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**Title: The Significance of gender in the application of the Care of Abusers (special provision) Act**

- A critical discourse analysis of the Swedish County Administrative Courts cases

Author: Adam Gustafsson

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Lund University  
Sociology of Law Department

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Supervisor: Eva Schömer

Examinator: Håkan Hydén

# Abstract

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The purpose of this thesis is to analytically examine and investigate if male and female have no meaning with regards to the County Administrative Courts descriptions and assessments in cases regarding the Care of Abusers (special provision) Act (LVM). It is to investigate if notions of gender are expressed in these LVM-cases, and if so, how are they expressed and how can we understand these expressions. Furthermore, the significance of gender in the practical application of LVM has been highlighted through the lenses of social constructivism, gender theory, and hegemonic masculinity. In order to study the role of gender in the legal application process, I applied a socio-legal approach which means that other factors than the purely legal will have impact on these descriptions and assessments from the County Administrative Courts. The use of Faircloughs three-dimensional critical discourse analysis is the foundation of this research which enabled the investigation to analyze different themes founded in the LVM-cases on three levels; the text-level, the discursive practice, and the social practice. The interpretations of the themes, specifically in the analysis of the discursive practice, and the social practice, has been linked to the chosen theories as well as previous research. The conclusion, based on the empirical material, indicates that the County Administrative Courts description and assessments differ depending on if the abuser is a man or a woman. In a concluding remark it seems that the County Administrative Courts, as part of the society, are affected by the prevailing perceptions and notions of male and female.

Key Terms: LVM, gender, County Administrative Court, Fairclough, male, female, abusers

## Acronyms

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LTP - the Compulsory Psychiatric Care Act

LVM - the Care of Abusers (Special Provisions) Act

LVU - the Care of Young Persons (Special Provisions) Act

Prop – the Government Proposition

SekrL - the Secrecy Act

SoL - the Social Services Act

SOU - the Swedish Governments Official Investigations

TF - the Freedom of the Press Act

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# Chapter 1

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## 1.1 Introduction and Research problem

According to the Constitution of Sweden (1974:152), there must not be any discrimination at all which means that men and women should be treated equally except in the exceptional cases such as military service.<sup>1</sup> However, feminist jurisprudence has shown that despite the fact of a formal equality before the law, there is no genuine equality in the legal application. Even though gender equality has overall increased, the fact still remains that the man is seen as the norm. Notions relating to gender permeate the society in all areas and, therefore, become difficult to detect as well as invisible since these notions are often unspoken. Since the legal system is part of this society, I believe that the legal application of laws is affected and driven by the same beliefs. The law can also be seen as a mediator of values and power structures which means that the legal application of a certain law may affect the notions that are prevalent in society.<sup>2</sup>

During last fall, I was studying Social Welfare legislation at Malmö University. It dealt with issues such as the aim and intentions behind the social legislation, as well as gender and ethnical perspectives on legislation. Social legislation includes laws such as the Social Service Act, the Municipal law, the Care of Abusers (Special Provisions) Act, the Act concerning Support and Service for Persons with Certain Functional Impairments, and the Compulsory treatment regulations. Social legislation includes more laws and Acts but the ones that are mentioned were the ones that were used most frequently within my studies.

A huge part of my studies was to analyze different cases and make a decision based on my analysis. An overall question that always needed to be reflected upon was if the outcome of the case would be different if the person in question would have been a man or a woman? This line of questioning has sparked my interest to investigate and analyze the current Care of Abusers (Special Provisions) Act (LVM).<sup>3</sup> This further means that this particular thesis will

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<sup>1</sup> The Constitution of Sweden (Kungörelse (1974:152) om beslutad ny regeringsform), Chapter 2, § 13

<sup>2</sup> Fletcher, R. (2002). "Feminist Legal Theory" in Banaker, R. & Travers, M.(ed.) *An introduction to law and social theory*. Oxford: Hart Publishing, p 135-154. See also: Pierce, J. (2002).. "Not Qualified? Or Not Committed? A Raced and Gendered Organisational Logic in Law Firms" in Banaker, R. & Travers, M. (ed.) *An introduction to law and social theory*. Oxford: Hart Publishing, p 155-171

<sup>3</sup>The Care of Abusers (Special Provisions) Act (1988:870). Hereafter referred to by LVM

focus on the practical application of the Care of Abusers (Special Provisions) Act to investigate if the Act is objective and gender neutral in its assessments.

## 1.2 Aim and Research Questions

The aim of this study is to analytically examine and investigate the current legislation and how it is applied in order to identify any gender discourses in a number of LVM-cases by the County Administrative Courts in relation to the Care of Abusers (Special Provisions) Act. Based on the material from the cases that has been chosen, the thesis aims to investigate if the County Administrative Court describe and assess a male and female abuser differently, and if so, how? The intention is not to prove or question these cases; rather it is to shed light on the issue with the help of perspective that goes beyond the purely legal.

In order to operationalize and facilitate an answer to the above discussion, the following questions have been chosen in order to investigate if the application of the Care of Abusers (Special Provisions) Act is objective and gender neutral:

- *Does the County Administrative Court describe and assess male and female differently?*
- *If so, how can these differences be understood?*

The focus of the study will lie on three different County Administrative Courts; in Malmö, Stockholm, and Umeå. The reason for this choice was the intention to be able to examine how various Courts assess and describe the male and female abusers and it will further lead to that the study will get a more complete picture of how the County Administrative Courts assess and describe male and female abusers.

## 1.3 Connection to socio-legal research

The intention is to do a socio-legal research that aims to increase the understanding of the Act's content as well as its application. In a traditional legal study the problem solution is based upon a pre-established legal structure and their understanding of how society should be designed.<sup>4</sup> Therefore, the questions and answers will be limited to these pre-established ideas

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<sup>4</sup> Banaker, R. & Travers, M. (ed.) (2002). *An introduction to law and social theory*. Oxford: Hart Publishing

and views of society. By changing the problematization and basing the analysis on social relations, it will enable the research to see beyond the purely legal content and be able to highlight the Acts application into society.

#### **1.4 Delimitations**

This thesis is limited to the Care of Abusers (special provision) Act and specifically to how the selected County Administrative Courts, in accordance with the legislation, judge and describe male and female abusers. Hence, it will not examine the actual facts of the different cases, nor doubt the County Administrative Courts judgment or assessments in the selected LVM-cases. Thus, this thesis separates itself and is limited to solely examine how the selected County Administrative Courts describe and assess male and female abusers. Therefore, the study is not designed to assess what behaviors or circumstances that may lead to a disposal or provision of care in accordance with LVM. The focus of the material is entirely on how the construction of male and female addicts are shaped and described from the County Administrative Courts point of view. Other factors such as the circumstances surrounding the disposal or provision of care, in accordance to LVM, are beyond the scope of this thesis. Therefore, it falls outside the established framework of the purpose and aim; thereby a delimitation in itself.

#### **1.5 Disposition**

Chapter (2), Legal Framework, deals with an introduction of the Care of Abusers (special provision) Act as well as introducing the readers to the general procedures with regards to the proceedings of the County Administrative Court. By explaining in a descriptive way the above-mentioned points, it accounts for the relevance of the analysis, as well as giving the reader a more comprehensive knowledge of the Act itself. It includes a description of the general procedure as well. This enables for an easier understanding during the following chapters in this thesis.

Chapter (3), Methodology, describes in detail the chosen method and its characteristics. Furthermore, this chapter will discuss the empirical material and the use of it which also leads to a discussion regarding reliability, validity and ethical considerations. Therefore, Chapter (3) thus creates a framework consisting of the foundation that will be used in chapter (6), the analysis.

Chapter (4) Previous Research, introduces the previous research surrounding the chosen topic. Due to the fact that there are limited studies that deal primarily with the Care of Abusers (special provision) Act from a gender perspective, this chapter introduces research that problematizes the implementation of the Act as well as research that is focused on gender, abuse, and law from a gender perspective.

Chapter (5) Theoretical Framework, discusses the theoretical foundations of this thesis. It introduces social constructivism and its implications on the thesis, as well as, discusses gender theory and how it is seen and used within this thesis.

The analysis chapter (6) outlines the analysis while it also includes a presentation of the results. In this chapter, the empirical evidence will be presented and analyzed by the structure of Fairclough critical discourse analysis model while it further will be connected to the theoretical framework.

In the last chapter (7), the study's conclusions will be presented, as well as, suggestions for further research within this area of the topic will also be discussed.

## Chapter 2

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### Legal framework

Bearing in mind the stated research questions, this Chapter aims to introduce a general overview of the Care of Abusers (special provision) Act and the general proceedings of the County Administrative Courts. Basically, it introduces the legal framework in order to have a better understanding of the LVM-cases as well as to be able to clearly investigate the stated research question.

#### 2.1 Introduction of the Care of Abusers (special provision) Act

The Care of Abusers (special provision) Act (LVM) was introduced in 1982, replacing the current Sobriety Act.<sup>5</sup> The law is subsidiary<sup>6</sup>, which means that other laws have precedence over this specific law, such as The Care of Young Persons (Special Provisions) Act (Lag (1990: 52) because LVM is basically only applicable towards abusers over 18 years old.<sup>7</sup> Even the Law on Compulsory Mental Care (LTP) has precedence if the individual's needs can be met under that Act.<sup>8</sup> However, the Social Services Act (SoL) is the general law that should always be applied in the first instance which means that the care should at first be given as voluntary form.<sup>9</sup> According to Chapter 5, § 9 SoL, the Social Welfare Committee shall actively ensure that the individual abuser gets the help that is needed to break his or her addiction. As for the content of the health care, even when regards to compulsory treatment, it is always the Social Welfare Committees provisions that is the basis unless otherwise is stated in LVM.<sup>10</sup>

Consideration with regards to compulsory treatment under LVM is based on §§ 2 and 4 of the Act (LVM). In the second paragraph it clarifies that the treatment for addiction should at first be given on voluntary basis under SoL. However, it emerges that an individual may be forced into treatment if he or she is not willing to partake in the voluntary treatment; thereof,

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<sup>5</sup> Regeringens proposition 1987/88:147 om tvångsvård av vuxna missbrukare, mm

<sup>6</sup> Regeringens proposition 1981/82:8, en lag om vård av missbrukare i vissa fall mm..

<sup>7</sup> Gustafsson, E. (2005). "Lagen om vård av missbrukare i vissa fall (LVM)" In: Arlebrink, J & Larsson Kronberg, M (ed). *Tvångsvård vid missbruk. LVM i teori och praktik*. Lund: Studentlitteratur. See also: SOFS 1997:6 (M) Socialstyrelsens allmänna råd. Tillämpning av lagen (1988:870) om vård av missbrukare i vissa fall.

<sup>8</sup> Ibid.

<sup>9</sup> Regeringens proposition 1981/82:8, en lag om vård av missbrukare i vissa fall mm..

<sup>10</sup> Ibid.

compulsory treatment. According to the Swedish governments proposition (1987/88: 147) it reveals that an individual can be sentenced to compulsory treatment despite consent to voluntary treatment in cases where the consent is not considered realistic or believable.<sup>11</sup> An example might be if an individual has on previous occasions suspended the voluntary treatment. In some cases, it does not need to be established that the individual has tried voluntary treatment. It only requires an assessment that all possibilities of voluntary treatment are exhausted. If the individual has opposed the voluntary treatment on several occasions might be included in the assessment.<sup>12</sup> However, in order for the LVM to be applicable, the requisites in § 4 section 1 and 2 (LVM), which is the general indication, must be met together with one of the special indications stated in § 4 section 3 a-c (LVM).<sup>13</sup>

If the requisites of the Act are met, it means that the law shall be applied which, thus, indicates that the law is mandatory to apply and the society has a duty to intervene.<sup>14</sup> In some cases, the Court is satisfied with solely examining the individuals need for compulsory treatment on the basis of one of the Act's indicators, even though the Social Welfare Committee is invoking several requisites in their application.<sup>15</sup> This aspect is further discussed by the researcher Ewa Gustafsson. She also illustrates the fact that the Court sometimes chooses to include an indicator that is not presented in the application, as they argue would be fulfilled and, thus, be applicable.<sup>16</sup> This is an aspect that will be further discussed in Chapter 4.1.

## 2.2 Description of the County Administrative Court and its general procedure

According to Chapter 1 § 2, in the Constitution of Sweden, the public power shall be exercised with respect for human equality and individual freedom and dignity.<sup>17</sup> Furthermore, it shall combat discriminations of persons on grounds of sex, color, national or ethnic origin, linguistic or religious affiliation, disability, sexual orientation, age or other circumstance that may affect an individual person. In Chapter 2 § 13 of the Constitution it states that laws or other regulations must not discriminate against any citizen on grounds of sex, unless the

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<sup>11</sup> Regeringens proposition 1987/88:147 om tvångsvård av vuxna missbrukare, mm

<sup>12</sup> Ibid.

<sup>13</sup> The Care of Abusers (special provision) Act, § 4 (Lag (1988:870) om vård av missbrukare i vissa fall)

<sup>14</sup> Gustafsson, E. (2001). *Missbrukare i rättstaten – en rättsvetenskaplig studie om lagstiftningen rörande tvångsvård av vuxna missbrukare*. Akademisk avhandling. Stockholm: Nordstedts juridik

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> The Constitution of Sweden, Chapter 1 § 2

provision is part of efforts to achieve equality between men and women or relates to compulsory military service or equivalent official duties. In Chapter 1 § 9 of the Constitution, it regulates that the Courts shall treat all equally before the law and shall observe objectivity and impartiality. This is further described in the Administrative Court Act (1971: 289) which also regulates the Administrative County Court's composition. According to § 17 it is constituted by a legally qualified judge and three jurymen. In the selection of jurymen, it should according to § 19 be pursued to a general composition with respect to age, gender and occupation. In the application of the law, the Court shall take into consideration which legal rules that is useful in the specific case, the legal issue, and what facts are relevant as well as the issue at hand. In order to determine the existence of different legal rules, ranks, and contents; the legal system needs legal norms. These norms are called the principle of legal sources which in relation to the legal provisions should be seen as meta-standards. The principle of legal sources is needed in order to consider both the legal question and the substance.<sup>18</sup>

The basis for the Administrative County Courts decision, with regards to a case involving LVM, is the application from the Social Welfare Committee which includes their investigation and a medical certificate. The medical certificate shall include the abuser's current state of health as well as the general care that is needed. In accordance with the Administrative Court procedure Act (1971:291) § 8, the Court has an obligation to ensure that the matter is as well investigated as its nature requires. The individual, in a case, is appointed a public counsel to provide the necessary legal assistance. The main rule of procedure is that a hearing is held and the decision by the County Administrative Court is based on the previous investigation and the findings of the hearing. In accordance with its purposes, the Court's decision must be a review of legality which means that the Court shall examine if the condition of compulsory treatment are met or not, and whether such treatment should be given. Examination by the Court does not refer to any form of care or institution with regards to the individual case.<sup>19</sup>

In addition, the information that has emerged during the hearing such as facts (including medical certificate) is reported in the final judgment as the Social Welfare Committee has

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<sup>18</sup> Schlytter, A. (1999). *Kön och juridik i socialt arbete-tillämpningen av 3 § LVU på länsrättsnivå*. Lund: Studentlitteratur.

<sup>19</sup> SOU 2004:3 Tvång och förändring. Rättssäkerhet, vårdens innehåll och eftervård. Betänkande av LVM-utredningen.

constructed it. The Court's assessment is based on case law and the Court should, in accordance to Administrative Court procedure Act (1971:291) § 30:2, give the reasons that determined the outcome. In general, it is clarified which parts of the case that have been decisive for the judgment.

### **2.2.1. Requisite**

The law is often designed around a variety of different requisites. These requisites are what determines how the law should be applied, and what is relevant information to take into account in different cases. The circumstances that are not defined in a requisite, is not relevant to take into account, and shall, therefore, not play any decisive role in the legislative process.<sup>20</sup>

### **2.2.2. To be "sentenced" to treatment**

Being an addict is not a crime, but the decision regarding compulsory treatment can be made in court and the individual can, therefore, be sentenced to compulsory treatment for his or her own good. By doing this, the state is forcing the individual to treatment in order for him or her to free from the addiction. In a sense, the abuse is seen as an invisible prison that prevents the individual from indulging in terms of economic and social security, equal living conditions and an active participation in society.<sup>21</sup> One might criticize this system to have a too far paternalistic approach towards an addicts own autonomy. As a result, it can be argued that the individual him/herself feels convicted of a crime, and the state has used its control and power. However, the researcher Ewa Gustafsson points out that it is important to remember that the individual is not convicted of a crime; it is rather about the use of the individual's right to health care.<sup>22</sup>

## **2.3 The construction of the law and its interpretation**

In order to be able to understand and interpret the County Administrative Courts decision and assessments, it is vital to highlight how the law is constructed as well as what role the judicial system has been in the creation of its laws. A background knowledge to how the law is interpret, what it is affected by, and how the law is constructed will clarify which aspects and

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<sup>20</sup> Hydén, H. (2001). *Rättsregler. En introduktion till juridiken*. Lund: Studentlitteratur

<sup>21</sup> SOU 2011:35 Bättre insatser vid missbruk och beroende, volym 1 & 2, p. 507; See also: The Social Services Act (1980:620), Chapter 1, paragraph 1

<sup>22</sup> Gustafsson,, 2001

perceptions that influence the County Administrative Court basis of its descriptions and assessments. In short, this will illustrate the importance of having background knowledge of how the laws are designed and based upon on. The construction of law, in turn, contributes to a need for different methods of interpretation that the Court must use in order to be able to understand the purpose of the law.<sup>23</sup> However, this is a bit problematic since these methods leads to subjective interpretations that may be influenced by prevailing norms and ideas in the society. Thereof, one can argue that the construction of the legal system is constructed by legal norms that are based upon male conditions and experiences, which then have been incorporated into laws.<sup>24</sup>

The researcher Stig Strömblom (1996) describes that interpretation can be done in two different ways, by accounting for the subjective and objective interpretation of the law.<sup>25</sup> The subjective interpretation of the law depicts how the judge will find the underlying mindset that was the basis for the legislation, by discovering the actually purpose of what the legislature wanted to achieve. This can be done by studying the preparatory work for the legislation, which can be considered problematic because it is almost impossible to understand the exact meaning of its purpose.<sup>26</sup> Consequently, it contributes to the interpretation of the legal provision will be influenced by the judge's individual assessments.<sup>27</sup> The objective interpretation of the law depicts that the judge will find the intent of the legislative provision by the legislative text itself.<sup>28</sup> This can be seen as complex because in order to achieve neutrality in the understanding of the law's intent, the judge shall not attach any respect to the legislature's purpose behind the legislation. The problem in this method of interpretation is that it also contributes to the judge's interpretation is influenced by their own values which may involve subjective judgments. These assessments can include values, norms and beliefs that the judge holds.<sup>29</sup>

The researcher Eva-Maria Svensson (1997) describes in her thesis how the judicial system is supposed to structure the society and maintain order. Many notions and legal norms that

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<sup>23</sup> Gustafsson, 2001

<sup>24</sup> Strömholm, S. (1996). *Rätt, rättskällor och rättstillämpning: En lärobok i allmän rättslära*. Stockholm: Norstedts Juridik AB

<sup>25</sup> Ibid.

<sup>26</sup> Ibid, p 453

<sup>27</sup> Ibid, p 454

<sup>28</sup> Ibid, p 453

<sup>29</sup> Ibid, p 455

formerly existed influenced the design of today's legal system.<sup>30</sup> She further illustrates how the legal system is created by an interaction between the law and the prevailing social ideologies. In reality, the conditions between men and women does not reflect the highlights by the normative ideology, instead, the law has not been able to help create rights that are equal between the two sexes. The legal system strives for gender equality but is far from fulfilling it, as the social structure still contributes to the production of differences in prevailing living relationship as well as the conditions between men and women. However, these differences are invisible due to the fact that they are often explained as individual choices.<sup>31</sup>

Furthermore, the researcher Cathrine Mackinnon (1991) argues how the laws of a society reflect its male dominance and how it maintains the social differences between men and women. These principles that govern society and its ideologies are institutionalized and become part of our perceptions which are not often questioned.<sup>32</sup> She expresses that the law, in societies that are governed in accordance to liberal principles, will contribute to the perspectives and ideas about society as institutions which will then be characterized after that.<sup>33</sup> Furthermore, she argues that within the law, the states incorporates the male social power and raises it to law but this relation is often invisible. The liberal laws are tools to render invisibility and legitimize male domination and when the male dominance is incorporated into its fully extent; the society is forced to follow it. This is a sort of artificial and forced regime that favors only the dominant group, in this case men. With the help of the law, the male dominance is part of life, and part of the reality we live in.<sup>34</sup> In a civil society, those in power creates the standards that should apply and the institutions that will maintain the existing order. The women are excluded in that way by not having been given any opportunity to influence the structure of the political landscape whose function is to make laws and values that will be applied.<sup>35</sup> Gender inequality is reproduced on the legal level, and from this, these law gain power and legitimacy but gender inequality is also embedded in the political atmosphere which is maintained on a social level.<sup>36</sup>

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<sup>30</sup> Svensson, E-M. (1997). *Genus och rätt-en problematisering av föreställningen av rätten*. Uppsala: Iustus Förlag, p 197

<sup>31</sup> Ibid, p 240-241

<sup>32</sup> Mackinnon, C. (1991). "Plädering för en feministisk rättsteori". *Kvinnovetenskaplig tidskrift*. 1 (12), p, 16-26.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid, p 16

<sup>35</sup> Mackinnon, 1991, p. 17

<sup>36</sup> Mackinnon, 1991, p. 17

To conclude one can argue that this illustrates the theoretical framework of how the laws are designed and on what basis they are constructed. The understanding of the construction of law, thus, contributes to a need for different methods of interpretation that the judge should use in order to understand the law's fully intention, but as described, it is a bit problematic due to these methods lead to subjective interpretations. In accordance with Mackinnon, these interpretations can be influenced by the prevailing mindset and norms that govern society and influenced the construction of the legal system, which is explained by the fact that the legal norms have assumed male values and experiences that in turn have been incorporated into laws<sup>37</sup>

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<sup>37</sup> Ibid, p. 16-26.

## Chapter 3

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### Method

This chapter will introduce the chosen method, which is based on Faircloughs critical discourse analysis. This specific approach belongs among the social constructionist view of science whose basic characteristics are explained by Jørgensen Winther and Philips (2000) on the basis of Vivien Burrs.<sup>38</sup> The reality is a social construct and access to it is through the language. Bladini (2013) highlights that the language should be seen as a social phenomenon and as part of the social practice while he also suggests that Burrs thoughts indicates that the social constructionist approach puts the language, knowledge, and reality as the central elements. The person who considers the world and gather knowledge about it, makes it first and foremost based on their own views of the world. This position emphasizes that the language that the person has access to, will influence how this person will interpret and described the world. The language is considered as a tool, in the light of Burrs thoughts, by which understanding of reality are constructed; in reality, how it is used and what impact a particular phenomenon may have, must be context-bound stresses Bladini (2013).<sup>39</sup>

### 3.1 Critical discourse analysis

According to Moa Bladini, a critical discourse analysis is both a theoretical and methodological approach, which as a whole, consists of an interconnected theory and method.<sup>40</sup> There is a large amount of existing discourse analytical perspective and approaches which focuses on the human characteristics of subjective interpretation of different phenomenon. However, the primary characteristics of a critical discourse analysis are its use of an in-depth text analysis to see how the discursive interaction can be regarded with the use of linguistic analysis.<sup>41</sup> The researchers Marianne Jørgensen Winther and Louise Philips (2000) suggest that this particular approach intends to demonstrate how the text is trying to rule over the uncritical reader by consolidating the ideologies of the text which is in a covert manner produced as universal.<sup>42</sup> Due to the fact that this approach aims to identify the hidden force that is performed by the language, I chose this path in order to be able to carry out and answer the aim and purpose of this study. According to Jørgensen Winther and Philips, the

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<sup>38</sup> Winther Jørgensen, M. & Phillips, L. (2000). *Diskursanalys som teori och metod*. Lund: Studentlitteratur, p. 21

<sup>39</sup> Bladini, M. (2013). *I objektivitetens sken: en kritisk granskning av objektivitetsideal, objektivitetsanspråk och legitimeringsstrategier i diskurser om dömande i brottmål*. Diss. Lund: Lunds universitet, 2013, p 30

<sup>40</sup> Ibid, p 312

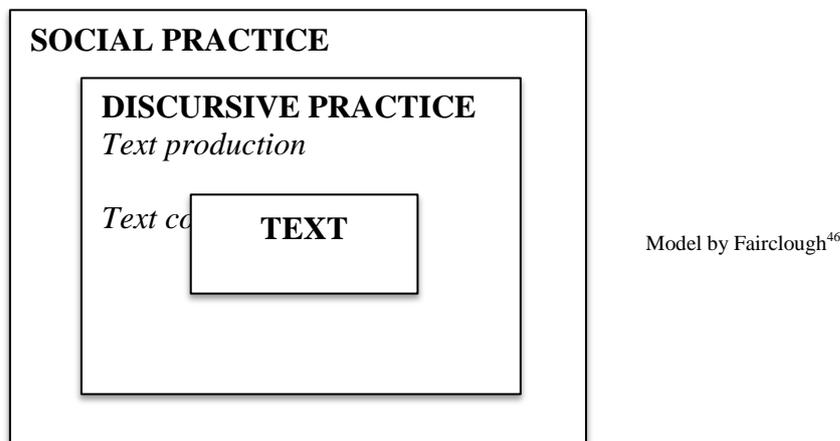
<sup>41</sup> Winther Jørgensen & Phillips, 2000, p. 10

<sup>42</sup> Ibid.

critical discourse analytical approaches do not set themselves as political neutral in the same manner as the objectivist social science does. This is because the approaches are engaged in social change.<sup>43</sup> It is, therefore, critical to reveal the role of the discursive practice that plays a vital role in the maintaining of the unequal power relations in our society.

### 3.1.1 Faircloughs critical discourse analysis

The approach that I chose (within the critical discourse analytical perspective) is Norman Faircloughs critical discourse analysis. The choice is based on that his approach is to clarify the relationship between language and social practice, through an analytical framework that can be used in empirical research with regards to communication and society.<sup>44</sup> Fairclough uses an approach that tries to connect three traditions. The first tradition is the detailed textual analysis within linguistic. The second tradition is the macro-sociological analysis of the social practice and the third tradition is the interpretive micro-sociological tradition in sociology.<sup>45</sup> The first tradition is used to gain insight into how the discursive processes can be seen with the linguistic point of view in texts. The second tradition allows one to infer relationships between texts and the social-and cultural structures they are in. With the third, and the more interpretative tradition, Fairclough want to create an understanding of how people actively creating a regular world of everyday practices. This can be illustrated by the model below:



In short, Faircloughs analysis of discourse consists of three different steps; text level, discursive practice and social practice. These three levels are interconnected and, therefore,

<sup>43</sup> Ibid, p 66-70

<sup>44</sup> This is based on the summary of Faircloughs works by Jørgensen Winther and Phillips. For more info, see; Winther Jørgensen & Phillips, 2000, p. 66-70

<sup>45</sup> Ibid, p 71

<sup>46</sup> Figure of Faircloughs three-dimensional model of discourse analysis in Fairclough, N. (1995) *Critical Discourse analysis*, London: Longman, p 57

have a relationship to one another. By investigating this relation and their relationship, one is able to analyze the discourses which mean that a communicative social problem is analyzed through the model.<sup>47</sup> In my study, the communicative social problem is limited to a selective LVM-cases involving drug abusers. Down below will Faircloughs' three-dimension model be presented in more detail as well as how it is used in the analysis of the empirical material.

### **3.1.1.1 First tradition; text level (text analysis – descriptive)**

The first tradition in Faircloughs model is the text level. In this dimension, the direct or actual text is analyzed which means that the discourse analyst studies the language to discover how it is structure and if it contains any grammatical patterns. It focuses on the grammar and the structure of the sentences within the text. By doing this first step, the discourse analyst examines the significance that can be taken from the text and its structure. By researching the structure of the language, one gains knowledge of how discourses are constructed.<sup>48</sup>

Some grammatical tools that are presented in this first step are modality and transitivity. Modality refers “the way” and analysis the authors' degree of agreement. There are various examples of modalities but, for instance, “I think it's rainy”, “it is rainy”, and “maybe it's a little rainy” are such examples. The author is connected by their claims but the common thread is that all of them show to a degree if the author agrees with an assertion. If the author agrees to a fully extent, the affinity is high and vice versa. Modality is all about how the author expresses himself/herself which means that by studying modality, one examines whether the author describes a certain statement as a truth or if there are any uncertainties in the formulation.<sup>49</sup> If an author fully agree with the statement or describe it as the knowledge is true, the modality that is used is the truth. There are different degrees of truth that an author can use to describe a certain phenomenon. For instance, objective modality refers to when an author constructs sentences as a fact, while subjective modality refers to when an author's assertion includes his or her own perceptions.<sup>50</sup>

Transitivity is referred to as a tool; it enables the discourse analyst to study how an event is described. It studies if an event or social problem is described as the creation of someone or if it only focuses on the effect if it. This means that transitivity refers to if an author describes a

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<sup>47</sup> Ibid, 66

<sup>48</sup> Fairclough, 1995, p 57

<sup>49</sup> Winther Jørgensen & Phillips, 2000, p. 87

<sup>50</sup> Ibid.

claim with a focus on a guilty party, an agent, a manager, or if the author rather focuses on the effect of an event or social problem.<sup>51</sup> If the author focuses solely on the consequences of a certain event or social problem, he/she is using either normalization or speech in a passive form. Normalization refers to that the event/social problem is described with a noun (a thing), rather than verbs (what one does) or adjectives (descriptive). If the author describes an event or a social problem by passive form, it produces a sense of that there is no agent or guilty party and the incident occurred without a cause.<sup>52</sup>

By making a detail analysis of the text's characteristics with these specific tools, it is possible to identify how discourses are textually realized and constructed. In turn, this leads to that the first step in Fairclough's model, will enable the discourse analyst to gain knowledge of how the text's structure is constructing discourses. In this specific research, how the text's structure is constructing discourses with regards to male and female drug abusers.

### **3.1.1.2 Second tradition; the discursive practice (processing analysis – interpretation)**

The discursive practice analyzes how the text is produced and consumed.<sup>53</sup> In this tradition, it examines how the discourses are used which means a focus on the text's intertextuality and interdiscursivity. Intertextuality designates how the text is based on the already produced texts (or pattern) from the discursive practices. A high intertextuality can express an implicit desire to reproduce the already prevailing conditions in and around the discourse, while the opposite may show signs of social change.<sup>54</sup> According to Jørgensen Winther and Phillips (2000), the concept of intertextuality captures the articulation, which for this reason, means that one cannot start from scratch because it is mere impossible to avoid using words that others have already used in the same context.<sup>55</sup> The interdiscursivity refers to it enables the investigation of whether the text is based on, or has elements of text characteristics from previous texts within the specific discourse and/or texts from other discourses. A high interdiscursivity in a text may relate to a social change while the opposite is rather to promote the reproduction of the already existing conditions.<sup>56</sup>

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<sup>51</sup> Winther Jørgensen & Phillips, 2000, p. 87

<sup>52</sup> Ibid.

<sup>53</sup> Ibid, p. 86

<sup>54</sup> Ibid, p. 77

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, p.77, 87, and 137

### 3.1.1.3 Third tradition; the social practice (social analysis – explanation)

The third tradition, the social practice means that the analysis connects the two previous traditions. This is due to that it results in a greater understanding of how discourses are constructed and maintained.<sup>57</sup> There is a connection between communication and society whereas the language is the link that binds them together. The purpose of contextualizing these traditions is to clarify the relationship between the discursive practice and the discursive order in which the discursive practice is part of.<sup>58</sup> Furthermore, the researcher wants to identify the partially non-discursive social- and cultural relationships and structures that create the framework of the discursive practice.<sup>59</sup> In order to be able to this, it requires a complementary theory to the critical discourse analysis. Fairclough suggests a theory derived from the sociological field or a cultural theory that can shed light on the social practice.<sup>60</sup> Since this thesis will use both social constructivism and gender theory (this will be explained in Chapter 5), it will enable the discourses in the previous traditions to be put into a larger context. Making use of a critical discourse analysis will have the advantage that it partly examines into the depth in regards to the analysis of the language, as well as it partly investigate the language as a creator and sustainer of the various social structure of the society.

### 3.1.2 The contributions Fairclough will give this thesis

Bearing in mind the aim of this thesis, the critical discourse analysis by Faircloughs will contribute to a greater awareness of the language by demonstrating and explaining how the exercise of power is taken for granted and justified by texts from courts, institutions, and dominant groups in society.<sup>61</sup> The analytical focus of the critical discourse by Fairclough is intended to show the utilization of the discursive practice that either works for social change or for the maintaining of the unequal power relations in the society. Additionally, this approach open the possibility to distinguish between what is considered to be ideology charged discourse and what is considered not to be.

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<sup>57</sup> Bergström, G. & Boréus, K. (ed.) (2005). *Textens mening och makt: metodbok i samhällsvetenskaplig text- och diskursanalys*. 2., ed. Lund: Studentlitteratur, p. 324

<sup>58</sup> Ibid.

<sup>59</sup> Winther Jørgensen & Phillips, 2000, p. 90

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

### 3.2 Application procedure

The analysis has been carried out in several steps based on Faircloughs three-dimensional model for critical discourse analysis. The material has been read in installments with a focus on the different dimensions, as well as the stated research questions. In the first stage of the analysis, the material has been coded to discern and categorize the basis of the decisions, actor and their action as well as how they are constructed. The researcher Alan Bryman stresses that the encoding of the material is the starting point in most forms of a qualitative data analysis.<sup>62</sup> In accordance with Brymans coding model, the coding scheme within this thesis has been constructed by reading through the material in different stages. In the first stage, it was focusing on getting an overview of the whole material without making any notes. This occurred throughout the whole empirical material; all of the 75 selected LVM-cases of the County Administrative Courts in Malmö, Stockholm and Umeå.<sup>63</sup>

In the next reading, the empirical has been shortened down to only 12 LVM-cases (four from each County Administrative Court) which has then been commented and coded. This is based on a purpose sampling. The purposeful sampling involves the selection of information-rich case in order to conduct an in-depth analysis.<sup>64</sup> The sample size and number are determined by the purpose of the particular study and the area of research, thus, the researcher select out the appropriate cases that meet the requirements; in accordance with the study's purpose and offering the richest descriptions. The choice of the dense and informative case is coupled to the validity of the study.<sup>65</sup> The selection of the 12 cases is based on the number of pages and how informative the cases are in respective reasoning and judgment. This is to allow for a thorough analysis of the research problem and, therefore, be able to answer the stated research questions. In order to allow a comparative analysis between the sexes, and highlight abusive women's and men's position within the judicial system, I considered it necessary to select an equal amount of cases between each sex which also means an equal amount of cases between each County Administrative Court.

Bryman further stresses the importance of critically examining the codes, which has been done by going back and forth in relation to the concepts of theory as well as in relation to previous research. It is also important to consider how the codes relate to each other and if

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<sup>62</sup> Bryman, A. (2012). *Social Research Methods*. 4th. Oxford: Oxford University Press, Print , p 523

<sup>63</sup> All of the cases can be found in Appendix 1

<sup>64</sup> Patton, M. Q. (1990). *Qualitative evaluation and research methods*. London: Sage.

<sup>65</sup> Ibid.

there is any connection in between them.<sup>66</sup> These encodings and further perusal of the material is the basis for the thematization of the material which leads to the results of the analysis. According to Bryman, some researchers equate a theme with a code, while others believe that a theme is more than one code.<sup>67</sup> However, this thesis takes the latter stance which implies the idea that a theme can consist of multiple codes. In the search for the themes, the thesis follows the guidance of the researchers Gery W. Ryan and H. Russell Bernard who recommends focusing on finding repetitions which basically means recurring themes throughout the empirical material.<sup>68</sup> In the construction of the themes, it has also been focused on the context of local typologies, which means local expressions as well as the similarities and differences in the different themes. In addition, the material beyond the empirical material is theory related materials, which means that the thesis has assumed socio-legal concepts in the creation of these themes.

### 3.3 Data collection

Bearing in mind the aim and purpose of this study as well as the application process (the section above), the empirical material has, therefore, been selected in relation to this. According to the second Chapter of the Freedom of the Press Act (TF), LVM- cases are public records as long as the documents are not confidential.<sup>69</sup> In accordance with TF Chapter 2 § 14 and Chapter 15, § 4 of the Secrecy Act (SkrL), a public document can be requested from the authority that was handling the case, in this case the County Administrative Courts.<sup>70</sup> According to Chapter 2 §§ 12-13 TF, these shall be disclosed as requested and it should also be possible to make copies of the documents requested.<sup>71</sup>

In order to obtain the relevant literature for the problem area and research question, I examined Lunds University library catalog, databases such as Libris as well as Social Services Abstracts. The following words were used in several different combinations; LVM, abuse, addiction, women and addiction, feminism, gender, drug abuse etc. Recommended

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<sup>66</sup> Bryman, 2011, p 527-529

<sup>67</sup> Ibid, p 528

<sup>68</sup> Ibid, p 529. For more information: Ryan, G., & Bernard, R. (2003). "Techniques to Identify Themes." *Field Methods* 15.1 85-109. Available at: <http://crlte.engin.umich.edu/wp-content/uploads/sites/7/2013/06/Ryan-and-Bernard-Techniques-to-Identify-Themes.pdf>

<sup>69</sup> The Freedom of the Press Act (TF), Chapter 2, article 1.

<sup>70</sup> The Freedom of the Press Act (TF), Chapter 2, article 14; The Secrecy Act (SkrL), Chapter 15, article 4

<sup>71</sup> The Freedom of the Press Act (TF), Chapter 2, articles 12-13

literature from the course coordinator, supervisor, and previous course literature have been used in order to examine the overall field of research.

The empirical material consists of cases from the County Administrative Courts in Stockholm, Malmö, and Umeå. In order to receive the material from the County Administrative Courts, I emailed each court and requested out 25 LVM-cases from each court. The amount of LVM-cases is based on time, limited space as well as in coalition with the advice from my supervisor. Since I requested the material by email, the Courts could only provide me with LVM-cases from 2011 until 2015 because otherwise I needed to physically visit each Courts own archives. So in order to get an overall view, I decided to request 5 LVM-cases per year (25 in total) from each Court and the only criteria I had was that it should be more or less equally divided between men and women and that the cases should be completed. By making this choice, it would consequently be a more random and objectively sampling. The overall sampling process resulted in 37 LVM-cases regarding men, and 38 LVM-cases regarding women which means 75 LVM-cases in total.<sup>72</sup> As previous mentioned in 3.2 the Application process, these 75 LVM-cases have been shorted down to 12 LVM-cases equally divided between the sexes as well as equally divided between the different County Administrative Courts (Stockholm, Malmö, and Umeå), in order to be able to make a thorough analysis of the research problem and, therefore, be able to answer the stated research questions.

### **3.4 Validity/Reliability/Generalizable**

In a qualitative research project, validity and reliability means that, as researcher, one should be able to demonstrate that the empirical data is collected and processed in a systematic and reliable way. This is achieved by describing and critically reflect all the aspect of the specific study. As a scientist, one should try to be neutral in the relationship towards the study and not let his/her personal understanding affect the results of the study.<sup>73</sup>

By validity, it is meant that if a study is examining what it is alleged to investigate, there must be congruence between interpretation and reality and this interpretation should, thus, be

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<sup>72</sup> As stated earlier, these can be found in Appendix 1

<sup>73</sup> Trost, J. (2005). *Kvalitativa intervjuer*. 3:e uppl. Lund: Studentlitteratur, p. 134

anchored in the study's result.<sup>74</sup> Validity means legitimacy which means that if the study has validity, it should be justifiable, reasoned and persuasive.<sup>75</sup> The credibility of the researcher and its craftsmanship will be important in the determination of whether or not a study has achieved validity. Therefore, a researcher must constantly check, question and theoretically interpret their results in order to prevent a distorted interpretation.<sup>76</sup> In order to achieve validity in this specific research project, I have studied literature and research that are in accordance to the purpose of this study. During the writing process, I have had a critical approach to the study as well as been thoroughly and strictly in the control over the sources used in this research.

Reliability refers to if a study is reliable or not. A study has a high degree of reliability, if the results of the study can be replicated by other researchers, and at another time. This means that the results of the study should be the same with repeated measurements, regardless of who carries out the research.<sup>77</sup> Therefore, it is vital that there is no error in the collection or encoding of the study's data. According to Bryman, there is no certainty that other researchers are able to achieve an identical research and identical results. He argues that text interpretations are always on the basis on oneself and, thus, may differ depending on who is doing the interpretation.<sup>78</sup> Therefore, the material that has been analyzed has been interpreted based on my own perceptions and experiences, which is based on the framework for what I can express and understand.<sup>79</sup> In order to prove the reliability of a research, Bryman argues that there needs to be awareness that it is impossible to achieve complete objectivity. It is important to not let personal values affect the performance nor the conclusion of the study. To achieve a high degree of reliability of this specific thesis, I have thoroughly and as in much detail as possible tried to describe how I have interpret the concepts and empirical data, in order to raise the reliability.

Lastly, in Chapter 3.2 (Application procedure), I have identified and described, as clearly as possible, each step in the collection of the empirical material which I believe would increase and strengthen both the validity and the reliability of this thesis. If the results of this study are

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<sup>74</sup> Olsson, H. & Sörensen, S. (2007). *Forskningsprocessen. Kvalitativa och kvantitativa perspektiv*. Liber AB: Stockholm, p. 66

<sup>75</sup> Kvale, S. & Brinkmann, S. (2009). *Den kvalitativa forskningsintervjun*. 2:a uppl. Lund: Studentlitteratur, p. 264

<sup>76</sup> Ibid, p. 266-268

<sup>77</sup> Kvale & Brinkmann, 2009, p. 263

<sup>78</sup> Bryman, Alan, 2012, p 370

<sup>79</sup> Ibid, p 370-375

considered reliable and valid, the question remains if the results are generalizable; in other words, if the results can be transferred to other situations and subjects.<sup>80</sup> It may be argued that the results of this particular study may not be generalizable because of the use of a qualitative method as a research strategy. This means that the empirical material is not quantifiable because of its amount. However, I believe that this study may contribute to different assumptions which could be applied to a quantitative study that examines a larger amount of court cases with regards to the same subject. This in turn would lead to that the results would be generalizable, if a larger amount of sources of information would be explored.

### 3.5 Ethical Consideration

Based on the research strategy and method, one ethical consideration is the data interpretation. The researcher is responsible for the process of analyzing the data which should avoid any misinterpretation or falsified analysis. This means that the data should be used fairly and represent the findings of the research in a truthful and believable manner.<sup>81</sup> Furthermore, the chosen empirical material is public records which mean that it is accessible for the public. However, in my presentation I avoid producing the identities of the persons involved since it is not within my scope or purpose to focus on the identities of those involved. This choice will not affect the production or understanding of this thesis.

Overall, these considerations are in line with the guidelines presented by the Scientific Council. There it is referred further on how a research should be approached regarding ethical considerations.<sup>82</sup>

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<sup>80</sup> Kvale & Brinkmann, 2009, p. 280

<sup>81</sup> Bryman, Alan, 2012, p 129

<sup>82</sup> For more information, please read *Forskningsetiska principer inom humanistisk-samhällsvetenskaplig forskning*. (2002). Stockholm: Vetenskapsrådet. Available at:  
[http://www.gu.se/digitalAssets/1268/1268494\\_forskningsetiska\\_principer\\_2002.pdf](http://www.gu.se/digitalAssets/1268/1268494_forskningsetiska_principer_2002.pdf)

## Chapter 4

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### Previous Research

In the following section, I will introduce the previous research that I believe are relevant to the chosen subject. However, there are limited studies that deal primarily with the Care of Abusers (special provision) Act from a gender perspective but there are research that problematize the implementation of the Act, as well as research that deals with gender, abuse, and law from a gender perspective.

### 4.1 Problematization of the Care of Abusers (special provision) Act

According to the researchers Bergmark and Oscarsson, the application of the LVM overrides the self-determination principle which is set in the Preamble of the Social Services Act (SoL).<sup>83</sup> This means that the addict is deprived of the right to decide over his or her own actions because of their drug addiction. An individual that not intend to seek support for his or her addiction by themselves should be helped by the community which means that they have to intervene. Bergmark and Oscarsson believe that the voluntary care is portrayed as something desirable and necessary that certain groups of addicts, who do not ask for it, will be motivated through compulsory care by the state. The compulsory care and its breach of individual privacy and autonomy, thus, becomes the price to be paid in order for LVM to work. Bergmark and Oscarsson suggest that it is necessary to analyze the unspoken notions and social conditions in order to be able to understand the problem of addiction.<sup>84</sup> Research has shown that the compulsory opportunities to motivate voluntary forms of care are limited and that, in practice, the notion of treatment can be seen as a control mechanism.<sup>85</sup>

The researcher Ewa Gustafsson argues that LVM is a law directed towards low-class citizens because the addicts who need treatment often initially lack income, labor, or family who can support them. Abuse and addiction occurs in all level of society but within the drug treatment services, it is rare to find individuals who have economic and social opportunities to seek help at an early stage. Those who can afford to pay for private treatments are rarely found in public records.<sup>86</sup> Therefore, it is not this category of people that are cared for with the support of the

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<sup>83</sup> The Social Service Act, Chapter 1 § 1

<sup>84</sup> Bergmark, A. & Oscarsson, L. (2000). "Vad får det kosta att bota missbrukare?". In U. Pettersson (red.), *Etik och socialtjänst*. Stockholm: Gothia, p. 51-65.

<sup>85</sup> Ibid.

<sup>86</sup> Gustafsson, 2001

Act or other contributions from the social services. The abusers own need should be the decisive purpose of LVM and not an ambient claim for protection.<sup>87</sup> Furthermore, she argues that the Act does not specify the criteria to be assessed and there is no current case law to provide further clarification which makes the cares requirements kind of shapeless. This means that there is an underlying risk of subjective judgments, and assessments, as well as the risk of a varying application of the law.<sup>88</sup>

According to the legislative protocol, the social welfare committee shall not wait for an acute emergency or until the abuse have led to a serious illness; rather LVM shall be applied earlier than that which means in an early stage.<sup>89</sup> Despite this, Gustafsson believes that the development of the law has gone in an opposite direction because in practice, the Act is only used in a very late stage of the abuse. Therefore, it becomes problematic with regards to the result of the treatments. As mentioned in the legal framework, it is sufficient enough that the general indication is completed with one of the three special indications.<sup>90</sup> Most often, the Social Welfare Committee relies on two or all indications in their application to the County Administrative Court and in some cases it is doubtful whether any of them are applicable. By this, Gustafsson means that the Social Welfare Committee gives the impression that they transfer the judgment completely to the County Administrative Court to judge which indicators that are applicable. In an investigation, the Social Welfare Committee shall only include circumstances that are relevant for the applications which mean that uncertified assumptions, rumors, and other judgments should not occur. Facts that are in the abuser's benefit should be included as well.<sup>91</sup>

However, in many cases, it is not clear which of the indicators in the LVM that are met.<sup>92</sup> In relation to this aspect, the researcher Annika Staaf found in her study that five cases of 137 investigations included the mentioning of the circumstances that militate against an intervention. Typically the investigating social worker claims that there are no circumstances that speak in favor of the client.<sup>93</sup> She further discusses that the descriptions are often oversimplified which she believes is in order to creating stereotyped images that can be easily

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Gustafsson, 2001

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> SOU 2004:3 Tvång och förändring. Rättssäkerhet, vårdens innehåll och eftervård. Betänkande av LVM-utredningen.

<sup>93</sup> Staaf, A (2005) *Rättssäkerhet och tvångsvård*. Lund: Sociologiska institutionen.

managed and taken into account when applying for the compulsory treatment through LVM.<sup>94</sup> Ewa Gustafsson has also studied this aspect by investigating 900 LVM cases and judgments from different bodies such as the County Administrative Court, the Court of Appeal and the Supreme Administrative Court. This was in order to be able to investigate which factors and indicators are the basis for their decisions. Both the acceptance and rejection have been studied in order to give a clearer picture.<sup>95</sup> She discovered that in recent years, the judgments actually include the social indicator that has been lacking.

Another interesting discover was that this indicator and social harm differ and vary between men and women, whereas some abusers, for instance, live in old wrecked cars while others have a more stable situation.<sup>96</sup> Although, the general picture is that all individuals that are subject to compulsory treatment have a troubled social life. The social harm is almost indicated in every case even though the social indication is not explicitly invoked. The risk of unemployment, housing and social support is roughly equal for men and women but criminality is to larger extent among men than women. An important aspect in her study was that the inability to take care of their children was higher among women than men, and Gustafsson argues that this can be explained by the fact that women often get custody of the children in cases of divorce. This is an important aspect due to one of the indicators for compulsory treatment regards the ability to take care of the children which means, in practice, that the legal prerequisites are given different meanings depending on gender.<sup>97</sup> Several studies have described women's need to relate to their children during the drug treatment while with regards to men, this aspect has not been studied to any great extent. This is further expressed by the researcher Gunbritt Sandström which argues the following:

One of the myths that our social order wants to cherish is that a women should be a good parent. It is also understood that every woman holds and master the tools necessary to implement parenthood. A man is not in the same manner presumed to hold these tools, nor the ability to manage them. Thereof, when a parent is questioned, it is almost always a woman. The man is not encountered for as a parent. At first this might be easy going for the man, but the consequences are that the man is rejected as a presumed good parent.<sup>98</sup>

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<sup>94</sup> Ibid.

<sup>95</sup> Gustafsson, 2001

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Sandström, G. (1997). "Tydliga men inte synliggjorda. Om könspositionerna i socialt behandlingsarbete". In: Nordborg, G. (ed.), *Makt och kön-tretton bidrag till feministisk kunskap*. Eslöv: B. Östlings bokförlag Symposion, p. 94-95

The principle of legality<sup>99</sup> establishes the principle to exercise power in accordance with the standard periodicity as well as reject arbitrariness. The LVM legislative text and motives pronounce no age limit for the application of the social indication. The legislator's view is that the law should be applicable to older abusers as well in order to save what is left of their social ties. The anchorage need not to be particularly strong, but it is about the individuals ability to live a dignified life.<sup>100</sup> Gustafsson found in her material that the social indication in some cases are not considered to be applicable if the individual has been in a social exclusion, while in similar cases it is still applied. If the constituent element are given a different content depending on the individual, it is contrary to the rule and claim of legality and objectivity and she believes that this particular represent a substantial legal uncertainty with regards to the individual.<sup>101</sup>

## 4.2 Gender in the judicial practice

The Social Services Act (SoL) complementary laws, such as LVM and LVU, involve setting boundaries for behavior that the society does not accept. The scholar Astrid Schlytter (1999) believes that the control and limitation in especially LVM is mainly directed towards men. She argues that the women are primarily seen as a victim and the abusive man's wife.<sup>102</sup> This means that the abusive woman is absent in research with regards to this subject, and, consequently, the research on addiction is mainly focused on male abusers. This means that the norms that LVM conveys about gender, either by knowledge-based law or by praxis, is different for men and women.<sup>103</sup> The consideration of what is morally and legally correct varies to historical, cultural, and social context as well as the consideration of masculine and feminine. The official accepted values and structures, including those relating to gender, are reflected by the law. The law, thus, acts as leverage to consolidate, create, and recreate the notion of gender.<sup>104</sup> Research on women's rights and feminist jurisprudence has shown that gender-neutral laws can counter the entrenched political ambitions of real equality. The reasons for this are that the law does not take into account the real differences that exist

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<sup>99</sup> Chapter 1, § 1, section 3 in The Constitution of Sweden (1974:152)

<sup>100</sup> Gustafsson, 2001

<sup>101</sup> Ibid

<sup>102</sup> Schlytter, 1999

<sup>103</sup> Schlytter, A. (1999a). "Den villkorliga frigörelsen" In E. Gunnarsson & A. Schlytter (red.), *Kön och makt i socialt arbete*. Stockholm (Edsbruk): Akademitryck AB, p. 9-24

<sup>104</sup> Nordborg, G. (1997). "Om juridikens kön". In Nordborg, G. (ed.), *Makt och kön-tretton bidrag till feministisk kunskap*. Eslöv: B. Östlings bokförlag Symposion, p. 171-198

between the genders, and that the law is based on male norms.<sup>105</sup> Therefore, gender-neutral laws may not fully promote gender equalizing as long as it is based on male experiences and perception of life, but it is a step in the right direction.

The researcher Eva-Maria Svensson believes that the laws formal gender neutrality disguises the fact that there is a notion of an existing gender relationship whereas the man is seen as the norm, and the woman as abnormal. The experience is the basis for the law which leaves room for interpretations of situations and events, and should be considered objective and unassailable. The law emphasizes that an object is separated from the subjects and, therefore, relationships might be dismissed as something non-relevant. Svensson further argues that the law and its contents should be seen as a product created and applied by the people, and the content is, thus, not determined by an independent reality.<sup>106</sup> During the legislative process, the fact that the sexes have different positions in society is disregarded. This means that unequal structures are reproduced in the creation of each new constitution.<sup>107</sup> Today, women have the same formal rights as men, and the legislation provides a variety of rules with regards to discrimination on the basis of gender.

Therefore, in formal terms, one might argue that the legislation should be gender neutral but the researcher Gudrun Nordborg argues that the alleged gender-neutral rules are gender blind.<sup>108</sup> This is because, even though, the women are given equal rights to men, the women have been granted access to the law that is created by men. But to give women special rights might, on the other hand, create the risk of further devaluation and new discrimination against women. The problem, according to Nordborg, is that the man is seen as the norm and if we want real change, it requires a change of perspectives in which the women is established as the norm on equal terms as the male norm.<sup>109</sup>

Schlytter (1990), in her study of County Administrative Courts cases with regards to the Care of Young Persons (Special Provisions) Act (LVU), discovered that the requisite of “other socially destructive behavior” in the Act is interpreted differently depending on if it is a boy or a girl. She found that the legal standards, in many respects, are different for girls and boys, and

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<sup>105</sup> Schlytter, 1999

<sup>106</sup> Svensson, 1997

<sup>107</sup> Ibid.

<sup>108</sup> Nordborg, 1997, p. 171-198

<sup>109</sup> Ibid.

that there is a double standard; one for girls and one for boys. The requisite, in LVU, seems to be more permissive for boys, which means that their scope of action is greater than for girls.<sup>110</sup> Boys are seemingly more allowed to consume more alcohol and have a more comprehensive drug problem before a public intervention as well as allowing them to be more difficult than girls. Girls' drug consumption is seen on the basis of the women's physical and psychological vulnerability, and these considerations will be part of the definition of the addiction.

Furthermore, Schlytter (1999a) argues that girls not only have tighter limits but they also have to take responsibility for that the specific limit is not exceeded. Exceeding the limit is interpreted as that the girl has an addiction. The law does not take into account the girls behaviors per se, but their behavior is governed by what she symbolizes, among other things, the relevance of her sexual behavior. This means that it is not the legal question or the legal prerequisites, that determines the laws content, but rather it is allowed to include other factors beyond the purely legal in the traditional sense.<sup>111</sup> The norms of boys are more visible and public in a different way which makes space for unfounded and unspoken beliefs about gender. Due to that the girls norms does not appear in the law text or investigations, it creates what Schlytter (1999a) calls for hidden norms. To a great extent, subjective perceptions of male and female influence the production of norms. In order for LVU to work as a law directed to both boys and girls, Schlytter (1999a) argues that the law should be amended to include the specific problems that girls exhibit. An example of such problems are eating disorder, cutting oneself, or sexually destructive behavior are just as important expressions, according to Schlytter (1999a), as violence and aggression are in boys.<sup>112</sup>

### 4.3 Abuse from a gender perspective

In the last decade, alcohol consumption in Sweden has increased. However, it differs between male and female but in general terms regardless of country or culture, men have higher alcohol consumption than women and their intake of alcohol is more acceptable.<sup>113</sup> According to the social norm it was considered more irresponsible if the women would drink because they would put family in the center. This approach persisted virtually up until the ration book

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<sup>110</sup> Schlytter, 1999

<sup>111</sup> Schlytter, 1999a

<sup>112</sup> Ibid.

<sup>113</sup> SOU 2004:3 Tvång & förändring – Rättsäkerheten, vårdens innehåll och eftervård. Stockholm: Fritzes

was abolished in 1955.<sup>114</sup> Today, however, it is about twice as many men as women who have alcohol problems, and alcohol abuse is behind a large proportion of premature deaths among men.<sup>115</sup> Even among drug users, there is a high degree of mortality, despite the fact that up until the early 1960s it was unusual with heavy drug use.<sup>116</sup> The increase in women's alcohol consumption is often seen as a means for women's liberation and an expression of the fact that women and men have equal rights and opportunities. Another explanation for why women in Sweden consume more alcohol than before might also be because, today, women are employed and working which also creates opportunities to extend the social network. This in turn might also create economic opportunities to consume alcohol.<sup>117</sup> As mentioned earlier, up until the 1980s, the research on abuse issues was focusing on men and their experiences. This was partly because it was more common for men to abuse than women. As a consequence, women's abuse were sidelined and led to that the society had little knowledge of women with abuse problems.<sup>118</sup> However, today there is a greater knowledge of this issue and the scholar Jan Blomqvist concluded in his study that more women than men are using drugs in order to suppress feelings they cannot control as well as be able to comprehend reality.<sup>119</sup> This is also reflected by the researcher Ingrid Lander in her study.<sup>120</sup>

Moreover, scholars such as Leili Lannemets and Karin Trulsson, confirms that abusive women are largely subjected to violence by their partner and they also believe that it is common for women to be victims of sexual abuse.<sup>121</sup> Both Lander and Laanemets describes the abusive women as vulnerable and also points out that the abusive women are generally perceived as more destructive in their addiction as well as feeling physically ill to a greater extent than men.<sup>122</sup> Trulsson argues that initially, when the abuse is fairly new, men's and women's situation and prospects are very similar to each other. She believes that as the addiction develops so does the differences between the genders. Due to the strong hierarchy that often prevails in the abusing world, it reduces women's' ability to experience new knowledge on how to survive in this addictive environment. The life of an abusive women

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<sup>114</sup> SOU 1994: 28 Kvinnor och alkohol, delbetänkande av alkoholpolitiska kommissionen. Stockholm: Fritzes

<sup>115</sup> SOU 2004:3

<sup>116</sup> Swedish Government proposition 1987/88:147 om tvångsvård av vuxna missbrukare, mm, p. 14

<sup>117</sup> SOU 1994: 28

<sup>118</sup> Ibid.

<sup>119</sup> Blomqvist, J. (2002). "Att sluta med narkotika – med och utan behandling". FOUrapport 2002:2. Stockholm

<sup>120</sup> Lander, I. (2003). *Den flygande maran. En studie om åtta narkotikabrukande kvinnor i Stockholm*. Kriminologiska institutionen: Stockholms universitet

<sup>121</sup> Laanemets, L. (2002). *Skapande av femininitet, om kvinnor i missbrukarbehandling*. Lund: Socialhögskolan; Also see: Trulsson, K. (1998). *Det är i alla fall mitt barn*. Stockholm: Carlssons Bokförlag

<sup>122</sup> Laanemets, 2002; Lander, 2003

will, therefore, be different from an abusive man's life which will also increase if there is a child in the picture.<sup>123</sup> If a child is in the picture, the chance of experiencing new knowledge will reduce and instead be guided by the responsibility for the child. However, it should also be noted that the pregnancy might also be a motivation to interrupt an ongoing abuse because through parenting hood, the women will gain a greater social value and an opportunity to gain access to the "regular" addiction-free world.<sup>124</sup>

As research has shown, in an abusive environment the man is perceived as the norm. Trulsson argues that the oppression of women is very clear and evident in an abusing environment.<sup>125</sup> According to Bengt Svensson women tend to have a low solidarity towards other women in the same situation and rather socialize or socialize better with men. This is something that could lead to further internalize the misogyny found in the abusing environment, which may lead to disparage of other women as well as herself.<sup>126</sup> The problem lies in that the women in an abusive environment stigmatizes to a greater extent than men that has the same problem. Laanemets argues that a women that abuses is not only seen as an "addict" but it is lot of emphasis on that she is just woman. Even Lander discusses this and believes that the abusive women are compared with not only drug-free women but with abusive men as well. The abusive women is seen as abnormal compared to drug-free women and Lander argues that the view of the abusive women is partly constructed by norms around gender as well as the image of what is normal contra abnormal.<sup>127</sup> Therefore, the notion of how a good woman should be creates the notion of a bad woman, and not vice versa.

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<sup>123</sup> Trulsson, 1998

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Svensson, B. (2007). *Pundare, jonkare och andra. Med narkotikan som följeslagare*. Stockholm: Carlssons bokförlag

<sup>127</sup> Lander, 2003

## Chapter 5

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### Theoretical framework

The following chapter will describe the theoretical foundations of this thesis, which are; social constructivism, gender theory, as well as the hegemonic masculinity.<sup>128</sup> These theories are chosen because it fits the profile and structure of this specific thesis as well as the analytic tool of critical discourse analysis.<sup>129</sup>

#### 5.1. Sociology of Knowledge and “commonplace”

As a theory, social constructionism is part of the, so called, sociology of knowledge; the branch of sociology which, according to sociologists Peter. L. Berger and Thomas Luckman “deals with the analysis of the social construction of reality”<sup>130</sup>, as well as the relationship between human thinking and its social context.<sup>131</sup> Thus, can one argue that social constructionism addresses both ontological issues such as quires about what, if anything that exists, and how it exists, as well as epistemological issues such as questions about how we can reach and communicate knowledge about the world.<sup>132</sup> Berger and Luckmann, whose book “*The Social Construction of Reality*” is an important cornerstone for social constructionism, believes that the sociological research of knowledge should focus on how people in their everyday lives perceive their reality. This is because human beings in their everyday lives; *his* words and *his* life choices and so on, only to a small extent are influenced by the “big” theoretical and philosophical thoughts and tendencies. The everyday life is characterized by human thought and their actions are guided more by “common sense”<sup>133</sup> and other beliefs. Berger and Luckman (1979) argues that a sociologists who ignores this subjective everyday reality, interpreted by people whose interpretations are sociologists working materials, thus risk to miss the intended target.<sup>134</sup>

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<sup>129</sup> This has been described in previous section

<sup>130</sup> Berger, P. & Luckmann, T. (1966). *The social construction of reality* [E-book]: a treatise in the sociology of knowledge. New York: Anchor books, p 12

<sup>131</sup> Ibid. För att synliggöra hur kön får en

<sup>132</sup> Hilde, M. (1996). *Avvikande beteende – en sociologisk introduktion*. Lund, Studentlitteratur

<sup>133</sup> This aspect will be discussed further down

<sup>134</sup> Berger.& Luckmann, 1966, p. 16

### 5.1.1. Construction and classification of social reality

Through most of the Western history, the view of the world and its understanding is characterized by the idea that there is an objective, pure knowledge, correctly understand and relate to the world. This has long been obvious in the social science, and makes it even to some extent in the natural science as well.<sup>135</sup> But during the twentieth century, it was a growing relativism which meant that it is no longer obvious that there is one reality and one truth.<sup>136</sup> The theory that is commonly called social constructionism, or constructivist belongs among the growing relativism. Other related, skeptical and critical, considering trends include post-structuralism and in recent years increasingly criticized postmodernism which possibly through its more or less explicit rejection of the universal, and its quest to relativize rationality and reason in relation to power can be viewed as an extreme form of social constructivism.<sup>137</sup>

Therefore, one see one's own reality as the true reality, and its knowledge as facts, and the knowledge of that other people live in that sphere as well. It leads to that both have the opportunity to assess and consider the facts; what is true or false, real or unreal.<sup>138</sup> In some cases, it may be clear for a person that his or her views of the world are not universal. These cases may occur, for instance, when values and interpretations of the world are in conflict with each other, or if one is faced with problems which cannot be solved with the view of the world, knowledge, and tools that the person know of.<sup>139</sup> But in general, humans have no logical reason to question their perception and view of the world; this continuously structure is designed and restored through thoughts and actions in a more or less unreflective way. The fact that the design is perceived as real and logical displays for the individual that shows that it reflects the "real" reality.<sup>140</sup> This world structure is what Berger and Luckmann calls the "common sense world"<sup>141</sup>. No one can opt out their own reality. People interpret other people's intentions, and transmit information through communication. Communication occurs through the character and the category systems that must be understandable for both the sender and the receiver, for instance, sign systems that are established and communicated

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<sup>135</sup> Barlebo Wenneberg, S. (2000). *Socialkonstruktivism – positioner, problem och perspektiv*. Malmö, Liber förlag

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Barlebo Wenneberg, 2000; Also see: Berger.& Luckmann, 1966.

<sup>141</sup> Berger.& Luckmann, 1966, p. 27

through the “language” in the broadest sense; voice, text, body language, and tone of voice.<sup>142</sup> Without these common and established systems (which are socially constructed), the world cannot be made intelligible. The common sign- and category systems are required for an inter-subjective comprehensibility and for further categorization. Therefore, it is very difficult to make something understandable if it is not in relation to anything else in the same system. The world cannot be divided into manageable, hierarchically arranged parts without these communication- and categorization systems.<sup>143</sup> However, communication and categorization does not only understand the world, they construct it at the same time. This is best expressed by Hans-Georg Gadamer:

The language is not only a kind of equipment that brought man to be part of her world; on the contrary, the man has a world because of the language and it shows itself in the language.<sup>144</sup>

Through people and their communications, it highlights what is true or false, important or unimportant, fact or fiction, and how these classifications of reality are related to everything else. The awareness of this, creates and raises a reality, a reality that others must relate to which often has consequences for others specifically those who are not participated in the construction process, as well as those who do not share the same world view.<sup>145</sup>

The above discussion is inspired by sociologists Berger and Luckmann’s theories about social reality, how it can be explained, and how a specific social phenomenon is structured. Berger and Luckmann argue the following:

- Society is a human product,
- Society is an objective reality,
- Man is a social product<sup>146</sup>

These three statements can appear to be contradictory, if, as Berger and Luckmann, believes that all three statements are true at the same time. But the arrangement of the statements becomes more understandable if one understands that Berger and Luckmann mean that humans have a natural tendency to form habits or ways of thinking.<sup>147</sup> Furthermore, these habits becomes externalized which means that these habits is spread to other people who have not been involved in the shaping of these habits or behavior. The new habits which are shared by new groups are what Berger and Luckmann calls institutions. Even from birth, people are

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<sup>142</sup> Lundgren, M. (2006). Från barn till elev i riskzon. En analys av skolan som kategoriseringsarena. Akademisk avhandling för filosofie doktorsgraden vid Institutionen för pedagogik vid Växjö universitet. Växjö, Acta Wexionensia Nr 98/2006; Also see: Berger.& Luckmann, 1966.

<sup>143</sup> Ibid.

<sup>144</sup> Reproduced in Ödman, P-J. (2007): *Tolkning, förståelse, vetande – hermeneutik i teori och praktik*. Stockholm, Nordstedts akademiska förlag, p 29

<sup>145</sup> Lundgren, 2006; Also see: Berger.& Luckmann, 1966.

<sup>146</sup> Berger.& Luckmann, 1966, p 79

<sup>147</sup> Ibid.

channeled into these institutions, for instance, adults explain to children what it means to be men, women, or what money and poverty is.<sup>148</sup> These so-called institutions are now taken for granted because no one questions their existence, which thus makes them objective and exist independently of those who once created these habits, but also by the people in the society.<sup>149</sup> In other words, one can say that the social reality is partly constructed and partly self-developing. These objectified institutions will then be internalized by future generations which is essential because it is due to this process people will become social beings who can understand other people and the social reality.<sup>150</sup> With other words, people are not living in a given world, rather in a world which is created by herself and her ancestor. In order to take part in the world, one must dedicate ourselves the tools we need to understanding the world and its structure.

### 5.1.2. Social problems, structures and Norm deviations

From a social constructivist view, social problems as well as phenomena in general is defined as

...the social agreement, within the framework of a social and political model, the prevailing discourse that could possibly be thought differently, and also has been thought differently.<sup>151</sup>

Therefore, there can be major differences in the perception of what kind of behaviors that are perceived as problematic or disruptive. In other words, one must know the context in which something is considered a social problem, and what is considered “normal” in order to be able to understand why something is considered to be a social problem.<sup>152</sup> Depending on the context, for some it might be considered a problem while for others it is not. Different viewer with different perception of the world, knowledge, and the ways of categorizing reality can assess the situation differently. One can also look at the social problems as norm deviations; they are behaviors that deviate from what is considered to be normal and problematic by those who have the power to decide what kind of moral and legal norms to be applied.<sup>153</sup> A social problem, based on the deviation from a norm, implies the existence of a legitimate social norm to deviate from. A social norm may be, from a social constructivist perspective, described as an agreement on how something should be in a system of symbols and

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<sup>148</sup> Ibid.

<sup>149</sup> Ibid. Also see: Barlebo Wenneberg, 2000

<sup>150</sup> Lundgren, 2006

<sup>151</sup> Börjesson, M. & Palmblad, E. (2003). *Problembarnets tid*. Lund, Studentlitteratur, p 20

<sup>152</sup> Ibid, p 20.25

<sup>153</sup> Börjesson & Palmblad, 2003, p 20-25

categories.<sup>154</sup> In our current society, those who assessing what should be considered a social problem (experts and practitioners) are the ones who, in Foucault's sense, "own the truth" about social problems.<sup>155</sup> They also control the structures that have the power to take measures to "correct" social problems. Among the experts, one should primarily mention those who in various ways are involved in the enactment or creation of the laws that practitioners have to relate to. Among the practitioners, it is primarily a social worker who has to assess whether the behavior of the people can be categorized as socially problematic.<sup>156</sup> The purpose of the categorization of behaviors is usually to be able to categorize the unwanted behavior in order to understand, influence, change, and reverse it. The downside of such thinking is that the expert and the practitioners' way of communicate and categorize social problems, in the manner described above, creates the phenomena of "social problems" as well as the term "people with social problems". The individual can choose to accept that his or her behavior is classified as a social problem, but just as well oppose it.<sup>157</sup> However, in this case, it is often the experts and practitioners' common sign- and categorization system that prevails. It should be stressed that this relationship is not limited to social problems and this specific phenomena; rather it is, for instance, valid on the construction gender (see further below, section 5.2)

### **5.1.3. The building of realities**

If one believes that social constructivism is a reasonable way to look at reality and on phenomenon in a broad sense, it might cause a problem or at least an interesting phenomenon. With this I mean that those who intend to explore the phenomena of social structures, or social structures as a phenomenon, they will interpret what he or she sees as their worldview, knowledge and their prior understanding of the categorizing of reality. Basically it means that it includes a process of subjectivity. Thereby, the researcher creates somewhat the subject as well as the theories and methods that he or she believes to be fruitful for the research. We create new realities by putting new labels on the phenomena we describing.<sup>158</sup> This is an aspect that I am very aware of.

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<sup>154</sup> Hilte, 1996; Also see: Lundgren, 2006

<sup>155</sup> Ibid.

<sup>156</sup> Ibid; Also see: Berger.& Luckmann, 1966.

<sup>157</sup> Ibid.

<sup>158</sup> Barlebo Wenneberg, 2000; Also see: Lundgren, 2006

#### **5.1.4. The use of social structures in this thesis**

This thesis argues that gender and social norms, as reflected in the County Administrative Courts judgments and assessments, with regards to LVM-cases, are not universal but rather constructed on the basis of its context. The construction of these concepts reflects the social, cultural-and historical context, and the worldview they occur and exists within. All these factors partly shapes how an individual's problem are defined and described, and partly how the legal praxis will treat these problems.<sup>159</sup> In other words, the thesis assumes a critical perspective on both concepts and praxis; it assumes that social problems actually exist, and that there are behaviors and situations that are harmful. But the question is what are those behaviors and situations, and how does the society, the law and its praxis asses and treat them? This is something culture-bound which means that problems do not exist independently of the society they exist in, even if the behaviors and situations may of course do so.<sup>160</sup> The thesis will not investigate the social problems in itself because that falls outside the scope of this thesis, but by investigating how the County Administrative Court assess and describe male and female abusers, it will at least show how they communicate, categorize, construct and reproduce ideas about gender. Therefore, the use of a social constructionist perspective is a suitable choice for this thesis.

### **5.2 Gender theory**

The concept of gender occurs in various discussions, but it seems not to be an overall consensus about how to interpret it. Gender can be seen as a continual creative process, based in the notions of interaction in a symbolic as well as on a concrete way. Further on, it can also be perceived as a concept with complex meaning, capturing both the biological and social aspect of gender. Social gender, as biological gender, get a broader meaning and may include further dimensions, but without a clear consensus in the discussions.<sup>161</sup>

#### **5.2.1. Sex and/or Gender**

The concept of gender is not just about categorizing people based on biological differences, but it includes the interpretation of the concept gender on the basis of the creation of notions, institutions, and practice. The researcher Yvonne Hirdman suggests that the shape of the

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<sup>159</sup> Berger.& Luckmann, 1966.

<sup>160</sup> Ibid; Also see: Barlebo Wenneberg, Sören, 2000

<sup>161</sup> Svensson, 1997

individual masculine or feminine gender is a process. The process is characterized by the community life, as well. It creates and maintains the institutionalized gender formations its legitimacy which means that the social structures shape the socially constructed gender.<sup>162</sup> Furthermore, Hirdman means that this process creates hierarchies and inequality which is seen as the gender systems two logics; the divide between the two genders and the prevailing male norm.<sup>163</sup> It basically suggests that men's actions and thoughts are valued higher.

The term social gender includes not only individuals' identity and character, but it also can be seen as a consistently institutionalized systems and a historical process. The process involves how social relations are organized and reproduced based on the formation of a gender.<sup>164</sup> Some gender researchers chose to use the term process instead of the system, as they rather aims to something ongoing, malleable, and changeable than any constitution formalized and permanent.<sup>165</sup> The term gender has sometimes been criticized for not providing the tools to understand the individuals' behavior, but rather describes more superior systems such as the legal system. It has had great benefits when it is useful to describe the social norms that are conveyed in the legal context. However, there is some criticism towards distinguishing the social from the biological gender, as it has social consequences and Schlytter (1999) means that it is wrong to deny the biological significance of the social interaction and the individual's own understanding of him/her as a person.<sup>166</sup>

### 5.2.2. Reproduction of Diversity

A central part of the gender research is to analyze how notions of differences between male and female are reproduced, as well as to analyze what meaning this might have on the formation and the maintenance of social and biological gender. By problematizing this issue and analyzing how practitioners keep the gender apart, in sense of feminine and masculine, one must take a problem-oriented approach towards gender as a concept. It also includes an understanding of the framework that creates the different roles between men and women. By doing this, one might be able to understand the concept of gender in terms of meaning,

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<sup>162</sup> Hirdman, Y. (1990). *Genussystemet. I Demokrati och makt i Sverige-maktutredningens huvudrapport*, SOU 1990:44. Stockholm: Allmänna Förlaget, p. 73-116

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Gothlin, E. (1999). *Kön eller genus?* Göteborg, Nationella sekretariatet för genusforskning.

<sup>166</sup> Schlytter, 1999

symbols, characteristics and attributes.<sup>167</sup> As stated earlier, in research there is no absolute consensus what the concept of gender really means. One way would be to see the concept gender as something non-given, rather it is something we do or construct and shape. To define the concept of social gender means categorizing gender and notions by historical, social, and legal perspectives which in turn organize a hierarchy of dominance and subordination.<sup>168</sup> In such a systematization of norms and notions, it can be seen as the man is the “norm” and the woman “deviation”. If one would primarily categorize gender on the basis of biological differences, the biological approach then becomes a form of a filter both for society and for the human body. The categorization on the basis on biological differences seems to produce differences with regards to the human as a cultural being. However, to preferably argue that the biological differences may be a causal explanation for the social differences is based on reasoning. It implies that human biology is perceived as something fundamental and stable rather than something flexible and changeable.<sup>169</sup>

Birgitta Fagrell believes that this makes biology into something independent and seemingly obvious, which affects the socio-cultural. The reasoning in which biological factors preferably dominates over other explanation models, on the basis of polarized categories, may result in the creation of categories such as normal and abnormal. And these categories are often set against each other. With the use of biology and anatomy it is possible to legitimize the gender categorization, but to suggest that biology and anatomy could explain the gender differences in the psychological or social sphere is a far stretch.<sup>170</sup> Trying to understand gender as a social construct and not as something given, leads to the perspective that the concept of gender is shaped depending on the social phenomenon and what structures that is normatively associated with men and women. To argue that gender is a purely biological structure becomes in this context insufficient because it would not be able to describe and explain other social norms or values.

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<sup>167</sup> Fagrell, B. (2000). *De små konstruktörerna- Flickor och pojkar om kvinnligt och manligt i relation till kropp, idrott, familj och arbete*. Studies in Educational Sciences 30, Stockholm, LHS förlag

<sup>168</sup> Ibid.

<sup>169</sup> Ibid, p 61

<sup>170</sup> Ibid.

### 5.2.3. Problematization, gender perspective and sexuality

The difference between men and women are created and assigned the two categories based on different abilities and sexuality. This can be seen as natural differences and symbolizes a certain kind of patterns relating to social relationship. The organization of differences can be seen rooted in beliefs, not because of a general view of sexuality but founded rather on gender identity in the context of heterosexual discourse.<sup>171</sup> Organizing from a gender perspective may also include events and emotions which are attributed to men and women on the basis of the prevailing norms. According to Karin Hamreby (2004) it is necessary, in a study of social problems from a gender perspective, to highlight society's gender hierarchy and the norm of heterosexuality as a contributing factor to men's control over women's sexuality through an organized superiority and inferiority.<sup>172</sup> This normativity affects all those covered by the system; men as well as women's lives and sexuality. Furthermore, Hamreby believes that the institutionalized heterosexuality, in this context, called the heterosexual discourse, and its organization helps to make some girls/women into social problems as well as:

...sexualization of girls' bodies have become essential in the socialization of girls into a female identity. The organization of sexuality can be seen as central to the process in which girls are made to women, but it is also central to the processes in which social problems are constructed.<sup>173</sup>

Behaviors that often been in focus with regards to girls deviations from social norms have been early sexual debut and a problematization of circumstances such as different partners and casual contacts. In this way, one can understand that violation of the prevailing norms will be a key element in the understanding of girls' social problems and perceptions about their differences.<sup>174</sup> The language molds thinking; how we describe something as a form of linguistic community, a community in which we live in together. The language is integrated into the social context in which we live and exist within and it may even be seen as marginalizing and stigmatizing in some cases.

Hamreby argues that the language is an integral part of how boys and girls social problems are constructed.<sup>175</sup> This takes place through a linguistic process in which the use of language may help to place the girls in vulnerable positions. Girls and women's' reputation is often

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<sup>171</sup> Hilde, M. & Claezon, I. (2005). *Flickor och pojkar på institution – ett könsperspektiv på vården av ungdomar*. Malmö, Stiftelsen Allmänna Barnhuset.

<sup>172</sup> Hamreby, K. (2004). *Flickor och pojkar i den sociala barnvården - Föreställningar om kön och sociala problem under 1900-talet*. Akademisk avhandling, Umeå universitet – institutionen för socialt arbete Nr 43 2004

<sup>173</sup> Hamreby, 2004, p 21

<sup>174</sup> Schlytter, 1999

<sup>175</sup> Hamreby, 2004, p 21

described by moral references to sexual behavior, while descriptions of boys and men frequently refer to the personality and achievements.<sup>176</sup> According to Hamreby it appears from a historical perspective that girls social problem has often been described based on morality and sexuality.<sup>177</sup>

#### 5.2.4 Hegemonic masculinity

Raewyn Connell argues that there are different types of masculinity based on such as class and race. However, hegemonic masculinity refers to an ideal way of masculinity, which is more tolerable and accepted than other ways of masculinity. The concept of hegemony points to the cultural dynamics that occur in a society and creates opportunities for a specific group (in this case a specific group of men) to adopt and maintain a dominant position in the society.<sup>178</sup> By this, she believes that a specific group of men will dominate not only over other groups of men but also over women who will assume a subordinate position. The hegemonic masculinity is described as a social construct and Connell argues that it looks different depending on which context as well as which characteristics that are seen as optimal for men in this specific context.<sup>179</sup>

Since the hegemonic masculinity is described as something that is learned and created by social relations, it also means that the role of masculinity is changing. Connell argues that ethnicity, class, so-called feminine behavior and homosexuality influence the masculinity. She believes that hegemonic masculinity is dependent on the existence of subordinate, less acceptable forms of masculinity or it may not exist. According to Connell, the lowest category of masculinity is homosexuality as they often are excluded from other men through violence or insult.<sup>180</sup> However, it not only homosexuals that are excluded from being part of the hegemonic masculinity, sometimes it even includes Western, heterosexual men. In these cases, words that refer to the feminine behavior clarifies that it is that specific behavior that is the basis for the exclusion. Connell states that there some men who have the opportunity to be considered as hegemonic masculinity despite the lack of a certain attribute or behavior. She gives an example about a black athlete who manages to be seen as a hegemonic masculinity and establish a certain status. This will not be significant for the large group of black men

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<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Connell, R. (1996). *Maskuliniteter*. Göteborg: Daidalos.

<sup>179</sup> Ibid

<sup>180</sup> Ibid.

who is still regarded as inferior in the Western context.<sup>181</sup> Despite this, Connell says that in reality, there are very few men that live up to normative image of masculinity as portrayed by the society. But these men often do their utmost to demonstrate their superiority, both over women and men, in order to take advantage of the benefits this provides in the society.<sup>182</sup>

### **5.2.5. The use of gender in this thesis**

In this thesis, gender is seen as a central building block of how people form and act in the social sphere and, thus, how we perceive and analyze different social problems. Trends in how gender is used as a concept seem to vary. In this research, the formation of gender is seen as a process that helps create social differences between men and women. These differences are seen as social constructs, and I believe it to be interesting to discuss social construction based on the relative in the creation of gender. I perceive that it covers the social aspects that are included in the theory, and as a tool to study. In the creation of the term gender, I see language as an essential ingredient and something that characterizes the men and women's lives, how we create ideas and shape our thinking. Furthermore, language shall be seen as affecting the descriptions and assessments of social problems. The language is, therefore, a building block that shape social norms and, thus, divides the expected behaviors, actions, and conditions on the basis of gender. Based on the hierarchical standards, I believe that the differences in perspective, the written and the unwritten word on a symbolic level, can influence the descriptions of what we perceive. By this, I mean among other things, that what is said and described in certain situations, and what is left out of the other, can be perceived as part of the segregation. In order to understand and to partially manage the chosen subject, the thesis has its foundation in the above mention theories and ideas about gender. The subject matter is obviously affected by my prior understanding of gender as a social construction, also of my prior understanding of gender power relations in society as a whole. I have used the theories of gender as a tool to approach the subject, as a basis of the research question and as well as a foundation of the purpose of the study. Lastly, the theory should be seen as a way to understand deviant behavior on the basis of legal and social norms, as well as a framework for how I handled the limited preliminary investigation of the LVM-cases by the County Administrative Courts.

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<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

## Chapter 6

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### Analysis and Results

In this chapter, the 12 LVM-cases will be presented and analyzed. In the first part (the text analysis), the LVM-cases will be picked apart and the differences in the cases will be presented by quotations to clearly point out the differences in the use of the language. The second and third part (the discursive practice and social practice) will be analyzed through the support of the literature to point out how these differences may be understood from a theoretical point of view. By having this structure, it follows the steps within Fairclough's three-dimensional model of critical discourse analysis (Chapter 3.1.1.), as well as making the analysis easier to follow.

Before turning to the analysis itself, I will remind the reader of my understanding of the central concept, discourse. My understanding, in accordance with how Fairclough defines discourse, is the following:

My view is that 'discourse' use of language is seen as a form of social practice, and discourse analysis is analysis of how texts work within sociocultural practice.<sup>183</sup>

Thus, discourses are no permanent phenomenon and instead discourses influence and are influenced by the processes and the contexts in which they exist and are included within. By using Fairclough's three-dimensional model one can understand the overall discourse/s<sup>184</sup> by distinguish between discourses; as text, discursive practice, and social practice.<sup>185</sup> This is because these three dimensions can be used to highlight different aspects of the same communicative event (text).

Bearing in mind chapter 3.3 the application process, it stated that in the second reading of the material, the material was shortened (12 cases), commented, and coded (themed). The reading was made based on and in relation to the purpose of this study, research questions, and the legal requisites. As a result, I distinguished the following themes:

- the nature of the abuse and its extent;
- physical and mental health;
- appearance;

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<sup>183</sup> Bergström & Boréus, 2012, p. 375

<sup>184</sup> Ibid, p 308 and 322

<sup>185</sup> Diskursen/er (likställs) och förstås (framöver) enligt min mening syfta på beskrivningar och bedömningar i de utvalda LVM-målen

- health care needs and previous actions;
- relative to other drug users and partners;
- crime;
- assault;
- prostitution;
- family conditions;
- housing and employment.

In order to make a clear presentation of the study's results, I have designed four overarching themes that are based on the themes that I found within the 12 cases. These are the following:

- The abusers health and addiction problem;
- The abusers motivation to break the addiction;
- Risk assessment;
- Social conditions

The first theme, the abusers health and addiction problem, follows the general indication and the health indication within LVM. The second theme is linked to the general indication and that the County Administrative Court must decide whether or not there is consent. The theme risk assessment is based on the health indication but also the social indication, which also includes the last theme, social conditions. I believe that these four broad themes are covering both the themes that emerged from the 12 cases, as well as the legal requisites, and the stated research problem.

### **6. 1. Analysis of the language texts (text analysis)**

Since the County Administrative Court's *decisions* and *judgments*<sup>186</sup> are text (speech and writing, picture or a mixture of linguistic and visual), the focus is, thus, primarily on the consideration of the characteristics of the text itself. The empirical data (informative texts) that constitute the core material is reproduced in connection to the presentation of the results of the analysis. The obtained results of the text analysis will further constitute the basis of the analysis of the discursive practice (Chapter 6.2). However, it is important to stress that when dealing with the characteristics of a text (the text itself); it also deals with the processes of production – and consumption (discursive practice) and vice versa. This is because the texts linguistic traits affect both the production –and consumption process.<sup>187</sup> Therefore, the analysis of the text is based on the information available from the 12 cases. Excerpts from the

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<sup>186</sup> The cursive words are intended due to that I want to clearly point out the relevance and importance of these words in relation to the analysis. Hereafter, cursive quotes, sentences, and words indicates that I want to highlight something specific and relevant for the analysis.

<sup>187</sup> Winther Jorgensen & Phillips. (2000), p74-75

cases will be presented in quotation under the four different sub-headings, which are in accordance with the thematization. To give the reader an overview, I have chosen to, in the table below, present a brief account of all the 12 cases.

<b>County</b>	<b>Case-number</b>	<b>Gender</b>	<b>Addiction problem</b>
<b>Administrative Court</b>			
<b>Malmö</b>	9553-12	Male	Alcohol
<b>Malmö</b>	670-13	Male	Alcohol
<b>Malmö</b>	1518-14	Female	Injecting drug use
<b>Malmö</b>	8347-15	Female	Narcotics
<b>Stockholm</b>	15550-12	Male	Alcohol
<b>Stockholm</b>	26988-13	Male	Poly drug use
<b>Stockholm</b>	20980-14	Female	Injecting drug use
<b>Stockholm</b>	24473-15	Female	Narcotics
<b>Umeå</b>	2285-12	Male	Poly drug use
<b>Umeå</b>	1047-13	Male	Alcohol
<b>Umeå</b>	273-14	Female	Alcohol
<b>Umeå</b>	570-15	Female	Poly drug use

### 6.1.1 The abusers health and addiction problem

The County Administrative Court needs to decide if there exists an ongoing abuse and if the addict, as result of the abuse, exposes their physical and mental health in grave danger. The empirical material shows that both male and female abusers have an advanced and far-reaching abuse. The majority has a combined use of various narcotics substances that in some case are combined with alcohol and/or other intoxicants. However, for the purpose of this study, it is of no importance what kind of substances that has been taken, it is rather how the abuse are shaped and judged in the County Administrative Courts assessments. An overall difference from the 12 verdicts is that the emphasis on the description of the abuse is different from men and women. This is an example of that:

He exposes his physical and mental health to serious danger by the abuse. <sup>188</sup>

<sup>188</sup> County Administrative Court (Malmö); case number: 670-13

...runs an obvious risk to ruin her life because, if the abuse continues, she risks facing even greater difficulties in terms of finances, housing, employment, health, and relationships with relatives.<sup>189</sup>

Here one can see that the emphasis on the man is, solely, on his mental and physical health, while for the woman it also includes a social aspect. Another example of this is

...he, as a result of the abuse, exposes his physical and mental health in grave danger.<sup>190</sup>

...runs an obvious risk to ruin her life...A longstanding abuse which among other things means that she cannot have any relations with her son. She is homeless, unemployed, without income and is not available for work because of her addiction.<sup>191</sup>

Once again, the social element is included in the woman's description while it is left out with regards to the man. This is an occurring theme through most of the cases, whereas the women's abuses are linked with social consequences without an illustrative description of why or what the social consequences are. Noteworthy is that this aspect is lacking with regards to the men's descriptions and certainly it may be justified to describe the social consequence of a drug abuse but the objection is that the corresponding descriptions of the men are completely missing.

### 6.1.2 The abusers motivation to break the addiction

One of the conditions required by the Social Service Act is whether the abuser's need of care can be met under this act (SoL), which the County Administrative Court needs to take into consideration. Furthermore, they need to take into account both the abuser's motivation and consent, as well as to confirm that the addict has been offered treatment on a voluntary basis.<sup>192</sup>

In these assessments, which stress the previous failed attempts with voluntary treatment, it can be argued that the men are more likely described as actors with regards to failing their previous attempts. The men are described as having made an active choice when they continued their abuse and, therefore, the blame for the failure is on them. This can be shown by the following quotations:

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<sup>189</sup> County Administrative Court (Malmö), case number: 8347-15

<sup>190</sup> County Administrative Court (Stockholm); case number: 15550-12

<sup>191</sup> County Administrative Court (Umeå); case number: 570-15

<sup>192</sup> SOU 2004:3 Tvång och förändring. Rättssäkerhet, vårdens innehåll och eftervård. Betänkande av LVM-utredningen.

He was offered admission to a dependence facility...but turn down the offer.<sup>193</sup>

In the planning of the care, he turned down the two offered accommodations.<sup>194</sup>

In the case of the women, the descriptions are different in which the women seem to be regarded as victims. They are described as not being able to control their addiction, but rather as a sort of “slave” for the drugs and/or victims of their own mental illness. It is also notable that it is often described as the state has made efforts, rather than the women themselves. This is can be illustrated by this quotation:

They have together with *her*<sup>195</sup> made many and great efforts with care on voluntary basis...that it is important to keep *her*<sup>196</sup> in compulsory treatment for a longer time because it maintains the motivation.<sup>197</sup>

As seen by the different quotations, the wording of the men and the woman’s description are completely different. This difference can be seen throughout all of the empirical material, and suggests that there are underline differences in how the County Administrative Courts treat the male and female abusers. Although, it can be argued that this is just circumstances and that the situation is different from case to case. I can agree to that, but the objection is that word such as motivation, or the indications that “they made efforts together” is lacking to a great extent in the cases regarding men, but clearly visible in the cases regarding women.

### 6.1.3 Risk assessment

This specific theme problematizes the particular risk assessment that the County Administrative Court has to consider on the basis of the health indication, as well as the social indication. The empirical material suggests that these assessments by the different County Administrative Courts are different among men and women. For instance, for men it is often concluded that the abuse exists, which means that they expose their lives and health to serious danger. For women, other factors that are beyond the abuse and its effect are often also considered in the assessment. This has been mentioned in the previous section as well (6.1.1). But to further broaden that discussion, one can clearly see in the following quotations the difference in wording between men and women:

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<sup>193</sup> County Administrative Court (Umeå); case-nr: 2285-12

<sup>194</sup> County Administrative Court (Malmö); case-nr 670-13

<sup>195</sup> I changed the word in order to keep the person anonymous.

<sup>196</sup> Ibid.

<sup>197</sup> County Administrative Court (Stockholm); case-nr: 20980-14

By his addiction, he exposes his physical and mental health to serious danger.<sup>198</sup>

...the abuse has been extremely destructive and intense and it may be considered established that, if the abuse continues, she risks facing huge social difficulties...as a consequences of the abuse, she runs an obvious risk of losing contact with her children, especially her son.<sup>199</sup>

As seen in the quotations above, a social aspect is included in the description regarding the woman, but is lacking with regards to the man. This has been mentioned before, and it is reasonable and justified to include a social aspect but the objection lies with that the social aspect seems to be of less importance with regards to the men's abuse, and in the women's cases it is a lot of emphasis on this particular aspect. This is again shown in the following quotations:

Exposing his physical and mental health in grave danger ant that he runs an obvious risk of ruin his life.<sup>200</sup>

With a continued abuse, she ultimately runs the risk of dying...Currently she<sup>201</sup> has no work or accommodation. She has during the fall been staying in assisted living facilities and with various friends.<sup>202</sup>

Once again, there is an obvious difference between the two quotations. With regards to the man, the social aspect is completely lacking whereas in the case of the woman; it is put a lot of emphasis on social aspects which will be affected by an ongoing abuse. When the risk assessment of the abuse is described with regards to the men, it seems to be treated as an abnormal behavior because of their addiction while the descriptions of the women includes other factors than those linked to drug use and bodily harm. This means that women, unlike men, are described in a social context in which the abuse is seen as part of the problem. It can be wondered if the County Administrative Courts descriptions and assessments are influenced by the objectification and current norms in the society. However, the question of risk assessment of male and female abusers are complex but the law should be non-discriminating, which means that the specific risk factors depending on the sex shall not be given due weight in the assessment. Rather it shall be the same with regards to all the cases regardless of the gender.

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<sup>198</sup> County Administrative Court (Malmö); case number 670-13

<sup>199</sup> County Administrative Court (Malmö); case number 8347-15

<sup>200</sup> County Administrative Court (Umeå); case number 2285-12

<sup>201</sup> This word is changed in order to keep her identity anonymous

<sup>202</sup> County Administrative Court (Stockholm); case number 24473-15

#### 6.1.4 Social conditions

In this section, the focus lies on facts concerning male and female abusers social situation in terms of employment, education, housing, relationships, and criminality, which namely are circumstances highlighted by the social indication. As stated earlier in 6.1.1 the social aspect has been heavily connected towards women. Bearing that in mind, the social conditions have been mentioned in 5 of the 6 cases regarding women and in only 2 of the 6 cases regarding men. In the cases of the women, it is often expressed in the following way:

...because of the addiction, she is in a situation where she has no work and permanent residence, and that, as a result of the abuse, may not have contact with her son...her abuse has led to social implications...<sup>203</sup>

It is worth noting that with regards to the men, the wording are a bit different, which might indicate that it is of less importance. This can be shown by the following example:

By his addiction, he exposes his physical and mental health to serious danger.<sup>204</sup>

The requisite of social indication means an overall assessment of the social situation of the addict, in order to determine if the addict runs an obvious risk to ruin his/her life. Although each case is different, the emphasis in the assessments should be the same among all the 12 cases which begs the question if the County Administrative Courts have the same emphasis with regards to men and women?

#### 6.2. Analysis of the discursive practice (interpretation)

Bearing in mind the previous section, the County Administrative Court's *decision* and *assessments* can also be considered a discursive practice. This means a production and consumption of texts, and an examination of these decision and assessments creates "the discursive practice"; the framework for the understanding of how male and female abusers are described and assessed, as well as an understanding of why they are described and assessed in this way. The discursive practice that is being analyzed comprises of the texts production and consumption. It should be noted that the discourses and genres (the language) that are articulated together to produce a text that a receiver builds his/her interpretation on, has a

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<sup>203</sup> County Administrative Court (Umeå); case number 570-15

<sup>204</sup> County Administrative Court (Malmö); case number 670-13

certain linguistic construction that shape both the production and consumption of the specific text.<sup>205</sup> Thereof, the implication that may be transferred from the County Administrative Courts to other public authorities will be explained further by the support of the literature, which in turn corresponds to the patterns in the previous section of the analysis.

The common inter-textual pattern in the County Administrative Courts descriptions and assessments, in the cases, is that a certain rule-driven production of statements, concepts and theories that together construct and constitute an articulate conception of the different notions between the genders.<sup>206</sup> The differences that have been found within the County Administrative Courts descriptions and assessments from the 12 cases shows that, according to me, the different notions of men and women are deeply rooted. Schlytter (1999; 1999a) argues that it is the practical application of the LVM that conveys different notions of men and women.<sup>207</sup> In her study, she also found that there is often space for unfounded and unspoken notions about men and women.<sup>208</sup> In this case, one can argue that these beliefs will lead to a greater extent of subjective and non-gender neutral values within the cases that has been the subject of this analysis. Although, it is worth emphasizing that a greater discretion towards men do not necessary have to be something positive.

Large parts of the empirical material are filled with descriptions of the physical and psychological consequences of the abuse. It pictures men and women, in many cases, as mentally unstable. However, in the case of the women, the descriptions of the psychological state are more detailed, whereas it is more generally described in the case of the men. The men's psychological problems are often described as

...he exposing his physical and mental health in grave danger<sup>209</sup>

The description of the situation regarding women is usually more thorough and the Courts often refer to that the women either:

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<sup>205</sup> Winther Jorgensen & Phillips. (2000), p 75-76

<sup>206</sup> Again, I find support in the literature, which in turn corresponds to the patterns in the previous section of the analysis.

<sup>207</sup> Schlytter, 1999a, p. 9-24

<sup>208</sup> Schlytter, 1999

<sup>209</sup> The Italics are there to highlight the specific phrasing. This occurs through most of the cases regarding the men

With a continued abuse, she ultimately runs the risk of dying or,...the abuse has been extremely destructive and intense and it may be considered established that, if the abuse continues, she risks ruin her life<sup>210</sup>

As shown, there is an obvious difference between the phrasing of the man's descriptions and the women's. One reason that the description of the man's mental condition, as shown, is often more vague can, in my opinion, be that the man did not suffer from any specific ailments or did not behave in a peculiar way in the official contexts. Even so, the difference is still interesting, and if one would discuss Connell's theory (1996) on hegemonic masculinity, the above difference can be interpreted as the law does not specify the man's mental conditions. In accordance with Connell (1996), this is in order to avoid damaging his masculinity further.<sup>211</sup> According to the Western male hegemony, the man should be strong and not vulnerable. To portray the man as weak and fragile in an already fragile situation would, in my opinion, weaken his position further. Although, it could be argued whether this is a situation to even discuss or care about the man's masculinity. From that perspective, the connection to Connell might be far-fetched, but in line with the evidence, there is basis for such an argument. A man must, in accordance with the male hegemony, be extroverted and active, while the opposite is true for a woman.<sup>212</sup> This is something that Hirdman also discusses in her studies.<sup>213</sup>

With this in mind, one cannot state with certainty that this is the case, but the empirical material indicates that the emphasis is put on different elements, which could be interpreted with the help from the theoretical framework, as there are different norms depending on the sex (man and female). A question that one must ask is if this is because the society is inclined to find it difficult to deal with female abusers or because the society consider the abuse to be worse if you are a woman? This enables a comparison with Hirdman (2001), which point to the picture of women as weaker and, therefore, must be taken care of.<sup>214</sup> In accordance with Hirdman, the more the County Administrative Courts describe these differences between men and women and put emphasis on different aspects; the more they will reproduce the current norms and hierarchies between the two sexes.

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<sup>210</sup> The Italics are there to highlight the specific phrasing. This phrasing occurs in different combination through most of the cases regarding the women.

<sup>211</sup> Connell, 1996

<sup>212</sup> Ibid.

<sup>213</sup> Ibid; See also: Hirdman, 1990, p. 73-116

<sup>214</sup> Hirdman, Y (2001) *Genus – om det stablas föränderliga form*. Malmö: Liber

Additionally, based on Hirdman's thoughts, she stresses that the women's position in society is limited to a certain freedom of movement and a control of their behavior.<sup>215</sup> Based on the County Administrative Courts descriptions and assessments, it can be argued that the male abusers appears to be portrayed as men with an abnormal behavior because of the addiction, but their role as a man are never questioned in the same way as for the female abusers. It can be interpreted as the men, despite their addiction, have a broader freedom of actions. According to Svensson (1998) the moral condemnation of the abuser varies, depending on how we perceive the cause of the abuse.<sup>216</sup> As mentioned earlier (in 6.1.2), it was argued that men are regarded as actors in relation to their abuse, while the women are more seen as victims of their abuse. In line with Hirdman, this can be explained by the perception of women as the weaker sex, and, therefore, women are seen as more vulnerable.<sup>217</sup> In fact that the County Administrative Courts emphasize that of which women as victims, I see as yet another expression of that the law is influenced by the current perceptions of male and female.

Furthermore, Gustafsson (2001) found in her study that more abusive men than women were singles<sup>218</sup>, which is also indicated by my empirical material, if one can assume that is the case, unless stated otherwise in the LVM-cases. Sexual behavior have only been mentioned in some of the women's LVM-cases and in all of them, it appears that the women are portrayed as victims in that particular relationship. This is an aspect that Schlytter (1999a) puts forward in her study. She found that the girl's sexuality is relevant to its assessment of their behavior in LVU-cases.<sup>219</sup> In my case, I believe the descriptions of the female abusers relationship, in the LVM-cases, are there because it considered important for the particular assessment. Due to the fact that similar descriptions are missing in the LVM-cases regarding men, I interpret it as the County Administrative Court makes a distinction between male and female abusers. This is because the County Administrative Courts put emphasis on an element (sexual relationship) in one case, but lacking the emphasis in another, and it is solely based on the biological sex. Therefore, it can be interpreted as women are made out to be responsible for their sexual behavior, which is not even imposed on men. Hirdman (1990) argues that social norms and control of women becomes very clear when it is put in relation to women's freedom of action

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<sup>215</sup> Ibid.

<sup>216</sup> Svensson, B. (1998). "Missbrukare". In Denvall, V. & Jacobson, T. (ed.), *Vardagsbegrepp i socialt arbete-ideologi, teori och praktik*. Stockholm: Norstedts Juridik, p. 75-91

<sup>217</sup> Schlytter 1999; Also see: Schlytter, 1999a, p. 9-24; Hirdman, 1990, p. 73-116

<sup>218</sup> Gustafsson, 2001

<sup>219</sup> Schlytter, 1999a

and their sexual behavior.<sup>220</sup> Based on that reasoning, it can be argued that the society as a whole makes a distinction between men and women's sexual behavior whereas moral values seem to limit women's sexual behavior. By neglecting the men's sexual behavior, the County Administrative Courts consolidates this specific order.

According to the social constructionist view, one can see the social norms as constructions given by experts and policymakers.<sup>221</sup> These structures indicate how something should be in a system of symbols and categories. With regards to the norms that compulsory treatments infringes, it can be argued that they are given by the law, and unspoken, as well as belonging to what Berger and Luckmann refers to as "common-sense world".<sup>222</sup> In both cases the deviation of the norm includes that the abuser indulge in behaviors that fall under a category that is considered undesirable according to the societal norms. The purpose of this categorization of social behavior as desirable or undesirable, is that experts and practitioners are able to distinguish the unwanted behavior (the norm deviation) from the desired behavior (societal norm/s), in order to be able to transfer people from one behavior category to another.

More specifically, it is obvious that the norms and how to deviate from them are different for male and female abusers. It is indicated from the empirical material, and the previous research that the County Administrative Courts put emphasis on different circumstances on the basis of biological differences rather than unconditionally based on individual circumstances; free from gender norms. In accordance with the theoretical framework, gender norms are constructed and are continuously shaped in coalition with its surroundings. Therefore, a potential explanation to the difference between male and female abusers description and assessment might be the systematization of the norms, which in turn creates different hierarchies.<sup>223</sup> Hirdman (1990) and Schlytter (1999) suggest that the categorization based on two sexes can be seen as *natural*<sup>224</sup> and consequently, norms and hierarchies can be divided into normal and abnormal. The gender power order leads to a categorization of the parent norm (the man) and the subordinate deviation (the woman). Furthermore, they argue that the two categories are ascribed to systematic attitudes and perceptions of norms by a certain

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<sup>220</sup> Hirdman, 1990, p. 73-116

<sup>221</sup> Berger.& Luckmann, 1966, p. 33-35

<sup>222</sup> Ibid.

<sup>223</sup> Hirdman, 1990, p. 73-116

<sup>224</sup> Ibid; Schlytter, 1999

gender structure that creates conditions for action in various respects.<sup>225</sup> In light of this, it is hard to solely base this on the empirical material, but in combination with the theoretical framework I believe that one potential consequence of this might be that gender as a social construct and category, may be partly hidden behind the biological sex and the behaviors that are considered to belong to either gender category (men and women).

Moreover, it can be argued that the County Administrative Courts put diverse meaning in different behaviors and ascribe these behaviors varying risk on the basis of the sex. Men are described, in many cases, on the basis of personality and achievements; women on the basis of morality, sexuality, and social consequences. This is an aspect that Hamreby (2004) put emphasis on in her studies<sup>226</sup> and one may be entitled to assume or question that there are difference in how the County Administrative Courts describe and assess male and female abusers. Obviously, it is difficult to draw conclusions on different ways of thinking, the norms and values that form the basis for how one as individual and collective describes a phenomenon, because it is influenced by too many factors which cannot be measured in order to present a “true” result. However, as far as I can see, it is possible to approach the tendencies of the language and thoughts that relatively still becomes hard to interpret. According to me, descriptions and assessments occur through language. The language is setting the conditions for sharing the thoughts and descriptions of the world but it also becomes essential for how the world can be understood and perceived. In accordance with social constructionist viewing, we construct and design our own reality, unconsciously in ourselves, and in interaction with others.<sup>227</sup> Through a joint system of communication and categorization, we can divide the world into manageable hierarchical parts.

Furthermore, as shown in the text analysis, there is a difference in how the addicts relationship are described depending if it is a man or a woman. With regards to the women, it is often mentioned that their addiction will lead to social consequences and that their relationship with their children would decrease. This serves often as a motivator for the addict to break the addiction. Studies show that parenthood is a motivator for both of the gender to break the addiction<sup>228</sup>; however, I believe that the notion of parenthood is rather more

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<sup>225</sup> Ibid.

<sup>226</sup> Hamreby, 2004

<sup>227</sup> Berger.& Luckmann, 1966, p 79

<sup>228</sup> Leissner, T. & Hedin, U-C. (2002). ”Inledning” In Leissner , T. & Hedin, U-C. (ed.), *Könsperspektiv på missbruk*. Bettna: Bjurner och Bruno, p. 8-27.

connected to maternity than paternity. This is an aspect stressed by Gustafsson and an example is that the maternity has preference over paternity since a woman is considered to be a better custodian as long as she is not directly inappropriate.<sup>229</sup> Furthermore, in her research, she found that the legal prerequisites are given different meanings depending on the gender, since the inability to take care of their children was mainly invoked as a valid circumstance for the compulsory treatment of women.<sup>230</sup>

By excluding the social consequences, access to children, and no mention of relationship in general, one can argue that the County Administrative Court is reproducing a certain image or view of the man through its discursive practice, which is in line with what the professor Connell refers to as the Western masculine hegemony.<sup>231</sup> In accordance with this view, the man should be, among other things, successful, mentally and physically strong as well as rational. According to me, this view is implied by the descriptions and assessments by the County Administrative Courts since they do not put as much emphasis on socializing in terms of friends and family, as they do when it comes to women. Consequently, this view is further spread and remaining while the man remains the dominant norm since other aspects, which clearly were used in the cases of the women, were disregarded.

### **6.3 Analysis of the social practice (explanation)**

As in the section above, the County Administrative Court's decisions and judgments can also be seen as a social practice; an act within the framework of operations. When these decisions and judgments reach the public eye, it creates a certain truth about how "reality is constructed". However, it should be stressed that these decisions and judgments also creates a social practice internally within the agency itself.<sup>232</sup> The analysis of the social practice implies that the relations between the text and the discursive practice (the interaction between them) are related to broader, non-discursive fields. The text and discursive practice are, thus, placed into the social context.<sup>233</sup>

The discourse analytical approach in this thesis belongs among the social constructionist view of science whose basic assumptions I lean against and emphasize.<sup>234</sup> The language should be

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<sup>229</sup> Gustafsson, 2001

<sup>230</sup> Gustafsson, 2001

<sup>231</sup> Ibid.

<sup>232</sup> This refers to the creation and maintenance of legal praxis.

<sup>233</sup> Bergström & Boréus, 2005, p. 324

<sup>234</sup> For further information, see previous section 5.1 (Theoretical Framework)

considered to be a tool through which understanding about “gender differences” in the County Administrative Courts descriptions and assessments are constructed as “reality” (the truth). How the language is used and what kind of impact a particular phenomenon, in reality, may be adopted to be context-bound. This means that the descriptions and assessments of the County Administrative Courts LVM-cases are described and given meaning depending on the context (discursive practice) that claims to emphasize their own description and pursue in order to create the “truth”. Language, knowledge, and reality are, therefore, the main focus.

The central objective of the critical discourse analysis is to clarify the relationship between language and social practice, by putting emphasis on the discursive practice in the role of either the maintenance of the social order or in changing it. In this thesis this is possible through the analysis of the communicative event, the informative texts of the LVM-cases; “...as part of the discourse order”<sup>235</sup>. As each communicative event (each LVM-case) acts as a form of social practice, which either reproduce or questioning the order of discourse, while it also shapes and is shaped by the social practice and its relation to the discourse order.<sup>236</sup> Thereof, the social implication that may be transferred from the County Administrative Courts to the public will be explained further by the support of the literature, which in turn corresponds to the patterns in the previous two sections of the analysis.

In this research, it has been found that the County Administrative Courts make different descriptions and assessments of male and female abusers. The biggest difference between the genders is that the County Administrative Courts often, with regards to men, concludes that their abuse exist, while the abuse of women is linked with social repercussions and consequences. Furthermore, it can be argued that the male addicts are seen more as actors in relation to their addiction while the female abusers are described as victims of their own abuse and their mental illness. It is common that other factors beyond the scale of the abuse are included in the risk assessment of the women while it is lacking in the assessments of the men. These factors are, for instance, social consequences, financial problems, housing, and relationship with their children. Notably, the County Administrative Courts reiterate and emphasize these conditions in their overall assessment of social indication requisite in relation to the women’s cases while these conditions seem to play a less of important role with regards to the men and their social indication requisite.

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<sup>235</sup> Winther Jorgensen & Phillips. (2000). s.76

<sup>236</sup> Ibid.

Interestingly, the researcher Camilla Forsberg (2012) describes a public body as a body whose activities are governed by laws and political decisions taken by the parliament or the government.<sup>237</sup> The public body's duties include government duties as well as deciding on rights and duties that are important for individual citizens through a so-called public authority.<sup>238</sup> Furthermore, she stresses that the official text is a typical use text and is characterized as such; it is informative and describes "the reality".<sup>239</sup> Such texts must have, inter alia, a sender with authority. Citizens can, therefore, expect that the exercise of authority bodies inform them in some way, usually by a linguistic document (text) about their obligations and rights. This means that the language can be a force in itself emphasizes Forsberg (2012).<sup>240</sup> The authorities providing the informational documents (texts) that describe "the reality" itself can make that the specific language becomes a force. Exercise of power, thus, becomes taken for granted and justified by texts from institutions and dominant groups in society. This further means that it is not up to everyone to set the framework for what is "male and female" or indeed "true and false" in the descriptions and assessments by the County Administrative Courts.

The basis for a LVM-case, in accordance with the Act and its preparatory work, should not be based in values. Nevertheless, I perceive that the description of the different behaviors, which is the basis for a LVM-case, to some extent still is governed by values rather than actual evidence. This is obviously problematic from a legal point of view, but at the same time it is difficult to the emotive feelings that in other contexts are tools of work and communication with people. I do not doubt that the people involved in working with the LVM have a genuine desire to help the abusers in the best way possible, but they too are nevertheless equally firm in their structures, as anybody else; structures shaped in a social context. Schlytter (1999) argues that the law in its current form is discriminatory for girls, since it is based on the "boy behavior". Based on the evidence and discoveries in this thesis, I am inclined to agree with her, since her thoughts and ideas are very applicable towards this study. Although, the empirical material suggest a lacking to include the men's vulnerability, especially vulnerable in contexts marked by social aspects (relations), sexual behavior and power. These are

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<sup>237</sup> Forsberg, C. (2012). *Myndigheten, texten och läsaren*.

*Myndighetsinformation i lättläst version*. Magisteruppsats, Malmö Högskola, Institutionen för pedagogik.

<sup>238</sup> Ibid, p 11

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

aspects, which seem to be of the outmost importance in the cases of the women. This makes it problematic since both relations and sexual behavior do not seem to be valued in same way for men and women. It suggests that relations and sexual behavior which are linked to women are not always set in relation to difference in circumstances and power, and are seen as more or less problematic.

This difference can, according to me, be understood and explained by the fact that the County Administrative Courts are not separated from society but rather a huge part of it. With this in mind, the jurors of the County Administrative Courts are influenced by the current cognitive structures and beliefs about gender that exist and permeate our society.<sup>241</sup> Based on the empirical material, I cannot confirm that this is the case; however, with the help of the theoretical framework, a potential explanation for this might be that the construction and recreation of notions of gender are deeply rooted and taken for granted.<sup>242</sup>

Additionally, it can be argued that the County Administrative Courts describes and assess that female abusers are in higher risk environments and that the abuse leads to more social consequences. This raises the question about the design and application of LVM since the male and female abusers problems are treated differently. It is pointed out by the literature, from researchers such as Schlytter (1999; 1999a) and Mackinnon (1991), that the law is designed based on the male norm.<sup>243</sup> To highlight the difference in problems, I believe that the law cannot only be based on the experience of male abusers; rather it is in need of a change in perspective so that the experience of the female abusers is made visible as well. The risks female abusers are exposed to are often linked to men. Therefore, the legislation must include the problematization of men's role and reasonability in relation to the risks to, which women are subjected to. In the same way that women are portrayed as victims of destructive relationships, the men's role as an actor should also be emphasized and described. This may in itself be debatable whether these destructive relationships should be included at all in the LVM-cases, but, according to me, these descriptions are a way to make women's subordinate position visible in order to make it more equal. Based on this reasoning, and in accordance with Eva-Maria Svensson, the question is if the legislation itself needs to change in order to

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<sup>241</sup> Hirdman, Y. (1988). "Genussystemet-reflexioner kring kvinnors sociala underordning" *Kvinnovetenskaplig tidskrift*, 9 (3), 49-61. Also see; Hirdman, 1990, p. 73-116

<sup>242</sup> Ibid.

<sup>243</sup> Schlytter, 1999a, p. 9-24; Also see: Mackinnon, 1991, p. 16-26

take into account the specific gender aspect, or if it is the application of the current legislation that should be changed in order to make it gender-equal?

## Chapter 7

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### 7.1 Conclusion

The aim of this study has been to analytically examine and investigate if male and female have no meaning with regards to the County Administrative Courts descriptions and assessments in cases concerning the LVM. It was to analyze if notions of gender are expressed in LVM-cases, and if so, how are they expressed and how can we understand these expression. In order to operationalize this research, I used the following two research questions: *Does the County Administrative Court describe and assess male and female abusers differently?* and *If so, how can these differences be understood?* By using Faircloughs critical discourse analysis, I have been able to answer these two questions by thoroughly investigating LVM-cases from the County Administrative Court in Stockholm, Malmö, and Umeå.<sup>244</sup>

Overall, the analysis has shown that there are both differences and similarities in how male and female abusers situation is described and assessed. However, the investigation of the empirical material has suggested that the County Administrative Courts put different weight and emphasis on certain aspects depending on the biological sex (male and female), at least it is formulated in that respect in the LVM-cases. Bearing in mind, the analysis chapter, I believe that the LVM-cases suggest how different notions of gender are expressed. By having acquired knowledge of gender theory, the two stated research question presuppose each other: notions of gender are expressed by the fact that they reproduce while they are repeatedly expressed. It is through a wave of repetition that creates the norms of gender.

From a theoretical standpoint, one potential explanation for this difference might be the one put forward by Hirdman (1988, 1990, 2001) and Connell (1996). They argue that there are certain structures that control how men and women should be as well as behave in our Western society.<sup>245</sup> Furthermore, they suggest that men are superior to women and Connell also highlights that there are clear hierarchies and certain norms to be followed within the group of men, in order for the man to be considered a "real man".<sup>246</sup> Women with substance

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<sup>244</sup> This refers to all of the 12 presented LVM-cases (and the partly reproducing layout as I demonstrate in the first section of the analysis).

<sup>245</sup> Hirdman, Y, 1988, p. 49-61; Hirdman, 1990; Hirdman, 2001; Connell, 1996

<sup>246</sup> Connell, 1996

abuse are often in a particular vulnerable situation and generally are gender structures even more evident in the abuse world, rather than in the rest of the society.<sup>247</sup> Based solely on the analysis of the empirical material, I cannot state that this is the case, but with the help of the theoretical discussion, it enabled the analysis to highlight that this might be a potential explanation to why the County Administrative Courts put different weight and emphasis on its descriptions and assessments

Due to the fact that the LVM-cases often are quite short and sparsely worded, including the lack of all of the background information such as the social services investigations, medical opinions, and the abused own admission. The empirical material has been interpreted in consideration of this. It is important to remember that the version that is on public records is the Courts version, not the individuals'. The abusers version of the event and opinions are very limited within these LVM-cases. It is my understanding that this specific topic needs to be examined more thoroughly, in sense of the amount of analyzed LVM-cases, in order to be able to even further investigate how male and female abusers are assessed and described.

In general, I believe that the stated research questions have been answered as well as met the aim of this thesis. It can be argued that this specific research may contribute to a better understanding with regards to social workers, lawyers and jurors on how male and female abusers are assessed and described in the court of law. An increased knowledge of this, which was mentioned initially, contributes to reduce the differences in how the Care of Abusers (special provision) Act is applied between male and female abusers. It is important to be assessed and described as an individual, not based on the biological sex. Otherwise, the County Administrative Courts contribute to the reproduction of perceptions and norms of gender differences.

In addition to answer the stated research question, it has also given birth to further questions; issues that needs further studies in order to be answered. Within the context of the chosen topic, I believe it should be conducted more research on norms and its impact on the investigations in the social services. We all are controlled by different norms and constructions, but the question is, rather; how do you actively work against discriminatory and

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<sup>247</sup> Hamreby, 2004; Laanemets, 2002

reality concealment values? To what extent are the policy-makers and the acting social worker controlled by this? What are the consequences?

Finally, I can say, given my limited area of analysis containing twelve but illustrated and detailed analysis that I speak with a certain caution about the conclusions that my work indicates. In my opinion, it seems to illustrate that the emphasis in the LVM-cases are differently depending on if the abusers are men or women.

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Stockholm: 24473-15, 20980-14 26988-13 1550-12

Umeå: 570-15, 273-14, 1047-13, 2285-12

## Appendix 1

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### County Administrative Court cases:

#### **Malmö:**

Malmö – 1231-11  
Malmö – 1560-11  
Malmö – 1674-11  
Malmö – 1826-11  
Malmö – 2445-11  
Malmö – 1592-12  
Malmö – 1678-12  
Malmö – 1817-12  
Malmö – 1837-12  
Malmö – 9553-12  
Malmö – 539-13  
Malmö – 670-13  
Malmö – 885-13  
Malmö – 1186-13  
Malmö – 1727-13  
Malmö - 941-14  
Malmö – 1180-14  
Malmö – 1517-14  
Malmö – 1518-14  
Malmö – 10333-14  
Malmö – 7624-15  
Malmö – 7645-15  
Malmö – 8216-15  
Malmö – 8270-15  
Malmö – 8347-15

#### **Stockholm:**

Stockholm – 18996-11  
Stockholm – 19501-11  
Stockholm – 22906-11  
Stockholm – 24053-11  
Stockholm – 24373-11  
Stockholm – 15550-12  
Stockholm – 15699-12  
Stockholm – 19924-12  
Stockholm – 21304-12  
Stockholm – 24147-12  
Stockholm – 26364-13  
Stockholm – 26413-13  
Stockholm – 26414-13  
Stockholm – 26697-13  
Stockholm – 26988-13  
Stockholm – 13796-14  
Stockholm – 17891-14  
Stockholm – 18683-14  
Stockholm – 20307-14

Stockholm – 20980-14  
Stockholm – 21208-15  
Stockholm – 23437-15  
Stockholm – 24473-15  
Stockholm – 24857-15  
Stockholm – 26355-15

**Umeå:**

Umeå – 1341-11  
Umeå – 1554-11  
Umeå – 1637-11  
Umeå – 1895-11  
Umeå – 2177-11  
Umeå – 478-12  
Umeå – 1878-12  
Umeå – 2259-12  
Umeå – 2262-12  
Umeå – 2285-12  
Umeå – 152-13  
Umeå – 194-13  
Umeå – 950-13  
Umeå – 1047-13  
Umeå – 1324-13  
Umeå – 29-14  
Umeå – 273-14  
Umeå – 510-14  
Umeå – 970-14  
Umeå – 1677-14  
Umeå – 160-15  
Umeå – 570-15  
Umeå – 916-15  
Umeå – 1361-15  
Umeå – 1388-15