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Controlling the Swedish state.
Studies on formal and informal bodies of control



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Acknowledgments

During the years I have spent writing this dissertation, a certain Pink Floyd song from the album *The Wall* has kept coming back to me. When Roger Waters in one of his shows in Stockholm in 2011 sang “Mother, should I trust the government?” and a text on the big screen said “No fucking way”, I felt that I couldn’t agree more. Working with state-crime issues, the one thing you lose is your trust in states. The image of the wall also symbolizes how nation states (and regions such as the EU) and their border control practices brutally differentiate between those who are considered to belong to the territory in question and those who are considered not to.

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Isabel Schoultz

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List of original papers

Paper I. Schoultz, Isabel. 2012. "State Crime in the Street-Level Bureaucracy: Toward an Understanding of Crimes of the Welfare State." *International Criminal Justice Review* 22:258-75.

Paper II. Schoultz, Isabel. 2014. "Seeking Asylum and Residence Permits in Sweden: Denial, Acknowledgement, and Bureaucratic Legitimacy." *Critical Criminology* 22:219-35.

Paper III. Schoultz, Isabel. 2014. "European Court of Human Rights. Accountability to whom?" in *Towards a Victimology of State Crime* edited by D. L. Rothe and D. Kauzlarich. New York: Routledge.

Paper IV. Schoultz, Isabel. "The state's mishandling of immigration to Sweden. How bodies controlling the state frame the problem", revised manuscript resubmitted to *Crime, Law and Social Change*.

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Introduction

Criminologists are used to discussing the state and the control exercised over individuals by various state agencies such as the police and the prison and probation service. Here the intention is to reverse this perspective and instead look more closely at the way control is exercised over the state. Since the state can engage in illegal or in other ways harmful activities, we also need to reflect on how the state can be held to account, on the forms of control that are directed at the state and on the level of access to accountability in cases where the state violates the rules that have been put in place.

Accountability refers to the possibility of holding the powerful to account by means of external scrutiny and sanctions (Mulgan 2000). In the democratic state, the core meaning of accountability has focused on the relationship between the citizens and the holders of public office. This includes aspects such as voters making elected representatives answer for their policies and citizens seeking redress from government agencies and officials (Mulgan 2000). It also includes public officials being answerable to their superiors, who are accountable to the minister, who is in turn responsible to parliament (Bovens 2005). This form of accountability is often referred to as vertical, and it is not the type of accountability that is examined here. Instead, this dissertation focuses on what may be referred to as horizontal accountability. The horizontal accountability manifested by among others the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights, the UN and non-governmental organizations (NGOs) does not constitute part of the direct political chain of accountability. These actors may be viewed as what Mulgan (2000:565) has labelled “institutions of accountability”, but they will here for the most part be referred to as bodies of control.

A large number of different bodies of control have evolved, not least with a focus on state agencies and employees. This type of control takes place on many different levels and with the help of a large number of different organs. It includes the control of individual officials by means of liability for official misconduct and various forms of disciplinary measures and control directed at the state agencies or the government representing the state. The focus of this dissertation is on the latter type of bodies of control, those whose focus is directed at holding the state or its agencies to account, i.e. at the structure rather than the individual. The criticisms expressed by the Parliamentary Ombudsman relate to public sector agencies, the Chancellor of

Justice specifies damages against the state and its agencies. The Swedish state can be found guilty of human rights violations by the European Court of Human Rights. Controls of the observance of human rights take place through the various organs of the UN and via the scrutiny exercised by NGOs. The broader aim of this dissertation is to develop an understanding of the outcomes and limitations of the formal and informal controls exercised in relation to the Swedish state, as well as of the positions and strategies of the social agents involved in the field.

The dissertation distinguishes itself from previous research in three ways: the object of the study (the Swedish state), the comparative approach (how control works in several different bodies of control), the type of cases examined (which cover a wide range of wrongs and harms including many less serious violations). The first factor that differentiates this dissertation from previous research is the object of study, namely the Swedish state. Many studies in this area have focused on so-called failed states, by examining international crimes such as genocide or other severe human rights violations in times of war (see for example Green and Ward 2009; Hagan and Raymond-Richmond 2009; Haveman and Smeulers 2008; Jamison and McEnvoy 2005; Kramer and Michalowski 2005; Maier-Katkin, Mears, and Bernard 2009; Mullins and Rothe 2008). When the focus is directed at the control of the Swedish state, other issues will inevitably be of greater interest. In two of the dissertation's four papers, I have restricted the examination of the control of the Swedish state to issues related to asylum seekers and others applying for residence permits. In these papers, limiting the focus to these issues may be seen as producing a case, which allows the scope of the empirical material to be delineated and enables the research to fully compare the control mechanisms. On the other hand, issues relating to migrants are not just any case but rather have a specific character that makes them particularly interesting as an object of study. Asylum seekers and others applying for residence permits highlight the problem of the differential that exists between non-citizens and citizens as bearers of human rights. According to the Universal Declaration, human rights apply to individuals, not to citizens of the nation state (Dembour and Kelly 2011; Erman 2006; Nash 2009; Weissbrodt 2008). In practice, however, states constantly violate the human rights of asylum seekers and migrants on the basis of their citizenship status (Dembour and Kelly 2011; Fekete 2005; Green 2006; Green and Grewcock 2002; Khosravi 2009; Pickering 2005b).

The treatment of asylum-seekers and others applying for residence permits in Sweden is part of a general trend in Europe, where border controls have intensified, immigration has become criminalized (Barker 2012; Bosworth & Guild 2008) and where most applicants have to experience the considerable force of what has been referred to as the European deportation machine (Fekete 2005). Asylum seeking has been transformed from a human rights issue into a security problem and asylum seekers have come to be

understood as a group of people whom “we” need to be protected from, rather than as people in need of protection (Aas 2007; Abiri 2000). The identification of failures to positively embrace the right to asylum throughout Europe (Green & Grewcock 2002) may be particularly disturbing to the institutional legitimacy of a country such as Sweden as a result of a desire to maintain the country’s self-image of decency and humanity. This is particularly true for the Swedish Migration Board, which today “aspires to the role of guardian of human rights” (Wettergren 2010:405). Focusing attention on non-citizens might therefore constitute a fruitful way of approaching an understanding of controls of the Swedish state.

Second, the dissertation uses a comparative approach, focusing on various types of bodies of control. Overall, the literature on the control of states has either directed its attention at general propositions regarding control (Ross 2000b; Rothe 2009), or has focused on a single body of control, such as the International Criminal Court (ICC) (Mullins and Rothe 2010), the International Criminal Tribunal for Rwanda (Mullins 2009), the European Court of Human Rights (Hurwitz 2000) or at the control of specific parts of the state such as the police or the military (Menzies 2000; Ross 2000c). Several scholars have discussed the effectiveness of controls of the state (Hurwitz 1981; Ross and Rothe 2008), but few, if any, have empirically studied how a range of formal and informal organs that exercise control in relation to the state work in practice, as this dissertation sets out to do.

The third factor that distinguishes the dissertation from previous research is the methodological approach it employs. By examining the outcomes produced by bodies that exercise control in relation to the state, this dissertation examines a wide variety of cases dealt with by the different bodies. This is in contrast to the many case studies that have to date accounted for the majority of research conducted in this field (Rothe et al. 2009). These have mainly focused on single incidents of state crime in single states (Michalowski 2010). Some crimes of this kind that come to the attention of the public are perceived as scandals or crises of legitimacy (Friedrichs 2007; Ross and Rothe 2008). This is not the case with many of the cases examined here, since they seem to relate to relatively undramatic incidents. Nonetheless, many of the cases have undoubtedly had an impact on people’s lives. Even some of the issues that may seem trivial would not, on the basis of Lipsky’s (1980) views on the power that street-level bureaucracies exert over people’s lives, be regarded merely as minor lapses on the part of state representatives. Prominent scholars of state crime have encouraged the analysis of all types of harm caused through the use of state power, including harms caused by bureaucrats in the developed world (Rothe et al. 2009). Thus, the dissertation highlights a wide range of wrongs and harms, including many less serious violations, rather than focusing only on the most high-profile cases. And in this sense, the studies included in the dissertation resemble the approach employed by Grabosky (1989) in his study based on data from Australia.

Grabosky's study includes both inaction and action; criminal or otherwise unlawful conduct. The cases occurred in the fields of federal, state and local government and represent both institutionalized policy and conduct that was officially condemned. However, Grabosky includes corruption and other misconduct for personal gain and in that sense his study goes further than this dissertation.

The broad methodological approach employed also includes a variety of actors from the public sector, rather than focusing on a single category of state representatives (such as the police). Even though two of the papers have a focus on accountability in relation to asylum seekers and others applying for residence permits, they nonetheless include a range of state actors, from the government to the Swedish Migration Board. Further, while much of the existing research has focused on broad, general trends in relation to the process of seeking asylum (Aas 2007; Barker 2012; Bosworth & Guild 2008; Fekete 2005; Green & Grewcock 2002), this dissertation seeks among other things to explain the mechanisms at work at a meso institutional level, when bureaucracies and bureaucratic actors attempt to maintain their legitimacy. The concept of legitimacy refers here to recognition and acceptance (Bourdieu 1993) and is understood in terms of an ongoing discussion rather than as a fixed phenomenon or an all-or-nothing matter (Liebling 2011; Sparks and Bottoms 1995). According to Bourdieu (1993:70): "An institution, or an action or a usage is legitimate when it is dominant but not recognized as such, in other words tacitly recognized". The process of legitimation includes competition and struggle and it is related to the social agent's various forms of capital. To gain recognition and legitimacy, agents use various strategies in relation to their position in the field. These aspects are developed further in the *Theoretical frame* as well as in the *Concluding discussion*.

The aim of the dissertation

The dissertation examines some of the existing practices within the field of control focused on the Swedish state. Based on theories of the state as an organization, as proposed by Ahrne and Papakostas (2002), I argue for an understanding of the state as including more than the elected government, and as instead comprising the whole state apparatus including the public administration. Five bodies of control were carefully chosen to represent various forms of control: formal and informal control, internal and external, domestic and international and control focusing on both the state as a whole and on the agencies within the state. The United Nations and the European Court of Human Rights (also referred to as the European Court or the Court) have been put in place to document and call states to account for human rights violations. In addition, the Parliamentary Ombudsman and the Chan-

cellor of Justice both have a long tradition as domestic bodies of control in relation to state agencies, and NGOs are important informal bodies of control in relation to state actions. The broader aim is to develop an understanding of the outcomes and limitations of the formal and informal control of the Swedish state, as well as of the positions and strategies of the social agents involved in the field. More specifically, the broad aim of the dissertation has been approached on the basis of a number of distinct research questions:

- What characterizes the crimes that the Swedish state is held responsible for by the Parliamentary Ombudsman, the Chancellor of Justice and the European Court of Human rights? How can this be understood in relation to how the bureaucracy and the control of the state functions in practice? (Paper I).
- Are denials and acknowledgements used by Swedish state representatives when they are accused of not fulfilling their obligations on issues relating to asylum-seekers and others applying for residence permits, and if so, how are they used? (Paper II).
- What characterizes those who hold the state accountable through the European Court of Human Rights and how can this be understood in relation to access to accountability? (Paper III).
- How do mechanisms of control represent the problem of the state's handling of the process of seeking asylum and residence permits in Sweden? How are these frames related to the positions and strategies of the different bodies of control? (Paper IV).

These research questions are tied together by an understanding which views control of the state as a field, inspired by Bourdieu's understanding of a field as an ongoing struggle between social agents, and which emphasizes the relationships between agents in the field (Bourdieu 1993). The struggle within this field can be described as a game in which the social actors compete for recognition and legitimacy. In this context, the main social agents within the field are the state, the bodies controlling the state and the individuals or organizations holding the state accountable. Conceptualizing control as a field in this way allows for the empirical findings from the four papers to be located in a wider analytical framework.

The remainder of this chapter focuses on reviewing the literature on the control of the state and its roots in the tradition of critical criminology. The text includes a review of literature on the features of the Swedish state and a discussion of who is called to account, what is being controlled and of access to accountability. Finally, the chapter contains an overview of the five selected bodies that exercise control in relation to the state: the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights, UN committees and NGOs.

Controlling the state

The critical perspective

Within criminology, the research on the control of states has come from a critical tradition. The term radical (later called critical) criminology was introduced in the 1970s, and emerged as an alternative to orthodox (sometimes called mainstream or traditional) criminology (Lynch, Michalowski, and Groves 2000). Taylor, Walton and Young's ground-breaking book *The new criminology* (1973) marked the development of critical criminology. Radicals were influenced by Lemert's understanding of the construction of social identities and the process of labeling deviants (for the most part comprising less powerful actors) (Lynch, Michalowski, and Groves 2000). The early definitional approach focused on how the distribution of political and economic power in capitalist society resulted in certain acts being defined as crimes while other equally harmful acts were not (Lynch, Michalowski, and Groves 2000). It noted the difference between how street crime was handled by capitalist society by comparison with white collar crime. Quinney (1970), in the forefront of conflict theory, attempted to explain why some acts were defined and prosecuted as criminal whereas others were not. In *The Social Reality of Crime*, he proposed among other things that "Criminal definitions describe behaviors that conflict with the interest of the segments of society that have the power to shape public policy" (Quinney 1970:218). Similarly, Chambliss (1975), influenced by Marx, challenged the previously dominant understanding of crime, by suggesting that everyone commits crime. Instead, the important question is who are identified as criminals, and this is mainly an issue of class. He stated that: "Acts are defined as criminal because it is in the interest of the ruling class to so define them" (Chambliss 1975:152). Radicals also acknowledged that rich people commit the same type of crimes, but are treated differently within the criminal justice system (Chambliss 1975; Quinney 1970). "The rich engaged in crimes just as much as the poor – they were simply too powerful to be apprehended," as Young (1988:168) famously wrote. In summary, since the late 1960s, various scholars working in the field of criminology have challenged state definitions of crime, and have instead acknowledged that crime is defined in the context of a social and political process, which is typically guided by the interests of those in power.

Scholars came to realize that although crimes of the powerful posed a greater threat than street crime, these powerful actors (such as the state, high ranking officials and corporations) were often not held responsible for their harmful actions (Lynch, Michalowski, and Groves 2000). However, it was not until William Chambliss (1989), in his presidential address to the American Society of Criminology, called for the study of “state-organised crime”, that the emergence of criminological research on crimes by states was triggered (Michalowski, Chambliss, and Kramer 2010; Rothe and Mullins 2011). This also led to attention being directed at the control of state crime (Ross 2000a), and at the formal and informal organs that exercise control in relation to the state.

Features of the Swedish state

The term state means different things in different political cultures, and when we speak of the Swedish state we usually mean something other than what is meant in the United Kingdom for example. Relatively speaking, viewing the state as a single actor that also includes the entire public sector is more common in Sweden than it is in the United Kingdom (Karlsson 2003). Premfors (1998) suggests that the Swedish state may be viewed as a single organization even in a broader sense, which includes the whole of the public sector, a position I have also adopted (see also Cameron 2006; Michalowski 2010; Ross 2003). The state differs from other organizations when it comes to the issues of membership (citizenship), collective resources linked to the state’s territory, and rules in the form of laws and legal rules (coercive power) (Ahrne 1998b; Ahrne and Papakostas 2002). These factors constitute the limits of state autonomy (Ahrne 1998a). I argue for an understanding of the state as including more than the elected government, and as instead comprising the whole state apparatus including the public administration. However, citizens’ contacts with the state, as a result of their relationships with various agencies and organizations, are often indirect and fragmented (Ahrne and Papakostas 2002). From an organizational perspective, politics and the political process may be viewed as exercising the central command and control function in relation to the state, while at the same time research in the field of organizational theory has shown that this command and control structure is of limited utility when it comes to understanding what actually happens within the state (Ahrne 1998a). Practices that are implemented at one level need not necessarily be the same as those which were decided at another level. The desire of various agencies for autonomy, and their competition for resources (Lundquist 1998), in part speak against the perception of the state as a cohesive unit. However, viewing the state as an organization suggests that the state does not necessarily act on the basis of

a coherent will. The intentions and actions of the state should rather be viewed as collective (Ahrne 1998b).

The Swedish welfare state was formed in the 1930s and 1940s and has been characterized by the assumption of extensive public responsibility for education and healthcare for all citizens (Premfors 1998). Trägårdh (1999a) argues that the Swedish welfare state liberated individuals from traditional forms of social organization (such as the market, the family and the church), but that it disempowered individuals in relation to the state. Thus, the Swedish welfare state is a paradoxical mixture of collectivism and individualism, or what Trägårdh (1999a) refers to as statist-individualism. He argues that Swedish citizens lack the judicial protection of their individual rights, established rights praxis and also a support system from civil society. Instead, the social rights of the individual belong to the people at large, indicating the state's responsibility rather than recognizing individuals' legally enforceable rights (Trägårdh 1999a). Vahlne Westerhäll (2002) calls these rights quasi-rights, in contrast to real rights (where the individual can both predict their rights and hold someone accountable if these are not met).

Similarly, taking patients' rights as an example, Karlsson (2003) argues that the Swedish welfare state recognizes few rights that are individually enforceable, and that rights are expressed as duties for the healthcare authorities rather than as rights of the individual.¹ Swedish citizenship, Karlsson (2003) argues, is harmony-oriented and characterized by an idea of the relationship between the state and the citizen as relatively conflict-free. It is based on the notion that the interests of the citizen and the state largely coincide. This fact partly contributes to an understanding that individuals' rights are not necessary. On the basis of the empirical example of healthcare provision, Karlsson (2003) describes the line of accountability in Sweden as being blurred.

The argument for the lack of individually enforceable rights in Sweden has been criticized by Lundberg and Tydén (2010) in a text on the history of the *Swedish model*. The Swedish model is usually associated with political democracy, social welfare and economic equality. Lundberg and Tydén (2010) differentiate between two discourses on the history of the Swedish model, the traditional (democratic) and the critical (constitutional, represented by Trägårdh among others). The traditional discourse emphasizes parliamentary democracy as a realization of individual rights, whereas the critical approach provides examples of how democratic decisions have disregarded individuals' rights. Lundberg and Tydén (2010) conclude that both these approaches have significant limitations. Firstly, both perspectives can be criticized for their reductionism. While the traditionalists have been con-

¹ However, when it comes to Social assistance (financial support) under the Social Services Act, entitlement is expressed in terms of rights and these rights are individually enforceable through administrative courts.

fronted with the repressive history of the Swedish state, e.g. in the form of revelations about the eugenic sterilizations that took place in Sweden, the critical approach has had to deal with the fact that the Swedish sterilizations laws were not as tied to the Swedish model as it had argued. Instead eugenics was influential both throughout Europe and in North America. Secondly, both perspectives can be criticized for their normative bias. They are both strongly connected to political disputes about the line between the state and the individual, public and private (Lundberg and Tydén 2010). The solution according to the constitutional approach is an expansion of juridical power. Trägårdh (1999a) explicitly suggests that Sweden should follow the example of United States, where courts to a greater extent are used to claim individual rights. However, the trend towards judicialization has not been without its critics (Hirschl 2009). With regard to the two approaches, Lundberg and Tydén (2010) underline the importance of avoiding grand narratives, and their arguments highlight the difficulties associated with the task of establishing definitive features of the Swedish state.

Inspired by Trägårdh's understanding of the Swedish model, Barker (2013) offers a double-sided reading of the Swedish welfare state. The Nordic exceptionalism thesis claims that Sweden (among the other Nordic countries) maintains low imprisonment rates and relatively humane prison conditions (Pratt and Eriksson 2012). In contrast to the conventional view of the mildness of the Swedish welfare state and its focus on protecting human rights, Barker (2012) identifies a number of more repressive aspects, noting for example the common use of restrictions and isolation in pre-trial detention, and the placement of self-harming detainees in locked cells in remand prisons. In a similar manner, Smith (2012) contrasts the supposed humanness of the Scandinavian countries with the phenomenon of the extensive and internationally criticized practice of pre-trial solitary confinement. By linking these more repressive practices to one of the structural features of the Swedish welfare state, the weak legal tradition of individual rights, Barker explains how the state can function both as universal and exclusionary. In sum, "individual freedom is constructed through the state rather than conceived as freedom from the State" (Barker 2013:11). This is in contrast to the liberal tradition in e.g. the United States and the United Kingdom.

Nergelius (1999) argues that the separation of powers within the Swedish state has been focused on a functional separation of state institutions, in contrast to the United States, for example, where control over state institutions is written into the constitution. Further, he argues that in an international comparison, the Swedish tradition is characterized by a lack of distrust for authorities. Even in relation to other Scandinavian countries, Sweden is described as having weak political and judicial controls when it comes to holding cabinet ministers and other high ranking officials to account (Nergelius 1999). Instead, Sweden has developed an ombudsman-centered tradition, with an absence of any strong litigation culture. Within the ombudsman tra-

dition, the quasi-judicial decisions from the Parliamentary Ombudsman (which express criticism of state agencies rather than of individual servants of the state) constitute the principal method for resolving disputes between individuals and the state (Bonnor 2003). Karlsson's (2003) discussion, as described above, also includes a view that the constitutional task in Sweden is primarily that of regulating the public administration, and not of enforcing the rights of the individual. The role of the individual is foremost that of calling attention to discrepancies within the public sector; accountability becomes indirect rather than direct.

However, Trägårdh (1999b) has argued that the influence of the European Court of Human Rights has meant European countries having a situation imposed on them in which individuals' rights are given a stronger position. Vallinder (1994:97) calls this process "judicialization from abroad". Karlsson (2003) also argues that the discussion of accountability has expanded in Sweden, driven by a transformation of the state which has led to the distribution of power becoming more diffuse. The state is constantly evolving, and the Swedish state has been described as having become increasingly complex as a result of differentiation, decentralization and market-oriented reforms (Premfors 1998). These developments seem to be part of an international trend that has been described as a transformation of the state "from government to governance" (Lindvall and Rothstein 2006:51). The declining significance, or even the death, of the nation state has been discussed in relation to the presence of supranational demands resulting from globalization, entry into the EU and local and regional self-determination (Premfors 1998). Algotsson (2001) argues that since joining the EU, Sweden has moved from a position of majoritarian democracy towards a vertical separation of powers on a major scale. Lindvall and Rothstein (2006:61) describe how "the state, as an organization, has become less coherent". If individuals cannot identify where the responsibility lies in the increasingly complex and differentiated state, this may of course have an impact on their ability to hold the state accountable (Karlsson 2003).

The overall features of the Swedish state described here will be used as a backdrop for developing a better understanding of the control of the state and the conclusions of the four papers included in the dissertation. If the aim had instead been to describe the development of the state, the history and transformation of the Swedish state could have been studied in more detail. In the context of such an analysis, the complexity of the state might better be studied by viewing the state as a number of more or less independent organizations, rather than as a single organization (see Premfors 1998).

Who is called to account?

Within accountability theory, two types of questions are usually asked: to whom and for what? (Bovens 2005). The second of these two questions (for what) contains the substance of accountability. What kind of issues is it possible to hold the state accountable for? These issues are dealt with in Papers I and IV. The first question (to whom) focuses on the different forms of forum that the state and public officials have to face, such as the five specific control mechanisms discussed in this chapter. Beyond this, I have broadened the question to whom to also include accountability to the individual or organization that utilizes the different forums of control to hold the state to account (see Paper III). In the same question, Bovens (2005) include aspects of the accountant, that I would like to reformulate into a third question accountability of whom? This question focuses on the problems associated with identifying responsibility from an actor, particularly when it is difficult to single out a specific actor in relation to more comprehensive policies or organizational behaviors.

The control of state actors is often directed at civil servants and it is often difficult to hold states responsible for their actions (Williams 2010). Official misconduct regulations may typically be viewed as a form of control of the individual. While official misconduct involves actions taken in the service of the state, the deficiencies that come to light can be dismissed as being the result of individual rotten apples within the state administration. If the control results in a disciplinary case, then in legal terms it is to be regarded as a breach of the employment contract between the individual and the state employer (Eklund 2005). This means that the person who has been negatively affected by the action, e.g. a person who has been subjected to a groundless deprivation of liberty or whose home has been searched unlawfully, has no role to play in the context of the disciplinary case. This makes it difficult to speak of control of the state; it is rather a question of the state exercising control over its employees. In the same way, the type of investigations that are conducted in relation to high-profile incidents only identify the individuals responsible rather than those at higher levels of the hierarchy (Ross 1998). There are parallels here with the situation in Abu Ghraib (a U.S. military prison in Iraq) for example, where it was low-ranking military staff who were punished, while there is much to suggest that the practice of torture was both ordered and sanctioned by much more senior representatives of the state (Huggins 2010). One important point to note in the context of any analysis of control and of exacting liability is that power is not only about who has the power and how it can affect others, but rather also who is called to account. Having the opportunity to assign responsibility to lower levels of the hierarchy may in itself constitute an expression of power (see Forsberg Kankkunen 2009).

Scholars have distinguished between on the one hand acts committed by representatives of states for the purposes of organizational goal attainment (state crimes), and on the other acts committed during the course of one's daily work activities for the purposes of the attainment of personal goals (white collar crime) (Friedrichs 2000; Rothe 2009). Drifting into a perspective that focuses on the individuals who are held accountable is problematic:

Avoiding the individualized line of thinking is particularly important for the study of state crime because there is often no 'smoking gun', or more correctly no smoking memo, pointing to a specific guilty political actor. (Michalowski 2010)

Proceeding from the point of departure that the state can be viewed as an organization, this dissertation focuses on the control of state agencies or of the state itself. The decision to locate responsibility at the structural level in this way is based on the fact that it is the state that is responsible for the observation of laws and human rights, and that it is thus the representatives of the state who must bear responsibility for breaches that are committed, not least in relation to international obligations (Hedlund Thulin 2004; Westfelt 2008). According to the principles of international law, the state may be responsible for crimes committed by any part of the public sector: executive, legislative, judicial and central and municipal agencies (Cameron 2006). It is the government that is ultimately responsible for ensuring that Sweden meets her international obligations, for example as the representative of the state in cases brought before the European Court of Human Rights (Abiri 2009).

Since certain control mechanisms have the character of controlling the state or its agencies, i.e. the structure rather than the individual, this has been the emphasis in relation to the data collected for the purposes of the dissertation. The criticisms expressed by the Parliamentary Ombudsman relate to public sector agencies, the Chancellor of Justice specifies damages against the state and its agencies. The European Court of Human Rights in turn passes judgments on states and the criticisms from the UN point in the strongest possible terms to the responsibility of the state. NGOs direct their criticism at different levels, but time and again at the responsible agency, government representative or the state itself.

What is being controlled?

One of the issues debated in the field of the control of the state is that of how the object of the control should be labelled. Several concepts are used such as abuses of power, wrongdoing, unlawful actions, violations, irregularities, harm and crime. In many contexts, and particularly those linked to human rights, the breaches of laws or conventions involved are not described as

crimes (see for example Hydén 2007; Silander 2007; Staaf and Zanderin 2007). This discussion goes back to arguments on how to define crimes by the state.

One of the principal arguments that has been put forward for why crimes committed by states should not be included in the criminological research tradition is based on the view that state crimes are not "really" crimes (Cohen 2000) since they do not violate criminal law (Matthews and Kauzlarich 2007). Criminologists who follow the lead of criminal law, tend to focus their attention on individual criminal actors (Matthews and Kauzlarich 2007). Two main definitional approaches have been identified by Matthews and Kauzlarich (2007). Scholars have either accepted a legalistic definition of crime but included other type of laws than merely state-defined criminal law, or they have rejected the legalistic definitions and argued for a shift in focus from crime to harm.

In the first approach, scholars have referred to international law and conventions on human rights (see for example Cohen 2000; Green and Ward 2004; Schwendinger and Schwendinger 1970) as well as to national legislation and regulatory violations, according to which state actions can be classified as crimes (see for example Doig 2011; Kauzlarich and Kramer 1998; Kramer and Michalowski 2006; Rothe 2009). Inspired by Rothe (2009), state crime is defined here as either acts or instances of inaction, which are attributable to an agent of the state and which violate domestic law (including administrative law) or international law (including human rights violations). It includes, but is not limited to, acts committed by the state and acts for which state agencies are reprimanded, or deemed liable to pay compensation, by the mechanisms controlling the state. Tanguay-Renaud (2013) suggests that the fact that we have typically not thought of state violations of international treaties as crimes has to do with the remedies that are available. I would argue that the same goes for national administrative law. The remedies available when control is exercised in relation to the state by a Parliamentary Ombudsman, Chancellor of Justice, the European Court of Human Rights, UN committees and NGOs (such as compensatory damages, condemnation and recommendations) are not what we traditionally consider to be punishments.

In the second approach, scholars have argued that the notion of social harm is more productive than the concept of crime in relation to social change, and that the concept of crime serves to maintain power relations (Hillyard and Tombs 2007; Schwendinger and Schwendinger 1970). Whyte (2009) asks why we should continue using the concept of crime when many of the most damaging acts of violence committed by states are entirely lawful.

In addition, Green and Ward (2004) suggest a definition of state deviance that includes violations of rules of international law, domestic law and also social morality "as interpreted by audiences that include domestic and trans-

national civil society [...] international organizations, other states and other agencies within the offending state itself” (Green and Ward 2004:4-5). With the focus on social morality and civil society, they go further than the legalistic definitions above, although they do distance themselves from the broad concept of social harm that they find stretches beyond the reach of criminology.

The question of the concept of crime also raises the question of how laws and legal legitimations come into being (see for example Whyte 2009). As has been noted by others, laws are created through political processes and power struggles between different interests (Chambliss 1975; Lynch, Michalowski, and Groves 2000). This is true of both domestic legislation and internationally agreed conventions on human rights. Taking laws as the point of departure for defining whether or not state actions are criminal presents problems as a result of the fact that the state defines the law and would rarely want to classify its own behavior as criminal (Matthews and Kauzlarich 2007; Rothe 2009; Williams 2010). Whyte (2009:174) notes that to “focus upon ‘crime’ is to focus upon a relatively small state-defined subcategory of a much broader set of social injuries”. Sellin (1938) argued a long time ago that criminology could not allow the state to define its field of inquiry. The state can indeed, as in Nazi Germany and in the context of other crimes against humanity, make its harmful actions legal (Cohen 2000; Maier-Katkin, Mears, and Bernard 2009). Taking a Swedish example, forced sterilizations were conducted under the Sterilization Act between 1934 and 1941. From 1941 to 1975, the Sterilization Act had an optional character but an inquiry conducted at the instruction of the government in 1992 found that sterilizations were in many cases *de facto* carried out against the relevant individual's will. The Government's instructions to the commission of inquiry stress that those sterilized against their will or on someone else's initiative should be given compensation even though the state is not considered to be under any formal obligation to pay such compensation (SOU 1999:2). The latter, I suppose, is based on the fact that at least some of the procedures did not breach any laws that were in place at the time.

In modern democracies, constitutions and laws, at least nominally, stem from the people (see Tanguay-Renaud 2013). The process of naming and framing crime is however, “significantly shaped by those who enjoy the economic and political power to ensure that the naming of crime in most instances will reflect, or at least not seriously threaten, their worldview and interests“ (Kramer, Michalowski, and Kauzlarich 2002). When Bourdieu (1994:1) declares that “one of the major powers of the state is to produce and impose (particularly through the school system) categories of thought that we spontaneously apply to all things of the social world,” he is referring to ideas about the state or about “social problems”, but I would argue that he might as well be referring to the category crime.

In this sense the wrongs, violations, and unlawful actions that are subject to the control of the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights, UN committees and NGOs could be labelled as crimes, even though they comprise a wide range of wrongs and harms including many less serious violations. However, this brings us to the question of why it would be important to label these actions as crimes when we can use other concepts such as harms or wrongs. Whyte (2009) points out that harmful practice is not weighted equally critically with regard to social or moral obligations as crime. To define harmful actions as crime may be important in order to help mobilize public support (Matthews and Kauzlarich 2007). Pickering (2005b), who has studied the treatment of asylum seekers in Australia, argues that the use of the crime concept also serves an ideological and discursive function. By labelling the actions of the state as crimes, we direct our focus at who should be recognized as victims, and who should correctly be viewed as the responsible perpetrators. Pickering argues further that civil society and the media have had an aversion to labelling incorrect state actions as crimes. Further, Matthews and Kauzlarich (2007:50) add that, “[s]ince many of the harms caused by states may also be studied as crimes if one is willing to use international law and/or human rights law as the foundation upon which the label crime is constructed, then perhaps critical criminologists should concentrate on labeling state harms as crimes within the broader field of criminology.”

Access to accountability

One recurrent theme in the papers included the dissertation is that of who can hold the state accountable for its actions. Previous research has shown that the crimes of the state can disproportionately affect the less privileged members of society (Grabosky 1989; Kauzlarich, Matthews, and Miller 2001). The gap between those who are victims of state harms and those who will and can hold the state accountable, i.e. the degree of access to accountability, is dependent on many factors. On the basis of a literature review, Ross (2000a) formulates a number of propositions in relation to victims of state crime which suggest that the greater the number of victims, the greater the power, resources and organizational capabilities of the victims and the better the communication between victims and the bodies controlling the state, the greater the degree of control of state crime.

Research on access to justice and accountability for victims of crime in general points to the relevance of similar factors for understanding access to accountability. Goodey (2005) points to three factors that are central in relation to the issue of accountability for victims of crime in general: power, knowledge and citizenship. For example, the most marginalized victims tend to have the least power and knowledge to deal with the aftermath of victimi-

zation, and many of the most vulnerable and marginalized victims of crime are not citizens. The concept of access to justice has been described as “the most basic requirement – the most basic ‘human right’– of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all” (Cappelletti and Garth 1978:185). Research in this area has traditionally been focused on the empirical documentation of how the legal system falls short of its supposed promise, particularly in relation to less privileged groups (Sandefur 2009). Cappelletti and Garth (1978) point to barriers in the legal system that may be of relevance to an understanding of access to state accountability by means of the European Court: costs of litigation, time and party capability (including the competence to recognize and pursue claims, and experience of the judicial system). They further note that the barriers to access to justice are highest in relation to legal actions that are focused on relatively small injuries caused by powerful actors. In addition, Curran and Noone (2008) identify four factors that are relevant in relation to access to justice from a human rights perspective; knowledge of the right, having the capacity to pursue the right, having confidence to pursue the right and the availability of accessible, affordable, timely and effective processes for accountability. Thus, having access to justice in practice, rather than merely at a theoretical level, may mean overcoming significant barriers for certain groups of individuals.

To date we know very little about the extent to which incidents are reported to various organs of control. One nationwide study that has examined perceived exposure to incorrect and unfair treatment on the part of state agencies in Sweden may be of some help. The questionnaire survey from 2007, which was conducted by the SOM Institute² in Sweden, asked the participants whether they themselves or a close relative/friend had been incorrectly or unfairly treated by a public sector agency or official over the course of the past twelve months.³ Almost 30 percent of respondents (483 of 1666) reported incorrect or unfair treatment in the survey, and almost as many (431 of 1666) stated that they knew whom to turn to in order to report the incident. A smaller proportion (3%) of those who answered the question also stated that they had previously reported an incident of this kind. The propor-

² The principal researchers responsible for the SOM-survey were Sören Holmberg, Lennart Weibull and Lennart Nilsson. I have myself compiled the analysis from the original data set, which was provided by the Swedish National Data Service (SND).

³ The question of incorrect or unfair treatment cannot be said to comprehensively cover the types of incidents or actions that the state may be guilty of. The control mechanisms that are studied in this dissertation cover a wider range of actions than might be included in the concept of incorrect and unfair treatment. Unfair treatment, on the other hand, may include perceived discrimination, but can also be interpreted more broadly and thus include less serious incidents such as being treated rudely. Also, the same act may be perceived differently by different individuals, and if an individual is treated incorrectly, this is not necessarily evident to the person concerned.

tion who stated they had the necessary knowledge regarding where to report the treatment was almost twice as large among those with a higher level of educational achievement than it was among those with a lower level of education. As regards the question of knowledge, the survey showed that those with higher levels of educational achievement had a greater knowledge of how to report incorrect and unfair treatment on the part of state agencies. Knowing about one's rights and about the opportunities that exist to seek redress may be regarded as a prerequisite for a functioning control of the state. Certain groups in society will find it more difficult to make use of the formal control mechanisms as a result of a lack of knowledge as to how the system works.

Formal and informal control of the Swedish state

With a focus on control of the state and its state agencies, and a point of departure based on the desire to explore various different forms of control, five bodies of control were selected for the empirical work conducted in connection with the papers included in the dissertation. These bodies can be categorized in different ways according to their function and purpose: formal/informal and internal/external (to a government or a country) (Ross 1998, 2000c, 2011). The external controls lie outside of the state apparatus of the state in question and the control that they exercise is imposed on the state (Ross and Rothe 2008). Internal controls have been criticized because they tend to protect the interests of the government rather than those of the individual (Ross 2000b). Bearing these concepts in mind, the five bodies of control that form the empirical base of the dissertation can be described and categorized as follows. The Parliamentary Ombudsman has the task of scrutinizing how Swedish laws are applied in the context of public sector activity. The control here is formal and external to government and the Parliamentary Ombudsman operates as a domestic control organ. Even though the Ombudsman is external to the government it is still an extended arm of the state's apparatus, since it is a state agency under the supervision of Parliament. The Chancellor of Justice acts as the government's ombudsman in relation to the supervision of agencies and state officials, and is an organ of formal, internal and domestic control. The European Court examines allegations of violations of the rights set out in the European Convention on Human Rights, and can be described as formal, external and international. The different UN committees monitor the compliance of UN member states with conventions such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and can be categorized as organs of formal control that are external to government and international. The NGOs are external to governments, may be both domestic and international and the control they exercise is informal.

Table 1. Types of control bodies.

Parliamentary Ombudsman	Chancellor of Justice	European Court of Human rights	United Nations commissions	NGOs
Formal	Formal	Formal	Formal	Informal
External (to government)	Internal (to government)	External (to government)	External (to government)	External (to government)
Domestic	Domestic	International	International	Domestic and international

The main focus of the control examined in the studies is directed at government agencies or the government itself as representatives of the state and not primarily at individual officials. This is one of the reasons that the judgments of these control bodies were chosen for the study rather than, for example, prosecutions for misconduct or disciplinary cases. There are several other bodies of control present in the Swedish system which will not be discussed in any detail since they are not included in the empirical work of the dissertation but which could nonetheless be mentioned. At the national level, the task of scrutinizing state officials or state agencies is assigned to various forms of actors. The regular court system is in many societies the principal protection for individuals from administrative illegalities and crimes committed within the bureaucracy (Hurwitz 1981). The opportunity remains to take a case to the Swedish courts, both within the general court system, the administrative court system or to a special court (such as the Labor Court). Since the incorporation of the European Convention on Human Rights into Swedish law in 1995, the Convention may also be applied in Swedish courts. Although the national courts have a controlling function in relation to the state, its agencies and officials, they could nonetheless be regarded as constituting a third arm of the government (Lund 1985). In this regard, Trägårdh (1999a) argues that the Swedish courts have a weak position in relation to Parliament, and they are described as merely administrative bodies. There are also disciplinary systems that serve to supplement the penal legislation. Disciplinary cases are dealt with by staff disciplinary boards, most commonly at the agency concerned, and may lead to dismissal, a formal warning or a salary deduction, which means that labor laws are also activated. From an historical perspective, these regulations were originally intended to provide the country's rulers with the opportunity to punish officials when they did not behave in accordance with the demands or wishes that had been put in place (SOU 1996:173).

Commissions and other forms of inquiry can be appointed in order to investigate earlier societal conditions and occasional serious incidents or aberrations in public administration (Hirschfeldt 1999). These inquiries are con-

ducted at the instruction of the government and thus may not be viewed as representing a form of control that is independent of the state. The majority of such inquiries have been tasked to investigate incidents that occurred some time ago, for example being the inquiry into sterilizations conducted in Sweden between 1935 and 1975 (SOU 1999:2) and the inquiry on child abuse and neglect in institutions and foster homes (SOU 2011:61). Commissions and other types of inquiry may perhaps primarily be viewed as a means of investigating responsibilities and liabilities after the event, but they have no judicial function (Hirschfeldt 1999). Criticism has been directed at the fact that inquiries of this kind are first and foremost no more than a token gesture. Appointing a commission of inquiry may constitute a means of neutralizing underlying criticisms (Flyghed 2004).

In addition, legal and political scrutiny of the government (including the work of individual ministers) is exercised by the Swedish Standing Committee on the Constitution. The media, who represent another important actor in relation to the discovery of irregularities within the state, may be viewed as a voluntary scrutinizer of state actions, and they serve an important function in this area (Abiri, Brodin, and Johansson 2008). Through their coverage of a given issue, the media may also exert pressure in relation to incidents that have already been reported (Hedin, Månsson, and Tikkanen 2008).

In the international arena, there are a range of actors that are not part of the empirical work of this dissertation. At the international level, scrutiny is exercised by e.g. the Council of Europe, and by the European Union. Since Sweden's entry into the EU, human rights have also come to be protected by the EU's various institutions (Silander 2007). The Council of Europe is linked to the European Court of Human Rights (discussed in more detail below) but also to other control mechanisms, such as the European Convention against Torture, which has repeatedly criticized the situation in Swedish pre-trial detention centers (Council of Europe 2009) and the Special Commissioner for Human Rights, who has made recommendations to Sweden, amongst other things, on a need for improved measures to combat the discrimination of the Roma (Council of Europe 2007). Since the International Criminal Court (ICC) indicts individuals and not states for the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, and since the focus of the dissertation is directed at Sweden, the Court is not touched upon here, although the control exercised by the ICC may be regarded as central, and has been a focus for several studies on state crime and its control (Rothe and Mullins 2006; Rothe and Schoultz 2014).

There now follow five sections focusing on bodies that exercise control in relation to the state in the form of the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights and the UN, which all constitute formal controls of the state, and NGOs, which are viewed as informal organs of control. This section then closes with a number of concluding remarks on the control of the Swedish state.

The Parliamentary Ombudsman

The Parliamentary Ombudsman has the task of scrutinizing how Swedish laws are applied in the context of public sector activity. According to the Instruction to the Parliamentary Ombudsman (SFS 1986:765, §1-2), the Ombudsman is to exercise scrutiny in relation to state and municipal agencies, their officials and other decision makers. The Ombudsman cannot rescind decisions but can direct criticism at public sector agencies. The Parliamentary Ombudsman does not only deal with individual complaints but also undertakes actions for the purposes of control and scrutiny on his or her own initiative (Staaf and Zanderin 2009).

In addition to directing criticism, the Parliamentary Ombudsman can indict public officials for official misconduct or other crimes committed in the course of their work (Abiri 2009) and may recommend disciplinary measures (Eklund 2005). However, during the years 2000 to 2010, there were few judgments that led to charges or disciplinary outcomes against individuals (see Paper I). The dissertation takes an organizational approach, and thus the individual cases are not included in any of the empirical studies. Instead, the dissertation focuses on registered incidents for which the Parliamentary Ombudsman has issued a reprimand directed at a state agency. The main reason for this restriction is that the study's interest lies in state responsibility and not in the individual.

The government and its ministers are not subject to the oversight of the Parliamentary Ombudsman. However, the Parliamentary Ombudsman may, at the instruction of the Standing Committee on the Constitution, indict ministers of state, parliamentary officials, and justices of the Supreme Court and the Supreme Administrative Court (Ekroth 2001). These types of individual responsibility may have been of more interest since they involve high ranking representatives of the state; however, indictments of this kind have not occurred in modern times.⁴

Although, the Parliamentary Ombudsman is an important channel through which private individuals may lodge complaints against the state apparatus, it has been described as impotent (Warnling-Nerep, Lagerqvist Veloz Roca, and Reichel 2007). A doctoral dissertation by Ekroth (2001) argues that the Ombudsman has on several occasions failed to react sufficiently strongly in the context of curtailments of civil liberties and rights, or of the rule of law. These cases have first and foremost involved situations where criticism has been directed at the agency concerned but without anyone being indicted or reported for a disciplinary sanction. The implication is that Ekroth (2001) feels that directing criticism at the agency is less serious, which need not necessarily be the case. On the one hand, an indictment may be viewed as

⁴ According to information received by e-mail (2014-04-23) from the Information Office at the Parliamentary Ombudsman.

being more serious because it involves a criminal justice sanction, but on the other hand, criticism directed at an agency may serve to contextualize the incident in a different way and in so doing implicate structural problems in a way that cannot be achieved by indicting an individual official.

The Chancellor of Justice

The Chancellor of Justice scrutinizes the government and directs its principal focus at the freedoms of the press and of expression. Since the Chancellor of Justice monitors the rights of the state and represents the state in legal matters, it is not a self-evident candidate for scrutiny of the state. However, the Chancellor of Justice settles the level of damages due to individuals in the context of the improper exercise of public authority and oversees more or less everybody who conducts public sector activity, with the exception of the government, ministers of state and parliamentary agencies and their employees (Gullnäs 2002). The focus is on registered incidents for which the state agencies have been judged to be responsible by the Chancellor of Justice or where the Chancellor of Justice has resolved the complaint by ordering the Swedish state to pay compensation for damages caused.

The role of the Chancellor of Justice has been described as that of a chameleon, who acts as a police officer (investigator), as a prosecutor (e.g. in freedom of the press cases), as a defense lawyer (in the Chancellor's role as legal representative of the government) and as judge (in cases involving damages to persons detained without grounds, for example, or of the improper exercise of public authority) (Gullnäs 2002). The Office of the Chancellor of Justice does not represent the individual but is rather the representative of the state, at the same time as it is the place where individual citizens have the opportunity to have their cases examined. To draw a somewhat simplistic parallel with cases in the criminal justice system, this would in principle mean that the size of the damages awarded for an assault would be determined by the perpetrator's legal counsel. Thus the system is founded on a very strong faith in the legal adjudications of the Chancellor of Justice, and by extension perhaps in the capacity of the state to protect the individual against the state itself (see Frändberg 1996).

The European Court of Human Rights

One important form of control over the activities of the state is found in the work of the European Court of Human Rights in Strasbourg, which is linked to the European Convention on Human Rights. Through the ratification of the Convention, the Swedish state has an obligation to follow rulings by the European Court relating to complaints against the state (Berlin 2009). In order to take a case to the European Court, all domestic legal options must first be exhausted. The European Court does not represent a higher court in

relation to the national courts, however, although states can be required to pay damages to those whose cases are heard (Danelius 1998). It is not only citizens who have the right to make complaints to the Court, but rather all individuals present within a country's borders who are affected by the decisions of its public sector agencies. Groups and organizations can also pursue complaints. Complaints are directed at the state as the body responsible for the actions of persons in the public sector, and not at individuals or specific public sector agencies (Bring and Mahmoudi 2007).

The means chosen by the European Court to compensate violations varies. Violations can sometimes lead to no more than a finding that the violation has occurred, but the Court can also award damages for economic or immaterial injury (Bratt and Söderberg 2000). The vast majority of complaints (over 90 percent) are dismissed, however, and do not lead to any action (Bring and Mahmoudi 2007). The European Court has been criticized in many respects, not least for being highly selective. Dembour (2006) suggests that access to redress is far from equal in the sense that privileged applicants have a greater chance of being heard by the European Court. These aspects are further explored in Paper III.

UN committees

The scrutinizing function of the UN is based on legally binding conventions. When conventions are ratified, it is the responsibility of states to protect, implement and promote the rights concerned (Abiri 2009). Since the mid-1960s, the various conventions have been supplemented by monitoring systems. These take three principal forms: state reports, individual complaints and reports from Special Rapporteurs. The reporting system, which is linked to all central conventions formulated under the auspices of the UN, means that states provide a report on their observance of a given convention with a periodicity of between two and five years (Scheinin and Grimheden 2008). Independent monitoring committees are tied to the conventions, with the task of checking and evaluating the work of different countries, of evaluating their respective human rights situation, and then of publishing criticisms and recommendations (Alfredsson 2005). Since 2006, a new function, labelled Universal Periodic Review (UPR), has also been established within the UN. UPR involves a recurrent evaluation of the human rights situation in all UN countries. Sweden was the subject of UPR scrutiny for the first time in May 2010. The monitoring work is of a judicial nature, although it has also been described as quasi-judicial since the committees should not be regarded as constituting courts (Alfredsson 2005; Gunner 2005). A number of the conventions are also linked to a complaints process, whereby individuals can make reports, which are then assessed by the expert organ (Hydén 2007). In addition, the UN system also includes what are termed special rapporteurs,

who scrutinize different countries, or areas such as health or violence against women (Abiri 2009; Gunner 2005).

NGOs

NGOs serve an important function when it comes to exposing human rights violations (Alfredsson 2005). Also, NGOs conduct an informal control and have in many cases had a major impact on the actions of states, although it is difficult to specify exactly how much influence they are able to exert (Berlin 2005). Even if identified as informal control, several NGOs have a formal advisory role at the UN and the Council of Europe. In connection with inquiries by UN organs or committees, NGOs are invited to write what are often referred to as Alternative or Shadow reports, which usually identify other types of human rights problems in the countries concerned than those described in the official reports from the countries' governments (Scheinin and Grimheden 2008). However, the NGOs working with migrant issues (covered in Paper IV) are far from homogenous, and vary from well-established international NGOs with links to the UN, to local NGOs with less influence on the international agenda but with a wide range of functions. To protect the interview participants' confidentiality, the names of the NGOs will not be presented, since a number of these NGOs only have one or a few employees working with these issues.

Concluding discussion on control

In this chapter, I have presented a comprehensive discussion of controls exercised in relation to states and presented the five bodies controlling the state that form the empirical basis of the dissertation. I will end this chapter with some concluding remarks on the control of states.

It is difficult to know to what extent controls of the state work in practice in their aim of controlling state agencies or the state itself. Both national and international bodies of control have been described as impotent. Informal control mechanisms that often appear to publish more pointed criticisms may on the other hand be undermined by the very fact that they are informal. The issue of whether control is sufficient also depends on which perspective is chosen to approach the issue. Alfredsson (2005) asks whether more extensive regulations lead to an improvement in the observance of human rights, or whether it is rather an issue of better utilizing the tools that already exist.

In parallel with increased demands that states be made to answer for their actions, there is an idea that the state could do better if it were encouraged and given guidance. One indication of this is found in the fact that criticism is often expressed in the form of recommendations. The issue of whether the control of states should be conducted using the carrot or the stick represents

an additional dimension of the aims of this control. Braithwaite (1985) examines the efficacy of punishment and persuasion as means of improving safety in the coal mining industry. Braithwaite's main study object with regard to regulation has been corporations, and not states, but he emphasizes different aims associated with regulation, and recommends a mix of punishment (primarily deterrence, but also incapacitation or rehabilitation of corporate offenders) and persuasion (an attempt to change prevailing conditions). Braithwaite (1985) argues that while persuasion works better than punishment, credible punishment is needed as well, to back up persuasion when it fails. In this regard, Hurwitz (1981:74) concludes that some bodies of control (he takes the French Conseil d'Etat as the example) "may be an excellent check or curb on past unacceptable behavior, but it contributes little to encourage or spur good future behavior. It is an *ex post* institution, reacting to individual complaints." This is compared to the ombudsman function whose task "is not to punish past behavior but, rather, to encourage future good behavior". The latter form of control (a form of persuasion) may perhaps be assumed to be based on the notion of the state as a good and changing agent.

In Mathiesen's book *the Politics of Abolition* (1974), he carefully considers various strategies to obtain the goal of the abolition of prisons. He differentiates between strategies of "moving into the established systems" and strategies "remaining outside the established system" (Mathiesen 1974:21). Taking the Norwegian prison association KROM as an example, he discusses the revolutionists and the reformists within the organization, arguing that the former risk being "'defined out' as irrelevant", the other risks being "'defined in' as undangerous" (Mathiesen 1974:23). He singles out *positive reforms* aimed at improving the system - making it function more effectively - and *negative reforms* that negate the basic prison structure. Since positive reform legitimizes the prevailing order, he argues that in order to enable long-term goals the reforms should be of the negative kind (Mathiesen 1974). These aspects have some importance in relation to how the control of the state works, its efficacy and the strategies used by various forms of bodies of control, not least with regard to NGOs as bodies of informal control in relation to the state.

Furthermore, the various types of bodies of control included in the dissertation vary of course in the extent to which they are successful in gaining acceptance for their framing of a problem. First, some of the bodies of control have a formal obligation to control the state whereas others are voluntary scrutinizers of state actions. Second, the control organs vary with regard to the resources they have at their disposal, a factor emphasized by Ross (2000a) as being important for understanding the extent of controls of the state. Third, the control bodies are characterized by different levels of acceptance, or legitimacy, in relation to civil society, which is likely to affect their influence. Fourth, the political opportunity structure will likely affect how widely accepted the outcomes become (see Joachim 2003). Thus, this

issue seems to be more complicated than simply establishing whether formal control organs are more influential than informal control bodies, or whether international control bodies are more influential than their domestic counterparts etc. In the process of gaining acceptance for a specific problem representation, the media also play an important role through their coverage of a given issue (see Ross 2000b).

In the following chapter, I present and discuss the dissertation's theoretical approach.

Theoretical frame

This chapter presents the theoretical framework applied in the dissertation. It covers Bourdieu's notion of the field, where social agents struggle for legitimacy, Lipsky's theory on the street-level bureaucracy carrying out and establishing state actions and policies, and Cohen's concept of state officials' accounts as constituting a means of avoiding responsibility. These perspectives have been applied in order to be able to understand how the control of states works in practice. The insight relating to struggles for legitimacy within a field, adopted from Bourdieu, has been applied both as a theoretical frame for understanding the field of the control of states in general, but also more specifically to develop an understanding of how certain 'problems' are framed by different bodies of control. Drawing on Lipsky, I attempt to understand how certain parts of the state and certain issues have been subject to control to a greater extent than others. Cohen's concepts of denial and partial acknowledgement have been employed to understand the mechanisms that are at work when the legitimacy of state actors is challenged. In addition, several of the concepts developed in the literature on the control of states, and also in the research on accountability and access to justice (presented earlier), have also formed part of the theoretical frame of the dissertation.

Control as a field

The discussion of control and accountability ties into the concept of legitimacy. Both complaints from the public and reprimands from those exercising control in relation to the state may be perceived as representing a problem of legitimacy (Green and Ward 2000; Pickering 2005b). As has already been mentioned, the concept of legitimacy is understood here in terms of an ongoing discussion rather than as a fixed phenomenon (Liebling 2011; Sparks and Bottoms 1995). As regards the issue of legitimacy, Bourdieu's understanding of a *field* as a site of struggle or a battlefield may here be used as a means of understanding the control of the state. According to Bourdieu (1993:133) a field is "an area, a playing field, a field of objective relations among individuals or institutions competing for the same stakes". The field is defined by its specific stakes and interests. This means that to study a field we need to uncover the struggle that constitutes the field (Bourdieu 1993). What is it that is worth fighting for? According to Moi (1991:1021), the aim

of the struggle in a given field is: “to rule the field, to become the instance which has the power to confer or withdraw legitimacy from other participants in the game”. This means that the struggle for legitimacy is not only an issue for the state under scrutiny but also for the other agents in the field, i.e. the bodies exercising control in relation to the state and those holding the state accountable.

To Bourdieu (2000), the unequal distribution of various kinds of *capital* constitutes the very structure of a given field. Capital should not be understood as specific object but as a social relation (Arnholtz and Hammerslev 2012) and capital exists and functions in relation to a field (Bourdieu and Wacquant 1992). *Newcomers* are those who are least endowed with capital (Bourdieu 1993). In Bourdieu’s terms, the agents’ access to accountability, as described above, may be understood as a manifestation of how their access to different types of capital (economic, cultural, social and symbolic) mediates the field (Bourdieu 2000). Within the field, the institutional environment creates a *habitus*, a “sense of the game” (Bourdieu 2000:11), which can be understood as an acceptable and “natural” way of thinking and acting within the specific context (Barker 2013; Whyte 2012). The habitus implies knowledge and recognition of the general laws of the field (Bourdieu 1993). Connected to habitus is the term *doxa*, which for Bourdieu refers to the schemes of thought and perception of the social world that appear to be natural and self-evident (Bourdieu 1977). Whyte (2012) describes the example of the liberal understanding of the free market society as a doxic experience that goes unquestioned. Even though doxa is understood as being established and beyond discussion, Bourdieu reminds us that it hasn’t always been so and that doxa is historically situated (Bourdieu 2000). This means that doxa can also be challenged, but a crisis is a necessary condition for an anti-doxic critique to develop (Bourdieu 1977; Moi 1991). As the analyses in Paper IV and in the *Concluding discussion* will show, Bourdieu’s concepts of field, capital, habitus and doxa are of value in relation to understanding the practice of controls of the state and how the bodies exercising these controls formulate their claims. In Paper IV, the notion of fields is applied to the analysis of how the bodies of control represent the problem of the state’s handling of the process of seeking asylum and residence permits in Sweden, and of which frames these problem representations are embedded in. The application of Bourdieu’s notion of a field is primarily intended to assist in developing the analysis of the relations within the field of control of the state, the positions of the relevant social agents and the strategies employed.

Still, the notion of field has its limitations as a theoretical frame for understanding the control of the Swedish state. I adopt an institutional approach, similar to that employed by other researchers (see for example Cohen 2011; DiMaggio and Powell 1991; Hammerslev 2003), when analyzing the field occupied by the state, the bodies of control and those holding the state accountable. However, those holding the state accountable can hardly

be considered to constitute an institution. They consist of a very broad group of individuals and organizations and could in Bourdieu's terms be described as newcomers in the game, while others have more experience in the field (such as lawyers who recurrently practice in the European Court). In addition, it may be rather insensitive to consider the three social agents as competing for the same stake. Consider the social agents analyzed in Paper IV (the state, the bodies of control and the migrants or those representing the migrants). The migrants' struggle for recognition and legitimacy may well also be a struggle for survival. The positions are far from equal.

Just as it is problematic to speak about those holding the state to account as a unified social agent within the field, it is also difficult to speak about the state as a consistent social agent. Bourdieu (1992), acknowledges the element of competition and struggle within the agents of the state. In his understanding "the state is not a homogeneous actor but rather a field (or more fields) in which various interests manifest themselves" (Arnholtz and Hammerslev 2012:54). Arnholtz and Hammerslev (2012) acknowledge a duality in Bourdieu's understanding, whereby on the one hand he questions the very existence of the state while on the other he emphasizes that the state has real power that exceeds that of individual actors. Arnholtz and Hammerslev (2012) suggest that the ambiguity is not Bourdieu's but characterizes the state itself. Bourdieu's contribution regarding the field of power includes an understanding of the state as the agency that "successfully claims monopoly over the legitimate use" not only of physical violence, as Weber famously proposed, but also of symbolic violence (Bourdieu 1994:3). Also the state, as the holder of a sort of meta-capital, has the ability to exercise power over the different fields, for example the physical force (the army and the police), and their particular capital. (Bourdieu 1994; Bourdieu and Wacquant 1992). The state's symbolic power enables it to impose mental categories and schemes of thought on a population (Bourdieu 1984).

Similarly, variations can also be seen within the category of bodies of control. These could be understood as different subfields, for example the formal domestic field of control, the formal international field of control and the informal control. It becomes evident in the empirical work of the dissertation that the rules of the game differ either slightly or significantly between the different bodies of control, regarding not only what they control and how they exercise control and but also what they require of those who participate. Still, many of the logics, rules and strategies are similar, which may also justify speaking of them in terms of one social agent. However, I cannot escape the understanding that reducing the analysis to a focus on a struggle in which the state, the bodies of control and those holding the state accountable are the main agents on the field constitutes a simplification. By simplifying the analysis in this way, the analysis is made more comprehensible and an understanding of the relations within the field is developed, but at the same time the level of complexity within the social agents is reduced. Still,

the analysis of three main social agents in the field does not mean that the social agents are treated as consistent entities. Instead, I acknowledge three types of social agents. In the analysis, I recognize that there are differences within the social agents' positions and strategies, at least when it comes to the bodies of control and those holding the state accountable. The state as a social agent is differentiated to a lesser extent in the analysis, however, for the simple reason that the empirical work has not been focused on the complexity of various state agents.

Nonetheless, the field should be viewed as a research or thinking tool and not as a fixed concept (Bourdieu and Wacquant 1992). Since the concept of fields is open and abstract it needs to be situated in the empirical work (Prieur and Sestoft 2006). The notion of the field is also applied in various ways by different scholars, either as a theoretical concept that permeates the whole study or as a theoretical framework to analyze data that have already been collected (Hammerslev, Arnholtz Hansen, and Willig 2009). The usage employed here resembles the later approach, since the dissertation did not engage in the analysis of control as a field to start with.⁵ Bourdieu's understanding of the field as a site of struggle is used as a means of understanding control of the state, the positions and struggles for legitimacy within the field, and also the strategies used by the social agents occupying the field.

The street-level bureaucracy

According to Lipsky (1980), *street-level bureaucrats* interact with citizens in the course of their daily jobs and have discretion in exercising authority. The limitations imposed by resources and conflicting and ambiguous goals entail significant constraints on their ability to meet demands for the fair and effective treatment of citizens. Street-level bureaucrats have a considerable impact on people's lives, for example when determining the eligibility of citizens for benefits or sanctions. The relationship between the bureaucrat and the client is non-voluntary in the sense that the citizen cannot normally obtain these services elsewhere. Lipsky (1980) concludes that public agencies whose clients are poor provide different treatment by comparison with those that serve more privileged individuals.

Lipsky (1980) points to the discretion exercised by street-level bureaucrats, and argues that the decisions they make, and the routines they establish, become public policy. In a way, these bureaucrats are carrying out and establishing state actions and policies within the context of broader policy

⁵ Having a Bourdieusian perspective from the start of a study means conducting an explicit empirical study of the social agents in the field, their relations, positions, capital and habitus. It means using reflexive sociology in praxis, from the planning of the study and throughout the whole analysis (see Hammerslev, Arnholtz Hansen and Willig, 2009)

structures (Lipsky 1980). In an updated edition of his famous book, Lipsky clarifies that the street-level bureaucrat's discretion should be understood in the context of broad policy structures, of which their decisions are a part. "Street-level bureaucrats may indeed 'make' policy in the sense that their separate discretionary and unsanctioned behavior add up to patterned agency behavior overall. But they do so only in the context of broad policy structures of which their decisions are a part" (Lipsky 2010:221). Thus, much of the contact between the state and the citizen goes through street-level bureaucrats, and the actions of the state then become visible through the work of these bureaucrats. This means that problems which affect citizens' ability to obtain benefits and services from the state may easily be interpreted as problems associated with the street-level bureaucrats rather than as structural problems (Lipsky, 1980). Lipsky (1980) argues that when parents are not satisfied with the education provided, they will first and foremost complain about the teacher, rather than focusing their complaints on the authorities responsible for many of the conditions in school.

Bureaucracies can gain legitimacy by demonstrating fairness and equity (Lipsky 1980). In order to cope with various constraints, the street-level bureaucracy has developed routines and ways of simplifying both its work and its relations with clients. Lipsky (1980) argues that in order for workers to cope with the difficulties and ambiguities of their jobs, both the decisions and the processes that surround the making of these decisions become compromised. Lipsky's theory is employed in Paper I to understand the study's findings that some parts of the state were deemed liable by the bodies of control to a greater extent than others and also the ways in which the work is conducted in relation to the clients. In addition, I am drawing on Lipsky to understand how the majority of the complaints comprised issues of procedural wrongs rather than substantive wrongs, focused on positive rights rather than negative rights and related to particular issues rather than general policies or general conduct.

Official accounts - denials and partial acknowledgements

Denials and neutralizations, concepts developed by Cohen (1996, 2009) with inspiration from Sykes and Matza's techniques of neutralization, can be understood as techniques used to justify state practice. Sykes and Matza (1957) explored the accounts used by ordinary delinquents to neutralize the moral bind of the law, and named these techniques of neutralization. The use of such denials shows that conventional values remain significant, even when violated. Cohen developed Sykes and Matza's classification of neutralizations by applying them to political actors engaged in gross human rights

violations. He shows that while the accounts look very similar, different words are used. Cohen's (2009) concepts of denials and partial acknowledgment are employed in Paper II when it comes to understanding state officials' use of accounts to respond to complaints. Accounts are adopted due to their public acceptability, and they work both before the act by making it possible and after to protect political actors from self-blame and the blame of others (Cohen 2000). The official denial is distinguished both from personal denials and cultural denial, which is where Cohen makes his major contribution (Cohen 2000).

Scott and Lyman (1968:46) describe accounts as "a linguistic device employed whenever an action is subjected to valuative inquiry". Inspired by this description, the accounts studied in Paper II are understood as official responses under valuative inquiry, functioning as a self-presentation of the denial or acknowledgement of the accusations. Complaints about the performance of the state and its agencies may be perceived as constituting a challenge to the legitimacy of the state or the state agency. Denials used by state officials might function as a way of avoiding moral censure (White 2010). In addition, the accounts are situated within a context and are drawn from an "acceptable pool of accounts available in the wider public culture" (Cohen 1996:519). Certain types of accounts are expected, routinized and accepted in certain contexts when someone has to explain the gap between actions and expectations (Scott and Lyman 1968). In this sense, the accounts used by Swedish state officials are situated within a broader organizational context and within a public discourse about the treatment of asylum seekers and others applying for residence permits.

Cohen (2009) identifies three types of content of denials: literal, interpretative and implicatory. When the fact or knowledge of the fact is denied, (It did not happen or It is not true) he calls it literal denial. The interpretative (It is not what it looks like) and implicatory denials (denying or minimizing the implications) are connected to the five techniques of neutralizations proposed by Sykes and Matza: denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners and appeals to higher loyalties. Cohen (1996, 2009) draws on these five techniques of neutralization but he also describes two additional accounts, which are specifically applicable to political perpetrators, denial of knowledge and moral indifference. In addition to official denials, Cohen also recognizes another type of response that is relevant to the analysis of the accounts of Swedish state officials, namely acknowledgement of criticism.

The technique of denial of injury allows an acceptance of the fact that something happened but disregards or minimizes its effect. The category of accounts labelled denial of the victim helps to neutralize accusations by pointing the finger at the victim and arguing that the victim was the original wrongdoer. Denial of responsibility functions as a way of neutralizing intent and responsibility. Condemnation of the condemners represents a way of

questioning the critics' right to criticize while at the same time trying to deflect attention onto the motives and character of these critics (Cohen 2009). This might, for example, include the condemnation of local human rights organizations, international organizations, the media or those who go public with accusations (Cohen 1996). When justifications make use of rhetoric about the importance of upholding state security or refer to nationalism, the army or to ideology, Cohen (2009) labels them appeals to higher loyalties. Denial of knowledge refers to the public denial of open secrets and the individual assertion of virtual blindness. The statements categorized defined by Cohen as moral indifference are not examples of neutralizations but rather represent a strong repudiation of moral codes, since in the context of pure ideological crimes, neutralizations are not needed.

Cohen's concepts of denial and partial acknowledgment have served as a framework for the coding of the accounts, but the concepts have been further refined and extended. The context and the type of complaints studied here are different from the gross human rights violations described by Cohen. The use of this framework in a new context, in this case that of the Swedish welfare state, allows the approach to be expanded. The accounts would therefore also be expected to be different. Cohen (2009) argues that democratic countries have to make some movement towards the acknowledgement of accusations in order to maintain their image. At the same time, many statements do not amount to a full acknowledgment, but instead represent only a partial acknowledgement. Besides noting three types of partial acknowledgements: spatial isolation (acknowledging the event only as an isolated incident), temporal containment (as something that used to take place) and self-correction (stating an awareness of the problem), Cohen does not expand very much upon these accounts. Since the statements analyzed in Paper II have been made by state officials within the Swedish welfare state (which has a good reputation on human rights), the study opens the way for a deepened understanding of the function of acknowledgments. The expansion of Cohen's theoretical concept of acknowledgments is one of the contributions of Paper II.

Integrated theoretical approach

The broader frame of the theoretical approach is based on Bourdieu's understanding of the field. The field perspective is employed to understand the relations, the positions and the strategies of social agents involved in the field. I recognize three main social agents (the state, the body controlling the state and the agents holding the state accountable) and they are all engaged in the struggle for recognition and legitimacy, and are to a varying extent equipped with the capital that constitutes the structure of the field. The distribution of capital shapes the strategies used by the social agents (Bourdieu

and Wacquant 1992). Cohen's theory on denial and partial acknowledgments can complement the understanding of how various strategies are used. Bourdieu emphasizes that strategies should not be viewed as explicit, calculated and conscious decisions; they are developed to maintain or improve their social agents' position in the field (Bourdieu and Wacquant 1992). The accounts that are used when states defend themselves from accusations of crime could be interpreted as strategies to maintain or reestablish legitimacy. As Ward and Green (2000) point out, by employing techniques of neutralization states implicitly accept the legitimacy of underlying human rights norms. Lipsky's (1980) perception of the street-level bureaucracy can in a similar manner be integrated into the notion of a field where recognition and legitimacy are at stake. The street-level bureaucracy is recognized as facilitating the contact between the state and the citizens, since the actions of the state become visible through the work of these bureaucrats. The consequence that structural problems may be interpreted as problems associated with the street-level bureaucrats can be interpreted as a strategy to displace the responsibility from those in the highest layers of the state hierarchy to those in the bottom layers of this hierarchy.

The theories can be integrated as suggested above, but it should be noted that they are based on different points of departure when it comes to the state. When Cohen (1996) describes the states he does so in terms of an actor that can act, have intentions and commit crimes. He does however not develop these understandings in any detail. Lipsky's (2010) reasoning is based on the street-level bureaucrat's discretion to carry out and establish state actions and policies, and the arguments are grounded in a fragmented state. He stresses at the same time that the decisions made by street-level bureaucrats are part of a wider structure. As already being mentioned, Bourdieu understands the state as a field (or as an ensemble of fields) where agents within the state compete for power (Bourdieu and Wacquant 1992). The state cannot in Bourdieu's terms be understood as a homogeneous actor. As was discussed earlier, I view the state as an organization. I find this feasible, even though the theoretical approaches employed in the dissertation have somewhat different understandings of the state. My intention is not, however, to distinguish what the state is or to identify its true nature. Instead, the theoretical frame is used in order to better understand the outcomes and limitations of the formal and informal control of the Swedish state, as well of as the positions and strategies of the social agents involved in the field.

In the next chapter, I move on to discuss the dissertation's methodological approach.

Methodology

This chapter outlines the overall methodological approach and provides an in-depth discussion of the methodological tools employed in the dissertation. It includes an introduction to the field of study and a discussion of the analysis of official documents and of conducting interviews with representatives of organizations. At the end of this chapter, I will discuss the limitations associated with the methodological approach and with the way in which the studies were conducted. The data and methods employed are discussed in detail in each paper and the empirical sources will therefore only be presented briefly here. The empirical sources have been summarized in the table below:

Table 2. The empirical sources

	Parliamentary Ombudsman	Chancellor of Justice	European Court of Human Rights	UN Committees	NGOs
Documents	<p>Paper I: 6460 judgments (resulting in a reprimand between the years 2000 and 2010).</p> <p>Paper II and IV: 100 judgments relating to the process of seeking asylum and other types of residence permit.</p>	<p>Paper I: 2084 judgments (resulting in a reprimand or compensation for damages caused, between the years 2000 and 2010).</p> <p>Paper II and IV: 11 judgments relating to the process of seeking asylum and other types of residence permit.</p>	<p>Paper I: 17 judgments (where at least one violation was found) between the years 2000 and 2010.</p> <p>Paper II and IV: three judgments relating to the process of seeking asylum and other types of residence permit.</p> <p>Paper III: 53 judgments, including 25 violations, 9 no violations and 19 friendly settlements.⁶</p>	<p>Paper IV: In total, 31 documents, including 7 reports from Special Rapporteurs, 15 Periodic Reviews and 8 Individual Communications/Complaints, which presented substantive concerns or recommendations related to the process of seeking asylum or other types of residence permit in Sweden, between 2000 and 2010.</p>	<p>Paper IV: 14 Alternative Reports (identified through the reading of the Periodic Reviews from the UN).</p>
Interviews	<p>Paper IV: Representatives from the Parliamentary Ombudsman, the Chancellor of Justice and the European Court.</p>				<p>Paper IV: Representatives from six NGOs.</p>

⁶ The difference between the sample of judgments where at least one violation was found in Paper I and Paper III is that the former followed the criteria set by the sample of judgments from the Parliamentary Ombudsman and the Chancellor of Justice i.e. including cases reported after January 1st 2000 and where decisions were made before the end of 2010. Since proceedings in cases dealt with by the European Court often take several years, I decided to include all cases where a decision was made between the year 2000 and 2010 (including cases reported before the January 1st 2000) in Paper III.

Analyzing documents

Official documents (judgments and reports) form the main part of the empirical material on which the dissertation is based. The empirical texts examined in the four papers have been analyzed differently. While the method used in Papers I and III may be considered quantitative textual analysis, Papers II and IV employ qualitative textual analysis.

Quantitative content analysis aims to systematically describe the content of a large number of texts by counting certain elements in the texts. The analysis searches for what is manifested in the texts (Boréus and Bergström 2012). The process of coding can be described as “many words of the text [being] classified into much fewer content categories” (Weber 1990:12). Even though the focus of the analysis was directed at counting and categorizing, the methodological approach also included more interpretative elements. In paper III, I adopt an intercategory approach, as proposed by McCall (2005), which involves first examining and comparing different dimensions of the categories employed and then synthesizing them into a configuration of categories, forming multiple dimensions in the intersectional analysis. In paper I, the analysis involved several manually coded variables whose coding was of an interpretive nature. Having the researcher as a co-creator of the results is closely related to a qualitative research tradition and can also be based on a quantitative approach and production (Aspers 2007). Miles and Huberman (1994) argue that the distinction between quantitative and qualitative is not necessarily tied to epistemological preferences. In this sense, adopting a constructivist approach to the creation of your empirical data may be consistent with both a qualitative and quantitative approach.

In paper II, I use what can be described as a directed qualitative content analysis, in which Cohen’s theory of denials provided the framework for the analysis. The aim of a “directed approach to content analysis is to validate or extend conceptually a theoretical framework or theory” (Hsiu-Fang and Shannon 2005:1281). The analysis of the judgments, reports and interviews in paper IV was guided by Bacchi’s (2009) *What’s the problem approach*. The approach is grounded in discourse analysis, and focuses on the language and concepts that frame an issue.

Prior (2003) suggests that the process in which official documents are created is as important to a study as the contents of the documents themselves. The documents employed in the dissertation comprise judgments in which the Swedish state and its agencies have been adjudged to be accountable by the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights or one of the United Nations commissions. These judgments contain a summary of the original complaint, the response of the state officials and also the final judgment of the control body in ques-

tion. These judgments are produced in a legal discourse with the specific purpose of scrutinizing state actions. Beyond this, the judgments issued by the Parliamentary Ombudsman, the Chancellor of Justice, the European Court and the UN differ from one another. One of the significant differences relates to how the response of the state officials is presented in the judgment. In the judgments from the Chancellor of Justice, the European Court, and United Nations commissions, the accounts of the state representatives have often been rewritten, whereas the judgments from the Ombudsman often contain a verbatim copy of the response given by the state representative. The judgments given by each control body often follow a consistent template, but their length varies from two to almost 40 pages. The analysis also includes (paper IV) reports from the UN and NGOs. The periodic reviews and reports from special rapporteurs, as well as the Alternative Reports from NGOs, mainly cover a specific type of rights or an issue related to a convention (for example Economic, Social and Cultural Rights or the Convention on Torture), with the issues I have been interested in only comprising a part of the report. We can thus note that we are dealing with different types of documents, which have different appearances and which to some extent have different functions. They have also been constructed in their own social context.

Who the author of the document is may also be important. Different people have different ways of expressing themselves and even though official documents often follow a form that regulates their content, there are usually opportunities for an individual touch. Thus who a given judgment or report was written by may be of significance for the contents (see Dembour 2006 for a discussion of the importance of various judges in the European Court). In the interviews with representatives of the formal control bodies, there is also an acknowledgement of the differences in relation to who decided on a given case. These differences will then influence how I interpret the content. Prior (2003) argues, however, that the author of a document is best studied in terms of the power and functionality of the document rather than by studying the author's identity.

In article I, the question of how the cases had been coded by the offices of the Parliamentary Ombudsman and the Chancellor of Justice became significant (because I based the analysis on their registers). As I came to understand, the judgments were coded by an administrator at the respective agencies, which in turn are involved in producing its meaning. How the decision maker has expressed the criticism will constitute the basis for whether the administrator then encodes the matter as a case of criticism or not. To fully understand the process of how the documents to be analyzed have been produced, it would be desirable to also conduct participant observations. Furthermore, Prior (2003) also notes that routines for such coding may vary over time.

Also important in relation to the study of documents is the understanding that the reader of the document is not just a passive recipient, but should be seen as being active in the process of producing the content of the document (Prior 2003). That idea that the reader is part of the process of producing the content of the document, at least passively, is not a difficult one to grasp. One of the clearest examples is found in a letter being written to a certain recipient (Prior 2003). Official documents are also written with the reader in mind in many cases, certainly with careful consideration being given to the wording and omission of details so that the reader understands enough (but maybe not too much). On the other hand, the fact that the documents have been produced for a reader does not imply that they were produced for research purposes. However, it is not uncommon for researchers to use material that other people have produced for completely different purposes (Becker 1998).

In sum, even though I consider the texts as a source of knowledge, it does not mean that I cannot see the construction of the texts. For example, any judgments or reports will be dependent upon a number of factors, such as the author of the documents, compromises between various interests, the resources available, the tradition and regulations related to the process, etc. These circumstances surrounding the genesis of the material are important irrespective of how the researcher works with the material (see Prior 2003). These conditions or limits affecting the control of the state are also something that is analyzed in all four papers.

Interviewing representatives of organizations

The interviews conducted for the dissertation set out to understand how problems are framed within the context of various forms of control. This approach was based on the broader interest in the control of the state and the various positions social agents occupy within the field. The individuals that came to be interviewed were identified through the organizations I was interested in, and they were interviewed as representatives of these organizations. The approach could be understood as an example of “tales from the field”, a form of collected organizational stories (Czarniawska 2001:734), even though the stories were not primarily treated as narratives in the current context. In a way similar to that found in institutional ethnography, the approach employed here includes a focus on organizational processes rather than individual experiences (see Devault and McCoy 2001). Hammerslev (2009) adopts a similar position, but on the basis of a different methodological approach (collective relational biography), arguing that what is most interesting is not the individual life histories but rather what these histories can tell us about the development of the field under study. In a similar vein, my own interest in individual experiences lies in the knowledge they can

provide about the control of states, and about how this works in practice, as viewed from the interviewees' perspectives.

If I had set out with the goal of first and foremost understanding the interviewees' personal experiences, the process of interviewing may have looked different, since our position and interests influence "the questions we ask, the ones we don't, who we interview, how we interview, how we listen and how we don't, and ultimately how we understand" (Phillips and Earle 2010:362). I tried to focus the interviews on the problem representations of the organizations that the interviewees' were representing and on the process of holding the state accountable from their organization's perspective. However, conducting interviews with the organizational stories and experiences in focus, "might not be finally summarized along the lines the interviewer had in mind" (Czarniawska 2001:735). First, I experienced the common problem that some interviewees did not always talk about the things I primarily wanted to talk about. Czarniawska (2001) emphasizes that instead of trying to bring the interviewee back to the point, we should understand the interviews as sites for the production of narratives. I think I found it particularly challenging when interviews took a different turn to the one I had intended, since they were conducted at the end of my work with the dissertation. I had a clear picture of what I wanted to know more about, in order to fill the gaps and complement the other empirical studies. In addition, since a few of the interviewees had stated that they did not have an awful lot of time, I was eager to ask the questions I had planned. In this regard, some of the interviews resemble the experiences of interviewing elites, where you have to handle the interviewees' more or less well-prepared "talk tracks" (Kvale and Brinkmann 2009:147). In addition, when interviewing elites, the questions that can be asked are often restricted by the amount of time you can expect to have with the respondent (Peabody et al. 1990).

Second, focusing on organizational stories and problem representations may include problems of interpretation. While I chose to phrase questions about "your organization", some interviewees responded with "I". Some did this more explicitly; for example, a representative of one NGO stated that a particular opinion was one that "I may have personally, but as an organization we do not". I experienced that some of the interviewees had a personal motivation beyond that of the NGO; in a sense, the organization was just the platform, not the source of the activities, while others felt more like representatives of the narrative of the organization. This is of course important to an understanding of what is being said during the interviews.

In addition, when using an organizational approach, it becomes even more important to find the "right" person within the organization (see Hammerslev 2009). Thus understanding the individual's position in the field becomes highly relevant. At the start I identified organizations that represented both formal and informal control bodies, and at which I wanted to conduct interviews. The NGOs were identified through their work either with human

rights in general or more specifically with the rights of migrants, such as asylum-seekers or undocumented individuals residing in Sweden. I wanted the organizations to represent both NGOs that had been involved in the process of writing shadow reports for the UN and organizations that were less well-established within international monitoring bodies. To protect the interview participants' confidentiality, the names of the NGOs have not been presented, since some of these NGOs only have one or a small number of employees working with issues related to migrants. The interviews conducted with representatives from formal domestic and international control bodies were limited to representatives of the Parliamentary Ombudsman, the Chancellor of Justice and the European Court. Even though these organizations all represent important parts of the field of control, the knowledge provided by the interviews was based on the respective individual's position within a given organization. I strongly believe that I succeeded in finding individuals within these organizations who were able to contribute with rich, specific and relevant descriptions (see Kvale and Brinkmann 2009) of the field of control of the state. In a few organizations, however, the individuals I first contacted declined to participate themselves, and referred me to another person. The motivations given for declining to participate were lack of time, or that another person was more suitable. I cannot escape the fact that two individuals from the same organization may provide stories and perspectives that, at least in part, differ from one another. Everything considered, interviewing several individuals within the same organization would have been preferable. In retrospect, this might perhaps to a greater extent have contributed to reaching the saturation point that we as researchers should strive for (Kvale and Brinkmann 2009).

Limitations and delimitations

In a lecture with his students, Bourdieu explains that a "research presentation is in every respect the very opposite of an exhibition, of a show in which you seek to show off and to impress others. It is a discourse in which you expose yourself, you take risks" (Bourdieu and Wacquant 1992:219). In one respect an introductory chapter to a dissertation is the opposite; the writer should explain, justify and defend the many choices that have been made during the years spent working on the dissertation. The writer should explain how it was all very well planned from the start and how every paper has a certain place within the whole, even though I guess that for most of us this will not be the whole truth. In another respect, the presentation of a compilation thesis may constitute an opportunity to expose yourself, to discuss the limitations embedded in your assumptions, implementation and conclusions. The following discussion is an attempt to expose some of the limitations associated with the individual papers and the dissertation as a whole.

I started to plan the research from the point of departure that I would be able to explore the crimes of the Swedish state. I was preoccupied with the idea of systematically documenting and investigating, and quite honestly, this idea was driven by a desire to expose the Swedish state. I soon came to experience a range of problems, both practical and more scientific. As Whyte (2012:89) notes, “researchers who wish to explore the ‘crimes of the powerful’ have no methodological and epistemological guidance from within the discipline”. Collecting data on state crime requires, naturally, a conception of the crimes involved. These may be difficult to spot, since they are rarely discussed as crimes and the acts may have legitimacy as a result of political or public acceptance (Cohen 2009; Rothe et al. 2009; Stanley 2006).

I decided to handle the practical and scientific difficulties by focusing on the outcomes of the work of bodies controlling the state. I have drawn on a large number of judgments and reports from bodies that exercise formal and informal control in relation to states, taking advantages of the fact that these materials are often available within developed democracies as a result of bureaucratic transparency (see Ross 1998). Even though the dissertation changed direction from documenting the crimes of the Swedish state to obtaining an understanding of the process of holding the state accountable, the former approach permeates the first paper presented in the dissertation.

In addition, using the concept of state crime is difficult for several reasons. From a traditional criminological perspective, labelling these types of acts as crimes is misleading, but from a critical tradition it is not. Still, as has already been noted, the concept lacks a uniform definition. The dissertation includes in the concept of state crimes acts for which the state and its agencies have been reprimanded or deemed liable to pay compensation by formal and informal bodies of control. Some of these acts or instances of inaction that are attributable to an agent of the state are issues that can be understood as having caused limited harm. Thus I am well aware that the inclusion of routine failures and non-sensational issues involving state representatives that have caused limited harm may water down the concept of state crime. The attentive reader will see that I have avoided the concept in Paper II, since at that time I had begun to doubt whether the cases I was examining could be accommodated within the concept of state crime. Then again, I found it important to continue using the concept, since the inclusion of routine failures and non-sensational issues may represent a way of further developing our understanding of crimes by the state. At the very least, this application of the concept of crime challenges preconstructions from inside as well as outside academia. As Bourdieu suggests, when we construct a scientific object, this requires “a break with common sense, that is, with the representation shared by all, whether they be the mere commonplaces of ordinary existence or official representations, often inscribed in institutions” (Bourdieu and Wacquant 1992:235).

The study is limited to judgments and reports from 2000 to 2010. In several parts of the dissertation, I draw conclusions about how the bodies of control work in relation to the type of cases produced. These conclusions relate to a limited period and in a different period it is likely that different types of cases would have been produced. For example, I note in Paper IV that controls conducted by the national formal bodies of control for the most part focused on bureaucratic/procedural problems. There are examples from 2011, however, where the Parliamentary Ombudsman clearly addresses substantive issues (the decision itself) both in relation to the expulsion of a large group of Roma from Romania and in relation to the detention of asylum seekers. Even though individual cases would not have changed the overall analysis, these judgments (if included in the scope of material) could have nuanced the understanding of the role of the formal domestic controls.

In addition to the limitation of the time-period being studied, another aspect is also relevant in relation to the objects under study. Neither the bodies of control nor the state and its agencies have been constant and static over the period between 2000 and 2010. Developments and changes over time in relation to the control of the state are acknowledged in the dissertation, although only to a limited extent. Further, the theoretical concept of the street-level bureaucracy has been accused of being outdated, and of being unable to capture the transformation of the state from governing to governance (Durose 2007). However, I still find Lipsky's approach valuable for understanding the relationship between the state and its citizens, and as was discussed earlier, the dissertation does not focus on understanding the development and transformation of the state as such.

Finally, the comparative approach, in combination with the dissertation's broad empirical scope, has contributed to producing a rich material. However, this methodological approach has added to the sense of being overwhelmed. The analysis may have been strengthened by using a smaller sample of cases. I would have lost the broader oversight, but perhaps gained a more detailed understanding. The risk of producing an underdeveloped analysis of a broad empirical material may also be greater when writing articles instead of a monograph. In addition, as has already been discussed, if Bourdieu's theoretical conceptualization of the field had been included earlier, the collection of the empirical material could have been conducted with a greater focus on certain issues. The Concluding discussion that follows the summary of the articles may address these shortcomings to some extent, by analyzing the four papers together in the context of a more developed theoretical discussion. The following chapter presents a summary of the four papers.

Summary of Papers

Paper I: “State Crime in the Street-Level Bureaucracy. Toward an Understanding of Crimes of the Welfare State”

On the basis of two points of departure: (1) no state has clean hands, and (2) the types of crime a state commits vary with state formations, Paper I explores cases where the Swedish state and its agencies have been held responsible for some form of wrongdoing. The aim was to examine what characterizes the crimes that the Swedish state is held responsible for. Further analysis was aimed at establishing whether the types of crime committed by the state can be understood in terms of how the bureaucracy and/or the control of the state functions in practice.

The paper systematically explores registered incidents for which the Swedish state and its agencies have been judged to be responsible by the Parliamentary Ombudsman, the Chancellor of Justice or the European Court of Human rights between 2000 and 2010, a total of 8,561 judgments. The study includes all the judgments in which these control bodies either have issued a reprimand or have resolved the complaint by ordering the Swedish state to pay compensation for damages caused. The analysis highlights aspects such as the type of complainant (individual, company, organization, initiatives/inspections or other state agencies) responsible state agency, the outcome of the control (reprimand or compensation for damages) and the type of judgment (whether it relates to procedural or substantive issues, negative or positive rights, general or particular accountability).

Initially the paper identifies the most common agencies that have been deemed liable for harms by the Parliamentary Ombudsman and the Chancellor of Justice. Many of the agencies found at the top of the list (municipalities, the Prison and Probation Service, the Police, the Social Insurance Agency, the Tax authority, the Enforcement Service and the Migration Board) are what Lipsky (1980) would call street-level bureaucracies, having a significant number of employees who have direct contact with citizens in proportion to the size of their workforce. A substantial majority of the judgments in the sample concern positive rights and procedural issues. In other words, the problems highlighted by the complaints relate to how the state fulfills its positive duties.

Further, the study finds that most of the judgments revolve around issues of particular accountability relating to the individual interests of the complainants and that only a relatively small portion involve complaints against the state in relation to general policies or general conduct. One overall conclusion is that the crimes committed by the Swedish state, and registered by these bodies of control, involve acts of negligence rather than purposeful acts of repression, and that the offences primarily involve procedural rather than substantive wrongs. The results are interpreted as a function of both how state bureaucracy works and of the limited ability of the existing control mechanisms.

The contact between the state and its citizens in many cases goes via social service agencies that provide public goods, and the street-level bureaucracy has developed routines and ways of simplifying both its work and its relations with clients to be able to cope with various constraints (Lipsky 1980). The dominance of positive-procedural judgments may in this sense be a manifestation of these coping mechanisms. In other words, the ways in which the work is being conducted in relation to the clients is being compromised by state agencies. Since state actions often become visible in the work of the street-level bureaucrats, it is not difficult to see why most of the complaints people make with regard to the state relate to issues of particular accountability. Drawing on Lipsky (1980), many of the problems experienced by the complainants in the current study might in practice be due to more structural and complex issues.

These specific bodies of control produce certain types of cases, as a result both of their own specific merits and limitations and of individuals' abilities to invoke accountability. Even though many complaints were related to state agencies that have close contacts with citizens drawn from the more underprivileged groups in society, such as inmates and people in need of economic assistance, I acknowledge that there are groups of people in society that will find it more difficult to make use of the formal control mechanisms as a result of a lack of knowledge as to how the system works.

Finally, I argue that as long as it does not engage in a systematic overview of crimes committed by the state, the internal control in particular, but also formal control in general, when it focuses on particular issues concerning single individuals, may be serving to strengthen the legitimacy of the state. At most, these controls reveal failings at individual state agencies or on individual issues. However, even if the control mechanisms function as a way of legitimizing the state, they may still provide an important form of redress for the individual.

Paper II: “Seeking asylum and residence permits in Sweden: Denial, acknowledgment and bureaucratic legitimacy”

The aim of Paper II was to explore the accounts used by state representatives in judgments from the Parliamentary Ombudsman, the Chancellor of Justice and the European Court of Human Rights on issues relating to asylum-seekers and others applying for residence permits. Much of the existing research in this area has focused on broad, general trends in relation to migration (Aas 2007; Barker 2012; Bosworth and Guild 2008; Fekete 2005; Green and Grewcock 2002). By contrast, this paper takes a meso-level, institutional approach, when it seeks to explain the mechanisms at work when bureaucracies and bureaucratic actors attempt to maintain legitimacy when responding to complaints about the processing of asylum-seekers and applicants for other forms of residence permit. Drawing on Stanley Cohen’s (1996, 2009) concepts of denial and partial acknowledgment, the paper explores how Swedish state officials respond to complaints regarding the process of seeking asylum and other forms of residence permit. The analysis is based on judgments in which the three control bodies had either issued a reprimand or had resolved the complaint by ordering the Swedish state to pay compensation for damages caused in cases between the years 2000 and 2010 relating to the process of seeking asylum and residence permits (a total of 114).

At first, the paper identifies five main categories of judgments relating to the process of seeking asylum and residence permits based on the type of complaints to which they referred: (1) criticism of decisions made during the application process (2) criticism of procedural issues during the application process, (3) condemnation of the approach towards asylum seekers (4) questioning of decisions on deportation (5) criticism regarding the enforcement of deportation. The analysis suggests that even within the Swedish state, denials of knowledge, of the victim, of injury and of responsibility all constitute forms of account that may be utilized to maintain legitimacy. Further, the lack of accounts that involve a condemnation of the condemner, an appeal to higher loyalties or moral indifference, is suggested to support the view that it is important to maintain the image of being a state where human rights issues are taken seriously.

The paper’s central findings relate to an understanding of how partial acknowledgments are employed by state officials within the bureaucratic setting of the Swedish welfare state. The analysis demonstrates that state representatives are eager to present themselves as being part of a decent and self-correcting organization, and thus regain their legitimacy. At the same time, it is suggested in the paper that the state officials’ acknowledgements might be understood as a way of avoiding moral censure, by apologizing, and by referring to the incidents in question as mistakes or isolated incidents in the

context of accusations of less serious bureaucratic wrongdoing. The expansion of Cohen's theoretical concept of acknowledgments, and the understanding of how state officials can use such acknowledgements to regain legitimacy, constitute two of the central contributions of the article. However, when the accusations could be understood as being more serious, the analysis suggests a tendency to use a stronger defense which contains a denial of the victim and of injury, although these are frequently used in relation to all categories of complaints. An overall assessment would suggest that there is also a tendency among senior officials to use accounts such as denial of knowledge and of responsibility, thereby placing the responsibility on less senior officials.

Finally, based on the support of arguments drawn from Cohen (2009) as well as Scott and Lyman (1968), the point of departure is that the accounts used by Swedish state officials are situated within a broader organizational context and within a public discourse about the treatment of asylum seekers and others applying for residence permits. Reflecting a general occurrence in Europe, where asylum seekers and others applying for residence permits are treated as fraudulent or even as criminals who constitute a security threat (Abiri 2000; Barker 2012).

Paper III: "European Court of Human Rights. Accountability to whom?"

This paper aims to discuss the characteristics of those who hold the state accountable through the European Court, in an attempt to answer the question of accountability to whom? The paper draws on accountability theory and the concept of access to justice in order to understand the selection of who it is that gets to hold the state accountable via the European Court. Within accountability theory, two types of questions are usually asked: to whom and for what? (Bovens 2005). Here the analysis draw on central factors identified in the literature, such as applicants' citizenship, access to power (including money, time, capabilities/capacities and confidence) and knowledge (of their rights and of the system of accountability) (Cappelletti and Garth 1978; Curran and Noone 2008; Goodey 2005). The second question (accountability for what) is dealt with by discussing the types of violations examined by the Court in its judgments (i.e. which Articles of the Convention the submissions claim have been violated).

The analysis is based on all judgments made by the Court in relation to the Swedish state between the years 2000 and 2010. These comprise 25 judgments where at least one violation was found, 9 judgments where no violation was found, and 19 friendly settlements. This total of 53 judgments

related to claims from 93 applicants, since several of the judgments included more than one applicant.

Taken as a whole, the issue of accountability to whom could be answered in two ways. The most common applicant who holds the state accountable is a middle-aged man with Swedish citizenship, whose complaint focuses on a violation of the right to a fair trial. He is most likely to be described either as a business owner, an owner of real estate or a worker. From another perspective, we can acknowledge that the remaining proportion includes a wide variety of applicants with diverse forms of claims, who occupy different social positions, are of different ages and include not only Swedish citizens but also citizens of other European and non-European countries. On the basis of the first answer, it would appear that the European Court is very selective in relation to who is given the opportunity to hold the state accountable and for what. Based on the second answer, the Court's selectiveness appears to be more a problem of quantity than of quality.

It is suggested that in comparison with other forms of bodies through which victims of state crime may seek redress, the European Court could perhaps be described as highly selective. In other words, the European Court may be an effective form of redress for certain people with certain types of claims. Furthermore, the issue of whether the control is sufficient also depends on which perspective is chosen to approach the issue. When it comes to the European Court, its core significance is located in its ability to influence changes in national laws that are ruled to be in violation of the Convention, rather than in providing compensation to victims (Ma 2000). Also, the process of a friendly settlement serves to mediate conflicts and attempts to prevent future recurrences, rather than punishing past behavior (Hurwitz 1981) and compensating victims in retrospect. For the individual seeking redress, decisions to reform the Court towards the most important and serious cases (European Court of Human Rights 2012), might mean less opportunity to have one's case examined by the Court.

Paper IV: "The state's mishandling of immigration to Sweden. How bodies controlling the state frame the problem"

Paper IV explores how a range of formal and informal organs that exercise control in relation to the state frame problems by means of criticism or recommendations focused on the Swedish state's treatment of current and former residence permit applicants. The aim of this study is to develop an understanding of how controls of the Swedish state work in practice by highlighting the conditions that allow particular problem representations to be formed, within different types of bodies controlling the state.

Bourdieu's (1993) understanding of a field as a site of struggle or a battlefield is used here as a means of understanding the control of state crime and the struggle for recognition and legitimacy between the social agents occupying the field. In addition, Mathiesen's (1974) conceptualization of strategies for political action is applied to assist in developing the analysis of the relations between the framings and the positions of the different bodies of control and the strategies employed.

The data sources used for the analysis are judgments issued by the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights (a total of 114 judgments) as well as judgments and reports from UN committees and NGOs (a total of 45). In addition, semi-structured interviews were conducted with three representatives of formal control bodies, namely the Parliamentary Ombudsman, the Chancellor of Justice, and the European Court, and also with six NGOs. Bacchi's (1999) *What's the problem approach* provides the methodological framework.

The problems highlighted by formal domestic control organs (the Parliamentary Ombudsmen and the Chancellor of Justice) relate to the state's failure to conduct its bureaucratic tasks properly, and include for example long application-processing times and delays in appointing a legal counsel. However, this framing of the problem leaves many issues unproblematized. The framing by formal international control organs, either in the form of particular problems (as in the protection from other states frame) or as more general problems (as in the rule of law, positive obligations and non-discrimination and the repressive elements frames), includes a broad variation of problem representations. The informal control bodies' (NGOs) framing of problems resembles that employed by the UN but could perhaps to a greater extent be interpreted as constituting criticism that challenges the "system".

The analysis suggests that the struggle for recognition and legitimacy, as well as the balancing between what Mathiesen (1974) describes as being *defined in* or *defined out* is important for the control bodies examined. The study notes that the position occupied by a control organ in the field in relation to the state may be highly relevant for understanding the ways in which bodies controlling the state frame their criticism. The formal role of the Parliamentary Ombudsman, the Chancellor of Justice, the European Court and the UN Committees means that they risk, in Mathiesen's terminology, being *defined in* and therefore considered undangerous. The NGOs have to consider, to borrow from Mathiesen's (1974) terminology, strategies that would move them into the established systems, or strategies that will keep them outside the established system. From a position outside the system, they may strengthen their chances of ensuring overall change, but at the same time risk being *defined out* and becoming irrelevant. Challenging the doxa of the field may, as observed by NGO representatives, compromise the organisation's influence and credibility. Some of the NGOs interviewed acknowledge how they have to adapt to the rules of the game, or risk being perceived as impos-

sible and losing their influence. The strategies involved include the ways in which they express their criticism or claims, for example by avoiding certain expressions and adapting to the use of formal language.

Finally in paper I argue for a more dynamic understanding of controls of the state. Controls of states have often been interpreted as an all-or-nothing matter, with discussions focusing on their availability, functioning or consequences (see for example Ross 2011). I suggest that control mechanisms might be understood as agents on a field, struggling for recognition and legitimacy.

Concluding discussion

The broader aim of the dissertation has been to develop an understanding of the outcomes and limitations of the formal and informal control of the Swedish state, as well as the positions and strategies of social agents involved in the field. This concluding discussion attempts to present a more comprehensive and cohesive discussion of the results from the empirical studies.

The dissertation's central conclusions may be summarized in three areas. Firstly, when it comes to the outcome of the control, the studies demonstrate that formal domestic bodies of control mainly produce criticism directed at state agencies that is focused on particular and procedural issues. International bodies of formal and particularly informal control produce criticism that is focused on general and systemic issues and that is directed at the government as the representative of the state.

Secondly, the dissertation highlights specific limitations of the control of the state. The results highlight the way in which access to accountability is dependent on individuals' and organizations' access to power and knowledge. This limited access to accountability is studied in particular in relation to the European Court. The bodies of control may be perceived as ineffective to a varying extent, but the conclusions drawn depend on how we understand the core significance of the control – whether this is viewed in terms of the control organs' ability to produce change in the Swedish state or to provide justice to victims. Another limitation of the control of the state is related to the risk of its being counterproductive, since rather than challenging the legitimacy of the state (as a result of illegal actions), it may under certain circumstances instead serve to reinforce this legitimacy.

Thirdly, I suggest that control of the state can be viewed as a field, emphasizing the relationships between agents in the field and the ongoing struggle for recognition and legitimacy. In Paper IV, I argue for a more dynamic understanding of controls of the state. Controls of states have often been interpreted as an all-or-nothing matter, with discussions focusing on their availability, functioning or consequences (see Ross 2000a, Ross and Rothe 2008, Ross 2011). Instead, the conclusions of this research highlight a much more complex game, in which the positions and strategies of the agents on the field are dependent on their specific capital (in the form of e.g. resources, knowledge, and support). The results from the dissertation also suggest that the ways in which the representatives of the state defend themselves may be understood as being techniques or strategies that are employed

to maintain legitimacy. Representatives of both formal bodies of control and NGOs highlight the importance of recognition and legitimacy for being able to do their work. Bodies of control balance their criticism in an attempt to improve the state. Those holding the state to account have to adjust to the rules of the game or risks being defined out. This is also true for the NGOs in their role as bodies of control. They are more independent of the state but are dependent to a greater extent on being recognized in order to be able to exercise control.

These three main areas of conclusions will be discussed further in the remainder of this chapter.

The outcomes produced by the bodies of control

One overall conclusion in Paper I, is that the outcomes produced by the formal control bodies focus on acts of negligence rather than purposeful acts of repression and related to what Lipsky (1980) would call street-level bureaucracies. The formal domestic control is for the most part focused on particular issues (rather than general) and issues of a procedural character, and the outcomes of this control assign responsibility to the lower levels of the state hierarchy. Drawing on Lipsky (1980), many of the problems experienced by the complainants in the current study might in practice be due to more structural and complex issues. These results can also be interpreted in relation to the features of the Swedish state, which in international comparison is described as having a weak political and judicial control when it comes to holding cabinet ministers and other high ranking officials to account (Nergelius 1999). Instead, in the absence of a strong litigation culture, the ombudsman-centred tradition is the principal method for resolving disputes between individuals and the state (Bonnor 2003). This means that formal domestic control will constitute a way of controlling state agencies rather than the high ranking representatives of the state.

The interpretation of the outcomes of formal control described in Paper I may be related to the results from paper IV, where different forms of bodies of control present the problem in different ways. The problems represented by the formal domestic control bodies (the Parliamentary Ombudsman and the Chancellor of Justice) relate to the state's failure to conduct its bureaucratic tasks properly. The criticism from the formal domestic controls can be harsh, but the proposed solutions give the impression that the problems are viewed as shortcomings rather than as systemic failures. This framing allows for an understanding of the state as being generally well-functioning, but at the same time also subject to occasional failures. The outcome of this form of control is shaped by the fact that the two domestic control bodies do not generally comment on the assessments made by state authorities. In other words, the formal domestic controls are formed to "catch the small fish"

(although they may still provide an important form of redress for the individual). The interpretation of the Swedish state found in the judgments from the formal domestic control bodies contrasts with the problem representations formulated by the UN commissions and particularly by the NGOs.

The criticisms from the UN and from NGOs are shaped by an external assessment of the state, rather than of state agencies, and they focus on general issues – noting systemic problems. The fact that this criticism is not formulated in relation to individual complaints allows for the control of the state to produce this type of outcome in these instances. For example, NGOs describe general problems within the Swedish state as creating a situation of poor legal security for the asylum seeker. In this sense, it is not a question of (a number of) incorrect decisions but rather of a system that is failing to live up to the principle of the rule of law. The problem representations formulated by the NGOs lean more towards describing Sweden as a systemic violator of her responsibility to provide protection from other states, than towards describing Sweden as failing to provide protection in individual cases (which is the case with the European Court). The NGOs are informal in their character, which implies more independence but less influence.

Limitations of the control

The nature of the outcomes of the control provides insights into limitations associated with the control of the Swedish state. I will focus here on three aspects: limited access to accountability, ineffective control and the risk of the control being counterproductive.

Limited access to accountability

In Paper I, I discover that even though many of the complaints examined were related to state agencies that have close contacts with citizens drawn from the more underprivileged groups in society, such as inmates and people in need of economic assistance, it is important to acknowledge that there are groups of people in society who will find it more difficult to make use of the formal control mechanisms as a result of a lack of knowledge as to how the system works. In a similar manner, Paper IV finds that the social status of the agents who report the incidents is important. With the exception of cases involving the enforcement of deportations, the incidents examined have occurred within the process of seeking a residence permit. Those outside this process, i.e. the undocumented individuals, and their perceived problems, are not included. Bourdieu emphasizes that agents are allowed to enter the field by “their possessing a definite configuration of properties” (Bourdieu and Wacquant 1992:107).

The Swedish welfare state has been described as having a weak protection of individual rights and as lacking an established rights praxis and legally enforceable rights (Trägårdh 1999b).⁷ The European Court is one of the bodies of control where individual rights are emphasized; however, the results show that access to the Court is limited. The limited accessibility of the European Court has also been described by other scholars (Dembour 2006; Koivurova 2011). The initial analysis of those who hold the state accountable through the European Court reveals a general pattern; most applicants are Swedish citizens, male and 41 years of age or older. These results provide support for central factors identified in previous research as being of importance in relation to access to accountability: applicants' citizenship, access to power (including money, time, capabilities/capacities and confidence) and knowledge (of their rights and of the system of accountability) (Cappelletti and Garth 1978; Curran and Noone 2008; Goodey 2005).

Ineffective

Formal domestic controls have been described as impotent or weak. "What did it lead to? Does reporting things to the Parliamentary Ombudsman change anything?" as one of the representatives from an NGO asks. The effect of the control of the state is not limited to the Parliamentary Ombudsman but all bodies of control in general. The issue of whether the control is ineffective or sufficient depends on which perspective is chosen to approach the issue. Is the core significance located in the bodies of control's ability to influence changes in the Swedish state or in providing justice to victims?

To use Braithwaite's (1985) terminology, on the scale from punishment to persuasion, the bodies of control would be located more towards the persuasion end of the scale. Hurwitz (1981:74) distinguishes between formal bodies of control, which mainly react to individual complaints by punishing past behavior, and bodies of control whose main task is to encourage future good behavior. The European Court and the UN could be considered more of the former and the Parliamentary Ombudsman and Chancellor of Justice more of the latter type. The nature of the domestic control organs is in line with the description of features of the Swedish state that emphasizes the ombudsman tradition. Since the function of the ombudsman is in the first instance to regulate the public administration, the individual right to accountability becomes indirect (Karlsson 2003). The European Court has been described as being a step closer to individually enforceable rights (Trägårdh 1999b). Nonetheless, in the interviews in Paper IV, it becomes apparent that while NGOs who represent victims in the European Court stressed the importance of the Court as an institution for individual accountability, the representative of the Court clearly supported the reform that has led to the work of the

⁷ This description has however been contested by e.g. Lundberg and Tydén (2010).

Court being directed at the most important and serious cases and which at the same time restricts the right of individual petition.

The sufficiency of the control exercised in relation to the state can also be viewed in relation to the various strategies discussed by Mathiesen (1974). The formal role of the UN Committees means that they risk being *defined in* and therefore considered undangerous (see Mathiesen 1974). The NGOs have to consider, to borrow from Mathiesen (1974) terminology, strategies that would move them into the established systems, or strategies that will keep them outside the established system. From a position outside the system, they may strengthen their chances of ensuring overall change, but at the same time risk being *defined out* and becoming irrelevant. The aim of the control exercised in relation to the state, and the strategies employed by the social agents on the field will be further discussed below.

Counterproductive

I have suggested that as long as bodies of control are not engaged in producing a systematic overview of crimes committed by the state, instead focusing on particular issues relating to specific individuals, their work may be serving to strengthen the legitimacy of the state (see also Mathiesen 1974 and his reasoning on the risks with positive reforms). This is of course problematic when the aim of the control has been the opposite, to challenge state practices (for example the mistreatment of asylum-seekers). The control then risks being counterproductive, since rather than challenging the legitimacy of the state (as a result of illegal actions), it may instead serve to reinforce this legitimacy.

One common interest of those occupying the field of control of states is the preservation of the field. The agents in the field agree that the “game is worth playing” (Bourdieu and Wacquant 1992:98). For the state, there is a lot to gain by showing that controls are in place, since the successful exercise of power requires legitimation. In the same way, we can understand the control of the whole state apparatus as a legitimizer of the state as such. As I conclude in Paper IV, much of the struggle takes place within the framework of human rights, a framework supported by states, and not least by the Swedish state. In this sense holding states accountable for violations of human rights may not only strengthen the legitimacy of the human rights framework but may also contribute to the legitimacy of states themselves (see also Pickering 2005a; Stanley and McCulloch 2013). Those holding the state accountable may have well-founded criticisms about how this control works, but they would rather strengthen this control than limit it. This position is shared by the representatives of the NGOs that were interviewed. Even the organizations that had the least access to the field emphasized the importance of making reports to formal bodies that exercise control in relation to the state. This was not because they always believed that their claims would be up-

held, but because they felt it was important to document the wrongful actions of the state. Thus the field would not exist if these social agents did not interact. In this sense, those who take part in the field, and the struggle that occurs there, helps to reproduce the game (Bourdieu 1993). At the same time, however, this study has noted that the position occupied by the different bodies of control in relation to the state may be highly relevant for understanding the control organs' potential for challenging the legitimacy of the state. This aspect will be discussed further below.

Positions and strategies of social agents involved in the field

The Bourdieu-inspired understanding of control of the state as a field produces a focus on the ongoing struggling between social agents. My understanding is that the struggle that takes place within the field of the control of states is about recognition and legitimacy. In this context, the competitors in the game are comprised of the state, the bodies controlling the state and the individuals or organizations holding the state accountable. Analysing the relations on the field from the positions of these three main social agents is problematic since it reduces the complexity found within each type of agent. For example, in a Bourdieusian sense, it is questionable to speak of the state as an actor. Also, as was discussed earlier in relation to Paper IV, the positions occupied by different groups are far from equal. In a sense, it is rather insensitive to consider all social agents within the field as competing for the same stake. When migrants are trying to hold the state accountable, the struggle for recognition and legitimacy may well also be a struggle for survival. Despite these simplifications, I find the analysis valuable as a means of becoming able to understand the positions and strategies on the field. Paper II demonstrates how state actors, in the context of judgments from formal bodies of control, struggle to maintain legitimacy either by using denials or neutralizations or by partially acknowledging the accusation. In paper IV, the struggle becomes even more evident, since representatives of both formal bodies of control and NGOs talk about the importance of recognition and legitimacy for being able to do their work. The NGOs represent a double role in this game. First and foremost they act as bodies of informal control by publishing reports and disclosing state crimes in other ways, but they are also in a sense complainants, in that they make use of formal bodies of control to hold the state accountable. In both these roles, however, it seems to be crucial to be accepted as credible and to receive recognition.

Positions in the field are dependent on the capital possessed by the social agents (Bourdieu and Wacquant 1992). There are, however, relevant differences in the possession of such capital both between different social agents

and within the same type of social agent (particularly in relation to those holding the state accountable).

It has been suggested that a private individual has little power vis-à-vis a governmental department (Hurwitz 1981). This might lead to the conclusion that the game has already been lost. However, since the game is taking place, those holding the state accountable also possess a configuration of different forms of capital. In a state that is keen to appear democratic and fair, one strategy may be to ensure that the other players receive just the right amount of capital to ensure that the game does not appear to be fixed. Here, it could be a possible difference between the Swedish state and other states with less interest in preserving their good reputation. In Bourdieu's (1994) terms, the state is the holder of a form of meta-capital, which enables the state to exercise power over the field and over the capital in the field. In other words, the state possesses the capital to settle the rules of the game and to determine who is a legitimate player. In this sense, distributing capital to the adversary agents in the game may in fact strengthen the position of the state.

In Paper III, which focuses on those who hold the state accountable in the European Court, we can note an unequal distribution in relation to citizenship, sex, age and other social positions. Those that are able to hold the state accountable to a greater extent, are those who hold what might be described as a more privileged position in society. Based on this knowledge, and in Bourdieu's terms, the agents' access to accountability may be viewed as a manifestation of their access to different types of capital (economic, cultural, social and symbolic). Interviewees, both from the formal bodies of control and NGOs, note the importance of access to specific knowledge and experience in the form of legal competence when formulating their claim. Some seem to know the game better than others.

The bodies of control hold the symbolic capital associated with pronouncing which of the other two agents have the greatest credibility. On the other hand, the interviews with representatives of these bodies of control suggest that there is much more at stake than merely deciding who will succeed in their claims. In the interview with the representative of the European Court it becomes clear that there are many aspects to consider. The challenge is for them to balance their judgments using both the carrot and the stick, since the underlying goal is not to provide individual redress but to improve the state.⁸

In addition, the economic capital of the bodies of control is a recurrent issue in the interviews. For example, a representative of the Parliamentary Ombudsman blames the transformation of substantive claims into procedural criticism on the fact that the Ombudsman lacks the ability to hear the parties orally. The resources allocated to the domestic formal controls are determined by Parliament on the basis of proposals from the Parliamentary Om-

⁸ The Court may also be viewed as a field of struggles in itself, with many different interests. I assume that this is the case for all bodies of control in general.

budsman and the government (in the case of the Chancellor of Justice). In this sense, the government has a role in the distribution of capital to the formal domestic bodies of control. The state also has a significant role in shaping the rules of the game by appointing judges to the European Court (although this is not to say that the state can influence the judges in the Court in an inappropriate way), and by independently deciding which human rights treaties to ratify and ultimately recognizing individuals' rights to complain to the UN. These examples highlight the role of the state as exercising symbolic violence, which without explicit coercion can form the rules of the game. The symbolic violence that shapes the field is an expression of domination, but will not necessarily be recognized as such (since it is understood as being in the order of things) (Bourdieu and Wacquant 1992). The resources of the NGOs, both as informal controls and as supporters of individuals who hold the state accountable, are also a recurrent theme. It becomes apparent that the level of economic capital varies a great deal within the group of NGOs.

Strategies are developed to maintain or improve social agents' positions in the field (Bourdieu and Wacquant 1992). The denials, neutralizations, and partial acknowledgements that are described in Paper II, viewed in relation to Cohen's theory, can be understood as techniques or strategies employed to win the game. The process of framing the field becomes visible in the way the representatives of the state defend themselves, by deflecting the responsibility away from the state and onto the agency concerned or an individual employee. This is also the case in the strategy used by senior state officials when the responsibility for an incident is framed as being the responsibility of less senior officials. At the same time, substantive complaints about the state can be transformed and framed as a procedural problem by the formal bodies of control. For example, a complaint about police brutality is framed by the body controlling the state as being a problem associated with the documentation of the incident, not the incident as such (Paper IV). The ability to frame an issue within the field is related to the capital the social agents possess. In addition, the strategies employed vary across different contexts. The analysis of how Swedish state officials defend themselves from accusations reveals not only denials and neutralizations but also acknowledgements. The state representatives are eager to present themselves as being part of a decent and self-correcting organization. Even though I have interpreted some of these acknowledgements as constituting another way of avoiding moral censure, these strategies differ significantly from the gross human rights violations described in Cohen's (2009) work.

Paper II also suggests that the broader public discourse is important to an understanding of which types of strategies are accepted. Parallels can be drawn to Paper IV where I identify how a doxa (in which the process of seeking asylum is taken for granted), molds the control of the state. The ways in which bodies controlling the state frame their criticism are conditioned by a certain understanding of the social world. Challenging the doxa

of the field may, as observed by NGO representatives, compromise the organisation's influence and credibility. Some of the NGOs interviewed acknowledge how they have to adapt to the rules of the game, or risk being perceived as impossible and losing their influence. In their role as an informal body of control, the formulation of their criticism of the state is based on issues of strategy and on considerations necessary to maintain their credibility. According to the interviews conducted, this is the case for all of the bodies of control, but for the organs of informal control in particular. As a result of their informal nature, they are highly dependent on being accepted in order to earn access to the field. This is described as a balancing act by some formal bodies of control, with every judgment being important for the legitimacy of the bodies of control since they are dependent on the cooperation of the state. The strategies involved include the ways in which they express their criticism or claims, for example by avoiding certain expressions and adapting to the use of formal language. Other NGOs seem to be less concerned about the risk of losing their position within the field. This is another result of the symbolic violence enacted by the state, this time in the form of the right to deny legitimacy to certain interests and forms of capital. Due to the logic of the field, the NGOs cannot question the rules of the game, or the doxa within the field, and at the same time be accepted as players in the game.

One recurrent issue in the papers is the fact that knowing about one's rights and about the opportunities that exist to seek redress may be regarded as a prerequisite for obtaining access to the field. Knowledge is therefore one of the fundamental forms of capital. Since newcomers are those least endowed with capital, they employ different strategies (Bourdieu 1993). Their supporters are likely to contribute both economic and social capital. In some cases lawyers may be viewed as *gatekeepers* (see Felstiner, Abel, and Sarat 1980) to the field. For those least endowed with capital, having a legal representative who knows the field and the habitus may strengthen their capital in relation to the other agents in the field. In some cases, legal representatives are themselves the ones who hold the state accountable.

Closing remarks

At the same time as this dissertation acknowledges the field of the control of states, the social agents occupying it and how the field is formed through doxa, it is itself bounded by this same field. The studies have been conducted inside the field. We may assume that there are social agents who do not share the same interest in participating in the field, who are not prepared to play the game. We may also assume that there are social agents who would have liked to participate in the field, but who lack the forms of capital that are essential to being given a position within the field. This may be due to

lack of knowledge, resources or other forms of capital. In more than one of the papers, I use the example of undocumented migrants to direct a focus at groups of people who are unable or unwilling to make their case in the context of the mechanisms that are studied here.

Furthermore, when the control of the state risks strengthening the legitimacy of the state, there will be agents who will find the game to be counter-productive. Paper IV suggests that the informal control exercised by NGOs challenges the “system” to a greater extent, and even though the NGOs express skepticism in relation to the bodies of control, they rarely question the field as such. Nonetheless, those who participate in the field have (unconsciously) accepted the existence of the field, a field that requires an understanding of the state (and its agencies) as being controllable. Those who challenge the field as such, refer to the investment required for the game as being too high. Participating in the field (using formal mechanisms to hold the state accountable) risks strengthening the legitimacy of the state, rather than the opposite. The view of one NGO representative was that control was ineffective when it comes to producing actual change, and that therefore it is not worth participating any more. Understanding the motivations of the agents in the field, as well as those outside the field, might constitute one way of further developing the knowledge generated in this dissertation.

Svensk sammanfattning (Swedish Summary)

Kriminologer är vana vid att diskutera staten och dess olika myndigheters kontroll över individen (såsom polisen och kriminalvården). I denna avhandling har jag vänt på konceptet och studerar istället kontroll av staten. Från kritiskt kriminologiskt håll är det inte främmande att tala om att stater, i likhet med individer eller för den delen företag, begår brott. När vi öppnar upp för möjligheten att staten begår brott, behöver vi också reflektera över hur statens förehavande regleras, vilken form av kontroll som riktas mot staten och vilka möjligheter som finns till upprättelse för individer och organisationer. Denna avhandling består av fyra studier, en introducerande kapp och en avslutande diskussion om avhandlingens slutsatser. I denna sammanfattning kommer jag först introducera studiens bakgrund och syfte, sedan presenteras avhandlingens fyra studier och därefter sammanfattas avhandlingen slutsatser.

Bakgrund och syfte

Avhandlingen utmärker sig från tidigare forskning på området på tre sätt. För det första ligger fokus i avhandlingen på kontroll av den svenska staten, till skillnad från tidigare studier som inriktats på att studera så kallade fallna stater, och internationella brott i krigstid (se exempelvis Green and Ward 2009; Hagan and Raymond-Richmond 2009; Haveman and Smeulers 2008; Jamison and McEnvoy 2005; Kramer and Michalowski 2005; Maier-Katkin, Mears, and Bernard 2009; Mullins and Rothe 2008). För det andra utmärker sig avhandlingen från tidigare forskning genom att studera och jämföra flera olika instanser som kontrollerar staten (JO, JK, Europadomstolen, FN och NGOs) istället för att fokusera på en enskild form av kontroll (ex. Internationella brottmålsdomstolen) eller på kontroll av enskilda myndigheter, såsom polisen (se exempelvis Hurwitz 2000; Menzies 2000; Rothe and Mullins 2010). För det tredje har avhandlingen ett brett metodologiskt angreppssätt. Genom att fokusera på utfallet av den kontroll som riktats mot den svenska staten, kommer avhandlingens studier att innefatta en lång rad ageranden och händelser av statliga aktörer. Det skiljer sig från de angreppssätt som är vanligt inom detta forskningsfält, nämligen fallstudier (Rothe et al. 2009). I två av studierna (Paper II och IV) ligger fokus på kritik mot statliga företrädare för hanteringen asylsökande och andra migranter.

Avhandlingens övergripande syfte har varit att utveckla en förståelse för utfallet av den formella och informella kontrollen av staten, dess begränsningar samt de positioner och strategier som centrala aktörer använder inom fältet. Kontrollen förstås här bland annat utifrån Bourdieus (1993) fältbegrepp, där staten, de som anmäler och det organ som kontrollerar staten alla är sociala aktörer som kämpar för erkännande och legitimitet inom samma fält. De enskilda studiernas mer specifika syften presenteras nedan.

Staten under kontroll

Kontroll av staten aktualiserar en rad frågor om ansvarutkrävande. Avhandlingen diskuterar tre viktiga aspekter, vem som hålls ansvarig, vad som kontrolleras, och vilka som har möjlighet att hålla staten ansvarig. För att ställa statliga företrädare till svars har det utvecklats en rad olika kontrollmekanismer. Dessa organ har olika syften med sin kontroll och riktar sig också mot olika aktörer; mot enskilda statliga anställda (exempelvis vid tjänstefel) mot statliga myndigheter (som är fallet med JO och JK) eller direkt mot staten (som är fallet i Europadomstolen). Denna avhandling har sitt fokus på organ vars huvudsakliga syfte är att utkräva ansvar av staten och dess myndigheter och väljer därmed bort de insatser som främst håller enskilda anställda till svars.

En återkommande fråga inom forskning om kontroll av staters agerande, är hur vi benämner det som kontrolleras. I grunden kommer diskussionen att handla om hur vi definierar brott. Att använda sig av en klassisk förståelse av brott med utgångspunkt i nationell straffrätt innebär att studieobjektet begränsas till individuella aktörer. Det faktum att stater sällan vill klassa sitt eget agerande som brottsligt (Matthews and Kauzlarich 2007; Rothe 2009; Williams 2010) har lett till att forskare har valt att ta kränkningar av mänskliga rättigheter som sin utgångspunkt för vad som kan klassas som brottsligt agerande (Cohen 2000; Green and Ward 2004; Schwendinger and Schwendinger 1970). Likaså har det funnits anledning att även inkludera överträdelser av annan nationell lagstiftning än det som traditionellt har klassats som brott, exempelvis administrativa lagöverträdelser (se exempelvis Doig 2011). I den här avhandlingen tar jag avstamp i en definition av Rothe (2009) där agerande av statliga företrädare (eller brist därpå) som bryter mot nationell eller internationell rätt räknas som brott av staten, vilket inkluderar (men inte är avgränsad till) agerande som utmynnar i statligt skadeståndsansvar eller till leder till kritik från instanser som kontrollerar staten.

Ett återkommande tema i avhandlingen är också vem som kan hålla staten ansvarig för sina handlingar. Tidigare forskning har visat att brott av statliga företrädare oproportionerligt drabbar de mindre privilegierade i samhället (Grabosky 1989; Kauzlarich, Matthews, and Miller 2001). Samtidigt menar forskare att mer privilegierade individer, med tillgång till makt och resurser

ofta har större möjligheter att hålla staten ansvarig (Dembour 2006; Ross 2000b). Utöver tillgången till makt (inklusive pengar, tid och kapacitet) kan individens medborgarskap samt kunskap om sina rättigheter och möjligheter till ansvarsutkrävande vara centrala faktorer (Cappelletti and Garth 1978; Curran and Noone 2008; Goodey 2005).

Formell och informell kontroll

Jag skiljer i avhandlingen på formell kontroll av staten (organ som har ett formellt uppdrag att kontrollera staten) och informell kontroll (såsom NGOs som har ett självpåtaget ansvar att kontrollera). Genom den formella kontrollen kan det antas finnas större möjlighet att utkräva ansvar av staten än genom den informella på grund av deras formella uppdrag att granska. Den formella kontrollen har också större möjlighet till sanktioner än den informella. Samtidigt kan det formella uppdraget vara mer avgränsat och på så sätt ge mindre möjlighet att kontrollera staten än de informella har. Skillnader i kontrollens utformning och funktion kan också undersökas utifrån uppdelningen i extern och intern kontroll. Ross (1998, 2000c, 2011) skiljer på extern/intern i relation till landet och till regeringen. Det innebär att JO exempelvis kan anses vara en inhemsk kontroll men extern i relation till regeringen medan JK kan anses vara intern ur båda dessa aspekter. Europadomstolen och FN är externa i båda bemärkelsen. NGOs (non-governmental organisations) är externa till regeringen men kan vara både inhemska och internationella. Den externa kontrollen kan antas vara mer oberoende än den interna som förutsätter att staten kan kontrollera sig själv. Den interna kontrollen har av andra forskare kritiserats för att i första hand tillvarata statens eller regeringens intressen (Ross 2000b). Nedan följer en kort beskrivning av de fem kontrollinstanserna som studeras i avhandlingen:

Justitieombudsmannen (JO) som är riksdagens ombudsman har till uppgift att utöva tillsyn över hur de svenska lagarna tillämpas i den offentliga verksamheten. JO ska utöva tillsyn över statliga och kommunala myndigheter, dess tjänstemän och andra beslutsfattare. JO kan inte upphäva beslut men kan däremot väcka åtal mot tjänstemän för tjänstefel eller andra brott i tjänsten, rekommendera disciplinpåföljder samt rikta kritik mot myndigheter. JO hanterar inte enbart individuella klagomål utan tar också egna initiativ till kontroll och granskning. Avhandlingen har på grund av sitt fokus på organisatoriska aspekter enbart hanterat ärenden som rör kritik mot myndigheter och inte åtal eller disciplinpåföljder mot enskilda tjänstemän.

Justitiekanslern (JK) är regeringens granskare och har huvudfokus på tryck- och yttrandefrihet. Eftersom JK bevakar statens rätt och för statens talan är det ingen självklar instans för granskning av staten. Men JK reglerar skadestånd till enskilda vid oriktig myndighetsutövning och har tillsyn över i stort sett alla som utövar offentlig verksamhet, (undantaget regeringen, stats-

råd och riksdagens myndigheter och dess anställda). JK:s roll har beskrivits som en kameleont, som uppträder som polis (utredare), som åklagare (t.ex. i tryckfrihetsmål), som advokat (i egenskap av regeringens högste ombudsman) och som domare (i skaderegleringsärenden exempelvis till oskyldigt häktade eller oriktigt myndighetsutövning) (Gullnäs 2002).

Europadomstolen i Strasbourg är kopplat till Europakonventionen om mänskliga rättigheter och genom att Sverige har ratificerat Europakonventionen är staten skyldig att följa de utslag som kan uppkomma efter klagomål mot staten (Berlin 2009). Klagomål riktas mot staten som ansvarig för offentliga myndighetspersoners agerande, inte enskilda personer eller myndigheter (Bring and Mahmoudi 2007). Europadomstolen kan enbart konstatera att en kränkning har skett eller utdöma skadestånd för ekonomisk eller ideell skada (Bratt and Söderberg 2000). De allra flesta klagomål, över 90 procent, leder dock inte till någon åtgärd utan avvisas (Bring and Mahmoudi 2007).

FN:s granskande uppdrag bygger på juridiskt bindande konventioner om mänskliga rättigheter. Statens ansvar när konventionerna är ratificerade handlar om att skydda, implementera och främja rättigheterna (Abiri 2009). De olika konventionerna har sedan i mitten av 1960-talet kompletterats med övervakningssystem. Dessa har två huvudformer, staternas rapportering och enskilda klagomål. Rapporteringsförfarandet, som är kopplat till alla centrala konventioner som utarbetas i FN:s regi, innebär att staten, med mellan två till fem års intervall, lämnar en rapport om efterlevnad av konventionen (Scheinin and Grimheden 2008). Övervakningskommittéer har sedan till uppgift att kontrollera och utvärdera ländernas arbete och situationen gällande mänskliga rättigheter och riktar därefter kritik och rekommendationer (Alfredsson 2005). Några av konventionerna tar också emot klagomål från enskilda individer (Hydén 2007). I FN-systemet finns också så kallade specialrapportörer som granskar olika områden, såsom hälsa och våld mot kvinnor (Abiri 2009).

Nationella och internationella NGOs kan ses som informella granskare av statens förehavanden. Vissa har dock en mer formell roll och en rådgivande ställning i FN och Europarådet (Scheinin and Grimheden 2008). I samband med granskningar av någon av FNs organ eller kommittéer förekommer rapporter från NGOs, så kallade skuggrapporter, som ofta framhåller andra former av problem när det gäller mänskliga rättigheter i landet än den officiella rapporten från regeringen.

Empiriska studier

Avhandlingen består av fyra studier som presenteras nedan i respektive ordning.

Paper I: “State Crime in the Street-Level Bureaucracy. Toward an Understanding of Crimes of the Welfare State”

Syftet med första studien är att studera vad som utmärker de registrerade ärenden där den svenska staten eller dess myndigheter har kritiserats, eller har blivit skyldiga att betala skadestånd genom kritik från Justitieombudsmannen, Justitiekanslern respektive Europadomstolen mellan åren 2000 och 2010 (totalt 8,561 ärenden). Analysen omfattar vilka delar av den svenska staten som kritiseras (uppdelat på myndighet), vem som anmäler (individ, företag, organisation, annan myndighet eller på kontrollens eget initiativ) samt resultatet av anmälan (kritik eller skadestånd). På ett urval av ärenden (25 procent) kodades också vilken typ av händelser som anmäldes (rör det sig om processuella eller materiella ärenden, berör det negativa eller positiva rättigheter och gäller det generella eller specifika frågor).

Analysen är knuten till Lipskys (1980) förståelse av gräsrotsbyråkratin, där majoriteten av kontakten mellan medborgaren och staten sker genom byråkrater som har en daglig kontakt med medborgare. Föga förvånande är det också den här typen av myndigheter som i störst utsträckning har fått kritik eller har behövt betala skadestånd. Det rör sig oftast om händelser som har tolkats som processuella, berör positiva rättigheter och enskilda händelser. Anmälningarna som har lett till kritik eller skadestånd handlar således framförallt om hur staten i enskilda fall inte levt upp till de positiva skyldigheter som är ålagda dem. För det första kan utfallet från de tre kontrollorganen förstås som en följd av relationen mellan gräsrotsbyråkratin och medborgaren, där byråkraterna på olika sätt tvingas hantera den press som de är under och där medborgaren i första hand kommer uppfatta att problemet ligger hos den enskilda tjänstemannen eller myndigheten (även om det skulle röra sig om ett mer strukturellt problem). För det andra kan utfallet också tolkas i relation hur kontrollen fungerar. Att kontrollera processuella brister (exempelvis för långa handläggningstider) där staten inte har tillhandhållit det den bör i enskilda ärenden kan tänkas vara enklare än att granska materiella beslut (som kontrollorganen endast undantagsvis hanterar), kränkningar av negativa rättigheter (av repressiv karaktär) och mer systematiska fel. Likaså är det en fråga om den enskildes kunskap om sina rättigheter, var och hur ansvar kan utkrävas. Andra typer av kontrollmekanismer, såsom FN och NGOs kan antas uppmärksamma andra typer av problem.

Paper II: “Seeking asylum and residence permits in Sweden: Denial, acknowledgment and bureaucratic legitimacy”

Den andra studien syftar till att förstå hur försvarsmekanismer används av statliga företrädare när de ställs till svars genom Justitieombudsmannen, Justitiekanslern och Europadomstolen mellan åren 2000 och 2010 i frågor som rör asylsökande och andra som söker uppehållstillstånd i Sverige. Stu-

dien är baserad på en kvalitativ analys av 114 ärenden. Med hjälp av Cohens (1996, 2009) koncept om förnekande och partiella erkännanden undersöks hur statliga företrädare svarar på kritik som riktas mot dem genom JO, JK och Europadomstolen. Cohen hämtar sin förståelse från Sykes och Matzas (1957) teori om neutraliseringstekniker (förnekande av ansvar, av skada, av offer, fördömandet av dem som fördömer och återopandet av andra högre lojaliteter) men lägger till ytterligare två tekniker som riktar sig mot politiska aktörer (förnekande av kännedom och moralisk likgiltighet). Utöver det nämner Cohen (2009) att stater med större anspråk på att framstå som goda kan använda sig av partiella erkännande.

Inledningsvis identifieras fem typer av ärenden: kritik av beslut under ansökningsprocessen, kritik mot processuella brister under ansökningsprocessen, kritik mot bemötandet av de som ansökt om uppehållstillstånd, ifrågasättande av beslut om avvisning samt kritik mot genomförandet av avvisning. Vidare finner jag att olika former av tekniker för att förneka eller neutralisera det inträffade används; samt att de används i något olika sammanhang beroende på vad kritiken gäller. Den stora omfattningen av partiella erkännanden tolkas, i linje med Cohens resonemang, som ett sätt för företrädare för den svenska staten att framstå som hederliga och ansvarstagande. Samtidigt kan den typen av erkännanden som används förstås i termer av att undkomma fullt ansvar genom att hänvisa till de inträffade som misstag eller en isolerade händelser. Analysen pekar på att förnekanden likväl som erkännanden kan vara ett sätt att upprätthålla statens legitimitet.

Paper III: "European Court of Human Rights. Accountability to whom?"

Syftet med den tredje studien är att analysera vad som kännetecknar de individer och organisationer som har ställt den svenska staten till ansvar och har fått sin sak prövad i Europadomstolen. Samtliga domar mot den svenska staten mellan åren 2000 och 2010 som antingen har lett till att en kränkning konstaterats, att en förlikning skett eller att ett avslag har meddelats (totalt 53 domar) har analyserats. Studien har en viktologisk ansats och tar sin utgångspunkt i offers möjlighet att utkräva ansvar och få tillgång till rättvisa (se Cappelletti and Garth 1978; Curran and Noone 2008; Goodey 2005). Studiens ambition har varit att göra en intersektionell analys av de som anmäler till Europadomstolen och får sin sak prövad. De 93 anmälarna har kategoriserats efter medborgarskap (svenskt, Europeiskt, utom-Europeiskt), kön (man, kvinna), ålder och social position (utifrån den beskrivning som görs av anmälaren i domen, exempelvis företagare). Utöver det har den artikel i Europakonventionen som anmälaren hävdar har kränkts kodats.

Inledningsvis konstateras att de flesta som får sin sak prövad är svenska medborgare, män och 41 år eller äldre samt att de flesta klagomål gäller *Rät-*

ten till en rättvis rättegång (Artikel 6). Detta tycks gälla oavsett vilket beslut domstolen fattar. Men det förekommer även många andra typer av anmälare i materialet och artikeln diskuterar olika grupper och deras möjligheter att få sin sak prövad i Europadomstolen. Utan möjlighet att jämföra med de som anmält men fått avslag på sin ansökan går det inte dra alltför långtgående slutsatser. Analysen tyder dock på att vissa typer av ärenden (rörande rätten till rättvis rättegång) från vissa (medelålders män med svenskt medborgarskap) prövas i större utsträckning. Utifrån denna slutsats diskuteras domstolens roll som instans för utkrävande ansvar av staten från de som upplever att sina rättigheter blivit kränkta.

Paper IV: “The state’s mishandling of immigration to Sweden. How bodies controlling the state frame the problem”

Den fjärde studien har till syfte att förstå hur kontroll av staten fungerar genom att sätta fokus på hur formella kontrollorgan (Justitieombudsmannen, Justitiekanslern, Europadomstolen och FN) och informella organ (NGOs) formulerar problem i relation till statens ansvar för asylsökande och andra som söker uppehållstillstånd. I analysen relateras dessa problembeskrivningar till de olika kontrollorganens positioner och strategier inom fältet. Studien är baserad på ärenden, domar och rapporter (sammanlagt 159) från ovan nämnda kontrollinstanser och utöver det har nio intervjuer genomförts med representanter för JO, JK, Europadomstolen och flertalet NGOs. Analysen är uppdelad i tre steg, först noterades hur problemet representeras och kopplas till underliggande ramar (så kallade frames), därefter synliggjordes de villkor som skapar problemformuleringarna och sist identifieras hur problembeskrivningarna är relaterade till positioner och strategier inom fältet. Teoretiskt hämtades inspiration från Bourdieus (1993) förståelse av ett fält, där en kamp om erkännande och legitimitet äger rum. Mathiesen (1974) teoretiska begrepp om strategier för politisk handling tillämpas också för att utveckla analysen av relationerna mellan problembeskrivningarna och kontrollorganens positionerna och strategier.

Analysen av materialet visar att olika former av kontrollorgan formulerar problemen angående statens hantering av immigranter olika. Problemen kan i sin tur härledas till olika ramar, där den formella inhemska kontrollen i form av JO och JK blir ett uttryck för den byråkratiska ramen. I dessa fall handlar problemen exempelvis om långa handläggningstider eller att juridiskt ombud inte har förmedlats i tid. Den internationella kontrollen, i form av Europadomstolen och framförallt FN, konstruerar problemen inom bredare ramar; antingen kopplat till felaktiga beslut om avvisning eller mer generellt kring rättssäkerheten i asylprövningen, positiva skyldigheter som staten inte lever upp till och repressiv behandling i form av omfattande placeringar av asylsökande och andra migranter i förvar. NGOs formuleringar

av problem liknar FN:s på flera sätt med några väsentliga skillnader, framförallt går de längre i sin kritik och utmaning av den svenska asylhanteringen. I analysen diskuteras hur kontrollinstanserna är beroende av erkännande och legitimitet för att utföra kontroll och hur doxa styr vilka krav som kan ställas inom fältet. Här finns även skillnader mellan olika NGOs. Dessa skillnader förstås som en konsekvens av deras position på fältet och därmed deras möjlighet att utmana doxa.

Sammanfattande slutsatser

Resultaten och slutsatserna från respektive studie lyfts här upp för att diskutera avhandlingens övergripande slutsatser utifrån tre övergripande aspekter: utfallet av kontrollen, begränsningar med kontrollen samt de positioner och strategier som centrala aktörer använder inom fältet.

I den första studien framgår att de delar av statens som främst blivit kontrollerade av den nationella formella kontrollen (JO och JK) är det som har kommit att kallas gräsrotsbyråkratin (se Lipsky 1980). Samtidigt är det framförallt anmälningar som berör processuella problem (i motsats till substantiella) och specifika frågor (i motsats till generella). Resultaten från den första studien kan jämföras med de som har framkommit i den fjärde studien, där färre ärenden har analyserats kvalitativt. De problem som formuleras av den formella inhemska kontrollen kan tolkas som tillkortakommande snarare än systematiska problem. Kontrollen skiljer sig på så sätt från de problem som formuleras av FN och av NGOs. De senare formulerar en annan bild av problemet i relation till hanteringen av asylsökande och andra som söker uppehållstillstånd genom att påtala mer strukturella och systematiska problem. Utfallet av den kontroll av staten som genomförs synliggör också flera begränsningar. Redan i den första studien uppmärksammas att det troligtvis finns grupper som inte har tillgång till de instanser som utövar kontroll över staten. I den tredje studien, där de som får sin sak prövad i Europadomstolen analyseras, framkommer ett mönster där personer som kan tolkas som mer privilegierade i samhället oftare får sin sak prövad. Vidare diskuteras kontrollens funktion i relation till förmågan att åstadkomma förändringar inom staten eller att ge den enskilde individen upprättelse. En av begränsningarna med kontroll av staten är att den riskerar att bli kontraproduktiv genom att bidra till att statens legitimitet förstärks (även i de fall kontrollen leder till allvarlig kritik), även då syftet är det motsatta. Vidare analyseras kontrollens utfall och begränsningar i relation till de positioner och strategier som de olika formerna av kontroll intar inom fältet.

I den andra studien analyseras de strategier som statliga företrädare använder sig av när de utsätts för kritik och tolkar det i termer av upprätthållande eller återskapande av legitimitet. På samma sätt behöver den som anmäler få ett erkännande för de klagomål som framförs. De organ som utövar

kontroll är också beroende av erkännande och legitimitet för att kunna utöva kontroll (se paper IV). Det kapital som de olika aktörerna på fältet innehar skiljer sig åt och dessa olikheter bidrar till vilka strategier som kan användas och hur fältet konstrueras. NGOs innehar dubbla roller genom att främst betraktas som en informell kontroll men också som en anmälare genom att använda sig av de formella kontrollorganen. Som en anmälare innehar de många olika former av kapital (såsom resurser och kunskap om fältet) som andra anmälare saknar. Många anmälare av staten kan ses som nykomlingar i spelet som pågår på fältet, medan de som utför kontrollen och de statliga representanterna har en större erfarenhet som bidrar till deras positioner och strategier. Statens kan också anses ha en särskild symbolisk makt som utan att utöva uttryckligt tvång skapar fältets regler (Bourdieu and Wacquant 1992).

Ett av fältets inneboende logik är att de som deltar i kampen om erkännande delar intresse för fältets fortlevnad. Staten har exempelvis mycket att tjäna på att det finns former för kontroll, inte minst ur en legitimitetsaspekt. Även om det finns de som kritiserar fältets regler är det sällan som fältet på allvar utmanas. Det finns dock de som anser att priset för att delta i fältet är för högt, grupper och individer som inte anser det fruktbart att delta eller som anser att spelet enbart stärker statens legitimitet. Sedan finns det med all säkerhet också grupper som inte har tillräckligt med kapital (kunskap och resurser) för att få tillgång till fältet. Gruppen av papperslösa i Sverige är ett exempel. Avhandlingens slutsatser mynnar ut i ett förslag om fortsatt forskning kring de motiv som finns hos de som deltar i fältet och de som väljer eller inte har möjlighet att delta på fältet där staten kontrolleras.

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