

The state's mishandling of immigration to Sweden – how bodies controlling the state frame the problem

Isabel Schoultz¹

Published online: 1 December 2016

© The Author(s) 2016. This article is published with open access at Springerlink.com

Introduction

Long before the so-called ‘European migration crisis’ of 2015, which gave rise to a vibrant political debate on the responsibility and reception conditions for asylum seekers, scholars had been noting that states consistently violate the human rights of asylum seekers as a result of the destination countries’ politics, policies and practice (e.g. [20, 23, 24, 30, 38]). 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 [1, 2]. The identification of failures to positively embrace the right to asylum throughout Europe [24] 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 (see [29, 46]). 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 [7, 10] and where many applicants have to experience the considerable force of what has been referred to as the European deportation machine [20].

These developments have been met with some criticism, however, from a number of bodies of control, whose focus is directed at holding the state or its agencies to account by means of publishing criticism or recommendations focused on the Swedish state’s treatment of current and former residence permit applicants, who are for the most part asylum seekers. At the national level, the task of scrutinizing the Swedish state is assigned to among others the Parliamentary Ombudsman and the Chancellor of Justice. At the international level, scrutiny is exercised by e.g. the European Court of Human Rights and committees of the UN. Domestic and international Non-Governmental Organisations (NGOs) may also be viewed as scrutinisers of the actions of the state.

✉ Isabel Schoultz
isabel.schoultz@soclaw.lu.se

¹ Sociology of Law Department, Lund University, Box 42, 221 00 Lund, Sweden

Although all of these different types of institution do exercise control over the state, a reasonable point of departure is that the ways in which control of the state is exercised vary across different types of control mechanism. The assumption is here that various control bodies present problematic actions by the state in diverse ways, and the problem representations will be embedded in different frames, defined as “underlying structures of belief, perception, and appreciation” [48, p. 23]. The struggle over the naming and framing of a situation includes not only the way problems are represented but also the solution [48]. Bacchi’s [4] “What’s the problem represented to be” approach, which was developed for the identification and assessment of problem representations in policy proposals, provides a tool that can be used to reveal how bodies criticising the state name and frame the problem of the state’s handling of migration.

The aim of this study is to develop an understanding of how the field of control of the Swedish state works in practice by highlighting the conditions that allow particular problem representations to be formed within different types of bodies that exercise control in relation to the state. Thus, the article aims to answer the following questions: 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?

In order to achieve this aim, I analyse criticism and judgments relating to the state on the basis of a sample of judgements and reports in which such criticism is expressed and also using data from interviews conducted with organs that exercise formal and informal control in relation to the state. Thus multiple sources of data are employed as a means of strengthening the study’s analysis (see [28]) of how problems are represented by various bodies of control and of the frames in which these problems are embedded.

The research questions are tied together by an understanding that views control of the state as a field, inspired by Bourdieu’s understanding of a field as an ongoing struggle between social agents [12]. The struggle within this field can be described as a game in which the social actors compete for recognition and legitimacy. This paper focuses on how the bodies of control struggle for recognition and legitimacy within the field. The concept of legitimacy refers here to recognition and acceptance [12] and is understood in terms of an ongoing discussion rather than as a fixed phenomenon or an all-or-nothing matter [33, 49]. The frames used by the bodies that exercise control in relation to the state reflect these bodies’ struggle for recognition and legitimacy within the field. This paper contributes to furthering our understanding of how the framing strategies adopted by control bodies reflect their positionality within the field and of how legitimacy within the field is negotiated, and the relevance of the findings therefore extends beyond the Swedish case. The paper’s findings may also be generalized beyond control of the state and the field of asylum seeking, since they link into scholarship on how NGOs and social movements negotiate the balance between making radical criticism or moderate claims and on the ways in which this shapes how issues are framed and how these organisations position themselves in their respective fields (see [17, 18, 26, 32]).

Formal and informal bodies of control

The control mechanisms selected for this study can be categorized in different ways according to their function and purpose: formal/informal and internal/external (to a

government or a country) [40, 42]. 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 [43]. Internal controls have been criticized because they tend to protect the interests of the government rather than those of the individual [41]. Bearing these concepts of formal/informal and internal/external control in mind, the control bodies selected for this study 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. It is formal, external to government and operates as a domestic control organ. 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.¹ 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. On the other hand, several NGOs have a formal advisory role at the UN and the Council of Europe, and 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. However, the NGOs working with migrant issues 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.

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. This discussion goes back to arguments on how to define crimes by the state. Scholars have referred to international law and conventions on human rights (see for example [15, 25]) as well as to national legislation and regulatory violations, according to which state actions can be classified as crimes (see for example [16, 44]). Inspired by Rothe [44], 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. 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

¹ None of the formal domestic controls are able to rescind the decisions of state agencies, and the available sanctions instead involve issuing reprimands/criticism. However, The Chancellor of Justice can order the payment of compensation for damages. The Parliamentary Ombudsman and the Chancellor of Justice also have the authority to prosecute individuals and to recommend disciplinary measures – although this only happens a few times per year.

committees and NGOs could be labelled as crimes, even though they comprise a wide range of wrongs and harms including less serious violations.

Theoretical approach

According to Bourdieu [12, p. 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 [12]. What is it that is worth fighting for? According to Moi [35, p. 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”. The struggle within the field at issue in the current article can be described as a game in which the social actors, the state, the control bodies and the migrants or those representing the migrants, compete for recognition and legitimacy. The focus of this paper is directed at the bodies of control themselves, and less at the struggles engaged in by representatives of the state or by those who hold the state to account via these bodies of control. In the case at point here, it would be rather insensitive to consider the various actors as competing for the same stakes – since the migrants’ struggle for recognition and legitimacy may well also be a struggle for survival. The struggle 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. To Bourdieu [13], the unequal distribution of various kinds of capital constitutes the very structure of a given field. 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.

Within the field, the institutional environment creates a habitus, a “sense of the game” [13, p. 11], which can be understood as an acceptable and “natural” way of thinking and acting within the specific context [8, 54]. Connected to habitus is the term doxa, which for Bourdieu stands for the schemes of thought and perception of the social world that appear to be natural and self-evident [11]. Whyte [54] 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 established and beyond discussion, Bourdieu reminds us that it has not always been so and that doxa is historically situated [13]. That means that doxa also can be challenged, but a crisis is a necessary condition for an anti-doxic critique to develop [11, 35].

In addition, Mathiesen’s book *the Politics of Abolition* [34], in which he carefully considers various political strategies focused on obtaining the goal of the abolition of prisons, has been found to provide valuable insights that help to further develop the analysis of the positions and strategies of the bodies controlling the state. Mathiesen differentiates between strategies of “*moving into* the established systems” and strategies that involve “*remaining outside* the established system” [34, p. 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”, while the latter risk being “‘defined in’ as undangerous” [34, p. 23].

In Mathiesen's view, the solution is to avoid being either *defined in* or *defined out* and instead to remain *unfinished*. The unfinished alternative should be based on premises that *contradict* and *compete* with the prevailing order. 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 [34]. Related to different positions in the field, Haines [26] develops an understanding of relations between organisations with moderate and with more radical claims. When moderate claims by social movements are contested by more radical claims, the moderate demands can be redefined and treated as more reasonable. Thus moderates can gain more support and attract more resources, as well as receiving access to decision makers as a result of their *relative* acceptability.

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.

Data and methods

Using Bacchi's *what's the problem approach* as a methodological tool, the paper examines how various bodies controlling the state represent the problem and the frames in which these problems are embedded.² The approach is grounded in discourse analysis, where a discourse is defined as "the language, concepts and categories employed to frame an issue" [4, p. 2].³ It is a comparative case study that includes five main types of control mechanisms. These data sources are judgements issued by the Parliamentary Ombudsman, the Chancellor of Justice, the European Court of Human Rights and UN committees as well as reports from UN committees and NGOs. In addition, interviews have been conducted with representatives of some of the control bodies, namely the Parliamentary Ombudsman, the Chancellor of Justice, and the European Court, and also several NGOs.

Judgements from the Parliamentary Ombudsman, the Chancellor of Justice and the European Court of Human rights relating to the process of seeking asylum and other types of residence permit were selected from a larger sample of (over 8000) judgments, which related to all types of complaints against the state apparatus between the years 2000 and 2010, in which the three control bodies described above had either issued a reprimand or had resolved the complaint by ordering the Swedish state to pay compensation for damages caused. Of the 114 judgments that were included in the analysis, the majority had been issued by the Parliamentary Ombudsman (100) and fewer by the

² In the field of media studies, frames have been treated as a deliberate process, a selection or a fabrication [31]. The process in which problems are represented by NGOs may, for example, be viewed as being more strategic and intentional in relation to attempts to attract attention to their concerns [28] than is the case with regard to formal control bodies such as the Parliamentary Ombudsman and the European Court, where the process is more unintentional or at least more tightly bound to certain criteria. However, the question of strategy or intentionality is not the main concern here, but rather how problems are represented and the implications of these representations (see [4], p. 36).

³ At the same time as I find Bacchi's approach useful and "hands on" for analysing how problems are presented, I do not follow every step of her approach, which includes, for example, Foucauldian archaeology and genealogy analysis [5].

Chancellor of Justice (11) and the European Court of Human Rights (3). The judgments primarily relate to the Migration Board, but also to agencies such as the police, the courts, the municipalities and embassies, as well as to the Government itself, which is the body whose actions are reviewed by the European Court.

In order to identify relevant UN documents for inclusion in the analysis, a search was done through Reports of Special Rapporteurs, Periodic Reviews⁴ and Individual Communications⁵ from any UN committees (treaty monitoring bodies) related to Sweden between 2000 and 2010 that included the term refugee, asylum seeker or migrant. All these were read in order to identify those documents that presented substantive concerns or recommendations related to the process of seeking asylum or other types of residence permit in Sweden. In total, 31 documents from the UN were selected; a figure that includes 7 reports from Special Rapporteurs, 15 Periodic Reviews and 8 Individual Communications. In addition, as a result of reading the Periodic Reviews 14 Alternative Reports from NGOs was identified.

In addition, nine semi-structured interviews, lasting between 1 and 2 h, were conducted with representatives of formal and informal control bodies. The interviews conducted with representatives from formal domestic and international control bodies (the Parliamentary Ombudsman, the Chancellor of Justice and the European Court) contributed by providing descriptions of experiences and knowledge of how this type of control is performed, and of its strengths and limitations. Interviews were also conducted with representatives from six NGOs that work either with human rights in general or more specifically with the rights of migrants, as asylum-seekers and as undocumented individuals residing in Sweden. Some of the NGOs have been involved in the process of writing shadow reports, some have not. In this sense, they represent both organisations that are well-established within international monitoring bodies and organisations that are not. The interviews revolved around their work, how they assessed the situation for asylum seekers or other migrants in Sweden, experiences of criticism directed at state actors, and experiences of other control bodies focused on the control of states.⁶ To protect the interview participants' confidentiality, the names of the NGOs will not be presented, since some of these NGOs only have one or a small number of employees working with these issues.

The analysis was completed in three main steps, by (1) identifying the problem representations and linking the problems to underlying frames (2) highlighting the conditions that allow a particular problem representation to take shape (3) identifying how the frames are related to the strategies and positions of the various bodies of control within the field. In the second step, a more sophisticated understanding was

⁴ In all cases but one I only include the Concluding Observations, which constitute the outcome of the review and which include positive aspects as well as concerns and recommendations. When it comes to the Universal Periodic Report, I selected both the final report and a compilation of UN information about Sweden which included a summary of human rights concerns that I found interesting. The latter also included a background document in the form of a Submission by the United Nations High Commissioner for Refugees (UNHCR) which was also found to be relevant for inclusion.

⁵ Individual Communications reflect the ability of individuals to complain about violations of their rights to human rights treaty bodies (Committees). Only those cases where a violation had been identified were included.

⁶ Two of the interviews with NGOs were conducted a couple of years earlier than the other seven interviews, which means that somewhat different questions were asked, although the focus of all the questions was on the same field.

develop of the similarities and differences in the frames adopted by different control bodies, as well as of their limitations and benefits, in order to be able to highlight the conditions that allow particular problem representations to be constituted within different types of bodies controlling the state. In the third step, Bourdieu's notion of a field is applied to assist in developing the analysis of the relations within the field of control of the state, the positions of the bodies of control and the strategies employed. In the context of the second and third step of the analysis, the experiences described in the interviews with representatives of the various control bodies played an important role.

How problems are framed

The analysis of problem representations draws attention to how various bodies controlling the Swedish state differ in their framing of an issue. The following section of this paper, where the results are presented, is organised on the basis of the different types of control body (formal domestic, formal international and informal). The presentation describes the problem representations identified and the frames in which these problems are embedded for each type of control body respectively. Thereafter, Bourdieu's notion of a field and Mathiesen's [34] conceptualization of strategies for political action are applied primarily 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.

Taken together, the identified problem representations have been interpreted in the context of six different frames, which I have labelled procedural issues, the rule of law, non-refoulement, positive obligations and non-discrimination, repressive elements and the right to asylum. The first frame, *procedural issues*, includes problem representations related to the process of seeking asylum and residence permits and to state agencies' failures to conduct their bureaucratic tasks properly. The second frame, the *rule of law*, is also a form of procedural frame but differs from the previous frame since it consists of problem representations that depict the process of seeking asylum as unfair and unequal. The third frame *non-refoulement*, concerns the protection of refugees from being returned or expelled to places where their lives or freedoms could be threatened and involves problems represented as being due to Swedish authorities' making incorrect decisions in relation to asylum applications. The fourth frame, *positive obligations and non-discrimination*, includes problem representations related to the Swedish state's failure to provide equal access to society's welfare systems. The fifth frame, *repressive elements*, includes problems associated with the state being described as too repressive in cases of detention and deportation. The problem representations related to these first five frames have all been identified in the material from the written reports and judgements. The sixth frame, *the right to asylum*, emerged in the material from the interviews with some of the NGOs and comprises challenges to the current system of asylum seeking and border controls (Table 1).

Formal domestic controls

The problems represented by the formal domestic control bodies (the Parliamentary Ombudsman and the Chancellor of Justice) have been interpreted within a frame of *procedural issues*. The problems highlighted by these bodies relate to the state's failure

Table 1 The frames represented by the three types of control mechanism

Frames	Formal domestic controls	Formal international controls	Informal controls
Procedural issue	x		
Rule of law		x	x
Non-refoulement		x	x
Positive obligations and non-discrimination		x	x
Repressive elements		x	x
The rights to asylum			x

to conduct its procedural tasks properly. This includes a lot of different issues: not having taken all the relevant information into account in the application process, long application-processing times, delays in appointing a legal counsel, delays in the provision of information to the applicant or the legal counsel and the loss of original documents belonging to the applicant, such as passports and marriage certificates, and also the treatment given asylum seekers and persons applying for residence permits. None of the adjudications focus on the actual decision relating to the issuance of a residence permit or the awarding of refugee status. In addition to the failures associated with administrative tasks, there is also criticism related to the enforcement of deportations, with a particularly focus on the work of the police. However, even if the report includes accusations of brutality or of wrongful decisions relating to a deportation, the adjudications from the Parliamentary Ombudsman and the Chancellor of Justice only focus on the documentation of the incident, not on the enforcement of the deportation itself.

The naming and framing of the acts of the state may be harsh, but the proposed solutions give the impression that the problems are viewed as shortcomings rather than as systemic failures. An exception from this framing is the case concerning the deportation, in December 2001, of two men to Egypt from Sweden by US agents with the assistance of the Swedish Security Service. The Parliamentary Ombudsman strongly condemned the Swedish Security Service for a number of organizational failures, describing some of its acts as unlawful [36]. Labelling acts as unlawful is very rare, particularly when it comes to the formal domestic control bodies. In this sense, referring to acts in this way constitutes a strong condemnation by comparison with the use of the word violation, which is not considered to carry the same weight (see [53]). However, the Swedish state officials are mainly blamed for their passivity in relation to the treatment of the two men; a case of omission rather than commission (see [6]). The decision on the deportation itself, which was taken by the government, was not investigated, since the government and its ministers are not subject to the oversight of the Parliamentary Ombudsman. While the Parliamentary Ombudsman seems to consider this in terms of an isolated incident, other control bodies view the case as a continuum of incorrect actions and of omissions to compensate for these failures.

Framing the problem as a procedural issue may allow for an understanding of the state as generally well-functioning, but at the same time also subject to occasional failures. Even when the problem is represented as endemic, the underlying assumption

seems to be that the problem can be resolved by means of improved routines. The binary between satisfactory/unsatisfactory asylum processes shapes a perception of the asylum process and of the rules this process is based on as being valid. This means that the question of whether the decisions on asylum and residence permits, or the substantive treatment of the applicants, have been correct on the basis of national or international obligations is not open to examination. The procedural issue frame is shaped by the fact that the two domestic control bodies do not generally comment on the assessments made by state authorities.

In addition, another condition that allows this problem representation to take shape is found in the social statuses of the agents who report the incidents (even though both of these domestic control bodies can initiate cases themselves). With the exception of the cases involving the enforcement of deportations, the incidents referred to 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 within this frame. The important factor here is not citizenship, however (cf. [21]), but rather the formal status of being a residence-permit applicant. This is a status that in Bourdieu's terminology may be described as the capital that is essential for having a position in the field where the state is held accountable.

Formal international control

The formal international control bodies, the European Court and the UN, present problems within four type of frames, *non-refoulement*, *the rule of law*, *positive obligations and non-discrimination* and *repressive elements*. Overall, the problems are framed in line with a distinction between control as addressing individual complaints (judgements from European Court or the UN) or general human rights problems (in the UN reports). In the UN discourse, calls for solutions are more prominent than the criticism expressed, and this criticism is formulated as recommendations rather than as a condemnation.

The problem representations formulated by the European Court of Human Rights are interpreted within a frame of *non-refoulement*. The judgments from the European Court conclude that the implementation of a deportation order against the applicant would give rise to a violation of the rights to life or a violation of the prohibition of torture. The judgments convey a distrust of the way in which the state has interpreted the grounds for protection adduced by the asylum seekers. However, the statements and the language used in the judgments, imply that no damage has yet been done. The judgements establish a binary between those who are in need of protection and those who are not, and highlight the underlying assumption that the sovereign state can allow certain individuals to become members of the nation state, and deny this to others. Sovereignty gives the state the privilege to deny non-citizens residency and to enforce their departure (see [19]). The context contributes to an image of the Swedish state as a (failed) protector of human rights, rather than as a violator of human rights (see [39]). A supranational legal framing allow NGOs to contest states at the national level. Eilstrup-Sangiovanni and Bondaroff [18] demonstrate the possibility of using legal framings that express an affirmation of supranational principles, and which enable NGOs to enjoy more universal support and at the same time challenge state actions in a radical way. However, the problem representations

formulated by the formal international control organs are understood in relation to the framework of human rights, a framework that is 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 [37, 50]. In other words, turning to law may serve a stabilizing and conservative function in relation to the existing political order, to use Arendt's [3] terminology.

The same frame, *non-refoulement*, is apparent in the problem representations formulated by the UN. Unlike the material from the European Court, the focus in UN periodical reports and in reports from Special Rapporteurs is not exclusively directed at individual cases.

Problem representations concerning the application process of the UN have been interpreted within a *rule of law* frame, which contrasts with the way problems are represented in the *procedural issue* frame. In the *procedural issue* frame, problems are represented as occurring within the context of a process that is largely fair, whereas in the *rule of law* frame, the process of seeking asylum is represented as unfair and unequal. In the reports from the UN, attention is directed at the decision-making process, including rejections of asylum-claims and deportations executed on inaccurate grounds, the withholding of information at deportation hearings, particularly hearings involving suspected terrorists, aspects of the decisions made in relation to LGBT-persons and women in general, and also a general distrust of asylum-seekers, as indicated by credibility assessments. The problem representations are embedded in an underlying assumption that the proceedings of the Swedish agency in question are flawed with regard to the principal of legal certainty. However, these aspects are developed further by the NGOs. The *rule of law* frame, as well as the following frames by the UN commissions, is shaped by an external assessment of the state, rather than of state agencies, and it focuses on general issues – noting systemic problems.

Embedded in a frame of *positive obligations and non-discrimination*, problems are represented in several UN reports as involving insufficient efforts to prevent various forms of discrimination: the discrimination of asylum seekers in general, discrimination in relation to gender issues and insufficient efforts to combat violence against refugee women in particular, the discrimination of undocumented migrants and asylum seekers in relation to access to health care, education and housing. The reports also note problems linked to the reception of unaccompanied children in general and to ineffective measures to prevent the disappearance of children travelling without guardians in particular. This frame is shaped by an external assessment of the state, framing the state as continuously violating human rights.

Problem representations concerning the detention of immigrants, which are found in the UN documents, have been interpreted within a frame of *repressive elements*. This frame also applies to the presentations in a number of UN reports of the case discussed above involving the deportation of two men to Egypt in 2001. In contrast to the other frames described, this frame highlights acts of commission by state representatives. The problem of detention is presented as a question of the extent to which (how often and for how long) detention is employed. The problem of asylum seekers being placed in remand prisons without having committed a crime, on the other hand, is presented as a practice that needs to be abandoned. These interpretations of the problem representations relating to the detention of asylum seekers have implications for the issue of the

legitimacy of the state. If the state detains people without cause, the legitimacy of the state is in question, but if it is instead presented as an issue of the extent to which detention is employed, this need not be interpreted as a challenge to the legitimacy of the state. This issue will be discussed further in relation to the framings employed by the NGOs.

Informal control

The analysis of the informal control conducted by NGOs reveals similar frames as those found in relation to the formal international control bodies, first and foremost the UN. The similarities between the problem representations of the UN and the NGOs is not surprising, since the NGO reports constitute a basis for the UN periodic reports, while the UN reports are used by NGOs to emphasise their problem representations. There are two central differences however. First, the problems are represented somewhat differently within the same frames and the language used within these frames differs. Second, a new frame emerged in the interviews with the NGOs, which I have labelled *the right to asylum*.

The criticism discourse found in the reports of NGOs resembles that of the UN. However, the criticism is more outspoken and harsh than that of the UN, for example stating that not providing adequate representation to a person seeking asylum is “a breach of the right to equal treatment before the law” [52]. By comparison with the other control bodies, the criticism of the NGOs is more often formulated in general terms, suggesting a systemic problem, as in the example: “There appears to be a general reluctance to believe in the statements of asylum seekers” [45].

The issue of decisions to reject applications for residence permits has been interpreted within two different frames, depending on how the problem is represented. As described in the frame labelled *non-refoulement*, the issue is presented as a wrongful decision, while in the UN and NGO reports it is also represented as an issue of the grounds for the application having been unfairly examined, and is thus interpreted as falling under the *rule of law* frame. The difference may seem subtle, but I would suggest that it has some significance for our understanding of the way control is exercised in relation to states. Consider the following quote from an NGO in an Alternative Report:

[...] there is a lack of knowledge and /or experience among counsels in asylum law, but there is also a lack of understanding in human rights law and humanitarian law at the Migration Board and even in the courts. Judgments are not well reasoned enough to serve as legal guidance for a legally predictable outcome. [51]

The problem is presented here as both general and an issue of insufficient knowledge, creating a situation with 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 principle of the rule of law. The problem representations that are located within this frame by the NGOs lean more towards describing Sweden as a systemic violator of her responsibility to provide protection from other states than they do towards describing Sweden as failing to provide protection in individual cases.

The difference between the formal and informal control bodies is also noticeable in the *repressive elements* frame, but this frame also reveals difference among the group of NGOs. While a number of NGOs consider the use of detention centres to be problematic in certain respects, one of the NGO representatives expressed a powerful condemnation of the detention centres and argued for their use to be completely abandoned since detaining someone who has not committed a crime should instead be regarded as a serious crime by the state. In contrast to the problem formulation described by the UN and also in the written reports from NGOs, in this particular interview the legality of the detention centres per se was called into question. The interviewee reflected on this position, and described it as radical in the context of the contemporary political climate, and explained this as possibly due to the NGO's independence in relation to the political powers that be. This frame, and the significant differences found within it illustrates the way in which frames are embedded in a socio-cultural context [9], but it also highlights the different positions of bodies of control and the strategies employed in the field. These aspects will be further discussed below.

Furthermore, in the interviews, the NGOs emphasised the lack of legal paths for migration and how border controls constitute (illegitimate) barriers to people's efforts to seek protection; these are problems that are not mentioned in any of the written reports or judgments. Although these problems are represented somewhat differently by different NGOs, depending on the respective organization's view of borders and state sovereignty, they are nonetheless embedded in the same frame - the *right to asylum*. The emphasis within this frame differs somewhat between NGOs, with some framing the issues in terms of the right to *seek* asylum while others frame them more in terms of the right to *be given* asylum. Thus, the informality of the control exercised by NGOs, the more distant position occupied by NGOs within the field of control of states, and also the ability to grasp issues on the basis of a structural perspective, may be the central conditions that shape this frame. The positions occupied by the NGOs are important to an understanding of their ability to (at least to some extent) challenge doxa. The positions and strategies employed by the bodies of control will be discussed below.

The positions and strategies of the bodies of control

The Bourdieu-inspired understanding of control of the state as a field produces a focus on the ongoing struggling between social agents. Strategies are developed to maintain or improve the social agents' positions in the field [14]. The struggle for recognition and legitimacy is demonstrated, among other things, by means of the framing of problems. In this article the focus is directed at the bodies of control, and at how they frame problems related to their positions and strategies within the field. However, the NGOs represent a double role in this game. First and foremost they act as bodies of informal control by publishing reports and disclosing crimes by states, 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. In addition, the analysis of the positions and strategies found within the field employs Mathiesen's [34] conceptualization of strategies for political action.

Struggling for recognition and balancing between *defined in* and *defined out*

With regard to how the organs of formal domestic control formulate their judgments, these were described by a representative of one NGO as “having no bite”. This description is similar to the picture painted by another NGO representative, who underlines the effects, or lack thereof, of the formal domestic control: “Then I think that the longer you work with this, you get to feel a bit tired about the fact that it’s a fairly blunt instrument. What did it lead to? Does reporting things to the Parliamentary Ombudsman change anything?” (Interview, NGO). Similarly, several of the NGO representatives expressed disappointment at the praxis of the European Court. One representative of an NGO described how the Court is not known among human rights lawyers for “taking a lead in any way whatsoever” (Interview, NGO).

The perceived ineffectiveness of these formal controls may perhaps be explained by viewing this form of control as a field in which the control mechanisms are striving for recognition and legitimacy (see [35]) and have to navigate between what Mathiesen [34] describes as being *defined in* or *defined out*. Representatives of the formal domestic control bodies describe having to balance their criticism. The following quote is an example of how this consideration is expressed:

“I can’t be an activist, because then I think you’d quickly lose credibility. So you have to find a balance. I can see the role of the Parliamentary Ombudsman; expressing criticism is actually not all that interesting, what’s important is finding alternatives, finding a potential for improvement.” (Interview, Parliamentary Ombudsman)

In addition, the recognition achieved by the formal domestic control mechanisms is viewed as being of special importance, since their decisions are not legally binding on state authorities. In other words, the control mechanisms need their recognition and legitimacy in order to control the state. In relation to their position, one understandable strategy might be that suggested by the representative of the Parliamentary Ombudsman in the above quote; instead of focusing on criticism, they try to find a potential for improvement in the state agency concerned. However, this strategy could be interpreted as exemplifying what Mathiesen [34] describes as *positive reform*, which legitimizes the prevailing order by improving the system so that it functions more efficiently.

Similarly, the representative of the European Court underlined how every decision is a balancing act that is of importance for the legitimacy for the Court. This legitimacy is associated with the “possibility of [the Court’s] decisions being accepted. Over the years, the Court has been criticised for being both too activist and too laid back. As long as there is criticism in both directions, I think it’s ok.” (Interview, European Court). If these formal bodies of control were to become too progressive or activist-like, they would risk losing credibility and also what Mathiesen [34] would call being *defined out* as irrelevant. Thus, the way the problems are framed by the formal domestic controls and the European Court can be understood in relation to this struggle and balancing act.

In the same way, the NGOs’ position in the field is also related to how they frame problems. Representatives of NGOs describe the formulation of their criticism as based on issues of strategy and on considerations necessary to maintain their credibility. This

is the case for all control bodies, but the organs of informal control are particularly dependent on the authorities' willingness to introduce change, either in the individual case or in relation to the structural issues. One of the few available weapons is that of "naming and shaming" [27]. One of the NGO representatives emphasised that an NGO can express strong condemnation of state authorities as long as it maintains a strict and correct attitude and avoids being "too political". With this last phrase, the interviewee is referring to terms that have been used by other organisations, such as "mass deportations" risk producing negative attitudes among decision makers that would in turn reduce the opportunities for the NGOs to reach out with their message. The risk of being *defined out* is also described as an issue when it comes to collaborating with NGOs that have more radical demands. In this regard, Moi [35] notes that without an understanding of the habitus in a given field, and of the unspoken rules governing what can legitimately be said or perceived within the field, certain discourses risk being excluded as nonsense. As was noted in Haines [26] study, being defined out may also be associated with one's *relative* position and acceptability in the field, where the recognition and legitimacy of those framing moderate criticisms may be strengthened by the presence of more radical criticism.

As regards the NGOs' role as a mechanism controlling the state, several of the representatives talked, directly or indirectly, about the influence of their organisations and about how this was linked to their strategies. I find this important for understanding the critical discourse formulated by the NGOs and for the frames in which their problem representations are embedded. I have interpreted some of these methods and approaches as a means of formalising the informal control exercised by NGOs. Some of the NGOs had a significant role in the control of the state, since they were given a formal role in UN processes via the writing of shadow reports, while other interviewed NGOs described having regular meetings with state agencies and other decision makers. A couple of the interviewees describe this direct relationship with decision makers as providing a great opportunity for making an impact. Other NGOs viewed the formalised relations to the state as associated with certain risks, which I have interpreted in Mathiesen [34] terms as involving being defined in as undangerous. The negative consequence of formalising their relationship with state agencies is described by representatives of NGOs in terms of a risk of becoming an alibi for the state. Young [55] describes similar experiences from NGOs of being co-opted and dampened when engaging with powerful organisations and decision making bodies. Here, by formalizing their contacts with state agencies, the NGOs hope to gain access and influence but at the same time risk giving legitimacy to the agencies they wish to call in to question. This is what [22] has labelled the price of power, with organisations maintaining their position within the field by not challenging the social order.

Challenging doxa

The problem representations by NGOs, and the frames they are embedded in, reveal the specific position of NGOs as controls of the state. Within other control bodies, particularly the formal domestic controls and the European Court, but to some extent even the UN, the focus is on particular problems with the asylum seeking process, and the process of seeking asylum is taken for granted. In Bourdieu's terms, the system of

sovereign nation states protecting their borders and only granting certain outside applicants access to the state is self-evident and “goes without saying” [11, p. 167]. A few of the NGOs question this doxa and ask what is so normal about borders, why is a restrictive immigration policy taken for granted, and how can we have ratified human rights conventions about the right to seek asylum when it is impossible to legally arrive in the country where you want to seek protection. These types of issues are what Bacchi [5] would have referred to as factors that the other control bodies have failed to problematize. Challenging the doxa of the field may, as was observed by NGO representatives, compromise the organisation's influence and credibility.

I have suggested elsewhere [47] that as long as control organs are not engaged in producing a systematic overview of crimes committed by the state, focusing instead on particular issues relating to specific individuals, their work may serve to strengthen the legitimacy of the state. On the other hand, this study has noted that the position occupied by a control organ in the field in relation to the state may be highly relevant for understanding the control organs potential for challenging the legitimacy of the state. Framing anti-doxic criticism (see [35]) may place the trustworthiness and legitimacy of the control organ in question at risk. However, for those NGOs who are less bounded by the field, and already have less influence, the risk of being *defined out* may be less harmful.

Concluding discussion

Initially, I asked how various bodies of control represent the problem of the state's handling of the process of seeking asylum and residence permits in Sweden and how these frames are related to the positions and strategies of the different bodies of control. The formal domestic control organs generally present the problem as something that has to do with the Swedish authorities' handling of the process of seeking asylum and residence permits – a procedural issue. This framing of particular and rarely more general problems is linked to an assumption that the underlying solution is that the bureaucracy can and should be improved by means of better routines. 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 *non-refoulement* 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. This form of framing represents both problems inside the process of seeking residence permits, and problems that lie outside of this process, for example the right to healthcare for undocumented individuals. However, the criticism is formulated in terms of recommendations rather than condemnation. 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”. Thus, the analysis of the controls might also be discussed in relation to whether the framing of the problem challenges the legitimacy of the state. The potentiality for challenging the legitimacy of the state may well be analysed from the perspective that the frames represented by the UN and NGOs include more systemic criticism than those employed by the formal domestic controls and European Court. Their framing of the problem may, to a greater extent than the

framings employed by the other bodies of control, reflect what Mathiesen [34] has labelled negative reforms, which both *contradict* and *compete* with the prevailing order.

The analysis of the positions and strategies of bodies controlling the state has shown itself to be of value for understanding the ways in which bodies that exercise formal and informal controls of state actions frame the problem of the Swedish state's handling of applications for residence permits. For all of the bodies of control (but to a greater for the NGOs 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 of what is necessary to maintain their credibility. The struggle for recognition and legitimacy that takes place within the field is also described as a balancing act. 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 [34] 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 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. The strategies involved include the ways in which they express their criticism or claims, for example avoid certain expressions and adapt to the use of formal language. 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. Since the start of the so-called 'migration crisis', Swedish policies towards asylum seekers have been worsened by the decision to tighten the country's borders and the implementation of stricter regulations for residency permits. The measures taken by the Swedish government in 2015 and 2016 may be interpreted as a deliberate attempt to discourage potential asylum seekers from seeking asylum in Sweden. There is reason to believe that positions within the field have shifted, with those who challenge doxa by questioning border controls and a restrictive immigration policy, and by promoting the opening of safe and legal routes for people in need, today being viewed as even less reasonable.

Open Access This article is distributed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made.

References

1. Aas, K. F. (2007). *Globalization & crime*. London: Sage.
2. Abiri, E. (2000). *The securitisation of migration: Towards an understanding of migration policy changes in the 1990s: The case of Sweden*. Göteborg: Göteborgs universitet.
3. Arendt, H. (1972). *Crises of the republic: Lying in politics, civil disobedience, on violence, thoughts on politics and revolution*. New York: Harcourt Brace Jovanovich.
4. Bacchi, C. (1999). *Women, policy and politics : The construction of policy problems*. London: Sage.

5. Bacchi, C. (2009). *Analysing policy: What's the problem represented to be?* Frenchs Forest: Pearson.
6. Barak, G. (1991). *Crimes by the capitalist state: An introduction to state criminality*. Albany: State University of New York Press.
7. Barker, V. (2012). Global mobility and penal order: criminalizing migration, a view from europe. *Sociology Compass*, 6(2), 113–121.
8. Barker, V. (2013). Nordic exceptionalism revisited: explaining the paradox of a janus-faced penal regime. *Theoretical Criminology*, 17(1), 5–25.
9. Benford, R. D., & Snow, D. A. (2000). Framing processes and social movements: an overview and assessment. [Article]. *Annual Review of Sociology*, 26(1), 611.
10. Bosworth, M., & Guild, M. (2008). Governing through Migration Control. Security and Citizenship in Britain. *British Journal of Criminology*, 48(6), 703–719.
11. Bourdieu, P. (1977). *Outline of a theory of practice* (Cambridge studies in social anthropology.). Cambridge: Cambridge Univ. Press.
12. Bourdieu, P. (1993). *Sociology in question*. London: Sage Publications (CA).
13. Bourdieu, P. (2000). *Pascalian meditations*. Cambridge: Polity Press.
14. Bourdieu, P., & Wacquant, L. J. D. (1992). *An invitation to reflexive sociology*. Cambridge: Polity.
15. Cohen, S. (2000). Human rights and crimes of the state: The culture of denial. In J. Muncie, E. McLaughlin, & M. Langan (Eds.), *Criminological perspectives. A reader* (pp. 489–507). London: Sage Publications.
16. Doig, A. (2011). *State crime*. Abingdon: Willan Publishing.
17. Edelman, L. B., Leachman, G., & McAdam, D. (2010). On law, organizations, and social movements. *Annual Review of Law and Social Science*, 6(1), 653–685.
18. Eilstrup-Sangiovanni, M., & Bondaroff, T. N. P. (2014). From advocacy to confrontation: direct enforcement by environmental NGOs. *International Studies Quarterly*, 58(2), 348–361. doi:10.1111/isqu.12132.
19. Ellermann, A. (2010). Undocumented migrants and resistance in the liberal state. *Politics & Society*, 38(3), 408–429.
20. Fekete, L. (2005). The deportation machine: Europe, asylum and human rights. *Race Class*, 47(1), 64–78.
21. Goodey (2005). *Victims and victimology: Research, policy and practice*. Longman criminology series. Harlow: Pearson Longman.
22. Gordon, N. (2008). Human rights, social space and power: why do some NGOs exert more influence than others?. *International Journal of Human Rights*, 12(1), 23–39.
23. Green, P. (2006). State crime beyond borders. In S. Pickering & L. Weber (Eds.), *Borders, mobility and technologies of control* (pp. 149–166). Dordrecht: Springer.
24. Green, P., & Grewcock, M. (2002). The war against illegal immigration: state crime and the construction of a European identity. *Current Issues in Criminal Justice*, 14(1), 87–101.
25. Green, P., & Ward, T. (2004). *State crime. Governments, violence and corruption*. London: Pluto Press.
26. Haines, H. H. (1984). Black Radicalization and the Funding of Civil Rights: 1957–1970. [research article]. p. 31.
27. Hydén, H. (2007). Olika perspektiv på mänskliga rättigheter. In *Mänskliga rättigheter i svensk belysning* (pp. 23–49). Malmö: Liber.
28. Joachim, J. (2003). Framing issues and seizing opportunities: the UN, NGOs, and women's rights. *International Studies Quarterly*, 47(2), 247–274.
29. Johansson, C. (2008). Svenska flyktingpolitiska visioner. Självbild eller verklighet? In *Sverigebilder: Det nationellas betydelse i politik och vardag* (pp. 113–129). Stockholm: Institutet för Framtidsstudier.
30. Khosravi, S. (2009). Sweden: detention and deportation of asylum seekers. *Race and Class*, 50(4), 38–56.
31. Koenig, T. (2006). Compounding mixed-methods problems in frame analysis through comparative research. *Qualitative Research*, 6(1), 61–76.
32. Kubal, T. J. (1998). The presentation of political self. *The Sociological Quarterly*, 39(4), 539–554. doi:10.1111/j.1533-8525.1998.tb00517.x.
33. Liebling, A. (2011). Distinctions and distinctiveness in the work of prison officers: legitimacy and authority revisited. *European Journal of Criminology*, 8(6), 484–499.
34. Mathiesen, T. (1974). *The politics of abolition* (Scandinavian studies in criminology. Vol. 4, Law in society series). Oslo: Universitetsforlaget.
35. Moi, T. (1991). Appropriating Bourdieu: feminist theory and Pierre Bourdieu's sociology of culture. *New Literary History*, 22(4), 1017–1049. doi:10.2307/469077.
36. Parliamentary Ombudsman (2169-2004). *En granskning av Säkerhetspolisens verkställighet av ett regeringsbeslut om avvisning av två egyptiska medborgare*.
37. Pickering, S. (2005). Crimes of the state: the persecution and protection of refugees. *Critical Criminology*, 13(2), 141–163.

38. Pickering, S. (2005). *Refugees and state crime*. Sydney: The Federation press.
39. Pickering, S. & Leanne W. (2013). Hardening the rule of law and asylum seekers: Exporting risk and the judicial censure of state legality. In E. Stanley & J. McCulloch (Eds.), *State crime and resistance* (pp. 183–98). New York: Routledge.
40. Ross, J. I. (1998). Situating the academic study of controlling state crime. *Crime, Law and Social Change*, 29(4), 331–340.
41. Ross, J. I. (Ed.). (2000). *Controlling state crime*. New Brunswick: Transaction Books.
42. Ross, J. I. (2011). Reinventing controlling state crime and varieties of state crime and its control: What I would have done differently. In D. L. Rothe & C. W. Mullins (Eds.), *State crime: Current perspectives* (pp. 185–197). Piscataway: Rutgers University Press.
43. Ross, J. I., & Rothe, D. L. (2008). Ironies of controlling state crime. *International Journal of Law, Crime and Justice*, 36(3), 196–210.
44. Rothe, D. L. (2009). *State criminality: The crime of all crimes*. Lanham: Lexington Books.
45. Save the Children Sweden, Swedish Helsinki Committee, Swedish Iran Committee, Swedish NGO Foundation for Human Rights, Swedish Red Cross, & Swedish Section of the Women's International League for Peace and Freedom (2002). *Alternative Report to The Committee Against Torture – Regarding Sweden's Fourth Periodic Report*.
46. Schierup, C.-U. (2006). 'Paradise Lost'? In C.-U. Schierup, P. Hansen, & S. Castles (Eds.), *Migration, citizenship, and the European welfare state: A European dilemma* (European societies). Oxford: Oxford University Press.
47. Schoultz, I. (2012). State crime in the street-level bureaucracy: toward an understanding of crimes of the welfare state. *International Criminal Justice Review*, 22(3), 258–275. doi:10.1177/1057567712456872.
48. Schön, D. A., & Rein, M. (1994). *Frame reflection : Toward the resolution of intractable policy controversies*. New York: BasicBooks.
49. Sparks, R. J., & Bottoms, A. E. (1995). Legitimacy and order in prisons. *British Journal of Sociology*, 46(1), 45–62.
50. Stanley, E., & McCulloch, J. (2013). Resistance to state crime. In E. Stanley & J. McCulloch (Eds.), *State crime and resistance* (Vol. 2, pp. 1–13). New York: Routledge.
51. Swedish Helsinki Committee for Human Rights (2008). *Procedural and material protection against refoulement (Article 3). Information from the Swedish Helsinki Committee for Human Rights to the UN Committee on the prohibition against torture and other cruel, inhuman or degrading treatment or punishment (CAT) in relation to the Swedish state party report submitted on December 23, 2005*.
52. United Nations Association of Sweden (2008). *Alternative Report to Sweden's Seventeenth and Eighteenth Periodical Report to the Committee on the International Convention on Ethnic and Racial Discrimination*.
53. Whyte, D. (2009). Definitions. In the eye of the beholder: Between crime and harm. In *Crime of the powerful: A reader* (pp. 170–177). Berkshire: Open University Press.
54. Whyte, D. (2012). Between crime and *Doxa*: researching the worlds of state-corporate elites. *State Crime Journal*, 1(1), 88–108.
55. Young, I. M. (2001). Activist challenges to deliberative democracy. *Political Theory*, 29(5), 670–690.