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Governmentality and the Swedish Approach on HIV/AIDS-prevention

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ABSTRACT

In this thesis have I studied SOU 2004:13 *Society's measures against HIV* from a Foucauldian governmentality perspective. There has also been a certain focus on law and how law might function in such a perspective. The study was conducted in the following way. First did I establish a theoretical framework on what I mean by governmentality and how a governmental project can be said to be constituted by three, overarching concepts called *setting the target*, *targeting* and *staying on target*. Law can have a function in each of these concepts as well as in none of them. Law is therefore not assigned a privileged position compared to other norms. When these three concepts are gathered, and if they are prevalent in the studied material, then it is also possible to speak about a governmental project in the Swedish approach towards HIV/AIDS.

Thereafter, have this theoretical framework been working as a grid which I have laid over the analyzed material. This constitutes a theoretical reading of the material. By using discourse analytical tools have I structured the analysis together with relevant theoretical concepts from the theoretical framework.

In the results and analysis part of the study did I find that the Swedish approach can indeed be seen as a governmental project that in a programmatic way tries to govern the behavior of the population at large as well as sub-groups in the population in desired ways. There I also found that the Swedish approach uses a plethora of different preventive measures that in one way or another targets the different groups of the population in a controlling manner. I also found that law plays an important function in this governmental project. Not, however, by laying down legal provisions and requisites, but in creating the very foundation on which the governmental project rests and which enables for such a project to run as smoothly as possible through pre-fixed channels of communications and institutions. I also found that there is a complex interrelationship between legal and extra-legal norms as well as between legal and non-legal discourses that together have formed the Swedish approach on HIV/AIDS.

The theoretical framework did therefore receive great support from the analyzed material, except for the concept *staying on target*. The official report struggled to establish better structures for follow-up studies and track keeping of the progress, which indicates that there were dissatisfactions regarding authorities' possibilities for staying on the target.

Keywords: Governmentality, governmental project, power, law, HIV/AIDS-prevention, setting the target, targeting, staying on target, sociology of law, SOU 2004:13.

Table of Content

1. Governmentality and the Swedish Approach on HIV/AIDS-prevention.....	4
1.1 Introduction	4
1.2 Research Question and Purposes of the Research.....	7
1.3 Delimitations	7
2. Previous Research	8
2.1 Introduction	8
2.2 HIV/AIDS- in Terms of Biopolitics and Security.....	8
2.3 HIV/AIDS and Technologies of Self and Risk-Management.....	9
3. Theoretical Framework.....	12
3.1 Introduction	12
3.2 A Governmentality Perspective	12
3.3 Governmentality and Law.....	15
3.3.1 The Instrumental Aspect of Law.....	17
3.3.2 Governmentality and Law Equals a Governmental Project.....	18
3.4 The Theoretical Considerations Translated in this Study	18
4. Methodological Considerations	21
4.1 Introduction	21
4.2 Description of the Empirical Material.....	22
4.3 Discourse Analysis.....	23
4.4 The Importance of Language when Studying Discourses.....	24
4.5 Method of Analysis	25
4.6 Strengths and Limitations.....	26
5. Results and Analysis.....	29
5.1 Introduction	29
5.2 Setting the Target	29
5.2.1 The Population at Large	30
5.2.2 Specific Groups Within the Population.....	30
5.2.3 Infected and None-Infected Groups	31

5.3	Targeting	32
5.3.1	Preventive Measures	32
5.3.1.1	The population at large	33
5.3.1.2	The specifically targeted groups	34
5.3.1.2.1	Men that have sex with other men.....	34
5.3.1.2.2	Persons of Foreign Nationality	35
5.3.1.2.3	Infected and none-Infected Groups	36
5.3.2	The Production of Knowledge	39
5.3.2.1	The distribution or circulation of knowledge.....	41
5.3.2.2	Statistics	42
5.3.3	The Involvement of Actors and Organizations	42
5.4	Staying on Target	44
5.5	Where did Law go?	48
5.5.1	The Division of Responsibilities	51
5.5.2	The Establishment of a Knowledge-Center	53
5.6	Concluding Remarks: the Emergence of a Specific Legal Paradigm?.....	54
6.	Discussion	57
	References	61

1. Governmentality and the Swedish Approach on HIV/AIDS-prevention

“And surely he who wants to make men, whether many or few, better by his care must try to become capable of legislating, if it is through laws that we can become good. For to get anyone whatever – anyone who is put before us – into the right condition is not for the first chance comer; if anyone can do it, it is the man who knows, just as in medicine and all other matters which give scope for care and prudence”. (Aristotle *The Nicomachean Ethics* 1980/2009:X.9).

1.1 Introduction

Since the middle of the 1980s four different national HIV/AIDS strategies have been presented in Sweden. In the first, presented by a governmental bill in 1985, the focus was on the need for more information and scientific research about the disease, different ways of supplying psycho-social support for those at risk, special interventions for care and treatment of drug addicts as well as economical funding's of preventive work on a municipal level (SOU 1985:37 and prop. 1985/86/171).

A couple of years later, the Swedish government addressed the issue again. This time, an Action Plan was developed which included a long-term strategy based on the experience from previous years. Proposed measures were the same as in the first governmental bill. Suggestions were also made for developing measures that could map out the spread channels and risk factors. Intensified epidemiological research was also considered. It was now also becoming a concern for Swedish schools around the nation since it was recognized that youths were specifically at risk for being contaminated with HIV (prop. 1987/88:79).

Thereafter, in 1995, did the Public Health Agency of Sweden together with official experts and non-governmental organizations develop a national public health policy against HIV (See Folkhälsoinstitutet 1995:65). This policy document expressed a consolidated and in a gathered form those starting-points and principles that had been leading the Swedish approach in the combat against HIV/AIDS. The purpose with the plan was to structure and organize involved authorities and organizations in their efforts in combatting HIV/AIDS.

Hereafter, in 2001, did the Public Health Agency develop a new Action Plan against HIV/AIDS. The main goal was stated to be the reduction of the spread of HIV as well as the consequences of HIV-infections in society. This goal was to be reached by fulfilling three part-goals. As a first part-goal, people's knowledges, attitudes and behavior should be aligned in such a way that it will ease the preventive efforts. As a second part-goal, HIV should be diagnosed as early as possible so that effective good medical and psycho-social caretaking of the infected individual can take place. As the third part-goal, it was stated that discrimination

and stigmatization of HIV-infected persons and their relatives needed to be countered (Folkhälsoinstitutet 2001:14). It was believed that these part-goals could be reached through targeted measures such as health-programs and preventive measures.

That same year, a national coordination group was invented which gathered experts from the Public Health Agency of Sweden, the Swedish Institute for Infectious Disease Control, medical experts and representatives from Swedish County Councils. The aim with this group was to follow-up on authorities' compliance with the goals in the Action Plan (SOU 2004:13).

In 2002 did the Swedish government appoint a special Investigator with the objective of doing a complete overview of every measure, institution and program that had been put in place since the 1980s. The official report was published in SOU 2004:13 *Society's measures against HIV*. The Investigator found several weaknesses in previous Action plans. The biggest concerns were the lack of proper tools for following-up on the implementation and that there were no clear division of responsibility between authorities that dealt with the HIV/AIDS issue. There was also a lack in strategic measures for implementing different interventions and measures in practical terms as well as a lack in the follow up or proper cost-analysis on how distributed money had been used in this work (SOU 2004:13 p. 14 and 105 ff.).

In this thesis will I carry out an in-depth study of the official report SOU 2004:13 *Society's measures against HIV*. This official report could be read as a logical and objective description of what has been done, what is being done and what needs to be done in relation to HIV/AIDS. However, and as will be suggested in the thesis, the official report could also be read as a description of the Swedish state's calculated attempt of how to govern the behavior of the civil society as well as the conduct and risk-taking of specific groups.

The interest is then not so much on actual goal attainments with executed or suggested prevention measures or how successful a suggested solution might be in reaching a specific goal. Instead, the interest lies in exploring how the population at large is mobilized in a directed and calculated attempt to control certain behavior, the arrangement of different actors and appointing different tasks to different organizations in this mobilization against HIV/AIDS (cf. Hörnqvist 2001:5). It is this description of the material that will be the concern for this thesis and the description will be done from what in the English-speaking world is usually referred to as a Foucauldian governmentality perspective (Gordon et al. 1991).

It is with this perspective that I will attempt to address the conditioned emergence of new fields of experience and how these are used to make things visible and thus in need of interventions whereas others are neglected or deemed uninteresting. These new fields of experience involve new regimes of truth and new ways in which we can be and required to be sub-

jects in relation to new practices of government (Burchell 1996:33 and Garland 2014:367 ff.). This description also hints at the activities that the researcher should be occupied with, namely a form of re-problematizing, that tries to dismantle the co-ordinates of the starting point and indicate the possibility of a different experience. It is a concern of the laid-down truth and how they can be critically examined from a certain perspective (Bacchi 2012:1 ff.). Basic questions to be asked is 'what sorts of relationships with ourselves, others and the world does this way of speaking the truth presuppose, make possible and exclude?' (Burchell 1996:33).

With this perspective follows also a particular understanding of law, which emphasizes the instrumental aspect of law. With this I mean that law works at the service of the legislator's political aims. This is something that was pointed out already by Hobbes, who made clear that the legislator is guided by a specific instrumental rationality, which conceives of law as a means for achieving political goals. This thought was later developed by Bentham who also emphasized the instrumental dimension of law in reaching political goals (Tuori 2016:xii).

However, the research about to be embarked upon here differs from that of both Hobbes and Bentham. First, I will approach law from an external perspective, thus not paying attention to law's claim to formal and substantive legitimacy or coherency. Secondly, I will perceive law as dissolved into the norm or as closely intermingled with the norm. With this I mean that law is traditionally understood as working in the nexus of legal/illegal or permitted/prohibited, whereas the code of the norm distributes facts on a graduated scale and demarcates normal from abnormal through averages or thresholds and limits. From this can we derive three guiding themes; law's instrumental aspect, the external approach and law as norm. (Tuori 2002:68).

When translated into my research the following image emerge. Ever since the 1980s has the Swedish state developed different ways of how to relate to HIV-issues, e.g. developed specific guidelines for acceptable behavior or diffusion of programs in preventing a spread of HIV. In doing so have individuals and groups in the population been inserted in multiple discourses and in that way been shaped by a political rationality adopted by the Swedish state. When studying the SOU 2004:13 in this way do I hope to be able to reveal how a theoretically important element to the analysis of law beyond legislation and administration of law in courts can be added. This will extend the sociological attention to law into considering how mechanisms of social control accompanies legal systems. Such an inquiry requires an engagement with sociology of law, which will be the focal point in this thesis (Deflem 2008:12).

1.2 Research Question and Purposes of the Research

Based on the theoretical framework will the research question be as follows:

- To what extent can the Swedish approach on HIV/AIDS-prevention, as explained in SOU 2004:13, be seen as a programmatic governmental project that controls the behavior of the Swedish population in this field?

As will be developed in my methodological chapter, the posed question raises a need for an archaeological investigation into the official report. In that way can I critically examine how HIV/AIDS is described as an issue, which measures that are proposed and how state authorities both produces the necessary knowledge and then distribute it in a systematic way down to lower levels of the organization. The purpose is therefore to critically analyze how the Swedish state both creates 'the problem' by defining it as well as proposes solutions to this very problem. Hopefully, that will lead to important insights into how more engagement with sociology in the study of law might generate a critical understanding of how the conduct of the population is controlled and regulated which would not have been possible if only a legal doctrinal view was applied. This approach therefore calls for a discourse analytical approach by mapping out the view held by the Swedish state in SOU 2004:13.

1.3 Delimitations

As mentioned, the Swedish state has concerned itself with the HIV/AIDS issue ever since the first cases of AIDS were reported in 1982 and it has discussed the issue on several occasions. The scope of this thesis will not allow me to examine each of these times when the state has had something to say about the topic. Instead, the thesis will be limited to SOU 2004:13. The reason for limiting the scope to this official report is that it is there where a complete and entire overview was made over measures that have been taken by the Swedish state.

Another delimitation that follows from only studying the SOU 2004:13 is that I will not examine how the governmentality perspective might function in other fields that relates to the issue of HIV/AIDS but that are not discussed in this SOU. For me to be able to assess that, would I have had to analyze another preparatory work, SOU 1999:51, where the Disease Control Act (Smittskyddslagen) as well as some discussion about how HIV/AIDS also might relate to criminal law are discussed. The implications that these limitations will have for this study will be discussed in my methodological chapter.

2. Previous Research

2.1 Introduction

Previous research that concerns governmentality studies is vast and covers many different topics. The aspect that I am interested in is the possibility for analyzing how law and legal discourse is deeply enmeshed in the workings of other norms and discourses. Since that aspect constitutes my theoretical framework will I deal with that research in the next chapter. The aim for this section is instead to identify key findings in my research field that touches on the field of controlling the conduct of conduct, especially related to HIV/AIDS. This section also serves as building blocks for my pre-understanding of the subject matter.

Previous research that I have found can be divided into two parts. The first part covers a more macro-level of government, i.e. government of whole populations in terms of biopolitics and security dispositifs. The second part concerns a more micro-level of government, i.e. interventions and measures that targets the acting agent through technologies of self and risk-management practices. This division is due to how the governmentality perspective is usually conceptualized, namely as a complex system of power relations that binds sovereignty (the state of domination), discipline, (disciplinary power) and the government of others and self (government) This means that governmentality is indeed as much about practices of government as it is about practices of the self (Holmes et al. 2002:560 and Lemke 2014:136).

2.2 HIV/AIDS- in Terms of Biopolitics and Security

A common theme is to discuss how HIV/AIDS can be understood in terms of biopolitics and security dispositifs. Usually, the emphasis lies generally in the intersection between state sovereignty in terms of exclusion mechanisms and disciplining practices and regulatory measures for controlling levels of HIV/AIDS transmission within the state territory. For example, regarding exclusion mechanisms, research show that some groups in society are marginalized and stigmatized and excluded from public health promotion and medical aid services. It can also be through an augmented responsabilization of certain groups' sexual activities, thus rendering them more responsible for their activities than other groups considered normal. Ingram for instance suggests that contemporary security practices do not just involve the 'conduct of conduct', or the incentive-based government at a distance. Instead, security practices frequently make use of sovereign power, in that it makes room for fields of intervention that targets specific individuals, e.g. by punishing transgressions or deviances (Ingram 2010). This raises the need for appreciating nuances in different fields and that particularities pertaining to

each field may contain a mix of different ways of acting upon its environment. One example could be to empower subjects and thus make them active. Another may be by punishing subjects and make them passive).

It is also common here to focus on the population or sub-groups in the population instead of the individual, where populations are increasingly medicalized and subjected to surveillance, control measures, and interventions (Ingram 2008:878 and Ingram 2010:293 ff.).

A crucial part in the biopolitical theme is the workings of health promotion movements, since they promote and organize knowledge, norms, and social practices. In so doing can an expert discourse be established that will lay the foundations for how to steer the population and affect individual's habits of everyday life (Gagnon et al. 2008:267). Gagnon et al. suggest that health promotion movement can be conceptualized as a governmental apparatus because its primary objective is to control choices, desires, and conducts of individuals and groups through the deployment of regulatory activities at all levels of social institutions (ibid.).

Research in this domain also suggests that governmental policies are purposefully aiming at decentralizing the government's responsibilities toward the consumers of health services. These consumers are instead presumed to possess the capacity to care for themselves. Shifting responsibility onto organizations and individuals can be seen as a strategy for involving actors into taking part of what otherwise would be the task of the state (Gagnon et al. 2008:270).

Gagnon et al. have also found that traditional public health framework and policies are usually shaped in such a manner that it develops tools for identifying infected individual, thus embracing surveillance mechanisms which systematically treat and manage infected individuals in the population (Gagnon et al. 2008:265 and Gagnon et al. 2012).

2.3 HIV/AIDS and Technologies of Self and Risk-Management

A recurrent theme in this second part concerns the understanding of the agent. With a Foucauldian understanding of disciplinary power, human agents are usually seen as passive and docile, whereas in Foucault's third and final period, the ethics period, agents are seen as active and self-enabling. Research in this field has shown that governmental projects provide agents with tools for self-determination, reflexivity and self-responsibilization. Individuals are empowered and activated in such a manner that they themselves want to appropriate inter-ventive measures as their own choice. What this achieves is that citizens can be more effectively mobilized into partaking in preventive work; not for the sake of others but for the sake of themselves (French 2015:427 and Nkomo 2014:411 ff.). Keogh has suggested that this

reflects an understanding of agents as capable to choose, to self-knowledge and self-determination, which all have informed governmental projects on HIV/AIDS in Western societies (Keogh 2008:590).

From here, the step is not far away from employing different kinds of risk-management and provide agents with tools for managing their own risks and the risks towards others. The governmental project on HIV/AIDS prevention programs therefore builds on a notion of the agent as having a capacity to manage risks by making informed and rational decisions which also make them bound to produce and account for their own health status (Keogh 2008:599).

Other researchers have found that the development of health technologies have impacted on the meaning of HIV risk and of what it means to be HIV-positive. Flowers et al. have suggested that HIV risk-management includes the risk of both infecting and being infected with HIV, risk-assessment, the psychosocial risk of managing HIV-related identities, the necessity of managing often complex HIV-related information and the valorization of HIV risks themselves (Flowers et al. 2000:286). However, the task of risk-management does not center on individual's risk decision-making processes. Instead, it prioritizes the task of managing risks, for instance living with them or reducing them. The work of risk-management has placed individuals in a dynamic of context-dependent opportunities and constraints (ibid.).

Others as well have emphasized the appeal to a rational actor, postulated as the good citizen in liberal societies. These citizens, in which the light of reason guides every action, will follow instructions provided to them, such as what to do when infected and how to prevent transmitting the disease further. According to these authors, this has led some jurisdictions to emphasize the obligation of HIV-positive people to inform potential sex partners of their HIV status before engaging in any kind of sexual activity (Rangel et al. 2014 and Young 2015:113 ff.). The main substantial contribution here, I believe, is that risk management techniques are grounded in social interaction and the possibilities for creating risk avoiding measures. They claim that the market-oriented logic of governance relies on the values of self-determination, individualism and free competition. The model of the responsible management of risk is at the center of these values. The management of risk turns out to be a new technique of social control brought about by the market-oriented logic of the state (Rangel et al. 2014:61).

As a final remark, another important theme regarding active agents is the augmented responsabilization of agents conduct. Subjects of advanced democracies, it is argued, are now governed through risk-techniques which encourage them to become autonomous individuals. With this autonomy follows responsibility that promotes behavior which assumes prudence and risk minimization behavior towards others (Rangel et al. 2014:71).

I have only found one article and one doctoral thesis (both by the same author, Bredström) that discusses the official report that I am analyzing. However, these have a slightly different approach than mine. Bredström has described how the Swedish HIV/AIDS policy discourse focuses on groups that are specifically at risk. She argues that the Swedish approach in making a division between different sub-groups is problematic since it risks reproducing stereotypes of these groups. She has also argued that this approach against HIV forms part of a wider machinery that produces and reproduces power relations in society since it occurs at the level of official policy that covers the Swedish state's approach (Bredström 2008:73).

In her findings Bredström argues that the differentiation between Swedes and non-Swedes is made through a racializing process where cultural difference become racialized and serve as markers for distinguishing between Swedes and non-Swedes in the official discourse (Bredström 2008:106). She concludes that the Swedish policy on HIV/AIDS conveys a picture of who is at risk, who constitutes risk, who is responsible for sexually transmitting diseases and who is to take responsibility for sexual safety. The answer to these questions are all mediated through racialized, gendered and sexualized intersections. She illustrates this with the description of homosexual men as construed as both promiscuous and inclined to practice unsafe sex whereas injecting drug addicts have sex partners but no stable relationship and finally immigrants as locked in their backward cultures (Bredström 2008:107).

In her article from 2009, Bredström, based on findings proposed by Wilton (Wilton 1997) and Allen (Allen 1994), she argues that Swedish authorities mediate risk and safety through conceptions of migration, ethnicity and 'race'. Insofar as ethnic identity, 'race', people and nations are constructed as 'communities of belonging', these will always be contingent upon a historical and socio-political context. This is clearly a constructionist view which emphasizes a need for looking at how and when ethnic and racialized notions are 'brought into play' and how they are 'constructed and reconstructed in terms of the present' (Bredström 2009: 58 f.). The argument here is that the distinguishing between different sub-groups in the population and the mapping out of routes of transmission of HIV-infection does not consider the multi-faceted nature of people's identities.

3. Theoretical Framework

“Another consequence of this development of biopower was the growing importance assumed by the action of the norm at the expense of the juridical system of the law /.../ I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory. A normalizing society is the historical outcome of a technology of power centered on life”. (Foucault 1979:144).

3.1 Introduction

The theoretical framework that will be used is a Foucauldian governmentality perspective. The aim of this chapter is to flesh out the meaning of this perspective and how it can accommodate a view on law that emphasizes law’s instrumental aspect. I will suggest that this juxtaposition of governmentality and law should be labelled as a governmental project.

Since the concept of governmentality covers a plethora of different perspectives and approaches have I framed my approach to that of a sociology of law perspective. This means that I will investigate how legal and extra-legal norms are enmeshed in a complicated net where they are indistinguishable from one another and at the same time works together.

I will therefore proceed by giving a brief and general overview on what a governmentality perspective means and how this relates to a state’s attempt to govern the population as well as target specific groups in the population. Thereafter follows a description of how I understand the governmentality perspective when inserted into a legal frame. In the final part of this chapter will I translate these general and theoretical considerations into my field of research, i.e. how the Swedish state handles HIV/AIDS as an issue of general concern.

It is important to note that the used perspective is not meant to capture the whole of actuality. Instead it serves as an analytical grid which will bring order to the empirical data that I will assess in the analysis part of this thesis (Jackson 2011:154). The following should therefore be interpreted as a heuristic devise in my thesis (cf. the discussion between Deleuze and Foucault, where they agree on that a theory should not be totalitarian by attempting to encompass every aspect of social life, Foucault et al. 1972/2001:1174 ff.).

3.2 A Governmentality Perspective

The concept governmentality was coined by Foucault during one of his lectures at the prestigious *Collège de France* in the late 1970s. The word governmentality constitutes a neologism of the words governmental and rationality. The concept of government should be understood in a wide sense in that it relates to the ‘conduct of conduct’. What Foucault meant by the

‘conduct of conduct’ is that governmentality contains a form of activity aimed at shaping, guiding or affecting the conduct of some person or persons. Viewed as a form of activity, it could both concern different forms of control or guidance as well as relations concerned with the exercise of political sovereignty (Foucault 1977-78/2004:91).

With the concept of rationality of government, Foucault had a specific way of thinking in mind that relates to the nature of the practice of government. This involves specific questions such as who can govern and what or who is governed? It also relates to a capacity to make forms of activities thinkable and practicable (Gordon et al. 1991:2 ff.). When governmentality is understood in this way it suggests an examination of which types of institutions, procedures, analyses and reflections, calculations and tactics that have been installed to target the population or parts of it. It does so by relying on a political rationality as the primary form of knowledge (Foucault 1977-78/2004:109). The specific meaning given to the word ‘rationality’ therefore refers to ways of thinking about and acting upon a problem, which can be systematic and dependent on formal bodies of knowledge developed by experts (Dean 2010:24).

According to Lemke, this final remark on rationality constitutes a continuation of what Foucault saw as the microphysics of power (Lemke 2014:145 ff. and Rose et al. 1992:181). Indeed, my own take is that we are still well within the idea introduced by Foucault that power works in a productive rather than a repressive manner. Nevertheless, we have now left the disciplinary side of power that Foucault developed in his middle, genealogical period which reached its peak with the work *Surveiller et punir* (cf. Foucault 1975/2005:34 f.) and turned our attention to the productive side of power that emphasizes the activation of agents. As will be demonstrated below, this will have repercussions on how we perceive the use of law as a tool for guiding what needs to be done and how it can be done. Suffice to say here that characteristic for this political rationality is that it allows for a problem to emerge while at the same time it proposes and cultivates solutions to this very same problem (Lemke 2014:145 f.).

This shift in the view on power can also be seen through Foucauldian concepts such as biopower and biopolitics developed during the same period as the governmentality lecture. Now, Foucault started to merge ideas on biopower and biopolitics into this previously discussed political rationality. The population thus becomes much more than the mere sum of individuals that constitute it. The population is targeted based on its biological and pathological properties. In doing so, is it believed that the population can be regulated more effectively. Biopolitics therefore focus on the population as a collective, on its health, hygienic conditions, birth rate, life expectancy etc. At the cross-section of this lies the abovementioned microphysics of power, where, even though the state focus on the population, the individual is not for-

gotten. On the contrary, government is preoccupied with both individuals and populations insofar as they have significance for increasing the strength of the state (Rose 1999:22 and Tuori 2002:59). This division is most likely also the explanation behind the division between macro- and micro-level approaches discussed in the chapter on previous research above (see also Ewald 1990:138 ff. and Lemke 2014:134 f.).

Findings in governmentality research suggest that numbers and statistics have achieved an unmistakable political power in technologies of government. They map the boundaries and internal characteristics of spaces of population, economy and society. With this view, practices are made intelligible, calculable and practicable through representations that are, at least in part, statistically numerical. Therefore, authors such as Rose argue that counts of population, of birth, death and morbidity have become intrinsic to the formulation of governmental projects (Rose 1999:197 f.). Other researchers such as Hacking have argued that the collection of statistics is enmeshed in the formation of a bureaucratic state machine that is part of the technology of power of the modern state (Hacking 1991:181 ff.).

These elements presently discussed, power, knowledge and statistics, are often fused by an explicitly stated need for addressing risks and risk management. Properly understood, risk can be viewed as a component of a reflexive government, in which earlier and different forms of governing, including forms of self-governing, become the means by which various programs of government set to govern risks (Rose et al. 2006:95 and Dean 2010:11 and 194). Therefore, the power/knowledge relationship masterfully developed by Foucault not only sets the target on an objective or a population to be governed but also targets specific entities within that population. Furthermore, the spiral power/knowledge often leads to a growth in measures taken since it tends to identify more and more risks and more and more refined tools for assessing and finding new risks (Hörnqvist 2001 and 2010).

This brief overview gives us reasons to examine how problematics of government could be analyzed in terms of their governmental technologies, the complex of mundane programs, calculations, techniques, apparatuses, documents and procedures through which authorities give effect to governmental ambitions. As seen, the perspective also has a specific understanding of the concept of knowledge. Knowledge is not seen as simply referring to ideas *tout court*. Instead it refers to the vast assemblage of persons, theories, experiments and techniques that together composes the way in which interventions are taken (Rose et al. 1992:177 f.).

3.3 Governmentality and Law

It is important to note that Foucault never wrote anything at length about the workings of law.¹ Suggestions have been made that he identified law with the repressive side of power and therefore did not take any interest in law since he was only interested in the productive side of power (cf. Smart 1992:29). It is also possible to find excerpts in his works that supports this view and that we need to free ourselves from a juridico-discursive representation of power by cutting the head of the king (Foucault 1976/2011:136). Hunt has described one way of how Foucault viewed law as a form of juridico-discursive representation (Hunt 2013:75):

- it lays down rules that take a binary form, i.e. licit and illicit, permitted and forbidden,
- it is negative since it says no,
- it lays down the law by means of a cycle of prohibition, and
- it manifests itself in a discourse that speaks the rule.

This enumeration suggests that juridical exercise of power essentially operates as a right of seizure of things, of bodies and time reinforced by a prohibitory discourse that identifies juridical imperatives with prohibiting practices forced upon individuals. However, this form of repressive power only takes up a small part of what power may be since it neglects the productive side of power with the emphasis more on the norm rather than on legal rules (Foucault 1976/2011:136 and Foucault 1980:93). The conclusion drawn by some authors given this view on law is that Foucault argued for a successive replacement of law with disciplinary norms. This view is sometimes referred to as the expulsion thesis (Hunt 1992:1 ff.).

Others, still, have argued that Foucault did ascribe law a dual working in contemporary societies in that law accommodates both a repressive and a productive aspect of power. Therefore, it is argued, Foucault can be interpreted as aligning law and legal provisions with norms that operates within the productive side of power (Cotterrell 2006:21 f.).

¹ The places where I have found Foucault discuss law at some length are mostly interviews, lectures and brief articles, see for instance 1972/73 *La société punitive*, 1976 *Crise de la médecine ou crise de l'antimédecine?* 1976 *L'extension sociale de la norme*, 1976 *L'occident et la vérité du sexe*, 1976 *Il faut défendre la société*, 1977 *Les rapports de pouvoir passent à l'intérieur des corps*, 1981 *Michel Foucault: il faut tout repenser, la loi et la prison*, and especially the lecture pronounced at the University of Bahia, Brazil in 1976 *Les mailles du pouvoir* (published in Dits et Écrits II, 1981/2001). Some of them are also available at youtube, such as the interview with Michel Foucault held at l'Université Catholique de Louvain in 1981, where he argues that the approach should rather be to examine crime and its relation and implication for law instead of analyzing law and its relation to crime, thus seeing crime as a form of rupture in relation to the legal system and from that view question what law is, https://www.youtube.com/watch?v=132QZ_C3ovs, last visited 2018-05-18.

Since these two interpretations of Foucault are apparently in conflict with one another, it will be necessary for me to decide on which path to embark upon in my use of the governmentality perspective and its relation to law. As stated by Foucault himself, it could be useful here to stress that his concepts and ideas should be used as a form of toolbox that could be used for the most diverse enterprises. Since I believe that law indeed is much more than only prohibitory (and not only in the Hartian way of making a distinction between primary and secondary rules, cf. Hart 1997:79 ff.) it could be useful to conceptualize law in terms of its instrumental workings (see Tuori 2016:25 f.).

Furthermore, Foucault, regardless of the different (re)conceptualizations of power that he made, he always emphasized that power is neither placed nor located at a particular place, which is commonly held in the Marxian approach that place law within the superstructure of society (see for example Stone 1985:39 ff.). Instead, the productive power which law can be a part of, is exercised in the relation between individuals or, in this case, between those that govern the conduct of others by the use of a certain number of tactics as explained above.

The argument that I would like to raise here is therefore that, if power could be divided into a repressive and a productive side, so could law be divided into a rationalistic and voluntaristic aspect as argued by Tuori, where the latter concerns law's instrumental aspect (see Tuori 2016). By so doing can we align the view of law's instrumental aspect with the general description of governmentality and thus be able to paint the following picture. Law is reduced from its grandly sovereign status as formerly represented by the juridico-discursive representation of power presented above. Instead, law assumes a position alongside those regulatory techniques such as development of knowledges which the state employs in governing the conduct of the population. Legal provisions thus become tactics to be used or not to be used, dependent upon what is deemed to have the most powerful effect on the behavior of the group under consideration. The role of law will therefore not have to be narrowed down to the repressive side of power, as suggested by the expulsion thesis. Depending on the circumstances, the role of law can take both a repressive and productive form as well as a disciplinary and activating or empowering form. This multi-dimension of the concept of power and its relation to law and how law works gives us reason to believe that these forms of power encroach upon and work through legal institutions (Foucault 1976/1997:34 and 241 and Wickham 2013:218).

When coupled with the governmental project, an intrinsic interrelationship emerges between legal, administrative and governmental state forms. The role of law takes on the form of an integrate part of a governmental project where subjects in the population are made visible, knowable and governable. It also brings to attention the multiplicity of technologies of

rule deployed in neoliberal government such as evaluation, supervision, target setting, benchmarking, ranking or diffusion of “best practice” (Brännström 2014:181 f.).

It is therefore no longer a question of imposing law on people but that of disposing of things which means the employments of tactics rather than laws and even using laws themselves as tactics by arranging things in such a way that, through a certain number of means, such and such ends may be achieved (Foucault 1977-78/2004:102). Political rationality and productive power, in which law is embedded, constitute essential mechanisms for the regulation of certain practices as well as it engages and assigns various actors to ensure that things are disposed in the right manner (Walters 2012:35).

3.3.1 The Instrumental Aspect of Law

Thus far I have argued that a governmentality perspective emphasizes the productive side of power and that it can make use of law in its attempt to govern the population. A few words need to be directed towards this instrumental aspect of law before turning to my considerations of how I will translate this theoretical framework into my thesis. When adopting Foucauldian premises as I do, law must be examined nominally. This means that there is no such thing as ‘the law’ but only particular legal practices which obey particular forms of rationality (Rose et al. 1998:543 and Tuori 2002:54). Legislation is conceived of as an instrument for achieving political goals. What matters for the instrumentalist view is the object rationality of law where the rationality of legislation is assessed in the light of the realization of its political objectives. This has, according to Tuori, also been the dimension of rationality of most interest to the sociologists of law (Tuori 2002:136).

The instrumental view on law embraces a critic’s narrative on law, where law’s instrumentality permeates and determines legal discourse. Law and legal discourse include consensus and universalism, but these result from strategic action, from the hegemony achieved by a particular standpoint. In legal discourse, the ‘raw’ preferences of social actors are translated into universalist legal language, which results in specific interests which are presented as general and ‘objective’. The end-point of this struggle is to reach a consensus on what should be the issue and how it should be solved. This could be described as a hegemonic process in which some agents or institutions have succeeded in making its position seem universal or neutral, necessary or even pragmatic (Tuori 2016:28). This also challenges our traditional understanding of blackletter law since it purports the proposition that socio-legal research would benefit from more engagement with sociology (Golder et al. 2009:2).

3.3.2 Governmentality and Law Equals a Governmental Project

I have now argued that a governmentality perspective is commensurable with an emphasis on law as an instrumental tool for governing the behavior of a certain population. In the remainder of this thesis will I refer to this juxtaposition under the abbreviated form, ‘governmental project’. With a governmental project, I mean a state’s approach taken as a whole when it attempts to control the population in society. In its purest form, the governmental project is completely programmatic in that it embraces all possible technologies for controlling the behavior of the population in relation to goals in an organized and calculated manner. By saying that it is programmatic in this way is to say that it captures both a downward and an upward process. It is downward in that official policy decisions and research are translated into interventions at the level of organizations and individuals. It is upward in that interventions at the level of individuals are followed up through the organization (Hörnqvist 2010:14 ff.).

3.4 The Theoretical Considerations Translated in this Study

For analytical purposes, the governmental project, needs to be conceptualized into more analytical friendly entities that will point out the directions in which to look when analyzing the official report. I will therefore in the upcoming analysis make use of a conceptual divide between the theoretically informed concepts which has only been alluded to in the previous sections; *setting the target*, *targeting* and *staying on target* as developed by the Foucauldian scholar Hörnqvist. In short, *setting the target* means the focusing on a particular group or population on which to intervene. With the concept *targeting* is understood the designing of different types of interventions such as control measures or administrative routines. The *staying on target*, finally, signifies those measures and evaluations that are taken in order not to lose track of the target, such as changing the routines and directives or monitoring the targeted group in new ways (Hörnqvist 2010:17 f.). As a furthering of these analytical concepts do I suggest that they could be even more refined by the introduction of the concepts *governed substance*, *governing work*, *governable subject* and *the telos of government* (Dean 1996:222.).

The *governed substance* relates to the issue that is of concern in the governmental project, in this case the regulation of the spread of HIV/AIDS in the Swedish community. This concerns the *setting targeting* process, i.e. identifying risk-groups and carriers of the disease as well as identifying actors that could possibly contribute to the telos of the governmental project. The use of data and statistics are primordial in this targeting process as well as the gathering of as much scientific knowledge as possible regarding the identified issue.

When speaking of the *governable subject*, I suggest that a division should be made between active citizens that can manage their own risks and targeted populations such as disadvantaged groups, the ‘at risk’ and the high risk, who will require intervention in the management of risks. The crucial thing here is to realize that these are liminal categories marking a fluid threshold rather than a strict divide. One of the consequences of the language of risk is that the entire population can be the locus of a vulnerability in a way that the language of danger or class or disadvantage cannot (Dean 2010:195). This suggests that in the population to be governed, the governmental project will make a division between different groups in the population, e.g. groups that will manage their own risk and groups that are in need of special care and specialized directed interventions that differ to that of the first group.

Barbara Cruikshank has suggested that typical technologies of agency comprise multiple techniques of self-esteem, of empowerment and of consultation and negotiation that are used in diverse health promotion campaigns, teaching at all levels and community policing (Cruikshank 1994:45). What these technologies of citizenship does is that they engage us as active and free citizens, as informed and responsible consumers and as members of self-managing communities and organizations and as agents capable of taking control of our own risks (Dean 2010:196). Both of these groups are to be empowered or entered into partnership with professionals, bureaucrats, activists and service providers (Dean 2010:221).

Turning to the *governing work*, this concerns the declared efforts to be done for handling the identified issue. This aspect concerns suggestions from officials on how to reduce the level of HIV/AIDS spread, the identification of measures that are needed for this goal as well as structuring of different tasks assigned to different governmental bodies in the governing work on the issue. It also involves the gathering of as many actors as possible in the governing work, such as social security services, voluntary organizations, hospitals or other institutions that are believed to be able to contribute in some way. This part concerns both the targeting and the staying on target aspect.

With the *telos of government*, finally, I understand the goal with the governmental project. In this case, it constitutes the elimination or reduction of the risk of HIV/AIDS infection in society and defending society from this disease and thus preserve a clean and healthy population. As Garland demonstrated regarding crime rates and the working of criminal justice systems, here as well, a negative outcome of an intervention does not necessarily have to mean a governmental failure. Instead, it could transpose into a redefinition of the telos, giving rise to a redefinition of aims and goals to be met (see Garland 1996:445 ff.).

In my approach, the theoretical perspective brings to bear on the question on how a particular problem, the governing of the population in Sweden in a specific field, comes to emerge as a target for government, and what role legal institutions, functionaries and calculations play in this. To speak with Rose and Valverde, it is not that law has no unity here – whether it be as a unique source of legitimate authority or as a form of reasoning. It is also that law has no privilege. The codes, techniques and discourses of law are only one element in the assemblages that constitute our modern experience of social issues (Rose et al. 1998:545).

The workings of law are therefore seen as always intermixed with extra-legal processes and practices. It equally implies the necessity, when analyzing law from the perspective of government, to turn away from the canonical texts, and instead focus on the mundane, meticulous and detailed work of regulatory apparatuses and of the operations of quasi-legal mechanisms for the regulation of relations between subjects where laws, rules and standards shape our ways of going on (Rose et al. 1998:545 f.). It is in this sense that I argue that there is a co-existence and mutual inter-dependence of law and norm which I will explore in this thesis (Baier et al. 2013:4).

Governmentality understands law as another means of, and another location for the exercise of, government. Law is not a special ‘external force’. Legal objects are discrete practices of government. In thinking of government as the ‘conduct of conduct’ one is also led to shift the focus of the study of government away from the notion of the state. In doing so, the focus of socio-legal studies shifts away from the nexus between law and the state (Wickham 2013:230). Government then, is only partly in the domains of law and definitely not a matter of imposing laws on men but of disposing of things, where legal measures are employed equally well as other tools deemed appropriate for governing a certain conduct (Foucault 1977-78:91 ff.). This comes to bear on this study since law might be prevalent in each of the three overarching concepts (*setting the target*, *targeting* and *staying on target*) or in none of them, depending on what is believed to be the most effective way to govern the population.

The working hypothesis in this thesis is therefore that if, and when, these three overarching concepts and sub-concepts have been assembled, a governing of one group over another is taking place in a programmatic way. Together, they build up what I have called a governmental project. It is within this frame that the examination of the role of law will take place where I will shed light on how law might function as a constituent part in such a governmental project.

4. Methodological Considerations

“If we were to think of law and theories of law as a species of game of whose structure and substance we are critical, we could think about the debate about feminist jurisprudence as torn between the options of trying to get into the team to have a better chance of changing the structure of the game or of engaging in strategic rule-breaking; of simply withdrawing to create and play a different game altogether; of watching on the sidelines and allowing ourselves the luxury of throwing the occasional rotten tomato from a safe distance; or some combination of these three” (Lacey 1998:185).

4.1 Introduction

A common definition of method is that it is a procedure or a technique for doing something, often in accordance with a plan. For me, methods are closely intertwined with the perspective that the researcher relies on as well as thoughts about how empirical data will be approached. However, methods could also be described as slaves under the theoretical master, where the theoretical construction of the research object inescapably brings methodological implications with it (Bourdieu et al. 1992:66 ff.).

The lesson to be learnt here is that it is never a matter of just applying methods. Instead the researcher always needs to pay close attention to the research process as a whole. This means that the selection of methods should be done in accordance with the object of study. The research object in turn should determine both the selection of texts and the analysis of those texts. Finally, the theoretical construction of the research object necessarily introduces some points of entry to the research whereas others are left out which inevitably have repercussions on the possible outcome of the research (Fairclough 2010:239).

This is also what the quotation above represents for me; if, whether and how we engage with law, different methodological considerations will necessarily follow; the aims, purposes, strategies etc. will differ considerably between the different approaches (Davies 2008:285 ff.). As stated in my theoretical framework, I believe that the governmentality perspective induces an emphasis on sociology and its implication for studying legal frameworks. The theoretical perspective therefore understands law as a tool or strategy for reaching a certain objective or goal where law is seen as inseparable from the social landscape in which it operates (Davies 2008:281 f.).

Furthermore, I would like to stress that, as a general consideration, the research process is seen as containing a perpetual reciprocal action of going back and forth between the abstract (theoretical considerations) and the concrete (the empirical data). For example, the processes discussed in my theoretical framework (such as *setting the target*, *targeting* and *staying on target*) are done using different techniques and through the involvement of several different

experts into the knowledge-production about the targeted population which mounts up to different regimes of truth about the population (Foucault 1977-1978/2004:109). These processes necessitate the posing of questions to the material such as which regimes of truth are in play or how have the state made use of such regimes or made circulation of knowledge happen? Posing such questions are of tremendous value since it will help me find pieces and evidence that contradicts the theoretical frame. Indeed, there are sufficient reasons to believe that even without ever starting an investigation on a given topic that is of interest of the state, the data will likely support the governmentality perspective.

It is therefore, like any good Popperian (cf. the process of falsification of a hypothesis, Popper 1959/2005), necessary to direct the attention towards those instances and cases where the governmental project is being counteracted or hindered and to ask the question why that is the case or why the governmental project is not being more effective than it is. Even though such questions will not falsify the perspective in the traditional sense, it will introduce ways to make adjustment and refinements to the perspective and thus augment its explicatory power of how the state's governmental project operates (cf. Gee 2011:29 f.).

Already can we trace the methodological implications that this perspective has for the research process and the methods to be used. This approach builds on an understanding of an interaction between legal and other social discourses, especially that of a scientific discourse with medical experts and the involvement of as many actors as possible in the contribution to the knowledge-production (Niemi-Kiesiläinen et al. 2007:69). Apparently then, the use of discourse analytical tools seems to be an appropriate way forward.

4.2 Description of the Empirical Material

The empirical material that will be studied in this thesis consists in the Swedish state's investigation in SOU 2004:13 *Society's measures against HIV*. This official report will be referred to as the discourse to be studied. It will only be this document that I will study in this thesis. The reason for singling out this report and no other is because it was in this report that a complete overview of every preventive measure against the spread of HIV/AIDS in society was carried out. Given my research interest and my pre-understanding of the topic that I have thanks to previous research do I believe this report to be the best representative of how Sweden approaches HIV in Sweden.

It should also be noted that the studied report is an official report. According to Alan Bryman, certain aspects are particularly noteworthy when studying such documents. First, it is

intentionally produced for a specific aim. Secondly, we normally have good reasons to believe that the information in the document is produced and presented in good faith, i.e. it is not produced with the purpose of deceiving and luring the reader. Thirdly, what is being said in the report should be understood as seriously meant (cf. Bryman 2015:320 ff. and 550 f.). To this would I also like to add that such documents are produced in a systematic manner and written in a way that aims at stating information as objectively as possible.

4.3 Discourse Analysis

Discourse analysis can be done on several different levels. A commonality, however, is to look at how language is used when describing something in law and its institutions (Niemi-Kiesiläinen et al. 2007:70). This therefore establishes a certain way of analyzing how norms are construed and how norms interact between different systems instead of staring blind on disciplinary boundaries (Banakar et al. 2005:xii f. and Niemi-Kiesiläinen et al. 2007:75).

With the discourse analysis, the focus will be on epistemological rather than ontological considerations. It is the production of knowledge and the use of knowledge that is of concern here (Neumann 2003:14). The approach will be close to that of a Foucauldian archeological project as developed in the first or early time axis of the Foucauldian thought. Nevertheless, this archeological project is not in itself a history or an epistemology with the aim at an internal analysis of a science's internal structure (e.g. law). Instead, it is a description of the archive, that is, the constitution of effective, pronounced discourses which continues to produce effects, changes over time and enables for new discourses to see the light of day while at the same time others are excluded (Foucault 1969/2001:800).

This understanding of discourse covers both statements and the regulated practices which accounts for statements. Therefore, groups of statements on a particular topic is captured as well as the rules and structures which produce this discourse. Discourses can generate exclusion when certain statements are kept in circulation while others are marginalized. According to Foucault, expert status is an important resource for the production of discourse since its successful circulation depends on whether statements will be judged as 'true' rather than 'false'. Discourse relies on the idea that there will be limitations on who will be considered to speak authoritatively. Discourse analysis must pay attention to the discursive resources which social actors use, such as category systems, narrative characters and interpretative repertoires. It also examines the distribution, exchange and control of discourse (Lange 2005:177 f.).

Discourse analysis is closely related to the interpretative aspect of text. A common approach is to make use of a hermeneutical understanding which sets out to find deeper meaning in texts (Lange 2005:182). That is not my approach. Instead, faithful to the archeological project of discourses as developed by Foucault, do I take the texts at face value. With this I mean that it is not meaningful to try to pile off layers from the texts to discover something hidden underneath. To do that would be to make transcendental claims, from the discursive to the non-discursive parts of life. This does not mean that non-discursive parts are uninteresting or that non-discursive aspects have not been part in giving the studied discourse its shape. On the contrary, the non-discursive sphere can provide the conditions of existence for a discourse and form the objects of discourse. Here instead, the discourse is seen as a veritable fact, something that constitutes a system that gives rise to propositions and statements which together constitute the archive that I as a researcher can archeologically explore (Foucault 1972:130 f.). Archeology then describes regularities of statement in a non-interpretive manner eschewing any quest to go beyond this level to find deeper meanings and it describes the relation between one statement and other statements (Wickham 2013:222).

With the discourse analytical approach described above follows a constructionalistic understanding of knowledge and how knowledge is produced. This means that categories or sub-groups in the population does not pre-exist or get their meaning from an essential and everlasting view. Instead, they are ascribed meaning from different perspectives and within the specific studied discourse. For example, to be homosexual or immigrant (which are relevant categories in this field) can have a completely different meaning depending on the context.

4.4 The Importance of Language when Studying Discourses

Language is important. With language we convey meaning, ascribe attributes and make classifications. Language is therefore not merely contemplative or justificatory but also performative. An analysis of discourse helps us elucidate not only the systems of thought through which authorities have posed and specified the problems for government, but also the systems of action through which they have sought to give effect to government (Rose et al. 1992:177).

Seeing language in this regard stands in close relationship to the notion behind Austin's speech act theory. According to him, speech acts can be divided into three elements or dimensions which we call locutionary, illocutionary and perlocutionary. With a locutionary speech act do we understand the act of saying or writing something. With an illocutionary speech act do we understand what someone is doing while saying or writing something. With a perlocu-

tionary speech act, finally, do we understand the effects that speech acts have in the extra-communicative world, i.e. what is being achieved by saying or writing something (Austin 1976). The distinction between these are only analytical in nature and helps the researcher in organizing a text (Tuori 2016:11). The discourse that will be studied can therefore be seen as a series or network of mutually linked speech acts. Speech acts attain an illocutionary force as contributions to discourse, if and when they are recognized and assessed as such by other contributions (Alexy 1983:77 ff. and Tuori 2016:12).

From what is usually referred to as an internal perspective on law (see for instance Hart 1997:79 ff. and Wells et al. 2010:17) legal speech acts are traditionally assessed by reference to a validity criterion where the normative correctness is measured from within the legal system as such. As developed in the theoretical framework above, what interests me is not a legal norm's substantive validity nor its formal validity but the aspect pertaining to instrumental rationality within the studied discourse. In other terms, this means that the focus will be on the discourse's truth claims of speech acts, where the instrumental rationality relies on the reliability of factual assumptions about society and societal causal relationships underlying policy decisions (Tuori 2016:15).

4.5 Method of Analysis

In my thesis have I not used a rigid set of procedures when I have analyzed my data, even though the reading of the studied official report has been systematically organized. If one were to give a name to my analytical enterprise, it could be called 'analysis through theoretical reading' since the analyzed text have undergone a theoretical structuration and confrontation with my theoretical framework (Charmaz 2004:496 ff.).

The most useful tool in this respect to interpret content of the text is that of posing theoretically relevant and informed questions to the text. Such questions will be derived from my conceptualization of my theoretical framework. For example, I will be posing questions such as how does a given statement fare when confronted with a set of theoretically informed concepts such as *setting the target*, *targeting* and *staying on target*? By asking such questions to the material can I investigate how the text discursively constructs meaning, directions for interventions, distribution and allocation of means etc. (Lynch 2015:274 f. and Hsieh et al. 2005). In this way will I be able to draw important distinctions in the studied text and lift out aspects that seem to be relevant and discard those that are not (Fairclough 2010:10).

As explained above, the official report has been intentionally produced for a specific purpose. It is therefore instrumental for goal-driven reasons and we are therefore expected to be able to clearly read about which these goals are in the document.

In summary, the approach in this thesis has been to analyze SOU 2004:13 with discourse analytical tools where the theoretical framework has given the structure for what to look for and what to consider. This will ensure that the analysis will not be too loose or fall prey to an all-encompassing attempt. The theoretical framework has thus provided me with theoretically filled concepts that will lay as a foundation for the discourse analysis. In that way can I consider how the population is diversified and categorized, how knowledge is being produced and how it circulates, how different actors are involved in what may be defined as a governmental project etc. Where the theoretical frame presupposes a correlation between the triangle 'power-knowledge-experience' the discourse analysis sets out to investigate that matter to see if it is identifiable in an empirical dataset such as SOU 2004:13 (Foucault 1981/2001:966 f.).

4.6 Strengths and Limitations

As in every research, there are strengths and limitations. Certain approaches are coupled with certain strengths and limitations compared to others. The strengths of my approach are several. In letting my theoretical framework serve as a grid when analyzing an official report can I structure the analysis in a clear manner and distinguish parts that are of relevance for the study from those that are not. If I were to use a discourse analytical approach *tout court*, would it not be possible to establish such a focused study, thus giving rise to a study that tries to cover every aspect in the report without a clear sense of direction.

Furthermore, the discourse analytical tool will provide for a critical examination of a given text and therefore contribute more to our understanding of how state authorities operate and work upon a given topic. This would not have been possible if I were to study the official report without any direct point of entry. Therefore, the approach provides me with a possibility for critically examine if, and to what extent, the official report could be said to reflect a programmatic attempt of governing human behavior in desired ways. This will also enable for a comparison between the previous research and my analysis. The theoretical framework will also help me shed light over a dataset.

One of the important aspects of qualitative research is its ability to provide for thick descriptions of the material. These descriptions should be anchored in the gathered data. By doing so do I hope to be able to develop new knowledge about law-in-society from a critical

perspective. In general, this approach therefore promotes one of the strength of qualitative research, namely the successive expansion of the theoretical framework so that it might embrace issues and aspects of social life not previously associated with it (Kvale et al. 2015:269 ff. and Bryman 2015:388). By increasing and expanding the theoretical framework's applicability in this way can an epistemic gain be made (Stones 1996).

However, and this is more important, the approach is accompanied by several limitations that need attention. In his lecture pronounced in 1976, *Il faut défendre la société*, Foucault emphasized the need of doing both an archeological and a genealogical examination when studying any social phenomenon (see Foucault 1976/1997:13). In this case, and as stated above, my approach will only cover the archeological part of the examination which will exclude any attempt to find explanations to underlying genealogical dimensions to why the studied discourse is taking the shape that it does. This limitation is due to the limited time and space for this thesis. However, this thesis will provide a first big step towards such an analysis.

Another important limitation that is associated with a discourse analytical approach is that it is very time consuming. The official report that I have studied constitutes 330 pages, which I have read three times. One time for getting a general overview of the report. A second time for discerning concepts and passages in the report that could possibly be connected to the theoretical framework as well as passages that seem to contradict the framework while at the same time taking notes of the pages and the passages. A third time, finally, with a more in-depth focus of the text coupled with the concepts and passages that I have discerned and with a close-read through my theoretical framework. This have provided me with a very good understanding of how the government is describing and approaching HIV/AIDS and how the Swedish state believes that the issue should be approached. However, at the same time it has prevented me from analyzing other official reports that concerns the studied topic that could equally well affirm or contradict the theoretical framework. The only clear remedy for this that I can come up with is that the conclusions drawn in this thesis should not be generalized. Instead they should be narrowed to the studied official report. In doing so could the reader of my thesis still be able to acknowledge the validity of my results within the scope of my perspective, i.e. whether my conclusions are derived rigorously from the evidence and logical argumentation that I will provide based on the findings in the official report (cf. Weber 1904/1988:155 ff.).

Nevertheless, one difficulty remains with the study of only one official report, albeit extensive in scope, namely, whether the opinions expressed in the official report merely belongs to

the Investigator as a person or if it represents the official opinion held by the Swedish state. Since the studied document almost exclusively is preoccupied with gathering information about what has been done, thus a factual emphasis, this limitation is relieved of some of its otherwise poignant impact. Nevertheless, it may still affect the results. A way to counterbalance this is by being transparent when reporting my results, so that the reader, given my theoretical frame, can be allowed to draw his or her own conclusions as well.

Furthermore, and in terms of analytical problems with my approach, is that it is difficult to refute the governmentality perspective. One does not have to be a Popperian to claim that there is a need for distinguishing between sound and unsound theories. It will most probably never be the case that the discourse under scrutiny will state its aim in the exact terms of a governmental project of governing a given population. Instead, this will be conclusions arrived at after having studied the discourse systematically under the auspice of a theoretical grid. This apparently conveys a risk of confirmation bias (Nickerson 1998:175 ff.) Awareness of this limitation or drawback will pose restrictions on what can be said and with what certainty something can be said. I will therefore need to limit my statements to considerations of *reasonableness* with a discussion whether my conclusions seem reasonable or not given my theoretical frame. The standard of reasonableness could be achieved by actively seeking out and account for parts of the research data which do not fit the main hypothesis or that otherwise contradicts interpretations that are in accordance with the theoretical frame (Lange 2005:185 and Esaiasson et al. 2012:210 ff.).

As a final remark, and this is a common criticism of governmentality research as such, is that such analyses are accused of ignoring the role of agency, experience, and resistance, thereby producing an image of government as a juggernaut that is willing itself into existence (Rose 2006:99 f.). This could be true here to the extent that I will never come in contact with the actual human beings that are being targeted and differentiated in the population. However, this drawback should not equate to mean that I will not consider, at each stage of the research process, if counterfactual alternatives could be present in my data i.e. acknowledging elements in the data set that contradicts the theoretical frame (Jackson 2011:155).

Since this thesis only studies a state public investigation and no individuals are pointed out as such in the study, there are no specific ethical considerations to be acknowledged besides the obvious fact that the research as such will follow the recommended guidelines on Good Research Practice by the Swedish Research Council (see for example Vetenskapsrådets rapportserie 2011:3).

5. Results and Analysis

“So, it is about developing methods that reaches well defined target-groups with the right message/measure in the right situation and to find the balance between immediate measures and more long-term strategies that will give space for reflexion and integration of new insights and knowledges”. (SOU 2004:13 p. 239 f.).

5.1 Introduction

In my theoretical framework did I mention that, for a governmental project to be programmatic, it needs to embrace the concepts *setting the target*, *targeting* and *staying on target*. I did also mention that law serves as a contributing factor that could play a role within each of these concepts as well as in none of them. Law is thus not assigned precedence over other forms of how the behavior of the population is governed.

In the following will I begin with a discussion of my findings related to these three concepts. This will be done under separate headings. The chapter will also include a discussion about passages and ideas expressed in the official report that relates to failures of the implementation of a governmental project. Since such failures, that I have found in the material, have all been related to the third concept, *staying on target*, will I discuss them at the end of that section. Thereafter follows a section where I will discuss the role of law in this governmental project. The chapter ends with some concluding remarks.²

5.2 Setting the Target

Setting the target relates to the meticulous discernment of the population. Such a classificatory work which divides the population into smaller entities is necessary for developing appropriate measures and tools for keeping track of the progress. This *setting the target* on the population correlates with the stated goals in the official report. In the report is it stated that the main objective is to carry out an overview of measures that has been taken to limit the spread of HIV/AIDS. It is also stated that the Investigator shall leave a suggestion for a National Action plan that will limit both the spread of HIV/AIDS and its consequences (p. 11 f. and 19).

The concept ‘population’ may include the whole civil society as well as certain groups within that population. When examining the content of the official report does it become evident that the Swedish approach has been to set the target by making a tripartite division of the population; the population at large, certain groups in the population and a distinction between those infected by HIV/AIDS and those who are not yet infected but at risk of being so (p. 16,

² Each time a reference only refers to a certain page, it refers to SOU 2004:13 if nothing else is stated.

19, 36 and 44 f.). Even though the division between different groups are not held constant in this way, they do become subject of much discussion in the official report.

5.2.1 The Population at Large

With the population at large, I mean those individuals that are neither HIV-infected nor belongs to any of the specifically discerned sub-groups. These individuals are the ordinary citizens in society. When this group is considered in the official report is it often mentioned that very few individuals in society are actually being affected by HIV. According to statistics referred to in the report, there are approximately 250 new cases of HIV-infected individuals registered each year in Sweden (p. 156). Nonetheless, it is stated in the official report that the risk of being contaminated with HIV in Sweden is big. The Investigator is also anxious about the current situation. If adequate actions are not taken can the situation swiftly deteriorate (p. 12 f.). This gives rise to the paradoxical suggestion in the official report that even though the annually reported number of HIV-contaminations in Sweden is very low, everyone is at risk of being infected if precautions are not taken.

The population at large is therefore targeted in the official report in order to inculcate the risks that can be associated with certain types of behavior or sexual conduct such as unsafe sex. This emphasis on risk supports the view that one of the consequences of the language of risk is that the entire population can be the locus of a vulnerability in a way that the language of danger or class cannot (Dean 2010:195).

5.2.2 Specific Groups Within the Population

A distinction between six different sub-groups is made in the official report based on findings presented by state authorities; gathered epidemiological data, statistical data and the possibilities for reaching these groups with preventive measures. These are the groups (p. 19):

- Men that have sex with other men (referred to as MSM in the report),
- Injecting drug addicts,
- Persons of foreign nationality,
- Youth and young adults,
- Abroad-travelers,
- Pregnant women.

Each of these groups are meticulously described in the official report with an extensive set of gathered data about each group, including specific statistical data such as number of contaminated, age, sex, nationality, type of sexual conduct that have been the typical way of transmission in each of the categories etc. (see for instance Ch. 3 in the official report).

5.2.3 Infected and None-Infected Groups

The official report also draws a distinction between those already infected by HIV/AIDS and those that are not infected but at risk of being so. It is stated that campaigns against HIV has usually been directed towards those that are not infected whereas those already infected has been neglected. The Investigator therefore stresses the need for cooperating with those already infected so that they can become involved in the gathered attempt to combat the spread of HIV/AIDS. The target is therefore also more clearly set on those already infected compared to what has previously been the case. In relation to the none-infected group, attention is paid to those considered to have a risky behavior or prone to take risks such as the abroad-travelers (cf. for example p. 40).

This *setting the target* that takes place in the official report clearly indicates a need for making a division of the population so that the targeting process can be rendered more effective and accurate. The population has become the object that government must consider in all its observations, in order to govern more effectively and in a rational manner (Foucault 1978/1991:100). These defining practices have therefore established a governable object.

Given that the target has been set in this way based on an extensive use of epidemiological data, statistics and particular knowledges pertaining to each group, suggests that the population has come to be seen through the grid of administratively identified regularities. This identification is of central importance in that it constitutes an epistemological precondition for the specification of new, practicable techniques of management which are necessary for developing such adequate actions mentioned in the official report (p. 12 f., Burchell 1991:126).

The distinction that is made in the *setting of the target* also suggests two different points of entry as suggested by previous research. One that sets the target on a more macro-level on the conduct of the population at large. The other that sets the target on a more micro-level which may include more individualizing techniques directed at specific groups. We can therefore, in agreement with Lemke, also claim that there is no clear-cut demarcation line between individualizing techniques and the workings of biopower (Lemke 2014:136).

Another common theme in the official report is that the emphasis is placed on the entirety of a given sub-group rather than specific individual behavior as such. This therefore supports the findings by Ingram who argues that it is more common that the focus is on the population or sub-groups instead of the individual, where populations are seen as increasingly medicalized and subjected to control measures and interventions (Ingram 2008:878 and 2010:293 ff.).

5.3 Targeting

After the target has been set will the next step be to discern how these groups are *targeted* through the use of different types of preventive measures. The section therefore includes a discussion of such preventive measures and how they relate to different groups. This section will also include an enquiry into how these measures relies upon human-sciences and epidemic data collection in terms of knowledge production that takes place in this field. Thereafter follows a discussion about how this produced knowledge is distributed and made to circulate in society in a top-down fashion. The section on the targeting process ends with a discussion of how the Swedish approach is characterized by a want for involving as many actors as possible that are believed to be able to contribute to the combat against HIV/AIDS.

Since this is the longest section in the thesis, will it also include two intermediate summaries; one after having discussed the aspect related to preventive measures, the other after having discussed the knowledge-production, its circulation and the involvement of actors.

5.3.1 Preventive Measures

In the official report, the Investigator does systematically review every type of measure that has been used in relation to each of the previously discerned sub-groups in the population. A founding principle for the workings and establishment of the different measures under scrutiny is that they are based on the accumulated knowledge that has been gathered in relation to each group. A typical statement in the official report is that the best preventive work is done through coordinated and well thought out communication and information actions (p. 118). In the following will I focus on some of these and how they differ depending on which group that is targeted.

5.3.1.1 The population at large

The common theme in the official report is that the population at large is targeted through a process of responsabilization where everyone should be made into a more responsible-taking actor for his/her own protection and his/her own sexual behavior. It is also stated that:

“it is important that the entire population is being engaged in the work against HIV through information and knowledge-sharing” (p. 19).

It is therefore possible to speak of a mobilization strategy of the civil society where the HIV/AIDS should be seen as an issue concerning everyone and not just a few (cf. Donzelot 1991:169 ff. and Hörnqvist 2001:40 ff.). Based on this mobilization strategy can we discern a common theme in the official report on how measures directed at the population at large sets out to affect their attitude towards safe sex, attitudes towards those that are HIV-infected and attitudes towards risk-management (p. 28). At other times, it is said that “society has a desire for a normalization of the HIV/AIDS area”, by which is meant that people’s attitudes should be formed in such a way that it accommodates a more realistic, tolerant and open view on HIV/AIDS (p. 98 ff.).

The population at large is therefore considered “normal” containing rational agents that can take care of their own situations. However, sometimes these agents are not taking such necessary precautions, for which they still need some guidance or simple reminders through information campaigns. These agents are the active citizens, those that do not need to be forced in any way, those that express a general concern for their own health and that have the necessary awareness of risks which they may be exposed to.

The main instrument for targeting the population at large with preventive measures is mainly through sexual education in school (p. 38), campaigns and distribution of information sheets (p. 69) and different legal measures that will affect attitudes that people might have towards HIV-infected persons (p. 99 and 143). Furthermore, the population at large could also be said to be addressed as potential victims of HIV. It is said that the Swedish state therefore needs to continue such preventive work that aims at supplying citizens with adequate knowledge and information which will turn them into enlightened citizens and that will teach them to recognize risky situations (p. 12 f.).

Another sign of this approach towards the population at large is that it is never claimed that this group would have any particular need for empowerment or that its members express a disinterest in their own health situations. However, at one point is it mentioned in the official

report that preventive measures in general also needs to empower or reinforce individuals' capacities (p. 42, cf. Cruikshank 1994:45 who suggests that typical technologies of agency comprise multiple techniques of self-esteem, of empowerment and of consultation and negotiation that are used in diverse health promotion campaigns).

The view that is defended in the official report is therefore that self-regulatory techniques can be inscribed in citizens so that they will align their personal choices with the ends of government. By targeting the population in this way can individuals be shaped into becoming an ally that can be mobilized in the pursuit of a common goal (Rose 1992:188 and 1996:40 f.).

5.3.1.2 The specifically targeted groups

When the attention is turned towards the specifically targeted groups the discussion in the official report pivots to a different understanding of what needs to be done. The official report works with a different regime of truth about the sub-groups compared to the population at large. This will be exemplified in the following by discussing the cases of *men that have sex with other men (MSM)*, *persons of foreign nationality* and *infected and none-infected groups*.

5.3.1.2.1 Men that have sex with other men

It is mentioned in the official report that research and survey-data suggest that safer-sex norms have become the norm in the subgroup MSM and that this is due to preventive efforts that have been directed towards this group. However, there has been a noticeable change that indicates that risk-taking has elevated once again in this group. Epidemic data that the Swedish Health Agency has provided suggest that nearly 50 per cent of the newly HIV-infected persons each year come from this sub-group (p. 45 f.).

This development requires special measures in targeting this group more effectively and to find channels where the communication with this group can be up-held. It is believed that Internet and voluntary organizations are good ways for reaching out to this group. Another aspect is the availability for more HIV-testing and more possibilities for consultations to MSM (p. 45 f.). A common theme in this targeting process of the sub-group is to try to target members of the group as both agents and as objects (p. 49 and 101). This could be done through information campaigns directed to this group and by considering "new arenas where the targeted group can be reached and where sexual connections are made" (p. 49). Another way of reaching this group indirectly is by providing voluntary organizations with necessary information about preventive work (p. 47).

It is emphasized that the collaboration between voluntary organizations and different medical institutions at regional level needs to be deepened so that the outcome of preventive measures can be maximized. Scientific research through state authorities knowledge-center concerning MSM is also stressed as an important factor when targeting this sub-group (p. 46 f.). The needed scientific research concerns the health of MSM and their life conditions (including exposure of violence and discrimination) which will help to adapt the preventive measures even more based on the needs of this group (p. 49).

Just as was the case regarding the population at large is the sexual education in school also mentioned as an example for targeting MSM. This time, however, is it stated that such a preventive measure would strengthen personal identities which is being considered as fundamental for HIV-preventive efforts in this sub-group (p. 47).

5.3.1.2.2 Persons of foreign nationality

When the sub-group *persons of foreign nationality* is discussed, the preventive work changes direction yet again. Two targeting strategies might be distinguished. In the first, can we see an attempt to reach this group through the same channels that immigrants themselves are believed to rely upon for their knowledge intake, i.e. through different immigrant organizations (p. 224). In the second, which functions indirectly, is the preventive work targeting this group through wider channels of communication such as different state institutions like school, the Migration Agency or primary care institutions (p. 224 f., Bredström 2009:64 f.).

In this targeting process was also a cultural component present that was otherwise absent in the preventive work. Now, the emphasis seems to be more on finding ways to overcome language barriers and other practical issues related to being an immigrant (cf. p. 90). It is also stressed that immigrants need special attention in this area since certain groups in this population may never have received sexual education and thus lack basic knowledge or that they lack the capacity to assimilate the general message on HIV-prevention (p. 217 and 225).

However, the effectiveness of the first strategy is questioned in the official report on the belief that immigrant organizations are often based on a religious or cultural value base that might confuse the state's message to be received (p. 224). Instead, it is recommended that identification processes are emphasized and that more persons with foreign heritage transposes into becoming 'HIV-informants'. The Investigator therefore suggests that "persons with a heritage in different ethnical groups and with clear connection to the new society in which they live are to be used" (p. 226). Immigrants with cultural competence is therefore of great importance for reaching this group with the preventive message (Bredström 2009:65).

It is also considered as a fruitful preventive measure that asylum-seekers and new arrivals are given the right to free health-observation upon arrival and that those identified as already infected should be offered treatment on the same conditions as Swedish citizens (p. 144).

Another aspect related to this sub-group (which it shared with injecting drug addicts) was that there is a slight tendency for this group to have a lower level of compliance to preventive efforts than other groups and that this group is less receptive to information about HIV/AIDS than other groups:

“a reinforced psycho-social support for HIV-infected in general and specifically to injecting drug addicts and persons with foreign nationality since these groups have been prone to have a certainly bad compliance to treatment”. (p. 143 f.).

This aspect is therefore also targeted to establish a change in their conduct and behavior in relation to follow-up on their health situations. It is believed that such a change could be reached through a ‘holistic strategy’ where prevention, psycho-social support and treatment are integrated (p. 143).

5.3.1.2.3 Infected and non-infected groups

As stated earlier, the official report is concerned with those groups that have already been infected as well as those not yet infected but at risk of being so. In relation to the infected-group, it is emphasized that more ways need to be found for supplying them with psycho-social support, treatment and empowerment. Tools are therefore needed for how to identify those already infected so that they can be offered such measures (p. 36).

It was stated that the most important task in relation to those already infected was to make sure that they do not transfer their disease to others. Suggestions were made that such individuals should be offered counselling where they will learn methods for safer sex. The Swedish legislation does also give room for restrictions on the infected persons sexual behavior in that conduct rules can be proscribed to them by physicians (such as safe sex, informing their sexual partner of their disease etc.). These forms of preventions constitute an essential part of the preventive work since it enables for directly targeting the individual’s behavior that exposes others for risks (p. 40). Specific measures such as contact tracing or disease and partner tracing as well as good diagnostic possibilities are considered to be of interest in this (ibid.).

Previously have campaigns against HIV usually been directed towards those that are not infected whereas those already infected has been neglected. For this group, precisely as for MSM, did the Investigator consider the possibilities for targeting the infected more as agents

and not solely as objects to be acted upon. The Investigator therefore stressed the need for cooperating with those already infected and make them more involved. HIV-infected persons' own experiences should therefore be integrated into the preventive work. Not primarily for preventing the spread of HIV/AIDS but for combatting discrimination and stigmatization that this group is being subjected to in society (p. 98). It is believed that those already infected are always at risk of being stigmatized and discriminated and that such discrimination would hinder effective preventive work from taking place (p. 143).

The strategy that the Swedish approach relies upon here is therefore to make already infected persons more visible and thus easier to target. By adapting the information campaigns towards this end and by ameliorating the support to different voluntary organizations can this visibility strategy be realized more effectively (p. 142 f.). It is important that those already infected are being targeted through means that will "integrate HIV-infected persons in the preventive work, both as agents and as a target-group" (p. 195). The production of regimes of visibility in this way will facilitate the construction of measures that can reach this group. This expresses the biopolitical idea that the target is set on the body and the targeting attempts to inscribe patterns of behavior by controlling their actions and by integrating their experiences into this control technique (Amo-Agyemang 2017:31 and Debrix et al. 2012:100).

However, in relation to this group, it is evident that the Investigator balances between on the one hand tools of subjugation/discipline through legal measures and on the other empowering techniques that will make these subjects active and involved in their own self-help (p. 41). In the official report, those already infected are described homogenously and the directed measures that targets them are not individualized. This is in line with Rose's claim that factors such as social background is toned down and the focus becomes the individual's own responsibility and possibilities for self-governing (Rose 1999:188 ff. and Hörnqvist 2001:45).

When considering the none-infected but at risk of being so, the Investigator stressed the need for targeting risk-behavior through direct measures towards those groups that are more inclined to expose themselves to risks than others. In the official report it is stated that:

"out of necessity should the priority in the preventive work also be such that they address those persons that have or could be developing, a risk behavior or live within a population that might be exposed to elevated risks". (p. 98).

Here specifically, does the Investigator claim that it is not easy with simple arithmetic to calculate risk and that organizational conditions as well as monetary situations for each preven-

tive measure affects the possibility to reach and target this group (ibid.). Nevertheless, at least a portion of this group has been found in the population called *abroad-travelers* (p. 238).

Later in the official report, under the section “Risk behavior when traveling aboard” is it stated that that very few people believe that they are or will be exposed for the risk of being HIV-infected. If this view is brought with them during their travel abroad can this mean that they will be exposed to risks. Some situational risk factors are also identified such as the use of alcohol. The Investigator invokes the results of studies that show that the majority of those that have engaged in sexual activity abroad have been under the influence of alcohol. Therefore, not only short-term preventive measures such as distribution of condoms and information sheets are needed but also to “develop methods that reaches well defined target-groups with the right message/measure in the right situation” (p. 239 f.).

In summary, the targeting process has depended on how the target has been set. Preventive measures do also reflect this, in that they are shaped in conjunction with the need of each group. This is also apparent in that the targeting process clearly makes a distinction between those subjects that already pertain to the general view on self-responsibility and self-control and those that do not. It is also seen through the tendency to differ between active citizens that can manage their own risks and targeted populations which need specific incentives or who will require specific interventions in the management of risks.

I also believe that it is possible to make, albeit somewhat broad, division between control strategies that seek to regulate conduct by enmeshing individuals within circuits of inclusion on the one side and such control strategies that seek to act upon pathologies through managing different circuits of exclusion on the other (Rose 2000:324). These two are particularly visible through the multiplication of different forms of techniques of responsabilization that are being employed which promotes the individuals’ choice, personal responsibility and self-government (ibid. p. 329). The division is also visible through targeting processes that are based on the notion of uninterested or none-compliant individuals, where the emphasis on circuits of insecurity relies on the rationale of managing these anti-citizens and marginal spaces through measures which seek to neutralize the dangers they pose (ibid. p. 330). These individuals are mostly located in the immigrants and injecting drug addicts sub-groups, which also reflects the measures taken that aims at managing the risks that they pose towards others.

Furthermore, the excess of different strategies that the Swedish approach relies on for targeting selected groups can also be compared with what Rabinow et al. see as one of the key components of biopower in contemporary societies, namely strategies for intervention upon

collective existence in the name of life and health. Modes of subjectification is also considered here, where individuals are brought to work on themselves under the guidance of authority and the information and desires that they are provided with in relation to established regimes of truth in the name of the life and health of the individual as well as the life and health of the population (Rabinow et al. 2006:197, see also Dean 2010:196 and 221).

5.3.2 The Production of Knowledge

The process of targeting is not based on some belief that the discerned issue will somehow self-regulate if left to its own devices. On the contrary, every preventive effort that is discussed is based on a meticulously developed knowledge that has been accumulated over the years. Traces of this can easily be found in the official report. One such example is the statement that:

“in the Action Plan it is suggested a clearer planning and follow-up structure, better conditions for knowledge-generation and knowledge circulation and an ameliorated handling of the state funding’s to HIV/AIDS”. (p. 15).

At other places, it is mentioned that there is a need for more systematized knowledge in the epidemiological field for mapping out patterns of disease spread and in social sciences for covering attitudes and understandings of human behavior (p. 20). Apparently, the production of this knowledge is not something that takes place haphazardly throughout the web of interventions that the Swedish approach makes use of.

As mentioned earlier, the personal knowledge and experiences of those already infected is not used in the Swedish approach as a basis for knowledge on what preventive measures to be used. They are included in the discourse for being activated and acted upon, not for speaking the truth about HIV. Knowledge is a privileged site in the hands of the experts. In this case, this privileged place where the knowledge-production takes place is referred to in the official report as the knowledge-center (p. 134). The following expresses its privileged position:

“Generally, it can be said that more evidence for the effects of actions should be reached and economical support to strategic human science projects shall continue; however most of the knowledge-constructing activities should fall within the frame of the institute’s general knowledge-center mandate”. (p. 137).

This conclusion also holds for the gathered experiences and knowledges that have been brought about by voluntary organizations. Such information can at best be a supplement for

the knowledge-production that takes place at a higher level in the hierarchy. It is considered much more important that knowledge circulates from above in a top-down fashion and that voluntary organizations are provided with correct epidemic data than the other way around.

The findings suggest that the knowledge production is centered at a state level and more precisely within the Swedish Health Agency. The content of the official report also suggests that the Swedish Health Agency has managed to make their arguments and calculations of knowledge the obligatory mode for the operation of preventive work that takes place in Sweden. This also supports the claim made by Rose et al. that the establishment of a center can only become such through its position in the complex of technologies, agents and agencies that make government possible. When the center is established can it ensure that certain resources only flow through and around these technologies and networks, and make sure that the right agents receive the right information (Rose et al. 1992:189).

In the discussions of how the microphysics of power works, Foucault made one of his most famous claims, namely that power and knowledge works together in a spiral and reinforces each other (Foucault 1975/2005:34). In this case, knowledge and preventive measures work together in the same way, where more knowledge produces more preventive measures which opens for new fields of research in a perpetual spiral. The following could be cited:

“epidemiological trends from the Swedish supervision in combination with the situation in the world gives support for that STDs/HIV-preventive measures need to be broaden”. (p. 113).

This development does also occur conjointly with a transformation in the rationalities and technologies of government and the creation of knowledge-centers and a rise of expert knowledges. This machinery in the production of knowledge that takes place in such institutions both creates and solves the issues that they have discovered in the first place (Rose 1992:187). The judgments and deliberations of experts that have been accorded the capacities to speak the truth in this field do so by laying claim to a certain knowledge and sphere of problem to be addressed such as concerns for the health of the population without having the objectivity of their claims seriously contested (cf. Rose 1996:50). Experts are therefore in position of generating enclosures, which means that the power that has been vested in them are relatively bounded which gives them a certain priority for stating truth-claims that cannot be easily countermanded by others (Rose 1992:188). Characteristically then is that regimes of truth about the health of the population, the dangers that they are being exposed to and how they

can be targeted in the most effective way is built up on an array of authorities considered competent to speak such truths (Rabinow et al. 2006:197).

However, for this knowledge-production to have effect is it necessary to find ways for its distribution, so that expert deliberations in one place can have actions in another. I have already touched upon how knowledge has informed different types of preventive measures. Above did I also mention that there seems to be a top-down approach in the distribution of knowledge. I will discuss this latter phenomenon before turning to how the use of statistics have been related to the setting the target and targeting process in the Swedish approach.

5.3.2.1 The distribution or circulation of knowledge

In a highly simplified manner could the Swedish top-down approach be described in the following way. The Swedish Government and the Swedish state has an expressed will for counteracting the spread of HIV/AIDS in society. Most of this work is done on a regional and a municipal level, but the direction of this work is willed by the state (p. 18). At other times, the division is explained in the following way:

“most of the preventive work fall within the municipals and county councils’ responsibility or are executed by voluntary organizations. The state’s regulation instrument consists, as described above, mostly in standardization and supervision, knowledge-generating and knowledge distribution and guidance in terms of economical incentives”. (p. 38).

In the official report the state’s responsibility is limited to proposing national strategic plans for how the work should be structured and organized with a wide space for maneuvers and delegation of responsibilities to state authorities (cf. p. 102 and 246 ff.). Two such state authorities play a crucial role in the preventive work: the Public Health Agency of Sweden and the National Board of Health and Welfare. It is also through these that the epidemic data and knowledge-production is taking place. It is stated that the Public Health Agency of Sweden, as a knowledge-center, shall distribute knowledge to those actors that are involved in the HIV-preventive work and to provide county councils and municipals with knowledge for their own knowledgebases (p. 21). The production of knowledge is thus both executed and funded at a state authority level and this knowledge is then distributed down to local levels, which includes voluntary organizations. These local levels are also financially aided and supplied with epidemiological data and other useful information that they might need (p. 20 and 119).

5.3.2.2 *Statistics*

In the governmentality perspective it is generally stated that statistics have a political power when coupled with technologies of government. This means that statistics can help map out the boundaries and the internal characteristics of populations. In doing so can practices be made intelligible, calculable and practicable through representations that are, at least in part, statistically numerical. Hence, counts of population, of birth, death and morbidity have become intrinsic to the formulation and justification of governmental projects (Rose 1999:197).

I would suggest that statistics play two major roles in the official report. The first function that this record-keeping has is to discern which groups that need to be targeted, how those groups have progressed or changed over time and how big the groups are compared to other groups. Exact figures are presented in the official report on how many persons that have been HIV-infected, the sexual conduct in how the infection most likely was transmitted, whether the infection was transmitted on Swedish territory or abroad, if it was transferred within a stable relationship or more occasional sex relation etc. (see Ch. 3). Statistics contributes to the pathologizing of the population by making otherwise invisible categories or individuals visible. It creates new fields and practices of government which can be subjugated to research which leads to the emergence of new truth games (Burchell 1996:33, Garland 2014:367 ff.).

Statistical enumerations have therefore helped create a conception of the population as an entity with its own regularities and normal distribution curves, deviations and social dynamics. Statistical knowledge fuels biopolitical technologies where statistical information forms the basis for political problematizations (Hacking 1991:181 ff. and Garland 1997:180).

The second function of statistics relates to the distribution of funding's to different state authorities, regional and municipal organizations, research institutes and voluntary organizations as well as type of preventive measures that should be used or not used. Funding is a recurrent theme in the official report and the more the sub-groups are being discerned, the more effective becomes the distribution of the funding's to different organizations in society. Statistical data therefore aids in governing more effectively through the right amount of funding's (p. 191 ff.).

5.3.3 *The Involvement of Actors and Organizations*

A recurrent theme in the official report is that the responsibility for the limitation of HIV/AIDS does not rest upon the Swedish state alone. It should instead be the concern for everybody and all of society should be mobilized to prevent the spread. Nevertheless, certain

actors stand out more than others in this preventive work. These actors range from state authorities to local municipals, voluntary organizations and even down to the individual.

The pattern that could be identified in the official report on how this involvement of experts, state authorities and local organizations works bears heavily on the same pattern as in how knowledge is made to circulate within this project, i.e. through a top-down approach. A common theme is also that the collaboration is done with a consensus on what is to be achieved and that the collaboration therefore works more based on inclusion rather than exclusion; everyone that can contribute should do so (cf. p. 21 ff. and 241 ff.).

The process of inclusion rather than exclusion is also seen at a micro or individual level. The workings of the productive side of power suggests that even those actors at a local level who wants to be excluded are worked upon until they are eventually included. I have already mentioned the expressed need for taking the HIV-infected owns experiences into account when developing preventive measures. Another example constitutes children, who for religious reasons, do not want to participate in sex education in school, should be included in this education anyway (p. 83). Yet another example is the inclusion of asylum-seekers who should be offered adequate treatment and care for HIV-infection (p. 26).

Since this involvement is of great interest in the preventive work, there is also a need for structuring how this involvement should be established. The Investigator discusses this at length in the official report through the bias of state funding's and its distribution in this web of collaboration (cf. p. 102). A reoccurring idea defended in the official report was that a better distribution of the funding's would equal a more effective work-load in existent organizations. It is stated that such a re-distribution would better acknowledge the different forms of competency and fields of responsibility that rests on them (p. 133).

In summary, there is a strong support for the conclusion that the Swedish state is at pains in trying to set the target properly on the population and its sub-groups and then target them through adequate means. It does so by making knowledge circulate through pre-determined channels in society as well as by attempting to find new channels for reaching out to the targeted groups. The knowledge-production is also institutionalized, thus giving rise to conditions for speaking the truth within this discourse. This in turn has made several different sub-groups emerge as objects of knowledge which have been seized by experts and professionals (Malkki 1995:237 and Ong 1995).

A central tenet in every type of governmental project is to mobilize forces into one united approach in reaching a stated goal. In the official report was it evident that the Swedish ap-

proach relies on what Garland calls responsabilization strategy. With this he means that state authorities seek to enlist other agencies and individuals to form a chain of coordinated action that reaches into situations in need of intervention (Garland 1997:188 f.). A peculiar trait in the Swedish approach is that this strategy works in a top-down way where lower levels in the hierarchy have particularly little to say about which knowledge to be used or how it has been produced. Not even those closest to the happenings such as municipal authorities, voluntary organizations and individuals have any substantial claims to speaking the truth. These actors should instead implement and spread the knowledge that have been produced at a top-level.

The circulation of knowledge and the involvement of as many actors as possible indicates that the Swedish approach makes use of a political rationality that relies on ways of calculating and distributing the right portion of money, the right types of interventions and the right amount of understanding that needs to be inculcated into not only individuals at a micro-level but also in county councils, municipal and voluntary organizational level (Lemke 2014:145).

5.4 Staying on Target

I will now turn to the third and final aspect of a governmental project, *staying on target*. Logically, this third part follows from the two previous in that the target is first being discerned and then follows preventive measures directed towards the targets. In this final part, the concern relates instead to the question how to ensure that those involved in the preventive work do not lose track of the targets (Hörnqvist 2010:17 f.). Staying on target therefore consists in the development of organized routines for follow-ups, evaluation of preventive measures, identify the gaps and make sure to fill the gaps, evaluate the funding's for preventive measures and consider if redistributions of responsibility or funding's are needed etc.

As a general characterization, if the first two concepts predominantly concerned the downward spiral, then this last concept focus on the upward spiral (cf. Hörnqvist 2010:14 ff.). It should nevertheless be stressed that the concepts overlap, in the sense that the involvement of different actors, distribution of funding's and statistical data and development of new knowledge also functions as a way of keeping track on the targeted groups. In the following will I therefore only touch upon some of the more prominent aspects in the official report.

In the official report it is stated that the funding of preventive work should continue as it has done in previous years. It is also the more long-term preventive measures that should be the primary focus. However, according the Investigator, the administration needs to be more effective so that the funding's can be distributed in a more responsible way. Regarding volun-

tary organizations, funding's should be provided primarily to those projects that are conducted in collaboration with municipals and county councils (p. 130 f.).

The funding part also seems to be of great concern in order not to govern too much or too little; just the right amount in relation to the seize and danger related to the targeted group. For instance, the exact amount of money that have been distributed in relation to each sub-group is mentioned in the official report. It is also mentioned that the funding on a national level should be considered a "strategic resource" in a broad preventive work (p. 146). The dispersed funding's are also going through some redistribution based on presupposed consequences and needs for different target-groups (p. 146 ff.).

A major concern for the Investigator relates to the somewhat blurred division of responsibility between involved actors in the preventive work. On the one hand, everyone should contribute, on the other, the responsibility should be shared between different authorities and within their respective field of competence. It is therefore suggested that the National Board of Health and Welfare should have the main responsibility for the planning and follow-up of the preventive work. In this they should also be supported with two expert authorities that will produce the necessary knowledge and implementation for this end. This will provide for a good flexibility in the structure (p. 135).

In the official report is the National Board of Health and Welfare ascribed a far-reaching responsibility for ensuring that the preventive measures *stay on target*. The National Board is supposed to develop strategic action plans, both on a national level and on a regional level in terms of communication plans. It should also execute follow-ups on a national level and plan its and other organizations with a set of follow-up indicators that reflects the complex reality which the spread of HIV constitutes (p. 20, 22 and 132).

Another important element in *staying on target* concerns the involvement of voluntary organizations. It is apparent that the work on a national level is toned down and more and more is left to be governed at a local level. It is explicitly stated that, when planning for follow-up routines, it must be considered which possibilities and limits that lies in the state's possibility to govern. The potential that lies in voluntary organizations to contribute to the preventive work therefore needs to be accommodated since they are in a unique position and can contribute more to the planning efforts (p. 19, 86 and 144).

Compared to previous years, the follow-up routines must consider the needs of the different sub-groups to a greater extent. Here, it is mentioned that certain 'risk-populations' represent huge differences in behavior in terms of risk-taking. Measures therefore needs to be developed that can articulate these nuanced differences between groups and individuals. This

must be reflected in planning as well as in follow-up routines (p. 116). As one example of such a track-keeping and follow-up could be the expressed need for continuously keep track on travel patterns and travel destinations of abroad-travelers (p. 239).

The *Staying on target* was the concept that received the weakest support in the official report. Coincidentally, this was also the part where the Investigator expressed the most concern for how the Swedish approach has been formulated and executed throughout the years. It is concluded in the official report that this is not due to some minor faults within specific organizations or the workings of authorities. Instead, the failure lies embedded in the structure with a weak system of reporting-back and follow-ups of how the preventive work progresses. Already in the beginning of the official report does the Investigator provide a complete list of every such structural problem that has been found in the official report (see especially p. 14, where the section fittingly bears the title ‘structural deficiencies’).

Each of these deficiencies that the Investigator mentions can be understood as failures of implementation in the governmental project. With failures of implementation I mean such obstacles and disturbances in the governmental project that hinders the effective or desired goals to take place or that makes the project run less smoothly than what lies within its potential (Rose et al. 2006:99 f.).

It is therefore quite telling that the Investigator devotes much attention to how these deficiencies might be amended and structured to accommodate the overarching goal or the telos of government in the project. A recurrent theme is what I above have termed the downward and the upward process. The upward process is far from being as developed as the downward process in this field. It is therefore possible here to speak of a failure in the implementation technique and a failure of the governmental project in regard to its upward working. That is also why the Investigator is at pains in trying to map out the responsibilities that rests upon each actor, how preventive measures should be better adopted to fit the targeted groups’ needs and how knowledge should be transmitted throughout every channel in society (see for example p. 131, 137 ff., 145, cf. p. 142).

As explained previously, the involvement of as many actors as possible constitutes an important element in the governmental project. However, the turn of events is not to the Investigator’s complete satisfaction. In the official report was it mentioned that there is still a lack of cooperation between authorities due to a lack of clarification on the division of responsibilities between involved actors (p. 138). It was also mentioned that the elevated collaboration between different actors have contributed greatly to the preventive work and made valuable

projects possible. However, and here is the concern, there is a deficit in how these efforts have been coordinated over the entire field. In the official report it is in this regard mentioned that:

“otherwise, the work seems to consist in debriefing by authorities’ efforts in this field. The first follow-up of the Action Plan also demonstrated that it has not been possible to establish common recommendations concerning preventive measures, research, method development, evaluation, quality checks and revision of the Action Plan’s goals as was presupposed in the original Plan”. (p. 113).

This approach by the Investigator could be compared to what Garland has called a redefinition process; where goals and aims are redefined which could possibly lead to a redefinition of the telos of government (Garland 1996:445 ff.). However, the results from the analysis does not fully support such a claim. The telos of government has instead remained the same throughout the years (i.e. the diminishing of the spread of HIV). What the results does support, is the more cautious claim mentioned above, that preventive measures are being adapted more to fit the needs of groups and the redistribution of funding’s between different organizations and that some failures might not count as failures according to the Investigator. It is mentioned that, when comparing the preventive measures that have been used and how they relate to goal-achievement and stated goals, the result is devastating Thereafter, the Investigator goes on by stating that:

“the Investigator does not, however, think that the negative outcome in a follow-up can be taken as evidence for that preventive work during previous years have been bad investments. On the contrary, it seems as if, taken as a whole, that primary preventive measures that have been executed and will continue to be used by different actors, with or without state funding’s, have been important and corresponded to real needs. That particular measures can be considered valuable does not mean, according to the Investigator’s opinion, that the gathered effort can be seen as successful. Obviously, the national planning has overestimated the possibilities, with existent preventive measures, to affect underlying social tendencies, at least in a short or medium-term perspective”. (p. 43).

This quotation does not give sufficient reasons for thinking that the goals will be changed in the governmental project. However, it does represent another form of redefinition, in that it turns to a more realistic view on what can be done, and an acknowledgment of preventive measures’ (lack of) potential in reaching or impacting on deeper lying structures in society.

What these and similar failures in the governmental project suggest is that, in order to make the circularity complete (upward and downward), the upward process needs to be rein-

forced to a much higher extent than is currently the case and the Investigator clearly shows awareness of this.

5.5 Where did Law go?

The number of times the word ‘strategy’ is used in the official report mounts up to no less than 113 times. The notion of law (and equivalent naming’s such as regulation, legislation etc.) on the other hand, is only explicitly evoked on rare occasions. At times, law and legislation is referred to when speaking about the daily work in different authorities and the division of responsibilities between them (p. 37). At others, it is stated that every preventive measure needs to be in accordance with existing legislation in ‘a reasonable way’ and that legislation in itself should be shaped so that it does not aggravate preventive work:

“Both those who execute preventive work as well as target-groups have to act in accordance with law in a reasonable way. Correspondingly the Disease Act legislation must be an integrated part of society’s gathered preventive efforts and thus shaped and applied in such a way that preventive work is not aggravated”. (p. 41).

A crushing disbelief in laws ability to govern the conduct of a given population is expressed in the following way in the official report:

“Where it was previously possible with the use of legislation and normative rules to regulate the actions of human beings does it today often lack such possibilities”. (p. 178).

On the next page after this quote, the Investigator stated that “administrative regulation tools are effective but not always popular”. However, merely spreading information about the existence of preventive measures is not enough; the measures needs to be anchored at the target-groups (p. 179).

Consequently, doubts are expressed concerning laws capacity in having such an anchoring effect on the target-groups. The role of law therefore seems to be ascribed a marginal role or even considered an obstacle rather than a tool for reaching and govern the population in desirable ways. Hence, one might fittingly pose the question where did law go?

Indeed, the content of the official report might at first suggest that law as a tool has nothing to do with the governmental project of counteracting the spread of HIV/AIDS. This may support the view that modern liberal societies govern more by the norm than by legal rules. The diminished conviction in laws potential in governing human behavior and that other tools need to be applied could also be seen as an acknowledgment that there is a need for adaptable

and flexible responses. As a management technique, the adaptability and flexibility of the norm would therefore prove to be superior to that of legal rules (Ewald 1990:156).

Nevertheless, I suggest that discarding the role of law in this way might be too hasty a conclusion. In the following will I propose that law comes to play a central role when considering it from its possibility to empowerment and as encroached upon by other discourses through different means of technologies of control. To begin with, the Swedish approach seems to make use of law as placed in the nexus of the productive and repressive side of power when law is considered in its relation to individuals or a micro-level. I shall discuss two examples that represents this. One that relates to the productive side of power and the other that relates to the repressive side of power. Beginning with the reproductive side of power, when discussing HIV-infected persons' life situations is it believed that discrimination and stigmatization need to be counteracted and that the discrimination law needs to be adapted to meet the needs of these groups. The productive form of power is seen here in its empowerment of HIV-infected individuals through legislation, where they are being formally recognized and categorized as disabled (p. 98). To claim rights in this field, the individual must first fit into this pre-fixed category and only then be able to claim the right under the auspice of 'disablement'. It would not be too farfetched to question whether this extension of rights is, on a more structural level, linked to the growth of technologies of control that have been installed for discerning and targeting the different sub-groups. More rights come at the cost of the potential for greater surveillance and greater conformity (Smart 1989:162).

The repressive side of power comes to mind when it is used for targeting individuals that are unwilling to adapt their behavior in desired ways. Here, the only tool mentioned concerns the possibility for isolating HIV-infected individuals in hospital facilities. It is stated that this measure should be used as a last resort for those individuals that pose a threat to others. Not necessarily because this would constitute a far-reaching intrusion into the freedom and personal life of the individual but for the negative effects that it might have on preventive work:

“when far-reaching compulsory measures are imposed on people with HIV, especially if the compulsion is considered unmotivated by the HIV-infected person, is there a risk that it will at least indirectly counteract the preventive efforts in society and contribute to elevated levels of discrimination against HIV-infected persons. It is the opinion of the Investigator that extensive use of compulsory measures will give the wrong image of how disease spreads. Measures that are viewed as conditioned by intolerance and lack of respect of HIV-infected persons could also lead to a decrease in responsibility-taking from the HIV-infected to not spread the disease to others and thus rather be working against its purpose. It is therefore important that compulsory measures are used very restrictively”. (p. 101).

The possibility to isolate HIV-infected individuals at hospitals creates a case of an act upon the diseased body, where individuals can be isolated because their bodies constitute a threat to the health of others. This also demonstrates how otherwise benevolent intention of preserving health can merge into a repressive form. As Smart has argued, health and health promotion can therefore have special ramifications for individuals, and especially so in relation to those whose bodies are constructed as central to the health of others (Smart 1989:99 f.).

The terrain thus created by epidemic research and expert knowledges has extended laws authority by encompassing more and more fields and target areas. This is also why we need to consider the effects that new medical technologies might have in creating new fields for legal interventions upon bodies. In so doing can we acknowledge that law's power has become re-fracted as technology has accumulated knowledge about human bodies that demands new forms of interventions. Bodies can now be risky, diseased, tainted or weak, which all needs to be either rectified or prevented from transmitting this infested form of decay to others (Smart 1989:99).

When law is seen from a more structural level, yet another image starts to emerge, that of its orchestrating of strategical techniques of control. The argument here is that the formation of an attempt to control the behavior of the population into more desired ways has neither diminished the power of law nor caused legal institutions to disappear. On the contrary, the rise of forms of knowledge and power that take the administration of life as its prime object of inquiry is accompanied by a proliferation of legislative measures for installing such institutions and provide them with directions in terms of biopolitical objectives to be achieved. One such objective is the re-shaping of individual and collective conduct (Ewald 1990:138 and Rose et al. 1998:541 ff.). That the control function is an inherent part of the system and the workings of preventive efforts is acknowledged in the report and even seen as contradictory:

“Disease protection measures, on the other hand, are partly also of controlling and supervising nature, both of individuals and of organizations such as health and medical care. There is a contradiction in this, since in the same organization both control measures and preventive measures are at play. At the same time, this contradiction can be said to be built-in in the whole system as such and thus not uniquely for the disease protection organization”. (p. 41).

The results therefore suggest that law in this context is colonized by mechanisms of control. This does not mean that law is about to wither away. Instead, it gives rise to the paradoxical claim that law is extending in scope where law as such is not being challenged by other discourses but work through these in different ways (cf. Smart 1989:20 and Deflem 2008:248).

This multi-dimension of the concept of power and how it works on both a macro- and micro-level as well as its relation to law and how law works suggests that these forms of power encroach upon and work through legal acts and institutions (Foucault 1976/1997:34 and 241 and Wickham 2013:218). The HIV/AIDS issue is not abandoned to physicians, medical experts or social workers. These professions have instead created new arenas which have led to an extension of law into more and more intimate areas of personal life (Smart 1989).

5.5.1 The Division of Responsibilities

The legal framework plays a significant role in the division of responsibilities between authorities as well as in the establishment of knowledge-centers. It is through pre-configured legal channels that these establishments are structured to reach specific goals. These types of institutions are willed into existence and later guaranteed through a body of legislation that have put them in place.

Once more is the notion of flexibility mentioned in the official report, this time in relation to the need for shared responsibility of preventive efforts (p. 88, 128 and 135). A special concern is how responsibility should be divided between different authorities; who should do what? Which organization should handle the overall planning of the preventive efforts and who should be responsible for follow-up routines? Such concerns are prevalent in the report:

“Such a mapping out of the responsibilities should be seen as a legal background to the discussion about the optimal balance between state obligations and municipal obligations”. (p. 241).

There is a reoccurring discussion of how formal institutional arrangements such as administrative hierarchies, legislative and decision-making procedures, budget mechanisms, and bureau types can be arranged. These types of concerns reflect a want for maximizing the attainment of the objectives set out in preventing HIV (Kooiman 2000:157). It also represents a form of modern day workings of a bureaucratically built-up system where bureaucracies are conceived of as organizations, charged with the implementation of policy, that are hierarchical in structure, have their activities based on general rules, employ standardized methods, and are impersonal in the execution of their duties (Deflem 2008:238).

In order for it to work properly, legal tools need to be installed to direct an agency or an authority into desired directions. By using the legal framework for such purposes can different authorities be provided with their own margin of appreciation of how to best achieve stated goals. The immediate corollary of this development is that it becomes clearer what to expect

from each organization. It will also result in more effective tools for how to measure their effectiveness in relation to stated goals. In this case, the official report makes clear that the National Board of Health and Welfare should take legal actions in terms of supervision and control so that health care can be turned into a more health-promotional direction (p. 80).

The workings of voluntary organizations are also affected by these types of considerations. In the official report, it is stressed that these have an important role to play in counteracting HIV/AIDS, but, that they do not have any formal legal responsibility for it. Neither does their work take over the responsibility of health and medical care that rests on county councils and municipal organizations as laid down in legal provisions. Instead, health care organizations are legally obliged to take into consideration how other societal organs, voluntary organizations included, can contribute in becoming more rational as an organization (p. 281 f.).

In relation to follow-up routines, it is mentioned that such routines and effective planning is dependent on the legal body, where the possibility for supervision is created by legislation (p. 104). Planning, it is stated, is conditioned by the pattern of human behavior, attitudes, a disease's inherent biological properties and administrative decisions in society (p. 20).

This concern for mapping out the responsibilities that rest upon different actors might provide an answer to why the use of legal rules are somewhat absent and state apparatus works more and more through the rationale of the norm. This might suggest a tendency for governing at distance, where government, *in this regard*, is exercised less and less in the shape of a top-down approach, i.e. from the state down to the local level. Instead, the state only maintains the outer responsibilities for directing the preventive work and for sketching out what needs to be done. Thereafter follows a minimalization of the state's responsibilities through massive delegations of its responsibilities upon other organizations on a more local level. A statement in the official report may at first contradict this suggestion since it is mentioned that the responsibilities of societal engagement in preventive efforts have grown during the years, not diminished (p. 178). However, the apparent concern for mapping out the responsibilities that rests below state level clearly speaks another language.

Compared to the relationship between state/authorities and the individual and the organizational body in society, law is used differently. As explained above, the official report stressed on several occasions that law, which directly targets individuals, should be avoided. In relation to organizations, however, legislation needs to be put in place so that their tasks and responsibilities becomes clearer. An example of this is whether health control should be made mandatory or not for new arrivals in Sweden. The answer is no since it "lacks sufficient reasons for making such controls mandatory". Instead, the Investigator proposed that county

councils should be legally obliged to offer asylum-seekers such health controls and that this therefore should be regulated in legal provisions (p. 219).

I would also suggest that there is a complex relationship between the discernment of different sub-groups and the structuring of the organizational body through legal means. The results give reasons to believe that legal provisions indirectly help fix and target the sub-groups in the population (Rose et al. 1998:548). In an indirect way can law be said to draw the defining lines for a biopolitical subject, on which the attention is directed through the expressed need of targeting these sub-groups in different ways. By categorizing individuals into different types of sub-groups can they be included in existing legal institutions (an injecting drug addict HIV-infected, a homosexual HIV-infected, a foreign person HIV-infected etc.). This segmentation of the population thus creates governable entities that can be arranged more effectively through existing legal institutions. This is so since the division of the population into smaller units serves an organizational task in that it renders initially vague or non-existent sub-groups visible, different institutional tasks becomes clearer and enables a division of the responsibility for each sub-group and their health situation which cannot be accounted for under the core system of law alone (cf. Wilson 1978 and Saltsman 2014:459).

5.5.2 The Establishment of a Knowledge-Center

According to the findings by Rose et al. the enactment of legislation serves as a powerful resource in creating centers. In this, law translates aspects of a governmental project into mechanisms that establish, constrain or empower certain agents or entities and set some of the key terms of their deliberations (Rose et al. 1992:189). Such facilities are not put into force by a mere want to learn things previously unknown. Instead, they are put into force to produce knowledge about a pre-given issue. The knowledge produced at these centers, as discussed above, turns into strategies for targeting specific groups in society which in turn will reinforce their own status in terms of head of development and leading resource for regulation, thus ensuring a firmer grip in this bureaucratic web of government. Due to legal mechanisms can these types of centers play a key role in the authorization of biopolitical authority that it possesses and makes use of in exercising authority over others (Rose et al. 1998:550).

As discussed earlier can we also discern the tremendous effect that this has had for the production, institutionalization and circulation of knowledge in a downward process. The legal framework is also coupled through the division between the different sub-groups. A complex net of responsibilities is tied to each of the different sub-groups where the main responsibility for each sub-group, rests on different actors; who should provide for the preventive

measures directed towards injecting drug addicts? Who should support HIV-infected asylum-seekers? Who should take care of risk exposing individuals currently in custody?

The legislative body is also relied upon when considering which diseases that should be acted upon in the first place and how this disease should be defined, which is being regulated through law and ordinations (p. 103). This process is quite circular since the pre-condition for this definitional work is dependent on the latest news provided by the knowledge-center.

A recurrent theme in the official report is that more epidemic data is needed so that preventive work can be better adapted to the needs of the different groups. It is also suggested at times that state authorities need to keep track of the development to see in which direction the different groups go, how the groups are changing, how their sexual patterns and their risk-taking patterns are developing. To lay down legal provisions on top of that track-keeping process could possibly constitute an obstacle rather than an asset in this machinery.

In the establishment of knowledge-centers, the instrumental aspect of law is here devoted to not how law serves as an instrument for economic or social interests but how certain legal structures function as conditions for developing such discursively-constituted institutional settings that are needed for effectively be able to speak the truth about how HIV is at risk of seeping into every corner of society if nothing is done. It is therefore law's rationalization that lays down the tracks on which the battles of interests are fought out (Lash 1990:131).

5.6 Concluding Remarks: The Emergence of a Specific Legal Paradigm?

Given the results from my analysis is it obvious that the state, in this field, governs through the use of norms to a much higher extent than through legal rules. I would argue that the overlapping and intrinsic connection between the concepts *setting the target*, *targeting* and *staying on target* that sums up the governmental project instrumentalizes a specific legal paradigm. What this suggests is that both the *setting the target*, *targeting* and *staying on target* is in one way or another enabled by law and through law. The targeting process, for instance, supports the view that it has been completely pervaded by forms of knowledge and expertise that are extra-legal in character but with legal effects in that it turns the population *en masse* into governable entities that are identified through the workings of existing institutions laid down by legislation. The regulations, deliberations and techniques of enforcement requires judgments and deliberations that can only be made within a given institution's legal frame and within the scope of its legal capacities (Foucault 1976/2010:190 and Berns 2005:43).

In this paradigm, the boundaries between the social and the legal is evaporating and completely blurred without claiming that law as an institutional fact is withering away as Marx would have it. In the official report, which goes along with this paradigm, does law, at the surface of things, seem to be absent and yet always present through the constant strive for good legal standards, alignment of legal provisions on a national level and the reorganization of state and local authorities' tasks and responsibilities.

The regulation of human behavior in this paradigm does not always unfold according to the traditional view of law where law is seen more as an organizing principle, coupled with legal facts and legal consequences as its binary language. Instead the results suggest that the state's regulation of human behavior in this field is conducted through calculative practices, strategic considerations and rationalization processes of existing bureaucracies.

By harmonizing the practices across the entire structure in society can uniformity and predictability be achieved at an organizational level, a task that traditionally is assigned as one of laws privileges. The functioning of law can therefore be viewed as a part of the productive or normalizing power mentioned earlier; not by organizing the practice of how to intervene against targeted groups but by supplying the structure with a frame in which each authority or involved actor is assigned specific tasks in which it can operate and cultivate solutions on their own for how to solve identified issues.

This conclusion is also supported by Foucauldian scholars such as Dean, who has interpreted the role of law and juridical institutions as acting as coordinating points for normalizing power and governmental regulations. In my case, especially the targeting-process is invested with a multiplicity of agents (psychologists, social workers, caseworkers, and medical experts) and associated with a myriad of regulatory practices (consulting between institutions, oral screenings, medical examinations, legal advices etc.). The key questions about law for analytics of government thus become a concern for its operation within a given regime of practices and the role it is assigned in specific governmental projects and the forms of subject it proposes to work through and upon (Dean 2010:140 and 145). It can therefore no longer be a question of trying to understand what law governs. Instead, the emphasis lies on the analysis of problematization within which these problematizing experiences are formed at the intersection of legal and extra-legal discourses, practices and institutions (Rose et al 1998:544). The issue of HIV/AIDS and the risk that it is said to be posing for the entire Swedish population have emerged as such a problem that needs to be regulated (Rose et al. 1998:544).

If we allow ourselves to understand the Swedish approach on the HIV/AIDS issue in this way can we come to see how state apparatuses unfold into a complex interrelationship be-

tween laws, policies and procedures as well as human sciences that support and constitute the political economy behind the governmental project. By embracing this thought could we develop a more profound understanding of how different discourses such as a medical discourse and legal discourse have come to form an alliance to regulate behaviors which has become interpreted as injurious to public and individual health (cf. Smart 1989:92 f.).

I have therefore suggested that, in putting specific institutions at place, law has been able to devise more and more specialized modes of regulation to control the behavior of different sub-groups in the population (Smart 1989:94). Its justification lay in the fact that the targeted sub-groups constitute special groups, outside the normal bounds of acceptable society, because of their own undesirable attributes, rather than because of the effects of law (Smart 1989:94). The discerned sub-groups differ from the normalcy compared to the population at large, may it be due to their sexual preferences (MSM), their nationality (foreign persons) or their inclination towards risk-taking behavior (abroad-travelers). The mere fact that having a body that could be subsumed under one of the pre-fixed sub-groups becomes a conduit of qualification, a right to be acted upon, a right to receive targeted measures (ibid.).

6. Discussion

“With government it is a question not of imposing law on men, but of disposing things: that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics – to arrange things in such a way that, through a certain number of means, such and such ends may be achieved/.../the finality of government resides in the things it manages and in the pursuit of the perfection and intensification of the processes which it directs; and the instruments of government, instead of being laws, now come to be a range of multiform tactics”. (Foucault 1978/1991:95).

The focus of this study has been to analyze whether the gathered efforts in Sweden against HIV/AIDS can be seen from the perspective of governmentality and whether the efforts can be understood as a programmatic governmental project. I have suggested that the concepts *targeting*, *setting the target* and *staying on target* need to be assembled to speak about such a project. These have been placed over the studied material as a grid coupled with the governmentality perspective’s take on law and how law works in advanced liberal societies.

It is peculiar to note that only very few people in Sweden is affected by HIV but still the Swedish state spends a considerable amount of money every year for combatting its spread. My conclusion was that this governmental project targets none-infected persons to a greater extent than those actually in need of treatment. It therefore works in a normalizing way where individuals should be trained to address their own involvement in handling such risks that they may or may not encounter in their daily life. This could explain the amount of different preventive measures in the official report whose rationale is to create active and responsible agents and cooperative citizens. It is therefore reasonable to believe that the Swedish approach constitutes such a governmental project that is programmatic in its workings in controlling the conduct of the population.

It may also explain why the Swedish state seems to withdraw from its responsibilities in this field by invoking the interests of other actors. The Swedish state cannot handle the issue alone but needs assistance from other actors. However, this does not mean that the Swedish state has lost interest in the question. It maintains its top-down approach with a redefinition of responsibilities, where the state keeps a definitional veto on what needs to be done and, through massive delegation of responsibilities, leaves the rest to more local levels (cf. Hörnqvist 2001:55 f.).

Nevertheless, there are several elements in the official report that indicate that the governmental project is not running as smooth as the Investigator think that it could. Several different implementation failures have been identified and addressed by the Investigator. What this adds up to is that the governmental project, no matter how rationally shaped, always contains

traces of incoherencies and contradictions, thus leaving space for an aleatory development with room for political maneuvers and calculations not always working in favor of the project (Garland 1997:196). This could also be compared to Foucault's famous claim that wherever there is power, there is resistance. In this case, even if there is no particular form of resistance to power to be found in the official report, it does not mean that there are no conflicts in terms of rival programs or strategies (Rose et al. 2006:100).

Finding such moments of failure during the analytical stage has also been an important methodological concern in this thesis. By posing questions to the official report if counterfactual alternatives could be present, could I edify an analytical narrative which helped me to take such expressions of failure into account (Jackson 2011:155). I therefore believe that the results from my research have led to an epistemic gain by providing support for a successive expansion of the theoretical frame to embrace issues and aspects of social life not previously associated with it. One example of this is the operation and productivity of law within the governmental project as well as the intrinsic connection argued for above, between *setting the target*, *targeting* and *staying on target*.

What I have wanted to address in this thesis is that governmental projects, such as the one instantiated through the Swedish approach on HIV, far more exceeds in its exertion of control over the population than reaching explicitly stated goals, such as in this case preventing HIV from spreading. One of the main outcomes of this governmental project has therefore been to complement existing forms of social control which brings about an expansion or widening of the net for more control. The governmentality perspective helps in demasking how the conduct of the population and its sub-groups are implicated in the exercise of such power relations. People's behavior is considered in a positive way so that governmental power can center on the population and its truth by presupposing individuals as living subjects in order to further the health and movements of the population in desired ways (Deflem 2008:234 and Rose et al. 1992:183). This form of modern social control blurs the distinctions between private and public life and cuts across social classes and rearrange individuals into other forms of categorizations such as MSM, normal individuals, foreign persons etc. (Deflem 2008:239).

This development could only had taken place because of the workings of the norm and the specialist knowledge and the development of a knowledge-center for gathering statistics and epidemic data that have revealed the general truths of the population as expressed in regularities about who was more likely to engage in risk behavior and under which circumstances. Based on a broad program in distribution of responsibilities, exact portioning of resources and installment of follow-up routines have the Swedish state ensured a furtherance of governmen-

tality. This thesis has shown that the governmentality perspective provides for a promising potential in deconstructing such regimes of truth (see also Amo-Agyemang 2017:174).

The modernity in social control is also seen through the new ways of channeling the preventive message that the Swedish state wants to distribute. Here, the proliferation of the internet, which apart from being a means to distribute and retrieve information, is also used to extract information and modify behavior, for instance through advertising and individualized modifications of web pages on the basis of collected information (Deflem 2008:241).

These considerations derived from my results inevitably challenge the classical, Kelsian understanding of law (see Kelsen 1934/2008:15 where he proposed a structural analysis of law freed from any sociological input). It does so by purporting the idea that there is a co-existence and mutual inter-dependence of law and social norms which in turn raises the need for more engagement with sociology (Deflem 2008:165, cf. Davies 2007:215 ff.). This is also one of the reasons for why I in this study have leaned heavily on an external, sociological understanding of how law could be viewed as an integrated part of what I have called a governmental project.

The ambition in the study has been to examine the workings of governmentality and how parts of law may function in such a perspective. Such a study calls for an engagement with sociological research methods rather than legal doctrinal ones. This has been a struggling point for many researchers and often functioned as a divider between socio-legal research and sociology of law. The view favored here was once expressed by Lon Fuller who made it clear that we should speak of law-in-society rather than law and society. Here, law is seen as a social issue that begs for sociological elucidation (Deflem 2008:7).

This goes in hand with the same type of project launched by Carol Smart several years ago, namely to challenge law's over-inflated view of itself (Smart 1989:3). She suggests that law has equally well encroached itself upon those areas of special concern to emergent knowledge fields established by human sciences. What this means is that law is not being challenged by the emergence of such discourses; rather law attempts to extend its sovereignty over areas constructed by the discourses of the human sciences as significant to the disciplining of the social body. The epidemiological discourse and the discourse of social science gave shape to governable sub-groups, where law extended the powers over those sub-groups through the workings of already existing social institutions in society. This therefore suggests a cooperation rather than a conflict and a process by which law extends its influence into more and more 'personal' or 'private' areas of life (Smart 1989:17).

I do not pretend that the explained workings of law or its paradigm, that I believe that the governmental project instantiates in this field, is transferable into other fields of law or state interventions. That would be to fall prey for the earlier explained erroneous view of asking what *the law* means, or what the function of *the law* is. Instead, law is seen as a multifaceted element which can take on many different roles. With the emphasis on sociology of law, as in this thesis, can we start to see how law plays a crucial part here as well. Indeed, I believe that black-letter lawyers would have rejected the official report as none-interesting from a legal positivistic perspective whereas the sociologist of law would have stated the contrary. We only come to see this when we make use of more sociologically informed research methods (Deflem 2008:165).

The analysis also suggests that the discursive machinery at place in *setting the target*, *targeting* and *staying on target* constitute an important precursory to the legislative body; attempting to challenge specific and concrete legal provisions from a legal doctrinal view may be to raise concern at too late of a stage if the legal provisions under scrutiny are mere transpositions of ‘established facts’ or truth claims developed through other discourses than the legal one. How could legal provisions in that case not be objective, based on equality for all and applied to each and everyone in the same manner?

This does not mean that law should be ignored, and the battle always to be fought at an earlier stage. What it does suggest is that non-legal strategies and local struggles might prove more prosperous in challenging the ways in which legal bodies are willing themselves into existence as if they were necessitated through the works of pure rational demonstration (cf. Smart 1989:164 f.). It is therefore recommended to consider in detail how law operates in different fields and to analyze it in its specificity rather than in its generality. So, if law does not stand in one place, have one direction, or have one consequence, it follows that we cannot develop one strategy or one policy in relation to it (Smart 1989:164).

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