Drawing the limits: Unaccompanied minors in Swedish asylum policy and procedure

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ISBN 978-91-7649-335-9

Printed in Sweden by Holmbergs, Malmö 2016
Distributor: Department of Child and Youth Studies

In loving memory of my sister
Camilla

Acknowledgments

First of all, I would like to thank my anonymous informants, and the archive and administration section at the Swedish Migration Agency, for providing me with the data that forms the basis for this thesis.

Karin Helander was the person who facilitated my first contact with the Department and for that I will always be grateful, thank you.

I want to thank my supervisors Ann-Christin Cederborg and Mauro Zamboni who have generously provided me of their time and offered helpful comments. In particular, Ann-Christin Cederborg has taught me the value of a robust scientific design, and the centrality of structure in text. Furthermore, she has also actively encouraged me to learn the ropes of "the trade". Ann-Christin supported my visiting scholarship to Australia and also made possible my stay with her while she was a visiting professor at Cambridge, which was both a fun and constructive visit. Thank you!

I would like to thank Karin Aronsson for being the reader at the interim seminar (and many good talks about film). I am greatly indebted to Anna Lundberg at Malmö University for her invaluable input as external reviewer at my final seminar. I would also like to thank Nihad Bunar for reading my texts and giving productive comments during the different stages of the thesis project. Annika Lagerqvist Veloz Roca read the background section and provided useful comments, thank you. Mats Börjesson contributed with valuable input and analytical questions at many higher seminars where I have presented material. Ingrid Engdahl offered firm guidance when I was international coordinator at the Department and provided helpful APA-referencing checks at the end stages of thesis writing. Rickard Jonsson, Björn Sjöblom, María Bergman, Tilda Maria Forselius and Anna-Lena Ljusberg have contributed with good academic insights as well as many nice conversations during the years.

I would like to thank my former and present fellow PhD Candidate colleagues at the Department of Child and Youth Studies for talks, lunches, after works, and other social activities, in particular Anna Ambrose, Anna Åhlund, Johanna Lindholm, Nadja Nieminen Mänty, Anna Gradin Franzén, Lisa Ottosson, Gunnel Mohme, Agneta Wallander, Ylva Lorentzon, Ulrika Winerdal, Magnus Kilger, Anneli Hippinen Ahlgren, Farhad Jahanmahan, Lina Lundström, Suzanne Kriström Alonzo and Jenny Nilsson Folke.

I want to especially thank Anna Falk, Sonja Henriksson, Malin Petersson and Jan Björklund for excellent and speedy support on a range of administrative and practical matters over the years.

During the writing of the thesis I spent one academic semester at the University of Sydney in Australia. Admittance to the Visiting Scholar Program at the Department of Sociology and Social Policy was made possible with the support of Robert van Krieken and Nicola Piper. At Sydney, many fellow PhD Students at the department quickly made me feel welcome and became a great company, in particular Polina Smiragina, Natalie Maystorovich Chulio, Fadi Baghdadi, Alexander Page, Mathew Toll, Jessica Richards and Tina Davis.

I have been fortunate enough to participate, present my research and exchange knowledge at the Nordic Network for Research Cooperation on Unaccompanied Refugee Minors' (NordURM) network meetings in Gothenburg and Copenhagen, as well as at NordForsk's network meeting in Turku, the Australian Sociological Association (TASA) 2014 conference in Adelaide and at the Stockholm Centre for the Rights of the Child.

I want to thank *Stiftsgården Rättvik* who awarded me a scholarship that made it possible to spend one week writing at this beautiful manor in 2015.

As a jack of several trades and master of none, many others have contributed with fruitful discussions about research, intellectual labour, activism and societal as well as personal development. I am particularly grateful to Sebastian Krook at Australian Catholic University, at Sydney: Senthorun Raj, Elisabeth Valiente-Riedl and Tim Anderson, at Stockholm: Barbro Sigfridsson, Thomas Wimark, Louise Dane, Lisa Salmonsson and Eva Berglund; Lena Sohl and Ulrika Wernesjö at Linköping and Hebbah Elgindy at Örebro. I am indebted to my past and present fellow board members of the Swedish migration research network *IMER-förbundet* as well as my colleagues on the editorial board of *Clarté* for great work and discussions. I also would like to thank the co-workers at my extra gig *Zita Folkets Bio* for providing a great blend of art house film, politics and after work cocktails during the writing of the thesis.

I owe a special thanks to my parents for their endless support, *tack för allt stöd och allt som ni har gjort för mig, mamma och pappa!*

I must thank some personal friends outside of my stricter academic bubble for encouragement, discussions and fun during the writing of the thesis: Mikael Ström, Cecilia Berggren, Malin Widhe, Johanna Karlsson, Ami Jansson, Silvia Garcia, Frida Jansson, Leila El Fahimi, Rebecca Röhlander, Mohamed Duar, Kinan Aljundi, Gustav Landström, Eva Kirkhaug, Gunilla Renbjer and Jay Jae Geun Lim.

The customary disclaimers apply to everyone mentioned above and any remaining mistakes or omissions are mine alone.

Rinkeby, February 2016.

Prologue

In late 2007 I was offered employment at a permit unit of the Swedish Migration Agency (SMA). At the time I already had experience in public service but had not worked with individual case processing before. Almost immediately after being introduced to my new colleagues, I was informed that there would be a few days of induction at a hotel in Stockholm for newly hired employees. These types of inductions were held only a limited number of times each year, and I was told that I was lucky to be able to attend one straightaway (Induction Days were also considered a formal part of in-service migration programme training), instead of waiting for months to participate.

A senior official from the cabinet of the general director of the SMA opened the Induction Days with a speech, where he said that it was true that we would work at an authority receiving plenty of external critique for inhumane decisions. Although people could indeed make individual mistakes in decision-making, this view of the SMA was to be understood as uninformed. Instead, he stated, we should be rest assured that the law that we would apply had been considered thoroughly by all seven political parties in parliament in a transparent process. Hence, he stressed, it was one of the most democratic acts ever issued in the country. "You will be carrying out the intent of the legislature", he declared, "Therefore, you should not feel ashamed but proud to be public servants engaging with the Aliens Act".

I do not remember many other details from the rest of those Induction Days, but the senior officials talk remained with me, particularly since I found that not only could understandings of the legislative intent vary greatly, but also because this was only one of several factors in day-to-day case processing. Rather than feeling proud, I experienced a growing self-critique as the months turned into years.

After a sabbatical year for postgraduate studies overseas, I was accepted to the PhD Program at the department of Child and Youth Studies, Stockholm University. At the time, the number of unaccompanied minors was growing quickly. However, there was a lack of knowledge about how they were understood by Swedish authorities. Therefore my thesis project became focused on the dialogue between legislation and implementation in Sweden concerning unaccompanied children seeking asylum.

Preface

There exists a significant link between the borders of nation-states and children. The still prevailing constructions of "children" and "childhood" ascended as consequences of the first nation-state projects' consolidation of political authority and borders in the 19th century. This occurred at a time when ideas about protecting children from exploitation, such as (child) labour hardships, domestic violence and sexual abuse, emerged as responses to the social impacts of expanding industrial capitalism (Therborn, 1993, 1996). Consequently, it became logical for the nation-state projects to attempt to increase the influence over both the economy and the traditional paternal family structure to achieve further state-building stability and economic growth. States would therefore gradually issue special legal regulations for children and provide (mandatory) basic education (Therborn, 1996).

Contemporary global migration is, however, primarily considered to be a phenomenon involving adults that have made either a forced *or* a voluntary choice about their movement across borders. This is a reductionist view. Children also migrate internationally, with their families, with other persons, or by themselves. As with the case of adults, children's motives to migrate can overlap and contain *both* voluntary and involuntary components (Bhabha, 2014; Hujismans & Baker, 2012; Sutcliffe, 2001). Children's decisions to migrate alone can be affected by everyday emergencies. It is more likely that they will travel unaccompanied in connection to wars, internal conflicts, following the death of a family member by unnatural causes, or famines (Ressler, Boothby, Steinbock, 1988). The United Nations High Commissioner for Refugees (UNHCR) estimates that nearly half of the persons that have been displaced forcibly are children (UNHCR, 2015a). However, to be resettled permanently in a new country is often considered a grace by the receiving state rather than a right (Bhabha, 2014).

Currently, every nation-state in the world regulates and restricts immigration to its territory (Sutcliffe, 2001). This is an historical exception. Migration has been a regular feature of social activity throughout human history (Sutcliffe, 1998). However, the usage of travel documents has shifted. In its modern conception as an international border-crossing license, the passport is a relatively new item (Torpey, 2000). For example, 1860-1914 a person could enter, work and remain in Sweden without having presented any passport, visa or permit at the border. A Deportation Act was introduced in 1914,

and the first legal act regulating immigration in a relatively systematic way came into force in 1927 (Hammar, 1964).

It is the economic and technological development during the last century that has required the emergence of a clear-cut multiple-state world. The resulting state project can maintain robust legal and institutional structures in a volatile world of advanced industrial competition and expanding market imperatives (Meiksins Wood, 2005). It is also the later stages of (economic) globalisation that have intensified the negative effects of market imperatives in child migrants' countries of origin, such as the disruption of established patterns of income maintenance and political attempts to build social welfare institutions (cf. Anderson, 2006; Connell & Dados, 2014; Piper, 2008, 2009; Stiglitz, 2002). This has led to poverty, social conflict, and corruption, thereby increasing incitements to migrate, both from (economically) developing countries to advanced industrial countries, and between different developing countries (cf. Khosravi, 2010; Piper, 2006, 2008, 2009). With regards to life and health, children and youth are amongst the most affected by this global inequality (Victora et al., 2003).

Conversely, most of the presently more developed destination countries began to establish advanced welfare systems in multiple shapes following the First and Second World Wars (Briggs, 2006). Children were the focus of many of these welfare projects (cf. Cornia, 1997). Even the development of social work as an academic discipline kept an interest in children and thereby contributed to encapsulating childhoods within nation state boundaries by linking children to the delineated reach of the (welfare) state (Nash, Wong & Trlin, 2006).

With the development of comprehensive welfare states followed increased administrative complexity. Juridical procedures, such as court processes and other juridical instruments, have been increasingly used both domestically and between states to manage the policy aims of politics in general and political disputes specifically. This expansion of the power of law also includes the field of migration (Hirschl, 2006).

The combination of a hundred years of nation-state solidification with gradually stricter migration policies in destination countries circumscribes the movement of global migrants (Meiksins Wood, 2005; Sutcliffe, 2001). Simultaneously, childhood, child protection and childcare have been interconnected with state projects and considered primarily as national questions (e.g. Myrdal & Myrdal, 1935; cf. Stephens, 1997; Therborn, 1993, 1996). The consequence has been the emergence of a dominating logic that both adults and children have natural belongings to geographical places (Barker, 2013). It is against this backdrop that contemporary nation-states in more developed countries attempt to regulate and manage children's migration.

Contents

Abbreviations

AAB	Aliens Appeals Board
CNSAP	Committee concerning a new system for appeals and procedures in aliens' cases
COSI	Committee on Social Insurance
CJEU	Court of Justice of the European Union
CRC	Convention on the Rights of the Child
EEA	European Economic Area
EC	European Community
ECHR	European Convention on Human Rights and Fundamental Freedoms
EEC	European Economic Community
EU	European Union
LGBT	Lesbian, Gay, Bisexual, Transgender
MCA	Migration Court of Appeals
NGO	Non-governmental organisation
NSAP	New system for appeals and procedures
OHCHR	Office of the High Commissioner for Human Rights
PTSD	Post-traumatic stress disorder
SFS	Svensk författningssamling
SMA	Swedish Migration Agency
SMB	Swedish Migration Board
SOU	Statens offentliga utredningar
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCR	United Nations Commissioner for Refugees
US	United States of America
WTO	World Trade Organization

List of papers

The thesis is based on the papers below. These studies are referred to in the text as Studies 1, 2 and 3.

1. Hedlund, D., Cederborg, A-C., & Zamboni, M. (In press). The art of the (im)possible: Legislators' experiences of the lawmaking process when reforming migration law. *Theory and Practice of Legislation.* doi:10.1080/20508840.2016.1158391

2. Hedlund, D., & Cederborg, A-C. (2015). Legislators' perceptions about unaccompanied minors seeking asylum. *International Journal of Migration, Health and Social Care, 11*(4), 239-252. doi:10.1108/IJMHSC-08-2014-0033

3. Hedlund, D. (Submitted). Constructions of credibility in decisions concerning unaccompanied minors.

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1. Aims of the study

We do not know enough about how legislators perceive the role of law in asylum policy dilemmas, or how they negotiate their perspectives about unaccompanied minors when developing policy. Furthermore, it is not known how case-officers at the Swedish Migration Agency (SMA) construct arguments about credibility when they attempt to implement this current legal framework in relation to unaccompanied minors. Hence, there is a lack of empirical knowledge informing policy and legal research about how legislators and public servants attempt to handle migration reform aims and the phenomenon of unaccompanied minors via law and rules (cf. Westerberg, 2013).

To further the knowledge about migration policy, the overall aim of the thesis is to explore legislators' perceptions of unaccompanied children in the development of migration law, and how case-officers transform the policy in arguments for and against residency in asylum-cases.

More specifically this thesis explores:

- how legislators experienced the process leading up to the current migration framework when putting in place the 2005 Swedish Aliens Act and the new system for appeals and procedures (NSAP) as well as their views of the proceedings in relation to legal outcomes.
- how individual legislators perceive unaccompanied children, their best interests, competences and agency.
- how unaccompanied children's credibility is constructed in asylum case decisions issued by the SMA.

2. Introduction

Individuals today referred to as unaccompanied minors or children have migrated across borders for ages (Ressler et al., 1988). For example, between the years 1618 and 1967, about 150 000 children were moved in an organised manner from the United Kingdom (UK) to the colonies in America, and later to settler states such as Australia and Southern Rhodesia. This activity was a way to handle "surplus" population and poverty issues, as well as supplying settler states with low-cost labour (Constantine, 2008). Child migration was aimed at children who were considered to not be able to reach adulthood under "normal" family circumstances, which primarily meant orphans or children born out of wedlock (Constantine, 2008).

Between 1938 and 1939 about 9 000 Jewish refugee children that were displaced from Nazi-controlled areas were evacuated to the UK (Ford, 1983). During the Second World War, 70 000 Finish "War Children" were sent to Sweden and Denmark (Korppi-Tommula, 2008; Nehlin, 2009; Nehlin & Söderlind, 2014) and thousands of children were moved for slave labour purposes or Nazi adoption- and racial testing programmes. About 700 000 children were forcibly relocated as slave labour from Poland alone (Ressler et al., 1988).

However, unaccompanied minors did not receive notable attention in policy as a particular refugee "category" until the beginning of the 1990s. Most refugees before that period were confined in regions close to the country of origin. Indeed, the end of the Cold War created another pattern of migration where refugees in larger numbers started to enter Western Europe. This contributed to new administrative categories of refugees. Since many countries in Western Europe closed their borders to labour migration in the 1970s, seeking asylum has been the only relatively systematic way of entry for people from other countries (Zetter, 2007).

Furthermore, the early 1990s and the development of new refugee labels coincided in time with more developed states' identification of other "problems" associated with global migration, most notably human trafficking (cf. Hujismans & Baker, 2012; Lindholm, 2015), terrorism (cf. Tirman, 2004) and "illegal", undocumented migrants (cf. Dauvergne, 2008). Possibly, the development of the "unaccompanied child refugee" has been an effect of securitisation discourses intersecting with a growing child rights discourse and the 1989 United Nations Convention on the Rights of the Child (CRC) (cf. OHCHR, 1989: Freeman, 2007; Lavenex, 2006; Zetter, 2007).

The advance of child politics in relation to migration can be explained by the increased attention to international human rights law and human rights as a hegemonic moral language, the rise of NGO politics, feminist struggles as well as the changed dominating understanding of the "family" and the individuality of its members (cf. Bob, 2005; Enloe, 2014; Hyndman, 2000; Meiksins Wood, 2005; Therborn, 1996).

In June 2015 I searched for the keyword *ensamkommande* [unaccompanied] in the Swedish newspaper archive Retriever Research *Mediearkivet*. The Swedish term *ensamkommande* is exclusively applied to unaccompanied minors; hence the need to place keywords such as "minor" or "child" after it was not deemed necessary for this snapshot overview. The first newspaper article using the keyword appeared in 1992, and was the only one that year. Until 1999, there were never more than three articles using the phrase during a given year. At the turn of the millennium, however, unaccompanied minors were becoming noticeable in Sweden (Wernesjö, 2014). In the year 2000, the number of newspaper articles was 12, and by 2006 unaccompanied minors were mentioned in more than a hundred newspaper articles for the first time (N=132). In 2014 this number had reached 5922. In the earliest article I identified, from 1992, an SMA psychologist said that a priority should be to make unaccompanied minors visible. This expression has influenced this thesis in terms of the interest in *how* they are visualised in asylum policy and implementation in Sweden.

Child policy, as migration policy, is intertwined with other policy fields. Outside of conventional family law and policy, the Aliens Act (Aliens Act SFS 2005:716; Social Services Act (Social Services Act SFS 2001:453), and the School Act (School Act SFS 2010:800) are the three most clearly legally defined domains for considerations about the best interests of the child principle in Sweden (cf. School Act SFS 2010:800; Schiratzki, 2000). Hence, negotiations of a migration reform imply discussions involving both the aims of migration policy and child policy. However, migration policy has been a difficult task to manage for the mainstream political parties in Sweden (Widfeldt, 2015), and the addition of child migrants (and thus child policy) as a particular "category" has not made it easier. For example, in a study about migration political discourses in Sweden, Johansson (2005) observed that the so-called "apathetic refugee children" were at the focus of attention in the Swedish asylum policy debate preceding the reform that put in place the 2005 Aliens Act and a new system for appeals and procedures (NSAP). The "apathetic" children entered unconscious conditions and did not respond to communication (Bodegård, 2005). The debate about whether these children were indeed sick, "faking" their illness or, had been intoxicated by their parents in order to obtain residence permits for their families, even reached the Swedish parliament. This situation made the government initiate official investigations (cf. Rapport 2005:2; SOU 2006:49; SOU 2006:114) about the phenomenon (cf. Eastmond & Ascher 2011). These investigations also be-

came the focus of critique as they did not firmly reject, for example, rumours about intoxication by the children's parents (Malmsten, 2014). Also, the phenomenon of "anchor children" emerged in the debate. The thought-construct was that parents would send their children unaccompanied to Sweden with the intention to have the remaining family join them after a permanent residency was approved (study 1).

The parliamentary agreement that created the 2005 Aliens Act and the NSAP (both the law and the new framework became effective in 2006) was the most substantial migration policy reform in decades (Stern, 2014). The process of negotiations preceding the reform was the first time that perceptions about unaccompanied children and other refugee children were a central part of political negotiations for migration reform in Sweden (cf. Eastmond & Ascher, 2011). The system that was put in place, with fairly unanimous support (at least publicly), is still principally intact and the dilemmas that existed in policy and implementation are still debated (Stern, 2014).

Arguably, the belief in formal law as a "solution" to dilemmas remains strong. For example, different actors such as refugee activists and the ombudsman for children as well as many politicians and lawyers suggest making the CRC into Swedish law (e.g. Bergsmark, Dane, Leviner & Warnling-Nerep, 2015; Ombudsman for Children, 2012; Swarting & Heilborn, 2014). They argue that it would contribute to solving some of the problems that are perceived to exist with legal ambiguity. This ambiguity is related to the formal legal resources available to advance children's rights at the policy level and considerations of the best interests at the level of implementation. The assumption appears to be that the existing legal framework is not clear enough, and that SMA case-officers do not fully understand the legal intentions about the best interests of children when making decisions based on the existing legal framework.

Terminology

The terms "child" and "minor" are used to designate persons under the age of 18 and they are used interchangeably. The literature may at times use the term "separated" instead of unaccompanied, arguing that separated children might not travel alone, while minors who do so are literally unaccompanied (Crock, 2006). Even though these two concepts can partially overlap, the term "unaccompanied" minor is used herein to underscore that the children are migrating without parents or other persons that are legally, or by custom, equal to parents (cf. UNHCR, 1994; Act about changing the Act 1994:137 about the reception of asylum seekers and others SFS 2010:532; Section 3 Paragraph 4 Act about the reception of asylum seekers and others SFS 1994:137).

A "child migrant" is here defined as an active party crossing national state borders independent of formal legal status when entering or exiting a country. Commonly, the term "asylum-seeker" is used to designate a person that has filed an application with a migration authority based on a fear of persecution but the final outcome has not been established (cf. Wikrén & Sandesjö, 2014). The Convention relating to the Status of Refugees (UNHCR, 1951) and the Protocol (UNHCR, 1967) will be jointly referred to as the Refugee Convention in this thesis. The label "refugee" in a strict legal sense means a person that has been granted asylum based on the norms of the Refugee Convention (cf. UNHCR, 2015b; Aliens Act SFS 2005:716).

However, there are also other provisions used to grant applications for asylum based on claims of persecution in Sweden, drawing on for example European Union (EU) Law. Also, an asylum applicant can also be granted residency on the basis of national provisions, such as Particularly Distressing Circumstances, which is not a protection status in the formal sense. Taking a research cue based on the existing framework, the conclusion is that refugee law and asylum law are not necessarily synonymous (Noll & Popovic, 2005-2006). However, the word refugee is also used in everyday language to capture diverse types of forced migration (Zetter, 2007). Furthermore, the concept of the refugee has a lengthy history that precedes the current legal international framework (Zolberg, 1989). Hence, the terms "asylum-seeker" and "refugee" are used interchangeably as well.

In this thesis, migration policy is understood as an umbrella-concept for all types of migration cases that are handled under the existing national framework, while the term asylum policy focuses on aims related to applications for protection, which includes refugee status determination.

Defining and describing countries with respect to global relations is conceptually not a plain task. However, an analytical separation pronouncing inequality and power relations between countries is indispensable. This means that, when necessary, countries are generally grouped in this thesis as (economically) "more developed countries" (for example the EU member states, Northern America and Australia) and "developing countries" (for example Afghanistan, the Philippines and Angola). This follows the definitions and concepts used by the Department of Economic and Social Affairs of the United Nations Secretariat (cf. Department of Economic and Social Affairs, 2013). However, in study 2 the concepts of Global North and Global South (cf. Levander & Mignolo, 2011) were used to describe the primarily same division; however, this part-project had a stronger focus on the social and cultural dimensions, setting the frame to construct different understandings of childhood among Swedish legislators.

Finally, the SMA changed to its current English name during the period of the PhD project. According to the SMA Information Service, the change was formally announced in March 2015 (G. Mascayano, personal communi-

cation, December 12, 2015). The previous English name, the Swedish Migration Board (SMB), was used in Study 2.

Outline of the thesis

The thesis is divided into nine numbered (1-9) chapters (cf. Contents) and is organised as follows. Chapter 1 presents the aims of the study. Chapter 2 offers the introduction of the concept of unaccompanied minors historically and as a label in Swedish asylum policy. Chapter 3 provides the theoretical concepts used to link the empirical studies with wider perspectives about the state in its capacity as a child refugee destination society. A presentation about international, EU and Swedish frameworks follow this presentation of unaccompanied children, in particular the Swedish context (Chapter 4). The next section reviews the existing relevant literature and situates the thesis in relation to this research (Chapter 5). Thereafter, the methods used are presented, as well as the ethical considerations (Chapter 6). The method section is followed by summaries of the three empirical studies (Chapter 7). The following chapter includes a concluding discussion (Chapter 8), where the findings are presented and discussed in relation to theoretical concepts, previous research and practical implications, as well as suggestions for future research. The final section (Chapter 9) consists of a summary of the thesis in Swedish including findings, concluding discussion and practical implications.

3. Theoretical concepts

This chapter provides theoretical concepts that are used to highlight the macro-relevance of the empirical studies. Since perceptions about unaccompanied children, policy and law are at the centre of this thesis I also highlight the work of some scholars that have added to the development of theoretical knowledge about the state, power and migrants. Theories are to be understood here as maps of how the social world is organised (Strauss, 1995), but also as part of the theorising process of exploring "labels" or phenomena, like unaccompanied children and asylum policy, and how they relate to each other (cf. LeCompte & Preissle, 1993). Hence, the theoretical concepts attempt to follow phenomena rather than inform the research as *a priori* theory (cf. Smith et al. 2009).

State(less) society

In much of the globalisation, post-national and transnational literature, it has been suggested that the borders of the state are getting porous and that international norms and cooperation places limits on the authority of the state (e.g. Soysal, 1994) in favour of, for example, transnational networks such as NGOs (e.g. Boli & Thomas, 1999; Florini, 2000). Arguably, these perspectives overlook the component of social property relations involved in setting the logics of the power of the state and its authority to define citizenship (Teschke, 2002, 2003). For example, Zetter (2007) has proposed that it is still the governments in more developed countries that can transform the "refugee label" into an apolitical category that asylum administrations can process. Arguably, unaccompanied minors are one subcategory of the refugee label. Furthermore, it has been argued that the EU membership and the *sui generis* (unique type) EU law, existing between the international level and the EU Member states, are circumscribing the role of the state and national policies (cf. MacCormick, 1993; Scharpf, 1999), even from the Swedish perspective (Wiberg, 2014). Research on the transformations of the state under economic globalisation has shown that the state is still the natural site for exercising the authority and legitimisation of politics and regulation (Jachtenfuchs, 2005; Zürn & Leibfried, 2005).

Hence, other sources of authority, such as the UN level, WTO, EU, NGO or private sector, which might indeed influence the nation state, are fragmented and cannot truly challenge it (cf. Tabb, 2009; Zangl, 2005). EU

States internal structures have also been transformed into a new division of balancing interests between the "winners" and "losers" of economic globalisation, which has required a re-orientation of political parties' strategies (Kriesi et al., 2006). In sum, the state machinery has assumed a role as an administrative "manager" of politics rather than a monopolist of authority (Tabb, 2009; Zangl, 2005). This means that the law can be an important tool for governing as well as an agent of legitimation (Hirschl, 2006, 2009). Even the extent of influence, to which international law impacts the nation state, primarily depends on acknowledgment at state level (Bring, 2012).

In addition, in the social sphere, comparative media research on news content in EU states has also found that identification with "Europe" is generally weak. Instead, it is the nation state that remains at the centre of attention for political discussion and potential democratic participation. Conversely, it appears as if no stateless democracy exists (cf. Peters, Sifft, Wimmel, Brüggeman, Kleinen-von Königslöw, 2005).

Hence, I suggest that an increased understanding of migration policies and their particular rationales primarily remain at the level of the nation state.

Habermas and rationality

The perspective of this thesis is that analysis of the state machinery can illuminate migration policies, their logics and state members' (and non-members') opportunities to participate in public procedure. Such a perspective makes it possible to increase the understanding of various rationalities of unaccompanied minors. Following the Second World War, the work by Habermas (e.g. 1971/1980) on rationality as a central element of democracy becomes relevant due to its critique of what he identifies as the increasing machination and technocratic development of policy and public administration in more developed countries (Cook, 2004). Politicians have become increasingly dependent on experts despite there being a difference between how political authority and technocratic rationalities are linked to democratic participation (Habermas, 1971/1980). This development has led to processes of juridification that create new and specific forms of dilemmas. These problems may accumulate to a system of crisis that opens up a sphere for new socio-cultural learning, where a new normative paradigm for the law emerges (Hydén, 2002). Hence, Habermas (1979) understands rationality as a learning process whose logic has developed from the advanced primacy of the economy in contemporary society (Cook, 2004). This can affect the law and communicative processes about what can be legitimised from the life world as objective, moral and social components. The juridification of politics is partly necessary, since society's members cannot reach immediate consensus on every urgent issue (Habermas, 1979), but the state is split between economic imperatives and political demands. If it fails to achieve le-

gitimation from the life world, the conflicts that arise may hinder rational solutions or move the political development into a more controlling and authoritarian direction (Habermas, 1996). Hence, Habermas seems to show that the concept of rationality is not an illusion, or that rationality cannot pervade in contemporary society, but rather that there are more or less democratic rationalities that can lead to outcomes that are perceived as more or less legitimate by the public. Consequently, the public and public participation need to be included in the pattern of exercising political power, not just the interchange between politicians and the technocracy (Cook, 2004; Habermas, 1971/1980). This means that even if unaccompanied minors are not citizens in a formalistic legal sense, they can still be affected by measures used in public policy. Drawing on Habermas' view, it can be argued that they should have a possibility to participate in the different stages of the asylum procedure. Furthermore, this procedure can also be perceived as rational and transparent. This means that the outcomes of the procedure should be logical from the perspective of experts, politicians, the wider public, and of course, the unaccompanied minors themselves, that is, the participants in the social life world (cf. Habermas 1971/1980).

Biopolitics and unaccompanied minors

The present legitimation and outcomes in the asylum procedure can also be understood from a historical perspective. The rise of the modern state required further control of the population within its borders by using a variety of techniques, such as the development of demographical science and public health risk regulations. Thereby, the era of "bio-power", that is, the sovereign power over bodies, was established (Agamben, 1998; Foucault, 1976/2013). Drawing on Teschke (2002, 2003), this changed texture in the control of populations occurred when pre-modern dynastic sovereignty was gradually replaced by modern state authority from the 17th century and onwards. The state's sovereignty and its links to territory, international relations and population have reflected the expansion of a system logic that today can be identified as capitalism (cf. Meiksins Wood, 2005; Teschke, 2002, 2003).

Hence, the power over life and death was shifted from the feudal sovereign to the state and its bureaucracy, after which the state's authority can only be maintained because the state can kill. The authority to kill, however, does not simply mean the power to execute a physical "murder". Rather, it means that the state can expose a person to either personal or political death, or increase the risk of their life ending (Foucault, 1976/2013). According to the bio-political perspective, the state is required to use the right of death to reinforce its sovereign power. From the perspective of his thesis this means that the attempts of managing migration by the state can imply that unaccompanied minors are exposed to deportations or other treatment that place

their life in danger. This is because the state has the final word on the legal status of refugees, as it has power over the life and death of its population (cf. Foucault, 1976/2013).

These types of regulatory techniques are inherent in the state project, and it takes a racist coloration, not necessarily a biological racism, but an evolutionary one, as the techniques inevitably form part of a selection process (Foucault 1976/2013). Migration regulations are ultimately about selection (Johansson, 2005), and when contemporary state projects use children in policy aims, it has an effect on the future society (Lee, 2001).

Moreover, children play a central role in nationalist and statist discourses, as they are the coming generation and thereby symbolically represent the country's future and identity (Stephens, 1997). In the case of unaccompanied minors, they have first been created as a new category of refugees to regulate, but they also need to be individualised for an asylum assessment to take place (cf. Bhabha, 2014; Wikrén & Sandesjö, 2014). Here, the bio-political power-knowledge can materialise and, for example, place their bodies under policies for medical examination to assess if they, in fact, can be considered as children at all (cf. Fassin & Rechtman, 2009; Fassin, 2012; Foucault, 1976/2013).

Nevertheless, in late modernity the dominating humanist ideological assumption is that state citizenship is the legitimate concept *for* human rights distribution, *as* it is linked to a state project (Sutcliffe, 2001). According to the Universal Declaration of Human Rights (UDHR) (UN, 1948), it is a human right to leave one's country of origin (Article 13:2). However, there exists no positive right to enter another (Sutcliffe, 1993). Children are not exempted. Hence, remaining outside of a country where one is not a citizen can be a precarious endeavour, as the bare life of the migrant comes under the authority of the receiving state (Agamben, 1998). Arendt (1951/2013) proposed that the limits of human rights become apparent when persons do not respond to given structures of the European nation-system. The consequence is that no minimum rights can be guaranteed if an individual does not have a government to which to turn. A person without a state would be a person that cannot claim legal rights for him or herself (Arendt, 1951/2013).

Bhabha (2011) has proposed that child migrants can be understood as *de facto* (in fact) stateless, even when they are not stateless *de jure* (legally). This is not only because they cannot prove their legal identities and legal citizenship due to lack of documentation (effective statelessness), but because they are not necessarily protected by the country of origin. The country of destination does not guarantee their rights either when the asylum application is processed. This means that policy-makers and decision-makers have not taken *de facto* child-statelessness into consideration (Bhabha, 2011).

Ambivalence and unaccompanied minors

Bhabha (2014) has suggested that it is not that unaccompanied children seeking asylum are "invisible", and that making their situation "visible" will improve the recognition of their rights. Rather, it is the ambivalence of policy- and decision makers regarding the perceptions of the legitimacy of their claims for protection and a legal status that becomes the primary reason for the continuing difficulties in policy and implementation. Hence, the concept of ambivalence as an approach to "otherness" can provide an analytic framework for understanding the deficit in acknowledging the rights of child migrants (Bhabha 2014).

The attention to chronological age can be described as turning towards the physical body and away from the told experience. Fassin and Rechtman (2009) have suggested that since the 1970s the narrated credibility of asylum accounts have gradually lost weight. Instead, the focus is on a body that is required to testify and prove genuine fear of persecution, for example, with scars from torture. However, no exact proofs about chronological age can be provided from medical age assessment on unaccompanied minors (Hjern, Brendler-Lindqvist & Norredam, 2012), and the stories that wounds can tell are not necessarily more precise. For example, physical torture can be performed without leaving clear characteristics on the body. It can also be difficult or impossible to date physical traces of abuse. As a comparison, following sexual abuse it can also be difficult to prove when injuries have healed without traces on the genitals. Even so, a perceived expert, such as a physician, is brought in to speak on behalf of the ambivalent body, and they know that the method used lack preciseness (Fassin & Rechtman, 2009; e.g. Svenska barnläkarföreningen, 2015). Furthermore, where the body stops to speak, the attention can be turned towards the psyche in the search for exact proof of abuse (Fassin & Rechtman, 2009). This means that it can also be difficult to identify mental health issues in a secure way, so that even the procedure can be frustrating for medical expertise (cf**.** Fassin & Rechtman, 2009**).**

4. Background knowledge

The aim of this chapter is to present the context of Swedish asylum policy, at the international and EU level, as well as the role of law in policymaking and implementation. According to Therborn (1999), politics is a wider concept than policy. Politics is about setting the frame for a certain area of political relations, while policy is about how to pursue a certain political aim within that frame (Therborn, 1999). Migration politics and migration policies are not only interlinked (Piper, 2006), they are also unavoidably entangled with other policy fields (Widfeldt, 2015). Even though there is no fixed dichotomy between politics and policy, the term policy will mostly be applied in this thesis, as it is concerned with an existing asylum framework.

Policy development

Every destination country has a different framework and routines in place for unaccompanied minors (Hessle, 2009). Policymaking takes place within a frame that is more or less prearranged and contains certain assumptions (Hogwood & Peters, 1982). For example, it is uncontroversial that migration to Sweden is to be regulated. Despite that, migration was not entirely regulated until 1967, even pro-migration representatives rarely question that this is offered as an indispensable regulation (Johansson, 2005). Rather, policy rests on previously consolidated layers of policies. These policies contain features that might persist in the shape of policy residue, systems and logics (Hogwood & Peters, 1982); however, new policy aims add an "evolutionary" aspect to the prior foundation (e.g. Zamboni, 2008a). Hence, when new policy is developed via law, it takes its cue from already existing norms in the social sphere, and a legal change may challenge or further deepen these norms (Hydén, 2006). Furthermore, developing policy is about making priorities, and unavoidably, when a certain position is assumed, other potential alternatives have to some extent been excluded, although not always transparently (Bacchi, 2012).

Despite some legal protection, just as throughout the history of modern childhood, "adult" politics have not been able to develop the political implication of migrating children (cf. Therborn, 1996). Consequently, children have been primarily considered the assets, extensions or appendages of the ideal political subject: an adult, often middle-aged male with a lengthy and

clearly visible political background, such as a political office holder or military officer (Bhabha, 2014; Piper, 2006; Therborn, 1996).

The international framework and unaccompanied minors

Articles 13 and 14(1) of the UDHR (UN, 1948) declare that everyone has the right to seek asylum in another country. At the international level, the Refugee Convention (1951, 1967) is the norm given for the concept of the refugee. Its norms are applicable to every individual without particular generational considerations (Hunter, 2001). This means that an unaccompanied child also needs to be acknowledged as a refugee in line with the primary definition in the Refugee Convention's Article 1A (2). Furthermore, the more generic principle of "non-refoulment" in Article 33 prohibits state parties to return or expel refugees to places where their life or freedom could be at risk, such as to an armed conflict area or a state where they could again be persecuted (Hunter, 2001). However, how refugee status determination is defined and processed is principally a state issue and therefore different subsidiary grounds can also be applied. This can make it difficult to compare various aspects of asylum systems (Noll & Popovic, 2005-2006).

At the international level, the second most relevant treaty to unaccompanied minors is the CRC (Stern, 2015). Lundberg (2010) has described the four founding pillars of the CRC defined by the Committee on the Rights of the Child. Article 2 provides unaccompanied minors with wide protection against discrimination in the asylum process. Article 3 emphasises the best interests of the child principle, which can be appreciated as guiding every decision concerning children. However, the Article 3 positions the principle as *a primary* consideration and not *the primary*. In cases where the principle is superseded, transparency showing the reason for this is to be shown (Lundberg, 2010). Stern (2015) has proposed that it is the best interests of the child principle that can make a contribution to better practices in both asylum procedure and assessment, for example the development of child perspectives on the concept of persecution.

Lastly, Article 6 guarantees the right to life and development, which is to be interpreted as positive policy aims and measures. Article 12 involves "democratic" aspects and gives children the right to provide input in matters that concern them, as well as to be heard in procedures that affect them, with regard to age and maturity (Lundberg, 2010). According to Stern (2015), it is evident that the CRC has influenced UNHCR guidelines and policies for refugee children, including unaccompanied minors. The Refugee convention and the CRC are linked to each other and offer a shared normative direction with regard to asylum protection for unaccompanied minors, both when it comes to procedural and substantive matters (Stern, 2015).

The European Union and unaccompanied minors

The EU and its member states are to recognise the requirements outlined in the Refugee Convention. Every EU member state has developed their own frameworks and routines (Hunter, 2001; cf. Noll & Popovic, 2005-2006). Furthermore, the European Convention on Human Rights and Fundamental Freedoms (ECHR) can be seen as guarantor for minimum standards for unaccompanied minors and other migrants in the EU, even though children are not specifically mentioned. For example, Article 3 stipulates that a person should not be put at risk to be exposed to inhuman or degrading treatment, which could also be used to accentuate the Refugee Convention's principle of non-refoulment (Hunter, 2001).

However, in practice, the EU has established three control functions that are mentioned below as they can affect unaccompanied minors in different ways, for example, the border regime, the Dublin Regulation, and Eurodac.

The EU, and its predecessor the EEC/EC, have been strengthening the external borders since the 1980s following a discourse of securitisation with regards to migration (Lavenex, 2006). This restriction as well as lack of "legal" ways to enter the EU have made travel a dangerous endeavour for unaccompanied minors, and could also cause risk of refoulment to unsafe environments (Ayotte, 2000). Lately, the aims to restrict migration, in particular "illegal" immigration, has been done via EU agreements with North African countries and security corporations that utilise advanced technology, to form a cooperation to hinder the movements of migrants. Effectively, this cooperation has established a shifting external EU border on the other side of the Mediterranean (Andersson, 2014a, b).

The Dublin Regulation means that as a principle, the first EU member state in which a refugee seeks asylum is responsible for processing the application. Prompted by an Court of Justice of the European Union (CJEU) verdict in 2013, Sweden assessed the merits of an asylum application from an unaccompanied minor even when the child has, for example, appeared on the radar of another Migration authority, but not yet received a decision in that country (CJEU, 2013). Hence, prior to 2013, the application could be dismissed [*avvisad*] and not substantially assessed, while a case for readmission to the first responsible member state would be initiated (Malmsten, 2014).

The Eurodac database was created in 2003 as a part of the Dublin system. It means that unaccompanied minors stating to be above the age of 14 are to provide fingerprints for the Eurodac database. Besides the fingerprints the database also contains other information connected to a person's identity, such as age and country of origin (Lenart, 2012).

Swedish asylum policy and children's rights

Due to its clearly international links, certain components of Swedish migrations law are linked to public international law, for example the conventional legal concept of the refugee (Stern, 2012). Hence, the concept of the refugee is intertwined with the global system of states (Johansson, 2005).

Latin Americans – mostly Chileans, Uruguayans and Argentinians escaping into exile following military coups in the 1970s – were the first refugees to claim the right to asylum. They were seeking refugee status in Sweden and therefore wanted to be treated according to the international refugee law developed during the Cold War (cf. Norström, 2004; Olsson, 2009). However, even in the 1970s, Sweden had begun to employ subsidiary grounds for asylum protection, which reduced the number of asylum seekers being granted full refugee status. Swedish policy towards refugees has been characterised by a contradiction: a high proportion, averaging around 45 per cent during 1994-2003, were granted asylum, but yet an average of only 2.7 per cent were awarded full refugee status during the same period (Noll & Popovic, 2005-2006).

Nevertheless, until the mid-1980s, almost all asylum applications were approved in Sweden (Abiri, 2000). The year 1989 became a starting point for two parallel, and to some extent colliding, developments. First, the Social Democrat government conducted a reform that was the 1989 Aliens Act (Aliens Act SFS 1989:529). Furthermore, in December the same year, a government decision restricted the legal interpretation of refugees (Abiri, 2000). According to the decision, the Refugee Convention (1951, 1967) would provide the only legal guidance for granting asylum (Widfeldt, 2015). Second, Sweden ratified the CRC in 1990 as Sweden already considered itself to be compliant with its spirit. Child protection and childcare had been established fields of policy for decades in Sweden, and the government considered the signature to be a formalisation of existing policy and practice (cf. Proposition 1989/90:107). However, despite this position, the government believed that a provision about the obligation to consider the health and development of the child, as well as other circumstances relating to its best interests, was needed (Proposition 1996/97:25). This provision was therefore built-in to the 1989 Aliens Act of 1 January 1997 and thus as a reply to the Swedish ratification of the CRC.

The preparatory work preceding the 2005 Aliens act and the NSAP does not take a firm stance when commenting on the relevance of international law. There are also indications that decisions from the Migration courts and the Migration Court of Appeals (MCA) do not make full use of the potential to reference international treaties or soft law (Stern, 2012, 2014).

Asylum application outcomes for unaccompanied minors 2006-2015

Overall, since the 2005 Aliens Act came into force on 31 March 2006, there have been five possible outcomes of an asylum application made on behalf of an unaccompanied minor. One alternative is of course rejection [*avslag*], since it has never been a positive right to be granted asylum. Moreover, the Aliens Act was amended on 1 January 2010 with the explicit aim to better reflect the EU directives about grounds for protection and asylum procedure (Fälldin & Strand, 2010).

Since the Refugee Convention is the model for the concept of a refugee and refugee status, and different types of subsidiary status offer different legal rights, it is possible to talk about an "asylum hierarchy". At the top is an outcome where the refugee is awarded full refugee status according to the Refugee Convention (Chapter 4, Section 1, Aliens Act SFS 2005:716). The law defines a refugee as a person experiencing a well-founded fear of persecution based on race, nationality, religious or political beliefs, gender, sexual orientation or membership of a particular societal group.

After refugee status follows subsidiary grounds. The second ground is Alternative protection (Chapter 4, Section 2, Aliens Act 2005:716), which is based on EU Law and covers situations where a person upon return to the country of origin risks being exposed to corporal punishment, torture or other degrading punishment. Also, it involves situations where a person can risk injury due to severe violent circumstances, such as external or internal armed conflicts. The SMA commonly divides Alternative Protection into two different codes (AC and AT) in its internal registration (cf. Table 4).

The third is Other Protection (Chapter 4, Section 2 a, Aliens Act SFS 2005:716), which is a national provision including cases where a person is outside the country of origin and needs protection from difficult tensions (such as armed conflicts that can be external or internal), grave abuse or environmental disaster. The provision both covers situations where authorities in the country of origin are responsible for the mentioned risks or where it is unable to protect the person from threats.

The fourth ground, at the time of data collection for this thesis, is Particularly Distressing Circumstances (Chapter 5, Section 6, Aliens Act SFS 2005:716), which primarily turns its attention toward aspects of health, integration into Sweden or circumstances in the country of origin. Hence, it is based more on "humanitarian" considerations. The provision was changed for minors to "Distressing Circumstances" on 1 July 2014 (Act about Amending the Aliens Act SFS 2005:716, SFS 2014:433) with the aim to provide a more child-centred approach by shifting attention away from the narrower concept of "particularly" (Departementsserien 2014:5).

In addition, Sweden has granted quota refugee permits, registered by the UNHCR, since the 1950s (SMA, 2015a). However, this type of resettlement in Sweden has been informally limited for unaccompanied minors for many

years. The reason for this has according to the SMA been two-fold. First, it has been perceived that unaccompanied minors should receive the best-quality resettlement processing; second, it has been decided that the capacity of the Swedish asylum reception system should not be further strained. Other refugee categories are therefore prioritised in a quota procedure even if no formal rules prevent the resettlement of unaccompanied minors. The UNHCR presents cases to the SMA who then makes an individual assessment. For example, in 2013, 11 cases were presented to the SMA by the UNHCR, and all of them were approved. In 2014, 18 cases were presented and 13 were approved. Out of these 18 presented cases, 4 were cancelled [*avskrivna*] and 1 rejected. It is, however, likely that most unaccompanied children in these statistics are presented as quota refugees together with extended family rather than completely without relatives, which makes it probable that the number of unaccompanied minors without any family at all in these statistics is much lower (D. Thomsson, personal communication, December 29, 2015).

Asylum procedure and unaccompanied minors

The concept of asylum procedure [*asylprövning*] in Sweden can be understood as a blend of law, procedural administrative aspects and the case-assessments made by the SMA.

The main assessment of an asylum case is to be done by the SMA (cf. Proposition 2004/05:170). Swedish administrative authorities have a high degree of autonomy and cannot be instructed directly by the government in individual case processing (Warnling-Nerep, 2012).

The SMA began to record data about unaccompanied minors in 1988. However, the calendar year 1996 was the first time that these statistics were recorded in a systematic and reliable way (Hessle, 2009).

When an unaccompanied child makes his or herself known in the eyes of the SMA, an Application Unit will make an initial interview with the child about the family tree, travel route, language skills and general health. If the minor states an age older than 14, fingerprints will be taken. This is also the first stage were the SMA staff make an assessment (primarily a visual inspection) about age. An unaccompanied child does not have full legal capacity in his or her status as a minor. This means that either a public counsel or a custodian [*god man*] can formally hand in the application for asylum on behalf of the child and represent him or her in relation to Swedish authorities. A custodian is the legal equivalent of a parent and is to represent the child's best interests (Fälldin & Strand, 2010). The custodians received this major role for unaccompanied minors via a new law (Act about custodians for unaccompanied minors SFS 2005:429) in 2005.

At this first meeting in practice, a custodian has most likely not yet been appointed by the municipality, which means that a public counsel (attorney), remunerated by the agency, will formally hand in the application (Von

Schéele & Strandberg, 2010). The public counsel is to represent the child's legal best interests in communication with the custodian (Fälldin & Strand, 2010). Later, an asylum interview will take place at an Asylum Permit Unit where the child's public counsel, an interpreter and the custodian participate, in addition to the interviewer (case-officer) (cf. Keselman, 2009; Von Schéele & Strandberg, 2010). According to the 2005 Aliens Act (Chapter 1, Section 11), a child is to be heard unless it is inappropriate with regard to age and maturity.

Previous research in forensic psychology has shown that children can provide an account from about the age of four if the right interview techniques are in place (Lamb, Sternberg, Orbach, Esplin, Stewart, Mitchell, 2003; Lamb, Orbach, Hershkowitz, Esplin, Horowitz, 2007). All the same, credibility is a key issue in unaccompanied minors' asylum procedure (Hunter, 2001) as it is for refugees in general (Noll, 2005). The MCA has stated that a credibility assessment in every asylum case is the main rule (cf. MCA, 2007). The burden of proof regarding claims for protection (cf. MCA, 2007) and personal identity, defined as name, age and formal citizenship (cf. MCA, 2011) is placed on the asylum applicant, in this case the unaccompanied minor.

It is a general public administrative principle that an asylum seeker holds the burden of proof, even children, although to a lesser degree than adults. However, public authorities also have a duty to examine the case to the furthest necessary extent. In Sweden the principles of free submission of evidence and free evaluation of evidence are applied, which means that any type of evidence can be presented in a case, and that a decision-maker can independently make an assessment of the value of different types of evidence. The SMA examines if the account is coherent, concrete, detailed, whether or not it contains contradictory elements, if it has been unchanged during the procedure, and if the account is supported by known facts such as country information (SMA, 2013).

The question of whether or not age assessment of unaccompanied minors should be performed has been brought up by the MCA (2014) and the SMA (e.g. 2015b), but chronological age is almost impossible to determine medically (Hjern et al., 2012). The latest conclusion made by the MCA and the SMA has been that the SMA is not required to offer medical age assessments, but that it has a duty to inform of the possibility to conduct such as assessment. However, a decision can still be made with regard to changing claimed age without any medical assessment (cf. MCA, 2014; SMA, 2015b). The Swedish Paediatricians' Association has recommended its members not to participate in medical age assessments (Svenska barnläkarföreningen, 2015). The Swedish Bar Association has also criticised this practice and advised its members not to encourage clients go through age assessment unless a particular reason makes it indispensable (Swedish Bar Association, 2015).

Other relevant precedents from the Migration Court of Appeal about unaccompanied minors

A ruling by the MCA (2015) issued in February 2015 has again raised questions as to what extent the new definition of distressing circumstances has impacted the assessment of children's cases. The case discussed was about a thirteen-year old girl that had spent six years in Sweden with her family with a permit, although the court underscored that the permit had been issued on false grounds and hence "illegal". The MCA dismissed that the girl had developed a "strong connection" to Sweden by her stay in the country, despite that it covered half of her life. This precedent has been critiqued because the court's reasoning was short and did not elaborate on how different rights or the principle of the best interests of the child had been considered or weighted (e.g. Dane, 2015).

In 2009, the MCA issued two decisions in cases concerning unaccompanied minors (MCA, 2009a, 2009b). Both were about the application of Particularly Distressing Circumstances. The first case (MCA, 2009a) stipulated that an unaccompanied Burundian girl could return to the country of origin as the provision was to be applied restrictively. The girl had had contact with her parents after arrival; however, at the time of the decision it was not known where they were. The court concluded that the girl could be taken care of in a wider social network or an organisation or institution in Burundi. Her fear of persecution and school abuse was largely disregarded, and the overall situation in Burundi did not seem to weigh into the decision substantially.

Indeed, the principle perspective by Swedish authorities to primarily strive for re-uniting unaccompanied minors with parents in the country of origin goes back to the 1990s (cf. Proposition 1996/97:25). It is further indicated in the preparatory work that it would be ethnocentric and against the spirit of the CRC to assume the position that children are better off in Sweden regardless of background (cf. Proposition 1996/97:25).

The second case (MCA, 2009b) was about an unaccompanied boy from Iraq. Both his parents had been killed and the court concluded that there were no social networks left in the country of origin, and that the situation in Iraq was critical. It appeared, however, that the most important evidence about the boy's situation was a psychiatric expert statement by a chief physician that the minor suffered from chronic PTSD, and that there was a risk that he could be suicidal. The MCA granted the boy permanent residency according to Particularly Distressing Circumstances.

Recent developments in Swedish asylum policy influencing unaccompanied minors

Granting permanent residency when asylum cases are approved has been the main rule since the 1970s. At that time, official investigations concluded that such types of decisions were more practical for the migration authority's

workload. In addition, there were indications that permanent residency had a positive impact on the integration and well being of immigrants (Proposition 1983/84:144).

In 2015, the numbers of asylum applications grew rapidly in Sweden due primarily to the war in Syria and increased economic turbulence in Afghanistan (cf. Asia Foundation, 2015; Ghiasy, Zhou & Hallgren, 2015). As many unaccompanied minors originate from Afghanistan, the numbers of applications also increased drastically to 35 369 in 2015, from 7049 in 2014 and 3852 in 2013 (SMA, 2016).

An agreement including all but two parties in parliament (the Left Party and the Sweden Democrats) was announced on the 23 of October. It stated that temporary three-year residency permits would be the new norm in asylum cases exempting, however, families with children and unaccompanied minors.

On 24 November, the government, consisting of the Social Democrats and the Green Party, announced (as part of a larger restrictive package) that unaccompanied minors would also receive temporary residencies and that medical age assessments would be established. Only unaccompanied minors already involved in the asylum procedure would be exempted (cf. Regeringen, 2015).

Again, just as prior to the last migration reform in force since 2006, the intersection of refugees and children has reached the centre of attention for public and political debate (cf. Eastmond & Ascher, 2011; Johansson, 2005). Edelman (1967, 1988) points out that this type of politics can be described as a dramatic performance, where meaning can be conferred through constructing "the crisis" of legitimate political decisions by the production and dissemination of symbols of external threats. That is, symbols in the sense of perceptions or beliefs. Edelman called this condition "the political spectacle".

The role of law in Swedish migration policy

Within legal scholarship there are different approaches to the relationship between law and politics (or policymaking). Zamboni (2008b) has organised these approaches into the autonomous, embedded and the intersecting models. The embedded model draws on natural law, critical and interdisciplinary perspectives and can broadly be described as drawing a firm link between law and politics, hence the law's "embeddedness". Intersecting approaches understand the law as partly distinct from politics, as the law has a definable normative centre (Zamboni, 2008b). From this perspective, the law is viewed as a technique to affect behaviour so different from political force that it is necessarily explored from within legal thinking. Autonomous perspectives view the law as extensively independent of the political sphere, and particu-

larly in relation to processes of globalisation. This is because the policies developed by national states' governments and parliaments rely predominantly on domestic law (statutes) for transforming policy into application (Zamboni, 2008b). This means that scholarship in Sweden is primarily oriented towards the autonomous approach.

Thus, in Sweden by tradition, there has been the upholding of a strict formal line between the domains of law and politics (cf. Bell, 2006; Lernestedt, 2005; Peczenik, 1997). In addition, Sweden has employed a system where international law becomes practicably applicable after it has been transformed into national statutes (Bring, 2012).

In recent decades these separations have become less well defined, partly by EU Law influence, where a teleological (purpose or context) approach to statutory interpretation is dominant (cf. Bring, 2012; Lernestedt, 2005). Sweden joined the European Economic Area (EEA) in 1992 and became a full member of the EU in 1995.

It could therefore be argued that the development of contemporary law is becoming increasingly politicised in the era of globalisation. This is because the law via this goal-orientated legislation (Westerberg, 2013) can become an outlet for politicians' values, even when the legal domain is kept formally separate from politics. Hence, politics colonise the law by the way legal reasoning is done (cf. Zamboni, 2008b).

The tendency of politicisation of the law can be viewed as entangled with a process of formal juridification. Until recently, Sweden held a sceptical approach towards judicial intervention in the domain of politics; however, this standpoint too has shifted (cf. Andersson, 2008; Holmström, 1994). The explicit drive behind the demands for separating out the asylum decision-making process from politics has been to improve both transparency and the rule of law (CNSAP 1999; COSI 2005; 2004/05:170).

This development has been part of a growing global tendency in which politics increasingly became interlinked with a process of juridification. This concept can be described as a process according to which the extent of formal, positive law expands, or when the field of politics gradually becomes dominated by legal expertise (Blichner & Molander, 2008; Teubner, 1987). For example, today, most legal drafting teams consist almost exclusively of lawyers. This is despite the fact that modern law reform can entail a multidisciplinary methodology (Xanthaki, 2008). Similarly, the term judicialisation can be described as a development of increased dependence on the court system to address issues of public policy and politics (Holmström, 1994; Trägårdh & Delli Carpini, 2004; Vallinder, 1994).

The law and legislative intent

The Swedish legal system is informed by legal positivism, which is a secondary, analytical theory about the nature of the law. Hence, it is not a nor-

mative theory about how the law is to be applied. Legal positivism means that current law can be drawn from factual (empirical) conditions, that law and morality are conceptually separated (with regard to the content of the law), and that a legal system is defined by being consistent and efficient (Spaak, 2013). Hence, a law is a law if it has been issued in a correct way, and judges as well as people in general are required to follow the law in a strictly legal sense. However, this does not mean that the judge or any other person necessarily needs to, in practice, behave morally in a certain way. A potential moral dilemma would not be considered a question directly linked to what constitutes current law (Spaak, 2013). Hence, from this legal perspective, the law is viewed as a complete input and output system following rules from within the structure itself. For example, real asylum cases based on heterogeneous experiences of serious abuse told by equally diverse people (such as unaccompanied minors), must be turned into legally understandable presentations that the system can process (cf. Westerberg, 2013).

When establishing current law in Swedish legal culture, the legislative preparatory works are central to the (subjective) interpretation of statutes, and this to a greater extent than all other legal systems in the world (Frändberg, 2005; cf. Peczenik & Bergholz, 1991). In addition, the role of legislative intent has been even more prevailing in Swedish migration law than in other specific public-administrative fields (Lagerqvist Veloz Roca, 2011). In sum, when the law is applied, law and morality are to be separated conceptually in the Swedish legal system, and subjective statutory interpretation of legislative intent is to be grounded in empirical legal sources and not moral reasoning (cf. Spaak, 2013).

While legislative intent can be said to play a role in most legal systems, understandings of argumentation is based on intentionality and as such it varies significantly. For example, there has been a debate about whether an institution itself can possess intention since a legislature is not one sole legislator but an assembly of political representatives (Ekins, 2012; cf. McLeod 2009; Scalia 1997). With regard to this discussion, Solan (2005, 2010) has argued that it is possible to speak of the intent of the legislature, even if every legislator in the assembly does not share this intent. This is the case, since it is possible to attribute a state of mind to groups, a phenomenon referred to as group entitativity (Solan, 2005). Legislative intent should be possible to partially locate by exploring the circumstances adjacent to the enactment of a particular law, for example by studying the foregoing proceedings that took place and how the issues were debated therein (Frändberg, 2005; Solan, 2005, 2010; cf. study 1).

However, when interpreting legislative intent in Sweden, the dominating logic is restrictive and narrow in particular in relation to migration law. This would be one of the main sources of the dilemmas arising in, for example, asylum decision-making. This is because there is a lingering view among lawyers and public servants that migration law is more a political area than a

legal area, and that this perception persists despite the system in place since 2006 (Lagerqvist Veloz Roca, 2011).

The Swedish parliament and the legislators

The Swedish parliament, the *Riksdag*, is a unicameral legislature with 349 seats (mandates). Since 1994, a parliamentary term is four years. In parliament, there are 15 parliamentary committees with 17 committee members in each, mirroring the political parties' representation in parliament. The committees are the motors of parliament, and they prepare the hundreds of propositions that the legislature takes a position on every year. Every government bill needs to pass through the committee first, before going to the parliamentary floor for a vote. This principle is prescribed by the constitution and is called obligatory preparation [*beredningstvång*] (Arter, 2008). It is the Committee for Social Insurance (COSI) that processes migration issues.

Swedish parliamentarians in general hold a higher formal education than the average Swede, but the elitist tendency known from other countries, such as France, have been absent and social recruitment relatively broad (Holmberg & Esaiasson, 1988; Nordvall & Malmström, 2015). Being a member of parliament is not a profession in the strict sense, although it is fairly handsomely remunerated. However, even if the power of the legislature is strong in the constitutional perspective, the individual parliamentarian is not. The elected politicians in Sweden formally and primarily represent their parties (Hagevi, 1998). This can be a dilemma, as representative democracy at an electorate level, and internal party democracy (Hagevi, 2014), result in party leaderships that may aim to please the voters rather than the party's grass roots in substantive issues (Hagevi, 2014; cf. May, 1973). In a critique of overtly top-down party bureaucracies, the Swedish legislature has been described as a "button-pushing establishment" [*Knapptryckarkompaniet*] by a former parliamentarian and scholar of economics (cf. Pålsson, 2011). Furthermore, Garsten, Rothstein and Svallfors (2015) have concluded that Swedish politicians to a substantial degree rely on "expert knowledge" from advisors and political assistants to build informed opinions on issues and prepare parliamentary work. This chain of knowledge and influence is, however, rarely transparent, which could be a democratic dilemma (Garsten et al., 2015).

5. Previous research

The aim of this chapter is to review the literature that can place the research questions and findings within a larger canon of scholarly work. I have principally divided the research identified into three main scientific areas: the mental health perspective, the sociological perspective and the legal and human rights perspective. Moreover, there is a final section entitled "other perspectives on unaccompanied minors in Sweden" that primarily brings together studies from different research fields and thus with a focus on Sweden.

I have not found previous studies that specifically focus on (national) legislators' experience of migration reform or their views about unaccompanied minors' best interests and needs. The closest I have identified is Palmer (2008), who carried out qualitative interviews with former ministers and senior officials about the values that had shaped Australian immigration policy during a period of three decades.

Moreover, I have found no prior studies that specifically focus on how migration authority case-officers' construct arguments about unaccompanied minors' credibility in asylum decisions. For example, Russell (1999) offered that no consideration is taken that the applicant is an unaccompanied child in the assessment of credibility in UK asylum procedure. Nevertheless, in the two cases exemplified by Russell, no systematic analysis of the reasoning is done, nor is any discussion provided about how representative the cases could be, although the examples were described as such (Russell, 1999).

The particular situation of unaccompanied minors has been acknowledged by scholars within different academic fields such as law, psychology, sociology, social work and education since the late 1980s (e.g. Ressler et al., 1988). To capture a broad review of perceptions about unaccompanied research, this section is divided into perspectives and perceptions grounded in academic fields with the exception of the presentation about Swedish studies. Particular focus is placed on studies about asylum policy and procedure, or research facilitating perspectives that may inform asylum policy and procedure (such as the mental health perspective), and not the reception system or its related subfields. In some of these studies the minors have been referred to as separated, but I will apply the term unaccompanied in the review.

The mental health perspective

Study 1 and study 2 partly illustrate legislators' concern regarding the risk of trauma on refugee children, in particular unaccompanied minors. In order to understand who these minors are, the understanding of their mental health can be of interest. The mental health discourse has a strong presence in discussions about unaccompanied minors' well being and vulnerability. Drawing on Fassin (2012), the focus on mental health in politics and research originates in a society preoccupied with the suffering of "foreigners" under the ideology of humanitarianism. The link between, for example, fear as a psychological phenomenon and fear of persecution as a legal concept is not necessarily direct.

Psychiatric and psychological research has found that unaccompanied minors are at risk of developing trauma-related psychopathology (cf. Bronstein, Montgomery & Dobrowolski, 2012; Jakobsen, Demott, Heir, 2014) such as dysthymia, adjustment disorder or post-traumatic stress disorder (PTSD), which makes them vulnerable in the destination countries even when health care quality is available. A Swedish study has indicated that unaccompanied minors are overrepresented in inpatient care and involuntary inpatient care (Ramel, Täljemark, Lindgren & Johansson, 2015). Severe risk of developing trauma has been shown to be more related to younger ages (Geltman, Grant-Knight, Ellis, Landgraf, 2007; Huemer et al., 2011; Sourander, 1998) and unaccompanied refugee females (Derluyn & Broekaert, 2007; Reijneveld, de Boer, Bean, & Korfker, 2005). PTSD developing at later stages after arrival has been linked to older unaccompanied minors with low educational backgrounds (Smid, Lensvelt-Mulders, Knipscheer, Gersons, Kleber, 2011). A study by Vervliet, Demott, Jakobsen, Broekaert & Derleuyn (2014) have suggested that all unaccompanied minors need support upon arrival in a destination country due to high prevalence of mental distress. Research has also found indications that mental health problems in unaccompanied minors can remain long-term, and have recommended that migration authorities avoid daily stressors and offer regular check-ups (Jensen, Skårdalsmo, & Fjermestad, 2014; Vervliet, Lammertyn, Broekaert, & Derluyn, 2014). Qualitative research in psychology has also proposed that unaccompanied minors can achieve positive change besides having experienced traumas (cf. Sutton, Robbins, Senior & Gordon, 2006).

In sum, the mental suffering of unaccompanied minors is presented as very prevalent both in the short and long term. It seems as if the research aims of the reviewed studies are to better understand vulnerability in order to inform policy but also to improve practical routines such as check-ups.

The sociological perspective

Wernesjö (2012) conducted a critical review of the mental health studies about unaccompanied minors from a sociological approach and showed that many of these studies place limits on unaccompanied minors' participation.

Even if the mental health discourses are central for understanding perspectives about unaccompanied minors' and their vulnerability, the link to "satisfactory" victimhood as a result of persecution and abuse is not clear-cut. McEvoy and McConnachie (2012) have argued that genuine victimhood requires complete "innocence". Meanwhile, migrants, and in particular refugees and asylum seekers, have been caught in-between discourses, polarising the perception of them as vulnerable war victims on the one hand and potential security threats, "illegal" immigrants, "unfounded" asylum seekers, or welfare strategists on the other (Bauman 2004; Bloch and Schuster 2002; Eastmond, 2011; Van Houtum & Boedeltje, 2009).

Child migrants are also perceived as linked to potential future social problems by policy-makers in destination countries (Bhabha, 2014). In the UK, refugee children have been found to be exposed to a polarity between vulnerability and an exclusionary asylum framework (Giner, 2007). Watters (2008) has found that this polarity has caused dilemmas in the link between migration policy and child care aims concerning unaccompanied minors in the UK. These dilemmas can also be reproduced in the connection between policy levels, for example the national and local (Watters, 2008). Indeed, research has shown that polarised discourses about unaccompanied minors exist in many destination countries, such as Canada (Bryan & Denov, 2011), Norway and Sweden (Stretmo, 2014), as well as Australia and the United States (US) (Bhabha & Crock, 2007).

In Australia and the US, research has indicated that the practical implications of polarised discourses about unaccompanied minors imply the risk that these children are placed in asylum detention (cf. Barrie & Mendes, 2011; Bhabha & Crock, 2007; Dudley, 2003). Between September 2013 and September 2014 alone, 68 000 unaccompanied minors were detained by the US border patrol, which was a 78 per cent increase from the year before. The majority of them originated from Honduras, Guatemala or El Salvador (Acuña & Valenzuela Escudero, 2015).

The term unaccompanied minors [*menores no acompañados*] has in the Spanish context primarily been designated for male Moroccan adolescents residing undocumented in the country. Media and policy-makers have apportioned blame on these "Moroccan street children" for being widely responsible for assaults, robberies and other criminal activities they are perceived to have brought into Spain from the streets of Tangier (Hadjab Boudiaf, 2011; Martínez Martínez, 2011). However, research has indicated that these dominant perceptions are not only to a high degree inflated, but that most of these minors do not, in fact, have a "street life" background in Morocco at all.

Rather, they appear to originate from relatively stable home situations; however, for various reasons they decided to reject formal education and move on, as a way to secure a future and income (cf. Lázaro González, 2007; Suárez Navaz, 2004).

Perceptions of age and agency

Stretmo (2014) has concluded that unaccompanied minors are discursively positioned in Swedish media and policy as not completely competent adults. Nevertheless, they are not presented as "normal" children either, which has created concern about the possible faking of chronological age. Indeed**,** the assumption by most European migration authorities has been that some asylum seekers may be trying to present themselves as chronologically younger than they are, in order to make use of the particular provisions and guidelines that are available for minors (Hjern et al., 2012). However, in Spain there have been indications that unaccompanied children have been trying to present themselves as older than they are to receive help to find work or make use of public labour market measures (Suárez Navaz, 2004).

Drawing on research regarding (unaccompanied) child labour migration in Thailand, Hujismans and Baker (2012) have argued that the child trafficking discourse, and the associated anti-trafficking measures, are used to discourage children from migrating alone. They argue that this comes from a conflict between the adult perspective on children's best interests according to the CRC and the child labour migrants' perspectives on their situation (Hujismans & Baker, 2012). There have been critics of the outcomes concerning the child rights movement's results on decision-making and focus on agency. For example, in Canada, it has been argued that a too one-sided focus on children as "active agents" has been counterproductive. This focus has placed greater accountability on refugee children, thereby increasing the risk that their applications will be rejected (Stasiulis, 2002; cf. Cradock, 2007).

Similar critical views on the sociology of childhood presented by Prout (2011), as well as Tisdall and Punch (2012), suggest that the many studies about participation, agency and competence need to be complemented with more interdisciplinary research about networks and the contexts that create prospects for children's agency. Furthermore, Quennerstedt (2013) has proposed that some research about competence and participation can lead to an uncritical use of its text rather than the formation of a constructed position for analysis and further theorisation of children's rights. This is because the CRC contains tensions and was created as a wide compromise for the sake of consensus (Stasiulis, 2002; Quennerstedt, 2013). Hence, a risk can be that research is conducted in a way that excludes critical questions about children's rights and the relation to human rights overall (Quennerstedt, 2010).

The legal and human rights perspectives

Overall, the legal focus has placed attention on the principle of the best interests of the child being neglected, under-dimensioned or not fully utilised (cf. Bhabha & Young, 1999; Enenajor, 2008; Engebrigtsen, 2003; Hunter, 2001; Lidén & Rusten, 2007; Lundberg, 2011; Montgomery, 2002; Nandy, 2005; Nilsson, 2007; Russel, 1999; Schiratzki, 2000; Vitus & Liden, 2010). Research about asylum law implementation has primarily focused on implementation at the level of grass roots' or "street-level" bureaucrats (cf. Lipsky, 1980) and how these professionals are caught between different considerations. In the UK, Jubany (2011) has explored the culture of suspicion against asylum-seekers that can arise within a migration authority, and how case officers vacillate between their subjective categorisations "learnt on the job" and legally acceptable evidence (Jubany, 2011). Baillot et al. (2013) have shown how emotional labour (cf. Hochschild, 1983) affects actors in the asylum process, from the applicant to case officers and immigrant judges. In particular, professionals are caught between engaging emotionally in their work and having to detach from it (Baillot et al., 2013).

It has been shown that the organisational culture of the SMA creates dilemmas for case officers when vacillating between efficiency and considerations about the best interests of children, despite intentions to improve child perspectives (cf. Lundberg, 2009, 2011). Different alternatives, as regards working for children's best interests and cutting case processing times, have been a dilemma for the SMA (Hedlund, 2012). SMA case officers, however, appear to maintain a strong focus on maintaining professionalism rather than engaging with external critique or fully acknowledging contradictions in their everyday work (Wettergren, 2010).

Moreover, the legal representatives that are appointed to legally protect the best interests of unaccompanied children in relation to the SMA are caught between the adult-centred focus in the asylum process and acknowledging the children's own claims (Ottosson & Lundberg, 2013).

Other perspectives on unaccompanied minors in Sweden

Under the wider concept of newly arrived students, Nilsson and Bunar (2015) have found that newly arrived students in Sweden settle in an educational arrangement that focuses on their perceived lack of school competence, which is intended to keep them potentially fixed in an organisational scheme that is not integrated with the established school landscape.

Keselman (2009) has further shown that unaccompanied minors arrive with a personal agenda to stay, and they can use different strategies to present themselves during asylum interviews at the SMA**.** However, the inter-

preter becomes an important mediator that can change, alter or restrict information between the minor and the SMA case-officers (Keselman, 2009).

Wernesjö (2014) has also found that unaccompanied minors, while attempting to establish a new sense of home, need to cope with polarised discourses about child migrants after settling in Sweden (Wernesjö, 2014). For example, hate speech against male unaccompanied minors in particular has been common online in Sweden. Asylum reception centres have even been exposed to threats and vandalism. On right-wing extremist sites they are also accused of being potential future rapists, paedophiles and abusers of women (Hirvonen, 2013). These commentators focus on the dimension of age claiming, that unaccompanied minors are really adult men masquerading as children, and that they should not at all be designated with the status of children. For example, facial hair, perceived to be linked to adulthood and potentially threatening masculinities, can be evoked as "proof" by these online commentators (Hedlund, 2015).

Despite the perceived concerns about unaccompanied minors, a ten-year follow-up study by Hessle (2009) indicated that unaccompanied minors are relatively well established in Swedish society with regard to work and social networks. However, Celikaksoy and Wadensjö (2015 a, b) found that labour market integration is lower for unaccompanied minors compared to same-age individuals born in Sweden but higher compared to refugee children arriving with parents. An exception was the unaccompanied females who are not as established in the labour market as the males. This research showed that refugee minors from Afghanistan are better established than other groups of unaccompanied children and that the overall employment rates for unaccompanied minors are higher in the Stockholm region (Celikaksoy & Wadensjö, 2015a, b).

6. Method

This chapter describes the methodological stances of the thesis and the collection of data, including a description of the two data sets, and outlines data selection for the three studies and the respective analytical procedures of each study. It also considers researcher reflexivity and the ethical considerations involved in conducting qualitative interviews and text analysis.

An interpretative frame

According to Willig (2012), interpretation is the key to understanding empirical data, as qualitative research is concerned with meaning. Consequently, it is possible to reach an understanding of people's actions (such as developing and implementing migration policy) through interpretation. We can thereby better understand how people make sense of their experiences and how they perceive that they do things (Willig, 2008). This also implies that a researcher's analysis is equivalent to making interpretation. That means "connecting the dots" between different components in the data, after identifying and asking specific research questions about it. Making interpretations is a cyclical process, where the researcher maintains a questioning approach while, for example, searching for themes in the data. The researcher should always be ready to re-evaluate provisional assumptions about the meanings of accounts and texts. Insights from data analysis are always intersubjective, as they are a synthesis between provided accounts or texts, and the researcher's perspective (Willig, 2012).

The methods used in traditional policy research are practitioner-oriented and mechanical, and they highlight policies as objective entities to be evaluated and resolved (cf. De Winter, 2002; Shore & Wright 2011). A particularly influential assumption from within the bounds of political science is that rational reasoning governs democratic politics (Douglas, 1986). Similarly, conventional legal research is predominantly concerned with exploring traditional legal sources in order to establish the "correct" application of current law (Kleineman, 2013, Westerman, 2013). Conversely, within this thesis, the interpretative framework about lived experience and human action are placed at the centre and viewed as meaningful and historically contingent (Bevir & Kedar, 2008). When interpreting data, qualitative research is unambiguously linked to the role of theory (Anfara & Mertz, 2014; Willig,

2008, 2012). As argued by Giorgi (1992), there is no exact dichotomy between description and interpretation. However, the position to interpret needs to be clarified. In this thesis, interpretation is viewed as an active engagement; therefore, themes do not "emerge" or are "discovered" within the data. Instead, the researcher makes the identifications and interprets it (Taylor & Ussher, 2001).

Approach to phenomenology

The analysis of legislators' experiences of the law-making process (study 1) and their perceptions about unaccompanied minors (study 2) draws on phenomenology, as the interest lies in what they express as meaningful. The foundational position in phenomenology is that nothing can be done without awareness. Phenomenological research explores consciousness and how we orient ourselves in relation to phenomena (Giorgi, 1995). A phenomenon is not to be understood as some unreachable object inside a person, such as their "inner world" or an intrapsychic process. Rather, a phenomenon is linked to how human subjects view the external world and attribute meaning to particular aspects of it, that is, how they make sense of events. As such, it is possible to conduct a scientific enquiry upon it (Giorgi, 1995; Merleau-Ponty, 1945/2012).

Heidegger (1927/2008) suggests that a phenomenon is something that is predominantly hidden, but also something that simultaneously becomes part of what shows itself to consciousness. Interpretative phenomenology is concerned with lived human experiences and recognises that the researcher moves beyond the level of description towards understanding via interpretation. This means that the phenomenon shows itself in the meeting with the researcher's interpretation, which allows it to be identified. In any interpretation it is important to consider the links that are made between the data and the claims made from it. This affects the integrity of the data and carries an imperative ethical dimension (Willig, 2012). Thus, the interpretation in the empirical studies are grounded in the data rather than introduced through theoretical concepts or *a priori* theory, or by importing established models that are external to the material. However, this does not mean that the interpretative process stops with the words provided by individuals. Parts can only be understood in relation to the whole, and the whole only in connection to the parts (Shinebourne, 2011). The position of interpretative phenomenology is that provided accounts have meaning for the participants, but there is no direct and transparent link between what a person says and "inner" psychological constructs (Smith, 1995).

When interpretative phenomenology is conducted, it might be that a participant, in theory, does not recognise an interpretation of their experience. This does not make the interpretation less valid. Rather, it shows that the participant might not acknowledge a particular level of their experience. As

mentioned above, interpretation is a cyclical endeavour; it has no final end-station. Instead, phenomenological research is about elucidating certain aspects of the phenomenon of research interest, not finding the "truth" about this phenomenon (Willig, 2012). Additionally, in contemporary interpretative phenomenology, meaning is seen as in dialogue with symbolic interactionism and constantly negotiated within a social context with others (cf. Denzin, 1995; Smith et al. 2009).

The position on language and meaning needs to be clarified, as there is a range from construing expressive utterances (following Husserlian phenomenology) to performative language (following Derrida's postmodern stance). In the former, language is a vessel for the transmission of meaning, i.e. experience come before language. In the later, it is language that constructs meaning rather than mirroring it (Willig, 2012). The interpretative framework of this thesis adopts a hermeneutic middle-position (Polkinghorne, 2005; Willig, 2012). This means that literal language is never enough to express experience, although language can do more than reflect understanding; it can also add to it.

The focus of this thesis is primarily the content of accounts and text, and therefore language is primarily viewed as expressive (language as a vessel) but only in a "weak" sense; there is certainly a link between content and practice/performativity. Interpretative phenomenology, for example, acknowledges social constructions, but to a reduced degree, since the focus as described above is different (Smith et al. 2009).

Social constructionism

The analysis of SMA case-officers' credibility reasoning in unaccompanied minors' first-decision asylum cases (study 3) is inspired by social constructionism.

The social constructionist outlook proposes that social information, such as facts, truths and meaning making, is constructed in interaction, and thus not "uncovered" by the mind (Berger & Luckmann, 1966/1991; Schwandt, 2003). Social constructionist research can employ discourse analysis to explore the discourse practices and cultural resources available in discourse in order to enhance knowledge about, for example, how the self and others are constructed (Potter & Wetherell, 1987, 1995). Therefore, language is not neutral. Individuals contribute to shaping their understandings of the world through interaction with each other when talking about their experiences. Hence, language does not mirror an objective reality, but our perception and reading of reality are shaped via language use. There is no singular knowledge but rather plural constructions of knowledge, which means that a phenomenon can be explored and viewed from different angles. Therefore, different descriptions of the same phenomenon are not necessarily "right or wrong", but social constructionist research focuses on how individuals use

language in different contexts to achieve certain purposes (Burr, 2003; Willig, 2012). From this perspective, the context becomes important, for example when a statement is made, by whom and who the recipient is. This is because social constructionism underscores that perceptions are mediated through the lenses of culture and time (Willig, 2008). The implications of social constructionism for this thesis are that perceptions about unaccompanied minors are established in interaction and draw from legal discourses (Burr, 2003; Goodrich, 1987). Even if the analysis of SMA decisions is focused on constructions of credibility, it does not mean that accounts cannot be understood as more or less true or false, or that asylum decisions about approval or rejection do not have material consequences for the recipient (the unaccompanied child). Another implication would be that "categories" such as "refugee" or "unaccompanied minors" are produced as outcomes of power relations and discursive processes, rather than pre-given classifications (cf. Salmonsson, 2014).

There exists a link between language and text on the one hand and action on the other. First-decisions in asylum cases are produced by case-officers in a particular context that provides certain possibilities and limits for formulations in written text. Hence, perceptions about unaccompanied children as presented by politicians, the media, and policy- and legal documents may influence how credibility is formulated in asylum-case processing. In addition, asylum decisions make certain actions possible, such as a deportation or permanent residency (cf. Burr, 2003; Potter & Wetherell, 1987, 1995; Potter, 2003).

Project and data

The thesis has a consistently qualitative approach and is based on two sets of data. Like other qualitative research, this thesis is concerned with meaning making (cf. Willig, 2008, 2012). The thesis explores legislators' experiences of negotiating migration reform, their perspectives about unaccompanied children, and case-officers' argumentation about unaccompanied minors in the SMA's decision-making.

The first dataset consists of semi-structured qualitative interviews with 15 legislators who negotiated the 2005 migration reform. These interviews were the base for study 1 and study 2 when exploring the legislators' experiences when negotiating the migration reform, and their views on the best interests of unaccompanied refugee minors. The second dataset consists of individual first-time decisions from the SMA in the asylum cases of unaccompanied refugee minors for analysis of case-officers' credibility reasoning. The second dataset forms the basis of study 3.

Dataset 1

Dataset 1 consists of 15 open-ended interviews with members of the Swedish parliament, the *Riksdag*, during the 2002-2006 parliamentary term. During that period, nine had been regular members and six were deputies of the parliamentary COSI that processed issues related to migration. Hence, this committee considered the migration framework put into force in 2006. Parliamentary committees of this type have a mediating role in legislative drafting (Bale & Bergman, 2006) and consist of seventeen members plus deputies.

The participants were recruited on the basis of their political experience in negotiating Swedish migration policy, and in particular with the focus on 2005 reform.

Recruitment of participants

I called the *Riksdag* administration and requested the names of the members of the COSI during the parliamentary mandate period 2002-2006. Two lists of politicians were supplied via email. The first list contained the 17 names of the members of parliament who signed the committee proposal for the new Aliens Act. The second list contained all 43 names of the members of the COSI as convened during the 2002-2006 term, including the chair, deputy chair, members and deputies.

Recruitment: Stage one

I contacted the 17 MPs on the first list by phone. I informed them about the project and asked them to participate. One of those contacted was still an MP. The other committee members had withdrawn from parliament, either following the elections of 2006 or in 2010. Despite their current status they are henceforth referred to as MPs, since the study examines their role during the 2002-2006 term.

If there was no reply after a few telephone call attempts, I sent an email requesting their participation and providing them with information on the aims of the project. If they agreed to participate, meetings were booked for an interview. Nine of the targeted group agreed to participate; six declined, mainly giving reference to time-constraints or faint recollection of the process. Two never responded to my requests, neither via phone or email.

In total, after the first stage of recruitment, nine MPs had agreed to participate, one incumbent MP and eight former. They represented six out of seven parties represented in parliament during the term 2002-2006. However, representatives from one specific party had declined participation.

Table 1. Recruitment outcome (Stage one)

Agreed to participate	9
Declined participation	6
No response	2
Total	17

Recruitment: Stage two

Since the preparatory work indicated that some deputy members of the committee had been active in the legislative process, the selection process was expanded to include all 43 MPs on the second list, thereby adding the names of 26 deputies.

The same contact procedure was applied in the second round (first a telephone call and if no response an email was sent) and 26 deputy committee members were contacted. Six new participants were recruited through the expanded selection criteria, namely to even include committee deputies.

Eleven declined participation directly, mainly providing reference to never, or to a very limited degree, participating, as deputies, in the work of the committee. Nine did not reply to any contact attempts.

Table 2. Recruitment outcome (Stage two)

Agreed to participate	6
Declined participation	11
No response	9
Total	26

Once all 43 former committee members had been approached at the completion of the second stage of recruitment it was notable that the political party that had no MPs agreeing to participate in the first stage of recruitment still had no representatives that wanted to participate in the expanded selection (including stage one). Hence, participants from six of the seven political parties present in the parliament during the 2002-2006 term are represented in the dataset.

As three of the political parties represented in parliament could be considered as positioned on the conventional economic centre-left spectrum (Widfeldt, 2015), and four on the centre-right, the entire traditional spectrum of political parties in the parliament during the term 2002-2006 was represented.

Participants: Final composition of Dataset 1
Once the two-stage recruitment process was completed, the total number of participants was fifteen.

Table 3. Total recruitment outcome (Stage one and two)

Agreed to participate	15
Declined participation	17
No response	11
Total	43

In total, 15 out of 43 participated in the study, whereof 9 out of 17 were the committee's regular members.
The fifteen interviews were conducted between August 2012 and December 2012.

Interview procedure
When the participants had accepted to be interviewed we agreed upon a meeting place that would be convenient for the participant. Seven of the interviews took place in relation to the participant's work place or other professional activities, which meant in an office or adjacent conference room. In five cases the interviews were conducted in cafés, two in private residences and one in a meeting room at a public library.

As the participants were or had been political representatives in parliament, and thereby also legislators, they could be described as regular, political elites (Odendahl & Shaw, 2001). This means that their "elite" power resided primarily in their holding office and the networks that this type of service can provide. They all had insights on government, the direct political process, and potential influence as lawmakers. This means that they could offer first-hand information about the migration reform and policy aims in a way that could otherwise be difficult to find (Beamer, 2002). In socioeconomic terms, however, the participants originated from heterogeneous backgrounds with regard to formal education and class.

Building trust with the participants is a central feature of phenomenological research (Smith et al., 2009). That is why I tried to build a rapport with the participant during the introduction stage. I wanted them to feel comfortable and able to open up and engage in conversation before the interview schedule was introduced. This was done using discreet strategies, such as, for example, an appropriate and correct greeting, complementing on the view from an office or an artistic ornament, and engaging with a neutral topic of conversation before the interview started (Odendahl & Shaw, 2001). The participants already knew from our phone conversation that I was a postgraduate researcher who had an interest in talking about unaccompanied

minors and migration policy reform. However, I kept the personal information to a minimum. For example, I did not mention that I had once been trained as a lawyer, or previously worked at the SMA. This was because I did not want them to believe that I was trying to evaluate how much "legal knowledge" they possessed, or that I would weigh the information they provided against potential insights about the internal workings at the SMA.

After the first introduction I provided them with a written information letter with a consent section (Appendix 1) and repeated verbally the general aims of the project. I told them that I was primarily interested in *their* thoughts and ideas ("You should be the one doing the talking, not me"), that they were not obligated to answer questions that would make them feel uncomfortable or that they simply did not want to answer. I also made clear that they could discontinue their involvement at any point. In connection to the participant signing the consent form, I always offered a copy of the information letter for the participant to keep, but out of the cohort of fifteen only two participants desired such a copy. Most of them appeared to only skim the document briefly before signing.

The interviews were digitally recorded with two dictaphones (I used one as a back-up for my own ability to be comfortable without thinking about potential technical errors). I informed the participants when they were switched on and off and demonstrated with the positioning of my body and tone of voice that the interview started. A semi-structured, open-ended interview guide was used (Appendix 2). With semi-structured interviews, it is possible to probe interesting areas that develop during the encounter and to follow the participants' account in a more flexible way. This aligns with the attempt to get as close as possible to the participant's experiential accounts. The interviewer should primarily be a facilitator. The participant thereby becomes the expert on the subject and should be encouraged to tell his or her story with a maximum of autonomy (Smith, 1995).

Exclusively open-ended questions were used to allow the participant to open up their perceptions and beliefs with as little prompting as possible (Smith, 1995). Their responses were explored further by posing new open-ended follow-up questions**.** Provided accounts during semi-structured interviewing are not to be taken as complete mirror images of a participant's inner thoughts, or "core", as an interview situation is an interaction, a meeting between two people (Willig, 2008). Even when questions are open-ended, the researcher is indeed physically and verbally present in conversation, and therefore intersubjectivity is introduced in the interview (Willig, 2012). This means that an interview is relational and the knowledge generated therein is shaped between researcher and participant in an interactional process (Holstein & Gubrium, 1995). Consequently, the researcher's interpretations are based on the participant's interpretation (accounts) of their lived experiences (Willig, 2012; Smith et al. 2009).

In line with the theoretical underpinnings of phenomenological research I strived to achieve rich and detailed accounts, which centred on experience itself (Willig, 2012). One deliberate strategy to accomplish this was to express naivety, another to continuously ask for clarifications and illustrations of events (cf. Willig, 2008). However, as these were elite interviews, I could not risk coming across as incompetent. This means that I had to balance the naivety by asking open follow-up questions that indicated that I understood the experiences they were sharing and the references to various components of political and legislative work (Odendahl & Shaw, 2002).

Overall, the participants seemed to have no problem telling me about their recollections and understandings. No one wanted to talk "off the record" or asked me not to use certain quotes during or after the interview (Goldstein, 2002).

Most of the participants showed interest in me as a person by asking me questions after the interview was completed. I would then inform them that I had a professional legal background and that I had also worked at the SMA. However, if a participant asked questions about what I thought about the authority's work I would attempt to respond as neutral as possible. This was done because I wanted to avoid the risk of giving the impression that the questions about how the participants viewed migration policy implementation had been a test.

Upon departure, most of them said explicitly that they were pleased to have been able to tell of their experiences regarding the migration reform process and from their perspective.

Field notes

I kept a field journal (cf. Hammersley & Atkinson, 2007) where I made short notes after every interaction with the participants, for example, what had been said on the phone, and if they had had any particular questions or concerns. After meeting the participants in person for the interview, I always wrote down my thoughts and observations directly after saying goodbye. In this journal I always referred to the participants by number codes. The field journal was stored in the burglar- and fire proof safe at the Department of Child and Youth Studies together with the other data (See below under Ethical considerations in this chapter).

Transcription procedure

I personally transcribed the 15 interviews. The process of transcribing the interviews normally started the same day or the day after an interview was completed so that I would be responsive to nuances that were still relatively clear in memory. The transcription process was informed by scholars in the area of qualitative interviews (cf. O'Connell & Kowal, 1995; Smith et al., 2009; Willig, 2008, 2012). It was further guided by the aims of the research and the methods of analysis (Willig, 2008, 2012), i.e. an interpretative phe-

nomenological approach and thematic analysis (cf. Braun & Clark, 2006; Smith et al 2009). This means that the interviews were transcribed word by word, as I was interested in the contents of the interviews rather than how participants employed non-linguistic features (Willig, 2008). However, transcriptions can never be an exact mirror image of the interview. This meant that decisions had to be made about what to include or not. This selectivity is a form of applied cultural understanding and unavoidable when the researcher is engaging with and interpreting the data (Willig, 2012). I chose to include incomplete sentences as they were spoken as well as laughter and subjectively longer pauses in order to represent the sentiments in such a way that the meaning of *what* a participant said was captured as completely as possible.

Data analysis

I independently coded the transcribed interviews case-by-case (one interview at a time) to achieve an in-depth, idiographic insight of each account across the data set (Mason, 2002; Smith et al. 2009; Willig, 2008). I searched for patterns of convergence and divergence to get a sense of the "texture" of the data. During this process, I also consulted my field journal.

To increase the reliability of the coding and thereby ensure that preliminary themes were sufficiently grounded in the data, the second author in study 1 and 2 independently searched for themes and built categories from the data. Then the two authors compared and discussed their individual identification of themes and sub-themes. During this process, some new themes were constructed while others were rejected. Different interpretations were solved via discussion. The third author in study 1 confirmed that the chosen themes and subthemes could respond to the questions asked in the study.

Study 1 is inspired by interpretative phenomenology (Smith et al., 2009) and study 2 takes its cue from thematic analysis (Braun & Clarke, 2006). Both methods build on coding procedures informed by practices in qualitative text analysis (Braun & Clarke, 2006; Smith, 1995b).

Dataset 2

Dataset 2 contains 2368 first-time decisions made by the SMA. They are all individual decisions in asylum cases including unaccompanied minors. These decisions represent one complete calendar year of first-time decisions, from 1 January to 31 December 2011. Hence, the data set includes every type of approval, from refugee status determination in accordance with the Refugee Convention (1951, 1967) to particularly distressing circumstances. It also includes all the rejections. The table below illustrates the content of the data set with regard to outcome of the first-decision, as it was delivered by the SMA and registered by me.

Table 4. Content of the data in Dataset 2

Asylum case decisions (Outcome)	**Distribution**
Refugee status (Refugee Convention) (SMB Code: AF) *Flyktingstatus* Based on International Law	N=153 (6, 46 %)
Subsidiary protection (SMB Code: AC) *Inre väpnad konflikt* (Internal armed conflict) Based on EU Law	N=825 (34, 84 %)
Subsidiary protection (SMB Code: AT) *Tortyr* (Torture) Based on EU Law	N=339 (14, 32%)
Other protection (SMB Code: AS) *Svåra motsättningar* (Difficult tensions) Swedish Law	N=108 (4, 56 %)
Particularly distressing circumstances (SMB Code: G) *Synnerligen ömmande omständigheter* Swedish Law	N=574 (24, 24 %)
Rejections (SMB Code: UTB) *Avslag*	N=346 (14, 61 %)
Others	N=23 (0, 97)
Total	N=2368 (100%)

Data collection

I personally contacted the general directorate (Swedish: *Generaldirektörstaben*) of the SMA by telephone in March 2013. I explained that I was interested in acquiring one calendar year of first-time decisions of unaccompanied asylum-seeking minors. The contact person at the general directorate asked me to make a formal written request to the SMA's procedural archive unit in Norrköping, Sweden. For this letter, I was advised to include proof of research supervision, a description of the purpose of the thesis project and the ethical considerations that had been developed.

Consequently, my principal supervisor, Professor Ann-Christin Cederborg, made a formal request on my behalf, presenting the information that had been asked for. Afterwards, as the general directorate had endorsed the request and the procedural archive unit issued a formal decision. The decision was conditioned that the study would follow the provisions of the Swedish Confidentiality Act (SFS 2009:400).

The procedural archive unit offered to locate and compile the requested first-time decisions on a CD-record. This procedure took about a month, and it was thereafter sent to the Department of Child and Youth Studies at Stockholm University by a certified letter. A small number of the decisions

(N=14) from the requested year could not be formatted to a system compatible with the CD-record and were delivered in the same certified letter but in paper format. The files were all placed in the same folder; hence, the SMA had not sorted them according to decision category or in any other systematic way beforehand.

Data selection

First, I went through the entire dataset, file by file. I sorted the data according to the decision grounds when I opened each file and read through every decision to generate an understanding of the content of the entire data set. This data categorization procedure was done in a Microsoft Excel sheet. I added information about the child's year of birth, gender and "country of citizenship" and the decision-code (outcome) for every dossier number in the Excel sheet. This information was based on how the SMA had registered personal data in the first-decision file.

As I was interested in a "comparison" between rejection and approval I then turned my reading to the decision codes. The decision code would appear on the first page of the decision. The "lowest" ground of approval was "particularly distressing circumstances", which had been awarded a code by the SMA called "G". All the applications for asylum that had been rejected were given the code "UTB". Consequently, every time I came across a decision from any of these two categories I created a digital copy and placed them in a two separate folders named G and UTB, respectively.

In total, the sorting procedure was time consuming and took me 12 months to conduct. I allocated one full workday a week to data sorting between June 2013 and June 2014.

After I had sorted all the decisions coded G and UTB in two separate folders, I opened each file for a second time and checked that they had been sorted correctly. I then identified and removed two duplicates as well as two group decisions that had been registered incorrectly by the SMA from the category of rejections (UTB). Hence, the number of rejected decisions in the sample was reduced from 344 to 342. The remaining distribution of decision outcomes in the selected sample was as below.

Table 5. The selected data sample

Data sample	**Number**	**Percentage of the entire dataset (100%, N=2368)**
Particularly distressing circumstances (SMB Code: G)	574	24, 23%
Rejections (SMB Code: UTB)	342	14, 44%
Total	916	38, 67

The 916 unaccompanied minors in the data sample originated from 55 different countries. See Tables 6 and 7.

Table 6. Description of the data sample: Countries represented by more than ten minors (15 countries).

	Cases (N=)	% of the sample	Males	Females	Born 1993	1994	1995	1996	1997 or later
The sample	916	100	84, 72 (N=776)	15, 28 (N=140)	12, 45 (N=114)	34, 17 (N=313)	25, 98 (N=238)	14, 30 (N=131)	13, 10 (N=120)
Top 15 countries	776	84, 72	87, 5 (N=679)	12, 5 (N=97)	10, 82 (N=84)	34, 54 (N=268)	27, 06 (N=210)	15, 34 (N=119)	12, 24 (N=95)
Afghanistan	507	55, 35	95, 46 (N=484)	4, 54 (N=23)	6, 71 (N=34)	33, 93 (N=172)	32, 35 (N=164)	17, 95 (N=91)	9, 07 (N=46)
Iraq	43	4, 69	74, 42 (N=32)	25, 58 (N=11)	20, 93 (N=9)	20, 93 (N=9)	25, 58 (N=11)	9, 30 (N=4)	23, 26 (N=10)
Serbia	33	3, 60	48, 48 (N=16)	51, 51 (N=17)	30, 30 (N=10)	9, 09 (N=3)	12, 12 (N=4)	9, 09 (N=3)	39, 39 (N=13)
Somalia	23	2, 51	78, 26 (N=18)	21, 74 (N=5)	17, 39 (N=4)	39, 13 (N=9)	21, 74 (N=5)	4, 35 (N=1)	17, 39 (N=4)
Mongolia	22	2, 40	72, 73 (N=16)	27, 27 (N=6)	13, 64 (N=3)	45, 45 (N=10)	22, 73 (N=5)	9, 09 (N=2)	9, 09 (N=2)
Iran	21	2, 29	80, 95 (N=17)	19, 05 (N=4)	19, 05 (N=4)	61, 90 (N=13)	4, 76 (N=1)	9, 52 (N=2)	4, 76 (N=1)
Stateless	19	2, 07	78, 95 (N=15)	21, 05 (N=4)	15, 79 (N=3)	26, 32 (N=5)	5, 26 (N=1)	15, 79 (N=3)	36, 84 (N=7)
Algeria	18	1, 97	100 (N=18)	0 (N=0)	11, 11 (N=2)	38, 89 (N=7)	16, 67 (N=3)	22, 22 (N=4)	11, 11 (N=2)
Ethiopia	17	1, 86	17, 65 (N=3)	82, 35 (N=14)	11, 76 (N=2)	41, 18 (N=7)	23, 53 (N=4)	5, 88 (N=1)	17, 65 (N=3)
Kyrgyzstan	15	1, 64	100 (N=15)	0 (N=0)	26, 67 (N=4)	60, 00 (N=9)	6, 67 (N=1)	6, 67 (N=1)	0 (N=0)
Unknown	13	1, 42	92, 31 (N=12)	7, 69 (N=1)	23, 08 (N=3)	30, 77 (N=4)	23, 08 (N=3)	15, 38 (N=2)	7, 69 (N=1)
Vietnam	12	1, 31	50, 00 (N=6)	50, 00 (N=6)	8, 33 (N=1)	33, 33 (N=4)	33, 33 (N=4)	25, 00 (N=3)	0 (N=0)
Morocco	11	1, 20	100 (N=11)	0 (N=0)	27, 27 (N=3)	45, 45 (N=5)	9, 09 (N=1)	9, 09 (N=1)	9, 09 (N=1)
Kosovo	11	1, 20	45, 45 (N=5)	54, 55 (N=6)	9, 09 (N=1)	36, 36 (N=4)	9, 09 (N=1)	9, 09 (N=1)	36, 36 (N=4)
Yemen	11	1, 20	100 (N=11)	0 (N=0)	9, 09 (N=1)	63, 64 (N=7)	18, 18 (N=2)	0 (N=0)	9, 09 (N=1)

Table 7. Description of the data sample: Countries of origin represented by less than ten minors.

Number and percentage of sample	Countries
N=9 (0, 98)	Kenya, Nigeria
N=8 (0, 87)	Kazakhstan, Russia, Syria, Tajikistan
N=7 (0, 76)	Tanzania
N=6 (0, 66)	Democratic Republic of the Congo, Djibouti
N=5 (0, 55)	Angola, Turkey
N=4 (0, 44)	Azerbaijan, Eritrea, Guinea, Macedonia
N=3 (0, 33)	Armenia, Belarus, Uganda, Uzbekistan
N=2 (0, 22)	Albania, Equatorial Guinea, Gambia, Georgia, Ghana, India, Jordan, Pakistan, Tunisia
N=1 (0, 11)	Bangladesh, Benin, Bosnia and Herzegovina, China, El Salvador, Ivory Coast, Lebanon, Libya, Rwanda, Senegal, Sierra Leone, Sudan, Togo, Ukraine, Under Investigation

Data analysis

When the selected data sample had been set apart I read through all decisions to get an overview of the content.

A standard asylum case decision provided by the SMA was about 10 A4 pages long. The first page typically covered the personal data of the minor, the decision code, the name of the decision-making SMA unit, the names of the decision-maker and case-officer and the concise outcome of the decision, such as "The Migration Agency decides to reject your application and deport you". Other standard sections described the background of the application, travel route, a summary of the claims for asylum, relevant legal provisions, identity assessment, medical and psychiatric evaluations (if any), results of spoken language analysis (if conducted) and available country information. In particular, the reports of the relevant legal provisions and the country information could be described as template and "copy-pasted" material. Reports of the results from language analysis or physicians were presented as objective by the case-officer, and were rarely further developed. I focused my attention on the components of the decision where it was clear to me that the case-officer had produced their own arguments, and in particular where the claims and the credibility of the minors were assessed. This was commonly only done in a few brief sentences.

I copied the substantial sections where the case-officer talked about credibility and placed them in two separate documents, one for G-decisions and the other for UTB-decisions. I decided to call the two separate documents of excerpts sub-data sets. Every excerpt was awarded a code that connected it

to a code key manual. The establishment of the code key manual was done to avoid the excerpt being connected to a particular case with a dossier number. When I created the code key manual I also replaced the dossier numbers in the main Microsoft Excel-sheet with codes. The reason for this was to further reduce the possibility of identification.
The sub-data set based on approvals (Particularly Distressing Circumstances, or Code G) contained 446 excerpts and covered 100 pages. The other sub-data set built on rejections (Code UTB) contained 381 excerpts and covered 150 pages. In total, there were 827 excerpts in the sub-data sets, covering 250 pages.
The two sub-data sets were first coded separately, inspired by coding procedures in qualitative social research (Oktay, 2012). Coding was inductive and guided only by the research aim. First, I made initial comments in the margins about ideas and questions that came to mind. Then, I directed the focus to linguistic and rhetorical features, that is, how arguments were built. Rhetorically, I took notice of assumptions, arguments and subordinate (supporting) arguments. When I identified that themes could be linked together I merged these codes that had similar meaning into preliminary themes.
Next, I engaged with the preliminary themes, bringing both of the sub-datasets together and reading them as one set. I searched for and identified both convergence and divergence in the preliminary themes. With this mutual reading, I identified two overarching themes that I further divided into subthemes. These two main themes with subthemes were then organised to become the findings of the study. Finally, I located the excerpts that I best thought reflected the themes and subthemes to illustrate their subject matter.

Data processing

This section presents methodological concepts that are shared for the analytical procedure of the overall thesis project.

Reflexivity and (inter-) subjectivity

As Willig (2008; 2012b) offers, the type of interpretation that takes place will also be inherently linked to his or her "I-position" or personal reflexivity. This means factors such as personal, educational and professional background. With regard to the I-position, it is primarily important to acknowledge that I am a legal graduate with about three years of experience in implementing migration legislation as a public servant at the SMA. This previous knowledge and preconceptions may have influenced my approach to the data and my interpretation of it. However, I have not been involved in any form of legal decision-making since July 2011. After I entered the PhD programme in September that same year, I began to consciously distance myself from the "practitioner perspective" in favour of rethinking migration policy and implementation from an interdisciplinary academic perspective.

According to Willig (2012), it is, however, clear that I may have influenced the findings by interpreting the data. The intersubjectivity element also means that my own understanding and being-in-the-world have been affected by engaging with the data throughout the process of the thesis project (cf. Heidegger, 1927/2008; Willig, 2012).

Furthermore, De Genova (2005) has pointed out the risk that a relatively privileged (on a global scale) social scientist objectifies a studied "category" of people in the focus of the research. In this project the primary risk would be to objectify the unaccompanied minors. However, an overall aim of this research project has been to explore *perceptions*. These are legislators' perceptions about migration reform, and unaccompanied minors (as phenomena) as policy-makers, as well as SMA case-officers' perceptions about unaccompanied minors' credibility in everyday asylum case processing. Hence, the perceptions examined are not mine, although, as I have presented above, these perceptions are interrogated, described, interpreted and presented by me. This interpretative work has been grounded in an understanding of unaccompanied minors' as a formally (legally) offered administrative "category" that therefore must be "handled" within an existing migratory framework. Indeed, I also appreciate that the understandings of unaccompanied minors are constructed in diverse and sometimes contradictory ways. In line with the methodological standpoints, the project's aim has been to keep a questioning approach to data, and explore perceptions of minors, as a particular constructed formation of generationally labelled global migrants (cf. De Genova, 2005; Zetter, 2007). In this way, I suggest it is possible to critically explore Swedish migration policy, the dilemmas of the nation-state and, by extension, its population when it attempts to regulating child policy as a particular field entangled with migration.

Coding

Searching for themes is an iterative process (Smith, 1995). All the transcribed and sorted data was read and re-read several times, with initial annotations made every time, to try and identify new insights with every new reading (Braun & Clarke, 2006). From an interpretative perspective, I searched for meanings and intentions in the data, an open textual analysis. The first detailed analytical stage of the research process is data coding. Here also interpretation becomes key, as qualitative coding means creating codes as the data is studied. The first phase of coding is done via line-by-line analysis (Charmaz, 1995; Oktay, 2012; Smith et al, 2009). This detailed coding provided me with the possibility to think about the data in new ways, as the pattern of codes developed and it became easier to keep a distance from the text. Codes could be descriptive, conceptual and linguistic (cf. Smith et al., 2009). The descriptive comments would be at a low level of abstraction, for example "stress" if the interview transcript or SMA decision-text said "stressful". Conceptual comments were more interpretative and here I would

engage with concepts at a higher level of abstraction, such as engaging with a sequence of comments about "stress" into "trauma performance". The linguistic comments focused on the use of language, such as repetitions or metaphors.

When the process of initial codes was over, the challenge was to create themes. On the one hand, some details in the coding needed to be moderated while preserving the overall integrity and complexity of the data. On the other hand, a theme needs to be identified at a higher level of abstraction that captures the meanings of the codes (Oktay, 2012; Smith et al., 2009). Broad themes were sorted into subthemes. As this process moves on, it was necessary to focus on how themes could relate to each other. First, the codes were reviewed within preliminary themes to see if the pattern was sufficiently coherent. Second, preliminary themes and subthemes were reviewed in relation to the entire set of data undergoing analysis. The preliminary themes were then refined and named (Braun & Clarke, 2006). For studies 1 and 2, the second author and I coded separately and independently. She maintained a role as second-examiner of preliminary themes. We met up on several occasions to discuss codes, patterns and preliminary themes. Through discussions of our interpretations we would agree upon the patterns and preliminary themes that we both thought were salient in the data. If a disagreement arose, we would discuss if a preliminary theme could be redefined or if a preliminary theme or a subtheme should be rejected. When this process was concluded and an agreement reached, we would mutually refine and name themes and select illustrative excerpts.

When working on dataset 1 (for study 1 and study 2) coding was conducted independently by the second author and myself. However, when I had sorted all the data in dataset 3 I first believed that it could be efficient if I used a qualitative data software program, such as NVIVO, to assist with the coding. However, the NVIVO software makes no "independent" analysis on its own; the user codes the data and interprets the staples that the program generates. After taking an NVIVO course at the University of Sydney in 2014, where I applied the software on a small set of excerpts that the lecturer in charge provided, I decided that I would continue with the manual coding. This was partly because I felt that I prefer to work with coding on paper, using different pens as well as highlighters with different colours. However, I also realised that it was a methodological stance, as I acknowledge that I am the analyst and interpreter of the data. In the end, I concluded that NVIVO would not substantially increase the quality or transparency of the study (study 3).

Translation

Translating data is especially challenging in qualitative research, as meaning stands in the centre of attention. It is, however, unavoidable that some units of meaning are lost and others added. The conclusion of this is that transla-

tion is also an interpretation. Being aware of this is an important ethical dimension of any research project (Willig, 2012). In this thesis, the analysis was conducted in the source language (Swedish), and therefore it remained directly linked to the original data. It was not until the analysis was completed that the meaning units (excerpts) and their corresponding interpretations were translated into English. When translated into English the quotes were "tidied up" for increased readability (and usability), following the recommendation by O'Connell & Kowal (1995), by only using the components of spoken discourse that are relevant for the analysis. I made a cross translation after the manuscripts had undergone language correction. Furthermore, a translation from Swedish to English can also contribute by keeping the identities of the participants' anonymous (cf. Hanell & Blåsjö, 2014).

Methodological specifics

The three analytical papers presented herein are empirical studies of 1) how legislators experienced migration reform, 2) how they perceived unaccompanied minors, and 3) how the SMA constructs understandings of unaccompanied minors' credibility. Hence, this could be viewed as material related to legislation, legal rights, and by extension, policy. However, this legal material was analysed with methods and methodologies from qualitative research in the field of psychology and sociology. This, as psychology, aims at understanding human behaviour (Yanchar & Hill, 2003; cf. Smith, Harré & Van Langehove, 1995a; Smith, Harré & Van Langehove, 1995b), whereas the purpose of law and policy is to regulate human behaviour (Hart, 2012; Hogwood & Peters, 1982; e.g. Cederborg & Gumpert, 2010; Leviner, 2011), and sociology is aimed to understand societal phenomena (Connell, 2007). In order to answer the research aims and research questions, as well as to provide justice to the richness of the data, three different qualitative methods have been employed. Those were as follows: an interpretative approach to phenomenology, thematic analysis with an interpretative approach and text analysis. These methods share some key features, as they require detailed coding of the material in several cycles, with the researcher building themes from the data via interpretation. The theoretical positions with regard to interpretation of the data are also similar and compatible (cf. Braun & Clarke, 2006; Charmaz, 1995, Smith, 1995; Smith et al. 2009; Willig, 2008, 2012). Their specifics will be presented in more detail below.

Study 1: An interpretative approach to phenomenology

This method is inspired by the work of Smith et al. (2009). An interpretative phenomenological approach allows the researcher's interpretative process to interchange between parts and whole. It is acknowledged that the researcher interprets participants' accounts of the phenomena with the aim to move

from description towards understanding (Bradbury-Jones, Sambrook & Irvine, 2009; Shinebourne 2011)

Transcripts were read and reread number of times to ensure that an overview of the entire material was obtained. Each transcript was examined through a line-by-line analysis of experiential accounts, understandings and language use. Descriptive, linguistic and conceptual comments were made in the left-hand margin to reflect the researcher's interpretations and summaries of ideas. Interpretative phenomenological method entails developing detailed codes *from* the data via line-by-line analysis with the aim of developing codes that provide a balance between descriptions of the phenomenon under study and interpretations of it (cf. Smith, 2011a; 2011b; 2011c). The initial codes were translated into a framework of preliminary themes and subthemes, which were recorded in the right-hand margin. The themes were interrogated for the identification of patterns of convergence and divergence between the interviews, along with nuances and coherence within these patterns.

Study 2: Thematic analysis with an interpretative approach

Thematic analysis (Braun & Clarke, 2006) is a theoretically flexible approach, which emphasises explaining the modes of analysis (the how) clearly. The theoretical foundation was informed by Willig's perspective on interpretation (2012). In particular, a phenomenological view on how to conceptualise and present data was adapted. This means that themes were identified at the semantic level (Braun & Clarke, 2006).

The six steps of thematic analysis involves:

1. Transcribing and exploring the content and initial ideas about the data.
2. Systematic construction of initial codes.
3. Amalgamating codes into prospective themes.
4. Reviewing and checking that codes are grounded in the data. This involves checking back to steps 1 and 2.
5. Defining and clarifying themes and making sure that the overall thematic pattern answers the research aim.
6. Final analysis that leads to a scholarly report.

Study 3: Qualitative text analysis

Text analysis can explore written arguments and how they are linked to perceptions via language (Bergström & Boréus, 2012). The method for this study was inspired by coding procedures in qualitative social research (Charmaz, 2014; Oktay, 2012) that shares most similarities with coding procedures in interpretative approaches to phenomenology (Smith, 1995) and thematic analysis (Braun & Clarke, 2006). This means that excerpts from first-decisions were coded inductively in detail. The codes were later merged into larger themes by connecting patterns covering the same areas of argumentative information. Identified themes were then compared for similarities

and the final interpretation of themes and subthemes were presented as findings. Theoretically, the study was informed by social constructionism (Burr, 2003; Charmaz, 2014). This means that language was not seen as an objective reflection of reality and that the focus of analysis was on how case-officers constructed arguments about credibility.

Ethical considerations

Research and responsiveness to ethical considerations need to be aligned in order to avoid potential misrepresentations of data or errors in the data at different stages of collection and analysis. In that way the integrity of findings can be protected as extensively as possible. In accordance with the Swedish Act Concerning the Ethical Review of Research Involving Humans [*Lag om etikprövning av forskning som avser människor*] (SFS 2003:460), ethical approval was sought from the Stockholm Regional Board of the Central Ethical Review Board at Karolinska institutet. The Board approved the application in June 2012 (registration number 2012/907-31/5) without having requested any clarifications or provided other remarks.

Ethics is a concept that is wider than the initial ethical approval. Considerations of ethics arise consistently throughout the research process (cf. Willig, 2012). As suggested above (cf. dataset 1, in particular interview procedure; dataset 2; coding; transcription procedure; categorisation procedure) ethical considerations occur not only in interaction with the participants but also during transcription, translation and presentation of the data.

Digital files from the interviews, interview transcripts, digital copies of decisions, consent forms, field journal and coded transcripts were kept in a fire- and burglar-proof safe. In addition, the digital material was kept on an extra hard drive in the same safe. Personal data and other personal references that could cause recognition of participants have been removed from the transcripts and excerpts provided. These amendments have not affected the findings reported in this thesis.

Furthermore, in agreement with the chosen methods and methodologies, the data was also presented thematically, rather than biographically.

7. Summaries of studies

This is an empirical thesis of perceptions about unaccompanied children in the development and implementation of Swedish migration law. In order to show the rich complexities and dilemmas identified in the data, qualitative methods were used. The three studies that form the basis of the thesis are summarised below.

Study 1. The art of the (im)possible: Legislators' experiences of the lawmaking process when reforming migration law.

Daniel Hedlund, Ann-Christin Cederborg & Mauro Zamboni (In press). *Theory and Practice of Legislation.* doi:10.1080/20508840.2016.1158391

As no study had investigated how politicians perceive their contribution to migration policy, the objective of this study was to further understand how they made sense of their involvement in a migration law-making process. We were interested in how they experienced their ambitions during the negotiations and how they reflected on the outcomes and current application of the migration reform in force since 2006. Therefore, 15 legislators that were members of the Committee on Social Insurance during the mandate period of 2002-2006 were openly interviewed about their views. Legislators from 6 out of 7 political parties in parliament participated in the study, hence the entire spectrum of left-right parties were represented. The Committee on Social Insurance is the committee that directly handles migration issues in parliament. The committee is shaped as a miniature Riksdag, as it reflects the political parties mandates in parliament. Legal bills need to pass through the committee before a decision can be taken in parliament, hence the committees have a mediating role in legislative work, in relation to the executive power (Bale & Bergman, 2006).

After the turn of the century, the conditions for asylum-seeking children reached the top of the debate agendas in Sweden. There were concerns among both professionals and a general public that decisions affecting children and youth were random and inhumane. This brought the 1989 Aliens Act into question (Eastmond & Ascher, 2011). After several calls in the

Swedish parliament, the *Riksdag*, and external pressure from civil society, the government opened up to the possibility of negotiating migration reform. This resulted in an agreement that put in place a new Aliens Act that came into force in 2006 (Aliens Act SFS 2005:716). In the end, it was the Social Democratic minority government (single-party) that brought the bill through parliament with the support of the Green Party and the Left Party. This agreement was reached in relation to the also on-going budget negotiations. Moreover, another new feature of the reform was the introduction of the new system for appeals and procedures (NSAP) and a three-month "temporary law" that would bridge between the 1989 and the 2005 Aliens Acts. The temporary law gave particular consideration to children and families that had been in the country for a substantial time (Eastmond & Ascher, 2011). The NSAP meant that the Aliens Appeals Board (AAB), who since 1992 had been the appellate body for applicants that had had their migration decisions rejected, would be closed down. Instead, the appeals procedure would be handled by the public administrative court system, with the aim of strenghtening the rule of law. To this end, three Migration Courts were established in Stockholm, Gothenburg and Malmö, as well as a Migration Court of Appeals in Stockholm. Prior to the establishment of the NSAP some critique had focused on the politicised nature of the asylum framework. However, the NSAP might have brought an increased juridification into Swedish migration policy (Lundberg, 2009). Juridification here is understood as a development where the dominance of positive, formal law and legal expertise increases (Blichner & Molander, 2008; Teubner, 1987).

In many countries there is recurrent dissatisfaction with migration policy, and in Sweden, the latest 2005 Aliens Act has also been called into question several times. Drawing on Bourdieu (1987), we present a theoretical frame where the juridical field is seen as an area of struggle between legal interpretation and the "naïve" non-legal understandings of justice and fairness. Hence, the right to interpret legal texts and determine current law is at stake. In Sweden there is a strong link between legislative preparatory work and subjective statutory interpretation (Frändberg, 2005). Legislators' own perceptions of their ambitions could therefore be important to further understand the legislative intent, the process of legislative drafting, as well as its possibilities and limits.

Through in-depth interviews, the politicians were asked about their individual experiences and recollections about the law-making process as well as the legal outcome. The 15 interviews were conducted in 2012. The analytical procedure did not take any predetermined stances on party-affiliation, as previous studies have shown that migration is an issue where the conventional Swedish mainstream political left-right division is inapplicable (cf. Abiri, 2000; Widfeldt, 2015). The analytical procedure drew on coding procedures in the area of qualitative social research (Braun & Clarke, 2006; Charmaz, 2014, Smith et al., 2009; Willig, 2012) and was theoretically in-

spired by interpretative phenomenological analysis (IPA; Smith et al., 2009). The theoretical approach to the data made it possible to explore individual experiences and how the legislators made sense of their experiences of migration reform (cf. Smith et al., 2009).

The main finding was that the legislators experienced their work as demanding and frustrating which, they expressed, in turn may have influenced the quality of the law making. The participants voiced that they did not consider that the problems that had been earlier identified with regard to asylum decision-making had been resolved in a sufficient manner via the reform in place since 2006.

Legislators articulated experiences of ambiguity and insecurity. They had believed that they did not properly understand the consequences of the reform beforehand. For example, several legislators described that increased reliance on the law and lawyers had not increased the humanitarian aspect of the law's applicability; instead, these legislators expressed that some aspects of the law had become more restrictive.

The dynamics of the negotiations prior to the reform were described as unique and made talks between unexpected political partners possible, at least among the five smaller parties in parliament. Meanwhile, participants explained that the informal party-whips had been strong in the parliamentary majority camp, consisting of the two largest parties, the Social Democrats and the Moderate Party. Due to the uniqueness of the situation, the migration reform had to be negotiated linked with the budget issue. Hence, migration's status as its own political area was toned-down and some participants explained that the five smaller parties had tried to use budget issues as leverage, even though they had understood it was not ideal.

The negotiation for migration reform was also described as unique from a personal point of view. Several legislators expressed that it was the most dramatic and intense period in their parliamentary career and that it had had both political and personal impacts. They articulated that they had to manage dilemmas between personal beliefs and party strategy, as well as explicit threats from the public. Despite these efforts nearly all participants expressed that the reform had not improved the rule of law to a sufficient degree. They focused their attention on the social environment of professionals implementing the law as a possible explanation. Some legislators emphasised that they felt that lawyers and the legal field had started to dominate the migration field at the expense of politics. Also, several participants expressed feelings of disillusionment and that they had an impossible mission. However, there was also a contrasting view among some participants that anything is possible, as politics can be "the art of the possible".

The findings of this study indicate that negotiating migration policy reform is a complex project where both personal and political agendas are at stake, as legitimation is sought from the juridical field (cf. Bourdieu, 1987). As negotiations ended up in budget discussions with the three centre-left

parties, it also appeared as if the economic left-right political paradigm regained importance in practice, despite the participants' views that unique collaborations had existed. It seems it can be complicated to achieve a profound change in policy aims and implementation via legislative reform alone. In particular, when views and aims are ambivalent, which could affect the understandings of legislative intent (cf. Bourdieu, 1987). It could be that political ambitions are difficult to translate into application as politics and law take their point of departures from different systems of logic.

Study 2. Legislators' perceptions about unaccompanied minors seeking asylum.

Daniel Hedlund & Ann-Christin Cederborg (2015). *International Journal of Migration, Health and Social Care, 11*(4), 239-252. doi:10.1108/IJMHSC-08-2014-0033

The purpose of this study was to further knowledge of how individual legislators in Sweden perceive unaccompanied minors seeking asylum, the life situation of these children, as well as their needs and best interests.

Previous research has shown that asylum-seeking children can be positioned in ambivalent ways as they are caught between contradictory discourses and practices. On the one hand, they can be affected by policy directed against asylum-seekers and refugees in general, as part of an overall pattern of criminalisation of migration in more developed destination countries. On the other hand, minors may also become included in broad child policy measures, as well as particular child protection and childcare practices. Therefore, the links between different perceptions about children's agency and vulnerability can be complex (e.g. Bhabha, 2014; Crawley, 2010, 2011; Doná & Veale, 2011; Eastmond & Ascher, 2011; Giner, 2007; Watters, 2007: Wernesjö, 2012, 2014).

Within the group of asylum-seeking children, unaccompanied minors can be understood as a particularly ambiguous "category" (Hedlund, 2012). Moreover, their backgrounds and aspirations are diverse (Wernesjö, 2014). Sweden has for many years been a primary destination country for unaccompanied minors in the EU. A new Aliens Act together with a new system for appeals and procedures were decided in Sweden in 2005 and operational from 2006. The latter shift meant that a system of migration courts and a migration court of appeals was introduced within the public administrative court system. Thereby, the migration framework underwent a substantial juridification. The political negotiations and the debate preceding the 2005 Aliens Act brought perceptions about asylum-seeking children to the centre of the negotiations for the first time (study 1).

This study explored subjective values of legislators that have negotiated migration policy, a work that can be seen as part of a social-life world where communication between legislators, experts and public servant decision-makers takes place (Habermas, 1971/1980). Thus, the link between perceptions of unaccompanied minors and the development of migration policy can have material effects on the lives of unaccompanied minors (Crawley, 2011).

In depth interviews with 15 legislators were conducted and analysed. These legislators had all been members of the Committee on Social Insurance between 2002 and 2006, the period during which the 2005 Aliens Act was negotiated. The data sample was purposive and homogenous. Thematic analysis (Braun & Clarke 2006) was used in order to identify and analyse patterns in the interview data. We focused on their responses to the questions about the best interest of the child in migration policy and practice, and how this principle was related to unaccompanied children seeking asylum. The theoretical understanding of the identified themes and their meanings was informed by Willig's (2012) insights on interpretation in qualitative analysis with regard to how the findings were conceptualised and communicated, in particular interpretative phenomenology.

The main finding is that chronological age becomes a key sign for how legislators understand the life situation, needs and best interests of unaccompanied children. Age was central to the understanding of what constitutes an authentic asylum claim, and the age limit of 18 became a reference point when clarifying if or when a person could be too close to the age limit. This was despite the fact that most of the legislators reported explicitly that they were aware that medical age determination was a difficult or almost impossible endeavour. This contradiction indicates that legislators appear to view the asylum system for unaccompanied minors as a rational apparatus, where expert knowledge can be relied upon to find reliable solutions (Habermas, 1971/1980). The belief that the asylum system is characterised by logic exists even if the legislators' own views about unaccompanied children can be interpreted as ambivalent. Consequently, there is a risk that this rationality is formalistic (cf. Habermas, 1971/1980). Practices that favour formalistic rationality when children's rights are taken into consideration can be problematic as the backgrounds and competences of unaccompanied minors are diverse (Bhabha, 2014; Wernesjö, 2012, 2014). These practices also need to be able to be informed by a critical reflection on children's agency (Crawley, 2010, 2011; Doná & Veale, 2011). Drawing on Habermas (1971/1980), these contradictions, in addition to the risk of a purely formalistic rationality, make it a key matter to clarify as well as make transparent how policy is developed and how the practices to reach policy aims are conducted and assessed. Without sufficient reciprocity and transparency, the irrational components of the treatment of unaccompanied minors can contribute to a democratic dilemma, where policy and implementation are not considered as legitimate by the wider society. Furthermore, this indicates that legislators

need to better understand to what extent practitioners can fulfil the expectations at the legislative level.

Legislators' strong differentiation concerning how to understand adolescents contributes to varying accounts that interchange between suspicion and protection. Contrary perceptions about unaccompanied minors depict them as either innocent and traumatised or potentially threatening. We identified three clusters of what we called idealistic, relativistic and flexible interpretations of unaccompanied minors. The idealistic arguments emphasised care and comfort. The relativistic view acknowledged the care perspective but "balanced" this by stressing that unaccompanied minors also need fostering and discipline, as they were perceived as potentially aggressive. The flexible perspective focused more on understanding the needs and best interests of unaccompanied minors, and thus had more in common with the perspective of the child. Despite the contradictory views, most legislators emphasised the need for family reunification and thereby diminished the possible interpretation that seeking asylum in Sweden could be an active strategy by the minor. Thereby, responsibility and accountability was also shifted away from Sweden. Hence, unaccompanied minors appear not to be understood as proper right-holders (Freeman, 2011).

Furthermore, the findings of this study suggest that that the moralising welfare ideology of the past is still present in political discourse and social planning, construing unaccompanied minors as an ambivalent category between civilisation and savagery (cf. Montgomery, 2008). In conclusion, it appears as if legislators carry out reforms that matter to unaccompanied minors without considering them as agents or with their own agendas to seek asylum in Sweden (Bhabha, 2014; James & Prout, 1997).

Study 3. Constructions of credibility in decisions concerning unaccompanied minors.

Daniel Hedlund (Submitted).

This study sought to further knowledge of how SMA case-officers constructed unaccompanied minors' credibility in first-decision asylum cases while attempting to apply the migration framework already in place.

Credibility is a key question as evidence assessment in asylum case processing can be more important than strict legal considerations (Noll, 2005). To maintain legal legitimacy, migration authorities are obligated to issue decisions with formulations that can be perceived and accepted as objective. This basic premise conceals the fact that any assessment of credibility requires the introduction of subjective and normative stances (Wikström & Johansson, 2013). Sweden is a major destination country for unaccompanied

minors in the EU. A relative small percentage of their appeals are overturned, which makes the first decision of the SMA imperative for the asylum-seeking minor. If their application is approved, the legal status they are awarded also matters, as each asylum ground offers different arrangements of rights in a hierarchical way.

We know from previous studies that children have been considered "apolitical" in the context of more developed countries. When they are considered political, their status as children can be questioned (Crawley, 2011; Doná & Veale, 2011; Kallio & Häkli, 2013). Unaccompanied minors can also become questioned within the frames of other ideological stereotypes where refugees are positioned as criminals, "economic migrants", or other types of potential threats (Bryan & Denov, 2011; Giner, 2007). Precedent affirms that the definition of a credible account is an account that is coherent, in alignment with available country information and does not contain contradictions (MCA, 2007). However, previous research has indicated that the professionals linked to the asylum process such as migration staff (Baillot et al., 2013), asylum interpreters (Keselman, 2009) and public counsels (Ottosson & Lundberg, 2013) may find it demanding to work with and relate to unaccompanied minors.

All asylum cases had been issued during one particular calendar year (2011). The data selection focused on all of the decisions based on the provision of Particularly Distressing Circumstances (N=574; 24, 38%), as well as all the rejected decisions (N=342; 14, 53%), hence in total 916 first-decisions in unaccompanied minors' asylum cases. In this study, I analysed 827 excerpts drawn from these 916 decisions. As Particularly Distressing Circumstances was the lowest approval outcome of asylum, the two selected categories of decisions were each located on the different sides between approval and rejection, respectively. Qualitative text analysis informed by coding procedures in social research (Oktay, 2012) was used to analyse how case-officers built argumentation for and against residency**.** As the study was interested in discursive practice, it took its cue from social constructionism (Berger & Luchmann, 1966/1991; Burr, 2003), thereby acknowledging the centrality of language use and that descriptions and explanations are not objective or neutral despite the law and legal discourse many times having been perceived in this way (Stone, Wall & Douzinas, 2012).

The main finding was that both approved and rejected decisions draw on similar techniques to consistently question unaccompanied minors credibility. The minors' knowledge about their own situation is questioned both with regard to how information reached the children and their accounts about their life situation and personal background. Even the minors who had had their applications approved were questioned. Moreover, stated political activities seem to be diminished and presented as exaggerated, hence this finding further confirms previous research indicating that the political agency of children is overlooked in asylum case processing (e.g. Crawley, 2011). The

possibility of interpreting the child as individually persecuted politically is thereby excluded. Rather, such claims were questioned as exaggerative or speculative. Also, case-officers seem to describe children as either not acting rationally enough, or too rationally, before departure from their country of origin.

Overall, case-officers seemed to assume that the child would be able to provide consistent and detailed accounts and explanation. Accounts that were described as lacking in these aspects could be described as not credible enough. However, even detailed and coherent accounts were questioned in similar ways. Therefore, it appears as if case-officers attempt to highlight any perceived inaccuracy or lack of knowledge. It may therefore be that decision-making occurs within a culture of disbelief (Jubany, 2011). The children were so consistently questioned that it appears as if even the humanitarian aspects of their claims are diminished (cf. Fassin, 2012). Questions can be raised with regard to how information provided by children is interpreted by case-officers. Despite that, unaccompanied children, as asylum seekers in general, are very diverse with regard to personal competences, backgrounds and reasons for migrating, and case-officers seem to be uninformed about their insufficient ways of constructing arguments about credibility. This means that the individual assessment in unaccompanied children's asylum cases can be described as limited.

8. Concluding discussion

This thesis has analysed the lived experiences of legislators when negotiating migration reform, their perceptions about unaccompanied minors, and how the SMA's case-officers construct unaccompanied minors' credibility. The thesis builds on interviews with 15 legislators and one calendar year of 916 out of 2368 asylum decisions concerning unaccompanied minors. In this final chapter, the overall findings of the thesis will be presented and discussed in relation to previous knowledge and the theoretical concepts concerning global state society, rationality, bio-politics and ambivalence. The ambition is to place the empirical studies in a wider theoretical frame but also to discuss practical implications of the findings.

This thesis is the first empirical Swedish study in social science about unaccompanied minors that turn the attention to the frameworks of selection- and asylum procedure rather than the asylum reception stage or later experiences. It therefore fills a gap in the Swedish literature that is important because the examination of one refugee label can say something about the larger system in place (Habermas, 1996; Zetter, 2007). The three overall findings are presented below.

Drawing the limits

The findings of this thesis indicate that the nexus of migration and child policy is complex. As shown in study 1, legislators expressed that they supported an open and humanitarian migration policy and that they treasured the best interests of refugee children. None of the participants said that a restrictive policy was a goal. Instead, they described that their intention with the migration reform was to create a system that was more precise and predictable to improve the rule of law. Even so, it also seemed as if it was difficult for them to draw the limit of how the selection is to be made, which to some extent is necessary in all regulated migration systems (cf. Foucault, 1976/2013; Johansson, 2005). As communication from legislators' can influence the legal interpretation of legislative intent, this finding could be relevant for informing practice (cf. Solan, 2005, 2010). However, it might be that when a society has the technology and economic resources to determine how the political or personal death of refugees can be managed and thereby avoided is when the migration issue may become truly political (cf. Agam-

ben, 1998; Foucault, 1976/2013). This means a political, and not mainly bureaucratic, spectacle (cf. Edelman, 1967, 1988; Norström, 2004).

The subjective experience of the legislators can be decisive in understanding migration policy. This means not only exploring legislative intent but also examining possible boundaries when negotiating the frameworks for selection of those asylum seekers that can be allowed to stay in Sweden. The findings from this thesis, and from previous research of the possibilities of a stateless society (Jachtenfuchs, 2005; Tabb, 2009; Zangl, 2005; Zürn & Leibfried, 2005), indicate that the Swedish state has not played out its role in drawing clear-cut limits on who is to be included and who is to be excluded from the possibility of becoming a citizen. The November 2015 decision, where the Swedish government announced a restrictive focus but without clear details on legal feasibility and implementation, can be seen as the most recent example of unclear inclusion and exclusion practices. Furthermore, the rule of law does not seem to be in focus when negotiating migration policy but rather budgetary considerations (cf. study 1). Hence, potential alternative fiscal policies appear to be disqualified (Bacchi, 2012), and migration policy seems instead to be developed as a parallel and separate structure.

The selection of refugees that can receive asylum seems to be done partly via changes in instructions for the bureaucracy via laws and rules (cf. Douglas, 1986; Habermas, 1971/1980, 1996). As shown in study 1, the trust in the legal field and the system to make objective decisions seems to be strong. Hence, it appears as if the legal perspective has gained in authority (Bourdieu, 1987), while the layman perspective (as reflected in legislators' subjective experiences) has diminished in strength. This indicates a process of juridification, where the law and technocracy colonise politics, but also where accountability is shifted from politics (and politicians) to the law (Hirschl, 2006). This means that unaccompanied minors' asylum and refugee rights can become de-politicised.

The created bio-political and administrative concept of unaccompanied minors needs to be filled with content to be made logical from the perspective of the legal system. As study 3 has shown, this questioning approach can also be visible in the decisions made by the SMA, where the children's accounts are questioned with different strategies. Hence, it appears that both the legislative level and the implementing level struggle to make sense of the diverging perceptions of unaccompanied minors. On the one hand, as shown in study 2, they are perceived as primarily vulnerable, comparable to a discourse that is dominant within the mental health perspective and a prevailing humanitarian ideology (Fassin, 2012). Thus, they are viewed as suffering, particularly psychologically (Fassin & Rechtman, 2009; Fassin, 2012). On the other hand, they have also been described as strategic, that is competent, and their earlier experiences may have made them susceptible to traumas that can lead to aggression (see study 2). Hence, unaccompanied minors also seem to be perceived as threats. These diverging discourses about unaccom-

panied minors and other refugee children have been identified in previous research from other destination countries as well (e.g. Bhabha & Crock, 2007; Bryan & Denov, 2011; Giner, 2007). Discourses about migration can also have material effects (cf. Burr, 2003; Potter, 2003) on unaccompanied minors and thereby influence the asymmetrical situation between them and authorities in a destination country. This is because unaccompanied children can be understood as *de facto* stateless as their potential futures are determined largely by the Swedish state (cf. Bhabha, 2011).

Hence, it seems that unaccompanied children are primarily perceived as vulnerable rather than potential political subjects in relation to international law. Study 2 indicates that they are understood as illogical phenomena in a primarily rational legal system. Consequently, the state can be placed in a dilemma to handle the phenomenon of unaccompanied minors. This entails vacillating between the control of borders and the regulated migration system (cf. Proposition 1996/97:25; Proposition 2004/05:170) as well as between the population (in a bio-political sense), and the child policy to protect and care for children. For the legislators', this phenomenon appeared to be a matter of "drawing a limit" for residency through inclusion or exclusion practices.

However, the rights to be included do not exclusively have to do with formal rules. As the studies have shown, the reach and limits of such rights have to do with the scope of political prioritisations. This is about what is made possible to fall within the reach of rights policy, and what is placed outside the boundaries of politics.

The ambivalence of unaccompanied minors

The findings from this thesis indicate that the unaccompanied minor can be seen as an ambivalent construction, where focus is turned towards chronological age in order to reach an understanding of vulnerability, rather than the absence of parents and the overall refugee condition. Invoking a perceived ambivalence about whether or not the asylum-seeking child is a minor or not, can be a way to exercise power by constructing them as a part of a political crisis (Edelman, 1967, 1988). Such a technique may facilitate new or changing rationalities in a more restrictive and authoritarian direction (cf. Habermas, 1971/1980). Both the negotiations preceding the 2005 Aliens Act, and also the 2015 development of asylum policy in Sweden, illustrate how this invocation can be done. Study 1 indicated that the budget, and the development of the economy in general, were both instruments and declared ends for asylum policy**.** Study 2 further indicated that the perception of risk could be used to mediate the understanding of vulnerability as well as the potential future benefits of receiving unaccompanied minors into Swedish society. For asylum policy and procedure, this can be seen as a prioritisation

issue, although it does not appear to be recognised as such but rather as an administrative matter that needs to be solved if the system should be considered logical (cf. Douglas, 1986). As pointed out by Bhabha (2011), they cannot get the documents for identification accepted by destination countries such as Sweden. Some states do not have a functioning civic registry and some cultures use other concepts of time. When the concept of the unaccompanied minor becomes ambivalent to legislators', or the account is perceived as insufficient to clarify age before the authorities, his or her body may be made to testify (Fassin & Rechtman, 2009) about its age. This is despite that chronological age determination is practically impossible from the perspective of medicine (Hjern et al., 2012).

It seems as if Swedish politicians (study 2) and authorities, such as the SMA, know the dilemma of determining age. However, it does not appear to be genuinely questioned as a possible redundancy. Instead, the accountability may be turned to the unaccompanied minors. This can be due to the minors' responsibility to show that they comply with the logics of the Swedish public administrative apparatus (cf. study 1, study 2, study 3). By focusing primarily on chronological age, other possible solutions are excluded or neglected (Bacchi, 2012). As argued by Stasiulus (2002), the concept of age and passage into adulthood can entail many different components of perceived "maturity". Aspects of perceived maturity can be anything from when a person can consensually have sexual intercourse or drive a particular type of vehicle. There is no strict biological development route for humans unfolding from child to adult, such as the metamorphosis "between the caterpillar and the butterfly" (p. 513). Rather, these examples show that the limit between child and adult can be an ambivalent social construct and thereby also challenged in different ways (Stasiulus, 2002).

The findings of this thesis indicate that the diverse character of political agency of unaccompanied minors is not fully understood by legislators (study 2) or made use of by case-officers' (study 3). As much as political agency is denied, it seems to be in line with findings from other studies of refugee children (e.g. Crawley, 2010, 2011; Dona & Veale, 2011). Stasiulus (2002) has offered that a too strong emphasis on agency and participation can lead to the denial of protection by, for example, migration authorities. This is because the dimension of vulnerability may become overtly neglected when it is disregarded that the relationship between adult politics and children is highly asymmetrical in practice (Stasiulus, 2002).

Hence, I suggest that the ambivalence of age becomes relevant both theoretically and for asylum practice, as the asylum account and the body create a double burden of proof for an unaccompanied minor that already finds him or herself in an asymmetrical power relation *vis-à-vis* the Swedish state, and a personal process of identification and belonging in Swedish society (Wernesjö, 2014).

Credibility and individual assessment

Credibility in asylum policy and implementation appears, just as unaccompanied minors, to be a multifaceted phenomenon. As pointed out by Noll (2005), credibility is not only a legal issue in the strict sense; it is also essentially a matter of evidence assessment. To some extent, asylum cases have been formally and individually assessed (cf. Wikrén & Sandesjö, 2014**)** However, the focus on the individual has increased since the latest migration framework was put in place 2006, as SMA case processing practices seem to have been altered in such a way to fit the administrative court system procedure into their assessments of applicants (cf. Wikrén & Sandesjö, 2014). As study 1 indicates, one of the legislators' aims of the reform was to encourage the assessments to become more objective and individualised. Some of the legislators expressed, however, disappointment with the outcome and still perceived that the system was full of randomness. Hence, it appears as if there exists, on the one hand, anxiousness about grouping or categorising refugees, and as if the risk that individual assessment may not be the full answer on the other. However, there is a risk with an inexact policy. For example, a perceived unfair asylum case assessment can be understood as the result of a mistake by an individual case-officer rather than a potential shortcoming in the system as a whole. In doing so, the court system can then clear errors upon appeal, and thereby repair shortcomings in an otherwise logical organisational structure (cf. Douglas, 1986).

Moreover, the findings in study 3 give an indication that individual assessment is constrained in unaccompanied minors' asylum cases. Indeed, the cases were processed according to existing frameworks and routines, and presented in a discursive manner that makes them appear as sufficiently and legally legitimate (cf. Bourdieu, 1987). However, the overall pattern of questioning of provided accounts indicates that the repertoires used by case-officers are not individualised to correspond to each applicant. Rather, the themes used to deconstruct and question asylum claims seem to be standard and lack consideration for the individual minor's unique refugee experience. Prior research has shown that the reasons for such a questioning approach could come from an internal culture of suspicion within the migration authority (Jubany, 2011), but also an emotional regime among case-officers to keep a "professional" distance from asylum seekers' experience (Baillot et al., 2013; Wettergren, 2010). It could also be that case-officers seek to balance different objectives such as efficiency in case processing (Hedlund, 2012; Lundberg, 2009) with potentially contradictory signals from the legislative level about regulating migration and not being political or subjective (cf. COSI; Proposition 2004/05:170; study 1).

Practical implications

As presented in this thesis, the different perceptions about migration reform and unaccompanied minors can have consequences for unaccompanied minors since they are affected by the outcomes of the logics and rationales guiding the legal and administrative system. Perceptions about the possibilities of legal reform and the concept of unaccompanied minors are essential components of this social value-system (cf. Habermas, 1971/1980; 1979, 1996).

The research in this thesis is primarily an exploration of perceptions and perspectives as they are told by legislators or presented in the argumentation of the SMA. As indicated above, the presented perceptions are an essential part of the asylum policy and the understanding of the unaccompanied minor seeking asylum, but the findings cannot give a "true" picture of how, for example, current law should be applied or changed, or the entire chain of events (asylum interview, complete case-file, prior discussions) that took place before the case-officers finalised the decisions of credibility. On the other hand, the findings can influence discussions of how to further policy development strategies when minors are seeking asylum by themselves.

Even if this thesis is based on asylum policy and procedure in the Swedish setting the international understanding of the findings can be both theoretically and practically relevant to other more developed destination countries. This is due to the structure of state projects and their inherent selection process (cf. Foucault, 1976/2013). This selection process could be understood as a "policy imperative", where state officials, such as legislators, are also required to attempt to draw the limits for diverse administrative labels of refugees seeking asylum, such as unaccompanied minors, according to the logics of the legal system (cf. Bourdieu, 1987; Douglas, 1986; Meiksins Wood, 2005). For other more developed countries as well, this selection process must be done in a way that can be perceived as (legally) legitimate in wider society (cf. Baillot et al., 2013; Foucault, 1976/2013; Habermas, 1971/1980; 1979, 1996; Hirschl, 2006). Similarly, other more developed countries have migration authorities that carry out the practical implementation of policy, that is, the assessments of asylum cases, where credibility also can play a central role.

Suggestions for future research

The findings of this thesis highlight the need for future research about the different subjective perceptions concerning unaccompanied minors that can be identified in policy and implementation. To further increase the knowledge about how these perceptions can be understood in relation to policy options and prioritisations, focus needs to be turned to other levels of policy- and implementation. For example, there is a need to explore the relationship between policy and implementation at the initial asylum reception stage, and to include unaccompanied minors' own views about the first stages of the asylum reception in Sweden and early care-measures. This is important as the first period after arrival can be one of the most vulnerable stages of reception for the minor as newly arrived. It is also at this stage where the first meetings between the minor and his or her formal network may set "the tone" for future cooperation.

At the initial reception stage, the municipal level is legally responsible, and in Sweden, municipal self-governance is the main rule. Municipalities are to appoint a *god man* (legal guardian) for an unaccompanied minor as quickly as possible, and this person legally becomes the equivalent of a parent, although in most cases, this person does not live with the child. There are currently no academic studies on how the institution of legal guardianship contributes to meeting policy aims or initial care with regard to unaccompanied children. Furthermore, interviewing unaccompanied minors about how they experienced having a legal guardian appointed and how they perceive the "roles" that different persons have in their formal networks would help to improve practice, and also contribute to further insights about children in "societal care". Based on this identification of the need for future studies, research questions such as the following could be asked:

How do the initial meetings between legal guardians and unaccompanied minors take place?

How do unaccompanied minors experience their appointed legal guardian?

How do unaccompanied children perceive the formal network around them?

How do unaccompanied minors' perceive the first phase of the formal reception framework in Sweden?

Furthermore, study 3 compared the construction of how the hierarchically lowest approval and rejections were performed. However, my readings of how full refugee status was awarded indicated that the SMA based its decisions on the risk of female genital mutilation or sexual orientation and gender. Therefore, another suggestion of future studies is to explore how the SMA understands gendered persecution against unaccompanied young girls, or unaccompanied minors' claims of LGBT persecution in asylum decisions,

since normative values can play a part in asylum case outcomes (Wikström & Johansson, 2013). This could be done via text analysis using the same type of method as in study 3 in this thesis. This type of study could also be complemented by analysing interviews with case-officers about case processing concerning unaccompanied young girls and unaccompanied LGBT persons.

9. Sammanfattning på svenska

Den här sammanläggningsavhandlingen handlar om föreställningar om ensamkommande barn på lagstiftarnivån och i Migrationsverkets förstagångsbeslut i asylärenden avseende ensamkommande barn.

Övergripande om avhandlingen

Avhandlingens övergripande syfte var att belysa uppfattningar om ensamkommande barn i svensk policyutveckling och implementering, särskilt på lagstiftarnivå samt hur handläggare omvandlar policy till praktik i Migrationsverkets trovärdighetsbedömningar i förstagångsbeslut i asylärenden.

Tilltron till rätten som lösning på samhälleliga dilemman förefaller stark. Såväl företrädare för ideella organisationer, Barnombudsmannen och politiker samt flera jurister föreslår att barnkonventionen borde göras till svensk lag (Bergsmark, Dane, Leviner & Warnling-Nerep, 2015; Ombudsman for Children, 2012; Swarting & Heilborn, 2014). Svensk asylpolitik och Migrationsverkets hantering av asylärenden som rör barn står ofta i fokus för denna kritik. Ett många gånger använt argument för barnkonventionens införande i svensk lag brukar vara att det skulle leda till bättre tydlighet i barnärenden. Utgångspunkten förefaller alltså vara att det existerar tvetydighet i lagstiftningen och att Migrationsverkets handläggare inte förstår lagstiftarens intentioner om barns bästa tillräckligt väl. Det saknas dock empirisk kunskap om hur lagstiftare och de handläggare som prövar asylärenden erfar och förstår utvecklingen av migrationsrätten samt hur de försöker hantera fenomenet ensamkommande barn utifrån systemets ramverk och rutiner (jfr. Westerberg, 2013).

Avhandlingen bygger på två set av data. Det första innehåller 15 intervjuer med svenska lagstiftare som satt i riksdagens socialförsäkringsutskott 2002-2006. Utifrån det andra datasetet har 916 Migrationsverksbeslut gällande ensamkommande barn analyserats. Avhandlingen tar sina teoretiska utgångspunkter i tolkande fenomenologi och socialkonstruktionism. Metoden bygger på kodningsprocedurer som utvecklats i kvalitativ socialvetenskap, så som de används i metoderna IPA, tematisk analys och textanalys.

Specifika frågeställningar

1. Hur uppfattar lagstiftare den parlamentariska process som installerade den nuvarande utlänningslagen från 2005 och dess tillhörande nya instans- och processordning i utlännings-och medborgarskapsärenden? (Studie 1)
2. Hur uppfattar lagstiftare ensamkommande barns bästa, behov och kompetenser? (Studie 2)
3. Hur konstrueras ensamkommande barns trovärdighet i Migrationsverkets förstagångsbeslut i asylärenden? (Studie 3).

Fynd

Den första studien (Studie 1) undersökte hur lagstiftare själva uppfattar sitt bidrag när de deltagit i en politisk process för att åstadkomma en lagändring. Politiken kan sägas föregå juridiken genom att den kan sätta ramar för utvecklingen av nya lagar. Därför blir lagstiftares perspektiv intressant. För detta syfte intervjuades femton lagstiftare som deltagit i riksdagsutskottsarbetet med att behandla 2005 års utlänningslag som trädde i kraft år 2006 tillsammans med en ny instansordning för överklaganden som förlades i det förvaltningsrättsliga domstolssystemet. Lagreformen kom till stånd efter en längre tids samhällsdebatt, där vissa asylbeslut ansågs vara inhumana och att handläggningen präglades av subjektivitet och bristande systematik. Det var också första gången barns rättigheter och kompetensen tydligt kom i fokus. Detta var på grund av de så kallade ”apatiska barnen”, som drabbades av utmattningssyndrom och blev sängliggande, kom att prägla en del av de politiska positionerna (Eastmond & Ascher, 2011; Johansson, 2005).

Studiens primära fynd visar att lagstiftare uppfattade reformarbetet som krävande och frustrerande samt att detta polariserade förhandlingsklimat kan ha bidragit till otydliga mål och intentioner i efterföljande lagstiftning. Detta ger en indikation att det politiska arbetets villkor, som föregår den mer konkreta utvecklingen och formuleringen av förarbeten, spelar en central roll i reformarbete. Studiens fynd ger också indikationer på att det är andra politikerområden som prioriteras och ges företräde i diskussioner om asylrätt och vilka som ska exkluderas eller inkluderas när migrationsrätten ska tillämpas. Särskilt verkar finanspolitiska frågor och statens relation till kommunerna gå före rent migrationspolitiska avvägningar, eller diskussioner om rättigheter. Denna insikt bör också kunna bidra till att öka förståelsen för migrationspolitikens utveckling.

I den andra studien (Studie 2) låg fokus på hur individuella lagstiftare uppfattade ensamkommande barn som söker asyl, särskilt deras bästa, livsvillkor och kompetenser. Tidigare forskning hade visat att ensamkommande barn kan hamna i skärningspunkterna för mer restriktiva diskurser om migration och barnrättsdiskurser, där barn ska vårdas och skyddas (jfr. Bhabha, 2014;

Crawley, 2010, 2011; Doná & Veale, 2011; Eastmond & Ascher, 2011; Giner, 2007; Watters, 2007; Wernesjö, 2012, 2014). Detta kan både göra det komplicerat att utveckla tydlig policy gentemot flyktingbarn som grupp (jfr. Giner, 2007; Hedlund, 2012) och att beakta insikten att ensamkommande barn inte är en monolitisk kategori utan består av barn som kan ha varierande personliga behov och agendor (Bhabha, 2014, Wernesjö, 2014).

Det primära fyndet visar att det är den kronologiska gränsen på arton år som blir referenspunkt för hur lagstiftare förstår ensamkommande barn och ungas behov och kompetenser. Detta var trots att de intervjuade lagstiftarna själva höll med om att medicinsk åldersbestämning är ett trubbigt och osäkert verktyg för att fastställa exakt ålder. En sådan inställning ger en indikation på att lagstiftarna uppfattar asylsystemet som en rationell och logisk helhet som kan hantera komplexa dilemman (Habermas, 1971/1980). Det är trots att lagstiftarna själva verkar bekräfta att åldersbestämning är en motsägelsefull praktik. Intrycket är att den rationalitet som eftersträvas är rent formalistisk.

Enligt Habermas (1971/1980) kan en formalistisk rationalitet göra det svårt att skapa transparens gällande hur policy utvecklas och bedöms. I förlängningen kan detta bli ett demokratiskt dilemma. De praktiska implikationerna av studien är att lagstiftare kan behöva utveckla sin förståelse för hur väl implementering och praktik kan uppfylla förväntningar på lagstiftarnivå.

Studie 2 identifierade också tre kluster av inställningar gentemot ensamkommande barn bland lagstiftare; idealistisk, relativistisk och flexibel. Den idealistiska inställningen betonade vård av alla barn. Den relativistiska verkade försöka kombinera vård med fostran och disciplin. Den flexibla inställningen föreföll söka barnets perspektiv. Sammantaget indikerade dock dessa fynd att lagstiftarna prioriterade familjeåterförening i andra länder än Sverige och att ansvar och skyldigheter låg någon annanstans än här i landet. På så sätt förefaller det som att ensamkommande barn inte ses som genuina rättighetsbärare utan betraktas genom en lins av moraliserande välfärdsideologi (jfr. Freeman, 2011; Montgomery, 2008).

Den tredje studien (Studie 3) syftade till att öka kunskapen om hur handläggare på Migrationsverket argumenterar kring trovärdighet när de konstruerar beslut i enlighet med gällande ramverk och rutiner. Ett helt kalenderårs beslut i asylärenden avseende ensamkommande barn begärdes ut och av dessa analyserades excerpt hämtade från 916 analyserade beslut. Trovärdighet som del av bevisföringen väger tungt i asylärenden, ibland till och med i större utsträckning än rent juridiska tolkningsfrågor (Noll, 2005). Utifrån systemets förutsättningar måste handläggare konstruera juridiskt legitima beslut som framstår som objektiva, även om ärendebedömningen innehåller subjektiva och normativa komponenter (Wikström & Johansson, 2013).

Tidigare forskning har konstaterat att barn i hög grad förstått som ”apolitiska” i mer utvecklade länder som Sverige. Motsatsvis kan ensamkommande som erkänts som politiska riskera att få sin status som barn ifrågasatt

(Crawley, 2011; Doná & Veale, 2011; Kallio & Häkli, 2013). Barn och ungdomar kan också komma att utsättas för de ideologiska mönster som positionerar asylsökande som kriminella eller ekonomiska migranter (Bryan & Denov, 2011; Giner, 2007). Professionellt verksamma kring barnet, såväl handläggare som offentliga biträden och tolkar kan uppfatta det som en utmaning att arbeta med ensamkommande barns ärenden (Enenajor, 2008; Keselman, 2009; Ottosson & Lundberg, 2013; Ottosson, Eastmond & Schierenbeck, 2013; Norström, Gustafsson & Fioretos, 2011).

Det primära fyndet visade att såväl beviljade beslut som avslagsbeslut innehåller samma tekniker för att ifrågasätta de ensamkommande barnens berättelser på olika sätt. Kunskapen om den egna situationen, informationskedjor och bakgrundshistoria utsätts för metodisk kritik. Berättelser om politisk aktivitet ifrågasattes genomgående och konstruerades som överdrivna eller spekulationer, vilket går i linje med tidigare forskning om barn som ”apolitiska” (jfr. Crawley, 2011).

Fynden indikerade också att handläggare verkar utgå från att ensamkommande barn kan berätta en konsekvent och detaljerad berättelse och att de berättelser som inte uppfyllde dessa krav ifrågasattes på ett sätt som, tillsammans med de andra teknikerna för att konstruera kritik, indikerar att det finns en misstänkliggörandekultur mot ensamkommande barn inom Migrationsverket (jfr. Jubany, 2011). Detta till följd av att det framstod som att berättelserna ifrågasattes så konsekvent att till och med humanitära aspekter förminskades (jfr. Fassin, 2012). Den här typen av argumentation och ifrågasättande av berättelser äger rum trots att lagstiftning och rutiner framhäver individuell bedömning i enskilda ärenden. Fynden från studie 3 indikerar dock att handläggarna använder sig av en begränsad repertoar av tekniker för att formulera beslut på ett sätt som gör att den individuella prövningen framstår som begränsad för ensamkommande barn.

Avslutande diskussion

Den här avhandlingen är den första empiriska studien om ensamkommande barn som också riktar uppmärksamheten mot de inbyggda selektionsprocesser som nödvändigtvis finns inom ramen för dagens nationalstater. Den fyller således en lucka i litteraturen. Avhandlingens fynd avseende hur ensamkommande barn blivit en biopolitisk flyktingkategori kan också säga något om systemet i sin helhet. De tre övergripande fynden presenteras nedan.

Att dra gränsen

Mötet mellan migrations- och barnpolitik förefaller vara komplext. Trots att lagstiftarna i studie 1 berättade att de hade ambitioner om bättre rättsäkerhet och en relativt öppen asylpolitik var deras erfarenhet att det var svårt och

konfliktfyllt att arbeta med migrationsrättsliga frågor. Den största svårigheten förefaller vara hur man ska dra gränsen för vem som ska inkluderas eller exkluderas inom ramen för den reglerade invandringen, även när det gäller barn (jfr. Foucault, 1976/2013; Johansson, 2005). Eftersom lagstiftare är ansvariga för att ge riktlinjer för politikens intentioner kan dessa motsättningar delvis förklara fortsatt missnöje och debatt kring migrationsrätten (Solan, 2005, 2010). Därtill visar studie 1 att finanspolitiska budgetfrågor och statens relation till kommunerna kan tendera att överskugga rent migrationspolitiska frågor som kan vara relevanta för rättens utveckling. På detta sätt kan alternativa politiska åtgärder underlåtas eller helt avvisas (Bacchi, 2012).

Tilltron till rätten som en möjlighet att lösa dilemman i asylpolitiken förefaller stark och migrationspolitiken har rört sig i en riktning där juridikens roll kan beskrivas som stärkt (jfr. Lundberg, 2009). Denna utveckling av det administrativa- och biopolitiska ”konceptet” ensamkommande barn måste därför kunna fyllas med ett innehåll som blir logiskt sett inifrån det juridiska systemet. Emellertid har studie 2 visat att detta koncept ofta är motstridigt och svårhanterligt för lagstiftare även om tyngdpunkten i lagstiftarnas beskrivningar av deras behov legat på att ensamkommande huvudsakligen ska förstås som utsatta och lidande psykologiskt (jfr. Fassin & Rechtmann, 2009; Fassin, 2012).

Ensamkommande barns ambivalens

Ensamkommande barn framstår som ett ambivalent koncept men den osäkerhet som finns inför denna kategori kan också användas som maktmedel i asylpolitiska diskussioner (jfr. Edelman, 1967, 1988). Såväl diskussionerna om apatiska barn som föregick lagreformen 2005 som 2015 års ”andrumspolitik” kan ses som exempel på detta. Trots att exakt kronologisk ålder är svårt och omöjligt att fastslå med exakthet utifrån medicinska bedömningar (Hjern et al., 2012) förefaller inte heller politikerna vilja avvisa åldersbedömningar som överflödiga (Studie 2). Istället är det de ensamkommande barnen själva som ska visa att de kan vara logiska i förhållande till det existerande systemet (Studie 1, studie 2, studie 3). Ett eventuellt ensidigt fokus på kronologisk ålder gör också att alternativa sätt att handlägga och bedriva politik stängs ute (Bacchi, 2012). Forskning har visat att ålder och mognad kan konstrueras på flera olika sätt och därmed skulle också de medicinska åldersbedömningarna kunna ifrågasättas (jfr. Stasiulus, 2002). Det förefaller dock som att de ensamkommande barnen får en dubbel bevisbörda genom att det inte bara är asylberättelsen som potentiellt ska öppna dörren till ett uppehållstillstånd utan också att kroppen kallas att vittna om såväl ålder som eventuella trauma (Fassin & Rechtmann, 2009; Fassin, 2012). Detta är en indikation på att det finns ett starkt asymmetriskt maktförhållande mellan den svenska staten och ensamkommande barn, vilket kan skapa svårigheter för dem att utveckla en personlig tillhörighet till landet (jfr. Wernesjö, 2014).

Trovärdighet och individuell prövning

Asylärenden har alltid innehållit ett visst mått av individuell prövning men det framstår som att övergången till en ny instans- och processordning 2006 lett till att den individuella prövningen betonats ännu mer (jfr. Wikrén & Sandesjö, 2014). Studie 1 visar att lagstiftarna önskade bättre objektivitet och individuell prövning även om flera av dem i efterhand var besvikna över vad de beskrev som systemets fortsatta slumpmässighet. Det verkar således finnas en spänning mellan att utveckla nya administrativa kategorier och samtidigt sträva efter att sätta den individuella prövningen främst. Den starka tilltron till asylsystemet som trots allt beskrivs av lagstiftarna själva ger också en indikation på att problem kan komma att förklaras som enskilda misstag av handläggare snarare än inneboende brister i ramverk och rutiner. Dessa misstag kan i sådana fall lösas genom överklagande (jfr. Douglas, 1986).

Studie 3 visar också att handläggarna använder en begränsad repertoar av tekniker för att ifrågasätta ensamkommande barns berättelser på ett sätt som potentiellt beskär möjligheten till en fullödig individuell prövning där det ensamkommande barnets unika erfarenheter hamnar i fokus. Detta gäller även om besluten i sig tillkommit på ett formellt rätt sätt och äger legitimitet i det existerande systemet (jfr. Bourdieu, 1987).

Praktiska implikationer

Även om denna avhandling huvudsakligen fokuserar på föreställningar och konstruktioner utan anspråk på att hitta en ”sann” kärna i beskrivningen av fenomenet ensamkommande barn, så kan dessa uppfattningar få materiella konsekvenser för dessa barn och unga. Detta är på grund av att de påverkas av det juridiska och administrativa systemets rationaliteter och logiker (jfr. Habermas, 1971/1980, 1979, 1996). Avhandlingens fynd kan dock bidra till vidare diskussioner om hur policyutveckling kan bedrivas när barn och unga söker asyl ensamma.

Studien behandlar bara den svenska kontexten men kan ändå ha betydelse för andra jurisdiktioner. Detta beror på att andra mer utvecklade stater har liknande dilemman när det gäller att dra gränser för nationalstatens inneboende selektionsprocess (cf. Foucault, 1976/2013). Även i andra mer utvecklade länder med anspråk på demokratiska styrelseskick måste också denna urvalsprocess framstå som logisk för att skapa legitimitet i det vidare samhället (jfr. Foucault, 1976/2013; Habermas, 1971/1980; 1979; 1996; Hirschl, 2006). Eftersom dessa länder också hanterar asylärenden på liknande sätt som Sverige så kan också trovärdighetsbedömningar få en framträdande roll i dessa nationella system.

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Appendix 1: Information letter and consent form (Swedish)

Informations- och samtyckesblankett till socialförsäkringsutskottets medlemmar

Jag heter Daniel Hedlund och är doktorand i barn- och ungdomsvetenskap vid Stockholms universitet. I min forskning vill jag studera barnperspektiv i myndighetsutövning när ensamkommande barn söker asyl. I den här studien vill jag utöka förståelsen för hur utlänningslagen konstruerades i förhållande till vad som skulle förstås som barnets bästa. Jag önskar förstå enskilda utskottsmedlemmars uppfattningar om ensamkommande barns förutsättningar. Den ska också utveckla förståelsen för ledamöternas föreställning om sin insats och hur utlänningslagen tillämpas.

För att kunna erhålla den kunskapen gör jag en intervjustudie och eftersom du var en av deltagarna i socialförsäkringsutskottet önskar jag få intervjua dig om dina synpunkter.

Deltagandet är frivilligt och kan när som helst avbrytas. Ingen deltagare kommer att känna igen sig i redovisning av resultaten. Anonymitet och konfidentialitet utlovas. Det innebär att uppgifter om partitillhörighet, individuella persondata såsom namn, professionell bakgrund, hemort och andra personrelaterade uppgifter tas bort redan vid bearbetning av intervjuerna.

Jag önskar få spela in intervjuerna på ljudbandspelare för att jag ska kunna koncentrera mig på att lyssna men också för att jag ska skriva ut det sagda efter intervjun. Utskrifterna är till för min bearbetning av samtliga intervjuer.

Ljudbanden kommer att förvaras i ett stöldsäkert skåp på institutionen där jag arbetar och de kommer inte att vara tillgängliga för någon obehörig. Det är endast jag och mina handledare, professor Ann-Christin Cederborg och professor Mauro Zamboni, som kommer att ta del av upptagningarna.

För att få möjlighet att genomföra studien ber jag dig ta ställning till om du samtycker till att bli intervjuad av mig. Om du samtycker ber jag dig att skriftligen underteckna samtyckesdelen längst ner i den här informationen.

Om du har några frågor kan du när som helst kontakta mig eller min handledare Ann-Christin Cederborg per email eller telefon.

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Genom att underteckna denna blankett intygar jag att:
-jag ger mitt aktiva samtycke till att bli intervjuad för forskningsprojektets räkning.
-jag har fått information om undersökningens syfte och är medveten om att deltagandet är frivilligt och att jag när som helst kan avbryta utan negativa följdverkningar för egen del.
-jag är medveten om att min identitet är skyddad och inte ska gå att identifiera i resultatpresentationen och att alla eventuella uppgifter om enskilda individer enbart kommer att nyttjas för det aktuella forskningsändamålet.

_____ _____

Ort och datum Underskrift

_____

Namnförtydligande

Appendix 2: Interview guide (Swedish)

Syfte
Att utöka förståelsen för hur lagstiftning konstrueras i förhållande till lagstiftarens intentioner och förutsättningar. Den ska också utveckla förståelsen för hur lagstiftaren värderar sin insats och bedömer tillämpningen av lagen.
1.1. Hur uppfattas lagstiftningsprocessen i konstruktionen av barnets bästa i utlänningslagen?
1.2. Vilket gehör fick den egna uppfattningen i förhållande till andras?
1.3. Hur uppfattas tillämpningen av lagen?

Kategori 1: Kontext och definitioner
Berätta för mig vad du tänker på när du tänker på utlänningslagstiftningen.
-Vad betyder principen om barnets bästa för dig?
-Hur förstår du barnets bästa i utlänningslagen?
-Vad innebär synnerligen ömmande omständigheter för dig?
-Hur tänker du kring begreppet individuell prövning?

Kategori 2: Erfarenhet av lagstiftningsarbetet med utlänningslagen
Berätta om dina erfarenheter av att arbeta med utformningen av utlänningslagen i Justitieutskottet.
-Vad tycker du att du bidrog med?
-Hur fördes resonemangen kring barnets bästa?
-Hur uppfattar du de andra deltagarnas synpunkter i förhållande till dina?

Kategori 3: Sju år senare
Berätta hur du uppfattar att utlänningslagen tillämpas för ensamkommande barn?
-Hur uppfattar du att utlänningslagen tar tillvara barnets bästa?
-Hur skulle du önska att barnets bästa togs tillvara?
-Hur uppfattar du att en individuell prövning av barnets bästa går till/görs?
-Vad skulle du vilja utveckla i ensamkommande asylsökande barns asylprocess?