Deportation of ‘Criminal Foreigners’
- a Discourse Analysis of the Parliamentary and Political Debates of the Bill L 156

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Abstract

The thesis critically assesses parliamentary and political discussions preceding the adoption of a Danish law from 2018, which has the purpose of increasing the use of deportation of what is referred to as ‘criminal foreigners’. The purpose is to investigate how persons brought up in Denmark can be viewed as foreigners rather than Danes and hence why they are deportable when convicted. This is done by identifying antagonisms and common assumptions in the arguments for and against it. Thus, the method used is discourse analysis building on the theoretical framework of Laclau and Mouffe’s discourse analysis. The theory of the community of value is used as lens to understand the identified discourses through. It is found that claims that problematise deportation on the grounds that the persons are Danes is not successful in the order of discourse, and that the discursive struggle primarily is over the role of human rights.

Keywords: deportation, belonging, foreignness, discursive struggle, community of value

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1 Introduction

1.1 Introduction to the topic

The area of interest for this thesis is deportation of what in public and political debates in Denmark are often referred to as ‘criminal foreigners’. In these debates there is a lot of focus on cases where criminal non-citizens cannot be deported to their countries of citizenship, with reference to human rights, especially the right to private and family life. This right is protected in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, often referred to as the European Convention on Human Rights or the abbreviation ECHR, which will be used from now on. Consequently, the human rights conventions have been criticised and problematised. In a public opinion poll from 2017 48% held that Denmark should withdraw from the ECHR if it could not be made easier to deport criminal non-citizens (Holstein, 2017a). This scepticism can be connected to cases concerning convicted criminals like Gimi Levakovic and Shuiab Khan. Levakovic is a Croatian citizen who has been living in Denmark since he was three years old and who in 2016 was tried deported (Khalaf & Starup, 2017, pp. 273-277). Shuiab Khan is a Pakistani citizen who was born and has grown up in Denmark and who has also been unsuccessfully tried deported, most recently in 2017 (Toft, 2018). As this judgment was appealed, he was, though, deported in late 2018 after the deportation law had been tightened in May (Lov om ændring af udlændingeloven, 2018). The interest of the thesis is how these persons, who have lived in Denmark since their early childhood, can be viewed as deportable, as they could also have been constructed as Danes.

In the period from 2000 to 2017 more than 10,000 persons in Denmark have been sentenced to deportation following conviction which does not include those who have been administratively deported (Hartmann, 2017, pp. 122-127). Even so, cases where deportation has not been possible have led to demands for increased use of deportation of convicted non-citizens. As a consequence, laws and regulations have been adopted in recent years (Udædlinge- og Integrationsministeriet, 2019). These include law amendments of the Aliens Act, Law number 1744 of 2016, law number 469 of 2018, and law number 174 of 2019. Law number 469 of 2018 will be referred to as law 469 and its main stipulations will be outlined in the material chapter of the thesis. With law number 1744 of 2016 ‘criminal foreigners’ must be deported unless it “with certainty” will breach the international obligations of Denmark (Lov om ændring af udlændingeloven, 2016, author’s translation). With law number 174 of 2019 the punishment for violations of travel ban has been increased (Lov om ændring af udlændingeloven, integrationsloven, repatrieringsloven og forskellige andre love, 2019).
When deportation has been problematised it has mostly been with reference to possible breaches of the international human rights obligations of Denmark. In political and public debates, it is thus not generally problematised whether deportation of persons who have lived in Denmark for most of their lives should be possible, and if ‘criminal foreigners’ is an appropriate term to use. There are some counterarguments which challenge this kind of thinking, though not successfully. The same tendency can be found in the parliamentary debate of the bill L 156, which was adopted as law 469. This is the situation which has sparked the research of this thesis.

The research that has been made in Denmark is also mostly concerned with the extent that deportation can be used without breaching international human rights obligations. The thesis therefore draws on research made in other contexts, which view deportation as site for understanding states not only as legal communities but as communities of value. Community of value refers to the way that inhabitants of states are described as not only being connected in a legal community but also a community which has a normative dimension. Deportation thus serves the function of demarcating who does not belong to this community.

### 1.2 Purpose and aim

The purpose of the thesis is to understand how persons who have been brought up in or have come to Denmark in their formative years and who have lived in the country for the most substantial periods of their lives can come to be understood as foreigners rather than Danes, and therefore, why they are viewed as deportable when convicted. This is explored through a discourse analysis, primarily of the parliamentary debate of the bill L 156. The analysis focuses both on discourses that legitimise increased use of deportation and on discourses that problematise this pursue. The aim is thus to explore the antagonisms and common assumptions in the discourses and deconstruct these to problematise them in an academic discussion. The purpose thus follows the position of Foucault that “[a] critique does not consist in saying that things aren’t good the way they are. It consists in seeing on what type of assumptions, of familiar notions, of established, unexamined ways of thinking the accepted practices are based” (Foucault, 1994).

### 1.3 Research question

What are the antagonisms and common assumptions in the discourses that are respectively legitimising and problematising the pursuit of increased use of deportation of convicted criminal,
non-citizen, long-term residents in the political debates regarding the bill L 156 and what does the *community of value* add to further understandings of these different discourses?

### 1.4 Relevance for human rights

The research area of deportation is related to human rights in different ways. In individual cases of deportation, it is concerns for human rights that are brought up as obstacles or protections, depending on the point of view. This is for example the right to private and family life and the right against torture and degrading treatment. Deportation is also connected to questions of global justice and the responsibilities that states have towards each other. Also, deportation is related to the question of who counts as a member of a political community and who can be excluded, which is the area of study that this thesis is interested in. The thesis thus contributes to this by studying understandings of belonging in Denmark in a political debate regarding deportation. As becomes evident this debate also concerns different understandings of support for human rights.

Therefore, it is also a subject which is relevant to study in connection to support for human rights, since in Denmark it has been observed that there is less support for human rights when they are believed to protect the ‘wrong persons’. This raises the question of how support for human rights should be maintained, including if it is appropriate to downgrade some rights in order to gain support for the human rights project in general.

### 1.5 Previous research

The previous research is divided into two sections. The first covers how deportation has been studied in general and the second focuses on how it has been studied in the Danish context.

#### 1.5.1 Deportation

Anderson et al. have identified different strands of the study of deportation in recent times (Anderson, et al., 2011, pp. 251-253). One focuses on the consequences for subjects of deportation, for example in terms of their rights. But it also includes studies from a normative perspective regarding the rights of permanent residents. Carens (2005) focuses on what rights permanent residents should have compared to citizens in a state, looking at different groups of rights. He argues that “deportation of long-term residents convicted of serious criminal offences is morally wrong” (Carens, 2005, p. 102). Another strand focuses on the rise of what can be termed “the deportation state” (Anderson, et al., 2011, p. 552, emphasis in original) which includes a study of developments in states as the use of
deportation has increased. Yet another focuses on the “construction of the deportable subject” (ibid., 2011, p. 552, emphasis in original) within studies of securitisation, criminalisation, and race.

The study by Anderson et al. (2011) itself is distinguished from the other identified strands of scholarship as it rather focuses on the consequences for the political community and therefore both for those who belong to it and those who do not. This conceptualisation of deportation as something through which to understand inclusion and exclusion in the political community, is relevant for the present thesis.

Anderson et al. (2011) looking at the UK and the US highlight the rise in use of deportation which they argue is characteristic for liberal democracies in general. Through deportation they look at both the legal and normative implications of membership, as deportation is constitutive of both (ibid., pp. 553-555). “Deportation, like naturalisation, helps to define the normative character of a political community” (ibid., p. 555). Deportation affirms the values of the society in the negative, but it is "more than simply naturalisation’s negative corollary” (ibid., p. 555) as deportation has further consequences than denial of citizenship application, since it prevents further stay in the state (ibid., p. 556). This idea that the political and legal community is also a community of value and its connection to deportation is further elaborated by Anderson (2013) and will be explained in the theory section of this work.

It has also been studied how it changes over time who can be deported. Gibney (2013) analyses parliamentary debates in UK to illustrate how it has changed which subjects are deportable. With this he aims to show that membership is not only a legal category, but that it also has a normative aspect which changes over time. Considering the norm that states cannot deport their own citizens he questions whether the UK has really moved far from the ancient practice of banishment and that recent concerns for security have redefined who are seen as being worthy of protection in the community (Gibney, 2013, pp. 221-223+234-235).

Deportation has to a limited extent been studied from a historical perspective (Walters, 2010, p. 70) which Walters continues by studying deportation as a practice which is “constitutive of citizenship” (ibid., p. 71-72, emphasis in original) and positioning it within the international system of managing populations (ibid., p. 72). He analyses the practice by situating it in relation to other kinds of expulsion that have been and are used by states, and hereby traces the genealogy of deportation (ibid., pp. 70-83). Furthermore, he analyses deportation as different forms of power; sovereignty, governmentality, and international police (ibid., pp. 83-92).
1.5.2 Deportation in Denmark

There is also some literature that covers the topic of deportation in Denmark, however, this is rather scattered.

As mentioned above deportation has been studied through an international lens, focusing on it as a way of managing populations. In the same line Arce and Suárez-Krabbe explore the “European border regime” (Arce & Suárez-Krabbe, 2018, p. 107) focusing on Denmark. The authors explore the struggles by persons of colour against racial oppression, which is viewed from a post-colonial perspective and understood as a form of apartheid (ibid., pp. 108-113). The focus is on the consequences for the subjects that are not privileged in the system (ibid., pp. 114-119+122). Furthermore, the actual consequences are contrasted with the claimed intentions by states.

Sane (1999) has studied deportation in Denmark from a historical perspective focusing on the period 1875-1915. The background for this is a law adopted in 1875 which broadened the possibilities for deporting aliens and had the consequence that large numbers of foreigners were deported in the following years (ibid., p. 2). Through analysing these tendencies Sane argues that this is connected to how foreigners are distinguished in modern Denmark (ibid., p. 3+31).

More recently, deportation has been studied in relation to the international human rights obligations and the political and public debates in Denmark. By examining rulings by the European Court of Justice and the European Court of Human Rights (ECtHR) Khalaf and Starup (2017) conclude that it is very difficult to assess if deportation is in breach with international obligations in specific cases. The starting point of the analysis is the case of Levakovic mentioned above and the attention that it has received from politicians and others (Khalaf & Starup, 2017, pp. 273-275). Following their findings, Khalaf and Starup (2017) argue that it is also difficult to impact the ECtHR to a different interpretation in cases concerning deportation, through “dialogue” (ibid., pp. 298-299). They refer to the president of the Danish Institute for Human Rights (DIHR)¹, Jonas Christoffersen, who contrarily has expressed the viewpoint that the politicians have a possibility of guiding the courts towards an increased use of deportation.

Starup has also made other contributions to the legal study of deportation in Denmark. In a paper from 2013 he concludes that it would be difficult to further the possibility for the use of deportation of criminals within the international legal framework (Starup, 2013). In a more recent paper, he accounts for the background for the law 469, which includes the political demands as well as the laws previously in place (Starup, 2018). Furthermore, he analyses the consequences of the law 469, which

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¹ An independent government institution
provides guidelines for the Danish courts regarding how the ECtHR has interpreted the legality of deportation.

Christoffersen (2017) has studied whether Denmark could increase its use of deportation without breaching international human rights obligations. The purpose of the study was both to ensure that the human rights of the potential subjects of deportation are not violated but also that there is continued respect for human rights (Christoffersen, 2017, p. 7). He concluded that Denmark could use deportation in more cases without breaching international obligations and therefore also that the critique of the human rights system should rather be turned at Danish authorities who have failed to deport in cases where it might have been possible (ibid., pp. 7-8+43-45). He also made suggestions for how to tighten deportation practices (ibid., pp. 46-47). Some of these are amendments made with the law 469.

In another report made for the DIHR, there is positive response to the adoption of guidelines for the Danish courts regarding the interpretations by the ECtHR which are part of the law 469 (Kessing, 2018, pp. 17-20). However, it is concluded that these could be more thorough by including more previous rulings.

There is also research that touches on the criticism that has been made of human rights in the cases where deportation has been considered illegitimate by Danish courts, because of reference to article 8 of the ECHR. Hartmann (2017) considers whether the critique is reasonable and whether it is representative for the state of affairs in matters of deportation. He uses statistics and cases to show that Denmark has a lot of discretion for using deportation and problematises the tendency that it is cases where deportation has been considered illegitimate that receives the most attention in the media (Hartmann, 2017, pp. 122-127). He assesses the criticism that human rights protect ‘the wrong people’ (ibid., pp. 120-121) and questions whether it is reasonable in cases like that of Levakovic, who has grown up in Denmark and does not have any connection to Croatia where he is citizen, that he should be the “problem” of Croatia (ibid., p. 127).

Furthermore, Hartmann (2017) refutes the criticism found in political and public debates, that it is the dynamic interpretations of the ECtHR which is the reason that Denmark cannot deport in all the cases that it should be able to, quoting for example Christoffersen (Hartmann, 2017). This is because the article 8, which is invoked, has always been part of the ECHR.
1.5.3 Situating the thesis in the previous research

The study of deportation has different strands of which one has been identified as relevant for the present work. This treats deportation as something which can be used for analysing the normative dimensions of membership in the state. This can be used for understanding the discourse surrounding the ‘criminal foreigner’ as a subject who can be deported from Denmark. The literature covering Denmark concerns the legality of deportation in the international human rights framework. Furthermore, it is questioned whether deportation of long-term residents is reasonable, but there is no research looking into the underlying assumptions of the discourse of deportation of what is referred to as ‘criminal foreigners’ in Denmark, which is what the present thesis aims at investigating. Therefore, it is relevant to conduct a discourse analysis as this can provide understanding of the arguments in the political debate in Denmark.

1.6 Delimitations

The study of discourses is confined to study statements made by politicians in the parliament and in the media. Furthermore, statements by organisations are included to connect the discourses to the wider public debates. Opinions of common citizens are not included as it is deemed outside the scope of the thesis.

Previously adopted laws and parliamentary debates, political agreements and debates could also have been relevant for the study, but only a more recent law and debates surrounding it are used as material for the analysis.

The formulation that ‘criminal foreigners’ should be deported unless it “with certainty” would breach the international obligations of Denmark was first added to the Aliens Act in 2011, but the wording was then changed again in 2012, before it re-entered in 2016 as mentioned above (Starup, 2018, pp. 3-4). With both adoptions it was problematised whether it has real implications for the number of deportations. And with the adoption of the law 469 this was also discussed in the parliamentary debates (Folketingsdebat, 2018). Furthermore, it was discussed whether there can be made further amendments to be able to deport higher numbers of what is referred to as ‘criminal foreigners’. Disputes over the consequences and claims that the laws are only symbol politics are outside the scope of the thesis. The analysis of the parliamentary debate and other materials also reveal arguments about the independence of the Danish courts, with the adoption of the law 469, but these have not been included as they are not deemed relevant for the aim of the thesis.
Deportation is relevant to study alongside naturalisation, but due to the limitations of the thesis only discourses of deportation are studied.

The analysis of the discourse of ‘criminal foreigner’ does not consider the construction of them as ‘criminals’, where they could instead have been constructed as for example ‘previously convicted’.

1.7 Chapter outline

The thesis is divided into four main sections of which three are remaining.

The second section concerns the theory and method used in the thesis which is divided into three sections. The first concerns the legal and normative implications of deportation and the implications of deportation for understanding membership in political communities. The second section concerns the theoretical foundation of discourse analysis. Finally, the method of discourse analysis and the implications of the method is discussed as well as how it has been used in this thesis, followed by a description of the material that has been analysed.

The third section is a presentation of the analysis, which is the academic contribution that the thesis makes. This is divided into two main sections, according to the two discursive struggles that have been identified through analysis. The two parts of the analysis are each followed by a discussion.

The fourth section is the conclusion, where the main findings are presented along with a discussion of these. Furthermore, there is an assessment of the validity and implications of the work as well as suggestions for further work with the subject.

2 Theory and method

2.1 The legal and normative implications of deportation

Deportation is a “valuable optic through which to understand contemporary citizenship” (Anderson, et al., 2011, p. 548) and membership, as deportation clearly distinguishes those who belong from those who do not. Citizenship both has a legal and a normative aspect. Citizenship as a legal status is defined in both national and international law (ibid., 2011, p. 553). The normative aspect is the ideal about shared norms and values in the state. “[M]embership is not merely a legal category and is not simply confined to formal citizenship” (Gibney, 2013, p. 221). Deportation therefore reaffirms legal rights as well as normative ideals.
2.1.1 The legal implications of deportation

The right not to be deported “can be seen as one of the few remaining privileges which separates citizens from settled non-citizens in contemporary liberal states” (Anderson, et al., 2011, p. 548) as non-citizens now have many of the rights that earlier exclusively belonged to citizens. Some citizens can though lose their citizenship and become ‘deportable’ (ibid., pp. 553-554 referencing De Genova, 2002). “Every act of deportation might be seen as reaffirming the significance of the unconditional right of residence that citizenship provides” (ibid., 2011, p. 548). This legal right to stay is exactly why deportation can be used to understand citizenship as it clearly separates the citizen from the non-citizen. Legal citizenship is not always the same as a status of belonging and membership (ibid., p. 554). An example of this is the special status of EU citizens, who in some member states have more protection against deportation than other legal residents.

2.1.2 The normative implications of deportation

As well as the legal right to stay, deportation reaffirms the normative dimensions of citizenship, as it establishes who are not fit for citizenship or even residence. As it is established who do not belong, it also establishes what kinds of persons that belong to the community.

2.1.2.1 The community of value

The state is thus not only a legal community, but also a community of value (Anderson, 2013), as “[m]odern states portray themselves not as arbitrary collections of people hung together by a common legal status, but as communities of shared value” (Anderson, et al., 2011, p. 554). Its members are thus persons who share “common ideals and (exemplary) patterns of behaviour expressed through ethnicity, religion, culture, or language” and who are related in communities (Anderson, 2013, p. 2). The state claims legitimacy through the community of value and “in this way it often overlaps with ideas of the nation” (ibid., p. 3). “The community of value is populated by ‘good citizens’, law-abiding and hard-working members of stable and respectable families. The policy maker and politician are often self-consciously ‘good citizens’, and so too, if less self-consciously, are the academic researcher and the anti-deportation campaigner” (ibid., p. 3). Good citizens might have very different ideas about policies regarding immigration. But good citizens have in common that they live up to liberal ideals and are therefore autonomous, self-owning, rational, independent and capable of moral reasoning. The community of value confirms certain values and “is valued” as well (ibid. p.3, emphasis in original). This means that it must be protected, especially from outsiders who “[a]t the
national level (…) are equated with foreigners” (ibid., p. 3). The foreigner, the non-citizen, is a legal category, but it also has normative implications since “[p]art of being an outsider is not sharing the same values – which easily becomes not having the right values” (ibid., p. 4). The community of value is thus defined from the outside by the foreigner, the non-citizen (Honig, 2003). But it is also defined from the inside by the failed citizen, who is a formal citizen, but who does not live up to the valued liberal ideals and who is therefore a disappointment and a threat to the community. Different kinds of persons can be failed citizens, for example persons who are convicted of crimes are “strongly imagined as internal Others, who have proved themselves unworthy of membership of the community of value” (Anderson, 2013, p. 4). Both the failed citizen and the foreigner lack values as well as value since membership in the community of value is also based on “economic worth, independence, self-sufficiency, and hard work” (ibid., p. 5).

The problems linked to both categories are “often presented as problems of ‘culture’” (Anderson, 2014, p. 5). “These ‘migrant’ cultural problems and their resultant exclusions can be presented as running through generations of families” (ibid., p. 5). And as both categories are viewed as not sharing the values of the community they are not seen as “properly modern” (Anderson, 2013, p. 7). In some instances, the distinction between the outsider, who is excluded, and the failed citizen is not entirely clear as “the excluded also fail, and the failed are also excluded” (ibid., p. 5). Both are imagined as “the undeserving poor who want something for nothing” (Anderson, 2014, p. 5, emphasis in original). The outsiders are undeserving because they do not belong, and the failed citizens are undeserving because they do not contribute to the community.

Apart from good citizens, non-citizens, and failed citizens there are also tolerated citizens, who must constantly prove to be good enough to the community of value (Anderson, 2013, pp. 6-7). They are situated at its boundaries, and thus demarcate these. Different groups and individuals can move through the different categories. The members of the different categories that are close to failure or exclusion, struggle with each other and are tried distinguished from one another in order to claim membership in the community of value. Thus, formal citizenship is not the same as membership in the community of value (ibid., p. 93+110).

2.1.2.2 Deportation and the community of value

The tendency that states portray themselves as communities of values is problematic as “modern states are, for the most part, communities of birth rather than communities of value: the result of the effects of some combination of jus sanguinis and jus soli rather than a contractual agreement amongst
individuals to forward key values or principles” (Anderson, et al., 2011, pp. 553-554 referencing Shachar, 2009). Deportation reinforces the values that the community is seen to build on and serves as “a public statement of what kinds of behaviour are unacceptable and therefore at odds with this normative, idealized conception of the community” (Gibney, 2013, p. 219). Deportation therefore “tracks those whose practices and values are seen as antithetical to the community of value” (ibid., p. 219). According to Kanstroom (2007) the affirmation of who belongs to the community is especially important during periods with extensive immigration (ibid., p. 219). “Deportation serves both to reassert the value of social unity and reassure the public that migration will be managed in a way beneficial to members” (ibid., p. 219). The use of deportation of criminal non-citizens also “indicates that the nation is both protected and worth of protection” (Anderson, 2013, p. 128).

Deportation used against legal residents who violate criminal laws can be conceptualised as a form of sanction. It is an additional punishment and is “often justified on the grounds of protecting the host community” (Anderson, et al., 2011, p. 549). This means that non-citizens are ‘eternal guests’ (ibid., p. 549 referencing Kanstroom, 2007) as continued stay and acceptance in the community are dependent on behaviour in accordance with the norms.

Following this, deportation is not only relevant for ‘foreigners’ but also for citizens and members, since it changes over time who can be excluded from membership (Gibney, 2013, pp. 219-220). This change is “constrained by legal, political, and moral considerations which may draw on rival accounts of membership” (Anderson, 2013, p. 128). Deportation of foreign national criminals shows that criminals, whether they are foreign or not, do not belong to the community of value (ibid., p. 128). And it also serves to show that there can be some kind of agreement on who are members of the community of value and who can be deported. As there is relatively more disagreement about whether deportation of other groups of non-citizens is legitimate.

2.2 Laclau and Mouffe’s discourse analysis

Discourse in general terms means “a particular way of talking about and understanding the world” (Jørgensen & Phillips, 2002, p. 1, emphasis in original). In Laclau and Mouffe’s discourse analysis every social action is discursive and can thus be analysed with discourse analytical tools (ibid., 2002, p. 24). That every social phenomenon is understood as discourse does not mean that physical and social objects do not exist, but it means that how we understand social phenomena is always contingent on discourse (ibid., p. 35).
Their poststructuralist theory is a fusion of Marxist thinking and structuralism (ibid., p. 25) and therefore builds on the idea that “discourse constructs the social world in meaning” (ibid., p. 6), and since language is always changing this meaning can never be permanently fixed. In language things acquire meaning as we position them in relation to other things, but the way that we position them is constantly up to change (ibid., p. 25). Even though it is not possible to fix meaning, it is still the struggle for this fixation that is of interest to discourse analysis. *Discursive struggle* is a key concept for the theory, since different discourses constantly struggle to become the dominant discourse, the achievement of which is called *hegemony*.

The aim of discourse analysis is to investigate the processes in which meaning is aimed at being fixed and the processes where some meanings are “accepted as true or ‘naturalised’, and others are not” (ibid., p. 21).

### 2.2.1 The structure of discourses

“A discourse is understood as the fixation of meaning within a particular domain” (Jørgensen & Phillips, 2002, p. 26). Laclau and Mouffe use different concepts to describe this fixation of signs which will be described in the following.

“All signs in a discourse are *moments*” (ibid., p. 26, emphasis in original) and the different signs in the system are ascribed meanings by their relation to the other signs. This relation between the different signs is established through *articulation* (ibid., p. 28). *Nodal points* are the signs that discourses are constructed around, and the other signs thus gain their meaning according to their relation to the nodal points and are given meaning when they are connected to other signs. Nodal points do not have meaning in themselves but through *chains of equivalence* “they are combined with other signs that fill them with meaning” (ibid., p. 50).

The fixation of meanings of signs in moments is done by excluding all other possible meanings. All the other possibilities of meaning which a discourse excludes are called *the field of discursivity* (ibid., p. 27). The signs have other meanings in other discourses and a discourse is therefore always challenged by other meanings. However, the field of discursivity also includes other discourses that are not in conflict with the discourse, but rather are not relevant to it. Jørgensen and Phillips find it useful to distinguish between these situations and therefore use the concept *order of discourse*, formulated by Fairclough, to encompass other discourses that seek to establish meaning in the same domain and use the field of discursivity to cover all other discourses.
Element is the word used to describe the signs that do not have a fixed meaning, and therefore have several possible meanings. This is important for understanding the struggle between discourses as “a discourse attempts to transform elements into moments” (ibid., p. 28). It is called a closure when the meaning of a sign is fixed, though this can never be permanent.

Floating signifiers are “those elements which are particularly open to different ascriptions of meaning” (ibid., p. 28). Nodal points are floating signifiers since they are “signs that different discourses struggle to invest with meaning in their own particular way” (ibid., p. 28).

2.2.2 Hegemony, objectivity, and antagonism

Laclau and Mouffe build on Gramsci’s theory and use the concept of hegemony which “is the term for the social consensus, which masks people’s real interests” (Jørgensen & Phillips, 2002, p. 32). According to Gramsci the groups that exist in society are the classes produced by the economy. But Laclau and Mouffe refute this idea and hold that the groups which exist in a society are created through “political, discursive processes” (ibid., p. 33), and therefore it is relevant to study how these are discursively constructed.

Just as discourses try to establish that signs have one definite meaning, we act as if the social world gives an objective truth about group belonging and our identities. However, as well as the fixation of meaning in discourses the structures in society can change and must not necessarily be in one way. The aim of analysis of the social world is thus “not to uncover the objective reality (…) but to explore how we create this reality so that it appears objective and natural” (ibid., p. 33, emphasis in original).

Those discourses that appear so natural that it is forgotten that there could have been other understandings of the signs are called objective or sedimented (ibid., p. 36). They can though always “enter the play of politics and be problematised in new articulations” (ibid., 2002, p. 36). Between political conflict and objectivity are hegemonic interventions, where one understanding is naturalised by oppressing other understandings.

Objectivity can be called ideology in discourse theory as other possible meanings are hidden. In other approaches the concept is used to “identify and criticise unjust power relations” (ibid., p. 37), but in Laclau and Mouffe’s theory this is not possible because ideology is defined as objectivity. A society without objectivity cannot be imagined, as we cannot constantly question everything. Following, the concept ideology is rarely used in their theory.

Laclau and Mouffe’s conception of power, resembles that of Foucault, who sees power as ‘productive’ and not something that someone exercises over others. There cannot be a society without
power, since power “creates our knowledge, our identities and how we relate to one another as groups or individuals” (ibid., p. 37). This also shows that different kinds of societies are possible as a specific kind of society is not necessary. When there is objectivity it has been forgotten that the world is formed by power and constructed in politics (ibid., 2002, p. 38).

According to Laclau and Mouffe society does not exist as a totality, but by using concepts like ‘the nation’ or ‘the people’ “we seek to demarcate a totality by ascribing it an objective content” (ibid., 2002, p. 39), but this is only imagined. Terms that are used to describe society as a whole are floating signifiers, referred to as myths by Laclau. Myths are unavoidable and they are constitutive for the kinds of discussion there can be about ‘society’, since the understanding about society is the starting point for these (ibid., pp. 39-40).

Antagonism is when discourses collide as the meanings that they present cannot coexist (ibid., pp. 47-48). Hegemony is similar to discourse; however, hegemony is achieved across different discourses that previously collided and one discourse comes to dominate alone. The discourse whose meanings are neglected is dissolved by rearticulation of its elements.

2.3 Methodology, material, and method

2.3.1 Implications of the use of discourse analysis

Laclau and Mouffe’s discourse analysis is chosen for the analysis as it is used to identify and deconstruct discourses, which is the aim of the analysis. All the above described concepts can be used for initiating discourse analysis. Furthermore, as discourses always build on earlier articulations, the relation between different discourses can be examined (Jørgensen & Phillips, 2002, pp. 29-30). The struggles over meanings can be analysed by looking at the different meanings of floating signifiers and it can be identified which signs there is more conflict about.

The work of the discourse analyst resembles the deconstruction that takes place when an antagonistic relationship between different discourses is resolved (ibid., p. 48). As through discourse analysis the aim is to deconstruct the structures that are taken for granted and show that things could have been ordered and understood in completely different ways (ibid., pp. 48-49). The analyst is though not situated outside discourse but has her starting point from the discourse being studied or another one. There is thus no hope to move beyond discourse and find an objective truth, since truth is a discursive construction. Any research will therefore also rest on certain representations, which one should be aware of as a researcher in positioning oneself (ibid., p. 187).
Following, criticism of the theory is that it cannot offer a better alternative to what it criticises, and that criticism can be directed at everything. This is not fully answered by the theory. However, Laclau and Mouffe set a goal of a radical democracy where all are free and equal, which researchers can help to strive towards. Following this, the goal of research is thus social change. But this kind of society will never be fully accomplished since “political communities can never include everyone as they always build on an opposition between ‘us’ and ‘them’” (ibid., p. 187). To strive towards equality the importance is that new understandings and formations in society are always possible.

Discourse analysis is also criticised for overestimating the possibility for change (ibid., pp. 54-55). Laclau and Mouffe acknowledge that there are constraints against change through the concept of objectivity, and they also recognise that not all actors have equal possibilities of challenging discourses. As mentioned above Jørgensen and Phillips aim at mediating this deficiency by introducing the concept order of discourse, which following this critique is also used in the present work.

Discourses, identities and social spaces are always constituted in relation to something which they are not (ibid., pp. 50-51). The ‘other’ is always constituted in relation to ‘us’ and analysing these creations can therefore give information about who can be excluded and the implications of this for the society in question. This is also why Laclau and Mouffe’s discourse analysis can be combined with analysis through the concept of the community of value and deportation as a form of exclusion from the community of value.

2.3.2 Method

Discourse analysis and the theory regarding the community of value and its connection to deportation is used to understand the case of the political debate concerning the bill L 156 which has the purpose of increasing the use of deportation in Denmark. The community of value has been used for studies on deportation in other liberal democracies and it is thus also relevant to apply as a lens to understand the Danish case. Denmark is interesting as a case because deportation is a subject which has received a lot of attention in the last 20 years, but especially recently (Holstein, 2017b), where there have been made several amendments to the law. Furthermore, it is connected to the general discourses about foreigners, and the related issue of integration which have been central in public discussions since the 1990’s (Rytter, 2018).

The materials have been analysed systematically using the concepts from Laclau and Mouffe’s discourse analysis and the theory which treats a political community as a community of value. As
mentioned above according to Laclau and Mouffe ‘us’ is created in relation to ‘them’, which is why analysis of the construction of them, can reveal something about the constituted ‘us’. The community of value is used to add further understanding of this creation as it provides insights to the grounds of exclusion.

Laclau and Mouffe’s discourse analysis can be criticised for not providing guidance on how to conduct the analysis (Jørgensen & Phillips, 2002, p. 8), and therefore it is needed to explain the procedure of the analysis presented here, which has been carried out using their concepts. Their framework is described thoroughly above to give a clear presentation of the understanding of discourse which is the starting point of the analysis. Especially some of the concepts that they use are guiding for the analysis. These include nodal points, objectivity, hegemony and antagonism, as well as order of discourse, which as mentioned above has been added to the theory by Jørgensen and Phillips (2002).

The reason why these are the tools used, is that the purpose has been to identify clashes and common assumptions of discourses. As the analysis has also been conducted with a purpose of finding controversies and therefore statements not considered to be relevant for this specific struggle over meaning have been disregarded. These other arguments are thus part of the field of discursivity.

The concept, community of value, and its demarcation through deportation, is used to explain the statements that are made in the discussions on the bill on deportation and their implications.

The first step of the research was to go through the parliamentary debate to identify different discourses at play. These were categorised in order to identify patterns and the main concerns in the debate. Statements that were not relevant to the purpose of the research were not included. As the purpose of the research is to investigate how persons that have been brought up in Denmark are viewed as foreigners and as deportable the analysis was guided by finding discourses related to this.

The concepts nodal point and floating signifier were used for identifying the antagonistic discourses filling these concepts with meaning. The concept order of discourse was used to identify relations between the antagonistic discourses, and it was found that some discourses dominated in the struggle over meaning. This led to the identification of discourses that did not explicitly concern the question of belonging, but rather human rights.

The next step was to read through all the approaches and questions forwarded by organisations and politicians in connection with the reading of the bill L 156. This was done considering the already identified discourses.
This was followed by an expansion of the analysis to cover media articles which include statements made by politicians and representatives of organisations already represented in the material. This examination was not as systematic as the reading of the material directly connected to the parliamentary discussion, as it consists of a large mass of articles. The purpose of this has thus mostly been to identify backgrounds and additional statements to the already identified discourses.

2.3.3 Material used for the analysis

The material used for the discourse analysis is the parliamentary debate concerning the bill L 156 which led to the adoption of the law 469. It is a quite recent law and the discussion in the parliament is rather extensive, which is why it has been chosen as material.

Preceding the formulation of the bill L 156 was work made by a working group which had been set up as part of a political agreement concerning gangs in 2017 (Tværministeriel arbejdsgruppe om udvisning af udenlandske rockere og bandemedlemmer, 2017). The purpose of the working group was to give suggestions for how to make it easier to deport foreigners involved in gang-related crime. The conclusions reached were applicable to criminal foreigners in general (Starup, 2018, p. 5) and include five recommendations for action. Two of the recommendations could be made without law amendments (Udlændinge- og Integrationsministeriet, og Justitsministeriet, 2017). These were administrative deportation and refusal of entry due to concern for public order, and better collaboration between the involved authorities (Tværministeriel arbejdsgruppe om udvisning af udenlandske rockere og bandemedlemmer, 2017, p. 1+4).

The remaining three recommendations were carried through with law 469. These include guidelines for the courts regarding when deportation does not breach article 8 of the ECHR, drawing on former practice of the ECHR. And an amendment of the practice of suspended sentences which was changed to a warning system, where a warning not only is in force for a certain period (Lov om ændring af udlændingeloven, 2018). Both Levakovic and Khan have more sentences on their criminal records (Holstein, 2017b) which can be seen in relation to this amendment. Furthermore, it has been made possible to sentence to shorter periods of entry ban.

Any new law must officially be treated three times in the parliament before it can be adopted (Folketinget, n.d.). There can be discussions in connection with each of these readings, but for the present law there were only discussions for the first read. The debates in parliament can be streamed online, furthermore the debates are transcribed, and it is the transcribed material which is used for the analysis. The law was passed with seven parties voting in favour of the law amendment and two
parties voting against it (Folketinget, 2018). The parties in favour of the adoption were the parties that are in the right-wing government, but also parties from the opposition and the two parties that voted against are left-wing parties, at least when it comes to value politics. Statements from the spokesmen of all the parties that participated in the debates have been used for the discourse analysis and included in the presentation of the findings. Two of the parties that voted in favour of the law did not participate in the debates and other statements from them have not been included.

When a law is discussed in parliament civil society organisations can forward comments and recommendations. They can make approaches regarding their position on the bill and they can pose questions to those who have introduced the bill, which the other politicians can do as well. Some of the approaches that were made in connection to the work with bill L 156 have been included in the analysis.

Apart from the discussion in the parliament, statements from one of the politicians and from representants of two organisations found in newspaper articles are used in the analysis too.

The material that is used for the analysis are all originally in Danish, therefore the quotes are always translated by the author. This will not be stated in the analysis. It is the responsibility of the researcher to make accurate translations that are not influenced by the aim of the analysis. As I am a native Danish speaker, I consider that I should be capable of making these translations.

3 Presentation of the findings of the analysis

In the parliamentary debate concerning the bill L 156 there have been identified different discourses that present different positions on the subjects possibly facing deportation, and the role that human rights and the ECHR should play in the policies that can be pursued to increase deportation of criminals. Some identified discourses are used across conflicting arguments and the discourses are not categorically for or against tightening of deportation laws. In one example politicians on either side of the vote have been found to speak the same discourse.

Two discursive struggles have been identified. The first concerns the construction of convicted criminal, non-citizen, long-term residents as either foreigners or Danes. The second concerns different understandings of human rights and their role in society. The identified discourses are described in the following sections illustrated with examples from the debate. The examples are supplemented

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2 See Appendix for an overview of the parties in the parliament, including their Danish and English names, party letters and relational positions in the parliament.
with statements found in the media, which use articulations that are found to be based on the same assumptions. The findings of the analysis will be presented in the following sections.

3.1 Discourses of belonging

3.1.1 ‘Criminal foreigners’ are guests who abuse the hospitality of the ‘Danes’

The discourse, which supports deportation of criminal non-citizens, portrays this group of criminals not as Danes but as foreigners who come to Denmark. This discursive representation is employed by the government and the other parties who support the law amendment. The nodal point is thus the ‘criminal foreigner’ who is given a specific meaning in the discursive construction.

Christian Rabjerg Madsen (A) initiates the debate by referring to the cases concerning Gimi Levakovic and Shuaib Khan. He says that it is the position of the Social Democratic Party that “foreigners, who abuse their stay in Denmark to commit criminality, have nothing to do in the Danish society. They must be deported, and (…) sent home” (Folketingsdebat, 2018). Furthermore, he says that criminal foreigners “have abused our hospitality to commit criminality here in Denmark” (ibid.).

‘Criminal foreigners’ are clearly positioned antagonistically to ‘Denmark’. As they abuse the ‘hospitality’ of the Danes it is evident that the criminal foreigners are imagined as guests. This is also evident as they must be sent ‘home’, which makes it clear that their home is not in Denmark. Their presence in Denmark is described as a ‘stay’ which implies impermanence in contrast to a ‘home’. And the use of the word ‘our’, implies an exclusion from the constituted ‘us’. Furthermore, this gives information about the imagined ‘us’, the ‘Danes’ who are hospitable. The ‘guests’ do not live up to the values of the ‘Danes’ and must therefore be deported in order to protect the community.

Marcus Knuth (V) claims that “[w]e will not stand for that foreigners, who have been enriched with stay in Denmark abuse that trust and commit criminality” (ibid.). Here the Danes are also implicitly presented as people who are hospitable and trustful and ‘criminal foreigners’ ‘abuse’ the ‘trust’ that has been shown to them when coming to Denmark. Furthermore, entrance to Denmark is described as ‘enrichment’, which highlights the value of the Danish society.

Sofie Carsten Nielsen (B) states that the Danish Social-Liberal Party will not protect any criminal foreigners “who only use their time in Denmark to hurt other persons, our society” (ibid.). Again, foreigners are persons who ‘hurt’ ‘our society’, to which they do not belong. Foreigners are also presented as persons who spent some ‘time’ in Denmark, and to whom Denmark is therefore not ‘home’. She also says that she does not think that others want to protect these persons and “especially
not all the hardworking people with foreign background in Denmark, who are affected by the debate (…) concerning the criminal foreigners” (ibid.). The ‘criminal foreigners’ are contrasted with other persons with foreign background. Other ‘foreigners’ are imagined as deserving when they are ‘hardworking’, and they can because of this claim to belong to the community of value. But their claims are negatively affected by the ‘criminal foreigners’ who they are associated with.

The minister for matters concerning foreigners and integration, Inger Støjberg (V), believes that “criminal foreigners do not belong in Denmark. It is simply insulting to my, and I believe to many others’, sense of justice, when foreigners, who have been welcomed here in the country, use their stay in Denmark to commit criminality. (…) if one comes here as foreigner and commit serious criminality, one is simple not welcome, and one must be deported” (ibid.). Foreigners are again seen as persons who ‘come’ to Denmark, permitted by the ‘welcoming’ Danes. Hence, they do not have an unconditional right to stay in the country, but must face deportation if they commit crimes, that are seen to seriously violate the rules in society. Rules that represent the values of the ‘Danes’. So, they must abide the rules in order to claim membership in the community of value. The phrasings ‘insulting’ and ‘sense of justice’ serves to show just how grave the ‘abuse of trust’ is.

In two statements foreignness is equivalated with not possessing Danish citizenship. Martin Henriksen (O) says that the Danish People’s Party would like to increase the use of deportations as there are “many of those who are active in the gang environment, who have a foreign background, who are not Danish citizens” (ibid.). And Laura Lindahl (I) claims that “if one commits a breach of the criminal code in Denmark, and one is not a Danish citizen, then one should not be here. (…) it seems absurd, that we time and time again are forced to keep persons in Denmark, who clearly do not want Denmark. So therefore, one should of course go as far, as one has the possibility to, to reduce the group of criminal foreigners, who we cannot deport” (ibid.).

A foreigner is thus equivalated with someone who does not possess Danish citizenship, in contrast to the Dane who is equivalated with the citizen. Criminal non-citizens do not belong in Denmark and should therefore be deported. Describing the criminal foreigners as persons who do not ‘want’ Denmark also justifies deportation. The logical consequence of this is that as many as possible must be deported, and the remaining are not ‘Danes’, but ‘foreigners’ who unfortunately cannot be deported.
3.1.2 Criminal non-citizens are the responsibilities of Denmark

In the parliamentary debate there is an antagonistic discourse that seeks to establish meaning in the same terrain as the discourse described above. Here the nodal point ‘criminal foreigner’ is given an alternative meaning, and these persons are instead constructed as Danes. This also renders the term ‘criminal foreigner’ inappropriate to use.

Josephine Fock (Å) believes that “we as a society have a responsibility towards the inhabitants who grow up and live in Denmark. Even if one has broken the law, I think that one is Danish, if one has lived here for the most of one’s life and Denmark is the only country that one has a real relation to” (Folketingsdebatt, 2018). A person is constructed as being Danish when one has grown up and lives in Denmark, and Denmark is thus one’s ‘home’. Being convicted of crimes does not mean that a person is no longer Danish or belongs elsewhere. There is thus not presented to be an antagonism between being Danish and having a foreign passport or having a criminal record. This means that Denmark has responsibility towards these persons and that they can make claims towards Denmark.

Following, the statement above where she sets out requirements for counting as Danish, she says that “these are exactly also some of the things that must be considered in relation to how deportation can be used” (ibid.). So even though she refers to the concerned persons as ‘Danes’ she does not categorically rule out deportation of this group.

Another implication of the statement is that it does not clarify what it means to have a ‘real connection’ to a country and whether it is then considered that for example Khan and Levakovic has such a relation to their countries of citizenship. The question is left open to whether ‘real relation’ should be understood as the ECtHR interprets it, and in this case the meaning is still not clear.

Another example of this kind of discursive construction can be found in the approach of the organisation Refugees Welcome3 in connection to the bill L 156. Here it is stated that the organisation believes that “deportation should only be used towards persons with short stays and without family or other strong ties in Denmark” (Refugees Welcome, 2018) and that primarily persons that come to Denmark to commit criminality should be deportable. Furthermore, it is stated that “[w]hen a person has lived a considerable part of his/her life in Denmark and has his/her family here, then that person is our responsibility – irrespective of how badly that person behaves. (…) One cannot solve the problem by sending the person to a country, that he no longer has any ties to” (ibid., 2018).

Here it is thus also the connections to Denmark that makes one Danish rather than the values that one represents. In both examples, criminals are presented as being the ‘responsibility’ of Denmark, which

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3 A humanitarian organisation that helps refugees
means that Denmark should take measures towards them. In the latter example the situation is presented as a problem, which means that criminals are also problems to be managed. The persons are problems, but internal rather than foreign problems, and they are failed as members of the community.

3.1.3 Discussion of the antagonistic discourses of belonging in Denmark

The two discursive constructions of how one counts as belonging to Denmark and being Danish exclude each other. In the discursive construction of ‘criminal foreigners’ membership is contingent on good behaviour in accordance with the Danish values. And if a person has ‘foreign background’ he/she is still a ‘foreigner’, even if he/she lives up to the values of the community. There is a clear understanding of who can claim membership in the community of value, and persons of ‘foreign background’ are always potentially at the boundaries of it. They must behave in accordance with the values in order to be tolerated and can otherwise be excluded through deportation. In the other construction, persons are imagined as being ‘Danish’ or at least as belonging to Denmark when they have strong ties to the country, irrespective of criminality and citizenship in other countries. To be law abiding is not a requirement to belong to the community, and there is thus not a as strong an imagination of a community of value. However, criminals can still be understood as internal others. That non-citizens are included in the community can itself be understood as a ‘Danish value’.

Even though the discursive construction of the criminals as ‘Danes’ is antagonistic to the construction of them as ‘criminal foreigners’, and the two discourses therefore should not be able to coexist, the conflict is not explicitly articulated in the parliamentary debate. The construction of the criminals as ‘Danes’ is only found in one statement in the debate and the speakers of the discourse of ‘criminal foreigners’ do not contest or comment on this statement. This shows that even though there is a conflict the discourse of ‘criminal foreigners’ is dominant and close to be an objective understanding. The understanding of the persons as Danes is not seen as being likely to replace this construction in the order of the discourses. The articulation of the criminals as Danes is not given a lot of attention in the debate and the construction of ‘criminal foreigners’ is thus close to succeed in the hegemonic project. Furthermore, in the statement where Danes are understood as persons who have grown up and live in Denmark, deportation of this group is not categorically rejected, and these conditions are only presented as limiting the use of deportation. This can be understood as a result of what articulations that can be meaningful within the fairly sedimented discourse of ‘criminal foreigners’.
3.2 Discourses of human rights

3.2.1 The discursive constructions of human rights

In the discourse of ‘criminal foreigners’ persons that in another discourse are understood as Danes are constructed as foreigners who have proven themselves unworthy of membership. The construction of criminal, non-citizen, long-term residents as deportable is connected to the discursive construction of human rights. In the debate there are found different discourses that construct the nodal point human rights in different ways. Two of these are used to justify the law and increased use of deportation of criminal non-citizens by respectively constructing human rights as a maximum of obligations and as irrelevant. These constructions of human rights are found to have consequences for the kinds of arguments that can be made against the law and increased use of deportation. Another discourse constructs human rights as minimum protections and therefore problematises furthering deportation practices. Across the discourses that construct human rights as a minimum and as a maximum is identified a discourse which seeks to protect the human rights system.

3.2.2 Human rights as a maximum

In the discourse spoken by most of the parties that support the tightening of the deportation law, human rights are presented as international treaty obligations that the state must fulfil. It is considered that the state is not obliged to protect human rights to a further extent than these prescribe. Human rights are thus constructed as putting a limitation on what the state is allowed to do in interest of the people.

Christian Rabjerg Madsen (A) says that the Social Democratic Party believes that “the international conventions must be observed. But there is no doubt that we wish that Denmark stretches the conventions as far as possible in the fight for sending foreign criminals home” (Folketingsdebat, 2018), the latter point he subsequently states several times.

Inger Støjberg (V) also says that it is important for the government to “tighten the rules as much as possible” (ibid.) and that “when it appears that there is room for additional deportations, that room must of course be utilised” (ibid.). She also says that the human rights must be respected. With human rights being presented as a maximum, the goal is thus to deport as “many as possible, when it comes to criminal foreigners” (ibid.) says Inger Støjberg (V), agreeing with a statement by Christian Rabjerg Madsen (A).
Human rights are thus articulated as being important to Denmark and part of the ‘Danish values’ but at the same time as limiting the ‘Danes’ in deciding who can stay in the country. It is due to international obligations that human rights must be protected, however they are also seen to have value in themselves. But there are other ‘Danish values’ worth of protection in the valued ‘Danish society’ and therefore as ‘many as possible’ must be deported.

In another statement by Christian Rabjerg Madsen (A) human rights are presented as crucial, but their use as problematic: “[o]f course Denmark shall not protect human rights that do not exist, especially not if these non-existing rights mean that hardcore foreign criminals stay in Denmark, in cases where they could have been deported. As a burning supporter of human rights is it on the contrary much heart-breaking that the human rights are primarily discussed here when they protect hardened habitual criminal offenders and violent criminals, who have nothing to do in Denmark” (ibid.). Here human rights are further articulated as having value in themselves. But when they protect persons who have rendered themselves unworthy of protection, they are problematised. Human rights are thus again equivalated with international treaty obligations. If a potential right does not exist in international treaty obligations it should not be protected.

Laura Lindahl (I) also says that the conventions are hindering deportation, and that to most people it is “absurd, that we time and time again are forced to keep persons in Denmark, who clearly do not want Denmark. So therefore, one should of course go as far, as one has the possibility to, to reduce the group of criminal foreigners, who we cannot deport” (ibid.). Thus, human rights are equivalated with conventions that constrain what Denmark can do and external regulations that ‘force’ Denmark to keep unwanted persons.

The goal is to deport as many as possible and human rights are understood as treaty obligations rather than principles. This means that when the ECtHR shifts its understanding of human rights the obligations of the state change. Marcus Knuth (V) says that “all changes to the interpretation that makes it easier to deport criminal foreigners, we find positive. Which is also why the government during our chairmanship for the Council of Europe has led the way to see whether it is possible to look at an amendment of that interpretation. I will not go deeper than saying that everything which makes it easier to deport criminal foreigners, we find positive” (ibid.). Inger Støjberg (V) supplements this when saying that the government constantly “will be hunting to see if things change” (ibid.) so that the Danish rules can be adapted to only follow the minimum requirements that the interpretations of the ECtHR place on states. It therefore becomes an objective of the state to try to amend these interpretations. In this conception human rights are valued as a concept, rather than with any specific
content, at least when it comes to deportation of ‘criminal foreigners’. Denmark aims at being viewed as a country that values and respects human rights, but this might conflict with the goal of ridding the country of ‘criminal foreigners’ who threaten the Danish society. These objectives are in some cases antagonistic and therefore the human rights obligations are tried amended.

### 3.2.3 Human rights as irrelevant

In another discourse, spoken by Martin Henriksen (O), human rights are not considered important. He for example states that the Danish People’s Party would not mind if we went not only to boundary “but beyond the boundary” of the ECHR (Folketingsdebat, 2018).

This discourse resolves the antagonism which is presented to exist between living up to human rights standards and following the Danish interest of deporting ‘criminal foreigners’, by viewing deportation of ‘criminal foreigners’ as crucial and human rights as not important to protect. The perceived conflict between the ideals can be seen in the questions that Martin Henriksen (O) poses the spokesmen of the other parties that speak in favour of both respect for human rights and increased use of deportation. For example, he asks if the Social Democratic Party will “be prepared to go further than the convention (…)? Since at one point or another it is necessary to choose whether the most important thing is to deport criminal foreigners, (…) or if the most important thing is to observe the conventions” (ibid.).

The statements made in the parliamentary debates can be seen in conjunction with previous public statements by Martin Henriksen (O) found in media articles. In 2017 the party proposed that Denmark should withdraw from the ECHR. In connection to this Martin Henriksen (O) claimed that “The Danes’ legal rights are protected in the constitution” (Ritzau, 2017). It is thus only the rights of the Danes that should be protected and therefore the international obligations can be disregarded, as this is in the interest of ‘Danes’. Denmark is thus only considered to have obligations towards Danish citizens.

### 3.2.4 Human rights as a minimum

In the discourse that is used to question whether the law and increased use of deportation is legitimate, human rights are constructed as a minimum rather than a maximum. This discourse thus conflicts with the abovementioned discourses.

Nikolaj Villumsen (Ø) says that the Red-Green Alliance “does not share the objective in the bill of moving to the boundaries of the human rights. The human rights are absolute minimum requirements
for how states can permit themselves to treat persons in our societies. (…) it is not a goal to pursue the lowest common denominator, because we firmly believe that criminals must be punished, but the consideration for the children’s and families’ rights must also be considered in the judgment that the courts make” (Folketingsdebatt, 2018).

Josephine Fock (Å) as well states that the bill concerns how Denmark positions itself towards international conventions, as a political question. She states that the Alternative does not support the goal of going “to the boundaries of the conventions” and she says: “I do not think that the human rights are a maximum, one must observe. On the contrary I believe that they are an absolute minimum (…)” (ibid.). However, she also states that the ECtHR is important for assessing whether deportation can take place.

In this view human rights are only minimum requirements and it is likely that states should do more than these prescribes. Therefore, deportation of criminal non-citizens is not an objective that should be maximised.

3.2.5 Protection of the human rights system and the ECtHR

In the discourse that presents human rights as a maximum, human rights are problematised because they limit the possibility of deportation of ‘criminal foreigners’. However, there are different arguments about where this criticism should be directed. Christian Rabjerg Madsen (A) referring to research made by the DIHR says that “Danish Courts overinterpret the human rights and consequently fail to deport criminals in cases where there are possibilities to do it” (Folketingsdebatt, 2018). He thus problematises the interpretations by the Danish courts rather than the international human rights system. As stated above he believes that the relevance of human rights should be highlighted in other matters than when they protect ‘criminal foreigners’, who are not worthy of their protection against deportation. Josephine Fock (Å) also problematises that the government has presented the picture that it is human rights that have hindered “a reasonable Danish practice of deportation of criminal foreigners” when it is “well-documented in the bill that it is not at all the case” (ibid.).

In the same line the president of the DIHR, Jonas Christoffersen, constructs the human rights system as worthy of protection. As previously mentioned, the DIHR in 2017 concluded that more criminals could be deported without Denmark breaching international obligations. In this regard Jonas Christoffersen says that it is “crucial that the human rights have support both in the political power and in the population” (Christoffersen quoted by Holstein, 2017b) and this support is hindered by the focus on the protection that human rights offer criminals from deportation. Furthermore, he says that
human rights should be a positive word, but that the focus on cases where deportation have been rejected hinders this. As it has been found that deportation practices can be increased without Denmark breaching the international conventions, he says that the criticism should rather be directed at Denmark. This discourse thus aims at protecting the human rights system from criticism. The problem is presented to be the interpretations of the Danish courts rather than those of the ECtHR. The human rights as a legal system, including the ECtHR, are seen to need protection from criticism, and there are no moral considerations regarding what human rights should protect.

In the same line Amnesty International in their approach considering the bill L 156 write that following the bill which aims at increased use of deportation of criminals without the international obligations of Denmark being breached should lead to “the ill-founded critique of the human rights, and especially the rulings of the European Court of Human Rights (…) [being] dropped” (Amnesty International, 2018, p. 4). This can be read in conjunction with statements by Amnesty International Denmark in connection to the Danish chairmanship of the Council of Europe from November 2017 to May 2018, which was also referred to above. For example, Trine Christensen the secretary general claims that the government should not let “a handful of individual cases concerning deportation of criminal foreigners overshadow or undermine the unique European institution that the ECHR and the Court of Human Rights represent for the post-war period’s relative peace and stability in Europe” (Christensen, 2017). Furthermore, she says that other countries would also question human rights and breach them to a larger extent if Denmark criticises the convention and the court.

The same kind of comparison of Denmark with other countries can be found in the parliamentary debate. Nikolaj Villumsen (Ø) says the government’s attack on the ECtHR has been “well received in a number of capitals around in the member states of the Council of Europe” (Folketingsdebat, 2018), mentioning the head of states of Turkey, Russia and Hungary and other ‘scoundrels’. He says that they of course find it “delightful that a democratic country like Denmark criticises the European Court of Human Rights” (ibid.). Denmark is thus presented as a country that respects human rights in contrast to other countries and therefore Denmark must make a good example and human rights must be protected because rights will otherwise be violated in other countries. Sofie Carsten Nielsen (B) also states that we should not take the rights that we have in Europe for granted as we can “look around in the world (…) and be confirmed that they can disappear” (ibid.). She thus compares Europe to other countries worldwide rather than to other countries in Europe.

Human rights are thus constructed as being important values that Denmark should protect, despite the protection they offer criminal foreigners. Furthermore, Denmark is presented as a country that
values human rights in contrast to other countries. Danes are constructed as having values that are worth of protection and specific to the Danish society, which is seen in contrast to other countries, either in Europe or world-wide where human rights are not protected.

In some arguments that can be identified as being within the same discourse, the dynamic interpretations of the ECtHR are viewed as positive. Nikolaj Villumsen (Ø) criticises the critique made by the government of the dynamic interpretations of the ECtHR and in general utters support for the dynamic interpretations as “the human rights would be useless, if they were not interpreted in relation to our age” (ibid.). He says that previously “the minister of justice has said that the course should be changed completely away from the dynamic interpretations” (ibid.) which is contrary to the positive attitude it has been met with when the ECtHR has moved in a direction that leaves more discretion to states concerning deportation, which is then inconsistent. The support of the Red-Green Alliance is thus presented to be principal in contrast to the abovementioned support of Marcus Knuth (V) for interpretations that makes it easier for Denmark to deport criminals. Sofie Carsten Nielsen (B) also says that the Danish Social-Liberal Party appreciates that the ECtHR “over time has interpreted dynamically as the world develops” (ibid.).

3.2.6 Discussion of the common assumptions in the human rights discourses

The concept of human rights is a floating signifier as it is filled with different discursive constructions of what human rights mean that stand in an antagonistic relationship to each other.

In one discourse human rights are constructed as international obligations that the state should live up to, but which also hinders the ‘Danes’ from following their interests. This means that the state is not required to do more than live up to these and therefore it should be possible to find a solution where both the interest of protecting human rights and deporting criminals can be pursued. In another discourse human rights are constructed as being contrary to the interest of protecting Danish values. These are valued and must therefore be protected from foreigners, whose deportation there should be no constraint to. Both discourses claim to protect Danish values and there is thus a struggle over exactly what has value and how it must be protected. In these discourses, deportation is seen as something that must be pursued to the furthest extent possible, however there is a struggle over where this line is. There is thus a struggle over exactly what values are constitutive of the community of value. Furthermore, the struggle is over which persons Denmark should protect the interests of. In the former, Denmark is presented as a country that protects the rights of all residents to the extent that is considered reasonable, and in the latter, Denmark must only protect the rights of Danes. There is thus
also a struggle over who the members of the community of value are, which are the persons who can claim protection of these values.

As it is only the Danish People’s Party that use this construction it is not a dominant argument in the debate. However, Martin Henriksen (O) poses a lot of questions to other parties that support increased use of deportation, showing how the interests of living up to human rights standard and deportation are antagonistic, which then has impact on the kinds of statements that are meaningful.

In another discourse human rights are constructed as setting a minimum standard for how states should treat residents. This is thus antagonistic to both abovementioned discourses. Following this, it is not seen as a goal that Denmark should deport criminals to the furthest extent possible. According to this discourse, human rights should thus be of central value in the community of value. The construction is though only found in two instances in the debate. This can be seen in the light that the debate is dominated by discourses where the furthest use of deportation is the goal. Which has implications for the meaningfulness of the discourse that construct human rights as a minimum. It appears that this meaning is less probable in the order of the discourses.

Across the discourses, that respectively establish human rights as a minimum and as a maximum, are found arguments for protection of human rights in general, including the human rights legal system. Some of the speakers of this argument are also arguing for the increased use of deportation. It thus appears that the support for human rights is constructed as meaningful across different understandings of the role of human rights in relation to deportation. This can be used to explain why it appears that most of the arguments that are critical to the law focus on human rights in general, which is because these arguments are meaningful across the discourses. Human rights are considered worthy of protection and this protection appears compatible with a pursuit of increased use of deportation of ‘criminal foreigners’. Human rights should thus be respected as they have value in other cases than when they are used to protect criminals against deportation. Human rights are thus important despite this protection and not because of it, as there are other matters where they are more important. As there is support for deportation, the increased use of deportation is deemed necessary for the continued support for human rights, which is thus more important than discussing the rights of those potentially facing deportation. It thus becomes a principal discussion about human rights and consequently a discussion of the rights of the potential subjects of deportation is not meaningful.

In the discourse where human rights are constructed as a minimum, the potential human rights breaches in other countries are discussed rather than the potential breaches of human rights in Denmark in deportation cases. The community of value that the ‘Danish society’ is understood to be
should thus be valued, which is evident when it is compared to other communities, that do not express the same values.

4 Concluding discussion

4.1 Findings

The aim of the analysis was to investigate how the persons that are targeted with the law 469 are constructed as ‘criminal foreigners’ who are deportable and to find the common assumptions and antagonisms in the arguments for and against increased use of deportation.

There have been identified two competing discourses over whether the concerned persons should be understood as foreigners or rather as belonging to Denmark. In the former conception, increase in use of deportation and the law are legitimised because it is necessary to protect the ‘Danish society’ and the ‘Danes’ against ‘criminal foreigners’ who have come to Denmark and who abuse the hospitality of the Danes. These foreigners do not live up to the values in the Danish society and as the Danish society is valued it must be protected against them. In the latter discourse persons are understood as being Danish when they have lived in Denmark for a substantial part of their lives. Criminality and not possessing citizenship are thus not necessarily grounds for exclusion through deportation. This latter construction is though not meaningful in the debate as the construction of ‘criminal foreigners’ is well-established in the order of the discourses. This understanding is also an underlying assumption of the bill which is being discussed.

The discourse of ‘criminal foreigners’ is sedimented in the discussion and this construction is then also an assumption for the arguments that are made against the bill L 156, which has consequences for the possible nature of these. A specific understanding of human rights is also underlying the construction of ‘criminal foreigners’ as deportable. The arguments problematising the law concerns the role of human rights which has been criticised in connection with the formulation of the law and in previous matters. In the discourse which argues for an increased use of deportation, human rights are constructed as international treaty obligations that states must follow, but which do not require that states do any more than what is prescribed by these. And it thus becomes a goal to amend the treaty obligations. This is challenged by a discourse where unrestricted use of deportation is seen as necessary to protect the Danish values and where human rights are seen as effectively hindering this. And it thus argued that human rights should be disregarded. This discourse is not dominant in the
discussion, but it still has implications for the arguments that can be made when arguing for both increased use of deportation and respect for human rights.

Both discourses are challenged by a construction of human rights as a minimum of obligations. Across the discourses that construct human rights respectively as a minimum and a maximum can be found arguments about the role of human rights and the ECtHR, which must be protected. In both discourses human rights are thus constructed as important values to the community of value, and the antagonism arises in the specific content of human rights.

The discussion is thus broader than a discussion of the rights of individuals potentially facing deportation and is a discussion of the role of human rights and whether human rights have specific contents or if the contents can be amended according to the interests of states in order to protect the community of value.

4.2 Validity and implications

The implications of discourse analysis are that there is no objective truth which the analysist can uncover, and the results of the analysis are thus contingent on the starting point of the researcher and the theory which is used to work on the material. The critical approach to the discourses in the debate is shaped by my starting point, and an analysis situated in another discourse could have focused on other discourses that have been excluded from the order of discourses. Furthermore, other theories could have been used to answer why convicted criminal, non-citizen, long-term residents are constructed as foreigners and why they are deportable. Such analysis might have led to other results. The findings of the analysis form a coherent picture of the struggle between the identified discourses. Some discourses are identified as being dominant and are presented as objective, this has consequences for the types of counterarguments that can be made and for what discursive constructions that can be used to challenge the dominant constructions. The analysis in the thesis is coherent because it considers the struggle between the dominant constructions and the alternative articulations.

The work is critical to current discursive constructions used in political debates and can thus be used for criticism of these. It provides understanding of how some discursive constructions are currently more meaningful than others. This can be a starting point for further problematisation of the construction of ‘criminal foreigners’, which already can be found in public and political debates, in order to rearticulate the concept and connected concepts. The work is thus relevant for discussions taking place in society regarding membership and the responsibilities of the state towards citizens.
and residents. These are not only legal discussions about what the state must do, as they also have a moral dimension.

Even though Laclau and Mouffe hold that a division of ‘us’ and ‘them’ in a political community is inevitable, the analysis is still relevant for understanding who are excluded and how more can be included in discursive constructions.

The results are not only relevant for discussions about deportation, but the overall findings can be generalised to other current discussions, which concern other groups of foreigners, both immigrants and refugees, and also internal others.

Furthermore, the results add validity to the theory of the community of value and its connection to deportation, which previously have been used in studies regarding other countries.

### 4.3 Future research

Further research on the subject could investigate deportation in relation to naturalisation. As the law for acquiring citizenship in Denmark is one of the strictest in Europe, this is especially relevant (Jensen, et al., 2017). However, there is already more research concerning naturalisation in Denmark and future research could be carried out in relation to this. Furthermore, the rules on withdrawal of citizenship could be studied in relation to this.

As mentioned above the findings of the thesis can be generalisable to other political discussions in Denmark regarding ‘Danes’ and ‘foreigners’, and these could thus be studied using the same framework. The theory on the community of value is especially relevant as perceived problems in the Danish political debates are often presented as problems of culture.

Furthermore, it could be interesting to investigate further discursive constructions of human rights to see if these are employed to protect individuals or if they are used to highlight the value of the society.
List of references


# Appendix

Parties in the Danish parliament, participating in the discussions of the bill L 156 and/or participating in the vote, sorted according to party letter

<table>
<thead>
<tr>
<th>Danish name and letter</th>
<th>English name</th>
<th>Political position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Socialdemokratiet (A)</td>
<td>The Social Democratic Party</td>
<td>The Social Democratic Party is the largest party on the left in parliament. And is thus the leading party in the opposition. And the most centre-oriented of the parties on the left. Recently the party has been known to have a more critical attitude when it comes to policies concerning foreigners. The party has 46 mandates.</td>
</tr>
<tr>
<td>Radikale Venstre (B)</td>
<td>The Danish Social-Liberal Party</td>
<td>The Danish Social-Liberal Party is situated at the centre of the political spectrum. The party has 8 mandates.</td>
</tr>
<tr>
<td>Det Konservative Folkeparti (C)</td>
<td>The Conservative People's Party</td>
<td>The party is one of the three parties that are currently in government. The party has 6 mandates.</td>
</tr>
<tr>
<td>Socialistisk Folkeparti (F)</td>
<td>The Socialist People's Party</td>
<td>The Socialist People's Party is a left-wing party. The party has 7 mandates.</td>
</tr>
<tr>
<td>Liberal Alliance (I)</td>
<td>The Liberal Alliance</td>
<td>The Liberal Alliance is the most liberal party in the parliament. The party is one of the three parties that are currently in government. The party has 13 mandates.</td>
</tr>
<tr>
<td>Dansk Folkeparti (O)</td>
<td>The Danish People’s Party</td>
<td>The Danish People’s Party is not an ideological party, but in general makes policies according to what is in favour of the Danes. The party is known to be critical on political matters regarding foreigners. The party has 37 mandates.</td>
</tr>
<tr>
<td>Venstre (Danmarks Liberale Parti) (V)</td>
<td>Venstre (Denmark’s Liberal Party)</td>
<td>Venstre is a liberal party and is the largest right-wing party in the parliament. The party is also the largest of the three parties in the government and has the premiership. The party has 34 mandates.</td>
</tr>
<tr>
<td>Enhedslisten (Ø)</td>
<td>The Red-Green Alliance</td>
<td>The Red-Green Alliance is a party on the far left. In is the second largest of the opposition parties. The party has 14 mandates.</td>
</tr>
</tbody>
</table>

4 Overview of mandates in the parliament: [https://www.ft.dk/da/medlemmer/1mandatfordelingen](https://www.ft.dk/da/medlemmer/1mandatfordelingen)

5 See: [https://danskfolkeparti.dk/partiet/bestil-materiale/spoergsmaal-og-svar/ideologi/](https://danskfolkeparti.dk/partiet/bestil-materiale/spoergsmaal-og-svar/ideologi/)
<table>
<thead>
<tr>
<th>Alternativet (Å)</th>
<th>The Alternative</th>
<th>The Alternative is a relatively new party. It is not based on an ideology⁶ but collaborates with parties on the left. The party has 10 mandates.</th>
</tr>
</thead>
</table>

⁶ See: [https://alternativet.dk/politik](https://alternativet.dk/politik)