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Differentiation of education through juridification

Andreas Bergh and Eva Forsberg

Department of Education, Uppsala University, Uppsala, Sweden

ABSTRACT

The objective of this article is to explore differentiation of education through juridification. We examine changes in school governing, including trends towards globalization and marketization, as well as increased regulatory intervention in addressing complex social problems. Drawing on Luhmann's theory of functional differentiation and Teubner's problematization of juridification, we scrutinize three sets of distinct legislative regulations in a Swedish context. We uncover a multifaceted juridification alongside a multifunctional school organization nested in a complex web of differentiated and interconnected subsystems. Traditional forms of differentiation persist, albeit with juridification as a lever, thus sparking renewed tensions.

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Introduction

The contemporary modern world is characterized by a prevalent global culture of education driven by the widespread adoption of mass schooling and an overall dominant logic of educational expansion, commonly perceived as integral to achieving the good society. This expansion has led not only to a rise in the number of educational attendees and a greater range of educational processes but has also resulted in an increase in governmental bodies and a growing central role of pedagogy in society (Baker, 2011). With the rise of the modern state, complex problems, like what it means to be well educated, were primarily entrusted to 'institutions run by professionals with a specific education on how to deal with such "ill-defined problems"' (Hopmann, 2008, p. 423). These institutions were given a comprehensive mission, and professionals were granted the necessary autonomy and pedagogical freedom to determine appropriate approaches to various problems in different situations, and evaluation of outcomes.

The belief in education's potential to effectively address social problems and the delegation of these responsibilities to schools and teachers can be viewed as fundamental characteristics of modernity and formal legal rationality. However, the public sector, including education, has encountered challenges in adequately responding to societal problems, partly due to governance difficulties and inefficiencies, administrative overload, and costly bureaucracies (Held, 1987). To address these issues, there has been a shift in state governing and control of education—specifically in the last few decades—with the aim of transforming ill-defined problems into clear, transparent, and well-defined ones. In this process, the legal system has been politicized and instrumentalized towards specific social interests, purposes, and ends (Teubner, 1987). Recently, this phenomenon of juridification, which refers to the expansion and intensification of legal procedures in politics and various social areas, has been observed in Nordic countries (Andenæs & Møller, 2016; Bergh & Arneback, 2019; Lindgren et al., 2021), England, the USA (Barberis & Buchowicz, 2015; Gibson, 2013), and Germany

CONTACT Andreas Bergh  andreas.bergh@edu.uu.se  Department of Education, Uppsala University, Sweden

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(Freier et al., 2023). However, so far, juridification has received limited attention in the education literature (Murphy, 2022). In addition, existing knowledge suggests that juridification may interfere in the differentiation and interconnection between education and other social areas and introduce tensions that can both facilitate and hinder educational endeavours (Bergh & Arneback, 2019). To contribute knowledge on contemporary shifts in state governing and control of education, it thus becomes important to bring together questions of differentiation and juridification.

The purpose of this article is to explore differentiation of education, particularly through juridification. We incorporate insights from Luhmann's system theory of functional differentiation and Gunther Teubner's problematization of juridification. We use the extensive restructuring of the Swedish national school system from the 1990s onward as a backdrop. A selection of 21st-century legal measures implemented to regulate the comprehensive school is used to illustrate various forms of juridification. These changes reflect a shift in the enactment of differentiation in education policy captured in the slogan change from 'one school for all' to 'one school for all'. Thus, the Swedish context holds the potential to shed light on the processes of both differentiation and juridification and their intersection.

In the following sections, we present the theoretical framework of differentiation and juridification. Subsequently, we provide a brief characterization of changes to the comprehensive school system in Sweden, followed by an examination of three distinct sets of legalizations: (1) measures aimed at safeguarding children's rights and promoting equal treatment, (2) initiatives focused on professionalization, and (3) extraordinary measures that go beyond the scope of regular schooling. Finally, in the concluding section, we revisit the implications of these measures for the differentiation of education.

Differentiation, juridification, and interconnections

Luhmann's theory of society¹ aligns with a well-established scientific tradition of differentiation positing that society should not be regarded as a single unit (Taylor, 2020). During the evolvement of the national state, various *functionally differentiated social subsystems of communication* emerged to reduce complexity, including for example the political, legal, economic, scientific, and educational realms. Luhmann's theory compels us to consider functionally differentiated social subsystems in a horizontal configuration. Each subsystem is self-organizing and self-determining (autopoietic) and fulfils a specific function in the world society, all of which are equally important. While the political system provides society with the means of making collectively binding decisions through power, the legal system is concerned with laws, the economic system deals with monetary matters, and science engages in knowledge production and the pursuit of truth. It is noteworthy that systems base their communication on contingency and that no system can substitute for another, as each subsystem has its own function, code, and media (Luhmann, 1984/1995).

In comparison, the education subsystem is less straightforward due to a twofold deficit: a structural and technological. The structural deficit arises from the complexity of the educational function, which aims to intentionally change the conscious thoughts and minds of students (the psychic system) through future-oriented instruction (Vanden Broeck, 2021). The technological deficit in education refers to the system's absence of a success medium comparable to power and money. Consequently, the effectiveness of education is limited and its outcome uncertain (Luhmann & Schorr, 2000). However, the education system compensates by organizing education as a specific form of face-to-face interaction that emphasizes the time and place of schooling, teacher—student relations, various artefacts, and not least evaluations, gradings, and student transfer (Emmerich, 2021). 'In Luhmann's account, professional work signifies, above all, coping with uncertainty in highly complex situations, with the awareness that there are no straightforward recipes for success' (Vanden Broeck & Mangez, 2018, p. 17).

Modern society is characterized by the complete inclusion of persons; as members of society, they are granted access to all subsystems. This seemingly resolves issues of access, participation, and equality. While previous dominant forms of social differentiation no longer

prevail at the subsystem level in the modern world, they may still emerge at lower levels. The empirical reality of functionally differentiated subsystems becomes evident through organizational decisions and face-to-face interactions. This reintroduces formally dominant forms of differentiation, such as segmentation, center—periphery dynamics, and stratification² (Nassehi, 2005). When the education system aims to maintain educational communication, it inadvertently generates unequal social differentiation through categorizations and sorting of students (Emmerich, 2021). This observation exemplifies a fundamental feature of evolution: old principles of social differentiation rarely vanish entirely (Stichweh, 2015).

Juridification is a notion recognizing the political (ab)use and proliferation of legal regulations and procedures in the governing of social fields. The expansion and intensification of law can be linked to the involvement of the state and has been interchangeably discussed in terms of a legal explosion and a regulatory crisis. In a progressively more complex world, regulatory law has increasingly been used as a control medium for state intervention to solve social problems with the objective of creating a just, equal, and democratic society in which the freedoms and rights of all citizens are safeguarded (Teubner, 1985, 1987). However, there is a risk of overregulation and adverse consequences, potentially inhibiting democratic progress and leading to the colonization of the lifeworld (Habermas, 1987).

Scholarly definitions of juridification are multifaceted and often linked to perceptions of problems, especially those disrupting the relationship between law and politics (Morris, 2004). In this article, we turn to Teubner's (1987) definition and discussion of juridification, which is founded on the idea of a functionally differentiated system. We also, when relevant, take advantage of Blichner and Molander's (2008) multidimensional definition: constitutive juridification and juridification as law's expansion and differentiation, as increased conflict solving with reference to law, as increased judicial power, and as legal framing. According to Teubner, juridification can be defined in relation to changes in the function of law, its legitimation, and norm structure. Teubner identifies a shift towards the materialization of formal law and more particularistic regulations aimed at achieving specific goals in concrete situations. Law is now legitimated by social results achieved through direct regulation and, with the rise of specific purposes in law, teleological methods, and result orientation. This kind of regulatory law, with its material rationality, regards itself as instrumental law, a means of social guidance to bring about specific social changes (Teubner, 1987).

Interconnections between systems are difficult to explain due to the operative closure of autopoietic systems. Nonetheless, we find that the major functional subsystems of society are intricately interwoven. These systems (social as well as psychic), existing in each other's environment, can irritate and observe one another, since they are cognitively open. Over time, irritations "can lead to 'tracks' along which such messages regularly reach a functional system. These have been termed 'structural couplings'" (Hutter, 2001, p. 290). Such tracks can be identified in patterns of regularity in messages exchanged and as triggers of new events. Legislation may serve as an example of structural coupling between political and legal function systems and other areas. However, 'the unlikely event of a successful structural coupling of political decision-making, legal norm-making and social guidance can only occur if relevance thresholds are successfully crossed and if the respective limits of self-reproduction are observed' (Teubner, 1987, p. 21). Otherwise, the law, politics, and the social area will be caught up in a 'regulatory trilemma', which exists in three forms: mutual indifference, social disintegration of law, and legal disintegration through society. Thus, various kinds of 'regulatory failures' must in fact be the rule rather than the exception (Teubner, 1987; see, p. 21; Freier et al., 2023 for a comparative educational analysis).

The intersection between the subsystems can also be examined from an organizational perspective. School organizations are typically delineated by the logic of their primary function systems, namely the education system. However, decision-making within schools extends beyond matters directly related to educating. Bureaucracy, compliance with regulations, and funding introduce decisions based on political, legal, and economic subsystems. Evidently, school as organizations

possess the capacity to amalgamate viewpoints from multiple societal function systems (Sales et al., 2022; Luhmann & Barrett, 2018).

To comprehend the dynamic interaction between education and legislation, the central concepts of functionally differentiated subsystems, juridification, deficits, structural coupling, and the regulatory trilemma come into play. The following two sections delve into the transformation within the Swedish regulatory framework for education. In the concluding section, we explicitly revisit these key concepts to discuss the influence of juridification on differentiation in education.

The context of Sweden: from “one school for all” to “one school for all”

In the 1940s and 1950s, the parallel school and its use of tracking and ability-grouping became a concern in Sweden. The call for equality and the emergent welfare state found the stratification of students into different educational trajectories and the allocation of life chances problematic. To address this issue, the 1960s witnessed the introduction of a comprehensive unified national school and a move from organizational differentiation like streaming and ability-grouping, towards pedagogical differentiation within the classroom (Dahllöf, 1971; cf.; Tomlinson, 2017 on instructional differentiation).

However, challenges in fully realizing the political vision persisted. Recurrently, reforms during the last decades have been legitimated by pointing to the public sector crisis and declining student performances on inter/national tests, high rates of truancy and dropouts, and disruptive behaviour leading to classroom disorder. Moreover, there have been growing concerns about residential segregation and increasing social differentiation, mainly affecting new arrivals, male students, and those from disadvantaged socioeconomic backgrounds (Barow & Berhanu, 2021; Kornhall & Bender, 2019).

Globalization, digitalization, marketization, and a move towards neoliberal ideology have influenced the restructuring of the school (Forsberg et al., 2017). This shift is evident in the adoption of standards-based curricula (Högberg & Lindgren, 2023; Sundberg & Wahlström, 2012), the expanded use of inter/national tests (Lindblad et al., 2018), and specified criteria-based teacher assessment (Lundahl et al., 2017), as well as strengthened control, inspection, and accountability mechanisms (Hult & Segerholm, 2016). These policies are guided by a performative approach that prioritizes goal attainment and systematic quality work, which, since its introduction in 1997, has been the subject of extensive national support efforts (Bergh, 2015). Additionally, inclusive measures for special education needs have been introduced (Nilholm & Göransson, 2017). Furthermore, freedom of choice through tax-funded private schools and a school voucher system was implemented (Wiborg, 2015), and individualization and diversity have been underscored, giving importance to both parental and children's rights (Quennerstedt & Moody, 2020).

With the broadened scope of juridification, matters previously addressed through educational practices now have the potential to enter judicial domains for monitoring compliance with the law. In the Nordic context, the tendency of schools to treat unruly behaviour, bullying, and violence as crimes is a relatively new phenomenon (Lunneblad, 2019). As schools are integral parts of the surrounding society, societal discourses of zero-tolerance are reflected in decisions on how to deal with violence and degrading treatment in Swedish schools.

These changes were accompanied by reforms in teacher education programs, state-funded continuous professional development initiatives, and school development programs grounded in notions of teacher matters and evidence-based practice. These were measures taken to enhance core competencies and address the lack of trust in school professionals (Kirsten, 2020). Supplementing national professionalization initiatives, the current Education Act (SFS, 2010:800) prescribes a scientific foundation and proven experience as the underpinnings of teaching, further supported, and exemplified by the National Agency for Education.

Although the education sector has a longstanding tradition of being subject to legal regulations, in recent years regulations have been revised, and a series of new regulations has been introduced in areas that were previously not subject to legislation. One quantitative measure that

illustrates the overall increase in juridification is the changing number of paragraphs in the Swedish Education Act over time. When the Act first came into force in 1963, it contained 64 paragraphs (Bergh et al., 2023). Today, the Education Act (SFS, 2010:800) comprises approximately 900 paragraphs divided into 31 chapters. Especially relevant is that the restructuring encompasses far-reaching legislative alterations, encompassing new education act, revised curricula, and eligibility criteria for upper secondary school, and changed governance structures. Installed in 2008, the Swedish Schools Inspectorate (SSI) is a prominent example of juridification as reflected in the expansion of areas inspected, development of evidence-based descriptors, use of law language, recruitment of legal expertise, overall bureaucratization of teachers' work, and shift from pedagogical problems to legal issues (Hult & Segerholm, 2016). One evident aspect of juridification is the growing emphasis on students' individual enforceable rights (Carlbaum, 2016). Following a changed relationship between obligation legislation and rights legislation, current provisions specify the rights individuals can demand, such as from the school principal, and outline the corresponding sanctions (Novak, 2018). 'The twin ideals of the rule of law and legally assured human rights have conquered and continue to conquer new ground worldwide', with implications for the relation between international and national regulations and agreements (Blichner & Molander, 2008, p. 37).

Together, these changes capture transformations in the relationship between the systems of education, politics, law, economy, and science (Bergh & Arneback, 2019) and reflect a shift captured in the catchphrase: from 'one school for all' to 'one school for all' (Francia, 2014), influencing the way differentiation is perceived and enacted (Paulsrud, 2022). The notion of 'one school for all', focuses primarily on equal access, common placement, pedagogies of difference and student interests, equality of opportunity, and political struggles for socioeconomic redistribution. The latter notion of 'one school for all' or for every child responds more to call for pedagogies of the same, freedom of choice, individualization, and cultural recognition as remedies for social injustice (Wahlström, 2014). In an examination of Swedish policy approaches to differentiation (Paulsrud, 2022), it was concluded that there is a markedly reduced text space about pedagogical differentiation in the current curriculum (Lgr 11) and the Educational Act (SFS, 2010:800), while organizational differentiation has undergone legalization. Moreover, student interest and influence have moved to the background. Noticeably, both notions of 'one school for all' address issues of student participation and interest, albeit in dissimilar ways and involving different stakeholders and subjects.

Differentiation through juridification—three sets of legalizations

In this section, we explore three sets of legalizations. The first set centres on children's rights and equal treatment, the second on state professionalization initiatives, and the third on extraordinary measures that extend beyond the scope of regular schooling. To further illustrate some of the regulatory changes described in the above section within the Swedish context, we follow Teubner's (1987) advice to study not only quantitative aspects of juridification but also qualitative and substantive changes brought about by the interventionist state.

Our set of examples encompasses a diverse range of issues, each concerning different problems with distinct purposes, scopes, flexibility, complexity, enforcement, and authorization. These problems are interconnected with the perception of children as vulnerable individuals in need of protection, while also acknowledging their capacity for both violence and emancipatory agency. Additionally, the examples concern policies regarding professional shortcomings and deficiencies concerning student performance and behaviour. Some measures in our examples focus on preventing or prohibiting certain phenomena, such as discrimination and disorderly behaviour. Others are geared towards promoting children's rights, continuous professional development (CPD), and teacher careers. Moreover, several examples highlight the separation of authority and responsibility as well as changes regarding spatiotemporal aspects of teaching. By examining these sets of legalizations, we can gain

further insight into the multifaceted nature of juridification and its relation to the differentiation of education.

Children's rights and equal treatment

Our initial illustration delves into the realm of rights and equal treatment. It sheds light on how issues previously considered solely within the moral purview of teachers have been the subject of legal expansion into new areas, increased judicial power, and established mechanisms to hold schools and local authorities accountable. A manifestation of the reinforced emphasis on rights is evident in the *Convention on the Rights of the Child* (CRC), which was ratified in Sweden in 1990, and has applied as Swedish Law (SFS, 2018:1197) since 2020. This decision comprises an obligation to consider 45 articles on rights, such as no discrimination, the best interests of the child, life survival and development, and respect for children's views (articles 2, 3, 6, 12).

Another aspect emerging from the increased focus on rights is encapsulated within the umbrella concept of *equal treatment*. In the 21st century, legal concepts such as discrimination and degrading treatment gained prominence within legislative frameworks, while the previously established notion of bullying has been omitted. With the introduction of the Child and Student Protection Act (SFS, 2006:67), regulations were put in place to address discrimination and other violations of children and students, alongside measures specifying how schools should actively promote equal treatment and counteract discrimination and violations. Moreover, state agencies provide policy manuals, advice, and tools for implementation and follow-ups. With the broadened scope of issues under the concept of equal treatment, matters previously addressed through educational practices now have the potential to enter judicial domains monitoring compliance with the law. Moreover, local institutions may face lawsuits for damage on behalf of students.

For students and their legal guardians, there are different avenues to pursue their rights. They can opt to approach the Board of Appeal for Education, an independent authority similar to a court of law, to appeal certain decisions made by schools. Moreover, they can turn to the Child and School Student Representative, tasked with providing support and safeguarding the rights of students, which also can initiate legal proceedings and claim damages in courts on behalf of students.

During the political process preceding the incorporation of the CRC, key stakeholders expressed both support and scepticism (Bill 2017/18:186). While the Children's Ombudsman welcomed its legal significance for children's rights, others cautioned about unpredictability and potential litigations. Influential legal institutions have questioned whether incorporation would truly enhance children's societal position (Leviner, 2018). The legal framework of CRC, now binding for schools, derives from international negotiations and spans over different types of rights (Quennerstedt & Moody, 2020). Overall, the statutes contain general wording and inherent tensions, demanding further interpretation and application. With more school cases expected in courts, immediate action is demanded from local school authorities, including teachers and school leaders. Currently, the local context in which teachers, students, and their legal guardians meet is embedded in a strengthened legal language where conflicts may be subject to court proceedings. It is also noteworthy that the mentioned discrimination legislation was not initially designed for educational issues (Rosén, 2023); rather, it resulted from EU directives primarily aimed at the working sector.

In sum, the strengthened legal weight given to children's individual enforceable rights extends the reach of the law into new domains. Its foundation in international law differs from the Swedish constitutional mindset, making the enactment of children's rights and equal treatment even more complex. This comprises the relationship between enabling political collective action and the protection of individual rights, the expropriation of human conflict by regulations

and aligned administrative procedures, and the interplay between politics, law, and professional discretion.

State professionalization initiatives

Through changes and expansions of juridical regulations, the state has successively extended its mandate to professional training and CPD in diverse ways. A recent initiative, exemplifying the state's commitment to incorporating legal measures is the introduction of the *National professional program* for principals, teachers, and pre-school teachers, which will come into force in 2025. The responsibility to develop and administer the national structure for CPD and the national merit system is entrusted to the National Board of Education.

Another recent initiative is a governmental inquiry aimed at reforming *academic teacher training* and suggesting legal changes to the educational content, emphasizing subject knowledge, cognitive science, and practical methodology (Dir, 2023:111). In addition to the state's influence on the formation of future teachers, a 'senior teacher reform' (SFS 2013:70) was introduced in 2013. This initiative specifically targets a selected group of teachers, marking a sharp departure from earlier traditions in which teachers' salaries were determined by years of professional experience and, to some extent, by extra responsibilities and differences between teacher categories.

State involvement in the *National School Leadership Training Program* can be traced back to the 1960s, although the training at that time consisted only of short courses. In stark contrast, the current program spans over three years (part-time, altogether 30 ECTS). Although it operates at an advanced university level, it clearly differs from other academic programs, particularly due to the significant influence exerted by the National Agency for Education on content, structure, and processes. Two-thirds of the program is devoted to legal matters, the exercise of public authority, governing, organization, and quality, while the last third focuses on school leadership.

In sum, over the last decade, the state has increasingly expanded its mandate in relation to the responsibilities entrusted to teachers and principals in different ways. The initiatives are rooted in ideas addressing teacher's and principal's competences to meet expectations regarding goal achievement, quality, and equivalence. The examples reflect how law is used to regulate academic content and methodology and how the political, economic, and legal subsystems are employed in the differentiation of education and professionals. New ways to differentiate through juridification not only condition the daily practices of local professionals and the materialization of content and human interactions but also impose new demands on other segments of the educational organization.

Extraordinary measures beyond regular schooling

Below, we highlight three extraordinary measures address concerns regarding the effectiveness of schools: emergency school (*akutskola*), vacation school³ (*lovskola*), and supplementary tutoring (*läxhjälp*). The introduced measures extend beyond regular schooling in terms of spatiotemporal considerations, and they are primarily directed towards students at risk, either to themselves or to others. The Education Act (2010:800) provides the regulatory framework, specifying purpose, distribution of authority, student selection criteria, activities, and evaluation. Further details are given in the application forms for allocating funds. The meaning of these measures can in part be deduced from where they appear in the Education Act. For instance, information about vacation schools immediately follows a paragraph titled 'assessment for gradings'. Supplementary tutoring, on the other hand, is a term applied only in relation to the allocation of funds but is mentioned in the Act under the heading of 'instruction time' as 'extra study time'. The concept of an emergency school is embedded within a chapter on 'safety and orderly environment'.

Organizers of *vacation schools* receive a special state allowance to support implementation, and only licenced teachers are permitted to teach, although exceptions are possible. The

notion of 'vacation school' refers to education provided by school organizers to students in grades 8 and 9, at risk of not meeting the qualifications for upper secondary school. It entails instruction beyond regular school hours at a designated location determined by the organizer. Based on students' performance levels, the principal has the authority to determine which students are offered the opportunity to participate. However, the decision to accept or reject the offer lies with the students' legal guardians. To permit students' transfer to upper secondary school, they have the option to take examinations in the subjects covered by the vacation school.

School organizers can also apply for grants to cover the costs of personnel who have teaching certifications or relevant training in psychosocial work for *emergency schools*. The selection of students is based on student misbehaviour and the schools' ability to ensure the safety of other students and maintain an orderly study environment. Emergency schools provide temporary education outside of students' regular school units at a location within the organization of the authority. Placement in an emergency school is the second-to-last step in a series of disciplinary procedures outlined in the Education Act, which includes seclusion from the classroom, detention, investigation, written warnings, temporary removal from the school, relocation to another school unit, and suspension. The decision of relocation rests with the principal after the students' guardian is informed. The placement may be effective for a period of four weeks.

The policy trajectory of *supplementary tutoring* is complex. For a long time, tutoring was seen as incompatible with the idea of 'a school for all' and was rarely encountered. Nevertheless, in the early 2000s, the introduction of tax reductions for private childcare enabled families to engage in supplementary tutoring, which fuelled the growth of a private tutoring market. In the following election, this emerged as a prominent topic of inequality. A slogan of 'supplementary tutoring for all' was later realized via extended tax reductions and expanded regulations, allowing organizers from the public, private, and civil society sectors. However, discussions on provisions, interactions, tutor competencies, and ideological considerations led to the elimination of tax reductions and the introduction of new regulations and government grants, limited to public and civil organizations. Still, the private market remains. Currently, all schools are obligated to offer voluntary participation (minimum of two hours per week) for students in grades 4–9 outside of regular school hours. Therefore, government grants for supplementary tutoring are limited to students in primary education.

In sum, all three policy measures enshrined in legislation and funded allocation are based on ideas of solving problems of student performance or misbehaviour through the relocation of both students and teachers in time and space. These measures simultaneously exemplify an expansion of schooling and a growth in differentiation. The authority to employ these measures lies primarily with school management.

Concluding remarks: differentiation through juridification of education

In this final section, we revisit findings from the exploration of the Swedish case, providing additional insights into the intersection between educational differentiation and juridification. First, we delve into differentiation and renewed tensions following the introduction of the new regulatory measures analysed in the previous section. We then turn to the many faces of juridification in education, and finally to differentiation and interconnections within school organizations.

Educational differentiation and renewed tensions

Informed by the theory of functional differentiation, the education subsystem is a complex web of interconnected social and psychic systems. This results in the presence of distinct and self-regulated units. While subsystems are available to all members of society, organizations restrict access to members, thus creating exclusivity. Education is structurally coupled within a nested assemblage

that interfaces with other subsystems through organizational decisions. Although there is no vertical differentiation on the level of society, traditional forms of differentiation are reinstalled within school organizations, as indicated by our examples and the contextual backdrop.

It is not a new phenomenon that students are categorized, observed, and included/excluded from regular teaching based on distinctions between normal and deviant conduct or performance (Nilholm & Göransson, 2017). Through labelling, students are often perceived as different, problematic, or in lack of something (Helakorpi et al., 2023). Currently, organizational differentiation is reinforced by regulations, and previously acceptable performances are now below bar. The enforcement of extra ordinary measures adds to former practices of adjustment and special support, as does criminalization of students (Lunneblad, 2019). Of note, the range of inter/national comparisons and rankings has increased the distribution of fame, shame, and blame (Steiner-Khamsi, 2004) across categories of students (e.g. gender, ethnicity, socioeconomic background, newly arrived), schools, and nations. These kinds of internally produced social differences can be characterized as an observation regime, legitimizing organizational closure mechanisms in the school system (Emmerich & Hormel, 2021).

Nationally, organizational segmentation has grown, encompassing public and private schools, as well extra-regular teaching arrangements. These, in turn, have brought about further types of social differentiation related to students and schools within different regions (urban/rural, center/periphery) and socioeconomic strata. While regulations still emphasize 'differentiation as individualization' and 'adaption within diverse classrooms', the restructuring comprises a move towards 'differentiation as adaption to specific groups' (cf. Eikland & Ohna, 2022). Furthermore, the standardization of curriculum and assessment criteria indicates less of Tomlinson's (2017) 'differentiated instruction' focused on modifying content, interaction, and outcome.

As previously mentioned, the education system is marked by both structural and technological deficits. The intention to change psychic systems, which are not directly accessible, coupled with the absence of a definite path to success, renders the configuration of teaching and the assessment of outcomes utterly crucial for the reproduction of the system. Our exploration includes observations of alterations regarding the teaching profession and teacher—student interactions.

Recent regulatory changes have significantly reshaped the vertical hierarchy among educational professionals, primarily evidenced by the introduction of 'senior teachers' and CPD programs tailored as career ladders for both teachers and principals. The complexity of professional differentiation is further heightened by the opportunity to recruit personnel without formal academic training or teacher licences. Consequently, enhanced planning and coordination are necessary between teachers and other staff categories. Numerous alterations are closely tied to shifts in authorization, with power predominately retained at the central level, while corresponding responsibilities are delegated to teachers as street-level bureaucrats at the periphery. The boundaries around teacher discretion and decision-making are entwined with both inter/national actors, local management, and the standards and procedures they develop (cf. Hall & Hampden Thompson, 2022).

The introduction of standards external to teaching and teachers alters the condition of teacher—student interaction. Inter/national tests and assessment criteria decided by the state are complemented by legal standards for the handling of rights and social problems. When 'the tail is wagging the dog', the curriculum is also affected, with external standards taking precedence. In this process of juridification and bureaucratization, local professionals are increasingly expected to act as competent legal experts within the education system. School professionals primarily communicate in informal language, which results from teaching actual students in real-life situations, while law language is typically formal and technical. When applied to educational problems and the logic of the education system, this increased use of law language and expertise appears to miss the mark. Legal experts approach issues in terms of just/unjust and legal/illegal, while the education system focuses on intended socialization and students' life courses. Ill-defined problems, previously entrusted teachers, have been transformed through target-oriented management and accountability materialized

through regulatory changes. Evidently, this poses a risk of overregulating curricula and undermining teachers' pedagogical freedom (Habermas, 1987). The restructuring places new demands and roles on teachers, and simultaneously, there is a reduction in authorization marginalizing assignments traditionally attached to the teacher role (cf. Hopmann, 2008).

Moreover, the extraordinary measures represent significant shifts in teacher—student interaction and exemplify instances of spatiotemporal alterations akin to the recently introduced regulations on distance learning and remote teaching (SFS, 2010, p. 800). These changes have transformed the interactions between teacher/non-teacher and students, with some being separated in time and/or place and, in some cases, communicating only via ICT. For students perceived to be at risk regarding achievement or conduct, distinctions such as school time/leisure time, classroom/out of classroom, and school/home have become blurred to some extent. Additionally, the curriculum has undergone modifications, now focusing primarily on core academic subjects. Although homework assignments used to be the primary link between home and school, new artefacts and activities have been added. The form of the educational system seems to be on the move, with what consequences remains to be seen (Forsberg et al., 2021).

Multifaceted juridification of education

The exploration of the Swedish case underscores the emergence of a multifaceted juridification of education that has unfolded over the preceding decades. Within this evolution, we discern a reinforced regulatory function and social legitimation of educational law, coupled with a transformation in normative structure, including instrumentalization and result orientation (cf. Teubner, 1987). Moreover, our examination reveals diverse manifestations of juridification across several dimensions, notably law expansion and differentiation, conflict solving, judicial power, and even constitutive juridification and legal framing (Blichner & Molander, 2008).

The current regulation signifies an intensified materialization of formal education law and an expanded scope of regulated educational domains, comprising areas such as children's rights, equal treatment, teacher professionalization, curriculum standards, assessment criteria, inter/national tests, and remedies for performances or behaviour deficiencies linked to a growing use of national special grants. Additionally, the globally connected governance of education, spanning multiple scales, introduces a more complex norm structure. The constitutional Swedish mindset is partially challenged and redefined by the integration of international law. Judicial conflict expropriation and resolution are now more pronounced, accompanied by an increase in administrative functions and support. In conjunction with education marketization there is a transition beyond the realm of public law, entailing contractual relationships.

The legal framework encompasses both particularistic and broader legal frameworks. Within the latter, authorization is often incrementally delegated to various levels and actors, allocating responsibilities accordingly. For instance, the enforcement of children's rights involves the evolvement of an extended administration, comprising state inspections, procedures for addressing misconduct, avenues for court appeals and damage claims, as well as access to legal aid and precedents. Schools are also expected to proactively address issues related to both CRC and discrimination as part of their systematic quality work (Rosén, 2023). Extensive bureaucratization has evolved in response to management by objectives, accountability, and regulations. This aligns with a shift in education policy discourses from equity to equivalence and quality characterized by instrumental language, challenging teacher autonomy and control (Bergh, 2015). Collectively, these changes entail a heightened utilization of legal expertise and language, not only in political decision-making but also in school administration and practice (cf. Hult & Segerholm, 2016). The state and its agencies, once primarily providers of education, have evolved into strong enforcers of standards, diligently monitoring schools, professionals, and outcomes.

Differentiation and interconnections in multifunctional school organizations

The juridification of education raises questions about the nature of school organizations. In our context, it is evident that schools are expected to address issues not solely as educational, but also as problems of politics, law, economy, science, medicine, and crime. Consequently, the dominance of the education medium with teacher as the primary profession in schools cannot be taken for granted (cf. Åkerstrøm Andersen & Grønbæk Pors, 2021). Rather, it is more appropriate to describe school organizations as multifunctional. However, in an increasingly complex and uncertain world, there is no standard mechanism for the range of structural couplings that may emerge between the subsystems. The way organizations are involved has to be examined case-by-case (Luhmann et al., 2011/2018).

We have identified a growing web of interconnections between education and other subsystems through shifts in the governing of a national school organization. As previously demonstrated, the amplified regulation of education underlines a reliance on legal remedies to address societal challenges, with political legislators increasingly resorting to legal measures to solve educational problems. Furthermore, this juridification of the political governing of education is further embedded in connections to other subsystems. Over time, more stable tracks of (self)irritations have generated structural couplings between the assemblage of education, politics, and law (EduPoL), along with other subsystems. Examples of these couplings include regulations on evidence-based policy and practice, professional career ladder, and student-based categorizations, which link EduPoL with science. Voucher schools and exams illustrate connections between EduPoL and the economy. Initiatives like supplementary tutoring and vacation schools exemplify the structural coupling between EduPoL and the family. Evidently, the emergence of the multifunctional school organization has led to an increase in both differentiation and integration. To what extent the expanded structural couplings reinforce regulatory trilemmas and risk regulatory failures, alternatively can be exceeded through reflexive law, necessitates further research (cf. Teubner, 1985, 1987).

In conclusion, our analyses demonstrate intricate relationships between juridification and differentiation, characterized by increased complexity and contingency. While juridification has been examined in relation to other subsystems, such as politics (Magnussen & Banasiak, 2013), health (Costa, 2023), social work (Schirmer & Michailakis, 2015), and religion (Klenk, 2011) education has remained relatively unexplored in this regard. Through our chosen approach, which combines insights from Luhmann and Teubner, our article makes significant contributions to the literature on educational differentiation. Furthermore, we enrich the body of knowledge in educational policy research, an area where the phenomenon of juridification has largely been overlooked until recent years (Murphy, 2022). Existing research has provided valuable insights into specific empirical examples, often focusing mechanisms of control and accountability (for example: Andenæs & Møller, 2016; Barberis & Buchowicz, 2015; Bergh & Arneback, 2019; Freier et al., 2023; Gibson, 2013; Lindgren et al., 2021). Our findings add a complex web of differentiation and interconnections between education and other systems, particularly evident in the nexus between education, politics, and law (EduPoL), but also other systems. Traditional modes of differentiation continue to exert influence, visible in the regulation of school organization and teacher—student interaction, in which we encounter categorization, segmentation, stratification, and center—periphery differentiations. While these patterns have historical underpinnings, a notable shift in emphasis has arisen, generating renewed tensions between individual rights/collective power, public/private education, authorization/responsibility, pedagogies of difference/pedagogies of the same, and inclusive/exclusive practices.

Drawing on Luhmann's theory, each system recognizes only what its internal framework allows it to communicate, and it cannot acknowledge any other aspect of reality. The insight that each system is inherently closed, with clearly defined boundaries regulating its internal operations, poses challenges for external communications and the overall functioning of society. Our empirically based

theorizing on the intersection of different social subsystems thus yields valuable knowledge on education governance and policy, offering implications at the systemic, organizational, and interactional levels. Nevertheless, further empirical studies are imperative, particularly with respect to how reduction of complexity through regulatory law plays out in policy enactment and education practice. These studies can also serve as a fertile ground for additional theoretical development and investigations of consequences, for example on normative curriculum aspects and professional discretion. Significantly, the transformation of ill-defined problems into clear, transparent, and well-defined ones is scarcely aligned with the inherent constraints of the education system, considering its dual deficits. Conclusively, juridification functions as a lever of differentiation, potentially reinforcing the polarization between ‘one school for all’ and ‘one school for *all*’, alternatively exceeding them.

Notes

1. Luhmann’s system theory and key concepts are further elaborated in special issues in *European Educational Research Journal* 2021, 20(6) and *Organization* 2006, 13(1), provide overviews and applications of Luhmann’s theory.
2. Segmentation is differentiation into similar units that are equal in status. Center—periphery differentiation creates dissimilar subsystems, in which inequality between a central subsystem and a series of segmentarily differentiated periphery subsystems exists. Stratification creates subsystems that are dissimilar and unequal in rank (Taylor, 2020).
3. Although similar to summer schools and summer classes, the vacation school is a formal regulation in the Education Act (SFS, 2010, p. 800).

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