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# Between Power and Empowerment: Trust and Dependence as a Legal Strategy in Elderly Care in Sweden

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In this article, it is argued that the elderly care system in Sweden rests on what is described as a concept of trust and dependence. In particular, it is discussed whether and in what way the interplay between trust and dependence is expressed by government committees and in public documents. Interplay implies a correlation between social services personnel (trust) and the elderly (dependence). It is further stressed that the concept is a necessity, and that the impact of power – in terms of an instrument for management control – is a precondition for the elderly care system to work. It is argued that in the absence of indicative regulations, a built-in power strategy to create trust becomes necessary for the elderly care personnel. The article also discusses power in terms of the elderly becoming empowered in relation to the exercise of public authority, activities or functions in elderly care by care personnel.

**Keywords:** elderly care, empowerment, trust and dependence, new public management, national fundamental values in elderly care

## Introduction

Elderly care is one of the largest and most rapidly changing welfare sectors in Sweden. The state's role as a caregiver has generated an extensive fund of trust in the area of elderly care; a situation which can be traced back to the Swedish welfare model (Greve 2015). There has also been a drift from public to informal care in recent decades, which means that a Nordic model of

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individual care has been challenged by a family model; research shows the emergence of re-familiarisation has taken place, i.e. relatives do more and more care work (Szebehely and Ulmanen 2015).

In this article, I will argue that the system of elderly care in Sweden rests on what I describe as a concept of *trust and dependence*. In particular, it is examined whether and in what way the interplay between trust and dependence is expressed by government committees and in official documents. Interplay, in this context, implies a correlation between social services personnel (trust) and older people (dependence). The article explores the argument that the trust and dependence concept is essential, and that the exercise of power – in terms of an instrument for management control – is a precondition for the elderly care system to work. I will further stress that in the absence of indicative regulations, a built-in power strategy for creating trust becomes a necessity for the personnel, more significantly so in situations when an old person is dependent on the care system. In this context, the term social services personnel rests on a broader definition encompassing both social workers involved in the exercise of public authority as well as providers of social services who carry out activities or functions. In the Swedish context, this broader definition involves a discussion of an imbalance of power that arises from the gap between i) the exercise of public authority and ii) the actual care of old people in need of support. Old people refer to those who receive support within the elderly care system according to the Social Services Act.<sup>2</sup> This imbalance between social services personnel and old people has been highlighted, to some extent, in government committees and official documents. Within the main body of the article *power* is considered in terms of older people becoming empowered in relation to the exercise of public authority and in relation to the activities and functions in elderly care.

I have chosen to exemplify key areas that guide a textual analysis where, in various situations, tension occurs between old people and the personnel. In the legal documents studied below I have found examples which clarify trust and dependence in elderly care. The key areas examined are: a) the opportunity to live together in special accommodation (cohabitation), b) the possibility to use one's own minority language (communication), and c) measures taken when older people do not voluntarily participate in activities (compulsion). Since 2011, these three key areas have all been subject to

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<sup>2</sup> Chapter 4, Section 1, Social Services Act (2001:453).

changes in the law in accordance with national fundamental values in elderly care.

Situations of dependence where old people are vulnerable are significant in this analysis. The article, therefore, focuses on legal grey areas, and in some cases, on illegitimate actions, better described as negative (misused) trust concerning elements of compulsion. As exemplified in the following quotation, the legal sources fall short of providing adequate guidelines for strengthening the situation of the elderly. It is essential to be aware of this and to take it into account in policy-making and decision-making processes.

What matters is to try to change the situation and in various ways get the [old] person to agree to take their medicine by themselves. With the provision that, even though the legislation prohibits it, it should be possible to coax the individual to take their medicine if they do not understand that it is necessary for their health and wellbeing. (SOU series 2006:110, 235, author's translation).

### **Point of departure**

New forms of governance produce “normality” through processes of assessment, comparison and evidence-based policy making (Nousiainen et al. 2013). This idea was initially inspired by New Public Management (NPM) where the intention is to empower old people by giving them a freedom of choice concerning the form of support they can receive. Elderly care is caught between the harsh economic reality in Sweden and a requirement for new forms of governance. On the one hand, the intention is to improve living conditions for old people through freedom of choice and competition, but on the other, the social sector is required to ensure that Swedish elderly care works in practice. These new forms of governance also mean that management control becomes a reality in, for example, the provision of package solutions in the municipalities or guidance by social services personnel regarding the support available for old people (Johansson, Denvall and Vedung 2015). I will stress that the interplay between trust and dependence becomes a precondition in terms of management control in order to get the elderly care system to work in Sweden. In the concluding part, I also consider the Swedish (paternalistic) welfare model as a cornerstone in endorsing the trust and dependence concept. Based on the welfare model, I

conclude that a reliance on the governance to work for the good of old people is built into the elderly care system.

The power relationship between social services personnel and old people is, I argue, profound and unequal. My point of departure is that there is no real empowerment of old people in their relationship with the personnel. This is crucial in my analysis as it describes that part of the public sector's role is an expression of preserving society. Legal empowerment is often described as a way of strengthening the situation of old people, allowing them to live in dignity with a feeling of wellbeing but also to exercise their rights (Prop. 2008/09:158; Hjalmarsson 2014). Empowerment occurs when it is possible for an old person to improve or influence a situation. Mathiesen, for example, argues that clients are disciplined and not given counter-power, by suppressing their desires and demands on society. Mathiesen has developed strategies in order to achieve real counter-power for the clients but he also underlines the importance of making people aware of their social rights. Wahlberg extends Mathiesen's argument to the social services personnel and their work strategies (Mathiesen 1989; Wahlberg 2013). Lipsky's argument regarding *the grassroots bureaucracy* is also often referred to, with its reference to caretaking and service personnel in a discussion about a centralized and unresponsive implementation of law (Lipsky 2010). I will contribute to this discussion on the lack of balance of power by highlighting trust and dependence as a concept. I think this concept can be used to show a power imbalance between old people and the personnel in elderly care, particularly in situations when legal shortcomings occur in the provision of adequate help and guidance. I argue that, for social service personnel, trust and dependence becomes a necessary strategy, a precondition, for the elderly care system to work. The overall problem, reflected on in this article, is the lack of legal guidance which indicates a gap between the law and reality. This development has been further emphasised by administrative management through new governance with instruments of financial control and confirmation of achieved goals and even tendencies to claim that the personnel are "gatekeepers" (Wånell 2011).

Social rights as fundamental goals for society are articulated in the Swedish Instrument of Government.<sup>3</sup> In Swedish welfare regulations, the legal system regarding social rights can be divided into three areas (Gunnarsson 2007). The first area is often defined as genuine legal rights close to the legal structure of

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<sup>3</sup> Chapter 1, Article 2, para. 2, the Swedish Instrument of Government (1974:152).

claim rights and enforcement often rests with local authorities. The second area can be described as quasi-rights or service rights and are more a matter of a duty for the authorities to enforce with no correlative right for an old person to claim. The third area is the goal-oriented framework legislation, for example the means of distributive social justice in the Social Services Act or a statement of the national fundamental values in elderly care. In this article, framework legislation is discussed from a critical perspective as it places increased responsibility on social services personnel. The national fundamental values were also enacted in 2011 in the Social Services Act and concerns the ability to live in dignity with a feeling of wellbeing expressed, for example, in self-determination, participation, good treatment and security.<sup>4</sup> In particular, old people with dementia are in a vulnerable situation of dependence and in need of a transparent and effective system (Socialdepartementet 2012; Socialstyrelsen 2015-2-41).

Providing care, often of an intimate nature, requires interaction between personnel working in the social services and old people. I find it relevant to discuss the implementation strategies concerning decisions, as well as service provision, in elderly care in terms of a trust and dependence concept<sup>5</sup>. This means, that the concept is applicable both on a decision-maker level and on a provider level. Below I explain how I narrow down the overall intention through documents from selected government committees and other official sources. It is important to underline that research indicates that support in recent decades has not been implemented with reference to people's self-determination and individual preferences. Instead, it has been adapted to existing measures and research shows that the value of support that does not take into account the self-determination and individual preferences of old people is eroded in real terms (Socialstyrelsen 2016-6-26; Hollander 1995; SOU 2007:10). Therefore, I will conclude this article with an analysis of what I describe as a power struggle between personnel in the social services and old people.

Research shows that it is possible to provide better support by creating a greater degree of confidence in the care system, in particular through trust created by the social services personnel in relation to old people (Socialstyrelsen 2014-9-41, see also Eneroth 2014; Harnett 2010). The use of

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<sup>4</sup> Chapter 5, Section 4, Social Services Act (2001:453).

<sup>5</sup> Trust or dependency is used here with no intention of developing explanatory models of trust as in political science, for example.

the concept of trust as a means for management control, to legitimise and deal with severe measures in elderly care is, therefore, interesting. Often in elderly care this ranges from difficulties in everyday situations, such as taking medicine, food and hygiene, to communication problems for old people speaking minority languages. The provision of support is reliant on old people and their ability to clarify their needs.

I have based this article on three key areas: cohabitation, communication and compulsion, which guide the analysis, and represent legislative changes that have taken place since 2011. Legally, attempts have been made to improve communication between social services personnel and old people who speak minority languages in order to strengthen integrity for them but also, for example, to protect them from direct abuse. In 2011 enhanced opportunities were introduced for old people to continue to cohabit in special accommodation and, as far as possible, to be able to choose when and how support and assistance in housing and other accessible services should be provided. At the same time, the regulation prohibiting compulsory and protective measures for old people with dementia was abolished (Socialstyrelsens meddelandeblad 2013-12-34). This legal change has left some question mark and the social service personnel with little guidance.

In this article I exemplify grey areas that can be identified in the legal sources which emerge when decisions are made, and actions are taken involving old people. In elderly care, grey areas can have elements of limitation and compulsory measures or can be the consequence of package solutions etc. Research shows that the measures taken will be legitimised by the intention of the personnel to act *in the best interest* of old people (Hjalmarsson 2009; SOU 2008:51; Lindelöf and Rönnbäck 2004; Socialstyrelsen 2016-6-26). At the same time the political objectives in society call for increased autonomy and integrity concerning people's self-determination and individual preferences.<sup>6</sup> This is in accordance with the empowerment of old people and a way in which to underline that they themselves define what is in their best interest.

## **Elderly care in Sweden**

I initially received signals about the lack of legal guidance from, among others, the participants in a national leadership training for managers in elderly care. The leadership training was procured by the National Board of

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<sup>6</sup> Chapter 1, Section 1, third paragraph, Social Services Act (2001:453).

Health and Welfare and I participated in a program conducted by Umeå University as a senior lecturer in law. The participants felt helpless in some situations and explained the pressure to meet the conditions imposed by the municipalities. The participants also stressed that one way to cope with the situation was to create trust. These statements correspond well with the criticism of elderly care presented by the National Board of Health and Welfare (Socialstyrelsen 2016-6-26). The following issues are emphasised by the Board:

- a) supply-oriented support,
- b) measures not carried out, and
- c) support adapted to existing measures.

Research shows that supply-oriented support may be seen as a view of old people as being in pre-existing categories (Nordström 1998; Dunér and Nordström 2005; Olsson 1995). The measures taken are biased; the support becomes instead a form of adaptation to the already existing institutional arrangements in elderly care. Such conduct is contrary to what social work is about, i.e. that old people and their needs should be set in relation to their resources and how these can be strengthened.<sup>7</sup> This criticism also refers to the different needs among old people, such as social assistance in the home, not covered by the maintenance support system. A recurrent result shown in reports into elderly care is that, in reality, the old people do not have the opportunity to influence their situation (Prop. 2009/10:116). This is an important framework within which the sources below are considered.

Who “exercises power” in the care of old people in Sweden? Personnel in the social sector comprise social workers involved in the execution of authority and providers of social services who carry out activities or functions for old people. In the early 1990s the purchaser and provider model had a strong impact in the municipalities where, before the reform, social workers had been managing both roles (Petersson Hjelm 2014). Thereafter, the execution of authority became separated from the provision of support. Today, there are arguments that social workers should devote less time to the execution of authority and more time to social work and that they should become senior advisors who, together with the old person, can plan the design of the care and also offer personal counselling support and coordination of support (Hjalmarson 2014). In my view the concept of trust

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<sup>7</sup> Chapter 4, Section 1, Social Services Act (2001:453).

and dependence, in order to compensate for deficiencies in the legal framework or the gap between the law and reality, can be applied to all social service personnel in the purchaser and provider model and I have therefore chosen to discuss personnel based on a broader definition.

Before the government committee papers and other official documents are analysed, a brief legal overview of the three key areas is presented to give a better understanding of the regulation of the Swedish elderly care system.

*Communication* is crucial for social services personnel, and the Social Services Act emphasises that support and service must be formulated and implemented together with an old person.<sup>8</sup> Social service personnel should particularly take into account old people who speak minority languages.<sup>9</sup> The municipalities should strive to have personnel with a knowledge of Finnish, Meänkieli or Sami available in the care system for the elderly.

*Cohabitation.* The Social Services Act emphasises that old people should live independently.<sup>10</sup> Specifically, institutional care has been devalued as an option, while the ability to remain in a familiar living environment has been highlighted as the preferred choice. The right to cohabit in special accommodation for those with a spouse or partner is regulated, provided that the couple have lived together permanently prior to these measures being taken.<sup>11</sup> The principle of personal responsibility – helping people to help themselves – is also strongly associated with measures taken with regard to old people and their living conditions.

*Limitation and compulsory measures.* This has not been clarified in legislation or associated preparatory work, regarding the limit for an action taken against an old person who has difficulties in giving consent, especially when such an action would be considered to constitute a coercive measure. In 2010 the National Board of Health and Welfare regulations prohibiting compulsory and protective measures for old people with dementia were abolished. The Board published an information sheet at the time of the repeal (Socialstyrelsens meddelandeblad 2013-12-34). In 2013 the government withdrew a legislative proposal concerning the use of compulsory measures in exceptional situations involving old people with dementia. In Sweden, however, under the Compulsory Psychiatric Care Act (1991:1128) and citing

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<sup>8</sup> Chapter 3, Section 5, Social Services Act (2001:453).

<sup>9</sup> Chapter 5, Section 6, third paragraph, Social Services Act (2001:453).

<sup>10</sup> Chapter 5, Section 4, second paragraph, Social Services Act (2001:453).

<sup>11</sup> Chapter 4, Section 1 c and Chapter 5, Section 5, Social Services Act (2001:453).

the defence of necessity (*nödrätt*) in the Swedish Penal Code (1962:700), coercion can be resorted to in elderly care. At the same time the Social Services Act contains no exceptions from the protection of the Swedish Constitution against physical intervention and detention.<sup>12</sup> The defence of necessity cannot be used for routine tasks.<sup>13</sup> In isolated circumstances, in order to avoid injury primarily to life and health, a person can be freed from responsibility in situations in which he or she would otherwise have been deemed to have violated an old person.

### **The Swedish welfare model**

Since the 1980s, the elderly care system in Sweden has been influenced by new forms of governance (Larsson, Letell and Thörn 2012; Hedlund 2011). My intention is not to describe the development in Sweden, but rather to show current overall tendencies in the field today. Previously, I stated that the key areas must also be considered in the context of increasing demands for rational and strategic choices in what is described as a paradigm between New Public Management (NPM) and New Public Governance (NPG) (Larsson, Letell and Thörn 2012; Hedlund 2011) or Evidence-Based Management (EBM) (Johansson, Denvall and Vedung 2015). NPM represents a clearer control instrument for financial management in elderly care. NPM has been discussed based on the personnel's management of standardised solutions in relation to support and measurable objectives but has also been formalised in a national model *Äldres behov i centrum* (SOU 2008: 51; Socialstyrelsen 2016-6-26; Lindelöf and Rönnbäck 2004). One consequence, discussed against this background from a structural perspective, is the effect the personnel have on the choices made in elderly care.

In recent years, a paradigm shift has taken place in social politics and legislation and social relationships related to europeanisation and globalisation, which meant that the focus moved from notions of state power and social citizenship to individual autonomy and active citizenship (SOU series 2003:91; Prop. 2005/06:115; Larsson, Letell and Thörn 2012; Hedlund 2011).<sup>14</sup> In a legal context NPG stands for a wider understanding regarding management and evaluation and alternative ways to control

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<sup>12</sup> Chapter 2, Sections 20 and 21, Instrument of Government (1974:152).

<sup>13</sup> Chapter 24, Section 4, the Swedish Penal Code (1962:700).

<sup>14</sup> Larsson, Letell and Thörn 2012. Evidence-Based Management (EBM) is also discussed as a new paradigm in the field by Johansson, Denvall and Vedung 2015.

policies and plans. This is one consequence, among others, of the greater use of soft law.

In the 1990s civil society was accorded increased importance. Simultaneously, municipalities became subject to competitive pressures and elderly care was driven, to a greater extent, by private or cooperative entrepreneurs rather than by the public sector (Socialstyrelsen 2006-110-21). Outsourcing of care is increasingly being used in elderly care (Andersson 2007; Blomberg 2004). In 2009 the Act on System of Choice in the Public Sector (2008:962) was adopted against a background of increased market control and discourses on personal autonomy, independence and free choice (SOU series 2013:53). To enable old people to choose which approved supplier would provide their care, the municipalities allowed the entrepreneurs to compete in the market. However, responsibility for elderly care and those in need of support remains ultimately with the municipalities.<sup>15</sup> The legal right to assistance and support can be termed a claim right, and states that a person is entitled to support and assistance if care cannot be provided for an old person, either by themselves or someone else. In reality, the quality of elderly care varies among the municipalities (Socialstyrelsen 2016-3-1).

### **Method and material: the three key areas**

I will discuss and exemplify trust and dependence as a concept in the documents from government committees and other official sources. A qualitative content analysis, based on the key words presented, is used in a discussion of how trust and dependence can be described as a management control instrument (Alvesson and Sköldbberg 2008). As the three key areas sometimes overlap the classification is not strict. Thus, I am concerned with the exercise of power, both as a necessary means by which the personnel get the system to work but also as an attempt to empower old people. I have searched the sources using a key word strategy and I used the software program NVivo to search sources I found relevant.<sup>16</sup> Initially, the use of NVivo enabled me to organise the large amount of documents from government committees and other official sources from a date-range between 1990 to 2013. At a first view, sources I found less informative in relation to the article's aim were rejected while other sources that provided qualitatively

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<sup>15</sup> Chapter 2 and Chapter 2 a, Social Services Act (2001:453).

<sup>16</sup> [http://help-nv10.qsrinternational.com/desktop/procedures/run\\_a\\_text\\_search\\_query.htm](http://help-nv10.qsrinternational.com/desktop/procedures/run_a_text_search_query.htm)

useful information were included in the study. These sources are marked with an asterisk in the reference list. Text Search Queries in the program make it possible to find all occurrences of a word, phrase, or concept. The Swedish key words I have used were synonyms for trust (*tillit, förtroende, inflytande* etc.) and dependence (*beroende, påverkan* etc.). I also searched the words power and empowerment. I then searched for related terms or phrases such as “make their voices heard”.

As stated above, I assumed that social service personnel were directed to the concept of trust and dependence in order to compensate for deficiencies in the legal framework or the gap between the law and reality. To examine my assumption, I then used the keywords to study the statements of relevant government committees and other official documents which regulate the three areas presented above. My intention was to analyse whether and in what way these signals of deficiencies were expressed in these sources in relation to the concept. My intention was also to allow a discussion of how a trust and dependence concept was addressed in the sources at the decision-making level and the service-provision level.

The awareness of power and empowerment is significant, i.e. how the power balance is presented in the sources, for example, whether value-laden concepts are used recurrently to legitimise power as an instrument of management control. First, I have searched the material to discover if, and if so how, power and empowerment are given expression in the sources. Secondly, I have noted whether power and empowerment are expressed or considered as instruments of structural management control in the sources. I have noted particularly whether the sources legitimise the exercise of power as a management control instrument in grey areas involving elements of compulsion.

Previously, I mentioned that the key areas differ in character and that social rights can be divided into three categories. As the Social Services Act is framework legislation, interpretation affects how the statute is applied. Of the three key areas discussed here only cohabitation can be described as a legal, genuine right if old people get a decision in the matter from the municipality. Whereas the municipality will work to ensure communication for people who speak minority languages but with no correlative right for old people to claim such communication. Finally, social services personnel are responsible for ensuring that the rights of old people are not violated by compulsory measures. This is important since the legal status is unclear in this area. In my

opinion, the three key areas are united in the discussion of power as a means for management control in official decisions and other activities provided by social service personnel.

I have particularly considered legal guidance or the lack of it, i.e. decisions and management based on discretionary policy, standardisation, financial frameworks, (lack of) legal security etc. The choice of the three areas is also motivated by the stricter legislation which came into force during 2011, providing a balance between the integrity of old people and the demands for oversight and control over the interests of old people. This applies especially to the trust between the people involved; a trust created to legitimise the actions and decisions of social service personnel (Vahlne Westerhäll 2007). In a broad sense, the personnel hold a position of authority in relation to old people and their more vulnerable, dependent and needful situations (Socialstyrelsen 2016-6-26).

The attempts to narrow down the intentions and my choice of approach in this article are open to criticism. It is important to stress this, especially as I use argumentation to address the field from a critical perspective. Aware of the significance of different considerations and that more considerations can be taken into account I have struggled with the following five concerns.

Firstly, the power structure in elderly care is discussed exclusively from sources selected as adequate. Here I argue for the built-in necessity of the trust and dependence concept even if the sources I searched are limited in extent. Secondly, the Health and Social Care Inspectorate is a government body responsible for supervising the area. Direct violations or complaints are more briefly analyzed since the focus here is on those areas described as grey areas (*a-legitimate* as described by Nousiainen et al. 2013). Thirdly, research reveals a discrepancy between the measures taken and the actual activities or functions within the social services, i.e. what the staff actually believe needs to be done, involving a conflict of loyalty towards an old person as well as towards colleagues (Hjalmarsson 2009). The focus in this article is not on the interaction among staff, but on social service personnel in this broader definition and old people. Fourthly, consent per se is not decisive in this article (concerning consent see Rynning 1994; Socialstyrelsens meddelandeblad 2013-12-34; Kindström Dahlin and Åkerström 2012). Fifthly, the Swedish constitutional context is dependent on obligations laid out by international conventions and membership in the European Union. The

international context is important even if it is not highlighted (see Council of the European Union 2012; United Nation 2002; Lind 2009).

### **The exercise of power and empowerment in elderly care**

Traditionally, research on elderly care examines the consequences and implications of the effect of power on people in a position of dependence, while it is less common to see power as essential for social service personnel to influence an old person who is in a more vulnerable position (Emerson 1962). I refer to power in a structural perspective and consider it a management control instrument for the personnel to determine the best interests of old people. I also use the sources to illustrate the way empowerment of old people is reflected in their everyday life.

For this reason, I find it important to emphasise the legitimacy problem as an issue central to both power and law (Strömholm, 1987). Several researchers emphasise that a power struggle in the field seems to be the consequence of legitimising the use of power to protect people against a dependent relationship, (substantive legitimacy see Vahlne Westerhäll 2007; Vahlne Westerhäll and Jäderberg 2005; Svensson 2007). Foucault argues that law should be viewed as power that sets in motion various submission mechanisms. This is because power relationships provide opportunities for the exercise of power, in the form of discipline and trust (Foucault, 1997). Foucault did not only define power as an oppressive instrument but also as an effective and unifying force. Power is considered closely linked to knowledge of the conditions in which it must operate, often to streamline a system. In this way legitimacy is discussed as protection of the vulnerable and at the same time trust and pressure create a form of adaptation. Skau claims that power is a value-neutral concept; in research about care neither a positive nor negative meaning can be attributed to the concept. However, abused power is associated with negative consequences (Skau 2006). This discussion is relevant, for example when power is used to infringe the possibility of old people to live in dignity and with a feeling of wellbeing, or is misused in the exercise of public authority, or when power is exercised despite a lack of knowledge about the situations of old people.

In this article, I find it relevant to discuss the concept I have presented involving elements of compulsion in the context of the legal grey areas in the sources. This is closely linked to questions of legitimacy and legal security, power and empowerment (Staaf 2005; Gustafsson 2002). I am inspired by

Nousiainen et al. (2013) and their interpretation of a-legitimate. They define power in terms of an analytical tool using the following concept of legitimacy:

We develop a new concept to describe the “undecided” conceptual zone between what is considered “legitimate” and what is “illegitimate,” that we have named “a-legitimate”. The starting point is the idea that legitimacy is construed in a binary opposition with illegitimacy. Instead of being static, the struggles over definition of “legitimate” and “illegitimate” are an outcome of dynamic processes and fundamentally shaped by the “a-legitimate” that falls in-between. (Nousiainen et al. 2013, 41)

In this quote, legitimacy is considered on the basis of the scale: legitimate, a-legitimate and illegitimate. As I pointed out above legal grey areas (a-legitimate) will be used to analyse power in relation to old people and a-legitimate then applies to areas where tension occurs in various situations involving old people and the staff. However, my premise can be described as the reverse; the illegitimate is made a-legitimate by coaxing, tricking, persuading, and in particular, creating a trust and dependence relationship with an old person in order to establish an everyday working situation.

Personnel in elderly care struggle with accidents that occur as a result of falling over and old people suffering from malnutrition, but often the guidance for dealing with such situations is poor, for example, when an old person chooses not to have a bed rail despite often falling out of bed. According to Lex Sarah in the Social Services Act abuse (illegitimate) must be reported by the personnel to the management or to the Health and Social Care Inspectorate. The main purpose of Lex Sarah is to deal with grievances and the notification requirement is intended to function as a support for the personnel so that they can make notifications without fear of reprisal (Prop. 1997/98:113; Prop. 2009/10:131).

Legal security is addressed in connection with the discussion of grey areas (a-legitimate), for example in situations when personnel need to deliberate when making decisions and providing social services. This includes, among other things, reduced predictability concerning these decisions, for example regarding the Social Services Act as a framework in relation to who decides what is in the best interest of old people in the decision-making or the implementation of support. The national model, *Individens behov i centrum*, aims to create more structural elderly care and therefore a more predictable

legal security system on the basis of a procedure of forms (Socialstyrelsen 2016-6-26).

In the introduction I pointed out tendencies for support to be adapted to the actual, accessible range of services that the municipalities offer, i.e. supply-oriented rather than need-oriented support (Socialstyrelsen 2006-110-21). According to research findings there will be a problem with legal security if, from the start, the measures taken are adapted from the start to supply, which the municipalities control and direct (Blomberg 2004). With a strong producer perspective, the municipalities base their work on “pre-determined support guides”. This approach can be counter-productive for old people since support can be diluted and distorted in the process (SOU 2008:51). The social services personnel exercise power by controlling the relationship and the situation through the advice they give to old people where they try to “match” their needs to the organization’s resources and service selection (Dunér and Nordström 2005). At the same time as this could prevent the social workers’ dominance on an individual level, it could increase management control on a structural level and perhaps even further increase package solutions in the process.

Legal instruments are available to strengthen the rights of old people but there is a risk when standardisation goes too far and old people and their actual needs are not seen. If documentation of their situation is standardized, old people are not allowed any real impact (Andersson 2007). Legal security lies in the ability of the individual to appeal a decision. If their actual needs are not visible it is difficult for old people to get their case tried in court.

Lipsky argues that it is not possible to have controlled rules and guidelines customised for each unique situation (Lipsky, 2010). Research indicates that an informal structure is developed in, for instance, the work of home-care services personnel in order to allow them to implement the care plans. The institutionalisation of informality does not mean that it is explicitly formalised in the elderly care system, but rather that it is an implicit condition for elderly care to function.

### **Result from the study: clarifying examples drawn from the sources**

In this section I will illustrate how Swedish elderly care serves as an arena for power and sometimes for empowerment, in government committee papers and other official documents.

*Communication* about power and influence, on a structural level, is dealt with in *From Recognition to Empowerment: The Government's Strategy for the National Minorities* (Prop. 2008/09:158). This is important as it concerns the right of old people to speak Finnish, Meänkieli or Sami. The concept of empowerment is crucial in this preparatory work and the term is aimed at the individual within the state, the organisation or other groups; a person should feel they have power over their own situation, their work, their environment, etc. However, reports concerning the National Minorities and National Minority Languages Act (2009:724) show a lack of implementation in reality in elderly care of the right to speak Finnish, Meänkieli or Sami (Länsstyrelsen Stockholm and Sametinget, Rapport 2015:6).

Language is described as a means by which the personnel exercise power (Socialstyrelsen 2010-5-1). The Board emphasises this by showing that the personnel did not perceive the power imbalance between them and an old person (Socialstyrelsen 2006-110-21). Often the question of power in the relationship between social services personnel and old people is expressed in terms of who gets to define the problem, suggest possible solutions or influence the outcome of decisions about support. This is significant in that personnel need to reflect on their own conduct in relation, for example, to an old person with dementia.

The communication between the person with dementia, relatives and personnel in the care-planning process is crucial for the results of the health and care planning. Because of their use of language and their status the personnel occupy a position of power in planning the conversation and therefore it is essential that they reflect on their own role in the communication (Socialstyrelsen 2010-5-1, 76, Author's translation).

Lack of implementation is also seen as a problem of prioritisation that has been handed over to the municipalities and the personnel to solve. In recent years this development has become more apparent as the gap between resources and needs has widened (Socialstyrelsen 2006-110-21, 30). It is clearly expressed in the sources that an old person who needs support often finds themselves in a dependent relationship. The manual for these laws and the regulations explicitly state why awareness of the power of the personnel in communication with old people is important (Socialstyrelsen 2015-1-10, 400).

Limitations and compulsory measures represent a more direct form of power. It becomes clear from the sources examined how a-legitimate acts and ethical dilemmas are expressed (SOU 2006:110). Difficulties in meeting the interests and values of everyone are shown, and at the same time the balance of power is recognised as problematic and taken into consideration. It is underlined, by the very basis for this choice of action, that putting tranquilizers in the juice of an old person who is upset without their knowledge or permission, could be seen as a physical violation (2006:110, 232). In such cases, preparatory works suggest that some form of “welfare paternalism” might be permitted, if it is for the good of old people:

What matters is to try to change the situation and in various ways get the person to agree to take their medicine themselves. With the provision that it should, even though the legislation forbids it, be possible to coax the individual to take the medicine if they do not understand that it is necessary for their health and wellbeing (SOU 2006:110, 235, Author’s translation).

In the balance between the conflicting interests stressed in the sources, the normally illegal act must have been performed to defend interests which are far more important to protect than the interest that is violated by the act for the action to be considered justifiable (SOU 2006:110 refers to Rynning 1994, 366).

The importance of accelerating the shift of power, expressed in the statement “a life with dignity for people in elderly care”, is clarified in the Swedish Official Report 2008:51. It concerns the empowerment of old people being reflected in power exercised in everyday life: power over meal times and sleeping times; power over one’s private life as well as power over association and participation (SOU 2008:51, 31). Social services personnel should respect and support old people so that they can maintain their self-determination, autonomy and power over their everyday lives (SOU 2008: 51, 121). Elderly care as an institution can contribute to a “balance of power” between an old person and the personnel by taking active responsibility concerning a feeling of wellbeing among old people (SOU 2008:51, 129). Furthermore, it is stated that sometimes it may be necessary to try to influence the behaviour of old people, for example, to prevent the person from coming to harm. This should not be considered to be in conflict with respect for self-determination. If such an approach is needed, it should be objective and

transparent. The preparatory work stresses that the use of coercion, misleading someone or other variants of manipulation, violate a person's dignity and integrity and are illegal. It must be regarded as absolute that old people are not to be violated or abused by personnel (SOU 2008:51, 122). Earlier preparatory work has also identified situations where some necessary actions require the use of "mild coercion" by the personnel (SOU 1997:170, 48–56).

This is about the form of persuasion, 'coaxing', used in various situations in everyday life concerning people with dementia. I have learned that it can involve a respectful interaction between people with dementia and staff, but can also sometimes lead to actions similar to compulsion, for example in conjunction with medication and meals, or when the person wants to leave a group home. The personnel have expressed a need for guidance and it seems to be an important question about attitude (SOU 1997:170, 281, Author's translation).

In recent years there has been a decline in the number of old people living in special accommodation (Socialstyrelsen 2015-2-51). The opportunities for management control can be seen on a more structural level:

Naturally, the possibility is closely linked to the range of special accommodation that municipalities can offer, flexible solutions and the ability of the parties to participate and decide on the format that suits them best. The Government, therefore, considers it of great importance that the municipalities overhaul the supply and, as far as possible, rethink it and adapt it to different needs (Prop. 2011/12:147, 34, Author's translation).

The right to be able to continue cohabiting in special accommodation has been strengthened and when measures are taken it must be made clear that an informative dialogue has taken place. In the preparatory work there is no requirement for further investment; municipalities are given the opportunity to decide on the form of support together with an old person, as before (Prop. 2011/12:147, 40). It is stressed that if the original application does not already contain a question about cohabitation it is the intention that an old person should be informed (Socialstyrelsen 2013-9-16, 56). The sources raise the point that the social services personnel should be aware that pressure can be brought to bear in an old person's relationships, such as spouses being

pressured by adult children who want their parents to continue to cohabit, even if it is against their will (Socialstyrelsen 2013-9-16, 29). Finally, the concept of empowerment is strongly associated with the Act on System of Choice in the Public Sector (2008:962) (LOV). The objectives of this Act are stated as being a transfer of power to the citizens by increasing their freedom of choice, increasing the influence of old people, and at the same time promoting a diversity of providers. The authority that procures the services decides on the application of the Act and what requirements the providers must fulfil in order for agreements to be concluded; requirements also apply to quality and follow-up (Prop. 2008/09:29, 113; Socialstyrelsen 2013-10-16).

### **An analysis of the examples: shortcomings and awareness**

In this part I will address my assumption that social service personnel are referred to the concept of trust and dependence in order to compensate for deficiencies in the legal framework or the gap between the law and reality.

The initial question of if, and if so how, power and empowerment are expressed in the sources cannot be answered with an unequivocal Yes. This is partly due to the fact that the sources are merely samples from recent years and partly because the themes differ slightly. Overall, preparatory work and other documentation show an awareness of the power imbalance that exists in relation to old people in positions of dependence. However, in the important preparatory work for the national fundamental values in elderly care the power imbalance is not explicitly expressed.<sup>17</sup> The aim here is to strengthen the fundamental objectives of the Social Services Act concerning, self-determination and integrity (SOSFS 2012:3 (S)). This involves living a dignified life with privacy and involvement and a life adapted to the needs of old people, support of good quality and good treatment, and of the feeling of wellbeing in terms of security and meaningfulness. The power imbalance is not described in concrete terms nor is it discussed except in the manuals for the national fundamental values in elderly care, and the preparatory work lacks this approach, which will be considered in the conclusion.

At the end of the 2000s the importance of the power of old people in terms of the empowerment concept in particular, shaped new forms of governance. This coincided with the increased use of soft law, and the national fundamental values, the binding force of which is rather weak. The importance of empowerment regarding communication and cohabitation is

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<sup>17</sup> Chapter 5, Section 4, Social Services Act (2001:453).

particularly clear, which is more obvious because of the character of the themes, while compulsory measures – considered necessary – have other aims. In these cases, alongside old people's empowerment, the need for "gentle violence", "soft paternalism" and "welfare-paternalism" are expressed in the government committee documents and other official documents mentioned above. Overall, confidence and trust are two terms that illustrate the impact of power, based on the current examination of sources.

Generally, power is considered as an instrument of structural management in the sources, needed to create a functioning elderly care system. However, in the examples power also constitutes a management control instrument, not only on the social service level but also on a general municipal level. Municipal autonomy, in terms of special accommodation and investment in this area, entails a control instrument for the elderly care system in the sense that it will create a framework. Indirectly, the investments and the initiatives undertaken will be the kind that are accessible for the social sector to carry out. Overall, in reality the research mentioned above underlines a lack of and deficiencies in the support available to old people in need of assistance. These considerations also include, for example, providing opportunities for old people to speak their minority languages. Empowerment is quite well defined in the sources about minority languages and administrative areas have been created in Sweden to ensure these efforts are realised.

Limitation and compulsory measures represent a more complex category because it is a direct violation of the law to use pressure in order to enforce actions and decisions against someone's will. In the sources this is expressed largely based on the national fundamental values and the opportunity to come to a consensus. Nevertheless, there is pressure to get the work done and then, sometimes in the shape of trust, the personnel from their position of power, are forced to act in this way as they lack guidelines. These difficulties are often illustrated in the sources based on individual cases or examples.

Overall, there are tendencies to legitimise power as a control instrument for the personnel, especially in grey areas, in elderly care. Although it is clear that legislation seeks in various ways to strengthen the position of old people, it appears that power is required for the elderly care system to function. The need for power sometimes involves pressure, as when the personnel do not have the necessary guidance and instead must rely on trust to achieve an outcome. The examples show that guidance is poorly expressed in the sources. For example, it is acknowledged that old people who speak a

minority language can face difficulties making their intentions clear. Despite attempts to incorporate administrative areas to comply with the law, examples cited above show that there are problems meeting this need.

I find that the trust and dependence concept constitute the gist of the analysis in the form of avoiding discussion of the pressure from social service personnel affecting an old person concerning support and management in certain situations. This indicates that discussing power is not unproblematic because of the unequal relationship between the personnel and old people. However, in the absence of an explicit discussion of power and empowerment, it is difficult to give an old person direct counter-power in cases where it is necessary, or to give the personnel real legal guidance according to the result from the study.

This, as I discuss in the concluding reflections, is partly explained by the Swedish paternalistic welfare model. Great public confidence in the Swedish state is expressed in the sources and discussed as the manifestation of a “paternalistic welfare institution” and “soft paternalism” in elderly care. It is accepted, in a sense, that social services personnel, in complex situations of choice, offer old people assistance in making decisions without restricting their right to choose independently (Prop. 2008/09:29, 91).

## Conclusion

I argue that the identification of *the trust and dependence concept* in elderly care is one of the main contributions made by this article. In fact, to get the elderly care system to function the exercise of power becomes a precondition in the form of an instrument for management control for social sector personnel. This is expressed in the sources, often related to an action taken *in the best interest of* old people. Generally, these sources describe the power imbalance comprehensively from a structural perspective. In that way, social service personnel can legitimise this concept to motivate support or other actions taken. In an uneven power relationship, this approach is not unproblematic which is partly underlined by the importance of strengthening old people’s counter-power. My reflections apply to the trust and dependence that is created to get the system to work, on the condition that the municipality provides: *cohabitation* in the form of opportunities to live together in special accommodation; *communication* through speaking one’s own minority language; and measures taken when old people do not voluntarily participate in activities with elements of *compulsion*. My contribution involving

compulsion focuses on legal grey areas, and in some cases, on an illegitimate action, where tendencies apparent in the sources can be seen as negative (misused) trust and dependence.

I find that the following four points, based on the clarifying examples and the study, form a platform for Swedish elderly care:

I. Throughout these clarifying examples, considerable confidence in the social services personnel is emphasised. Overall, the aim of providing *good care taking* is expressed on a structural level, as are also the expectations on the personnel to obtain what is in the best interest of old people. Sweden's paternalistic legacy of great confidence in the welfare society stakeholder is an overarching explanation for this approach.

II. Swedish elderly care is managed by goal-oriented legislation, which means that on a decision-making level and a provider level what actually constitutes the law is a matter of interpretation. The focus in elderly care – as a whole – should be guided by this approach, based on the values that old people should live a life of dignity with a feeling of wellbeing. I find that the examples above express cautious support for the idea that the concept of trust and dependence creates a structural, *well-intended* pressure on an old person. In this way power is legitimised in the sources in the form of a positively constructed approach to power in order to create trust. These examples show a hands-off way of managing elderly care, which leaves the personnel to struggle with difficult matters and decisions. Legal guidance in the grey areas is insufficiently discussed, especially compared to legal security and actual rights.

III. Administrative management through new governance has a strong link to instruments of financial control and confirmation of achieved goals. This has an effect on the measures taken which tend to be standardised in relation to what an old person actually requires and needs. This is consistent with research which shows that there are tendencies to claim that the personnel are “gatekeepers”.

IV. All three key areas have been subject to stricter legislation and generally increasing demands through implementation of the national fundamental values for elderly care. Strengthening the position of old people, empowerment (counter-power), is exemplified in some of the sources. The difficulty of a vaguely presented discussion of power is whether or not counter-power becomes a reality for old people. The examples show shortcomings where the government committees and other official

documents leave what I describe as the trust and dependence concept as the only guideline for the personnel. In order to avoid making difficult statements about “necessary” pressure, i.e. situations when the personnel must use their position of power, there is a lack of or limited information in the sources, rather than any identification of unmet needs.

These reflections indicate gaps; a discrepancy between the law and reality. This applies to the deficiencies described above by the National Board of Health and Welfare, for example adapting support to existing measures, as well as the difficulty of avoiding compulsory measures in order to enforce actions or decisions. To summarise, the problems that can be discerned from this are the lack of discussion and legal guidance in such sources as preparatory work. If deficiencies are mentioned at all it is only vaguely and in the abstract and not in a coherent discussion. Instead, the examples show that dilemmas are discussed in manuals and other non-conclusive sources. This corresponds to the experience of the participants in the leadership training for managers in elderly care. The lack of legal guidance in the sources results in dilemmas being passed on to the personnel to deal with. One of my key arguments about the trust and dependence concept is that poorly expressed guidance in the sources, particularly in grey areas, constitutes power as a necessary means.

In the examples above, I find tendencies towards clarifying the actual impact of power. In the sources from the mid-1990s, the discussion of power and empowerment is formulated more clearly, while regarding the national fundamental values power imbalance is primarily communicated in handbooks and other non-conclusive sources from the National Board of Health and Welfare. I think that the concept of trust and dependence becomes more important and compensates for the lack of legal guidance and the abstention from regulating issues such as compulsory measures. Instead, the Swedish Dementia Centre was tasked with working on this issue by the National Board of Health and Welfare and the government. In 2015 their report was published expressing a Vision Zero for persons with dementia, to “inspire and provide tools” to develop a person-centered approach instead of coercive measures in elderly care. There has also been a move to shift decisions closer to the user. In some municipalities attempts have been made to set up a *simplified support system*, for instance, entrusting old people, in dialogue with a contact person or old people’s *counsellor*, to define their needs, subject to subsequent approval. The intention is to reduce the exercise

of authority in favour of the empowerment of old people. Research indicates that this approach may endanger predictability and equal treatment (Hjalmarsson 2014). In Sweden, new legislation on simplified decision making for old people who need help with domestic services is also meant to enter into force on 1 July 2018. The simplified process is characterised by the municipalities being able to offer standardised efforts without a needs assessment and without the right to appeal (SOU 2017:21).

I stress that new forms of governance by processes of assessment, comparison and evidence-based policy making affect what I describe as the *trust and dependence concept* in elderly care. Even though the examples I have used show differences in the legitimisation of power and requests for empowerment among the three key areas the difficulty with *the imbalance of power* is not emphasised at greater length. The discussion of power is on a general level and remains rather abstract in these sources, although its actual impact is tangible in the elderly care system.

Power structures within the elderly care system should be continuously highlighted to avoid the development, or concealment, of poorly expressed strategies where the personnel need to *coax* or *lure* an old person (see above). The examples, illustrated in the situations above, underline the unreasonable dilemma of an old person left to the discretion of individual personnel when making difficult choices. Social services personnel should not be required to act in a way that can be seen as a-legitimate or illegal. It is crucial to explain how the personnel are expected to lean towards what is described in this article as the *trust and dependence concept* so that the elderly care system might function. The importance of reflecting before using this “concept as a strategy” should be expressed in the sources, particularly by encouraging a transparent system and providing knowledge about the dismantling of legal guidance (in non-conclusive sources etc.). In cases where the social services personnel are left with this concept, this should be made transparent through knowledge and awareness of what actually happens in elderly care.

Using the examples presented above I find it important to raise the problem of social service personnel being left without any real guidance in the sources. The examples indicate that without trust between the personnel and old people difficulties would certainly occur. Parallels can be drawn with Lipsky’s theory of street-level bureaucracy, in a broad sense, where a part of the power is found in the hands of individual officials who develop their own policy-making guidelines for making decisions and acting on them. This

entails implications for legal security. According to Lipsky, there are few opportunities to have rules and guidelines so distinct that they can be customised for each unique situation. I find, as a result, that striving to bridge the gap between the law and reality is visible in a dualistic way. On the one hand the sources provide poor guidance for how the personnel should tackle difficulties, and on the other hand the gap shows that this is a severe difficulty for the system to handle. Hopefully, my intention in this article to highlight elderly care and the need for increased knowledge and transparency and the importance of underlining the absence of guidelines, will lead to further debate on the matter.

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