

An object in need of protection but not a subject of rights?

A study on rights of children involuntarily placed in care in the Swedish welfare state

Jonna Rennerskog



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Abstract

The practice of locked coercive care of children occupies a unique position in the Swedish welfare state. It is one of the most intrusive interventions into private life the State can practise, and the only welfare intervention that involves the use of coercion: firstly, through the involuntary placement of a child in a locked institution, and secondly, through the use of coercive measures, such as placement in isolation cells, body searches and restrictions on the use of mobile phones or internet. It is justified on the grounds that it is an act of protection and that the state has the ability to improve the child's life, but is repeatedly criticised for exposing children to neglect, violations and violence.

This dissertation examines the translation of the UN Convention on the Rights of the Child (CRC) into coercive care legislation as a regulatory response to the above-mentioned issues. The turn to universal rights as a way to solve complex problems at a local level often results in unintended problem formulations and tensions. In this case, the translation of the CRC into national coercive care legislation actualises a tension between lawful use of coercion in order to ensure children a safe and secure care, and demands on respecting children as autonomous subjects of rights. This study specifically addresses how this tension is articulated and negotiated in the translation process.

Through an analysis of official documents, interviews with Members of Parliament and audit inspectors, the study highlights an overreliance in the CRC and the translation process as means to address issues of neglect, violations, and violence within locked coercive care. It raises awareness of how children's rights function as strategies of power, used to legitimise increased coercion, discipline and control. Further, it illustrates how children's individual rights are expected to regulate the welfare state's use of coercion, and discusses how this results in increased demands on holding children responsible for realising their right to a safe and secure care. This fragmentation of social responsibility is found to be related to how different logics of the Rechtsstaat, institutional inertia, an intensified law and order debate and processes of neoliberalisation are working in tandem, shaping how these children's rights are interpreted and realised. Consequently, this dissertation adds to the literature concerning the reasons for potential failures when translating universal children's rights into local contexts.

Keywords: *children's rights, coercive care, crime policy, neoliberalism, welfare state, rechtsstaat, regulation, UN Convention on the Rights of the Child.*

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Chapter I:

Introduction

The practice of locked coercive care of children occupies a unique position in the Swedish welfare state. It is the only social welfare intervention that involves the involuntary placement of a child in a locked institution and constitute one of the most intrusive interventions into private life the Swedish state can practise (Leviner and Lundström, 2017). The practice is justified on the grounds that it is an act of protection and that the State has the ability to improve the child's life (Mattsson, 2017). It is also a practice that is repeatedly criticised for exposing children to neglect, violations and violence (Governmental report, 2011; Ung inlåst, 2020; Barnrättsbyrån, 2021, 2022; Barnrättsbyrån and Childhood, 2023; Inspectorate, 2023). This dissertation examines the translation of the UN Convention on the Rights of the Child (hereafter 'Child Convention') into coercive care legislation as a regulatory response to these issues.

This introduction of rights as a way to solve complex problems at a local level is a part of a wider international trend and has been described by several scholars (Banakar, 2010; Leviner, 2018a; Smith, 2002). It is, however, a solution that often results in new tensions, and formulations of new problems (Gustafsson, 2018). In this particular case, the translation of the Child Convention actualises a tension between the Swedish state's use of coercion to ensure children safe and secure care, and the demands on respecting them as autonomous subjects of rights.

The group of children placed in locked coercive care is extremely heterogeneous, including children with substance abuse problems and children with criminal behaviour; some are placed as a result of them running away from previous placements, and others are girls who are placed in locked care to protect them from being sexually exploited or from harming themselves (Leviner and Lundström, 2017; Vogel, 2017). Some of these children are under the age of 15, the minimum age of criminal responsibility in Sweden, and have committed serious crimes (Governmental report, 2023). Others are unaccompanied refugees, often with severe mental health problems (Pettersson and Vogel, 2023). What they all have in common is that they are in an extremely vulnerable position, usually with a low socio-economic background and with experiences of mental health problems (Leviner and Lundström, 2017; Vogel, 2017; Pettersson and Vogel, 2023). In addition, they have behaved in a way that is said to deviate from the fundamental norms of the society (Governmental report, 2015), and through that behaviour, are found to be at risk of harming their own health and development and in urgent need of protection (Care of Young Persons Act).

A placement in locked coercive care is thus a protective intervention and a social right aimed at preventing the child from harming their health and development when all alternatives are deemed insufficient. In this way, the State replaces the parents as the primary caretaker to protect these children from harming their development, and in the long run, their futures. Unlike a penal sanction, this type of coercive care does not contain the aspect of societal protection (Lundström, 2017). The object of protection is the child alone. However, like the prison system, this act of protection includes the use of coercion: first, by the involuntary placement of a child in a locked institution, and second, by the use of different forms of coercive measures such as placement in isolation cells, body searches, restrictions of use of phones and internet and involuntary testing for drugs. These coercive measures involve a further infringement into children's private life and are legitimised by the need to ensure that children receive safe and secure care, and are perceived as an act of protection (Andersson, 2021; Care of Young Persons Act 1990:52).

In 2011, the government presented a report documenting the presence of neglect, violations and violence within the practice of coercive care of children during the 20th century, including the locked coercive care institutions (Governmental report, 2011). The report resulted in a public apology and economic compensation to those victimised (Governmental report, 2011). A subsequent regulatory response was the initiative to transform the law regulating the practice of coercive care in accordance with the Child Convention (Government, 2012). According to the government, the Swedish state holds a certain responsibility for children placed in its care, a responsibility which in some cases involves the use of coercion in order to ensure children their right to a safe and secure care (Government, 2012).

By emphasising children both as in need of safe and secure care, when necessary through lawful use of coercion, and by positioning them as subjects of rights, children are to be protected from harming themselves as well as from harm within the welfare system (Government, 2012). However, civil rights organisations and media have continued to report on cases of neglect of, and violations and violence against children placed in locked coercive care (Ung inlåst, 2020; Barnrättsbyrån, 2021, 2022; Barnrättsbyrån and Childhood, 2023; Swedish Radio, 2016, 2018, 2020, 2021, 2022; Swedish Public Television, 2021). These reports are met with the same response – the rights of children in locked coercive care must be strengthened.

The Swedish welfare system acknowledges that the State, in some cases, must intervene with the use of coercion to ensure children their right to safe and secure care (Government, 2012). At the same time, these children must be recognised as autonomous actors and given their individual rights, such as the right to be heard, to be given information, and to have their voices given due weight in decisions that concern their life (Government, 2012). As expressed in the governmental directives, “when society intervenes with coercive measures to protect children and youths, it is particularly important that the regulation governing these interventions are clear, consistent and consider individual rights”

(Government, 2012:8). This has resulted in an ambiguous regulation: It is an act of protection that is carried out against the will of the child though the use of coercion, which must, simultaneously, be exercised in consensus with the child, with respect to their integrity and human value.

Hence, by emphasising children both as in need of safe and secure care through the use of coercion and as autonomous subjects of rights, a tension arises between use of coercion and respecting children's autonomy (Government, 2012). The challenge arises when pursuits of safety and security through the use of coercion infringes on children's autonomy, or reversely, when their autonomy infringe on what the State pursues as necessary for ensuring children receive safe and secure care.

Aim and scope

The primary objective of this dissertation is to analyse how the tension, between safe and secure care through the lawful use of coercion and children's position as autonomous subjects of rights, is manifested in regulation of locked coercive care as the Child Convention is translated into Swedish law. This aim has been clarified in one overarching research question:

How is the tension between lawful use of coercion, and children as autonomous subjects of rights, articulated and negotiated in the process of translating the UN Convention on the Rights of the Child into national regulation of locked coercive care of children in Sweden?

The dissertation comprises three different articles which each analyse different aspects of how this tension between lawful use of coercion and respecting autonomy is articulated and negotiated in the regulation of locked coercive care. By understanding regulation as "any practice which has the intension or effect of controlling, monitoring or influencing the behaviour" (Lacey, 2004:147) of others or oneself, the three articles engage with the rights translation process from different angles of regulation.

Article *I* analyses the legislative process of the transformation of coercive care legislation, through the Care of Young Persons Act, in accordance with the Child Convention, which took place primarily between 2015 and 2018. Article *II* engages with the rights translation from the political perspective and focuses on how the tension between coercion and children as subjects of rights is manifested by members of parliament following the incorporation of the Child Convention in 2020. Article *III* focuses on enhanced auditing as a regulatory response to critique regarding misuse of lawful coercion of children in locked coercive care in 2020, and analyses how children's position as autonomous subjects of rights is used in the auditing process to ensure children receive safe and secure care.

Consequently, this dissertation is a criminological study of legal rights in action. Some have argued that criminology is defined by a reluctant relationship to law (Zedner, 2011); others speak of a fault line between criminology and the legal field on human rights, especially the legalisation of rights (Murphy and Whitty, 2013). However, in the first ‘Handbook of Criminology and Human Rights’, which was published in 2016, the editors argue that a convincing criminological engagement with human rights must consider the legal (Murphy and Whitty, 2016). At the same time, rights cannot be reduced to the legal sphere (Murphy and Whitty, 2013). A criminological study that acknowledges this involves an empirical engagement with legal rights, which includes an engagement with law as well as with the local political and social context within which universal legal rights are translated.

The set of legal rights in focus in this dissertation is the UN Convention on the Rights of the Child. Although children’s rights are a part of a broader human rights framework (e.g., Bobbio, 1996; Grover, 2007), the Child Convention has become its “ultimate definition” in the Western world (Quennerstedt, 2012:104). In Sweden, children’s rights and the Child Convention are used interchangeably. Consequently, I have chosen to focus solely on the translation of the Child Convention into national law; and when I refer to children’s rights, I refer to the rights specified in the Child Convention. While the Child Convention should be seen as a political document among many (c.f., Quennerstedt, 2012), it is *the* document of children’s rights that is currently translated into Swedish law. In this translation process, as articulated by Ann Quennerstedt (2012:104), so-called universal rights “...necessarily have to undergo a ‘cultural journey’ when they are put into practice in a certain society”. Hence, as with any legal and political issue, the translation of children’s rights is expected to take different directions and be interpreted, applied and realised in various ways depending on within which social and political context it is placed.

The social and political context in which the rights translation takes place is informed by a number of different but interrelated dimensions. First, the practice of coercive care is a social intervention aimed at protecting children from harming their own health and development. It is a social right which ensures children in need receive safe and secure care through the welfare state. Second, it is a practice with long historical roots, informed by pre-welfare state logics stemming from poor laws and the social-liberal state of the 1920s. As will become evident throughout the dissertation, the Child Convention is translated in a context marked by institutional inertia, where old values still linger in today’s regulation of locked coercive care. Third, although separated from the penal system, it is a practice regulating deviant and socially destructive behaviour. Sweden experienced in the mid-1980s a construction of youth crime as a societal problem, which, as will be further described below, has influenced, and continues to influence, the social and political context around the practice of coercive care. Fourth, it is a rights translation process that takes place in a neo-liberal era, which logics have an influence on how rights are interpreted.

An analysis of the tension between the State's use of coercion to ensure safe and secure care and that of the demands placed on respecting children's autonomy that take place in such a context described above, can contribute to an understanding of how and why the rights of children in locked coercive care are interpreted, applied and realised in different ways. As pointed out by Pernilla Leviner (2018a), it is well known from previous research and governmental investigations that practices of the Swedish state in many aspects do not comply with the Child Convention, but *why* this is the case is, however, rarely analysed. This study aims at contributing to such a discussion.

The structure of the dissertation

Having introduced the aim and scope of this dissertation, I move on, in Chapter II, to offer a description of the quite complex practice of coercive care of children in Sweden. The chapter aims at providing the reader with an understanding of what this practice is, how it is organised and how it is situated in the Swedish welfare system. Chapter III takes the long-term perspective of coercive care and engages with an historical overview, illustrating how logics rooted in the poor laws of post-Reformation Europe and ideals of the 1920s social-liberal state influence current regulation of coercive care. In that way, this dissertation is situated in a contextual understanding of the welfare state as a mode of government influenced by historical logics.

Chapter IV engages both with previous research on youth crime and official documents on coercive care. I discuss how the construction of youth crime as a societal problem in 1980s Sweden, and the following intensified debate on crime policy, have influenced the regulation of locked coercive care. Next, Chapter V serves as a brief introduction to neo-liberalisation, which in this study is viewed not as a distinct phenomenon, but as the processes of activities and logics that influence the rights translation in different ways. Having set the scene of the social and political context within which children's rights are translated, Chapter VI focuses on the Child Convention specifically. It offers a literature review on children's rights, with a specific focus on the translation of the Child Convention in a Swedish context. It sketches out how the emphasis on children as autonomous subjects of rights challenges the traditional view of children as objects in need of protection.

In Chapter VII, the theoretical framework, which draws on Isaiah Berlin's conceptualisation of positive and negative freedom, is presented. These two ideal types of freedom capture the main objective of this study: namely the tension between ensuring safe and secure care through the use of coercion, and respecting children's autonomy. They also provide a theoretical base for the three articles to draw on as they go on to examine different aspects of this 'fundamental' problem of the translation process. Chapter VIII sketches out methodological considerations and offers a detailed description of empirical material and analytical procedure, as well as a discussion on the dissertation's limitations. Chapter IX summarises the findings of the three articles, and Chapter X offers a concluding discussion

where general findings are presented and situated in a broader context. Lastly, a Swedish summary of the dissertation is found in Chapter XI.

Chapter II:

The practice of coercive care

The practice of locked coercive care of children involves the removal of a child from their family and where the State takes the role as the primary caretaker and places the child at a locked institution. Consequently, it is one of the most intrusive interventions into private life that the State may practise (Leviner and Lundström, 2017). Simultaneously, it is a practice of protection when other voluntary alternatives are deemed insufficient (Mattsson, 2017). This chapter provides the reader with a contextualisation of this practice, of how it is organised and administrated. Although the object of focus in this dissertation is *locked* coercive care, I will begin by addressing the practice of coercive care of children in general for the reader to gain an understanding of how this form of state intervention is situated in the contemporary Swedish welfare state. Thereafter follows a description of the regulation and organisation of locked coercive care. The purpose of this chapter is to offer a description of what the practice of coercive care of children is, how it is situated in the Swedish welfare system, and how related legislation on youth crime affects its orientation.

Coercive care of children is a part of the welfare system and constitutes a protective legislation aimed at providing children protection and good care (Mattsson, 2017). If we look for it in the State budget, it is to be found under the category of “health care, medical care and social care” (Governmental bill, 2020:7). Hence, it can be conceptualised as a social right. Simultaneously regulated in the Care of Young Persons Act, which constitutes exceptional legislation to the Social Service Act, it is a part of an administrative coercive apparatus. This allows for the coercive apprehension of a child if care and treatment cannot be offered on a voluntary basis.

There are two possible reasons for a child to be placed in coercive care: first, if children are found to be at risk of harming their health and development as a result of physical or mental abuse, exploitation, neglect or other circumstances in the home (Care of Young Persons Act §2). These types of coercive apprehensions are commonly referred to as the ‘environmental case’. Children coercively apprehended by the State as a result of such circumstances are not allowed to be placed at locked institutions; instead they are placed in foster care, family homes or at open care institutions.

The second type of coercive apprehension focuses on the behaviour of the child and is known as the ‘behavioural case’. It allows for a coercive apprehension if the child behaves in a way that exposes their health or development to severe harm (Care of Young Persons Act §3). This can be through criminal behaviour, abuse of addictive

substances, or what is referred to as ‘other socially destructive behaviour’. The last procedural requirement – other socially destructive behaviour – has been criticised for being vague and less legally secure (Mattsson, 2002; Schlytter, 1999). The underlying motive is, however, that society must be able to interfere in response to behaviours that are not necessarily criminal, but which deviate from the fundamental norms of the society (Governmental report, 2015). Examples mentioned in court practice are runaways, absence from school without allowances or accommodations from the school, domestic violence, being a victim of sexual abuse, and excessive computer gaming (Governmental report, 2015). Children apprehended according to the behavioural case can be placed within the open out-of-home care system or, if considered necessary for the protection of the child, in locked coercive care, which is the focus of this dissertation.

Although coercive apprehensions require court orders, these are processed by the administrative court and not the criminal court. Such court orders are applied for by municipal welfare boards and not public prosecutors, which would be the case had they been placed in criminal law. If approved, it is up to the municipal welfare board in each municipality to decide if a child should be placed in a family home, an open care institution or, if considered necessary, at a locked institution. The municipal welfare board may also decide on coercive apprehensions in acute situations, which must be processed by the administrative court within one week (Care of Young Persons Act, §7). In Sweden these boards consist of politically elected members (Höjer et al., 2017). This means that politically chosen laymen are making decisions in individual cases of coercive apprehension. Hence, the coercive apprehension of children and their placement in locked coercive care is a form of administrative incarceration. This ‘laymen system’ was previously practised by the other Nordic countries but has been completely or partly replaced with a system closer to the legal system, where legal practitioners are involved in the decision making process (Höjer et al., 2017). Opponents accuse the Swedish laymen system of being less legally secure compared to its Nordic neighbours, while its supporters refer to the importance of citizen transparency and democratic processes (Höjer et al., 2017).

The locked State-driven coercive care

As the focus of this dissertation is on how the tension between lawful use of coercion and respecting children’s autonomy is manifested in the regulation of locked coercive care, we shall now direct our focus towards this specific practice. Since 1993 locked coercive care has been operated by the public authority the National Board of Institutional Care (hereafter NBIC). Currently, the NBIC consists of a headquarter placed in Stockholm and 21 different institutions for children, with around 730 treatment places spread out around the country. Of these treatment places, more than 90 percent are ‘locked’. Each year around 1100 children are placed at these institutions, and the mean age is 16. There is no under-age limit for placing a child in this type of care, but the upper-age limit for a placement is 20 years old; however, the care may proceed up until the child (or youth) reaches the age of 21. A placement in locked care is re-evaluated every second month by the municipally welfare

board, but there is no time limit for how long a child may be placed in locked care, although the mean time for a placement in 2022 was around six months (NBIC, 2022a). The majority of the children are boys, but around one third are girls, who are usually placed at a younger age compared to boys (Vogel, 2017).

Regarding national or ethnic background of those placed in locked care, the National Board of Institutional Care does not offer any data; however, in 2020, 71 percent were born in Sweden and 62 percent had Swedish as their first language (NBIC, 2020). Research shows that around 40 percent of children placed at NBIC have a different ethnicity to Swedish (Vogel, 2012). There have been indications that unaccompanied refugee children have been placed by NBIC on weaker grounds compare to children growing up in Sweden (Eriksson et al., 2021; Kauntiz and Jakobsson, 2014, Pettersson and Vogel, 2023).

It is evident, as articulated by Tommy Lundström (2017:55), that the grounds for placement in coercive care “leave space for interpretations and that the actual enforcement (of law) is determined in a complex interplay between societal morality, scientific knowledge and the rule of law”. Although this type of social right does not distinguish between citizen and non-citizen, between poor or rich, it is well known that the coercive care apparatus mainly affects families with a low socio-economic background, single mothers and families with a foreign background (Lundström, 2017; Lundström and Sallnäs, 2003). In that way, it continues to be a regulation of ‘the poor’ and ‘the other’ (Lundström, 2017; Sunesson, 1990).

What distinguishes the NBIC from other operators of coercive care is that the authority has the legal mandate to practise locked care. It is often described as founded upon a logic of care and treatment combined with punitive and repressive functions inspired by the penal system (Enell et al., 2018; Kaldal and Tärnfalk, 2017). The locked institutions are often located in the countryside, surrounded by high fences with barbed wire and windows made of bullet-proof glass (Enell et al., 2018). More recently, in 2020, the government directed the NBIC to classify their 21 institutions into different security levels, similarly to the prison system (Government, 2020). Apart from holding children in locked care, staff have, if considered necessary for the safety of the child or others, the legal mandate to use different types of coercive measures such as drug tests, body and room searches, restricting electronic communication, and placement in isolation cells. Enell and colleagues (2018) point out how it is a practice understood as a ‘last resort’, which also legitimises its repressive tools.

Since the beginning of the 1990s Sweden’s use of locked coercive care has increased. The number of locked treatment places has gone from 140 in 1990 to around 730 in 2023 (Governmental bill, 1998; NBIC, 2023). It is a development that makes Sweden’s use of this type of practice stand out in comparison with its Nordic neighbours (Enell et al., 2022). For example, in 2019 Denmark had a total number of 145 locked places available for this type of care, while Norway, which does not have locked institutions for children,

had 140 places for children in the open care system, but where the staff have the legal authority to use coercive measures (Enell et al., 2022). Finland has a comparable number of treatment places to Sweden (300) given the country's population, although their system is similar to Norway, with an open care system where staff can use coercive measures in certain cases. Sweden's use of locked coercive care as a welfare intervention stand out also in relation to an international context, where similar practices are usually categorised as youth prisons (Biszczanik and Gruber, 2021)

The underlying assumption when a child is coercively apprehended is that the State can change the child's situation and position for the better (Mattsson, 2017). What legitimates such an act is that these practices "hold a certain quality and create conditions for a better existence" (Mattsson, 2017:118). According to the NBIC, the majority of children express at the time of their discharge that they are somewhat satisfied or satisfied with the treatment and that they experience their time at the coercive care settings as safe (NBIC, 2020). There are, however, continuous reports that bear witness to the exact opposite.

In a Swedish context the most striking evidence of harmful effects of coercive care is found in the governmental investigation on neglect of, and violations and violence against children placed in coercive care during the 20th century (up until the late 1990s, when NBIC was operating locked coercive care). As described in Chapter I, the investigation resulted in a governmental report presented in 2011 which concluded that a large number of children were continuing to be, and had been, exposed to systematic neglect, violations and violence (Governmental report, 2011). This was found to be a result of insufficient and weak supervision and auditing, rather than insufficient legislation (Governmental report, 2011). Apart from demanding several regulatory changes so that future generations of children placed in coercive care would not experience the same neglect, violations and violence, the report also demanded a public apology from the State to those victimised. Ultimately, the State was found liable to pay damages to those exposed (Governmental report, 2011).

This governmental report also resulted in the initiative to transform the coercive care legislation in accordance with the Child Convention (Government, 2012). Unfortunately, recent reports from civil rights organisations show that this was not the end of harm of children placed in coercive care (Barnrättsbyrån, 2021, 2022; Barnrättsbyrån and Childhood, 2023). Additionally, the Ombudsman of Law (2018, 2022, 2023) has repeatedly directed criticism towards NBIC for unlawful use of physical restraint, and most recently for failing to meet their legal obligation to immediately offer children a treatment place. A part of this problem is that social services are failing at finding open treatment places for children that are ready to be discharged from NBIC (Ombudsman of Law, 2023).

A recent report from the audit unit, the Health and Social Care Inspectorate (2023), illustrates how NBIC fails to meet the complex needs of the children, especially girls, how the use of coercive measures are used in an unlawful way, and how girls are

placed in isolation cells more often than boys. The report further illustrates how girls feel less safe living at NBIC compared with boys and that one fourth of the girls have experienced sexual abuse and violence by staff. In their operational plan for 2022 to 2024, the NBIC identifies the inability to come to terms with repeated misconduct as a risk (NBIC, 2022). Further, the Swedish Agency for Public Management (2020) reported that NBIC has difficulties offering sufficient care to all children, especially to those with severe psychological issues, neuropsychiatric disabilities, severe criminality, and gang-related criminality. And more recently, it reported that NBIC, apart from having to come to terms with severe cases of neglect, violations and violence, must strengthen its leadership and management and increase staff competence (Swedish Agency for Public Management, 2022).

Studies also show that children often perceive a placement in coercive care as a punishment (Vogel, 2017; Stenström and Pettersson, 2021) and how an increased focus on physical security counteracts staff's ability to create a care environment and trustful relationships between staff and children (Enell & Wilińska, 2021; Nolbeck, 2022; Nolbeck et al., 2020; Nolbeck et al., 2023; Vogel, 2020). In addition, the expanded use of this practice is accompanied by a vast number of studies and reports on limited or no positive treatment outcomes (Lundström et al., 2012; Leviner and Lundberg, 2017; Vinnerljung and Andreassen, 2015). Other studies show how these institutions have difficulties treating girls and children with psychiatric disorders within coercive care, the latter of which currently constitutes 71 percent of the population (Vogel, 2017, 2020; NBIC, 2019). Additionally, longitudinal studies show that many children are re-admitted or reoffend after being discharged from locked coercive care (Henriksen, 2021; Pettersson, 2017; Vogel, 2012). These are findings which are supported in an international context (Gevers, 2021; Gutterstwijk et al., 2022; Strijbosch et al. 2015).

NBIC and the practice of closed custody

Apart from operating locked coercive care of children, the NBIC is also responsible for executing the penal sanction 'closed custody'. Closed custody was introduced in 1999, and aimed to keep children aged 15–17 who had committed serious crimes out of the penal system and within the welfare system (Pettersson, 2017a,b). The sanction was introduced partly as a result of the Child Convention, which states that placement of children in prison must be avoided as far as possible (Pettersson, 2017b). Consequently, closed custody is executed at the same locked institutions, and sometimes at the same units where children are placed as a result of coercive apprehensions following the Care of Young Persons Act.

The introduction of closed custody at NBIC meant that the public authority had to adjust to meet the demands of executing a penal sanction (Pettersson, 2017c). This has resulted in an increased focus on security provision, which has also affected children placed in locked coercive care (Nolbeck, 2022). As of 2022, the NBIC has, however, decided to keep children in closed custody separated from children in coercive care (NBIC,

2022). While the focus of this dissertation is on the rights of children coercively apprehended and placed at NBIC by the social services, and not on those who are there as a result of penal sanction, this means that the two legislations are closely entangled. In addition, one third of the children placed in closed custody have previously been placed in locked coercive care at NBIC (Pettersson, 2017c).

These two practices, locked coercive care and closed custody, thus both serve the function of keeping children with criminal or socially destructive behaviour out of the penal system. There is, however, one (for this dissertation) important function that differentiates them: namely the aim of societal protection. While coercive apprehensions following the Care of Young Persons Act do not include an aim of societal protection (Lundström, 2017), closed custody does, as the practice constitutes a penal sanction and not a welfare intervention. Consequently, an increased focus on physical security is to be expected around the practice of closed custody. However, as these two different interventions and sanctions are operated by the same authority, a certain spillover effect may be expected, especially in the light of the intensified law and order debate which the country has experienced (Tham, 2022).¹ Such a spillover effect was found in Article II, with discussions on how children absconding closed custody affects the physical security in terms of increased perimeter protection, including for coercively apprehended children, and suggestions on moving children placed in locked coercive care into the penal system. Hence, although this dissertation focuses on coercive care, the reader should bear in mind that the practice of closed custody exists and is operated by the same public authority.

¹ This development is further discussed in chapter IV.

Chapter III:

Coercive care – a practice with long historical roots

The tension between ensuring children protection through coercive state interventions and respecting their autonomy reflects a classic conflict about how to understand the Swedish welfare state. On the one hand, the Swedish welfare state is traditionally associated with social protection, a generous social insurance system described in terms of universalism and solidarity, and within criminology, a humane penal system (Esping Andersen, 1990; Pratt, 2008; Åmark, 2005). On the other hand, it has been criticised for failing to recognise individual rights (Berggren and Trägårdh, 2007; Barker, 2018). In the text 'In Search of the Swedish Model', Urban Lundberg and Mattias Tydén (2010) direct a critique towards these two understandings for failing to explain contradictions within the welfare state. Instead, they suggest a third option, which situates the welfare state within a contextual approach which reaches beyond these two understandings (Lundberg and Tydén, 2010). This contextual understanding of the Swedish welfare state does not consist of a coherent line of argument, instead, it comprehends a range of alternative ways of understanding its development in different time and place.

Drawing on this third approach, I will in this chapter recognise how the practice of coercive care, being a welfare intervention, is characterised by an institutional inertia, dependent on its historical heritage (Moss, 1975; Sallnäs, 2000). By taking a long-term perspective on the practice of coercive care of children in Sweden, I will direct attention to how repressive logics that influence current regulation of coercive care are a residual effect of both poor laws of post-Reformation Europe and the social engineering of the liberal-social State of the 1920s. These are logics that still linger within the Swedish welfare state, understood *as a mode of government*, independent of parliamentary composition.

As noted in Chapter II, the practice of coercive care of children can be seen as a regulation of the poor and the 'other' (Lundström, 2017; Sunesson, 1990). It is a practice with roots in what has become known as the poor laws – a regulation of poverty that took shape in mid-14th-century England (Levin, 2008). These legislations came to influence regulation of poverty across post-Reformation Europe and brought about a new moral understanding of the poor as in need of both support and discipline (Levin, 2008). Before the Reformation, poverty was not perceived as a moral flaw and to provide for the poor was considered a duty both of the Church and the general public (Levin, 2008). The Reformation brought about a shift where morality was placed at the centre, accompanied by evaluations of worthiness. Those deemed unworthy were seen as being responsible for their own poverty (Levin, 2008). Poverty as a moral problem was further established during the early 19th century as the so-called social question evolved, entangled with liberal ideas

of knowledge and reason (Hirdman, 1989). To the problems of poverty and otherness, such as self-control, hygiene, unwillingness to work, a solution was found in the construction of poorhouses, work-institutions, and for children, different types of protective homes (Kumlien, 2008; Levin, 2008).

The first child welfare act was introduced in 1902 and targeted children in need of support and discipline (Enell et al., 2018; Kumlien, 2008; Lundström, 1993). The underlying idea was to foster and discipline individuals, including children, to become productive members of their society (Kaldal and Tärnfalk, 2017; Kumlien, 2008). As Mats Kumlien (2008) explains, this logic can be traced back to the poor laws of the 17th century, which gave foster parents the right to use the child as a worker until they had repaid the foster family for food, living and upbringing. What was ‘new’ with the 1902 child act was that interventions should be carried out, not only towards already ‘vicious’ children, but towards those at risk of becoming a threat to decent society (Lundström, 1993; Kumlien, 2008). It was in the State’s interest to intervene before the children became a burden for the society and its order. The primary concern of the time was the children of the working class (Bjurman and Henschen, 1990; Lundström, 1993). Industrial work was considered a risk, as parents were unable to care for their children, who in turn could not resist the temptations of the cities (Kumlien, 2008; Lundström, 1993). It was then up to society to provide the parental authority that such families could not.

Generally, it was the protection of society and social order that was of primary interest, not the protection of the children themselves (Stang Dahl, 1978). As suggested by Sofia Enell et al., (2018), the State’s concern for the working class children can be said to have created a system that included children *at risk* of developing criminal behaviour and which was separate from the penal system.

The ‘birth’ of today’s child welfare system is, however, commonly dated to 1924, when new child welfare legislation was introduced. At this point in time the critique against the 1902 legislation was massive. Partly, this had to do with the growing success of the workers’ movement – it was no longer possible to frame children of the working class as the problem, as such – and partly, that the interest in ‘the social question’ had increased alongside social-liberal ideas of scientific knowledge and reason (Hirdman, 1989; Lundström, 1993). Lundström (1993) explains how the new law of 1924 brought about two changes that have, since then, oriented the practice of coercive care. The first change was the expansion of the law to include the protection of children exposed to maltreatment and abuse by their parents. This category of children is, as described in the previous chapter, commonly referred to as the environmental case.

The second change was the introduction of municipal child committees. The constitution of these committees mirrored the ideology of the general societal development, which was based on morality and normativity as well as on knowledge and reason (Hirdman, 1998; Lundström 1993): There was the priest with their authority, morality and

ethics; there was the teacher as an expert on upbringing; there was the doctor that could control the health of the children; and the woman with her ‘natural’ maternal instincts.

The perceptions of knowledge and reason were tied to the ideas of the Enlightenment which permeated the values of social engineering in early 20th-century Sweden (Hirdman, 1989). These values were based on the belief that it was possible to educate individuals to reach a higher level of reason and to construct a society with the highest possible degree of happiness combined with economic efficiency. On the one hand, this meant a State that encouraged its people to educate themselves. As expressed by Yvonne Hirdman (1989:228) “it was a history of self-education: that you, by ‘yourself’, together with equals, gain an education, knowledge, a new modern ‘sense’”. Being poor was considered a great shame – not only for the individual – and the solution was found in self-education and knowledge together with social rights to increase the ‘human value’ and economic efficiency. The idea during the early 20th century was that every individual has a function in society in terms of (potential) work, hence, it would be irrational for the State not to care for its people. The State thus had a duty to ensure its members’ protection from social risks, a duty that later developed into the social insurance system (Junestav, 2008).

On the other hand, this logic meant that someone – the State – knew what was right (Hirdman, 1989; Smith and Ugelvik, 2017). In this way, the State and its experts represented the higher reason. This is normally where the constitutional discourse refers to repressive interventions as initiated by the social democratic welfare state (c.f., Barker, 2018). There is, however, an alternative way of understanding these repressive interventions, which recognise them as based on a liberal logic of governing through knowledge and reason that came to be administrated by the welfare state (as a mode of government and not a social democratic ideal). As Mats Börjesson et al., (2005) explains, the liberal ideology of knowledge and reason rejects paternalistic interventions that are deemed too intrusive, but acknowledges that individuals who, for different reasons put their development at risk, must be cared for or controlled. Such an intervention must, however, be rationalised, and legitimised by framing interventions as being carried out in the best interest of the individual. The State’s relationship to the child can, from this perspective, be understood in terms of a ‘rational’ nature. Consequently, there was no problematic power relation to speak of. For those children who did not willingly engage in desirable behaviour, the State had no option but to intervene and, if necessary, forcefully guide and foster the irrational individual into reason and into accepting societal norms (Hirdman, 1989). It was, however, not only the current societal order that was at stake, but also the one of the future society. Hirdman (1989) explains how the care and fostering of children thus became synonymous with the care and fostering of the future society (Hirdman, 1989).

The number of institutions and treatment places peaked in the 1940s but declined after the Second World War. This deinstitutionalisation during the post-war period has been described as an effect of an expansive social welfare with decreasing class differences, rising equality and a socio-economic standard that was accompanied by a

general critique towards residential care (Meagher et al., 2016). The responsibility and operation of different types of institutional care were initially taken on by actors within the philanthropic movement and other non-profit organisations during the 19th century. However, the State became increasingly involved and was, from the mid-1940s, responsible for institutional care (Enell et al., 2018). The legislation remained more or less the same until 1960, when a new child welfare act came into force. The most important change was that the State was given an increased mandate to intervene at an earlier stage and that children over the age of 15 had the right to remark upon the treatment (Governmental report, 2011). With time, the public owning of coercive care increased, and in the late 1970s almost all institutional care was under public provision (Meagher et al., 2016:809). However, with the end of the 1970s came the end of State dominance on the field. Following the new Social Service Act of 1982, the deregulation and growth of the for-profit market began. We shall, however, keep our focus on the public sphere and locked coercive care as we turn to questions of voluntariness and critique towards the use of repressive measures within the social welfare system.

The Social Service Act of 1982 marked a change within the Swedish welfare system in general and within coercive care in particular. The new act was adopted after 15 years of investigative work, and it was primarily the question of repression and coercion that constituted the cause for its delay (Edman, 2004). The ambition was that the new law was to be based on individual's 'self-determination' and 'integrity', which were somewhat difficult to combine with coercion (Edman, 2004). However, the use of coercion in some cases was considered necessary, which resulted in a social service act based on voluntariness, with additional 'exceptional' coercive legislation, such as the Care of Young Persons Act (Edman, 2004). As is described by Johan Edman (2004), this process was characterised by a critical view of the society, where causes of problematic behaviour were considered to be found in society, rather than with the individual. Simultaneously, the more individually oriented treatment ideology began to gain ground and the new Social Service Act (1982) can be seen as a legislation aimed at caring for both the individual as well as the society.

The critical perspective is reflected in changes in the legislation of coercive care of children. While being based on coercion rather than voluntariness, two significant changes were made. First, the legislative aim of societal protection was abolished, and children were only to be coercively apprehended with regard to their own behaviour and not for societal protection (Lundström, 2017). Second, through a change of authority, the practice went from being a matter of the State to being operated by municipalities and county councils. This change of authority was a way to emphasise social service's responsibility for children and youths who had been involved in criminal activities and drug misuse. It was a way to mark that youths with socially destructive behaviour were not to be handled by the criminal justice system, for which the State was responsible. By placing the responsibility at municipality level, the intention was to blur the lines between open care

and closed care institutions, and further, to contribute to a decreasing need for locked institutional care (Governmental bill, 1990:12). As was described in Chapter II, the reality would, however, turn out to be quite the opposite with an increased use of locked treatment places.

Traces of poor laws and the liberal-social State in current coercive care regulation

It has now been almost 100 years since the ‘birth’ of the modern child welfare system in 1924 (c.f., Lundström, 1993), and Sweden, including its regulation of coercive care, has obviously gone through a significant change. It is, however, still possible to see traces of the moralising logics of the poor laws and the 1920s liberal-social State’s emphasis on knowledge and rationality within today’s regulation. This is not surprising, several scholars have described how historical sediments are found in almost all social institutions and organisations (Moss, 1975; Sallnäs, 2000; Scott, 1998). What one observes at a certain point in time is, according to Scott (1998), a cross-section of elements that are remnants of various earlier historical processes. Others have pointed at how this type of institutional inertia is related to the buildings within which institutional care is practised, meaning that the buildings often come first and are then filled with a particular practice, which will be shaped by this specific architecture (Qvarsell, 1996). Although the architecture of the building goes far beyond the focus of this study, it is worth noting that some of the buildings where locked coercive care is facilitated have been used for a similar purpose since the 19th century.

One example of such institutional inertia is found in the preface to a recent report on sexual abuse of girls placed in locked care where Anders Nyman² emphasises how an outdated view of children that used to permeate law, regulation and routine a hundred years ago, is present in today’s practice of coercive care (Barnrättsbyårn and Childhood, 2023). Similar to what was described in the governmental report on neglect of, and violations and violence against children in coercive care from 2011, this report expresses how children are perceived as co-constructors of the violence and abuse they face, and further, as unreliable when they tell their stories (Barnrättsbyårn and Childhood, 2023).

Another example is illustrated in an examination of court orders carried out by Swedish Radio (2023) which found how references to vagrancy are used to motivate coercive appropriations of girls perceived to have a high-risk sexual behaviour, for example, by associating with older guys (Swedish Radio, 2023). This type of moral evaluation is, however, not unique for coercive care of children or Sweden. As pointed out by Claes Levin (2008), drawing on the work of Yeheskel Hasenfeld (2010), moral evaluations and questions of deservingness have pervaded the administration of welfare all around Europe since the first poor laws.

² The inquiry secretary of the governmental investigation on abuse and neglect of children in coercive care from 2011 (Government, 2011).

The tendency of moral evaluation is also found within the framework of this dissertation. For instance, I found that the rights of children placed in locked care were not discussed to the same extent as children placed in the open-care system, particularly children placed in foster care. The reason given was, as one member of parliament put it, “you don’t feel sorry for them in the same way” (Article *II*, p. 9). Another member of parliament expressed how children in locked care tend to be perceived more as criminals than as children. This may not be unexpected, given the above-described history of coercive care (and its relation to the intensified law and order debate which is described in the following chapter). However, this way of holding children responsible for being placed in locked care has consequences for the process of translating their rights into law.

In Article *II*, the rights of children in locked care were found to be seen as conditional on physical security, such as an increased perimeter protection, which also means a further restriction of personal integrity. Additional findings are continuous references to the protection of not only the current but also future society. The framing of this group of children as untrustworthy and irrational are, however, most apparent in Article *III*, which investigates the role of children’s participation in the auditing process. While all inspectors emphasised the importance of listening to children’s experiences in the auditing process, a number of inspectors described how children in locked care often behaved rudely and complained about irrational things (Article *III*). Among these inspectors, there was a tendency to ‘check’ the children’s stories with staff’s opinion of what had ‘actually’ happened. In order for children to be taken seriously in the auditing process, certain demands were found. For example, children were expected to behave rationally and to give trustworthy, coherent stories, although not in a way that raised suspicions of an orchestrated complot. While such demands are partly an effect of the inspectors attempts to build a strong case against the National Board of Institutional Care, the perception of the children in locked care as irrational and untrustworthy illustrates how repressive logics belonging to the past influence today’s regulation.

Chapter IV:

Youth violence as a ‘societal problem’ and its influence on coercive care

Despite the fact that locked coercive care falls under the responsibility of social services and targets children who may not necessarily have committed crimes, its development and organisation are closely linked to society’s perception of youth delinquency. This chapter aims to shed light on this connection.

The summer of 1986, a ‘tearaway’ crisis and a reformation of coercive care

The summer of 1986 has been identified as the point in time when youth violence was constructed as a social problem (Estrada, 1999; Pollack, 2001). That youths committed crimes was obviously not a new phenomenon, neither did the crime rate increase or the crimes committed become more violent (Estrada, 1999, 2022). However, for some reason, youth crime, and especially violent crimes, gained enormous attention from the media, which offered a picture of a new societal problem that created insecurity as well as engagement. These youths were referred to as ‘tearaways’ – a small group of criminally active youths in the Stockholm area (Estrada, 1999).³ It was a problem that political parties had to react to. An anti-violence campaign was initiated by the prime minister, the regulation of assault was expanded (Estrada, 1999), and the locked coercive care of children was nationalised.

Felipe Estrada (1999) discusses this process as a form of enforcement wave, referring to how public attention leads to demands on societal reactions. While increased political focus on crime as a social problem could lead to an increased focus on underlying causes of crime, research shows how this type of public attention towards crime is often capitalised on by right-wing parties, commonly by suggesting harder reactions towards crime (c.f., Mathiesen 1990; Tham, 1995). Another effect of a so-called enforcement wave is a widening of what is considered problematic behaviour; hence, a change in the social evaluation of an act, and how it should be responded to (Estrada, 1999). This time would be no different.

Following the summer of 1986, several different reactions towards youth violence were proposed. Of specific interest for this dissertation is a motion from the

³ A tearaway is, according to the Cambridge Dictionary, “a young person, usually male, who behaves in an uncontrolled way and is often causing trouble”. In Swedish, *värsting*.

Conservative Party suggesting a change of authority that covers the coercive care of children, from municipalities and county councils back to the State (Conservative party, 1988). As described in the previous chapter, the organisation of coercive care of children was decentralised in 1982 and placed at the municipal and county council level. The underlying idea was to mark that children and youths with socially destructive behaviour were to be handled by social services (situated at municipality level) and not by the penal system (situated at the State level). The idea was, further, that this would lead to a decrease in treatment places. However, following the events of 1986, increased demands on coercive care were made, both regarding the number of places and the ability to use coercive measures.

According to the Conservative Party (1988), the organisation of coercive care was flawed. It was said to fail at providing children and youths safe and secure care, and a return to state authority as well as increased use of locked care for a longer period of time was presented as the only possible solution. During the following years (1988–1991) the practice and function of coercive care of children with problematic behaviour was to be discussed and debated in a vast number of governmental inquiries, governmental bills, committee reports, motions and reports from other significant authorities. The great number of political documents indicates that the question of coercive care was a heated topic which was driven by three main arguments: first, that children were refused placement because they were considered too difficult; second, they were discharged from coercive care because they were considered ‘untreatable’; and third, as a result of being discharged, they were sent to prison instead of being treated within the welfare system. This was considered to be an unacceptable situation.

As previously noted, the idea behind the previous change of authority from the State to municipalities and county councils was that the practice of locked coercive care of children would decrease (Governmental bill, 1990). However, during the late 1980s and beginning of 1990 the increased focus on youth violence and youth’s deviant behaviour led to a striking need for more treatment places, and especially closed treatment places. An investigation made by the Committee on Health and Welfare (1990) showed that around 100–150 youths were refused placement during 1988 due to a lack of places or a lack of staff. Of these, around 40 youths were refused a place as they were considered too difficult to treat (these would be defined as ‘tearaways’), while the majority were refused a place simply due to lack of treatment places. The situation was similar in March 1990, when only 40 out of 154 children and youths (of which 116 were boys and 38 girls) were offered a treatment place (Governmental bill, 1990). The coercive care was left in a situation in which it lacked treatment places and where children and youths were discharged because they were considered too difficult. Consequently, the political debate was entangled in a complex net of treatment, control and repression. The conflicting nature of coercive care was articulated by the Committee on Social Health and Welfare (1990:34) as it evaluated the situation:

Youths with often severe social problems and in need of qualified care do not...in many cases, receive any treatment or an unsatisfied treatment. Additionally, the necessary societal reaction is lacking when a young individual commits a crime or engage in drug misuse.

A reading of political motions and other official documents from this period up until 1993, when the authority of coercive care was again transferred to the State, reveals a process closely connected to the tearaways described above. This group was described by the Liberal Party (1990) as a “serious problem” towards which “the society had to react”. According to the Conservative Party (1989), the tearaways had been so visible in the public debate that there was a need for the government to react, independently of whether juvenile crime had increased or simply become more visible. The Care of Young Persons Act was considered to be “one of many tools to counteract and fight violence and destructivity” (Conservative Party, 1989:1).

The Social Democrats, which was the political party in power at the time, went from opposing a change to state authority to adopting a low profile on the matter (c.f., Social Democrats, 1991). Consequently, the political opposition (consisting of the Conservatives, the Liberals, the Centre Party and the Christian Democrats), with the help of the media, succeeded in creating a political debate that would focus solely on this small groups of youths in the Stockholm area. This group of youths was used as the main argument to push coercive care into state authority and led to the founding of the National Board of Institutional Care in 1993, which was soon to be named by the media as the “tearaway authority”, *vårstingverket* (c.f., Dagens Nyheter, 1992).

Although all political parties agreed that children with socially destructive behaviour should not be wrapped up in the penal system, there was an explicit emphasis on societal protection – an aim that, as noted above, was (and still is) formally abolished. A report from the Commission of Violence in 1990, which came to play a central part in this process, highlighted the ‘protective aspect’, claiming that “the protection of the citizens must be placed in the forefront” (1990:231). The youths were, in the Commission of Violence report, framed as “criminals for life” and whose behaviour “constitute dangerous attacks on fundamental societal values” (1990:232). According to the Commission of Violence, the phenomenon of youths discharged as a result of being too difficult to treat leads to “a loss of trust in the legal system” (1990:232). It was “first and foremost a question of citizens security to life and property and not at least their faith in the society’s will to cherish the rule of law”, and this can be seen in later reports (1990:233). The Commission of Violence further argued that, despite the Care of Young Persons Act being a protective legislation and a care legislation, the motive is also to protect society (1990:234–235). This dimension of state protection was also emphasised in a governmental report (1992:77) which stated that “people are afraid of these youths”. Hence, the politicians echo the picture laid out by the media during this time, portraying these youths as a small but ruthless group that society had to be protected from (Estrada, 1999).

This is a debate that must be viewed partly in the light of increased criticism towards the welfare state and the view of the offender as a victim of social circumstances, and partly in the light of the election campaign of 1991 (Tham, 1995, 2022). The election campaign of 1991 has been described as the country's first real 'law and order' election, and resulted in victory for the right-wing parties. According to Henrik Tham (2022), The Social Democrats lacked a strategy to handle these questions and for that reason avoided conflicts with the opposition. This debate, and the founding of NBIC could be seen as an initial step towards a possible blurring of the fundamental 'division of labour' between child welfare and criminal justice, as expressed by Tapio Lappi-Seppälä (2018).

Current trends and developments

The construction of youth violence as a social problem and the founding of NBIC must be situated in a wider trend of an intensified law and order debate. While the Scandinavian countries are commonly described as having a milder penal culture in comparison with many other countries (Pratt, 2008), Sweden, as well as other Western countries, have experienced a penal expansion since the 1960s (Andersson and Nilsson, 2017; Pollack, 2001; Tham, 2022).

A key aspect of this development is the one of safety and security (Hermansson, 2019). In line with the international preoccupation with order and security, the law and order debate in Sweden and its Scandinavian neighbours has been centralised around defining and responding to different types of risks: risky behaviour, risky individuals and risky groups (Bauman, 2000; Douglas, 1992; Hope and Sparks, 2000; Hermansson, 2019). Scholars have illustrated a development of expansive migration controls, pre-trial detentions and intrusive interventions towards outsiders and those perceived as 'others', including drug users (Aas, 2014; Barker, 2017, 2018; Barker and Smith, 2021; Crewe et al., 2022; Reiter et al., 2018; Shamma, 2016; Smith and Ugelvik, 2017; Todd-Kvam, 2019). It is a development that has been accompanied by increased emphasis on the *Rechtsstaat* (sometimes translated as rule of law) (Hörnqvist, 2021).

The *Rechtsstaat's* engagement with law has a dual nature. On the one hand, it is founded upon the idea that law can control (State) power (Costa, 2007; Zolo, 2007). On the other hand, law is also believed to be able to control the abuse of power by an individual actor or organisations that do not comply with norms set up by society. Consequently, an increasing number of behaviours are regulated by law. It is a project closely tied to ideas of enlightenment, as expressed by Hörnqvist (2021:47): "one might still wish to impose pain, yet the underlying objective had to be derived from reason and involve a greater good". In the Swedish context, the greater good is often conceptualised as *trygghet*, a term which overlaps with both safety and security, but which is described as more emotionally loaded (Hermansson, 2018). The term is related to a sense of stability, predictability and trust (Eriksen, 2006; Hermansson, 2018; Lunggren, 2015). As explained by Klara Hermansson

(2018), the term can relate to a subjective feeling, but also a perception of low risk of victimisation.

There are particularly three categories of crimes – violence, drugs and organised crime – that have influenced this process (Tham, 2022). Current conceptualisations of youth violence in Sweden often comprise all three categories, where drugs are, to a large extent, financing the gangs which children who commit violent crimes are believed to be a part of (Granath, 2022). Traditionally, the idea has been to focus on the individual child's conditions and needs, commonly referred to as the treatment perspective, rather than on the penal value of the crime committed (Shannon et al., 2014). Simultaneously, some sort of reaction is also considered necessary when children behave in a way that deviates from societal norms. Children and youths are the society's future, and consequently, their problematic behaviour is perceived as a sign of future societal problems (Estrada, 1999). Nevertheless, the Swedish state has had a tradition of holding children in conflict with law out of the penal system and within the welfare system (Holmberg, 2022). It is, however, a tradition that is about to change.

During the past 20 something years, the Swedish society's reactions towards youth crime have followed the above-described punitive development (Holmberg, 2022; Estrada, 2022; Sarnecki and Estrada, 2006; Shannon et al., 2014). Similar to the mid-1980s, youths who commit violent crime, especially gang-related shootings, are today the centre of attention of both media and politicians. While youth violence in general has declined in the past 30 years, gun violence among youths has increased since the year 2010 (Estrada, 2022; Granath, 2022). This development is related to a small number of children and youths that commit a large number of serious crimes (Granath, 2022). That a small group accounts for a high proportion of the more serious crimes is not unique for Sweden and is found in other Western countries (Moffitt, 1993; Sivertsson et al., 2022). However, Sweden seems to stand out when it comes to the increase in gang-related shootings, where an overrepresentation of youths is found among both perpetrators and victims (Brå, 2021; Granath, 2022).

Sven Granath (2022) explains the increase of gang-related shootings in Sweden as a result of a number of factors such as increased accessibility of weapons, a larger market of illegal drugs, and a development of technology that creates new channels of communication. Other factors that are more specific to Sweden are increased residential and school segregation, as well as increased class divisions (Granath, 2022; Sandhal, 2022). Together with increased media attention, increased sensitivity to violence, and political demands for harder reactions towards these crimes, the problem of 'youth violence' has played a significant role when it comes to showing political power and action (Estrada, 2022), which again affects the regulation of both closed custody and locked coercive care.

As previously described in Chapter II, the introduction of closed custody, which aimed at keeping children who had committed serious crimes out of the penal system,

meant that the NBIC had to adjust to executing a penal sanction (Pettersson, 2017c). Together with the intensified law and order debate described above, this has resulted in an increased focus on security provision at the NBIC. In 2020 the government directed the NBIC to enhance their security provision (Government, 2020). The underlying reasons given by the government was a number of highly recognised escapes from closed custody described by the media, where some of the youths had been placed at NBIC as a result of shootings they carried out (Government, 2020). The NBIC were directed to develop a security classification system similar to the prison system. This means that children with a high risk of escaping or of being violent are to be placed at specific high-security institutions (Nolbeck, 2022, see also Government, 2023). This preoccupation with security provision at the NBIC has, however, affected all children placed in locked coercive care, independently of being considered high risk or not (Enell & Wilinska, 2021; Nolbeck, 2022; Nolbeck et al., 2020; Nolbeck et al., 2023; Vogel, 2020). For instance, this focus on physical security has been found to counteract a trustful relationship between staff and children (Nolbeck, 2022).

The increased focus on security also affects how rights of children in coercive care are translated into law. Article *II* in this dissertation illustrates how the rights of children in coercive care are, in the rights translation process, understood as both synonymous with security provision and a threat to security. On the one hand, the article found that children's right to be protected from harmful acts, as well as their right to care provision, were formulated as synonymous with physical security that had to be ensured through increased perimeter protection. On the other hand, children's right to information via the internet, mobile phones and e-book readers, or their right to see the names of staff who had taken notes in their journal, were perceived as a threat, both towards staff and the general public.

The current media and political focus on the (in)ability of the NBIC to ensure security has resulted in an insecure future for the public authority. In June 2023, the NBIC declared in a press release that a new governmental investigation is to investigate a transfer of "criminals" to the prison and probation service, while the NBIC are to focus on "care and treatment" (NBIC, 2023). Who these "criminals" are, however, is not specified. In addition, the NBIC writes that an investigation is to oversee what is described as the NBIC's need for routine use of body and room searches. These suggestions were also included in the transformation of the coercive care legislation analysed in Article *I*, but have not yet come into force. As described in Article *I*, the inclusion of these suggestions would mean an implementation of parts of the Prison Act into coercive care legislation and a further infringement of children's autonomy. While this is a current and ongoing debate, and beyond the realms of this dissertation, there are clear indications of an increased blurring between the penal system and the social welfare system.

Chapter V

Processes of neo-liberalisation

Neo-liberalism has influenced policy processes in most countries since the 1980s, including the Nordic welfare states (Kamali and Jönsson, 2018). A wide range of studies have explored the effect of neo-liberalisation on crime as well as on human rights and social policy (Cavadino and Dignan, 2006; Kamali and Jönsson, 2018; Lacy, 2013; MacNaughton and Frey, 2018; O'Malley, 2018). A claim raised by many of these scholars is that a rise of neo-liberalism contributes to a weakening of positive social rights (Kamali and Jönsson, 2018; MacNaughton and Frey, 2018) and consequently a decrease in equality, and a more controlling, punitive and responsabilising social climate (Wacquant, 2009). Another argument is that neo-liberalisation also negatively affects civil and political rights by making access to such rights dependent on an active and capable individual (Kemshall, 2008). At the same time, Nicholas Rose and colleagues (2006) have warned us of the tendency to view 'neo-liberalism' as a general model of explanation. This dissertation takes this warning seriously. While acknowledging that neo-liberalisation is a part of the context within which rights are translated, this dissertation also challenges the view holding neo-liberalisation as the only explanatory model for processes of responsabilisation. This chapter offers a brief introduction to the logics of neo-liberalisation, and its relationship to processes of responsabilisation.

Although the term 'neo-liberalism' is widely used, it is usually vaguely defined and has been called a "loose and shifting signifier" (Brown 2015: 20). In this dissertation, I draw on Neil Brenner et al., (2010:330), who urge us not to view neo-liberalisation as a distinct phenomenon but as "a variegated form of regulatory restructuring" and a "syndrome of processes and activities". Such a perspective allows for a nuanced investigation of how processes of neo-liberalisation interact with other activities such as crime policy and rights translation, and as a result, the trap of turning to neo-liberalisation as an encompassing explanatory model can be avoided (c.f., Rose et al., 2006).

It is often argued that the development of crime and social policy since the 1980s has been shaped by a notion of the 'risk society' (Beck, 1992) a culture of control (Garland, 2001) and a growing regulatory state (Braithwaite, 2000). What these notions have in common is a focus on risk management, security and safety. The relationship between neo-liberalisation and crime policy is perhaps most clearly articulated in the neo-liberal penalty thesis, which claims that neo-liberalism is the cause of a restructuring of penal policy with an increase of punishment, security and control (Wacquant, 2009). From this perspective, a retrenchment of the welfare state in combination with economic

deregulation and a rise of the penal state operate together (c.f., Beckett and Western, 2001; Cavadino and Dignan, 2006; Wacquant, 2009). Several scholars have, however, criticised the relationship between neo-liberalism and punitive development (e.g., Hörnqvist, 2020; Lacey, 2013; O'Malley, 2018). However, as Magnus Hörnqvist (2020) points out, the neo-liberal penalty thesis is about more than the correspondence between neo-liberalism and punitiveness. Suggesting that the Western world experiences a rise of not only penal punitiveness, but also of regulatory risk management and disciplinary state institutions that make access to social rights dependent on individual participation, Hörnqvist (2020) offers a new understanding of how security is provided and regulated.

Within the framework of this dissertation, security provision and risk management are understood from several perspectives. First of all, children in coercive care are themselves considered a 'risk' both towards themselves and general society, which is dealt with by placing them in locked institutions. Second, these institutions are sometimes also perceived as a possible security threat as these children may abscond and cause insecurity to the public, which is managed through increased security provision. These two perspectives have already been discussed in chapters II and IV. A third perspective on security addresses how the coercive care institutions are a possible security threat for children. From this perspective, children's security is to be ensured through regulation and auditing.

Regulation can, however, be understood in different ways. In a narrow way, it is understood as "an instrument to solve a problem, a goal-oriented practice for the purpose of reducing a tightly-defined and specific harm" (Heines, 2011: 10). This type of regulation is associated with regulatory agencies that exercise supervision and make sure that authorities, organisations and corporations comply with regulation (Braithwaite, 2000). Article III in this dissertation investigates the work of one such regulatory agency, namely the Health and Social Care Inspectorate, which is the public authority responsible for auditing of coercive care. But regulation can also be perceived in a wider sense. As explained in the Introduction, this dissertation has a broad understanding of regulation, drawing on Nichola Lacey's (2004:147) definition of it as "any practice which has the intention or effect of controlling, monitoring or influencing the behaviour" of another or oneself. What characterises this broader perspective of regulation is how it operates by guiding or directing individuals (or organisations) towards desirable behaviours (Lacey, 2004). Although being a strategy of power, it does not take the shape of direct discipline or coercion. Instead, it operates by creating opportunities for desirable acting.

This broader understanding of regulation has been associated with questions of individual responsibility. It is a development which Pat O'Malley (1996) has described as 'prutentialism', which refers to different strategies that make the individual responsible for managing risks. Similarly, Rose (2006) describes individual responsibility as the hallmark of advanced liberal societies, which is distinguished by the idea that the State shall assist individual responsibility rather than provide safety and security. For adults as well as

for children, this has meant an increased focus on activation and participation (Hörnqvist, 2020; Kemshall, 2008).

It is argued that the focus on individual participation has contributed to a situation where needs are no longer framed as universal rights, but in terms of investment and opportunities (Kemshall, 2008, 2002b). From this perspective, rights are increasingly matched by responsibilities (Goldson and Muncie, 2006; Kemshall, 2008; Jordan, 1998). According to this line of argument, rights have, under the neo-liberal era, become conditional on individuals taking responsibility for their own situation. Many of the studies on the conditionality of rights have focused on social rights and argue that access to them are limited due to the processes of neo-liberalisation where welfare is pushed back (c.f., MacNaughton and Frey, 2018). While acknowledging an increase of what is often termed the activating welfare state (c.f., Hörnqvist, 2020), this dissertation holds a somewhat reluctant stance on this model of explanation. Instead, it illustrates how neo-liberalisation is working in tandem with logics of the *Rechtsstaat* (to be discussed in Chapter VII) and the disciplinary logics that are found in the welfare state as a mode of government (discussed in Chapter III).

When it comes to rights associated with individuals' autonomy and civil and political rights, such as the right to information, the right to be heard and the right to participate in decision making, these are said to share several features with neo-liberalism, as both focus on the individual, are suspicious of the State and marginalise social and relational aspects (Glendon, 2002; MacNaughton and Frey, 2018; Nolan, 2013). For that reason, civil and political rights are said to be easily abducted by a neo-liberal agenda (MacNaughton and Frey, 2018). Scholars have illustrated how an increased emphasis on children as autonomous actors and holders of civil and political rights is accompanied with increased demands on children to act as "responsible and accountable citizens" (Reynaert et al., 2012). This is seen in a range of different contexts from education to children in conflict with the law (Muncie, 2006; Reynaert et al., 2012; Reynaert et al., 2010; Such and Walker, 2005).

The logics of neo-liberalisation, which are often expressed in terms of risk management, opportunities and choice, are further discussed in Chapter VII, which sketches out the theoretical framework of this study, and is found throughout the three studies but is perhaps particularly visible in Article III. This article, which analyses how children's participation is used in auditing processes to ensure they receive safe and secure care, illustrates how children's right to information and to be heard is often understood in terms of choice and opportunity, which children can take or not take. As a result, there is little attention directed towards whether children have the capacity to make such a choice. The article further points out how children, in order for their voices to be given due weight in the auditing process, must take responsibility for their own behaviour, and preferably their own risk management.

Chapter VI

Translating children's rights

That children have a safe and secure upbringing is described as a central notion of the Swedish state (Lundström, 1993, 2017), and the country is usually seen as being at the forefront of advocating for children's rights (Leviner, 2018b). Sweden was among the first countries to ratify the Child Convention in 1990 and, on 1 January 2020, it became national law.

When comparing different childcare systems, Sweden has traditionally been categorised as having a 'child welfare model', characterised by aid-directed social work aimed at supporting and assisting families and children, rather than at controlling and intervening in their private life (Leviner and Lundström, 2017; Svensson & Höjer, 2016). During the last decade there has, however, been an increased emphasis on child protective elements, which places Sweden closer to what is often called a 'child protection model' (Leviner and Lundström, 2017). This second model aims to identify children at risk, followed by imposing interventions, and is illustrated by the increased use of risk assessment instruments within social welfare, which according to Lundström (2017:57) constitute an ideological break. Nevertheless, what these two systems have in common is a focus on ensuring children have their social rights (Gilbert, 2011; Heimer and Palme, 2018), which are provided *through* the State.

Following the increased focus on the Child Convention, a third model has entered the scene – the child as an autonomous subject of rights. If the Swedish child welfare and child protection models both build upon the idea that the child's development is a question for both parents and society, this latter model emphasises the child's own relationship with the State (Government, 2015) and situates the child as an autonomous subject of rights, with authority over themselves. Consequently, this third model challenges the traditional relationship between the child and the State (c.f., Arneil, 2002). This chapter begins by engaging with the idea of children as not only objects in need of protection through different forms of interventions, but also as autonomous subjects of rights. Thereafter follows a description of the drafting process of the Child Convention, after which I turn to its incorporation into Swedish law. Lastly, the chapter engages with children's rights within the practice of coercive care specifically.

Children as competent beings and the subjects of rights

The emphasis on children as autonomous subjects of rights is related to a break in our view of children, which are traditionally believed to be "morally and culturally weaker or less significant than adults" (Wyness, 2006:23). This break is commonly symbolised by the drafting of the Convention in 1989 and described as a shift from Thomas Humphrey

Marshall's (1950) argument that children should be seen as citizens *in potentia*, as incomplete 'becomings', rather than viewing them as competent 'beings' (James, 2011; Lister, 2007). According to Marshall (1950), children were to be ensured social rights but not civil and political rights, as they lack the necessary competence, and thus, cannot be full citizens of a society. Scholars of the sociology of childhood and children's rights have long argued against this view, claiming an alternative childhood image of the 'autonomous child' as opposed to the previous 'incompetent child' (Freeman, 1998; James et al., 2002; Reynaert et al., 2012; see also Cockburn, 1998; James, 2011; Lister, 2006, 2007; Wyness, 2006).

The term 'autonomy' stems from the Greek word 'autos' (meaning 'self') and 'nomos' (meaning 'rule', 'government' or 'law'); hence, it is referring to 'self-rule' or 'self-government' (Beuchamp and Childress, 2013:57). While the notion of autonomy was first discussed in relation to state and nations, it has since been extended to individuals (Beuchamp and Childress, 2013). The 'modern' discussion on autonomy is commonly related to John Stuart Mill's work 'On Liberty' from 1859 which conceptualises the notion of autonomy as individuals' self-determination (Mill, 1984). While the notion of autonomy does not hold a single definition, it captures the right of a child to decide on their own circumstances, although usually without full self-determination (Mattsson, 2002). Autonomy is also seen as a precondition for 'integrity', which refers to the protection of private life, and the respect for individuals' views, beliefs and wishes (Mattsson, 2002).

The drafting of the Child Convention

For many scholars the Child Convention has been seen as the prominent tool to question the view of children's position as solely linked to their futures. As expressed by James (2011:176): "through its promise to bestow rights of participation on children as social beings in the here-and-now, a new vision of children's citizenship might have become possible". In Western societies, children's rights and the Child Convention are used interchangeably and have become *the* way of talking about children's rights in policy as well as in practice and research (Quennerstedt, 2010, 2013; Quennerstedt et al., 2018). The Child Convention was drafted in 1989 after ten years of discussions and is currently ratified by 196 nations. This can be seen as a success story, although more sceptical voices have argued that countries' willingness to ratify it had more to do with keeping up appearances about caring for children's rights rather than actual concern (Glenn, 1997). The Child Convention was suggested in 1978 by the Polish government to the UN Commission on Human Rights, which in turn decided that the drafting of such a convention was to be based on a principle of consensus (Quennerstedt et al., 2018).

According to Quennerstedt and colleagues (2018), who have analysed the drafting process, this principle of consensus contributed to complicated negotiations and a Child Convention consisting of vague and flexible formulations. The Child Convention, like other human rights conventions, includes economic, social and cultural rights, and civil

and political rights. The subject of disagreement was not economic, social and cultural rights, but civil and political rights (Quennerstedt et al., 2018). The former subdivision of rights was accepted with minimum resistance by all nations in the working group; the latter, however, was accepted only with certain restrictions. An agreement was made which meant that the rights of parents and children's level of development were "legitimate grounds for placing limitations upon the expression of children's civil and political rights" (Quennerstedt et al., 2018:48). Hence, children were seen as having the same economic, social and cultural rights as other humans, but restricted civil and political rights.

Quennerstedt et al., (2018) further illustrate two opposing standpoints regarding how the Child Convention was to be seen. On the one hand, there were some state parties arguing that it should be seen as supplemental to other human rights' instruments for children; on the other hand, there were those that argued that the Child Convention should be *the* instrument. This issue was not resolved in the drafting process, and as noted above, the Child Convention is today mainly regarded as the norm for children's rights, at least in Western countries such as Sweden. Consequently, children's rights are an "adapted version of human rights" (Quennerstedt, et al. 2018:52).

Interestingly, the categorisation of children's rights soon moved away from the common subdivision of 'economic, social, cultural' and 'civil and political' rights and was replaced with the so-called three Ps: protection, provision and participation. This 'new' categorisation was originally presented as a 'pedagogic tool' (rather than a new way of categorisation) and originally defined as following (Hammarberg, 1990:100):

Provision – the right to get one's basic needs fulfilled – for example, the rights to food, health care, education, recreation and play.

Protection – the right to be shielded from harmful acts or practices – for example, to be protected from commercial or sexual exploitation, physical or mental abuse, or engagement in warfare.

Participation – the right to be heard on decisions affecting one's own life.

According to Thomas Hammarberg (1990) the Child Convention is stronger in the categories of provision and protection, compared with participation. The translation into the 'regular' human rights subdivision of rights, provision and protection can be seen as 'social, cultural and economic rights', while participation regards children's civil and political rights. According to Didier Reynaert et al. (2012:158), both the image of the 'incompetent child' and the image of the 'autonomous child' are embedded within the Child Convention and are "...translated as protection and participation rights. Together with provision rights, i.e. rights to services in order for children to be able to support and execute their rights, they embrace the full content of the UNCRC". Hence, the Child Convention holds an inherent tension: On the one hand it is based on the demand of state intervention, that social rights – participation and provision – are ensured through the State. On the other hand, it is based

on the need for individual protection from the State by ensuring that children have civil and political rights – or participation.

The categorisation of the so-called three Ps is widely used and has become widespread in research on children's rights as well as among practitioners (c.f., Heimer and Palme, 2016). However, it has also been criticised for having a hampering effect (Quennerstedt, 2010). I agree with Quennerstedt (2010) as she argues that this categorisation risks framing research in a way which moves children's rights even further away from regular human rights, and Article *III* addresses this specifically. At the same time, I engage with this way of grouping rights in article *II*, as I found it to be a useful tool in grasping the tensions between the Child Convention and the Swedish State (c.f., Verhellen, 2001). As noted, the Swedish child welfare system is said to be based on ensuring child 'protection' and 'provision', where the State acts as the paternalistic supervisor, while the category of participation (children's civil and political rights) has traditionally been largely absent (Heimer and Palme, 2016; Heimer et al., 2018). Hence, the emphasis on increased protection and provision which demands the involvement of the State does not challenge the position of the 'incompetent' child in relation to the State. The emphasis on civil and political rights – or participation – however, challenges and disrupts this relationship.

It is also the category of participation that has caught the attention of scholars critical of this categorisation (Quennerstedt, 2010; Reynaert et al., 2009). This category seems to have taken on a life of its own and has become a dominant theme in studies on children's rights and policy practices (Wyness, 2018). In their examination of how understandings of children's rights have been constructed in academic work on the Child Convention, Reynaert et al. (2009) found a clear preoccupation with 'children's right to participation'. Recently, scholars have argued that this category of articles should be referred to as 'autonomy rights' to emphasise children's role as autonomous subjects of rights (Daly, 2018). What is behind this hesitation to speak of children's civil and political rights is, however, unclear.

Sweden's ratification and incorporation of the Child Convention

We shall return to the notion of children as autonomous subjects below, but we shall first direct our attention to the process of Sweden's ratification and incorporation of the Child Convention. As previously noted, the Swedish state ratified the Child Convention one year after its drafting in 1989, and it was incorporated in national law in 2020. In short, the ratification meant that Sweden was obligated to follow the articles in the Child Convention and that courts and authorities must interpret national legislation in the light of the Convention. However, in cases where the Child Convention goes against national law, the latter has precedence (Leviner, 2018a). As Sweden has now incorporated the Child Convention, it has the same status as national law. While Sweden's ratification of the Child

Convention was an uncontroversial process, the choice to incorporate it was quite the reverse.

The discussion of an incorporation of the Child Convention was initiated by children's rights organisations and the Ombudsman for children around 20 years after its ratification (Leviner, 2018a). In 2013, the right-wing government initiated a governmental investigation which had the directives to investigate possible advantages and disadvantages of an incorporation of the Convention. However, after a change in power, the new social democratic government gave the investigation new directions – they were now to investigate how this incorporation should be executed. The results of the investigation, which were presented in 2016, were met by extensive criticism (Leviner, 2018a). While there was a political consensus behind the incorporation, backed up by the media, severe concerns were raised by a vast number of consultation bodies as well as by the Council on Legislation.

These concerns were not that children's rights should not be strengthened, but that an incorporation of the Child Convention was not the way to do this. In a study on the process leading to the decision on incorporation of the Child Convention, Leviner (2018a) explains how these concerns were partly related to the fact that the Child Convention articles are not formulated as concrete legislation, but as goals, which makes them difficult to assess in individual cases. Another main concern raised was the lack of guidance provided by the investigation regarding how authorities should interpret these 'goals' in their practical work. In fact, some consultative bodies even expressed that an incorporation would lead to an even greater uncertainty regarding children's access to rights, especially those at society's margins (Leviner, 2018a).

Previous research on incorporations of the Convention in national legislations show that its success is dependent on whether the incorporation is preceded by a thorough analysis of what is to be achieved, of carrying it out systematically, and of how the State and its authorities are working with the Child Convention (Lundy et al., 2013; Vamstad, 2016). Such an analysis and systematic guidance was found to be missing in Sweden's suggested incorporation of the Child Convention (Leviner, 2018a). As pointed out by Leviner (2018a), it was well known at the time that the Swedish State in many ways failed to comply with the Child Convention and that there was a need to strengthen the rights of children, especially those at society's margins. From a political perspective, there was a strong belief that an incorporation of the Child Convention would solve these issues. Rather than providing guidance on how the Child Convention should be interpreted and administered in different legal branches, the idea was (and is) that the law-making is to take place in court rooms. An important question that then follows – although often without an answer – is how children's voices, experiences and claims are to reach these places (Leviner, 2018a). However, this approach means that children's position as autonomous subjects of rights is essential.

In a Swedish context studies before and after the incorporation show that the translation of the Child Convention has had limited impact on children's right to have a say in decisions that directly concern them (Eriksson and Näsman, 2011; Fernqvist, 2011; Heimer and Palme, 2016; Heimer et al., 2018; Leviner, 2018; Pålsson, 2017) and further, that Swedish child welfare legislation recognises the voices of parents rather than the voices of children (Heimer and Palme, 2016; Ufford et al., 2022). Although there seems to be a general openness towards children's participation from the perspective of local policies, few practical efforts have been made to realise this (Pålsson and Wiklund, 2022). Nevertheless, the category of participation has, in policy as well as in research, become an important principle when child welfare is evaluated both from a national as well as an international perspective (Pålsson and Wiklund, 2022; Wyness, 2018). A narrative literature review of children's participation in the context of residential care illustrates that children have limited opportunities in what is called meaningful participation (Brummelaar et al., 2018). Similar results are found in a systematic review of children's participation from the perspective of welfare workers (Toros, 2021).

Hence, children's right to participation – or civil and political rights – has been found to be understood as tokenistic, meaning that, although children are given the opportunity to express their views, these are rarely given due weight (c.f., Leviner, 2020). In their general comment to the Convention, the Committee on the Rights of the Child (2009) specifically urges states to avoid such a tokenistic approach. Hence, as stated by Heimer and Palme (2018:316), “the preoccupation in children's rights literature on children's participation as an absolute right has not been enough in terms of highlighting the consequences of lacking participation on the part of children in social services”. Instead, the categories of protection and provision seem to outweigh children's civil and political rights, both in a national and international context (Hanson, 2012; Heimer and Palme, 2018; Vis et al., 2011). However, in the rare cases when children's voices and experiences are given due weight, it is likely to have a positive influence on children's access to social rights (Heimer and Palme, 2016; Ufford et al., 2022; Vis et al., 2011).

Although these studies mainly focus on the realisation of rights rather than engaging with tension within the Child Convention or within the local context in which rights are translated, they do point to the importance of the relationship between the child and the State. Critical studies that explore the relationship between the translation of children's rights and the Swedish welfare state are, however, rare. The few studies that do investigate this relationship do not focus on children in coercive care specifically, but on children in different vulnerable positions at society's margins (e.g. Björkhagen Turesson, and Staaf, 2023; Holappa and Leviner, 2022; Lind, 2020; Lundberg and Lind, 2017; Näsman, 2019). While focusing on different local contexts, these studies all illustrate, using the words of Holappa and Leviner (2022:260), “a silent acceptance” that children in vulnerable and socially exposed positions have limited access to their rights. These are children whose parents are considered unwilling to contribute to society by being dependent

on economic support (Holappa and Lveiner, 2022; Näsman, 2019), or children whose parents are simply not there and who claim their rights from a position of an undocumented migrant or asylum seeker (Lind, 2020; Lundberg and Lind, 2017; see also Lind and Persdotter, 2017; Lundberg and Spång, 2017). Näsman (2019:258) suggests that “undeserving parents make children undeserving of society’s support”, and of access to rights.

As noted above, the relationship between the State and the child is strengthened as well as challenged with the increased emphasis on the child as an autonomous subject of rights. The latter development seems to be accompanied by an increased tendency to hold children responsible for their actions and behaviours, which was discussed in the previous chapter, and in more depth in articles *II* and *III* (see also Ponnert, 2007; Reynaert et al., 2012).

Children’s rights and locked coercive care

The emphasis on children’s rights within coercive care legislation is not new but figured in the governmental investigations preceding the Social Service Act of 1982 (Johansson et al., 2022). However, as illustrated by Johansson et al. (2022), children’s ‘rights’ were discussed in a discourse of children’s needs and parents’ rights, which differs significantly from the idea of children as an autonomous subject. It was with the Care of Young Persons Act of 1990 that today’s children’s rights perspective within coercive care of children began to take shape with phrases such as ‘in coalition with the child’ and ‘with respect for the child’s human value and integrity’. The 1990 legislation also stated that “what is best for the child shall be determining” (Johansson et al., 2022). It was, however, not until the transformation of the Care of Young Persons Act in accordance with the Convention, which took place between 2015 and 2018, that children’s rights and the idea of the child as an autonomous subject became more prominent (Johansson et al., 2022).

However, as we shall see throughout this dissertation, there is a discrepancy between emphasis on the child as an autonomous subject and the realisation of a legal sphere that protects the child *from* arbitrary state interventions. This discrepancy is closely connected to ideas of societal protection and individual responsibility. As noted on several occasions, the coercive care legislation included, until 1982, the aim of societal protection. The abolishment of this aim signalled an important distinction between coercive care as a part of the social service system and the penal system, of which the formal aim is societal protection (Kaldal and Tärnfalk, 2017). According to Kaldal & Tärnfalk (2017), the abolishment of the aim of societal protection, together with the increasing emphasis on children as autonomous subjects, could be seen as a break from the previous child welfare model and the child protection model, which are characterised by a control- and disciplinary perspective. This dissertation will, however, argue otherwise.

Chapter VII

Caught between two concepts of freedom – a theoretical approach

This dissertation engages with the tension between the State's use of lawful coercion, carried out in order to ensure children safe and secure care, and respecting their status as autonomous subjects of rights. In this chapter, this tension is theoretically situated as a struggle between positive freedom safeguarded through the welfare state, and negative freedom guaranteed by the *Rechtsstaat*, which ascribed individuals a legal sphere where they are protected from state intervention (Costa, 2007; Zolo, 2007). By drawing on Isaiah Berlin's essay 'Two Concepts of Liberty' written in 1958 and his later written 'Introduction' in 1969, this chapter describes these notions of freedom as two constantly clashing but mutually dependent ideal types (Berlin, 2002a).⁴ I begin this chapter by sketching out how the welfare state functions as a guardian of positive freedom, and how the *Rechtsstaat* guarantees negative freedom. Thereafter follows a critical engagement with positive and negative freedom where I also present how these ideal types are operationalised in the three articles.

The welfare state as the guardian of positive freedom

The development of the Swedish (and Nordic) welfare state(s) that began in the 1930s is closely connected to positive freedom through its emphasis on access to social rights such as social insurance, healthcare and education (Kotkas, 2017; Vahlne Westerhäll, 2002). In this way positive freedom acknowledges the interdependence of our social world, our abilities and social conditions as the preconditions of freedom (Christman, 2012; Vahlne Westerhäll, 2002). It is associated with creating conditions of liberty, social justice, morality and reason (Berlin, 2000a,b; Dimova-Cookson, 2012; Zolo, 2007). In this context the autonomous child is a social being, dependent on their social environment and social relations (Vahlne Westerhäll, 2002). Being associated with creating conditions of freedom, positive freedom is often conceptualised as a duty (of the welfare state) to protect the material interests and the needs of the socially exposed party (Vahlne Westerhäll, 2002). Rights are, in this context, delivered indirectly to the individual (mainly) through state authorities which are oriented towards caring for individuals at society's margins (Gustafsson, 2005). The practice of coercive care of children, aimed at protecting children from harm and providing good, safe and secure care, constitutes such a right. Although the presence of coercion could be argued to be the opposite of freedom, it is legitimised on the

⁴ Berlin (2000a,b) uses the terminology of liberty and freedom interchangeably and I will follow his example.

grounds that it constitutes a precondition for ensuring children safe and secure care and framed as an act of protection.

From this perspective, individuals cannot be said to be the holders of rights – the society is. Put differently, within the notion of positive freedom it is the State and its authorities rather than the individuals that are the holders of rights, and which are responsible for their content and administration (Hydén, 2002; Gustafsson, 2005). Authorities can thus be said to hold the position of benevolent deputies of individuals' positive freedom (Gustafsson, 2005). It is a freedom that is commonly said to be characterised by a goal rationality, where the goal is to realise social rights and individuals' social needs (Vahlne Westerhäll, 2002) or in this case, what is considered to be in the best interest of the child, which mirrors the general will and the common good (Eriksson, 1980).

The Swedish welfare state as we know it today can thus be said to be a political phenomenon, developed through a formation of a unity between the individual and the State (Hirdman, 1989). As pointed out by scholars like Vanessa Barker (2018), Gøsta Esping-Andersen (1990) and Yvonne Hirdman (1989), ensuring citizens' social rights also benefits the State. According to Esping-Andersen (1990), social democracy's 'embrace' of reforms was built upon two premises: first, that workers needed access to social rights in order to "participate effectively as social citizens" (Esping-Andersen, 1990:12); second, that social rights not only serve as emancipatory, but are a requirement for economic efficiency. Owing to this unity between the State and the individual, there has been little need for individuals to turn to the courts to secure their social rights (c.f., Kotkas, 2017). Instead, it is the State's obligation or responsibility to secure the wellbeing of its citizens.

The *Rechtsstaat* as the guarantor of negative freedom

Negative freedom is related to the degree to which it is possible to live a life without the interference of external pressures (Berlin, 2000a,b). It is a line of thought that derives from the liberal ideology of individual rights that emerged in the 19th century from which a new ideal – the *Rechtsstaat* – was constructed. The term was coined in 1930s Germany to capture the relationship between the political power of the State, law and the individual (Costa, 2007; Zolo, 2007). The *Rechtsstaat*, or *Rättsstat*, in Swedish, and sometimes translated as 'the rule of law' in English, is a way of governing that "...direct[s] us about how to intervene (through 'law') on 'power' so as to strengthen individuals' positions" (Costa, 2007:74). Hence, by ascribing individuals with a legal sphere, their individual (negative) rights are protected against the State and its possible arbitrariness. In this way, the *Rechtsstaat* is the guarantor of individual autonomy through negative freedom. Hence, it is through the *Rechtsstaat* and individual rights that children are to be protected from harm caused by the State.

The two main theories on the *Rechtsstaat* were developed by Friedrich Julius Stahl and Robert von Mohl during the first half of the 19th century. For Stahl, the centrality

of the *Rechtsstaat* was the State and its legal format (Costa, 2007). Law was, according to Stahl, the State's way of acting, which removed any arbitrariness. For Mohl, on the other hand, the guiding principle was individual freedom: it was synchronically the goal, the limit, as well as the criteria of state action (Costa, 2007). Through these theories, law set the conditions for individual action and became the framework within which they are carried out (Costa, 2007). From this perspective, the rights are perceived as natural, independent and separate from variations of power structures over time.

During the second half of the 19th century, the *Rechtsstaat* phenomenon went from supporting constitutional reforms to undergoing a technicalisation process (Costa, 2007). The notion of the State's 'self-limitation', that the State restricted and limited itself, was used to ensure the coexistence of state power with law, limitation and judicial control (Costa, 2007). The "Rechtsstaat was therefore a sovereign state which, by limiting itself, appeared as a legal person, a holder of rights and obligations, and was bound to respect both objective law and the rights of the individuals which it entered into a relationship with" (Costa, 2007:99). A second principle that came to characterise the *Rechtsstaat* was the 'distribution of power', which meant that individuals became attributed to legally defined claims – individual rights – against the power of the State (Zolo, 2007), claims that ensured the individual legally acknowledged non-interference. Today, the *Rechtsstaat* is concerned with the legal protection of individuals' civil and political rights and is founded upon the idea that law can control power (Costa, 2007; Zolo, 2007).

Critical considerations of positive freedom and negative freedom

For Berlin, the distinction between positive and negative freedom is based on the relationship between the individual and the social (Berlin, 2000a,b). In the case of negative freedom, rights are seen as something 'pre-social', unrelated to the State but guaranteed through law (Gustafsson, 2005). Hence, negative liberty is separated from the conditions of liberty. It exists at the individual level rather than at the social level. Positive freedom, on the other hand, exists at the social level and is concerned with social rights that are transferred indirectly, through the State and its authorities, to the individuals (Hydén, 2002). This separation between the individual and the social is an important part in understanding the tension between ensuring safe and secure care through the use of coercion and respecting autonomy. In the following sections, I shall engage more directly with this separation.

Negative freedom and the separation of liberty from conditions of liberty

One of Berlin's key claims is that individuals "lack political liberty or freedom only if [they] are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not a lack of political freedom" (Berlin, 2000a:169). Although Berlin, in his later work, stresses that a certain level of minimum conditions must be ensured by the State through law for individuals to be able to exercise their rights, he holds on to his key claims, namely that "liberty is one thing and the conditions for it are another" (2000b:45).

A precondition for accessing negative liberty is the position of the individual as an autonomous subject. For Berlin (2000a), the essence of the individual is their autonomous position in relation to law and power. Individuals must, from this perspective, be autonomous in the sense that they are “authors of values, of ends in themselves, the ultimate authority of which consists precisely in the fact that they are willed freely” (Berlin, 2000a:183). According to Berlin (2000a) there is nothing worse than to reject individuals their autonomous position, to manipulate their choices either by force or rewards. This perspective sets any concerns with morality, rationality and social justice aside and is based on a logic that law itself ensures individuals be equal and have equal capabilities to actualise their rights (Hydén, 2002).

However, Berlin’s perception of negative freedom is not, he argues, equal to “blank endorsement” (2002b:56, note 1) and he is not blind to dangers associated with negative freedom. Rather, he acknowledges how non-interference can be problematic and used by those in positions of power to support destructive policies. Although Berlin does not use the term *Rechtsstaat*, he stresses that too much unrestricted freedom may in fact result in infringement of basic human rights. In that sense, negative freedom may be turned into its opposite. Further, he emphasises the importance of social and legal systems to provide minimum conditions, which are to ensure individuals the opportunity to exercise their rights (such as children’s right to have a say in decisions that concern them, or the right to appeal decisions on placement in isolation cells), a notion which is clearly related to the idea that law can control power (c.f., Costa 2007; Zolo, 2007). Berlin (2000b) will, however, throughout his work, hold on to his claim that liberty must be separated from the conditions of liberty.

Operationalising negative freedom

With its neglects of conditions of freedom, this perspective of negative freedom is in many aspects controversial. Nevertheless, it is this controversial argument that I find to be the key to understanding children’s position as autonomous subjects in the current context of coercive care. It is, however, a perspective that can only be defended when it is separated from social justice and moral considerations (Dimova-Cookson, 2012). Put differently, it is through law alone that children in coercive care are the holders of negative freedom rights. Children are, from this perspective, to be viewed as autonomous subjects of rights if they have their negative freedom (expressed by their civil and political rights) protected by law, regardless of their ability, in practice, to realise this freedom.

The problem with this perspective, which sets any concern with morality and social justice aside, is, by using the words of Bruce Baum and Robert Nichols (2012:12), that it “fails to properly distinguish between acceptable and unacceptable forms of non-interference and, thus, cannot recognize a relationship of domination”. We can here talk about a problem of non-interferences which becomes a way of holding children responsible for realising their rights. Throughout the three studies, I use the separation between the

social and the individual, and between liberty and the conditions of liberty, to show how children's negative freedom is continuously separated from its social and moral context. It is a separation founded upon the idea that law has the ability to control (state) power (c.f., Costa, 2007). As pointed out by Pietro Costa (2007): "before the legislating state and the judging state, citizens' rights were only moral; when, however, the State acted as an administrative power, the control could be entrusted to a judge committed to protecting the individual's legal sphere". This idea of freedom has contributed to what Teubner (1987) has called the juridification of the social sphere and an overreliance on the legal system.

In Article *I*, I engage with the separation of the individual from the social by drawing on concerns raised by scholars critical towards this process of 'juridification of rights' (Banakar, 2010; Gustafsson, 2018; Smith, 2002). These theorisations view the current international trend of translating more rights into law, and thus continuing the separation of freedom from the conditions of freedom, as an individualisation of rights and a fragmentation of moral considerations and social responsibility. This becomes explicit when children in locked institutions are given increased legal opportunities to appeal decisions on coercive measures, but where the law is indifferent to children's capabilities and the social context within which this negative freedom is exercised. If we follow the logic that children's negative freedom (to appeal) is separated from social conditions (such as the ability to initiate an appeal) this is, however, unproblematic.

In articles *II* and *III*, I continue to engage with this separation between individual (negative) freedom and conditions for freedom in order to show how it takes the shape of responsabilisation. While Article *II* mainly focuses on the conditions of freedom in relation to the welfare state and neo-liberalisation, Article *III* engages explicitly with negative freedom exercised through the *Rechtsstaat*. It points specifically to how this mode of government fails to recognise unacceptable forms of non-interference (domination) in relation to children's civil and political rights.

Positive freedom and the social conditions of liberty

The realisation of positive freedom demands active interferences from the (welfare) state which necessarily means a restriction of individual's negative freedom (Berlin, 2000a,b). In his early work Berlin takes an explicit stance against positive freedom, associating it with paternalism, which he, drawing on Kant, calls "the greatest despotism imaginable" (Berlin, 2002a:184). This position is, however, reframed in his later written 'Introduction' to his collection on 'Four Essays of Liberty', where he conceptualises positive and negative freedom as twin brothers, representing equally important but clashing values (Berlin, 2002b). He will, however, hold on to his claim that positive freedom can easily be turned into its opposite and "...exploit the favourable associations of its innocent origins" (2002b:39).

Berlin's concern about positive freedom reflects, in several aspects, the concern raised by scholars critical of the welfare state (c.f., Lundberg and Tydén, 2010). These concerns regard how positive freedom, exercised through the welfare state, has limited legal control mechanisms, which enable repressive state interventions. According to Lundberg and Tydén (2010), the book 'To put life in order' by Yvonne Hirdman, published in 1989, became the starting point for a re-evaluation of the history of the Swedish welfare state. In focus was (and still is) the function of social policy as both liberating and potentially repressive. While Hirdman (1989) emphasised a duality of the welfare state by analysing how social engineering and social policy aimed to prevent poverty, but sometimes resulted in an infringement of individual integrity through different types of social and medical interventions, it is the latter that has been the centre of attention of the critical discourse (Lundberg and Tydén, 2010).

However, as described in Chapter III, these repressive practices are based on logics of moral evaluation, knowledge and reason that can be seen as a residual effect of poor laws and the social-liberal state of 1920s Sweden, rather than the social democratic welfare state that developed during the 1930s. In the following, I will draw on Berlin's (2000a,b) critique of positive freedom and relate it to the concerns of Hirdman (1989) to conceptualise how the State's duty to ensure children protection through coercive care, which aims at liberating children, may turn into its opposite.

One of Berlin's (2002a:195) main concerns towards positive freedom relates to the division between what he calls the higher and the lower self. He explains this by telling a story about the divided self, the rational higher self and the not so rational lower self:

This dominant self is then variously identified with reason, with my 'higher nature', with the self which calculates and aims at what will satisfy it in the long run, with my 'real', or 'ideal', or 'autonomous' self, or with my self 'at its best'; which is then contrasted with irrational impulse, uncontrolled desires, my 'lower' nature, the pursuit of immediate pleasures, my 'empirical' or 'heteronomous' self, swept by every gust of desire and passion, needing to be rigidly disciplined if it is ever to rise to the full height of its 'real' nature. (Berlin, 2000a:179).

Hence, it is only the rational higher self that may enjoy freedom and to which the lower self must strive to turn itself into, or let itself be turned into, by another entity. This transformation can, according to Berlin, be done through two different processes. First, "that of self-realization, or total self-identification with a specific principle or ideal" and second, "that of self-abnegation in order to attain independence" (Berlin, 2000a:181). The process of self-realisation is of particular interest to this study and relates to the idea that 'knowledge liberates'. It is a process based on the idea that freedom can only be reached by understanding the world through critical reason. Only by being enlightened and structuring our life accordingly is it possible to be free.

The two selves – the higher and the lower – may be divided by a wider gap than on the individual level. The ‘real’ higher self may “be conceived as something wider than the individual (as the term is normally understood), as a social ‘whole’ of which the individual is an element or aspect... a state, the great society of the living and the dead and the yet unborn” (Berlin, 2000a:179). This entity – the State or the society – then imposes its collective will upon its members, thereby raising them to a “higher level of freedom” (Berlin, 2000a:179). What justifies the act of coercion in order to reach a collective goal (such as children’s right to a safe and secure life) is that if they (in this case the children) were more enlightened, they would pursue the same goal without any obstructions.

Berlin’s concern is that the higher self becomes identified with institutions and states as well as with the common good and “what had begun as a doctrine of freedom turned into a doctrine of authority and, at times, of oppression, and became the favoured weapon of despotism” (Berlin, 2002b:37). Hence, for Berlin, the main problem with positive liberty is its preoccupation with the conditions of freedom which are at risk of being turned into its opposite, rather than positive freedom itself. At the same time, he emphasises that “democratic self-government is a fundamental human need” independently “whether or not it clashes with the claims of negative liberty or any other goal” (Berlin, 2002b:39).

Operationalising positive freedom

I use this division of the higher and lower self in order to investigate how coercion and discipline are articulated and negotiated in relation to the rights translation process. As previously noted, placing a child in locked coercive care is justified by the belief that the State can improve the child’s situation and life (Mattsson, 2017). Consequently, the State represents the ‘higher reason’ and both knows and wants what is best for the child (c.f., Hirdman, 1989; Smith and Ugelvik, 2017). Coercion is further exercised at these institutions through the use of lawful coercive measure, such as the prevention of a child from leaving the institutions, use of isolation cells, and body and room searches. These coercive measures may be used in order to ensure children safe and secure care (Care of Young Persons Act). They are in that sense used to benefit the child in the long run.

Following Berlin (2000a,b), this type of logic involves a negotiation between the higher and the lower self (between the State and the child), where rational children will align with the will of the State and its experts. Those not so rational will, however, either through self-mastery or “by models of education...seek to bring the irrational and uneducated to that deeper understanding of their true or ‘objective’ interests as a prerequisite for the achievement of master over oneself” (Baum and Nichols, 2012:12). It is a type of freedom under responsibility, which demands social coherence, which is as much a concern about individuals as it is a concern about the future society (Hirdman, 1989). Further, it is a process of how seemingly uneducated individuals “must be educated” in order to be made rational and thereby free.

In the context of coercive care, the State restricts children's negative freedom in order to protect their health and development, and to ensure them safe and secure care. It is however, as we shall see, also a restriction carried out in order to protect the general (current and future) society. In this process, positive freedom is related to self-direction and self-control, to the individuals' moral and rational ability, but is also about the general will of a social context (Berlin, 2002a).

In Article *I*, which analyses the transformation of the coercive care legislation in accordance with the Child Convention, I operationalise this as a form of 'disciplinary resistance', not towards the children directly, but towards the translation process by strengthening the position of the State against the child, rather than the child against the State. In articles *II* and *III*, I draw on Marshall's (1950) notion of citizenship and his division of children as 'beings' or 'becomings', which mirrors the division between the higher and lower-self, to show how positive freedom may also take responsabilising forms. As previously discussed, the emphasis on children as autonomous subjects is often considered to illustrate a shift from viewing children as non-yet real and rational human beings but 'human becomings', towards viewing them as rational, capable, autonomous 'beings' (e.g., James, 2011). In articles *II* and *III*, I draw on this division to demonstrate how children in coercive care are viewed with a certain suspicion and are constantly exposed to moral evaluation (in politics and auditing). In article *III*, I analyse how the children, in order to be viewed as trustworthy and rational autonomous subjects must, through self-mastery, behave in a rational way that corresponds with the will of authorities.

Neo-liberal Responsibilisation

In addition to the operationalisation of the two forms of responsabilisation presented above, this study engages in a discussion on the relationship between the welfare state and processes of neo-liberalisation (Article *II*) and the *Rechtsstaat* (Article *III*). Responsibilisation is commonly understood as a product of neo-liberalism, where the autonomous individual is made responsible for their own risk management by engaging in a partnership with the State (Rose, 2000). While the process of responsabilisation in the welfare state takes the shape of 'discipline', the responsabilisation in processes of neo-liberalisation takes the form of 'control'. The notion of discipline refers here to the practice of socialising individuals into the 'right' behaviour either through self-education or coercive guidance (Hirdman, 1989; Rose, 2000). This differs from the notion of control which is occupied with monitoring individuals to take control of their own lives to combat external threats (Rose, 2000). By acknowledging this distinction, it is possible to investigate the relationship between different notions of responsabilisation while exploring how the welfare state and processes of neo-liberalism (Article *II*) and the *Rechtsstaat* (Article *III*) are working both on their own and together.

Chapter VIII

Methodological considerations

The failures within human and children's rights are often associated with poor implementation. However, questions are rarely raised regarding what I, drawing on Quennerstedt (2012), have referred to as the cultural journey universal rights take as they are translated and put into practice in a local context (see Chapter I). A study of translation of rights which takes into consideration the local social and political context, which this dissertation does, necessarily involves a view of rights as constructed, or, more specifically, for the object of this dissertation, the rights translation process as a social construction. In line with Hacking (1999), I understand social constructions as social and historical building blocks that together form what we understand as reality. In this chapter, I describe the material and methods used to capture and make sense of such building blocks that make up the social and political journey that the Child Convention takes as it is translated into the regulation of locked coercive care. I also discuss the study's delimitations and limitations.

Material

The dissertation comprises three articles that each address three different aspects of the translation of the Convention into national law. Article *I* analyses the legal process of transforming the Care of Young Persons Act in accordance with the Convention through an analysis of official documents. It was a process initiated in 2012 by the right-wing alliance (consisting of the Conservative Party, the Christian Democrats, the Liberal Party, and the Centre Party) that led the government between 2010 and 2014 but which was replaced by the Social Democrats and the Green Party, which formed a minority government between 2014 and 2018. The final results of the transformation process were then presented to the parliament in May 2018. All documents of relevance to the transformation process were included in the analysis, including a memorandum with subsequent consultative responses from 2011, the government inquiry presented in 2015 with 142 consultative responses, the government bill presented in March 2018, and the final report on the new Care of Young Persons Act presented by the Committee on Health and Welfare presented in May 2018.

Articles *II* and *III* both take the incorporation of the Convention into national law on 1 January 2020 as a starting point and consist of documents and transcripts of interviews but differ in scope. Article *II* focuses on the political debate on the rights of children in coercive care that took place after the incorporation of the Convention up until July 2021. The sample includes 36 party motions, one public letter, two reports from the Committee of Health and Welfare, one public hearing organised by the committee, one protocol from a parliamentary debate, and finally, one letter from the parliament. Together,

these documents represent all written work on the rights of children in locked coercive care that have been carried out within the parliament during the given time frame. These documents were then supplemented with interviews with members of parliament to get a deeper insight into the translation process. Five interviews were conducted with members of parliament representing four different parties (Left Party, Centre Party, Christian Democrats, and Moderate Party) and two different committees, the Committee of Justice and the Committee of Social Health and Welfare. The interviewees were chosen based on their previous interest in the question of the rights of children in coercive care, and had all written motions on the matter. As described in Article *II*, these two committees receive the majority of motions concerning coercive care. Formally, the responsibility of coercive care is placed with the Committee of Social Health and Welfare; however, the Committee of Justice, which formally handles questions on crime and punishment is heavily engaged in the matter of coercive care.

Article *III* focuses on the auditing of coercive care carried out by the Health and Social Care Inspectorate (hereafter the Inspectorate) which in 2020 received a government mandate on enhanced auditing of locked coercive care that in particular considered the Child Convention. The material primarily consists of transcripts from nine interviews, with 11 audit inspectors representing the six regional offices of the Inspectorate. The strategy of choosing interviewees for Article *III* differs from that of Article *II* in the sense that I contacted the participants in Article *II* in person based on their previous engagement with the question, while for Article *III* the interviewees were chosen by the Inspectorate. Initially, I contacted the different regional offices directly but was referred to the head of management of the Inspectorate which, after an initial digital meeting where I presented the purpose of the study, agreed to participate. The head of management then chose the interviewees for me and I received a list of 11 people who had all agreed to participate and who were all experts on the auditing of locked coercive care. Although I asked for individual interviews, the chosen inspectors from two regional offices insisted on participating in the interview together, hence, two interviews are conducted with two inspectors at the same time. While this was perhaps not desirable from a perspective of methodological coherence, I believe it made the participants more relaxed than they would have been if forced to take part individually. Hence, I believe that this was necessary for the quality of these particular interviews. In addition to the interviews, the data consists of 68 regulatory decisions from 2020 and 2021. These decisions proved to be rather stripped down in format and have been used mainly to underline and support the accounts of the interviewees.

The purpose of the interviews in both articles *II* and *III* were to elicit narratives about the interviewees' professional expertise on their field, rather than their personal experiences. In Article *II*, the interviewees were all members of parliament and can thus be considered belonging to an 'elite' which holds a significant position of power in the Swedish State. Getting access to elites is often considered to be a challenge and, as

Teresa Odendhal and Aileen Shaw (2002:306) put it, “typically requires extensive preparation, homework, creativity on the part of the researcher, as well as the right credentials and contacts, not to mention a little luck”. The challenges I faced, in many ways, confirm this statement. I was perhaps lucky in the sense that the rights of children are not a controversial topic in Sweden; on the contrary, all parties are advocating for ‘the rights of the child’, although these rights are seldom specified (Leviner, 2018a). In addition, getting access to elites is, to a large extent, about finding the right person and being in the right place at the right time (Odendhal and Shaw, 2011).

The interviews were conducted in early 2021, and this point in time proved to be significant for two reasons. First, the tragic death of a three-year-old little girl previously placed in coercive care one year earlier, about the same time that the Convention was incorporated into Swedish legislation, had set off a political ‘rush’ in legislation regarding the rights of children in coercive care. Hence, this was considered a heated topic which all parties would align around, especially in the Committee of Social Health and Welfare. This meant that the majority of the members of parliament that I contacted were eager to give their views on the importance of the matter. I also made a strategic choice on whom to contact: as mentioned above, I only reach out to those that had showed political engagement in the question by writing motions advocating for the rights of children in coercive care. However, getting access to interviewees from the Committee on Justice proved to be more difficult. My emails were sometimes simply ignored and, in the end, only two representatives from this committee agreed to participate. During the interviews, I also came to understand that ‘rights’ was a more sensitive topic in the Committee on Justice than in the Committee on Social Health and Welfare.

A second aspect that I believe made a difference to the interviews was that they were conducted in the middle of the pandemic, which meant that they took place digitally using Zoom and not in person. Although research on interviewing elites usually recommend ‘in person interviews’, it is often stressed that the place where the interview takes place may be used as a demonstration of power from the perspective of the interviewee (Odendhal and Shaw, 2011). In my case, as the interviews were taking place online at a time when many were working remotely from home, I was ‘invited’ into the homes of these members of parliament. This meant that, rather than meeting in the house of parliament, we ‘met’ at the kitchen table in our homes, informally dressed over a ‘digital’ coffee. While it is impossible for me to know what the interview situation would have been had we met in the house of parliament, I strongly believed that this informal setting removed many of the barriers of power described by those studying the elite. On the contrary, I found the interviewees to be very open with quite controversial arguments.

As noted, the strategy for getting access to interviewees differs scientifically between articles *II* and *III*. In article *III*, the study was first approved by the Inspectorate, which then chose the interviewees for me. While the interviewees have been guaranteed anonymity in relation to the broader public, this also means that the management of the

Inspectorate, as well as the management at each regional office, are well aware of who my interviewees are. This, in turn, may have affected what the interviewees felt comfortable sharing with me. They all pointed out, although to different degrees, that they spoke on behalf of the Inspectorate and not as private individuals, hence adopting a ‘spokesperson’s’ position (Delaney, 2007). As the aim was to conduct interviews with the inspectors as professional experts on auditing, it can be seen as an advantage that the interviewees expressed themselves in terms of ‘we’ or ‘the authority’ and less often used the term ‘I’, although the latter, of course, was used, especially when inspectors expressed themselves in more critical terms (Delaney, 2007). At the same time, this ‘spokesperson’s’ perspective can be problematic if one is, as I was, interested in the thinking and meaning-making that led to these official positions regarding children’s rights within the auditing process. To overcome this problem, I found it useful to ask the inspectors to give examples and describe the discussions and thought processes they had during different parts of the auditing process, and how this has changed over time.

The interviews in both articles *II* and *III* followed a thematically open approach centred on different themes anchored in the Convention, its role and function, and the meaning attached to it and how interpretations of the Convention shape the work of the interviewees (Holstein and Gubrium, 1995). I found it useful to begin the interviews with open-ended questions in order to ‘activate’ the interviewee and invite them to engage in a conversation. In the interviews with members of parliament, I began by asking the politicians about the motions that they had written on the topic; and in the interviews with the inspectors, I began by asking them to describe the auditing process. Throughout the interviews, I purposely asked the interview questions that meant that the interviewees had to engage in different time positions, such as the role of children’s rights before and after the incorporation of the Child Convention, as well as inviting them to talk about differences depending on whether the children were placed in open or locked care. All interviewees were informed about the purpose of the study and had received a written project description before agreeing to participate. They were further informed about their rights and how I intended to use their narratives, and that they were interviewed based on their expertise in their work. The interviews lasted between 45 to 90 minutes and were all recorded with the approval of the interviewees. They were then transcribed word for word and analysed together with other text.

Analytical procedure

The material – documents and interview transcripts – in all three studies have been analysed using thematic analysis inspired by Braun et al’s (2019) reflexive approach. On a general level, thematic analysis can be described as an umbrella term for methods to capture themes in different forms of texts. I understand a ‘theme’ in line with Braun et al’s (2019:845) definition “as reflecting a pattern of shared meaning, organized around a core concept or idea, a central organizing concept”. From this perspective, themes have the potential to unite different types of qualitative texts (I have treated both documents and interview transcripts

as text) as they capture both explicit and implicit ideas and meanings across data sets, building on smaller codes. This is also one of the advantages with the method, as the reflexive approach offers flexibility with regards to both data collection and theory. Following this approach, the coding process is organic, meaning that it is not fixed from the beginning, rather the codes evolve throughout the analytical process (Braun et al., 2019). This places high demands on transparency of the coding procedure, which is of course always important, independently of method, and strengthens the studies reliability.

The reflexive approach to thematic analysis consists of a number of different phases, beginning with a familiarisation with the material. I approached this first phase by reading and re-reading the material and making casual notes. As for the interviews, I was listening to them while reading the transcripts. For instance, in Article *III*, the initial idea was not to focus on participation but to have a broader scope; however, after transcribing the interviews and getting to know the material in this first phase, it was clear that ideas of children's participation dominated all the interviews, and it also shaped the research questions. The next step was to begin to generate codes by systematically going through and making sense of the material and to label 'chunks' of text that would later be used to organise the material along patterns of meaning. Codes can either be developed inductively or deductively. The first means that they are generated from the text and 'bottom-up'. However, Braun et al. (2019) recognise that no researcher approaches the text from a completely blank slate; hence, the inductive coding means that codes are generated through the text rather than decided in advance, which would be the deductive coding procedure. In articles *I* and *III* the approach to the coding phase is from an inductive perspective; however, later-generated themes are theoretically anchored. In Article *II*, I used a mix of these approaches, which is recommended by King (2004), as I started out with a few predefined codes. The process of constructing themes is a time consuming one: it involves trying out different themes and sub-themes, reformulating them, setting some aside while letting others grow in relation to, and in communication with, theory until meaningful patterns are captured across all the text and the overall 'theme story' is taking shape.

In article *I*, which focuses on the transformation of the Care of Young Persons Act in accordance with the Child Convention, two main themes were initially identified and found to permeate the official documents. These were termed 'the collectivistic discourse on state protection' and 'the child's rights discourse'. Chunks of text including descriptions of the state's responsibility of children, of their care and of the society were categorised under collectivist discourse while chunks of texts describing children's individual rights, their position as autonomous legal subjects or children as rights holders were placed under the theme child's rights perspective. Thereafter followed a categorisation of these first themes into different subthemes such as 'protection of child', 'societal protection' and 'right to appeal'. The final themes of 'disciplinary resistance', 'individualisation of rights' and 'fragmentation of responsibility', were developed in relation with the theoretical approach of rightification. It is also the main theme of this article, the tension between the

collectivistic discourse on state protection and the discourse on children as subjects of rights that has shaped the dissertation as a whole.

The coding procedure of article *II*, which analyses the relationship between logics administered by the welfare state, processes of neoliberalisation and responsabilisation of children, started out with three initial deductively constructed codes of ‘protection’, ‘provision’ and ‘participation’. These themes served as a first categorisation of the text (interview transcripts and official documents) in relation to three groups of rights. Categorising rights in this way can, as discussed in chapter VI be argued to be problematic as it may have a hampering effect of rights. However, I found these predefined codes to be useful as a first orientation of which type’s of rights that are discussed in the material. Thereafter followed a further inductively generated coding, where ‘security’ was found to be a general subtheme. The final themes identified are first, ‘the responsible versus the responsabilised child’, which captures descriptions of children in locked care as responsible for their own behaviour. Second, ‘protection of the current and future society’, which encapsulates statements and arguments regarding societal protection. The third theme is care ‘provision as conditional on security’ which captures ideas of how care and treatment are made conditional on security provision. The last theme, ‘participation – a safety threat and a safety regulatory function’ describes how children’s individual rights are perceived both as security threat and as a tool for good care. For example, statements of how children’s right to information through electronic communication pose a risk are categorised as ‘safety threat’ while arguments regarding how children may choose to engage in youth councils or formulate treatment goals has been categorised as ‘safety regulation’ to provide children a safe and secure care.

Article *III* analyses children’s right to participation in the auditing process of coercive care, and more specifically, the relationship between participation and processes of responsabilisation. As noted, children’s participation was not the intended focus of this study but was found to dominate the interviews. I view this as an illustrative example of the advantages of the thematically open approach that I followed, which allowed the interviewees to become co-constructors of the interview process. The coding procedure evolved inductively, beginning with participation as the overarching theme with subthemes such as ‘right to be heard’, ‘child perspective’, ‘*Rechtsstaat*’, ‘untrustworthy’ and ‘rationality’. These subthemes developed into four final themes where the first, ‘governing participation’ describes how participation is perceived from a child perspective within the auditing process. The second theme, ‘the opportunity to be heard and the problem of non-interference’ captures ideas of how children’s right to information and to be heard are described in terms of opportunities and choice, and of the Inspectorate’s failure to attend to social conditions of rights. The third theme, ‘struggle between the irrational ‘becoming’ and rational ‘being’” concerns statements regarding evaluations of children’s conduct, such as reasonings of children’s trustworthiness. The fourth and last theme of the article is termed ‘demanding engaged and rational subjects’ and encapsulates descriptions of how regulatory

success is depended on how children are able to package and deliver information to inspectors.

Limitations and delimitations

This dissertation is, without question, a ‘top-bottom’ study. While being a study on children’s rights, it lacks the voices of the very same children. The study can in that sense be accused of being a study ‘on’ children and not ‘with’ children (c.f., Christensen and James, 2017). Scholars have pointed out the importance of situating children as subjects rather than objects, to incorporate children as social actors in research and to adopt a child standpoint (Hendrick, 2008). Not to include children’s voices was, however, an intentional choice. It was a choice based on my own interest to begin to understand and critically examine how the Swedish welfare state and those in power view and make sense of children’s universal rights, as they are translated into the context of one of the most intrusive state interventions in the Swedish welfare system.

A second concern that can be directed towards this dissertation is that children’s rights are so much more than the Child Convention. The Child Convention can be seen as one political document among many (Quennerstedt, 2010, 2013). It complements human rights regulated in a number of other international documents relevant for children placed in coercive care, as well as in other conventions such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on the Rights of Persons with Disabilities (c.f., Leviner, 2018a). The choice to focus exclusively on the translation of the UN Convention on the Rights of the Child was, as noted in the Introduction, based on the fact that it has become the normative way of talking about children’s rights in Sweden and was presented as one of the solutions to come to terms with severe problems of neglect, violations and violence within the context of coercive care.

A third limitation and delimitation that must be discussed is that this dissertation does not consider how factors such as gender, disability, class, age or ethnicity affect the tension between ensuring safe and secure care through the use of coercion and respecting autonomy in the translation process. Previous studies have shown that gender may affect placement decisions in coercive care (Schlytter, 1999) and that girls are placed on mental health grounds, which constitutes an extension of legal praxis (Schlytter, 1999). Others have argued that girls in coercive care are more likely to be seen as vulnerable compared to boys at the same institutions, and are consequently perceived more as a child in danger than a threat to the social order (Pettersson and Vogel, 2023). At the same time, girls are more often placed in isolation cells compared to boys (NBIC, 2022). It is also likely that younger children are perceived as more vulnerable and in need of protection compared to older youths. Previous research has also illustrated how ethnic minorities are facing

discrimination within the legal system (Estrada et al., 2022; Schclarek Mulinari & Keskinen, 2022; Steffensmeier et al., 2017; Wästerfors & Burcar, Alm, 2020).

The choice not to consider such factors was intentional, and I have focused on children placed in locked coercive care as one group, which was found to be perceived as ‘more criminal’ compared to children in other forms of coercive care (see articles *II* and *III*). This choice is perhaps most easily defended in the context of articles *I* and *II*, which focuses on different aspects of the translation process. However, the choice could be questioned in relation to Article *III*, which explores participation as a strategy of power in the auditing process. For instance, some inspectors argued that disability was a factor that could hinder children’s access to make complaints and take part in the auditing process. I was, however, primarily interested in examining the overarching logics that inform the relationship between participation and responsabilisation; a more explicit focus on factors such as disability was beyond the article’s scope. A study of such factors and their effect on realisation of rights of children in coercive care should, however, be a subject of future studies.

Chapter IX

Summary of findings

Article I: ‘Rightificating’ Coercion – A Critical Perspective on the Transformation of State-driven Coercive Care

In Article I, I set out to investigate the transformation of the Care of Young Persons Act in accordance with the Child Convention, which took place between 2012 and 2018, with two questions in mind. First, I explored how the tension between the use of lawful coercion and respecting autonomy were negotiated in the transformation process, and second, how this tension affected the orientation of the regulation of locked coercive care. In the article, I refer to this as a tension between a collective discourse on state protection (which involves the protection of the child as well as society through the use of coercion) and the children’s rights perspective. According to the general comment of the UN Committee on the Rights of the Child No 12, a children’s rights perspective means that children shall be acknowledged, respected and protected as rights’ bearing persons (UN, 2009): hence, as an autonomous subject of rights.

The empirical material analysed is based on all official documents of the transformation process, including a memorandum with subsequent consultative responses from 2011, the government inquiry from 2015 with 142 consultative responses, the government bill from 2018, and the final report on the new Care of Young Persons Act presented by the Committee on Health and Welfare the same year. Theoretically, the article is informed by the concept of ‘rightification’ developed by Håkan Gustafsson (2018). Rightification refers to the process of seeking a solution to complex problems by translating more rights into law and seeks to explain how this form of conflict resolution is informed by different dimension of individualisation, fragmentation and discipline. According to Gustafsson (2018), it is *through* these dimensions that rights are ‘rightificated’.

Drawing on this concept of rightification, the analysis illustrates that the transformation process had an individualising effect on the tension between use of coercion and children as subjects of rights. This is illustrated by the suggestion to implement new coercive measures (routine use of body and room searches) inspired by the Prison Act in order to be able to guarantee children their right to leisure. An implementation of these coercive measures was first discussed in 2011, before the transformation process began, but was rejected based on system-oriented arguments. The majority of the consultative bodies were at that point in time of the opinion that penal law should not be easily implemented into care legislation and that children should be provided care and not a further infringement on their negative freedom.

This was again discussed in 2015 as a part of the transformation process, although with a different outcome. The same consultative bodies were now positive to the implementation of the new coercive measures based on the argument that children's right to leisure can only be secured through increased protection, which was understood as physical security. In this way, children's right to leisure was to be guaranteed through increased infringement of their autonomy. Given the assignment of these institutions to prevent children from escaping or harming themselves, it is reasonable that social activities are accompanied by some form of security arrangement. However, the main point is that the arguments of the consultative bodies shifted from moral and structural concerns regarding the orientation of coercive care to the individual level and specific circumstances where increased use of coercion becomes synonymous with protection and a precondition for rights.

A second conclusion was that the responsibility for children's access to rights and the respect of their autonomy is, as a result of this individualisation of rights described above, subject to fragmentation. One example was children's increased right to appeal decisions on coercive measures, such as a placement in isolation cell. While children under the age of 15 were given the right to public counsel during the process of appeal, children over the age of 15 were denied such a right. Given that the mean age of these children is around 16, this means that the majority are expected to, by themselves, initiate an appeal. Hence, while children do have a right to appeal such decisions, the realisation of that right is dependent upon them acting as capable and active individuals.

A third and more overarching conclusion is that the transformation process is both endorsed and resisted. On the one hand, children's position is strengthened, for example through their increased right to appeal the use of coercive measures. On the other hand, so is the position of the State. In the transformation process, it is suggested that the coercive care legislation which aims to provide children 'good care and treatment' be complemented with a new goal: that of 'protection'. This addition is motivated by the Child Convention article 39, which compels the State to take all appropriate measures to ensure the protection of a child from harmful acts. While this additional aim is a way of harmonising the coercive care legislation with the Child Convention, it also means a strengthened State position against the individual child where the term 'protection' is also discussed in terms of the safety and security of general society from the child. I refer to this as a form of disciplinary resistance towards the translation process.

The article contributes to the discussion on why children rights are both met and simultaneously restricted. It illustrates how the tension between use of coercion and autonomy is reduced to the individual level and transferred into broader perceptions of who is to be protected through this legislation.

Transition

At this point in time (year 2019), I also suggested that the implementation of the children's rights perspective into national legislation on coercive care was primarily an administrative

question, rather than a political one. However, this changed in the beginning of 2020. On 1 January 2020, the Child Convention was incorporated into Swedish law, and just a few weeks later, a three-year-old girl, which the media named ‘Little heart’, was found dead. Little heart, who had been placed in out-of-home care since birth was, after two years, returned to her birth parents. One year later she was tragically found deceased in their home. This case was described as a breakdown of the Swedish child welfare system and set off a legislative rush to strengthen the rights of children in coercive care. Additionally, about a month later, Swedish Public Television (2020) showed how girls in locked State-driven coercive care were systematically abused by staff, something that had been known by the management of the institution for at least five years.

Suddenly, within just a few months, rights of children in coercive care had become a highly political and sensitive topic. The two following articles examine two different forms of regulatory responses to this situation. Additionally, articles *II* and *III* are both inspired by one major finding from Article *I*, namely that access to rights are related to processes of responsabilisation. Although *I*, in Article *I*, do not use the concept of responsabilisation, the components associated with this term – individualisation and fragmentation of societal responsibility and discipline – are all there. As described in Chapter VI, a growing emphasis on children’s status as autonomous subjects of rights, with a shift from viewing children as ‘beings’ rather than ‘becomings’, is accompanied by increased demands on children to take responsibility for their own behaviour and their situation (c.f., Arneil, 2002). Hence, regulatory responses and responsabilisation(s) constitute the focus of the following two articles.

Article II: Children in coercive care as ‘Responsibilized Becomings’: On rights and responsabilization in the Swedish welfare state⁵

Previous studies have shown that rights are not only used to empower children by strengthening their role as autonomous rights holders, but also to hold them responsible for their behaviour (Kemshall, 2008; Reynaert et al., 2002). While the process of responsabilisation is commonly explained as an effect of neo-liberalisation, this article explores the relationship between responsabilisation and logics of protection and discipline administrated by the welfare state. In doing so, it sets out to identify the driving forces behind the relationship between increased emphasis on empowering children by positioning them as autonomous subjects of rights, and increased demands on holding them responsible for their situation. Further, the article aims to investigate how these forces are used to conceptualise and reconceptualise the rights of children in these institutions.

The study takes as its starting point the above-mentioned political rush to strengthen the rights of children in coercive care following Sweden’s incorporation of the

⁵ I have taken the liberty to present these findings from a slightly broader perspective than in the published article. I have done this by problematising the perspective of security provision in relation to the increased political focus on youth violence and an intensified law and order debate.

Child Convention and the increased media attention on neglect of, and violations and violence against these children. The empirical material consists of all written documents that have been executed within the parliament on the rights of children in coercive care between January 2020 and July 2021, including political motions, public letters, protocols from public hearings, and parliamentary debate and reports from the Committee of Health and Welfare. In addition, I conducted five interviews with members of parliament (MPs). These MPs were strategically chosen on the basis that they had shown professional interest in the question of children's rights by writing motions on the matter. Hence, they were able to contribute with in-depth knowledge of the translation process. Three of the MPs held a position within the Committee on Health and Welfare, and two in the Committee on Justice. Formally, questions on coercive care are dealt with by the Committee on Health and Welfare, as the practice is considered a welfare service; however, the Committee on Justice, which deals with questions of penal practice, is heavily engaged in the matter.

The analysis, which is theoretically anchored in conceptualisations of responsabilisation, shows how the two committees has adopted two different approaches to the rights of children in coercive care. On the one hand, the Committee on Justice did not discuss children's rights as this was considered too 'soft'. On the other hand, MPs in the Committee of Health and Welfare explained how they have adopted a strategy to only engage in questions they could unite around. What they could unite around were the rights of children in the open care system, but not the rights of children in locked coercive care. As a result, the rights of children in locked coercive care were not discussed, as this was considered a topic that was too complicated.

The reasons these rights were not discussed, given from the perspective of the Committee on Health and Welfare, were that children in locked care were considered to be more like "criminals" which "you don't feel sorry for in the same way" while the rights of children in the open-care system were described as a "given case". This differentiation between the groups of children was described as related to the responsibility that could be attached to children, and whether they were to be considered as "children, youths or criminals". Hence, the responsibility attached to this group of children is partly related to age, but primarily related to the fact that they are placed in locked care, independently of whether they have been charged for any crime. This form of responsabilisation should be seen in the light of a combination of institutional inertia and the construction of youth violence as a societal problem, where old responsabilising ideas of societal protection and moral blame are reinforced by the intensified law and order debate and the increased focus on security provision.

The analysis further shows that, when the rights of these children were discussed, their rights were perceived either as synonymous with security or as a security threat. On the one hand, all parties emphasised the importance of protecting children from harm; however, it was a protection (understood as protection from harmful acts and access to care and treatment) conceptualised as synonymous with increased coercion through

increased perimeter protection. On the other hand, children's right to information was perceived as a security threat. For example, children's access to information via the internet and mobile phones, as well as the opportunity to see the names of members of staff who have been making notes on the children in their journals, is perceived as a security threat. A picture is painted of these children as dangerous, as children who are not able to handle their right to information without becoming a threat towards the staff or the public. The underlying concern is that children will use their right to information to abscond from the institution or threaten staff.

Children's right to be heard is, however, not perceived as a threat, but is discussed in terms of opportunities for children to formulate goals and engage in youth councils. This can be perceived as a way of strengthening the child's position and a practice of democracy, while at the same time following the neo-liberal responsabilising logics of activation and self-governance. This way of perceiving the right to be heard differs from how it is understood for children in the open-care system, where this right is expressed as absolute, rather than as an opportunity that the child may choose to take.

In sum, this article argues that the lack of political space for the rights of children in locked coercive care opens the door to different types of responsabilising logics. This comprises where children's right to protection and care provision becomes a means in the process of enhanced security provision, but where children's right to information in some ways becomes an obstacle to overcome, and in other ways is regulated by a neo-liberal logic. While acknowledging that security provision is an important part of the coercive care institutions' assignment, and that restrictions on the use of the internet and mobile phones might be necessary in some cases, it is essential to acknowledge how children's rights are used as responsabilising tools to motivate further use of coercion.

Article III: Auditing (through) participation: the case of coercive care of children

This article explores how children's autonomy, expressed as participation, is used as an auditing tool to ensure children a safe and secure coercive care. By approaching rights as regulatory (c.f. Sokhi-Bulley, 2016), it investigates the use of children's right to participation as a strategy of power and its relation to responsabilisation(s) through the case of auditing of locked coercive care. The questions I set out to answer are, first, how is children's right to participation articulated and used as a strategy of power within the auditing process? Second, what does this right mean for children placed in coercive care?

The analysed case is the practice of auditing of locked coercive care carried out by the Health and Social Care Inspectorate (hereafter the Inspectorate). In 2020, the Inspectorate received a governmental mandate of enhanced auditing of locked coercive care where they were to especially consider the Child Convention. This governmental mandate should be understood as one of the regulatory responses to the massive critique raised by media and civil rights organisations regarding neglect of, and violations and violence

against children placed in locked coercive care. The material consists of transcripts from nine interviews with 11 audit inspectors representing the six regional offices of the Inspectorate and 68 regulatory decisions from the year 2020 and 2021.

As discussed in Chapter VI, the concept of ‘participation’ originally referred to children’s civil and political rights but is often reduced to the right to be heard, a conceptualisation which has become a dominant theme in childhood studies and policy practices (Reynaert et al. 2009; Wyness 2018). Simultaneously, emphasis on children as autonomous subjects and their right to ‘participation’ has been accompanied by increasing demands on holding children responsible for their behaviour (Kemshall 2008; Ponnert 2007; Reynaert et al. 2012). This process of responsabilisation is commonly described as a product of welfare state retrenchment under neo-liberalism and the growth of the advanced liberal state where children, like adults, must transform themselves into rational and risk-calculation subjects (Myers 2018; c.f., Garland 2001; Rose 2000). This article challenges this model of explanation by arguing that the relationship between ‘participation’ and responsabilisation is not only related to advanced liberalism, but also to the responsabilising logics of the *Rechtsstaat* and the disciplinary logics of the welfare state.

The study first identifies how the Inspectorate governs participation by adopting a child perspective rather than a children’s rights perspective, meaning that participation is reduced to the practice of listening to children and their right to be heard. In this way, the Inspectorate is governing their own ‘rights’ discourse, which reflects the hampering effect of ‘participation’ described by Quennerstedt (2010). This framing of children’s right to participation as the right to be heard is defined by the inspectors as a strategy to ‘sharpen’ the authorities auditing approach, hence recognising the relationship between participation and power. While this acknowledgement is a testimony to children’s voices as powerful, certain requirements arise for the inspectors to use children’s voices as a tool in the auditing procedure. The study identifies three forms of requirements which illustrate how the Inspectorate governs through participation in relation to responsabilising logics of the *Rechtsstaat*, the disciplinary welfare state and the advanced liberal state.

The first requirement concerns children’s access to be heard. While children do have the legal right to make complaints and to be heard by inspectors, it is a ‘right’ understood in terms of opportunities which children may choose to take, or not to, which is found separated from their actual ability to realise this right. This demand is found to be based on the logics of the advanced liberal state, where accessibility is understood in terms of opportunity and choice, and the *Rechtsstaat*, which protects civil and political rights through law, but which neglects the social conditions often necessary for realising such rights (Costa, 2007; Hydén, 2002; Zolo, 2007).

The second requirement relates to how children’s access to participation is conditional on good behaviour and where autonomy becomes dependent on a disciplinary notion of children’s self-direction and self-control (c.f., Kotkas, 2017; Hirdman, 1989).

Findings show how both the children themselves and the information they provide become subjects of evaluation of truth. It is an evaluation of the conduct of these children that is closely related to notions of rationality and discipline belonging to logics of poor laws and social-liberal ideas of knowledge and reason that the welfare state, with its social institutions, has failed to abolish.

The third requirement has to do with the quality of children's experiences and how these are delivered to the Inspectorate. This mode of government is, contrary to the disciplinary notion of the welfare state, not interested in the child's behaviour, but of the quality of the information. This demand focuses on the child's self-promotion and self-government and rewards children who take moral responsibility of their actions and who engage in an active partnership with the Inspectorate.

In conclusion, the article points to the importance of acknowledging the overreliance in law by underlining how easily the framing of the 'right to participation' is transformed into different processes of responsabilisation where an essentialist view of autonomy is created. This is a view which only ensures children the status of autonomous subjects of rights if they meet the three requirements of being capable enough to take the opportunity to make their voices heard, of behaving rationally and trustworthily and of taking moral responsibility for their own risk management.

Chapter X

Concluding discussion

This study has explored the translation of the UN Convention on the Rights of the Child (Child Convention) as a regulatory response to the presence of neglect of, and violations and violence against children placed in locked coercive care of children (c.f., Government, 2012). The introduction of international human rights treaties as a way to solve complex problems at a local level is not unique for Sweden, but a part of a broader international trend (Banakar, 2010; Smith, 2002). It is, however, a form of problem resolution that often results in new tensions (Gustafsson, 2018). In this particular case, the translation of the Child Convention into national regulation on coercive care has actualised a tension between the State's lawful use of coercion to ensure children their right to safe and secure care, and the demands of the Child Convention to respect children as autonomous subjects of rights. The overarching question that this study has set out to explore is how this tension between lawful use of coercion and respecting children's autonomy is articulated and negotiated in the process of translating the Child Convention into regulation of locked coercive care of children in Sweden.

In order to engage with this tension between the State's lawful use of coercion to ensure children safe and secure care and respecting the child's autonomy, I have drawn on the theoretical conceptualisations of the welfare state as a guardian of positive freedom and the *Rechtsstaat* as the guarantor of negative freedom (Berlin, 2000ab; Costa, 2007; Zolo, 2007). Positive freedom represents the State's duty to ensure children protection and is concerned with creating conditions of freedom, emphasising social justice, morality and reason (Berlin, 2000a,b; Dimova-Cookson, 2012). As a result, it is commonly conceptualised as a duty of the State to protect the needs of (socially exposed) individuals. Consequently, access to these rights, such as children's right to be protected from harming themselves or from harmful acts, necessarily involves active interference of the State (Hydén, 2002; Gustafsson, 2005). In this specific case, it is done by safeguarding children's need to be protected against their will, first through the involuntary placement in coercive care, and second, if considered needed to ensure children their right to safe and secure care, through the lawful use of coercive measures.

Negative freedom, on the other hand, is concerned with civil and political rights, which are to ensure the individual a position as an autonomous subject and protect the individual from the interference of others, including the State (Berlin, 2000a; Hydén, 2002). From the perspective of negative freedom, liberty is separated from the conditions of liberty. Rights are in that sense pre-social and guaranteed through law and the *Rechtsstaat* (Costa, 2007; Gustafsson, 2005; Zolo, 2007). These two types of freedom are to be understood as ideal types which are equally important but constantly clashing (Berlin,

2000a,b). They both have a risk of turning into their opposite but are at the same time mutually dependent (Berlin, 2000b). In that sense, they function as strategies of power, to be used by the State or by individuals (c.f., Sokhi-Bulley, 2016). In this final chapter, I will structure the discussion around these aspects in order to reach a broader understanding of how the tension between children's right to safe and secure care through use of lawful coercion and children's autonomy are articulated and negotiated in the process of translating the Child Convention into national law and regulation.

First, we shall consider the tension between children's right to safe and secure care through the use of coercion and respecting autonomy as constantly clashing. On the one hand, the use of coercion is found necessary to ensure children their social right to safe and secure care. On the other hand, children must, according to the Child Convention, have their negative freedom and position as autonomous subjects of rights respected. The legal paragraphs regulating this care explicitly states that it is to be exercised in consultation with the child, with respect to the child human value and integrity, although against the will of the child through the use of coercion. Although this clash is impossible to avoid, this dissertation has analysed how attempts are made to regulate around it.

One major conclusion is that children's individual (negative) freedom is presented and used as a tool to regulate harm caused by the coercive nature of this practice. As a result, the responsibility for regulating coercion is, in several ways, placed on the individual child. One such example relates to children's increased right to appeal decisions on coercive measure, such as isolation or body searches, which is discussed in article *I*. Appeals are presented as a way of strengthening children's integrity and negative freedom. Such an appeal can, however, only be made after the coercive measure has already been executed, consequently, after the potential harm has occurred. For instance, a child can only question the State's decision to place them in an isolation cell after they have already been exposed to this type of coercion. Hence, an appeal will, in most cases, not have any impact on the use of coercion for the individual child. Yet, it is through the right to appeal the child's position is to be strengthened in relation to the State. A successful appeal may, however, serve as a form of redress for the child.

A similar finding from Article *III* regards children's participation in the auditing process. While the right to make complaints is an important aspects of children's negative freedom, the auditing processes is to a large extent dependent on children's ability to express their experiences. This result in a backwards-looking regulation that address harms that has already occurred, rather than a forward-looking regulation that prevents harm from occurring in the first place. The right to make complaints can be framed as children's right to challenge decisions made on their behalf, however, these complaints regard, in many cases, harm that children have already been exposed to, commonly motivated by children's right to safe and secure care. In addition, as the Inspectorate do not have the mandate to pursue individual cases, these complaints are investigated by the NBIC themselves, whom the complaint is made against.

A second overarching conclusion is that the Child Convention functions as strategies of power, where children's positive as well as negative freedom are used to legitimise further use of coercion, discipline and control. In this way, this study illustrates how logics of both positive and negative freedom hold a risk of being turned into its opposite. Let's consider the example of how children's right to safe and secure care and treatment, are made synonymous with security provision, particularly strengthened perimeter protection (such as CCTV, or the building of fences, and more developed alarm systems for staff) as discussed in Article *II*. The scope of safe and secure care is, through emphasis on need for security provision, extended to the protection of the general public from the child. While the aspect of physical security is not irrelevant given the NBIC assignment to hold children in locked institutions, the expansion of safety and security of the child to the safety and security of the general public from the child is beyond their formal assignment.

This way of turning children's social right to safe and secure care into a question of security provision for both the child and general society can be understood as a result of both institutional inertia and an intensified crime policy debate. Although formally abolished in 1982, the aim of societal protection seems to be a difficult one to discard in practice. As described in Chapter II, coercive care of children aimed, during the early 20th century, at preventing these children from becoming a threat to decent society (Lundström, 1993; Kumlien, 2008), where the protection of society and social order was of primary interest (Stang Dahl, 1978). This dissertation provides several examples of how locked coercive care continues to be perceived as an institution for societal protection, related to moral evaluations of these children as 'criminals' (article *II*), 'untrustworthy' (article *III*) and 'dangerous' (see chapter IV). Hence, although current legislation has the protection of the child as its primary focus, the perception of the NBIC as an institution that will provide societal security appears to be formally abolished but socially accepted.

This historical artefact of coercive care as societal protection is likely to be reinforced by the current intensified law and order debate, which has resulted in an increased focus on security provision. As previously pointed out, the introduction of closed custody, which has been accompanied by an increased focus on security, has also affected the regulation of locked coercive care (see Article *II*). To provide an example, a number of, by the media, recognised escapes from closed custody resulted in the governmental initiative to construct a new security organisation at the NBIC and a security classification of all institutions (Government, 2020). There are ongoing discussions on transferring closed custody to the prison system, which would, according to the NBIC (2023), enable them to focus solely on care and treatment. However, given the history of locked coercive care, such a transfer is unlikely to change the perception of the children left at the NBIC as potentially dangerous and from whom the society has to be protected.

Another example of how rights are used as strategies of power regards how they may function as disciplinary tools. As illustrated in Article *III*, in order for children's voices to be given due weight they must be able to act both rationally and trustworthily. As previously noted, the practice of locked coercive care is justified by the idea that the State can change the child's situation for the better (Mattsson, 2017), and that coercion is an act of protection and carried out with the child's best interests in mind (Care of Young Persons Act). In that sense, it is the State and its experts that know what is best for the child, but the child must simultaneously be given the right to have a say in every situation that concerns them. This does not mean, as illustrated in Article *III*, that the child's experiences are always believed to be true. In the context of auditing, to have their voices given due weight, children must express themselves and behave in a way that is considered rational and trustworthy in order for them to be taken seriously by inspectors.

As a result, their right to be heard is transformed into a self-regulation of conduct, which reflects Berlin's (2000a) description of how the lower self must be transformed into the higher self in order to be empowered. The perception of these children as irrational and untrustworthy should, however, not be understood as ill will, but as a reflection of an historical understanding of who these children are, which is reinforced by the way the auditing system is structured. These audit inspectors do not have the mandate to pursue individual cases; instead, their task is to ensure that the NBIC complies with regulation, where their primary source of information is the child. Consequently, they need trustworthy and rational claims that hold against the State.

A third example regards how children's negative freedom rights may function as strategies of power in terms of control, self-regulation and risk-management. This dissertation shows that children in coercive care are entitled to their negative freedom in several ways. For instance, they have the opportunity to appeal decisions (Article *I*), to engage in youth councils where they can make their voices heard (Article *II*), and to make complaints about their situation to audit inspectors (Article *III*). These are all negative freedom rights that aim at strengthening the child position, based on the logic of non-interference and the perception of rights as pre-social.

If we agree with the idea that children's position in relation to the State is strengthened through a negative freedom which is separated from conditions of freedom, then there is no problematic power relationship to speak of. However, if we do not accept this, but instead direct our attention to the social conditions of negative freedom; we might find children who are not capable to initiate appeals on their own; comfortable to express their opinion in a group setting; able to understand their rights or to communicate their experiences in ways perceived as trustworthy. Differently put, we might find children who are, in theory, legally entitled negative freedom, but in practice unable to realise the very same rights. Instead, we find a system where non-interference intended to empower children may instead function as domination. I do not argue that this process of turning

children's negative freedom into domination is intentional. Rather, I suggest it to be a result of an overreliance in law as the only tool necessary to guarantee negative freedom, which is enforced by neoliberal logics of opportunity, choice and risk-management.

However, in the end, these two ideal types of freedom are mutually dependent. The State can simply not leave children on their own: they are obliged to ensure them a safe and secure childhood, which involves some degree of interference into private life; at the same time, children must be viewed as autonomous subjects of rights if the goal (of the welfare state as well as of the *Rechtsstaat*) is to uphold a democratic society and follow international conventions. In that sense, to ensure children safe and secure care and a position as autonomous subjects of rights are mutually dependent. Current attempts to regulate this mutually dependent tension have, however, resulted in a form of 'responsibility-dumping' on the very same children that the State sets out to protect. Although this study does not set out to present a solution on how to regulate this tension, it points at the importance of recognising the position of the child as an autonomous subject of rights, as socially and politically situated. Such an approach is often described in terms of 'relational autonomy' (c.f., Makenzie and Stoljar, 2000; Oshana, 2006), which serves as an umbrella term gathering a range of perspectives on autonomy as socially embedded. How to conceptualise a negative freedom of children in locked coercive care that is socially embedded but avoids domination of any sort goes, however, beyond the aim of this dissertation.

During the time that I have been writing this dissertation (2018–2023), the practice of locked coercive care has become a highly debated phenomenon on several fronts. Testimonies about violence and sexual abuse of both girls and boys placed at the NBIC are continuously presented in reports and social media. Most recently, girls currently placed and previously placed at the NBIC, calling themselves *SiS-tjejer*, translated as "NBIC-girls", are organising themselves in a social media uprising against this practice. The group is demanding a complete deconstruction of the NBIC, a call that has been repeated by the Green Party (2023). Simultaneously, calls are being made for an expansion of locked coercive care, a possible transfer of some of these children to the prison and probation system, increased security provision, and new coercive measures (Tidöavtalet, 2022). Political parties are continuously presenting suggestions on legislative and regulatory changes, and the future for the NBIC is insecure.

Independently of outcome, if the answer is found in a reformation or a deconstruction of the NBIC and locked coercive care, this dissertation highlights several aspects that should be taken into consideration going forward, at least if the future care of these children is to respect them as autonomous subjects of rights and not only as objects in need of protection through use of coercion.

- *The responsibility for regulating coercion should not be placed on children:* This analysis of the translation of the Child Convention into national regulation of locked

coercive care illustrates a problematic overreliance in the legal system, where children's negative rights are used as tools to regulate and control harm. Future governmental investigations should not only discuss how children's negative freedom can be strengthened, but also how a wider societal responsibility for addressing potential harm before it occurs can be organised. A recent government report has suggested giving children aged over 15 the right to public council in cases of appeal (Governmental report, 2023b). While this is a positive development, it will not change the fact that children will, in most cases, already have been exposed to the coercion that the appealed decision concerns. Another recent suggestion regards a further investigation of children's right to an independent Ombudsman, who can pursue individual cases and who works only for these children (Governmental report, 2023b). Such a right is in line with a more relational understanding of autonomy, and may increase children's capacity to change their situation. In addition, while children's voices must be given due weight in the auditing process, it should be directed towards preventing harms from occurring in the first place.

- *Rights do not operate in a vacuum:* This dissertation illustrates how rights operate as strategies of power, shaped by the local social and political context they are to be realised within. This means that rights can be shaped and used in different ways to justify different policy directions, such as increased use of coercion. While rights will perhaps always function as strategies of power, unintended consequences, such as the processes of responsibilisations illustrated in this study, may be regulated by a broader commitment to children's social, civil and political rights. The current narrow focus on protection and participation plays a part in what has enabled a commitment to societal protection and a fragmentation of social responsibility.
- *Future regulation must acknowledge the presence of institutional inertia:* What can be said with certainty is that, historically, rooted ideas and moral evaluation with perceptions of children in locked coercive care as untrustworthy, irrational and as potential threats to societal order have survived different ways of organising this practice during the past 100 years. The same can be said for the aim of societal protection which was formally abolished in 1982, but which is still used to motivate increased coercion. The translation of the Child Convention into national law has not changed this. Rather than being abolished, such logics have been found to be administered by the welfare state independently of parliamentary composition. These are reinforced by current calls for harder reactions towards youth crime and are likely to survive future organisation of coercive care as long as they are not brought to light, acknowledged and addressed.

Chapter XI

Svensk sammanfattning

Att med tvång placera ett barn på en låst institution är den mest ingripande åtgärd den svenska staten kan göra i ett barns liv. Det är en praktik som motiveras av att staten kan förändra barnets liv och situation till det bättre, och att tvång i vissa fall är nödvändigt och sker med barnets bästa i beaktande. Samtidigt kritiseras tvångsvården återkommande för att i praktiken innebära det motsatta, där barn systematiskt har utsatts för försummelse, våld och kränkningar på de institutioner som är till för att skydda dem. Den här avhandlingen undersöker hur Barnkonventionen implementeras i tvångsvårdslagstiftningen som ett sätt att lösa denna problematik och utsatthet.

År 2011 presenterades den så kallade vanvårdsutredningen sin slutrapport. Det är en statlig utredning där 886 individer intervjuats om sina erfarenheter av att som barn varit placerade i olika former av samhällsvård från tidigt till sent 1900-tal. Av dessa hade 88 procent utsatts för fysiskt våld, kränkningar eller sexuella övergrepp och av de 665 personer som varit placerade på institution berättade 69 procent att de även upplevt försummelse i form av otillräcklig vård, omsorg eller skolgång. Detta resulterade bland annat i en offentlig ursäkt från staten och ekonomisk ersättning till de som drabbats. Ytterligare en konsekvens av vanvårdsutredningen var initiativet som kom från den dåvarande regeringen år 2012 att göra om tvångsvårdslagstiftningen, Lag med särskilda bestämmelser om Vård av Unga (också kallas LVU) till att bli kompatibel med Barnkonventionen.

Barnrättsorganisationer och journalister har dock påvisat att utsattheten hos barn som är placerade med tvång på låsta institutioner fortgår. Dessa vittnesmål följs ofta av ett givet svar – tvångsomhändertagna barns rättigheter måste stärkas! Det finns med andra ord en stark tilltro till Barnkonventionen som lösning på vad som tycks vara en strukturell problematik med försummelse, våld och kränkningar, både historiskt såväl som inom dagens låsta tvångsvård som bedrivs av Statens institutionsstyrelse (SiS). Denna tilltro till rättigheter som lösning på strukturella problem är förstås inte unikt för tvångsvården eller Sverige, utan följer en bredare västerländsk trend som brukar benämnas som en juridifiering av rättigheter. Det vill säga att internationella rättighetskonventioner författas internationellt för att sen implementeras i olika nationella lagstiftningar. Tidigare forskning har dock visat att en implementering av universella rättigheter som ett sätt att lösa lokala problem ofta innebär att nya problemformuleringar uppstår – så även i detta fall.

Inom den svenska sociala barnvården dit tvångsvård tillhör finns en tradition av att framförallt fokusera på barns rätt att bli skyddade från skadliga handlingar och deras

rätt till en trygg och säker vård. Det är rättigheter som staten och samhället är skyldiga att tillhandahålla och som ofrånkomligen bygger på olika former av statliga interventioner. Det är med andra ord *genom* staten som barn får dessa rättigheter. Det kan handla om rätten till skolgång eller sjukvård. I detta fall gäller det rätten till en trygg och säker vård när barnet själv motsätter sig vård, och som därför ska tillförsäkras barnet genom tvång. Tvånget är närvarande dels genom att placeringen i sig görs mot barnets vilja, och dels genom att personal har rätt att använda olika former av tvångsåtgärder såsom placering av barn i isoleringscell, kroppsvisitation och urin – och blodprov om det finns misstanke att barnet är påverkat av alkohol eller droger. Det är en praktik som skiljer sig från den princip om frivillighet som välfärdsstaten normal grundar sina interventioner på och har rötter som går långt tillbaka i tiden till 1700-talets fattigvårdslagstiftning och upplysningstiden ideal. Man skulle kunna säga att den låsta tvångsvården av barn utgör en rest av tidigare idéer om skötsamhet och uppfostran blandat med dagens kunskap om vård och behandling. Det utgör en tvingande social rättighet som kan tas till när inget annat anses hjälpa.

Implementeringen av Barnkonventionen innebär dock att barn inte enbart kan ses som objekt som ska skyddas, utan även måste bemötas som autonoma rättighetssubjekt vars integritet ska respekteras och vars röster och åsikter måste tas i beaktning. Med andra ord ska barn inte bara skyddas *av* staten, de ska även skyddas *från* staten. Som följd står den svenska välfärdsstaten inför en ny problemformulering, nämligen hur man i myndighetsutövningen av ska hantera spänningen mellan barns rätt till en trygg och säker vård, som inom tvångsvården även innebär långtgående tvångsåtgärder, och att respektera barn som autonoma rättighetssubjekt. Den här avhandlingen handlar om hur denna spänning mellan tvång och autonomi tar sig uttryck och manifesteras i regleringen av den låsta tvångsvården av barn mellan 2012 och 2022. Tidsperioden omfattar därmed initiativet att göra om LVU lagstiftning till att bli kompatibel med Barnkonventionen samt hur spänningen mellan skydd och autonomi tar sig uttryck efter att Barnkonventionen blev svensk lag 1 januari 2020.

De barn som placeras i låst tvångsvård är en väldigt heterogen grupp. Det är en grupp som består av barn med olika former av kriminellt beteende och missbruksproblematik, men det kan också vara barn som placeras för att de rymmer hemifrån eller från vård i öppna former. Andra barn har placerats för att de har ett sexuellt riskbeteende eller anses uppehålla sig på platser som gör att de kan riskera att dras in i kriminalitet eller utnyttjas på olika sätt. Vad de har gemensamt är att de ofta kommer från en socialt utsatt position, har en historia av psykisk ohälsa och har ett beteende som bedöms vara en fara för deras egen hälsa och utveckling. Vård inom öppna former har antingen redan prövats och misslyckats eller på förhand bedömts vara otillräckligt för att skydda barnet från att fortsätta utsätta sig själv för fara av olika former.

Viktigt komma ihåg är att den låsta tvångsvården är en välfärdsintervention och inte ett straff. Barn som placeras på dessa institutioner kan visserligen både begått och blivit dömda för brott, men placeringen utgör i sig inte en påföljd, utan är en form av social

vårdinsats. Det betyder också att tvångsvården har som syfte att skydda barnet och inte att skydda allmänheten från barnet. Det finns dock flera likheter mellan dessa låsta institutioner och fängelsesystemet. De låsta institutionerna är ofta omgärdade av stängsel och övervakas av kameror. Personal har också rätt att använda så kallade tvångsåtgärder som exempelvis begränsningar av post, användning av mobiltelefon och internet, utföra drogtester och placera barn i isoleringscell om det anses nödvändigt för erbjuda en trygg och säker vård eller upprätthålla ordningen på institutionen. Vad som utgör skydd får därmed en bred förståelse och inkluderar både rätten till vård och behandling samt långtgående tvångsåtgärder. Det är således även dessa praktiker som nu utmanas av att barn i allt högre grad ska få sin integritet respekterad, sina åsikter hörda och sin rätt till information bemött.

När universella rättigheter såsom Barnkonventionen ska implementeras i nationell lag är det viktigt att komma ihåg att denna process inte sker i ett vacuum utan är påverkad av den specifika lokala kontexten i vilken denna process sker. I avhandlingen identifieras ett antal sociala och politiska aspekter som påverkar hur spänningen mellan tvång och autonomi manifesteras i lagstiftning och myndighetsutövning. Dels betonas vikten av att komma ihåg att tvångsvård av barn har en lång historia som sträcker sig tillbaka till fattigvårdslagstiftningar på 1500-talet vilka porträtterade fattigdom som ett moraliskt problem, där dessa individer ofta ansågs bära skulden till sin egen utsatthet. Vidare belyses hur logiker från 1920-talets sociala ingenjörskonst baserat på idén att det är möjligt att genom expertis och kunskap förändra, om nödvändigt med tvång, individens beteende till det bättre. Ytterligare två aspekter som påverkar hur spänningen mellan tvång och autonomi tar sig uttryck i myndighetsutövningen är det ökade fokuset på ungdomsvåld som ett samhällsproblem och nyliberala processer som bidrar till ett större fokus på olika former av riskhantering.

Resultaten bygger på en analys av offentliga dokument som varit en del av implementeringsprocessen. Men också av intervjuer med politiker som genom sitt arbete varit med och format denna process samt intervjuer med tillsynsinspektörer från Inspektionen för Vård och Omsorg som i sitt arbete ska utgå från Barnkonventionen när de utövar tillsyn över de låsta institutionerna. Jag kommer nu presentera resultaten av de tre olika artiklarna som utgör denna avhandling.

Artikel I: LVU transformeras till att bli kompatibel med Barnkonventionen

Avhandlingen första artikel undersöker hur spänningen mellan tvång och autonomi tar sig uttryck och manifesteras i den juridiska processen där LVU-lagstiftningen arbetas om (transformeras) till att bli kompatibel med Barnkonventionen. Det var ett arbete som initierades 2012 och som pågick till och med 2018 och analysen bygger på samtliga offentliga dokument som ingick i denna process. Å ena sidan visar resultaten att transformeringen av LVU-lagstiftningen innebär ett ökat fokus på barns skydd. Det framhålls i transformeringsprocessen att staten nu får ett ökat ansvar att skydda barn från skadliga handlingar. Så långt går alltså processen i linje med Barnkonventionen. Å andra

sidan sker en expanderings av vad som ska skyddas till att inkludera samhället i stort, inte minst det framtida samhället. Ett förstärkt skydd av dessa barn beskrivs gynna det framtida samhället ekonomiskt när dessa barn växer upp och kan bidra genom arbetskraft. Samtidigt beskrivs barnets rätt till skydd i form av skyddsuppfostran vilket är en terminologi som härstammat från tidiga 1900-talets idéer om att barn måste skyddas från att utvecklas till dåliga människor och har således en tydlig moralisk koppling. Detta kan förstås både som att staten tar tydligt ansvar för barnets framtid, men också som ett sätt att stärka statens position gentemot barnet.

Den senare delen, det vill säga statens position gentemot barnet, förstärks ytterligare när barns rättigheter används för att motivera och legitimera en utökad användning av tvång. Här föreslås att ta in delar av fängelselagen vilken skulle innebära möjligheten att genomföra rutinmässiga kroppsvisitationer av barnen och genomsökningar av deras rum även när det inte finns någon misstanke om att det har otillåtna föremål på sig eller i sitt rum. Detta anses visserligen vara integritetskränkande, men legitimeras av att barnens säkerhet bedöms väga tyngre än deras rätt till integritet. Medan säkerheten på dessa institutioner givetvis är viktig är det värt att understryka att Barnkonventionen här används som ett motiv för att ta in delar av fängelselagen i LVU och utöka användningen av tvångsåtgärder utan att det förs en diskussion om vad detta innebär för barnets integritet.

Samtidigt stärks barnets position som autonomt rättighetssubjekt genom att barn får utökade möjligheter att överklaga vissa tvångsåtgärder, såsom placering i isoleringscell. I praktiken görs dock en sådan överklagan efter att barnet redan blivit isolerad och påverkar på så sätt inte utövandet av tvånget. Det är dessutom enbart barn under 15 år som får rätt till offentligt biträde som kan hjälpa dem att driva en överklagan. Givet att medelåldern på dessa institutioner är 16 år och 7 månader innebär det att majoriteten av dessa barn själva måste initiera och driva ett överklagande. I teorin stärks alltså barnets position genom utökade möjligheter att överklaga, vilket i praktiken innebär att ansvaret för att reglera tvång läggs på det enskilda barnet.

Sammantaget visar studien att Barnkonventionen används både för att stärka statens position gentemot barnet och för att motivera ett utökat tvång, men också för att stärka barnets position som rättighetssubjekt genom rätten att överklaga. Resultatet bli en stärkt stat vars utövande av tvång är tänkt att regleras genom det enskilda barnet.

Artikel II: Skydd, tvång och ansvariggörande

Avhandlingens andra artikel tar vid där artikel 1 slutade genom att undersöka relationen mellan ett ökat fokus på barn som aktörer och ansvariggörande. Ungefär samtidigt som Barnkonventionen blev svensk lag den 1 januari 2020 skakades Sverige av vad media kom att kalla för fallet Lilla hjärtat. Lilla hjärtat var en treårig flicka som efter att ha spenderat

större delen av sitt liv i en fosterfamilj återplacerades hos sina biologiska föräldrar var flickan därpå tragiskt avlider. Kort därefter avslöjade media och barnrättsorganisationer hur flickor på låsta institutioner åter igen utsatts för övergrepp och kränkningar. Tillsammans resulterade detta i en intensiv politisk debatt med flera lagförslag om att stärka tvångsvårdade barns rättigheter. På så sätt ses Barnkonventionen igen som lösningen på en fortsatt problematik inom tvångsvården. Den här artikeln analyserar denna politiska debatt om att stärka rättigheter för barn på låsta institutioner genom intervjuer med fem medlemmar i riksdagens socialutskott och justitieutskott samt en analys samtliga offentliga dokument som berör institutionsplacerade barns rättigheter under tidsperioden januari 2020 till juli 2021.

Under intervjuerna framkom snart att de två olika utskotten hade olika sätt att arbeta. I socialutskottet diskuterades främst de barn vars rättigheter man kunde enas om, vilket var de barn som likt lilla hjärtat tvångsomhändertagits på grund av att deras biologiska föräldrar inte kunde ta hand om dem. Det framkom att barn placerade på låsta institutioner ansågs kunna hållas ansvariga för deras beteende i högre utsträckning och att det inte var barn man tyckte synd om på samma sätt. Inom justitieutskottet fokuserade man däremot enbart på barn på låsta institutioner, dock inte på deras rättigheter. En medlem av justitieutskottet uttryckte det som att ”skulle jag börja prata om rättigheter skulle jag anklagas för att dalta”. På så vis fann studien att det tycks finnas en begränsad politisk vilja och utrymme för att arbeta för att stärka rättigheter för barn på låsta institutioner, vilket tycks vara kopplat till moralisk bedömningar av vilka dessa barn är och deras sociala värde.

När väl dessa barns rättigheter diskuterades i den politiska debatten och i lagstiftningsprocessen ställs de genomgående i relation till den fysiska säkerheten på de låsta institutionerna. När det kom till barnens rätt till en trygg och säker vård presenterades dessa som synonymt med den fysiska säkerheten, det vill säga tvånget. Exempelvis diskuteras vårdkvalitet framförallt i relation till möjligheten att förhindra rymningar genom förstärkt skalskydd. När det kommer till barnens rätt till information via internet, mobiler och läsplattor ses detta som ett ytterligare säkerhetshot, både mot personal som mot allmänheten och som också det ska hanteras genom förstärkt skalskydd.

Sammantaget pekar studien på ett ansvariggörande av dessa barn genom att porträttera dem som både moraliskt klanderbara och som potentiellt farliga, oavsett vilken problematik de omhändertagits för. Vad det beror på är sannolikt en kombination av vad man i forskning brukar kalla en institutionell tröghet, det vill säga att gamla historiska värderingar ofta lever kvar i sociala institutioner, samt ett ökad fokus på säkerhet följt av en allt mer hårdare kriminalpolitik. Resultatet blir ett förstärkt fokus på den fysiska säkerheten i form av förstärkt skalskydd, oavsett vilken rättighet som diskuteras. Resultaten pekar på att barn på låsta institutioner i högre utsträckning ses som aktörer som visserligen ska skyddas från sig själva och från samhället, men inte som ovillkorade bärare av rättigheter.

Artikel III: Barns delaktighet som tillsynsverktyg för att garantera en trygg och säker vård

Ytterligare en konsekvens av den mediala uppmärksamheten kring de låsta institutioner som nämndes ovan är att Inspektionen för vård och omsorg (IVO) år 2021 fick i uppdrag av regeringen att förstärka tillsynen av de låsta institutionerna, och särskilt beakta barnkonventionen. IVO är en nationell tillsynsmyndighet som har i uppgift att utöva tillsyn över bland annat den låsta tvångsvården av barn och se till att institutionerna följer de regler och lagar de har att förhålla sig till. Även om inte IVO driver enskilda ärenden så är de ansvariga för att följa upp tvångsomhändertagna barns klagomål och se till att de utreds av institutionerna. Barn kan lämna klagomål till IVO genom att ringa, maila eller prata med tillsynsinspektörerna när de besöker institutionerna vilket de gör minst en gång om året. Om IVO finner att klagomålen inte utreds på ett korrekt sätt, eller att institutionerna brister i att tillgodose barnen en trygg och säker vård kan IVO kräva att åtgärder görs och i sista hand stänga ner institutionerna om de anses föreligga allvarliga brister.

Artikel III fortsätter att undersöka relationen mellan autonomi och tvång genom att undersöka hur barns delaktighet används som ett verktyg i tillsynen för att säkerställa att barnen får en trygg och säker vård och inte utsätts för våld, kränkningar och övergrepp. Materialet grundar sig på intervjuer med elva inspektörer och en analys av 68 tillsynsprotokoll från åren 2020 och 2021.

Trots att IVO ska utgå från Barnkonventionen i helhet berättade inspektörerna under intervjuerna att barns delaktighet i tillsynsprocessen är den rättighet som anses vara viktigast. Inspektörerna är visserligen skyldiga enligt lag att ta emot klagomål och prata med alla barn som vill under inspektioner, men de lyfte alla att det är genom barnen de får den viktigaste informationen. Information som de sedan kan använda för att säkerställa att den vård barnen får på de låsta institutionerna är trygg och säker.

Det visade sig dock att vissa krav ställdes på barnen och den information de hade för att den skulle anses vara användbar och hålla för att kunna driva ett fall vidare mot institutionerna. För det första fanns en idé om att delaktighet krävde ett visst engagemang från barnen. Flera inspektörer beskrev delaktighet i termer av möjligheter som barn kunde välja att ta eller inte ta. Exempelvis grundar sig tillsynen del på en enkät som skickas ut till barnen i januari varje år. Vissa inspektörer menade att den var utformad på ett sätt som gjorde att barn kunde ha svårt att svara på den. Men andra ord visar studien att barn inte alltid har de förutsättningar som krävs för att realisera sin rätt att vara delaktig i processen, trots att den faktiska rätten att vara delaktig i processen.

Det andra kravet som ställs på barnen har att göra med deras trovärdighet. Flera inspektörer beskriver hur de kontrollerar barnets berättelse med personalen på

institutionerna för att ta reda på om vad de berättar verkligen stämmer, eller uppger hur barn på låsta institutioner ofta klagat på irrationella saker som mat eller är otrevliga när de ringer för att lämna klagomål. Andra sätt att bedöma trovärdigheten är att se om flera barn har upplevt samma sak och i så fall kan ge samstämmiga berättelser. Dock riskerar berättelser som är för samstämmiga att misstros eftersom det anses finnas en risk att barnen har pratat ihop sig, och att deras upplevelser då tolkas som falska. Det finns på så sätt en tydlig moralisering av barnen. Vissa inspektörer beskriver att de, genom erfarenhet, har tillskansat sig en professionalism som gör att det har en känsla för vad som är allvarliga klagomål och vad som inte är det.

Det finns dock inspektörer som tenderar att ha en hög tillit till barnens berättelser och som beskriver hur de tar till olika sätt för att driva deras fall, exempelvis genom att begära tillgång till övervakningsfilmer. Trots det är tillsynssystemet uppbyggt på ett sätt som ställer högre krav på barnens berättelser. Ett exempel på ett framgångsrikt fall ges av en inspektör som beskriver hur hen tagit emot ett samtal från ett barn som både blivit utsatt för våld av personal men också själv slagit och sparkat personalen. Inspektören beskriver hur flickan på ett nyanserat sätt kunde ge båda sidor av händelsen som hade pågått under en hel dag. Att hon var kapabel att ta på sig ansvaret för sitt eget agerande och samtidigt ge exempel på när personal kunde ha stoppat utvecklingen och eskalerandet av våldet. På så sätt tar flickan även ansvar för sin egen riskhantering. Detta gjorde att inspektören gick utöver vad som förväntades av hen och ringde upp institutionen direkt för att påvisa allvaret i situationen.

Sammantaget visar studien att barn faktiskt ges rätt att delta i tillsynsprocessen. Denna rättighet är dock förknippad med olika former av ansvariggörande där tvångsomhändertagna barn måste bete sig rationellt och förtroendeingivande samt ta ansvar för sin egen riskhantering för att ha möjlighet få denna rättighet realiserad. I och med att tillsynen i så hög utsträckning bygger på barns berättelser innebär det att ansvaret för barnens rätt till en trygg och säker vård i hög utsträckning läggs på barnen själva.

Avslutande reflektioner

Under den tid jag har arbetat med den här avhandlingen har den låsta tvångsvården blivit en (milt uttryckt) omdebatterad praktik på flera fronter. Återkommande är vittnesmålen om barn som utsatts för våld och kränkningar på de statliga ungdomshemmen. Medan unga med erfarenhet av att ha varit placerade på dessa hem organiserar sig och kräver att de läggs ner höjs andra röster från maktens korridorer för en expansion av tvångsvårdande praktiker. Organiseringen av den låste tvångsvården och Statens Institutionsstyrelse står nu inför en osäker framtid, och oavsett hur en framtida organisering av vård av unga i utsatta positioner utformas visar den här avhandlingen på ett antal faktorer som bör tas i beaktning.

- *Det är inte barnens ansvar att reglera tvång:* Det finns i dag en stark tilltro till att implementeringen av Barnkonventionen i LVU-lagstiftningen per automatik innebär

att tvångsvårdade barn skyddas från försummelse, kränkningar och övergrepp. Den här studien har dock visat att det i praktiken resulterat i att barn på olika sätt blivit ansvariga för att själva reglera tvånget. För att barn ska kunna garanteras en trygg och säker vård krävs ett utökat samhälleligt ansvar.

En nyligen presenterad statlig utredning föreslår bland annat att också barn över 15 år ska ges rätt till offentligt biträde vid överklaganden och att en fortsatt utredning ska undersöka möjligheten till oberoende barnombud som ska driva barns enskilda ärenden. Dessa förslag är i grunden bra, men för att barn ska tillförsäkras en trygg och säker vård är det inte tillräckligt att de har rätt att överklaga beslut om exempelvis en isolering som de redan utsatts för eller rätt att klaga på incidenter som redan skett. Framtida utredningar måste arbeta, både för att ge barn de sociala förutsättningar som krävs för att de ska kunna utöva sina individuella rättigheter, och för att utövandet av vården och regleringen av den är uppbyggd på ett sätt som gör att det är möjligt att identifiera och åtgärda brister innan potentiella skador uppstår.

- *Rättigheter existerar inte i ett vacuum:* Det tycks saknas en förståelse för att rättigheter är öppna för tolkning och beroende av den sociala, och politiska kontext de ska implementeras i. Den här studien visar att rättigheter kan användas som maktstrategier, både för att stärka barnets position, men också för att motivera mer tvång, eller för att förlägga ansvaret för realiseringen av rättigheterna på barnen själva. Förnekandet av dessa faktorer är bidragande orsak till att staten fortsätter att misslyckas med att skydda barn placerade i låst tvångsvård.
- *Den låsta tvångsvården är förknippad med föråldrade idéer om vilka dessa barn är:* Mycket tyder på att det saknas en förståelse för den institutionella tröghet som medför att barn på låsta institutioner fortfarande är föremål för en moralisk värdering, att de många gånger tenderar att ses som irrationella och mindre trovärdiga och farliga enbart på grund av att de är tvångsomhändertagna och placerade i låst vård av den stat som är till för att skydda dem. Dessa värderingar, vilka sannolikt förstärks av det allt mer hårdnande kriminalpolitiska klimatet, har överlevt nästan 100 år av olika former av organiseringar av tvångsvård och kommer sannolikt att överleva länge till, oavsett organiseringsform, så länge de inte konfronteras öppet i den politiska debatten.

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