order 13768 'Enhancing Public Safety in the Interior of the United States' (2017),
- Executive order 13841 'Affording Congress an Opportunity to Address Family Separation' (2018).

The policy I have chosen to examine is the policy, in everyday speech referred to as the 'Zero Tolerance policy' which *officially*⁷ was active from April to June in 2018. This policy was introduced by former Attorney General Jeff Sessions (Human Rights Watch, 16 August 2018; Department of Justice, 7 May 2018). This kind of policy has a great impact since all the Attorneys in the United States work and prosecute according to the priorities as set out by the Attorney General – meaning that the Attorney General can take directional decisions which affect millions of people under its jurisdiction (including national immigration law).

⁷ Investigations on the matter have shown that the Zero Tolerance policy, which led to thousands of families being separated at the border, was being implemented before it was officially proclaimed as a 'pilot project' (Riordan Seville & Rapple, 29 June 2018).

4.2.3. *Critical evaluation of the sources*

It is important to remember that in a limited study – based in the discourse analysis tradition – the retrieved material is much narrower than it could have been in a, for example, quantitative content analysis (Bergström & Boréus, 2012, p. 407–8). To make this study as comprehensive as possible I have thus chosen to focus upon both ‘official’ statements and material which have an actual power to make an impact, and also more non-official statements (such as speeches or presidential remarks) since they all are a part of the discourse – whether official or not.

Through Sarah Blakeslee’s source evaluation test (CRAAP) we can examine the sources through the five criteria currency, relevance, authority, accuracy, and purpose (Blakeslee, 2004, 6–7; California State University, n.d). The criterion currency revolves around the question of time and timeliness of the publication of the material (including whether it has been the object of any updates and/or alterations). Relevance aims at looking at whether or not the information in the source is of relevance to your research. The criterion of authority deals with the source of the information/material (questions regarding the author or publisher). Accuracy treats the reliability, truthfulness, and correctness of the material, while purpose aims at finding out why the information/material exists, and what (if any) objective the source has (California State University, n.d).

All of the collected material is retrieved from governmental archives and archives from different departments within the US government. This does however not impact its relevance to the study since we are interested in the ex-president’s term of office. Because of this the *currency*, *relevance*, and *authority* of the sources can be said to be fulfilled since the material is retrieved from different governmentally controlled pages – which is likely to express the official position in relation to different matters. But, as the aim for this thesis is to look upon how the political social construction of migration takes place, the political tendency of the texts is of interest to us and does not constitute a methodological problem. Since the intent of this thesis is to look upon the *construction* of migration, migrants and refugees, the political opinion is then of higher interest than whether or not these opinions might be based upon partial or incorrect information.

The *accuracy* and *purpose* criteria are closely linked to each other since the origin of the statements and their purpose is highly politically influenced and is biased leaving us with opinionated-driven material which, as mentioned above, is key to fulfill the aim for this thesis. So, while these criteria may not be fulfilled in a manner to deem them as ‘qualified’, it is still valuable to us in this thesis – while in other instances they might not be.

With this said, it would be impossible to include everything that has been said through even less informal channels, like the ex-president's twitter account, and one must remember that we can never fully know what has been said behind closed doors, we just get to take part of the final 'product' in the form of statements and/or policies. But, since the language and text is at the center in discourse analysis, it makes sense that it is the spoken and published material that is of most interest for us when conducting a discourse analysis – since this makes for any interpretations which transforms into discursive and social practice.

4.3. Methodological considerations

The choice to use some sort of text analysis for this thesis was quite clear given the discursive dimension of the research questions. Since the thesis aims at critically examining the construction and portrayal of migrants and refugees, the method of CDA came in handy because of its critical core – where the focus lies upon the identification of discourses discharge in the (re)construction of social power relations (Bergström & Boréus, 2012, p. 374). Another important component is that CDA aims at reconstructing social identities and examine how different distinctions between 'us' and 'them' relate to the (re)construction of asymmetrical power relations (ibid, p. 379-380). The fact that CDA is closely linked to social constructivist theories and traditions made it suitable since my theoretical framework (and key concepts of (non)-citizenship and securitization) are based upon a social constructivist approach where language and social power relations sit at the center.

“What in particular makes it suitable for such work [research into social and cultural change] is that it foregrounds links between social practice and language, and the systematic investigation of connections between the nature of social processes and properties of language texts. (I use 'text' for the language 'product' of discursive processes, whether it be written or spoken language; a spoken 'text' can of course be turned into a written text by being transcribed.)” [added by author] (Fairclough, 2013, p. 131).

CDA has however received criticism for being unsystematic because of its openness and indulgent approach towards scientific research. I have therefore tried to be as thorough and systematic as possible when conducting my analysis and thus followed my pre-decided methodological procedure (as stated above [4.2](#)).

4.4. Ethical considerations and positioning

Since the method of CDA includes more than simply an analysis of discourse – it aims at doing a “transdisciplinary analysis of relations between discourse and other elements of the social process” (Fairclough, 2013, p. 10) – it fits the purpose and research questions of this thesis. Seeing that we want to analyze how the portrayal of migrants and refugees (which can be said to be the discursive element) affects their actual right to liberty and security (the social process). Considering that CDA is founded upon critical premises this is also suitable for my research since it too aims of analyze the asymmetrical power relations that I have identified within the subject of migration, state sovereignty and (non)-citizenship and the situation on the US–Mexico border (as mentioned earlier in problem formulation (1.2), previous research (2.1 and 2.2) and key concepts (3.2)). I therefore assume the existence of asymmetrical power relations and acts of securitization to be present within my chosen case.

The critical basis regarding aim and research questions have been influenced by my preconceived notions – but, as Fairclough points out – goes well with the type of research I am conducting since my aim is to challenge the current structure of national belonging being so closely linked to the right to have human rights. As such, even though the material is thoroughly selected by me, it aims at giving a comprehensive picture of the discourse surrounding migration at the US–Mexico border under the Trump administration by including both presidential speeches and official national policies. I am also following the pre-decided methodological plan by using the tools earlier described and not aiming at falsifying or justifying something as true or false – but rather to examine the consequences of different projections and portrayals.

Another essential scrutiny is founded in my western academic perspective regarding this subject, and especially in relation to the people categorized as migrants and refugees. Considering that I never conducted any interviews during the formation of this thesis, most of the ethical apprehensions in relation to this were avoided.

5. Results and analysis

The aim for this thesis is, as previously mentioned, to analyze how the human rights for migrants and refugees are affected by the securitization of the phenomenon of migration and criminalization of migrants and refugees. Considering my chosen method of CDA, the results will be presented in a joint chapter with the analysis since the method is concurrent with analysis.

5.1. Securitization of migration and criminalization of migrant and refugees

Throughout the first two Executive Orders (henceforth EOs) the connection that is being formed between migration and security is easily spotted. The border security and interior enforcement of the national laws are viewed as “critically important to the national security of the United States” and that the “recent surge of illegal immigration at the southern border with Mexico has placed a significant strain on Federal resources and overwhelmed agencies charged with border security and immigration enforcement” (EO 13767, 2017).

Transnational *criminal organizations* operate sophisticated drug- and human trafficking networks and smuggling operations on both sides of the southern border, contributing to a *significant increase* in *violent crimes* and *United States deaths* from dangerous drugs. Among those who illegally enter are those *who seek to harm Americans* through *acts of terror* or *criminal conduct*. Continued illegal immigration presents a *clear and present danger* to the interest of the United States (EO 13767, 2017).

Above we can see how the ex-president Trump is connecting the ‘illegal’ immigration to sophisticated criminal gangs and terrorism when he implies that those who migrate to the US pose as an imminent threat to the ‘interest of the United States’. This poses as an example of *interdiscursivity* – since the focus is drawn towards the discourse of terrorism and national security, it is connected to the phenomenon of transnational migration. The interdiscursivity appears through the incorporation of the language scheme which is often used in the discourse of terrorism – when ‘illegal’ migration is described as a “clear and present danger to the interest of the United States” and which will contribute to an increase of ‘American deaths’ (EO 13767, 2017). This can be said to represent a clear attempt to securitize the phenomenon of migration, while the criminalization of the actors involved is created through the portrayed distinction between ‘us’ and ‘them’. This portrayal of ‘the other’ and identity construction of oneself, as

mentioned earlier, becomes evident where the ‘others’ are constantly being portrayed as dangerous, criminals, or terrorists whereas the ‘we’, as in our case the American people, are the victim of those who ‘violate’ the border, as indicated below.

Our southern border is a pipeline for vast quantities of illegal drugs, including meth, heroin, cocaine and fentanyl. Every week 300 of our citizens are killed by heroin alone, 90 percent of which floods across from our southern border. More Americans will die from drugs this year than were killed in the entire Vietnam War (Trump in Politico, 8 January 2019).

In the above quotation the identity-based distinction between ‘us’ and ‘them’ is established, in the same way a connection is made between transnational migration and issues regarding drug trafficking and ‘American deaths’. These issues are, according to Trump, to be expected to worsen if the migration continues in the same manner as before – hence referring to migration as an existential threat (in so far that it threatens ‘American lives’) and as something urgent that cannot be left unaltered. In the process of turning an issue from non-political to political, it is clear to see how the ‘issue’ of migration is transformed into a matter of security by describing it as an *urgency* which must be dealt with to evade an even bigger crisis.

Throughout the selected EOs the modal verb mostly used is ‘shall’ – which gives the impression of being a wish or suggestion rather than an order. Nearly all of the ‘shall:s’ were aimed at different law enforcement organs, executive departments, the Attorney General, etc. which work for the administration. The words which follow the ‘shall’ do however vary and give very different impressions of the level of seriousness and its certainty. The following meaning, for example, gives an impression of being more of an order than a suggestion: “The Secretary *shall immediately take all appropriate actions to ensure the detention of aliens* apprehended for violations of immigration law pending the outcome of the removal proceedings of their removal from the country” (emphasis added) (EO 13767, 2017). This is interesting since it is aimed at both the Secretary of Homeland Security (as the actor who shall initiate the actions) and the aliens (which in this instance is the goal for the process of initiating the extensive detentions). This use of words, and the transitivity that follows, makes this ‘shall’ more of an obligation.

Another example from the EO 13768 is when the Secretary of DHS is ordered to:

take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes

committed by removable aliens and the family members of such victims
(emphasis added) (EO 13768, 2017).

From this section above we can see the transitivity when the ‘alien’ is identified as the crime committer and the Americans as the victims – and that this issue is portrayed so gravely that there is a need to establish an office within the ICE with all appropriate measures (which indicate it as a rather prompt matter) (EO 13768, 2017).

In the latest of the three EOs, included in the selected material, (which was issued after the Zero Tolerance policy) it states that the Secretary of Homeland Security “*shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry of immigration proceedings involving their members*” (emphasis added) (EO 13841, 2018). This sentence is quite the opposite from the earlier ones where in this case it is more doubtful and regarding the availability of appropriateness that this shall be implemented – notice how this is in relation to the actions that would benefit the migrant and refugee families as opposed to the previous actions that where more enforcement like that dealt with the detention of ‘aliens’.

Another dimension of the victimizing of the American people proceeds from the so-called ‘Victims of Immigration Crime Engagement’-office which was launched in order to “help victims and their families recover” (Department of Homeland Security, 2020). Here, as mentioned earlier, the premise is that the migrants and refugees are the perpetrators, and the American population are the victims – in need of governmental support. This way, the perspective on the different processes is through this focused upon the migrants and refugees as the problem and this is reinforced when the DHS expressed pride in the fact that they have “accelerated returns of tens of thousands of aliens by cutting bureaucratic paperwork” (Department of Homeland Security, 2020). This acceleration of the asylum process is described as something positive – despite the fact that this higher pace does not assure the quality of the asylum process. Rather than to serve with the best interest for the asylum seekers in mind, it comes across as a way to speed up the process of *asylum denial* – despite if the decision is legitimate or not.

The Secretary of DHS is further ordered to “take all appropriate measure action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico” (EO13767, 2017). This and the previous example illustrate how the migration from Mexico is

portrayed as a grave security threat and is thereby used as an argument for legitimizing actions and conducts which normally would be either unethical and/or illegitimate – as a part of the process of securitization. For example, the fact that during a period back in between 2018 and 2019, the Trump–administration placed a suspension and limitation of entry “of *any alien* into the United States across the international boundary between the *United States and Mexico*” (emphasis added) (Trump, 9 November 2018). Through transitivity analysis we can see how the actors who are targeted by these limitations are the migrants and refugees mainly from the South route (even if the Trump administration did restrict the travel allowance for several Muslim countries) – which further depict the picture that it is a certain migrant or refugee, from a certain geographical origin, that the government sought to keep out. This, in turn, can lead to diminishing the chances of seeking and gaining asylum for those travelling on the route from South and Central America in contrast to those coming over the northern border – which would be discriminatory on the basis of *country of origin* (as stipulated in the 1951 Refugee Convention).

The Zero Tolerance policy, issued in 2018, reaffirmed this since the policy is limited to apply to the Southwest border of the US. The policy was intended to explicitly criminalize anyone who crossed the border illegally – irrespectively of the inherent right to seek asylum regardless of how you entered the country. The outcome of the policy nonetheless also has an *implicit criminalization* consequence for migrant children when thousands of families were separated, and the children put in separate holding facilities. To come to a head, one can argue that this geographical limit, of both the Zero Tolerance policy and earlier limitations and suspensions of entry at the US south border, has led to both an explicit and implicit criminalization of migrants and refugees.

How does this affect the right to liberty and security for the migrants and refugees at the border? Considering that all of the retrieved material can be described as speech acts – with the intent to securitize the phenomenon of migration – the acceptance of these as a common reality, as a part of everyday life, has an enormous power. The power to – not just detain migrants and refugees who possess a right to seek asylum – but to reproduce the structure that now holds migrants and refugees equal to prisoners and criminals. The acceptance of this reality, as portrayed by the Trump administration, therefore has the power of justifying the biased detention and apprehension of refugees and migrants. The acceptance of the public, regarding the securitization of migration at the US–Mexico border, can be said to be finalized through the

issuing of policies and orders to the governmental actors working at the border or with the people crossing it.

This targeting gets definite through policies like the Zero Tolerance policy. Since this policy is targeting migrants and refugees who come through the Southern route it is contrary to the General Comment 35 since it is arbitrarily applied to detain people “based on a mandatory rule for a broad category” (UN Human Rights Committee, 2014, §18) and not on a case-by-case basis. The right to liberty and the freedom from arbitrary detention, as a migrant or refugee pursuing to seek asylum, is not only limited from a legal point of view but also from an ethical and political point. The right of these individuals, as declared by several international instruments relating to IHRL, is thus arbitrarily limited because of an individual’s status as a non-citizen but also based on your country of origin (since policies are mainly focused on the US south border (but other policies sought to decline the allowance for people from certain Muslim countries) – thereby in majority affecting people who come from South and Central American states and the Caribbean states).

5.2. Distinction between ‘us’ and ‘them’

Throughout the varying statements by ex-president Trump, the distinction between ‘us’ and ‘them’ becomes evidently clear through the use of terms like “there is a growing humanitarian crisis and security crisis at *our* southern border” and that “the arrival of large numbers of *aliens* will contribute to the overloading of *our* immigration and asylum system and to the release of thousands of *aliens* with no basis for admission into the interior of the United States” (emphasis added) (Donald Trump in Politico, 8 January 2019; Donald Trump, 9 November 2018).

As mentioned earlier, the theory of social constructivism is founded upon the idea that identities, or rather portrayals of identity, are constructed by contrasting attributes found in ‘the other’ and different attributes which often can indicate a certain constructed hierarchy among identities and groups. In our case this becomes evident when the migrants and refugees consistently are referred to as ‘illegal immigrants’, ‘aliens’, ‘criminals’ while the American population (as a group) or individual ‘Americans’ are referred to as ‘brave’, ‘heroic’ and ‘precious’ (Trump in Politico, 8 January 2019). The hierarchy within these words and attributes are recognizable and represent a clear distinction between ‘us’ and ‘them’ and the belonging and not-belonging. The fact that migrants and refugees are consistently referred to as ‘aliens’ do contribute to the separation between those who belong and those who don’t, in a rather dehumanizing way – which in turn could lead to the dismantlement of the *human* rights that

migrants and refugees have through various international legal instruments (e.g., UDHR, ICCPR, Refugee Convention and its Protocol).

Further Trump argues that “thousands of Americans have been brutally killed by those who illegally entered our country and thousands more lives will be lost if we don’t act right now” which is a clear example of turning the question of migration into one of national security by defining it as an urgent and massive threat to national interests (Donald Trump in Politico, 8 January 2019).

The United States expects the arrival at the border between the United States and Mexico (southern border) of a *substantial number of aliens* primarily from *Central America who appear to have no lawful basis for admission into our country*. They are traveling in large, organized groups through Mexico and reportedly intend to enter the United States unlawfully or without proper documentation and to seek asylum, despite the fact that, *based on past experience*, a significant *majority* will not be eligible for or be granted that benefit (emphasis added) (Donald Trump, 9 November 2018).

The great number of *aliens* who cross *unlawfully* into the United States through the southern border consumes *tremendous resources* as the Government seeks to *surveil, apprehend, screen, process, and detain them* (emphasis added) (Donald Trump, 9 November 2018).

Above we can distinguish an attempt to cast suspicion upon migrants and refugees and their legitimacy for trying to enter the US when Trump is questioning their motives, fears, and legal basis for qualifying for asylum. Here the transitivity regarding the actors, their actions and its circumstances are founded in the conviction that migrants and refugees are portrayed and perceived as actively attempting to breach the law (the active actor who is breaching the material border) and the American border control agencies are the ones who are negatively affected by this act as the receiver or victim.

The fact that multiple EO:s, proclamations and national policies are founded upon the conviction that those seeking asylum (whether defined as a migrant or refugee) have no legal basis for applying and that this is “based on past experience, a significant majority will not be eligible for or be granted that benefit” (Donald Trump, 9 November 2018) is both a pessimist and opposing stance. As a result, Trump is both indicating that you, as an individual, have been denied your individual rights to seek asylum based on past experiences, as well as indicating that, because of these experiences, the (according to Trump) eligible minority will be

collectively punished. In relation to international human rights law, this is in violation of the Refugee Convention where it set forth that state parties to the Convention, or its supplementary Protocol, are obligated to “not impose penalties, on account of their illegal entry or presence, on refugees” (UN Convention Relating to the Status of Refugees, 1951).

Furthermore, we can distinguish how the distinction between ‘us’ and ‘them’ is prevalent throughout all of the retrieved material and how the ‘us’ is referred to using good attributes from start to finish, while the migrants’ are usually described with negative attributes (such as illegal, alien, criminal, etc.). These contrasting identities are of interest because of the way identities are produced and reproduced as legitimate through these particularistic and separatist identities based on stereotypes and hearsay. As the excerpt below will show, this constant portrayal of migrants and refugees as dangerous criminals lead to the (re)production of prisonlike structures which begird the migrants and refugees – e.g., the commonality in using terms like detention when talking about immigration politics aimed at achieving and provide safety for those who flee.

Day after day, *precious lives* are cut short by those who have *violated our borders*. In California, an Air Force veteran was *raped, murdered and beaten to death* with a hammer by an *illegal alien* with a long criminal history. In Georgia, an *illegal alien* was recently charged with *murder for killing, beheading and dismembering* his neighbor (emphasis added) (Donald Trump in Politico, 8 January 2019).

Here, on the other hand, the action of ‘illegal’ immigration is described as having the consequence of violent crimes conducted by ‘illegal’ aliens who, according to Trump, “had no right to be in our country” (Donald Trump in Politico, 8 January 2019). In the above extracts migrants are described as, and connected to, criminal, illegal and organized gangs who travel with the intent to illegally enter the US while the American citizens are portrayed as innocent victims. This too poses as an attempt in securitizing the phenomenon of migration and criminalizing the migrants and refugees by distinguishing ‘them’ from ‘us’ by linking coveted attributes to the national identity as ‘Americans’ and bad attributes to the migrants and refugees as ‘aliens’, ‘illegal’, ‘criminals’, etc. The fact that the American victims are described in a much more comprehensive way also led to a more individual based-approach where the audience easily can relate and feel empathetic towards them – while the migrants and refugees are consistently referred to as a rigid mass. The crimes committed by migrants are described in much detail and aims at speaking towards the audience through sentences like: “imagine if it was you child, your husband, or your wife whose life was so cruelly shattered and totally

broken” (Donald Trump in Politico, 8 January 2019). As mentioned earlier, in the chapter problem formulation (1.2) and previous research (2.1), this entails a sense making of belonging and non-belonging which ultimately also entails the lost right to have rights for migrants and refugees (as perceived from a traditional state-centric view).

In connection with the signing of the EO 1384 ex-president Trump, along with ex-vice president Pence, made a short remark about the Zero Tolerance policy and the *family separations* resulted in. Trump then argued that this policy was “about keeping families together while at the same time making sure that we have a very powerful, very strong border” and that the US still holds a zero tolerance policy against those who enter the country illegally (Trump in White House, 20 June 2018). Below we can see how the feelings presented towards the family separations originate from Trump himself – the narrative is his. The family separations are also talked about as if they were agentless – i.e., it is described as something that no one has yet taken the control over – somewhat of a natural phenomenon.

we’re going to have strong — very strong borders, but we’re going to keep the families together. *I didn’t like the sight or the feeling of families being separated. It’s a problem that’s gone on for many years, as you know, through many administrations. And we’re working very hard on immigration. It’s been left out in the cold. People haven’t dealt with it, and we are dealing with it* (emphasis added) (Trump in White House, 20 June 2018).

In a comparison we can see how issues relating to different actors are described in dissimilar ways – depending on whether it affects the ‘American’ people or the illegal aliens. As mentioned earlier, the tragedies that affect American citizens are described in a nuanced way and are also accredited to the illegal aliens, while the fate of migrant and refugee families at the border are brushed off easier – regarding the lack of details and accountability. The nuanced way of describing ‘us’ (as the American people) and the lack of nuance when describing the migrants and refugees have a constitutive effect as ‘they’ are treated as a grey mass in contrast to the detailed descriptions of different American individuals’ fates. Or, as Sessions puts it when presenting the Zero Tolerance policy, that it will lead to a secure border “so that we can give the American people safety and peace of mind” (Sessions, 7 May 2018).

Through these speech acts (which my material can be said to constitute) it is clear to see the two branches of systematics which were infused in the Trump–administration immigration policy: the symbolic political and cultural barrier, in addition to the more enforcement-like

instrumental parts through the initiation and establishment of policies and/or deployment of military personnel. Besides the fact that Trump ordered the construction of a physical wall, more than that he constructed a symbolic wall between ‘those who belong’ and those who don’t.

5.3. Questioning the right to have rights

The essential right to have rights, as previously discussed in previous research (2.1) and under key concepts (3.2.1.) as initiated by Arendt, will constitute as the last theme in the analysis and focus on how the earlier two themes (securitization and identity construction) finally leads to the questioning and/or dismissal of the right to have rights.

The rights of migrants and refugees at the border is dismantled when ex-president Trump argues that “although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to *ensure the removal of aliens who have no right to be in the United States*, the Federal Government has failed to discharge this basic sovereign responsibility” (emphasis added) (EO 13768, 2017). By denying the right of the migrants and refugees to, for example, seek asylum you are acting contrary to the international human rights framework – and especially the right to liberty and security. As the 1951 Refugee Convention, and its complementary Protocol from 1967, points out: those who seek to apply for asylum shall not be punished nor arbitrarily detained for executing their right – even if the asylum seeker would be denied asylum and therefor legitimate to remove – it is problematic that the political debate and federal laws take this rightlessness somewhat for granted.

The Secretary of State and the Secretary of Homeland Security shall consult with the Government of Mexico regarding appropriate steps—consistent with applicable law and the foreign policy, *national security*, and *public-safety interests of the United States*—to address the approach of large groups of aliens traveling through Mexico *with the intent* of entering the United States *unlawfully*, including efforts to *deter, dissuade, and return* such aliens *before they physically enter* United States territory through the southern border (emphasis added) (Donald Trump, 9 November 2018).

Above we can distinguish both the previously mentioned connection between transnational migration and the safety interest of the US, and the intent to obstruct and complicate the act of fleeing to the extent of stopping people from reaching the US territory. Not only is this based on the interpretation of someone else’s intent, but it is highly doubtful if this is in accordance with international refugee law. The fact that multiple actors within the Trump administration, working on all different levels, is based with mistrust and skepticism against the intent and

eligibility of the migrants and refugees does somewhat set the tone for the immigration politics that have been governing in the US. Below we can see how the DHS is referring to the MPP as something good which has contributed to the return of thousands of migrants and refugees – even through this might fall under the notion of collective expulsion, which is prohibited under both CIL, IHRL and international case law. It is interesting how they refer to the asylum proceedings as ‘removal proceedings’ and hence assume the ineligibility of those applying for asylum.

Effectively ended "catch and release" by implementing and expanding the Migrant Protection Protocols. Under MPP, *60,000 aliens* have been *returned to Mexico* for the duration of their *removal* proceedings (Department of Homeland Security, 2020).

In the Zero Tolerance policy the modal verbs are more explicit and clearer than in the previous presented EOs. ‘Will’, ‘cannot’ and ‘must’ are used throughout the presentation of the policy which all have a higher assertiveness behind it – meaning that this is presented as a necessity or obligation rather than a suggestion. In the citation below I have thus marked out both the modal verbs and the different transformative aspects (actions, actors, and circumstances).

I have put in place a “zero tolerance” policy for illegal entry on our Southwest border. If you cross this border unlawfully, then we will prosecute you. It’s that simple. If you smuggle illegal aliens across our border, then we will prosecute you. If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law (emphasis added) (Jeff Sessions, 7 May 2018).

The name ‘zero tolerance’ is vindicating its name through this statement where there seems to be no room for negotiation or exceptions. Since the policy is limited to the Southwest border it implicitly argues that this is where the ‘problem’ is located – Sessions is turning the situation into a question of geographical position and thereby giving the impression of an immigration system built on sheer luck. In an attempt to understand the situation for the migrants and refugees seeking to come to the US, Session says that he “has no doubt that many of those crossing our border illegally are leaving difficult situations. But *we cannot take everyone* on Earth who is in a difficult situation” and goes on by declaring that “citizens of other countries *don’t get to violate our laws* or *rewrite* them for us. People around the world has no right to demand entry in violation of our sovereignty” (emphasis added) (Sessions, 7 May 2018).

This makes for a possible denial of the *right to have rights* for the migrants and refugees – which in a way performs as a dehumanizing move. By stating that the US ‘cannot take everyone who is in a difficult situation’ they thus close the door for people to utilize their right to seek asylum – both those in flight at the moment and those who might have to flee in the future – which both dismisses the individual’s rights and punishes the system. The rewriting of the laws, as Sessions puts it, seems to be referring to the national federal laws of the US which indeed shall not be changed by any outside party (due to the principle of state-sovereignty); but the international legal treaties and conventions, which the US is a state party to, must still be respected and enforced. As mentioned above, the Refugee Convention and Protocol are explicitly referring to the non-refoulment principle as well as to the non-punishment principle for actions taken with the intent to seek asylum that might be contrary to the national immigration laws. Further, in the EO13841, the Attorney General is ordered to request a modification of “the Settlement Agreement in *Flores v Sessions* [...]in a manner that would permit the Secretary, under present resource constrains, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration process” (EO 13841). This, in turn, would authorize the detention of families, including minors, for an uncertain period of time – which, inter alia, is contrary to article 9 of ICCPR (right to liberty and security, and not to be arbitrary detained). So, while the Trump administration tried to end family separations at the border (through the shut-down their own Zero Tolerance policy) they opted to detain families instead (through the regulation and termination of the FSA). One could say that the Trump administration thus legitimized the detention of migrants through both symbolic and instrumental actions through their intent to change the FSA and the implementation of the Zero Tolerance policy. But these actions have a historic affiliation to the US’s way of denying international policies or regulations that somehow is beneficial for non-citizens – such as their open and hard denial of General Comment 31.

The DHS publication ‘Common Sense Immigration Policies’ is a summary of the measures that have been taken relating to immigration during the Trump administration. Because of the nature of this text, it does not give the same clear impression of being a political text – but it does however reinforce some of the ideas that have been discussed in the other texts.

regulations to deter *aliens* from filing *frivolous, fraudulent*, or otherwise *non-meritorious asylum applications* in order to obtain employment authorization. Making key reforms to our legal immigration system to

protect American workers while continuing to welcome the world's best and brightest. Closed legal loopholes in the Flores settlement agreement that incentivized smugglers who use children as pawns to bring aliens into the country. Created H-1B and H-2B fraud reporting tip lines to restore integrity to temporary worker visa system (emphasis added) (Department of Homeland Security, 2020).

In the above extract, from the DHS publication, the line between the ‘good American worker’ and the illegal alien is clear and the criminalization of migrants is therefore up for display. The fact that the DHS expresses a welcoming spirit towards the ‘world’s best and brightest’ indicated that in order to be welcomed as a migrant or refugee you need to possess certain qualities and fulfill certain criteria – otherwise you risk being called out through one of the ‘tip lines’ which are supposed to ‘restore integrity’ into the American immigration system. The right to have the right of seeking asylum is therefore treated as something that is exclusive for only the ‘best’ and ‘brightest’ – rather than for everyone. This can easily be connected to the ‘exclusionary politics’ and particularistic interpretation of human rights that Franke (2008) argues is tangible in a state-centric international structure where national citizenship – rather than humanity – is the granter for human rights.

These types of utterances illustrate how this deep-rooted social construction of (non)belonging as (non)citizenship affects the human rights – which was developed and intended to apply to everyone, everywhere without any distinction such as race, gender, or nationality. This together with the lack of individually shaped asylum processes – due to the Zero Tolerance policy and MPP – generates a structure based on collective expulsion measures. These utterances and policies reproduce the structures that have been shaping the global arena as we know it through the maintenance of asymmetrical power relations between the global south and global north. And by stating that certain people “have no right to be in the United States” (EO 16768) it reaffirms the status of non-citizens while it poses as one of the most definite examples of the denial of rights and dehumanization of migrants and refugees.

6. Discussion

The aim of this thesis has been to analyze how the social construction of migration and profiling of migrants and refugees has affected their right to liberty and security – with an emphasis on family separations and detention – at the US–Mexico border. The analysis supports the theory that there has been a clear securitization of the migration at the border - as we have been able to follow each step of the securitization-process (e.g., perception of threat, securitizing move (speech act), acceptance of construction, and the placement onto the security agenda). This, in turn, has led to the dismissal of rights, both explicit and implicit criminalization of migrants and children, a possibility to detain migrants indefinitely, an attempt to restrict the right to seek asylum, an increase in (arbitrary) detentions, et cetera.

Through the study of modal verbs (modality) and the transitivity of the texts both implicit and explicit portrayals and social constructions of migrants and refugees were identified in the retrieved material. The modal verbs aimed at restricting the rights of migrants and refugees were almost exclusively stated with utmost certainty and assertiveness (e.g., verbs had a high modality). While, on the other hand, any orders aimed at favoring those same people had a lower degree of assertiveness (such as the EO 13841 in relation to addressing the end of the family separations due to the Zero Tolerance policy). The transitivity is, in our case, focused upon the point of view that is presented, and whose perspective the policies and regulations take a stance in. Throughout the result chapter, we have identified that the perspective is ‘the American’, which takes on a victim-role, in contrast to the ‘other’ which are the migrants and refugees who are described as *illegal*, *aliens*, *criminals*, etc. These attributes that are ascribed to ‘us’ (the American people) and ‘them’ (migrants and refugees) thus influence the construction of identity as well as the ascribing of ‘the other’ through the exaggerating of positive and negative counterparts. In addition to this, a difference in the nuance regarding the storytelling in the retrieved material has been identified. While the faiths of ‘Americans’ are described in detail and with the intent to create empathy and compassion, the struggles of migrants and refugees lack these nuances and are brushed off as either a problem they have created by themselves or as a ‘natural cause’.

The study of these two grammatic concepts thus led to the identification of the retrieved material as highly social constructionist in nature – especially regarding the shaping of the ‘everyday life’ as experienced by the migrants and refugees at the border. Through intersubjectivity the

securitizing actor (in our case the Trump administration as a hegemonic actor) thus has the opportunity to shape the common perception of an object (in our case migration) to fit their ideal political objective. The lack of face-to-face situation might simplify for the securitizing actor to persuade the audience of its objectives and the ‘identity’ of the threat – making the acceptance of the securitization act more accessible for the audience.

As the definition of a refugee, migrant, and asylum seeker is an everchanging and non-fixated social construction it possesses the ability to change into one another as the context changes. With this in mind, it is hard to see how the US immigration policies under ex-president Trump align with either the international human rights framework or the previous national immigration laws and regulations (such as the FSA). To then base the legitimacy of national policies – which both affect transnational migration flows as well as on an individual’s rights – on ‘previous experiences’ can be identified as being grounded in both distrust and a dehumanizing attitude. Since the context surrounding migration, and the people migrating or fleeing, is everchanging you cannot predict the rightfulness of one asylum seeker based on a previous one.

Throughout the retrieved material the migrants and refugees are given multiple roles and different aspects seem to collide. While on one hand the migrants are considered a threat to national security, the ‘best’ and ‘brightest’ are still considered to be welcomed – e.g., you would therefore need to fulfill local criteria to be considered legitimate to come to the US. Further, the DHS states that by closing the ‘loopholes’ in the FSA, migrant children have been protected from human smugglers, etc. As the identity of the migrants and refugees shifts throughout the publications so does their role – migrants and refugees are both wanted and unwanted, welcomed, and illegal, dangerous, and vulnerable. One of the most important aspects of this is how the alternation of the FSA – which originated intending to protecting migrant children – has contributed, together with the Zero Tolerance policy, to an even more vulnerable position for children and families at the border since the risk of being separated from each other is greater now.

The distinction between ‘us’ and ‘them’ is thus in a way both concrete – through the construction of a physical wall – as well as symbolic – through the social construction of opposite identities. Through distancing yourself from ‘the other’ you create a legitimate population who ‘belongs’ and an outsider ‘alien’ that does not belong or to put in other words: you reaffirm the accuracy of national citizenship as the granter for human rights. This ‘structural fusion’ of human rights into citizens’ rights – which has been discussed earlier by both Arendt (1973) and Hamacher (2014) – arbitrarily strips non-citizens, such as migrants and refugees, of

their right to human rights. My analysis, therefore, reaffirms the previous research on the subject of non-citizenship concerning the right to rights. It shows that both explicit policies, such as the Zero Tolerance policy and MPP, and more implicit speech acts lead to either denial or declining of human rights for migrants and refugees – regardless of the legitimacy of these actions in relation to international human rights obligations.

The process of legitimizing the Zero Tolerance Policy and MPP, which normally would not be accepted as legitimate, can be described through the theory of securitization as an attempt at moving the phenomenon of migration onto the security agenda. By referring to and portraying the migration across the US-Mexico border as something that poses as a national security- and terror threat, that must be solved by extended militarization and detention, a connection between migration and criminals is (re)produced and upheld. This in turn has affected, as has been shown, the right to liberty and security for migrants and refugees at the US-Mexico border since their rights has either been compromised, reformed, or denied with the intent to benefit the US. This is the result after the targeted apprehensions, surveillance, detention, and removal from US territory. This, in turn, has resulted in the strategic denial of the right to seek asylum through the fast paced system, MPP, and the intent to make it harder to get to the US in the first place by higher military presence. Through the EO:s, and policies the Trump administration managed to implement a zero-tolerance towards all ‘illegal’ immigration – thus totally shutting the door for people seeking to come into the US regardless of the vulnerability in the situation. One could argue that these targeting policies have a discriminatory side since they are specifically aimed at migrants and refugees from a certain geographical point of origin (e.g., where the majority is coming from South and Central America through Mexico).

The connection between migration and security is partly established through the constant reinforcing of the view of migrants and refugees through ascribing negative attributes (such as alien, illegal, and criminal). As a consequence, the wall between the US and Mexico seems to have a social constructionist dimension since a clear distinction is made between the ‘American victim’ and the ‘illegal alien’ who never truly can become one of ‘us’. The American immigration politics has thus affected migrants and refugees on several different levels (both physical, but also psychological as being treated as criminals). This has evolved through both ethical, moral, and humanitarian ‘soft’ ways, as well as through military enforcement actions – or as both symbolic and instrumental apparatus. The toughened attitude and political tone have thus resulted in breaches of the right to liberty and security on several accounts through targeted policies, creation of fear, and arbitrary mass detentions and/or expulsions. The aforementioned

process of securitizing a phenomenon showcases the power that language possesses – especially when deriving from a hegemonic power position.

Securitization of migration is however not limited to our chosen case but has become a rather common practice within the globalized world order. Similarities to this case can be found in the strategies, vocabulary, and policies along other international borders. The production of security threats is one of the great paradoxes in globalization as earlier discussed in the way that while the flow of services and goods generally are requested, the movement of people labelled migrant or refugee is restricted. This amounts to a more explicit purpose of keeping migrants and refugees from seeking asylum through extended militarization, comprehensive immigration strategies, and mass detention and/or removals. By blurring the lines between immigration policies, criminal law, and counter-terrorism strategies, the process of securitization is not as comprehensive but much more convenient than it might have been before in the way that this blurring has become common practice.

Through this thesis I have thus identified some of the main discursive strategies to regulate or dismiss migration and how this affects the right to liberty and security for migrants. Through focusing on the securitization of migration we have been able to see how the portrayal of migration and connection to security issues raise the degree of currency of immigration politics in the political debate. The policies and agendas that otherwise would be considered illegitimate, if not illegal, are through this act of securitization now considered legitimate. As long as a government can turn a question into the national security sector almost anything can be accepted. It is therefore important to inspect speech acts, especially those coming from hegemonic actors, to determine both the accuracy and the legal aspects of the actions proposed.

The fact that the US never accepted General Comment 31 as legitimate (regarding the fact that states must respect and ensure the human rights to everyone either within their power or effective control) might suggest their positioning toward operating and guaranteeing non-citizens these rights. This can be placed within the bigger debate surrounding the nexus between the universality of the human rights and the principle of state sovereignty. The notion of human rights – either as a political construction based on citizenship or seen as an inherent right due to humanity – needs to be reconceptualized to include the most vulnerable who have fallen through the cracks of the system that is built by and for citizens.

7. Conclusion and further research

7.1. Conclusion

This thesis has aimed at answering the research questions about how the Trump administration's construction of migration as a security threat affected the right to liberty and security for migrants and refugees. Based in my qualitative CDA, and through the lens of social constructionism, I have found that by portraying migrants and refugees as a security threat had both implicit and explicit effects on the right to liberty and security. The implicit effects were identified by analyzing the underlying, but constant, referring to the differences between 'us' as the 'American people' and 'them' as the migrants and refugees. This in turn led to the more and more explicit either denial of or alternation of the right to rights – e.g., as a constant reminder that the migrants and refugees at the border do not belong in the US and hence are not under the responsibility of the US as a sovereign state.

The Trump administration's construction of migration as a security threat affected the right to liberty of migrants and refugees by either denying or distorting the right to rights and acknowledging migrants and refugees as legitimate rightsholders. Through practices like mass detention and collective expulsion, as a result of the governmental speech acts, the right to liberty was severely restricted. This case, as a part of a bigger context with an overall hardened attitude and border politics, illustrates the importance and power of language and perception of ourselves and the world. Even if we might not want it, Arendt's theory regarding the right to have rights, is maybe more relevant today than ever as we are positioned in a globalized world surrounded by xenophobic border politics and pronounced distinctions between those who belong and those who do not. When doing so you alienate the phenomenon of migration and the people migrating – even though it has been an important, if not crucial, part of human history.

The distinction between 'us' and 'them', as a result of a social construction of identities and borders, thus affects the accessibility to rights (or the right to have rights) for those who, according to this social construction, do not fit into the predetermined borders and limits. These borders and limits are, as this thesis has illustrated, both explicit and implicit (through the direct application of attributes, or the implicit indication on value), physical and psychological (as the wall along the US-Mexico border, and through the imagined belonging and alienation). Through the securitization of migration international borders have regained its political value

on the cost of migrants and refugees who are left to pay the prize – often by the neglect of their human rights.

7.2. Further research

The research on the subject of international migration, security, and human rights needs to be elevated and renewed to fit the challenges that come hand in hand with the globalized world. To further develop the research, it would be necessary to include interviews and surveys with both migrants and refugees, but also government officials, for the method to be as inclusive as possible and generating a more experienced-based research. In addition to this, future research might want to include a more comprehensive examination of the issues the Covid-19 pandemic has meant for the realization of rights for migrants and refugees – both at the US-Mexico border but also elsewhere. It would also be of interest to look upon how the Biden administration immigration policy has progressed, what policies are being implemented, and how this might affect the right to liberty and security for migrants and refugees.

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