

In Courts We Trust

Administrative Justice in Swedish Migration Courts

Livia Johannesson

Academic dissertation for the Degree of Doctor of Philosophy in Political Science at Stockholm University to be publicly defended on Friday 24 March 2017 at 10.00 in hörsal 4, hus B, Universitetsvägen 10 B.

Abstract

The research problem this dissertation addresses is how judicial practices generate administrative justice in asylum determination procedures. Previous research on immigration policies argues that when asylum determinations are processed in courts, principles of administrative justice are ensured and immigrants' rights protected. In this dissertation, I challenge that argument by approaching administrative justice as an empirical phenomenon open for different types of interpretations. Instead of assuming that administrative justice characterizes courts, I assume that this concept acquires particular meanings through the practices of the courts. Empirically, this dissertation studies practices of assessing asylum claims at the Swedish migration courts. The migration courts are the result of a major reform of the Swedish asylum procedure that took place in 2006, with the motive to end inhumane rejections of asylum seekers by enhancing administrative justice in the asylum process. By interviewing and observing judges at the migration courts, litigators from the Migration Board and public counsels from different law firms, this interpretive and ethnographic study analyzes how administrative justice acquires meanings in the daily practices of assessing asylum claims at the migration courts.

The main result is that a ceremonial version of administrative justice is generated at the migration courts. This version of administrative justice forefronts symbolic dimensions of justice. The asylum appeal procedure succeeds in communicating justice through rituals, building design and metaphors, which emphasize objectivity, impartiality and certainty on behalf of the judicial practices. However, these symbols of justice disguise several unfair aspects of the asylum appeal procedure, such as inequality in resources and trustworthiness between the state's representative and the asylum applicants as well as the uncertainty inherent in both the factual and the credibility assessment of asylum claims. The implications of these findings are that immigration policy research needs to reconsider the relationship between the courts and immigrants' rights by paying more attention to the everyday practices of ensuing administrative justice in courts than on the instances when courts oppose political attempts to restrict immigrants' rights.

Keywords: *Sweden, asylum, refugee, courts, appeal procedure, administrative justice, immigration policy, rituals.*

Stockholm 2017

<http://urn.kb.se/resolve?urn=urn:nbn:se:su:diva-138909>

ISBN 978-91-7649-694-7
ISBN 978-91-7649-695-4
ISSN 0346-6620



Department of Political Science

Stockholm University, 106 91 Stockholm

Stockholm Studies in Politics 171

In Courts We Trust

Administrative Justice in Swedish Migration Courts

Livia Johannesson



In Courts We Trust

Administrative Justice in Swedish Migration Courts

Livia Johannesson

© Livia Johannesson, Stockholm University 2017
Cover Photo: Sailko
ISSN 0346-6620
ISBN 978-91-7649-694-7
ISBN 978-91-7649-695-4

Printed in Sweden by US-AB, Stockholm 2017
Distributor: Department of Political Science, Stockholm University

To asylum seekers, everywhere

Contents

Acknowledgements	1
1. Introduction: Administrative Justice in Asylum Determination Procedures	1
The Research Problem	2
Aim and Research Questions	3
Contribution to Immigration Policy Research	6
Previous Research on Asylum Determinations	8
Disparities in Asylum Determinations	9
Illegitimate Factors in Asylum Determinations	11
Power Inequalities in Asylum Interviews.....	12
The Swedish Asylum System.....	12
Outline and Argument in Brief.....	17
2. Opening the “Black Box” of the Judiciary.....	21
Policy Analysis from the Bottom-Up.....	21
Conceptualizing Meaning Constructions	24
The Meaning(s) of Administrative Justice.....	26
Competing Ideals of Justice.....	26
Models of Asylum Determination Procedures	27
Ethnographic Research on Courts.....	30
Rules and Roles.....	31
Rituals of Courts	32
Summary of Framework	33
3. Methods for Analyzing Meanings of Administrative Justice...35	
Policy Communication as Framing	35
Material and Coding	37
Rules, Roles and Rituals at the Migration Courts.....	38
The Meanings of Rules.....	39
The Meanings of Roles.....	40
The Meanings of Rituals	48
Limitations with Selected Material	52
Access to Interviews	52

Access to Court Hearings	55
Summary of Method and Material.....	57
4. Swedish Asylum System in Political Context.....	59
Immigration to Sweden	59
1980s: A Politicized Asylum System	60
Emerging Conflicts in Parliament.....	62
Control and Responsibility	63
1990s: A Bureaucratized Asylum System	64
"Refugee Crisis"	65
Adjustments within the EU	67
The 1997 Amendments of the Aliens Act.....	68
2000s: A Judicialized Asylum System.....	69
Separation of Law and Politics	70
Adversarial Elements	71
Orality	72
Summary.....	73
5. Framing the Court Reform.....	75
Interpretive Communities.....	77
The Government and its Allies	77
The Opposition Parties and their Allies	78
Problem Definitions.....	79
Framing for Efficiency: Protracted Proceedings	79
Framing for Humanitarianism: Inhumane Rejections	81
The Moderate Party's Problem: Discretionary Decisions	82
The Judiciary's Problem: Politicizing the Courts.....	82
Stories.....	84
Framing for Efficiency: An Abused System.....	84
Framing for Humanitarianism: A Dysfunctional System	85
Prescriptions for Actions	86
Framing for Efficiency: Special Courts or Status Quo.....	86
Framing for Humanitarianism: Administrative Courts	87
Framing for Humanitarianism: Refugee Amnesty	90
Framing for Efficiency: Individual Assessments.....	91
Results of the Policymaking Process.....	92
Conclusions	92
6. Practicing Adversarial Roles	97
Litigators as Adversarial Party.....	98
Litigators as Neutral Experts.....	100
Public Counsels as Adversaries.....	104

Judges as Impartial Decision-makers	107
Conclusions	110
7. Practicing Judicial Independence	113
Judicial Knowledge versus Extra-Legal Expertise	113
Judges' External and Internal Independence.....	116
Skeptical and Affirmative Approaches.....	120
Public Counsels' Affirmative Approach.....	121
Litigators' Skeptical Approach.....	122
Lay Judges' Emotional Approach	126
Separating Humans from Professionals	129
Conclusions	130
8. Practicing Orality	133
Oral Hearings - An Opportunity to Be Heard	133
Constricted storytelling.....	135
The (In)visibility of the Interpreters	139
Oral Hearings - Tools for Assessing Credibility.....	141
Objectivity/Subjectivity Dichotomy in Legal Guidelines	143
The Official, Mysterious and Subjective Credibility Assessment	146
Conclusions	149
9. Symbolizing Administrative Justice	151
Contextualizing the Observed Cases.....	152
Outside the Court Room: Practices Excluded from the Ritual	155
Hidden Spaces, Intimate Talk	155
Interpreters' Knowledge Claims.....	156
Children	157
Inside the Court Room: Sequencing the Ritual	157
The Opening	158
The Counsel's Interview	161
The Litigator's Interview.....	162
Final Pleadings	164
Last Words.....	165
The Courts' Rulings	168
Conclusions	171
10. Conclusions.....	173
Problematizing Administrative Justice in Asylum Appeals.....	173
Court Reform and Status Quo	174
Adversarial Roles Disguise Inequality.....	175
Judicial Independence as Skepticism.....	176
Orality as Obligation and Control.....	177

Court Rituals as Administrative Justice	179
A Ceremonial Version of Administrative Justice	181
Justice as Accuracy and Fairness	183
Implications for Immigration Policy Research	186
Political Control and Restrictive Policies	188
The Logics of Courts.....	190
Interdependence between Political and Judicial Branches.....	192
References	195
Appendix 1: Interview Guide	214
Appendix 2: Reflection Guide	215
Svensk sammanfattning	217

Acknowledgements

At a seminar on feminist political theory during my master studies in Political Science, a co-student discussed her experiences of helping asylum applicants in the Swedish asylum procedure. Her story opened up a whole new knowledge terrain for me. At that time, I had never thought about how Swedish authorities concretely proceed to assess whether someone claiming asylum is eligible for protection or not. However, from that moment to this day, that inquiry has occupied my mind. I am deeply indebted to my co-student, Maria Bexelius, for introducing this new and intriguing terrain to me, and for our later conversations about the issue.

Without the people at the Migration Agency, the migration courts and at several law firms in Stockholm, Gothenburg and Malmo, this project would not have been possible. I am deeply grateful that you allowed me to interview you and for your generous sharing of expertise from the complexities of assessing asylum claims in courts. We might not agree on all the results, but I hope that this book will give you some new ideas and perspectives. I am also deeply grateful to the asylum applicants that allowed me to observe their oral hearings.

There are many people to thank for making these years of PhD studies into such a pleasant experience, and most of all, I thank my three supervisors. Kristina Boréus, has, in her very unique way, helped me through this whole process with great integrity, tranquility, wisdom and a discrete but steady hand of guidance. Thank you for staying with me during this time, Kristina! My other supervisor, Leila Brännström, came into the project when I was looking for someone with profound judicial expertise and a critical eye that could help me work through all the judicial language and thinking. I soon discovered that I had not only found such a person in Leila, but also a constructive and supportive supervisor. Thank you Leila! At the final stages of this project, I had the privilege of having a third supervisor, Ulf Mörkenstam. Besides excellent reading and commenting, I want to thank Ulf for always taking time to share his experiences and advice about research and academia at large with me. It has truly been inspiring and intellectually challenging to be supervised by the three of you, and I am a bit worried and sad that I cannot think of any obvious reasons for us to regularly meet any more.

There are numerous other people that have carefully read and commented on my work throughout the years, in particular Katharina Tollin, Constanza Vera Larrucea, Tua Sandman, Martin Qvist, Hanna Wikström and Karim Zakhour. At the final stages of completion, Maritta Soininen, Ludvig Beckman and Martin Qvist (again!) gave me invaluable suggestions on how to improve the work. Thank you so much!

I have presented parts of the thesis at different seminars at my home department and elsewhere, always receiving constructive and helpful comments. Thanks to everyone in *Politics and Gender*, *InRights*, *Policy and Public Administration* and the *Discourse seminar* at the department of Political Science at Stockholm University and also thanks to *Remeso*, Linköping University and the *Department of Law* at Lund University for inviting me to your seminars. The Politics and Gender colleagues have been particularly important to me, especially Linda Ekström, Elin Hafsteinsdóttir, Eleonora Stolt, Helena Tinnerholm-Ljungberg, Katharina Tollin and Sofie Tornhill. But, without encouragement, intellectual brightness, gentle leadership and warmth from Maria Wendt, Maria Jansson and Cecilia Åse, I do not think that I would have applied for the PhD program in Stockholm in the first place. Also, many thanks to Diane Sainsbury for supporting the project from the beginning with great enthusiasm.

All these years my closest colleagues at floor five have been enormously important for my daily well-being. Thank you all! A special thanks to Naima Chahboun for sharing office space with me and therefore having to put up with my daily joys and sorrows. These years would have been so much more difficult without your friendship! I also want to express my deep gratitude for having the opportunity to work with, and be a friend to, Maria-Therese Gustafsson. It is a rare gift to find a true *compañera* in both work and life!

Other people, both near and distant, have facilitated my work during these years. At my home department Lena Helldner, Pernilla Nordahl, Schauki Karim, Anneli Lindén, Aline Rojas Österlind, Petter Zirath and Linnea Hjelmtorp Andersson have been helpful with all kinds of teaching and practical matters. Without the excellent editing of Mary-Jane Fox, the book would be much less readable. Generous support has been given from *Helge Ax:son Johnsons stiftelse*, *Lars Hiertas Minnesfond* and *Knut & Alice Wallenberg jubileumsdonation*, which among other things enabled me to visit the *Institute for International Law and the Humanities* (IILAH) at Melbourne Law School. Special thanks to Professor Michelle Foster for the warm welcome I received during my time there. The method course *Issues in Political, Policy, and Organizational Ethnography* at ECPR Summer School in Ljubljana proved to be very influential for my later

work, much due to our excellent and inspiring teacher, Professor Dvora Yanow. Thank you for opening my eyes to the world of ethnography!

I have many close friends who have shown true interest in what I have been writing about. Hanna Sjögren and Jenny Jonstoj has always been on my side, as well as the amazing Jennie K Larsson with her amazing family! My friends from childhood, Ola Berge and Alex Berglund, your support and encouragement in what I am doing has meant more than you know! Carolina Krupinska stepped in to help with the layout of the book cover picture, I am truly grateful for that. A special thanks goes to Ebba Segerborg, for always so eagerly asking about the book every time we met. I hope you will enjoy finally reading it! My mother, Berit Johannesson has always believed in me and helped me whenever I needed it. Thank you also for proofreading the Swedish summary. My mother as well as my older sister, Anna Holmkvist, both art enthusiasts, were very helpful in discussing the book cover picture of Lady Justice that Luca Giordano created for the Palazzo Medici Riccardi in Florence in the early 1860s.

Finally, to my wonderful and loving children – Orlando and Lola – *vad skulle jag ha gjort utan er! Att efter varje arbetsdag få komma hem till er har varit den största lyckan under dessa år.* And my greatest gratitude to Walter, who through these years has made our life enjoyable and consistently has cared so much more about me than the book I was writing.

Frescati, February 2017

Livia Johannesson

1. Introduction: Administrative Justice in Asylum Determination Procedures

To determine whether a person is eligible for asylum is not a simple task. At its core, it is about determining which of all the individual reasons people have for leaving their home countries to seek residency in a new one, fall under the criteria for international protection. The criteria, founded on the 1951 Refugee Convention and its 1967 protocol, stipulate that a refugee is a person:

who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution.¹

Determination of protection claims requires interpretations of both international law and domestic legislation, and assessments of both past and future events in cultural, political and social settings which are distant to the decision-makers' daily lives. In addition, an oral testimony from the asylum seeker is often the only evidence provided to support the claims for protection. The oral testimony is evaluated against what the decision-maker knows about the socio-political situation in the country in question as well as the decision-maker's perception about the credibility of the applicant. Despite the obvious uncertainties attached to these assessments, an erroneous dismissal of an asylum application will have severe, sometimes life-threatening consequences for the rejected applicant. For these reasons, legal scholars have argued that asylum determinations constitute the most complex decision-making in contemporary Western societies (Rousseau et al 2002, 43; Crépeau & Nakache 2008, 56; Thomas 2011,

¹ Article 1A (2) in the *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*. In many countries, subsidiary protection criteria have also been introduced in national legislation, which expands the eligibility for protection.

48). The complexities that scholars point to have one consequence in common: they constrain decision-makers' ability to uphold administrative justice in this procedure.

Despite these inherent uncertainties, great numbers of people in the world have no choice but to depend on the fairness of this procedure. The United Nations High Commissioner for Refugees (UNHCR), the international UN body set up to facilitate the protection of refugees, estimates that around one million people seek asylum somewhere outside their home country each year.² In the current era of globalization, there are no indications of reductions in these numbers in the near future. How well states manage to maintain administrative justice in these procedures is hence a question that will continue to be a great concern for a large number of people. Administrative justice in asylum determinations is also the overarching topic for this dissertation.

The Research Problem

The issue of administrative justice in asylum determinations was hotly debated in Sweden at the break of the new millennium and in 2006, a reform (hereafter called the court reform) of the Swedish asylum system stipulated that courts were best equipped to uphold administrative justice in asylum determinations. This publicly widespread confidence in courts at the time of the reform in Sweden is what inspired the title of this dissertation *In Courts We Trust*. The expectation on the judiciary to be the safeguard against states' attempts to bypass their international obligations to protect refugees stems from a presumption that law and politics are distinct activities and that the institutional logics of courts are beneficial for immigrants' rights. The research literature on immigration policies has expressed a similar expectation of the judiciary as a safeguard against arbitrariness and political attempts for closure (Joppke 1998; Guiraudon 2000b; Hollifield 2004).

The research problem that this dissertation addresses is how judicial practices generate administrative justice in asylum determination procedures. In order to contribute with new insights to this problem, I analyze the daily practices of assessing asylum claims at the Swedish asylum appellate organ, the migration courts. By focusing on practices that occur on a daily basis at the migration courts, I observed how policies to improve administrative justice are turned into practices. Sweden's migration courts

² Information retrieved from UNHCR webpage, 2016-11-20. <http://www.unhcr.org/asylum-seekers.html>

are a result of the 2006 court reform. The drafters of the court reform argued that a relocation of the asylum appeal procedure from the administrative tribunal the Aliens Appeals Board, [*Utlänningsnämnden*] to special units, called the migration courts [*Migrationsdomstolarna*], at the regular administrative courts [*Förvaltningsdomstolarna*] would significantly enhance administrative justice. In the public debate, the policymakers formulated it as going from a system which rejected asylum applicants “on completely unfounded and unlawful grounds” to a system in which the asylum applicant and the public migration authority would “act as parties against each other in a trial with normal principles of law.”³ Hence, the policymakers motivated this reform by claiming that courts are superior institutions for upholding administrative justice in asylum determinations.

The 1951 Refugee Convention does not, however, stipulate that courts be best equipped to ensure administrative justice in asylum determination procedures. Instead, the Convention allows states to organize the asylum determination procedure so that it harmonizes with the larger domestic administrative system (Staffans 2006). Hence, different states have organized domestic asylum determination procedures in different ways, ranging from entirely bureaucratic procedures to highly judicialized procedures. Comparative research that has evaluated administrative justice in asylum determination procedures in different countries has also demonstrated that regardless of organizational model, the difficulties to uphold administrative justice in asylum determinations persist, even if the problems take slightly different forms in different organizational models (Staffans 2006; Millbank 2009a; Kneebone 2009; Staffans 2012; Hamlin 2014).

Aim and Research Questions

The aim of this study is to offer a critical reappraisal of the widespread claim that courts generate administrative justice in asylum determinations.

It does so by proposing a problematizing redescription of how judicial practices generate administrative justice in asylum determinations. The term “problematizing redescription” was coined by Ian Shapiro (2002)

³ Translated from Swedish by the author. These quotes are found in the opening of an opinion article written by representatives from all parliamentary parties in Sweden, except the Social Democratic party, who was in government and for a long time hampered the court reform. It was published in the Swedish daily newspaper *Dagens Nyheter* (Lindberg et al. 2000).

when arguing that political science needs studies that aims to critically scrutinize taken for granted assumptions about social reality. He claims that “much commentary on politics, both lay and professional, takes depictions of political reality for granted that closer critical scrutiny would reveal as problematic” (2002, 613).

By grounding the empirical base of this study in the daily practices of assessing asylum claims in a court setting, this study opens up the “black box” of the judiciary, allowing me to unpack a different story about the judiciary’s role in immigration policies. Domestic judicial institutions have been given an important role in theories about the expansions of immigrants’ rights in liberal democracies. However, these theories are to a large extent built on comparative studies of different Western countries, and therefore lack detailed studies of the daily practices and meaning making inside court institutions. This case study of Swedish migration courts can therefore contribute with a bottom-up, policy-in-practice perspective to the discussion in immigration policy research on courts’ roles in expanding immigrants’ rights in liberal democracies.

The problematizing redescription that is offered in this dissertation rests on three theoretical assumptions. Firstly, I view policy implementation as processes of communicating meanings. From this follows a rejection of policies (and laws) as merely instrumentally rational, goal-oriented statements and a commitment to understand the values and meaning constructions that they give rise to at both the policymaking level and implementation level (Yanow 1993; 1996; Wagenaar 2006; 2011).

Secondly, administrative justice is understood as an indeterminate and elusive concept that is attributed different kinds of meanings and practices depending on the institutional setting and the normative script that dominates among the practitioners (Mashaw 1985; Sainsbury 1992; Adler 2003; Adler 2010a). This facilitates an analysis of how administrative justice is given temporarily fixed meanings through certain practices, both at the policymaking and implementation levels. Instead of assuming that administrative justice characterizes the courts, I assume that this concept acquires a particular meaning *through* the practices of the courts.

Thirdly, this study assumes that judicial behavior is guided not only by formal rules, but also by how employees belonging to judicial professions working with asylum appeals, here called *judicial workers*, perceive their professional roles (Gillman 1999; Tata 2007; Hilbink 2007). Moreover, courts are viewed as having both instrumental and symbolic functions. Therefore, ritual activities are part of what guides judicial behaviors and makes judicial practices meaningful (Komter 1998; Chase 2005; Kurkchyan 2013).

Informed by these three theoretical assumptions, this study addresses its overarching aim with two research questions. The first is:

- 1) How were the courts' roles constructed in relation to administrative justice in the policymaking of the 2006 court reform?

By answering this first research question, I wish to uncover how particular meanings of administrative justice were constructed by the policymakers of the 2006 court reform. I argue that the construction of meaning that was produced in the policymaking process have consequences for how the judicial practices that were set to enhance administrative justice are legitimized, but not necessarily for how they are implemented. In order to answer this question, official documents pertaining to the policymaking process, such as government bills, government official reports and parliamentary committee proposals, have been analyzed.

The second research question aims to discover how the judicial workers at the migration courts, as implementers of the court reform, understand and practice administrative justice. It is formulated as:

- 2) How do the judicial workers at the migration courts attribute concrete and practical meanings to administrative justice?

This question attempts to provide an understanding of how the elusive concept of administrative justice was given concrete and practical meanings at the migration courts. The study investigates how those institutional changes of the reform, explicitly stated to enhance administrative justice, were understood and practiced by the judicial workers at the courts. These new institutional structures entailed: (1) a separation between judicial and political control over the system; (2) adversarial design of the appeal procedure; and (3) increased use of oral hearings as an investigation tool at appeal level. By focusing the empirical investigation on how these institutional changes of the reform were made meaningful for the judicial workers at the migration courts, I attempt to discern how the elusive concept of administrative justice was given concrete and practical meanings at the migration courts. The material used to answer this question consists of interviews with migration court judges, litigators from the Migration Agency and asylum applicants' public counsels as well as observations of oral hearings and official guidelines that govern the judicial workers' actions in court.

Contribution to Immigration Policy Research

As noted earlier, previous research on immigration policies has largely omitted studying the courts' role in immigration politics from a bottom-up approach which focuses on the daily work inside the courts. This has resulted in a view on the courts which fails to recognize how complex the daily work of decision-making in the courts is. By opening this black box of the judiciary in the case of asylum determinations, this study offers a new description of the relationship between courts, asylum determinations and administrative justice. In this section I describe previous research on domestic courts' roles in immigration policies and carve out my contribution to this field of research.

Assumptions about a separation of power and courts' autonomy from political institutions in liberal democracies have led immigration policy scholars to prescribe courts a particular role as guardians of immigrants' rights.⁴ Immigration policy scholars have outlined a "liberal paradox" that shape immigration policies in Western liberal democracies. On the one hand, Western democracies are governed by politicians with a populist and nationalistic bent which gives rise to restrictionist policies against all kinds of immigrants. On the other hand, the same states also have well-institutionalized rule of law functions, which are willing to offer minorities and immigrants' protection according to the liberal ethics of universal rights. Christian Joppke (1997) made a contribution to this debate by convincingly arguing that this paradox of popular sovereignty and universal human rights is a constituting feature of liberal nation states and is not imposed on states by international norms.

According to the liberal paradox thesis, the rule of law institutions are insulated from politics and function according to a "logic" of their own (Boswell 2007, 83). This literature characterizes the judiciary as governed by such liberal values as impartiality, public neutrality, non-discrimination

⁴ Although not the focus of this study, the "policy gap" between restrictive political rhetoric and more expansionist policy outcomes have long occupied the scholarly debate within immigration policy research (Cornelius et al 1994; Soysal 1994; Freeman 1995; Sassen 1996; Joppke 1998;). Some explanations have put forward global forces as the reason for expansionist policies (Soysal 1994; Sassen 1996; Hollifield 2004) while other scholars have argued that domestically derived mechanisms could explain the policy gap (Freeman 1995; Joppke 1998; Guiraudon 2000b; Boswell 2007; Guiraudon och Lahav 2007; Bonjour 2011; Ellermann 2013; Hamlin 2014). It is the latter discussion, about domestically derived explanations, that I engage here.

and rational reasoning.⁵ Joppke expresses this clearly in an influential article from 1998 where he attempts to explain why liberal states accept unwanted immigration. Contrary to the political branch, which, according to Joppke “is chronically vulnerable to populist anti-immigrant sentiments,” judges are “generally shielded from such pressures, as they are only obliged to the abstract commands of statutory and constitutional law.” Due to their autonomy, Joppke continues, courts can act “in open opposition” to political restrictiveness (1998, 271). Hollifield makes a similar statement in another well-cited article, when claiming that domestic jurisprudence’s loyalty to the rights of minorities and foreigners can help explain why the United States, Australia and countries in Western Europe have not had a greater impact from “nativist and xenophobic movements” (Hollifield 2004, 897). Guiraudon argues that state institutions with a high degree of autonomy from the political branch will develop inner logics of their own. In the case of courts, these logics strive to achieve coherence in the application of law, which sometimes gives rise to decisions that expand social rights to non-citizens (Guiraudon 2000b).

Later contributions to this debate have questioned the assumption that the judiciary’s is underpinned by a particular logic, which result in expansionist immigration policies as well as the interrelated idea that politicians’ and public opinion’s prime concern is to restrict immigration (Köppe 2003; Ellermann 2006; Boswell 2007; Statham & Geddes 2007; Bonjour 2011; Ellermann 2013; Hamlin 2014; Acosta Arcarazo & Freier 2015). Critics have pointed out this thesis is built on the assumption that the political branch at all times strives for restrictions on immigration, which is not empirically correct if the theory is applied outside the Anglo-Saxon world (Bonjour 2011; Acosta Arcarazo & Freier 2015). Antje Ellermann demonstrates how policies on guest-workers in Switzerland and Germany are influenced by historical policy developments which include both restrictionist and expansionist elements (Ellermann 2013).

Additionally, the thesis about an inner logic of the courts has been criticized for expressing a simplified idea about the courts as autonomous, not only from political institutions but also from political discourses in a broader sense (Köppe 2003, 431; Boswell 2007, 83). These researchers

⁵ The idea about intrinsic values residing in judicial institutions is not restricted to immigration policy literature. On the contrary, this idea is found in theories on judicialization in general, for example in the often cited work of Torbjörn Vallinder (1994). He distinguishes between decision-making in the legislative and judicial spheres of the state and characterizes judicial dispute-solving as based on rational reasoning and weighing of arguments. The judicial sphere is therefore described as better equipped to “shelter the fundamental rights of citizens” than the legislature (Vallinder 1994, 92).

argue that for reasons similar to why we can question that there is an inner logic of restrictiveness in the political branch, we can also question that there is an inner logic of inclusiveness in the judicial branch. As Saskia Bonjour points out, the state is nothing else than the sum of “different actors who, at different times and for different reasons may adopt positions either against or in favor of the admission of migrants” (2011, 116f).

This study approaches the state in a similar way as the above stated studies, that is, as a historically contingent result of different actors’ interests and positions. This study, however, adds a dimension to this conceptualization of the state, and that is a street-level, bottom-up understanding of the state. In this view, the state is also the everyday encounters between front-line workers and populations targeted by the state’s policies (Lipsky 1980; Yanow 1996).

With this understanding of the state, it becomes reasonable to study a state’s immigration policies through the encounter between state representatives and people subjected to these policies. One advantage of focusing a study of immigration policies on the street-level encounters is that the unavoidable discrepancies between the policy formulations and the practices of implementation (which has been the major concern for immigration policy scholars, see footnote 4) can be highlighted and scrutinized. In this study, this stipulates that the enhancement of administrative justice, which was the officially formulated political goal of 2006 asylum reform, cannot be taken for granted, but instead needs to be the object of study. However, as noted above, I am not seeking to find out whether the officially formulated policy goal is achieved or not, but to analyze *how* this goal is formulated and practiced in the encounter between the state and the targeted subjects of the policy. With that approach, this study can contribute to the immigration policy literature with a more nuanced description of domestic courts’ roles in relation to immigration policies. In the concluding chapter of this book, I elaborate the contributions of this study in detail.

Previous Research on Asylum Determinations

There is an extensive body of research that has opened the black box of the judiciary and analyzed how asylum determinations are conducted in practice; however, this research is usually not synthesized with the literature on immigration policies. The analysis provided in this study is heavily influenced by the findings from the research on asylum determinations, but also combine this literature with immigration policy research. Besides

confirming many of the findings from the previous research on asylum determinations, my analysis pays more attention to the symbolic meaning of judicial practices than is what commonly found in studies of asylum determination practices.

In this section, I summarize how the problems of administrative injustice in asylum procedures have been depicted in previous research, in Sweden as well as in other Western democracies. This description of the main problems serves as both a background and a starting point for the forthcoming analysis. I have distinguished three main problem formulations: one focuses on disparities in granting rates between different decision-makers; the second centers on the extra-legal factors that asylum decisions are based on; and the third analyzes discourses and power inequalities in the asylum interview situation.

Disparities in Asylum Determinations

One of the administrative justice problems that have been identified in research on asylum determinations is disparity in the rate of granting asylum between countries that apply similar criteria for assessing protection (Neumayer 2005; Toshkov & de Haan 2013; Hamlin 2014) and between different decision-makers within the same jurisdiction (Anker 1990; Ramji-Nogales et al 2007; Rehaag 2012).

Two statistical studies on the granting rate of individual decision-makers in asylum cases in the USA (Ramji-Nogales, Schenholtz & Schrag 2007) and Canada (Rehaag 2007; 2012) revealed large differences in granting rates, both at first instance and at appeal level. The conclusions from these studies were that the disparities could not be explained by the merits of the cases, but were probably due to the attitudes among and characteristics of the decision-makers (Ramji-Nogales, Schenholtz, & Schrag 2007; Rehaag 2007; Rehaag 2012). In similar terms, an earlier study on the determination of refugee status in the USA from 1990 concluded that, despite Congress' attempts to reform the determination procedure in order to achieve uniformity, fairness and impartiality in asylum claims, there was evidence of systematic errors in the decision-making, and this could only be explained by decision-makers "ideological preferences and political judgments" (Anker 1990, 447). This lack of uniformity between different Western states as well as within the same state's asylum system has called researchers to depict the asylum procedure in Western states as an "asylum lottery" (Rehaag 2012) or as "refugee roulette" (Ramji-Nogales, Schenholtz, & Schrag 2007).

Similar indicators of disparity in decision-making have also been found in evaluations of the Swedish asylum system. In a research anthology from 1998, authored by prominent Swedish legal scholars in refugee law, it was concluded that similar cases were not treated alike by the former appellate body the Aliens Appeals Board (AAB), and the reasons for that was stated to be that the decision-makers lacked the theoretical instruments and legal methods to avoid discretionary decision-making (Diesen 1998). In the revised edition of the same anthology after the reform, it was stated in the preface that “the possibility of a court process and an adversarial procedure increased the prerequisite for administrative justice dramatically: the application of law and thereby the coherence has become improved” (Diesen 2012, 5, *author's translation*). Which facts that this statement rests on is unclear, as succeeding evaluations show that the disparity problem still predominates in the court system.

In a government report (SOU 2009:56) which evaluated the court reform, the problem of disparities was taken up in relation to how the application of law was steered in the new judicialized asylum system. The Migration Supreme Court [*Migrationsöverdomstolen*], it was stated in the report, was of the opinion that the court’s assignment was to offer guidance in questions of law, not on factual information such as the socio-political situation in a given country. This Country of Origin Information (hereafter COI) is needed in all asylum determinations for two reasons. First, it is used to evaluate the degree of risk of persecution that an asylum applicant is exposed to upon return to the country of origin, and second, it is used to evaluate the credibility of the applicants’ claims against “commonly known facts”, that is, what is known to the decision-maker through the COI.⁶ The lack of guidance on factual questions runs the risk of creating disparity in decision-making, concluded the government report (SOU 2009:56, 23). The same conclusion is found in research that compared Sweden’s system of collecting COI with the UK country guidance system. The author argues that the Swedish system, with sparse guidance, risks generating arbitrariness, inconsistency and lack of predictability as individual decision-makers at appeal level are likely to interpret the COI differently (Thorburn Stern & Wikström 2016, 45). Other evaluations of the Swedish asylum appeal system have also found disparities in granting rates, both between the different migration courts (*Migrationsdomstolarna* 2007) and between individual judges (Martén 2015). A report from the

⁶ COI reports are conducted by the Migration Agency’s expert unit on country information, although reports from other countries’ migration authorities and from NGOs are frequently used in asylum cases as well. According to my interviewees, COI reports particularly from Norwegian and British migration authorities are frequently used.

Swedish Red Cross from 2011 with a qualitative design found discrepancies between the three different courts' interpretation of gender related persecution and the *sur place* criterion of converting to a new religion (Se-genstedt & Stern 2011).

Illegitimate Factors in Asylum Determinations

An extensive body of literature has analyzed illegitimate factors that affect decision-making in asylum determinations. Most studies focus on credibility assessments, as that is the part of the assessments where legal guidelines are most sparse. Instead, the decision-makers have to rely on personal judgements about how a certain person would behave in a certain situation or how a certain kind of ethnic group, gendered or sexual oriented group typically would look like or behave.

Rousseau et al (2002) showed that except from the legal problems that pertained to the lack of legal competence among decision-makers in Canada's asylum procedure, cultural and psychological factors also accounted for many problems in the decision-making. In a study of the Danish asylum procedure in the 1990s (Montgomery & Foldspang 2005), it was shown that some asylum applicants had greater chances of being granted asylum than others, despite the fact that they had similar experiences of violence and human rights abuses. Higher education, being a member of a religion other than Islam and being a complete family with no deceased adult family member at the time of asylum application proved to increase the chances of being granted refugee status.

Case studies on different Western liberal democracies have found that stereotypes of typical "gayness" in behavior and sexual history was used to assess asylum claims concerning sexual orientation (Berg och Millbank 2009; Millbank 2009a; Millbank 2009b; Spijkerboer 2013) and that gender stereotypes of how women and men should behave are used in the assessment of credibility in both Sweden and other countries' asylum determinations (Spijkerboer 2000; Johannesson 2012; Wikström & Johansson 2013; Wettergren & Wikström 2014; Griffiths 2015).

Research that has drawn on psychological literature shows that it is very difficult to describe a traumatic event in a coherent and detailed fashion, which are the criteria that asylum narratives are judged by in judicial-administrative procedures (Rousseau et al 2002; Herlihy, Scragg, & Turner 2002; Herlihy, Gleeson, & Turner 2010; Rogers, Fox, & Herlihy 2015). Moreover, it is very difficult to listen to a narrative about traumatic events without having some kind of psychological reaction. This is called "vicarious traumatization", and the reaction can be that the listener develops

trauma symptoms, but it can also result in trivialization, sarcasm and restrictive impulses from the listener (Rousseau et al 2002). Findings like this indicate that the emotionally stressful environment that decision-makers find themselves in can impact in the way they comprehend and react to traumatic experiences that the asylum applicants present as ground for their claims. Several other studies have also found that decision-makers employ a skeptical approach to asylum applicants, which effects the credibility assessments negatively, as the decision-makers search for indicators of deception and pay less attention to indicators of credibility (Margulies 1993; Durst 2000; Kagan 2002; Thomas 2006; Byrne 2007; Millbank 2009a; Tomkinson 2015).

Power Inequalities in Asylum Interviews

The linguistic and cultural differences between asylum applicants and decision-makers has been pointed to as complicating factors for credibility assessments in asylum cases (Kalin 1986; Kalin 1991; Gibb & Good 2014). Discourse theorists have found that asylum applicants and decision-makers employ different narrative styles, and it is these different styles which hamper the applicants' chances to be believed by the decision-makers (Barsky 1994; Blommaert 2001; Maryns & Blommaert 2006).

Some studies have made theoretical claims about the production of knowledge in the asylum interview. They argue that the interview strategies that decision-makers employ create "epistemologies of ignorance" rather than knowledge (Bohmer & Shuman 2007) and that an "ontological gap" between experiencing and knowing emerges in the asylum interview when the asylum applicant is forced to tell his or her asylum narrative (Kynsilehto & Puumala 2015). Johansson analyzes silences of asylum applicants in asylum interviews with the purpose of reformulating silence as a sign of applicants' agency (Johnson 2011) and reads the asylum interview through a post-colonial ethical framework to mark the responsibility of Western countries on the refugee situation in the world (Johnson 2013).

The Swedish Asylum System

The Swedish asylum determination procedure at appeal level is the empirical case that I explore in this dissertation. As mentioned, the Swedish asylum system underwent a substantial reform in 2006, which gave the courts

a greater role in the system. The former asylum appellate body was organized as an administrative tribunal called the Aliens Appeals Board (AAB). The AAB could ask for guidance from the government in difficult and unprecedented cases. The government hence had the power to steer the application of law in individual cases if deemed important for the development of the inflow of asylum seekers. The procedure at the AAB was inquisitorial in design, that is, the decision-maker both investigates and take decisions, and oral hearings were very rarely used. The reform aspired to enhance administrative justice in the asylum determination procedure by a relocation of authority from the government to the administrative courts and by making the appeal procedure adversarial and with more oral hearings.

The Swedish asylum determination process after the court reform has many similarities with other liberal democracies' asylum systems. The Swedish Migration Agency [*Migrationsverket*] is initially responsible for processing asylum claims. The procedure at the Migration Agency is inquisitorial in design and is organized following bureaucratic ideals of routinized and standardized decision-making, hierarchical organization and internal control. This model is the usual way of approaching an initial asylum determination in Western countries (Kneebone 2009; Thomas 2011; Staffans 2012; Hamlin 2014).

If the Migration Agency dismisses an asylum application, the applicant can appeal to the migration courts, which are units within the four largest administrative courts in Sweden.⁷ The migration courts review both questions regarding facts and law, which means that the absolute majority of all appealed asylum decisions are reviewed by the migration courts. During the court procedure, the asylum applicant, with public counsel, presents his or her claims and litigators from the Migration Agency act as the adversarial party. The adjudicating board in the majority of asylum cases consists of one professional judge and three lay judges without legal training.⁸ In cases where the credibility of the asylum applicant is at stake, the court can use oral hearings to assess the credibility of the claims.

The Swedish appeal model is a common way to organize appeals in asylum determinations even if the level of adversarialism differs and some

⁷ By the time I collected material this study, there were three migration courts in Sweden, in Malmo, Stockholm and Gothenburg. In July 2014, a fourth migration court was established in Lulea.

⁸ This is the common composition of the adjudication board at Swedish administrative courts. Lay judges had the same function in the former appellate organ, the Aliens Appeals Board.

countries, such as Canada and the UK, apply a tribunal arrangement instead of encumbering the ordinary administrative court systems (Staffans 2006; Thomas 2011; Hamlin 2014). In Sweden, the application of law is guided by precedents from the Migration Supreme Court, which is the final instance of appeal in asylum cases in Sweden. As mentioned, the Migration Supreme Court only reviews questions of law, thus leaving the majority of appealed cases outside of their scrutiny. In other countries, the appellate organ offers guidance on country information as well (Thomas 2011; Thorburn Stern & Wikström 2016).

Given that the Swedish appeal procedure is similar to other asylum determination procedures, there are possibilities for comparative insights from this empirical study to other asylum determination contexts. Judicial independence, adversarialism and orality are common features of asylum procedures in many Western democratic countries. In that sense, it is possible to generate knowledge from this study which can be applicable to other countries' asylum determination procedures if they apply adversarial designs, oral hearings and institutional structures which shelters decision-makers from political influence. It is even possible to envision that the findings from this study can speak to court practices in other areas of law, particularly if credibility assessments are a significant part of the overall assessments and where linguistic and cultural divides exist between claimants and decision-makers. It is not possible to know, however, how judicial workers in other empirical contexts interpret their actions and connect them to perceptions of administrative justice. This is something only empirical investigations in those contexts can give answer to.

Swedish refugee politics, which is the broader political context in which the Swedish asylum determination procedure is situated, has been formulated within an official discourse of generosity and solidarity with refugees (Abiri 2000; Stern 2014).⁹ When comparing the Swedish public discourse on refugees by the time of the court reform with other Western democratic countries during the same time, it is clear that Sweden stands out with its emphasis on compassion towards refugees and concern about inaccurate rejections of asylum applications due to a culture of mistrust among decision-makers. In most other countries in Europe, the political discussion centered on “bogus” asylum seekers that abused the asylum

⁹ This discourse of generosity was however abruptly put to an end in the late fall of 2015, when the Swedish government proposed a new temporary Aliens Act which transformed Swedish legislation on refugees to the EU minimum standards. The explicit aim was to reduce the number of asylum seekers coming to Sweden, which by that time had reached new top levels due to the escalating conflict in Syria and breakdown of the EU external border controls.

system (Rawlings 2005; Weber 2006; Hyndman & Mountz 2008; O'sullivan 2009; Foster & Pobjoy 2011; James & Killick 2012; Hamlin 2012). To study countries which experiences other official discourses on refugees than open hostility has been called for by immigration policy researchers. Acosta Arcarazo and Feier argue that immigration policy theory needs to move beyond the “common wisdom” that government discourse is significantly more restrictive than their policy practices and instead “be based on an unbiased analysis of the dynamics and interaction of political discourses and corresponding policies and laws” (Acosta Arcarazo & Freier 2015, 686).

Sweden is also uncommon compared to many other Western democracies in that the divide between judicial and political branches of government has been less clear than in other countries. The government agencies are authorized both law review and dispute solving functions, which in many other countries has been a task performed by courts (Nordquist 2001, 15). Additionally, the courts have made suitability assessments and not been given any substantial constitutional control functions (Nordquist 2001, 17f). These characteristics show that there is no clear separation between public administration and courts in Sweden, similar to many other countries. This has had consequences for the constitutional review function of the courts. Sweden, as other Nordic countries, has a tradition of weak judicial review of political decisions (Wind 2014; Ahlbäck Öberg & Wockelberg 2015). The Counsel of Legislation [*Lagrådet*] – which is the closest resemblance of a constitutional review function there is in Sweden – has merely an advisory function in the policy-making process in Sweden, but it can never put in a veto against a new law (Holmström 1994). Within the Nordic countries, and Sweden in particular, the preparatory political work (e.g. Government Bills and official parliamentary reports)¹⁰ in which the motives for a new policy are expressed have a dominant position as a legal source when the court interprets any particular law. This implies that the Swedish judicial branch has a tradition of interpreting the law close to the legislators' intentions (Nergelius, Peczenik & Wiklund 1999, 12ff).

It is, however, a misinterpretation that the Swedish state system therefore lacks control functions over the political branches. The media has played an important role in this regard in Sweden, and the Swedish Freedom of the Press Act is constitutionally protected in Sweden. In Swedish the phrase “the third state power” does not refer to the courts but to the media (Taube 2003). Another unique feature of the Swedish state system

¹⁰ These sources are called “förarbeten” in Swedish, which means “preparatory work” and refers to the sources where the intent of a treaty or law has been documented.

which has a control-function over the political branches is that it is characterized by “administrative dualism” (Ahlbäck Öberg & Wockelberg 2015), meaning that the state administration is divided between a set of small ministries in charge of the policy making and a large number of autonomous government agencies in charge of implementation. The agencies’ autonomy is protected in the Swedish constitution as a prohibition for individual ministers to issue authoritative orders to the agencies. Orders to the agencies should be given by the government as a collective, and individual ministers cannot change decisions taken by the agencies (Andersson 2004). There are also other control functions developed in Sweden, such as “Ombudsmän” at the central state level and with significant authority to intervene in state decisions and the Swedish National Audit Office (Bäck, Larsson & Erlingsson 2011). These unique features has driven scholars to denote Sweden’ and the other Scandinavian countries’ organization of the state branches as “exceptional” (Modéer 2008).

A third circumstance which makes Sweden uncommon in comparison with many other Western democratic states is the comparatively large inflow of asylum seekers that has arrived in Sweden. Statistics show that Sweden, since the 1980s, been positioned at the top end among the EU countries in numbers of lodged asylum applications as well as in granting rates (Vink & Meijerink 2003). This has resulted in Sweden taking a disproportionately large share of the total number of asylum applicants entering the EU, both in terms of its population size and GDP level (Toshkov & de Haan 2013). However, during the years of the policy making process that preceded the 2006 reform, the levels of asylum applications steadily declined to very low levels compared to the previous decade. This might have been one reason why high levels of asylum applicants were not formulated as the main problem in the court reform process. To the contrary, high levels of rejections of asylum applications were formulated as one of the main problems in the system by that time.

Since the establishment of the migration courts, the inflow of asylum applicants to Sweden has again increased. When the reform was launched, the yearly intake was between 20,000-30,000 applicants. In 2012, this number increased to approximately 40,000, and in 2013, it was above 50,000 applications. In 2014, a new peak was reached with over 80,000 applications, and it doubled in 2015 to a new record of 160,000 asylum applications (Migrationsverket, 2017). Sweden was the second largest receiver of asylum applications in the EU in 2014, only surpassed by Germany. Sweden also has a high granting rate compared to the EU average (Eurostat 2015). This is, however, largely explained by the fact that half of all the accepted asylum applications came from Syrians and Eritreans,

and they have an almost 100% acceptance rate in Sweden due to a group-based decision from the Migration Agency to accept everyone from these two countries. This means that individual evidentiary assessments at the migration court level very seldom are needed for these two categories of applications, as long as they can prove to be from either of these countries.

The Swedish migration courts conducted a report in 2007 when the migration courts had been in place only one year, which found that the granting rate between the different migration courts (in Stockholm, Malmo and Gothenburg) differed substantially. It was almost twice as high in Gothenburg (38.1%) as it was in Stockholm (19.9%) (Migrationsdomstolarna 2007). A few years later, economist Linna Martén demonstrated in a statistical analysis of all rulings from the migration courts between 2011 and 2013 that the migration courts changed the initial decisions (which are rejections of the asylum claims) in 13% of all asylum cases, but that there were significant discrepancies between individual judges in the granting rate (Martén 2015, 3). These statistics show that the courts' granting rates have declined since the start of the reform, but it tells us very little about the inner logics that guided and guide the daily decision-making at the migration courts.

Outline and Argument in Brief

This chapter, *Administrative Justice in Asylum Determination Procedures*, has introduced the research problem that is addressed in this study and motivated why this problem is important. It has argued that asylum determinations have far-reaching consequences for about a million people in the world each year. Nevertheless, the uncertainties attached to assessing asylum claims have given rise to several administrative justice problems in liberal states' asylum determinations. Courts have been presented, both in policymaking and in research, as guardians of immigrants' rights and consequently as state institutions that can ensure administrative justice in this procedure. However, this study sets out to challenge this description of courts' roles in immigration policies. It does so by employing a bottom-up, practice-oriented approach to administrative justice in the Swedish appellate organ, the Swedish migration courts.

The next chapter, *Opening the "Black Box" of the Judiciary*, presents the theoretical framework, which is built on interpretive policy analysis, socio-legal research on administrative justice in administrative decision-making and ethnographic research on judiciaries. From these three differ-

ent bodies of literature, concepts and perspectives are taken which facilitate an analysis of the meaning-making of administrative justice in a court setting.

Chapter three, *Methods for Analyzing Meanings of Administrative Justice*, presents the analytical strategies that have been employed to glean meaning constructions at both the policy-making level and at the migration courts. It presents the material used to answer the research questions and it reasons about the problems of gaining access to the court environments and the people working there.

In the fourth chapter, *Swedish Asylum System in Political Context*, the institutional changes of the reform in 2006 are presented. Those are the establishment of a separation between judicial and political control, adversarial procedures and oral hearings. This chapter also provides the contextual background to the court reform in 2006. It situates Swedish refugee politics and administrative procedures in a larger historical perspective and shows that the 2006 court reform is part of a larger process of judicialization that has taken place.

A frame analysis of the policy-making process preceding the reform in 2006 is provided in Chapter five, *Framing the Court Reform*. It further shows how compassion and humane decision-making were rhetorically connected to the migration courts. No substantial law changes were made to liberalize the criteria for protection, but the advocates of the court reform succeeded to frame the changes of the appellate organ as a victory of the refugee-friendly opinion.

Chapters six, seven, eight and nine turn the focus away from the policymaking of the reform and towards the judicial workers who should implement the objective of the court reform, namely to enhance administrative justice in the asylum appeal procedure.

Chapter six, *Practicing Adversarial Roles*, analyzes how the interviewees interpret their and other actors' roles in the adversarial procedure. The resources available for each party in the adversarial setup of the procedure are explored in this chapter. The litigators are assigned double roles as both neutral experts and adversarial parties. These roles are sometimes used strategically by the litigators to support their claims for rejections. The public counsels do not have that advantage. The adversarial setup of the procedure therefore reinforces inequalities between asylum applicants and state representatives, rather than adjusting for them.

In the seventh chapter, *Practicing Judicial Independence*, an analysis of the interviewees' perceptions about the courts as judicial independent institutions is offered. I show in this chapter how the judicial workers at the courts interpret skeptical approaches towards asylum applicants as a

way to show judicial independence. The argument pursued in this chapter is that skepticism is understood as a neutral approach while affirmative behavior becomes perceived as emotional and politically biased.

Chapter eight, *Practicing Orality*, provides a detailed description of how the interviewees interpret the oral element in the reformed appeal procedure. Oral hearings are considered, on the one hand, to be an opportunity for the applicants to speak, but it also puts obligations on the applicant regarding how and what to say. On the other hand, the interviewees described the oral hearings as a control of the credibility of the applicants. However, how the credibility assessments were done during the oral hearings were not easy for the interviewees to explain.

This leads into the ninth chapter, *Symbolizing Administrative Justice*, which brings forth the observation material by presenting an analysis of the ritual function of the oral hearings. In this last empirical chapter, I argue that the ritual function of the oral hearing needs to be included in descriptions of how administrative justice is created in migration court practices. Courts do not only need to make sure that justice is done, but they also need to make sure that justice is *seen* to be done. By treating the asylum narrative as a tangible object that can be picked apart and saved for later, the ritual of the oral hearing manages to overshadow the fact that the asylum narrative is a co-produced story, highly dependent on the judge's authoritative style, the interviewer, the interpreter and the emotional mood of the narrator. By that overshadowing, the courts enhance their legitimacy as producers of certain and just decisions.

Lastly, in the concluding chapter, I discuss the main results of the study and answer the two research questions. I argue that the court reform produced a ceremonial version of administrative justice, which helped to legitimate the restrictive refugee policies that are employed in Sweden as well as in other Western countries. It is a kind of administrative justice that, by showing symbols of justice, succeeds to create an impression of administrative justice. However, this version of administrative justice fails to meet standards of both substantial and procedural conceptions of justice. This problematizing redescription of courts' roles in asylum determinations has several implications for immigration policy theory, which are discussed last in this chapter.

2. Opening the “Black Box” of the Judiciary

This chapter presents the theoretical framework that is employed to open the black box of Swedish migration courts. The theoretical framework is informed by three different fields of research: interpretive policy analysis, socio-legal research on administrative justice, and ethnographic research on courts. These three fields have two components in common: they use bottom-up approaches and they put meaning construction at the center of analysis. The historical development within each of these three fields are briefly described and the concepts and approaches that I use are defined.

Interpretive policy analysis represents the overall theoretical framework, which helps to conceptualize meaning construction in policy implementation. Socio-legal research on administrative justice offers an approach to institutional changes in asylum determination procedures that allows me to study this concept from below instead of working with pre-defined conceptualizations of what administrative justice should include. Third, ethnographic research on courts facilitates an analytical approach to judicial workers that puts focus on the ideological script that structures activities at the courts. This script can be gleaned in the institutional rules, the perceptions of roles and the ritualized practices that together render the judicial meaning of administrative justice visible. By carving out important concepts and approaches from these three bodies of research literature, the approach this study employs to address how judicial practices generate administrative justice in asylum determinations is outlined.

Policy Analysis from the Bottom-Up

For realizing this study’s aim – to offer a critical reappraisal of the widespread claim that courts generate administrative justice in asylum determinations – I decided to analyze meaning constructions attached to the daily practices of assessing asylum claims at the Swedish asylum appellate organ, the migration courts. This project requires a theoretical framework that enables an analysis of practice-oriented meaning constructions during

policy implementation. Courts are not the usual objects of study in implementation research. However, the administrative courts in Sweden adjudicate disputes between administrative agencies and individuals, thereby substituting their own decisions for that of the initial administrative decision-maker. In such a role, “the adjudicator will naturally play a role in advancing and implementing the underlying social policy goal” (Thomas 2011, 6).

Research that focused on implementation processes of public policies grew out of evaluation studies and were popular in the 1970s up to the mid-1980s, but have since then lived a peripheral existence without solid disciplinary boundaries (Winter 2012). Implementation of policies as an empirical process, however, has not been ignored within research since then. It is still intensively researched, but is spread across a diverse range of research disciplines, predominately within public administration and public policy studies (Saetren 2005), but also within organizational theory and public management research (Pulzl & Treib 2007). The lack of disciplinary boundaries has hampered the development of a coherent theoretical framework of policy implementation (Winter 2012, 257). The disagreements concern almost every part of a research design: conceptual apparatus, methodological approaches, objects of study and explanatory frameworks. One of the most persistent debates among implementation researchers have been whether a top-down or bottom-up approach is preferable (Pulzl & Treib 2007; Palumbo & Calista 1990; Hill & Hupe 2009).

The focus on practice-oriented meaning constructions that this study emphasizes calls for a kind of bottom-up approach.¹¹ Michael Lipsky’s seminal book *Street-level Bureaucracy: Dilemmas of the Individual in Public Services* (1980) is usually described as the most influential source of this bottom-up approach. Since 1980, much has been written within this approach to policy implementation and the original thoughts have been further developed (e.g. Brodtkin 2011; Watkins-Hayes 2009; Henman & Fenger 2006; Maynard-Moody & Musheno 2000; Larsson 2015). The street-level approach entails the basic idea that it is in the encounter between the state agents and the citizens that public policies come into material existence. The street-level bureaucrats are thus understood as not only delivering, but also substantially influencing the outcome of public

¹¹ The focus on daily practices in local settings is also the reason why discursive policy analysis, with its focus on policy problem formulations but less on the interpretations of these formulations at implementation levels (Bacchi 2000), is unsuitable to this study. See Ekström (2012) for an excellent review of the historical development of different strands within policy analysis.

policies (Meyers & Nielsen 2012). They work under conditions of uncertainty and pressure which give them large room for discretion and autonomy. They try to do what is expected from them (from managers as well as clients), but different organizational constraints and contradictory rules makes this difficult or sometimes impossible for them. They are caught in dilemmas between different goals and they develop discretionary strategies to cope with the daily work situations (Hupe & Hill 2007).

The street-level approach has many advantages from this study's perspective: it focuses on the everyday work in a complex organization; a space is created for agency and change in the implementation process; and it breaks up the unproductive binaries between rules and discretion as well as between policy-making and policy implementation. It does presuppose particular intentions among the street-level workers trying to serve the clients and managers and the problem they face regarding uncertainty and pressure. These presuppositions are relevant for bureaucrats and other street-level workers, but less appropriate for an analysis of the judicial workers in appeal instances (Lens et al 2013). Moreover, and in spite of some street-level research explicitly analyzing workers' meaning-making (Maynard-Moody & Musheno 2000), the conceptualization of what meaning is and how it can be gleaned is sparse within this research field. I have therefore found a more promising bottom-up approach in interpretive policy analysis.

Interpretive policy analysis comprises multiple approaches and epistemological standpoints (Wagenaar 2011, 7; see also the introduction in Yanow & Schwartz-Shea 2013). I have been inspired by Dvora Yanow's hermeneutical and phenomenological approach to policies, where policy implementation is understood as a process of communication of meanings (1993; 1995; 1996; 2000; 2013; Yanow & Schwartz-Shea 2013). Yanow's analysis forefronts the symbolic dimension of meaning-making, and she has developed methods for studying this in language, objects and actions (Yanow 1993; 2000). Policies are analyzed in terms of the meanings they communicate and how receivers of this communication interpret a policy's meaning and potentially transform it through their practices. Yanow expresses this communication-interpretation process as "texts" that are "read" by different audiences, such as clients, legislators, other agency personnel and citizens. These new interpretations are in turn read by other audiences in the form of actions (verbal or non-verbal) or written texts (Yanow 1996, 23; see also Yanow 1993). Yanow's approach to policies is to take a broad view of which audiences are relevant to study. In the present study, the focus is narrower, concentrating on the communication of meanings that transpired during the policymaking process of the 2006

court reform, and how the reform was interpreted (in Yanow's terminology "read") by judicial workers at the migration courts.

Conceptualizing Meaning Constructions

How meaning is constructed is a central question for all kinds of interpretive research approaches. In this section I define how meaning construction is understood in this study, and argue for how it can be empirically studied.

Firstly, meaning is not the same as subjective intentions but collectively and interactively constructed. It is not the mental state of an individual (i.e. what was your intention?) that constitutes the meaning of a particular action. In my employment of meaning in this study I draw on Hendrik Wagenaar's quest for an actionable approach to meaning. It is an approach which explicitly conceptualizes meaning construction as a process that take place collectively, interactively and relationally among two or more persons. The question, then, for the policy analysts is "what does this particular action signify in this context?" (Wagenaar 2011, 21). Meaning construction is thus an intrinsically collective process with both senders (of meaning) and receivers (of meaning). Subjective intentions, purpose and rationality give rise to individual actions, but actions occur in a relational and collective meaning construction process, which often result in unintended consequences (Wagenaar 2011, 61).

Secondly, and closely related to the first premise, meaning construction is in this study based on a dialectic understanding of structure and agency which allows room for ambiguity and discrepancy in interpretations, concisely captured by Lisa Wedeen in the concept of *semiotic practices* (2002). The semiotic practices concept entails a dialectic relationship between practices and systems of signification (semiotics). They "do more than merely influence each other" (Wedeen 2002, 719). Practices and systems of significations are therefore to be treated as a synthesis, but they can come into conflict with each other, "both conceptually and causally in the world" (Wedeen 2002, 720). For Wedeen, practices and systems of significations entail both structure and agency. On the one hand, there cannot be "a human signification without agency – people doing the work of interpreting and making intelligible signs" (Wedeen 2002:720), but they do so within confined terrains defined by structure. Practices, on the other hand, entails both structure in terms of habits, routines and institutional roles, at the same time as they need agents acting in the world to come into existence. This makes the semiotic practices both stable and yet flexible, determined and yet ambiguous. Further, Wedeen explains, because of the

fact that meaning construction is a relational activity, it requires a shared system of signification so that the activities and signs can make sense both to its practitioners and the receivers. The context in which a word is uttered or a practice is performed sets the boundaries for what it can mean (Wedeen 2002, 721).

Thirdly, meaning construction can be empirically studied. Wedeen explains that “studying meaning-production entails analyzing the relations between agents’ practices (e.g. their work habits, gendered norms, self-policing strategies, and leisure patterns) and systems of signification (language and other symbolic systems)” (Wedeen 2002, 714). In other words, a relational and dialectic understanding of meaning construction requires the analyst to both observe what people do, to listen to them talking and to analyze how these two empirical materials relate to each other. Wagenaar reminds us that “the interpretive analyst acts on the assumption that the general is folded into the particular” (Wagenaar 2007, 433). In the same way as we need to see the larger context to be able to interpret the relevant meaning of one concrete observable action, we can only explore a system of significations by observing concrete actions and concrete talk, coming from concrete actors (Wagenaar 2007, 432). Yanow explains that the “researcher is constantly living in two worlds, making sense of self (‘my’ world) and making sense of the community, organization, or other type of group which is being studied (the ‘other’ world)” (Yanow 1996, 45). This jump between two worlds gives rise to puzzles for the researcher when she is confronted with objects, language and practices in the “other” world which she cannot make sense of immediately. Those moments of puzzling discoveries are important starting points for the exploration of how meaning is constructed among actors in a particular local setting. The explicit use of the researcher’s own body and mind as an interpretive tool also sets boundaries as to what can be discovered and from which vantage points knowledge could be gained (Schatz 2009).

The three premises elaborated above can be summarized as conceptualizing meaning constructions as comprising the following: 1) both subjective intentions and collective interpretations of others’ intentions; 2) both language (texts and talk) and actions; and 3) an analytical strategy that purposely jumps between the particular and the general, the micro-level and the macro-level, between what is familiar and what is puzzling. In the method chapter (chapter 3) I explain how I made use of these premises in carving out concrete methods for gleaning meaning constructions that were communicated in the policymaking process, and among the judicial workers.

The Meaning(s) of Administrative Justice

Socio-legal research on administrative justice is founded on a commitment to empirically investigate how administrative justice acquires meaning in different local settings and for different groups within the same setting. Moreover, studies of administrative justice focus on the normative values underpinning the different interpretations of administrative justice, which resembles the interpretive policy analysts' attempts to connect meaning constructions to deeper normative values that drive a society in a particular direction.

Jerry Mashaw, one of the founding scholars within the socio-legal approach to justice in administrative decision-making, defined administrative justice as “those qualities of a decision process that provide arguments for the acceptability of its decisions” (Mashaw 1985, 24f). Adler elaborates this definition and concludes that it means the aspects of the procedure that give it legitimacy in the eyes of its users (Adler 2003). This definition signals that administrative justice is dependent on actors who interpret and argue for a particular form of decision-making as the most just procedure.

Mashaw was concerned with the meaning of administrative justice for an administrative agency responsible for implementing a welfare program. He thereby approached administrative justice as an empirical phenomenon which could comprise different ideals of fairness depending on which actors filled it with meaning. Mashaw developed three normative models of administrative justice, which he claimed competed over the meaning of justice within the same administrative agency. These models are distinguished based on their different decision-making mode, the overarching normative goal of the model and their different grounds for legitimacy. Within socio-legal research on administrative justice, different models since then have been developed to account for a different version of administrative justice in different policy areas (e.g. Adler 2010; Kagan 2010; Halliday & Scott 2010; Hertogh 2010).

Competing Ideals of Justice

The literature on administrative justice has tried to make normative claims about which administrative justice model is most desirable in an “overall sense” (Adler 2003, 336). When pursuing such normative theorizing, the socio-legal research on administrative justice has been occupied with the relationship between the ideal types of substantial justice and procedural fairness. In Adler's words, procedural fairness “is concerned with the process of decision-making, that is, with the ways in which individual citizens

are treated”, while substantial justice “refers to the outcomes of decision-making, that is, to the benefits or burdens that are conferred on individual citizens” (Adler 2003, 323f). For Adler, who is well acquainted with the normative theory literature on justice, it is important to understand that “although procedural fairness can contribute to substantial justice, it does not only have instrumental value but can be justified in its own terms” (Adler 2010b, 136). Sainsbury uses the words *accuracy* to refer to the substantial justice aspects and *fairness* to refer to the procedural aspects of administrative justice. For him, both aspects are crucial for the fulfillment of administrative justice, even if accuracy is put first on the list (Sainsbury 1992, 302).

Accuracy has been associated with inquisitorial procedures, while procedural fairness is associated with adversarial procedures. It has to do with how truth and impartiality are understood in the two different traditions. Impartiality is, in inquisitorial models, understood as a position that the decision-maker reaches by being loyal to the truth, no matter which party gain or loses from it. The inquisitorial model is designed to discover the truth, which is a different enterprise than what truth-seeking signifies in adversarial models (Jolowicz 2003). The notion of truth in adversarial models is bounded to what the different parties’ claim to be the truth. In this model, the objective is not to discover a hitherto unrevealed truth, but to judge which one of the parties’ truth-claims that is most likely (Jolowicz 2003, 283). Impartiality is here constructed according to the ideal picture of a judge with no prior knowledge or presuppositions about the case, and who uses rational reasoning to weigh the two adversary parties’ arguments against each other and finally reach a decision (Jolowicz 2003, 287).

Models of Asylum Determination Procedures

None of the most well-known normative models of administrative justice in the literature have attempted to incorporate non-citizens’ claim-making towards nation states, and this is in spite of the institutions whose prime mission is to uphold administrative justice have become increasingly important instances for negotiating these demands at national (Soennecken 2013) and international levels (Tolley 2012). However, scholars recently have begun to incorporate asylum determination procedures into the administrative justice framework. I discuss two such projects below in order to spell out the different normative ideals of administrative justice that different asylum determination models facilitate.

Robert Thomas (2011) develops an evaluative framework for assessing the quality and effectiveness of the asylum appeal instance in the UK. In order to introduce evaluative elements to the theoretical framework, Thomas pinpoints four different justice values that he argues are the “irreducible core” of administrative justice in asylum determination procedure. The first is accuracy in decision-making, the second is fairness of the procedure, the third is cost efficiency and the fourth is timeliness. While the first two recognize the importance of individuals’ right and entitlements, the two last values concern the collective interest of achieving policy implementation (2011, 12).

Thomas distinguishes between three different administrative models for organizing asylum determination: administrative organization, tribunal adjudication and experts. *Administrative organization* is a model organized after bureaucratic ideals of routinized and standardized decision-making, hierarchical organization and internal control. This model is the ordinary way of approaching asylum determination at first instance in Western countries. Efficiency and speed is prioritized over thorough vetting of cases and careful investigations of individual circumstances (Thomas 2011, 51ff).

Tribunal adjudication refers to a model which is organized according to the ideal of an adversarial dispute resolution model. Values that are prioritized are openness, predictability and impartiality over cost and time efficiency. This model is commonly employed at appeal instances in asylum systems. The third model in Thomas’ framework is the *expert* model. This model is not as dominant as the two others, but it is often visible at the margins of asylum system. Medical experts, psychologists, social workers, and anthropologist are professions that to some extent influence asylum determinations, and they tend to bring this model into the asylum system. In this model, the asylum applicants are not viewed as passive recipients of decisions (as the administrative organization stipulates) or as litigants in a dispute (as tribunal adjudication implies) but as individual clients with special needs that professional experts can assess (Thomas 2011, 58).

Political scientist Rebecca Hamlin made a substantial contribution to the literature on administrative justice in asylum determination procedures in her comparative study *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia* where she theorizes refugee status determination in three regimes (Hamlin 2014). Hamlin develops the concept Refugee Status Determination-regimes to explain variation in refugee policy outcomes between countries. Hamlin uses that concept to capture the different state institutions that are involved

in assessing who is entitled to refugee status according to the Refugee Convention's definition, as well as the power dynamics that exist between these institutions (2014, 183).

Hamlin argues that a hierarchically controlled decision-making model in a classical Weberian bureaucratic fashion characterizes Canada's asylum determination system, much like Thomas' *administrative organization* model. The institutional structure involves a few central actors that are organized in a top-down mode. With such a governance structure in place, the ability for the central decision-making bodies to develop detailed guidelines and to control compliance with these guidelines is high (Hamlin 2014, 183f). Often there are limited possibilities for court review in this kind of system, as a clear chain-of-command which fosters accountability is the prioritized administrative justice value in this institutional model. Taken together, these characteristics suggest that the abilities to achieve a coherent application of law and accountability are aspects of administrative justice that is highly valued in this model (Legomsky 2007; McCubbins, Rodriguez & Weingast 2009).

Hamlin uses the United States' asylum system as an example of the opposite model, a highly-fragmented asylum system, more like Thomas' model of *tribunal adjudication*. There is a conflictual and intensive relationship between first and appeal instances as the appeal instance often changes first instance's decisions or reassigns them to a new assessment at first instance. The political branch is not, however, very involved in this power struggle, as it is foremost an inter-branch conflict between the bureaucracy and the judiciary. The fragmentation makes the asylum system accessible for a wide range of different judicial actors which facilitates several moments of control of errors and thorough vetting of each case as it passes through the chain of appeals instances. Hamlin concludes, however, that this type of organization also leads to high costs, inconsistency and unpredictability in the system (Hamlin 2012). The underlying administrative justice value that is prioritized in this model is the screening of cases from multiple perspectives and a clear separation of powers. Australia is depicted as a mix of these two systems with parallel determination procedures, which is partly steered by the government and partly by the legal system. The question about how asylum determination should be organized is highly politicized in Australia, and the relationship between the political and judicial branch has been highly conflictual at times, Hamlin concludes (2012; 2014).

From these two studies, some important insights can be drawn about how asylum determination procedures are organized, and which ideals of

justice are attached to each organizational model. A centralized and bureaucratic asylum system prioritizes accuracy, coherence in application of law, clear chain of command and clear channels of accountability, and also cost and time efficiency. A fragmented and judicialized asylum system, in contrast, prioritizes openness, predictability, impartiality and multiple error checks in each individual case, which lead to a costly and less time-efficient system. The risks of inconsistency in the application of law and less clear channels for accountability are balanced by a high degree of independence of decision-makers and an adversarial dispute-solving mechanism.

The literature on administrative justice facilitates the macro-level understanding of different models of asylum systems and which sort of justice ideal that is prioritized in each model. It is not, however, sufficiently detailed about how meaning is constructed around particular judicial practices. Therefore, this project also needs to be informed by research that has analyzed meaning construction inside the judiciary, among judges and other judicial workers. Studies that have used ethnographic and interpretive approaches to courts proved to be helpful in this regard. The next section discusses how these studies contribute to this study's theoretical framework.

Ethnographic Research on Courts

Theories about judicial behavior in political science have mainly developed from the very narrow and unique empirical setting of the U.S Supreme Court. They are grounded in the idea that discrepancies in decision-making between Supreme Court judges could be explained by factors outside of law and the legal setting (e.g., Epstein & Knight 1998; Segal & Spaeth 2002; Howard & Segal 2002).

In contrast to these theories, other scholars have attempted to explain judges' behaviors as a result of their legal training and the judicial institutions that they are working within (see Clayton & Gillman 1999; Hilbink 2007; Mack & Roach Anleu 2010; Lens et al. 2013). This research mainly employs ethnographic methods and seeks to glean the meaning construction of judicial workers. Inspired by these ethnographic studies of judiciaries, I understand judicial workers' construction of meaning as guided by *rules*, *roles* and *rituals*. These concepts are elaborated below.

Rules and Roles

Lisa Hilbink (2007) studied the Chilean legal system guided by the inquiry: “Why did Chilean judges, who had been trained under and appointed by democratic governments and were steeped in a long-standing legalist tradition, facilitate and condone authoritarian policies?” (2007). Hilbink makes a distinction between *rules* (the institutional structure) that judges have to apply and the *roles* (role perceptions) that they are trained and socialized to apply. Her theoretical claim is that neither of these two aspects can be ignored in a study of judicial behavior as they both constrain and constitute behavior (Hilbink 2007, 243).

She defines the institutional structure as “the organizational rules governing the powers and duties of different offices within the institution, including their relationship to each other and to other government offices” and role perceptions as “the discrete and relatively coherent set of ideas shared by members of the institution regarding the institution’s social function or role, that is, the professional norms that guide behavior within the institution” (Hilbink 2007, 5). Her analysis shows how both the institutional structure and the role perceptions of the Chilean judges created a professional norm that valued legalism but lacked beliefs in democratic and human rights principles. The result was an inability of the legal system to resist the violations of human rights that the Pinochet regime conducted. She calls this an ideology of “antipolitics”, made up by an autonomous bureaucratic structure which is supposed to insulate the judiciary from politics and a role perception that taught “any judge desiring to preserve their professional integrity and standing [...] to demonstrate their fidelity to ‘law’ alone, and ‘law’ was to remain distinct from and superior to ‘politics’ ” (Hilbink 2007, 226).

The claim that judges’ role perceptions play a significant part in judicial decision-making has also been purported by others (Conley & O’Barr 1990; Komter 1998; Lens 2012; Lens et al 2013; Tomkinson 2015). Gillman discusses the advantages of interpretive approaches to study judicial behavior and describe that the researcher seeks to find out what the normative mission of the organization is and how this mission is institutionalized. In contrast to many studies’ preoccupation with the differences in judges’ behavior (see for example Lens 2012; Lens et al. 2013; Tomkinson 2015), Gillman finds it interesting to study the “remarkable similarities in the judges’ understanding of their responsibilities” (Gillman 1999, 80). This demarcates that meaning construction around judicial decision-making is supported by institutional structures.

Tata also forefronts the collective aspect of meaning construction among judges, explaining that it involves more actors than the judges. The

point is that even if judicial decision-making is staged as an individual activity, this activity rests on a collectively developed and sanctioned understanding about what is the proper thing for a person in that situation to do. Without a shared idea between litigants, law clerks, lay judges, interpreters and other participants in judicial settings about what constitutes good judicial decision-making, a judge's activities would not seem rational and necessary (Tata 2007, 434).

To sum up so far, collectively maintained role perceptions and institutional rules are perceived as interrelated and together are constructing particular meanings around judicial decision-making activities. Consequently, to glean meaning constructions among judicial workers, the analyst should search for rules that are influencing the judicial workers' behavior and their role perceptions. Moreover, role perceptions are created and legitimized collectively, and among more professional categories than the profession under study. However, in line with Yanow's interpretive policy approach, I am also interested in the symbolic dimensions of meaning constructions at courts. Other scholars have been too, and the next section explains how the symbolic dimension of court activities can be understood and helpful in explaining meaning constructions at the courts.

Rituals of Courts

Martha L. Komter (1998) studied the criminal courts in the Netherlands during the 1990s with the objective to include both functional and symbolic dimensions of judicial practices. Komter claims that the courtroom activities are structured by a "dilemma of ceremony and substance" (Komter 1998, 135). The legitimacy of the courts is dependent on the capacity of court room activities to "not only see that justice is done, but it must, above all, make sure that justice is *seen to be done*" (Komter 1998, 133f, emphasis in original). The attraction of the ceremonial aspects of the courts, however, depends on to what extent they appear as merely instrumental activities. If the ceremonial aspects of the courtroom activities would appear to be the hearing's most important function, the legitimacy of the courts as the implementer of state's authority would be lost. Therefore, it is crucial for the courts to structure the activities in the courtroom so that they present an illusion of being decision-making "on the spot" (Komter 1998, 134), without predetermined outcomes, while at the same time predetermining the activities to such a degree that the meaning construction attached to them can be reasonably controlled.

Oscar G. Chase, studying American courts, makes a similar claim about the importance of both functional and symbolic analyzes of court activities. “Either understanding alone would be inadequate”, he states (Chase 2005, 4). Chase, like Komter, explains the prevalence of ceremonial elements in court activities with their capacity to attribute legitimacy to the courts, but also stresses that the ritual aspects of courts have to resonate with other cultural features in a given society. Over time, he states, these ritual aspects will take on a symbolic power of their own, thus distributing meaning to other activities in that society (Chase 2005, 114). In that sense, court practices are simultaneously reactive to social and cultural features in society and proactively reinforcing and maintaining them. The dispute-solving function of the judiciaries can therefore be understood as a “solid platform to stand upon in order to see how the society works” (Kurkchian 2013, 528). This is an idea about extending the findings from a detailed case study to a larger societal phenomenon (see Burawoy 1998; Small 2009). For Kurkchian, who study the Ukrainian legal system, the specific characters of different national legal systems can tell us something about the specific character of these countries at large. She explains that “each legal system tends to project different social messages and to create different sets of mentalities among those who represent the institution as well as the members of the public who use it” (Kurkchian 2013, 252).

Overall, the rituals of courts are part of the meaning construction around their legitimate function in society. In this study, judicial practices are understood as consisting of both functional and symbolic elements which reinforce each other. The court practices have to resonate with other cultural features in society in order to acquire symbolic power, and therefore we can study court practices as rituals that simultaneously shape, reproduce and reflect larger societal relationship.

Summary of Framework

In this presentation of the theoretical framework, three different theoretical perspectives have been selected and defined. From interpretive policy analysis, the theoretical approach to policies as *communication of meaning* was chosen. In order to define that approach, I discussed how meaning construction has been understood in interpretive research. I concluded that meaning construction is a collective activity that requires both language and actions, and that it can be analyzed by alternating between micro- and macro-levels. Another important theoretical perspective was found in socio-legal research on administrative justice. In line with this perspective, I

chose to approach *administrative justice as an empirical phenomenon* that acquires different meanings in different institutional settings and among different professions in an administrative decision-making process. From this research I deducted that more fragmented and judicial institutional settings prioritize adversarial procedures, judicial independence and thorough screening of individual cases, while centralized, bureaucratic institutional settings prioritize coherence in application of law, accountability and time and cost efficiency. A third theoretical perspective of importance was an ethnographic approach to court practices. From that perspective I subtracted the three interrelated concepts of judicial *rules, roles, and rituals*. By exploring judicial workers' meaning constructions through not only the rules that guide their behavior, but also the role perceptions that they develop as well as the rituals that judicial institutions harbors, an encompassing description of their thinking and actions can be formulated. In the next chapter, how I operationalized these approaches into concrete method for generating and analyzing material is discussed.

3. Methods for Analyzing Meanings of Administrative Justice

This study addresses the broader problem of how judicial practices generate administrative justice in asylum determination procedures. In the previous chapters, I set out the ambitions of this study and defined the theoretical framework employed for examining this problem.

In this chapter, the methods and material used to answer the two research questions is described. First, the chapter presents tools and material for conducting a frame-analysis of the meaning constructions of administrative justice that were articulated in the policymaking process. After that, the second research question about the concrete and practical meanings to administrative justice among the judicial workers is addressed through the analytical concepts of rules, roles and rituals. The interviews, observations and documents used to answer this question are described in the second part of this chapter. Last, I elaborate on the difficulties associated with gaining access to the judicial workers, and thus the limitations this created for the results of the study.

Policy Communication as Framing

In order to answer the first research question: “How were the courts’ roles constructed in relation to administrative justice in the policy making of the 2006 asylum reform”, I conducted a frame analysis of the official political debate preceding the reform. Framing is an analytical concept that stresses the important role of values and belief in policy making (Wagenaar 2011, 82). The frame concept in policy analysis originates from Martin Rein and Donald A Schön, who used the concept as a way to explain “intractable policy controversies immune to resolution by appeal to facts (Schön & Rein 1994, 4). These controversies are not examples of conflict over facts, but conflicts over what constituted a fact in relation to the policy issue (Wagenaar 2011, 85). In Wagenaar’s employment of the frame concept, he emphasizes the concept’s inclusion of both a particular representation

of the world and a particular direction of action in the world. Frames represent the world and deliver a “road map” with instructions about how to act in that world (Wagenaar 2011, 223). Yanow’s employment of the frame concept also harbors courses of actions. Framing gives prescription to its users about how to act in particular situations or when confronted with particular problems (Yanow 2000).

In a later article, co-authored with Merlijn van Hulst, Dvora Yanow develops the frame concept for policy analysis to include the process of which the framing of a policy issue takes place (Hulst & Yanow 2016). A process of framing “organizes prior knowledge, including that derived from experience, and values held, and it guides emergent action” (Hulst & Yanow 2016, 98). The act of framing includes naming, selecting and categorizing in a cognitive and communicative process of creating a problem formulation out of a complex, uncertain and contradictory situation. Van Hulst and Yanow also incorporate *storytelling* into the frame concept. They claim that in order for a frame to create a neat and coherent *problem definition* as well as *prescriptions for actions*, stories need to be included in the framing process. Stories are the glue that binds different elements of a situation together into a pattern that is coherent and recognizable as a policy suggestion. Stories are identified by their detailed and situated descriptions of past-present-future events. These events are linked together in a causal chain and they serve to persuade the listeners of a particular course of action (Hulst & Yanow 2016, 101).

Another important component in frame analysis is the assumption that frames do not operate without agents. Yanow writes that “frames direct attention toward some elements while simultaneously diverting attention from other elements. They highlight and contain at the same time that they exclude. That which is highlighted or included is often that which the framing group values” (Yanow 2000, 11). Yanow’s quote highlights actors’ intentions and agency as a part of frame analysis. Agency and actors’ intentions can be captured by the concept of *interpretive community* (see also Brandwein 2013, 290). Interpretive communities refers to a group of people who, by having similar experiences, identities and positions, develop shared cognitive schemes, engage in similar acts and use a similar language to talk about their thought and actions. These interpretive communities are fluid and might overlap, but they are distinct to the degree that an analyst can identify them though interaction in the field of inquiry (Yanow 2000, 10).

In the frame analysis of the policymaking process of the court reform, I operationalized the framing process that took place as consisting of the

four components discussed above. I identified different frames by searching the policy documents for: 1) *problem definitions* of the situation; 2) *prescriptions for actions*, often formulated as concrete policy suggestions; 3) *stories*, articulated in the policy making process which gave meaning to the categories and names being used; 4) *interpretive communities* that advocated a particular frame.

Material and Coding

The material that was used for the frame analysis consists of official policy documents connected to the policy making process preceding the court reform in 2006. I have delimited the policy making process to start when the Government initiated a commission of inquiry to investigate the possibilities of reforming the asylum system in 1997. From that time until the law was implemented in April 2006, I have collected all relevant official documents, including Government directives [*kommittédirektiv*], Official Government reports [*statens offentliga utredningar*], Government Bills [*regeringspropositioner*], parliamentary committee proposals [*utskotts-betänkanden*], parliamentary motions and selected minutes from the most important parliamentary debates. In order to situate the policy making process within a broader historical context, I have also read official documents from parliament and government as far back in time as the 1970s, although the time period starting in 1989 has been more systematically read.

With assistance of the qualitative software NVivo I searched the policy documents for problem definitions, prescriptions for actions and stories. These were coded for each proponent (e.g. political party, referral body) and the proponents that used the same categories and names were then collected under the different interpretive communities. The table below (table 1) illustrates how I coded text extracts as definition, prescription and story. The coded extracts in the table all belonged to the same frame, a frame that I labelled “the empathy frame” as it describes the Swedish asylum system (before the court reform) as a highly inhumane system and therefor prescribed more humane and generous policies as solutions to this problem. The result of this frame analysis is presented in chapter five.

Table 1. Examples of coded text extracts.

Problem definition	"Unfortunately, the practice developed here is very restrictive, which during the spring of 2001 affected a thousand refugees from Kosovo who received negative decisions on their asylum applications" (motion from the Liberal Party 2001/2002:Sf216). ¹²
Prescription for action	"The current asylum process must be made into an administrative court process. Pure adversarial negotiations will be conducted with the applicant present. Aliens Appeals Board must be closed properly and should not be replaced by a special court" (motion from the Liberal Party 2001/2002:Sf216).
Story	"I'll tell you about four unaccompanied minors between 17 and 13 years, who are in a municipality. I met them two weeks ago. Their father was assassinated last fall in his home country. Their mother has not been in the family since the youngest son, who was now 13 years, was small. These children were shipped to Sweden where all their relatives lived. Those who would take them to Sweden dumped them in Italy and said that they were in Sweden. And these four children alone knew no better than they applied for asylum there. They spent quite some time in an orphanage where the oldest girl of 17 years were subjected to sexual harassment and was feeling very bad. They managed to escape from this place and get a transport to Sweden and now they live with their grandmother. They also have aunts and uncles in Sweden, and the family wants to help. In their homeland there are none. These children applied for asylum in December last year. But they have not yet been notified. Is this a humane refugee policy to allow children to wait this long?" (Addr. 9, Birgitta Carlson, the Centre Party, Parliamentary Minutes 2005/06:3).

Rules, Roles and Rituals at the Migration Courts

In order to answer the second research question: "How do the judicial workers at the migration courts attribute concrete and practical meanings to administrative justice", I conducted interviews with judicial workers at

¹² All translations of Swedish material are made by the author.

the migration courts, observed oral hearings with asylum applicants and read texts that govern the judicial practices at the migration courts. This material was analyzed with the objective to glean how a particular meaning construction about administrative justice was reflected in that material. Based on insights from interpretive and ethnographic studies on courts, I have located the rule structure, the role perceptions and the ritual activities as instances where the meaning constructions could be discovered. In the following section I explain how I have proceeded to examine these three components of judicial workers' meaning constructions.

The Meanings of Rules

In this thesis, I adopt the same definition of institutional structures as Hilbink used in her study of the Chilean judiciary during the dictatorship of Pinochet. Hence, institutional structures are defined as “the organizational rules governing the powers and duties of different offices within the institution, including their relationship to each other and to other government offices” (2007, 5). This definition indicates that institutional structures have to be explored both inside the organization and in the larger organizational field that surrounds the organization under study.

The larger organizational field has been analyzed through official political documents such as government bills, official government reports and research literature that describe the Swedish asylum system in an historical perspective. Chapter four presents an analysis of this larger organizational, political and historical context. To grasp how this organizational field was connected to the intra-organizational institutional structure, I analyzed texts that provide guidelines for the judicial workers at the migration courts. Texts in large and multi-sited institutions have been described as “a central nervous system running through and coordinating different sites” (DeVault & McCoy 2006, 33). I have collected guidelines that the interviewed workers referred to as important sources of guidance in their work. If they said that a particular precedent or other source was guiding their actions, then I read that text. The underpinning idea here is that I investigate what people experience as law, without any predefined assumption about which rules and laws are most important for the work (Hertogh 2010, 206f).

Besides these specifically referred texts, I analyzed other sources of written prescriptions of how the different professional workers should act within the migration court setting. Jurisprudential literature such as *Utlänningslagen med kommentarer* (Wikrén & Sandesjö 1990; 2002), *Bevis 2.*,

Prövning av flyktingärenden (Diesen 1998), *Bevis 8.*, *Prövning av migrationsärenden* (Diesen 2012) have been valuable sources for capturing the formal scripts that govern the judicial workers practices in the migration courts. A handbook from the court (Domstolsverket, 2007), and the handbook from the Migration Agency (Migrationsverket, 2013) as well as the UNHCR handbook on procedures and criteria for determining refugee status (UNHCR 2011) are other sources of texts that I have used to secure a better idea about which formal rules regulate the professional workers at the courts.

The Meanings of Roles

Again borrowing from Hilbink, I define role perceptions as “the discrete and relatively coherent set of ideas shared by members of the institution regarding the institution’s social function or role” (2007, 5). This definition emphasizes that professional norms are individually communicated among the members of an organization; nevertheless the content of the norms are understood in similar ways by the members of the organization.

This definition has several implications regarding the way I collected material for discovering role perceptions among the judicial workers. First, I needed to talk to workers to grasp their individual perceptions of their roles and the court’s function in the asylum system. Ideas about professional roles do not travel with official impersonal communication such as official guidelines in an organization, but are communicated in face to face contact between members of professional communities. These discrete and individual perceptions should not be understood as being the same as informal ideas, meaning that it is ideas that are not officially legitimized within the court institution. Role perceptions should not be seen as the opposite of formal rules, but the extension of them into more personalized accounts of what it means to be a skilled judicial worker. Therefore, the institutionalized talk that judicial actors are famous for using constitutes an informative source of knowledge about these collective professional norms. The task for the researcher is not to try to move beyond this institutional talk in hope of finding authentic attitudes, ideologies or behaviors – their “sincere preferences” to use Gillman’s (1999) description – but to *analyze* the institutional talk that they use as an aspect of professional activities (see for example Barsky 1994; Conley & O’Barr 1990; Philips 1998; Blommaert 2001; Jacobsson 2006). I discuss how the interview guide was structured and how the coding proceeded in the next sections.

Second, this definition required that I talk to a broader selection of interviewees than just judges. It is not only members of a particular profession that reflect the role perceptions of that profession. Instead, role constructions are here understood as a collective process that is dependent on other categories of workers that can legitimate the behaviors of the profession. In this study, I selected interviews in a sequential manner (Small 2009), not knowing from the start how many interviews I needed or from which categories of judicial workers. The aim was to interview actors that possessed important knowledge about role perceptions among judicial workers regarding administrative justice. The selection of interviews as well as the exact interview questions were not determined prior to the generation of data started, but instead evolved during each interview situation as I developed deeper knowledge about the judicial workers and the court setting (Small 2009, 26).

I began the interview study in January 2013 by conducting explorative interviews with actors who could be described as experts on the Swedish asylum system. These interviewees had all been working close to the asylum system prior to the reform in 2006, either as state employees or for different refugee advocacy groups and NGOs. They gave me valuable information about the political process preceding the reform, as many of them in different stages had been involved in that process, either as consultative experts, asylum rights advocates or government officers. Through the information I received from these interviews it was possible to identify the central actors in the asylum appeal procedure at the migration courts. I decided to focus the interview study on judges, litigators [*processförare*] and public counsels [*offentliga biträden*], three categories of workers that play important roles in the assessment of protection needs at the Migration Courts. The three professions also interact with one another in ways which make them shape the other professions' role perceptions.

This choice of interview group was thus based on the degree of influence and authority over the daily practices at the migration courts that different actors had, at the same time as I looked for possible variations in meaning constructions among workers within the courts. Other potential actors for interviews could have been lay judges [*nämndemän*], who can impact on the court decisions in asylum appeals; interpreters, who have significant informal influence over the asylum appeals; or the asylum applicants, who also influence the decision-making at the migration courts. What these groups lack is formal and durable influence over the court setting. Each individual lay judge and interpreter only occasionally participates in court hearings, and the asylum applicants only participate once.

The explorative interviews strengthened my view that none of these groups could influence the practices at the migration courts to the same extent as the three chosen groups could in their positions as professional workers in the appeal procedure.

Litigators

The litigator category was a result of the 2006 court reform. The Migration Agency had to develop the new category of employees called litigators, consisting of senior officers with high legal competence that could represent the Migration Agency in the courts (Wettergren 2010, 402). Their main task is to reconsider the asylum cases when they have been appealed to the Migration Courts, and if an appeal is not granted, they act as adversary party to the asylum applicant during the appeal process at the Migration Court. In 2013, which was the time I undertook the interviews, these officers were assigned to special units, called administrative process units [*Förvaltningsprocessenheter*] located in Stockholm, Gothenburg and Malmo. In 2013, 87 litigators worked at these different units.¹³ The majority of the litigators were located in Stockholm, as that is where the majority of the asylum appeals are processed (SOU 2009:56, 450). In total I interviewed nine different litigators during 2013; four in Gothenburg, three in Malmo and two in Stockholm. Every one of the nine litigators that I was able to interview had worked as litigators since the start of 2006. All except two interviewees had previously worked at the Migration Agency as decision-makers, many since the beginning of the 1990s. The two other litigators had previously worked as officers at the Aliens Appeals Board (AAB). One of the litigators had worked as public counsel for asylum applicants in the 1990s. Accordingly, all interviewed litigators had spent the absolute majority of their professional lives working with the assessment of protection needs.

Judges

I completed eight interviews with judges at the three different Migration Courts in Stockholm, Malmo and Gothenburg. During the time of the study (2013-2014), twenty-six judges worked at the Migration Court in Stockholm, eighteen at the Migration Court in Malmo and nineteen at the Migration Court in Gothenburg (SOU 2009:56, 423).¹⁴ The judges at the migration courts are the decision-makers in asylum cases. Their task is to

¹³ E-mail contact with Human relations-unit at the Swedish Migration Board, 2016-11-14.

¹⁴ E-mail contact with the Swedish National Court Administration, 2016-10-19.

lead the investigation of asylum claims at appeal level and to decide on the outcome of each case. Since the migration courts are integrated departments at the overall organization of administrative courts, the judges who work at the departments that handle migration cases also occasionally work with other administrative law cases, such as social insurance or tax law. In Malmo and Gothenburg this is more common than in Stockholm, where the number of migration cases are higher and therefore are handled by departments specialized in migration cases (Martén 2015, 7). Seven of the interviewed judges had worked at the Migration Courts since the start in 2006 and one began to work there in 2008. Two of them had previously worked at the Migration Agency in managerial positions and two of the judges had worked as judges at the AAB. Four of the judges had no other professional experience of the asylum system other than from the migration courts. Even if the interviewed judges' background in the asylum system differs, they had all been working with the assessment of protection needs at the migration courts for at least five years when I interviewed them, which makes it reasonable to assume that they were well acquainted with the norms and values that underpinned their work at the courts.

Public Counsels

The third group I interviewed consisted of public counsels. Public counsels are appointed by the Migration Agency to assist the asylum applicant in judicial matters during the asylum process. Each asylum applicant who appeals to the migration courts has the right to be assisted by a public counsel. An evaluation report from the Swedish Agency for Public Management (Statskontoret 2012, 30) shows that there were 1100 persons on the Migration Agency's list for available public counsels during 2008-2011, and there are no reasons to believe that the number has changed significantly since then. However, many of these public counsels do not take more than a few asylum cases a year. The public counsels thus constitute a much more differentiated group regarding background, professional experience and legal competence than the judges and the litigators. I interviewed eight public counsels for this study, three located in Stockholm, three in Malmo and two in Gothenburg. All the interviewed public counsels had law degrees. Three of them had been working with asylum applicants as public counsels since the 1970s and they had their own law firms with specialization on asylum law established. Two of the interviewees had been working as public counsels for asylum applicants since the 1990s and they were employed at law firms. Three of the public counsels had less experience with asylum cases as they had only worked as public

counsels since the 2004, 2005 or 2009 respectively. All of the interviewed public counsels took other kinds of legal cases besides asylum applications. Three of the interviewees had worked as investigators at the Migration Agency during short periods of time. One of the public counsels had, besides working at the Migration Agency, also experience from the Swedish asylum system as an asylum applicant in the 1990s. That was an experience that this interviewee did not share with anyone else in the interview sample.

Interview Questions

As mentioned above, I did not pose the exact same questions to all the interviewees. The interview guide was instead loosely structured in themes around several topics (see appendix 1). In light of myself learning more about the topics, and the more people I interviewed, the interview questions were reformulated and new questions were introduced while others were dropped. For example, in the first interviews I asked several questions about what the interviewees perceived to determine the outcome of individual asylum cases. My idea was that the interviewees would mention informal (maybe even illegitimate) factors that influenced the decision-making, but none of them did. They did not even understand the question and asked me to clarify my question and give examples of what kind of factors I could have in mind. I realized that these questions would not give much new information that had not already been discussed under other themes. In contrast, a theme that became more important and elaborated as I learned more was the theme which concerned sources of knowledge that were used in the court procedure. Many of the interviewees were concerned about this topic and made me realize that this was an issue where different role perceptions conflicted.

Each interview started with me asking a question about the interviewee's professional background. This question gave me important information about the interviewee's knowledge, experiences and positions. This information gave me insights about the diversity of roles that some of the interviewees have had during their careers. Some of them had previously worked as decision-makers at the Migration Agency before working as judges at the migration courts, while others had worked as public counsels before being employed as decision-makers at the Migration Agency and later advancing to a litigator position.

The next theme in the interviews concerned the interviewees' daily work tasks. I asked the interviewees to describe in detail what they did when processing an asylum appeal. The answers to this question gave me

insights into how the different categories of judicial workers expressed what important tasks were for them in the procedure. I could also compare how different interviewees emphasized different tasks and used different kind of words to describe the procedure. The different wordings and emphasis reflected different role perceptions among the interviewees.

The third theme revolved around the changes of the court reform in 2006. Some of the interviewees had experience working in the former system when the appellate organ was organized as an administrative tribunal, and they could elaborate on what they experienced as the differences between the two systems. Others, which lacked experience with the former system, could give their views on the advantages and drawbacks in the court system compared to how the former system was organized. This theme gave me information about what the interviewees valued in the court system and what they conceived as problems or less valued features of the court reform.

The fourth theme concerned the interviewees' perceptions about what distinguishes a skilled judicial worker in the asylum appeal procedure. I asked each group of interviewees about which skills they found to be most important among their own profession, but also what characterized a skilled professional worker among the other professions that worked in the migration courts. That gave me great knowledge about how the professional norms at the migration courts were constructed because the interviewees' answers reflected each other's as they could describe the judges, litigators and public counsels from different positions and perspectives.

The fifth theme concerned which sources of knowledge were used in the investigations of asylum claims. The judges, litigators and public counsels partly described different sources of information as most trustworthy and also had diverging views about the quality of the COI that the Migration Agency provides. From the answers to this question I could distill information about the differences in resources and status that exist between the different categories of professional workers.

The last theme of the interview concerned the interviewees' own views of the asylum determination system in Sweden. I asked them to give their opinions about what was good in the system and what could be done better. I also asked them to describe what they perceived to be the ideal asylum determination system. This theme gave me information about the interviewees' ideas about what the prime function of the asylum determination procedure should be.

Coding

The interviews were audio-recorded and transcribed, except in one case where the interviewees declined to have the interview recorded and instead I took notes. Nine of the recorded interviews were transcribed by me and the rest by a professional transcriber. Interview transcripts are a particular text genre (Kvale & Brinkmann 2009, 177f). They are the textual representation of a “micro-situation[s] within a larger sociocultural context” (Borer & Fontana 2012, 46) and hence “interview situations fundamentally, not incidentally, shape the form and content of what is said” (Gubrium & Holstein 2012, 32). Thus, interview transcripts have been handled differently in the analytical process than policy documents or other official documents where the words have been co-authored and reviewed by multiple actors before the official publishing. If one takes the interview as a locally shared construction of meaning/knowledge seriously, the challenge is to be able to analyze the *situation* of the interview. That includes remembering and working with the emotional framing, bodily movements and spatial orientations that occurred during the interviews.

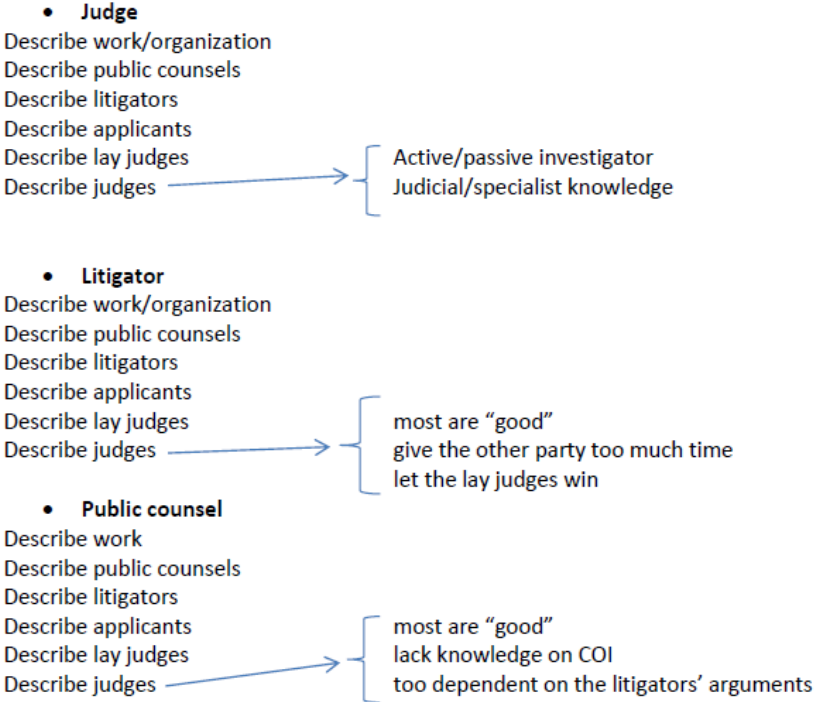
In order to comprehend as many of the aspects of the interview situation mentioned above as possible, I set up an interview guide for myself which I answered shortly after every interview. I called it a *Reflection guide* and it helped me to stay focused during the interviews and to reflect on these different aspects of each interview after it took place (see Appendix 2). These reflection notes became a kind of field notes for me to use while analyzing the interview accounts. In these field notes I wrote down my impressions concerning the place of the interview and the emotional character of the interview. I conducted all the interviews at the offices of the interviewees, which gave me small glimpses into the everyday working place of the interviewees (Elwood & Martin 2000).

The interview transcriptions captured the exact words and the word sequence, but left out sounds that were not complete words such as pauses, mumbling, cut-off words and laughter. Nevertheless, when I found passages in the transcriptions where the interpretation was somewhat dubious, I went back to the tape recordings and listened to what was said. Usually that helped me to reach a better understanding of what the interviewee intended to say. I could also go back to the reflection guide for the same purpose, to try to recall the interview situation.

The coding of the interview material follows a common way to work analytically with interview material, namely to initially code and categorize sections of interviews into broad themes and then in a second analytical phase refine these themes into more theoretically informed categories (e.g., Larsson 2016). This coding strategy is a way to aggregate data to

find the dominant themes in it, inspired by grounded theory (Alvesson & Sköldbberg 2008, 143; Kvale & Brinkmann 2009, 202ff). I used NVivo, software for qualitative analysis, to organize the coding of the interview data. An illustration of how the coding scheme was organized in NVivo is presented in figure 1.

Figure 1. Example of interview codes



It is an illustration of the coding of the interviewees' interpretations of the adversarial roles in the appeal procedure. Each category of professional workers were assigned their own codes, which were structured according to the broad themes that I wanted to explore in more detail (left column in the figure). Each of these themes was then, in a second analytical step, carefully read and compared against each other in order for me to draw out the dominant perceptions within each category of workers. This second step resulted in more specified codes, as is exemplified in the right columns in the figure. Each specified code makes up a sub-theme. When the

different quotes listed within one sub-theme eventually (after some adjustments and moving around between different themes) appeared to be similar in content, I started to compare the different interview groups against each other to find out if there were patterns of similarity or differences between them. I was more interested in the commonalities between the different groups than their differences. I asked which ideas and perceptions that were shared among the groups in the themes where they appeared to say different things or have different opinions.

For example, as is seen in the figure above, the judges expressed that they were concerned about how active they should be during the oral hearings. It was clear from the interviews that this was something that the judges had different opinions about, some thinking that judges should be active while others thought they should be passive. However the fact that they all discussed their opinions about “activeness” showed that this was a central aspect of their role perceptions. When analyzing the accounts about judges from litigators and public counsels it became clear that the activeness of the judges during the oral hearings was something that concerned these two categories of judicial workers as well. The litigators were of the opinion that judges took too passive role during the oral hearings, which resulted in ineffective and long hearings where the asylum applicants were allowed too much time to speak freely. The public counsels were concerned about another aspect of activeness, namely that passive judges did not investigate the litigators claims enough. The conclusions I drew from these interview accounts were several. The activeness of the judges was something that depended on how the judges perceived their roles (i.e. not settled by the rules). Additionally, the activeness of the judges was a concern for the other categories of workers as well. Consequently, it was something that influenced how administrative justice was practiced at the courts (see chapter six for an elaborated analysis of this argument).

The Meanings of Rituals

As mentioned in previous chapter, the argument pursued by ethnographic researchers is that court activities have both instrumental and symbolic functions. The ways in which disputes are handled in courts reveals important information about how the society at large makes sense of conflicts and distributes power among its members. Based on that argument, I asked which kind of symbolic activities exist at the migration courts.

Dvora Yanow has written extensively about how to analyze the symbolic dimensions of meaning constructions. She suggests that in order to analyze the tacitly communicated, symbolic dimension of meanings, the researcher has to “identify the artifacts—the language, objects, and acts—in which they are embedded, and which represent them in a symbolic fashion” (2000, 20). She distinguishes three different types of symbolic artifacts: “built spaces” which carry symbolic objects, metaphors that represent symbolic language, and rituals which represent symbolic actions (Yanow 1993, 47).

Metaphors are the linguistic equivalents to symbolic objects and found in language. Yanow pays close attention to the receivers of the metaphors, which indicates that the context is an important part of the analysis. Different metaphors could be used in different contexts and that is a clue to understanding how each metaphor transports different meanings in distinct contexts (Yanow 1993, 51). I have coded both the policy material and the interview material for metaphors. They do not make up the substantial part of the analysis, but in some cases the metaphors helped me to further my understanding of the meaning constructions in the policy process and at the migration courts.

By symbolic objects, Yanow refers to the built space that a policy is implemented in, which include the “landscapes, including those that surround and ‘contain’ governmental, educational, corporate, domestic, and other types of building” (Yanow 2013, 370). I have not conducted a systematic analysis of the built space of the migration courts (cf. Mulcahy 2007), but during my visits at the courts I took photos of the buildings and the interior design and I sketched the courtrooms, including where the different actors were sitting. Insights from these field notes have informed the analysis in chapter nine.

Ritual is the third symbolic artifact that according to Yanow deserves the analyst’s attention. Rituals are actions that occur deliberately within an organization in the exact same order and are repeated with frequent intervals. It is not what is being asked or done during the ritual that is the purpose, but the performative dimension of the doings and sayings that deserves analytical attention. “Rituals are the more visible embodiment of myths” and function to “accommodate incommensurable values, beliefs and points of view” within an organization by directing attention to the ritual itself, and thereby a temporal invisibility of the contradictions emerges (Yanow 1993, 51f).

Micro-sociologist Randall Collins (2004) has developed a methodology for how to study rituals in everyday situations. The advantage of his approach is that it draws attention to emotional mobilization as an inherent

part of rituals. Even more importantly, he focuses on the results of rituals. Collins defines rituals as situations with stereotyped activities which necessitate a physical encounter, has barriers to outsiders and demands that the participants have a mutual focus of attention and a shared emotional mood. A successful ritual will therefore result in strengthened group solidarity and emotional energy. Together these results create a shared sense of what is morally good within the group that participated in the ritual.

Observations of Oral Hearings

I conducted observations of seven different oral hearings at the three migration courts. An oral hearing is a trial situation that is part of the ordinary procedure in Swedish administrative courts. It has an adversarial setup with the two disputing parties and an adjudicating board normally consisting of one professional judge and three lay judges present. However, it also harbors inquisitorial elements in that it is the judge who decides if a case would benefit or be settled more efficiently with an oral encounter. Likewise, it is the judge who decides which part of the overall case is to be discussed during the oral hearing (Bylander 2006, 130ff). Not all asylum appeals receive oral hearings, but the ones in which credibility of the applicant is at stake are supposed to be given oral hearings. Between 2011 and 2013, 43% of the cases were allowed oral hearings (Martén 2015, 12). In total, 2515 oral hearings were conducted in asylum appeals at the migration courts in 2013 (Migrationsverket 2013, 110).

I took notes from the moment of entering the court building until the oral hearings were over and all the participants had left the court building. This included between two and three hours of observation for each oral hearing. In the breaks before, during and after the oral hearings I observed how the participants who stayed outside the court room interacted with each other. The major part of these field notes includes transcriptions of the conversation in Swedish that took place during the oral hearing. As every word that was said during the oral hearings was translated by an interpreter, the conversation slowed down, which allowed me to take exact notes of what was said in Swedish. Apart from that, the field notes include descriptions of which persons were present during the oral hearing, which roles they possessed in the oral hearing, where they were located in the court room and how they were dressed as well as how I interpreted their gender, ethnicity and age. I paid attention to how the persons in the court room oriented themselves towards others; that included how their bodies were turned towards or away from other actors, as well as their facial expressions (see Anleu, Blix & Mack 2015). Emotional expressions were

hard not to pay attention to during these hearings, as they often became intensely emotional when the applicants were asked to dwell on the details about why they had fled. Due to confidentiality concerns I cannot reveal the identities of the seven cases that I observed, and have made this decision despite the fact that all except one of the hearings were open to public. However, the asylum narratives that were told during the hearings included very personal aspects of persons' lives, and I see no point of making the applicants' asylum narratives more public than they already are.

Before the oral hearings began, I requested the judges send me a copy of the investigation material. I was not provided with the whole investigation, but I received the decision at first instance from the Migration Agency, the opinions and pleadings from the litigator and the public, counsel and in some cases the transcription from the first instance asylum hearing at the Migration Agency. I was not, however, allowed to bring these documents outside the court building and I had to return them after the oral hearings. That gave me limited time to read the investigation material before the hearing began, but I summarized the content in brief in the field notes. About three weeks after an oral hearing the court ruling would be announced, and as that is a public document, I gathered all seven decisions from the oral hearings I observed.

Coding

Based on both Yanow's and Collin's theorizations of rituals I developed a set of analytical questions to work with when analyzing the field notes from the observations. The first one is: Who is *actively participating* in the ritual? This question highlights who is playing an active role on the stage, and who is merely participating as a passive audience or an object. The second question deals with the objects of attention during the ritual. What kind of *objects are at the center of attention*, and what do these objects mean for the group? By reiterating Yanow's idea about rituals as concealers of contradictory values within an organization, these objects are understood as the objects which symbolize the shared values that the ritual mobilized in order to obscure the controversies. Therefore, the third analytical question is: what kind of *values and activities are obscured* as a consequence of the attention on particular objects? Lastly, a fourth question deals with the *emotional mood* that is established during the oral hearing. What kind of emotions are aroused by the ritual actions and what kinds of emotions are legitimate as well as rejected during the ritual? By asking this question I try to grasp the emotional mood which the ritual triggered. The reason for focusing on shared emotional mood is that it is a

prerequisite for the success of a ritual, namely to strengthen the collective bonds within a group and to develop a shared sense of what is morally good within the group. Only those who share emotions during and after the ritual can be said to be part of the in-group, through which their collective identity thereby becomes strengthened.

To study emotions in an environment where they are said to be absent, such as among judicial actors (Jacobsson 2006; Blix & Wettergren 2016), poses particular challenges. Anleu et al discuss this, and their solution to this difficulty is to use both observations and interviews, as that enables the researcher to “observe emotional expression and ask people about their emotional experiences” and then to link these two sources (Anleu, Blix & Mack 2015, 150). During the interviews, I asked about emotional aspects of the interviewees’ daily work and this information functioned as a backdrop when I observed emotional reactions in court. The result of the analysis of the oral hearings as rituals is presented in chapter nine.

Limitations with Selected Material

In this last section, I discuss the limitation of the material for this study. First, the limitation of the interview material is examined and then limitations of the observations are also considered.

Access to Interviews

The total number of interviews in this study *became* thirty, of which five were explorative interviews and the rest were interviews with the three groups. I deliberately use the word *became* to indicate that the sample size was not totally under my control, as access to the judicial workers at the migration courts proved to be challenging in different respects.

Judicial settings are known to researchers as being hard to reach. This is due to the high status of the actors working there as well as their concerns about confidentiality. Anleu et al state, that “gaining access requires establishing the legitimacy of the research, the credibility of the researchers, and the value of the study for the courts and the judiciary” (Anleu, Blix & Mack 2015, 148).

The only feasible way for me to access judges and litigators proved to be through managerial levels. I contacted the managers of the litigators at the Migration Agency and the heads of the judges at the migration courts and they responded swiftly, providing me with names of employees that

they had selected for interviews. The only one that did not offer any employees to interview was the migration court in Stockholm, but I managed to interview one judge from the Stockholm court through other contacts.

This selection principle is apparently attached to some ethical issues. How voluntary was the participation when the managers asked the interviewees to participate? How could the interviewees' anonymity be secure when the managers knew which employees participated? The way I handled these ethical concerns was by making clear to the interviewees at the start of each interview that the participation was voluntary and that I did not mind if they wanted to end the interview at any moment. I also promised the interviewees that it would be impossible to identify them in the final presentation of the study, although it was obvious to both them and myself that the managers would know which of their employees had participated in this study. Consequently, the only confidentiality that I could offer them was that no individual interviewee would be recognizable in published reports from the project. Therefore, I present the interviewees by category (L for litigators, J for judges and PC for public counsels) and numbers and exclude their gender, age and which unit they worked at, as well as any other characteristics that could expose their identity to managers or colleagues.

Except for the ethical problem that this way of gaining access raised, I was also left with very little certainty of the selection criteria of the interviewees. I asked the managers for interviews with experienced litigators and judges, as I thought that the senior workers would be in a better position to influence the norms that regulated these practices. Of course, I cannot know if that was the only criteria the managers used to select interviewees. All of the litigators have experience in working in the former asylum determination procedure, either as decision-makers in the first instance or as officers (although not decision-makers) at the AAB. This means that I have interviewed people who have been schooled in the former system, which might indicate that they still act and behave according to the norms of that old system. The question is if the interviewed litigators can be seen as representative for the new appeal system despite their experiences from the old system. I reason that they can, and this is because the position as litigators did not exist in the former system, meaning that their daily work tasks were quite different from the tasks they had in the former system. Moreover, when I interviewed them, they had been working in the new system for eight years, which is a considerable time to adjust to new tasks, routines and norms.

The judges had more diverse backgrounds: some had experience from the former asylum system while others had no professional background in

migration issues at all, although with profound experience in judging in other areas of administrative law. I found their role perceptions to be surprisingly coherent despite these differences. What was problematic with the sample of judges was the fact that I only had access to interview one judge in Stockholm, despite the fact that the court in Stockholm handled half of all asylum appeals in Sweden at the time of the interview study. The interviews with litigators and public counsels who work in the Stockholm court, however, partly made up for the difficulty of accessing judges in Stockholm. From these interviews, I gathered information about how the judges in Stockholm behaved. The explorative interviews with people working in Stockholm also provided additional information about the Stockholm court. Moreover, I observed oral hearings in Stockholm, which gave me insights about how the judges in Stockholm worked. The observations exposed me to many different actors, both from the categories of the judicial workers that I interviewed and from the other actors participating in the oral hearings at the courts. The field notes from the observations reveal that during the observations I was able to study the practices of four different judges, seven litigators and seven public counsels. Additionally, I could study seven different interpreters, eight different asylum applicants, seven children, seven different law clerks and twenty-one lay judges. Altogether, the observations exposed me to seventy different individuals.

The selection of the public counsels was not made through managers. Instead I used a snowballing strategy as the public counsels are numerous and distributed throughout law firms across the country. To avoid the problem of similar-minded interviewees, which is a risk with snowball samples, I started to interview public counsels who did not know each other and belonged to different networks (Tansey 2007; Söderström 2016). From the experts I interviewed for explorative purposes, I got names of public counsels whom they knew had significant experience with asylum cases. When I interviewed the litigators and the judges, I also asked them to name the public counsel in each city that I could interview. I contacted every public counsel that I received the name of from these different sources. About half of all the public counsels that I contacted agreed to be interviewed; the other half did not respond to my e-mails.

From a small *n* study-logic, this sample is possibly biased if compared to the total population of public counsels on the Migration Agency's list. They constitute a biased selection with regards to their high level of education, long experience and frequency in appearances at the migration courts. Moreover, this sample consists of public counsels who agreed to be interviewed. I do not know why some of the contacted public counsels

agreed to meet me while others did not even respond. One possible explanation could be that the interviewees already had gained a settled position at different law firms (in some cases even their own law firms) to be able to devote time to something that would not further their careers. However, from a perspective of multiple case study-logic, this sample biases are not to be “controlled away” but instead best understood as a set of cases with particular characteristics that should be incorporated into the larger analysis of meaning constructions at the asylum appeal procedure (Small 2009, 14). It is important to understand, however, the particularities that exist in this sample and to have this in mind when drawing conclusions about meaning constructions from this sample. During several of the interviews with the public counsels, I was told that they won many of their cases and that they had many clients who actively asked to have them as their public counsel during the asylum process. They were clearly skilled at what they were doing, or at least they wanted to give that impression. It is plausible to assume that the sample of public counsels for this study consists of individuals who belong to the most experienced and skilled public counsels in Sweden.

The difficulties in accessing more interviews, and particularly to judges at the migration court in Stockholm, had the consequence that I could not make any inferences about local differences between the migration courts despite previous research (Segenstedt & Stern 2011; *Migrationsdomstolarna* 2007) indicating that such differences exist. Moreover, I cannot make any claim about differences between interviewees in terms of gender, ethnicity, prior work experience or family situation, despite that research has shown that such group identities may have an impact on administrative and judicial decision-making (Songer & Crews-Meyer 2000; Johnson, Songer & Jilani 2011; Watkins-Hayes 2011).

Access to Court Hearings

As noted earlier, accessing judicial settings is considered to be attached to particular difficulties. At first, it seemed difficult to access the court hearings. I could barely be granted access to interviewees; to make observations inside the courthouse seemed to be asking too much. However, as I established a rapport with some judges at the different migration courts by interviewing them, access turned out to be less of a problem. Several of the interviewed judges actively advised me to observe oral hearings to get a sense of their daily work. One of the judges informed me that there is a law paragraph which enables the judge to allow researchers to participate in the oral hearings even if they are conducted behind closed doors. By

referring to that paragraph and the interviews I had already conducted, I eventually was able to arrange for one judge at the court in Gothenburg, two judges at the court in Malmo and one judge at the court in Stockholm to let me observe oral hearings that they were in charge of. In total I observed seven different oral hearings between November 2013 and January 2014.

As with the interviews, this sample size was not under my control. I told the judges that I wanted to observe as many oral hearings as possible; nevertheless, that request resulted in as few as seven observations. The judges decided how many oral hearings they wanted me to observe and they made it clear to me when they considered that I had seen enough hearings. These oral hearings were also selected by the judges and I do not know what they based their selection of oral hearings on. In addition, I know that they chose hearings with low security risks for the asylum applicants if the information from the hearing would be made public.

After completing these observations I am not as concerned as I was before about the sparse number of observations. The reason for that is how I understood after a couple of observations that these hearings are highly formalized events which follow an identifiable structure and as I am interested in the ritual aspects of these hearings, this sparse number actually was sufficient for that purpose. I also asked actors who had participated in the oral hearings that I observed (mainly judges and public counsels) if they considered the oral hearing exceptional in some sense, and the answer was always no. This led me to conclude that the seven oral hearings that I observed were situated within the domain of normal practices at the Migration Courts.

Martha L. Komter has described the formal setting of the courtroom as staged for observability, public inspection and control (1998, xvii). This suggests that my appearance in the courtroom would not have influenced the activities that took place in any significant way, which of course is beneficial as I wanted to study a “normal” oral hearing. However, in some parts of the observations I had a participatory role. The judge (with a few exceptions) presented me as a researcher from Stockholm University when the oral hearings began and asked if the participants had anything against me observing the oral hearing. At one hearing, I was asked to look after three children that came to the oral hearing with their mother.¹⁵ Additionally, I tried to introduce myself to the participants as we waited before the oral hearing and explain the research purposes for this study. In the breaks during the hearing I was occasionally approached by the public counsels

¹⁵ A request that I declined, but we sat together at the gallery bench of the room. They made drawings and listened to music and I wrote notes.

and the interpreters, who wanted to know more about my work or simply chat to pass time. Some of them first assumed that I was a public counsel, which make sense considering that I fitted the demographical characteristics of that group (being female, white and about thirty years old).

What can be noted is that despite the formalized structure of the oral hearings, the asylum applicants' narratives and geographical and demographic characteristics were very different from each other. What these asylum applicants had in common was the fact that their asylum claims had been denied at first instance and that their credibility was questioned by the Migration Agency. These are the most "difficult cases" as they are neither perceived to be manifestly unfounded (therefore not even allowed an oral hearing) nor clearly genuine (as that would have granted them protection at the Migration Agency). In this regard, these cases are positioned on the border between what Swedish migration authorities perceive as genuine protection needs and as merely ordinary hardship.

The choice to focus the observations on activities attached to the oral hearings had some limitations. It did not allow me to gain access to informal practices, the so-called backstage of an organization. Anleu et al discuss the advantages of observing informal activities in judicial settings as that can enhance the researcher's understanding of what is going on during the formal activities (Anleu, Blix & Mack 2015). One such situation that I believe would have furthered my understanding of how the decisions were taken is the deliberation between the professional judge and the lay judges after the oral hearing was terminated. These situations were, however, inaccessible for me. Socio-legal scholar Sule Tomkinsson shows that her active interaction with asylum applicants after the formal hearings revealed aspects of the hearing situation that she could not have gained information about in any other way, even if it also posed difficult ethical challenges for her (Tomkinsson 2014). That kind of interaction did not occur during my observations, even if I attempted to contact the asylum applicants.

Summary of Method and Material

This chapter has presented how the study of meaning constructions about administrative justice in policy and practice will be carried out. The tools for gleaning meaning constructions at both policy level and implementation level have been accounted for, and the material generated has been presented. I have also discussed the limitations of this material due to the difficulties in gaining access to judicial workers. Despite these limitations,

I argue that the interviews, texts and observations together provide a strategically sound and varied material for analyzing meaning constructions about administrative justice. I also make the claim that frame analysis is an appropriate method for gleaning meaning constructions at the policy level, and that the analytical concepts of rules, roles and rituals together create an appropriate method for understanding the practical meanings of administrative justice at the implementation level.

4. Swedish Asylum System in Political Context

The historical background and the major changes of the court reform in 2006 are depicted in this chapter. It draws on previous research on Swedish refugee politics and on the Swedish public administrative system in general, complemented with readings of relevant policy documents from the 1970s and forward. The changes in the asylum system, described throughout this chapter, can be connected to another broad trend in Swedish public administration, namely the increasing influence of judicial practices and actors in issues and arenas that have been perceived as political. It is easy to find support for the global trend of judicialization of politics since the 1970s and forward (Vallinder 1994; Ferejohn 2002; Hirschl 2006; Silverstein 2009) and scholars on Swedish public administration and law agree that this trend has reached Sweden during recent decades (Nergelius, Peczenik & Wiklund 1999; Taube 2003; Mod er 2008; Br nnstr m 2009; B ck, Larsson & Erlingsson 2011; Bergman 2011).

Immigration to Sweden

Immigration to Western Europe after the Second World War is usually divided into three different periods. The first period started in the 1950s and was dominated by labor migration, ending in the beginning of the 1970s when the economy slowed down in Western Europe. The next period was dominated by family migration and culminated during the 1970s and 1980s. The third wave of immigration developed in the aftermath of the Cold War with an increase in asylum seekers and led to a politicization of migration. Scholars argue that a new global refugee regime has developed since the 1990s, which employs a reactive comprehensive approach to refugees (Hammar 1999; Geddes 2003; Joly 2002). It is dominated by industrialized states and characterized by a search for solutions and management rather than protection (Zetter 2007). Industrialized states employ a range of exclusionary strategies in order to keep presumptive asylum seekers away from their geographical borders, thus hampering them from

lodging asylum claims on their territories. Measures taken by states in order to prevent the inflow of asylum seekers are among others visa regulations, border controls at foreign airports, establishment of “buffer zones” in neighboring countries where the border controls take place and criminalization of smugglers (Hyndman & Mountz 2008; Joly 2002; Geddes 2003; Pickering & Weber 2006; Castles & Miller 2009; Mountz 2010).

Immigration to Sweden has followed this larger European trend. Since the 1950s, Sweden has been a net immigration country. It was predominantly labor migrants from the other Nordic countries, but also from Yugoslavia and Greece, who came to Sweden during the labor immigration era. However, a public reform, advocated by the trade union in Sweden, put a halt to labor immigration in the first years of the 1970s (Borevi 2012, 37). After that, immigration to Sweden has been dominated by refugees and their families. The political response to refugees in Sweden can be described as a combination of policies deriving from an official generosity rhetoric and employment of the policy tools for hampering refugees that the new global refugee regime offers.

1980s: A Politicized Asylum System

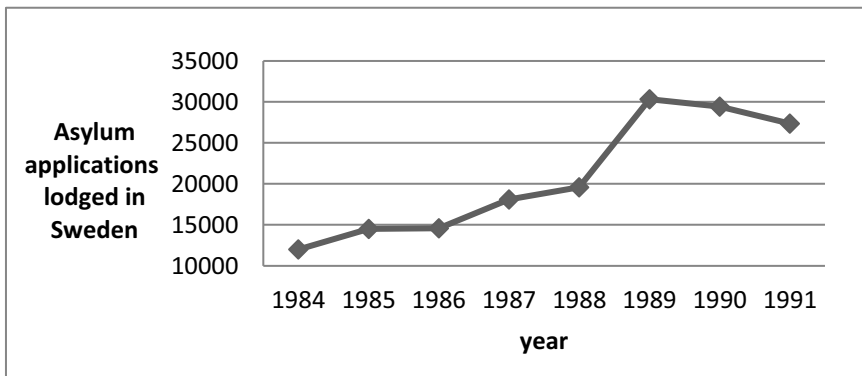
The Swedish Parliament has traditionally delegated significant authority over immigration policies by letting the government steer the regulation by two different methods: through secondary legislation or through guiding decisions in individual cases (SOU 2004:74, 223). The political argument for allowing the government to have authority over the application of law was that the system became flexible and easily adjustable to international migration flows and Sweden’s political relations to foreign states (Wikrén & Sandesjö 1990, 89). This political argument built on a persistent idea about the necessity of governmental influence over the asylum determinations that can be traced back to at least the 1970s (see prop. 1975/76:18, 118).

Consequently, the government had exclusive authority over the application of law in the asylum process as there was no other appeal instance than the government. The Swedish Migration Agency had several possibilities to hand over an individual case to the government for a decision. It could be motivated due to national security or in cases which were deemed to involve politically sensitive issues for foreign state relations. Cases were also handed over to the government when the migration authority needed guidance on how to develop practice (Wikrén & Sandesjö

1990, 154). It was civil servants at the ministry who handled and investigated the asylum appeals and reached a preliminary decision, which was then presented to the ministers in government once a week. Formally it was, however, the ministers who took a joint decision to grant or reject the appealed cases (Aurelius & Arnstberg 1993).

During the 1980s, almost everyone seeking asylum in Sweden was granted protection. Iranians and Chileans were the two most common nationalities among the asylum seekers between 1984 and 1991. The granting rate for the Iranians was 92 % and for the Chileans it was 98 %.

Figure 2. Asylum applications lodge in Sweden, 1984-1991.



Source: The Swedish Migration Agency.

A consequence of this politicized organization was that the work load for the Government Offices became huge as the asylum applications started to increase during the second half of the 1980s (see figure 2). This increase caused notable anxiety among politicians and the public in Sweden; refugees were for the first time since the World War II formulated as a social problem in the official political rhetoric. The Swedish reception system was newly reformed during these years. The system was designed to have a capacity for about 5-6,000 asylum applicants; this turned out to be greatly underestimated as more than 30,000 applicants came in 1989 (Johansson 2005; see also Hammar 1999; Abiri 2000; Spång 2008). To account for the inefficiency in the new organization, the Social Democratic government decided in January 1989 to introduce an amnesty for every asylum applicant who had lodged an application before January 1988 and was still awaiting a final decision. They would receive permanent residency on humanitarian grounds if no particular reason against such a decision was found (Johansson 2005, 158; Hammar 1999, 186).

Emerging Conflicts in Parliament

A new aliens act (UtlIL 1989:529) was enacted in July 1989, its main purpose to “enable a faster and rationalized decision-making process, without changing the principles of the refugee- and immigration politics” (Wikrén & Sandesjö 1990, 22, *author's translation*). Another purpose of the new 1989 Aliens Act was to adjust the law to what had been developed in practice (Wikrén & Sandesjö 1990, 55). In addition to the protection ground as a refugee (Convention Refugee), two subsidiary protection grounds were defined in the 1989 Aliens Act (Johansson 2005, 156; Abiri 2000, 13) and “humanitarian reason” became for the first time inscribed in law and not just stated in secondary legislation (Wikrén & Sandesjö 1990, 56). The government, however, still had the authority to define the criteria for “humanitarian reasons” in order to create flexibility in the refugee policy (Wikrén & Sandesjö 1990, 89). In practice, this meant that the government could tighten the criteria for humanitarian reasons in case of a large influx of asylum applicants. But it also gave the government continued authority to use the humanitarian reason clause to grant amnesty to groups of asylum applicants when the criticism against the asylum system became too loud and inconvenient. This system, with the government as the only appeal instance in asylum cases and with exclusive authority over how humanitarian reason should be defined, created much negative publicity around the government as it became directly responsible for controversial deportations of asylum seekers. The government was criticized for being deeply inhumane and enabling a refugee policy that run contrary to the official discourse of humane and generous refugee politics (Spång 2008, 66f).

Spång (2008) concludes that the enactment of the 1989 Aliens Act ended the long tradition of consensus in Swedish immigration politics and indicated the emergence of a new alliance in immigration politics between the Social Democratic Party and its main adversary, the right wing Moderate party (see also Abiri 2000). The political debates preceding the enactment of the 1989 Aliens Act were intense, and particularly the Liberal Party, the Green Party and the Left Party criticized the majority position in Parliament for enabling a restrictive refugee politics which undermined administrative justice¹⁶ (Spång 2008). Spång also points to the fact Parliament's reclusive role in the formulation of immigration policies had

¹⁶ In Swedish (as well as in Scandinavian) legal theory “*rättssäkerhet*” is a well-established concept with a long history. The concept originates from the German word ‘*Rechtssicherheit*’ and the French idea of “*securité public*”. The official meaning of *rättssäkerhet* according to a Swedish Dictionary is “the security (to life, liberty and property) and the protection of the rights guaranteed by the law (in a community) and maintained by the legally prescribed instruments” (*my translation*, Svenska Akademiens Ordbok 2006). Possible

started to change to a more active role as more regulations was codified in law and thus less regulation was authorized to be under the government's discretion (Hammar 1999; Spång 2008).

Control and Responsibility

On December 13, 1989, only a few months after the adoption of the new 1989 Aliens Act, the Social Democratic government decided to hamper the inflow of asylum seekers by making use of the exception clause in the 1989 Aliens Act. It meant that the newly adopted 1989 Aliens Act was sidestepped by the government's authority to formulate exceptions from that law. The government decided to set the subsidiary protection grounds aside and only admit convention status refugees to stay in Sweden, as they perceived that the pressure on the Swedish reception system was too high. This decision, often called the "December-decision" (or in Swedish "Lucia-beslutet", as it was announced on Saint Lucia's Day) has been extensively examined in previous research since it is often portrayed as a restrictive turning point in Swedish immigration policy (Abiri 2000; Johansson 2005; Spång 2008; Borevi 2012). With the December-decision as the first sign, the gap between the overarching refugee policy goals of solidarity, generosity and human rights and the regulations at the implementation level gradually widened during the 1990s and 2000s (Abiri 2000; Johansson 2005; Spång 2008; Borevi 2012). The restrictive decisions were made on governmental or administrative levels, thus leaving the primary legislation and official goals of Swedish refugee policies untouched. This meant that the official political discourse of generosity persisted vis-à-vis refugees, despite increasingly restrictive policies at the lower levels.

This asylum system was politicized in the sense that the government had the legitimate authority to adjust the legal criteria for protection according to the level of asylum applicants coming to Sweden. It was also a centralized system as no state actors other than the government and the Migration Agency could intervene in the asylum determination procedure. The core objective of the asylum system was to create flexibility for the government by having clear and short chains of command between the

translations to English would be "legal certainty" or "legal security", but also "law and order", "the rule of law", "process of law", "due process" and "due process of law" would sometimes be suitable translations of the Swedish term. Carsten Henrichsen, Danish legal theorist, argues that the most suitable translation to English would be administrative justice, as it in similar vein as *rättssäkerhet* encompasses a broad range of different aspects of that commonly is thought of when justice in administrative or judicial decision-making is discussed (Henrichsen 2010, 323).

principals (the government) and agents (the Migration Agency). However, that decision-making model also created clear channels of responsibility for the controversial aspects of immigration policies, namely deportations (Ellermann 2006; Leun 2006). That double-sidedness of the politicized asylum system (enabling control, but also responsibility) became even more obvious in the 1990s “refugee crises” when asylum seekers from the Balkan wars began to arrive.

1990s: A Bureaucratized Asylum System

The December-decision was effective for two years but abolished in 1991 by the new right wing government led by the Moderate Party. The Moderate Party was not large enough to achieve a majority in Parliament and therefore formed government with the Centre Party, the Liberal Party and the Christian Democratic Party.¹⁷ These four parties were used to cooperating in opposition to the dominant Social Democratic Party, but their views on refugee politics differed considerably. The Moderate Party had a much more restrictive policy towards refugees than the other smaller parties, whereas especially the Liberal Party had been profiled as a representative for generous refugee policies (Spehar 2012). That a member of the Liberal Party, Birgit Friggebo, was appointed as the Minister of Immigration can thus be seen as a concession from the Moderate party to the smaller parties in the government (Abiri 2000).

Only one month after the election in 1991, this Moderate-led government proposed (prop. 1991/92:30) installing a new appeal tribunal for immigration matters which would relieve the Government of many of the appeals that it had to take decision on (Spång 2008, 68f). The new tribunal was called the Aliens Appeals Board (AAB) and was installed at the beginning of 1992 after being approved by a unanimous parliament (prot. 1991/92:38). One of the arguments for installing an appeal tribunal was not only that it would strengthen administrative justice, but also that it benefited the government wanting to distance itself from the often publicly criticized deportations that it took decisions on (Spång 2008, 66–67).

The AAB had an organizational structure similar to a court. The board presidents had legal expertise equivalent to judge competence and they

¹⁷ A new party with the name New Democracy had entered the Swedish political landscape in the election 1991 and their right-wing populist, anti-establishment and anti-immigration rhetoric brought them 25 seats of Parliament’s 349 seats. After only a few years in Parliament the New Democracy however imploded due to internal conflicts and lost all its seats in Parliament in the 1994 national elections (Johansson 2005, 126; Abiri 2000, 23).

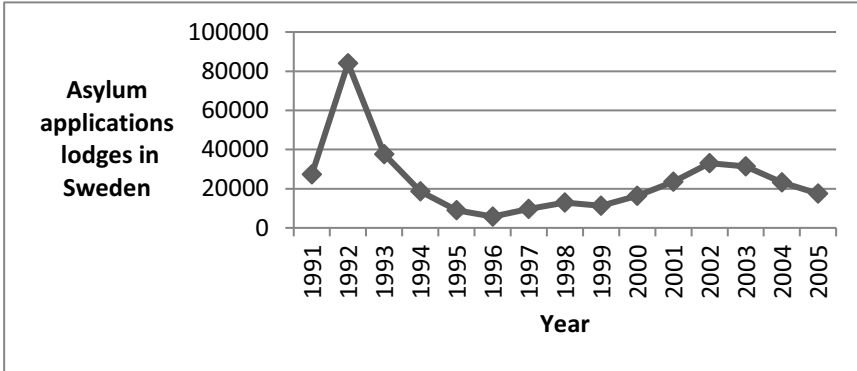
were appointed by the government (Wikrén & Sandesjö 2002, 32). The asylum appeal procedure was inquisitorial in design. The appealed asylum cases were investigated by an officer at the Board, and when the fact-finding was deemed to be satisfactory, the case was handed over to the decision-maker or a decision-making committee, who took a decision based on the investigation conducted by the officer (Wikrén & Sandesjö 2002). The Migration Agency did not act as a party in this appeal procedure but only handed over their investigation material to the AAB.

Moreover, the authority over the application of law was only partly delegated to the AAB, as the government continued to issue guiding decisions. The government's guiding decisions were used as precedents, although they were not court decisions in a legal sense (Stern 2008, 21f). It was only on initiative from the immigration authorities (The Migration Agency and the AAB) that the government took decisions in individual cases; hence the individual asylum applicant could not appeal to a higher instance than the AAB. If a case necessitated an assessment of the political situation in a country, which in practice would be critical for a large number of cases, it would still be handed over to the Government for decision (bet. 1991/92: SfU4, 7). The AAB, however, had extensive possibilities to investigate the socio-political situation in countries of origin. The investigating officers at the AAB were divided into units with special responsibility for different regions in the world in order to develop expertise in particular areas. There was a special unit at the Aliens Appeal Board that decided which decisions would be regarded as guiding for the application of law. When such decisions were to be taken, an enlarged committee was gathered to the Board's meeting (Wikrén & Sandesjö 2002).

“Refugee Crisis”

Right from the start, the AAB faced huge backlogs as the Balkan War started, which resulted in large numbers of people on flights across Europe, and the majority of them lodged their asylum applications in Germany and Sweden (Vink & Meijerink 2003). Sweden received a peak of asylum seekers in 1992, with over 84,000 asylum applications lodged (see figure 3).

Figure 3: Asylum applications lodged in Sweden 1991-2005



Source: The Swedish Migration Agency.

The two most common nationalities among the asylum seekers during this period were people from the former Yugoslavia (in Swedish statistics referred to as coming from Serbia-Montenegro and Bosnia-Herzegovina) closely followed by Iraqis, who arrived in fairly large numbers during the time period 1992-2005. When the number of asylum applications increased, the granting rate gradually decreased in Sweden. Vink and Meijerink found the same relationship to be statistically significant for the majority of the EU-member states during the same time (2003). Compared to the granting rates in the 1980s, there was a sharp decrease of approved asylum applications between 1992 and 2005 in Sweden. The granting rate for Iraqis was on average 78%, for applicants from Bosnia-Herzegovina it was only 53%, and for the largest group of applicants, people with a Serbia-Montenegrin nationality, it was as low as 33%.

With the dramatic increase of asylum applications in 1992, the Moderate-led government decided to make use of the flexibility in the system and hampered the inflow of asylum seekers by introducing visa requirements for all citizens from Serbia, Kosovo and Montenegro. The Minister of Immigration proclaimed that the visa requirements allowed the government to focus on “the real protection need, on human beings who are escaping violence, persecution and terror” (cited in Abiri 2000, 20).

However, the inflow of asylum applicants did not diminish, as the situation in Bosnia became worse and more people from Bosnia-Herzegovina arrived in Sweden. As a consequence, the visa regulations were enlarged to pertain to Bosnia-Herzegovina as well in 1994. This time the Minister of Immigration had difficulties arguing that the visa regulations pertained to persons who were not genuine refugees, so now the decision was moti-

vated as a way to help the Bosnians in their country of origin and to hamper the attempts at ethnic cleansing that were conducted in Bosnia-Herzegovina at that time (by forcing the Bosnians to stay in their country) (Abiri 2000, 21). At the same time, again making use of the flexibility in the system and to soften the criticism for not living up to Sweden's generosity discourse, the Government decided to offer permanent residency to 40,000 Bosnians already in Sweden (Appelqvist 2000).

Several other similar amnesty regulations were issued throughout the 1990s, often in a package of more permanent changes that aimed at tightening the right to residency (SOU 2004:74, 163f; Nielsen 2016, 116). Abiri depicts this use of humanitarian grounds as a strategy for the government to try to act restrictively and generously at the same time (Abiri 2000, 21). Karin Borevi makes a similar remark, arguing that the politicians in Sweden have been guided by a dilemma since the beginning of the 1980s when the number of asylum seekers started to increase in Sweden. It consists of maintaining the self-image of a country that is a role model when it comes to human rights, solidarity and humanism, but at the same time wants to prevent sending signals to presumptive asylum seekers that Sweden has a loose immigration policy (Borevi 2012). By gradually restricting the permanent regulations, signals were sent to presumptive asylum seekers abroad and also to the domestic anti-immigration opinion, which during the 1990s was strong in Sweden, that Sweden employed a restrictive policy. Nevertheless, to avoid being publicly accused of implementing too restrictive policies, the humanitarian reason paragraph could be used by the government as an instrument to soften the effects of the restrictive regulations. This balancing act between restrictiveness and inclusiveness has continued to characterize Swedish migration politics since then, and it was evident in the policy process preceding the 2006 court reform as well.

Adjustments within the EU

Sweden entered the EU in 1995 and after that was influential in changes within the refugee policy area, including involvement in several transnational agreements. One was the Dublin Regulation, which strengthened the principle of first country of asylum. This principle already existed in Swedish legislation, but with the Dublin Regulation it changed in practice as fewer exceptions from the principle were accepted, i.e. more asylum applicants were sent back to their first country of application for asylum and thus did not get their claims assessed in Sweden (Spång 2006, 19). Another agreement was the Schengen Agreement which became effectuated in

Sweden in 2001 and extended the list of countries with visa requirements to Sweden and sharpened carrier responsibilities. Parliament was divided on the issue as the Left Party and the Green Party claimed that the Schengen Agreement would have a negative impact on the abilities to apply for asylum in Sweden. The Social Democrats, with support of the four right-wing parties, argued that this primarily was an agreement to strengthen the internal freedom of movement within the EU and downplayed the possible effects for asylum seekers (Spång 2006, 12).

Spång's analysis of the impact of EU immigration legislation on Sweden's national legislation shows that the largest adjustments to Swedish legislation in order to conform to the Common European Asylum System (CEAS) pertained to regulations that aimed at restricting immigration to EU territory, such as enlarged visa requirements, stricter carrier sanctions and tougher punishments for carriers (Spång 2006, 27ff). Sweden has from the start taken an active part in promoting the CEAS at the EU level. Andrea Spehar explains this behavior by stressing the conflict lines within the Swedish Parliament over refugee politics. The smaller parties have advocated more generous and liberal refugee politics whereas the two large parties – the Social Democrats and the Moderate Party – together have promoted restrictive refugee policies. Due to weak support in Parliament for the larger parties' refugee policies when one of them has been in government, increased authority over the refugee politics at the EU level has been seen as a way for the large parties to get their restrictive politics implemented, as the government can negotiate directly with each other about important issues at the EU level, thus avoiding interference from the national parliaments (Spehar 2012).

The 1997 Amendments of the Aliens Act

The 1997 amendments to the 1989 Aliens Act is often highlighted as a restrictive turning point in Swedish immigration politics (Abiri 2000; Johansson 2005; Spång 2008). A Social Democratic government bill that was abolished when they lost power in 1991 was taken up again by the Social Democratic party when they won the national elections in 1994. Abiri's explanation for this is that the restrictive suggestions that had been hampered in 1991 could now be effectuated without risk of being associated with the "populist message" of New Democracy, as they had vanished from the political scene by 1994 (Abiri 2000, 18). Abiri further shows that a new and "cruder language" which emphasized control and economic concerns were introduced in the reports preceding the government bill (Abiri 2000, 23). Johansson claims that the reformulated suggestions in

the new Social Democratic government bill (prop. 1996/97:25) were articulated in a discursive terrain that had strong anti-immigration affinities and where a separation between the categories of genuine refugees and economic immigrants became central to immigration politics (Johansson 2005, 126).

Regulations with restrictive aims in the 1997 amendments were time limited residence permits, which was introduced as a way to handle the assumed burden that a mass influx of refugees would put on the welfare system, restrictions in the family reunion principle and the introduction of repatriation as a new goal for refugee politics (Johansson 2005, 91). The maximum penalties for organizing illegal immigration routes to Sweden were also raised (Wikrén & Sandesjö 2002, 20), and the legal criteria for protection were also changes in the 1997 amendments. Johansson claims that the rearrangement of protected categories on the whole constricted the grounds of protection available for asylum seekers (Johansson 2005, 91). The same conclusion is found in an official government report (SOU 2004: 74, 163).

The 1997 amendments were preceded by an intense debate in Parliament where several parties accused the Social Democratic Party of legitimizing a restrictive refugee politics contrary to the guidelines of humanitarianism and generosity that was stipulated in the official national policy on refugees. The suggested amendments nevertheless gained a majority with the support of the Moderate Party and the Centre Party, and the changes became effectuated in January 1997 (Abiri 2000; Spång 2008, 74).

2000s: A Judicialized Asylum System

With the installation of the AAB as appellate organ in asylum determination, the Swedish government was relieved of a growing work load as the asylum applications increased in numbers. The responsibility for the controversial decisions about deportation was still firmly directed to the government as the government had the authority to issue secondary legislation and guiding decisions in individual cases and had done so several times on humanitarian grounds. Moreover, the AAB had to cope with large backlogs from the start and was accused of ineffectiveness and bureaucratic rigidity. Until the mid-1990s, the idea that asylum determination should be under political control so that it could be adjusted according to the national integration capacity and the influx of asylum applicants had been unchallenged in Sweden. However, during the end of the 1990s, this

idea started to be questioned and by the time of the court reform in 2006, it had been severely marginalized to the benefit of another idea, namely that asylum determination should be under judicial control.

After almost a decade of political conflicts and negotiations about how to reform the appellate organ in asylum determinations regarding enhancing administrative justice in the system, the court reform was implemented in April 2006 (the policymaking process is described in the next chapter). Simultaneous to the court reform, a new Aliens Act was also implemented (UtlL 2005:716) which contained several rearrangements of the legal criteria for protection and residency. The goal was to prioritize protection needs over the “humanitarian reason” paragraph, which had been too frequently used (prop. 2004/05:170, 177f). It was stressed that the law changes were not intended to restrict the overall possibilities to be granted a residence permit compared to former practice (Stern 2008, 38f).

Separation of Law and Politics

With the court reform in 2006, the Swedish asylum system changed significantly. The government’s authority decreased substantially as the appeal authority was given to the administrative courts and the authority over the application of law was authorized to the administrative high court in Stockholm, which became the new Supreme Court in migration cases. A separation between political control and judicial control was for the first time established in the asylum determination procedure.

This led to fragmentation of the system. At first instance the Migration Agency is still the only decision-making body, but at the appeal instance the authority to decide has been allocated to several different administrative courts with responsibility over different geographical regions of Sweden. At the highest appeal level – the Supreme Migration Court – leave to appeal is necessary and the court only allows appeals regarding questions of law, not facts. This means that only if an appealed case is considered to have importance for the guiding of other similar cases or if a procedural fault is discovered in the prior proceeding of the case, it could be reviewed at the Migration Supreme Court. The reason for this is that the situation in specific countries can change very rapidly and the Migration Supreme Court therefore found it to be outside of their authority and competence to decide on factual matters (SOU 2009:56, 211ff). The Migration Supreme Court issued leave to appeal in less than one percent of the all asylum appeals in the years 2012-2014 (Martén 2015, 4). Thus, in the majority of asylum cases, the decisions of the migration courts in the different geographical regions are final.

A result of the separation between judicial and political control has therefore been that a separation between questions of law and questions of facts has been created and that factual questions have been sidelined from central guidance.

Adversarial Elements

The change of appellate organ also brought changes to the design of the procedure, as the administrative courts in Sweden employ an adversarial model of procedure. At the AAB, the procedure was inquisitorial. The inquisitorial model originates from a European tradition and is mainly employed in countries with civil law systems (Menkel-Meadow 1996; Parisi 2002; Stobbs 2011). In the inquisitorial procedure, the decision-maker is responsible for the investigation of the case, thus being able to initiate, investigate and determine when the investigation is sufficient. This implies that the claimant's role is less encumbered with responsibility for the outcome than in the adversarial procedure. In an inquisitorial procedure, the claimant is not responsible for translating his or hers claim into legal language that can persuade a judge. It is instead the decision-maker's responsibility to translate the claimant's argument into legally applicable claims (Jolowicz 2003, 292).

The adversarial model is usually described as the ideal dispute resolution design. The adversarial procedure originates from a liberal tradition and is mainly employed in countries with common law systems, such as the USA, Canada and Australia. It is a dispute resolution which uses the method of contradictory debate to reach correct decisions (Jolowicz 2003, 282). Oral hearings which facilitate argumentations, cross-examinations and spontaneity are highly valued in this form of procedure. The judge is given a passive role with little power over the kinds of facts and arguments that are presented to the court. The judge cannot demand particular kinds of evidence, nor call witnesses or experts to illuminate the case or in any other ways take control over the knowledge production regarding the case. These powers are instead given to the parties.

In practice, most administrative or judicial procedures have ingredients of both models (Parisi 2002; Jolowicz 2003; Nagorcka, Stanton & Wilson 2005; Staffans 2006). Legal scholar Ida Staffans described the reformed Swedish asylum procedure as "an inherently inquisitorial procedure in which adversarial measures have been introduced" (Staffans 2012, 235, footnote 73). She refers to the whole asylum system, which at first instance is exclusively designed as an inquisitorial procedure. As I focus this study

on the appeal procedure, the “adversarial measures” become more apparent as it is at the appeal level that the adversarial procedure has been introduced.

The division of the burden of proof is arranged differently if the procedure is conducted according to an inquisitorial or an adversarial model. Burden of proof is a judicial concept signifying “the obligation to prove the claims in the procedure or as the risk of suffering negative consequences as a result of insufficient proof of these claims” (Staffans 2012, 70). It demarcates who is responsible for providing the decision-maker with facts, information and evidence to support or contradict a claim made to the state from an individual. Basically, in an appeal process this responsibility could be put on the party who asks for something, on the party who denies giving something or on the decision-maker.

In an inquisitorial procedure, the decision-maker has a far-reaching responsibility to investigate claims, while in the adversarial procedure the responsibility for fact-finding is put stronger on the claimants and less on the decision-maker. The ideal in the adversarial model is a passive decision-maker who expects to be offered the investigative material by the two parties, while the inquisitorial ideal depicts an active decision-maker who takes initiatives to investigate the case in all aspects that seem relevant until a correct decision can be made. This tension between passiveness and activeness is also mirrored in the Swedish administrative court procedure in general, as the procedure includes both adversarial and inquisitorial elements.

The adversarial measures introduced in the asylum appeals facilitated thorough vetting of individual cases from multiple perspectives as the two parties in the trial now have the responsibility to present their arguments in front of the administrative court. In the inquisitorial procedure at the AAB the decision-maker investigates the claims without active involvement of the applicants or the Migration Agency. However, stronger demands on the applicants have also been introduced as the adversarial model indicates a stronger focus on the parties’ responsibility to present evidence for their claims (Diesen 2012, 158).

Orality

A third difference between the appeal procedure at the AAB and the migration courts is that the oral element in the process increased. It can be seen as a logical consequence of transforming the appeal procedure from an inquisitorial to an adversarial procedure where cross-examination is a central facet. The appeal process at the AAB was mainly conducted by

written communication, and oral hearings with asylum applicants were very unusual. The decision-makers at the AAB had the opportunity to arrange oral hearings in asylum cases if that would improve the investigation; it was uncommonly used.

The oral hearings at the migration courts are designed according to the same regulation that applies in regular administrative court proceedings (SOU 2009:56, 86). It stipulates that the proceeding in the migration courts should be written communication, but that oral hearings can be used if it is deemed to improve the investigation or increase the efficiency in the procedure. This is a very similar formulation as was used at the Aliens Appeal Board. However, a new regulation has been submitted which prescribes that if an asylum applicant demands an oral hearing at the court, it should be conducted unless particular reasons can be argued against it. This has increased the number of oral hearings at the appeal instance significantly. In the court process, more than half of the asylum appeals include oral hearings (SOU 2009:56).

Summary

The chapter described the background to the 2006 reform and the resulting major changes of the asylum determination procedure. The reform led to a separation between judicial and political control over the asylum system, and also a separation between legal and factual questions in asylum determinations. The guidance on questions of law is provided by the Supreme Migration Court, but questions of facts are left to each migration judge and the parties in the trial to decide. The reform also introduced adversarial elements in the asylum appeal procedure which changed the division of roles and responsibilities in the procedure. Moreover, orality as an investigation tool became more common in the appeal procedure after the reform. How these three changes (judicial/political distinction, adversarialism, orality) were motivated in the policymaking process and which consequences they had for how administrative justice is practiced are addressed in the following chapters.

5. Framing the Court Reform

With the historical developments of the Swedish asylum system and the major changes of the court reform outlined in the previous chapter, this chapter answers the first research question about how the courts' roles were constructed in relation to administrative justice in the policymaking of the 2006 court reform. The court reform was closely entangled with the formulation of a new Aliens Act and also with a temporary law that gave permanent residency to about 17,000 rejected asylum applicants. The analysis of policymaking of the court reform therefore briefly describes these two other reforms as well.

Several other scholars have previously covered this period (e.g., Spång 2008; Stern 2008; Borevi 2012; Nielsen 2016; Hedlund, Cederborg & Zamboni 2016). The analysis in this chapter therefore draws on and to a large extent supports the findings from these studies. However, when compared to these studies, the difference is that the analysis in this thesis brings forth the role of courts in this policymaking process, as well as the relationship to administrative justice they were perceived to have.

By employing the analytical concepts of *interpretive communities*, *problem definitions*, *stories* and *prescriptions for actions* the chapter identifies two dominant policy frames that struggled over influence during this period. Based on the characteristics of the different framings, I have called them the “efficiency frame” and the “humanitarian frame”.

The interpretive community representing the efficiency frame consisted of the Social Democratic party, which was in government, supported by the Migration Agency and the AAB. The judicial branch partly supported the government's framing but took a different view on the role of the administrative courts in asylum determinations, which in the end positioned the judiciary in opposition to the court reform. The efficiency frame comprised a problem definition which centered on the inefficiency of the asylum system and consequently suggested prescriptions for actions which aimed to speed up the procedure but keep the political control over the system intact. The stories that supports this frame brings up asylum seekers who abuse the Swedish asylum system.

The humanitarian frame was represented by the small parliamentary parties in opposition, both on the left and the right. They advocated court reform and eventually managed to pressure the government to implement the reform and issue an amnesty for large groups of rejected asylum applicants. This frame was also supported and strengthened by an intensive mobilization among refugee advocates outside Parliament. The large right wing party in Swedish politics – the Moderate Party – partly reinforced this framing by supporting the proposal of replacing the AAB with administrative courts, but they took a different view on the refugee amnesty which positioned them as opponents to the humanitarian frame. This frame defines the problem to be about inhumane and unlawful rejections of asylum applicants, particularly children. The root cause of this problem is presented to be the AAB’s restrictive practice which resulted in rejections of genuine refugees. The solution to this problem is therefore to abolish the AAB and replace it with migration courts. Many stories accompanied this frame, and they tell about the sufferings and hardship of people who have been rejected but continue to live in Sweden as “hidden refugees”.

Policymaking processes in Sweden are often deliberative, rationalistic, open and consensual in character. Much emphasis is put on “anchoring” the policy proposals in large sections of Swedish society, and in that process commissions of inquiries and the referrals system are important (Pettersson 2015). The policymaking process investigated here employed commissions of inquiries and referrals, but conflict lines persisted and it was far from consensual in character. Legislators involved in this policy process have described this period as the most hectic, turbulent and emotionally tiresome in their political careers (Hedlund, Cederborg & Zamboni 2016).

This period was also a specific historical moment in Sweden, when the mobilization from the public for inclusive refugee policies was exceptionally strong at the same time as the inflow of asylum applicants was comparatively low (see figure 3 in chapter four). The number of asylum applications decreased steadily during the policymaking process, from 33,000 applications in 2002 to 17,530 applications in 2005 (Migrationsverket, 2017). There were no indications of increases in asylum applications in the prognoses from the Migration Agency. It was a time in Swedish politics when the 1990s refugee crises seemed to belong to a distant past.

Interpretive Communities

One aspect of the frame analysis consisted of locating the actors who expressed a coherent framing of the court reform. I found interpretive communities that articulated the two distinct frames, but also participants in the reform process who did not fit neatly in any of the frames.

The Government and its Allies

The Social Democratic Party was the prime advocate of the efficiency frame, ruling Sweden under a minority government during the years that the policymaking process took place. Traditionally, the Social Democrats have, at least during times when they have been in government office, seen increasing court influence as a threat to democracy, while the right wing parties, at least during times when they have been outside of office, have advocated more court influence over politics as a guarantee for democracy (Holmström 1994; Bergman 2011).

At the beginning of the policy making process, the Social Democratic Party followed their traditional skepticism towards increased judicial power and argued for increased political influence over the assessment of protection needs. During the evolution of the policy process, however, they dropped that argument and agreed to delegate more power over the asylum system to the judiciary.

During the whole policymaking process the Social Democratic government did formulate the problems in the asylum systems to be about protracted proceedings and misuse of the system, and this in turn, created low legitimacy for the asylum system. The government's problem definition found support among the migration agencies. One example is the elaborated opinion from the Head of the AAB, Håkan Sandesjö. He argued that the AAB was capable of securing administrative justice and that it was the most cost efficient alternative (SOU 1999:16, 619-635).

The judiciary participated as referral bodies in the policymaking process. Their reluctance to the idea of relocating the appeal authority to the administrative courts made them support the view to keep the AAB. However, when scrutinizing the arguments from the judicial referral bodies in detail, it is clear that they do not articulate any other arguments that is in line with the Social Democratic Party. Thus, they cannot be said to fully promote the efficiency frame, despite their support of parts of the frame's arguments.

The Opposition Parties and their Allies

The five small parties in Parliament ranged from the government's two supporting parties, the Left Party and Green Party, to the three right-wing parties, the Liberal Party, the Centre Party and the Christian Democratic Party. Together they formed an interpretive community that advocated more court influence. They have historically promoted inclusive policies in the area of refugee policy (see chapter four), and continued to do so in this process. Across the ideological diversities that these parties show in other political issues, in this process they all had high expectations of the administrative courts to create a more humane and inclusive asylum system.

The largest conservative party in Sweden, the Moderate Party, was at the beginning of the policy-making process in alliance with the smaller parties in Parliament, advocating a relocation of appeal instance to the administrative courts. This correlates with the Moderate Party's historically positive opinion about the judicial branch (Holmström 1994; Bergman 2011). However, the Moderate Party additionally has a history of promoting restrictive refugee policies together with the Social Democratic Party, and in the last stages of the policymaking process, when the smaller parties in Parliament started to formulate explicit demands for inclusive refugee policies, they changed their alliance partner to the Social Democrats.

During the policymaking process in Parliament, the mobilization in favor of a court reform outside Parliament gradually intensified. Different civil society organizations started to formulate demands for a general amnesty for failed asylum applicants who continued to live in Sweden as undocumented immigrants. Two main public campaigns were organized that advocated this demand. One was called "the Easter Petition" [*Påskuppropet*] and led by the Swedish Christian Council and the archbishop K G Hammar; the other was a collaboration between over one hundred NGOs and political organizations that gathered under the heading "Refugee Amnesty 2005" [*Flyktningamnesti 2005*]. Together these two campaigns collected 157,000 signatures from the public that were sent to the Minister of Migration, Barbro Holmgren, and arranged demonstrations in over thirty cities around Sweden during the spring and fall of 2005 (Spång 2008, 94; Stern 2008, 42).

Problem Definitions

Defining the problem that a policy is supposed to solve is an important part of policy framing. In the policymaking of the court reform, the problem definitions of the efficiency frame and the humanitarian frame stood in bright contrast to each other. However, they shared the view that the asylum system needed to improve its legitimacy among the public. In addition to these dominant problem definitions, two other problem definitions occurred in the material, one of them being how the Moderate Party formulated a slightly different problem with the asylum determinations than the humanitarian frame. A fourth problem definition was articulated by the judiciary in their referrals to the political reform suggestions.

Framing for Efficiency: Protracted Proceedings

Even if an argument for installing the AAB in 1992 was that it would increase efficiency and administrative justice in the asylum system, it was from the beginning criticized for inefficiency, lack of transparency and restrictive application of law. Forced to act on this persistent critique, the Social Democratic government assigned a commission of inquiry in 1997 to investigate the possibilities of reforming the asylum system (dir. 1997:20). The commission consisted of one member from each parliamentary party as well as experts on law and migration, the heads of the AAB and the Migration Agency. The only party with two members was the Social Democrats. This is a common composition of the members for commissions of inquiry in Sweden (Pettersson 2015).

The directive formulated protracted proceedings as the most acute problem in the asylum system. It was claimed to be both inhumane and cause unnecessary financial cost for society to have asylum applicants pending for final decisions for years. It was the regulation called “New Applications” that had caused large backlogs in the asylum system. The purpose of the regulation was to allow asylum applicants to lodge a new application even if they had been given a final negative decision in case there would arise new circumstances that could entitle them to the right to remain in Sweden. In 1997, half of all the AAB’s decisions concerned new applications (SOU 1999:16, p 401). The Social Democratic government was highly concerned about this development. “The asylum procedure”, stated the Minister of Migration, would need to have “a clear beginning and a clear end” (Addr. 28, Barbro Holmgren, Social Democratic Party, 2004/05:130).

In the Directive, the government described the assessment of protection needs at the Migration Agency and the AAB as conforming to administrative justice principles, but lack of transparency was named as a problem. Insufficient transparency undermined the public trust for the procedure. The Government wanted the parliamentary committee to investigate three options regarding a reform of the asylum procedure. The first was to relocate the appeal instance to the administrative courts with an adversarial model of procedure; the second was to keep the appeal authority with the Aliens Appeal Board or a special court; and the third option was to let asylum cases be handled by a court already at first instance decision-making.

Additionally, the government expressed concerns about how a changed appeal procedure would affect the government's abilities to steer the immigration to Sweden. The government's opportunities to steer the assessments of protection needs had been made less flexible due to the amendments of the Aliens Act in 1997, as less room was given for the government to issue guiding decisions (bet. 1996/97:SfU5, 75). In the Directive in 1997, the government expressed concerns that this method could hamper their possibility to "steer the immigration" in case of "acute situations", and therefore new instruments that could increase the government's control over the asylum system was to be taken under consideration by the commission of inquiry (dir. 1997:20).

When the commission of inquiry presented its final report in 1999, and doing so with a suggestion to decommission the AAB (SOU 1999:16), the government did not find the proposal to be satisfactory. The government was concerned that the calculations of costs in the court proposal were severely underestimated. Briefly following this, the government put together a working group at the government office consisting of civil servants with the assignment to investigate the alternative with special courts or tribunals more thoroughly than what the parliamentary commission had done. Lack of transparency and protracted proceedings were again formulated as the main problems with the asylum system, based on input from the AAB and the Migration Agency (ds. 2000:45, 61ff).

To conclude, the problem definition of the efficiency frame was first of all protracted proceedings, then the lack of transparency which led to low public trust for the system, and finally that the government had too few instruments to steer the immigration to Sweden in case of a new refugee crisis.

Framing for Humanitarianism: Inhumane Rejections

Analyzing the different formulations of the problems in the asylum system reveals that a common formulation concerned rejections of asylum claims and deportations of failed asylum seekers. Nielsen noted that “hidden refugees” become the common denominator for failed asylum applicants in political debate at the beginning of the new millennium (Nielsen 2016, 85ff). In party motions from the smaller parties in Parliament this concept was repeatedly mentioned. Nielsen distinguishes different problem formulations attached to the category of hidden refugees during the first years of the millennium (Nielsen 2016, 90ff). She concludes that in contrast to other European countries political debates around the same time, the Swedish discourse centered on “the circumstances of irregular migrants – rather than their presence as such” (2016, 94), which directed the debate away from perceiving asylum seekers as threats and a security issue to discussing their living conditions.

The smaller parties in Parliament were particularly concerned about rejections of asylum claims based on homosexuality, gender and children’s situations. They were concerned that the overarching goals of solidarity and generosity in Swedish refugee policy had not been met when they were confronted with individual asylum applicants who had been denied protection and received deportation orders. The smaller parties in Parliament had lost confidence in both the Migration Agency’s and the AAB’s capacities to act as neutral implementers of the legislators’ intentions. The Green Party illustrates this when they suggested in a motion, “the Migration Agency and the AAB should put on the empathy-eyeglasses and act on the basis of a humane refugee policy” (mot. 2001/02:Sf394). The Liberal Party stated, “instead of letting the decisions be taken by a neutral and impartial court, it is now the same authority, the Swedish Migration Agency, that investigates and examines the applicant’s asylum claim” (mot. 2001/02:Sf216). The Centre Party claimed that the inaccurate rejections were caused by a widespread culture of disbelief within the migration authorities’ employees (mot. 2003/04:Sf25). In a later motion, the Liberal Party simply stated that “the Swedish migration politics has become increasingly inhumane” (mot. 2003/04:Sf24).

The ability to lodge a new application was not formulated as a problem by the smaller parties in Parliament, but instead portrayed as a “safety device” in a system that was dysfunctional due to too restrictive practice and poor investigations (mot. 2003/04:Sf21; mot. 2003/04:Sf25; mot. 2003/04:Sf24; mot. 2003/04:Sf27). Consequently, the proponents of the humanitarian frame did not formulate the problem of an inhumane asylum system as a consequence of having a regulated immigration politics, but

as a consequence of how those immigration politics were implemented. That problem formulation distanced the legislators from the problems in the system and instead put responsibility on the government and its agencies.

The Moderate Party's Problem: Discretionary Decisions

The only oppositional party in Parliament that did not argue that the problems in the Swedish asylum system were connected to a gradually restrictiveness was the Moderate Party. For them, the problem with the system was not that the system was inhumane, but that the Aliens Act as a whole was too imprecise and gave room for discretionary decision-making. This discretion had in turn resulted in lowering the public trust for the system. The only way to build up the trust for the asylum system would be to formulate a new Aliens Act with more precise criteria for protection and to employ an adversarial model at the appeal instance with increased oral elements, the Moderate Party argued (mot. 2003/04:Sf22).

The Judiciary's Problem: Politicizing the Courts

The judicial branch plays an interesting role in this policymaking process. The judiciary resisted the characterization of the courts as the guarantor for administrative justice and humane asylum determinations throughout the policymaking process and expressed great reluctance at the idea of establishing migration courts within the administrative courts system. Several judicial bodies opposed the court reform in referrals. Among them were the Administrative Supreme Court [*Högsta Förvaltningsdomstolen*], the Administrative High Court in Stockholm [*Kammarrätten i Stockholm*], the Administrative Court in Stockholm [*Förvaltningsrätten i Stockholm*], and the Swedish National Courts Administration [*Domstolsverket*]. Adding to that, the Counsel on Legislation [*Lagrådet*] strongly dismissed the court reform on two occasions (in 2002 and in 2005). The Council on Legislation only has an advisory role in legislation processes in Sweden and therefore their dismissals were not decisive for the outcome of the reform process.

The main arguments for the Council on Legislation's rejection in the 2002 opinion were that the Council on Legislation requested a more thorough investigation and motivations of the problems with the existing asylum system. In their opinion, the most significant problem was that the Aliens Act was not precise enough for the court system. They claimed that

many formulations in the Aliens Act were not eligible for judicial decision-making, but only suitable in bureaucratic decision-making which allow more room for discretionary decisions and political considerations.

Moreover, they stated that assessments of protection need required non-judicial knowledge about situations in foreign countries which the administrative courts could not be expected to possess. In their 2005 opinion, they argued that “the appeals procedure in the Aliens Act cannot, according to the Council on Legislation, be considered to have arisen by chance or be due to purely historical reasons” but it had to be regarded as appropriate for administrative agencies to have authority over asylum determinations and not courts (2005, 7). The prime reason for this was that the assessment of protection needs included “not insignificant room for discretionary assessments” (p. 9). The Council of Legislation sharply opposed the idea that the administrative courts “with the independent role they should have in their judicial activity, should be imposed with tasks that may require standpoints on issues with elements that are distinctly politically marked” (p. 10).

As a response to the belief in courts as generous interpreters of the asylum laws, the Counsel claimed that the probable outcome of the new Aliens Act would be an increasingly restrictive practice (2005, 27). The same argument was articulated by the Administrative High Court in Stockholm, claiming that “a transfer to the courts is not a guarantee against unpopular decisions” (ds. 2000:45, 52).

Regarding the introduction of an adversarial model of procedure, the Council explicitly stated that “the expectations held by some that the measure by itself – or in conjunction with the minor changes in the Aliens Law that have been proposed – should lead to a substantial change in the application of law seems unrealistic” (2005, 11f). A reform of the asylum procedure to an administrative court procedure, distributed across different courts, would probably lead to decreased consistency of the application of law, the Administrative Court in Stockholm assumed. They continued by arguing that “the lack of transparency for the parties and the public will not a priori be cured by a new appeal body” (ds. 2000:45, 53). The court instead proposed to keep the appeal authority at the AAB and to increase the influence of lay men in the procedure to enhance transparency.

The judiciary’s referrals reveal a different conceptualization of administrative justice than what the other participants in the policymaking expressed. They challenged many of the assumptions about the courts’ roles in asylum determinations that the proponents of a court reform articulated. Most of all, they were concerned that the politically controversial ques-

tions about rejections of asylum claims would affect the courts' independence. By putting asylum appeals under the administrative court authority, the courts' decision-making risked being questioned in the same way as the AABs decision-making had been.

Stories

I searched the policy material for stories that could be connected to the two dominant problem definitions outlined above: the "efficiency problem" and the "humanitarian problem". I found two types of stories, one describing the asylum applicants as abusers of the system and the other describing the system as an abuser of asylum applicants.

Framing for Efficiency: An Abused System

The precarious situation for children with failed asylum applications had been acknowledged in media and political debates since the mid-1990s (Nielsen 2016, 87f). However, in the first years of the 2000s, media reports about asylum-seeking children who had developed severe depressive symptoms that plunged them into apathetic conditions started to increase.¹⁸ The confusion among experts and the public about the causes and range of this problem was huge and resulted in many public speculations about the so called "apathetic children" and their families (Tamas 2009). In 2004, the Social Democratic government assigned the child psychologist Marie Hessle¹⁹ to investigate the sharp increase of asylum-seeking children with these symptoms (dir. 2004:115). This resulted in a final report (SOU 2006:49) that claimed the children's symptoms were a unique Swedish experience that only could be recognized in particular ethnic groups of asylum-seeking families. Moreover, the report suggested that it could not be excluded that the families intentionally plunged their children into this state in order to be given residency on humanitarian grounds according to the "new applications" rule (Ek 2008). These kinds of accusations, expressed by people with close ties to the Social Democratic Party, were never confirmed but they fed on one of the most persistent ideas about the problem with asylum determination procedures in Western states, namely that asylum applicants abuse the system to be granted welfare benefits from the state.

¹⁸ In medical terms this condition is called depressive devitalization syndrome. For a medical exploration of the syndrome, see Von Folsach & Montgomery 2006; Jans et al. 2011.

¹⁹ The appointment of Marie Hessle was controversial from the start, see Tamas 2009.

Framing for Humanitarianism: A Dysfunctional System

Where the efficiency frame located the problem of protracted proceedings in the asylum applicants' (mis)use of a regulation, the humanitarian frame formulated the problem as a dysfunction of the asylum system itself. In the Swedish parliamentary debates about the court reform that took place in May and September 2005, the opposition in Parliament accused the government of inhumane treatment of asylum applicants, particularly referring to their handling of the apathetic children. The stories about the sufferings of these children were powerful rhetorical tools for the humanitarian frame. An example of these kind of stories is found in the speech of a parliament member of the Christian Democratic Party:

The past year, at least 100 children from asylum seeking families have been admitted to child psychiatry clinics. Their reality is so terrible that it is hard to take it in emotionally and mentally. Nor is it surprising that these children react the way they do. Which child in any country in this world can witness his or her mother being raped and family members beaten and murdered without being terribly distressed? The images of these children have created a wave of compassion among the Swedish people, but also a storm of outrage at what is perceived as politicians' and authorities' insensitivity (Addr. 31, Sven Brus, Christian Democratic Party, 2004/05: 130).

The storytelling from the proponents of the court reform culminated on the final chamber debate about the court reform (prot. 2005/06:03). During that debate, the gallery was filled with refugee advocates which illustrates how closely allied the proponents of the court reform were with refugee advocates outside of Parliament. When the Minister of Migration, Barbro Holmgren, began her speech in the chamber, the audience at the public gallery disagreed so loudly that the president of the chamber decided to evacuate the entire gallery before the Minister could continue her statement. According to the chamber minutes, the president of the chamber had to remind the audience not to disturb at least one more time when the Minister had the floor as well as not to applaud two times when speakers from the smaller parties made their statements (prot. 2005/06:03). The affirmative relation between the audience and the parliament members in favor of the court reform was confirmed by a member of the Liberal Party who referred to one person in the audience by describing his personal asylum situation in the following terms:

Mr President! Here in the gallery sits a few of the people who for years have been waiting and waiting to start a new life in Sweden. Among them is Mohammed Walid Shawali, stateless Palestinian. Mohammed has lived in Sweden since July 2000. In 1869 days, this young man has waited, and

some members of this Parliament, perhaps even a majority, want him to continue to wait (Addr. 2, Mauricio Rojas, Liberal Party, 2005/06:03).

This statement continues with a long and detailed story about that man's struggles to be granted asylum in Sweden. Statements like this, which included personal stories of asylum seekers sufferings and described the member of parliament's personal engagement in individual asylum cases, dominated the entire parliamentary debate.²⁰ These stories help to create a coherent frame which position the court reform as the only humane alternative in the policy conflict, and moreover succeeded to put the responsibility for the system's maltreatments directly on the Social Democratic government.

Prescriptions for Actions

A frame is not complete if it does not prescribe particular guidelines for actions. The two frames that have been described in this chapter do prescribe guidelines for actions. The government suggested a special court as the best solution to the low trust of the system, while the opposition parties proposed administrative courts. In addition, the small opposition parties, backed by the public mobilization for refugees outside of Parliament, demanded a refugee amnesty as a way to make up for the dysfunctions in the former asylum system. That demand did, however, meet resistance from both the Social Democratic Party and the Moderate Party, who argued that it would be against the principles of administrative justice.

Framing for Efficiency: Special Courts or Status Quo

Backed up by the Migration Agency and the AAB, the Social Democratic Party's solution to the problem of low public trust for the asylum system was to transform the AAB into a special court. A special court would, similar to the administrative courts, apply adversarial procedures and use increased oral hearings. The main reason for an arrangement with a special court instead of administrative courts was that it would be less expensive, according to a government report (ds. 2000:45, 104). Parliament was not

²⁰ Similar stories were found in the following speeches: Addr. 4, Ulla Hoffman (Left Party); Addr. 9, Birgitta Carlsson (Centre Party); Addr. 10, Peter Eriksson (Green Party); Addr. 55, Anne-Marie Ekström (Liberal Party); Addr. 56, Kalle Larsson (Left Party); Addr. 62, Annika Qarlsson (Centre Party); Addr. 67, Gustav Fridolin (Green Party); Addr. 73, Mona Jönsson (Green Party); Addr. 88, Birgitta Olsson (Liberal Party).

persuaded by the government's suggestion to install a special court-model and therefore decided in November 2001 that the AAB should be abolished and assigned to the government to prepare for a relocation of the appeal instance to the administrative courts (bet. 2001/02:SfU2).

The government did not execute Parliament's decision but instead presented a new government bill (prop. 2003/04:59) which aimed to solve the problem of protracted proceedings. The suggestion did not take into account that Parliament already had taken a decision to decommission the AAB. Instead the bill was formulated as if the AAB would act as the appeal instance in asylum cases in the future as well.

This bill was rejected by Parliament and the frustration among the proponents of a court reform was clearly articulated. The government was accused of being "arrogant towards the parliament" (mot. 2003/04:Sf25) and using "delaying tactics" (mot. 2003/04:Sf25; see also mot. 2003/04:Sf24; mot. 2003/04:Sf21) that were "noteworthy from the factual as well as the constitutional point of view" (mot. 2003/04:Sf25). This ignorance of Parliament's decision to decommission the AAB led to an even more conflictual relation between the Social Democratic government and the opposition parties over how the asylum system should be governed.

Framing for Humanitarianism: Administrative Courts

In 1999, the parliamentary committee presented its final Official Government Report called "Improved Administrative Justice in Asylum Cases" (SOU 1999:16). The committee had investigated three different reform alternatives of the asylum procedure, but none of them included a system that kept the AAB (or a special court) as the final appeal instance (SOU 1999:16, 221-233) although this had been one of the options in the government directive.

The report suggested that the appeal authority would be relocated to the administrative courts and thus the AAB would be decommissioned. According to the committee report, the benefits of this suggestion were that transparency, public trust and efficiency would increase. The administrative court procedure would allow an increased use of oral hearings; this was expected to speed up the proceedings and improve the general trust among the public and asylum applicants within the asylum system. The adversarial model of procedure was expected to improve the investigations as both parties in the procedure would be imposed on to hand in relevant evidence which also would ease the work load for the decision-makers. It was additionally argued that it "might not in all cases be an advantage for

an individual [asylum applicant] to be ‘contradicted’ by a counterpart” (SOU 1999:16, 207). The administrative courts were additionally presented as having the advantage of being situated within the “court environment” which was assumed to “make it clearer that decision-making even in this area of law has, from the state, predetermined parameters to act within” (SOU 1999:16, 19).

The committee suggested that the three administrative courts in Stockholm, Malmo and Gothenburg should handle the appeals, thus giving these courts the opportunity to build up the special competence that was needed in asylum cases. The committee trusted the judges at the administrative courts to have a natural “interest in international relations and human rights issues about other countries” (SOU 1999:16, 296). The judges’ interests to learn about human rights issues and international relations was understood to be a sufficient substitute for the loss of country specific competence that existed at the AAB.

The officers at the Migration Agency would be required to improve their judicial competence in order to be able to fulfill their new role as adversarial party in the court procedure and to “be able to reach the same level” of judicial knowledge as the public counsels, according to the Official Government Report (SOU 1999:16, 298). The logic underlying this suggestion to exchange the specialist knowledge at the AAB with judicial knowledge at the administrative courts was that decision-makers with long experience of asylum determination would become cynical and numb towards the tragic stories that asylum applicants told and lose the ability to feel compassion with asylum applicants.

The government’s instruction to investigate how to improve the government’s steering of the assessments of protection needs was simply dismissed and instead the committee’s suggestion was to abolish the government’s authority to issue guiding decisions in individual cases. It was claimed that continued political control over asylum determinations would threaten the independence of the administrative courts, and that this arrangement went against the “principles of separation of powers” (SOU 1999:16, 311). The Administrative Court of Appeal in Stockholm was presented as a proper final appeal instance and would therefore be authorized to issue precedents in asylum cases.

A minority of the committee members in the Commission of Inquiry from 1997 made reservations against the proposal and proclaimed a shared

dissenting position in the report.²¹ The minority consisted of representatives from the Left Party, the Green Party, the Liberal Party and the Christian Democratic Party. They wanted asylum cases to be decided by courts already at first instance decision-making. The reason for this was that they did not trust the Migration Agency's capacity to make decisions with high degree of administrative justice. Among other things, they referred to a research report by several Swedish legal scholars that had stated the decision-making at the Migration Agency (and the Aliens Appeals Board) suffered from administrative justice deficits such as not treating similar cases equally and having low levels of predictability. Furthermore, they claimed that the inquisitorial system resulted in an unfair division of the burden of proof, to the asylum applicants' disadvantage (SOU 1999:16, 600). The minority also suggested that asylum appeals would be distributed among more administrative courts in order to prevent "mass proceedings" of them and that all asylum cases would have the ability to appeal in two instances instead of only one, thus making the Administrative Supreme Court the final instance (SOU 1999:16, 603).

Taking these aspects into considerations, the minority's position in fact proclaimed a more radical judicialization of the asylum procedure than what the majority of the committee wanted. This indicates that within the parliamentary committee, the conflict line was not drawn between those who sided with the Social Democratic government's position and those who wanted to drive the asylum system in a judicialized direction, but between those who wanted a modest judicialization and those who proclaimed a radical judicialization of the asylum procedure. This conflict line did not agree with the left-right lines either, as the Left Party and the Green Party, who were the supporting parties to the Social Democratic minority government, shared position with the Liberal Party and the Christian Democratic Party, which were two of the right-wing parties in Swedish Parliament.

By prescribing the administrative courts as the solution to the problems of inhumane rejections of asylum claims, the humanitarian frame succeeded to connect the administrative courts to inclusive decision-making. The component that glued the administrative courts and inclusive decision-making together was administrative justice. As the problem in the humanitarian frame was defined as a problem of implementation and not of policy formulation, something in the procedure of determining asylum claims needed to be changed. The adversarial procedures, the oral hearings

²¹ Other reservations among single committee members were also made, but I have not conceived of them as central protagonists in the political process, as they are experts and not from the political parties.

and the fact that administrative courts were ordinary courts with ordinary judges (without specialization in asylum law) was supposed to guarantee administrative justice in asylum determinations, according to the humanitarian frame.

Framing for Humanitarianism: Refugee Amnesty

The humanitarian frame included more prescriptions for actions than a reformed asylum procedure. A proposal to regulate undocumented migrants in Sweden, articulated as a demand for a general amnesty for “hidden refugees”, had been raised under the broad movements Easter Petition and Refugee Amnesty 2005. By the time the court reform was presented in Parliament, all five small parties, from left to right, supported the suggestion about a general refugee amnesty. The reasons given by the advocates of an amnesty were that it would function as a “reset” [*nollställning*] of the harmful former system. The idea was to start the new appeal system without large backlogs from the old system. There were also humanitarian reasons for the demand, in which an amnesty would serve as a “restitution for historic injustices caused by the old order” (Nielsen 2016, 118).

The proponents of the amnesty showed reluctance to use the word amnesty, which originally was coined by civil society outside of Parliament. In one of the earlier parliamentary debates about an amnesty, a member of the Left Party expressed the concerns with amnesty in the following terms:

There are at times in the debate a concept called “amnesty” used. We are not so sure of that particular name. It implies that one has committed a crime which you then get absolution from, to be freed from criminal liability for an unlawful action (Addr. 108, Kalle Larsson, Left Party, 2004/05:45).

A characterization of the demand in terms of a reset was more appropriate, according to this parliament member. Reset was also the concept that the proponents in Parliament continued to use interchangeably with the word amnesty when debating this demand.

One of the most salient advocates of a refugee amnesty was Gustav Fridolin, a member of the Green Party, who argued for a reset by stating that it would relieve the courts from a “heavy backpack with spoiled human destinies” (Addr. 38, Gustav Fridolin, Green Party, 2004/05:130). The metaphor of a backpack was first used by the Easter Petition in their joint call for a refugee amnesty but was frequently used by the members in Parliament. This metaphorical language of resets and heavy backpacks when presenting the amnesty proposal indicates that the court reform

would make a dramatic change in the asylum system and no more inhumane rejections or “spoiled human destinies” were expected to occur in the new court system.

Framing for Efficiency: Individual Assessments

The opposition parties in Parliament lost their most important actor when purporting the amnesty demand, namely the large Moderate Party. Instead of supporting the amnesty proposal, the Moderate Party sided with their old alliance partner in migration issues and supported the Social Democratic government’s rejection of that proposal. A member of the Moderate Party expressed the reasons for not supporting this suggestion with reference to the right to have an individual assessment. He stated:

Either you believe in the principle of individual assessment or you do not. We have, from the moderate side, chosen to uphold the principle of individual assessment (Addr. 29, Tobias Billström, Moderate Party, 2004/05:130).

The Minister of Migration responded to the amnesty demand in similar language when stating that “much has been said today in this chamber about the importance of administrative justice” and then asked how the proponents of the amnesty demand at the same time could:

Submit a proposal that is anything but administrative just, namely that there should no longer be the claims that are assessed, it is no longer whether you are a refugee or not that should be determined, but it is time spent in Sweden that will decide if you get a residence permit or not? (Addr. 127, Barbro Holmberg, Social Democratic Party, 2004/05:45).

Together the Social Democratic Party and the Moderate Party reached a majority in Parliament which allowed them to reject the amnesty proposal. By claiming to be the faithful protectors of administrative justice, the Moderate Party and the Social Democratic Party attempted to capitalize on the value of administrative justice that had been frequently used by the advocates of the humanitarian frame. This shows how elusive the concept of administrative justice was at that time. It was used as a tool for promoting a more generous refugee policy by the humanitarian frame but it also worked to oppose a proposal for a more inclusive refugee policy. The meaning of administrative justice fluctuated from being a synonym for adversarial procedures and oral hearings (in the humanitarian frame) to being equivalent to individual assessments (in the Social Democrat’s and Moderate’s responses to the amnesty proposal).

Results of the Policymaking Process

On May 31, 2005, after negotiations between the Social Democratic government and the two supporting parties, a government bill (prop. 2004/05:170) was presented. This bill followed to a large degree the recommendations that the parliamentary committee had presented in the final report in 1999 (SOU 1999:16), complemented with the recommendations in the governmental official report (SOU 2004:74) about how the new Aliens Act should best be formulated to adjust to a court procedure. The bill also included many of the suggestions that the social democratic government had presented in the Government bill about “new applications” (prop. 2003/04:59). In September 2005, Parliament approved the government bill (prop. 2004/05:170) and on March 31, 2006, the AAB was decommissioned and the first appeals on asylum cases became assessed in the administrative courts in Stockholm, Malmo and Gothenburg under the new Aliens Act (UtiL 2005:716).

Despite the fact that the government succeeded in reaching a majority, with the support from the Moderate Party, to reject the amnesty proposal, the Green Party and the Left Party succeeded in pressuring the government to accept a temporary law on impediments to enforcement of deportation decisions in the upcoming budget negotiations that fall (Hedlund, Cederborg & Zamboni 2016). The temporary law entered into force in November 2005 and persisted until the new Aliens Act came into force in March 31, 2006. The temporary law gave some categories of formerly rejected asylum applicants a new chance to get their claims determined. These categories were families with children who had been residing in Sweden without permission due to a rejected asylum application, and rejected asylum applicants where the deportation could not be enforced due to the situation in the receiving countries. As a remission to the Social Democratic argument about the importance of upholding administrative justice principles, an individual assessment was conducted in every case and not everyone who applied for residency was approved. In total 17,300 residence permits of the 30,000 lodged were granted due to this temporary law (Stern 2008, 44; Borevi 2012, 72f).

Conclusions

The result of the policymaking process reflects both policy frames. The government, in advocating the efficiency frame, had been outmaneuvered on the special court suggestion, but gained influence over the possibilities to lodge new applications by formulating restrictions in the new Aliens

Act. Initially, the government had been concerned about their delimited possibilities to control the immigration to Sweden if the appeal authority were relocated to courts. During the policymaking process, that concern was however dropped and the government seemed to accept the loss of that control instrument. One possible explanation is that the politicized asylum system put too much responsibility on the government for controversial deportations. The media reported frequently on the sufferings and hardship for people, particularly children, with rejected asylum applications living as undocumented in Sweden (Sager 2011, 36ff) and it created bad publicity for the government. As the policymaking process developed, it became necessary for the government to de-politicize the question about assessments of protection needs, and one effective way of doing so was to distance the political branch from the policy field or issue (Flinders & Buller 2006). The court reform was thereby an effective way for the government to create distance between the political branch and the implementation of refugee policies.

The advocates of the humanitarian frame succeeded in relocating the appeal authority to the administrative courts and eventually imposing a temporary law that granted amnesty to rejected asylum applicants and the right to stay permanently in Sweden. Many of the problems presented in the humanitarian frame concerned restrictive assessments of asylum claims at the migration authorities and the solution was a relocation of the decision-making at appeal instance to the administrative courts.

According to the humanitarian frame, this relocation of appeal authority would result in enhanced administrative justice. Administrative justice was supposed to be enhanced by adversarial procedures where the applicant and the Migration Agency presented their claims in front of the administrative courts' judges. The possibility to have an oral hearing was also presented as a way to enhance administrative justice. The humanitarian frame presented the judges at the administrative court as naturally interested in human rights and therefore they would not produce inhumane rejections of asylum claims. Moreover, the humanitarian frame gave the impression that the public counsels would be more knowledgeable than the litigators from the Migration Agency about socio-political situations in the countries of origin.

In the "humanitarian frame", the AAB was constructed as the root cause for restrictive policies, and the courts positioned as the inclusive alternative despite the fact that the new Aliens Act lacked any formal regulations which were aimed towards a more inclusive refugee policy. The debate about a refugee amnesty contributed further to establishing the meaning of the courts as bearers of humane decision-making. The metaphors of a

reset and getting rid of heavy backpacks contributed to framing the court reform as a solution to the problem of inhumane rejections of asylum claims. Therefore, what the humanitarian frame communicated was that the compassionate and refugee-friendly side of Parliament won the political conflict, and accordingly that the relocation of asylum appeals to the courts would lead to a less restrictive refugee policy. The administrative courts were in light of this framing perceived to be in favor of the asylum applicants, and a control instrument against the restrictive policies advocated by the government.

The dominance of the humanitarian frame in motivating the court reform communicated a “*verboden goal*” (Yanow 1993), i.e. a message which everyone understood but which could not be articulated publicly. The silent message of the court reform was that Swedish refugee policy could be both strictly regulated, and still not reject, expel or deport asylum seekers with painful and brutal experiences. No one in the policymaking process questioned the idea that Sweden should have a regulated immigration policy. Still, the dominance of the humanitarian frame created the impression that if the administrative courts took over the responsibility for asylum determination, the inhumane consequences of a regulated immigration politics would never happen. This message was communicated with the help of powerful stories about the dysfunctional asylum system which rejected asylum seekers together with metaphorical language about a reset and heavy backpacks, which would position these disturbing stories into a distant past.

The only participants in the policymaking process who openly resisted the construction of administrative courts as guarantors of administrative justice were the judicial referral bodies. They questioned the ideas that adversarial procedure and oral hearings would lead to enhanced administrative justice and transparency, and that a relocation of appeal authority to administrative courts would relieve asylum determinations of its uncertain assessments and dependency of knowledge about socio-political situations in countries of origin. If they had to deal with these difficult assessments, they were more concerned about the legitimacy of the administrative courts than they were about the low public trust for the asylum system. The judicial referrals also directed explicit criticism to the implicit assumption in the humanitarian frame that administrative courts would solve the legislators’ dilemma of accepting a regulated immigration politics but not being willing to take the responsibilities for the, sometimes inhumane, consequences of such policy.

The result of the policymaking process was nevertheless that the administrative courts were given the authority of asylum appeals and consequently also for the application of law in this area of legislation. The explicit expectations on the courts was to enhance administrative justice in this procedure, but there was also an implicit expectation from the legislators that this reform would temporary conceal and harbor the contradictory values of Swedish refugee policy. How the judicial workers at the migration courts handled this is the issue the guides the following chapters.

6. Practicing Adversarial Roles

To review what has been covered thus far, the analysis in chapter four demonstrated that the adversarial design rearranged the division of responsibilities among the parties of the asylum procedure. The judges have responsibility to make sure that the claims are sufficiently investigated to make a decision, but they are dependent on the two parties to provide the necessary information. Adversarial procedures are designed on the premise that the parties in the procedure have equal access to resources and possibilities to present their claims in front of the judge. This prerequisite of a power balance is usually described as the parties being “equal in arms” (Jolowicz 2003). In order to be equal in arms, the parties have to possess equal resources to investigate and provide evidence, but also equal legitimacy as carriers of knowledge in the court procedure. To have legitimacy as a carrier of knowledge is very important in asylum determinations, as most of the knowledge that the decision-maker receives about the case is oral information or contextual information about how the socio-political situation in countries of origin evolves.

The frame analysis in chapter five revealed that the expectation of the adversarial setup of the procedure was high. It was perceived the adversarial setup would lead to richer investigations when the parties were more active in the investigation. The policymakers thought that the Migration Agency would have to improve their investigation skills in order to compare with the public counsels’, who were perceived to be better legally trained. There were no articulated concerns regarding a reversed scenario, where the public counsels would have difficulties meeting the Migration Agency’s knowledge and resources.

This chapter analyzes the judicial workers’ meaning constructions about their roles in the adversarial design of the procedure. The analysis focuses on the interviewees’ perceptions about division of responsibilities and resources of each party in this triad: the litigator, the asylum applicants with public counsel, and the judge. It also raises vital questions about the process. Who is perceived to possess trustworthy information about the socio-political situation in the countries of flight? And who is perceived to possess trustworthy information about what is a plausible flight narrative?

By conducting that analysis, the second research question about how the judicial workers attributed concrete and practical meaning to administrative justice will begin to be answered.

Litigators as Adversarial Party

Litigators from the Migration Agency have a dual role to fulfill in the asylum appeal procedure. On the one hand, they must act as an adversarial party in the asylum appeal procedure, which means examining the asylum claims in search of whatever does not meet the criteria for achieving protection. On the other hand, they also represent the Migration Agency as an expert agency on asylum and, as such representatives, should assist the investigation of asylum claims in an “objective, neutral and impartial manner” (Diesen 2012, 200). The litigators’ expertise is connected to the Migration Agency’s role in collecting COI. The Migration Agency produce a database called *Lifos*, where COI is collected and made searchable. The database consists of country reports conducted by the Migration Agency as well as reports from other countries’ migration agencies (in particular, the UK’s and Norway’s reports were appreciated among the interviewees) and NGOs such as Amnesty, UNHCR and Human Rights Watch. The *Lifos*-database is open for public access, and is a very well-used source of COI for litigators, judges and public counsels.

A role interpretation as adversarial party is evident in accounts from litigators, throughout all three courts.²² In these accounts, the litigator’s prime task is described to be to uphold the Migration Agency’s decision from the first instance and to show that the asylum applicant lacks credibility in the oral hearing. One litigator claims that he or she would “defend a decision even if I do not really believe in it, I probably do that, and it is my job also to do so.”²³ Another litigator explained that it was always possible to put extra effort in finding sources that support the Migration Agency’s standpoint.²⁴ Two litigators talked about how pleasant it was to be party to the case and relieved of the burden to decide. “You can drive your own race, and it is up to others to assess the credibility and the source, so to speak”, as one of them put it.²⁵ A situation where the litigator would

²² Interview sources: L2, L3, L5, L7, L8.

²³ L8.

²⁴ L5.

²⁵ L2.

allow the appeal was merely considered something that “theoretically could happen”²⁶ but never did so in reality.

Another side of being positioned as one of two adversarial parties in the court proceeding was that the court could scrutinize the litigators’ knowledge claims. One interviewee used the metaphor of a stage when describing how the litigators have to act “in front of an open scene”²⁷ to show that the litigators were exposed and scrutinized as one of two parties in the procedure. This exposure made it important for the litigator to appear as neutral experts during the appeal procedure. Two litigators referred to how ruthless behavior from the litigator towards the asylum applicants made the court (and particularly the lay judges) sympathetic towards the asylum applicants, which was not a positive move for the litigator in the role of adversarial party.²⁸

Among the two other groups of judicial workers, the role interpretation as adversary party was viewed as an inappropriate role for the litigators, but it nevertheless was a role that they occasionally spotted among the litigators. From the judges’ perspective, the most important characteristic, for a litigator was the ability to change standpoint if new circumstances were added to a case.²⁹ The judges talked about this as a behavior that demanded “courage”³⁰ and “fearlessness”³¹ from the litigators. Moreover, it required that the litigators were able to improvise and be open-minded. This resembles the metaphorical picture that one litigator applied to the court procedure as a stage where the actors are exposed and under a certain amount of pressure. The judges, however, talked about litigators who change their minds when faced with new information during the course of the proceedings as very rare. Instead some of the judges mentioned that some of the litigators were behaving ruthlessly, describing their behavior as “cynical”³² and “arrogant”³³. In an informal conversation between myself and a judge after an oral hearing, the judge’s evaluation of the hearing was that “the litigators tend to be quite pushy, but it’s good not to disturb the conversation”.³⁴

From the public counsels’ accounts, it was possible to extract similar perceptions about the litigators as the judges had. The public counsels

²⁶ L3.

²⁷ L7.

²⁸ L8, L9.

²⁹ J2, J3, J4, J5, J6, J7.

³⁰ J2.

³¹ J4.

³² J5.

³³ J2.

³⁴ Observation 5.

wanted the litigators to be less constricted by the Migration Agency's decision from the first instance and to take more impressions from new evidence that could come up during the appeal proceedings.³⁵ The public counsels also experienced how litigators sometimes behaved ruthlessly in the court. Three of the public counsels described some litigators as having routinely bad behavior and were "cynical", while others always acted "friendly" and "objectively".³⁶ They, in similar line of arguing as the litigators, however, thought that ruthless behavior from the litigators' side increased the chances of winning the case for the asylum applicant.

The public counsels described how the litigators used methods to undermine the credibility of the applicant. It could be to intensively search in the protocol from the asylum hearing at the Migration Agency for deficiencies in communication between the asylum applicant, the interpreter and the migration officer and then attempt to construe it as credibility defects in court.³⁷ They could use references to specific COI-reports in their decisions in such a way that only information to an applicant's disadvantage became cited.³⁸ Other studies has found similar practices of selective use of COI among migration officers in UK and France (Gibb & Good 2013, 303) and in Sweden (Johannesson 2012, 77). Research on Danish COI has found that boundaries between COI and policy goals often are blurred and that the production of knowledge in COI may become a site of political negotiation (Rosset & Liodden 2015).

Litigators as Neutral Experts

The litigators did not only express their roles in the adversarial procedure as counterparts to the applicants, but also described their roles as experts on COI. This role perception is also found among the litigators quoted in the previous section, which demonstrates that most of them were explicitly struggling in the interviews to navigate between the role as adversarial party and as a neutral expert on COI. An illustrative account that positions the litigators as neutral experts rather than adversarial party is this:

³⁵ PC1, PC4, PC8, PC9.

³⁶ PC3, PC4, PC5.

³⁷ PC3, PC4.

³⁸ PC7, PC8.

One must have the courage to do right regardless of what any manager or anyone else says. One must have the courage to say in court, I actually think that the one that have written this decision has probably been a little tired.³⁹

This statement suggests that it is a collegial pressure among the litigators at the Migration Agency to not admit mistakes conducted in first instance decision-making. However, two of the litigators explicitly stated that the main goal for them was not to win a case, but to make sure that the decisions follow established practice and to get clarifications from the court on issues that were not settled.⁴⁰ One of the litigators admitted to having experienced feelings of wanting to win the cases as a newly appointed litigator but had realized now that this was not the purpose of the job.⁴¹ In similar terms, another litigator claimed to have colleagues “that think that a litigator’s main task is to make sure that the Migration Agency’s decision holds in court.” However, for this interviewee, that was not the correct way to approach the litigators’ role; instead, the litigator stated “I want to be correct”.⁴²

One of the questions I posed during the interviews was who of the actors in the court procedure the interviewee considered to have most expert knowledge about the socio-political situation in the country of origin. Because the investigation responsibilities, as a consequence of the adversarial procedure, have been distributed between the three parties in the trial, this question provided information about who among the parties was deemed to be a legitimate carrier of knowledge.

The litigators answered with confidence that it was they who had most expert knowledge regarding COI in general.⁴³ They compared their competence with the other judicial workers and concluded that none of the others could compete with the Migration Agency’s expertise in COI matters. The public counsels were particularly unequipped to compete with the litigators’ competence, according to several litigators.⁴⁴ Both the litigators and the judges expressed that the competence among the public counsels differed severely, and that some were very skilled while others

³⁹ L9. Original quote in Swedish: "Man måste ha mod att göra rätt oavsett vad någon chef eller någon säger. Man måste ha modet att i domstolen säga jag tror faktiskt att de här som har skrivit det här beslutet har nog varit lite trötta."

⁴⁰ L1, L5.

⁴¹ L1.

⁴² L9.

⁴³ L1, L3, L6, L7, L8, L9. One of the litigators (L4) answered differently, stating that it was the asylum applicant that had most knowledge about his or her own country.

⁴⁴ L3, L8, L9.

were unable to present their clients' best interests.⁴⁵ Some judges indicated that some public counsels were more interested in making money than helping the applicants in the best possible way.⁴⁶ The litigators also described the public counsels as a diverse group in terms of competence.⁴⁷ From the perspective of the litigators, the public counsels posed questions to the asylum applicants about irrelevant matters and presented evidence that did not concern the crucial aspects of the cases. Additionally, the litigators repeatedly talked about how some public counsels acted unprofessionally during the oral hearings, personally attacking the litigators, calling them "idiots" and accusing them of not doing their job properly.⁴⁸

The construction of the litigators as the most knowledgeable actors in the asylum procedure was confirmed by the judges. Several judges agreed that it was the litigators who had most expert knowledge about the socio-political situation in other countries.⁴⁹

The public counsels gave a completely different answer than the litigators on the question concerning who had most expert knowledge on COI. Three of them claimed they had the most knowledge of all the actors in the procedure. But this was due to these three public counsels' interest in particular countries and their long experience of representing clients from these countries in the asylum process.⁵⁰ Other public counsels stated that none of the actors in the procedure could in general be said to be more knowledgeable than the others. It was instead dependent on personal interest if an individual had more expert knowledge than the others.⁵¹ Two public counsels directly rejected the idea that the litigators would be the experts in the new adversarial procedure.⁵² One of them claimed:

The [Migration] Agency claims to do good investigations, but that is not true. They are standardized, copied from older decisions, referring to old COI that does not fit reality. They do not know what happens in the country. Their knowledge is not good, very incomplete.⁵³

⁴⁵ J2, J4, J5, J6, J7, J8.

⁴⁶ J3, J5, J6.

⁴⁷ L2, L3, L4, L5, L6, L7.

⁴⁸ L8, L7, L1, L4.

⁴⁹ J2, J5, J6, J7.

⁵⁰ PC3, PC5, PC9.

⁵¹ PC4, PC7, PC8.

⁵² PC4, PC8.

⁵³ PC4. In Swedish: "Verket [Migrationsverket] påstår att de kan göra bra utredningar, men det är inte så. Det är schablonmässigt, kopierat från gamla beslut, hänvisar till gammal landsinfo som inte passar verkligheten. De känner inte till vad som händer i det landet. Deras kunskaper är inte bra, väldigt bristfälliga".

As was discussed in chapter three, the selection of public counsels for this study probably consisted of the most experienced, and therefore were not representative for the whole population of public counsels. This selection bias should be taken into consideration when analyzing the answers about their role perceptions. It is plausible that other less experienced public counsels interpret their role in the appeal procedure differently or at least with less devotion and confidence than these public counsels.

What this analysis shows is that the wide diversity between different public counsels' competence construct them as having a generally low degree of legitimacy as carriers of knowledge. Each public counsel therefore has to prove that she or he has higher competence than the "average public counsel" and therefore can be a legitimate carrier of knowledge during the court proceedings.

The litigators were highly aware of the imbalance in resources that their expertise and knowledge created. Many of them expressed concerns about the system being unfair in this regard.⁵⁴ One of the litigators formulated the consequences of this imbalance in resources between the two adversarial parties in a drastic manner when stating:

In a migration court process, the asylum seekers have the burden of proof while we on the other hand do not really have to prove anything, but we have all government resources on our side.⁵⁵

Three of the litigators mentioned situations where, during breaks in the oral hearings, they had tried to help the public counsel to find better arguments by advising them to look in particular COI-reports that they knew would support the asylum applicants' claims.⁵⁶

One of the judges reflected on the Migration Agency's legal opinions, which can be understood both as expert statements and as a pleading from one of the parties:

The Migration Agency's legal opinions are a party plea, but on the other hand, just like the insurance office and tax office, they are from an expert agency. The courts are not an expert Agency [...] When a legal opinion describes how it is in a particular country and how the Migration Agency assesses the situation there, one should always take that with a pinch of salt because it's actually a party pleading that they have been there [in the country] and they have made some kind of investigation. And then, of course,

⁵⁴ L1, L6.

⁵⁵ L9.

⁵⁶ L1, L7, L9.

they should as an agency, a Swedish agency, also pick up things that are of benefit to the individual [asylum applicant].⁵⁷

This statement makes it clear that the conflicting roles available to the litigators do not only have consequences for how the litigators interpret their own roles, but also for how the judges evaluate the information given to them by the litigators. What makes this role-conflict problematic in terms of administrative justice is not so much that the litigators use certain methods to support their claims (because that is what adversarial parties are supposed to do), but that they can do so under pretense of acting as neutral experts, providing the court with objective information about the socio-political situation in foreign countries.

Public Counsels as Adversaries

According to both international and European standards, the burden of proof initially rests with the asylum applicant since the claim-making is understood as a right to a benefit; this is instead of imposing restrictions on the asylum applicants. In this view, it is a “task for the appealing applicant to prove the wrongfulness of the first instance decision by proving that the preconditions for asylum do exist, contrary to what the appealed decision says” (Staffans 2012, 74). However, once the asylum applicant has managed to satisfy the initial obligation of presenting evidence for the claims, the decision-making authorities also have a shared responsibility to investigate the applicant’s claims in an objective manner (Staffans 2012, 75).

Staffans shows that in different European countries, despite all of them subject to the directives of the Common European Asylum System, the answer to the question of what the applicant must do to fulfill its burden differs appreciably. She notes that adversarial procedures seem to put more burden on the applicant than inquisitorial ones. The English adversarial appeal procedure, “is skeptical towards any attempts to shift the burden of proof even slightly away from the appellant” (Staffans 2012, 207).

⁵⁷ J5. In Swedish: “Migrationsverkets rättsliga ställningstaganden är en partsinlaga, men å andra sidan så precis som försäkringskassan och skatteverket så är det en expertmyndighet, domstolarna är ingen expertmyndighet [...] När det kommer ett sådant där rättsligt ställningstagande om hur det ser ut i ett visst land och hur migrationsverket bedömer situationen får man ju ta det med en nypa salt för att det är ju faktiskt en partsinlaga, men de har varit där och de har gjort någon form utav utredning. Och sedan så ska de ju som myndighet, svensk myndighet så ska de ju också även plocka fram sådant som är till fördel för enskilda.”

Another closely related matter which is important for how asylum claims are assessed, is how high the standard of proof is set (Thomas 2011, 41). The standard of proof in asylum procedures can be described as the “threshold to be met by the claimant in persuading the decision-maker of the truth of his or her factual assertions” (Gorlick 2003, 367). This standard is set below the standards in criminal procedures where the prosecutor – who has the burden of proof – must prove beyond any reasonable doubts that the accused has committed the crime. In asylum procedures, the standard of proof is usually set by formulations such as “reasonable likelihood” or “good reasons” to assume that the claims are true. In Swedish administrative law, the standard of proof is set comparatively high, prescribing that the asylum applicant should have made it *plausible* that he or she is in need of protection (Thorburn Stern & Wikström 2016, 171).

In order to be able to fulfill that burden of proof and meet the standards of proof, the asylum applicant has the right to be assisted by a public counsel. According to the legal framework governing administrative courts, all individuals who are represented as a party in the administrative court process have the right to legal counsels. The regulations concerning public counsels in asylum cases were not changed in any significant way in the new Aliens Act in 2005 (Diesen 2012, 296). Except for some special situations, all asylum applicants should be provided a public counsel in matters concerning expulsion (Diesen 2012, 290). The resources given to the applicant in order to fulfill this initial burden of proof has thus not changed in the transformation from an inquisitorial to an adversarial procedure, although the adversarial model as such indicates a stronger focus on the parties’ responsibility to present evidence for their claims (Diesen 2012, 158).

In contrast to the litigators, the public counsels did not experience dual roles in the adversarial asylum procedure. As Nagorcka et al has stated, the lawyers in the ideal adversarial system are permitted to act according to a “non-accountable partisanship”, meaning that they only have to be loyal to their clients and could “advocate their clients’ interests with the ‘maximum zeal’ permitted by law, and are morally responsible neither for the ends pursued by their client nor the means of pursuing those ends” (Nagorcka, Stanton & Wilson 2005, 452).

The interviewed public counsels stressed that their primary role was to support the asylum applicant. Many of them also described how they emphasized this during the first meeting with the asylum applicants.⁵⁸ Other public counsels added that they also informed their clients about the boundaries of their support. They could shape the asylum narrative in a

⁵⁸ PC2, PC4, PC5.

more beneficial way for the applicant, but they could never lie in order to make the asylum narrative stronger.⁵⁹ This loyalty to the applicants was also evident in the way the public counsels described their prime function in the court procedure. The public counsels characterized this in terms of arguing, attacking the Migration Agency's motivations, and persuading the court about the asylum applicants' eligibility for international protection.

In the law that governs public counsels in administrative processes in Sweden (1996:1620) it is stipulated that the state bears the cost of the public counsel if the investigation tasks cannot be performed by the court or the public agency handling the case (Diesen 2012, 290). It is the Migration Agency that administrates the payments at first instance and the migration courts that decide how much the public counsel should be paid for their work at appeal level. The Migration Courts regularly lower the requested remuneration to the public counsels, often with the argument that the public counsels spend more time than needed on investigations (SOU 2008:65, 98).

The public counsels stated that if one wants to make money, one should not choose to become a public counsel in asylum cases. Four of them claimed that they did not get properly paid for the work they put into every case.⁶⁰ The result was that they did not do everything that they could do in every case, as they had to calculate how much they would get paid for each task. Among the tasks the public counsels indicated they would do if they were paid for it was to help their clients to write applications for impediments to enforcements of deportation orders, to appeal to international courts and to have face-to-face meetings with the clients to review the reasons for decisions from the migration courts.⁶¹

The public counsels disliked the Migration Agency being assigned to appoint public counsels to the asylum applicants. This arrangement gave the Migration Agency a "psychological power"⁶² over the public counsels and it was also perceived as a complicating circumstance in the relationship between the public counsel and the asylum applicant. Two public counsels claimed to have been deprived of clients due to the Migration Agency's hostility towards them as public counsels⁶³ and another counsel commented that the fear of being withdrawn from the Migration Agency's

⁵⁹ PC8, PC9.

⁶⁰ PC1, PC2, PC3, PC8.

⁶¹ PC3, PC4, PC5, PC8.

⁶² PC2.

⁶³ PC1, PC4.

list of available public counsels might hamper the counsels' willingness to oppose the Migration Agency's opinions.⁶⁴

Apart from verbal or written argumentation, the public counsels could use tools such as calling in witnesses, finding COI that supported the asylum claim or providing relevant documents. The public counsels told stories about how they had won cases by using these "extraordinary" tools.⁶⁵ These stories, however, share an element of being dependent on the courts' willingness to allow them to translate documents, bring in witnesses or inform the court about their knowledge of a situation. Three of the counsels expressed concerns about the time pressure they felt that the judges were driven by at the oral hearings. That made it sometimes difficult for them to scrutinize a case properly, or to supplement the asylum narrative with witnesses or additional country information.⁶⁶

Judges as Impartial Decision-makers

The "principle of ex officio proceedings"⁶⁷ has a long tradition in Swedish administrative law. It puts an extensive investigative burden on the public authorities although it is not stated clearly just what the burden consists of and when it is fulfilled. The main aim of the principle is to achieve materially correct decisions with a high degree of efficiency. This principle is a self-evident element of an inquisitorial procedure, but it has also been incorporated in the adversarial procedure at the Swedish administrative courts. The judges' investigation responsibility in asylum cases is connected to a minimum requirement called investigation standard, which is the minimum investigation that has to be done in order for a case to be able to be decided (Diesen 2012, 204). According to the principle of ex officio proceedings, it is the court's responsibility to make sure that this standard is fulfilled. It is established by precedents that in asylum cases the migration court has to actively provide the facts that the court finds lacking in the investigation if the parties do not hand them in to the court (MIG 2006:1, MIG 2006:7). However, in line with basic idea of the adversarial model, the two parties still have investigation demands which exceed the investigation standard. The result of an unfulfilled investigation

⁶⁴ PC8.

⁶⁵ PC1, PC3, PC4, PC5, PC9.

⁶⁶ PC1, PC3, PC4.

⁶⁷ In Swedish "officialprincipen". "Offizialmaxime" refers to the same kind of principle in German administrative law and it is standard in inquisitorial procedures (Staffans 2012, 129).

demand should be that the counterparty's information will be accepted (Diesen 2012, 204).

How to determine when the investigation standard has been met and which of the two parties should be responsible for any remaining “blind spots” or unconfirmed claims made in the case are up to each judge to determine in every individual asylum case. They can do so more or less actively, depending on their own interpretation of what the principle of *ex officio* proceedings stipulates.

The judges' descriptions of their own role in the asylum procedure showed that it was important for the judges to reach correct decisions based on rich material, but how to act in order to achieve this was open for different interpretations. The interviewed judges talked about how they navigated between, on the one hand, the demands to take active part in the investigation of a case in order to ensure a rich investigation, and on the other hand, the request to step back and let the parties present all relevant facts to the case. The purely “passive” position seemed to function primarily as a fictional position and not a real position of the judges at the migration courts. This fictional position is exemplified in the following quote from one of the judges:

I personally think that we should make sure to have materially accurate decisions. But I believe there are colleagues here, especially those from the other side, from a district court, where you put a lot [of responsibility] on the parties.⁶⁸

Even if all judges recognized that the judges are supposed to be active in fact-finding, some of them put stricter constraints on themselves in that role than others. Three of the judges said that they preferred to let the parties bring all relevant material to the case, and if they saw that some aspect was insufficiently investigated then this was communicated to the parties to pursue rather than investigating it themselves.⁶⁹

In the Handbook from the Swedish National Courts Administration (Domstolsverket, 2007), for migration judges the boundaries of the judge's investigation responsibility is discussed and the idea that a judge is not allowed to investigate claims that speak against the individual is taken up as an issue that is disputed and unsolved among judges in Swedish administrative courts. The handbook states:

⁶⁸ J4. In Swedish: “Jag för min del tycker att vi skall verka då för att ha materiellt riktigt i asylmål. Men jag tror att det finns kollegor här, särskilt de som kommer från andra sidan, från en tingsrätt, där lägger man ju väldigt mycket på parterna”.

⁶⁹ J6, J7, J8.

It is very questionable whether the court should be active when it comes to including materials that are of a disadvantage to the individual. This question is controversial and sensitive and a response to it cannot be given in this context (Domstolsverket 2007, chapter 7.2.2, *author's translation*).

Two of the judges, from different courts, referred to this discussion and concluded that they find it improper to take such an active role in the investigation that they would place the asylum applicant in a more disadvantaged position.⁷⁰ They were, however, in the minority; the majority of the judges prioritized uncovering as much information as possible. The difficult balance between being active in the investigation and upholding a neutral position were mentioned by two of them.⁷¹ One of them explained that when judges ask for clarifications on particular parts of the asylum narrative "we should be impartial, we have to clarify it in a neutral way somewhat", which could result in the case "developing in both directions".⁷² The other judge explained that as the asylum applicant "already has a rejection, this person cannot reasonably be in a worse position"⁷³ and for that reason this judge took an active role in the investigation of the asylum claims. Both these two judges told me stories about particular situations when they had "got a feeling"⁷⁴ or trusted their "intuition"⁷⁵ that some details in a case needed to be further investigated, and therefore asked the law clerk to search for more information. That new information had later been decisive for the outcome of the cases.

The litigators had very coherent perceptions about what the judges should be doing during the court process. The judge should lead the process, and be a strong, clear and authoritative leader during the oral hearings. One of the litigators stated that during the first years after the reform the judges were not as professional as they were today, but the judges had learned from the litigators and now they behaved much more professionally.⁷⁶ This is a further indication of the expert role and influence that the litigators feel that they have over the procedure.

However, according to the litigators, many of the judges let the public counsels and the asylum applicants have too much influence over the oral hearings. During one of the hearings I observed, the judge repeatedly in-

⁷⁰ J1, J7.

⁷¹ J3, J4.

⁷² J4.

⁷³ J3.

⁷⁴ J4.

⁷⁵ J3.

⁷⁶ L7.

errupted the litigator's interview with questions to the extent that the litigator, with observable annoyance, turned to the judge and asked if the judge intended to take over the interview. The judge took a more passive role after that. This incident reveals that such activeness among judges is not always appreciated by the litigators.

On the other hand, among the public counsels some interviewees expressed concerns with the judges' evaluation of the information that the parties handed in to the court. One of them said that the public counsels' investigation efforts were constantly disregarded by the court. "It is like casting pearls before swine", was the expression this interviewee used.⁷⁷ Another public counsel explained that the judges had not understood that an asylum case cannot be assessed according to the same knowledge base as "when you revoke a driver license". This public counsel further questioned the idea that judges do not need to be experts on country information in order to know when a case is sufficiently investigated by asking "how can you, if you do not have a clue about what it looks like in Nepal, determine when the investigation is enough to take a decision?"⁷⁸ Both the litigators' and the public counsels' perceptions of the judges show that there is an inequality in arms between the parties in the procedure, and that the judges' investigation responsibilities cannot fully make up for that imbalance.

Conclusions

The main finding from the analysis in this chapter is that the public counsels (and consequently the asylum applicants) are in a disadvantaged position compared to the litigators. The public counsels' main function is to assist the asylum applicants in the investigation of their claims and to translate them into legal language. The analysis, however, shows that the public counsels are constructed as frequently lacking in both legal competence, experience and economic resources to collect the necessary facts to properly support the applicants. This meaning construction gives them low legitimacy as carriers of knowledge claims. In contrast, the litigators are constructed as neutral experts on COI and as such they gain high legitimacy as carriers of knowledge claims.

⁷⁷ PC1. See PC3 for a similar opinion. One of the public counsels however stated that the judges did a fair evaluation of the information from both parties (PC9).

⁷⁸ PC7. In Swedish: "Men hur kan man, om man inte har en susning om hur det ser ut i Nepal, avgöra när underlaget är tillräckligt för att våga gå till dom?"

The administrative court system in Sweden is aware of the imbalance of material resources between the state representative and the individual, and therefore a particular investigation responsibility is put on the decision-maker, regulated under the “principle of ex officio proceedings”. Analyzing the perceptions among the judges demonstrates that this principle can be interpreted differently by different judges. The judges have wide room to interpret their role in the investigation of asylum claims as more or less active. The majority of the judges preferred to take an active fact-finding role, but they differed in how they interpret the boundaries of this activeness. Some of them understood the boundaries of fact-finding to be met if the facts to be found would risk being disadvantageous for the applicants, while others argued that their role was to actively investigate all claims, no matter which consequences that would have for the applicants. This means that some of the judges saw their fact-finding roles as a way to adjust for the imbalance in resources between the litigators and the applicants, while others saw their fact-finding roles as a way to make sure that the decisions were based on the most accurate information.

This description of the adversarial procedure indicates that the adversarial setup is staged in such a way that the state party, the litigators in this case, have an advantageous position compared to the individual claimant, in this case the asylum applicant. This is the regular setup in the administrative courts’ trials, with the difference being that in asylum appeals the question to be settled is if the claimant should be included in the Swedish community or not. Other administrative court decisions pertain to questions about entitlements stemming from such inclusion (Noll 2005). In that sense, the asylum applicant is in a more vulnerable situation than other claimants – already recognized as members of the community – in the administrative court procedures.

The inequality between the parties becomes visible when analyzing the power relations between the parties *in practice*, as the adversarial procedure “has the great advantage that it effectively ensures the automatic observance of the basics of procedural justice” (Jolowicz 2003, 282). From a distant, macro perspective, it gives the impression of a contradictory debate where each party forwards their argument and opposes the others. But when immersing into the court setting and analyzing the meanings attached to the different roles in this procedure, as was done in this chapter, this procedural setup acquires a different meaning. This chapter demonstrates that the adversarial procedure masked rather than adjusted the inequality in resources that inevitably exists between the state party and the asylum applicant.

7. Practicing Judicial Independence

In chapter four it was demonstrated that the court reform resulted in an institutional structure that kept the appellate organ insulated from political influence and control. This was followed by the discussions in chapter five, where it was shown that the policymakers prioritized judicial knowledge over non-judicial specialist knowledge in asylum determinations. A distinction between political and judicial decision-making, which until then never had existed in the Swedish asylum system, was thereby established both in the rule structure and in the political rhetoric.

In this chapter, the idea that administrative justice is achieved by having judicially independent judges without expertise in socio-political questions is addressed. Moreover, what judicial independence means to the judicial workers and how it can be recognized in others is analyzed in this chapter.

Judicial Knowledge versus Extra-Legal Expertise

As stated above, the court reform did prioritize judicial knowledge over extra-legal expertise. That idea was not fully embraced by the judicial workers at the migration courts, who continued to emphasize the importance of expert knowledge about socio-political situations in countries of origin for correct decision-making.

The interviewees viewed competence in socio-political situations in countries of origins as a prerequisite for making informed decisions in asylum cases.⁷⁹ Apart from mentioning profound knowledge about socio-political situations in other countries, many of the interviewees stated that knowledge about human behavior was also necessary knowledge in order

⁷⁹ All litigators expressed this, as well as four public counsels (PC3, PC5, PC7, and PC9) and three judges (J1, J3, and J4). Four of the judges expressed another opinion (J2, J3, J4, and J7), emphasizing their competence as generic judicial experts who are also adjudicating other administrative law areas such as tax-law cases and family-law cases. These experiences gave them additional knowledge that they found to be useful in asylum cases. Note that the same person might express both perceptions, as J3 and J4 did.

to assess asylum cases.⁸⁰ The reasons for this was that the majority of all asylum cases, both at first instance and appeal levels, were believed to be depended on the assessment of the COI and credibility. One of the public counsels expressed this view as the following:

One of the big problems is the assessment of the situation in the world. Jurisprudential details are not what affects a large group, but that does the assessments of the world. Is it war in Iraq? Can you trust the law enforcement agencies?⁸¹

Many of the judges stated that without the expert knowledge about the socio-political situation in the countries of origin, their chances of making correct decisions were impaired.⁸² In other words, they could not only depend on the parties' arguments, but had to assess the veracity of them by comparing them to their knowledge about the COI. This partly contradicts what the judges said in the previous chapter about the litigators as the most knowledgeable actors in the trials. I interpret this as a consequence of the double role that the litigators have and the confusion that this generates among the judges about how to relate to the litigators. It becomes even more complicated, given that the COI the judges refer to in most cases come from the *Lifos* database, which is under the authority of the Migration Agency.

The former appellate body was often mentioned in the interviews when we talked about the competence required in order to make decisions on asylum. Many of the interviewees who had experience working in the former system stated that the AAB had been prioritizing expert knowledge about COI more than the migration courts did.⁸³ These interviewees explained that at the AAB the officers who conducted the investigations of the asylum cases had been organized into sub-units with special responsibility for particular countries. One of the judges said that the main difference between the AAB and the migration courts was that at the AAB, the

⁸⁰ PC7, L2, L7, L8, J1, J3.

⁸¹ PC7. In Swedish: "Ett av de stora problemen är ju bedömningen av hur världen ser ut. Det är ju det som, juridiskt finlir är ju inte det som påverkar den stora gruppen, utan det är ju bedömningar av hur världen ser ut. Är det krig i Irak? Kan man lita på rättsvårdande myndigheter?"

⁸² J1, J3, J4, J5.

⁸³ PC7, PC8, L1, L5, L8, L9, J1, J3, J7. With one exception, PC4 stated that the Aliens Appeals Board did "poor investigations".

decision-maker was “served” information by the “highly driven and competent” investigation officers, while at the court they had to be more active in the investigation of the cases, like “the spider in the web”.⁸⁴

A shared perception among the judicial workers was that the guidance from the Migration Supreme Court was too parsimonious.⁸⁵ The interviewees expressed frustration with this lack of guidance from the highest judicial instance and one of the public counsels described the judges at the Migration Supreme Court as “arrogant, they think that they are gods”.⁸⁶

This void of country specific guidance makes the legal positions [*rättsliga ställningstaganden*]⁸⁷ from the first instance (the Migration Agency), crucial for decision-making at the courts, according to several public counsels and one of the judges. This is so even if these are formulated at a lower instance than the court and thus should not guide the courts’ decision-making.⁸⁸ However, several of the litigators, who are bound to be guided by the legal positions from the Migration Agency, described how they only let themselves be guided by the precedents from the Migration Supreme Court, and did not paid much attention to the legal positions from the Migration Agency.⁸⁹ It was a commonly expressed concern among the interviewees that the application of law in asylum cases was not only very incoherent between the three different courts, but also between different individual judges.⁹⁰

This confusion regarding which guiding tools to use by which professional actors is an indication of the wide room for interpretation of socio-political situations in countries of origin that exists in the court system. It also makes the judges’ perceptions about which party was presenting the most trustworthy information (see chapter six) important for how much effort the judges will put into controlling the information.

⁸⁴ J1.

⁸⁵ PC1, PC2, PC3, PC4, PC5, PC8, L5, L8, L9, J2, J5.

⁸⁶ PC4. Similar concerns were expressed by J2 and L5.

⁸⁷ *Legal Positions* are general recommendations about application of laws and COI within the Migration Agency's activity. They are developed in order to achieve a consistent and uniform decision-making within the Migration Agency. They are publicly available on *Lifos*.

⁸⁸ PC1, PC5, PC9, J6.

⁸⁹ L1, L2, L3, L4.

⁹⁰ PC3, L5, L6, L8, L9 J1, J3, J4, J5.

Judges' External and Internal Independence

Judicial independence is closely connected to impartiality, and thus to one of the core principles of administrative justice. But what is it precisely that judges are supposed to be independent of when one is claiming judicial independence? McCubbins et al (2009) outline two distinctive understandings of judicial independence; one that pertains to independence from external party influence and one that refers to independence from the decision-makers' internal prejudice and ideologies.

The first understanding of judicial independence wants to safeguard decision-making from political repression and corruption. That requires an institutional structure that enables decision-makers to "pay fidelity" to the law, no matter which outcome the law may imply (McCubbins, Rodriguez & Weingast 2009, 62). With the second understanding of judicial independence, illegitimate pressure originates from an internal source, within the decision-maker, often referred to as a set of ideological presuppositions or assumptions that drift the decision-maker away from the impartial path that he or she otherwise should have followed. This internally originated bias has no clear connection to a political affiliation, but is nevertheless interpreted as the reason for non-independent decision-making (McCubbins, Rodriguez & Weingast 2009, 64f). With this analytical distinction between external and internal sources of political influences, the question is how the judicial workers interpret and practice independence, and how they recognized independent behavior in others. As was noted in chapter three regarding the ritual functions of courts, the legitimacy of the courts depends on their ability to make sure that justice is *seen* to be done. One way of showing justice is to show independence in decision-making.

There was a clear consensus among the interviewees from all three groups that the migration courts as institutions were free from political influence.⁹¹ One judge expressed it as being pleased to be working at the migration court instead of the bureaucracy because the decision-makers at the migration court did not have to deal with any political considerations: "I only have to adjudicate so to speak; I find that very pleasant".⁹² Another judge explained:

Politics does not govern the judiciary. As I perceive it, the court is a quite robust organization and it feels like we are judges, we hold our independence very high and there is no one to tell us how to do things. [...] We are

⁹¹ With one exception, L2 said that it was more politics involved in the assessments of asylum claims now than before.

⁹² J4.

not driven by any sort of personal political agendas. To us, it is the law that rules, and maybe that law might be stupid sometimes, both from our perspective and from other's perspective, but it is the system that we have.⁹³

Here the judge slides between talking about politics as external actors with political agendas and the judge's own ideologies or political affiliations. This quote also reveals the dilemma judges face between their own opinions and the intention or consequences of a law. The law is perceived as something that judges can apply without exercising any extra-legal interpretive schemes.

This idea about judges as free from internal prejudices and political agendas was also evident among the public counsels and litigators. One of the public counsels pointed to the high level of education among the judges as the reason for why they "had polished off much of the idea about taking political considerations".⁹⁴ The judges embodied objectivity and impartiality as part of their profession, which then became visible when a litigator contemplated on which other professional categories would be appropriate decision-makers in asylum cases:

One would imagine that you have a psychologist or a sociologist [as decision-maker] but I think that jurisprudence still is the best because it will still be as objective as you can get it, right?⁹⁵

Why the adjudication would be more objective in the hands of a judge than a psychologist is not clear from this interview, but one plausible reason could be that the judge works in an institution which symbolically communicates objectivity.

The symbolic meaning of objectivity that surrounded the administrative courts as institutions became visible in other interviews as well. The shift of the appeal authority from a bureaucratic institution to a judicial institution had defused the public debate about asylum determinations, according to several interviewees.⁹⁶ The interviewees compared the migration courts

⁹³ J5. In Swedish: "politik styr nog inte upplever jag, styr inte domstolsvärlden, den är rätt trögrörlig organisation och där känns det nog som att vi är domare, vi håller väldigt hårt på våran självständighet och det är ingen som skall säga till oss hur vi skall göra sådana [...] Och jag upplever inte att vi har någon form utav personliga politiska agendor utan vi, det är lagen som gäller sedan så kanske den kan vara dum ibland både från våran synvinkel och ur andras synvinkel men det är det systemet vi har."

⁹⁴ PC5.

⁹⁵ L8. In Swedish: "Man skulle kunna tänka sig att man har en psykolog eller en sociolog [...] men jag tror att juridiken ändå är den bästa för att det ändå blir så objektivt som det går att få det va".

⁹⁶ J1, J5, J6, J7, PC7.

with the pressure from media and public opinion that surrounded the AAB. Below are two extracts from judges on this topic:

At the Aliens Appeals Board, we received a lot of mass media contacts. It was the newspapers that telephoned; you could get quoted in the daily radio news. There were demonstrations outside; I had to go out the back door. It was a totally different pressure. Here [at the Migration Court], there is hardly anything and I wonder why that is? Is it the Court, is it only that?⁹⁷

When I visited the Aliens Appeals Board, I was there at least once a month. There was always some kind of demonstration that people went out and demonstrated [...] now you have three Migration Courts and then you have a Supreme Migration Court but it is very rare, what I know, that there is someone who demonstrates outside here.⁹⁸

The judge cited in the first quote seems to assume that the work they did at the AAB is very similar to the work they do at the Migration Courts, and therefore finds it a bit surprising that the change in media attention is so radical between the two appellate bodies. Another judge expressed this change in a drastic manner when uttering surprise over the low media attention by stating "it is always the Migration Agency that gets the blame, whatever we come up with".⁹⁹ These extracts show that there is a kind of surprise among the judges about the low level of attention that the Courts gain from the media and public.

However, it was not only the attention from the public opinion and media that changed in the reform. Several of the public counsels¹⁰⁰ who had experience working under the former system explained how in the former system they had used informal channels of influence as a way to increase the possibilities of getting an appealed case approved. One of them claimed:

⁹⁷ J1. In Swedish: "På utlänningsnämnden fick man en hel del massmediala kontakter. Det var expressen som ringde, man blev citerad i dagens eko. Det var demonstrationer utanför, man fick gå ut bakvägen. Det var ett helt annat tryck. Här finns det knappast någonting och det kan man fråga sig varför är det så? Är det att det är en domstol, bara att det är det?"

⁹⁸ J5. In Swedish: "när jag var på utlänningsnämnden, jag var där minst en gång i månaden, det var alltid någon demonstration som folk gick ut och demonstrerade [...] nu har du tre migrationsdomstolar och så har du Migrationsöverdomstolen, men det är ju väldigt sällan vad jag förstår som det är någon som demonstrerar utanför oss."

⁹⁹ J6.

¹⁰⁰ PC1, PC2, PC7.

At the Aliens Appeals Board, if it was a nice officer, could slip a bit on the rules and let people stay, even if they were not supposed to. That is not how it works in courts.¹⁰¹

But it was not only in individual cases that the public counsels felt they could influence the decision-making at the AAB; they also used the informal channels to obtain the country information reconsidered by the officers at the AAB which in a long run could change the way all appealed cases from this particular country were decided. The existence of informal contacts between public counsels and decision-makers at the AAB was also confirmed by other interviewees with experience working at the AAB, either as judges or as investigation officers.¹⁰²

One judge expressed how important it is for the migration courts to live up to the idea about being insulated from external influence, which would make it inappropriate to invite experts in the same way as was frequently done at the AAB:

Here you are much more cautious, for we are a court. We shall not be affected, in some way. [...] Much greater caution here than on the Aliens Appeals Board when it comes to visits. We had [...] doctors who were involved with apathetic children, and others as well. We had that kind of visit pretty often [at the Aliens Appeals Board].¹⁰³

My interpretation of these statements is that at the migration courts, it is important to *show* judicial independence, and in the effort to do this, even expertise from the outside may be interpreted as a threat to the courts' performance as independent institutions. External experts' knowledge (such as medical experts on children with apathetic symptoms or public counsels with new COI) was considered to be legitimate channels of influence at the AAB, but is now viewed with suspicion. This is because their presence in the court could challenge the reputation that the migration courts' judges possess as undamaged by societal opinions and political agendas that other professions in the asylum system are exposed to.

¹⁰¹ PC2. In Swedish: "på utlänningsnämnden kunde då om det var en schysst föredragande liksom slira lite på lagstiftningen och så där och låta folk stanna även om de egentligen inte borde få göra det och så, så funkar det ju inte i domstol".

¹⁰² L8, L9, J1, J7

¹⁰³ J1. In Swedish: "Här är man mycket mer försiktig, för vi är en domstol. Vi ska inte påverkas på nåt sätt. [...] mycket större försiktighet här än på UN, när det gäller besök. Vi hade [...] läkare som höll på med apatiska barn, och andra var det väl. Vi hade ganska mycket såna besök".

At the migration courts, the meaning of judicial independence is closely connected to distance. Distance as a performative attribute of independence is common in judicial settings (Jacobsson 2006; Mack & Roach Anleu 2010). Judicial workers often use detachment and distance to express the core value of independence in their everyday work in court. This way of expressing independence is linked to the adversarial ideal of judicial procedures, where the judges take a more passive role than with the inquisitorial model (Mack & Roach Anleu 2010). With distance as an attribute for independence, it becomes problematic for the migration court to let experts from the outside inform the judges about COI and other factual aspects of asylum determinations. The idea that particular kinds of expert knowledge and experiences can lead to biased decision-making, which was also expressed in the policymaking of the reform, underpins the judges' expression of independence. Knowledge and experience about matters other than the law seems to threaten the independence of judges at the migration courts.

Skeptical and Affirmative Approaches

The complexity of determining asylum claims opens up a choice for the decision-maker between believing and disbelieving the asylum narrative. Byrne (2007) develops the argument that asylum adjudicators approach the applicants with “presumptive skepticism” when assessing the credibility of the claims, and she compares that to a “presumptive affirmation” approach that she finds among the judges at the International Criminal Court when they are faced with the task of assessing witnesses' credibility. Her point is to show that these two assessments of credibility both are confronted with similar barriers regarding language, culture, education and trauma, but that the International Criminal Courts have a more appropriate understanding of what kind of uncertainties these barriers can create in credibility assessment.

In this part of the chapter, I analyze how skeptical approaches or affirmative approaches to asylum applicants become attached to meanings of what is politically informed behavior.

As stated above, the idea that the judges do not let external actors or internal political agendas influence their decision-making was frequently expressed by the interviewees. In those discussions, it became apparent that it was a certain kind of decision-making behavior that became identified as political and another that was viewed as neutral, hence representing

independent decision-making. How the interviewees recognize politically influenced behavior is discussed below.

Public Counsels' Affirmative Approach

As a consequence of public counsels' role in the procedure, they were not expected to be impartial. They are assigned to assist asylum applicants in presenting their case to the courts. Therefore, they occupy a partial position, standing on the applicants' side in the adversarial setup. One public counsel expressed views on what constituted a professional approach from the judges towards asylum applicants when stating that "the Refugee Convention was written under entirely different conditions; economic inequality in the world is the major cause of suffering today" and therefore decision-makers should let their empathy for asylum applicants' experiences of hardship play a crucial part in their decision-making.¹⁰⁴ Another public counsel expressed the same normative idea by stating that the asylum determinations should be based on much more "humanitarian concerns" than they are today.¹⁰⁵ A third public counsel said, "if I was a litigator, 30%-40% of the applicants would get permanent residence straight away, but then I would probably get fired".¹⁰⁶

The public counsel described the asylum applicants as nervous and uncomfortable in the court setting. This perception was closely attached to an idea about differences between Swedish culture and foreign countries' cultures, particularly in the Middle East. The public counsels expressed this idea both in terms of how they tried to "school them in the European thought system" which was exemplified by admitting if one did not know the answer to a question instead of trying to invent an answer¹⁰⁷, but also as a critique against the migration courts, which were said to lack awareness of cultural differences between Swedes and asylum applicants. It was particularly the way one tells a story that was stressed as a difference between Swedes and foreigners. The consequence of this omission to acknowledge cultural differences was, according to these public counsels,

¹⁰⁴ PC8.

¹⁰⁵ PC4.

¹⁰⁶ PC4. It could be noted that this interviewee actually had worked at the Migration Agency.

¹⁰⁷ PC9. See PC3 and PC5 for similar expressions.

that the cultural expressions were interpreted as indicators of non-credibility and therefore asylum applicants from culturally similar countries had better chances of getting approved applications than others.¹⁰⁸

The normative standpoint implicit in these accounts is that the asylum applicants should be approached with presumptive affirmation. However, because of their position as loyal towards the asylum applicant's interests, their affirmative approach was seen as an expression of a partial position.

Litigators' Skeptical Approach

As mentioned in the previous chapter, there is an inscribed role-conflict for litigators between being a neutral expert on COI and being the adversarial party. The previous chapter also showed that the litigators gain substantial influence over the assessment of protection needs, because of this role-conflict. In this section, the litigators' perceptions about what a biased behavior consisted of is explored.

The litigators' perceptions of biased attitudes were directly connected to showing solidarity with asylum applicants. One litigator used the metaphor of "refugee huggers" when characterizing the political opinion on refugees in Sweden.¹⁰⁹ Another litigator found an example of this kind of pressure from the former General Director at the Migration Agency, who was "driving his own agenda" to try to push the Migration Agency's decision-makers in a liberal direction.¹¹⁰ A third litigator claimed that the Migration Agency's legal position concerning children with symptoms of apathetic conditions and the Migration Agency's decision from 2013 to give asylum applicants from Syria permanent residence in Sweden were examples of guidance that was influenced by political pressure for generosity. The litigator believed that in these decisions "there must be some kind of political opinion behind it, I guess. You know 'best in the class', Sweden is best in the class".¹¹¹

The litigators argued that subsidiary protection was a less legitimate ground for asylum than Refugee Convention Status. They referred to it as a distinction between law and politics, where Refugee Convention Status becomes categorized as law and subsidiary protection as politics.¹¹² These two extracts illuminate what several litigators expressed:

¹⁰⁸ PC1, PC2, PC7. One Litigator expressed the same idea about cultural similarity as a factor that impact on the chances of getting an application for asylum approved (L8).

¹⁰⁹ L2.

¹¹⁰ L5.

¹¹¹ L3.

¹¹² L8, L9.

I think probably that you have moved away from the core, which is political persecution, that it has become so much more. I mean, the reason we have an asylum system is that Hitler's extermination should never happen again, and when the wall was placed between East and West, that those who fled would have a safe haven. It was like it was the thought of it all, but now it has become some kind mishmash.¹¹³

The whole point of the asylum process is to provide protection for people in need of protection; what it becomes in the end is some kind of carnival where everyone has an opinion. But the ideal is of course that you select those who need protection, give them the protection they should have and those who do not fall within the scope they should not have a residence permit and they must leave the country, and not to focus so very much on all the psychological [aspects] at the end because it drags down the entire process.¹¹⁴

The determination of other aspects than political persecution is depicted in such metaphorical terms as “mishmash” and “carnival” by these litigators. Another litigator¹¹⁵ used the word “circus” as a metaphor for oral hearings in which the claims of the public counsel and applicants departed from what this litigator interpreted as strictly judicial issues. With subsidiary protection needs positioned in the colorful, chaotic and multi-opinioned arena of politics (as mishmash, circus and carnival implies), the litigators implicitly stated that too many circumstances had been included in the criteria for protection. Thus, the asylum legislation was too inclusive, and that was because of political pressure from “refugee huggers”.

The litigators also expressed frustration with what they experienced as the lack of responsibility from the legislators' side regarding the consequences of the current refugee politics. This is clearly formulated in the two following quotes:¹¹⁶

¹¹³ L2. In Swedish: ”sen anser jag väl att man har gått ifrån kärnan som är den politiska förföljelsen, att det har blivit så mycket mer. Jag menar, anledningen till att vi har ett asylsystem är att man sa att Hitlers utrotning aldrig ska få inträffa igen och när muren fördes upp mellan öst och väst, att de som flydde skulle få en fristad. Det var ju liksom det som var tanken med det hela, men nu så har det ju blivit nån slags mishmash.”

¹¹⁴ L6. In Swedish: ”Hela meningen med asylprocessen är att bereda skydd till skyddsbehövande människor. Det som blir i slutändan det är någon slags karneval där alla tycker någonting. Men idealet är ju naturligtvis att man tar fram de som behöver skyddet, ger dem det skyddet de ska ha och de som inte faller inom ramen de ska heller inte ha ett uppehållstillstånd och de ska lämna landet, och att inte fokus blir så väldigt stort sedan på allt det psykiska på slutet för det drar ner hela processen”.

¹¹⁵ L1.

¹¹⁶ Similar formulations in L8.

You cannot say that we should have a regulated immigration and drive through this legislation we have, and then find it so terrible when faced with a TV camera.¹¹⁷

Now we end up in the very strange situation that we have regulated immigration in Sweden, but we have a lot of politicians who refuse to take responsibility for the decisions taken, and choose to say that this is wrong, wrong decisions, blaming civil servants. But the decisions are completely in the spirit that they themselves have written into the laws.¹¹⁸

The litigators' articulations of what the political pressure consisted of seems to be influenced by the historically persistent political discourse of generosity despite restrictive implementation of refugee policies, as described in chapter four.

The asylum applicants were portrayed as "fortune seekers"¹¹⁹ by one litigator. Another litigator explained that "the purpose of our work is to separate the wheat from the chaff".¹²⁰ The cases that did not get approvals in the first instance, at the Migration Agency, were perceived to be a "bit dubious" from the start, as one litigator expressed it. The litigator continued to paint a picture of the typical appealed case as a "single male applicant" in economic trouble.¹²¹ Another litigator made a distinction between asylum applicants who lied with ease and confidence and those who did not do it as naturally. Both these categories, however, lied in court, according to this litigator. The litigator explained this "habit" of lying by stating that "they have not engaged in anything else in life, or they have lived in a society where one must do so in order to survive, it is as simple as that".¹²²

One litigator suggested that when asylum applicants "made the impression of being uninformed which they often are, it is also often a way of hiding that they have been lying".¹²³ The same line of thought is expressed

¹¹⁷ L5. In Swedish: "Det går inte att säga att vi skall ha en reglerad invandring och köra igenom den här lagstiftningen som vi har och sedan tycka att det är så hemskt när man står inför en TV kamera".

¹¹⁸ L6. In Swedish: "Nu hamnar vi i den mycket märkliga situationen att vi har en reglerad invandring i Sverige men vi har väldigt massa politiker som vägrar att stå för de beslut som fattas och då väljer man att säga att det här är fel, felaktiga beslut, skyller på tjänstemän men de är fattade helt i den anda som de har skrivit själva i sina lagar".

¹¹⁹ L8.

¹²⁰ L3.

¹²¹ L8.

¹²² L3.

¹²³ L2. In one account from a judge, the same idea about applicants pretending to be uninformed as a way to deceive the court was indicated (J6).

by the litigator who stated that applicants with different class backgrounds behave differently in the court. “However”, this litigator claimed “it does not mean that the farmer is more stupid than the others, because it could be that he is more sly”.¹²⁴

Four litigators did on several occasions during the interview talk about different “myths” that existed in the public debate about asylum applicants.¹²⁵ One myth that three of them wanted to expose was that the asylum applicants are fleeing “head over heels”¹²⁶. Instead of that “myth”, which the litigators claimed was persistent in media and among the general public, these litigators stressed that the asylum applicants prepared their travel to Sweden over a long time period and made many plans ahead of time. One of them used the metaphor of a “charter trip” to describe how the applicants purchased a whole travel package from the smugglers. The litigator concluded:

So some kind of victim who comes here and meets the mighty bureaucrat who is big and mean, that is not how it is. Not that I know anyway. To the contrary, they know what this is about, just as we do, sort of.¹²⁷

The other litigator that wanted to disclose this “head over heels” myth, describing the long term planning for the flight in the same way, but instead of stressing the inaccuracy of the idea of asylum applicants as “victims”, this litigator stated that the function of this myth was to make it seem logical that the asylum applicants often lack id-documents and other papers to support their claims.¹²⁸ What was suggested was that the asylum applicants deliberately withhold documents from the Swedish migration authorities in an attempt to mislead and hamper the asylum investigations.

A third litigator meant that the explanation of how the smugglers take the passport from the asylum applicants and do not return them is so common among the asylum applicants that it must be a so called “standard story”, i.e. a fabricated story.¹²⁹ Another litigator explained that “women

¹²⁴ L7.

¹²⁵ L1, L2, L5, L8.

¹²⁶ L2, L8.

¹²⁷ L2. In Swedish: ”Så någon slags offerperson som kommer hit och möts av den stora byråkraten som är stor och elak, så är det ju inte. Det känner jag inte i alla fall va. Utan det här är, de vet vad det handlar om, precis som vi gör på nåt sätt va”.

¹²⁸ L8.

¹²⁹ L5.

who weep and are incredibly devastated, and they sit there with their children and it is really, the whole court is crying”¹³⁰, could in fact be fabricating it all. It was also a ”myth” that all asylum applicants are well educated, when in fact many of them were illiterate, one litigator told me.¹³¹

The litigators told me further stories during the interviews about deceitful asylum applicants. Two of these stories concerned the refugees who came to Sweden during the Balkan War in the 1990s. One of them stated that “almost 100%” of the documents handed in during that time were false, and that they discovered a “paper factory” in a “priest house” in a minor town in Sweden where these documents were produced.¹³² Another litigator told me how the Kosovo Albanians in the beginning of the 1990s told such similar stories about which route they had taken across the Macedonian mountains that it must have been made up.¹³³

To sum up, the litigators expressed strong skepticism towards the asylum applicants. Furthermore, they understood policy changes, instructions from the management or demands for changes in decision-making which might lead to liberalizations as instances of political influence. Nevertheless, they did not interpret instructions for restrictive changes as politically motivated, nor did they interpret their own skeptical approach to asylum applicants as a politically informed standpoint.

Lay Judges’ Emotional Approach

It became clear during the analysis that the lay judges play an important role in the judicial workers’ meaning constructions of judicial independence. The lay judges were constituted as the most salient threat against judicial independence at the migration courts. The interviewees’ interpretations of the lay judges’ behavior reveal something about their own views on how a judicial independent worker at the migration court should behave.

The purpose with lay judges in the Swedish administrative court system is to bring common sense into judicial reasoning and increase the public’s trust for the decision-making in administrative courts. Lay judges are not trained lawyers, but have other professions. They come to the court in connection with the hearings, which they are randomly assigned to. They are nominated by the political parties in Parliament and the intention is that they should complement the professional judge’s legal knowledge. The lay

¹³⁰ L1.

¹³¹ L2.

¹³² L8.

¹³³ L5.

judges are supposed to act as ordinary citizens and abide the law, and not act as representatives for their political parties. Thus, they are not intended to represent a political influence in the asylum system, but are representatives of “common” citizens. The decision-making committee in asylum cases at the migration courts commonly consists of three lay judges in addition to the legally trained judge. Decisions are settled by voting, and if the vote is tied, the trained judge casts a deciding vote. However, if all three lay judges have an opposite opinion to the professional judge, their opinion prevails. This happens in approximately one percent of all appealed asylum cases, and in the absolute majority of them, the professional judge wants to reject the appeal (Martén 2015, 13).

Lay judges were perceived to be unprofessional and biased by the majority of the interviewees. The litigators were most upset with the lay judge system and some of them expressed strong disagreement with the idea of having lay judges at the migration courts.¹³⁴ The majority of the litigators had the impression that the lay judges tended to be emotionally affected and therefore vote in favor of the asylum applicants, pushing the decisions in a too inclusive direction.¹³⁵ Lay judges were assumed to make judgments based on their “political beliefs and their emotions”¹³⁶ or “irrelevant factors, such as gender, what do I know, possibly ethnicity and so forth, maybe race”.¹³⁷ The main concern from the litigators’ perspective was that lay judges did not follow established practice in decision-making, which posed a threat to a coherent application of law.¹³⁸ For that reason, the litigators saw it as a failure every time the lay judges voted against the professional judge, as that indicated that the judges were unable to steer the lay judges during the deliberation and voting.

The judges expressed very similar perceptions about the lay judges as well, although with less frustration. Judges expressed that lay judges were allowed to believe in something without providing rational reasons for it, simply having “larger room for assumptions”¹³⁹ than what the judges believe that they themselves have, being legally trained. Lay judges are also driven by emotions in a way that the judges cannot allow themselves to be. One judge described the judge role in comparison with the lay judges as this:

¹³⁴ L1, L2, L3.

¹³⁵ L1, L2, L3, L4, L8.

¹³⁶ L2.

¹³⁷ L3.

¹³⁸ L1, L2, L3, L5, L9.

¹³⁹ J4.

It is different to sit at an oral hearing and have a complainant who is in despair and I can allow myself to have two roles, first one that is kind of humanitarian, I often care about the person sitting here. There is a story, true or not, it exists, it has been difficult, terrible for this person but it's not in that role that I sit here as the Chair, my role is to decide if the criteria are met. And these roles can melt together. I think that for the lay judges it is little easier for these roles to melt together, to be influenced by the person sitting there.¹⁴⁰

The judges talked about how they used different strategies to steer the lay judges into making the “right” decision.¹⁴¹ One such strategy was to use their more profound knowledge about the particularities in the cases, and by explaining to the lay judges what is at stake in this case and “get them on the track”¹⁴² and convince them about how they should vote. Another strategy that judges described was to use group pressure by first letting the most experienced of the lay judges cast their vote, thus putting pressure on the more inexperienced lay judges to follow the same decision.¹⁴³ The judges were in agreement with the public counsels and the litigators that when the lay judges departed from the professional judges’ view in asylum cases, it was in a liberal direction.¹⁴⁴ Several judges described how they had been overturned by lay judges in cases where they wanted the decision to be a rejection, but the lay judges’ voted for approval.¹⁴⁵

The public counsels also shared the view that lay judges sometimes acted unprofessionally.¹⁴⁶ The public counsels did not, however, express any particular troubles with the lay judges.¹⁴⁷ On the contrary, two of the

¹⁴⁰ J1. In Swedish: ”det är annorlunda att sitta i en muntlig förhandling och ha en klagande som är förtvivlad och jag kan tillåta mig att ha två roller, först en liksom allmänmänskliga, jag ömmar ofta om den person som sitter här. Det finns en historia, sann eller inte, det finns, det har varit jobbigt, fruktansvärt för den här personen men det är ju inte i den rollen jag sitter här som ordförande, min roll är att titta om kriterierna är uppfyllda. Och de här rollerna kan flyta ihop. Jag tror att nämndemän har lite lättare för att de här rollerna flyter ihop, att färgas av den personen som sitter där”. Two other judges made similar remarks about the existence of emotionally driven lay judges and that made them more prone to grant asylum (J4, J6).

¹⁴¹ J1, J2, J5, J6

¹⁴² J2

¹⁴³ J4, J5

¹⁴⁴ J1, J2, J4, J5, J6

¹⁴⁵ One judge recalled that s/he had been overruled by lay judges in a case where s/he wanted approval, but they voted for rejection (J7).

¹⁴⁶ PC3, PC4, PC5, PC8, PC9.

¹⁴⁷ With one exception. One public counsel said that s/he was “terrified of them” because the lay judges acts out of political considerations. S/he specified that by referring to the Sweden Democrats, which is a parliament party with strong anti-immigration political agenda (PC 9).

interviewed public counsels¹⁴⁸ said that from time to time they could sense when particular lay judges were “on their side” by looking at the facial expression of the lay judges. They labeled this behavior unprofessional, but agreed that it facilitated their task as a public counsel as it meant that their chances of getting an approval increased. Another public counsel said that you could dramatize the emotional aspects of an asylum narrative in the courtroom in order to garner sympathy from the lay judges.¹⁴⁹ The only problem that the public counsels expressed with the lay judges was that the professional judges tried to steer them too much in the direction that they wanted the decision to go, and that was towards rejecting the appeal.¹⁵⁰

Lay judges are assigned to represent the “common citizen” in the determination of asylum claims and as such they have power to influence decision-making. Martén’s (2015) statistical analysis demonstrates that lay judges with anti-immigration attitudes affect the decision-making of the court in a restrictive direction while lay judges with pro-immigration attitudes influence the court decisions in an inclusive direction. That is not unexpected, given that the lay judges have legitimate leverage over decision-making. What Martén’s study also shows – and which is supported by the findings in this qualitative study – is that the legally trained judges vote in favor of rejections more often than the lay judges. Hence, there seems to be a professional judge attitude, which is not directly influenced by a political affiliation but which nevertheless drives the decision-making in a restrictive direction. That attitude operates through a presumptive skepticism towards the asylum applicants.

Separating Humans from Professionals

One of the judges emphasized that it was important to show respect for the applicants and for the actors in the court to “understand that they are humans”.¹⁵¹ This statement is interesting as it indicates that it is not taken for granted that asylum applicants are humans. It is an indication that there are practices and interpretations that dehumanize the applicants, which the judge in this statement tries to challenge by making this statement of re-humanizing the applicants. It is not only the applicants who are being re-

¹⁴⁸ PC3, PC4.

¹⁴⁹ PC5.

¹⁵⁰ PC1, PC3.

¹⁵¹ J2.

humanized in the interviews. Both litigators and judges made repeated references to themselves as humans. The litigators emphasized that they are humans with feelings of compassion towards the applicants, even if they had to play the role of the adversarial party towards the asylum applicants.¹⁵² One judge mentioned that judges were humans and not robots, as to stress that they also did wrong sometimes.¹⁵³ Other judges used the phrase human to explain that they sometimes counted on their intuition in their decision-making¹⁵⁴ and that political considerations unconsciously could slip in to the courts' decisions.¹⁵⁵

Sociology scholar Katarina Jacobsson shows that the Swedish prosecutors that she had interviewed explain administrative justice deficits (such as not treating similar cases equally in the court procedure) by referring to deviations from legal rationality, because, after all, the judicial actors are humans, and “to err is human” (Jacobsson 2006, 53). This creates an idea that judicial actors' interpretations of the law is a non-human activity and that the law in itself is beyond human action (Jacobsson 2006, 55). To dehumanize the litigators and the judges can therefore be interpreted as a way to detach them *as humans* from their professional roles.

Conclusions

This chapter began with the claim that a distinction between political and judicial decision-making had been established both in the rule structure and in the political rhetoric as a result of the court reform. How that distinction was made practically meaningful for the implementers of the reform was addressed in this chapter.

It was evident in the analysis of the interviews that the distinction between law and politics was present among the implementers. To show independence as a judge means to show distance to knowledge that comes from external sources outside of the courts, but also to show distance in relation to affirmative, emotional and human parts of one's self.

Meanings of judicial independence is thereby constructed around what it is not, that is, what kind of behaviors and attitudes that are perceived to be politically or emotionally informed. The analysis demonstrated that public counsels and lay judges were actors inside the migration courts perceived as biased. What these two categories of workers have in common

¹⁵² L1, L3, L5, L8.

¹⁵³ J5.

¹⁵⁴ J3.

¹⁵⁵ J4.

is that they are perceived to have an affirmative approach to asylum applicants. The litigators were perceived less biased, as their roles are to provide neutral expert information to the courts. The litigators that I interviewed had strong ideas about what constituted a politically informed approach regarding asylum. They regarded inclusive responses to asylum applicants as motivated by a political agenda because they connected inclusiveness to the official discourse of generosity that has dominated the political debate on refugees in Sweden.

The consequences of how judicial independence is made meaningful among the judicial workers is that inclusive policies and affirmative approaches to asylum applicants risk being associated with politics, while restrictive policies and skeptical approaches to asylum applicants are associated with judicial independence.

It is not possible from this analysis to draw any inferences about how large an impact these meaning constructions have on the outcome of individual asylum appeals. Nevertheless, these meaning constructions undermine the expectations that the policymakers had on the judges at the administrative courts to hamper a restrictive application of law. This analysis shows, on the contrary, that the judicial workers express judicial independence and recognize it in others by demonstrating distance to what is perceived as a political agenda. Practices that are associated with judicial independence are thus created in opposition to what is perceived to be a generous and affirmative political agenda.

8. Practicing Orality

This chapter investigates how the judicial workers at the migration courts constructed meaning around the third new feature of the court reform, that is, increased oral elements. A new formulation in the administrative law regulating the courts' procedures prescribes that oral hearings should be conducted if the applicants demand it. In the policymaking of the reform, orality was perceived to be a significant improvement of the asylum procedure compared to the written communication which dominated the asylum appeal procedure in the former, inquisitorial, appeal procedure. It would make the investigations faster as questions and misunderstandings could be resolved immediately during the oral encounter. The possibility for the applicant to speak and be heard in front of the court judges was also expected to increase the public's trust for the system.

Two partly contradictory perceptions about the benefits of oral hearings for the asylum procedure have been found among the judicial workers. One perception establishes the oral hearing as an opportunity for the applicants to be heard by the court. This perception communicates that the procedure is fair in the sense that everyone has a chance to present their claims in person. The second perception establishes the oral hearing as a superior tool for assessing credibility, thus emphasizing the control function of oral hearing. It is the physical encounter that is put forward as the benefit with the oral hearing compared to the former, written, procedure. With these two perceptions as a starting point for this chapter, the analysis strives to bring out meanings of the oral hearings among the judicial workers at the courts.

Oral Hearings - An Opportunity to Be Heard

Many of the judicial workers considered the new oral element in the asylum procedure to be a significant change in the system.¹⁵⁶ One of the litigators expressed that the written procedure in the former system and the

¹⁵⁶ PC3, L1, L2, L5, L6, L7, J3, J4, J5, J6, J7.

new oral procedure in the adversarial court procedure was as different as “night and day”.¹⁵⁷ The judicial workers seemed to be very satisfied with this change. One reason for why oral hearings were appreciated was that it gave the asylum applicants an opportunity to be heard by the courts. This perception should be understood in connection to the fact that the lack of orality was one of the most commonly expressed criticisms against the former appeal procedure at the AAB. This perception was shared among the different categories of judicial workers.¹⁵⁸ An illustration of how the judicial workers described the oral hearings as an opportunity for the applicants to be heard is given by the following two extracts, one from a judge and the other from a public counsel:

We sit there for two hours just listening to what they [the applicants] have to say to us.¹⁵⁹

What they [the judges] want in particular is to give the asylum seekers the opportunity to be heard and to speak, and they let him or her talk pretty undisturbed for quite a while.¹⁶⁰

These quotes depict the oral hearing as a situation in which the asylum applicant is given the opportunity to speak freely for a long time and to elaborate on his or her claims for asylum. This description stands in bright contrast to the findings from the observations of oral hearings that I conducted, and will be discussed in chapter nine.

The idea about oral hearings as an opportunity to be heard was discussed in a study of administrative oral hearings in the USA where the author conferred that “the ‘opportunity to be heard’ has an almost sacrosanct and hallowed timbre; it implies all have an opportunity to participate in the legal and political institutions that govern our lives” (Lens 2007, 329). To describe the oral hearing in this way signals that the encounter between the applicant and the authorities incorporates an inclusive moment where the individual can take active part in the proceeding and also actively affect the outcome of it.

¹⁵⁷ L7.

¹⁵⁸ PC, PC2, PC3, PC9, L2, L4, L5, L6, L7, L8, J2, J4, J5, J7.

¹⁵⁹ J2. In Swedish: ”Vi sitter där i två timmar och bara lyssnar på vad de har att säga till oss.”

¹⁶⁰ PC1. In Swedish: ”Vad de (domarna) vill ju framförallt är att den asylsökande ska få komma till tals och berätta, och de låter honom eller henne prata på ganska ostört ett bra tag va.”

Another perception about oral hearings was that the effect of letting the applicants speak in front of the court increases the likelihood that the applicants will accept a negative decision. One of the judges stated that it “might have a curative effect”¹⁶¹, and a public counsel similarly claimed that it had a “pedagogical effect”¹⁶² on the applicants who received negative decisions that they at least had been given the opportunity to speak for themselves.¹⁶³ To describe the oral hearing as not only an opportunity for the applicants to be heard but also as a tool for increasing the rejected applicants’ willingness to accept the decision was also articulated in the policymaking of the reform. The emphasis on increased efficiency and respect for the individual helps to legitimize the reform in the public sphere. However, among the judicial workers, the construction of the oral hearing as an opportunity for the applicants to be heard was not as straightforwardly positive as in the policymakers’ framing. The interviewees also emphasized what is required of the speaker in order to be properly heard in the courts. It was a particular kind of speaking that was demanded in the courtroom, a constricted storytelling.

Constricted storytelling

In parallel with the perception of the oral hearing as an opportunity for the applicants to be heard, the judicial workers were aware of certain rules and constrictions around how to express one’s self which applied to the asylum applicants during the oral hearings. The perception of oral hearings as the opportunity to be heard was in that sense much more complex than how it was framed from the policymakers’ side. For example, the interviewees expressed that the opportunity to be heard in asylum cases did exclude the opportunity to be silent, which is one of the basic rights of the accused in criminal court procedures (Durst 2000). Several interviewees were of the opinion that in asylum cases, the opportunity to speak was not a matter of free choice, but on the contrary a matter of obligation, as is evident in the two following quotes from judges:

Sometimes when the litigator asks questions, it's like this, they say, “I have already answered” or “why should I answer it” or something like that and then you must tell them “yes, you have to answer and if you cannot respond you may well say that then” but if you say that you do not *want* to answer this question, and the answer is of significant importance, of course, then you are withholding something that might have been of relevance for our

¹⁶¹ J5.

¹⁶² PC3.

¹⁶³ See J2 for similar statement.

assessment. And one can say this, it is a better strategy in criminal cases where you have a prosecutor who shall prove beyond all reasonable doubt that you committed a crime, then it might be a good strategy sometimes to just be quiet, but in migration cases, it is the opposite. Then it is the asylum seeker who must demonstrate that he has a need for protection and then maybe it's not so good to be silent.¹⁶⁴

Here you have to tell everything, thoroughly, and in detail, and not suppress things because you do not dare or you do not think you are able to tell. No, you have to do it; it is you who has requested a hearing and then you simply have to utilize it.¹⁶⁵

The opportunity to be heard is, by these statements, transformed from an opportunity into an obligation. But not only is there an obligation to speak, it is also required to tell everything, thoroughly, and in detail, as the second quote above shows.

The oral hearing did not only put restrictions on what the applicants should talk about, but also *how* they should talk in order to be properly heard. Prior research has shown that ordinary conversation style differs extensively from the rules of proper verbal conduct in courtroom conversations during cross-examination (Lens 2007; Lens et al. 2013; Lens 2011; Fielding 2013; Menkel-Meadow 1996; Berk-Seligson 2002). Socio-legal scholar Nigel Fielding studied lay persons' experiences of witnessing and giving testimony in adversarial hearings, and he concluded that the cross-examination as a hearing style creates anxiety, frustration and confusion among lay persons who are unfamiliar with the adversarial situation. "The prime courtroom discursive forms – the monologue and the interrogation – are unusual and resented in normal interaction" (Fielding 2013, 300),

¹⁶⁴ J5. In Swedish: "Ibland när processföraren ställer frågor så är det så här, då säger de, 'det har jag redan svarat på' eller 'varför ska jag svara på det' eller något sådant och då får man ju säga till dem att 'ja du får ju svara och kan du inte svara så får du väl säga det då' men att man säger att man inte vill svara på den frågan eller så och svaret på frågan är av väsentlig betydelse så har ju det jättestor betydelse naturligtvis, då undanhåller man ju någonting som kanske skulle legat till grund för våran bedömning. Och man kan ju säga så här att det är väl en bättre strategi i brottmålen där du har en åklagare som skall ställa utom allt rimligt tvivel att du har begått ett brott. Då kan det kanske vara en bra strategi ibland att bara vara tyst men i migrationsmålen är det tvärt om. Då är det ju en asylsökande som skall göra sannolikt att han har ett skyddsbehov och då kanske det inte är så bra att tiga."

¹⁶⁵ J6. In Swedish: "här måste man berätta allting och noggrant och detaljrikt och inte undertrycka saker därför att man inte törs och inte tror sig att kunna berätta utan man måste göra det, man har ju själv begärt muntlig förhandling och då får man utnyttja det helt enkelt."

and that does not only create unease in the interaction, but more importantly, it breaks up the testimony into an interrupted and incoherent narrative which is difficult to make sense of in order to understand what really happened.

Out of the three groups of judicial workers, the public counsels were most aware of this difference between ordinary oral conversation and the adversarial mode of oral interaction. Several of the public counsels emphasized that the oral hearing requires that the applicant has the ability to tell her or his story in an effective manner. One of them explained that what was required from the applicants was:

To answer in a nice way, to give a sympathetic impression, to look at the Chair and at the lay judges quite often, and not look at the interpreter instead because then they [the decision-makers] will lose interest.¹⁶⁶

The public counsels distributed general advice about how to perform the asylum narrative with the asylum applicants during the preparation for the oral hearing in the court. It is possible to grasp a tension between different kinds of advices. On the one hand, the public counsels wanted the applicants to tell their asylum narrative in a very rehearsed and controlled manner. They should only answer to specific questions and not talk about things that were not asked for; they should answer in great details when requested but not have long answers to questions in general. When they did not know the answer to a question, it was advisable to not try to invent or improvise an answer. Several of the public counsels explained how they used to rehearse the questions that they thought would be posed during the oral hearing so that the applicant could practice how to respond in court and learn the dates and details by heart. However, the counsels also emphasized how important it was that the asylum narrative was perceived to be self-experienced and that required the applicant to “not hold back emotions, but to dare to show emotions”,¹⁶⁷ to “tell the story freely”¹⁶⁸ and “as if it was self-experienced”.¹⁶⁹ The following quote from one public counsel captures this tension:

¹⁶⁶ PC4. In Swedish: ”svara på ett fint sätt, framstå som sympatiska, titta på ordföranden, och nämndemännen rätt ofta, inte titta på tolken istället, för då tappar de intresset.”

¹⁶⁷ PC5.

¹⁶⁸ PC9.

¹⁶⁹ PC4.

You should know [your asylum narrative] *by heart*, not sit there with notes or look it up somewhere, and tell it *from the heart*, that is what makes an impression.¹⁷⁰

To tell something from the heart or to tell it by heart implies very different approaches. To tell *from* the heart means that someone conveys something that is so important for that person, that he or she can relate it without thinking about it intellectually. To tell *by* heart, on the other hand, implies that something is learned by practicing it so well that it is remembered without any assistance. In an asylum hearing, the difference between these two facets of “heart-telling” is extremely important and both manners are connected with the risk of signaling lack of credibility in the courts’ view. An openly rehearsed asylum narrative runs the risk of being deemed to lack authenticity, whereas an improvised asylum narrative risks being recognized as lacking in consistency or details.

The public counsels expressed having troubles with applicants who were not keen to take instructions from their counsel, or applicants who lacked the capacity to “tell a story”.¹⁷¹ The counsels identified different reasons for why an applicant failed to tell the asylum narrative as the court wanted to hear it. It could be that they were unused to speaking in front of other people, and particularly in front of high status persons in a formal setting like the court environment. It could also be that they lacked the intellectual abilities to tell a story in an understandable way. One public counsel meant that applicants who had been through traumatic events got “sloppy” when talking about it, because they felt that it is so evident that these things had happened to them.¹⁷² To request oral hearings in cases where the applicant was unsuitable for the demands was by one public counsel equated to “dragging them to the firing squad”,¹⁷³ which metaphorically depicts the atmosphere in the courtroom. For these reasons, the public counsels did an active estimation of the applicant’s abilities to present themselves in a credible way during the oral hearings and refrained from demanding oral hearings in cases where they estimated that the applicant would make a bad impression.¹⁷⁴

¹⁷⁰ PC8. In Swedish: ”du ska kunna den utantill, inte sitta med lappar och titta efter någonsans, och berätta från hjärtat, det är det som gör intryck.”

¹⁷¹ PC3, PC4, PC5, PC8, PC9.

¹⁷² PC3.

¹⁷³ PC3.

¹⁷⁴ PC3, PC4, PC5, PC7, PC9.

The (In)visibility of the Interpreters

Notwithstanding the boundaries of what can be said and will be heard in the oral hearing, the fact that every word that is uttered in the court room needs to be interpreted by a person sitting next to the applicant strongly affects the interaction between the applicants and the other parties in the hearing. The interpreter translates what the applicant says into Swedish, and translates everything that the other parties in the hearing say into the native language of the applicant. This interrupts the communication between the applicants and the other parties in very obvious ways. Research which has used bilingual analysis of the interpreters' activities during court observations has demonstrated that the interpreters often add new meanings and emotional flavor to the communication simultaneously as some parts of the original meaning and content of what the sender said are lost in the interpretation (Elsrud 2014; Berk-Seligson 2002; Torstensson 2010).

The need to translate everything that is said also means that the oral communication and the non-verbal communicative signals are detached from each other. When the judicial workers state that they listen very carefully to the applicant, they actually mean that they listen very carefully to the interpreter, while they are watching how the applicant behaves. It is the interpreter who tells the applicant's asylum narrative, and it is the interpreter's choice of words and emphasis that the decision-makers have to understand and make sense of.

There is a lack of authorized interpreters in Sweden and the judicial workers expressed concerns about the shifting quality of the interpreters. Many of the judicial workers expressed awareness of the important role of the interpreters during the oral hearings.¹⁷⁵ One of the public counsels claimed:

The interpreter is most important in the process, for it is the interpreter who tells what the client says. I can only make legal claims of what has been said.¹⁷⁶

According to the judicial workers, the demands on the interpreters were very high. They were expected to balance the line between interpreting the asylum applicants' words literally, in linguistic research labeled semantic translation or formal equivalence, and making the applicants' accounts un-

¹⁷⁵ PC3, PC4, PC5, PC8, PC9, L2, L4, L5, L8, L9, J2, J5.

¹⁷⁶ PC4. In Swedish: "tolken är viktigast i processen, för det är tolken som berättar vad klienten säger, jag kan bara göra juridik av det som sägs."

derstandable to a Swedish audience, what linguistic researchers call communicative translation or dynamic equivalence. A semantic translation would focus on the source language culture and attempts to be as close as possible to the sender's thought process. This interpretation style has high semantic accuracy but might lose out in translating the accurate meaning that the sender tries to communicate. A more dynamic and communicative translation focuses on the receiver and strives to make the substance of the senders' accounts understandable in the target language culture. This might imply that details and exact wordings are lost in the translation but it achieves a more accurate translation of the meaning that the sender tries to communicate (Torstensson 2010, 70). The interpreters in the court are required to master both of these styles at the same time. One public counsel offered a clear illustration of this balancing act:

[A good interpreter] should interpret literally but still not, well, to be able to translate certain Arabic expressions into Swedish so that we understand what they mean without distorting the content.¹⁷⁷

Although the interpreters were described as fundamentally important for the whole process, there was a tendency among the interviewees to downplay the interpreters' role during the oral hearing. Some of them expressed that the interpreters did best when they interpreted without even being noticed.¹⁷⁸ This is a general requirement for interpreters, which Torstensson described as "to translate so idiomatically correct that an illusion of transparency is created" (Torstensson 2010, 70).

One litigator did not want the interpreter to ask the court for a break during the oral hearing, as that was not respectful behavior towards the court.¹⁷⁹ In the same line of reasoning, one litigator and one public counsel stated that the interpreters should not have any internal dialogue with the applicant, even if it only regarded asking for clarifications about what the applicant meant with particular phrasings.¹⁸⁰ This description of the interpreters' role in the procedure puts them in a peripheral position, which not only lowers their status in the proceedings, but also makes it more difficult for them to manage their work. Moreover, the construction that demands invisibility of the interpreters also helps to create an idea about the oral hearings as less complicated and saturated with less potential moments of

¹⁷⁷ PC3. In Swedish: "[en bra tolk] ska kunna tolka ordagrant men ändå inte, alltså att man översätter vissa arabiska uttryck till svenska så att vi förstår vad man menar utan att förvanska innehållet."

¹⁷⁸ PC8, L3, L9.

¹⁷⁹ L3.

¹⁸⁰ PC4, L2.

miscommunication than what it actually harbors (Kalin 1986; Maryns & Blommaert 2006; Bohmer & Shuman 2008).

The construction of the oral hearing as an opportunity for the asylum applicants to be heard requires that the interpreters are made as invisible as possible. The “illusion of transparency”, as Torstensson phrased it, is an important aspect of creating legitimacy for the reform, and it would be less compelling if the interpretation process with all its proximities and altering of meanings would have been publicly recognized.

Oral Hearings - Tools for Assessing Credibility

The other common perception among judicial workers was describing the oral hearings as providing the decision-makers with tools for assessing credibility. This perception was articulated by all judicial workers, with an exception of three individuals.¹⁸¹

There is no consensus in research about how common rejections due to lack of credibility on asylum applications are, but the scholarly literature is in agreement that the credibility assessment is a core element of determining asylum claims. At the same time, it is one of the most challenging parts of the overall assessment of protection needs (e.g., Kagan 2002; Rousseau et al. 2002; Noll 2005; Thomas 2006; Millbank 2009b; Wikström & Johansson 2013; Thorburn Stern & Wikström 2016). The practices of assessing credibility demonstrate great inconsistencies between different countries, state institutions and even individual decision-makers (Rousseau et al. 2002; UNHCR 2013; Tomkinson 2015). In a UNHCR report on the practices of assessing credibility within the EU member states from 2013, the following description of credibility assessment can be found:

The question for decision-makers is how do they know whether they should accept the facts presented by the applicant as supported by his or her statement and the other evidence available in the case? This, in essence, is the question that the credibility assessment should assist in answering (UNHCR 2013, 27).

The basic idea with a credibility assessment is consequently to give decision-makers tools to know when they can accept the facts presented by the applicants and when they should reject them as fabrications. This is not to say that the facts presented need to be of the same quality as proof in other

¹⁸¹ These are PC7, L4, J7.

judicial determinations, as that is very difficult for the applicants in general to provide. The legal principle of “the benefit of the doubt” has therefore been introduced by the UNHCR as a tool for the decision-makers to demarcate that the assessment of the asylum applicants’ provided facts (oral or written) requires “softer” criteria than the assessment of proof in other judicial proceedings (Kagan 2002; Sweeney 2009).

Based on the interviews with the judicial workers, it was the physical encounter between the decision-maker and the asylum applicant that enabled an assessment of credibility. The judges understood the oral element as giving them an opportunity to form an opinion about the applicant, and to highlight ambiguities in the case¹⁸² and thereby “straighten out question marks”.¹⁸³ That could include ambiguities concerning factual as well as credibility aspects of the cases, but it was the credibility aspects that required the physical encounter in order to be solved. The centrality of the physical encounter for credibility assessments was articulated by many of the judges, illustrative in this quote when a judge stated that “there is somehow different when you have the person in front of you physically”.¹⁸⁴ Another judge explained that the real advantage with the oral hearing was the fact that the decision-makers could see and listen to the applicants. The judge repeatedly stressed the importance of meeting the applicant face-to-face, as that meant that “you can *sense* whether it seems to be true or not.”¹⁸⁵

Although it was the judges who expressed the importance of the physical encounter most explicitly among all the interviewees, similar formulations were found in the litigators’ descriptions of the oral hearing as a method for credibility assessments. Several litigators agreed with the judges that the oral element was the superior way to form an opinion about the applicants.¹⁸⁶ One of them frankly claimed that “it *shows* if a person blatantly lies”,¹⁸⁷ while another elaborated more on why it was important to physically meet the applicants for the credibility assessment:

Partly it gives the person the opportunity to be heard and the court can *look* at them, *see* if they answer in a natural way, if they have an easy time answering the questions, if the answers are reasonable [...] this leaves us with

¹⁸² J2, J4, J5, J6, J7

¹⁸³ J5.

¹⁸⁴ J2.

¹⁸⁵ J2.

¹⁸⁶ L1, L5, L6, L7, L8.

¹⁸⁷ L7. The expression that asylum applicants “blatantly lie” [*blåljuger*] is also used by L1.

a sense of whether the person speaks the truth at all, or if it is personally experienced or not.¹⁸⁸

In this extract, as well as in the previous quotes by judges, the verbs that are used to describe what the judicial workers are doing in order to assess credibility have been italicized to show that they refer to the kind of actions that prerequisites a physical encounter, however not necessarily any verbal communication. The tangibility of the oral hearings seems to be an important part of the credibility assessment. However, these descriptions stand in stark contrast to how the credibility *should* be conducted, according to legal guidelines.

Objectivity/Subjectivity Dichotomy in Legal Guidelines

The Swedish Migration Supreme Court has established a few precedents which take up the question of credibility assessments (MIG 2007:12; MIG 2007:33, MIG 2011:6). According to the precedents, the assessment of asylum claims should be divided in two aspects: sufficiency and plausibility. These two aspects do not have to be practiced in a given order, and in exceptional cases only one of the aspects needs to undergo an individual assessment. In one precedent (MIG 2007:12), it is explained how to distinguish the two aspects. The decision-maker should ask:

Whether the applicant's story in itself is sufficient to meet the criteria for protection (sufficiency aspect), and whether the applicant has made his or her asylum story plausible either by presenting facts or that he or she is deemed to be credible and therefore be conferred the 'benefit of the doubt' (plausibility aspect).

The plausibility aspect can also be divided in two parts, where the evidence provided to the case makes up the first part of the plausibility assessment, and the asylum applicant's oral narrative makes up a second assessment. The assessment of the applicant's oral narrative concerns the general credibility of the applicant and may result in conferring the benefit of the doubt to the applicant.

A complicating circumstance with the principle of the 'benefit of the doubt' is that the applicant has to be deemed generally credible in order to be eligible for this principle in the first place (Diesen 2012, 208f; Gorlick

¹⁸⁸ L6. In Swedish: ”dels får ju personen komma till tals själv och rätten kan *titta* på dem, se om de svarar på ett obesvärat sätt, om de har lätt att svara på frågorna, om det de svarar är rimligt [...] det gör ju att *vi får en känsla* för om människan talar sanning över huvud taget, eller om det är självupplevt eller inte.”

2003). It becomes even more complicated if one has in mind that prior to sufficiency and plausibility assessments, an assessment of the applicant's identity has to be made. If the applicant's claimed identity cannot be proved, the evidence provided to the case is deemed less important, as it is not certain that the evidence concerns this particular asylum applicant. If the applicant provides evidence that is deemed fabricated, then this also affects the credibility assessment negatively (MIG 2007:12).

The precedents prescribe that the artifacts belonging to the case should be assessed first and separately from the credibility of the oral accounts. Indicators of credibility of the oral accounts are: *internal consistency*, i.e. if the narrative is coherent and does not include implausible statements; *external consistency*, i.e. if the narrative contains statements which contradict generally known facts; if the narrative is *detailed*; and if the narrative is *unchanged* during repeated interviews. These principles are uncontroversial as they closely resemble principles described in other jurisdictions (Sweeney 2009). They are not very enlightening, however, about *how much* inconsistency, details or changes in the narrative are acceptable in a given case. The precedents outline the principles, but are not clear regarding their practical application.

Moreover, these judicially legitimate indicators of credibility have weak support in cognitive research on deception detection in situations of interrogation (Strömwall & Granhag 2003; Granhag, Strömwall & Hartwig 2005; Schelin 2007). An experimental study of convicted offenders' false and true testimony revealed that the common judicial indicators of credibility had few possibilities to determine truth from fabrication. The same study also found that authenticity in story-telling is something that can be learned to communicate to an audience (Willén & Strömwall 2012). In other words, the legal indicators of credibility are constructions that suit jurisprudential methodology, but it is not anchored in how people actually behave.

The Migration Agency has in a legal position from 2013 (RCI 09/2013) thoroughly prescribed, based on the recommendations from UNHCR and other international legal documents, how credibility assessments should be conducted in the first instance. This guiding document emphasizes the importance of making an objective and impartial assessment. The Migration Agency's guidelines prescribe that "the method of assessing evidence should never be based on subjectivism, arbitrariness and intuition. The method must, in each case be built on a rational, objective basis" (RCI 09/2013, 7). What an objective base for decision-making means in the Migration Agency's guidelines is elaborated in the following description about credibility assessments:

Credibility is not about how data is presented (applicant gestures, gaze, etc.) if these cannot be objectively assessed. However, if it can be documented in the file that the applicant does not respond to questions repeatedly raised and cannot explain the reasons for that, it can be determined as an objective basis for assessing whether the data has been submitted in a credible way (RCI 09/2013, 3).

An objective base for assessing the applicant's demeanor is here defined by whether the "suspicious" demeanor (such as the inability to answer questions on several occasions) can be confirmed by documentation and no plausible reason for it can be given. Objectivity is thus achieved when a subjective impression has the ability to be transformed into written documentation in a file. This transformation process is, however, difficult to imagine without any interpretive processes. Notably, the meaning-making of the interpreters that has been present during each interview with the applicant is not acknowledged in this definition of objectivity. It is actually not the accounts of the applicants that has been documented, but the translated meaning of those accounts by an interpreter, which in a second step of meaning-making has been written down by an officer at the Migration Agency. What the documented interview transcript shows is the content of what the asylum applicant has said, filtered through an interpreter's and later an officer's minds, which necessarily include moments of subjective meaning-making.

Moreover, this definition of objectivity positions all observations based on a physical or oral encounter on the subjective side of the dichotomy between subjectivity and objectivity. All benefits of the physical encounter that the interviewees point to are thereby made useless if their assessments of credibility are to fit within the definition of objectivity in the Migration Agency's guidelines. This officially manifested dichotomy between subjectivity and objectivity creates a distance to the reality in which the decision-making in asylum cases takes place, as the interviewees' descriptions of how they conduct credibility assessments show. On the one hand, oral hearings are perceived to be the superior tool for making credibility assessments, but on the other hand, it is not possible for the decision-makers to motivate their decisions on credibility of any observations made during the oral hearing that has to do with "seeing", "sensing" or "feeling" or other tangible aspects of the encounter. This difficulty of translating the observations made during the oral hearings into the official language of the courts positions the decision-makers in a dilemma when they are asked to explain how they performed the credibility assessment.

In the next section, I show different strategies used by the interviewees to handle this dilemma. When I asked the interviewees how they assessed

credibility, I encountered three kinds of answers, which I refer to as the *official*, the *mysterious* and the *subjective*. They could be seen as three different kinds of strategies that workers employed in order to address the dilemma of not having a legitimate language for concretely assessing credibility during face-to-face encounters in court.

The Official, Mysterious and Subjective Credibility Assessment

The first kind of answer used in the official strategy clearly applied the official language from the guidelines on credibility assessments. The interviewees more or less rattled off the indicators of non-credibility such as inconsistency between different interviews with the same asylum applicants¹⁸⁹ and reasonableness of the narratives¹⁹⁰. Often these indicators were exemplified with hypothetical cases to show how fabrication of asylum claims can be identified. Below are illustrations about fabrications that were told to me during the interviews:

You have clients that leave different information at different times. You know, when I meet them the first time they say one thing and the second time they say another thing, and at the Migration Agency, they say a third thing. Then you begin to wonder if this is true or not.¹⁹¹

If a person cannot even tell what month it occurred, leaving different information at different times and including more people in the course of events or excluding people without reasons, well, then you're right to ask an investigating question about that.¹⁹²

The knowledge base which the judicial workers leaned on in their credibility assessments seemed to be personal experiences of hearing fabricated asylum narratives in the past. One of the problems with that knowledge base, which has been discussed in a psychological study, is that when an applicant receives a rejection due to lack of credibility, it is very hard to

¹⁸⁹ PC5, PC9, L1, L3, L6, L7, L8, L9, J2, J3, J6, J8.

¹⁹⁰ L3, L6, L8, J1, J2, J3, J5, J8.

¹⁹¹ PC9. In Swedish: "man har klienter som lämnar olika uppgifter vid olika tillfällen. Asså, när jag träffar dem första gången så säger de en sak och andra gången säger de en annan sak, och på migrationsverket säger de en tredje sak. Då börjar man fundera, om det här är sant eller inte."

¹⁹² J6. In Swedish: "Att en person inte kan berätta ens vilken månad det inträffade och lämnar olika uppgifter vid olika tillfällen och drar in ytterligare personer i händelseförloppet eller utesluter personer oförklarligt ja då har man väl rätt att ställa en utredande fråga om det."

know if the decision was correct or not for the decision-makers. Did the applicant lie about the claims or were they true? That kind of feedback is very uncommon for the decision-makers to receive, which can result in perceptions about what characterizes the fabricated narratives that live on in the minds of the decision-makers for lengths of time without being adjusted (Granhag, Strömwall & Hartwig 2005). In a study of Finnish migration officers' assessments of credibility, Kynsilehto and Puumala described how asylum decision-makers "related their personal judgment to knowledge, while the applicants' personal experiences were somehow regarded as "pure" experience that had to be evaluated against reliable information to be given the status of knowledge" (Kynsilehto & Puumala 2015, 458). This resembles how the judicial workers in this study turned their prior experiences of assessing credibility (without having much feedback on the correctness of the assessments they made) into an objective knowledge base about what constitutes a credible narrative and what were considered indicators of fabrications.

The second kind of answers, categorized as the mysterious answer, were saturated with uncertainty and confusion about what it was that the judicial workers actually did when assessing credibility. These kinds of answers were most common among the judges.¹⁹³ One example of this is from one judge who simply stated, "I cannot explain to you how I do [the credibility assessment]".¹⁹⁴ This is notable as the judges are the judicial workers with the most experience in conducting these kinds of assessments, and their assessments also have the most significant impact as they are the final instance in the majority of the cases. On the other hand, the judges are most dependent on presenting their practices as legitimate within a legal discourse, and thus they have much to risk by talking about subjective elements in their assessments of credibility. Below is a quote from a judge which illustrates this inability to verbalize what it is that they do when they assess credibility:

How do you know if it is probable? You always get that [question] from the clerks, 'how do you find out the truth?' My God, if I had been able to answer that question I would have been a millionaire or begun to speculate on the stock market or something, because that is impossible to know for sure [...] But it's really hard, I cannot give you any formula and I would have worked with something else if I could tell you when people speak the truth and when they do not.¹⁹⁵

¹⁹³ J2, J3, J5, J8, but also in PC8.

¹⁹⁴ J8.

¹⁹⁵ J5. In Swedish: Hur vet du att det är sannolikt? det får man alltid från notarier, hur tar man reda på sanningen? Herre gud, hade jag kunnat svara på den frågan så hade jag ju varit

What this type of answer indicates is that the judges make decisions based on a credibility assessment that they cannot verbally explain how they did it. I interpret this as a consequence of the dichotomy established in the guidelines between objective and subjective bases of assessing credibility. The guidelines prescribe that facts and evidence should be the “objective” base from which assessments should be derived, but the majority of cases that oral hearings are conducted in lack any such grounds for assessments. And as the guideline delegitimizes physically derived grounds for that assessment, the judges lack any legitimate legal language to speak about credibility assessments.

The third kind of answer I received, the subjective answers, acknowledged the subjectivity inherent in credibility assessments. These answers were offered by members of all three categories of judicial workers, but by a minority in each group. One public counsel explained how the assessment of credibility among clients was done:

It is partly based on the experience and then on arbitrariness and biases. I mean that you just get a feeling that something is true or not true, and it could be right or wrong, but in some cases you can, based on experiences, put together a story.¹⁹⁶

As a public counsel, this interviewee did not have to translate the practice of assessing credibility of an asylum narrative into legal language, but instead used ordinary language to explain how a sense of credibility was reached. In that ordinary language, experience and “gut feeling” is used to describe the assessment. But it is also interesting to note that for this public counsel it is clear that such a gut feeling is tentative and can be either right or wrong.

This awareness of the uncertainty that is inherent in a credibility assessment was also evident for some of the litigators and the judges. However, as credibility assessments are part of their formal work tasks, they have to legitimize what they were doing in the legal language of objectivity. Some litigators described the credibility assessment as a very complex task

miljonär eller börjat spekulera på börsen eller alltså, för att det går ju inte att veta säkert [...]Men det är jättesvårt, jag kan inte ge något recept och då hade jag jobbat med något helt annat om jag hade kunnat berätta att nu talar folk sanning eller inte sanning”.

¹⁹⁶ PC3. In Swedish: ”Det är baserat delvis på erfarenhet och sedan på godtycke och fördomar, alltså att man får bara en känsla för att något stämmer eller inte stämmer och det kan ju vara rätt eller fel men i vissa fall så kan man ju på något sätt erfarenhetsmässigt lägga ihop en berättelse.”

which involved interpretations from the decision-maker's side.¹⁹⁷ One litigator expressed:

So really, in one way it's easy, but in another way it is difficult because everything depends on how malicious you want to be and what you want to question or what you want to believe, what you want to accept.¹⁹⁸

This litigator points to the moment in the assessment of credibility when the objective/subjective dichotomy collapses. Even if there are objective indicators of credibility or non-credibility such as inconsistency or lack of details, it is for the decision-makers a matter of subjective choice when to decide how many indicators are enough or how strong they have to be to deem the whole narrative genuine or fabricated. As this litigator states, it is a matter of "what *you want* to accept". One of the judges expressed similar awareness of the necessity of subjective elements when trying to explain how the credibility assessments were conducted:

No, you have to make up your mind, that's what the legal training is all about, you come to a point where you cannot read more. You have the scales of Justitia. This is how it works, "now I take a decision", that's exactly how it is done.¹⁹⁹

This is a statement which not only makes visible the subjective element that rests within the decision-making in asylum cases, but also reveals that this subjectivity is an integrated part of being a professionally trained judge. At some point a decision needs to be reached despite lack of resources, time or efforts, and it is then up to the individual judge to decide what that decision will be.

Conclusions

The first finding from this analysis is that the policymakers' framing of the benefits with the new oral element were to be found at the implementation level as well. The policymakers framed the reform as contributing

¹⁹⁷ L3, L8, L5, L6

¹⁹⁸ L9. In Swedish: "Så egentligen på ett sätt är det enkelt, på annat sätt är det svårt därför att sedan beror ju allting på hur illvillig du vill vara och vad du vill ifrågasätta eller vad du vill tro på, vad du vill acceptera."

¹⁹⁹ J3. In Swedish: "Nej, man måste bestämma sig, det är hur hela skolningen går till, du kommer till ett läge att nu kan jag inte läsa mer. Du har vågskålen där, Justitia. Det är så det funkar, 'nu bestämmer jag mig', det är precis så det går till."

both to increased efficiency as the applicants would return voluntarily to a larger extent and to better administrative justice as the credibility assessments would be more accurate and the applicants' legal rights would be respected. The perception of the oral element as an opportunity for the asylum applicants to be heard was frequently articulated among the judicial workers as well. This perception created an understanding of the reformed asylum system as a more egalitarian system with respect for the individual applicants. It purports that the oral hearing was primarily conducted for the applicants' sake. It also expresses expectations that rejected applicants would be more inclined to return voluntarily to their countries of origin. The second perception of the oral hearing depicted it as a superior tool for credibility assessments. It is a somewhat revered understanding of the benefits of the oral hearing, as it emphasizes the control function of the asylum system, in contrast to the first perception's emphasis on the oral hearings as facilitating individuals' legal rights.

The second finding is that despite similar meanings of the oral hearings were found both at policy-making level and at the implementation level, the implementers complicated and nuanced the meaning constructions. Within the first perception, the oral hearing as a *constricted* opportunity to be heard emerged among the interviewees. This constricted opportunity turned the oral hearings into an *obligation to speak* in front of the court. It also emphasized the interpreters' important role in the oral hearings and the high demands put on them. Interpreters are the prerequisite for an oral communication between the judicial workers and the asylum applicants, but their role is to be invisible so that the other actors can pretend that the moments of interpretation do not exist. The interpreters' role is therefore to create an illusion of transparency in the oral hearings.

The other perception of the oral hearing emphasized the physical encounter as a tool for making credibility assessments. The physical encounter was described as facilitating the credibility assessment, captured through such occurrences as seeing, sensing and feeling. This way of constructing meaning around the benefits of orality, however, runs afoul with the judicial guidelines for assessing credibility in asylum cases. Due to the construction of any subjectively or interactively derived assessments about credibility as illegitimate, the judicial workers lacked the legitimate language to explain how they assess credibility during the oral hearing.

9. Symbolizing Administrative Justice

The interpretive and ethnographic approach employed in this study understands judicial practices as consisting of both functional and symbolic elements. In the theory chapter, it was emphasized that courts have an objective not only to make sure that justice is done but also to make sure that justice is *seen* to be done. The legitimacy of courts' authoritative power depends on this performative dimension of judicial practices. This act of showing justice is directed to the general public, but also to the claimants and the judicial workers participating in the performative act.

In this chapter, I analyze the activity with most symbolism that exists in the asylum procedure, namely the oral hearing that takes place in the courtrooms of the administrative courts. The meanings of judicial independence, adversarial roles and orality that have been gleaned in the former chapters are further investigated in this chapter by analyzing the symbolic dimensions to these practices. The analysis is guided by four analytical questions, developed from Yanow's and Collins' analyses of rituals (see chapter three). The first question pertains to who is actively *participating* in the ritual. The second question deals with what kind of objects are at the *center of attention*, and what these objects mean for the group. The third analytical question asks what kind of values and activities are *obscured* as a consequence of the attention on particular objects. And the final question concerns the *emotional mood* that is established during the oral hearing.

The chapter begins with a brief summary of the cases I observed followed by an analysis of the practices that are excluded from the courtroom. It then proceeds to analyze the practices that take place inside the courtroom. This part of the chapter is divided into different sequences of the oral hearing: the opening, the public counsel's interview, the litigator's interview, the final pleadings, and the last words. After that, the courts' rulings are analyzed in terms of how they understood the asylum narrative during the oral hearing. The chapter's concluding section connects the findings from this chapter to the second research question regarding how administrative justice acquires a practical meaning among the judicial workers at the courts.

Contextualizing the Observed Cases

In this section a brief summary of each case that I observed is presented. It includes the original asylum claims in the application to the Migration Agency and the motivation for why the Migration Agency rejected the claims.

One case pertains to a single male who lodged an application for refugee status and permanent residence in Sweden because he claimed to have Syrian origin and there he would risk future persecution from the government due to his and his father's political activity. A military book and copies of identity documents and a health report was included in the application to the Migration Agency. The Migration Agency examined the document and found that the military book was manipulated on several pages and that the other documents were of too simple nature to have any value as evidence. A language and knowledge test was conducted to check the applicant's residence in Syria.²⁰⁰ The results of the tests did not confirm that the applicant spoke Arabic with a Syrian dialect and claimed that the applicant lacked knowledge about the local area he claimed to have lived in during his whole life. The Migration Agency conducted two hearings with the applicant before they decided to reject his application for asylum.

A second case pertains to a married couple with three children who claimed that they were of Syrian origin but had lived illegally in a second country since they were children. Therefore, they could not receive protection from the authorities in that country. The reason they applied for asylum in Sweden was that the husband's father had been killed by criminal gangs because he did not give them money and the husband had been threatened to be killed by the same persons if he did not give them money. They had not provided any written evidence or identity documents to support their claims but they had sent several medical reports that described the physical disability of one of the children. The Migration Agency conducted three different language tests on both adults in the family to check their Syrian origin. The result of the three tests proclaimed that they did not speak with a Syrian accent and a third country was stipulated as their proper linguistic residence. The Migration Agency decided to reject their application for asylum and argued that they could move to the country that the language test stipulated they originated from to avoid the criminal gang threatening them.

²⁰⁰ Language- and knowledge tests have been repeatedly criticized for being an uncertain tool for assessing someone's ethnic or geographic origin. However it has been considered a valid complementary instrument in assessments of asylum cases by the Swedish Migration Supreme Court (MIG 2011:15).

A third case pertained to a young man who claimed to be entitled to protection due to threats from the militant Islamist group Al-Shabab in Mogadishu. He stated that he had committed a political act by refusing to collaborate with Al-Shabab and that this group would try to kill him if he returned to Mogadishu. He did not supplement his oral testimony with written evidence or identity documents. The Migration Agency held one oral hearing with the applicant and found that his asylum narrative was vague and therefore it was not convincingly plausible that he would risk any harm upon return to Mogadishu. They rejected his asylum application.

The fourth case pertains to a man from a sub-Saharan African country who claimed that he should be granted permanent residence in Sweden on grounds of attributed political opinion and ethnicity. The man claimed to have been imprisoned and tortured by the police because of his political activity. He was later released but the threats from the police continued and he feared for his life. He provided a driver's license as identity document and a medical report confirming injuries from torture. The Migration Agency found the man's asylum narrative credible but disbelieved that he would risk future harm upon return to his country of origin because the police had released him. Therefore, his asylum application was rejected. The applicant appealed the decision and supplemented the application with COI from Amnesty and Human Rights Watch about the situation for people who had been imprisoned but were later released. The Migration Agency sent a new petition to the court where they argued that his driver's license was incomplete and therefore presumably manipulated. They had also found out that the applicant's wife had applied for asylum in Sweden a few years earlier and had been rejected. When the Migration Agency compared the asylum narratives from the applicant and his wife they discovered inconsistencies in a few parts of the overall narratives. That made the Migration Agency doubt the applicant's credibility.

A fifth case pertains to a Somali woman and her five-year old child who claimed that they would face serious harm if they returned to Mogadishu. As grounds for the application for asylum they claimed attributed political and religious belief. Additionally, they claimed to be facing harm as women and as part of a particular social group. Their application was not supported by any written evidence. The Migration Agency conducted a language- and knowledge test with the applicant, which confirmed that the applicant was from Mogadishu. After the first interview at the Migration Agency the public counsel sent a petition with corrections to the protocol from the hearing where the threats towards the applicant were more carefully described. The public counsel claimed that the officer from the Migration Agency that held the hearing had not asked enough questions about

the individual threats towards the applicant and that the interpreter and the applicant misunderstood each other during the hearing. The Migration Agency interpreted this as if the applicant had escalated the asylum narrative during the investigation, and therefore questioned her credibility. With reference to COI, they did not believe that she risked future harm. The best interest of the child was interpreted in this case to be a return to Mogadishu, with reference to a guiding decision from the Government in 2005, claiming to avoid ethnocentrism in not always assuming that Sweden was a better place for asylum-seeking children. With these reasons, the Migration Agency rejected the application.

A sixth case pertains to a man who claimed to come from a sub-Saharan country. He stated that both his parents had been killed and when he was trying to find out who killed them he was kidnapped by the rebels in the area and they took his identity documents. After several weeks of humiliating treatment and military training for the rebels he succeeded in escaping. He assumed that the rebels had handed over his identity documents to the government forces to prove that he had joined them and he claimed that he therefore risked persecution from both the rebels and the government if he returned to his country of origin. The applicant did not provide any documents to support his asylum claims or identity. The Migration Agency assessed the asylum narrative as vague and in many parts as implausible and therefore rejected his asylum application.

The seventh and last case pertains to a woman from Nigeria with three small daughters who claimed that she needed protection based on her gender and religion. She claimed that while she was pregnant with her youngest child, her father-in-law threatened to kill the child if it was a girl. Her husband and father-in-law belonged to a religious sect and the sect demanded a boy to inherit the family's position as the head of the sect in the future. The father-in-law also wanted to genitally mutilate the daughters, which she did not agree to but would be forced to do if she stayed in the family. There were no identity documents or other written evidence provided for the case. From the protocol of the first asylum hearing it was obvious that the three children interrupted the interview and disturbed the conversation on several occasions. The Migration Agency did not find the applicant credible and rejected the application.

Outside the Court Room: Practices Excluded from the Ritual

One strategy to grasp the activities that constitute the ritual elements of the oral hearing is to analyze the difference between practices that exist outside the courtroom and those that exist inside. The boundaries of the ritual become visible by such analysis. The practices that are deliberately excluded from the inside of the courtroom have been analyzed as situations where the function of the ritual otherwise could have been threatened.

Hidden Spaces, Intimate Talk

Despite the differences in location, size, street view, color and interior scale between the migration courts in Stockholm, Malmö and Gothenburg, there are some common design elements. The built spaces (Yanow 2013) of the migration courts express both openness to the public's sight and closure from the public's sight. It contains both public space and hidden space within its walls. They all harbor waiting areas with sofas, tables and coffee machines as well as reception desks. These spaces are publicly open, but signs convey that these areas are monitored with video camera surveillance and security personnel in uniforms sitting behind the reception desks. These publicly available spaces stand in bright contrast to the inner parts of the buildings, where only employees of the court have access. These inner spaces are shielded from the public by discrete doors with readers for access cards and code locks. This double presence of both openness and closure is also visible inside the courtroom, as there is one main entrance for the visitors of the court and another more discrete door, located in the opposite corner of the room, where the judge, law clerk and lay judges enter and leave from.

Before the hearings, the court members (clerk, judge and lay judges) sit together in a seminar room in the hidden part of the court to share information about the case, and after the hearing they retreat back to the hidden part of the court to deliberate and agree on a final decision. The inner, and for the public hidden, parts of the courts would not be legitimate without its open and transparent parts. At the same time, the decision-making of the courts is conducted behind closed doors and later translated into the official reasoning written in the court rulings. My interpretation of the design of the courthouses is that the transparency that the court is associated with is dependent on its opposite: a space shielded from public sight. This design is also distancing the decision-makers from the public, which is a way to symbolize that judges are judicially independent.

The areas immediately outside the courtrooms are places designed for waiting. The applicants, the public counsels, the interpreters and the litigators have to share this space awaiting the clerk's call through the speaker system that the hearings can start. It can be said to constitute the pre-stage of the ritual where the participants first meet face-to-face, but without the predetermined rules for how they should interact with each other that exists in the courtroom. The interaction in this space commonly took very intimate and hesitant forms, with informal encounters and whispering conversations. This was in stark contrast to the formal language and authoritative communication that were performed inside the courtroom. In the courtroom, the demands of transparency are strong, and everyone should be able to hear what everyone else is saying. Conversations inside the courtroom must also be sanctioned by the judge, who gives the floor to different speakers. Outside the courtroom, the conversations were spontaneous and intimate as the voices were kept low to avoid uninvited listeners.

What these contrasts between transparency and opacity, and intimacy and distance, both in building design and the participants' actions, signal is that transparency and distance are values that the courts' ceremonial elements aim to communicate.

Interpreters' Knowledge Claims

The interpreters play a difficult role in the hearing as they are supposed to be constantly present without being noticed. Their knowledge about the language and culture of the applicant has no proper place in the asylum procedure as it is extracted from personal experience and not from judicial expertise. Outside of the courtroom, they were, however, the one actor that everyone turned to in order to find an array of different information. The interpreters often took on the role as the applicant's guide to toilets, coffee and tea dispensers as no signs were written in the applicants' languages. The interpreters were also the people who most often made contact with me when we sat outside the courtroom waiting for the doors to open. On two occasions the interpreters also told me, in confidence during a break and after the hearing that they knew whether the applicant told the truth or not based on their knowledge about the language that the applicants spoke. They both made clear to me that no one inside the courtroom was interested in their opinions. These interpreters represented a kind of knowledge that the court lacks, the knowledge that comes from lived experiences of a specific cultural and linguistic context, and by ignoring that kind of knowledge inside the courtroom, this kind of knowledge is suppressed. By

suppressing this lived and experienced knowledge, the construction of the judicial competence of the judges as holding the most important knowledge becomes symbolically reinforced.

Children

In three of the hearings I observed, small children were present as their parents were the main applicants. Children are generally not allowed to be inside the courtroom but in one of the hearings the applicant had not arranged a babysitter for her three small children, so she insisted on having them with her inside the court room. This caused observable irritation and confusion among the professional actors, particularly the judge. It was clear that the presence of small children inside the courtroom was not something that the court could easily incorporate. One way of interpreting this anxiety that the children's presence aroused is that the children threaten to disrupt the formal codes of conduct of the oral hearings. Children have a tendency to laugh or cry when they should be serious, to talk when they should be silent, and to run around when they should be sitting.

Inside the Court Room: Sequencing the Ritual

The analysis of activities that are excluded from the courtroom offered hints on the symbolic meaning of the oral hearing as ritual. Transparency and distance were two values that the activities inside the courtroom symbolize, and they stand in bright contrast to the hidden spaces behind the courtrooms where the decision-making takes place. Likewise, the interpreters' knowledge about the linguistic origins of the asylum applicants, which was an issue of dispute during several of the hearings, was not accepted knowledge inside the courtroom. This kind of extra-legal knowledge would challenge the competence of the judge which would threaten the judge's authority and further the idea that legal competence is superior to extra-legal competence in asylum determinations. Children's exclusion from the oral hearings was interpreted as a way of strengthening the authority of the judge in the courtroom. Children are a threat to the judge's authority as they cannot be expected to conform to the rules of conduct that are part of the ritual elements of the oral hearings.

With these insights as a backdrop, the following part of this chapter analyzes the ritual activities that take place inside the courtroom. It does so by dividing the oral hearing into sequences that were observed in every attended hearing. It ends with the written rulings from the court. Despite

not being part of the activities that take place inside the courtroom, the rulings are a direct result of the activities that took place inside the courtroom and therefore they mark the end of the asylum appeal procedure.

The Opening

The judge, the three lay judges and the law clerk are already in sitting inside the courtroom before the other participants are allowed to enter the room. They sit together in a row behind a long table at the back of the room. The judge sits in the middle and on his or her right hand is the place of the law clerk and one of the lay judges. At the left-hand side sit the two other lay judges. On each side of the podium the two adversarial parties have their places. The litigator took place at one side and the applicant, interpreter and public counsel took place at the other side of the room.

The positioning of the judge as separated from and in the middle between the two adversarial parties is a traditional courtroom arrangement designed to emphasize the adversarial relationship between the parties and their equal relationship to the independently judging party (Chase 2005, 119; Flisbäck 2009). The importance of signaling distance between the judge and the rest of the participants became evident when one judge asked me to step up to him during the break in one of the hearings, but when I tried to approach the judge before everyone else had left the room he gestured that I should wait, as if the physical distance between the judge and myself was a measurement of his impartiality. The spatial design of the courtroom is therefore not only *reflecting* the impartial position of the judge, it also seems to be part of *maintaining* that position.

The judges, the clerks, the litigators and the public counsels were most formally dressed in suits in dark colors. The lay judges were a bit less formally dressed with more colors and less uniformed outfits. The interpreters and the applicants came to the court in jeans, skirts and t-shirts in brighter colors which made them look casually and informally dressed compared to the other participants. The different ways of dressing function as uniforms which mark the status of the participants at the oral hearing. In this context, the dark suit signals respect for the situation and for its bearer. This interpretation of dress codes was noticed by one of the interviewees, who claimed to always wear proper clothes when interacting with asylum applicants because that indicated the interviewee was a person with authority who should be respected.²⁰¹ The suits are also a symbol of professionalism which enables the participants to act in the roles that the

²⁰¹ Interview with L3.

court procedure has given them. The judges, clerks, litigators and public counsels are most uniformly and formally dressed, which also marks their professionalism. The lay judges are assigned the role as common citizens, which also are symbolized by their quasi-formal outfits.

In a study of interrogation styles in oral hearings concerning citizens' rights to welfare services in the United States, the authors named the judge "the chief choreographer of the proceedings" (Lens et al. 2013, 200) as it is the judge who decides whom should talk, when and about what during the oral hearings. That description fits well for the judges at the oral hearings I observed. The judge opened the oral hearing by introducing the participants to each other and making sure that the right persons were present in the room. After the presentation, the judge informed the parties about what the different parties disagree about. If any new information has been called upon in the hearing, the judge made sure that all parties had the opportunity to access that new information.

Moreover, the judge gave the applicants instructions about how the continued hearing would evolve and how the applicant should answer the questions. Lens et al. (2013) showed in their study how different judges used different strategies to steer the hearing, ranging from an authoritative to an open style (see also Tomkinson 2015; Gill et al. 2015). I could also observe great discrepancies between different judges' behavior even if the sparse number of observations disallowed any general claims in this regard. The most authoritative style can be illustrated in the judge who instructed the applicant about the verbal rules of conduct in the following way:

Judge:	The hearing is only a supplement to the written exchange in the case. This means that only the most necessary is to be addressed in the hearing. The applicant should only answer the questions, nothing else. Is it possible to answer yes or no to the question you should just do that. So now I ask you [turns to applicant], have you understood what I just said?
Applicant:	Yes.
Judge:	Well, it seems so. ²⁰²

This judge is here strongly emphasizing the authority that the judge has over the applicant's activities in the courtroom and signaling that the applicant should say as little as necessary during the hearing. Another judge

²⁰² Notes from observation 3, all extracts are translated by me.

that I observed, however, used a less authoritative strategy when giving the applicants instructions in the opening part of the hearing, illustrated in this quote:

Now you will get questions from the public counsel, and later from the litigator and then from me if I want to ask something. The purpose is that we should reach as correct an investigation and decision as possible.²⁰³

This instruction does not state how the applicant should behave, it only describes what will happen during the oral hearing and what the purpose of the hearing is. The attempt to take control over the asylum applicants' words is not as evident in this latter example as in the first one. Both, however, make clear to the applicants that their only role in the oral hearing is to answer questions, which makes it difficult for the applicants to steer communication during the oral hearing.

In one of the observed hearings the public counsel asked the applicant to speak up a bit and the judge commented on it by stating that "the main thing is that the interpreter is heard."²⁰⁴ This statement emphasizes that the applicants' voice is not important for the hearing. What is left of the face-to-face encounter with the asylum applicants is the appearance of the applicants, but detached from the oral narrative as it is communicated by the interpreters.

In this opening sequence of the oral hearing, the judge was the only active participant. Every oral hearing started with the judge's declarations of the rules of the oral hearings. By turning directly towards the asylum applicant with instructions about what is expected of them during the hearing, the judge emphasized the power that is exercised over the applicant in this process. The judge also focused attention on the oral narrative that the asylum applicant should deliver by giving detailed instructions about how and when the asylum applicant should talk. What is obscured by the judge's attention to the asylum narrative is the presence of the interpreter and the influence that the translation has on the asylum narrative. As mentioned in the previous chapter, the invisibility of the interpreter creates an illusion of transparency in the communication with the asylum applicants. By directing attention to the asylum narrative as an object that could be discovered and scrutinized during the oral hearing, the judge directs attention away from the fact that they have to make an important decision about a person's future life based on that person's translated story during the oral hearing. If the importance of the interpreters were acknowledged at the

²⁰³ Observation 4.

²⁰⁴ Observation 5.

opening of the oral hearing, it would have been difficult to ignore the influence of the interpreter on how the asylum narrative was presented.

The Counsel's Interview

The second part of the oral hearing consisted of the public counsel's interview with the applicant. The public counsels posed questions to the applicant, which the interpreters translated to the applicants. The applicants responded and the interpreters translated the answers back to Swedish. The applicants mostly answered the questions very briefly and the public counsels often had to encourage the applicants to develop the answers more thoroughly. The public counsels asked for details and insisted the applicants fill the narrative with thick descriptions about crucial events in the narratives. The public counsels also asked the applicants for clarifications of claims that the litigators earlier had questioned. Additionally, the public counsels asked the applicants about their health and wellbeing. In some hearings, the public counsels asked if the applicant needed a break when they appeared pressured or if they cried. Here is an illustration of one such moment:

Public counsel:	Why did they kill your father?
Applicant:	They demanded money from him, sometimes he refused and then they killed him.
Public counsel:	Is it difficult? Can I continue?
Applicant:	It is hard.
Public counsel:	Everyone here understands that. ²⁰⁵

The public counsels made attempts to present a rich and detailed asylum narrative with literary qualities which portrayed the persecution in a self-experienced and vivid way. However, for the applicants who had been instructed by the judge to answer as briefly as possible, the public counsels' questions about giving more details run contrary to the instruction from the judge at the opening of the hearing.

The active participants in this part of the hearing are the public counsels. The applicants are answering questions which position them in a passive role. The asylum narrative is the object of attention during this part of the hearing as well. And again, the interpreter's presence is ignored and instead the attention is given to the facial expressions of the applicant. Everyone in the courtroom is looking at the applicant and listening to the interpreter's voice. The focus on the demeanor of the applicant together

²⁰⁵ Observation 4.

with the voice of the interpreter merge of the interpreter and the applicant symbolically into one subject.

The Litigator's Interview

The third part of the hearing was devoted to the litigators' interview with the applicant. In two observations, the judge added a few questions to the applicant during this part of the hearing.²⁰⁶

The mutual focus of attention during this part of the hearing was again the asylum narrative. However, in this interview it was inconsistencies in the narratives and the applicants' explanations for this that were in focus. One of the interviewed litigators used the metaphorical picture of a balloon when illustrating how one single mistake from the applicants' side during the oral hearings can be sufficient to undermine his or her credibility; it can "puncture the whole balloon" was the exact expression used.²⁰⁷ This metaphor is interesting as it presents the asylum narrative as a detached and autonomous object with clear boundaries which is floating around in the air. The metaphor of the asylum narrative as a balloon also creates a picture of a fragile and empty object without substance.

In this part of the hearing, the litigators attempted to puncture the asylum narrative by using different interrogation strategies. Most of the litigators' questions centered around instances in the asylum narrative where incoherence with protocols from former interview could be spotted. These conversations led to significant confusion and misunderstandings which took a long time to clear up. The field notes from one hearing²⁰⁸ is particularly thick with these kinds of misunderstandings due to the offensive approach from the litigator's side, even though the same type of problems occurred in many of the other hearings as well. One example from this hearing is when the litigator became suspicious about the coherence of the narrative as the interpreter translated the applicant's description of his time in prisons as "we heard gun shots", while the protocol from the first asylum interview stated that he had said the "I heard gun shots". When confronted with this incoherence during the oral hearing the applicant answered that the interpreter might have heard wrong, because he was alone in the prison cell and was blindfolded so he had no reason to say 'we'. The litigator replied: "Then we must be many that heard wrong, because we heard that the interpreter said 'we'". The litigator did not take into account that everything the judge, lay judges, public counsel and litigator (those in

²⁰⁶ Observation 4, observation 6.

²⁰⁷ Interview with L5.

²⁰⁸ Observation 5.

the room who did not understand the applicant's native language) could understand was what the interpreters said, and therefore they could not know for sure if the applicant had said 'I' or 'we' during any of the interviews. This example shows a lack of awareness from the litigators about the interpreters' role and how words can be changed in the process of interpretation.

In another instance during the same part of the hearing the litigator spent a lot of time questioning how long the applicant had been hiding in a particular house from those pursuing him. In the first interview protocol, he had not specified this, but when asked during the litigator's examination he stated that it was for two days. The litigator then began to question that time span as very short because of all that happened during the time he was hiding and the applicant corrected himself and stated that it might have been longer, but that he was afraid and sat in a dark place and therefore guessed that it was two days. "Have you guessed several of your answers here today?" the litigator then replied and continued to state that the applicant had claimed to be hiding for only two days until the applicant stopped him and asked: "you keep saying two days all the time but I have told you that it could have been several days. Why do you continue to say two days?" The litigator did not respond to that but continued to repeat that he had been hiding for only two days. By focusing attention on these inconsistencies, the litigator actively co-created incoherence, vagueness and inconsistencies in the asylum narrative.

Another strategy that was used by the litigators was to ask for things that the applicants could not know anything about. This is a similar strategy that Bohmer and Shuman (2008) found in their research on asylum interviews in USA and the UK. In their study, they found that the officers could ask the applicants to explain the political situation in their country of origin or what happened to family and friends when the applicant was not there. Similar questions were asked in the litigators' interviews with the applicants I observed. When the applicant responded they did not know, it was interpreted as an indicator of vagueness, which undermined the credibility of the applicant. Apart from these themes, the travel route was another theme the litigators were interested in.²⁰⁹ It was used to insinuate the applicant was hiding information about how they came to Sweden. In one hearing the litigator was not only insinuating this but frankly stated, "you are not telling the truth!" when the applicant described how he had travelled to Sweden.²¹⁰

²⁰⁹ Observation 1, observation 2, observation 3, observation 7.

²¹⁰ Observation 3.

The litigators' interview strategies fostered an emotional mood of confrontation during this part of the hearing. This emotional mood caused reactions of anger and frustration among the applicants as they tried to resist the litigator's attempts to characterize their narratives as fabricated. One applicant questioned why she should answer the same questions she had already responded to several times before, and on a question about what her father-in-law had planned for her children, she responded: "how could I know, I am not inside his head."²¹¹ Another applicant questioned the litigator's request that he should remember things that had happened twenty years ago.²¹²

The active participant during this part of the oral hearing was the litigator, and sometimes supported by the judge. The applicant was again only allowed to answer the posed questions, which gave them a passive role. The object of attention was the incoherent and inconsistent asylum narrative, which the litigator created by employing several different interview strategies. What was suppressed by this focus were the explanations given by the applicants for why these inconsistencies had occurred. Explanations such as "I do not remember", or "the interpreter must have translated wrong", or "I was ashamed to tell that before", were not given any attention by the litigators during this part of the interview.

Final Pleadings

When the litigators' examination of the narrative was over, the judge asked the litigator and the public counsel for their final pleadings. In this part of the oral hearing the judge, the public counsel and the litigator are the active participants. The interpreter translated everything to the applicant in a low voice during the speeches so that the applicant would understand what was said. Sometimes the applicant reacted to the speeches by silently crying,²¹³ but commonly they sat quiet and listened.

The mutual attention of focus during this part of the ritual was again the asylum narrative. The litigators used this speech to argue that all inconsistencies, incoherence and vagueness that had been spotted during the oral hearings were proof of fabrications of the claims. The public counsels tried to explain the weaknesses of the asylum narratives with other causes than fabrication of claim. They argued that incoherence could be caused by a poor investigation or translation of the first asylum interview at first instance and that what can be seen as implausible from a Swedish point of

²¹¹ Observation 2.

²¹² Observation 4.

²¹³ Observation 4, observation 7.

view might be reasonable in other non-Western countries and cultures. They also argued that the asylum narratives that were detailed and coherent as indicators of credibility. The emotional mood during this part of the oral hearing was characterized by emotional detachment and rational reasoning.

Last Words

The last part of the oral hearings consists of the concluding words by the judge, where it is stated when the decision will be officially declared and the bill from the public counsel is handed in. If the applicant had any travel expenses, this is also handed in to the court. The judge asks the litigator if a control of the applicant in the European asylum control system has been conducted to see if the applicant had been registered in any other country as an asylum applicant. Then the moment arrives when the judge asks if the applicant wants to say something more to the court before the hearing ends. Some of the applicants take the opportunity to do this. Below are some sample accounts that the applicants told the court:

Observation 2:

Judge: Does the claimant want to say a few words to the court?
Applicant: [points to the litigator] He has never been to Nigeria. You cannot read stuff at internet and draw conclusions from that. I have told you what happened there. I have been there myself.

Observation 3

Judge: Before we finish, I will ask the claimant if you want to say something with your own words.
Applicant: Thanks to the court. My and my wife's asylum claims should not be mixed together [the applicant shows the court a photograph of his premature baby in an incubator]. Our child was operated three times during the time when my wife was interrogated by the Migration Agency. The baby only had 50 % chance of making it. She was very anxious. The Migration Agency made mistakes then. I wish that the court has tolerance and that the family's rights are recognized.
Judge: I think we stop there.

Observation 5:

- Judge: Does the claimant wish to add something before we finish?
- Applicant: Yes, I want to. I wonder if the Migration Agency has influence over the decision or if it is totally up to the court?
- Judge: It is only the court.
- Applicant: I have been in Sweden for two years and conducted several investigations at the Migration Agency. First, they did not believe that I was from Mogadishu. I did a language-test. The rejection that I received pertained to the Dublin regulation, not the credibility of the asylum narrative. At that time, it was only my nationality that was questioned. Is it not the same Migration Agency that sits here today?
- Judge: Now, it is up to us at the court to decide if the decision should be changed or not.
- Applicant: I am very afraid to return to Somalia.

Observation 7:

- Judge: Does the claimant want to say something?
- Applicant: I applied for asylum in Sweden because I will be killed in my country. If you send me back, you send me to death.
- Judge: We stop there.

Several different strategies can be spotted in these statements. One is the applicants' attempt to appeal to the decision-makers' mercy and compassion instead of their legal expertise. It is visible in the second, third and fourth quotes. Lens et al describe how the applicants in front of the administrative court "have a more relational style of communication [which] is also out of sync with the linear, declarative style of the law" (Lens et al. 2013, 203).

A second strategy is that the applicants claim to have superior knowledge compared to the Migration Agency about the asylum claims. It is visible in the first quote when the asylum applicant questions the expertise of the Migration Agency by stating that there is a difference between fact-finding "on internet" or to "have been there" in person.

A third theme is the applicants' questioning of the independence of the migration courts from the Migration Agency, which is spotted in quotes two and three. The ineffectiveness of these kinds of appeals is visible in the responses from the judges as they in all cases interrupted the applicant

after a few seconds. These few seconds of speaking is the only non-constricted communication that the applicant is given during the oral hearings. All other communication is strictly directed by the judge, the litigator or the public counsel. This moment of non-constricted speech harbors a contradiction as it asked the applicant to decide what they want to say, as to mark the difference between this moment and the other communications that has taken place during the oral hearings. At the same time, as soon as the applicants start to elaborate and answer, the judge definitively silences the applicant by stating “I think we stop there”. This question about last words is symbolically showing that the court listens to the applicants in a non-constricted way, but without letting that kind of speech influence the decision-making in any substantial way.

In this last part of the oral hearing the focus of attention as well as the emotional mood is far from shared and mutual among the participants. The judge and the public counsel are mainly focusing on the bill exchange and when the decision will be announced while the litigators have ended their assignment and mostly prepare themselves to leave the room, watching the clock (as in the quote below) or asking for permission to leave.²¹⁴ These separate focuses are illustrated in this extract from the field notes of the last minutes of one of the oral hearings:

Judge:	[To the applicant] do you need reimbursements for travel expenses?
Applicant:	We arrived by car.
Judge:	But you can get reimbursement for that.
	[The Litigator is constantly watching the clock on the wall]
Judge:	The hearing is finished and the ruling will be announced within three weeks.
Applicant:	I need help with my children!
Judge:	We have understood that.
Public counsel:	[to the applicant] You will get a notice from me when the ruling is official. ²¹⁵

The applicant in the quote above makes a last attempt to appeal to the court’s compassion by emphasizing that his children (one of them is disabled) need to stay in Sweden. The judge is clearly not interested in hearing more about that aspect and interrupts his plea directly by stating that the court already is aware of that. The oral hearings often ended in a moment of diverse emotional mood, ranging from the applicant’s desperate cry for help and the litigators’ rush to get out of the room.

²¹⁴ Observation 1.

²¹⁵ Observation 4.

Whether or not the asylum applicants felt that they were properly listened to cannot be investigated in this study. There are, however, other studies (Kynsilehto & Puumala 2015; Bohmer & Shuman 2007) which have interviewed asylum applicants about their experiences of being heard by asylum officers. The result of these studies reveals that the applicants felt deprived of their agency to decide which part of the asylum narrative that had importance for the claims they made. Their attempts to contextualize their experiences by telling about the historical background of the conflict or their family history were not seen as relevant by the decision-makers. Instead the officers wanted to know very specific details about the asylum claims, for example about the feelings, motives and whereabouts of others, which often were difficult for the applicant to have any knowledge of. Kynsilehto and Puumala called this difference between what the applicants wanted to tell and what the decision-makers' wanted to hear "an ontological gap" (2015, 458). Bohmer and Shuman came to the conclusion that the asylum hearings tend to produce more ignorance than knowledge about the applicants' asylum claims (Bohmer & Shuman 2007).

The Courts' Rulings

Six of the seven oral hearings that I observed resulted in rejections of the applicants' appeals. The appeal which was approved by the court was one of the rare cases in which the lay judges voted against the professional judge.²¹⁶ In this case, all three lay judges voted for approval, while the professional judge wrote a dissenting opinion to motivate a rejection of the appeal. The professional judge agreed with the lay judges that the asylum narrative was credible, but had come to the conclusion that it was not sufficient to meet the criteria of protection, and therefore it should be rejected. The professional judge thereby followed the litigator's interpretation of the country information, which stated that there was a possibility to get protection from domestic authorities, and therefore there was no future risk of harm.

All the six other cases were rejected due to the asylum applicants' lack of credibility. In one case the applicant's credibility was undermined because he had handed in fabricated documents about his identity and reasons for his flight.²¹⁷ The Migration Agency had also done a language test which did not support his stated nationality. In this case, the documented

²¹⁶ Observation 2.

²¹⁷ Observation 6.

evidence against his claims was strong, and it came from several different sources.

None of the other five cases included written evidence of fraud. In its place, language tests, old interview transcripts and COI was used to undermine the credibility of the applicants. In one case, several language tests that did not support the applicant's stated nationality was given as a motivation for rejection together with the indicator of vagueness in the asylum narrative.²¹⁸ In two other cases,²¹⁹ the applicants passed the language tests and thereby made their identity plausible according to the court, but their asylum narratives were regarded as lacking credibility anyway. The indicators of non-credibility that the court mentioned in one of the cases²²⁰ were vagueness, inconsistency in two details of the narrative between the first and second asylum hearing, and one part of the asylum narrative was deemed to be implausible. The other case²²¹ was also deemed to lack credibility due to inconsistency with prior interview protocols. The new information that the applicant revealed during the oral hearing was interpreted as an escalation of the asylum narrative in the court judgement, which undermined the credibility of the applicant even further.

In another case,²²² the asylum narrative was also determined by the court to have been escalated during the oral hearing. However, it was not stated which part of the asylum narrative that this indicator pertained to. This asylum narrative was further claimed to be detailed, but several parts of it were deemed implausible, including the travel route to Sweden.

One of the cases I observed included written evidence that supported the applicant's claims. The written documents included a driver's license as an identity document and a medical report confirming injuries from torture. Moreover, the appeal included COI from Amnesty and Human Rights Watch about the situation for people in the same situation as the applicant. A petition from Amnesty was also sent in to the court which stated it was highly plausible that the applicant would be exposed to imprisonment and torture again if he returned to his country. The Migration Agency first argued that his driver license was incomplete and therefore presumably manipulated. Later in the court procedure the litigator found the missing parts of the driver's license among the investigation material but continued to claim that it was of low evidentiary value as it lacked a signature. They

²¹⁸ Observation 4.

²¹⁹ Observation 5, observation 1.

²²⁰ Observation 5.

²²¹ Observation 1.

²²² Observation 7.

had also found out that the applicant's wife had applied for asylum in Sweden a few years earlier and was rejected. When the litigator compared the asylum narratives from the applicant and his wife, they discovered inconsistencies in a few parts of the overall narratives.

This case includes both factual evidence (driver license, medical report of torture, amnesty report, COI) and oral statements (by both the applicant and his wife). How the factual evidence should be interpreted is up for dispute in this case. The public counsel claims that the factual evidence is weighted in favor of the applicant, but the court makes the opposite interpretation. Based on the finding that the driver license lacked a signature it was not regarded valid as an identity document. The petition report from Amnesty about the likelihood that the applicant would face torture again upon return was therefore also dismissed as he could not validate that he was the person Amnesty wrote about. The medical report about his injuries was not properly issued and could therefore not be regarded as evidence. The COI was dismissed as it only concerned the general situation for prisoners in the country, and not his individual situation. Regarding the asylum narrative, the court concluded that there were two episodes of internal inconsistency between what the applicant said at the court hearing and the protocol from the hearing at the Migration Agency. There were also two parts of the narrative that were inconsistent with the wife's asylum narrative. The wife had said that he transported weapons when he was arrested and he had said that he transported political leaflets. The applicant's explanation that the police had told the wife that it was weapons in his truck when they arrested him was dismissed as "not acceptable" by the court. The other inconsistency pertained to if he had been caught by the police when he ran from his apartment or in the apartment. The court also stated that it was strange that the wife's asylum narrative did not include a description about the fire in the prison that the applicant was located in.

One of the most important ritual functions of the oral hearing, I have claimed, is to establish the asylum narratives as an object. This creation of something that in reality does not exist as a physical object into something that is talked about as if it were possible to touch, encapsulate, save for later, pick apart and build up again is also manifested in the written judgments from the court. The asylum narratives are described as objects without connection to time and space. This is why it makes sense for the judges to consider two minor disparities between a five-year-old transcript of an asylum narrative from the applicant's wife and the applicant's own asylum narrative as an indicator of non-credibility. This is also the reason why the applicants' explanations for why they did not remember more details (e.g.

“it was 20 years ago”²²³), was unwilling to reveal everything in the first asylum interview at the Migration Agency (e.g. “I was ashamed”²²⁴) or why details differed between different interviews (e.g. “the interpreters did not translate correct”²²⁵) are dismissed as “not acceptable” in the court judgements. These dismissals only make sense if one considers the asylum narratives as tangible objects, unaffected by time and contextual circumstances during the interview situations.

Conclusions

The analysis in this chapter has been guided by four analytical questions. In this last section of the chapter, I summarize the findings from these questions, starting with participation and the emotional mood, and then moving forward to the mutual object of attention and what is obscured by that attention.

The actors in the ritual who *participated* most actively are the judge, the litigator and the public counsels. They are the actors able to pose questions and to steer the conversation in the room. The applicants are strictly controlled during the hearing and never given a chance to speak freely (except for a few seconds at the end) as their activities are reactions to other participants’ actions. On the one hand, this is expected as the public counsels are assigned to argue in the applicants’ place, thus positioning the applicant in a more passive role. On the other hand, viewed from the ritual analytical perspective, the active participants in a ritual are more likely to develop bonds and collective identities with each other than the passive participant can. In that sense, the ritual function of the asylum procedure can be understood as strengthening the collective identities among the judicial workers at the court.

Their sense of belonging is also strengthened by the *emotional mood* of detachment and rational reasoning that they shared during large parts of the hearing. This is a common way of handling emotions in judicial settings: to deliberately put them aside (Blix & Wettergren 2016, 32). Their emotional mood stands in stark contrast to the asylum applicants, who expressed anger, sadness and distress during the hearings. That kind of emotional mood was, however, ignored or created a slight emotional reaction of inconvenience among the other actors. The contrast between the asylum applicants’ emotional mood and the other actors’ was most evident at the

²²³ Observation 4.

²²⁴ Observation 1.

²²⁵ Observation 5.

end of the oral hearing, which emphasized the exclusion of the applicant from the shared collective identity, as that, according to Collins, is an outcome of the ritual. The collective norm among the judicial workers of abstaining from emotional expressions reinforced the idea of them acting on merely rational bases.

Regarding the question about what the *mutual attention* is directed to, I claim that the asylum narrative becomes the object of attention. The asylum narrative is treated as a tangible object – the thing which everyone directed their attention to – in the courtroom. However, the asylum narrative is not a tangible object but a co-constructed, oral testimony of past events. As such, it requires interpretation both from the sender and the receiver in order to make sense in the context of asylum determinations. In the oral hearing, this process of interpretation is complex as it involves several actors and needs to pass language barriers as well as different cultural and geographical interpretive schemes. Despite this obvious fact (that the asylum narrative is something other than a tangible object) it is approached by the migration courts as if it was a tangible object that exists outside of time and situational context. This creation of something that in reality does not exist as a physical object into something that is talked about as if it were possible to touch, encapsulate, save for later, pick apart and build up again is manifested in the court rulings.

The written judgments are expressed in a definite and certain language which shows no signs of the apparent hesitation about how to assess credibility that were visible in the interview material (see chapter eight). The hesitancy and uncertainty that surrounds the credibility assessment are effectively buried in the hidden places of the administrative courts: behind the closed doors of the building and in the closed deliberations that take place between the professional judge, the law clerk and the lay judges after the oral hearings. The conflicting values between the administrative justice principle of making decisions based on objective, indisputable and certain facts, and the fluid, subjective and arbitrary character of the credibility assessment is thereby *obscured* through the ritual elements of the oral hearing. The symbolically created asylum narrative as a tangible object that can be discovered with judicial methods communicates an idea about the credibility assessment as a conventional judicial practice with high degree of administrative justice. By directing mutual attention to the asylum narrative as a tangible object instead of to the conditions under which asylum narratives are told, the inherent value conflict in the asylum determination procedure between the requirement to make correct and definite assessments of asylum claims, and the intrinsic uncertainty regarding identities and events that saturate this assessment, remain disguised.

10. Conclusions

The research problem addressed by this study concerns how judicial practices in Sweden generate administrative justice in asylum determinations. In previous research on immigration policies, judicial institutions have been portrayed as guarantors of immigrants' rights against restrictive policies because of their supposed loyalty to abstract command of law. However, systematic and empirically detailed research about how courts handle immigrants' rights in everyday decision-making practices has been sparse.

The aim of this study has been to offer a critical reappraisal of the widespread claim that courts generate administrative justice in asylum determinations. I have met that objective through an ethnographic and interpretive study of the everyday practices of determining asylum claims at the Swedish migration courts, which are the appellate organ for asylum applications. The courts are a result of a reform in 2006, which aimed to enhance administrative justice in Sweden's asylum system.

Two research questions informed the study: the first asked how courts were constructed in relation to administrative justice in the policymaking of the court reform; the second research question considered how the judicial workers at the migration courts attribute practical meanings to administrative justice. In this last chapter I synthesize the findings from each empirical chapter in order to provide the problematizing redescription that this study set out to accomplish. Finally, I draw out the broader implications of this problematizing redescription of how judicial practices generate administrative justice in asylum determinations for immigration policy research.

Problematizing Administrative Justice in Asylum Appeals

In this section I summarize and draw out the most important findings from the analysis of how administrative justice was framed in the policymaking

of the court reform and how the judicial workers attributed concrete and practical meanings to administrative justice.

The argument pursued throughout this study is that the different meaning constructions policymakers and implementers attributed to judicial independence, adversarial roles and orality created a *ceremonial version of administrative justice*, which functions to legitimize the controversial consequences of Sweden's refugee policies. This conclusion could not have been reached if I had not approached this topic through the theoretical framework presented in chapter two. Guided by this interpretive and ethnographic approach, I approached the broader research problem through an in-depth case study of meaning constructions about administrative justice at the Swedish asylum appellate body. The methods used to respond to this reformulated research problem were introduced in chapter three. I employed a frame analysis to glean the meaning constructions of the court's role in relation to administrative justice among the policymakers. In order to glean meaning constructions among the judicial workers of the migration courts, I applied another set of method concepts. The three interrelated concepts of rules, roles and rituals formed the building blocks that allowed me to make sense of the meaning constructions of administrative justice among the judicial workers.

In chapter four, I demonstrated that the Swedish asylum system has undergone a process of judicialization which culminated with the court reform in 2006. With that reform, three new features of the asylum determination procedure were introduced: (1) a distinction between judicial and political authority were for the first time established in this policy field; (2) adversarial roles; and (3) oral elements in the investigation of asylum appeals. Together, these three institutional changes make up what I have called the judicial practices to enhance administrative justice. These three new features of the reform became the focal points around which the empirical chapters were structured.

Court Reform and Status Quo

Chapter five presented a frame analysis with the purpose of bringing forth which construction of the courts' role in relation to administrative justice was communicated to the general public in the policymaking of the court reform. The conclusion from that analysis was that the conflict stood between a framing that valued efficiency and another one that valued humanitarianism in the procedure. Both of these frames' prescriptions for actions are reflected in the outcome of the policymaking process. The court reform was presented together with a temporary Aliens Act that

granted many formerly rejected asylum applicants permanent residency on humanitarian grounds. This law was communicated by the humanitarian frame as a “reset” of the former dysfunctional and inhumane asylum determination system, thereby marking a new era of humane and lawful asylum determinations. The migration courts became the symbols of that new era. The silent message implied in this framing of the court reform was that Sweden could have a regulated refugee politics in accordance with the global refugee regime of management and control, but still not cause any inhumane consequences in terms of rejection of asylum claims.

Adversarial Roles Disguise Inequality

In chapter six, the analysis revolved around another feature of the court reform that was supposed to enhance administrative justice, namely the adversarial setup of the procedure. The chapter posed questions concerning role perceptions that procedural setup fostered among the judicial workers.

The judges and litigators viewed the public counsels in general as lacking the competence and knowledge to assist their clients. This creates a perception of the public counsels as unlikely to be legitimate carriers of knowledge, which is a disadvantage for the applicants. At the same time, the interviewees stated that the litigators took advantage of their double roles as they acted as experts (and were seen as experts by the other judicial workers) simultaneously as many of them took their roles as adversarial party seriously and argued for rejections even in cases where they did not fully believe that to be the most correct decision. The judges at the migration courts also treated the litigator with this double standard as they simultaneously saw them as parties in the procedure, and as experts on COI.

The administrative judges work according to the “principle of *ex officio* proceedings” to weigh up for the imbalance in resources between the individual claimant and the representative of a government agency, meaning the judges have an investigatory responsibility. It is unclear, however, just how far that responsibility reaches, and the interviews showed that judges interpret this responsibility differently. Some judges took an active role in investigation of the asylum claims, while others understood their role as balancing the unequal resources between asylum applicant and litigator.

Refugee law scholars have compared the division of the burden of proof in asylum procedures with criminal court procedures (Popovic 2005; Durst 2000). They are designed, according to the administrative justice principle, that the party with the greatest resources also has the burden of proof.

In practice this means that the prosecutor, who represents the state's interests, has to prove beyond any reasonable doubt that someone is guilty of breaching the law. That principle is important because it communicates to those who are subject to the state's power (the people under its jurisdiction), that there are mechanisms installed which protect the people from the state's powers. In the asylum procedure, as well as in all administrative courts procedures, this principle is not present. Instead, the asylum applicant has the burden of proof, but is not given greater resources than the adversarial party to prove any claims. Scholars have argued that if the principle of being innocent until proven guilty would apply in asylum procedures, the burden of proof would be placed on the litigator, who is a state actor and therefore the strongest party, and the decision-maker would be forced to presume that the asylum applicant told the truth until the litigator could prove the opposite (Popovic 2005; Durst 2000).

The consequence of how adversarialism is practiced at the migration courts is that the procedure is staged as two equal parties in front of an impartial adjudication board. This staging of the procedure creates a symbolic staging of administrative justice. The adversarial setup is often portrayed as the ideal procedure for fair dispute resolution, with the criminal courts procedure as an ideal model. However, for those who have an active participating role in this procedure, it is evident that the resources the two different adversarial parties possess are highly unequal. What this staging does, therefore, is to legitimize the procedure for the general public, that is, those who view this procedure from a distance but do not risk to be positioned inside it. The adversarial setup communicates fairness to the Swedish public, but for the workers inside the asylum appeal procedure, this setup creates ambiguous roles and responsibilities, which occasionally are used to manipulate the procedure to the applicants' disadvantage.

Judicial Independence as Skepticism

In chapter seven, the judicial workers' meaning construction of judicial independence in decision-making was analyzed. A consequence of the court reform was that the authority over asylum determination was divided between the political and judicial branches. Before the reform, the guidance of extra-legal questions was controlled by political actors, but afterwards was handed over to individual judges at the migration courts. This is due to the Migration Supreme Court not viewing their role as providing guidance on factual questions and therefore only conducting precedents on legal questions. By that shift of power, a determining factor in many asylum cases – the interpretation of the socio-political situation – moved

away from actors who can be held politically accountable. However, the fact that the extra-legal part of the assessment of asylum claims is conducted by the court does not mean that the evidentiary ground of decision-making is based on more firm evidentiary grounds. The judges still have to make an assessment of the future risk of harm based on very sparse and uncertain evidence.

For judicial workers, this separation between law and politics as well as between law and facts had consequences for their work. They expressed concerns over the sparse guidance on factual issues. The wide room for interpretation in asylum determinations at the court means that the judicial workers' approach towards the applicants' asylum narratives becomes influential for the outcome of the cases. Judicial workers can adopt a more or less affirmative or skeptical approach in their assessment of the cases. The analysis on chapter seven did not attempt to estimate how common either approaches were among the judicial workers, but instead analyzed what affirmative and skeptical behavior meant for the workers in this judicial setting. This study found that affirmative approaches are perceived to be connected to political agendas while skeptical approaches are viewed as more neutral and judicially correct. The public counsels and lay judges are the actors inside the courts who are perceived to have an affirmative approach to asylum applicants. The public counsels were viewed as partial in their roles as the legal advocates of the applicants and the lay judges were perceived, by all three categories of judicial workers, to be acting out of emotional and compassionate considerations to a larger extent than the legally trained judges. The official political discourse in Sweden for decades has revolved around generosity, human rights and humanitarian concerns towards asylum seekers (Abiri 2000; Stern 2014), which can explain the perception among the judicial workers that affirmative behavior was politically biased, while skeptical approaches were seen as impartial and professional.

Orality as Obligation and Control

Chapter eight analyzed how the judicial workers constructed administrative justice in relation to oral hearings. The chapter argues that there are two contradictory ideas about orality among the interviewees. One idea purports that an oral hearing is the opportunity for asylum applicants to be heard by the court. In practice, however, this opportunity was constricted by several requirements for how an asylum narrative must be expressed in order to be presented as trustworthy to the courts. The demands were in themselves contradictory, as the applicant both had to present the asylum

narrative in the exact same wordings as the first time the asylum narrative was documented at the first interview with the Migration Agency, but still the narrative had to be told in a manner that signaled authenticity, presence and immediateness. The opportunity to be heard was simultaneously an obligation to speak in a very constricted and particular manner in front of the court.

The other idea constructed the oral hearings as an opportunity for the court to control the veracity of the asylum claims by conducting an assessment of the applicants' credibility. The analysis in chapter eight demonstrated that there is a discrepancy between what the formal language of the court prescribes as legitimate methods for assessing credibility and how the decisions on asylum were taken in practice. This is a conclusion that several other studies of credibility assessments in asylum determinations have also found (Kagan 2002; Rousseau et al. 2002; Wettergren 2010; Wikström & Johansson 2013; UNHCR 2013; Tomkinson 2015; Thorburn Stern & Wikström 2016). Interactively derived indicators of credibility seemed to be important for the decision-makers' assessment of credibility, as many of them emphasized the physical encounter as the most appreciated change with the reform and the tool which makes the credibility assessment possible. They talked about how the encounter with the applicant revealed aspects of credibility that would not have been possible to detect in written, non-physical communication. The appearance of the applicants was mentioned as the benefit of oral hearings when determining credibility. At the same time, the interviewees were well aware of the official guidelines for assessing credibility, which rejects all factors that can be marked as subjective, interactive and intuitive. The official language of the courts does not allow the intuitive and interactively derived indicators to be legitimate sources of knowledge for the decision-makers. In court rulings and other official documents these sources of knowledge had no legitimate place, and therefore the standard argument such as vagueness and incoherence was used to motivate rejections of asylum claims due to lack of credibility.

The consequence of the discrepancy between the official language of the courts and the interviewees' descriptions of how credibility was assessed leads to this part of the overall assessment of protection be covered in silence and opacity. The judges lacked a legitimate language to express how they made determinations in concrete terms when they assessed credibility during the physical encounter. The official language of the courts rejects intuition and subjectivity, and therefore the interactional dimension of the oral hearing is dismissed by judges in written motivations for decisions.

In the policy making process, requests for increased transparency were often raised. It was argued that increased transparency would lead to higher acceptance of the decision-making, both from the public and from the asylum applicants. Transparency was also framed as a way to hamper prejudiced decision-making, as all reasons for rejections would have to be stated in the court rulings. The assumption was that the language of the courts would guarantee that prejudice did not affect the decision-making. What the analysis of the judicial workers' meaning constructions of orality indicates is that the oral elements in the investigation functions as a symbol of administrative justice as it gives the impression of transparent communication between the courts and the asylum applicants. What the analysis of the judicial workers' perceptions about credibility shows is that credibility assessments are a non-transparent activity in the courts. Oral hearings open up for intuitive, prejudiced and emotionally derived decision-making, but that is not compatible with the official language of the courts and therefore the judicial workers have difficulties openly discussing how they the credibility assessments without jeopardizing their professional identities.

Court Rituals as Administrative Justice

One of the theoretical starting points for this study was that administrative justice is an elusive concept acquiring different meanings in different settings. Further, the theoretical framework postulated that one way of gleaning meaning constructions is to analyze the symbolic communication of values that transpire through metaphors, the building design and rituals. It was concluded in chapter nine that the building design of the administrative courts functions to symbolically communicate the values of transparency, judicial authority and impartiality. At the same time, the buildings consist of hidden and closed areas where the deliberation before decisions are reached takes place. The building design creates a physical distance between decision-makers and the parties of the trial as a way to communicate impartiality and authority on behalf of the decision-makers. At the same time, the judges are dependent on the extra-legal knowledge of others, most obviously, the interpreters' language skills but also the litigators' and public counsels' socio-political knowledge. This helps them to determine the veracity of the asylum claims as their own expertise is in general administrative-legal methods and procedures.

The structured activities during the oral hearings have several symbolic functions. They encourage the judicial workers to act emotionally detached, which creates a shared mood among them and strengthens the

group identity among the judicial workers as rational and morally superior actors in the trials. Moreover, the judicial workers' ritual activities create an impression that the asylum narrative is a tangible object beyond their influence. Other studies of the interview situation in asylum determinations have also discussed the decision-makers' pretensions that the asylum narratives are beyond their influence (Millbank 2009b; Berg & Millbank 2009; Maryns & Blommaert 2006; Johnson 2013).

The construction of the asylum narrative as a tangible object is a fundamental condition for the intelligibility of how the credibility assessments are undertaken during the oral hearings. With the impression of tangibility in place, it becomes reasonable to try to find incoherence in details between different times that the narrative has been told (internal consistency criteria according to the official language of the court) or to compare the narrative with "what is commonly known" (external consistency criteria according to the official language of the court) or the decision-makers' judgement about what a reasonable person would do in a similar situation (plausibility criteria according to the official language of the court).

The asylum narrative is co-produced by the asylum applicant, the interpreter and the interrogators, but during the oral hearing it is approached as if it pre-existed and was independent of that particular situation. The sequential analysis of the ritual elements in the oral hearings demonstrates how the asylum narrative first emerges in the interaction between the applicant and the public counsel and then reemerges and changes in the interaction between applicant and litigator. The interviewers' (the public counsel and the litigator) demeanor and questions shaped how the asylum applicant responded and consequently how the asylum narrative appeared. Nevertheless, in the court rulings the asylum narrative was described as a physical object that could be taken apart, punctured or stored away and saved for later. It was frequently referred to prior asylum interviews that had been conducted at the Migration Agency as if the asylum narrative could be unaffected by the interaction that took place then, and instead was a physical object that one could store away and save for later. This is a misconception, as the only physical object that could be stored away and later picked up is the transcript of what the interpreter had translated of the interactive moment between applicant and interviewer. The transcript of the asylum narrative is not equivalent to the asylum narrative, but when it is used as a substitute for the asylum narrative it masks the intangibility of it. This symbolic construction of the asylum narrative as a tangible object overshadows the inherent uncertainty in the evidentiary assessment of the asylum claims. To overshadow uncertainties is an important function of

the oral hearing as uncertainty in decision-making undermines the authority and legitimacy of the courts.

A Ceremonial Version of Administrative Justice

In the introductory pages of this thesis, I described the complexities and uncertainties inherent in asylum determinations. The assessment of the future risk of persecution and harm based on sparse evidence and oral testimonies makes the asylum determination one of the most complicated and difficult tasks of administrative-legal decision-making. Yet, one million people put their faith in the fairness and accuracy of these procedures each year. An inaccurate rejection of asylum claims can have devastating consequences for applicants' lives and well-being. Inaccurate rejections also breach the international obligation of the *non-refoulement* principle to not return people to their countries if they risk persecution, torture or other humiliating treatment. Inaccurate approvals of asylum claims have no equivalent illegal consequence, but it undermines the public trust for the asylum system.

The meaning construction of administrative justice that has been captured in this study forefronts symbols of administrative justice. The meaning of the administrative courts and administrative judges as impartial and only loyal to the letter of the law was established already at the policy-making of the reform. The courts became symbols of humane, non-arbitrary and legitimate decision-making as the judges are judicially independent, the procedure is adversarial and the investigation has oral elements.

At the courts, however, the judicial workers had to lean on other knowledge than judicial expertise and produced a professional norm of skepticism towards asylum applicants. The adversarial design reinforced the inequality between the litigators and the applicants as the burden of proof rested on the applicant, but the litigators could exploit their role as neutral experts to gain advantages in the adversarial setup. The oral hearing was perceived by the judicial workers to put constrictions surrounding the applicants' opportunities to speak, and foremost, the possibilities to be regarded as credible. The credibility assessment was not only conducted based on judicial guidelines, but included gut feelings and subjective indicators of credibility.

However, the problematic aspects of the judicial practices to enhance administrative justice were overshadowed by the ritual function of the oral hearings. The structured activities during the oral hearings function was to direct attention away from the inherent uncertainties and inequalities that

the assessments of asylum claims involves, and towards the symbols of certainty, authority and impartiality. The symbols of administrative justice disguising inequality and uncertainty creates a version of administrative justice that I have labelled a *ceremonial version of administrative justice*.

Ceremonial administrative justice is important for the legitimacy of the courts as the institutions in society that uphold rule of law and justice. The members of a community need to believe that justice is being done in courts and to have a faith in the state as a legitimate power over their lives and freedoms. Legal scholar Moa Bladini argues that it is the semblance of objectivity that gives courts their legitimacy and that the stronger the repressive power of the institution is, the more crucial that it is conceived as legitimate (Bladini 2013). Komter formulated the court's quest for legitimacy as a "dilemma of ceremony and substance". She concluded that the fact that justice is done in courts is not enough: justice must also be seen to be done in order to gain legitimacy (Komter 1998). Komter claims that it foremost is "the public" that need to be persuaded by the courts' activities that justice is being done in courtrooms (Komter 1998, 134). However, she also writes about the professionals as a group that the ceremonial activities are directed towards, conferring that "ceremonial confirmation of the moral order reassures the public and the professionals and reinforces existing relations of authority" (Komter 1998, 135).

Translating this analysis from Dutch criminal court procedures into the Swedish asylum appeal procedure, I think that the performative aspects of the court hearings primarily serves to persuade the professional workers inside the courtroom about the justice of the procedure. I ground this claim on the fact that even if there is a bench for the public in the courtrooms, it is very rare that someone from the public actually observes the asylum trials. Besides, many of the asylum hearings are closed to the public due to the sensitivity of the information in the cases. Therefore, I suggest that it is foremost for the sake of the judicial workers themselves that the ceremonial activities exist. They need to be convinced that they take part in a procedure where justice is being done, and not in a procedure where institutionalized skepticism, inequality and arbitrariness is taking place.

The judicial referral bodies' worry during the policymaking process that the reform would politicize the administrative court system was an expression of legitimacy concerns. Their referral statements can be seen as a fear that the semblance of objectivity would be lost if asylum determinations would be under the administrative court's authority. However, the reform managed to depoliticize the asylum determinations instead of politicizing the courts. In chapter seven, I showed that the interviewees

expressed surprise over the fact that no refugee advocacy groups demonstrated outside the migration courts, as it had been a regular phenomenon at the AAB. The reason for this attention could be that the determinations of asylum claims were under the direct responsibility of the government in the former asylum system. With the court reform, this chain of responsibility was broken. The migration courts have succeeded in maintaining legitimacy by connecting administrative justice to the judicial practices of independence, adversarial roles and orality. This ceremonial version of administrative justice is a way to make sure that justice is *seen* to be done.

However, that a procedure is legitimate for the general public and the professional workers who want to see justice being done is not the judicial institutions' only concern. They also need to make sure that justice *is* done, to reiterate Komter's (1998) discussion about the judiciaries' dilemma of ceremony and substance. In the next section I discuss the justice of the court procedure in terms of substantial and procedural justice.

Justice as Accuracy and Fairness

Justice is a highly contested concept in political theory. The theoretical debate has influenced the normative discussion about administrative justice in socio-legal research literature, which was briefly described in the theory chapter. Two broad definitions of justice were described: one defining justice in the outcome of the decision-making (substantial justice), and another defining justice in the procedural setup of the decision-making (procedural justice). In this concluding discussion, I connect to that discussion.

The ceremonial administrative justice that is practiced at the Swedish migration courts include several features that hamper justice in outcomes, that is, accurate decisions. To start with, asylum determinations are inherently difficult as there is a fundamental uncertainty about what happened in the asylum applicant's country of origin and how that will affect the applicant's future risk of persecution and harm. Inaccurate decision-making is a high risk in asylum determinations, disregarding which model of decision-making is used.

Reiterating the theory chapter discussion, the move from an inquisitorial to an adversarial procedure at the appeal instance could, on the one hand, lead to a more fragmented system where each case could be scrutinized by multiple actors. This would make the system apt for finding inaccuracies in the decision-making of others. On the other hand, adversarial designs have been depicted to have a different objective than inquisitorial

models' quest to find a hitherto unrevealed truth in each case. Adversarial procedures' objective is to judge which one of the parties' truth-claims is most likely (Jolowicz 2003, 283). The findings from this study demonstrate that these two contradictory ideas about what truth is and how it can be determined both are present among the judges at the migration courts. Some of them are more prone to the quest to actively discover the truth, while others were passively adjudicating the truth-claims from the parties of the trial.

Two crucial determinants of accuracy in these cases are the decision-makers' methods for assessing credibility and the methods for collecting and interpreting COI. In the Swedish migration courts, the judges lean to a large extent on the litigators to assess the COI; this study found that the litigators tend to use the COI strategically to support their claims for rejections. This indicates that the COI can be manipulated to the applicant's disadvantage, which potentially could lead to rejections of asylum applicants with asylum claims that do meet the legal criteria for international protection. Moreover, the findings from this study show that the credibility assessment made during the oral hearing is difficult for the judges to explain without using emotional, interactional and subjective indicators of credibility. In the court rulings, the official legal indicators such as vagueness, inconsistency and implausibility are used. However, the official legal indicators of credibility are not supported by research on how to detect deceptive behavior. In conclusion, justice as accuracy in outcomes is not the prioritized value in the ceremonial version of administrative justice employed at the migration courts.

The ceremonial version of administrative justice can also be evaluated against the other idea of justice, namely procedural justice. In this conceptualization of justice, it is the procedural setup that determines the fairness, regardless of which outcome that procedure leads to. Values such as transparency, predictability and impartiality are mentioned as indicators of fair procedures. However, the controversies among normative theorists about how to define procedural fairness are persistent. Cass Sunstein discusses the conflictual relationship between different conceptualizations of procedural fairness: one that defines fair procedures as "clear, specific, abstract rules laid down in advance of actual applications" and the other one defining fair procedures as "individualized treatment, highly attentive to the facts of the particular circumstances" (Sunstein 2006, 619). These two conceptions of procedural fairness are, however, often employed simultaneously when evaluating the fairness of a procedure, Sunstein argues (2006).

Jeremy Waldron argues that regardless of how procedural fairness is conceptualized, the moral value of a fair procedure is that it shows respect for the personality and autonomy of the people subjected to the procedure. Waldron states:

Applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view and respecting the personality of the entity one is dealing with. As such it embodies a crucial dignitarian idea—respecting the dignity of those to whom the norms are applied as *beings capable of explaining themselves* (Waldron 2010, 14, emphasis in original).

This idea rests on a presupposition that the two parties in the procedure will be perceived as equally autonomous, rational and trustworthy by the adjudicator.

The analysis in this study demonstrates that the adversarial setup and the activities in the migration courts cannot adjust for the power inequality between state representatives and asylum applicants, and therefore it does not fully adhere to justice as procedural fairness. Even before the applicants attempt to explain themselves in front of the migration courts' judges, particular presumptions about the meaning of their actions are activated among the judicial workers. The interpretive scripts about asylum applicants and litigators are already in place before the actual asylum applicant and litigator enters the room, and that interpretive script speaks to the advantage of the litigators. During the oral hearings, the judges constricted the opportunity for the applicants to explain themselves and the explanations that they offered were dismissed as "unacceptable" in the court rulings (see chapter nine).

Another important value in conceptions of justice as fair procedures is that the rules on which decisions are based are transparent, clear and laid down in advance. Chapter eight showed that the credibility assessments of asylum applicants' narratives were covered in silence and confusion. The judges could not explain how the credibility assessments were conducted during the oral hearings, and the litigators and public counsels used emotional, interactional and subjective explanations for how they determined the credibility of asylum applicants. Accordingly, the rules prescribing how the credibility assessment should be conducted in asylum cases were not informative about how the credibility assessment actually was conducted in individual cases. This hampers clarity and predictability about how the credibility assessments will be conducted, which is problematic from the procedural fairness conception of justice.

To conclude, the ceremonial version of administrative justice that is constructed by both policymakers and judicial workers disguises aspects of the procedure that is both procedurally unfair and risks leading to inaccuracy in decision outcomes. It does, however, bring legitimacy to the asylum determination procedure by its use of metaphors, symbolic objects and ritual practices that symbolize administrative justice to the general public and the professional workers. And by doing that, the court reform succeeded in solving one of the major problems in the former asylum system, namely its lack of legitimacy among the general public. It succeeded to improve the legitimacy of the procedure without changing the direction of Swedish refugee policy in any substantial way. Swedish refugee politics continue to be arranged around the dilemma of wanting to maintain a restrictive refugee policy, in line with the global refugee regime described in chapter four, but at the same time not wanting to be responsible for the inhumane consequences of that kind of regulation.

There were no suggestions in the court reform that explicitly aimed for more generous decision-making, even if that was how the court reform was framed by the advocates of the reform. Instead, the court reform improved the legitimacy of the asylum determination procedure by placing symbols of administrative justice in the procedure. The political consequence of this reform is that the ceremonial version of administrative justice functions to legitimize the inhumane consequences of the refugee policy that is employed in Sweden. The court reform transformed the rejection of asylum applicants from being a political question about compassion and morality to becoming a judicial question about standards of proof and credibility. This transformation did not mean that the arbitrariness and moral considerations disappeared from this determination; it only dressed them in judicial language and practice. What this transformation did was to shield the politicians from the responsibility for rejecting asylum applicants on unclear and arbitrary grounds.

Implications for Immigration Policy Research

Immigration policy research has been largely concerned with what has been called the policy “gap” between public opinion and policies and the policy outcomes on the immigration policy area in Western democracies (Freeman 1995; Joppke 1998; Gibney 2001; Cornelius 2004; Hollifield 2004; Castles 2004; Boswell 2007; Guiraudon & Lahav 2007). The problem speaks to the efficiency of the policies, formulated as “the control gap” (Cornelius, Martin & Hollifield 1994), under which states seem to lack

control over immigration inflows despite efforts to stop them. Explanations proposed for this problem have been that globalization has weakened the state's capacity to control immigration (Soysal 1994; Sassen 1996) or that social and economic inequality in the world force people to migrate to richer and more democratic countries regardless of which policies the receiving states adopt (Castles 2004).

Despite the concern about what happens between policy formulation and outcome, insight from implementation research has been sparse in the field. Little consideration has been paid to insights that have been made within implementation research regarding how and why such policy gaps emerge. Tsuda and Cornelius (2004), for example, believe it is puzzling that "few labor-importing countries have immigration policies that are perfectly implemented or do not result in unintended consequences" (p. 4f). From an implementation research perspective, it is hardly reasonable to imagine any public policies that are "perfectly implemented" or lack any "unintended consequences (see Bonjour 2011, 91). Guiraudon and Lahav (2007) state that implementation of immigration policy is one "oft-missing variable" (2007, 4) and a "terra incognita", which "deserves further attention in order to assess adequately the so called 'gap' between policy goals and outcomes" (Guiraudon & Lahav 2007, 14). This combination of policy implementation being an understudied area of immigration policy research, and the scholarly attention and disagreement about *if*, *how* and *why* a gap exists, makes it relevant to open the black box of policy implementation (Palumbo & Calista 1990) in this particular area of politics. This study thus contributes broadly to the field of immigration policy research by employing policy implementation theory and approaching the topic of policy implementation with ethnographic methods.

However, from a policy implementation perspective, it is not productive to construct the problem with immigration policies as a gap problem between policy formulation and outcome. That is rather the expected outcome in every policy process. Christina Boswell's critical review of this debate distinguishes a second research problem for immigration policy studies, one that is concerned with "the gap between the generally protectionist bent of public opinion in democratic states, and the more inclusionary policies that often emerge" (2007, 75). The gap is here defined as a gap between general public opinion and the policies that are formulated. The question is: why do governments conduct policies that allow large-scale settlement of immigrants that they find undesirable? This second research problem has been described as the "most significant" problem (Acosta Arcarazo & Freier 2015, 664) and "true paradox" (Bonjour 2011, 92) of immigration policies in Western liberal democracies. That task here

is to explain “why liberal states accept unwanted immigration” (Joppke 1998). The “liberal paradox” of liberal democracies has been purported as an explanation for this gap, meaning that liberal states are both exclusionary and inclusive at the same time. They are nation states, and thereby constituted on the exclusion of others than the members of the nation state. At the same time, they are controlled by liberal rule of law institutions, which open up for equal treatment and rights of all subjects under its jurisdiction (Joppke 1998; Gibney 2001; Guiraudon 2000a; Guiraudon 2000b; Cornelius, Martin, och Hollifield 1994). The autonomy of rule of law institutions – such as courts – is crucial for this argument (Joppke 2001, 340). It is the autonomy of courts that shield them from the restrictive bent of the politicians. Politicians are driven by a logic of seeking to be re-elected, and therefore they are vulnerable to the populist anti-immigration opinion in Western liberal democracies. Rule of law institutions, to the contrary, are driven by a loyalty to an abstract command of law, coherence of application of law and rational reasoning, the liberal paradox-thesis argues.

I think there are several aspects of this description of the drivers for political and judicial institutions in liberal democracies that do not fit the results of this study. Below, I discuss three important aspects that need to be reconsidered based on the findings from this study.

Political Control and Restrictive Policies

The first aspect concerns the assumption that political control leads to restrictive policies. There is no evidence that Swedish political actors in general found asylum seekers to be “unwanted”. In Sweden, politicians were not publicly articulating a restrictive agenda for refugee policies during the first years of the millennium in Sweden, even if the more restrictive EU agenda on refugees was implemented during these years. Public mobilization was also numerous and vocal for increased rights for asylum seekers and undocumented immigrants during the same years. Moreover, during the 1980s and 1990s, when the government had total control over asylum determinations in Sweden, several refugee amnesties were conducted by the government. Research has argued that these amnesties were used to soften the consequences of simultaneously introduced restrictive measures in the refugee policy area (Abiri 2000; Appelqvist 2000; Borevi 2012). However, it shows that the politicians wanted to soften the restrictive policies to accommodate the refugee friendly opinion in Sweden.

The conclusion to be drawn from this is that it is inadequate to predict political actors always are pushing immigration policies in a restrictive

direction. This conclusion is supported by other immigration policy scholars. Saskia Bonjour shows in a case study of Dutch family migration policies that policymakers' moral perspectives played a more important role for the development of liberal family reunion policies than domestic courts. Moreover, she concludes that "the tone of the public debate, rather than invariably tending toward restriction, may [...] very well push toward expansive entry policies" (Bonjour 2011, 112). Research on Latin American countries' immigration policies also contradicts the presumption that politicians always portray immigrants as unwanted (Acosta Arcarazo & Freier 2015).

Research has also shown that public opinion can change views on immigration depending on how the questions about immigrants are formulated. When the public becomes aware of the consequences of immigration policies, such as how deportations of rejected asylum applicants are conducted, the attitudes tend to change in a more inclusive direction (Ellermann 2006). This argument connects to my findings from the frame analysis of the Swedish court reform. In chapter five, I showed that the Swedish political debate which preceded the court reform focused heavily on the sufferings of rejected asylum applicants. The storytelling of the humanitarian frame was saturated with morals and emotions which helped mobilize Parliament for the court reform and the amnesty proposal.

The findings from this case study of Sweden, as well as the Dutch and Latin American studies, show that political control over migration policies will not by definition lead to restrictive policies. This assumption in research would therefore need to be reformulated into a thesis which stipulates that immigration policies which are under political control are vulnerable to public pressure, and if that pressure is pushing for restrictions, it is plausible that the politicians will attempt to change the system in that direction. It is also important for immigration policy research to be aware of how the framing of immigration issues matter for how public opinion can be mobilized. When faced with the inhumane consequences of immigration policies, public opinion seems to be less prone to support further restrictions. Simply put, political control over immigration policies is not by definition leading to restrictive policies: it depends on how the policy problem is framed and which parts of public opinion are thereby mobilized.

Moreover, immigration policy research argues that politicians have lost control over immigration policies during the last decade as a consequence of a broader trend of judicialization in liberal democracies. Joppke makes the claim that activist courts have interfered in immigration policies and

led to the immigrants' rights expansion in the USA, Germany and the European Union (2001). Joppke states that "activist courts have aggressively defended the rights of individuals against intrusive states" (2001, 358). He further situates this explanation as "part of a larger story of an expanding judicial domain and the proliferation of rights that goes along with it" (2001, 359).

In the Swedish case, the process of judicialization in the domain of asylum determinations was not driven by "activist courts"; rather to the contrary, the courts actively took a position against the relocation of power from government to courts. It was the politicians that actively expanded the judiciary's power in this case. By the relocation of power over the asylum determinations, the government managed to distance itself from the responsibility for controversial rejections of asylum applicants. This is a recognized strategy that politicians use to shield themselves from the uncomfortable consequences of their decisions (Flinders & Buller 2006). Other scholars have argued that the relocation of power over refugee policies to the EU has been a strategy from Swedish governments to sidestep the more refugee-friendly Swedish Parliament and enforce restrictive refugee policies (Spehar 2012). The same line of argument has been pursued by Guiraudon and Lahav (2000) when claiming that nation states have used distancing strategies to enforce restrictive immigrant policies. They argue that decision-making has been delegated upward to intergovernmental fora, downward to local authorities, and outward to non-state actors. In the Swedish case, I think it is reasonable to claim that the politicians actively promoted the relocation of power from themselves to the courts. They, not the judiciary, pushed for a judicialization of asylum determinations.

The Logics of Courts

Immigration policy research is dominated by comparative case studies, mainly pertaining to Anglo-Saxon countries and Germany. Without single case studies it may not be possible to go into enough detail about the policy-making processes that are investigated, Bonjour argues (2011). She continues by claiming that more research on the judiciary which focuses on all judicial decisions is needed, not only the decisions that expanded immigrants' rights (Bonjour 2011, 115). Another single case study of Germany's legislation on immigrants from 1960 till 2000 found, in stark contrast to the idea of courts as guardians of immigrants' rights, that German courts in many instances used subtle mechanisms to "strip migrants of their rights" (Köppe 2003, 432) in the name of public order and public

interest. That kind of result was only possible to achieve through a thorough case study.

Bonjour's criticism of the methods that immigration policy research has employed is reasonable. If the courts' role in the development of immigration policies had been the topic of in-depth case studies, the description of the inner logics of the judiciary would possibly have been differently depicted. My study is an attempt to offer a different description of the courts' role in immigration policies. It may well be correct that courts on an institutional macro-level are insulated from the political branch of government and that the formal goal is to achieve coherence in the application of law and pay loyalty to the abstract commands of the law. Nevertheless, that gives us nothing more than a vague indication of how administrative justice is practiced at the micro-level, in the messy, complex and uncertain daily work of determining asylum claims in the courts.

I have searched for what can explain decision-making in courts in the meaning construction of administrative justice; this is, in my view, what constitutes grounds for judicial workers' actions. The premise behind this argument is that judicial workers do what makes sense to them, given the rules that regulate their profession, the role perceptions that they collectively create, and the ceremonial activities that are expected of them.

The analysis in this study demonstrates that role perceptions have an important place in the concrete and daily practices of decision-making at the migration courts. The rules of asylum determination were simply not sufficiently thorough for guidance in asylum cases, resulting in the judicial workers developing shared role perceptions to guide their activities. Rituals were also important for the meaning-making of judicial workers. The rules, roles and rituals that construct administrative justice at the courts do not strive to expand asylum applicants' rights. It is a version of administrative justice that focuses on showing attributes of administrative justice, however unable to actually fulfill either substantial or procedural conceptions of justice. The ceremonial version of administrative justice, however, fulfills the quest for legitimacy that was missing in the former, less judicialized, asylum system in Sweden.

It is not possible to draw more general conclusions about courts' roles in immigration policies based on this single case study of Sweden. However, this study strengthens what other scholars have argued: that more deep case studies of the judiciary are needed to advance the assumptions made in immigration policies. Moreover, my findings point to the difference between judicial practices that show attributes of administrative justice and practices that enhance justice for immigrants. The difference between these two objectives of court practices is important to be aware of

when analyzing the drivers and logics of courts. What seems to be practices for justice from an outside perspective might not have that function when examining the meaning constructions that arise among the judicial workers themselves. A starting point for studies of courts should be that the courts' overall aim is to secure their own legitimacy. Sometimes that generic objective of legitimacy coincides with the right of immigrants, and sometimes it does not.

Interdependence between Political and Judicial Branches

In immigration policy research, it has been argued that the autonomy of judicial institutions from political influence and public view is the condition which explains inclusive immigration policies in liberal democracies (Joppke 1998; Guiraudon 2000b; Joppke 2001).

The findings from this study suggest that the apparent autonomy between politics and courts also harbors an interdependence between these two branches, both in terms of political legitimacy and judicial legitimacy. The Swedish case study demonstrates that it is important for judicial workers to show distance and opposition to what was perceived to be the political agenda. This is a sign of independence and professionalism in the court environment, and is why the litigators and the judges – both prescribed to act neutrally according to law – embraced a skeptical approach towards asylum applicants. An affirmative approach was perceived to be unprofessional, to show a hidden political agenda, and a connection to the approaches that public counsels and lay judges usually employed. The judges and litigators distanced themselves from affirmation and compassion towards applicants, as that was what they perceived to be the political agenda in Sweden at that time.

In the policymaking process, the autonomy of the courts was forefronted as a legitimizing factor of the court reform. The idea purported by the proponents of the court reform was that the judges at the administrative courts would not let themselves be affected by political considerations, but only to be guided by the letter of the law. In that way, the policymakers became dependent on the autonomy of the judiciary to legitimize their refugee policy.

This finding implies that the political and judicial branches stood in an implicit dependent relationship to each other. The political branch was dependent on the judiciary's ceremonies of justice to legitimize their refugee policy. The migration courts were implicitly dependent on the political branch in order to communicate independence from the current political

agenda. If the political branch had not expressed views on asylum determinations, the judicial workers would not have a political agenda against which they could define their own views. In the quest to demonstrate independence from political agendas, judicial workers developed their actions in opposition to how the political agenda was articulated. Without the possibility to motivate a skeptical approach towards applicants by claiming to employ a different – and more professional – approach than the lay judges and the public counsels, the skepticism towards asylum applicants that litigators and judges expressed might have been interpreted as an emotionally and politically driven approach.

On a more general level, I think that the liberal paradox thesis would benefit by studying the relationship between the judicial and political branches in more detail, and not assume that because they are autonomous from each other on a macro-institutional level, the judges would be guided by a liberal ethics of universal rights. In the messy daily reality, judicial workers have to meet a variety of formal and informal norms that guide their behaviors, and these norms should gain more attention from immigration policy researchers aiming to better understand the courts' roles in immigration policy implementation.

References

- Abiri, Elisabeth. 2000. "The Changing Praxis of 'Generosity': Swedish Refugee Policy During the 1990s". *Journal of Refugee Studies* 13 (1): 11–28.
- Acosta Arcarazo, Diego and Luisa Feline Freier. 2015. "Turning the Immigration Policy Paradox Upside Down? Populist Liberalism and Discursive Gaps in South America". *International Migration Review* 49(3): 659–696.
- Adler, Michael. 2003. "A Socio-Legal Approach to Administrative Justice". *Law & Policy* 25 (4): 323–52.
- . (ed) 2010a. *Administrative justice in context*. Oxford and Portland, Oregon: Bloomsbury Publishing.
- . 2010b. "Understanding and Analysing Administrative Justice", in Adler, Michael (ed) *Administrative justice in context*. Oxford and Portland, Oregon: Bloomsbury Publishing. 129–60.
- Ahlbäck Öberg, Shirin and Helena Wockelberg. 2015. "The Public Sector and the Courts". In Pierre, Jon (ed) *The Oxford Handbook of Swedish Politics*. Oxford: University Press. 130–147.
- Alvesson, Mats and Kaj Sköldböck. 2008. *Tolkning och reflektion: vetenskapsfilosofi och kvalitativ metod*. Lund: Studentlitteratur.
- Andersson, Catrin. 2004. *Tudelad trots allt: dualismens överlevnad i den svenska staten 1718-1987*. Diss. Stockholm: Stockholm University.
- Anker, Deborah E. 1990. "Determining Asylum Claims in the United States: Summary Report of an Empirical Study of the Adjudication of Asylum Claims Before the Immigration Court". *International Journal of Refugee Law* 2 (2): 252–64.
- Anleu, Sharyn Roach, Stina Bergman Blix and Kathy Mack. 2015. "Researching Emotion in Courts and the Judiciary: A Tale of Two Projects". *Emotion Review*. 7(2), 145–150.
- Appelqvist, Maria. 2000. "Party Politics and the Bosnian Question: The Swedish Decision to Grant Permanent Residence". *Journal of Ethnic and Migration Studies* 26 (1): 89–108.
- Aurelius, Göran and Karl-Olov Arnstberg. 1993. *Kultur, kultur och kultur: perspektiv på kulturmöten i Sverige*. Stockholm: Liber utbildning.
- Bacchi, Carol. 2000. "Policy as Discourse: What Does it Mean? Where does it Get Us?" *Discourse* 21 (1): 45–57.

- Barsky, Robert F. 1994. *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing*. Philadelphia: Benjamins.
- Berg, Laurie and Jenni Millbank. 2009. "Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants". *Journal of Refugee Studies* 22 (2): 195–223.
- Bergman, Torbjörn. 2011. "Demokratin, statskicket och regeringsformen". *Statsvetenskaplig tidskrift* 113 (3).
- Berk-Seligson, Susan. 2002. *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University of Chicago Press.
- Bladini, Moa. 2013. *I objektivitetens sken : en kritisk granskning av objektivitetsideal, objektivitetsanspråk och legitimeringsstrategier i diskurser om dömande i brottmål*. Göteborg: Makadam.
- Blix, Stina Bergman and Åsa Wettergren. 2016. "A Sociological Perspective on Emotions in the Judiciary". *Emotion Review* 8 (1): 32–37.
- Blommaert, Jan. 2001. "Investigating Narrative Inequality: African Asylum Seekers' Stories in Belgium". *Discourse & Society* 12 (4): 413–49.
- Bohmer, Carol and Amy Shuman. 2007. "Producing Epistemologies of Ignorance in the Political Asylum Application Process". *Identities* 14 (5): 603–29.
- . 2008. *Rejecting Refugees: Political Asylum in the 21st Century*. London: Routledge.
- Bonjour, Saskia. 2011. "The Power and Morals of Policy Makers: Reassessing the Control Gap Debate". *International Migration Review* 45 (1): 89–122.
- Borer, Michael Ian and Andrea Fontana. 2012. "Postmodern trends", in Gubrium, Jaber F. (ed) *The Sage Handbook of Interviewing Research: the Complexity of the Craft*. California: SAGE.
- Borevi, Karin. 2012. "Sweden: The Flagship of Multiculturalism", in Brochmann, Grete and Anniken Hagelund (eds) *Immigration Policy and the Scandinavian Welfare State 1945-2010*. Basingstoke: Palgrave Macmillan.
- Boswell, Christina. 2007. "Theorizing Migration Policy: Is There a Third Way?" *International Migration Review* 41 (1): 75–100.
- Brandwein, Pamela. 2013. "Studying the Careers of Knowledge Claims", in Yanow, Dvora and Peregrine Schwartz-Shea (eds) *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*, Armonk, New York, London, England: M.E. Sharpe.
- Brodkin, Evelyn Z. 2011. "Putting Street-Level Organizations First: New Directions for Social Policy and Management Research". *Journal of Public Administration Research and Theory* 21 (2): 199–201.

- Brännström, Leila. 2009. *Förrättsligande: en studie av rättens risker och möjligheter med fokus på patientens ställning*. Malmö: Bokbox.
- Burawoy, Michael. 1998. "The Extended Case Method". *Sociological Theory* 16 (1): 4–33.
- Bylander, Eric. 2006. *Muntlighetsprincipen: En rättsvetenskaplig studie av processuella handläggningsformer i svensk rätt*. Diss. Uppsala: Iustus Förlag.
- Byrne, Rosemary. 2007. "Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals". *International Journal of Refugee Law* 19 (4): 609–38.
- Bäck, Henry, Torbjörn Larsson and Gissur Ó. Erlingsson. 2011. *Den svenska politiken: struktur, processer och resultat*. Malmö: Liber.
- Castles, Stephen. 2004. "Why migration policies fail". *Ethnic and Racial Studies* 27 (2): 205–27.
- Castles, Stephen and Mark J. Miller. 2009. *The Age of Migration: International Population Movements in the Modern World*. New York: Guilford Press.
- Chase, Oscar G. 2005. *Law, Culture, and Ritual: Disputing Systems in Cross-cultural Context*. New York: New York University Press.
- Clayton, Cornell W. and Howard Gillman. 1999. *Supreme Court Decision-Making: New Institutional Approaches*. Chicago: University of Chicago Press.
- Collins, Randall. 2004. *Interaction Ritual Chains*. Princeton: Princeton University Press.
- Conley, John M. and William M. O'Barr. 1990. *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago: University of Chicago Press.
- Cornelius, Wayne A., Philip L. Martin and James F. Hollifield. 1994. *Controlling Immigration: A Global perspective*. Stanford: Stanford University Press.
- Crépeau, François and Delphine Nakache. 2008. "Critical Spaces in the Canadian Refugee Determination System: 1989–2002". *International Journal of Refugee Law* 20 (1): 50–122.
- Dagmar Soennecken. 2013. "Extending Hospitality? History, Courts, and the Executive". *Studies in Law, Politics and Society*, 60, 85-109.
- DeVault, Marjorie L. and Liza McCoy. 2006. "Institutional Ethnography: Using Interviews to Investigate Ruling Relations", in Smith, Dorothy E. (ed) *Institutional ethnography as practice*. Lanham, Md.: Rowman & Littlefield. 15–45.
- Diesen, Christian. 1998. *Bevis. 2, Prövning av flyktingärenden*. Stockholm: Norstedts juridik.

- . 2012. *Bevis. 8, Prövning av migrationsärenden*. Stockholm: Norstedts juridik.
- Durst, Ilene. 2000. "Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative". *Rutgers Law Review* 53: 127.
- Ek, Richard. 2008. "Apatiska entreprenörer? Om gäst(o)vänlighetens politik och spelet om flyktingbarnen", in Tesfahuney, Mekonnen and Magnus Dahlstedt (eds) *Den bästa av världar? Beträktelser över en postpolitisk samtid*. Hägersten: Tankekraft. 76–102.
- Elkström, Linda. 2012. *Jämställdhet - för männens, arbetarklassens och effektivitetens skull? En diskursiv policystudie av jämställdhetsarbete i maskulina miljöer*. Diss. Stockholm: Stockholm University.
- Ellermann, Antje. 2006. "Street-level Democracy: How Immigration Bureaucrats Manage Public Opposition". *West European Politics* 29 (2): 293–309.
- . 2013. "When Can Liberal States Avoid Unwanted Immigration? Self-limited Sovereignty and Guest Worker Recruitment in Switzerland and Germany". *World Politics* 65 (03): 491–538.
- Elsrud, Torun. 2014. "Othering the "Other" in Court: Threats to Self-presentation During Interpreter Assisted Hearings". *International Journal of Law, Language & Discourse* 4 (1): 27–68.
- Elwood, Sarah A. and Deborah G. Martin. 2000. "'Placing" Interviews: Location and Scales of Power in Qualitative Research". *The Professional Geographer* 52 (4): 649–57.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington: Congressional Quarterly Inc.
- Eurostat, (2015). "Asylum applicants and first instance decisions on asylum applications: 2014", *Population and social conditions*. Issue number 3/2015. European Commission.
- Ferejohn, John. 2002. "Judicializing Politics, Politicizing Law". *Law and Contemporary Problems* 65: 41.
- Fielding, Nigel G. 2013. "Lay People in Court: The Experience of Defendants, Eyewitnesses and Victims". *The British Journal of Sociology* 64 (2): 287–307.
- Flinders, Matthew and Jim Buller. 2006. "Depoliticisation: Principles, Tactics and Tools". *British Politics* 1(3): 293–318.
- Flisbäck, Marita. 2009. "Att urskilja allianser för att hantera osäkerhet". I *Socialvetenskaplig tidskrift*. Vol. 16 (1), 38–55.
- Foster, Michelle and Jason Pobjoy. 2011. "A Failed Case of Legal Exceptionalism? Refugee Status Determination in Australia's 'Excised' Territory". *International Journal of Refugee Law* 23 (4): 583–631.

- Freeman, Gary P. 1995. "Modes of Immigration Politics in Liberal Democratic States". *International Migration Review* 29 (4): 881–902.
- Geddes, Andrew. 2003. *The Politics of Migration and Immigration in Europe*. London: SAGE.
- Gibb, Robert and Anthony Good. 2013. "Do the Facts Speak for Themselves? Country of Origin Information in French and British Refugee Status Determination Procedures". *International Journal of Refugee Law* 25 (2): 291–322.
- . 2014. "Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures in the UK and France". *Language & Intercultural Communication* 14 (3): 385–99.
- Gibney, Matthew J. 2001. "The State of Asylum: Democratization, Judicialization and Evolution of Refugee Policy in Europe". *New Issues in Refugee Studies*, Working Paper 50. UNHCR.
- Gill, Nick, Rebecca Rotter, Andrew BurrIDGE, Melanie Griffiths and Jennifer Allsopp. 2015. "Inconsistency in Asylum Appeal Adjudication". *Forced Migration Review*, 50 (52).
- Gillman, Howard. 1999. "The Court as an Idea, Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision-Making", in Clayton, Cornell W. and Howard Gillman (eds) *Supreme Court Decision-Making: New Institutional Approaches*, Chicago: University of Chicago Press.
- Gorlick, Brian. 2003. "Common Burdens and Standards: Legal Elements in Assessing Claims to Refugee Status". *International Journal of Refugee Law* 15 (3): 357–76.
- Granhag, Pär Anders, Leif A. Strömwall and Maria Hartwig. 2005. "Granting asylum or not? Migration board personnel's beliefs about deception". *Journal of Ethnic and Migration Studies* 31 (1): 29–50.
- Griffiths, Melanie. 2015. "'Here, Man Is Nothing!' Gender and Policy in an Asylum Context". *Men and Masculinities* 18 (4): 468–88.
- Gubrium, Jaber F. and James A. Holstein. 2012. "Narrative Practice and the Transformation of Interview Subjectivity", in Gubrium, Jaber F. (ed) *The Sage Handbook of Interviewing Research: the Complexity of the Craft*. California: SAGE
- Guiraudon, Virginie. 2000a. "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion". *International Migration Review* 34 (132): 1088–1125.
- . 2000b. "The Marshallian Triptych Reordered: The Role of Courts and Bureaucracies in Furthering Migrants' Social Rights", in Bommes, Michael and Andrew Geddes (eds) *Immigration and Welfare: Challenging the Borders of the Welfare State*. London: Routledge, 72–90.

- Guiraudon, Virginie and Gallya Lahav. 2000. "A Reappraisal of the State Sovereignty Debate. The Case of Migration Control". *Comparative Political Studies* 33 (2): 163–95.
- . 2007. *Immigration Policy in Europe: The Politics of Control*. London and New York: Routledge.
- Halliday, Simon and Colin Scott. 2010. "A cultural Analysis of Administrative Justice", in Adler, Micheal (ed) *Administrative justice in context*. Oxford and Portland, Oregon: Bloomsbury Publishing, 183–203.
- Hamlin, Rebecca. 2012. "International Law and Administrative Insulation: A Comparison of Refugee Status Determination Regimes in the United States, Canada, and Australia". *Law & Social Inquiry* 37 (4): 933–68.
- . 2014. *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia*. Oxford: Oxford University Press.
- Hammar, Tomas. 1999. "Closing the Doors to the Swedish Welfare State", in Brochmann, Grete and Tomas Hammar (eds) *Mechanisms of Immigration Control: A Comparative Analysis of European Regulation Policies*. Oxford: Berg, 169–201.
- Hedlund, Daniel, Ann-Christin Cederborg and Mauro Zamboni. 2016. "The Art of the (Im)possible: Legislators' Experiences of the Lawmaking Process when Reforming Migration Law". *The Theory and Practice of Legislation* 0 (0): 1–19.
- Henman, Paul and Menno Fenger. 2006. *Administering Welfare Reform: International Transformations in Welfare Governance*. Bristol: Policy Press.
- Henrichsen, Carsten. 2010. "Administrative Justice in a Scandinavian Legal Context: From a Liberal and a Social State to a Market State or a Milieu State", in Adler, Micheal (ed) *Administrative justice in context*. Oxford and Portland, Oregon: Bloomsbury Publishing, 241–56.
- Herlihy, Jane, Kate Gleeson and Stuart Turner. 2010. "What Assumptions about Human Behaviour Underlie Asylum Judgments?" *International Journal of Refugee Law* 22(3), 351-366.
- Herlihy, Jane, Peter Scragg and Stuart Turner. 2002. "Discrepancies in Autobiographical Memories: Implications for the Assessment of Asylum Seekers: Repeated Interviews Study". *BMJ: British Medical Journal* 324 (7333): 324–27.
- Hertogh, Marc. 2010. "Through the Eyes of Bureaucrats: How Front-line Officials Understand Administrative Justice", in Adler, Micheal (ed) *Administrative justice in context*. Oxford and Portland, Oregon: Bloomsbury Publishing, 203–25.
- Hilbink, Lisa. 2007. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. Cambridge: Cambridge University Press.

- Hill, Michael J. and Peter L. Hupe. 2009. *Implementing Public Policy: an Introduction to the Study of Operational Governance*. Los Angeles: SAGE.
- Hirschl, Ran. 2006. "New Constitutionalism and the Judicialization of Pure Politics Worldwide". *Fordham Law Review* 75: 721.
- Hollifield, James F. 2004. "The Emerging Migration State". *International Migration Review* 38 (3): 885–912.
- Holmstrom, Barry. 1994. "The Judicialization of Politics in Sweden". *International Political Science Review* 15 (2): 153–64.
- Howard, Robert M. and Jeffrey A. Segal. 2002. "An Original Look at Originalism". *Law & Society Review* 36 (1): 113–38.
- Hulst, Merlijn van and Dvora Yanow. 2016. "From Policy 'Frames' to 'Framing': Theorizing a More Dynamic, Political Approach". *The American Review of Public Administration* 46 (1): 92–112.
- Hupe, Peter and Michael Hill. 2007. "Street-Level Bureaucracy and Public Accountability". *Public Administration* 85 (2): 279–99.
- Hyndman, Jennifer and Alison Mountz. 2008. "Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe". *Government and Opposition* 43 (2): 249–269.
- Jacobsson, Katarina. 2006. "'Vi kan inte göra hipp som happ' Åklagares formuleringar av en objektiv ordning". *Sociologisk Forskning* 43 (2): 30–61.
- James, Deborah and Evan Killick. 2012. "Empathy and Expertise: Case Workers and Immigration/Asylum Applicants in London". *Law & Social Inquiry* 37 (2): 430–55.
- Jans, Thomas, Juliane Ball, Maike Preiss, Michael Haberhausen, Andreas Warnke and Tobias J. Renner. 2011. "Pervasive Refusal Syndrome: Three German Cases Provide Further Illustration". *Zeitschrift für Kinder- und Jugendpsychiatrie und Psychotherapie* 39 (5): 351–59.
- Johannesson, Livia. 2012. "Performing Credibility: Assessments of Asylum Claims in Swedish Migration Courts". *Retfærd. Nordisk Juridisk Tidsskrift* 35 (3/138): 68–83.
- Johansson, Christina. 2005. *Välkomna till Sverige? Svenska migrationspolitiska diskurser under 1900-talets andra hälft*. Diss. Linköpings University. Malmö: Bokbox.
- Johnson, Susan W., Donald R. Songer and Nadia A. Jilani. 2011. "Judge Gender, Critical Mass, and Decision Making in the Appellate Courts of Canada". *Journal of Women, Politics & Policy* 32 (3): 237–60.
- Johnson, Toni A. M. 2011. "On Silence, Sexuality and Skeletons: Reconceptualizing Narrative in Asylum Hearings". *Social & Legal Studies* 20 (1): 57–78.

- Johnson, Toni A. M. 2013. "Reading the Stranger of Asylum Law: Legacies of Communication and Ethics - Springer". *Feminist Legal Studies* 21 (2).
- Jolowicz, J. 2003. "Adversarial and Inquisitorial Models of Civil Procedure". *International & Comparative Law Quarterly* 52 (02): 281–295.
- Joly, Danièle (ed). 2002. *Global changes in Asylum Regimes*. Basingstoke: Palgrave Macmillan.
- Joppke, Christian. 1997. "Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain". *Comparative Political Studies* 30 (3): 259–98.
- . 1998. "Why Liberal States Accept Unwanted Immigration". *World Politics* 50 (02): 266–93.
- . 2001. "The Legal-Domestic Sources of Immigrant Rights: The United States, Germany, and the European Union". *Comparative Political Studies* 34 (4): 339–66.
- Kagan, Michael. 2002. "Is Truth in the Eye of the Beholder - Objective Credibility Assessment in Refugee Status Determination". *Georgetown Immigration Law Journal* 17: 367.
- Kagan, Robert A. 2010. "The Organisation of Administrative Justice Systems: The Role of Political Mistrust", in Adler, Micheal (ed) *Administrative Justice in Context*. Oxford and Portland, Oregon: Bloomsbury Publishing.
- Kalin, Walter. 1986. "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum- Hearing". *International Migration Review* 20 (2): 230.
- . 1991. "Refugees and Civil Wars: Only a Matter of Interpretation". *International Journal of Refugee Law* 3: 435.
- Kneebone, Susan (ed). 2009. *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives*. Cambridge: Cambridge University Press.
- Komter, M. L. 1998. *Dilemma's in the Courtroom. A Study of Trials of Violent Crime in the Netherlands*. New York and London: Taylor & Francis Group.
- Kurkchiyan, Marina. 2013. "Justice Through Bureaucracy: The Ukrainian Model". *Social & Legal Studies* 22 (4): 515–33.
- Kvale, Steinar and Svend Brinkmann. 2009. *InterViews: Learning the Craft of Qualitative Research Interviewing*. Los Angeles: Sage Publications.
- Kynsilehto, Anitta and Eeva Puumala. 2015. "Persecution as Experience and Knowledge. The Ontological Dynamics of Asylum Interviews". *International Studies Perspectives*, 16(4), 446-462.
- Köppe, Olaf. 2003. "The Leviathan of Competitiveness: How and Why do Liberal States (Not) Accept Unwanted Immigration?" *Journal of Ethnic and Migration Studies* 29 (3): 431–48.

- Larsson, Jennie K. 2015. *Integrationen och arbetsmarknad: Hur jämställdhet, arbete och annat "svenskt" görs av arbetsförmedlare och privata aktörer*. Diss. Linköping University. Stockholm: Atlas Akademi.
- Larsson, Jennie K. 2016. "Empiri och teori i växelverkan: en analys av närbyråkratin", in Gustafsson, Maria-Therese and Livia Johannesson (eds) *Introduktion till politisk etnografi: metoder för statsvetare*. Malmö: Gleerups, 125–44.
- Legomsky, Stephen H. 2007. "Learning to Live with Unequal Justice: Asylum and the Limits to Consistency". *Stanford Law Review* 60 (2): 413–74.
- Lens, Vicki. 2007. "In the Fair Hearing Room: Resistance and Confrontation in the Welfare Bureaucracy". *Law & Social Inquiry* 32 (2): 309–32.
- . 2011. "Contesting the Bureaucracy: Examining Administrative Appeals". *Social & Legal Studies* 20 (4): 421–39.
- . 2012. "Judge or Bureaucrat? How Administrative Law Judges Exercise Discretion in Welfare Bureaucracies". *Social Service Review* 86 (2): 269–93.
- Lens, Vicki, Astraea Augsberger, Andrea Hughes and Tina Wu. 2013. "Choreographing Justice: Administrative Law Judges and the Management of Welfare Disputes". *Journal of Law and Society* 40 (2): 199–227.
- Leun, Joanne Van Der. 2006. "Excluding Illegal Migrants in The Netherlands: Between National Policies and Local Implementation". *West European Politics* 29 (2): 310–26.
- Lindberg, Göran, et al., (2000). "Representanter för sex riksdagspartier kräver: avgör asylfrågorna i domstol", Dagens Nyheter [online]. Available at: <http://www.dn.se/arkiv/debatt/dn-debatt-representanter-for-sex-riksdagspartier-kraver-avgor-asylfragor-i/> [Accessed 2016-12-09].
- Lipsky, Michael. 1980. *Street-level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russel Sage Foundation.
- Mack, Kathy and Sharyn Roach Anleu. 2010. "Performing Impartiality: Judicial Demeanor and Legitimacy". *Law & Social Inquiry* 35 (1): 137–73.
- Margulies, Peter. 1993. "Difference and Distrust in Asylum Law: Haitian and Holocaust Refugee Narratives". *St. Thomas Law Review* 6: 135.
- Martén, Linna. 2015. "Political Bias in Court? Lay Judges and Asylum Appeals". Working paper 2015:2. Department of Economics. Uppsala: Uppsala University.
- Maryns, Katrijn and Jan Blommaert. 2006. "Stylistic and Thematic Shifting as a Narrative Resource: Assessing Asylum Seekers' Repertoires". *Multilingua – Journal of Cross-Cultural and Interlanguage Communication* 20 (1): 61–84.
- Mashaw, Jerry L. 1985. *Bureaucratic Justice: Managing Social Security Disability Claims*. Yale: Yale University Press.

- Maynard-Moody, Steven and Michael Musheno. 2000. "State Agent or Citizen Agent: Two Narratives of Discretion". *Journal of Public Administration Research and Theory* 10 (2): 329–58.
- McCubbins, Mathew D., Daniel B. Rodriguez and Barry R. Weingast. 2009. "The Rule of Law Unplugged". *U of Texas Law, Public Law Research Paper*, (158).
- Menkel-Meadow, Carrie. 1996. "Trouble with the Adversary System in a Postmodern, Multicultural World, The". *William and Mary Law Review* 38: 5.
- Meyers, Marcia and Vibeke Nielsen. 2012. "Street-Level Bureaucrats and the Implementation of Public Policy", in Peters, Guy B. and Jon Pierre (eds) *The SAGE Handbook of Public Administration*, London: SAGE Publications, 305–18.
- Migrationsdomstolarna. 2007. "Kartläggning och analys av bifallsfrekvenserna i migrationsdomstolarna", *rapport* 2007-05-31, länsrätten Göteborg, länsrätten Skåne län, länsrätten Stockholms län.
- Migrationsverkets årsredovisning. 2013. Available at: <https://www.migrationsverket.se/Om-Migrationsverket/Styrning-och-uppfoljning/Redovisning-av-verksamheten.html>. [Accessed 2017-02-09].
- Migrationsverket, 2017. "Asylsökande till Sverige under 2000-2015". Available at: <http://www.migrationsverket.se/download/18.2d998ffc151ac3871598173/1460036885615/Asyls%C3%B6kande+till+Sverige+2000-2015.pdf> [Accessed 2017-01-19].
- Millbank, Jenni. 2009a. "From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom". *The International Journal of Human Rights* 13 (2–3): 391–414.
- . 2009b. "'The Ring of Truth': A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations". *International Journal of Refugee Law* 21 (1): 1–33.
- Modér, Kjell Å. 2008. "Adjustment or Reluctance? Scandinavian Exceptionalism in Legal Cultures", in Petersen, Hanne (ed) *Paradoxes of European Legal Integration*. Aldershot: Ashgate Publishing, 287–98.
- Montgomery, Edith and Anders Foldspang. 2005. "Predictors of the Authorities' Decision to Grant Asylum in Denmark". *Journal of Refugee Studies* 18 (4): 454–67.
- Mountz, Alison. 2010. *Seeking Asylum: Human Smuggling and Bureaucracy at the Border*. Minneapolis: University of Minnesota Press.
- Mulcahy, Linda. 2007. "Architects of Justice: The Politics of Courtroom Design". *Social & Legal Studies* 16 (3): 383–403.

- Nagorecka, Felicity, Michael Stanton and Michael Wilson. 2005. "Stranded between Partisanship and the Truth – A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice". *Melbourne University Law Review* 29: 448.
- Nergelius, Joakim, Aleksander Peczenik and Ola Wiklund. 1999. *Löser juridiken demokratins problem?* Demokratiutredningens skrift nr 23. SOU 1999:58. Stockholm: Kulturdepartementet.
- Neumayer, Eric. 2005. "Asylum Recognition Rates in Western Europe: Their Determinants, Variation, and Lack of Convergence". *Journal of Conflict Resolution* 49 (1): 43–66.
- Nielsen, Amanda. 2016. *Challenging Rightlessness: On Irregular Migrants and the Contestation of Welfare State Demarcation in Sweden*. Diss. Linnaeus University. Växjö: Linnaeus University Press.
- Noll, Gregor. 2005. "Introduction: Re-mapping Evidentiary Assessment in Asylum Procedures", in Noll, Gregor (ed) *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*. Leiden: Martinus Nijhoff Publishers.
- Nordquist, Jonas. 2001. *Domstolar i det svenska politiska systemet: om demokrati, juridik och politik under 1900-talet*. Diss. Stockholm University. Stockholm: Stockholm University.
- O'sullivan, Maria. 2009. "The Intersection between the International, the Regional and the Domestic: Seeking Asylum in UK", in Kneebone, Susan (ed). 2009. *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives*. Cambridge: Cambridge University Press.
- Palumbo, Dennis J. and Donald J. Calista. 1990. *Implementation and the Policy Process: Opening up the Black Box*. New York: Greenwood Press.
- Parisi, Francesco. 2002. "Rent-seeking through Litigation: Adversarial and Inquisitorial Systems Compared". *International Review of Law and Economics* 22 (2): 193–216.
- Petersson, Olof. 2015. "Rational Politics: Commissions of Inquiry and the Referral System in Sweden", in Pierre, Jon (ed) *The Oxford Handbook of Swedish Politics*. Oxford: University Press.
- Philips, Susan U. 1998. *Ideology in the Language of Judges: How Judges Practice Law, Politics, and Courtroom Control*. Oxford: Oxford University Press.
- Pickering, Sharon and Leanne Weber. 2006. "Borders, Mobility and Technologies of Control", in Pickering, Sharon and Leanne Weber (eds) *Borders, Mobility and Technologies of Control*. Netherlands: Springer. 1–19.

- Popovic, Aleksandra. 2005. "Evidentiary Assessment and Non-Refoulement: Insights from Criminal Procedure". in Noll, Gregor (ed) *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*. Leiden: Martinus Nijhoff Publishers.
- Pulzl, Helga and Oliver Treib. 2007. "Implementing Public Policy", in Fischer, Frank, Miller, Gerald and Mara Sidney (eds) *Handbook of Public Policy Analysis*. Boca Raton. FL : Taylor & Francis.
- Ramji-Nogales, Jaya, Andrew I. Schenholtz and Philip G. Schrag. 2007. "Refugee Roulette: Disparities in Asylum Adjudication". *Stanford Law Review* 60 (2): 295–411.
- Rawlings, Richard. 2005. "Review, Revenge and Retreat". *The Modern Law Review* 68 (3): 378–410.
- Rehaag, Sean. 2007. "Troubling Patterns in Canadian Refugee Adjudication". *Ottawa Law Review* 39: 335.
- . 2012. "Judicial Review of Refugee Determinations: The Luck of the Draw?" *Queen's Law Journal* 38 (1).
- Rogers, Hannah, Simone Fox and Jane Herlihy. 2015. "The Importance of Looking Credible: the Impact of the Behavioural Sequelae of Post-traumatic Stress Disorder on the Credibility of Asylum Seekers". *Psychology, Crime & Law* 21 (2): 139–55.
- Rosset, Damian and Tone Maia Liodden. 2015. "The Eritrea Report: Symbolic Uses of Expert Information on Asylum Policies". *Oxford Monitor of Forced Migration* 5 (1): 26–32.
- Rousseau, Cécile, François Crépeau, Patricia Foxenand and France Houle. 2002. "The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board". *Journal of Refugee Studies* 15 (1): 43–70.
- Saetren, Harald. 2005. "Facts and Myths about Research on Public Policy Implementation: Out-of-Fashion, Allegedly Dead, But Still Very Much Alive and Relevant". *Policy Studies Journal* 33 (4): 559–82.
- Sager, Maja. 2011. *Everyday Clandestinity: Experiences on the Margins of Citizenship and Migration Policies*. Diss. Lund university. Lund: Lund University.
- Sainsbury, Roy. 1992. "Administrative Justice: Discretion and Procedure in Social Security Decision-making", in Hawkins, Keith (ed) *The Uses of Discretion*. Oxford: Clarendon Press. 297–98.
- Sassen, Saskia. 1996. "Beyond Sovereignty: Immigration Policy Making Today". *Social Justice* 23(3 (65): 9–20.
- Schatz, Edward (ed), 2009. *Political Ethnography: What Immersion Contributes to the Study of Power*. Chicago: University of Chicago Press.

- Schelin, Lena. 2007. *Bevisvärdering av utsagor i brottmål*. Stockholm: Norstedts juridik.
- Schön, Donald A. and Martin Rein. 1994. *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*. New York: Basic Books.
- Segal, Jeffrey A. and Harold J Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.
- Segenstedt, Alexandra and Rebecca Stern. 2011. *Vad krävs för att få skydd?* Stockholm: Svenska Röda Korset och röda Raoul Wallenberginstitutet. Available at: <http://uu.diva-portal.org/smash/record.jsf?pid=diva2%3A639919&dswid=-9761> [accessed 2017-02-03].
- Shapiro, Ian. 2002. "Problems, Methods, and Theories in the Study of Politics, or What's Wrong with Political Science and What to Do about It". *Political Theory* 30 (4): 596–619.
- Silverstein, Gordon. 2009. *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics*. Cambridge: Cambridge University Press.
- Small, Mario Luis. 2009. "'How Many Cases Do I Need?' On Science and the Logic of Case Selection in Field-Based Research". *Ethnography* 10 (1): 5–38.
- Songer, Donald R. and Kelley A. Crews-Meyer. 2000. "Does Judge Gender Matter? Decision Making in State Supreme Courts". *Social Science Quarterly* 81 (3): 750–62.
- Soysal, Yasemin N. 1994. *Limits of Citizenship: Migrants and Post-national Membership in Europe*. Chicago: University of Chicago Press.
- Spehar, Andrea. 2012. "Reducing Refugee Numbers through European Integration". *Cergu's working paper series 2012:7*. Gothenburg: Gothenburg University. Available at: http://www.cergu.gu.se/digitalAssets/1433/1433935_2012-7.pdf. [Accessed 2017-02-03].
- Spijkerboer, Thomas. 2000. *Gender and Refugee Status*. Aldershot: Ashgate.
- . (ed) 2013. *Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum*. New York: Routledge.
- Spång, Mikael. 2006. "Europeisering av svensk invandringspolitik". *Current Themes in IMER Research*, 4. Malmö: Malmö University. Available at: <http://dspace.mah.se/handle/2043/3197>. [Accessed: 2017-02-03].
- . 2008. "Svensk invandringspolitik i demokratiskt perspektiv". *Current Themes in IMER Research*, 8. Malmö: Malmö University. Available at: <https://dspace.mah.se/handle/2043/6128>. [Accessed: 2017-02-03].
- Staffans, Ida. 2006. "The Appellate Organ in the Asylum Procedure". *Nordic Journal of International Law* 75 (1): 89–119.
- . 2012. *Evidence in European asylum procedures*. Leiden, Boston: Martinus Nijhoff Publishers.

- Statham, Paul and Andrew Geddes. 2007. "Elites and the 'Organised Public': Who Drives British Immigration Politics and in Which Direction?" in Guiraudon, Virginie and Gallya Lahav (eds) *Immigration Policy in Europe: The Politics of Control*. London and New York: Routledge. 48-69.
- Statskontoret 2012. *En ny modell för Migrationsverkets förordnanden av offentliga biträden*. Rapport nr 2012:30. Available at: <http://www.statskontoret.se/publicerat/publikationer/2012/en-ny-modell-for-migrationsverkets-forordnanden-av-offentliga-bitraden->. [Accessed 2017-02-09].
- Stern, Rebecca. 2008. *Ny utlänningslag under lupp*. Stockholm: Svenska Röda korset. Available at: <http://www.diva-portal.org/smash/get/diva2:639916/FULLTEXT01.pdf> [Accessed 2017-02-08]
- . 2014. "'Our Refugee Policy Is Generous': Reflections on the Importance of a State's Self-Image". *Refugee Survey Quarterly* 33 (1): 25–43.
- Stobbs, Nigel. 2011. "Nature of Juristic Paradigms: Exploring the Theoretical and Conceptual Relationship between Adversarialism and Therapeutic Jurisprudence". *Washington University Jurisprudence Review* 4: 97.
- Strömwall, Leif and Pär Anders Granhag. 2003. "How to Detect Deception? Arresting the Beliefs of Police Officers, Prosecutors and Judges". *Psychology, Crime & Law* 9 (1): 19–36.
- Sunstein, Cass R. 2006. "Two Conceptions of Procedural Fairness". *Social Research* 73 (2): 619–46.
- Sweeney, James A. 2009. "Credibility, Proof and Refugee Law". *International Journal of Refugee Law* 21 (4): 700–726.
- Söderström, Johanna. 2016. "Livsberättelser: Att leva och förstå politik efter krig", in Gustafsson, Maria-Therese and Livia Johannesson (eds) *Introduktion till politisk etnografi: metoder för statsvetare*. Malmö: Gleerups.
- Tamas, Gillert. 2009. *De apatiska: om makt, myter och manipulation*. Stockholm: Natur & Kultur.
- Tansey, Oisín. 2007. "Process Tracing and Elite Interviewing: A Case for Non-probability Sampling". *PS: Political Science & Politics* 40 (04): 765–72.
- Tata, Cyrus. 2007. "Sentencing as Craftwork and the Binary Epistemologies of the Discretionary Decision Process". *Social & Legal Studies* 16 (3): 425–47.
- Taube, Caroline. 2003. "Domstolar och lagprövning", in Mattson, Ingvar and Olof Petersson (eds) *Svensk författningspolitik*. Stockholm: SNS förlag. 163–83.

- Thomas, Robert. 2006. "Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined". *European Journal of Migration & Law* 8 (1): 79–96.
- . 2011. *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*. Oxford: Hart Publishing.
- Thorburn Stern, Rebecca and Hanna Wikström. 2016. *Migrationsrätt: skyddsbehov och trovärdighet: bedömning i asylärenden*. Stockholm: Liber.
- Tolley, Michael C. 2012. "Judicialization of Politics in Europe: Keeping Pace with Strasbourg". *Journal of Human Rights* 11 (1): 66–84.
- Tomkinson, Sule B. 2014. "Doing Fieldwork on State Organizations in Democratic Settings: Ethical Issues of Research in Refugee Decision Making". *Forum Qualitative Sozialforschung/ Forum: Qualitative Social Research* 16 (1).
- Tomkinson, Sule B. 2015. *Contextualizing Discretion: Micro-dynamics of Canada's Refugee Determination System*. Unpublished dissertation, University of Montreal.
- Torstensson, Niklas. 2010. *Judging the Immigrant: Accents and Attitudes*. Diss. Umeå: Umeå University.
- Toshkov, Dimitar and Laura de Haan. 2013. "The Europeanization of Asylum Policy: An Assessment of the EU Impact on Asylum Applications and Recognitions Rates". *Journal of European Public Policy* 20 (5): 661–83.
- Tsuda, Takeyuki and Wayne Cornelius. 2004. "Controlling Immigration: The Limits of Government Intervention", in Cornelius, Wayne A. (ed) *Controlling Immigration: A Global Perspective*. 2. ed. Stanford: Stanford University Press.
- UNHCR. 2013. *Beyond Proof: Credibility Assessment in EU Asylum Systems*. Available at: <http://www.unhcr.org/protection/operations/51a8a08a9/full-report-beyond-proof-credibility-assessment-eu-asylum-systems.html> [Accessed 2017-02-08].
- Vallinder, Torbjörn. 1994. "The Judicialization of Politics—A World-Wide Phenomenon: Introduction". *International Political Science Review* 15 (2): 91–99.
- Vink, Maarten and Frits Meijerink. 2003. "Asylum Applications and Recognition Rates in EU Member States 1982–2001: A Quantitative Analysis". *Journal of Refugee Studies* 16 (3): 297–315.
- Von Folsach, Liv Lyngå and Edith Montgomery. 2006. "Pervasive Refusal Syndrome among Asylum-Seeking Children". *Clinical Child Psychology and Psychiatry* 11 (3): 457–73.

- Wagenaar, Hendrik. 2007. "Interpretation and Intention in Policy Analysis", in Fischer, Frank, Miller, Gerald and Mara Sidney (eds) *Handbook of Public Policy Analysis*. Boca Raton: Taylor & Francis, 429–41.
- Wagenaar, Hendrik. 2011. *Meaning in Action: Interpretation and Dialogue in Policy Analysis*. Armonk: M.E. Sharpe.
- Waldron, Jeremy. 2010. "The Rule of Law and the Importance of Procedure". *New York University Public Law and Legal Theory Working Papers 234*. Available at: http://lsr.nellco.org/nyu_plltwp/234 [Accessed 2017-02-08]
- Watkins-Hayes, Celeste. 2009. *The New Welfare Bureaucrats: Entanglements of Race, Class, and Policy Reform*. Chicago: University of Chicago Press.
- . 2011. "Race, Respect, and Red Tape: Inside the Black Box of Racially Representative Bureaucracies". *Journal of Public Administration Research and Theory* 21 (suppl 2): i233–51.
- Weber, Leanne. 2006. "The Shifting Frontiers of Migration Control", in Pickering, Sharon and Leanne Weber (eds) *Borders, Mobility and Technologies of Control*. Springer Netherlands. 21–43.
- Wedeen, Lisa. 2002. "Conceptualizing Culture: Possibilities for Political Science". *American Political Science Review* 96(04): 713–728.
- Wettergren, Åsa. 2010. "Managing Unlawful Feelings: the Emotional Regime of the Swedish Migration Board". *International Journal of Work Organisation and Emotion* 3 (4): 400–419.
- Wettergren, Åsa and Hanna Wikström. 2014. "Who Is a Refugee? Political Subjectivity and the Categorisation of Somali Asylum Seekers in Sweden". *Journal of Ethnic and Migration Studies* 40 (4): 566–83.
- Wikrén, Gerhard and Håkan Sandesjö. 1990. *Utlänningslagen med kommentarer*. 3:e uppl. Stockholm: Norstedts juridik.
- . 2002. *Utlänningslagen med kommentarer*. Stockholm: Norstedts juridik.
- Wikström, Hanna and Thomas Johansson. 2013. "Credibility Assessments as 'Normative Leakage': Asylum Applications, Gender and Class". *Social Inclusion* 1 (2): 92–101.
- Willén, Rebecca M and Leif A Strömwall. 2012. "Offenders' Lies and Truths: An Evaluation of the Supreme Court of Sweden's Criteria for Credibility Assessment". *Psychology, Crime & Law* 18 (8): 745–58.
- Wind, Marlene. 2014. "Who Is Afraid of European Constitutionalism? The Nordic Distress with Judicial Review and Constitutional Democracy". *iCourts Working Paper Series*, No. 13. Available at: <https://ssrn.com/abstract=2539045> [Accessed 2017-02-09].

- Winter, Soren C. 2012. "Implementation", in Peters, Guy and Jon Pierre (eds) *The SAGE Handbook of Public Administration*. London: SAGE Publications Ltd.
- Yanow, Dvora. 1993. "The Communication of Policy Meanings: Implementation as Interpretation and Text". *Policy Sciences* 26 (1): 41–61.
- . 1995. "Practices of Policy Interpretation". *Policy Sciences* 28 (2): 111–26.
- . 1996. *How does a Policy Mean? Interpreting Policy and Organizational Actions*. Washington D.C: Georgetown University Press.
- . 2000. *Conducting interpretive policy analysis*. Thousand Oaks, London, New Delhi: Sage Publications.
- . 2013. "How Built Spaces Mean", In Yanow, Dvora and Peregrine Schwartz-Shea (eds) *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*. 2nd ed. New York: M.E. Sharpe. 368–386.
- Yanow, Dvora and Peregrine Schwartz-Shea (eds). 2013. *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*. New York: M.E. Sharpe.
- Zetter, Roger. 2007. "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization". *Journal of Refugee Studies* 20 (2): 172–92.

Primary Sources

Committee Proposals

Bet. 1991/92: SfU4

Bet. 1996/97:SfU5

Bet. 2001/02:SFU2

Government Bills

Prop. 1975/76:18 *Regeringens proposition om ändring i utlänningslagen (1954:193) m.m.*

Prop. 1991/92:30 *Om en särskild nämnd för utlänningsärenden*

Prop. 1996/97:25 *Svensk migrationspolitisk i ett globalt perspektiv*

Prop. 2003/04:59 *Prövning av verkställighetshinder i utlänningsärenden*

Prop. 2004/05:170 *Ny instans- och processordning i utlännings- och medborgarskapsärenden*

Government Directives

Dir 1997:20, *Ny instans- och processordning vid tillämpning av utlännings- och medborgarskapslagstiftningen samt viss översyn av utlänningslagen*

Dir 2004:115, *Barn i asylprocessen som uppvisar svåra stressreaktioner i form av stark uppgivenhet*

Minutes from Parliamentary Debates

Prot. 1991/92:38

Prot. 2004/05:45

Prot. 2004/05:130

Prot. 2005/06:03

Official Government Reports

SOU 1999:16 *Ökad rättssäkerhet i asylärenden*

SOU 2004:74 *Utlänningslagstiftningen i ett domstolsperspektiv*

SOU 2006:49 *Asylsökande barn med uppgivenhetssymtom – trauma, kultur, asylprocess*

SOU 2008:65 *Sekretess och offentliga biträden i utlänningsärenden*

SOU 2009:56 *Den nya migrationsprocessen*

Parliamentary Motions

Mot. 2001/02:Sf216

Mot. 2001/02:Sf394

Mot. 2003/04:Sf21

Mot. 2003/04:Sf22

Mot. 2003/04:Sf24

Mot. 2003/04:Sf25

Mot. 2003/04:Sf27

Precedents from Swedish Migration Supreme Court

MIG 2006:1

MIG 2006:7

MIG 2007:12

MIG 2007:33

MIG 2011:6

MIG 2011:15

Primary Legislation

UtL 1989:529

UtL 2005:716

Other Sources

Ds 2000:45 *En specialdomstol för utlänningsärenden*

Domstolsverket, 2007. *Handläggare i migrationsdomstol*. Available at: <http://www.dvhandbok.domstol.se/>. [Accessed 2017-02-09]

Migrationsverket, 2013. *Handbok i migrationsärenden*. Available at: <http://www.migrationsverket.se/Om-Migrationsverket/Styrning-och-uppfoljning/Lagar-och-regler/Handbok-i-migrationsarennden.html>. [Accessed 2017-02-09]

Opinion from the Counsel on legislation, 2002

Opinion from the Counsel on legislation, 2005

RCI 09/2013 *Rättsligt ställningstagande angående metod för prövning av tillförlitlighet och trovärdighet*

UNHCR 2011. *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. Available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 2017-02-09].

Appendix 1: Interview Guide

Theme 1: Background, experiences, information

- Tell me about your background in the areas of migration. What kind of jobs, positions and tasks have you had? Why did you want to work with these issues?

Theme 2: Daily work

- Describe how a case is handled by you. What do you do from the time it reaches your desk until you are done with it?

Theme 3: Comparison between the Aliens Appeals Board and the court system (if the interviewee has experience with the old system).

- What are the main differences compared to the system before 2006?
- What do you see as the pros and cons of this system?
- How have politicians been able to influence asylum assessments during the different periods?

Theme 4: Roles

- What distinguishes a skilled litigator / judge / public counsel / lay judge / interpreter?
- How does a "good" asylum seeker behave?

Theme 5: Sources of knowledge

- How are different sources valued? How do you handle the country information presented by the other actors in the process?
- Who would you say has expert knowledge about COI?

Theme 6: What affects the outcome of an application for asylum?

- What do you think affects the outcome of a case in the current system? Provide all possible causes.

Theme 7: Conclusion

- Is there something you want to change within the current system?
- If you had to describe the ideal asylum system using some key words, what would they be?

Appendix 2: Reflection Guide

1. Who does the interviewee think I am? How have I presented myself?

The interview as a social scene, a complex social interaction. Gender, age, occupation, ethnicity, clothing, choice of words does matter, but not in the way I think. The interviewee will adapt their behavior to me after their perception of who I am.

2. What do the interviewee think that my study is about?

The interviewees' views on the research project affects their answers. Do they think that I am negative or positive to the current system?

3. What kind of identities do the interviewees want to present to me?

The interview is a situation where different identities can be played out, and I possibly encourage or oppose them.

4. Which cultural scripts guide the conversation in the interview situation?

The interviewees (and I) more or less strictly follow a formal way of speaking. Which technical, formal terms are used in interviews, and what can I do to minimize this and make use of alternative vocabulary? How does the interviewee react to certain words?

5. What moral stories emerge in the interview?

Which stories about themselves do the interviewees tell? Which social skills and moralities are the interviewees often highlighting when talking about themselves?

6. What interests can interviewees be governed by?

The interviewees are governed by self-interest or group interests. This can also be the reason for participating in the study.

7. What is the role of the location that the interview was conducted in?

Could anyone else hear our conversation? Was the interviewee disturbed by the location? Did the interviewees show parts of their work to me? What did I observe about the workplace?

Svensk sammanfattning

Omkring en miljon människor söker asyl utanför sitt eget land varje år. Dessa människor är beroende av att de nationella procedurer som finns i mottagarländerna behandlar deras ansökningar om asyl på ett rättvist och korrekt sätt. Forskning visar dock att det finns många osäkra moment kopplade till bedömningen av asylansökningar eftersom det ofta bara finns en muntlig berättelse att styrka asylansökan med. Denna berättelse ska översättas av en tolk och jämföras med vad beslutsfattaren vet om platsen som den asylsökande söker skydd från. Dessutom är det en framåtsyftande bedömning av framtida risk för förföljelse eller tortyr som ska göras av den som bedömer asylärenden. Det är av dessa anledningar som forskare har kallat asylbedömningar för det mest komplicerade beslutsfattandet som utförs i västerländska länder.

Länder har stor frihet att utforma asylbedömningsproceduren enligt egna traditioner och förvaltningslagar. Vissa länder väljer att upprätta byråkratiska procedurer med skriftligt förfarande medan andra har utformat ett tvåpartsförfarande i domstol med stort inslag av muntliga förhandlingar. I denna avhandling undersöks hur juridiska praktiker såsom tvåpartsförfarande, muntliga förhandlingar och domstolens oberoende ställning genererar rättssäkerhet i asylbedömningar. Fallet som studeras är de svenska migrationsdomstolarna.

Inom migrationsforskningen har domstolar pekats ut som försvarare av immigranternas rättigheter gentemot politikerns försök till att begränsa dem. Genom sitt oberoende från politiska institutioner anses domstolar vara de statliga institutioner som är bäst utrustade för att säkerställa rättssäkerheten i detta förfarande. Samma resonemang ligger till grund för den stora reform av asylprocessen som genomfördes i Sverige 2006 (kallad NIPU-reformen), då överprövningen av asylärende överfördes från Utlänningsnämnden till enheter på förvaltningsdomstolarna som kallas migrationsdomstolar. I policyprocessen som ledde fram till reformen utpekades förvaltningsdomstolarna som både rättssäkrare och humanare än den dåvarande överprövningsinstansen i asylärenden, Utlänningsnämnden.

Denna studie syftar till att granska antagandet att domstolar genererar rättssäkerhet i asylärenden genom att studera hur asylbedömningar görs i

praktiken i de svenska migrationsdomstolarna. Genom att studera dessa bedömningspraktiker med en etnografisk ansats erbjuder denna avhandling en problematiserande omtolkning av rättssäkerhet i domstolar. De två övergripande forskningsfrågorna är: 1) Hur konstruerades domstolarnas roll i relation till rättssäkerhet under policyprocessen som ledde fram till domstolsreformen 2006? 2) Hur förstår och praktiserar de juridiska aktörer som ska implementera domstolsreformen rättssäkerhet?

Det teoretiska ramverket för denna studie bygger på tre perspektiv: tolkande policyanalys som förstår implementeringsprocesser som kommunikering av mening mellan olika aktörer; *socio-legal* forskning som studerar rättssäkerhet som empiriskt fenomen och etnografisk forskning om domstolar som undersöker både instrumentella och symboliska dimensioner av juridiska praktiker. Tillsammans skapar dessa perspektiv ett ramverk som möjliggör en analys av meningsskapande kring rättssäkerhet i asylbedömningar på svenska förvaltningsdomstolar.

För att besvara den första forskningsfrågan tillämpas *frameanalysis* på det politiska material som beskriver policyprocessen som ledde fram till domstolsreformen 2006. Olika aktörers problemformuleringar, förslag till lösningar och berättelser analyseras för att ta reda på vilka olika inramningar (*frames*) som presenterades av olika politiska partier i processen. Socialdemokraterna tillsammans med migrationsmyndigheterna representerade en inramning som formulerade problemet med asylprocessen som att det handlade om ineffektivitet och avsaknad av tydlig styrning. Deras förslag på lösning var initialt att behålla Utlänningsnämnden men att begränsa möjligheterna att få en ny prövning om nya omständigheter dök upp i det enskilda ärendet. På det sättet skulle processen effektiviseras.

Socialdemokraterna fick dock inte gehör för denna lösning bland sina stödpartier i riksdagen. Istället formulerade Vänsterpartiet och Miljöpartiet tillsammans med de borgliga partierna i riksdagen en problembeskrivning som handlade om att asylprocessen var orättssäker och inhuman för att människor fick orättfärdiga avslag på sina asylansökningar. Möjligheten till en ny prövning sågs som en "säkerhetsventil" i ett dysfunktionellt system. Lösningen, enligt denna inramning av problemen, var istället att lägga ner Utlänningsnämnden och föra över överprövningen av asylärenden till förvaltningsdomstolarna. Tvåpartsförfarandet och muntligheten som tillämpas i förvaltningsdomstolarna ansågs främja rättssäkerheten i dessa fall. Dessutom ansågs förvaltningsrättens domare vara mer objektiva och självständiga i sina bedömningar än beslutsfattarna på Utlänningsnämnden. Domstolarna motsatte sig detta lösningsförslag då de ansåg att asylbedömningar innebar för mycket skönsmässiga bedömningar samt politiska hänsynstaganden för att passa i domstolen.

Frågan om hur asylsystemet skulle reformeras diskuterades flitigt i riksdagen från 1997 till 2005 när Socialdemokraterna, Miljöpartiet och Vänsterpartiet presenterade en gemensam proposition där Utlänningsnämnden skulle läggas ner och ersättas av förvaltningsdomstolar och där möjligheten till ny prövning kraftigt begränsades. En ny utlänningslag formulerades också som utvidgade flyktingkriterierna och begränsade möjligheten att erbjuda uppehållstillstånd på humanitära skäl. Sammantaget blev möjligheterna att erbjuda skydd för flyktingar i Sverige oförändrade med den nya lagen.

I samband med att den nya lagen och reformen av asylprocessen röstades igenom i riksdagen förde de fem mindre partierna (Vänsterpartiet, Miljöpartiet, Centerpartiet, Folkpartiet och Kristdemokraterna) en kamp för att få igenom en flyktingamnesti för alla som i det gamla systemet fått avslag på sina asylansökningar men fortfarande levde kvar i Sverige som gömda. Detta krav formulerades som en ”nollställning” och ett sätt att rätta till de fel som begåtts av det förra systemet. Flyktingamnestikravet fick också stöd från allmänheten. Två stora kampanjer startades till stöd för kravet och demonstrationer och namninsamlingar skedde över hela Sverige. Moderaterna och Socialdemokraterna röstade emot förslaget med argumenten att det inte skulle vara rättssäkert att ge grupper av asylsökande uppehållstillstånd utan möjligheten till individuell prövning. När det var dags för budgetförhandlingar mellan socialdemokratiska regeringen och deras stödpartier Vänsterpartiet och Miljöpartiet lyckades emellertid stödpartierna driva igenom en modifierad version av amnestikravet och en tillfällig lag infördes som gav ca 17 000 asylsökande uppehållstillstånd i Sverige.

Resultatet av policyprocessen skildrades som en seger för den flyktingvänliga opinionen och det nya systemet med domstolsprocess framställdes som ett rättssäkert system utan de inhumana konsekvenser som det förra systemet hade orsakat. Det implicita budskapet som förmedlades genom policyprocessens utfall var att Sverige kunde behålla en strikt reglerad asylopolitik samtidigt som inhumana avslag inte längre skulle förekomma.

Den andra forskningsfrågan besvarades genom att intervjua domare på migrationsdomstolen, processförare från migrationsverket och offentliga biträden som assisterar den asylsökande i rätten. Dessutom observerade jag muntliga förhandlingar i asylärenden på migrationsdomstolarna och läste skriftligt material som vägleder asylprövningen i domstolen. Detta material analyserades med hjälp av tre begrepp, härledda ur det teoretiska ramverket: *regler*, *roller* och *ritualer*. Regler är de skriftliga normer som styr de juridiska aktörernas praktiker i asylärenden medan roll-begreppet undersöker vilka informella normer som styr deras praktiker. Ritualer är

ett begrepp som fångar den symboliska dimensionen av domstolspraktiker. Domstolar har som uppdrag att både säkerställa att rättvisa skipas och att se till att rättvisa *görs synligt* genom domstolsförhandlingarna. Det är därför som domstolsförhandlingar följer visa ritualer och är designade för att iscensätta rättvisepprinciper såsom opartiskhet, transparens och likhet inför lagen.

Analysen som följer av detta tillvägagångsätt visar att de rollförväntningar som tvåpartsförfarandet innebär skapar ojämlika villkor för de två parterna. Ett tvåpartsförfarande förutsätter att de både parterna är jämnstarka, eller ”equal in arms” som uttrycket heter på engelska. De asylsökande med offentliga biträde har både sämre möjligheter att leta fram bevis och att framstå som trovärdiga i domstolsförhandlingarna än vad processförarna från migrationsverket har. Processförarna har nämligen en dubbel roll att fylla: dels representerar de den ena parten i förhandlingen som ska yrka på avslag i enlighet med Migrationsverkets beslut i första instans; dels representerar de migrationsverket som neutral expertmyndighet på landinformation, vilket utgör en viktig del av bevismaterialet. Intervjustudien visar att dessa två roller gör att processförarna kan presentera material och argument för domstolen som om de var neutrala experter men samtidigt yrka på avslag som en del av sitt uppdrag. Domarna har svårt att hantera denna rollkonflikt och uttrycker att processförarna har mest expertkunskap om landinformationen medan de offentliga biträdena anses vara av skiftande kvalitet och därför inte heller ha stor legitimitet som kunskapsförmedlare i domstolsförhandlingarna. De offentliga biträdena anses också vara partiska i den bemärkelsen att deras uppdrag är att få den asylsökande accepterad som skyddsvärd.

Som motvikt till de ojämna resurserna som den enskilde har i relation till myndigheten som är motpart, finns det i förvaltningsrätten en princip (offentlighetsprincipen) om att domaren har skyldighet att se till att parterna presenterar tillräcklig information för att kunna göra en riktig bedömning. Intervjuerna visar dock att domarna tolkar sin utredningsskyldighet olika. Vissa använder den för att få så mycket information som möjligt medan andra bara utnyttjar den om det inte är till nackdel för den asylsökande. Slutsatsen är att tvåpartsförfarandet snarare förstärker än utjämnar den ojämlikhet som redan finns mellan processförarna och de asylsökande med offentliga biträde. Vad tvåpartsförfarandet däremot uppnår är att iscensätta symboler för opartiskhet och likhet inför lagen genom att proceduren är utformad för att framställa två jämlika parter och en opartisk domare.

Den oberoende ställning som förvaltningsdomstolarna förknippades med i policyprocessen är föremål för analys i avhandlingen. Domarna vid

förvaltningsdomstolarna är juridiska experter men saknar generellt specialkompetens inom migrationsrätt eller landinformation. Den högsta instansen utgörs efter reformen av migrationsöverdomstolen vid Kammarrätten i Stockholm. Denna högsta instans fattar bara beslut i frågor av juridisk karaktär och lämnar därmed frågor om den socio-politiska situationen i olika länder som människor söker asyl från utan vägledning för lägre instanser. Denna uppdelning mellan juridiska frågor och faktafrågor har inte funnits i svensk asylprövning förut då regeringen var högsta vägledande instans i både juridiska och faktafrågor. Migrationsdomarna måste alltså förhålla sig objektiva och oberoende utan att själva besitta specialkompetens i frågorna de ska besluta om. Dessutom innebär asylärenden väldigt ofta en bedömning på osäkra grunder huruvida den sökandes berättelse är trolig eller inte. Inom forskning menar man att detta kräver att beslutsfattarens grundinställning är att de sökande talar sanning eftersom säkra bevis är svåra att hitta.

Genom att analysera vad intervjupersonerna uttrycker som neutrala respektive partiska förväntningar på asylsökande nås en förståelse för hur opartiskhet tolkas och praktiseras i asylöverklaganden. Jag visar i denna analys att skepsis gentemot asylsökande förstås som en mer neutral position än att visa en bekräftande attityd gentemot asylsökandes berättelser. De offentliga biträdena uttrycker en generell tilltro till de asylsökandes berättelser om förföljelse och förtryck. Processförarna har däremot en skeptisk attityd mot asylsökandes berättelser och uttrycker att asylsökande kan vara både sluga och beräknande. En vanlig inställning bland intervjupersonerna är att nämndemännen har större tilltro till asylsökandes berättelser än domaren på grund av att de inte är utbildade jurister. Nämndemännen använder känslor för att bilda sig en uppfattning om de asylsökandes skyddsvärdshet medan domarna har juridiska metoder och principer att följa. Enligt intervjupersonerna representerar också nämndemännen en politisk agenda som driver en generös hållning i flyktingpolitiken. I intervjuerna framkommer en föreställning om att den dominerande politiska agendan i Sverige är att driva flyktingpolitiken i en mer liberal och generös riktning. Detta beror troligen på att Sverige länge har haft en politisk retorik om generositet och humanitet i flyktingpolitiken, även om praktiken succesivt har drivits i en allt mer restriktiv riktning.

Konsekvensen av att offentliga biträden och nämndemän anses uttrycka en mer generös och bekräftande hållning till asylsökande, samtidigt som ingen av dessa aktörer anses vara neutrala och opartiska, blir att attityder och åsikter som uttrycker bekräftelse eller tilltro gentemot asylsökande blir svåra att kombinera med en opartisk och objektiv roll, vilket är do-

marnas främsta uppgift. Processförarnas skeptiska hållning gentemot asylsökande ifrågasätts inte av domarna i intervjuerna som en partisk attityd eftersom de också har en roll som neutrala tjänstemän. Jag visar i denna analys hur oberoende konstrueras vid migrationsdomstolarna och att en generell skepsis gentemot asylsökandes berättelser uppfattas som en neutral inställning medan bekräftande beteenden och attityder uppfattas som känslomässiga och partiska.

I avhandlingen analyseras också hur de intervjuade domarna, processförarna och offentliga biträdena uppfattar det muntliga inslaget i den reformerade överklagandeprocessen. Muntliga förhandlingar ansågs i policyprocessen utgöra ett viktigt steg mot ökad rättssäkerhet i asylprocessen. Intervjupersonerna beskriver det muntliga inslaget dels som ett sätt att låta den asylsökande komma till tals, dels som ett sätt att öka kontrollen av trovärdigheten i den asylsökandes berättelse. Föreställningen om att de asylsökande får möjlighet att komma till tals uttrycktes av intervjupersonerna men i praktiken verkade de asylsökandes möjligheter att få tala och framförallt bli hörda vara mycket begränsade. De offentliga biträdena försökte instruera asylsökande om hur de skulle berätta sin historia inför rätten. Den skulle låta spontan och självupplevd men fick inte förändras i detaljer från hur den berättades i första instans vid förhören med migrationsverket. Vissa asylsökande hade inte förmåga att leva upp till dessa krav och hade därmed svårt att göra sin berättelse trovärdig i rätten. Dessutom översätts asylberättelsen av en tolk som omedvetet kan missuppfatta eller förändra innebörden av det sagda.

Domarna och processförare hade svårt att beskriva hur de gjorde trovärdighetsbedömningarna under de muntliga förhandlingarna trots att det muntliga inslaget ansågs vara en stor fördel vid dessa bedömningar. Å ena sidan ska trovärdighetsbedömningar enligt den formella skriftliga vägledningen inte inbegripa magkänsla, personligt intryck eller icke-verbala faktorer såsom utseende eller gester. Å andra sidan beskrev flera domare och processförare att det var sådana typer av bedömningar som gjordes möjliga i den muntliga förhandlingen och att det var därför de uppskattade dem. Andra domare kunde helt enkelt inte beskriva hur de gjorde trovärdighetsbedömningarna, det förblev ett mysterium både för dem och mig.

De muntliga förhandlingar som observerades i avhandlingen analyserades utifrån de inslag av rituella aktiviteter som finns i dem för att bättre förstå den symboliska dimensionen av rättssäkerhet i migrationsdomstolarna. Ritualer behövs i olika sammanhang för att skyla över dilemman och oförenliga mål och värderingar som samsas inom en viss verksamhet. Ritualen gör att uppmärksamheten bland deltagare och åskådare för en stund vänds bort från dessa oförenliga mål och värderingar och mot de

föremål och aktiviteter som ritualen riktar uppmärksamheten mot. Ritualer inbegriper ett antal aktiva deltagare som delar känslomässigt läge och som tillsammans riktar uppmärksamhet på ett bestämt objekt eller en aktivitet.

I de muntliga förhandlingarna är det domaren, processföraren och det offentliga biträdet som har aktiva roller medan den asylsökande har mycket begränsade möjligheter att agera utanför de ramar som sätts upp av domaren. Dessutom är den asylsökande beroende av att tolken översätter allting på ett korrekt sätt och inte missförstår, lägger till eller tar bort någon information. Processföraren håller en utfrågning med den asylsökande som syftar till att hitta felaktigheter i berättelsen som kan underminera den asylsökandes trovärdighet. Hur processföraren frågar påverkar också hur och vad den sökande svarar och i många fall hjälper processföraren till att skapa oklarheter och felaktigheter i asylberättelserna genom sitt sätt att fråga eller att missförstå svaren. De rituella aktiviteterna som utförs under de muntliga förhandlingarna hanterar asylberättelsen som ett fysiskt objekt som kan plockas isär i delberättelser och sedan vid ett senare tillfälle fogas ihop igen, utan tanke på att berättelsen påverkas av både mottagare och avsändare och skapas i en specifik situation med hjälp av tolk. Genom att de aktiva deltagarna i den muntliga förhandlingen behandlade asylberättelsen som ett fysiskt objekt och inte som den samproducerade, relationella, muntliga och översatta kommunikation som den egentligen är lyckades de också överskugga det faktum att domstolen i asyländringen fattar beslut på osäkra och subjektivt härledda bedömningar.

Slutsatsen i denna avhandling är att de praktiker som skapats i domstolsreformen 2006 för att upprätthålla och förstärka rättssäkerheten producerade en *ceremoniell version av rättssäkerhet*. Denna version av rättssäkerhet upprätthåller domstolens legitimitet genom att göra symboler för rättvisa synliga och manifesta i domstolsprocessen. Tvåpartsprocessen upprätthåller skenet av att två jämlika parter möts framför en opartisk domare trots att processförarna i praktiken har både mer resurser och mer inflytande över utredningsarbetet än vad den asylsökande med offentligt biträde har. De offentliga biträdena och nämndemännen blir i intervjuerna utpekade som partiska genom sin tillitsfulla attityd mot de asylsökande medan processförarna inte blir sedda som partiska men har en uttalad skeptisk syn på asylsökande. Därmed förskjuts den neutrala positionen som domarna är måna om att ha åt det skeptiska hållet. Bakom en symbolik av opartiskhet, som manifesteras under domstolsförhandlingen, finns en informell norm om att visa opartiskhet genom att inta en skeptisk hållning till asylsökandes berättelser. Den muntliga förhandlingen erbjuder också en föreställning om att den asylsökande får komma till tals och kan

påverka sin utredning. Det utrymme som ges i de muntliga förhandlingarna för den asylsökande att själv tala är emellertid ytterst begränsat och kräver att den sökande klarar av att lägga fram sin berättelse enligt de kriterier som domstolen ställer upp. Dessutom inbegriper den muntliga förhandlingen en möjlighet att bedöma trovärdigheten i berättelsen. Hur denna trovärdighetsbedömning görs i praktiken är dock svårt att förstå utifrån mina intervjuer. Det verkar finnas en diskrepans mellan å ena sidan de formella riktlinjerna för trovärdighetsbedömningar och å andra sidan de bedömningar som görs i praktiken, där subjektiva och visuella element spelar större roll än vad riktlinjerna tillåter.

Denna ceremoniella version av rättssäkerhet bidrar till att skapa legitimitet för domstolens auktoritet genom att kommunicera opartiskhet, objektivitet och likhet inför lagen i offentligheten och till de juridiska aktörer som deltar. Att skapa legitimitet för offentliga beslut genom att se till att på olika sätt iscensätta rättvisa är en viktig del av domstolarnas uppdrag. Den andra delen av domstolarnas uppdrag är dock att också skipa rättvisa på ett substantiellt plan. Huruvida denna version av rättssäkerhet också skapar substantiell rättvisa eller formell rättvisa är däremot mer tveksamt. Substantiell rättvisa definieras som utfallet av en process, alltså att beslutet är korrekt. Domstolsprocessen för att bedöma asylöverklaganden har på flera sätt svårt att leva upp till kravet om att säkerhetsställa korrekta utfall. Eftersom bevis ofta saknas och trovärdighetsbedömningarna görs på oklara grunder är det sannolikt att många fall inte bedöms korrekt. Formell rättvisa definieras av hur proceduren för att nå ett beslut utformas. Transparens, opartiskhet och likvärdighet är värden som prioriteras i denna form av rättvisa. Även på dessa punkter brister den ceremoniella versionen av rättssäkerhet som praktiseras i migrationsdomstolarna, såsom analysen har visat.

Slutsatserna om att juridiska praktiker genererar en ceremoniell version av rättssäkerhet har implikationer för forskning om immigrationspolicys i västerländska länder. Antagandet om att politiker strävar efter att begränsa invandring medan domstolarna aktivt strävar efter att expandera immigranternas rättigheter behöver omformuleras. Utifrån den beskrivning av hur rättssäkerhet praktiseras som framlagts i denna avhandling kan tre bidrag till denna litteratur göras.

För det *första*, utifrån det svenska fallet går det inte att generalisera om i vilken riktning politiker vill att immigrationspolitik ska drivas. Även om många västerländska länder har haft regeringar som drivit en restriktiv agenda, och fått medhåll för detta från väljarna, så behöver antagandet om att politiker alltid vill driva en restriktiv immigrationspolitik omformuleras. I Sverige har politiker både drivit liberal och restriktiv asylpolitik, ofta

samtidigt. Den politiska diskursen har präglats av humanitet och generositet mot flyktingar medan praktiken ibland har drivits i restriktiv riktning. I Sverige har en flyktingvänlig opinion varit aktiv och ställt politiker till svars för inhumana konsekvenser av den förda politiken. Detta blev svårhanterligt för regeringen i början av 2000-talet och en av anledningarna till att asylbedömningar flyttades över till domstolarna. Ett sätt för politiker att göra sig av med kontroversiella beslut är att helt enkelt distansera sig från dem, till exempel genom att föra över mer makt och ansvar på domstolar. Inom immigrationslitteraturen förutsätts att det är domstolarna själva som tar initiativ till att lägga sig i politikernas beslut men så var det alltså inte i det svenska fallet. Domstolarna uttryckte istället en oro för att behöva ta sig an dessa svåra och kontroversiella beslut.

För det *andra* har immigrationsforskningen dragit slutsatser om domstolarnas inre logik utan att göra noggranna empiriska studier av dessa. Baserat på komparativa fallstudier har forskningen förutsatt att de viktigaste principerna i domstolarnas arbete med immigrationsbeslut är att upprätthålla rättssäkerheten och universella rättigheter. Denna studie visar att domstolar har många både formella och informella normer som styr deras praktiker. Dessutom kan rättssäkerhet ges olika innebörd i olika sammanhang och bara en empirisk undersökning kan ta reda på hur rättssäkerhet förstås inom en viss domstolsarena. Den symboliska dimensionen av domstolars arbete har heller inte uppmärksamats i denna litteratur. Jag hävdar att en viktig förklaring till domstolars beteende går att finna i deras behov av att iscensätta rättvisa och att detta ibland får ersätta behovet av att skipa rättvisa. Den som vill studera logiken bakom domstolars beteende bör fästa uppmärksamhet vid denna symboliska dimension av domstolars arbete.

För det *tredje* har forskning om immigrationspolicys förutsatt att domstolar är oberoende i relation till politik. Detta är sant i det svenska fallet i en formell mening men de juridiska aktörerna är inte oberoende av den politiska diskursen i samhället. Intervjupersonerna i denna studie resonerade och förhöll sig till vad de uppfattade som den politiska agendan. De visade sitt oberoende genom att ta avstånd från åsikter och förhållningssätt som förknippades med att ha en politisk hållning. Denna slutsats innebär att den politiska och den dömande makten står i ett implicit beroendeförhållande till varandra. Å ena sidan behöver de politiska aktörerna rättsväsendets symboler för rättvisa för att legitimera den asylnpolitik som förs. Å andra sida behöver domstolarna visa avstånd från den politiska agendan för att iscensätta sitt oberoende och på så sätt är de också implicit beroende av den. Immigrationsforskningen behöver problematisera relationen mellan politik och juridik och inte förutsätta att det är vattentäta skott mellan

dessa två arenor även om deras relation kan vara av en mer implicit art, såsom denna undersökning visar.

Doktorsdisputationer (filosofie doktorsgrad)

- Tage Lindbom (1938) Den svenska fackföreningsrörelsens uppkomst och tidigare historia 1872-1900.
- Lars Frykholm (1942) Studier över artikel 48 i Weimarförfattningen.
- Jörgen Westerståhl (1945) Svensk fackföreningsrörelse.
- Hans Thorelli (1954) The Federal Antitrust Policy.
- Bruno Kalnins (1956) Der Sowjetische Propagandastaat.
- Åke Thulstrup (1957) Aggressioner och allianser. Huvuddragen i europeisk storpolitik 1935-39.
- Lars Sköld (1958) Kandidatnomineringen vid andrakammarval.
- Rune Tersman (1959) Statsmakterna och de statliga aktiebolagen.
- Jurij Boris (1960) The Russian Communist Party and the Sovietization of the Ukraine.
- Per Sundberg (1961) Ministärerna Bildt och Åkerhielm. En studie i den svenska parlamentarismens förgårdar.
- Gunnar Wallin (1961) Valrörelser och valresultat. Andrakammarvalen i Sverige 1866-1884.
- Göran Lindahl (1962) Uruguay's New Path: A Study in Politics during the First Colegiado, 1919-33.
- Elmar Nyman (1963) Indragningsmakt och tryckfrihet 1785-1810.
- Tomas Hammar (1964) Sverige åt svenskarna. Invandringspolitik, utlänningskontroll och asylrätt 1900-1932.
- Krister Wahlbäck (1964) Finlandsfrågan i svensk politik 1937-1940.
- Torsten Landelius (1965) Workers, Employers and Governments: A Comparative Study of Delegations and Groups at the International Labour Conference 1919-1964.
- Kjell Goldmann (1971) International Norms and War Between States: Three Studies in International Politics.
- Daniel Tarschys (1972) Beyond the State: The Future Polity in Classical and Soviet Marxism.
- Harald Hamrin (1975) Between Bolshevism and Revisionism: The Italian Communist Party 1944-1947.
- Birger Hagård (1976) Nils Wohlin. Konservativ centerpolitiker.
- Gunnar Hellström (1976) Jordbrukspolitik i industrisamhället med tyngdpunkt på 1920- och 30-talen.

Stockholm Studies in Politics

ISSN 0346-6620

(De med * utmärkta avhandlingarna är doktorsavhandlingar,
som av skilda skäl ej ingår i Stockholm Studies in Politics)

1. Thomas G Hart (1971) *The Dynamics of Revolution: A Cybernetic Theory of the Dynamics of Modern Social Revolution with a Study of Ideological Change and Organizational Dynamics in the Chinese Revolution*. 9903705557
2. Sören Häggroth (1972) *Den kommunala beslutsprocessen vid fysisk planering*. 9903658125
3. Gunnar Sjöstedt (1973) *OECD-samarbetet: Funktioner och effekter*. 9905287434
4. Yngve Myrman (1973) *Maktkampen på arbetsmarknaden 1905-1907. En studie av de ickesocialistiska arbetarna som faktor i arbetsgivarpolitiken*. 9900827953
- * Rolf Ejvegård (1973) *Landstingsförbundet. Organisation, beslutsfattande, förhållande till staten*. (Grafisk Reproduktion Tryckeri AB).
5. Lars-Erik Klason (1974) *Kommunalförbund och demokrati. En studie av kommunikationsprocessen i kommunalförbund*. 9900795474
6. Magnus Isberg, Anders Wettergren, Jan Wibble & Björn Wittrock (1974) *Partierna inför väljarna. Svensk valpropaganda 1960-1966*. (Allmänna förlaget) 91-38-01936-1
7. Bengt Owe Birgersson (1975) *Kommunen som serviceproducent. Kommunal service och serviceattityder i 36 svenska kommuner*. 9901646588
8. G Roger Wall (1975) *The Dynamics of Polarization. An Inquiry into the Process of Bipolarization in the International System and its Regions, 1946-1970*. 990168627X
9. James Walch (1976) *Faction and Front: Party Systems in South India*. (Young Asia Publications: New Delhi) 9901135281
10. Victor Pestoff (1977) *Voluntary Associations and Nordic Party Systems. A Study of Overlapping Memberships and Cross-Pressures in Finland, Norway and Sweden*. 9901232996
- * Chimelu S. Chime (1977) *Integration and Politics Among African States. Limitations and horizons of mid-term theorizing*. (Scandinavian Institute of African Studies). 91-7106-103-7
- * Katarina Brodin (1977) *Studiet av utrikespolitiska doktriner*. (SSLP/Försvarsdepartementet).
- * Lars Thunell (1977) *Political Risks in International Business: Investment Behavior of Multinational Corporations* (Praeger Publishers: New York).
11. Harriet Lundblad (1979) *Delegerad beslutanderätt inom kommunal socialvård*. (Liber) 9138-048909-4

12. Roland Björnsne (1979) *Populism och ekopolitik. Utvecklandet av en ekopolitisk ideologi i Norge och dess relationer till ett mångtydigt populismbegrepp*. 91-7146-039-X
13. Anders Mellbourn (1979) *Byråkratins ansikten. Rolluppfattningar hos svenska högre statstjänstemän*. (Liber) 91-38-04850-7
14. Henry Bäck (1979) *Den utrikespolitiska dagordningen. Makt, protest och internationella frågor i svensk politik 1965-1973*. 91-7146-065-9.
15. Rune Premfors (1980) *The Politics of Higher Education in a Comparative Perspective: France, Sweden, United Kingdom*. 91-7146-071-3
16. Sahin Alpay (1980) *Turkar i Stockholm. En studie av invandrare, politik och samhälle*. (Liber) 91-38-05635-6
17. Diane Sainsbury (1980) *Swedish Democratic Ideology and Electoral Politics 1944-1948: A Study of Functions of Party Ideology*. (Almqvist & Wiksell International) 91-22-00424-6
18. Roger Ko-Chi Tung (1981) *Exit-Voice Catastrophes: Dilemma between Migration and Participation*. 91-7146-160-4
19. Stig Munknäs (1981) *Statlig eller kommunal skola? En studie av centraliserings- och decentraliseringsproblem inom svensk skolförvaltning*. 9902487424
20. Bo Lindensjö (1981) *Högskolereformen. En studie i offentlig reformstrategi*. 91-7146-184-1
21. Claes Linde (1982) *Departement och verk. Om synen på den centrala statsförvaltningen och dess uppdelning i en förändrad offentlig sektor*. 91-7146-406-9
- * Bernt Öhman (1982) *Löntagarna och kapitaltillväxten. Solidarisk lönepolitik och löntagarfonder*. (Jernströms Offsettryck AB) 91-38-07152-5
22. Stefan Swärd (1984) *Varför Sverige fick fri abort. Ett studium av en policyprocess*. 91-7146420-4
23. Bo Malmsten (1984) *Bostadsbyggande i plan och verklighet. Planering och genomförande av kommunal bostadsförsörjning*. (Statens råd för byggnadsforskning 869:1984) 91-540-4139-2.
24. Bertil Nygren (1984) *Fredlig samexistens: klasskamp, fred och samarbete. Sovjetunionens detente-doktrin. (Utrikespolitiska institutet)* 91-7182-576-2
25. Jan Hallenberg (1984) *Foreign Policy Change: United States' Foreign Policy toward the Soviet Union and the People's Republic of China 1961-1980*. 91-7146-428-X
26. Jan Wallenberg (1985) *Några effektivitetsproblem i statlig byråkrati*. (Studentlitteratur) 9144-23401-5
27. Maud Eduards (1985) *Samarbete i Maghreb. Om regionalt samarbete mellan Marocko, Algeriet, Tunisien och Libyen 1962-1984*. 91-7146-438-7
28. Ishtiaq Ahmed (1985) *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan*. 91-7146-458-1
29. Michele Micheletti (1985) *Organizing Interest and Organized Protest: Difficulties of Member Representation for the Swedish Central Organization of Salaried Employees (TCO)*. 917146-451-4

30. Torbjörn Larsson (1986) *Regeringen och dess kansli. Samordning och byråkrati i maktens centrum.* (Studentlitteratur) 91-44-25311-7
31. Ingegerd Muncio (1987) *Från lag till bruk. Hemspråksreformens genomförande.* 91-7146471-9
32. Tuija Meisaari-Polsa (1987) *Ståndpunkter i UNCTAD. En analys av generaldebatterna 1964-1979.* 91-7146-472-7
33. Virginia Capulong-Hallenberg (1987) *Philippine Foreign Policy Toward the U.S. 1972-1980: Reorientation?* 91-7146-478-6
34. Hans Bergström (1987) *Rivstart? Från opposition till regering.* (Tidens förlag) 91-550-3315-6
35. Agneta Bladh (1987) *Decentraliserad förvaltning. Tre ämbetsverk i nya roller.* (Studentlitteratur) 91-44-27731-8
36. Nils-Eric Hallström (1989) *Lagen om ungdomslag i beslut och genomförande.* 91-7146-782-3
37. Maritta Soininen (1989) *Samhällsbilder i vardande.* (CEIFO) 91-87810-03-X
38. Stefan Lindström (1991) *Hela nationens tacksamhet. Svensk forsknings-politik på atomenergiområdet 1945-1956.* 91-7146-932-X
39. Yeu-Farn Wang (1991) *China's Science and Technology Policy: 1949-1989.* 91-7146-953-2.
40. Jan Hylén (1991) *Fosterlandet främst? Konservatism och liberalism i högerpartiet 1904-1985.* (Norstedts) 91-38-50086-8
41. Jan Johansson (1992) *Det statliga kommittéväsendet. Kunskap, kontroll, konsensus.* 91-7146969-9
42. Janina Wiktorja Dacyl (1992) *Between Compassion and Realpolitik: In Search of a General Model of the Responses of Recipient Countries to Large-Scale Refugee Flows with Reference to the South-East Asian Refugee Crisis.* 91-7146-007-X
43. Leo Bartonek (1992) *Der Topos »Nähe« - Ernst Blochs Eintrittsstelle in die Sozialwissenschaften. Ein Beitrag zur Ontologie der modernen Gesellschaft.* 91-7153-022-3
44. Jan-Gunnar Rosenblad (1992) *Nation, nationalism och identitet. Sydafrika i svensk sekelskiftesdebatt.* (Bokförlaget Nya Doxa) 91-88248-24-0
45. Alexa Robertson (1992) *National Prisms and Perceptions of Dissent: The Euromissile Controversy Reflected in Opinion and the News in the UK and the FRG 1980-1983.* 91-7153-070-3
46. Lars Lindström (1993) *Accumulation, Regulation, and Political Struggles. Manufacturing Workers in South Korea.* 91-7153-121-1
47. Göran Bergström (1993) *Jämlikhet och kunskap. Debatter och reformstrategier i socialdemokratisk skolpolitik 1975-1990.* (Symposion Graduale) 91-7139-135-5
48. Jens Bartelson (1993) *A Genealogy of Sovereignty.* 91-7153-140-8
49. Ingvar Hjelmqvist (1994) *Relationer mellan stat och kommun.* 91-7153-186-6
50. Emmanuel Obliteifio Akwetey (1994) *Trade Unions and Democratisation: A Comparative Study of Zambia and Ghana.* 91-7153-250-1

51. Kristina Boréus (1994) *Högervåg. Nyliberalism och kampen om språket i svensk debatt 1969-1989*. (Tidens förlag) 91-550-4129-9
- * Steve Minett (1994) *Power, Politics and Participation in the Firm* (Athenaeum Press Ltd, Newcastle) 1 85628 331 3
52. Michael Karlsson (1995) *Partistategi och utrikespolitik. Interna motiveringar och dagspressens agerande i Catalina-affären 1952 och EEC-frågan 1961/62*. 91-7153-346-X
53. Sun-Joon Hwang (1995) *Folkrörelse eller affärsföretag. Den svenska konsumtkooperationen 1945-1990*. 91-7153-379-6
54. Ulrika Mörth (1996) *Vardagsintegration - La vie quotidienne - i Europa. Sverige i EUREKA och EUREKA i Sverige*. 91-7153-460-1
55. Claes Wahl (1996) *The State of Statistics: Conceptual and Statistical Reasoning in the Modern State 1870-1940*. 91-7153-506-3
56. Peter Kjaer (1996) *The Constitution of Enterprise: An Institutional History of Inter-firm Relations in Swedish Furniture Manufacturing*. 91-7153-538-1
57. Eva Haldén (1997) *Den Föreställda Förvaltningen. En institutionell historia om central skolförvaltning*. 91-7153-578-0
58. Kristina Riegert (1998) *"Nationalising" Foreign Conflict: Foreign Policy Orientation as a Factor in Television News Reporting*. 91-7153-743-0
59. Peter Ehn (1998) *Maktens administratörer. Ledande svenska statstjänstemäns och politikernas syn på tjänstemannarollen i ett förändringsperspektiv*. 91-7153-779-1
60. Magnus Norell (1998) *Democracy and Dissent. The Case of an Israeli Peace Movement, Peace Now*. 91-7153-828-3
61. Jan Lionel Sellberg (1998) *Hur är samhället möjligt? Om den tidigmoderna naturrättens språkfilosofiska grunder. Brännpunkt: Samuel Pufendorf*. 91-7153-825-9
62. Jan-Axel Swartling (1998) *Ideologi och realitetsarbete. Om analys av makt och dominans på etnometodologisk grund*. 91-7153-846-1
63. Magnus Ekengren (1998) *Time and European Governance. The Empirical Value of Three Reflective Approaches*. 91-7153-861-5
64. Peter Strandbrink (1999) *Kunskap och politik. Teman i demokratisk teori och svensk EU-debatt*. 91-7153-943-3
65. Jouni Reinikainen (1999) *Right against Right. Membership and Justice in Post-Soviet Estonia*. 91-7153-951-4
66. Eric Stern (1999) *Crisis Decisionmaking: A Cognitive-Institutional Approach*. 91-7153-9936
67. Ulf Mörkenstam (1999) *Om "Lapparnes privilegier". Föreställningar om samiskhet i svensk samepolitik 1883-1997*. 91-7265-004-4
68. Cecilia Åse (2000) *Makten att se. Om kropp och kvinnlighet i lagens namn*. (Liber) 91-4706080-8
69. Margreth Nordgren (2000) *Läkarprofessionens feminisering. Ett köns- och maktperspektiv*. 91-7265-133-4

70. Charlotte Wagnsson (2000) *Russian Political Language and Public Opinion on the West, NATO and Chechnya. Securitisation Theory Reconsidered.* 91-7265-135-0
71. Max M. Edling (2000) *A revolution in favour of government. The American Constitution and ideas about state formation, 1787-1788.* 91-7265-130-X
72. Pasquale Cricenti (2000) *Mellan privilegier och fattigdom. Om italiensk demokrati och socialpolitik ur ett välfärdsstatsperspektiv.* 91-7265-179-2
73. Henrik Berglund (2000) *Hindu Nationalism and Democracy: A Study of the Political Theory and Practice of the Bharatiya Janata Party.* 91-7265-198-9
74. Magnus Reitberger (2000) *Consequences of Contingency: the Pragmatism and Politics of Richard Rorty.* 91-7265-199-7
75. Mike Winnerstig (2001) *A World Reformed? The United States and European Security from Reagan to Clinton.* 91-7265-212-8
76. Jonas Nordquist (2001) *Domstolar i det svenska politiska systemet: Om demokrati, juridik och politik under 1900-talet.* 91-7265-218-7
77. Kjell Engelbrekt (2001) *Security Policy Reorientation in Peripheral Europe. A Perspectivist Approach.* 91-7265-234-9
78. Susanna Rabow-Edling (2001) *The intellectuals and the idea of the nation in Slavophile thought.* 91-7265-316-7
79. Nelli Kopola (2001) *The Construction of Womanhood in Algeria. Moudjahidates, Aishah Radjul, Women as Others and Other Women.* 91-7265-317-5
80. Maria Jansson (2001) *Livets dubbla vedermödor. Om moderskap och arbete.* 91-7265-340-X
81. Dagmar von Walden Laing (2001) *HIV/AIDS in Sweden and the United Kingdom Policy Networks 1982-1992.* 9-7265-342-6
82. Marika Sanne (2001) *Att se till helheten. Svenska kommunalpolitiker och det demokratiska uppdraget.* 91-7265-348-5
83. Bror Lyckow (2001) *En fråga för väljarna? Kampen om det lokala vetot 1893-1917.* 91-7265-359-0
84. Magnus Enzell (2002) *Requiem for a Constitution. Constitutionalism and Political Culture in Early 20th Century Sweden.* 91-7265-395-7
85. Welat Songür (2002) *Välfärdsstaten, sociala rättigheter och invandrarernas maktresurser: En jämförande studie om äldre från Mellanöstern i Stockholm, London och Berlin.* 91-7265-405-8
86. Johan Lembke (2002) *Defining the New Economy in Europe. A Comparative Analysis of EU Technology Infrastructure Policy, 1995-2001.* 91-7265-417-1
87. Maria Wendt Höjer (2002) *Rädslans politik. Våld och sexualitet i den svenska demokratin.* (Liber). 91-47-06585-0
88. Håkan Karlsson (2002) *Bureaucratic Politics and Weapons Acquisition: The Case of the MX ICBM Program.* 91-7265-531-3
89. Andreas Duit (2002) *Tragedins institutioner. Svenskt offentligt miljöskydd under trettio år.* 91-7265-528-3

90. Lucas Pettersson (2002) *Information och identitet. Synen på televisionens politiska roll i Sverige och EU*. ISBN 91-7265-549-6
91. Magnus Jedenheim Edling (2003) *The Compatibility of Effective Self-Ownership and Joint World Ownership*. 91-7265-589-5
92. Peter Hallberg (2003) *Ages of Liberty: Social Upheaval, History Writing and the New Public Sphere in Sweden, 1740-1792*. 91-7265-629-8
93. Linus Hagström (2003) *Enigmatic Power? Relational Power Analysis and Statecraft in Japan's China Policy*. 91-7265-628-X
94. Jacob Westberg (2003) *Den nationella drömträdgården. Den stora berättelsen om den egna nationen i svensk och brittisk Europadebatt*. 91-7265-681-6
95. Eva Erman (2003) *Action and Institution – contributions to a discourse theory of human rights*. 91-7265-726-X
96. Göran Sundström (2003) *Stat på villovägar. Resultatstyrningens framväxt i ett historisk-institutionellt perspektiv*. 91-7265-750-2
97. Ersun Kurtulus (2004) *State Sovereignty. The Concept, the Referent and the Ramifications*. 91-7265-754-5
98. Magdalena Kettis (2004) *The Challenge of Political Risk. Exploring the Political Risk Management of Swedish Multinational Corporations*. 91-7265-842-8
99. Sofia Näsström (2004) *The An-Archical State. Logics of Legitimacy in the Social Contract Tradition*. 91-7265-924-6
100. Gunilla Herolf (2004) *France, Germany and the United Kingdom – Cooperation in Times of Turbulence*. 91-7265-797-9
101. Lena Dahlberg (2004) *Welfare relationships. Voluntary organisations and local authorities supporting relatives of older people in Sweden*. 91-7265-928-9
102. Anette Gröjer (2004) *Den utvärdera(n)de staten. Utvärderingens institutionalisering på den högre utbildningens område*. 91-7265-939-4
103. Malena Britz (2004) *The Europeanization of Defence Industry Policy*. 91-7265-916-5
104. Hans Agné (2004) *Democracy Reconsidered. The Prospects of its Theory and Practice during Internationalisation - Britain, France, Sweden, and the EU*. 91-7265-948-3
105. Henrik Enroth (2004) *Political Science and the Concept of Politics. A Twentieth-Century Genealogy*. 91-7265-967-X
106. Lisbeth Aggestam (2004) *A European Foreign Policy? Role Conceptions and the Politics of Identity in Britain, France and Germany*. 91-7265-964-5
107. Catrin Andersson (2004) *Tudelad trots allt – dualismens överlevnad i den svenska staten 1718-1987*. 91-7265-978-5

108. Johan Lantto (2005) *Konflikt eller samförstånd? Management- och marknadsreformers konsekvenser för den kommunala demokratin*. 91-7155-103-4
109. Daniel Helldén (2005) *Demokratin utmanas. Almstriden och det politiska etablissemanget*. 91-7155-136-0
110. Birgir Hermannsson (2005) *Understanding Nationalism, Studies in Icelandic Nationalism 1800-2000*. 91-7155-148-4
111. Alexandra Segerberg (2006) *Thinking Doing: The Politicisation of Thoughtless Action*. 91-7155-179-4
112. Maria Hellman (2006) *Televisional Representations of France and the UK under Globalization*. 91-7155-219-7
113. Åsa Vifell (2006) *Enklaver i staten. Internationalisering, demokrati och den svenska statsförvaltningen*. 91-7155-243-X
114. Johnny Rodin (2006) *Rethinking Russian Federalism. The Politics of Intergovernmental Relations and Federal Reforms at the Turn of the Millennium*. 91-7155-285-5
115. Magnus Lembke (2006) *In the Lands of Oligarchs. Ethno-Politics and the Struggle for Social Justice in the Indigenous-Peasant Movements of Guatemala and Ecuador*. 91-7155-300-2
116. Lenita Freidenvall (2006), *Vägen till Varannan Damernas. Om kvinnorepresentation, kvotering och kandidaturval i svensk politik 1970-2002* 91-7155-322-3
117. Arita Eriksson (2006) *Europeanization and Governance in Defence Policy: The Example of Sweden*. 91-7155-321-5
118. Magnus Erlandsson (2007) *Striderna i Rosenbad. Om trettio års försök att förändra Regeringskansliet*. 978-91-7155-448-2
119. Anders Sjögren (2007) *Between Militarism and Technocratic Governance: State Formation in Contemporary Uganda*. 978-91-7155-430-7
120. Andreas Behnke (2007) *Re-Presenting the West. NATO's Security Discourse After the End of the Cold War*. 978-91-7155-522-9
121. Ingemar Mundebo (2008) *Hur styrs staten?* 978-91-7155-530-4
122. Simon Birnbaum (2008) *Just Distribution. Rawlsian Liberalism and the Politics of Basic Income*. 978-91-7155-570-0
123. Tove Lindén (2008) *Explaining Civil Society Core Activism in Post-Soviet Latvia*. 978-91-7155-585-4
124. Pelle Åberg (2008) *Translating Popular Education – Civil Society Cooperation between Sweden and Estonia*. 978-91-7155-596-0
125. Anders Nordström (2008) *The Interactive Dynamics of Regulation: Exploring the Council of Europe's Monitoring of Ukraine*. 978-91-7155-616-5

126. Fredrik Doeser (2008) *In Search of Security After the Collapse of the Soviet Union: Foreign Policy Change in Denmark, Finland and Sweden, 1988-1993*. 978-91-7155-609-7
127. Mikael Blomdahl (2008) *The Political Use of Force: Beyond National Security Considerations as a Source of American Foreign Policy*. 978-91-7155-733-9
128. Jenny Cisneros Örnberg (2009) *The Europeanization of Swedish Alcohol Policy*. 978-91-7155-748-3
129. Sofie Bedford (2009) *Islamic Activism in Azerbaijan: Repression and Mobilization in a Post-Soviet Context*. 978-91-7155-800-8
130. Björn Harström (2009) *Vad vi inte får se. 100 år av censurpolitik*. 978-91-7155-878-7
131. Monica Andersson (2009) *Politik och stadsbyggande. Modernismen och byggnadslagstiftningen*. 978-91-7155-944-9
132. Jenny Madestam (2009) *En kompis pappa och en yttlig djuping. Parti-eliters ambivalenta partiledarideal*. 978-91-7155-962-3
133. Marja Lemne (2010) *För långt från regeringen – och för nära. Expertgruppen ESO:s födelse, levnad och död*. 978-91-7447-006-2
134. Maria Carbin (2010) *Mellan tystnad och tal – flickor och hedersvåld i svensk offentlig politik*. 978-91-7447-037-6
135. Sofie Tornhill (2010) *Capital Visions. The Politics of Transnational Production in Nicaragua*. 978-91-7447-052-9
136. Barbara Kunz (2010) *Kind words, cruise missiles and everything in between. A neoclassical realist study of the use of power resources in U.S. policies towards Poland, Ukraine and Belarus 1989–2008*. 978-91-7447-148-9
137. Eva Hansson (2011) *Growth without Democracy. Challenges to Authoritarianism in Vietnam*. 978-91-7447-199-1
138. Anna Ullström (2011) *Styrning bakom kulisserna. Regeringskansliets politiska staber och regeringens styrningskapacitet*. 978-91-7447-235-6
139. Karl Gustafsson (2011) *Narratives and Bilateral Relations: Rethinking the 'History Issue' in Sino-Japanese Relations*. 978-91-7447-305-6
140. Svend Dahl (2011) *Efter folkrörelsepartiet. Om aktivism och politisk förändring i tre svenska riksdagspartier*. 978-91-7447-357-5
141. Emelie Lilliefeldt (2011) *European Party Politics and Gender: Configuring Gender Balanced Parliamentary Presence*. 978-91-7447-379-7
142. Andreas Johansson (2011) *Dissenting Democrats. Nation and Democracy in the Republic of Moldova*. 978-91-7447-406-0
143. Ola Svenonius (2011) *Sensitising Urban Transport Security: Surveillance and Policing in Berlin, Stockholm, and Warsaw*. 978-91-7447-390-2
144. Katharina Tollin (2011) *Sida vid sida - en studie av jämställdhetspolitikens genealogi 1971-2006*. 978-91-7389-898-0

145. Niklas Bremberg (2012) *Exploring the Dynamics of Security Community-Building in the post-Cold War Era: Spain, Morocco and the European Union*. 978-91-7447-463-3
146. Pär Daléus (2012) *Politisk ledarskapsstil: Om interaktionen mellan personlighet och institutioner i utövandet av det svenska statsministerämbetet*. 978-91-7447-535-7
147. Linda Ekström (2012) *Jämställdhet – för männens, arbetarklassens och effektivitetens skull? – En diskursiv policystudie av jämställdhetsarbete i maskulina miljöer*. 978-91-7447-327-8
148. Lily Stroubouli Lanefelt (2012) *Multiculturalism, Liberalism and the Burden of Assimilation*. 978-91-7447-597-5
149. Mats Wärn (2012) *A Lebanese Vanguard for the Islamic Revolution: Hezbollah's combined strategy of accommodation and resistance*. 978-91-7447-604-0
150. Constanza Vera-Larucea (2013) *Citizenship by Citizens: First Generation Nationals with Turkish Ancestry on Lived Citizenship in Paris and Stockholm*. 978-91-7447-636-1
151. Göran von Sydow (2013) *Politicizing Europe: Patterns of Party-Based Opposition to European Integration*. 978-91-7447-666-8
152. Andreas Nordang Uhre (2013) *On Transnational: Actor Participation in Global Environmental Governance*. 978-91-7447-709-2
153. Cajsa Niemann (2013) *Villkorat förtroende. Normer och rollförväntningar i relationen mellan politiker och tjänstemän i Regeringskansliet*. 978-91-7447-776-4
154. Idris Ahmedi (2013) *The Remaking of American Strategy toward Iran and Iraq: Outline of a Theory of Foreign Policy Change*. 978-91-7447-813-6
155. Mikiko Eto (2014) *Women and Politics in Japan: A Combined Analysis of Representation and Participation*. 978-91-7447-833-4
156. Monica Svantesson (2014) *Threat Construction inside Bureaucracy: A Bourdieusian Study of the European Commission and the Framing of Irregular Immigration 1974-2009*. 978-91-7447-853-2
157. Magnus Lundgren (2014) *International organizations as peacemakers: The evolution and effectiveness of supranational instruments to end civil war*. 978-91-7447-950-8
158. Andreas Gottardis (2014) *Reason and Utopia. Reconsidering the concept of Emancipation in Critical Theory*. 978-91-7649-016-7
159. Matilda Valman (2014) *Three faces of HELCOM - institution, organization, policy producer*. 978-91-7649-033-4
160. Max Waltman (2014) *The Politics of Legal Challenges to Pornography: Canada, Sweden, and the United States*. 978-91-7649-047-1
161. Mikael Olsson (2015) *Austrian Economics as Political Philosophy*. 978-91-7649-062-4
162. Matilde Millares (2015) *Att välja välfärd. Politiska berättelser om valfrihet*. 978-91-7649-082-2
163. Maria-Therese Gustafsson (2015) *Beyond Conflict and Conciliation: The Implications of different forms of Corporate-Community Relations in the Peruvian Mining Industry*. 978-91-7649-125-6

164. Henrik Angerbrandt (2015) *Placing Conflict: Religion and Politics in Kaduna State, Nigeria* 978-91-7649-233-8
165. Per-Anders Svärd (2015) *Problem Animals: A Critical Genealogy of Animal Cruelty and Animal Welfare in Swedish Politics 1844–1944* 978-91-7649-234-5
166. Helena Tinnerholm Ljungberg (2015) *Omöjliga familjen. Ideologi och fantasi i svensk reproduktionspolitik* 978-91-7649-231-4
167. Elín Hafstensdóttir (2015) *The Art of Making Democratic Trouble: Four Art Events and Radical Democratic Theory* 978-91-7649-232-1
168. Björn Jerdén (2016) *Waiting for the rising power: China's rise in East Asia and the evolution of great power politics* 978-91-7649-394-6
169. Martin Vestergren (2016) *The Political Legitimacy of Global Governance Institutions: A Justice-Based Account* 978-91-7649-521-6
170. Björn Ottosson (2017) *A Cacophony of Voices: A Neoclassical Realist study of United States Strategy toward Central Asia and Southern Caucasus 1991–2006* 978-91-7649-626-8
171. Livia Johannesson (2017) *In Courts We Trust: Administrative Justice in Swedish Migration Courts* 978-91-7649-694-7

