

# Identity as Discourse: ‘The Person in Need of Guardianship’

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## Abstract

This article presents a critical discussion of the legal institution of adult guardianship in Israel. Based on a critical discourse analysis' study of official guardianship reports for older adults submitted by social workers to family courts in Israel, findings reveal how guardianship institutional procedures construct the personal life stories of older persons into legalistic guardianship paradigm, and in doing so they create a new identity of 'a person in need of guardianship'. The article further delineates how 'a person in need of guardianship' (as well as a 'guardian') is a discursive identity, a subject who never existed prior to the guardianship proceeding, a legal creation which does not reflect the complexities and realities of older persons.

**Keywords:** Critical discourse analysis, critical theory, discursive identity, guardianship, social worker's report

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## Introduction

### Social workers' reports and guardianship proceedings

Through a critical analysis of guardianship proceedings, the article discusses the discursive character of the legal imagined identity of a 'person in need of guardianship'. This is so, as there is no ontological identity of 'needing guardianship', and no one can be previously identified as a person in need of guardianship until guardianship proceedings themselves defined him or her as such. The article demonstrates the ways in which institutional structures form discursive social identities.

A guardian is a legal appointee who is responsible for providing for the legal and therapeutic needs of people who are unable to tend to their own affairs (Doron, 2002a, 2004, 2010; Jurickova *et al.*, 2011; Doron and Soden, 2012). Guardianship law differs significantly from country to country; in some federal countries, it differs from state to state and is well embedded in local cultures, social context and legal traditions (Doron, 2002a, Crampton, 2004).

In Israel, the law stipulates that a guardian will be appointed for legally incompetent persons and for persons who are incapable, permanently or temporarily, to look after their affairs, in whole or in part, wherein no one is authorised and willing to take care of them on their behalf (Law of Legal Capacity and Guardianship, 1962, Chapter 3, Section 33A(3) and (4)). This intervention measure was instituted for the protection and intervention in the lives of older adults suffering from self-harm, neglect, abuse or exploitation (Jones, 2009; Doron, 2010; Alon *et al.*, 2013).

However, alongside its positive goals, the guardianship mechanism also contains negative aspects of taking the rights, the liberty and the autonomy of a person to make decisions on personal, familiar or economic matters. Studies in the field of guardianship of the elderly deal with the tension between the right of a person to protection and the right of a person to autonomy (Chesterman, 2013; Mills, 2017).

According to the law in Israel, the procedure of the appointment of a guardian starts by a motion to the family court made by the relative of the person in need of guardianship. In cases in which the person has no family, a social worker will initiate the process and submit the motion via a representative of the Attorney General (Law of Legal Capacity and Guardianship, 1962). In addition, the common procedure for the nominated guardian is a family member, who naturally is the closest person (unless the person has no family—where usually a non-for-profit guardianship organisation will be nominated) (Social Work Regulations, 2014).

Within this Israeli legal context, the social worker has a significant role in the guardianship process. This role may begin as early as the pre-legal stage, namely, in identifying whether it is appropriate to refer a person to guardian appointment proceedings and assign them a referral for medical diagnosis. The social worker may also be the one who initiates the appointment of a guardian by contacting an Attorney General's representative, especially when the person in need of guardianship has no family acting to fill this role. Moreover, the social worker's function extends into the legal proceeding itself, where the court may request a report, resultant of the social worker's observation of the issue at hand, and their subsequent recommendations to the court on the inherent complexities and dilemmas related to the subject of guardianship ([Law of Legal Capacity and Guardianship, 1962](#), Chapter 4, Section 70).

The social worker's report (also known as 'report from the court visitor') ([Crampton, 2004](#); [Jones, 2009](#)) is the outcome of a psychosocial investigation done by the social worker submitted to the appropriate legal authorities or even to the Attorney General ([Social Work Regulations, 2014](#), Provision 3.20). Its purpose is to form a professional and non-biased opinion and offer recommendations on issues and dilemmas related to persons in need of protection and guardianship as well as expound upon the proposed guardian's ability to serve as guardian ([Crampton, 2004](#); [Jones, 2009](#)).

The report includes an assessment of the individual's capacity to make decisions and cope with daily needs, justification for the proposed guardian and the powers that should be vested in the guardian to address the needs of the ward ([Crampton, 2004](#); [Jones, 2009](#)). As such, it is quite clear that the reports made by social workers within the legal guardianship proceedings carry significant weight and have crucial importance to the legal outcome.

Scientific research in the field of guardianship of older adults has so far focused mainly on two subcategories of interest, the legal field and the medical field (and the connections between them). This quite extensive body of research included a number of key themes such as discussions on the medical diagnosis required for the definition of a ward ([Doron, 2004](#); [Falk and Hoffman, 2014](#); [Myers, 2015](#)); the social-moral justification for the appointment of a guardian and the manner in which the matter is regulated by law ([Doron, 2000, 2002a, 2002b, 2004, 2010](#); [Carney, 2012](#); [Doron and Soden, 2012](#); [Wood, 2012](#); [Tolub and Kanter, 2014](#); [Nedlund and Nordh, 2015](#)); the manner in which to, and nature of, supervising the guardians ([Doron, 2008](#); [Vilnai, 2009](#); [Weiler-Pollack, 2012](#)); the alternatives to plenary guardianship ([Doron, 2000, 2004](#); [Doron and Soden, 2012](#)) and more.

One of the arguments raised in the various discussions described above was the unbearable lightness in which the courts in Israel appoint

a guardian for a person (Doron, 2004). This argument was based, among other things, on the fact that empirical studies found that, in most cases, the voices of older persons were not heard; they were not seen in person by the judges prior to the ruling; they did not receive legal aid and neither were they legally represented and the outcome was mostly total guardianship (both on property and on person) without any sort of limitations (Doron, 2004; Doron and Soden, 2012).

Although there has been a growing interest in the empirical study of adult guardianship and despite of the wealth of literature in the field of adult guardianship, to date there has not been any empirical examination of the role social workers' reports in the construction of 'the person in need of guardianship'. For example, in Doron's (2004) work on the Israeli adult guardianship system, which surveyed 523 guardianship court cases, he found that in 98 per cent of the cases, social workers' reports were submitted to the courts. However, the reports themselves were not analysed.

This is not unique to Israel. Other non-Israeli studies into adult guardianship mentioned above which examined various procedural aspects of adult guardianship have also overlooked the matter of social workers' reports (Doron, 2000, 2002b, 2004, 2010; State Comptroller, 2011; Doron and Soden, 2012). It seems that while there has been an awareness to the relevance and importance of social workers' reports in guardianship cases, the full impact of these reports is still understudied. This article seeks to bridge the information gap, by presenting findings of qualitative study using critical discourse analysis of official guardianship reports for older adults submitted by social workers to family courts in Israel.

## A critical theory of guardianship proceedings

In trying to understand the role that social workers' reports play within the institutional procedures in which courts appoint a guardian for an older person, different theoretical approaches can be adopted. This study chose to use conceptualisation of the establishment and conversion of identities of social subjects (Althusser, 2003), which belongs to what is known as a critical theory approach.

Broadly speaking, critical theory is the general term for an academic and intellectual process originally formulated by the Marxist Frankfurt school (Ritzer, 2007; Buchanan, 2012), which attempts to unveil various aspects of social reality for a more accurate exposure of society's nature and balance of power and the pursuit of changing said power balance (Ritzer, 2007). Critical theory is extensive and highly varied but raises a number of central issues such as questions of power and control (Ritzer, 2007; Azmanova, 2012), as well as social order and social exclusion (Powell, 2017).

In this context, it should be stressed that Foucault is a key figure to critical theory. According to Powell (2017), Foucault's work has enormous significance to the analysis of age and aging in two different but interdependent ways. First, the ways in which techniques of discipline and punishment have constructed the image of older people as object of surveillance and control. Secondly, Foucault analysis focussed both on the prevailing discourses embodied in professional practices and social policies and those operating and implementing within the general society.

For analysis purposes, this article focusses on the ways in which institutional structures and discursive practices construct and transform the subject. Althusser (2003), who drew his social analysis from Lacan's thought, claimed that every person is converted to being a subject of one type and not another due to the social structure imposed on him from his or her first moment and every moment thereafter. For example, the very birth of a person to this family and not to another, to one nation and not to another, even before birth—due to the specific expectations of his or her parents towards his or her birth—s/he is already converted to be specific subject and not another.

This conversion process can be demonstrated in instances such as when someone calls us and we turn our heads to him, at that moment we are turned to the symbolic signifier into which we were defined. In a similar way, we are converted into religious, national, gender identities and so on. Accordingly, human identities are not essential entities but rather imaginary, discursive, symbolic creations.

With the theoretical understanding that human reality consists of social 'identities' which may differ in nature and can symbolise various power relations, cultural constructs and hegemonic discourses, the aim of this study was, therefore, to try and expose the 'identities' which are formed within the legal process of adult guardianship—in general, and within the social workers' reports—specifically.

## Methods

This study was conducted using qualitative methodology of Critical Discourse Analysis (Blommaert, 2005; Wodak and Meyer, 2009; Van Dijk, 2012), which has also been used in the field of ageing (Rožanova, 2010; Hammond *et al.*, 2012; Ellison, 2014; Zimmermann, 2016). Critical discourse analysis suggests that a single text reveals only one facet of the facts, and awareness of this phenomenon may contribute to identifying not only what the text says but also how the author used the data to shape the topic under discussion (Kurland, 2000; Randall *et al.*, 2006). The purpose of critical discourse research is to expose the ways in which discourse and ideology are intertwined (Johnston, 2012).

Critical discourse analysis does not offer a uniform theoretical or methodological framework for data analysis method, and each approach to critical discourse analysis has its own theoretical positions combined with specific methodologies and methods (Wodak, at Kendall, 2007). However, it does offer a basic orientation according to which the relations of power and social structure (Kincheloe and McLaren, 2005), inequality (Billig, 2008; Van Dijk, 2012), social processes (Taylor, 2004; Billig, 2008; Gee, 2010) and ideology (Johnston, 2012) emerging from discourse should be monitored.

### Sample, process and ethics

The texts used in this work were official guardianship reports for older adults, undertaken by social workers acting under civil procedure law or social workers under the Protection of the Elderly Law, which was submitted to family courts in proceedings for the appointment of guardianship between 2011 and 2016. To collect the reports, a direct request was made by the researchers to 120 social workers to participate in the study, by providing examples of reports they prepared and submitted to the family courts in Israel in the framework of the proceedings for the appointment of guardians of old persons. This sample was a convenience sample, based on a snowball strategy, which began with the social workers personally known to the researchers, who in turn referred to other participants.

The participation in the study was fully voluntary, with no provided compensation and with no direct power relations between the research team and the social workers who sent in their reports. As the reports contained private and sensitive data, the social workers were asked to delete all personal and sensitive data, including data concerning the social workers themselves, the would-be wards, their family members, etc. The study itself received the approval of the Haifa University Faculty of Welfare and Health Sciences IRB (number 082/15).

The sampling method in the study was a purposive sampling, in which the data are chosen deliberately (not randomly) due to their meeting pre-defined criteria and having potential for rich information that serves the study's objectives (Patton, 1990). Accordingly, the request from the participants was that both 'simple' reviews be submitted (i.e. in which there were no conflicts regarding the need for guardianship or the identity of the proposed guardian) and 'complex' reviews (i.e. in which there were conflicts both regarding the actual need and with regards to the proposed guardian). In the initial research design, it was determined that thirty reports would be collected for the analysis, but during the course of the study, additional reports were added to the analysis until the

theoretical saturation was obtained (Morse, 1995), and eventually seventy-five reports were analysed.

The sampling method described above reflects a significant methodological limitation. Both the actual sampling of social workers and the selection of their reports were not conducted in a random manner as ideally required. This kind of limitation may not provide a full or accurate picture of the broader reality of the reports submitted to the courts. However, for the purpose of this study, the weight of these limitations is not as significant due to the fact that this study focusses less on the representation of the overall sample population and more on the different ways by which representation of the discourse is reflected in the reports submitted to the courts.

In this context, it should also be noted that during the period of this study, Israel's guardianship law was significantly reformed. Specifically, new alternatives to guardianship (e.g. ongoing power of attorney, supported decision-making, advance directives and tailored guardianship) were introduced for the first time. This was all part of Amendment 18 of the Legal Capacity and Guardianship Law of 1962 (Law of Legal Capacity and Guardianship, Amendment No. 18, 2016). The sample of reports in this study was all made prior to this new amendment; therefore, it is for future research to examine the changes that will occur to the social workers' reports in Israel in coming years. It should also be noted that even after this new legal reform, the findings of this study are still relevant as the foundational underlying legal question—that is, the 'need' for guardianship—has not changed under Israeli law.

## Data analysis

The data analysis included three main stages: 'First stage—first-level coding', in which the meaning units of the discourse in the report's text were identified. Later, the units of meaning were sorted into categories (Tutty *et al.*, 1996). The emphasis on identifying the meaning units was on the discourse itself, what happens and how it happens in the discourse and what does not happen in it; what enters the discourse and what does not (Medeiros and Rubinstein, 2015) and the social structuring processes as they are organised in the discourse space (Blommaert, 2005; Wodak and Meyer, 2009; Van Dijk, 2012). 'Second stage—second-level coding', in which conceptualisation was made at a higher level. Categories were compared, connections between them were searched for and meaning was imparted (Tutty *et al.*, 1996). 'Third stage—analysis in view of the broader aspects of critical theory'. The last part of critical discourse analysis is the discussion, in which the various findings are observed from above, results are compared and the analysis is opened to

the broad conceptual framework of critical theory to extract a unifying interpretational kernel.

### Positioning and reflexivity

For the purpose of reflexivity, several steps were taken. First, the ideas were documented in an investigator's log and thus were collected and became an integral part of the data that the study processed; secondly, the data were brought up for discussion in a number of study groups in which researchers, both from social work and various other fields, participated to provide a reflexive position vis-à-vis our positioning as investigators; thirdly, in the next stages of data analysis (the second coding and conceptualisation), the ideas and conceptualisations raised from the data were examined in light of literature in the field.

### Trustworthiness of the findings

The findings' trustworthiness was examined by way of three methods: 'Preservation of the chain of evidence' at each stage of the study: preservation of the social worker's reports which constituted the raw data, preservation of the minutes from the group discussions and preservation of the personal records—all undertaken so that the data analysis process could be followed closely. 'Triangulation between researchers'—the social worker's reports were presented for discussions between the research team (which included both men and women; both social workers and a lawyer), other investigators and social workers, constituting a triangulation among researchers. 'Triangulation between data and theory'—linking the findings, their translation and their conceptualisation to larger theoretical structures, as was done in the later stages of data analysis (the second coding and conceptualisation).

### Findings

As for the actual qualitative, critical discourse analysis of social workers' reports, findings revealed that although there is a different person described in each social worker's report, the 'story' of the person in each of the various reports is told in a similar way. Each of the reports describes a person who in the distant past was multidimensional with diverse interests (having a career, family, hobbies, etc.); in each of the reports, the 'plot twist' was his or her cognitive decline and in each of the reports, from this point on the person is described one-dimensionally, focussing only on his or her limitations. His or her

present continues to be described only through his or her ‘incapacity’ prism, with no reference to his or her overall needs arising from this incapacity, focussing instead only on the need for guardianship. In the person’s future, no description of the connection between the person’s past and the management of the person’s affairs in the future is rendered.

### An analysis of the past discourse world of the person

The analysis shows that the past of the person for whom the report was conducted is divided into two parts: the far past is until the beginning of his or her decline and the recent past thereafter.

‘The far past’—until the beginning of the person’s deterioration—the person is described as a multidimensional person with personal, familial and professional achievements, and the description has a positive tinge. All the reports describe what the would-be ward did in his or her past life: where they were born, why and when they immigrated, built a family, practiced a profession, chose to live, etc. For example, in one report, it was described how:

The father (the ward)—N., 77.5 y.o. (born 21 March 1934), born in the U.S., completed high school and two years of post-secondary studies in cinema, served in the U.S. army. Worked for some time in his parents’ butcher shop and then opened his own. After his marriage, moved to Mexico to live with his wife, where he worked in his mother-in-law’s textile shop until they made Aliya. In Israel, he worked in a hospital as an administrative manager in the maintenance division.

Or, for example, in a different report the description was:

The mother (the ward)—G., 83 y.o. (born 12 September 1929), was born in Syria, where she stayed in camp . . . She immigrated to Israel with her family in 1949 and settled in . . ., where she met her husband. Over the years the family lived in . . . G. did not work outside the house, but took care of her children and helped her husband, who owned a fish shop.

Some of the reports also describe some of the subject’s emotional world: what he liked, for example:

N. said that he liked to take care of the home repairs.

Or, in another example:

Activities that she liked to do in the past: cooking, baking cookies.

Or, in another example the person was described as:

Loved the sea and therefore they moved to live near the sea (Report 30, Line 55).

Some of the reviews describe what the subject's hobbies were, for example, collecting stamps (Report 6), played chess (Report 12) and loved to sing (Report 21). Some of the reviews even revealed parts of the ward's intellectual world: his or her worldview, for example, a Zionist (Report 26); his or her beliefs, for example, religious (Report 63).

In all of the above examples of a person's far past, until the beginning of his or her decline, one can see a multidimensional person with a history and a full world that constituted his or her personality, professional, family and personal worlds.

'The near past'—as his or her condition begins to deteriorate—the person is described in a one-dimensional manner focussing on illness, as in one example:

Functional history:

Mr. A.'s functional difficulties began in 2007; he suffered drooling and began to walk bent. He was referred for medical examinations and C.T. on suspicion of a cerebral event. According to his wife, he was diagnosed with Parkinson's disease, although to this day she is not sure of it, as no unequivocal diagnosis has ever been made. According to her, both Parkinson's itself and Parkinson's drugs cause cognitive decline. She describes a gradual cognitive decline culminating in July 2010, when A. went astray and the whole family was called in and police assistance was necessary to find him. Since then she does not leave him alone. At first she requested to work from home, and later quit her job.

Or, for another example:

Functional history:

The daughter D. says that many years ago, her mother began to suffer tremors on the left side. According to her, her mother was young and nobody knew what it was. G. received medication, the tremor continued but became very weak. Slowly her situation deteriorated. About 6 years ago, cancer was diagnosed in the kidney. The kidney was removed, without further treatment. At this stage, according to D., her mother's condition began to deteriorate severely, in all motor areas. At one point, she says, her mother stopped walking and standing on her own.

It is possible to see how a person's life story is divided into two, with the reference 'pivotal plot point' being the cognitive decline. Before the turn, in the distant past, a multidimensional person is described, characterised by diverse personal, professional and family world of content; whereas in the recent past, a one-dimensional person whose entire

description focusses on his or her disability is described, as if s/he has no other world of content. It is possible that the description of the person in this manner is self-evident, since this is the report's underlying question, but the analysis demonstrates how the question underlying the report leads to a certain type of story.

### Analysis of the present discourse world of the person surveyed

The analysis shows that the subject person's present is a continuation of the recent past. The person is described in a one-dimensional manner that focusses on the person's illness and needs, for example, in one report:

Today, Mr. A. moves on his own, but finds it difficult to get up and needs supervision for fear of falling. He also needs assistance in washing, dressing and using septic products (Report 1, Lines 31–32).

Or, in similar way for example, in another report:

Today G. is completely dependent on the help of others, does not watch television, does not read, cannot stand up, walk, shower, eat. According to daughter D., her mother really wants to be independent but cannot. According to D., most of the day her mother is asleep, speaks unclearly, without context, which has recently become worse.

From the medical summary of Dr. ... it emerges that Mrs. G. is very limited in motor function, requires nursing care, and suffering from depression and severe dementia. She is not interested in her surroundings, cannot follow or understand what is being said. In an attempt to evaluate mental function, she is totally disoriented, finds it hard to understand basic instructions, lacking understanding or discretion in any matter (Report 2, Lines 39–47).

It is possible to see how a person's description of the present is a continuation of the description of the near past, in which the focus is on disability or inabilities, as if one person's world is no more complex than that.

It can also be seen that the report presents the variety of needs of the person in need of guardianship [e.g. in Report 1: supervised needs (Lines 29–31), physical treatment (Lines 31–32), comprehension (Line 41), judgment (Line 34), orientation (Lines 29–30, 34) and expression (Lines 40–41). Or for example, in Report 2: the need for activity (Lines 53–54, 73–77), for a relationship (Lines 74–77, 87–88)]. But the continued 'story' in the report does not lead to the construction of a comprehensive therapeutic intervention programme that will meet the needs of the person, but only a response to the question of whether guardianship is required. In other words, the analysis suggests that the purpose of

presenting the needs of a person is not intended to elicit answers to them but is actually intended to serve the guardianship narrative: Do his or her needs justify the appointment of a guardian.

As in the analysis of the person's past discourse world, analysis of his or her present discourse world also shows how the person's story is actually the story of guardianship: the story is told through the prism of guardianship that examines whether or not a person fits into it. Does s/he need guardianship or not? Here, too, it may be obvious; this is the question underlying the study, but the analysis shows how the question underlying the report leads to a story of a certain kind being composed.

### Analysis of the future discourse world of the person surveyed

Finally, none of the social workers' reports presented expectation or demand from the guardian to link between what the person did, felt or thought and decision-making in these areas in the future. For example, should his or her investments continued to be invested conservatively as it was when s/he managed them; making medical decisions with preference to drug therapy rather than surgical interventions, as s/he would have preferred, etc. That is to say, the analysis shows how the report does not expect the guardian to come into the shoes of the person in need of guardianship, in the language of the law and to make decisions as the person needing guardianship would make in the past. In this way, a disconnect is created between what the would-be ward was in the past and what will happen to him or her in the future; actually forcing a break in his or her identity.

In conclusion, analysis of the discourse worlds shows how the reports structure the story of a person in need of guardianship to the guardianship paradigm. The story of the person is told in a way that the 'turning point in the plot' is the cognitive decline, and his or her past is divided into two: the far or distant past as before the cognitive decline, in which the person is described as multidimensional and with diverse, rich personal, familial and professional content worlds. This is then followed by a turning point, in the more recent past, which happens after the cognitive decline in which the person is henceforth described in a one-dimensional manner that focuses only on his or her limitations, inabilities and illness.

The person's present is then described as a disconnected from his or her far past, yet as a direct continuation of the near past, continuing to present the person only through his or her 'inability' prism. The description of the person's present puts forth a variety of needs of the person. Yet, when the social workers' reports move into the 'future', the report provides no construction of a comprehensive intervention programme for the person, based on his or her unique past preferences or values.

The social workers' reports are not supposed to do so because this is not the question they were asked about. The sole purpose of the description of the 'present' is to serve the guardianship narrative by tending to the question of whether or not the person needs guardianship, without any connections to his or her far past. Moreover, in the description of the future, there is no attempt to connect between the identity of the person in the far past, for example, his or her unique ways of making decisions and their value preferences regarding the future. Here too, the social workers' reports are not supposed to do so because this is not the question they were asked about.

## Discussion

The findings from the study show how the story of a person in need of guardianship is organised according to the guardianship discourse and creates very specific and focussed identities of 'a person in need of guardians' and guardians. It presents evidence to how the narrative of guardianship takes over the private story of those in need of guardianship, which could have been told in a myriad of other ways but is 'translated' and adapted to the pattern of the guardianship legal discourse. This is so as the person's life story is presented such that the central intersection is his or her cognitive decline. If the report had been like a narrative study of life stories and the social worker was an investigator who would asked him or her to 'tell me your life story', it is doubtful that the person would choose this way to describe his or her most significant life's intersections. The person might have given other emphases, such as the turning point where s/he made significant decisions, or achievements in life, rather than the turning point of his or her disabilities and its current limitations. After the assignment of 'cognitive decline', the findings show the description of the status quo person as one-dimensional, a being in need of nursing, ill and incapacitated. Namely, the person is positioned in a one-dimensional pattern of illness and disability. Here too, it is doubtful whether the person's story of their present is indeed one-dimensional, and whether the only content of his or her life is sickness and disability. However, the question of guardianship focusses the story on these places. As it emerges from the findings, the person is positioned for his or her future as dependent in the hands of the proposed guardian, while disconnecting, perhaps even cancelling, between the person who s/he was, what s/he wanted, between his or her way to conduct themselves and to make decisions in the past, to what will be with them in the future and the manner in which future decisions will be decided for them. In other words, the very question underlying the report—'Does the person need a guardian'—creates a paradigm for a very specific narrative, the discourse of guardianship and the person's

private story is reproduced into it, and they themselves are positioned to fit it.

Another important insight which the findings of this study provide us touches upon the broad conceptual framework of critical theory and specifically on the topic of converts and establishes social identities. The report, like any other diagnostic report, examines by means of professional tools and criteria, the person on whom the report was prepared and the person who is to be appointed guardian, and determines whether the first will be defined as 'in need of guardianship' and the other as 'guardian'. In this manner, it actually transforms and establishes the person who is the subject of the report to become one 'needing guardianship', and the person to be appointed to become a 'guardian'. These new identities, as constructed and symbolised by the institutionalised discourse of guardianship and as reflected in the binary representation of the person in the social workers' reports, are the ones that define who is 'in need of guardianship' and who is the 'guardian'. As was explained in the literature review, the way in which the external social structure turns the details into subjects of a certain type was raised in the work of [Althusser \(2003\)](#), who claimed that every person is a subject of a certain kind and not of another kind, since the social structure imposes this on him from the first moment and every moment thereafter. Similarly, the report's preparation also causes those involved to be subjects of a certain type towards the imagined identity of the 'person in need of guardianship' and the 'guardian'.

Establishing one's narrow and specific identity only through the lens of 'need for guardianship paradigm' can have two major consequences: The first touches on the human rights' impact of socially constructing people as simply 'people in need of guardianship'. Such a narrow social view, which focusses only on disability and need, does not see the person as a whole, enables stigmatisation and eventually can legitimise oppression and exclusion. The second relates to more practical aspects, which may result in ignoring one's broader social needs. For example, a person may have difficulty managing his or her affairs but may live in a family that provides adequate protection from abuse or neglect. However, it may be that his or her personal preference is in supporting his or her self-confidence, abilities and social engagement. In this situation, a more appropriate response may not be simply protection (i.e. guardianship) but rather active social engagement (e.g. via providing supportive services).

These implications are relevant not only to social work practice but also to the formal institution of guardianship. It should be remembered that as described in the literature review, the operation of social workers in the context of preparing guardianship reports is anchored within a legal framework (e.g. the Legal Capacity & Guardianship Act of 1962 in the case of Israel). Therefore, the findings of this study also emphasise

the need to engage in legislative reforms that will not only create new alternatives (e.g. via continuing powers of attorneys) but will reframe the foundational question under laying legal guardianship and the role of social workers within. More specifically, the formal legal focus should shift from a ‘needs-based’ approach (i.e. the need of the person to guardianship), to a ‘human-rights based’ approach, which will focus on the ways to secure the person’s capabilities to maintain independence and autonomy (e.g. through the right to receive community-based support services).

From a critical theory perspective, both of the above insights support the theory’s understanding about human reality—in general, and about legal institutions—specifically. They uncover, reveal and expose the underlying societal power relationships which are hidden in everyday professional terminologies and practices. They stress our need not to be satisfied by formal categorisations or by linguistic manipulations.

In conclusion, the application of the broad conceptual framework of critical theory allowed for the extraction of a unifying interpretative kernel, according to which the report actually creates discursive, imaginary identities and establishes subjects as ‘a person in need of guardianship’. The discussion showed how ‘a person in need of guardianship’ (as well as a ‘guardian’) is a discursive, imaginary identity, an identity which did not exist before the guardianship proceeding. Those ‘in need of guardianship’ are in fact a creation of the Guardianship discourse, which establishes and converts people into a pattern it created and thus constructs imaginary identities. This transformation into imaginary identities is translated into real life and legal decisions, which allow judges and courts to ‘frame’ people into the appropriate categories which justify the nomination of a guardian, at the cost of losing sight of the real, living, and non-imaginary people who are the subject of these proceedings.

From a policy perspective—both within the specific Israeli context and within the broader international context—two complimentary recommendations can be proposed: First, from a legislative perspective, future adult guardianship legislative reforms should consider fundamentally reframing the way in which social workers’ reports (or any other ‘professional’ assessment reports) are structured and defined. Specifically, they should try to avoid framing the legal question in terms of the ‘need for a guardianship’ and shift to the present the subjective life course perspective of the older person and the ways to support and enable the human right to self-determination and autonomy in old age. Secondly, on the professional level, social workers (and other professional involved in adult guardianship professional proceedings), especially those working with older adults, should be trained and exposed to critical theories and their practical applications in daily practices. Specifically, such training and learning should emphasise the subjective

and political implications of the discursive choices made throughout the professional guardianship process.

More generally, the article demonstrates through the guardianship process broader institutional processes involving social workers, such as defining children at risk or defining parents who endanger their children, domestic violence and so on. The article calls on social workers to examine their role in these institutional processes that produce discursive identities that limit the autonomy of mental identity of the individual.

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