Legal consciousness in street-level bureaucracies

A qualitative study on the legal consciousness of social workers assessing
eligibility for social assistance in relation to activation requirements

Karin Jansson

Supervisor: Peter Scharff Smith

Examiner: Matthias Baier

Abstract

Activation measures were implemented as a condition for social assistance in Sweden in the 1990s. Generally, the goal has been to promote the transition from welfare to work and to (re)integrate people dependent on social assistance into the labour market. Social assistance is regulated by the Social Services Act, which is a framework law that gives municipalities and individual social workers extensive discretion in deciding over benefits and interpreting the meaning of the formal legislation. The question becomes how such requirements are operationalized at the street-level. Social workers are in a complex situation where they have to take the needs of the assistance recipients into consideration while simultaneously following rules and guidelines. The aim of the study is to examine individual understandings on law and legality among street-level bureaucrats working with activation requirements for social assistance. It intends to answer the question of how social work officials understand, interpret and use the law in the context of assessment of eligibility for social assistance in relation to activation requirements. This is a qualitative study, based on interviews with social workers from working in Malmö municipality. The study combines legal consciousness and street-level bureaucracy to explore the decision-making role of social worker officials when it comes to social assistance eligibility and activation requirements. The findings suggest that legal consciousness varies depending on what role social workers saw for themselves and prioritised at different moments. When they were in a situation were they could and wanted to exercise their discretion, law was there providing possibilities for actions. Social workers could make use of their skills and experience to justify most decisions. When social workers were facing the potential consequences of decisions, law was an impartial and overpowering source, that they as social workers could only follow.

Key Words: legal consciousness, street-level bureaucracy, discretion, social assistance, activation, social work, policy implementation, welfare

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Contents

1. Introduction

In recent decades there has been a pattern of policy changes in Europe, often referred to as activation policies. Activation is broadly defined as practical efforts to assist people to find or remain in paid employment and thus improve their prospects in the labour market. This welfare reform trend took hold in Sweden during the 1990s, when municipal activation policy programs were implemented for social assistance. At the time, Sweden was experiencing an economic recession, resulting in both increased unemployment rates and a significantly larger need for social assistance support.[1] The goal with activation measures is to promote the transition from welfare to work and to (re)integrate people dependent on social assistance into the labour market.[2] In some circumstances, activation is intended to increase the claimants' competency and confidence. At other times, the driving argument is to prevent long term social assistance recipiency, also called welfare dependency.[3] However, there are multiple negative aspects to activation efforts that might not be obvious from the above mentioned goals. To reach these goals and to make recipients self-sufficient as soon as possible, recipients are sometimes put under heavy pressure through activation becoming a condition of social assistance eligibility and restricting their freedom of action.[4]

In Sweden, social assistance is considered the last safety net of the welfare system, and provided to individuals who cannot support themselves through wage labour or other social protection schemes.[5] Social assistance in provided by municipalities and carried out by social workers employed by the social services. The benefit is regulated by a national law, the Social Services Act, but it is formulated as a framework law that gives municipalities and individual social workers extensive discretion in deciding over benefits and interpreting the meaning of the formal legislation. The activation policy requirements are therefore better understood as

[1] Hvinden, Björn., Heikkilä, Matti, & Kankare, Ikka, "Towards activation? The changing relationship between social protection and employment in western Europe", in Kautto, M., Fritzell, J., Hvinden, B., Kvist, J., & Uusitalo, H. (Eds.), *Nordic welfare states in the European context*, London, Routledge, 2001, p. 169; Thorén, Katarina, "'Activation Policy in Action': A Street-Level Study of Social Assistance in the Swedish Welfare State", Växjö University Press, Växjö University, 2008, p. 13.
[2] Bergmark, Åke, Bäckman, Olof, & Minas, Renate, "Organizing local service measures to counteract long-term social assistance receipt. What works? Experiences from Sweden", *European Journal of Social Work,* Vol. 20, No. 4, 2017, p. 549.
[3] Hedblom, Agneta, *Aktiveringspolitikens Janusansikte: En studie av differentiering, inklusion och marginalisering*, Lund Dissertations in Social Work, No 16, Lund University, 2004, p. 11.
[4] Aerschot, Paul van, *Activation Policies and the Protection of Individual Rights: A Critical Assessment of the Situation in Denmark, Finland and Sweden,* Routledge, New York, 2016, p. 1.
[5] Thorén, 2008, p. 13.

optional interventions that municipalities can decide whether they will require or not.[6] In general though, unemployed social assistance recipients are required to participate in some form of activation in order to be eligible for social assistance, and the requirement is accompanied with the option of applying sanctions with reference to the recipient's failure to actively contribute to their employment.[7]

The question becomes how such requirements are operationalized at the street-level. The individual assessments for social assistance are not just dependent on and regulated by laws and guidelines, but also the discretion of social work officials. Social workers are in a complex situation they have to take the needs of the assistance recipients into consideration while simultaneously following rules and guidelines.[8] How they perceive, interpret and use the law is therefore of particular interest as it affects how activation policy is implemented. The position of social workers in the implementation process of activation policies and the discretion they exercise (or choose not to) is very much a central part in how activation policies affect social assistance recipients. Thus, this study centres around the assessments and decisions about social assistance made by local social work officials by exploring their legal consciousness.

1.1 Research Aim

The aim of this study is to examine individual understandings on law and legality among street-level bureaucrats working with activation requirements for social assistance. Therefore, one objective becomes to interpret the role of social workers in the social assistance and activation process. It is important to understand how social workers regard their work and the expectations set on them, and also what possibilities they have in effecting the activation requirements for assistance recipients. Central to this is the question of what affects the social workers' discretion in relation to activation. There is a need to consider the relationship between social workers and formal rules, and social workers' understanding of the role of discretion in their practice. The study will try to illustrate how individual social workers understand and interpret the legal environment surrounding activation requirements and the rights recipients. The social workers' legal consciousness could be defining when it comes to their perception of the organisational policies and procedures that govern their work. This means that a central part of the study will

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[6] Bergmark, Bäckman & Minas, 2017, p. 551.
[7] Nybom, Jenny, "Activation in social work with social assistance claimants in four Swedish municipalities", *European Journal of Social Work*, Vol. 14, No. 3, 2011, p. 347.
[8] Stranz, Hugo, *Utrymme för variation: om prövning av socialbidrag*. Dissertation, Department of Social Work, Stockholm University, 2007, p. 12.

focus on the factors that affect how frontline staff make decisions and how they implement, or can be expected to implement, a particular policy or goal.

The study will analyse the everyday experiences and perceptions of individual social workers. I will focus on both structures and the strategies of individual agents, trying to understand the ways in which they try to achieve outcomes or objectives within existing structures and practices, or to change them in particular ways. I am not looking to explore what organisations *should* do, rather I am concerned with developing an understanding of what they actually do and why they do it. The study has its foundation in the bottom-up perspective and examines the street-level routine practices that are present when implementing municipal activation policy in order to comprehend the meaning of municipal activation policy itself.

1.2 Research Question

The question that I will explore in this study is formulated in the following way:

> *How do social work officials as street-level bureaucrats understand, interpret and use the law in the context of assessment of eligibility for social assistance in relation to activation requirements?*

Sub questions for consideration are:
a) How do central legal concepts translate into social work practice?
b) How do professionals employ a social work perspective when using the law in practice?
c) How do street-level conditions affect social work officials' discretion?

1.3 Scope

The organisational arrangement in Sweden concerning activation measures for social assistance recipients is characterized by a context with both professional social workers and activation workers. The social workers are responsible for determining the right to social assistance and whether social assistance recipients are required to participate in an activation measure. The social services do not administer any activation measures themselves, instead refer the clients to other relevant agencies. The activation workers are situated in the local activation programs, and are responsible for the practical implementation of the activation policy measures.[9] The focus of this study is on the social workers making the decisions regarding eligibility for social

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[9] Thorén, 2008, p. 17.

assistance, and thereby decide if and how activation should be applied. The study is limited to the social service in Malmö municipality, in large part because of convenience, but also because Malmö presents an interesting case as it is one of a few municipalities in Sweden with a very high percentage of social assistance recipients. In 2018, more than 9 percent of the population received social assistance in Malmö, while in some other municipalities it was less 1 percent.[10] The informants consisted of a group of seven social workers from three different social service offices located in different urban areas in Malmö municipality.

1.4 Background

Activation as a labour market strategy has a long history in Scandinavian countries, and have now become representative of the new Western welfare thinking. 'Activation' is an umbrella concept that refers to a wide range of policies targeted at people receiving public benefits, and/or in danger of being excluded from the labour market.[11] In recent decades these policies have been redrawing the boundaries between work and the welfare state, and can be understood as part of a broader project through which states are promoting the primacy of work and limiting the provision of welfare.[12] European and US social policies have increasingly emphasized activation as society's main tool for supporting social assistance recipients' (re-)integration into work. To put it simply, activation policies stress the obligations of unemployed social assistance and insurance claimants to contribute to a changed income and labour situation by participating in programmes that are intended to increase their chances of finding work or increase their employability. The Nordic countries, and specifically Sweden, have traditionally spent a high share of their GDP on active measures for the unemployed through programmes governed and administrated by the state (i.e. Active Labour Market Policy Programmes, ALMPs).[13] In the 1930s, the concept of the 'workline' came to be associated with the advancement of the principles 'full employment' and citizen's 'right to work'. In the post-war period, Sweden was a prominent example of a country that exercised an active and effective labour market policy. In the early 1990s Sweden experienced an economic recession, to which the government responded with a number of new measures in order to confront the unemployment issue. They

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[10] Socialstyrelsen, Statistik om ekonomiskt bistånd 2018, Sveriges officiella statistik, 2019-09-26.
[11] Kildal, Nanna, "Workfare Tendencies in Scandinavian Welfare Policies", International Labour Office, Geneva, 2001, p. 2.
[12] Brodkin, Evelyn Z., & Larsen, Flemming, "Changing Boundaries: The Policies of Workfare in the U.S. and Europe", *Poverty and Public Policy,* Vol. 5, No. 1, 2013a, p. 37.
[13] Nybom, 2011, p. 340.

reduced the levels of unemployment benefits and introduced waiting days, as well as gradually transferring the responsibility of labour market issues to local authorities.[14]

Take-up increased and assistance spells became longer during the economic crisis, but as the economic situation improved at the end of the decade, both expenditure and the proportion of recipients among the population declined. One thing that did not change, however, was that the duration of social assistance spells continued to increase. This can be explained by a changed composition of the group of social assistance recipients, primarily due to the great influx of refugees during the Balkan wars in the 1990s, and cutbacks in social insurances during the same period.[15] The cutbacks of social insurance and unemployment insurance led to people who were sick or incapacitated, on disability benefits or in early retirement, and unemployed persons falling behind the working population economically.[16] This represented a challenge for municipalities, and increased focus on activation measures could be seen as one of the main practices to handle this. In 2017 Sweden had the lowest unemployment rate since the crisis in the 1990s, but now a new issue is on the rise. There seems to be a lack of workforce in many industries, while simultaneously the unemployment rate among certain groups is rather high, such as young adults and jobseekers with foreign background. Labour market politics have also been facing the challenge of supporting the many newly arrived immigrants and refugees that have arrived since 2015.[17]

The Swedish Public Employment Services (Arbetsförmedlingen) have for a long time been the main provider of active measures for unemployed persons. However, as the municipalities took on more responsibility for labour market policies, so they did with activation measures. One of the most obvious examples of this is the trend of introducing activation requirements into social assistance schemes, either by requiring assistance recipients to participate in government activation programmes or in programmes arranged by the municipalities.[18] The decentralisation therefore led to there being a two-tiered division of active labour market institutions; a division where the unemployed with unemployment insurance receive the traditional state-level activation and the uninsured unemployed, often referred to social assistance by curtailments in unemployment insurance, receive local-level activation

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[14] Kildal, 2001, p. 9; Blomberg, Staffan, Hultqvist, Sara, & Petersson, Jan, "Social politik och social arbete" in Meeuwisse, Anna, Swärd, Hans, Sunesson, Sune, & Knutagård, Marcus, (eds.) *Social Arbete: En Grundbok*, 3rd edition, Natur & Kultur, Stockholm, 2016, p. 222.

[15] Bergmark, Bäckman & Minas, 2017, p. 551.

[16] Sjögren Lindquist, Gabriella, "Inkomstolikhet och grupper som halkar efter i det svenska välfärdssamhället", in Swärd, Hans (ed.), *Den kantstötta välfärden,* 1st edition*,* Studentlitteratur, Lund, 2017, p. 84.

[17] Ulmestig, Rickard, & Panican, Alexandru, "Att vistas i arbetsmarknadspolitikens ingenmansland: organisatoriska gränser inom local arbetsmarknadspolitik", *Sociologisk Forskning,* Vol. 55, No. 4, 2018, p. 467.

[18] Bergmark, Bäckman & Minas, 2017, p. 550.

connected to the last formal economic resort.[19] While this can be confusing, there seems to be a consensus that municipalities should work with the unemployed persons that are situated far away from the labour market, while the Public Employment Services should handle the ones that are close to it.[20]

While the recipients primary obligation had been to actively seek work and to accept reasonable offers, this was transformed during the 1990s to an obligation to participate in municipal work or training projects.[21] The Social Services Act was revised in 1998, giving municipalities the option to oblige recipients to participate in different forms of local activity programmes. If the claimant refused to participate, the municipality had the possibility to reduce or withdraw assistance. Thereby, the right to social assistance was made conditional, which marked a clear political shift in comparison to the former Social Services Act.[22]

The main legislation that regulates all municipal-based social work, the Social Services Act, is designed as a framework law. This means that it primarily states overarching goals rather than giving specific directions for how client-based activities shall be carried out, hence giving extensive discretion to municipalities and the individual social worker.[23] The intention behind a framework law can be interpreted as giving a lot of flexibility to social workers to be able to respond to the varied needs and circumstances of different individuals.[24]

All practical social work conducted at the social services is characterized by extensive means-testing. Means-testing social assistance comprises aspects such as giving applicants admission to the organisation, determining whether applicants are in need of financial support and the level of the benefit.[25] Usually the individual has to apply for social assistance on a monthly basis at the municipality's local social service agency where social workers assess the individual's eligibility and need of or obligation to participate in activation.[26] While the the economic standard guaranteed by social assistance is rather high viewed from an international perspective, it is still considerably below that of a full-time worker in a low-wage job in

[19] Ulmestig & Panican, 2018, p. 470; Nybom, 2011, p. 340.
[20] Ulmestig & Panican, 2018, p. 471.
[21] Kildal, 2001, p. 10.
[22] Johansson, Håkan, "Activation Policies in the Nordic Countries: Social Democratic Universalism under Pressure", *Journal of European Area Studies*, Vol. 9, No. 1, 2001, p. 72.
[23] Stranz, Hugo, Karlsson, Patrik, & Wiklund, Stefan, "The wide-meshed safety net: Decision-making on social assistance eligibility in Sweden", *European Journal of Social Work,* Vol. 17, No. 5, 2017, p. 712.
[24] Mattson, Titti, "Juridik och social arbete", in Meeuwisse, Anna, Swärd, Hans, Sunesson, Sune, & Knutagård, Marcus, (eds.) *Social Arbete: En Grundbok*, 3rd edition, Natur & Kultur, Stockholm, 2016, p. 204.
[25] Stranz, Karlsson & Wiklund, 2017, p. 712.
[26] Nybom, 2011, p. 344.

Sweden. Any income in the household reduces the benefit by the same amount, and the general rule is that any assets or savings should be realised.[27]

1.4.1 Welfare state crisis

The Nordic welfare states are supposedly characterized by a comprehensive social policy, a social entitlement principle that has been institutionalised (social rights), and social legislation that is solidaristic and universalist in character. Mainly the embrace of universalism is what has given the Nordic welfare states a special status.[28] In 1980s and 1990s many aspects of Swedish welfare policy came under scrutiny. There were many claims that if the welfare system grows too large, it risks perverting incentives to work. Welfare was seen as breeding a dependent underclass, especially related to what was considered excessively generous sickness benefits and disability pensions. This debate on "welfare dependency" was not new, but recently it has been given even more salience as it is now expressed by people on both ends of the political spectrum.[29] Social policies shifted from being framed in terms of welfare, to attacking the "passive" benefit system. This is where activation policy came in, putting beneficiaries under pressure from sanctions and time limits to force them to accept any job offer whatsoever. This has also led to the labour force in Sweden being increasingly commodified, where the possibility of upholding a socially acceptable living standard independently of labour market participation has considerably increased.[30]

1.4.2 The legal framework

The Social Services Act (2001:453) is the main legal instrument governing the social service and the right to social assistance. Article 4 (1) states the principles and goals of social assistance but does not give any extensive detail. To summaries, it states that anyone who is unable to meet their own needs or to have them met in any other way, has the right to assistance. Persons who cannot provide for their subsistence but are able to work have the right to social assistance if they place themselves at the disposal of the labour market. The person may have the right to social assistance even if they are not at the disposal of the labour market if there are acceptable

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[27] Mood, Carina, "Social Assistance dynamics in Sweden: Duration dependence and heterogeneity", *Social Science Research,* Vol. 42, 2013, p. 123.

[28] Kuhnle, Stein, & Olsson Hort, Sven E., "The Developmental Welfare State in Scandinavia: Lessons for the Developing World", UN Research Institute for Social Development, Geneva, 2004, p. 2.

[29] Kuhnle & Olsson Hort, 2004, p. 14.

[30] Bengtsson, Mattias, "Transformation of Labour Market Policies in the Nordic Countries: Towards a regime shift in Sweden and Denmark?", Conference Paper, ILERA World Congress 2012, Beyond Borders: Governance of Work in a Global Economy, Philadelphia, Pennsylvania, 2012, p. 17.

reasons. Following this, the different costs that should taken into account when assessing the level of social assistance are presented.[31]

Besides the Social Services Act, the National Board of Health and Welfare has published a handbook on how to interpret the framework law and provides some more detailed explanations and considerations for the assessment of social assistance. The first two chapters summarises the goal and tasks of the social service in relation to assistance, providing some guidelines on how to assess the eligibility and level of social assistance. To give some examples, the handbook explains that social assistance should be the welfare system's last safety net. It clarifies that social assistance is a complement to the more general systems and that the assistance should only be seen as a temporary relief for short periods of time when problems in subsistence arise. The assistance should be conditional, but the conditions should be adapted to the individual. The rest of the handbook describes how to proceed with the processing and investigation of applications.[32]

1.5 Disposition

The study is organised in the following way. Chapter two consists of a literature review discussing the development of activation policies in general, variations in activation implementation, legal consciousness and juridification, street-level bureaucracy and discretion, and lastly similar research in the Swedish context. Chapter three presents the theoretical foundations of the study. Legal pluralism is presented as the background perspective on law in the study, Lipsky's theory of street-level bureaucracy is utilized to examine the street-level implementation practices of social workers, and Ewick and Silbey's theory on legal consciousness is articulated as the main analytical framework of the study. Chapter four offers a description of the research methods that are employed in the study including a presentation of how the data collection and data analysis have been organised throughout the research process. Chapter five provides the empirical analysis, presenting excerpts from the interviews and analyses these together with the theoretical framework and previous research, to examine the implementation practices related to the social assistance application and how social workers perceived legality when determining social assistance eligibility. The final section of the analysis involves a discussion about the conclusions in relation to the research question.

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[31] The Social Services Act (Socialtjänstlag), (2001:453), Chapter 4, Article, 1.
[32] Socialstyrelsen, "Socialstyrelsen handbok för ekonomiskt bistånd", 2013.

2. Literature Review

In this section, I will present and discuss the most prominent and influential studies that have been conducted in the field of activation policy implementation, street-level bureaucracy, and legal consciousness in institutional contexts. I will furthermore describe the particular situation in Swedish welfare agencies. The research that is discussed have been chosen specifically due to the relevancy of their approaches and perspectives to this study.

2.1 Activation policy as a political shift

The extension of activation to social assistance recipients has been interpreted by some as an expression of an ideological shift towards an individualized view of social problems.[33] In a similar vein, van Berkel and van der AA has also expressed that activation implies a shift in the way welfare states deal with unemployment, going from people processing technologies to people changing technologies. The focus on activation measures are aimed at changing people in some way, either their situation or their behaviour and attitude.[34] As explained by Thorén, as well as Blomberg, Hultqvist, and Petersson, how social problems are perceived affects the preferred solutions. If unemployment and social assistance dependency is perceived as structural problems due to the lack of work opportunities or low education levels it encourages policies that try to increase job opportunities and greater access to training and education possibilities. If unemployment is perceived as being rooted in the individuals themselves, for example by lacking work ethic or having personal deficiencies, then the policies will be oriented toward changing individual behavioural patterns and increasing individual responsibilities.[35] In general, the policies can be seen as part of a broader project through which states as promoting the primacy of work and limiting the provision of welfare.[36]

Many researcher agree that the trend in social policy seems to be a clear emphasis on sanctions rather than incentives, and on obligations rather than rights.[37] According to Handler,

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[33] Bergmark, Bäckman & Minas, 2017, p. 551; Thorén, 2008, p. 38.
[34] Berkel, Rik van, & van der AA, Paul, "Activation Work: Policy programme Administration or Professional Service Provision?", *Journal of Social Policy,* Vol. 41, No. 3, 2012, p. 495.
[35] Thorén, 2008, p. 15; Blomberg, Hultqvist & Petersson, 2016, p. 216.
[36] Brodkin, Evelyn Z., & Larsen, Flemming, "The Policies of Workfare: At the Boundaries between Work and the Welfare State" in Brodkin, Evelyn Z., & Marston, Gregory, (eds.) *Work and the Welfare State: Street-Level Organizations and Workfare Politics,* Djøf Publishing, Copenhagen, 2013b, p. 57.
[37] Johansson, 2001, p. 70; Kildal, 2001, p. 1; Aerschot, 2016, p. 16: Larsen, Flemming, "Active Labor-Market Reform in Denmark: The Role of Governance in Policy Change" in Brodkin, Evelyn *Work and the Welfare State: Street-Level Organizations and Workfare Politics,* Djøf Publishing, Copenhagen, 2013, p. 116; Swärd, Hans, "Introduktion", in Swärd, Hans (ed.) *Den kantstötta välfärden,* 1st edition, Studentlitteratur, Lund, 2017, p. 25.

this has also meant that the meaning of social citizenship and the administration of welfare has changed. Social benefits are rights that a person has because of their status as a citizen. With this new shift, rights only attach if the obligations are fulfilled. This changes social citizenship from status to contract.[38] Hedblom has found this tendency in Sweden and refers to a conditional citizenship, in which social rights are defined between the individual and the organisation the administer them.[39] The relationship between clients and social workers have also been affected by these changes according to both Jones and van Aerschot. Because of the higher eligibility requirements, there is a new regulatory focus during contact with clients, and a large part of the work involves assessing if clients meet the requirements, exercising a certain amount of social control.[40]

Activation has also been expressed as blurring the boundaries of social and employment policies.[41] This blurring can be understood as undermining central intentions behind welfare policies, as they generally provide cash assistance which affects the boundaries between work and the welfare state by relieving certain groups from market demands, however temporary or partial that relief may be. Depending on how these welfare policies are arranged, they may serve to reduce the market imperative to work at any price, what Esping-Andersen calls "de-commodification."[42] A project of commodification can be said to advance when policies and practices reduce the ability of citizens to make claims on the state for protection from market vulnerability and receive income support that allows, at minimum, for basic necessities of life. Commodification may be produced through informal organisational practices that function to delegitimise claimants and claims making, in part by redefining claimants from citizens in need to dependent claimants, subject to caseworker discipline and sanctions.[43]

Activation is often accompanied by the use of sanctions, which have many implications for the character of social policy. Bergmark, Bäckman and Minas view sanctions as having two seperate and to some extent opposing mechanisms. First, sanctions can have a complementary

[38] Handler, Joel F., "Social citizenship and workfare in the US and Western Europe: from status to contract", *Journal of European Social Policy,* Vol. 13, No. 3, 2003, p. 230.

[39] Hedblom, 2004, p. 178.

[40] Jones, Chris, "Voices from the Front Line: State Social Workers and New Labour", *British Journal of Social Work,* Vol. 31, 2001, p. 553; Aerschot, Paul van, "Some Aspects of the Application of Legal Safeguards to Active Social Policy in Danmark, Finland and Sweden", *European Journal of Social Security,* Vol. 5, No. 3, 2003, p. 230.

[41] Girardi, Silvia, Pulignano, Valeria, & Maas, Roland, "Activated and included? The social inclusion of social assistance beneficiaries engaged in 'public works'", *International Journal of Sociology and Social Policy,* Vol. 39, No. 9/10, 2019, p. 738.

[42] Brodkin & Larsen, 2013a, p. 39; Esping-Andersen, Gøsta, *The Three Worlds of Welfare Capitalism,* Polity Press, 1990, p. 21.

[43] Brodkin, Evelyn Z., "Commodification, Inclusion, or What?: Workfare in Everyday Organizational Life" in Brodkin, Evelyn Z., & Marston, Gregory, (eds.), *Work and the Welfare State: Street-Level Organizations and Workfare Politics,* Djøf Publishing, Copenhagen, 2013a, p. 156.

effect in relation to activation measures by ensuring participation. The underlying presumption here is that there is some reluctance or lack of motivation among recipients to take part in activation if it is voluntary. The second mechanism goes against this by suggesting that activation programmes do not need to have any effect, and that sanctions is simply a way to eject clients from the system. It is presumed that the combination of sanctions and compulsory activation are so repellent that clients either leave voluntarily or feel incapable of staying on. When it comes to the second mechanism, whether or not people establish self-sufficiency or end up being more socio-economically marginalized after exiting the system is left as an open question.[44]

2.1.2 Different types of activation policy approaches

It is important to distinguish between different forms of activation, as it can involve many different measures. There seems to be divide between approaches that correlates with activation's two conflicting motives: empowerment/enabling and coercion/discipline. On the empowerment/enabling end of the spectrum we find so-called human resource development (HRD) approaches. The ambition to make recipients independent of social assistance by helping them develop their abilities through education and vocational training to be able to compete on the labour market. The enabling streak is seen by Bergmark, Bäckman, and Minas as being more in line with core values of social work.[45] At the other end, on the coercion/discipline side, we find the workfare approach. The enabling ambition is usually more modest in these type of programmes, and they are normally non-voluntary. The rationale behind workfare is closely connected to the belief that unconditional social assistance generates a 'culture of dependency', and aims at making sure recipients do not become habituated to welfare. Workfare literally means "work-for-welfare", and entails forcing beneficiaries of social assistance into work or training by threatening them with withdrawal or reduction of benefits. Some researchers have identified a third type of activation, called the work-first approach. It is often considered a part of the workfare category, but can be distinguished as an approach that focuses on getting participants into work as soon as possible, with little to no emphasis on long-term skills and empowerment.[46] It involves strategies for quick exit from social assistance into any job, and requires the unemployed to accept the first job offered regardless of its qualities and prospects

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[44] Bergmark, Bäckman & Minas, 2017, p. 557.
[45] Bergmark, Bäckman & Minas, 2017, p. 549; Girardi, Pulignano & Maas, 2019, p. 739.
[46] Bergmark, Bäckman & Minas, 2017, p. 550; Aerschot, van, 2016, p. 7.

for economic security.[47] According to Girardi, Pulignano and Maas, the division of these two, or three approaches, is in practice less clear. A lot of the time activation has both enabling and regulatory elements, combining conditions and sanctions with vocational training opportunities for example.[48]

2.1.3 Implementation of activation policies

Activation policies also differ in how they are implemented by social workers and activation workers. For example, there is a lot of diversity in programmes and in the nature and strictness of sanctions.[49] Activation requirements also complicate the role of social workers. Van Berkel and van der AA suggest that when welfare entitlements become dependent on participation in activation programmes it compromises the social service orientation. The professional model that is required for providing social services is overshadowed by the bureaucratic work of monitoring and sanctioning clients.[50] This tension between roles is also connected to the enforcement of rules, both legal and organisational. Sainsbury brings attention to this by emphasizing the difficulties of combining the role of caring social worker with the role of a rule-bound bureaucrat. Social workers are supposed to perform their 'professional' role, acting as a client's advocate and collaboratively working towards mutually agreed goals, at the same time as they are required to apply rules of conditionality and possibly invoking sanctions. According to Sainsbury, social worker continuously have to deal with the tension between being a 'good cop' and a 'bad cop'.[51]

In contrast, Tabin and Perriard found that many social workers tended to adapt activation requirements to the professional values of social work, at least to some extent. For example, using their discretion to delay activation when it is judged to be needed. Instead of activation, 'classical' social work is then viewed as necessary, avoiding individualising responsibility in regards to the situation.[52]

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[47] Nybom, 2011, p. 341; Brodkin & Larsen, 2013a, p. 43.
[48] Girardi, Pulignano & Maas, 2019, p. 739.
[49] Berkel, van, & van der AA, 2012, p. 496.
[50] Berkel, van & van Der AA, 2012, p. 496.
[51] Sainsbury, Roy, "Administrative justice, discretion and the 'welfare to work' project", *Journal of Social Welfare and Family Law,* Vol. 30, No. 4, 2008, p. 333.
[52] Tabin, Jean-Pierre, & Perriard, Anne, "Active social policies revisited by social workers", *European Journal of Social Work,* Vol. 19, No. 3-4, 2006, p. 344.

2.1.4 The (image of) social assistance recipients

While this study may not focus on recipients of social assistance, their predicaments still need to be taken into account, in particular as the perception of recipients can affect both the policy orientation and social workers' behaviour. For example, the dependency culture is closely related to sigma, accusing the poor of being "lazy" or "irresponsible".[53] It is commonly assumed that long-term social assistance recipiency leads to passivization or decreasing motivation to look for jobs, because any stigma felt about applying for benefits weakens as one grows accustomed to it.[54] Stigma can also be embedded in the institutional design of support, through control practices that scrutinise the resources and the expenses of the claimant in detail before deciding whether to give assistance. This results in an intrusion into the personal life of the people involved, creating feelings of shame and unease.[55]

According to Walker, shame can be used by government and its bureaucracies to distinguish deserving from undeserving claims. This shame can easily become generalized as stigma which apply to all people in poverty. In turn, the construction of stigma allows for so-called institutional discrimination to manifest, in the form of conditions, expectations and duties on the recipients.[56] As Ulmestig and Marston puts it, detailed and bureaucratic processes of determining eligibility inevitably create a welfare subjectivity that is deemed as suspicious and untrustworthy.[57] Unlike more universal forms of welfare, those that are contributory or rights-based, means-tested provision tends to smack of charity.[58]

2.2 Legal consciousness and juridification

There is plenty of research within the field of legal consciousness, most of it focusing on ordinary citizens, but examinations of legal consciousness in government decision-making is much less common.[59] Someone who is very relevant to my study is Cooper, who looks at the character of legal consciousness within local government in the UK.[60] The focus on

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[53] Girardi, Pulignano & Maas, 2019, p. 741.
[54] Mood, 2013, p. 121; Ulmestig & Marston, 2015, p. 402.
[55] Girardi, Pulignano & Maas, 2019, p. 746; Walker, Robert, *The Shame of Poverty,* Oxford University Press, Oxford, 2014, p. 54; Stranz, Karlsson & Wiklund, 2017, p. 713.
[56] Walker, 2014, p. 53.
[57] Ulmestig, Rickard, & Marston, Greg, "Street-level Perceptions of Procedural Rights for Young Unemployed People – A Comparative Study between Sweden and Australia", *Social Policy and Administration,* Vol. 49, No. 3, 2015, p. 402.
[58] Walker, 2014, p. 60.
[59] Richards, Sally, "Unearthing bureaucratic legal consciousness: government officials' legal identification and moral ideals", *International Journal of Law in Context,* Vol. 11, No. 3, 2015, p. 299.
[60] Cooper, Davina, "Local Government Legal Consciousness in the Shadow of Juridification", *Journal of Law and Society,* Vol. 22, No. 4, 1995, p. 506.

bureaucracies emphasizes the creation of consciousness as a situated practice involving both collective and individual agency. It also opens up an interesting possibility of exploring the relationship between legal consciousness and power when it comes to local governmental actors. The way that Cooper explains it is that social workers are, on the one hand far removed from the recipients, and on the other hand they often express a legal consciousness similar to that of recipients, where they are caught in a tightening web of law.[61] Cooper's findings also indicate that for some law functioned as more of an environmental nuisance, resource or taken-for-granted condition of local government activity.

If we look a bit closer at Cooper's research, there is much that might be compared with my study. Social worker expressed what can be considered a gamelike legality, in which an increase in juridification further intensifies the value of law as a resource since law provides means through which transactions can occur. This representation is connected to the idea of local government getting its powers from the state and its permission and 'goal posts' from law.[62] Interestingly, municipal actors claim both that "the law is the law", viewing law as a normatively closed tool of government policy, and engage in law games which highlight the open, albeit skewed, nature of legal possibility.[63] Another point that should be mentioned, is that law can at times be interpreted as colonizing other professional discourses. Cooper, however, also found that to some respondents law itself was something that could be colonized by different professional disciplines.[64]

Another person that brings an interesting perspective to the study of legal consciousness of government officials is Richards, who focuss on governments officials understanding of juridification, putting a strong emphasis on the attitudes of the individuals.[65] One of the findings is that government officials' identification with law increases in combination with their idealisation of intellect and information processing. Conversely, as the officials' identification with law decreases, their idealisation of experience and truth verification increases. These findings indicate that underlying moral ideals inform bureaucratic legal identification.[66] Richards also found that there were wide variations in enthusiasm for the the law, usually dependent on the extent to which they believed that law should play a role in regulating their decision-making.[67] For example, when the bureaucrats emphasized the importance of acting in

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[61] Cooper, 1995, p. 510.
[62] Cooper, 1995, p. 511.
[63] Cooper, 1995, p. 522.
[64] Cooper, 1995, p. 521.
[65] Richards, 2015, p. 303.
[66] Richards, 2015, p. 299.
[67] Richards, 2015, p. 307.

an impartial manner, they expressed a correspondingly strong regard for the law, and in contrast, when underlining the importance of acting out of care and understanding, they demonstrated a correspondingly low identification with law.[68]

2.3 Street-level bureaucrats, discretion and rules

Street-level bureaucracy is a thoroughly investigated area, with Lipsky's theory providing a starting off point for most, and the question of discretion taking centre stage. When it comes to rule discretion, Sainsbury explains that when rules fail to give frontline officials clear instructions in the decision-making process, they will draw on criteria that lie outside the rules. This is when decision-making becomes more diffuse, and difficult for observers to understand.[69] Rules therefore have the effect of ensuring that decision-making becomes more transparent.

A common finding is, however, that even in rule-saturated organisations, street-level discretion is still an important feature of bureaucratic decision-making. How professional relate to organisational rules is therefore a key dimension to understanding discretion.[70] For example, Evans found that even if rules can be thought of as unambiguous, they sometimes contribute to uncertainty which in turn leads to discretion being needed. Law and policy is often expressed in vague phrases, creating wide discretion for the interpretation in the absence of guidance from managers.[71] Sometimes there is also a kind of 'embedded discretion' in the rules, through for example the allusions to standards such as "necessary", "essential", "exceptional", or "reasonable".[72]

Maynard-Moody and Musheno explain that discretion is inevitable because of street-level workers make decisions on a case by case basis, and rules and procedures can never universally fit each individual and every circumstance, so judgements must be made. The proliferation of rules also requires matching the case to the rule or procedure, which requires discretion.[73] Maynard-Moody and Musheno found that rather than using rules and procedures to guide judgements about individual clients, social workers make judgements first about the clients and

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[68] Richards, 2015, p. 308.
[69] Sainsbury, 2008, p. 328.
[70] Evans, Tony, "Organisational Rules and Discretion in Adult Social Work", *British Journal of Social Work*, Vol. 43, 2013, p. 739.
[71] Evans, Tony, & Harris, John, "Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion", *British Journal of Social Work,* Vol. 34, No. 6, 2004, p. 885.
[72] Sainsbury, 2008, p. 328.
[73] Maynard-Moody, Steven, & Musheno, Michael, "State Agent or Citizen Agent: Two Narratives of Discretion", *Journal of Public Administration Research and Theory,* Vol. 10, No. 2, 2000, p. 338.

then turn to rules and procedures to help enact or, if negative, to rationalize their judgements.[74] A different perspective is presented by Harris, who found that social workers sometimes use rules and procedures in a defensive manner. At times, social workers can hide behind rules and avoid discretion to defend against responsibility for the outcomes.[75]

Nevertheless, rules do still permeate all aspects of street-level work, and most street-level actions conform to agency guidelines. It is usually the case that when the rules and procedures fit a situation, street-level judgment is not problematic and lead to rules being applied without difficulty. As this does not present itself as a conflict or dilemma, it is usually not deemed as a worthy story to tell by respondents, which means that research is based on the stories and talk of street-level workers that is biased against the routine. Thus, it is important to remember that rules do constrain judgement, but street-level workers rarely choose to describe these judgements.[76]

2.3.1 Accountability and discretion

When discussing discretion, the question of accountability is sure to come up. As Brodkin puts it: "all too often, bureaucratic discretion is the nemesis of accountability." The main part of managing street-level discretion concerns the search for strategies of administrative oversight and control that can promote accountability, without deadening responsiveness and undermining the application of professional judgement on which management also depends.[77] It is not unusual that performance measures are used to further ensure accountability, and are sometimes part of larger managerial reforms attempting to systemize the exercise of discretion to create more routine discretion.[78]

A final question that I would like to bring up in relation to accountability is about how politics may affect the burden of accountability at the street-level. A very interesting perspective on street-level bureaucracy is provided by Brodkin in another publication, in which the structural location of street-level organisations position them as mediators of not only

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[74] Maynard-Moody & Musheno, 2000, p. 347.

[75] Harris, Nigel, "Defensive Social Work", *British Journal of Social Work,* Vol. 1, 2008, p. 452.

[76] Maynard-Moody & Musheno, 2000, p. 349.

[77] Brodkin, Evelyn Z., "Accountability in Street-Level Organizations", *International Journal of Public Administration,* Vol. 31, 2008, p. 327.

[78] Brodkin, Evelyn Z., "Street-Level Organizations, Inequality, and the Future of Human Services", *Human Service Organizations: Management, Leadership and Governance,* Vol. 40, No. 5, 2016, p. 447; Brodkin, 2008, p. 323; Brodkin, Evelyn Z., "Policy Work: Street-Level Organizations Under New Managerialism", *Journal of Public Administration Research and Theory,* Vol. 23, 2006, p. 633.

policy, but also politics.[79] This three-dimensional perspective directs attention to how politically contested policy projects may be advanced indirectly by altering practices of policy delivery.[80] This can be an effective strategy because changing the conditions of street-level work sometimes substantively changes what street-level workers produce as policy. Doing it this way limits the visibility of the processes of policy transformation.[81] An example of this, is the use of framework laws in Scandinavian countries, which explicitly eschew details in favour of broader principles and goals. While there may be other reasons behind this approach, it still has the effect of deferring some of the difficult policy choices to the implementation process.[82]

2.4 The Swedish Context

Moving on to looking more directly at street-level workers in Sweden, there is not a large amount of research to refer to. Even though the numbers are limited, the research that exists is very relevant. Holmgren, Rosstorp and Rohdén have explored the confidence recipients of sickness insurance have in the Swedish Social Insurance Agency. They found that how recipients perceived the the rule of law affected their confidence in the system. Many respondents expressed feeling that the handling of individual cases was an insecure process, stemming from the lack of transparency due to a lack of clear directions. This made the outcomes seem unfair, because the decisions were considered to be based on random and arbitrary assessments.[83] Similarly, Ulmestig and Marston has found that the high degrees of autonomy afforded to social workers and low levels of scrutiny they experience in Swedish municipalities creates a lot of variation, which makes it hard for people in Sweden to grasp procedural rights.[84] Also, the strong reliance on the quality of the interpersonal relationships for service delivery in Sweden have significant effects. For example, the way in which clients present themselves to the agency has a substantial impact on the degree to which frontline workers are prepared to work in the clients' interest.[85]

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[79] Brodkin, Evelyn Z., "Street-Level Organizations and the Welfare State" in Brodkin, Evelyn Z., & Marston, Gregory, (eds.), *Work and the Welfare State: Street-Level Organizations and Workfare Politics,* Djøf Publishing, Copenhagen, 2013b, p. 18.
[80] Brodkin, 2013b, p. 23.
[81] Brodkin, 2013b, p. 24.
[82] Brodkin, 2013b, p. 22.
[83] Holmgren, K., Rosstorp, F., & Rohdén, H., "Confidence in public institutions: A focus group study on views on the Swedish Social Insurance Agency", *Work,* Vol. 55, 2016, p. 84.
[84] Ulmestig & Marston, 2015, p. 403.
[85] Ulmestig & Marston, 2015, p. 408.

Of particular importance for this study is Thorén's study on street-level bureaucracy and social assistance in Sweden. With a very similar focus, Thorén expresses many interesting conclusions that can support or be discussed in relation to this study. The main finding was that the activation requirement in itself became a method to discourage clients to apply for social assistance by introducing an additional obligation that clients had to comply with in order to be entitled to social assistance.[86] In other words, the guiding condition for any further decisions about social assistance was for clients to be at "the disposal of the labour market". Clients were compelled to demonstrate that they were "ready to work" already at the initial application stage. While this might not contradict the Social Services Act since clients can be required to be participate in activation, here the social workers used the activation requirement as an "assessment tool" and not as an employment support measure.[87]

In general, there has been a relatively low amount research conducted about social assistance in Sweden, and most of it focuses on the recipient's position.[88] A very small number of studies have scrutinized implementation practices of municipal activation policies and how they work in Sweden, and this limited amount of research is not sufficient to provide an adequate understanding of the street-level workings of this emerging activation policy reform. The actual decision-making process of street-level workers is a rather unexplored area, Thorén providing one of the few exceptions. These studies have also had different analytical perspectives and reached somewhat contradictory conclusions, which makes additional research even more pertinent.

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[86] Thorén, 2008, p. 147.
[87] Thorén, 2008, p. 88.
[88] Stranz, 2007, p. 11.

3. Theoretical Framework

In the following sections I present the theoretical framework of the study, and central concepts that will guide the analysis. First, legal pluralism is discussed as a perspective on law as not just one uniform entity or one system. Secondly, street-level bureaucracy is presented to be the base for the analysis of street-level behaviour in the social services. Finally, legal consciousness constitutes the analytical tools to explore the intricacies of the social workers' decision-making role in relation to legal and organisational rules.

3.1 Weak Legal Pluralism

To begin, one of the underlying assumptions guiding the study and its theoretical perspective is the contention that "the law" is plural. Even if we often refer to law as one legal system, the interpretations of what is legal can vary considerably between people.[89] According to Mathiesen, it is possible to differentiate between the judicial and bureaucratic view of law. While the judicial view can be likened to that of judge, where the focus is on handling for example claims and questions of legal interpretation using formal legislation, the bureaucratic view differs from this in many ways. Formal legislation is applied here as well, but the decision-makers, many of them street-level bureaucrats, do not really try to interpret the law themselves using classical legal sources. Most of the time they rely on pre-determined interpretations that central authorities have already provided them with, which often come in the form of standardised handbooks.[90] For the most part, bureaucracies are made up out of non-legal professionals who apply legal rules in light of their specific professions, such as social workers.[91] Even so, application of legal rules is very much a part of the job requirements, and all decisions concerning the social services is dependent on "the law". When for example organisational conditions or values become very important factors in the decision-making process, it will in practice lead to rules that are not traditionally legal developing a status of "legal". This means that a lot of the bureaucratic legal sources are not necessarily the same as the traditionally judicial ones.[92]

The explanation of the differentiation between the judicial and bureaucratic view on law can be termed as "weak legal pluralism", and refers to a fragmentation within and as a part of

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[89] Mathiesen, Thomas, *Rätten i samhället: En introduktion till rättssociologi,* Studentlitteratur, Lund, 2005, p. 215.
[90] Mathiesen, 2005, p. 208.
[91] Mathiesen, 2005, p. 213.
[92] Mathiesen, 2005, p. 214.

the formal legal system. This type of legal pluralism has significant consequences in practice, as it entails that citizens often meet different types of legal application depending on where they are situated and what bureaucracy or legal institution they are dealing with.[93] Another type of legal pluralism is "strong legal pluralism", which refers different legal cultures and systems parallel to each other and outside of the formal legal system.[94] The present study is only concerned with weak legal pluralism, as the focus is on the bureaucratic view on law.

3.1.1 Other perspectives on legal pluralism

Mathiesen's perspective on legal pluralism, in particular the bureaucratic view of law, is very relevant for this study, but it is one among many and needs to be put in perspective to other approaches. According to Griffiths, legal pluralism can be defined as a situation in which two or more legal systems coexist in the same social field.[95] What is meant by "legal system" then, is very open, even more so than from Mathiesen's perspective. A legal system can be systems of courts and judges, or it can also be non-legal forms of normative ordering that are part of for example organisations, corporations and universities. Merry is critical to this view of legal pluralism as it risks seeing any normative system as legal.[96] Another perspective is Tamanaha's view of law as what people within social groups have come to see and label as "law". It cannot be defined into a single scientific category because over time and in different places people have seen law in different terms.[97]

According to Merry, the existence of legal pluralism is not what is of interest, it is rather the dynamics of change and transformation.[98] Another aspect of legal pluralism is looking at law as a system of meanings, and cultural codes for interpreting the world.[99] As will be made clear in the following sections of this chapter, both Tamanaha and Merry's ways of viewing the law has a connection to the theoretical perspective of legal consciousness.

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[93] Mathiesen, 2005, p. 215.
[94] Mathiesen, 2005, p. 215.
[95] Griffiths, John, "What is legal pluralism?", *Journal of Legal Pluralism,* Vol. 24, 1986, p. 1
[96] Engle Merry, Sally, "Legal Pluralism", *Law & Society Review,* Vol. 22, No. 5, 1988, p. 870.
[97] Tamanaha, Brian Z., "Understanding Legal Pluralism: Past to Present, Local to Global", *Sydney Law Review,* Vol. 30, No. 3, 2008, p. 396.
[98] Engle Merry, 1988, p. 879.
[99] Engle Merry, 1988, p. 886.

3.2 Street-Level Bureaucracy

One of the main conclusions of Lipsky's study of street-level bureaucrats was that frontline work of public service organisations play a key role in the implementation of social policies and the delivery of social services. Lipsky makes two distinctive claims: the exercise of discretion is a critical dimension in the work of street-level bureaucrats, and the jobs typically cannot be performed according to the highest standards of decision making in the various fields because street-level workers lack resources to respond properly to individual cases.[100] On the one hand, the work is often highly scripted to achieve policy objectives that have their own origins in the political process. On the other hand, the work requires improvisation and responsiveness to the individual case.[101] The decisions of street-level bureaucrats and the routines they establish to cope with these uncertainties and work pressures, effectively become the public policies they carry out. This is because a citizen most often and directly experiences policy as the decision that the street-level bureaucrat makes about their particular case.[102] Thus, street-level bureaucrats have a mediating role in the relationship between citizens and the state.[103] A defining facet of their work is that they must deal with clients' personal reactions to their decisions, no matter how they cope with the implications.[104] The relationships with clients are therefore very important in shaping the work experience of street-level bureaucrats.

3.2.1 Discretion

The policy-making roles of street-level bureaucrats are built upon two interrelated facets of their positions: relatively high degrees of discretion and relative autonomy from organisational authority. Unlike lower-level workers in most organisations, street-level bureaucrats have considerable discretion in determining the nature, amount, and quality of benefits and sanctions provided by their agencies.[105] One of the main reasons for this is that that street-level bureaucrats deal with people. They work in conditions that often require responses to the human dimensions of situations, which are often unpredictable. While society might seek impartiality from its public agencies, it also hopes for compassion for special circumstances and flexibility in dealing with them.[106] This is not to say that street-level workers are unrestrained by rules,

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[100] Lipsky, Michael, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services,* (30th anniversary expanded ed.), Russell Sage Foundation, New York, 2010, p. xi.
[101] Lipsky, 2010, p. xii.
[102] Lipsky, 2010, p. xiii.
[103] Lipsky, 2010, p. 4.
[104] Lipsky, 2010, p. 9.
[105] Lipsky, 2010, p. 13.
[106] Lipsky, 2010, p. 15.

regulations, and directives from above, or by the norms and practices of their occupational group. The major dimensions of public policy, such as levels of benefits, categories of eligibility, nature of rules, regulations and services, are shaped by politicians and the "higher-ups". The normative and regulatory environment structure policy choices of street-level bureaucrats, but does not completely determine them.[107]

The most visible discretion that social service workers exercise is that of deciding eligibility. Rules and regulations provide only a measure of guidance as discretion must be used in determining eligibility for the presenting situation and classifying the behaviour or background of the client.[108] Another aspect that might complicate the decision is that a worker's concern for the client conflicts at times with the general social role of the agency. When it comes to social assistance, the intention can be interpreted as fostering the health and well-being of individual recipients, but also to eliminate dependency and maintaining the attraction of low-wage work through activation requirements. These goals may at times be conflicting, which contributes to the necessity of discretion by street-level bureaucrats.[109]

3.2.2 Coping behaviours

There are aspects of the work conditions besides the lack of recourses that require coping mechanisms. There are some difficulties arising from the fact that values of social policy rarely go hand in hand with bureaucracy. On the one hand, service is thought to be focused on a model of human interaction, caring, and responsibility. On the other hand, service is delivered through a bureaucracy, encouraging a model of detachment and equal treatment under conditions of resource limitations and constraints. The human interaction model often functions as the motivation of public service workers and clients.[110] But the helping orientation of street-level bureaucrats is incompatible with their need to judge and control clients for bureaucratic purposes.[111] It puts the street-level bureaucrat in a position where they have to be both the judge as well as a server. This puts a strain on the worker as well as the relationships they establish with clients, which means that they often try to find ways to cope with their contradictory role.[112]

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[107] Lipsky, 2010, p. 14.
[108] Lipsky, 2010, p. 60.
[109] Lipsky, 2010, p. 109.
[110] Lipsky, 2010, p. 71.
[111] Lipsky, 2010, p. 73.
[112] Lipsky, 2010, p. 74.

Routinization can be seen as a defining feature of increased bureaucratization, and is designed to insure regularity, accountability, and fairness, and protects workers from client demands for responsiveness.[113] Routines also provide a legitimate excuse for not dealing flexibly, since fairness in a limited sense demands equal treatment.[114] Deferring to the law and organisational rules protects workers from client pressures, by limiting their responsibility. These type of practices can be understood as strategies to deflect clients' claims, but sometimes they are better understood as rigidly held attitudes that partially have their origin in the distress over the gap between expectations and perceived capability.[115] But it is also important to acknowledge that some street-level bureaucrats do not simply adapt to the bureaucratization of social services, opting instead for resistance.[116] It is of course not a very easy thing to effectively resist, but a few workers go out of their way to respond generously to people in need despite rules and organisational factors encouraging the opposite. These street-level bureaucrats find motivation in a strong professional identity and ignore rules that seem excessively rigid in order to help people in need.[117]

3.2.3 Accountability

The wide discretion that is afforded to street-level bureaucrats brings with it the question of accountability. It is not easy to specify where the lines to equal treatment should be drawn, but it seems that responsiveness can be a guiding principle even if it sometimes means stepping beyond strict mechanical accountability.[118] If the organisation is too heavily regulated, it tends to leave the recipient population feeling less secure. If the rules are strict and authoritarian, then they do not leave much room for the possibility that people's needs as very different and require varied solutions. Strong rule proliferation also leads to workers feeling more anxious, especially if these rules are accompanied with increased checks on performance.[119] One of the main dilemmas that face street-level bureaucrats is therefore to find the correct balance between compassion and flexibility on the one hand, and impartiality and rigid rule-application on the other hand.[120]

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[113] Lipsky, 2010, p. 100.
[114] Lipsky, 2010, p. 101.
[115] Lipsky, 2010, p. 149.
[116] Lipsky, 2010, p. 190.
[117] Lipsky, 2010, p. 229.
[118] Lipsky, 2010, p. 230.
[119] Preston-shoot, Michael, "Regulating the road to good intentions: Observations on the relationship between policy, regulations and practice in social work", *Practice,* Vol. 13, No. 4, 2001, p. 15.
[120] Lipsky, 2010, p. 15.

3.2.4 Critical perspectives on Lipsky

Lipsky's research is based on the US experience, which raises the question to what extent can the theory be generalised to other settings. The US welfare system is quite different from the Swedish welfare system, which may result in the behaviour patterns of street-level bureaucrats developing differently. The US welfare state has been classified as 'liberal', and is characterised by means-tested assistance, modest universal transfers, and modest social-insurance plans. Benefits are usually directed towards the poor and the working class. Welfare is limited by the marginal propensity to opt for welfare instead of work, making stigma and strict entitlement rules a common feature. The main consequence of this type of welfare state is that it minimizes de-commodification effects, and exentuates a class-political dualism.[121] Sweden, on the other hand, belongs to the so-called social democratic type of welfare state and is characterised by principles of universalism and de-commodification.[122] One difference between the US and Swedish welfare experience is that as an effect of a universal welfare system there is a certain amount of bureaucratic efficiency. When there is no selectivity on economic or other grounds for social benefits, it lessens the administrative costs. In contrast, means-tested benefits and strict eligibility grounds entail a lot of administrative work.[123] Whether or not the differences of the welfare states effect the generalisability of Lipsky's theory has been discussed by Winter, who compared the relevancy of Lipsky's research with a Danish case. Denmark belongs to the same welfare state classification as Sweden, which makes the arguments quite relevant. While the welfare systems and the settings were different, Winter still found similar behavioural patterns as those presented by Lipsky in Denmark. The fact that similar result were found in a welfare state with different characteristics implies strong support for the relevance of the street-level bureaucracy theory.[124]

There are other points of his research that have been criticised for not giving enough attention to certain factors that affect street-level behaviour. Evans, for example, argues that Lipsky gives insufficient attention to the role of professionalism in his analysis of management control.[125] Lipsky's analysis assumes that managerialism means domination, and more

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[121] Esping-Andersen, 1990, p. 26.
[122] Esping-Andersen, 1990, p. 28.
[123] Kuhnle & Hort, 2004, p. 11.
[124] Winter, Søren C., "Explaining Street-Level Bureaucratic Behaviour in Social and Regulatory Policies", Paper prepared for the 2002 Annual Meeting of the American Political Science Association in Boston, 2002, p. 23.
[125] Evans, Tony, "Professionals, Managers and Discretion: Critiquing Street-Level Bureaucracy", *British Journal of Social Work*, Vol. 41, 2011, p. 368.

importantly treats 'managers' and 'professionals' as categorically different and antagonistic.[126] According to Evans, in most public organisations which professionals are employed in the front line, such as social workers in the Swedish setting, their local managers tend to be drawn from the same professional group. This means that professional status most likely has an impact on the relationship between workers and managers.[127] They often see themselves as social workers who are now in management roles, and practitioners refer to these local managers more in terms of providing professional support and guidance, rather than as agents of hierarchical control.[128] Lipsky's also misses the role of managers as actors with significant discretion themselves in the policy implementation chain, and that they may have their own agenda, either personal or professional.[129]

Taylor and Kelly discusses if Lipsky's theory is still relevant in terms of changes that have happened over time within bureaucracies. They acknowledge that in some instances the level of discretion of street-level bureaucrats is on similar levels as what was expressed by Lipsky, but now there is closer monitoring which reduces street-level bureaucrats' ability to "make policy".[130] As a consequence, task-based discretion has increased as professionals are required to consider the implication of their tasks for targets and managers.[131]

3.3 Legal Consciousness

Ewick and Silbey's theoretical concept of legal consciousness addresses issues of legal hegemony, and looks at how the law sustains its institutional power despite a persistent gap between the law on the books and the law in action.[132] To put it more simply, it is about the different ways in which people use and think about law, and to what degree people understand their lives through legal concepts and processes.[133] Legal consciousness takes a constitutive perspective, meaning it assumes that law shapes society from the inside out by providing principal categories that make social life seem natural, normal, cohesive and coherent.[134]

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[126] Evans, 2011, p. 369.
[127] Evans, 2011, p. 372.
[128] Evans, 2011, p. 382.
[129] Evans, Tony, "Street-level bureaucracy, management and the corrupted world of service", *European Journal of Social Work*, Vol. 19, No. 5, 2016, p. 603.
[130] Taylor, Ian, & Kelly, Josie, "Professionals, discretion and public sector reform in the UK: re-visiting Lipsky", *International Journal of Public Sector Management,* Vol. 19, No. 7, 2006, p. 639.
[131] Taylor & Kelly, 2006, p. 640.
[132] Silbey, Susan, "After legal consciousness", *Annual Review of Law and Social Science,* Vol. 1, 2005, p. 323.
[133] Ewick, Patricia, & Silbey, Susan S., *The Common Place of Law: Stories from Everyday Life,* The University of Chicago Press, London, 1998, p. xi.
[134] Sarat, Austin, & Kearns, Thomas R., *Law in everyday life*, (1st edition), University of Michigan Press, Ann Arbor, 1995, p. 22.

According to Merry, law and society are mutually defining and inseparable, both being involved in the constitution of each other. This means that popular legal consciousness reshapes law itself, as users are constantly hearing stories about what the law is and what it can and cannot do.[135]

3.3.1 Interpretative schemas

Ewick and Silbey pay particular attention to the so-called commonplace experiences and images of law, which can vary quite a bit and sometimes be contradictory. Legal consciousness should be understood as cultural practice and specifically as participation in construction of social relations. When a person interprets some event in terms of legal concepts or terminology legality is produced. By repeated invocation of the law, legality is able to shape social relations.[136] The ways in which legality is constructed and becomes a pattern by people in their social relationships can explained as interpretative schemas. In other words, through language, society and its organisation provide specific opportunities for possible thought and action. Schemas include cultural codes, vocabularies of motive, logics, hierarchies of value, and conventions, as well as binary oppositions."[137] Interpretative schemas should be understood as ongoing processes rather than sets of immutable constraints.[138]

Individual legal consciousness is dependent on collective understanding, but that does not mean that those meanings and interpretations are complete reproductions of an existing template. Legal consciousness is locally shaped and situated, and involves improvisation and invention as well as appropriation and replication.[139] Because people's legal actions and interpretations are situationally specific, an individual could, in the context of various interactions or events, express different forms of consciousness.[140] I will now move onto explaining the three interpretative schemas, or types of legal consciousness, that Ewick and Silbey found in their research.

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[135] Engle Merry, Sally, "Culture, Power, and the Discourse of Law", *New York Law School Law Review,* Vol. 37, 1992, p. 209-214.
[136] Ewick & Silbey, 1998, p. 45.
[137] Ewick & Silbey, 1998, p. 39.
[138] Ewick & Silbey, 1998, p. 41.
[139] Ewick & Silbey, 1998, p. 46.
[140] Ewick & Silbey, 1998, p. 53.

3.3.2 Before the Law

The first schema, or way of interpreting legality, is called "before the law". Here legality is envisioned and enacted as if it were a separate sphere from ordinary social life, yet authoritative and predictable. Legality is understood as relatively fixed, and not easily affected by individual action. It is often thought of as if being somewhere else, in a place not associated with everyday life. Law is defined as objective rather than subjective, being characterised for its impartiality.[141] When standing before the law all persons are understood as being treated the same, and impartiality is achieved through indifference to the particularities of biography or personality. The technical procedures and rules of law define the boundaries of legal agents' legitimate action and constrains legality, but they are also responsible for its capacity for impartiality and objectivity. Because rules instruct and constrain legal actors, they limit possibilities for discretion and personal preferences. It also creates a division of labour and authority that enables action without it being reducible to any single actor.[142]

One of the clearest expressions of this form of consciousness is the 'reified' view of law, which refers to the tendency to give historically specific processes and behaviours a thinglike quality.[143] Confronting the organised features of law, people tend to abstract and reify legality so that what is partial becomes general, and what is historical and contingent is treated as permanent. From the perspective of before the law, the human social production of legality and its everyday presence is erased, so that the formal institutional apparatus of law becomes synonymous with legality. By reifying the legality, social action is divested of human agency, and law becomes a thing with its own power.[144] Rules and regulations seem to produce effect on their own, and legal decision-makers have little choice in interpreting or acting on matters before them.[145]

3.3.3 With the Law

The second form of legal consciousness is called "with the law", and is associated with a view of law as game that can be played. Law is a bounded arena in which pre-existing rules are deployed and new rules invented to serve a wide range of interests and values. Perceiving law as a game to be played means that competitive tactical manoeuvring in the pursuit of self-interest is to be expected. There is much less concern with legitimacy in this form of

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[141] Ewick & Silbey, 1998, p. 47.
[142] Ewick & Silbey, 1998, p. 76.
[143] Ewick & Silbey, 1998, p. 78.
[144] Ewick & Silbey, 1998, p. 82.
[145] Ewick & Silbey, 1998, p. 86.

consciousness, instead what it is important is the effectiveness of legal procedures in achieving desired aims. Being with the law implies finding yourself in competitive struggles, where the question is not about law's inherent power, but rather about the power of self or others successfully deploying and engaging with the law.[146] Whereas a reified view of law understands substantive guidelines as limiting human action, the gamelike view of legality interprets rules as creating spaces and loopholes within which action can occur and advantage be taken.[147]

Although, this does not mean that the availability and possible uses are thought to be unlimited.[148] The rules that define the game offers a normative space within which one can pursue their interests, and also constrain the pursuit within certain limits, do not neatly correspond to the rules and norms that operate elsewhere in social life. This is what Ewick and Silbey mean by a bracketing of the everyday world, creating a suspension of rules that operate in and define the everyday somewhere else.[149] The roles, relationships, rules, and expectations that might operate in the real world are suspended during the game.[150] As a consequence, people often refer to multiple realities and characterization for the same event or person.[151]

3.3.4 Against the Law

The third and final form of legal consciousness that Ewick and Silbey present is called "against the law". Characteristic of this perception of legality is that people express a sense of being up against the law.[152] Legal actors, such as bureaucrats, public officials, police, and judges, are seen as exercising their arbitrary power with a lack of empathy or sympathy for the individual. In contrast to the reified view of law, where justice is supposed to be blind to particularities of biography, personality or circumstance, in this view of law people reject this ideal as ensuring any kind of justice. Law fails to acknowledge or take their situations into account, meaning it subverts rather than achieves justice.[153]

3.3.5 Hegemonic legality

As I mentioned earlier, people can express more than one of these schemas at the same time, and it is precisely this coexistence of multiple and contradictory perceptions of law that

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[146] Ewick & Silbey, 1998, p. 48.
[147] Ewick & Silbey, 1998, p. 146.
[148] Ewick & Silbey, 1998, p. 131.
[149] Ewick & Silbey, 1998, p. 140.
[150] Ewick & Silbey, 1998, p. 137.
[151] Ewick & Silbey, 1998, p. 160.
[152] Ewick & Silbey, 1998, p. 49.
[153] Ewick & Silbey, 1998, p. 190.

constitute it as hegemonic. The two that function together most commonly is "before the law" and "with the law", meaning that the law can be both a reified transcendent realm and a game to be played. These two safeguard each other from challenge, if for example legality is criticised for being only a game, then invoking legality's transcendent reified character would nullify that critique. In the same way, if law is dismissed for being irrelevant to daily life, invoking its gamelike purposes provides an answer. Hence, these forms of consciousness, and the opposition between them, make it so that legality becomes an uncontested and unrecognized power that sustains everyday life.[154] In other words, the cynicism and pessimism expressed in a view of law as a game level our aspirations and set realistic expectations, while the majestic removal of law from everyday life inspires allegiance.

The consciousness of "against the law" can be considered a counterhegemonic account of legality. Stories from the perspective of "against the law" acknowledges and exposes legality's contradictions, and exploits the openings in the institutional and discursive framework to forge moments of resistance from legality's power.[155]

3.3.6 Legal consciousness as an approach

How to go about applying legal consciousness as a theoretical framework and as a research approach needs to be addressed. Most obviously, the researcher should describe forms of legal consciousness that people express, using words and accounts of the interviewees as illustrations.[156] Ewick and Silbey explain that it is important to shape the interviews so as to not lead the interviews toward conventional definitions of law and legality. This can be difficult, since questions need to be asked that illicit a relevant response that have at least some connection to legality, but asking questions with direct references to the law and legal issues can get in the way of the respondents' own understandings and definitions of these concepts.[157]

Nielsen emphasizes the importance of contextualizing the legal consciousness, because it might change according to the area of social life about which the research asks, with reference to the social location of the subject, and the subject's knowledge about the law and legal norms.[158] Nielsen mentions that focusing on an individual does not rule out the collective effects that socialization and social characteristics exercise over legal consciousness, raising the

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[154] Ewick & Silbey, 1998, p. 231.
[155] Ewick & Silbey, 1998, p. 31.
[156] Ewick & Silbey, 1998, p. 29.
[157] Ewick & Silbey, 1998, p. 24.
[158] Nielsen, Laura Beth, "Situating Legal Consciousness: Experiences and Attitudes or Ordinary Citizens about Law and Street Harassment", *Law and Society Review,* Vol. 34, No. 4, 2000, p. 1061.

possibility that individuals with similar social characteristics and experiences could have many similarities in legal consciousness.[159]

3.3.7 Critical perspectives on legal consciousness

The legal consciousness of people as citizens, as people who "receives" law, has been studied by many and was the focus of Ewick and Silbey's research. Richards suggests that much less attention has been given to the legal consciousness of people who work with the law.[160] Similarly, Marshall and Barclay's critique Ewick and Silbey's study for focusing on such a wide variety of people's problems and social locations, which does not allow for analysis of organisational and institutional contexts that can influence the meaning of legality.[161] Interestingly, Silbey offered a similar suggestion in a self-critical essay in which the relevancy of legal consciousness as an approach was discussed. According to Silbey, the best way for the field of legal consciousness to move forward would be to look at the middle level between citizen and the transcendent rule of law, which would be institutions. It is within institutions that law continuously promises and fails to live up to its promises, and it is the place where legal consciousness is most explicitly constructed.[162] The focus on the social services in this study can be understood as following these suggestions and trying to explore legal consciousness in an institutional setting, specifically the street-level bureaucratic setting that has its own interesting characteristics.

Besides Silbey own critique, there are critical perspectives that suggest another approach to legal consciousness studies. Going in the opposite direction as Silbey, Hertogh argues for a non-critical approach. According to Hertogh, the critical project is flawed since it does not provide adequate empirical support for the 'unrelenting faith' that people supposedly have in law, thus presuming rather than problematizing the salience of law. Before looking at how law dominates everyday life, we need to see if law dominates everyday life. Another suggested flaw is that critical legal consciousness studies equate 'law' with 'state law' in their analyses of law's hegemonic power, leaving various legal or quasi-legal phenomena with little significance.[163]

Ewick and Silbey's focus on three orientations toward law has also received some criticism. Marshall and Barclay claim that by centering the analysis on these orientations toward

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[159] Nielsen, 2000, p. 1087.
[160] Richards, 2015, p. 299.
[161] Marshall, Anna-Maria, & Barclay, Scott, "In Their Own Words: How Ordinary People Contruct the Legal World", *Law and Social Inquiry,* Symposium Introduction, 2003, p. 622.
[162] Silbey, 2005, p. 358.
[163] Hertogh, Marc, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life,* Palgrave Macmillan UK, London, 2018, p. 8-14.

law, Ewick and Silbey's emphasizes the importance of law at the expense of attention to other social norms and structures that shape meaning and behaviour.[164] Cowan, on the other hand, discusses how Ewick and Silbey's lack of separation between law and society can make it seem as though all forms of power and authority equals law, which means that legal consciousness is no longer meaningfully legal.[165]

3.4 Combination of the three perspectives

In this chapter, I have presented the three central theories that will be provide the tools and framework through which I will try to answer my research question. Mathiesen's perspective on weak legal pluralism provides the underlying assumption about what law is. Lipsky's theory gives explanations of conditions that street-level workers are subjected to, and in particular specifies an understanding of what street-level discretion is. Lipsky's definition of discretion is a guiding concept in this study, and will be a central part of the analysis. Lastly, Ewick and Silbey's theory of legal consciousness constitutes the main analytical tools to be utilised in the analysis. The perspective of legal consciousness will be combined with Lipsky's concept of discretion, to better be able to understand the decision-making role of social workers when it comes to social assistance eligibility and activation requirements.

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[164] Marshall & Barclay, 2003, p. 622.
[165] Cowan, Dave, "Legal Consciousness: Some Observations", *The Modern Law Review Limited,* Vol. 67, No. 6, 2004, p. 929.

4. Methodology

In this chapter, I will discuss the methodological choices that I have made and how I proceeded in collecting empirical data. The interviews were conducted with employees of three different social service offices in Malmö municipality, as street-level bureaucrats, to clarify their understanding of policy, relevant discourses and their own work.

4.1 Qualitative method

I have chosen to work with a qualitative approach, by doing so my focus will be on exploration and interpretation. In general, qualitative studies rely primarily on human perception and understanding, which is central to the theories of legal consciousness and street-level bureaucracy.[166] Qualitative research typically entails the intensive study of a small group, or of individuals sharing certain characteristics.[167] It tends to try to generate descriptions and situational interpretations of phenomena to enhance theoretical and practical comprehensions of it. This means that a researcher should try to explore a few situational experiences, being selected because of the activities and contexts provide an opportunity to understand an interesting part of how the thing works. It is less important that the study has a wide range than that the experiences explored can be said to bring insightful revelations.[168] Such an approach is therefore an appropriate research strategy for this particular study since street-level implementation of municipal activation policy is a complex situation that requires closer exploration. The study is not meant to be a representative sample of the perspectives of professional social workers in general, rather to understand the specific situation of the participants to be able to give more insight into a phenomenon such legal consciousness in street-level bureaucracies.

For a qualitative study, it is important to show the complexity of a situation, underlining that there are multiple factors playing a part. The context is very important for this approach, and it will very much guide the analysis. The behaviours, values and perceptions that are being examined should be understood in context, as the behaviour of members of a social group can only be understood in terms of the specific environment in which they operate.[169] However, I want to be clear that because of the limited size of this study and the time allotted to it, the

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[166] Stake, Robert E., *Qualitative research: studying how things work*, Guilford Press, New York, 2010, p. 11.
[167] Bryman, Alan, *Social Reserach Methods,* 5th ed., Oxford University Press, Oxford, 2016, p. 384.
[168] Stake, 2010, p. 57.
[169] Bryman, 2016, p. 395.

contextual information collected mainly comes from the interviews, and not from for example observations, statistical information or an extensive data collection from multiple sources in the policy hierarchy. In this study, the focus is on the organisation that is the social services in Malmö municipality. While the interviewees provide a lot of contextual information, they cannot be seen as representing adequate knowledge about the entirety of the organisation. I do not see this as much of an issue, however, as a qualitative study is sometimes carried out in a single location but the location itself is not part of the object of analysis, rather it simply acts as a background to the collection of data. Interpretation depends of good understanding of surrounding conditions, but the the focus is on the group of social workers and their activities.[170] Also, the theory of street-level bureaucracy presents an explanation of the specific environment that the members of the social group operates and derive their understandings from.[171] The theory provides enough consideration of the conditions of the environment that it can function as an explanation of the main characteristics of the context. Previous research also presents a lot of contextual information.[172]

4.2 Interpretative approach

Usually a qualitative approach involves a interpretivist paradigm for understanding the social world, and the various experiences and perspectives that individuals hold. An interpretive paradigm accepts the inherent subjectivity of our social world and is interested in studying the social relationships of individuals embedded in their social and cultural contexts. The approach to the interviews was based on the belief that there are multiple perceived and/or experienced social "realities" concerning what happened, rather than a singular "truth".[173] By explaining the processes by which people experience, explain and understand the world, we can discover the socially constructed lived realities of the subjects and gain knowledge of the world. The intention is to understand what a thing "is" by learning what it does, how particular people use it, in particular contexts.[174] Not only am I looking to gain knowledge on the experiences and understandings on legality and the role of law in individuals' lives, but also on the various ways that peoples' legal consciousness directs them.

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[170] Stake, 2010, p. 51.
[171] Bryman, 2016, p. 395.
[172] Bryman, 2016, p. 64.
[173] Swartz-Shea, Peregrine, & Yanow, Dvora, *Interpretive Research Design: Concepts and Processes,* Routledge, New York, 2012, p. 4.
[174] Swartz-Shea & Yanow, 2012, p. 23.

In an interpretative project, the character of evidence cannot be understood as objectively mirroring or measuring the world.[175] My interpretation as a researcher will unavoidably direct both the collection of data as well as the analysis. During the process, the researcher is selecting information considered as relevant, hence the data and the results of the study are dependent on the researcher's perception. The research question "tells" the researcher what the research-relevant data and their likely sources are.[176] The interpretivist approach encourages transparent reflection upon positionality during the research process. This requires self-criticism regarding my understanding and interpretation of the data. I must recognize my own subjectivity by reporting about the findings as transparently as possible and by being critical to my own interpretation and bias.[177]

4.3 Semi-structured interviews

Nielsen argues that only through in-depth interviewing can we access the legal consciousness of subjects.[178] This is the method that I find most suitable for capturing individuals' legal consciousness and its relation to the broader societal structures. During the interviews the individuals are asked to explain lived experiences, which are then analysed by using thematic analysis. Qualitative interviews as the method for data collection are useful for researching attitudes and perspectives, as well as experiences and details about a phenomenon.

The interviews were conducted in a semi-structured form, meaning with a prepared set of questions and topics that should be covered during the conversation, but could be strayed from when necessary and appropriate to keep the conversation flowing and to give participants room to speak more about what interests them. Conducted conversationally with one respondent at a time, the semi-structured interview uses a blend of closed- and open-ended questions, often accompanied by follow-up why or how questions. The dialogue can roam around the topics on the agenda, rather than adhering completely to a set of standardized questions. This leaves the opportunity for unforeseen issues to be brought up, while at the same time keeping the conversation close to the main themes. Usually about one hour is considered a reasonable maximum length for semi-structured interviews, in order to minimize fatigue for both interviewer and respondent, which was the approximate length of the interviews for this

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[175] Swartz-Shea & Yanow, 2012, p. 80.
[176] Swartz-Shea & Yanow, 2012, p. 79.
[177] Swartz-Shea & Yanow, 2012, p. 79-81.
[178] Nielsen, 2000, p. 1061.

study.[179] Semi-structured interviews are particularly useful as they give the opportunity to adapt and adjust during the interviews depending on the participant and the conversations direction.[180]

When drafting the interview guide, careful attention was given to questions that may evoke pressure to give socially acceptable answers. I tried to look for ways to remove any stigma that might be attached to certain answers, and emphasized from the beginning of the interview that the answers are not intended to be judged afterwards and that I was not looking to identify "wrong-doings".[181] Still, there is always a risk of participants feeling obliged to provide an answer that is perceived as "correct", not willing to stand out from the consensus at work and disturb the definition of the situation that the organisation is trying to uphold. It is also important to bring attention to the fact that while I might be looking for them to explain their experiences with for example decision-making, the responses may say more about how the participants justify their their decisions rather what impelled them.[182] However, that may not be much of an issue when their justification could give quite an insight into their legal consciousness.[183]

The questions that I asked were related to their role in the decision-making and implementation processes and how the interviewees had experienced the past events. I also asked about the situation interviewees had encountered when dealing with the law, and how they dealt with or have overcome these situations and challenges. The specific themes of the interview guide were: background, organisational culture, implementation of activation measures, decision-making and client interaction.

4.4 Sampling of informants

The informants are a relatively small group, consisting of seven social workers from three different social service offices in Malmö municipality. The sampling principles that steered this study were not based on the idea of representativeness, but on the notion that samples should be selected on the basis of their appropriateness to the purposes of the study.[184] The main criteria for the participants was that they worked in one of the social service offices in Malmö municipality as a social work official dealing specifically with economic assistance. In other

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[179] Adams, William., "Conducting semi-structured interviews", in Newcomer, Kathrin, Hatry, Harry, and Wholey, Joseph (eds.), *Handbook of Practical Program Evaluation,* 4th ed., Jossey-Bass, A Wiley Imprint, 2015, p. 493.
[180] Bryman, 2016, p. 467.
[181] Adams, 2015, p. 497.
[182] Brodkin, 2008, p. 329.
[183] Bryman, 2016, p. 35.
[184] Bryman, 2016, p. 10.

words, that they were a sample of the street-level bureaucrats that this study focuses on. According to Lipksy, street-level bureaucrats are the frontline workers or policy implementers in government agencies such as the social service. Lipsky presents two main characteristics to identify street-level bureaucrats: they have regular and direct interactions with citizens or the recipients of government services, and they have the power to exercise a degree of discretion over the services, benefits and sanctions received by those recipients.[185] The social work officials that participated in this study can be considered street-level bureaucrats because they have regular meetings with citizens seeking government benefits, and in their work they continuously interpret the relevant policies and exercise discretion in the decision-making process. Social workers are have previously been identified by researchers as typical street-level bureaucrats, and are mentioned as an example by Lipsky at multiple points.[186]

The reason why I did not conduct any interviews with claimants or managers is mainly because it was not part of the aim of the study, in which the street-level bureaucrat and their relation to policies are at the centre. It could be argued that the recipients' and managers' perspectives should have been included, so as to understand the interactions more accurately. However, my aim is focus on street-level bureaucrats, and while these groups could give important insights about street-level work, the size of the study required that the scope be limited to the most central group of possible participants.

4.5 Procedure and ethical considerations

The first step I took in finding participants was to call the receptions at the five different social service offices in Malmö, and asked if they had a contact that I could reach out to that could help me find possible participants for the study. I was recommended to call or email the heads of the economic sections at the social service offices, and given their contact information. Three of them answered my email or call, and I proceeded to explain the purpose of the study and that I was looking for participants that were social work officials dealing specifically with economic assistance. They all agreed to help by either forwarding my initial email explaining the study to the social work officials at their respective sections, or by including the email in their weekly office letter. After this initial contact, I proceeded to be contacted individually by social work officials at the three different offices that I managed to contact. When initiating contact with

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[185] Lipsky, 2010, p. 27.
[186] Lipsky, 2010, p. xi; Berkel, van & van der AA, 2012, p. 493; Taylor & Kelly, 2006, p. 630; Tabin & Perriard, 2016, p. 444.

informants I made sure to inform them of the intentions behind the study, the aims for the interviews, and what could be expected from them. The decision as to where and when the interviews were to be conducted was in large part left up to the participants to decide according to their preferences. Six of the interviews were held at the informants' workplace and during their working hours, in meeting-rooms that the informants' had booked before the interview. The interviews were therefore conducted in what can be considered a formal setting, and the interviewees' professional role was present. The seventh interview was conducted through a phone call while we both were in our own homes, due to the preference of the informant.

At the beginning of the interviews, the purpose of the interviews was briefly repeated to ensure that we were on the same page, which I followed up by asking for ensurance that I had their consent for participation in the study. They were all informed that participation was voluntary. A description of how the data collected from the interviews would be handled was provided, mainly pointing out that personal information would be confidential and presented with fictive names. However, it is important to note that some of the participants were from the same office, and all of them work for the same organisation, which creates a risk that they could talk to each other and find out about the participation in the study. Whether or not this will present itself to be an issue is difficult to know beforehand, but as the study is not of an evaluative nature or focuses on very sensitive topics, my hope is that it will not have any consequences for the participants. All the participants agreed to let me record the interview. Recording the interviews allowed me to be more actively engaged in the conversation as well as consider the next question instead of having to concentrate on writing down answers.[187] Put simply, the interviews consisted of me asking quite open question, that the interviewees could interpret and answer according to their own interpretation, and in general they all tended to answer the questions very thoroughly, not needing me to coax them into giving more extensive answers. I will discuss the results interviews more in the beginning of the analysis.

4.6 Data processing

The analysis is conducted using a thematic analysis, which means that the data is analysed by extracting core themes that could be distinguished both between and within the transcripts. One of the main elements of the identification of themes is through coding each transcript. With the analysis of qualitative data, coding is a process whereby the data are broken down into their component parts and those parts are then given labels. The different codes either have potential

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[187] Adams, 2015, p. 500.

theoretical significance and/or appear to be particularly salient within the social worlds of those being studied. By searching for recurrences of those sequences of coded text within and across transcripts and also for links between different codes, you can start to easier make sense of the data. This is a process in which the data is being managed, the transcripts are being made more accessible, and the researcher is making sense of the data so that it can then be interpreted. By interpretation I mean the attempt to link the process of making sense of the data with the research questions, as well as with the literature and the theoretical perspective intended to illuminate the issue.[188] Codes serve as shorthand devices to label, separate, compile, and organise data. In qualitative data analysis the codes tend to have the potential for revision and fluidity during the process. The data are treated as potential indicators of concepts, and the indicators are constantly compared to see which concepts they best fit with.[189] The thematic analysis is more or less done simultaneously with the coding. The themes and subthemes are essentially recurring motifs in the text that are then linked to the data.[190]

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[188] Bryman, 2016, p. 10.
[189] Bryman, 2016, p. 573.
[190] Bryman, 2016, p. 585.

5. Results and Analysis

In this chapter I will present the results from the thematic analysis, and simultaneously analyse and discuss the themes in relation to the theoretical framework of legal consciousness and street-level bureaucracy, as well as previous research. The main purpose of the analysis will be to use the theory of legal consciousness as tool to better understand street-level discretion. The presentation of the result is based on excerpts and quotations from interviews, and they are presented with as much authenticity as possible but I have translated them from Swedish to English. I have avoided changing the wording, except for a few occasions where other English phrases more accurately presented what I interpreted as the respondent's intention. Otherwise, the excerpts presented in this chapter are taken directly from the transcripts. As the respondent's often gave very lengthy answers, and sometimes went further away from the topic, I have decided to omit and shorten some parts of their answers at times, to highlight the main point and what I considered more relevant to the analysis. Even so, I have not removed anything that changes and misrepresents the character of the excerpts. The excerpts that are presented in the analysis are of course affected by my own interpretation of what is relevant, as well as to some extent theoretically biased as the research design was decided before the interviews.

I approached the finding of themes by identifying meaningful segments of texts, considering what the meaning of said segment was, and then gave it code. These codes were then combined into subthemes, and lastly three main themes, which were practical work conditions, discretion and interpretation of the law. The identification and segmenting of themes and subthemes were driven by a combination of both the data and the theoretical concepts of the study. Some subthemes were included because they were expressed to a particular extent during the interviews, while others were identified relying on the concepts that would structure the analysis.

I will shortly present the respondents using fictitious names to keep them unidentifiable:

Fictive name:	Age:	Work experience:	Academic background:
Johanna	31	4 years at the economic section in Malmö (works specifically with young adults)	Bachelor programme in social work
Eva	26	3 years at the economic section in Malmö	Bachelor programme in social work
Agnes	32	4 years at the economic section in Malmö (worked in a smaller municipality previously)	Bachelor programme in social work

Hanna	25	1 year at the economic section in Malmö	Bachelor programme in social work
Sofia	31	1 ½ years at the economic section in Malmö (worked within substance/alcohol abuse and psychiatry previously)	Bachelor programme in social work
Martina	28	4 years at the economic section in Malmö (works specifically with young adults)	Bachelor programme in social work
Amina	25	2 years at the economic section in Malmö	Bachelor and master programme in social work

The informants have similar characteristics, all under 35 years old, same gender[191], and have very similar working and academic experience. This homogeneity among the informants was not intentional, but might not be considered a complete coincidence either. A few of the respondents gave some indications as to why these characteristics may be quite common at the economic section of the social service. They mentioned that there were high levels of staff turnovers, about 25-30 percent each year, and that this leads to there being a lot of new and young employees that have little previous experience. Economic assistance was said to have the reputation of being a "stepping off point" towards a more desirable job within social work. The reasons behind their similar academic experience is that it is more or less a requirement to have a social work education to work as a social work official at this level, and as many go straight into this job after their graduation and are quite young, they have rarely studied something else additionally, such as law. These similarities among the informants can of course contribute to the apparent similarity that I found among their answers.

5.1 Practical work conditions

The first theme that I will be presenting and analysing is the interviewees' work conditions as social work officials at three different social service offices in Malmö municipality. This theme can be seen as more of a background to the two other themes, hence I will be more concise in this section than the others and mainly summaries the key aspects brought up by the respondents.

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[191] As I did not directly ask the informants what gender they identified with, so I want to be clear that the claim of them being of the same gender is based on assumptions about normative gender expression, in particular in connection to their names. The reason why I mention gender at all, is because it can be interesting to know when trying to understand the results.

The social service in Malmö is divided into different sections handling specific responsibilities, such as economic assistance, child protection and family welfare, substinance abuse, and so on. The respondents that I interviewed all worked at the so-called economic section, where they as social work officials process applications for social assistance, meet clients, decide on eligibility for assistance and the necessary activation measures, according to the legal and organisational rules. All of the respondents gave similar retellings of what their workdays look like and what main assignments they handle each month. Applications for social assistance are handled monthly. Most significantly it includes investigations and administrative work, as well as client meetings and follow-ups of client activation plans. The respondent all explained that one of their central tasks is to work with clients by creating and keeping up with a plan towards activation they both have agreed upon. The client is supposed to follow this plan to the best of their abilities, and a part of the social work official's job is keep track of the client's progress and try motivate compliance. This entails continuously checking to see if the clients are keeping up with their plans, by for example scheduling a meeting with the client to talk about the situation or contacting the relevant agencies to see if the client has been participating in the decided upon measures. Since the social service does not supply any such actication measures themselves, they have to rely on organisations such as the Public Employment and the Labour Market Department (Arbetsmarknadsavdelningen)[192] for these.

5.2 Discretion and special assessments

The second theme is about the discretion that social workers perceived themselves as having (or not having) when assessing eligibility for social assistance. This was a recurring theme, being directly and indirectly discussed during the entirety of the interviews.

All of the respondents saw themselves as having rather wide discretion when it came to making decisions about clients, only being hampered at times by either management incentives or the law. The respondents all acknowledged that they have the possibility of adapting the policies and the law to the individual case, and most importantly to very special cases where the situation is complicated. Some of them referred to these special cases as exceptions, and examples would be people who have been sick for a long time, have an active addiction or mental illness, people in retirement, and similar situations. These can be considered exceptions because they are seen as very strong reasons why someone should not be required to participate

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[192] Arbetsmarknadsavdelningen (AMA) is a municipal organisation that is part of the same administration as the social service.

in activation measures. It seemed, however, that the social work officials could adapt the requirements for other clients as well, if they found it appropriate.

> Amina: The activation policies come in of course, but we can choose when it should come in with a high threshold or when we can adapt the threshold to the clients.

> Martina: We always have to have a legal basis for why we do what we do. But as the Social Services Act is a framework law, it opens up for a certain discretion or that we interpret things to fit. (…) We are allowed to make decisions based on how the situation actually looks. We don't circumvent anything, we still justify it, but it can look different for different people. With that said, would person A be in the same situation as person B, then of course they would get the same decision.

> Eva: We have quite wide discretion, because we are the ones that know the client, it's not our bosses that do. And as long as we keep to the law, it's still the Social Services Act, then I have pretty much. I mean, our expertise is here to be able to make special assessments… and that you can sometimes, if you want to be crass, completely "screw" the law because because there's a special reason…and that you are secure in it as well.

It is rather clear that the respondents are expressing a gamelike legality here. They perceive legality as an arena of context, providing possibilities for action. As many of them state, however, these perceived uses that legality provide are not understood as infinite. There are multiple constrains that operate on the use of law, and that there are rules of the game that stipulate how law can be invoked.[193] Martina referring to not circumventing anything and justifying the decision with the rules, implies that law provided boundaries, but as long as you stayed within these boundaries, you could play the game to best of your ability. Eva even speaks about ignoring the law, but continues the same sentence with a clear indication that the decision had to be secured with a fitting justification to fit the legal rules. This talk about justification was one of the most obvious subthemes from the interviews.

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[193] Ewick & Silbey, 1998, p. 131.

Martina: I think people are good at finding openings to use the freedom that they themselves want to use through the discretion and the fact that it's a framework law. We talk a lot about it actually, that we can in principal make any decision, as long is we have a basis for it, since the law is so broad. But of course there is a line as well, somethings are just completely impossible to justify.

Agnes: Technically, with a good enough justification, I can grant exactly anything in the whole world, but there should be very special reasons for it. But there can be.

This supports Tabin and Perriard's findings that many social workers tend to adapt activation requirements to the professional values of social work, using their discretion to delay activation when it is judged to be needed.[194] When respondents refer to being able to find openings and presenting acceptable reasons to pass applications, it indicates that, similarly to what Maynard-Moody and Musheno presents, rather than simply using rules and procedures to guide their judgements, social workers make assessments about the clients first and then turn to the rules to rationalize their decisions.[195] There can even be sense of pride in finding a good enough argument for granting a clients application, especially when there is an accompanying belief that it is to help a deserving client. So when social work officials make decisions, it involves a certain amount of practical knowledge and improvisation.

There are some signs of the respondents expressing a gamelike form of legal consciousness when discussing these skilful argumentations and manipulation of rules. In the schema of "with the law", the skill of actors in deploying their knowledge and experience is seen as the crucial factor in the legal game. In a gamelike legality, playing by the rules and playing with the rules is both accepted.[196] But playing with the rules has its limits, and the same goes for the pursuit of interest in a gamelike legality. Neither of these are unregulated, even if they may be recognised as part of law's function. Transgressing boundaries of the rules of the law-game is seen as a violation.[197]

The fact that it is possible for the social work officials to make special assessments to this extent speaks to the high degrees of discretion that they have. These special assessments in cases that can be considered exceptions to the norm is an essential part of the street-level

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[194] Tabin & Perriard, 2016, p. 445.
[195] Maynard-Moody & Musheno, 2000, p. 347.
[196] Ewick & Silbey, 1998, p. 150.
[197] Ewick & Silbey, 1998, p. 144.

experience. They work in situations that often require responses to the human dimensions of situations and the accepted definitions of their tasks call for sensitive observation and judgement. So the situations that respondents hinted at represents their search for a balance between compassion and flexibility on the one hand, and impartiality and rigid rule-application on the other hand.[198]

5.3 Interpreting the law

Under this theme I will discuss informants' perceptions on the law and legality when they interpret the law. Trying to define the legal consciousness of the social work officials will mean looking at how they use and think about law, and to what degree they understand their lives, in this case their worklife, through legal concepts and processes.[199]

5.3.1 Judging the right to social assistance

The question of interpreting the law and making 'legal' decisions was more or less present throughout the interviews, either through responses to direct questions or in connection to more distant and general questions. For example, when asked what the organisational and professional goal was, multiple respondents expressed the goal as judging the right to economic assistance. This goal was often expressed in combination with a reference of self-sufficiency, and more importantly not very obvious references to the legal requirements for the right to social assistance.

> Martina: Well, our main goal is actually to help as many people as possible reach self-sufficiency. But also that is should be the right assistance to the right person at the right time, we usually say. Because we look at the need here and now, and we have to see if the person in question has a right to, that there is no other way that the person can meet their own need, and we also have to look at if the person is doing what they themselves can to try to cope without our help and become self-sufficient.

Here, the respondent is using multiple of the terms used in the Social Services Act (chapter 4 article 1), which concerns the right to economic assistance. The respondent is actually spelling

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[198] Lipsky, 2010, p. 15.
[199] Ewick & Silbey, 1998, p. xi.

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out the conditions of the right to assistance, making clear that judging if potential and current clients meet these conditions is their main goal. Multiple respondents made a direct reference to the right to social assistance found in the Social Services Act. After which they specified the definition and explained how this more overarching and general article was broken down into guidelines by the politicians in the municipality and legal advisers.

Similarly, another respondent listed many of the laws and guidelines that are relevant to their work with social assistance, mentioning the Social Service Act, the Administrative Procedure Act, and the Marriage Code by name. The guidelines were seen as having been broken down from the Social Service Act, giving more clear directives. All these rules were expressed as things they could look at to be able to accomplish their work, and actually very necessary for them do their job. While hinting at the same perspective, the one respondent expressed the presence of law when performing their work assignments as something so palpable that it stopped drawing attention:

> Eva: I don't think about it, I just do my job and I know what requirement and what rules we base our work on, because it is always so palpable. (…) So I don't really think about that I am using my guidelines, it is like a part of my everyday and my work. But when things that are new to me pop up, it is then that I use the handbook for help or look at the guidelines to see what it says… So we have help to be able to execute our daily work, but I don't think about it so specifically, about how the guidelines look, I just do what I do and know what applies.

This way of 'actively' using the law mainly when there is something uncertain about the situation was also mentioned by other respondents. Many of the uncertainties in the work derived questions about what would be appropriate legally in response to more unusual client circumstances.

> Hanna: First and foremost, it's the legal, because it's where we have to stay, it is bureaucratic work that we do in the first hand. You come across very strange cases… Recently, we had a client that completely lacked any ID documents and had never had any… he just wasn't in the system. And we had never come across

that before. How do you go about it then? So we have gotten help from our 'first'[200] and our boss, and they have had to call around a bit and ask how we should proceed.

If understood in terms of the 'with the law' schema, this can be understood as viewing legality as a game where the process matters much less than the outcome.[201] In other words, the law is only actively engaged when its effect is uncertain.[202] Interpreted in this way, the above respondents expressed that law is mainly actively engaged when there is a need to resolve an uncertainty. It is also important to keep in mind what Maynard-Moody and Musheno said about respondents mainly telling stories about conflicting situations as the norm does present itself worthy of telling. This means they are more likely to speak about the law, and remember having thought about the law, when there was something unusual about the situation. The routine use of the law is left untold, at least to some extent.[203]

When asked questions more directly about the law, respondents were clear about how they had to follow the law and policy guidelines. They expressed how they could not step out of the legal framework to make decisions. In response to a question about client appeals, one respondent explained that their goal as social work officials is to make sure the client understands why they have received the decision they have.

> Martina: It always, in some way, feels good when the person understand why they cannot get the money. There are a lot of clients who actually plead to you as if we were more of a charity, and in some way I can understand that, because we exist to help the ones who have the need. We can see that the person does not have money, they have a need to receive money for this, but at the same time the person has not contributed themselves to trying to solve their situation or the person has not planned their economy based on how they should have done (…) And yes, to make the person understand that we can't just give out money because we want to help you, we have these rules as well, based on the laws.

The respondent emphasizes how ensuring understanding from the client will help and at least make the social work official feel reassured that they have done what they can to explain the

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[200] Reference to a type of local manager called the "first social work official".
[201] Ewick & Silbey, 1998, p. 148.
[202] Ewick & Silbey, 1998, p. 147.
[203] Maynard-Moody & Musheno, 2000, p. 349.

limitations that are put on them as decision-makers. The limitations are expressed as frames that a social worker cannot bypass even if they might wish to because of their desire to help. Whether or not the social work official wants to help the client is not deemed as relevant, because there are rules they have to abide by. Sometimes, the rules take precedent over the inclination to help a person in need.

In the reified law, people locate legality in rules and regulations. The rules are perceived as producing effect independent of human action, making it so that legal decision-makers have little choice in interpreting or acting upon matters before them. According to Ewick and Silbey, usually respondents construct a reified law by ignoring discretion, and by expressing a relative absence of will.[204] Another respondent expressed a similar view:

> Johanna: I think it is the most tough when you yourself feel inadequate, or that I feel that I have given the person what I can within the frames that I can help, but the person is still dejected … or when you feel that you would have wanted to do more but it does not exist, that is, I can't give more support than this…in such situations you can feel rather powerless.

In the schema of 'before the law', people have a certain loyalty and acceptance of legal constructions, believing they are appropriate and just because of law's distinctiveness from ordinary social life and individual interests. This does not mean, however, that the outcomes are always seen as fair.[205] Perceived as independent of human action, desire, or interest, the law is depicted as impartial.[206] When viewed this way, legality also defines the boundaries of legal agents' legitimate actions. As expressed by the above respondents, their discretion is limited to what is considered possible within the legal framework.

Street-level bureaucracies also gain legitimacy through commitments to standards of fairness and equity, which are seen as stemming from their commitments to the impartiality associated with reliance on law. But street-level bureaucrats are constantly confronted with the apparent unfairness of treating people alike at times. Bureaucratically and legally relevant characteristics can seem insufficient sometimes, missing many individual and situational aspects that could be seen as necessary to actually make a fair judgement.[207]

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[204] Ewick & Silbey, 1998, p. 88.
[205] Ewick & Silbey, 1998, p. 47.
[206] Ewick & Silbey, 1998, p. 76.
[207] Lipsky, 2010, p. 22.

5.3.2 Framework law

Another subtheme that I identified was the emphasis on the Social Service Act being a framework law. All the respondents mentioned it at some point during the interview, usually in combination with an explanation that this meant they had a lot of discretion in making decisions. In various ways multiple respondents underlined that the fact since it was a framework law, it did not "say much", which is why accompanying guidelines were necessary. For example:

> Agnes: … the framework is the Social Service Act, but it is just a framework law, so it doesn't say much in it. (…) So it does not give me that much. But it does not take away anything either. It is rather when it comes down to guidelines, more on that level.

> Hanna: It is 4.1 in SoL that we use all the time when we write up our decisions. So it is granted according to to 4.1 or rejected according to 4.1. But in reality it does not say very much. (…) So we don't actually have that much help from the Social Service Act, except that we make references to it, that it is there that we get the legal article from.

So the respondents felt that the Social Service Act in itself was not very useful except for the fact that they had to make a reference to it when making decisions. When actually making decision, however, the framework law did not give them guidance, hence the focus on the handbook and guidelines put forward "further down the line." Like Sainsbury argued, a framework law creates a kind of 'embedded discretion', only alluding to broad directives and using vague phrases that inevitably will entail wide discretion.[208] Organisational guidelines function as restricting this discretion to some extent, but even these are just "guidelines". Multiple respondents also went further and expressed how they felt about the fact that it is a framework law.

> Sofia: It is framework laws, which actually make it so that it is up to the observer, because it is more "you should", but "should" for me is one thing and "should" for

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[208] Sainsbury, 2008, p. 328.

you is another. But we have the city's legal advisers that come in and interpret the laws and create guidelines. Sometimes it works great, sometimes it does not work at all. Then there is still a lot of room for me to do my job in the way that I want to, if I notice that my clients need it, and I dare stand for it.

Martina: I think it is very fitting. There are more detailed guidelines, like Malmö city has their own guidelines…or there are previous judgements, like precedent that we use as a base… That creates more security about how we should proceed, because you can of course feel lost when we have a framework law to start from. (…) So it is necessary to have guidance documents, guidelines, previous judgements, and information on how we should interpret the law as well.

When rules do not give street-level workers clear instructions as to how to proceed in a situation, they draw on criteria that lie outside the rules. It is not too far a leap to suggest that some of these other criteria most likely have a connection to the professional identity. The fact that the main law that should be governing the work of social work officials is a framework law opens up for the possibility that legality does not claim any overwhelming power over the decision-making process.[209] Organisational factors, professional values, or client relationships may lead the decisions of street-level workers more than the law. In the first quote, the question of feeling secure in how you should proceed is mentioned. This was a pattern among a few respondent, each explaining the reliance on the law and more importantly guidelines to feel secure when making decision.

5.3.3 Rejections and sanctions

Another very central subtheme during the interviews was about how respondents made decision about rejections and how they handled this situation with clients. First, I think it is important to address how common rejections were according to respondents. There were mixed responses, but most said that rejections are very common when it comes to the first application that a client or potential client makes, expressing that a majority get rejected at the first try. However, when it came to the ongoing application, the ones that are handed in by a client that have been brought into the system and applies every month, the number of rejections were much less significant. With ongoing clients, most applications were granted every month. This difference was

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[209] Ewick & Silbey, 1998, p. 22.

explained by many of the respondents as not that odd. The main reason being that the caseloads were divided between the workers in the office, where the social work officials that I spoke to handled almost exclusively ongoing applications, while a number of other workers handled specifically the initial application. This last section of employees was referred to as the receiving section. The social work officials that I spoke to explained that they at least have to handle a few initial applications every month, but these are clients that have been deemed by the receiving section as potential ongoing applications.

Mostly, however, when discussing rejections, the respondents were referring to ongoing application. These type of rejections can be understood as what has been explained in previous research as sanctions. Respondents gave many indications rejections as being a difficult part of the job, and therefore explained some of their strategies to handle this to the best of their ability.

> Agnes: I always try to be very clear before I make a decision that effects the negatively, with what is required…so that it is your decision if you want to do this or you don't, but then you understand the consequence is that you don't have a right to social assistance.

Being clear with the client and making sure they understand what the line is seems to be one of the most common strategies of the social work officials before giving rejections. It is in a way preventative, in that it functions as both a warning, as well as makes sure that there are no misunderstanding or miscommunications about what is expected from the client. Another aspect that some respondents brought up is that rejections can functions as a tool to ensure that clients 'behave' or disturb their "sense of security" in the system.

> Agnes: Unfortunately, it becomes sort of a security for some to have social assistance… So they get a bit dependent on it or lulled into a false sense of security. So sometimes it can be very difficult to give a rejection, and sometimes it can be very easy. When you just feel that no, this is not right. It can also have effect, that things start to happen when people get a rejection, especially the ones that have had social assistance for a longer period of time. It can be sort of like an awakening, like it is not a given that I have this support.

> Eva: Sometimes you have to put your foot down and show that this is not unconditional money that you receive from us, there are conditions as well. So to

make people reflect. Usually it is enough with one rejection, and then they behave. But sometimes you are the "bad guy".

The idea of dependency was brought up by these respondents as a justification of the use of sanctions. The assumption that longer periods of social assistance recipiency leads to passivity is common, especially since the shift in the social policy orientation in the last few decades.[210] As Agnes says, people grow accustomed to receiving benefits as well as the accompanying stigma. The respondents seem to suggest that they use sanctions mainly in a complementary manner to activation to ensure participation. There is not really anything to suggest that they use sanctions as a way to eject clients from the system, and not caring what happens to them afterwards.[211]

One of the most interesting conclusions that can be drawn from the respondent's discussion about rejections and sanctions, is that the support it gives to Thorén's previous findings about street-level work in the Swedish social service. Thorén found that the activation requirement itself was used to discourage potential clients to apply for social assistance by introducing obligations already at the initial application stage. A person had to prove their willingness to work when applying for social assistance to be considered eligible.[212] It was very clear that this was how it was done in Malmö as well. The requirement of being at "the disposal of the labour market" functioned as a guide for most decisions about social assistance. In other words, the condition of activation was in large part used as an assessment tool, not just an employment support measure.

Rejections and sanction, or at least the possibility of it, also seems to be one of the most obvious way that street-level bureaucrats ensured compliance from clients. Street-level workers superior position is underlined by their control over desired benefits, and their potential capacity to deny benefits or make their pursuit more costly.[213] However, multiple respondents saw the use of sanctions as something to be avoided if possible. It should only be used as a last resort if the clients continuously refused to cooperate.

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[210] Mood, 2013, p. 121; Ulmestig & Marston, 2015, p. 402.
[211] Bergmark, Bäckman & Minas, 2017, 557.
[212] Thorén, 2008, p. 147.
[213] Lipsky, 2010, p. 57.

5.3.2 Frames, security and justification

A very prominent subtheme during the interviews wes the view of the legal framework providing a sense of security in the social work officials when making decisions.

> Martina: I actually feel very secure in that, no matter if it is granting or rejecting an application, I have the support of the law. Because it creates a justice that would not otherwise exist and it stops me from being arbitrary in my assessments. So I am just happy that the law exists in this system. I feel secure because it exists and that we follow it and that no social work official circumvents it or makes other assessments, because that would not be good for anybody, not for any clients at all in fact. Even it in that moment it can feel like we have made the wrong decision or that the person is put in a very difficult situation, it is the only thing we can rely on. That as long as the law exists, then the idea is that we should not carry out any corrupt activity, so to say, or base our decisions on arbitrariness.

Law is justified as necessary in the work of social work officials because it is objective and separated from the private worlds of self-interest. The respondent, at least in part, decided to mobilise the law because it was interpreted as being in public interest to ensure impartiality in the decisions. This is an expression of a reified view of legality, since law was perceived as being separate from the person implementing it and thus able to be objective.[214] Richards explains that there are variation is enthusiasm for the law dependent on the extent street-level workers believe that law should play a role in regulating their decision-making.[215] If bureaucrats want to highlight the importance of acting in an impartial manner, they express a strong regard for the law, and when they want to underline the importance of care and understanding, they demonstrate low identification with the law.[216]

> Martina: I don't feel that it would be appealing with more freedom. When you stand in front of a person that really needs your help and you know that you can't, it is very nice to have something else to reference that decision to besides you personally. I don't want the responsibility to decide who is deserving and who is undeserving poor, which the system more or less already does as it is. I would say

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[214] Ewick & Silbey, 1998, p. 84.
[215] Richards, 2015, p. 307.
[216] Richards, 2015, p. 308.

that most feel happy that we have the law to stand behind or to have the law behind you in a way. So that yes, when the decision is made, then the decision is made.

5.3.4 Two roles

While discussing the work that they perform, in particular the decision-making role that they have as social work officials and the accompanying discretion, a number of respondents voiced feeling like inhabited two divided roles: the controlling role and the caring role. These two, at times, opposing roles were seen as causing distress for the workers and putting them in a position were they felt they had to choose one or the other. One respondent expressed this by explaining the difficulties with having to report fraud.

> Martina: I think it is really hard in situations where I know that I have to report fraud… I think it is really difficult for the relationship. And at the same time, I know that it is not my fault…this is something I have to do in my role. But sometimes I which we had another person that did this so that my role wouldn't become so double all the time.

Another mentioned this while speaking about sanctions.

> Hanna: We have a kind of double role, I think. Partly, we should be this supportive and guiding person, we should help you to reach self-sufficiency, and for the meetings to preferably be of a caring nature. (…) But then we also have this controlling and authoritative role, where we should control, we require people's account statements, which is kind of intrusive and can feel like a violation of their integrity I would imagine. (…) I think it is difficult, it is a difficult role to get together, and it usually messes up the relationship with the client.

The divide in roles stems from social assistance becoming dependent on participation in activation measures, which compromises the social service orientation. The helping orientation of social services is incompatible with the bureaucratic role that monitors and sanctions clients.[217] It is also a question of being a caring social worker at the same time as being a rule-

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[217] Lipsky, 2010, p. 73; van Berkel & van Der AA, 2012, p. 497.

bound bureaucrat.[218] There is continued tension between these roles, and street-level workers either have to find strategies to reconcile them or accept that they will be caught in middle. Some respondents also expressed another kind of divide between roles: them as social work officials and them as private individuals.

> Johanna: The most important is that you try to explain the grounds for the rejection as clearly as possible, that this is not something I do because I want you to get a rejection, this is nothing personal.

> Agnes: There is a tendency among clients that don't get what they want to ask to change case-worker and think that they will get another decision from another case-worker. You then explain that it is not me as an individual that is sitting here and thinking this, this decision is made based on the current guidelines and law and judgements and so on, so it does not matter.

I would say that the respondents are speaking about legality in gamelike terms here. They see legality as something different but still coexistent with everyday life, when they refer to themselves as being a professional bound by rules at the same time but in another space a private individual. Thus, legality is understood as suspended in time and bracketed in space, separate from everyday life. The issue is that the suspension and bracketing does not eclipse the other reality, which is why the respondent refer to multiple characterizations of themselves.[219] The respondents seem to have embraced these multiple contexts, the only issue with it being clients not understanding the separation of roles. One of the effects of this bracketing is that ethical principles and normative commitments that are into expressed in the rules of the game are rendered irrelevant in this space.[220]

5.5 Concluding discussion

For this final part of the analysis, I will discuss the conclusions that can be drawn and how these relate to the legal hegemony. From the above analysis, it it evident that the respondents

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[218] Sainsbury, 2008, p. 333.
[219] Ewick & Silbey, 1998, p. 159.
[220] Ewick & Silbey, 1998, p. 137.

displayed two forms of legal consciousness: "before the law" and "with the law". Depending on which situation the respondent spoke about about, the perception of legality varied.

When speaking about discretion, in the manner that they saw themselves as being able to utilise a space to accomplish what they perceived as their goal, the respondents expressed a gamelike legality. The law was seen as providing possibilities for actions, that would not have been possible if they could not use the rules of the law-game to back them up. They could adapt the activation requirements for clients, if that was what they judged would be most "right". Like one of the respondents said: "we interpret things to fit". At the same time, they recognised that there were boundaries that came with the rules. The could not step over the rules, if they wanted to make a legitimate decision. Hence, the importance of justification and reasonable grounds for decisions. They could, however, manipulate the rules to fit their goal and work in their interests. The facts of the case and legal rules were perceived as being subject to interpretation, selection, and strategic presentation. Many respondents made a point that if they wanted to and were skilful enough to find a way to justify a decision within the boundaries of the law, then almost any decision could be made. To approach law in this way was seen as acceptable, since it was all part of the game.

When adapting the activation requirements, the social workers could use the professional values of social work, either to find reasonable grounds or to make an assessment in general before even applying the rules. It seems that it was not unusual for respondents to make an assessment about the clients using their social work professional judgements first, and then they would rationalize their decision using the rules. This means that the law did not necessarily guide social worker's judgements, instead just provided the normative framework from which they could present their decisions and make them legitimate. Finding openings in the law and being able to argue for the sake of their clients was seen as requiring skills and experience. To be able to play the legal game, a certain amount of knowledge, improvisation and skilful argumentation is needed if you are to succeed in pursuing your interests.

Another instance when the respondents expressed law within terms of the "with the law" schema, was when they spoke about about actively turning to the law when there was a need to finding a solution to a conflict. When legality is viewed as a game, law is only engaged when the outcomes are uncertain. This may be one of the reasons for why some of the respondents did not see themselves as using the law when making "easy" decisions.

So the respondent conveyed legality as a game when discussing their wide discretion, but this could change rather quickly when they started speaking about consequences of decisions. Many placed themselves "before the law" when referring to how they communicated decisions

about rejection to clients, underlining that a main strategy was to explain the limitations that came with the law. Unlike when speaking about discretion, in these situations law was seen as something overpowering, that they as social workers could only follow. This reified view of legality was common when respondents justified and defended their decisions and actions. In these situations, legality could be found in rules and regulations, and so could legitimacy. The respondents relied on a view of law as impartial when their decisions had negative consequences for clients, because it the assumption the becomes that everyone is treated the same, so the decision is not unfair. The respondents expressed being constrained by the law, but that this was for the better since it ensured impartiality. In other words, when referring to situations in which decisions did not have "positive" effects, they perceived the reasons for this being that their discretion was limited by the rules. What they perceived to be the preferable or more in line with their professional values did not matter, because the rules were not in their favour. In this reified view of legality, the responsibility for a decision can be traced back to the thinglike law. This also meant that law was seen as giving security to social workers when making decisions, protecting them from being blamed for decisions that they had no control over.

Sometimes these the two forms of legal consciousness would almost converge. When referring to conflicting situations arising from either client being disappointed or themselves not being completely content with the decision, they could either depict law as completely separate from themselves or as bracketed within a particular space. Most expressed themselves as being professionals bound by rules at the same time as they were private individuals, but the private individual was not to be taken into account in the legal arena. By bracketing their professional selves off from their everyday, them as private individuals could kept away responsibility. Decisions that they might not be comfortable making as a private individual could be made in the legal arena because they were someone else then. A few respondents did not perceive it this was, instead of them having two roles, one in the legal arena and one in private, them as individuals were completely separate from the decision. It was the law that made the decision, not them. The interesting most part about this is that these two perceptions of legality both protected the social workers from having to bear the majority of the responsibility for difficult decisions.

I would say that the most interesting patterns that could be found in the interviews was the difference in legal consciousness depending on the what role social workers saw for themselves and prioritised at different moments. As explained previously, the respondents expressed feeling divided between a controlling role and the caring role, which was in large

part because the helping orientation of the social work is compromised by eligibility for social assistance becoming dependent on activation requirements. One of the strategies used by respondents was to rely on two forms of legal consciousness for the different roles. When in inhabiting the role of a controlling bureaucrat, they emphasised the importance of acting in an impartial manner and expressed a reified view of law. When the caring role was prioritised, they underlined the importance of care and understanding and they expressed a gamelike legality that they could use to help people.

What does this say about the legality being hegemonic? Because people's legal actions and interpretations are situationally specific, an individual might, in the context of various interactions or events, express all three form of consciousness. As we use the term, then, legal consciousness is neither fixed nor necessarily consistent; rather, it is plural and variable across contexts, and it often expresses and contains contradiction. It is exactly these contradictions between the "before the law" and "with the law" that make legality hegemonic. By expressing law as both a game that social workers can play to the best of their ability and as a transcendent thing that is separate from human interest and inspires allegiance because of its capacity for impartiality, law is given power and depth by being two "things" at the same time. The more law is constructed simultaneously through these contradictory interpretative schemas, the more difficult it becomes to perceive a way out.[221] When respondents express these multiple images of legality they constitute a hegemonic legality, since together the two perceptions mediate the everyday world of concrete particularities with the demands for legitimacy and consent which is required for all social institutions.[222] Legality then becomes both practical and authoritative within the work of social workers. In this way, legality can be an uncontested and unrecognised power that form the everyday conditions of street-level workers, and it makes it possible for social workers to be both rule-bound and have extensive discretion at the same time.

I have yet to mention the perspective of "against the law", and the main reason is that the respondents did not really express this form of legal consciousness. An explanation for this would be that in their positions as street-level bureaucrats that are rarely subject to laws power in that way. It is more likely that the clients may express this type of consciousness as they are constantly up against the law through their interactions with the street-level bureaucracies and the requirements they put on them.

The institutional setting also needs to be discussed, especially since legal consciousness studies usually focus on people in their ordinary lives, not in professional settings. First, I would

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[221] Ewick & Silbey, 1998, p. 50.
[222] Ewick & Silbey, 1998, p. 230.

like to note that even if the interviews had their different nuances, in general there were some rather consistent patterns among all the respondent's perceptions of legality. This is not that surprising, as legal consciousness is a collective construction. It is continuously constructed by participating in conversations and actions, and their understandings of legality do not just appear, they must be drawn from what is already available. So within a street-level bureaucracy like the social service there are certain culturally available narratives of law that are used to interpret their positions as street-level workers.[223] However, these interpretative schemas are not exclusively legal. There are other social structures that interact with legality to create different understanding of the social world.[224] The organisational setting most likely affects the legal consciousness of street-level bureaucrats. For example, the respondents worked in an environment were the goal of their work was broadly known and accepted but still rather ambiguous. Having to make decisions that effect people's lives to such an extent based on a goal that leaves the question of how to approach it open, is not a simple task. Importantly, the amount of responsibility and pressure that is put on street-level workers could definitively contribute to use of law as a defensive mechanism. Street-level bureaucrats modify their objectives to better match their ability to perform, meaning that they view legality differently depending on what they perceive as possible, and they develop conceptions of their jobs that reduce the strain between capabilities and goals, thereby making their jobs psychologically easier to manage.[225]

The main point that I want to make here though, is that the nature of the work within street-level bureaucracies shape the legal consciousness of street-level workers, and the same goes the other way around. Social workers work in conditions that require responses to the human dimensions of situations, which means that standardised responses such as those described in legal rules are inadequate. Social workers are therefore afforded wide discretion to be able to make sensitive observations and judgements. So the street-level bureaucrats are supposed to be impartial, but also have compassion for special circumstances and be flexible in their responses. Thus, street-level work more of less inscribes the reliance on both a reified legality and a gamelike legality.

Looking back at the concept of weak legal pluralism, the results of the study speaks to there being a bureaucratic legality, in which street-level workers perceive and use law in a different way than the typical judicial legality. Here, the main frame of reference is not so much

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[223] Ewick & Silbey, 1998, p. 247.
[224] Ewick & Silbey, 1998, p. 49.
[225] Lipsky, 2010, p. 141.

the formal law, but rather the guidelines that are based on a previous interpretation of the law by another source, and these are used in light of their professional identity. While I would still say that law was very much a central aspect guiding their decisions, their perception of legality could change to better allow them to handle their work situation and stay true to their professional identity as social workers. At times, legal rules could take a background position in the decision-making process, and other factors may be conceived to be of much more important. These factors were usually connected to professional values, such as care, help, and treatment. At other times, the more typical judicial perception of law was present and functioned as a protective screen for social workers from the reactions from clients, but also in general to enhance the legitimacy of their professional decisions as being backed by law. This means that the social workers have their own legal culture, that exists within the formal legal system. The street-level legal use is in large part characterised by their extensive discretion and non-legal professional identity, that distinguishes their perception of law from that of legal professionals.

The stated research question of the study is: How do social work officials understand, interpret and use the law in the context of assessment of eligibility for social assistance in relation to activation requirements? So to summaries, depending on which situation the social workers find themselves, the perception of legality varied. When they were in a situation were they could and wanted to exercise their discretion, law was there providing possibilities for actions. Social workers could make use their skills and experience to justify most decisions. When social workers were facing the potential consequences of decisions, law was as impartial and overpowering source, that they as social workers could only follow. In relation to activation requirements, this means that street-level workers have wide discretion in adapting activation requirements for clients, but this does not mean that the discretion is boundless and that social workers will always use their discretion in this way. The organisational context, their professional identity and relationship to the client will affect whether a social worker sees themselves as standing "before the law" or playing "with the law".

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Appendix

Interviewguide

Information:
Tack för att du har gått med på att delta i denna intervju. Anledningen till varför jag vill intervjua dig är för att bättre förstå din position som socialsekreterare. Studien kommer att handla om den administrativa och rättsliga situationen runt aktiveringskrav i relation till försörjningsstöd. Generellt sett kan man säga att studien ämnar att svara på frågan om hur socialsekreterare förstår sin och organisationens roll i bedömningen av berättigande av försörjningsstöd i relation till aktiveringskrav. Det finns alltså inga rätt eller fel, inga bra eller dåliga svar till några av de frågor som jag kommer att ställa. Jag är intresserad av din egna erfarenhet, perspektiv och åsikter.

Deltagande i denna studie är frivilligt. Intervjun kommer att ta ungefär en timme beroende på hur mycket information du är villig att dela med dig av. Med ditt samtycke, skulle jag vilja spela in intervjun för att inte missa några av dina kommentarer. Dina svar kommer att "av-identifieras" och jag kommer att så gott jag kan se till att informationen som jag inkluderar i min studie inte går spåra till dig som informant. Du kan välja att inte svara på någon av frågorna eller upphöra intervjun när som helst. Har du några frågor innan vi börjar?

Är det okej om jag spelar in vårt samtal?

Frågor	Följdfrågor	Tema
Vad är din professionella och akademiska bakgrund? Hur gammal är du? Vad är din arbetsposition inom socialtjänsten?	- Hur länge har du jobbat här/som socialsekreterare? - Vad är ditt ansvarsområde? - Kan du ge några exempel/ förklara lite vad det innebär?	Bakgrund
Hur ser en vanlig dag ut här på jobbet? Vad skulle du säga att organisationens mål och huvudprinciper är? Är arbetsuppgifterna och de krav som ställs på dig tydligt definierade? Hur är att göra bedömningar och ta beslut inom ramen för dina arbetsuppgifter?	- Vilka är de mest återkommande arbetsuppgifter som du utför? - Hur känns arbetsmiljön? - Tror du att de andra kollegorna skulle hålla med? - Finns det mycket som påverkar beslutsfattande? (Förutom klienter?) - Känner du att du har mycket utrymme för att utöva din professionella bedömning?	Organisationskultur
Hur ser kommunens implementering av aktivering ut? Vilka uppfattningar har du kring socialtjänstens policy och förväntningarna	- Vem har främsta ansvaret för implementering av aktivering? - Hur upplever du dina arbetsuppgifter i relation till aktiveringskrav?	Implementering av aktivering

som sätts på dig i ditt arbete? Hur upplever du att aktivering fungerar (för klienter och för samhället)? I vilken utsträckning godkänner du och andra socialsekreterare i din närvaro försörjningsstöd? Hur ser samarbetet ut mellan olika organisationer (arbetsförmedlingen, arbetsmarknads avdelningen, försäkringskassan)?	- Vad tycker du om socialpolitiken kring aktivering? - Har den förändrats under din karriär som socialsekreterare? - Hjälper aktivering (och sanktioner)? - Hur ofta är aktivering en del av bedömningen?	
Hur uppfattar du din och dina kollegors yrkesroll när det gäller handlingsutrymmet i beslutsfattande av försörjningsstöd? I vilken utsträckning kan den enskilda socialsekreteraren anpassa insatserna efter biståndstagaren? Hur arbetar du med det rättsliga ramverket? Har ni några mer informella regler eller principer/värderingar som ni utgår från här på enheten? Finns det något specifikt som du finner extra svårt i din beslutsfattande roll? I vilken grad understöttar eller motverkar lagen ditt arbete? I vilken utsträckning skulle du säga att lagen är rimlig och rättfärdigad i detta område?	- Vilka principer utgår ni ifrån i er bedömning? - Några specifika regler? - Hur har du upplevt det att sätta sig in i lagen? - Inom vilka situationer anser du att lagen och organisatoriska regler är mest relevanta? - Balans mellan objektivitet och empati? - Vilken betydelse har det för dig i ditt arbete?	Beslutsfattande

Skulle du kunna berätta lite om din erfarenhet med att arbeta med klienter som ansöker om försörjningsstöd? Hur är det att kombinera klienternas behov med det rättsliga kraven och kriterierna? (Relationen mellan dig och klienten? - Hur ofta skulle du säga att du använder dig av sanktioner för att uppmuntra aktivering?	- Vilka är de mest förekommande klienterna? (alltså hur ser deras livssituation ut? Varför är de i behov av försörjningsstöd?) - Hur går du tillväga när du bedömer deras rätt till försörjningsstöd? Har du en viss process? - Upplever du "konflikter" i bedömningen? - Kommunikationsproblem?	Klienter
Vad skulle du säga är den hjälp som flest av dina klienter behöver? Vad motiverar dig i ditt arbete? Har du något du skulle vilja lägga till?	- Hur förändras det beroende på klienters olika livssituationer?	

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