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A development of social norms in the Swedish educational system: A socio-legal study on how juridification processes in the Swedish educational system influence social norms in the lifeworld of teachers, students, parents and principals in elementary schools

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Master Thesis (SOLM02)
Spring 2020

Abstract

The Swedish education system has for many years been under development in line with neoliberal reforms. Municipalization of school operations, the voucher system and the expansion of free schools were elements referred to by the government when suggesting the 2010 Education Act and introduction of the Swedish Schools Inspectorate in 2008. The new education legislation had to adapt to a new climate and in doing so the social norms of students, teachers and principals changed. Disputes are to an increased degree solved with judicial and administrative procedures rather than dialogue and communication, while the teachers' obligation to document every decision made in the classroom puts further pressure on their profession.

With the intention of making the politics of constructing problems visible, this thesis examines the rationale, discourses and arguments brought forward in the propositions to the 2010 Education Act and 2008 Swedish Schools Inspectorate, bringing further understanding to the developing social norms in today's education system affecting the relationships of those involved in school operations. With the aid of Bacchi's WPR (What's the problem represented to be) post structural policy analysis, the results indicate that the manner in which the government has represented the problems is aligned with lack of efficiency and lack of legislation adapted to the current education system. Important aspects such as inequalities in the education system and transferring expertise on how to best run a school operation to the Swedish Schools Inspectorate were consequently left out of the representations. With Habermas' theoretical framework on communicative action and the systems' colonization of the lifeworld, it could be concluded that juridification processes in the Swedish Education system encourages a culture where students are expected to solve disputes with judicial procedures characterized by instrumental rationality rather than with communicative dialogue and mutual understanding. Furthermore, teachers' obligations to document and report suspected cases of degrading treatment has increased their workload and affected their relationship with their students and colleagues.

Keywords: Instrumental & Communicative rationality, WPR, Supervision, Education Act, Swedish Schools Inspectorate, neoliberalism, welfare state.

Acknowledgements

I would like to say my thanks to the staff and classmates at the department of Sociology of Law where I have spent most of my five years of learning. I would also like to show appreciation to my supervisor Peter Scharff Smith for providing me with valuable feedback throughout the process of writing this thesis.

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1. Introduction

The Swedish educational system is a topic which recurrently finds itself in the center of the political debate, a common denominator transcending into other important societal challenges such as the labour market, integration, the welfare system and crime. Recently the educational system and specifically elementary schools have been subject to multiple debates; inequalities in education, a criticised PISA-investigation and a report culture affecting teachers and other school personnels' dynamic with students. This thesis will delve into the social norms of students, teachers and other school personnel with the right-based and goal-oriented Swedish education legislation as points of departure. Outer influence from ideologies such as globalization and neoliberalism combined with demands from the EU, UN and Council of Europe have steered welfare legislation in Sweden towards an increased rights based approach, and the education legislation is no exception. An example of this is the implementation of the UN's convention on the rights of the child in Swedish legislation, which clearly states that every child has the right to education.¹ State parties who have adopted the convention are also expected to take legislative, administrative, social and educational measures to protect children from physical and psychological harm, injury or abuse.²

However, in the process of ensuring students' rights and emphasizing the obligations of teachers, principals and school mandators, the social norms of teachers, students and other parties involved in the school culture have evolved. Disputes are to an increased degree solved with judicial and administrative procedures rather than dialogue and communication. This claim is strengthened by a number of articles in which teachers express their thoughts on students' possibility to activate their rights through the Swedish Schools Inspectorate. In multiple articles from the Swedish teachers' association teachers express an increased workload due to their obligation of

¹ SFS 2018:1197. *Lag om om Förenta nationernas konvention om barnets rättigheter*. Article 24.

² SFS 2018:1197. *Lag om om Förenta nationernas konvention om barnets rättigheter*. Article 19.

documenting and filing reports when suspecting a student to be subjected to degrading treatment by another student or teacher³;

“No teacher should have to be specified in a document on the basis of a misunderstanding from a parent”.⁴

“Today we have many cases in which teachers have to intervene to ensure study tranquility, however this has resulted in reports to the Swedish Schools Inspectorate for degrading treatment. This causes an insecurity among teachers as to what authority they have which results in an unwillingness to intervene”.⁵

Furthermore, in an interpellation to the Swedish minister of education, a member of the Swedish Parliament representing the party “The Liberals” claims that the issue of teachers’ and principals’ authority must be raised in the political debate.⁶ The member of parliament claims that the level of violence and threats against school personnel have increased. Meanwhile there is a strong resistance towards decisions made by teachers and principals today. Decisions regarding grades and disciplinary measures which to an increased degree are criticised by students and parents. It must be clarified how the state through the Education Act and its implementation specify teachers’ authority to maintain order and security in school operations.⁷

These examples could arguably be displayed as effects of juridification, a process explained as an increase in goal oriented written and/or formal law, institutionalizing moral norms.⁸ Translated from senior lecturer in Public Law at the University of Gothenburg David Ryffé, he writes in a Swedish article that “I claim that soon a student will not be able to go to the bathroom without there being a law in place. This is what is referred to as juridification, when a non-legal operation becomes legal in all aspects”.⁹ Consequently administrative procedures are constituted

³ Bergling, Mikael. *Var femte lärare tvekar att ingripa vid bråk*. 2017-04-27.

⁴ Lundsten, Elinor. *Rör inte min yrkes stolthet*. 2020-02-21. Skolvärlden.

⁵ Sandberg, Katarina. *“Principals must support teachers who are reported”*. 2020-03-05. Skolvärlden.

⁶ The Swedish Parliament. Interpellation to the minister. *To the minister of Education Anna Ekström (S)*, 2019-08-14.

⁷ *Ibid*, p. 1.

⁸ Blichner, L & Molander, A (2008). *Mapping Juridification*. European Law Journal, Vol 14:1. p. 41.

⁹ Ryffé, David. *Allt i skolan är styrt av juridik - men lärare kan inget om det*. 2019-03-01. Skolvärlden.

to enable audit control and supervision, a task delegated to a specific governmental agency.¹⁰ In the context of the Swedish educational system this task is conducted by the Swedish Schools Inspectorate. Students therefore have the opportunity to file complaints directly to the Swedish Schools Inspectorate, possibly resulting in the school mandator being obliged to pay indemnity if a breach of legislation can be proven. The institutionalization of moral rights can be argued to cut both ways; ensuring the rights of the students while simultaneously encouraging dispute solving with administrative and bureaucratic procedures on behalf of dialogue and communication.

In terms of statistics, the Swedish Schools' Inspectorate and National Child- and Student Mandator (Barn- och elevombudet) received 38 76 complaints in 2020, 19 % less complaints than the year before.¹¹ For the second year in a row since the introduction of the Swedish School Inspectorate in 2010 there has been a decline in complaints.¹² The Swedish School Inspectorate has in recent years emphasized the importance of a well structured local system for complaints for the school mandators in order to hastily address problems. This could potentially explain the decrease in filed complaints to the Swedish Schools' Inspectorate in recent years. To what extent the pandemic has affected the level of complaints is too early to determine.¹³

1.1 Thesis aim and research question

The problems depicted by the articles above illustrate good examples of the clash of discourses caused by the juridification of education legislation in Sweden. Although not ill-meaning, the consequences have immediate effect on the teacher profession and the dynamic between everyone involved in school operations. The purpose of this thesis will hence be to address these normcollisions and rationalities in Swedish education, enabled by the development of a rights based legislative approach and formation of a Swedish Schools' Inspectorate, which substitute pedagogical and communicative problem-solving with legal processes and a supervisory regime. To grasp this development of social norms in teacher-student relations and

¹⁰ Ibid, p. 42.

¹¹ Skolinspektionen. *Statistikrapport över ärenden 2020*. Skolinspektionen.se. Last updated: 2021-03-26.

¹² Ibid.

¹³ Ibid.

the overall teacher profession, this thesis intends to examine the juridification processes in the 2010 Swedish Education Act and introduction of a Swedish Schools Inspectorate. Specifically the chapters on students' right to security and study tranquility as well as measures against degrading treatment will be focused on in the 2010 Education act. Furthermore, by making the politics of constructing problems visible one gets acquainted with the rationale behind the formation of law and its consequences on those practising it. The research questions analytically encouraging the thesis are:

(1) How did the Swedish government represent the problems when suggesting the 2010 Education act and the introduction of a Swedish Schools Inspectorate?

(2) How have the juridification processes of Swedish education legislation developed the social norms in the lifeworld of students, teachers and other school personnel in Swedish schools?

2. Legal framework

2.1. The Education Act

In 2009 the then existing government passed a bill to renew Swedish education legislation with the "Education act". Although the previous Education Act from 1985 continued to govern Swedish education until the 2000s and was continuously supplemented by extensive legislation on individual rights, it was not outlined to cope with such amendments which resulted in ambiguities and gaps.¹⁴ A governmental inquiry commission was hence formed to ascertain how the 1985 Education Act could be modernized for it to fit a system where state responsibilities for education were commissioned to municipalities.¹⁵

2.1.1 Security and the right to study tranquility

The current Education act has a specific chapter on security and the right to a good study

¹⁴ Novak, Judit (2019). *Juridification of educational spheres: The case of Sweden*, Educational Philosophy and Theory, 51:12, 1262-1272. p. 1265.

¹⁵ Ibid, p. 1266.

environment. The third paragraph in this chapter suggests that education ought to be structured in a manner which ensures a school environment characterised by security and study tranquility.¹⁶ The fourth paragraph refers to the work environment act which regulates the demands for a good working environment.¹⁷ Furthermore, chapter five paragraph 6 in the Education act regulates teacher and principal authority. Principals and teachers are allowed to take immediate and temporary action which are authorized to ensure safety and study tranquility for their students, or to come to terms with a disruptive student.¹⁸ Continuously, the forthcoming paragraphs in chapter five regulate the conditions for dismissing a student from the classroom, detention, temporary relocation to other schools, suspension and confiscation of objects.¹⁹

2.1.2 Degrading treatment

The sixth chapter of the Education act regulates measures against degrading treatment. According to chapter 6 paragraph 1:

“This chapter has the objective to prevent degrading treatment towards students and children”.

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Degrading treatment as described in the sixth chapter paragraph 3 of the Education Act, is conduct which without being discriminatory according to the Discrimination act, degrades the a student or child’s dignity.²¹ Furthermore, the mandator is responsible for assuring that their school personnel fulfill the obligations outlined in chapter six of the Education act. Every school operation which the mandator is in charge of should pursue a goal oriented endeavour to prevent degrading treatment of students and children.²² For instance, chapter 6 paragraph 8 specifies that the mandator is in charge of an annual plan outlining measures required to

¹⁶ SFS 2010:800. *Education Act*. 5. Chapter § 3.

¹⁷ 5. Chapter § 4. Ibid.

¹⁸ 5. Chapter § 6. Ibid.

¹⁹ 5. Chapter § 7-22. Ibid.

²⁰ 6. Chapter § 1. SFS 2010:800. *Education Act*.

²¹ 6. Chapter § 3. Ibid.

²² 6. Chapter § 6. Ibid.

prevent degrading treatment. Moreover, chapter 6 paragraph 10 regulates the obligation to report, investigate and take action on degrading treatment for all school personnel.²³ A teacher or other school personnel who discover a student or children being subjected to degrading treatment, is obliged to report this to the principal. In turn, the principal is obliged to report this to the school mandator. The school mandator has the responsibility to hastily investigate the circumstances leading up to the degrading treatment and take action to prevent further degrading treatment in the future. If the mandator fails to fulfill the obligations outlined in chapter 6 paragraph 7-11, indemnity shall be provided to the student or child subjected to degrading treatment.²⁴

2.2. The Swedish Schools' Inspectorate

The Swedish Schools' Inspectorate is a governmental agency founded on October 1st 2008. The agency is responsible for supervising and controlling the quality of preschool education, compulsory schools, upper secondary schools and adult education.²⁵ The operation of the agency is based on the Swedish Education Act, a special commission and on directions written by the government each year.²⁶ There are four main areas which the agency is tasked with: regular supervision, quality audit, investigations and decisions regarding complaints and issuing permits for independent free schools.²⁷

2.2.1. Regular Supervision

Regular supervision is carried out every three years and has the intent to discover improvement needs in schools and promote development. Certain schools are monitored more regularly where a high proportion of students are at risk of not getting the education they are entitled to.²⁸ Schools which are monitored more closely are selected based on the school's results, reports filed by

²³ 6. Chapter § 10. Ibid.

²⁴ 6. Chapter § 12. Ibid.

²⁵ Skolinspektionen. *The Swedish Schools Inspectorate for international audiences*. Ärendemening. 10/11/2015.

²⁶ Ibid, p. 1.

²⁷ Ibid, 8.

²⁸ Ibid, p. 9.

students and parents, surveys and other information about the school. The Swedish Schools Inspectorate audits educational conditions, educational development, financial and legal conditions for the school authority to provide education, teaching and learning, security, peaceful study environment and measures against degrading treatment.²⁹

2.2.2. Quality audits

Quality audits are in depth evaluations within limited areas in the school system. The audits are based on national guidelines and objectives, supported by research results and experience. Examples of such areas can be the contents and format of a subject such as English, physics, mathematics, the work with follow-up and assessment of the student's knowledge or teachers' role as educational leaders.³⁰ An audit consists of auditors gathering written information, visiting schools, observing lessons and interviewing staff and students. Once the audit is completed, the agency presents the overall results of the audit in a general report.³¹

2.2.3. Complaint Cases

Complaints from students and parents who are dissatisfied with conditions in school are issued to the Swedish Schools Inspectorate. This could refer to degrading treatment from staff or other students, lack of support for students entitled to special education tools and other issues relating to teaching and the student's sense of security and working environment.³² When a report is issued the Swedish Schools Inspectorate investigates what is behind the complaint and writes a report to the school about what needs to be improved to rectify the situation.³³ If necessary the Swedish Schools Inspectorate has the possibility to impose an injunction with a penalty to make the school correct the conditions discovered through the complaints.³⁴

²⁹ Ibid, p. 10.

³⁰ Ibid, 14.

³¹ Ibid, 15.

³² Ibid, p. 16.

³³ Ibid, 16.

³⁴ Ibid, p. 16.

2.2.4. Issuing Permits

The final task delegated to the Swedish Schools Inspectorate is issuing permits to independent school authorities that want to expand or start a school. Since the 1990s Sweden has had a system where independent school operations not owned by the municipalities are permitted.³⁵ Criteria for such school operations include legal requirements, adding something new to the range of existing education programmes in the municipality, not being at risk of having to be closed by the municipality and whether it is expected to operate in proportion to its expected funding.³⁶

3. Literature review

In order to grasp the scientific field in which this research is situated, conducting a literature review is of importance and a necessary tool to acquaint oneself with previous literature and identify main themes and concepts within the topic.³⁷ The field of intended inquiry is the culture of mistreatment among students in Swedish elementary school in a socio-legal context, connecting the issue to Swedish educational legislature. The topic is situated within the socio-legal fields “welfare regulation and implementation”, “welfare state - rights and entitlements to welfare support” and “child rights”. Thus, the Lund University library database “LubSearch” was used to search for existing literature related to these research fields. In the advanced search option, selecting “peer reviewed” articles and “English” as language, the following search string was employed: “Welfare state”, “Education”, “Sweden” and “Student Rights” The search generated 14 articles which were used to access more articles by snowballing the contents of their reference lists and thus finding articles with various different angles in the context of the welfare state, teacher profession, student rights and juridification.

This thesis intends to supplement existing research with a sociology of law perspective; studies with a social scientific approach to law have hence been prioritized in the literature review. A

³⁵ Ibid, p. 17.

³⁶ Ibid, p. 17.

³⁷ Efron, Efrat, S. & Ravid, R. 2019. *Writing the literature Review: A practical Guide*. The Guildford Press. p. 25

snowball method has been used to access relevant literature through scholars such as Judit Novak and Agneta Hult, two social scientific scholars concerned with education studies and more specifically educational policies in a Swedish context. Although they are not researchers from the socio-legal tradition, they address the problem of juridification in Swedish school legislature in a social scientific manner. However, to grasp the theoretical context of the developing social norms in Swedish elementary schools, one must first understand the societal and political development of the welfare state enabling education reforms which have changed the teacher profession.

3.1 Welfare state legislation and educational restructuring

The convergence of welfare state institutions, rights based policy and global capitalism have introduced new methods of governance exemplified by quasi-markets, public-private partnerships and evaluations of processes as means of improving quality and effectiveness of welfare services.³⁸ Frequently occurring concepts corresponding to the European welfare restructuring include marketization, decentralization and privatization. From the 1970s and onwards European societies have changed towards post-industrial economies with shifting demographical and cultural configurations.³⁹ Welfare policy reforms have changed the professional worlds of those involved with providing welfare service to the public.

One such welfare service under transformation is the education sector which ought to be regarded as a worldwide movement with similar characteristics in multiple countries.⁴⁰ One idea of restructuring builds on innovation and adaptation, in the context of education the reforms on deregulation, increased autonomy and marketization are hence aimed towards

³⁸ Houtsonen, Czaplicka, Lindblad, Sohlberg & Sugrue, 2010, *Welfare state restructuring in Education and its National Refractions*. Vol. 58(4): 597-622. Current Sociology. p. 598.

³⁹ Jörg Müller , Caroline Norrie , Fernando Hernández & Ivor Goodson (2010) *Restructuring teachers' work-lives and knowledge in England and Spain*, Compare, 40:3, 265-277, DOI: 10.1080/03057920902830061. p. 265.

⁴⁰ Lindblad, S. & Goodson, I. "Researching the teaching profession under restructuring.", In *Professional knowledge and Educational Restructuring in Europe*. Red., Goodson, I. & Lindblad, S., Edition 1. (Sense Publishers, 2011). p. 1.

achieving a school with greater freedom and one that is more coherent with its environment to improve creatively and innovatively.⁴¹ A second idea explains the restructuring of education as a consequence of societal and political changes within existing welfare systems and societies. This idea does not only regard the restructuring of education as a result of shifts in policies, societies and governments, it has, in a sense, also impacted society, education and the teaching profession. In contrast to the first idea which emphasizes an increase in innovation and adaptation with more autonomy, the second idea indicates welfare restructuring as building an iron cage around health and education institutions. Consequently, the incentives to act autonomously declines on account of audits and quality indicators.⁴²

In Sweden, during the 1990s, there was a vast discursive change with a restructuring of the Swedish economy. This led to growth of knowledge-intensive production, an expanded service sector and a rise in the general education level among the population.⁴³ In terms of the educational sector this discursive shift was made visible through the new contradictory components emphasizing self governing individuals while simultaneously controlling individuals with investigative actions. The educational goals are set by the national curriculum, although the schools are encouraged to obtain those goals in a self-governing manner. However, quality audits decide to what extent these goals are satisfactory.⁴⁴ Furthermore, since the 1980s there has been a policy discourse emphasizing the rights of the pupils and parents, resulting in new demands and strain on teachers' approach towards their pupils.

3.1.2. Decentralization

An important aspect to consider in the development of Swedish education is the municipalization of schooling. Detailed national curriculums, state subsidies and regulations concerning staffing, resources and organisation were abandoned on behalf of reforms aimed at

⁴¹ Lindblad, S. & Goodson. 2011, p. 2.

⁴² Ibid, p. 2.

⁴³ Ibid, p. 603.

⁴⁴ Ibid, p 604.

strengthening equality and increasing freedom, adaptability and increased professionalism.⁴⁵ The reforms were enforced by both socialist and non-socialist governments. Good quality education and how to best prioritize resources was believed to be best decided locally in the municipalities rather than centrally by the state. Later, during 1991-1994 further steps were taken by the non-socialist government to achieve increased local autonomy, which was made visible through the establishment of independent schools and the introduction of subsidized lump sums to the municipalities.⁴⁶

3.1.3 Budget reforms

Equally important as the municipalization of education in Sweden is the budget reform which leaves municipalities with the responsibility of funding the schools.⁴⁷ Rather than the “ear-marked” money administered by the state for schooling, the lump sum method was introduced to allow municipalities to set their own local services preferences.⁴⁸ Such lump sums are provided with budget contracts, in which educational services of the schools are specifically defined. The budget is to be intertwined with the national curriculum goals to enable evaluation of how well the school performs in accordance with these goals. From the perspectives of central actors, primarily representatives from the teacher union, the changed system of state subsidies from lump sum funding directed at schools to a sack of money to the municipalities have resulted in ambiguity as to where the responsibility for schools lie.⁴⁹

Interviews with leading education politicians with different political opinions and administrators in Sweden suggest that from their perspective the development of the Swedish education system ought to be regarded as a transition from governance by rules to governance

⁴⁵ Lundahl, L., 2002. *From Centralisation to Decentralisation: governance of education in Sweden*. European Educational Research Journal. Vol. 1(4). p. 625.

⁴⁶ Lundahl, L., 2002. p. 626.

⁴⁷ Johannesson, Lindblad & Simola, 2002, *An Inevitable Progress? Educational restructuring in Finland, Iceland and Sweden at the turn of the millennium*. Vol 46, No. 3. Scandinavian Journal of Educational Research. p 328

⁴⁸ Ibid, p. 328.

⁴⁹ Lundahl, L., 2002. *From Centralisation to Decentralisation: governance of education in Sweden*. European Educational Research Journal. Vol. 1(4). p. 629.

by objectives.⁵⁰ Central and local actors suggest that the national curriculum guides and syllabus are the only powerful instruments left on the state level. Furthermore, interviews with both local and national politicians and administrators suggest a consensus on the necessity and inevitability regarding decentralization. The old system was considered to be too hierarchical and ineffective to influence local situations.⁵¹ The decentralization of the Swedish education system was hence legitimized by politicians as a democratic process, emphasizing the increased influence of parents, students and contributing to a more autonomous school.⁵² Furthermore there is a high level of consensus in accordance with increased demands on teachers, students and school leaders in the new situation. Students are expected to commit to their education and become active agents in regards to their schooling, the passive student is not supposed to succeed within this new system.⁵³

3.2. The teacher profession

Meanwhile, teachers have to take on a number of new roles and responsibilities within the new decentralized education system. Not only do they need to have the ability to teach and be knowledgeable within their subject field, they also need to be part of important decisions such as resource allocation and take on a supervisory role towards the students.⁵⁴ In today's education system a teacher has to be a social model and work with the whole individual when dealing with students. Parents ought to be regarded as resources rather than burdens and commitment is required. Authority is hence earned and not automatic any more.⁵⁵

In order to grasp the circumstances which result in different professional identities and narratives for teachers one must look to the shape and history of the respective country's welfare system. Case studies conducted in Spain and England by Müller, Norrie, Hernandez & Goodson funded by the European Commission indicate how teachers in these countries

⁵⁰ Ibid, p. 628.

⁵¹ Ibid, p. 630.

⁵² Ibid, p. 632.

⁵³ Ibid, p. 623.

⁵⁴ Ibid, p. 632.

⁵⁵ Ibid, p. 633.

perceive the different waves of reforms on education and how they cope with new social demands.⁵⁶ Although there are significant differences in how the welfare systems have evolved in England and Spain, teacher narratives from these countries do agree upon the decline of class barriers, better education among the general public and increasingly diverse student populations.⁵⁷ These factors have helped create a new culture in education which has resulted in a shift in how one perceives the teacher profession. For example, pupils and parents are increasingly aware of their rights and expect transparency from teachers and other school staff.

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In England, Thatcherism altered the earlier autonomous teacher profession by strengthening central government through a highly dogmatic curriculum and strong regime of accountability.⁵⁹ A comprehensive system for monitoring the education system was hence introduced in England during this period and still exists today. On the other hand, the role of government in Spain after Franco's authoritarian dictatorship introduced new education reforms which increased autonomy and participation for teachers, and could thus be described in terms of a clientistic administration in comparison to the English rational-bureaucratic form of administration.⁶⁰

Furthermore, Müller, Hernandez, Et al suggest in "Comparative overview: European primary teachers' work and life under restructuring" that there are three main areas of concern in the restructured education system internationally caused by an increased neo-liberal orientation; diverse student population, order and discipline and loss of status and prestige.⁶¹ In terms of the diverse student population, inclusion policies and cuts in special education budgets have led to increased work burden for teachers due to the need of having to prepare different materials for

⁵⁶ Jörg Müller, Caroline Norrie, Fernando Hernández & Ivor Goodson (2010) Restructuring teachers' work-lives and knowledge in England and Spain, *Compare*, 40:3, p. 266.

⁵⁷ *Ibid*, p. 271.

⁵⁸ *Ibid*, p. 272.

⁵⁹ *Ibid*, p. 270.

⁶⁰ *Ibid*, p. 270.

⁶¹ Müller, J., Hernández, F., Norrie, C., Sancho., J. "European school teachers' Work and Life under Restructuring", In *Professional knowledge and Educational Restructuring in Europe*. Red., Goodson, I. & Lindblad, S., Edition 1. (Sense Publishers, 2011). p. 15.

different pupils. Special education needs (SEN) legislature in England, Spain, Ireland and Portugal has resulted in teachers having to incorporate SEN students into normal classrooms.⁶² Inclusive education is hence seen as problematic among teachers due to difficulties in providing students with special needs with proper help. Teachers in Greek and Ireland emphasized the issue of insufficient resources to meet the demands of immigrant pupils.

However in the context of Sweden, this was not regarded as a systemic problem. Instead, although 33 languages are spoken in Swedish schools, learning difficulties were to be addressed in the relationship between parents and the school.⁶³ The right to choose one's school, referred to as the voucher system, creates a sense of competition for schools to offer what the parents are demanding, in this case the means to supply the pupil with Swedish learning disabilities with sufficient resources.⁶⁴ Continuously, the Swedish teacher profession has been expanded to also include active work towards preventing students being subject to discrimination and harrasment. Everyday work for a teacher may thus include obligations to report one's coworkers due to the nature of the current school legislature. This to ensure the Swedish School's inspectorate that the work against discrimination and bullying is taken seriously.⁶⁵ The legal language and procedures have hence found its way into the Swedish school culture. David Ryff   likens this with a circular block (reality) being placed in a square hole (law). The increase of rights for the individual can at first sight be considered positive and a guarantee for the education policy's main objective: equality.⁶⁶ However in reality this has resulted in increased knowledge and commitment from parents to activate these rights for their children. This has arguably increased the equality gaps in education; parents with experience from higher education are more likely to understand how to activate these rights and learn the "legal language" compared to parents with less education experience.⁶⁷

⁶² Ibid, p. 16.

⁶³ Ibid, p. 17.

⁶⁴ Ibid, p. 17.

⁶⁵ Lindgren, Carlabaum, Hult, Segerholm, (2018). *Professional responsibility and accountability?* Nordic Studies in Education. (04). Universitetsforlaget. p. 370.

⁶⁶ Ryff  n, David. 2020. *Vem vill styra skolan?* Skolledaren, 2020 (3), 22-25. p. 25.

⁶⁷ Ibid, p. 25.

The socio-legal scholar Ulf Leo's dissertation considers the professional role of principals in Swedish elementary schools. Leo argues that the goal - and resultsoriented legislation results in more complicated norms because it requires more interpretation.⁶⁸ This leads to a different kind of professional norms which require communication between principals as well as between principals and other actors in schools. Hence, actors in the school sector on national and local level require work to establish structures which support the production of professional norms.⁶⁹ Furthermore, in the context of student discrimination and security, Leo argues that a normperspective is important in Swedish schools to study the relationship between legal norms and professional norms.⁷⁰ The state wants to regulate behaviour with legislation while schools want to regulate behaviour with social and professional norms. With a normperspective it is possible to study and reflect on different norms, so that the legal norms merge with professional norms resulting in action.⁷¹

3.2.1. Order and discipline

In terms of order and discipline, a most contemporary topic in Swedish education, as was indicated in the background of this paper, there is consensus among teachers in multiple european countries that the once taken for granted authority of teachers is a thing of the past. In Greece, the loss of status and prestige once attributed to the teacher profession is due to a rising middle class, modernised society and an expanding ideology characterized by consumerists.⁷² The parents, paying for their children's schooling, are considered having a vital role in activating their rights to question the teachers' methods and work. For the media and the government, the teachers are easily scapegoated when any youth related problem arises, which reduces the social status of teachers.

In Finland, a country in which teachers' prestige and social status was relatively high for a long

⁶⁸ Leo, U. (2010). Rektorer bör och rektorer gör. In: *Lund Studies in Sociology of Law*. Lund University. 148.

⁶⁹ Ibid.

⁷⁰ Ibid, p. 151.

⁷¹ Ibid, p. 152.

⁷² Ibid, p. 18.

time, suggest seeing similar patterns. Falling class barriers and increase in education level throughout the whole country were mentioned as variables causing the decrease of teachers' previously undoubted privileged position in society.⁷³ Furthermore, Portuguese teachers emphasize the urban-rural dimension, suggesting that their social status was higher previously in rural areas and currently under attack in urban areas due to increased public blaming through instruments such as the media. In Sweden the decreased prestige of teachers was not as explicit, however the new voucher system has necessitated dialogue between teachers and parents.⁷⁴ Thus, there has been a development of increased demand for influence from local parents and pupils. The rise in the general level of education throughout the country provides children with facts and experiences from multiple sources, enabling them to demand more from their local school.⁷⁵ Hence, schools and their teachers need to earn their authority to a much further extent now than previously, which may alter their authority.

As briefly covered in the section on restructuring, accountability and evaluation are important aspects creating a shift from education controlled by teachers practise to the control of school results. Hence, teachers from all the countries involved in the study conducted by Müller, Hernández, Et al., indicate that the need for documentation has increased. The purpose of such documentation varies, for English teachers documentation is part of a performativity chain controlled by education authorities.⁷⁶ Teachers from Ireland, Sweden, Spain, Portugal and Finland refer to the increased paperwork as “ineffective” regarding educational authorities controlling performance, although teachers take the paperwork seriously when it comes to documenting special needs and demanding increased resources for pupils.⁷⁷

⁷³ Ibid, p. 19.

⁷⁴ Ibid, p. 18.

⁷⁵ Lundahl, L., 2002. *From Centralisation to Decentralisation: governance of education in Sweden*. European Educational Research Journal. Vol. 1(4). p. 629.

⁷⁶ Ibid, p. 20.

⁷⁷ Ibid, p. 20.

3.4. Juridification

The Swedish welfare state model has also been subject to vast education reforms. In Sweden the concept of juridification is a recurring aspect in research on the development of the Swedish education system. One can interpret the concept of juridification from multiple perspectives, however in simplified terms it can be described as a phenomenon or activity being subject to increased legal regulation.⁷⁸ In the words of Jean Cohen, legislation characterised by juridification are

“More particularistic than classical formal law, yet often involves vague and open ended directives”.⁷⁹

As argued previously the development of the education sector is a feasible example of a welfare service where reforms have been made to ensure students’ rights to a good education. The reforms made in Sweden leading up to the shift in governing education are covered by Novak in the context of the relationship between law and politics.⁸⁰ The evaluative regime in the education sector which was briefly mentioned previously in this chapter, is a consequence of the expansion of legal protection as a political strategy which requires methods to hold those violating these claims responsible.⁸¹ Such violations are to an increased degree opened up to judicial control and bureaucratic intervention. The juridification of educational spheres thus refers to not only increased formal law, but also judicial means to complement situations through legal norms and superimposition rather than communicative consensus and dialogue.⁸² In other words there has been an institutionalization of moral arguments by means of legal procedures in the context of Sweden. Thus, this development has resulted in individuals and institutions being more likely to turn to judicial bodies when initiating moral and political

⁷⁸ Blichner, L & Molander, A (2008). *Mapping Juridification*. European Law Journal, Vol 14:1. p. 41.

⁷⁹ Cohen n 8 supra, at 152. cited in: Blichner, L & Molander, A (2008), *Mapping Juridification*. European Law Journal, Vol 14:1. p. 42.

⁸⁰ Novak, Judit (2019). *Juridification of educational spheres: The case of Sweden*, Educational Philosophy and Theory, 51:12, 1262-1272. p. 1263.

⁸¹ Ibid, p. 1268.

⁸² Ibid, p. 1269.

issues. In this way, professional standards and norms become subsidiary to and codified by legislative measures for both school inspectors and school professionals.⁸³

Furthermore, in terms of the problem of degrading treatment in Sweden and the teacher-pupil relationship, Lindgren, Hult, et al. explain the juridification of education as a way of attempting to ensure all children feel safe in school.⁸⁴ In general terms, the stricter legal regulations corresponding to moral and social principles for teachers, students and parents are well received in Swedish society, to come to grips with everyday problems a student may be faced with during a school day which otherwise had only resulted in occasional reprimands.⁸⁵ A system which enables teachers to detect degrading treatment when students, teachers and principals regularly change schools is more advantageous than a system where old modes of embodied knowledge and informal documentation is the norm. It is therefore important to consider the juridification of education as not only a bureaucratic iron cage, but also a way to ensure the rights, safety and protection of students in a decentralised and marketized school.⁸⁶ Meanwhile Lunneblad and Johansson stress that the expectation on school staff to report potential matters of discrimination within school contributes to a school culture with conflicting discourses. In turn this results in dilemmas when deciding upon whether to solve an issue juridically or communicatively.⁸⁷

A concrete example of dilemmas where discourses collide is the question of violence in school. Odenbring, Johansson, Et al discuss behaviour which previously been categorised as fights and teasing, are now perceived and described with legal discourses and judicial terms such as discrimination and harrasment, as indicated from interviews with school officials in Sweden.⁸⁸

⁸³ Ibid, p. 1270.

⁸⁴ Joakim Lindgren , Agneta Hult , Sara Carlbaum & Christina Segerholm (2020): *To See or Not to See: Juridification and Challenges for Teachers in Enacting Policies on Degrading Treatment in Sweden*, Scandinavian Journal of Educational Research, DOI: 10.1080/00313831.2020.1788150, p. 11.

⁸⁵ Ibid, p. 11.

⁸⁶ Ibid, p. 12.

⁸⁷ Johannes Lunneblad och Thomas Johansson (2019), *Vi kan ju inte polisanmäla allt som händer i skolan*. Nordic Studies in Education, Vol. 39, 1-2019. p. 50.

⁸⁸ Odenbring, Johansson, Hammarén, Lunneblad (2019), *The Absent Victim: Schools' assessment of the "Victimization Process*. Urban Education Vol.54(7). p. 1008.

Violence in school is nothing new, however the manner in which it is classified has changed during recent years due to a closer relationship between education and legislation.⁸⁹ Hence, there is significant overlap between inappropriate and criminal behaviour. Furthermore the interviews performed by Odenbring, Johansson, Et al indicated that school officials in Sweden such as teachers and principals feel certain pressure to report discriminatory behaviour. In many cases they prefer to solve an issue through dialogue rather than legal measures.⁹⁰ Although this particular study solely focuses on teachers and other school personnel's obligation to report discrimination and harrasment among students, it illustrates a culture of documentation and reporting. This culture cuts both ways and applies to students feeling mistreated by teachers and other school personnel, thus explaining the culture of mistreatment as referred to by Swedish teachers.

Norweigan scholars such as Andenæs and Graver also write about the juridification processes in a Norweigan and nordic context. Both scholars explain the emergence of juridification caused by outer influence from ideological tendecies such as globalization and neoliberalism as well as demands from the likes of the EU, UN and Council of Europe.⁹¹ With "rettsliggjøring" (translated to juridification in this context), they mean a transition in power from politicians to lawyers and from professionals to judicial supervisory bodies.⁹² In the context of welfare legislation, this is illustrated through an increased rights based legislation towards specific groups such as consumers, receivers and patients.⁹³ In Norway, Graver presents examples of how the social services law replaced the earlier law on social care, the child welfare act, the municipal health service and the Patient rights act.⁹⁴ Graver also gives the example of the Norwegian Education Act which to greater extent is characterized by a

⁸⁹ Ibid, p. 1019.

⁹⁰ Ibid, p. 1023.

⁹¹ Graver, Hans Petter. 2012. *Hvem bestemmer over loven? Hvordan rettsliggjøringen av samfunnet gjør jussen mektigere på bekostning av politikken*. In: *Samtiden* nr. 2, 2012. p. 101.

⁹² Andenæs, Kristian. 2005. *Om maktens rettsliggjøring og rettsliggjøringens maktpotensial*. In: *Tidsskrift for samfunnsforskning*, vol 47, nr 4. p. 593.

⁹³ Graver, Hans Petter. 2012. *Hvem bestemmer over loven? Hvordan rettsliggjøringen av samfunnet gjør jussen mektigere på bekostning av politikken*. In: *Samtiden* nr. 2, 2012. p. 102.

⁹⁴ Ibid, p. 102.

language of rights with the right for students to appeal assessment grades.⁹⁵ Continuously Graver explains the development of “*fullmaktlovgivning*” or power of attorney legislation. Such laws give the state possibilities to partake in society on a specific arena, without necessarily regulating the conditions for this.⁹⁶ This allows the state to guarantee not only the traditional liberal, civil and political rights of the people, but also social welfare rights. The political and judicial development were quite parallel in the nordic countries and this development gave rise to what we refer to as the “Nordic model”, as earlier mentioned in the previous section of this chapter on welfare state restructuring.⁹⁷

Andenæs brings up the increased number of lawyers as a result of the juridification processes. This is evident in the business sector with more complicated regulations both nationally and internationally which makes it difficult for business people to navigate through the vague landscapes of business.⁹⁸ Lawyers have therefore gained a central role in society with their ability to interpret and implement legislation and other forms of regulation. Andenæs reasoning can be linked to the subject of this thesis in the sense that power has been shifted from teachers, principals and other school personnel (professionals) to lawyers at the Swedish Schools Inspectorate tasked with supervising and sanctioning school mandators. The lawyers at the Swedish Schools Inspectorate have the tools and knowledge to decide whether a school operation complies with the law or not. One can therefore argue that the goal oriented education legislation which encourages supervision has caused the professionals in school operations to surrender some of their power and expertise to lawyers who are tasked with upholding the law.

Furthermore the goal and result oriented approach in Swedish education legislation lack normative instructions, resulting in that teachers and principals are given room and freedom for

⁹⁵ Ibid, p. 102.

⁹⁶ Ibid, p. 103.

⁹⁷ Ibid, p. 103.

⁹⁸ Andenæs, Kristian. 2005. *Om maktens rettsliggjøring og rettsliggjøringens maktpotensial*. In: Tidsskrift for samfunnsforskning, vol 47, nr 4. p. 597.

interpretation and solutions which best fit the specific operation.⁹⁹ Even a simple thing such as a principal approving or denying an application for vacation is up to interpretation. Although there is no “right” answer, there is no “wrong” answer either.¹⁰⁰ The important thing is to motivate one's choices and considerations in a manner which can be approved by those tasked with supervising and assessing it.¹⁰¹ The combination of an education legislation open to interpretation and lawyers at the Swedish Schools Inspectorate tasked with evaluating these interpretations gives rise to an education system with significant differentiating school operations.

3.5. Literature review reflections

As established by the literature review the development of a school characterised by instrumental rationality has put pressure on the welfare state to ensure the rights of all students. In turn, this has resulted in a juridification of education and a school culture with an increased judicial language. Teachers, principals and other school personnel have to adapt to this culture and have in a sense been forced to learn the judicial language to cope with the new demands of their work such as documentation, reporting potential cases of mistreatment, solving disputes legally rather than communicatively. Meanwhile there is international consensus regarding the decreased teacher authority and increased parent influence as a consequence of the marketization, rights based legislation and decentralization of education. Hence there is extra strain put on teachers and this is evident in Sweden in regards to them being reported for mistreating a student when attempting to maintain order in the classroom.

The studies which have been conducted within the domain of the legislative development of education in Sweden and internationally have covered multiple angles, thereby leaving little room for identifying any vast research gaps. From macro level focused research on ideological shifts in society to micro level research with case studies on teachers and other school

⁹⁹ Ryffén, David. “Vad behöver skolläda kunna om juridik”. In: Blossing, Ulf (red.) *Rektor i fokus: Kunskap, värden och verktyg*. Edition 2. Studentlitteratur AB. 2020. p. 51.

¹⁰⁰ Ibid, p. 50.

¹⁰¹ Ibid, p. 51.

personnel's perception of the new rights based education legislation. However, this thesis intends to deploy a socio-legal perspective on the topic of rights based legislation in the Swedish education sector, something which has not yet been covered as indicated by the literature review. Thus, addressing the clash in discourses in Swedish schools in the context of degrading treatment, security and study tranquility will be examined through socio-legal theories and the political problem representations for institutionalising moral norms in Swedish education.

3.5.1. Three Discourses

Another observation made from conducting the literature review is the existence of three discourses. A child rights and traditional welfare state discourse was primarily distinguished in the works of Houtsonen, Czaplicka, Lindblad, Sohlberg & Sugrue.¹⁰² Discourses developed by rising demands from international conventions and organizations encouraging rights based legislation and systems to supervise and activate these rights.¹⁰³¹⁰⁴ According to Jörg Müller, Caroline Norrie, Fernando Hernández & Ivor Goodson students are nowadays more aware of their rights and expect transparency from their schools and teachers regarding decision making.¹⁰⁵ This is a development enabled by the decline of class barriers, better education among the general public and diverse student populations.¹⁰⁶ Molander & Blichner also consider the child rights discourse when explaining the juridification of education as a way to ensure all children feel safe in school.¹⁰⁷ The child rights and welfare state discourse do however correspond to the neoliberal discourses. The neoliberal discourse is made visible through decentralizations, self determination, professional freedom and marketization. All of which are important

¹⁰² Houtsonen, Czaplicka, Lindblad, Sohlberg & Sugrue, 2010, *Welfare state restructuring in Education and its National Refractions*. Vol. 58(4): 597-622. Current Sociology.

¹⁰³ Ibid, p. 598.

¹⁰⁴ Graver, Hans Petter. 2012. *Hvem bestemmer over loven? Hvordan rettsliggjøringen av samfunnet gjør jussen mektigere på bekostning av politikken*. In: *Samtiden* nr. 2, 2012. p. 101.

¹⁰⁵ Jörg Müller, Caroline Norrie, Fernando Hernández & Ivor Goodson (2010) Restructuring teachers' work-lives and knowledge in England and Spain, *Compare*, 40:3, p. 266.

¹⁰⁶ Ibid, p. 270.

¹⁰⁷ Joakim Lindgren, Agneta Hult, Sara Carlbaum & Christina Segerholm (2020): *To See or Not to See: Juridification and Challenges for Teachers in Enacting Policies on Degrading Treatment in Sweden*, *Scandinavian Journal of Educational Research*, DOI: 10.1080/00313831.2020.1788150, p. 11.

components according to the government when legitimizing the restructuring of a new education system to ensure students' rights.¹⁰⁸¹⁰⁹

4. Theoretical framework

The aim of this research is to delve into the juridification of Swedish elementary schools, how certain legislative aspects were represented and legitimated and how they affect the social norms of teachers, students, parents and other school personnel. The Swedish Education Act from 2010 introduced a new explicit emphasis on pupils rights' to study tranquility and safety, in addition to an obligation among school staff to take measures against degrading treatment. For the purpose of understanding the theoretical context of the emergence of these legislative aspects of the Swedish education act, Jurgen Habermas' theory of communicative action will provide a good framework for further understanding.

As have been covered in the introduction and literature review, the juridification of rights in a modern welfare state are important aspects in the context of the 2010 Swedish Education Act. These aspects are well covered in Habermas' work, suggesting that the institutionalisation of rights in a political system such as that of Sweden are passed to secure certain needs in the lifeworld which might be at risk in the capitalist society.¹¹⁰ Although the juridification of rights are directed to those who are in most need of them including students, children, women and the elderly, the circumstances in activating one's rights are characterized by bureaucratic intervention and judicial control.¹¹¹ Applying Habermas' theories on the right to study tranquility, security and measures against degrading treatment in Swedish elementary schools could thus be interesting in terms of how they affect the relationship between teachers and students as well as the teacher profession.

¹⁰⁸ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. Stockholm 7/2 - 2008.

¹⁰⁹ Graver, Hans Petter. 2012. *Hvem bestemmer over loven? Hvordan rettsliggjøringen av samfunnet gjør jussen mektigere på bekostning av politikken*. In: *Samtiden* nr. 2, 2012. p. 101.

¹¹⁰ Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" in Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 82.

¹¹¹ *Ibid*, p. 83.

Furthermore, the methodological approach will concise of Bacchi's "What's the problem represented to be" (WPR) policy analysis which is linked to Foucauldian poststructural theories, however this thesis will deviate from this linkage on behalf of Habermas' theory of communicative action. Habermas's ideas are related to those of the enlightenment, where knowledge production among individuals is regarded as a liberating and emancipatory practice which helps create meaning and consensus.¹¹² Meanwhile Foucault had a slightly different approach to the relation between knowledge and the subject, suggesting that knowledge is about understanding internal and external conditions which "govern" the individual and allow institutionalised coercion.¹¹³ For Foucault, power produces the individual while for Habermas power "hijacks" the lifeworld of rational beings.¹¹⁴ This thesis has the objective to understand how the juridification processes of Swedish education legislation affects the social norms in the lifeworld of students and teachers in schools. A comprehensive Foucauldian analysis on the historical circumstances and conditions around this legislation is hence not necessarily of interest in regards to this thesis. The theory on communicative action, clash of different rationalities and relationship between system and lifeworld is a more favourable theoretical tool for understanding the increased workload among teachers and improved incentives for students to activate their rights and report the breaching of these rights.

4.1. Communicative and Instrumental Rationality

Habermas can in essence be categorized as a representative for critical theory, revealing and challenging power structures in society. However, instead of going in the same direction of the Frankfurt School about the side effects of modern society and failure of rationality he modified the critical theory slightly with focus on individual freedom and agency, although still a critic of capitalism and totalitarianism. In his book *The theory of communicative action* Habermas dissects the concept of rationality and the conception of its close relation to knowledge. In Habermas' view a person is rational when interpreting the nature of one's desires and feelings

¹¹² Habermas, Jürgen, 1996. *Between Facts and Norms*. Polity Press & Blackwell Publishers Ltd, UK. p. 197.

¹¹³ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 29.

¹¹⁴ *Ibid*, p. 30.

in the context of established value standards.¹¹⁵ Cultural values and norms of action do not arise with claims to universality, they are possibilities for interpretation under which those affected can normatively regulate common interests.¹¹⁶

4.1.1. Communicative Rationality

For Habermas, communicative reason differs from practical reason in that it is made possible with the linguistic media in which interactions are encouraged and forms of life are structured.¹¹⁷ This rationality is engraved in the linguistic endeavour of mutual understanding. Mutual understanding is achieved through the interaction of two or more subjects who via verbal or extra-verbal means establish interpersonal relations.¹¹⁸ Language is hence given a significant role when negotiating definitions of the given situation to reach consensus. Communicative rationality encapsulates everyday communication tied to the lifeworld's intersubjective structures. In the lifeworld language acts as an irreplaceable media for reaching understanding.
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4.1.2. Instrumental Rationality

Instrumental (or purposive) rational actions are coordinated through steering media such as power and money. In contrast to communicative rational actions there is no competition between actions aimed at reaching understanding, rather the aim is to achieve certain goals.

Entrepreneurs and officials, as well as workers and employees, are obliged to work goal oriented. Capitalist enterprises and modern state administrations are characterized by "the concentration of the material means of operation" controlled by the rationally calculated leader or entrepreneur.¹²⁰ The development towards a bureaucratic state and administration through

¹¹⁵ Habermas, J. (1984). *The theory of communicative action Vol. 1 Reason and the rationalization of society*. Cambridge: Polity Press. p. 20.

¹¹⁶ Ibid, p. 20.

¹¹⁷ Habermas, Jürgen, 1996. *Between Facts and Norms*. Polity Press & Blackwell Publishers Ltd, UK. p. 3.

¹¹⁸ Habermas, J. (1984). *The theory of communicative action Vol. 1 Reason and the rationalization of society*. Cambridge: Polity Press. p. 144.

¹¹⁹ Ibid, p. 342..

¹²⁰ Ibid, p. 217.

rationally oriented laws and regulations is very close to the development of modern capitalist development.¹²¹ According to Habermas, modern society rests on the principle of calculation for it to function, on the basis of fixed norms like “the expected performance of a machine”.¹²²

4.2 Theory of Communicative action

With Habermas’ theory of communicative action the contradictory aspect of the process of societal rationalization becomes clear. This contradiction emerges between an everyday communicative rationalization tied to intersubjectivity and the lifeworld on the one hand, and subsystems with instrumental rationality on the other hand where actions are coordinated through power and money as steering medias.¹²³ The rationalization of the lifeworld encourages a systemic integration which competes with the fundamental principles of reaching understanding and can thus have disintegrative effects on the lifeworld.¹²⁴ The steering medias of power and money work regardless of mutual understanding on validity claims, norms or interpretations. In terms of this research topic, the problem representations proposing the new Swedish Education Act and introduction of a School’s Inspectorate need not rest on mutual understanding and argumentation for it to reach legitimacy, due to the political administration and lawmaking process being subject to the steering medias of power and money.

In Habermas’ view, speech acts rest on three validity claims; theoretical claims to truth, normative rights and subjective truthfulness.¹²⁵ Hence these claims have to be argued, open to criticism and justification in order for communicative action to arise and the person on the other side of the argument agrees. If agreement is not reached, the hearer and the receiver should engage in further argumentation and dialogue (Habermas’ aspect of communication referred to as discourse) to test the communicatively rational justification of the statement

¹²¹ Ibid, p. 218.

¹²² Ibid, p. 218.

¹²³ Ibid, p. 342.

¹²⁴ Ibid, p. 343.

¹²⁵ Habermas, Jürgen, 1996. *Between Facts and Norms*. Polity Press & Blackwell Publishers Ltd, UK. p. 127.

based on the three above-mentioned validity claims.¹²⁶

4.3. The system's colonisation of the lifeworld

The system's colonisation of the lifeworld occurs when instrumental rationalization expands and thus conflicts with the communicative action of the lifeworld. Subjective perceptions such as meaning, solidarity and personal identity are corrupted by functional flaws and crisis tendencies in the system which in turn have to expand its goal oriented, calculative rationality.¹²⁷ The reason as to why the colonisation emerges depends on built in functional flaws in the system whose attempt to mend itself does so at the expense of the communicative rationality in the lifeworld. Side effects of this procedure are anomic and include futility, lack of faith in institutions and identity diffusion.¹²⁸

This particular aspect of Habermas' theoretical framework will be considered when attempting to understand the juridification of the Swedish Education Act, its problem representations and the practical implications on student-teacher relationships as well as the teacher profession in general.

4.4. Habermas' Sociology of Law and juridification

Habermas regard the law as the institutionalisation of norms. Hence, the law has a normative dimension even in the modern and rationalized society. There is a strong connection between law and morality given that the law needs to be justifiable to achieve legitimacy.¹²⁹ Deflem, when discussing Habermas, claims that although the modern capitalist society has developed towards an increased instrumental rationality as opposed to the days of "community", the law still has to be morally justifiable and have the general public's support.¹³⁰

¹²⁶ Ibid, p. 130.

¹²⁷ Habermas, J. (1984). *The theory of communicative action Vol. 1 Reason and the rationalization of society*. Cambridge: Polity Press. p. 358.

¹²⁸ Ibid, p. 360.

¹²⁹ Ibid, p. 173.

¹³⁰ Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" i Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 81.

In the context of society's distribution of system and lifeworld the law works in such a way that it institutionalizes instrumental norms and enables the functioning of power and money in their respective administrative and economic systems.¹³¹ Habermas also considers juridification, a process involving an increase in written and/or formal law, frequently in the arena of social rights. The surge in demands from the lifeworld in an otherwise systemically dominant society results in the legal institutionalization of social rights to address these demands.¹³² However, welfare states characterised by juridification of social rights have the unintentional effects of complicated formal and bureaucratic procedures to activate one's rights. These demands and rights are implemented in a manner which is beneficial to the bureaucratic organisations supplying them, rather than to the people they concern. Thus, a collision between system and lifeworld takes place in these procedures.¹³³

For an extended period of time, Habermas regarded law as dualistic, meaning that it both worked as a steering media and institution of the lifeworld. However, he changed this conception later on in life and solely viewed law as an institution of the lifeworld. In this regard, law itself can be colonised by political and economical systems, redefining them and enabling them to be implemented on the basis of instrumental, goal oriented efficiency.¹³⁴

5. Methodology

The following section will provide an overview of the empirical material and which methodological approach used to analyse it. Furthermore, delimitations and ethical considerations will also be reflected upon in this section of the thesis.

¹³¹ Habermas, J. (1984). *The theory of communicative action Vol. 1 Reason and the rationalization of society*. Cambridge: Polity Press. p. 360.

¹³² Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" i Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 81.

¹³³ Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" i Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 81-82.

¹³⁴ Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" i Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 85.

5.1. Empirical material

To grasp the relationship between legislation and practice in the context of Swedish education the empirical material used in this thesis will consist of 1. Legal documents leading up to the passing of the new 2010 education act and the introduction of the Swedish School's Inspectorate, and two reports from the Swedish school's inspectorate containing observations and interviews with teachers, principals, students and other school mandators.

The propositions to the 2010 Education Act and introduction of the Swedish Schools' Inspectorate are expected to answer the first research question of this study. Unveiling the manner in which the government represented the problems when introducing the legislation and the effects of juridification processes will provide the legal aspect of this study. Continuously, the activity protocols and inspection verdicts are expected to address and give examples of how the social norms in the lifeworld of teachers, students and parents are developing in Swedish schools. Thereby providing the sociological aspect of this socio-legal study. The inspection verdicts and protocols will be analysed with document analysis.

The intended study is situated within the category of explanatory research. The reason for this being that this research has the objective of identifying the causes and effects of juridification processes in the Swedish education system. The causes represent the circumstances and rationale for the 2010 Education Act and introduction of the Swedish Schools' Inspectorate, while the effects represent the developing social norms in the lifeworld of students, teachers and parents in Swedish elementary schools.

5.1.2. The Education Act

To unveil the argumentation, implied problems and discourses used for proposing a new Swedish education act, legal documents leading up to the adoption of this law will be scrutinized. In December of 2002 an education act committee submitted a report on a new *Education act for quality and equality* to the minister of education. The report was conducted for a time period of 3 years with a vast selection of commissioners, experts and special

advisers ranging from various professions and political views. The report brings forward shortcomings in the former education act, suggests principles which should be enforced and guide the new education act as well as concrete recommendations on new legislation. Focus will specifically be on “The School’s working environment” in chapter 11 which sheds light on degrading treatment, security and study tranquility.

A few years later in 2005, a proposition to a new Education act was brought forward by the then social democratic government. However negotiations with its cooperation parties stalled which eventually led to the proposition’s postponement. Instead, the liberal government in 2009 brought forward their version of a proposition to a new Education act which turned into legislation in 2010. The proposition *The new Education Act - for knowledge, freedom of choice and security* will hence also provide empirical material for this thesis. The proposition claims to achieve a legislature with a structure more suitable for the much developed education system in Sweden. For the purpose of this thesis, the specific chapters on the right to a good working environment, study tranquility and degrading treatment will be analysed with the methodological strategy.

5.1.3. *The Swedish Schools Inspectorate*

The proposition *New School Authorities* was submitted to Swedish parliament by the then liberal government in 2007 and came into force early in 2008.¹³⁵ The proposition consisted of a suggested changed division of responsibilities for authorities within the education system, such responsibilities were previously situated within the National Agency of Education. Instead, the proposition suggested that a new autonomous authority, the Swedish School’s Inspectorate, ought to acquire these responsibilities.¹³⁶ Specifically the chapters on the suggested new tasks for the Swedish Schools Inspectorate will be of interest. Such tasks include supervision and quality inquiry within pre-school education, elementary school, upper secondary school and adult education.¹³⁷ How the Swedish Schools Inspectorate is expected to uphold the right to

¹³⁵ Prop. 2007/08:50, *Nya Skolmyndigheter*. Ministry of Education. p. 1.

¹³⁶ *Ibid.* p. 1.

¹³⁷ *Ibid.* p. 38.

security, study tranquility and measures against degrading treatment will be of foremost interest.

5.1.4. Activity protocols and Inspection verdicts

Continuously, the secondary aspect of the empirical material will consist of inspection reports from the Swedish School's Inspectorate on specific schools, thereby providing examples of how the legislature on study tranquility and degrading treatment is put into practice. There are multiple reasons as to why a school or operation is to be inspected. In most cases, inspections are made by random sampling. Inspections can also depend on a school not achieving expected objectives, misconduct and lack of inspection for a longer time period.¹³⁸ The inspection is in most cases performed with classroom observations and interviews with pupils, teachers and student health for a duration of two days. Areas of inspection include teaching, special support, grading, security, study tranquility and measures against degrading treatment.¹³⁹ In this case, special focus will be on the latter three for the purpose of this thesis. The reports are referred to as Regular supervision and contain a vast range of documents based on every aspect of the supervision. The documents used as empirical material in this thesis will be the protocols which contain notes on interviews with teachers, students, student health and the board as well as the final verdict on whether or not the school fulfills its obligations in relation to the legislation.

5.2. Delimitations

The New Education Act which came into force in 2010 transformed the Swedish education system with extensive reforms in different areas. This thesis intends to address the altered social norms in the lifeworld of teachers and students. To grasp these social norms, specific focus have been on the legal aspects of discrimination and students' right to a secure and calm study environment, constituting chapter five and six in the Swedish Education Act. Therefore, the legal documents and inspection reports will be analysed and delimited to these aspects.

¹³⁸ Skolinspektionen. *Anledning till inspektion*. Skolinspektionen.se. 12/03/2021. Updated 2/9/2020.

¹³⁹ Ibid.

Furthermore, referrals and objections to these propositions from opposing political parties before they came into force will be excluded for limitation purposes.

In terms of the inspection reports from the Swedish Schools Inspectorate which will provide examples of how the legislation is put into practise, obtaining generalizability is not the objective. Rather, the inspection reports are to be regarded as randomized samples to help give context to the problem representations, discourses and argumentations used in the legal propositions and display how the legislation is applied in practise. Continuously the inspection reports from the Swedish Schools Inspectorate will be delimited to elementary schools and regular supervisions. Inspection reports based on particular complaints or shortcomings will therefore not be included. The inspection reports will not be dated further back than 2019 to maintain contemporaneous examples. After initiating contact with the Swedish Schools Inspection and their investigators conducting the inspections, the material for a single school inspection makes up for 68 case files containing over 200 pages. Therefore, only the protocol containing notes from interviews with teachers, students, student health and the board along with the final verdict will be used as material. Seeing as this material will only be used in terms of how the legislation on supervisory control on degrading treatment, right to a good study environment and security is applied in practise, one or two cases will suffice.

5.3. Carol Bacchi's 'WPR' Approach

The empirical material will be analysed using Carol Bacchi's "What's the problem represented to be" (WPR) methodology. The WPR approach is a policy discourse analysis tool and according to Bacchi policy is something which is intertwined with a course of action or program. Policies therefore have underlying assumptions about something needing to be fixed and hence a problem to address.¹⁴⁰ Presumed problems are implicit when suggesting policies and the WPR approach aims to make these presumed problems in public policy explicit with further scrutiny.¹⁴¹ Bacchi exemplifies her reasoning on policy with training schemes for

¹⁴⁰ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 4.

¹⁴¹ *Ibid*, p. 5.

women. The policy aims to increase women participation in better paid professions, which implies that the represented problem is women's lack of training. The representation of this problem in the policy is hence of interest, rather than the problem in itself.¹⁴² The WPR methodology thereby challenges labelling problems without further inquiry. In the case of this thesis, what is of interest is thus unveiling the discourses and argumentations hidden within the implied problems of the new education act and introduction of the Swedish schools inspectorate.

Additionally, Bacchi's WPR methodology can be considered poststructural as it is connected to Foucauldian theories with concepts such as governmentality, power and knowledge. Employing a poststructural perspective entails questioning the obvious, objects are not only objects and people are not only people. The centre of one's focus should shift to how these things have come to be and are produced on an ongoing basis.¹⁴³ "Things" therefore become open-ended and adaptable, enabling one to question and dismantle them. Knowledge plays a key role in producing reality and is through research a form of political practice.¹⁴⁴ The manner in which certain problems are represented play a crucial role in how we are governed.¹⁴⁵ It is therefore important to understand how problems are created and what impact they have on the general public. In the context of this thesis it is therefore necessary to challenge and examine the political strategies employed by the Swedish government when suggesting new policies in the education sector. The propositions for the 2010 education act and introduction of the Swedish Schools Inspectorate correspond to Bacchi's material that can be adopted for a WPR analysis. It ought to be prescriptive and "offer rules, opinions and advice on how to behave as one should".¹⁴⁶ The key point is to identify a "proposal" or "proposed solution" in order to "read off" the implicit problem representation in it.¹⁴⁷

¹⁴² Ibid, p. 6.

¹⁴³ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 14.

¹⁴⁴ Ibid, p. 15.

¹⁴⁵ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 7.

¹⁴⁶ Foucault (1986: 12) in Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 29.

¹⁴⁷ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 29.

5.3.1 The Six question WPR approach

To employ her methodological approach Bacchi suggests a six question framework to apply on one's empirical material. In the first question "What's the problem represented to be in a specific policy or policies" one should identify a problem representation. Policy texts are complex constructions and may thus contain more than one problem representation. The aim is to start from stated solutions to investigate their implicit problematizations.¹⁴⁸

The second step of the process is asking oneself how the problem representations were made possible by considering the assumptions, presuppositions, knowledge and discourses that enabled the policy to make sense.¹⁴⁹ Secondly, this step includes identifying concepts and binaries which are included in the construction of the problem representation, such as man/woman, migrant/citizen, student/child or public/private. Finally this step also involves reflecting on patterns in the problematizations which display the operation of political or governmental rationality.¹⁵⁰

The third step is closely linked to Foucault's understanding of discourse as knowledge rather than language. Hence, for Foucault one ought to employ an approach referred to as "archaeology" when examining problem representations which essentially entails mapping out the conditions of their emanation and transformation.¹⁵¹ Bacchi equates and simplifies this process to conducting a genealogy of one's family in which the idea is to look back in time and trace "roots" or "the descent" of one's family.¹⁵² This specific step will not be employed when analysing the empirical material of this thesis. The theoretical framework will instead consist of Habermas' communicative action where the idea of discourse deviates from Foucault's understanding of discourse.

The objective in the fourth step of Bacchi's 'six question WPR approach' is to direct attention

¹⁴⁸ Ibid, p. 21

¹⁴⁹ Ibid, p. 21.

¹⁵⁰ Ibid, p. 21.

¹⁵¹ Ibid, p. 22.

¹⁵² Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 10.

towards unproblematized elements within the existing problem representations, thereby providing a critical element to the analysis.¹⁵³ Bacchi makes clear that

“a key intervention here is to ask - what fails to be problematised?”¹⁵⁴

Specific policies are constrained due to how they represent the problem, consequently the aim is to shed light on perspectives and issues that are unperceivable in identified representations.

¹⁵⁵

In the fifth question one is expected to consider the effects of the problem representations. Effects are in this case referred to as political implications rather than outcomes which can be measured.¹⁵⁶ Specifically, three categories of effects should be considered according to Bacchi: *discursive effects*, *subjectification effects* and *lived effects*, all of which being interconnected. *Discursive effects* adhere to the “silencing” effect problem representations have when producing a problem, limiting what can be thought and said about the problem. *Subjectification effects* are effects on how subjects are implicated in problem representations and the production of their subjectivity.¹⁵⁷ *Lived effects* refer to “the ways in which discursive and subjectification effects translate into people’s lives”.¹⁵⁸ In other words, Bacchi explains these effects as the way in which problem representations in policies materially affect our lives.¹⁵⁹ This particular aspect of question five will not be considered in this thesis due to it failing to capture the scope of intended research.

The sixth question in the WPR approach builds upon question 3 regarding how and where the problem representations have been produced, disseminated and questioned.¹⁶⁰ Just like question 3 this step of the process is closely related to Foucauldian post-structural theories¹⁶¹

¹⁵³ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 22.

¹⁵⁴ Bacchi, Carol. 2009. *Policy discourse analysis: What’s the problem represented to be?* p. 13.

¹⁵⁵ Ibid.

¹⁵⁶ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 23.

¹⁵⁷ Ibid.

¹⁵⁸ Bacchi, Carol & Goodwill, Susan, 2016, *ibid*, p. 23.

¹⁵⁹ Bacchi, Carol. 2009. *Policy discourse analysis: What’s the problem represented to be?* p. 18.

¹⁶⁰ Ibid, p. 19.

¹⁶¹ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 22.

and will consequently not be considered in this thesis. As mentioned earlier the WPR will primarily work as a tool to examine the problem representations in the propositions to the Education Act and introduction of the Swedish Schools Inspectorate, while Habermas' theory on communicative action will supplement the findings of the methodology.

Conclusively, the last step of the WPR approach is to

“emphasize the existence and possibility of contestation, to destabilize taken-for-granted truths”.¹⁶²

In this step one is encouraged to reflect on “counter conduct” or forms of resistance that opposes extensive and authoritative problem representations. This step is a reflexive self analysing practise and calls for the researcher to apply all the previous six questions to one's own problem representations. Acknowledging the need to critically examine one's own thinking, it is important to consider the historically and culturally rooted forms of knowledge.

¹⁶³ This step will be further elaborated on in the next section (4.3.2.).

5.3.2 The WPR approach in practise

The empirical material will be analysed in two parts. The first part will consist of applying the WPR approach on the propositions presented in chapter 4.1 with specific focus on the right to security, study tranquility and measures against degrading treatment. Scrutinizing the problem representations on this legislation will provide interesting angles on what is left out in these representations, the operation of political rationality they might reveal and which effects (discursive and subjectification) these representations have for students, teachers and the social norms in the Swedish school culture. The WPR approach in this thesis will diverge from the focualdian theories, instead employing Habermas' theory of communicative action to bring a different perspective on power, discourse and the subject, as explained in the previous theoretical chapter (4.).

¹⁶² Ibid, p. 24.

¹⁶³ Ibid, p. 25.

The second part of analysing the empirical material will consist of comparing the findings from the WPR approach with how the legislation is upheld in practise. The discursive effects, implicit assumptions and concepts of the problem representations in the analysed propositions will be used to contextualise and understand the content of the inspection protocol and verdict. Which discourses can be identified in the evaluation of a school and how do these correlate or contrast the discourses, concepts and experiences of students and teachers. Interviews and observations performed by inspectors from the Swedish Schools Inspectorate and their assessment will therefore provide valuable insights into the dynamics of students, teachers and other school personnel involved in school operations.

Lastly, given that the last step of the WPR approach calls for author reflexivity in a Bordieusian manner¹⁶⁴, I would like to emphasize that in the debate on power between Foucault and Habermas I tend to lean towards Habermas' perspective on power, subject and rationality. While Habermas has a more optimistic view on individuals' communicative rationality and capacity to achieve mutual understanding, Foucault is slightly more relativistic towards subjects' rationality which must be understood in relation to historical investigations (genealogy). This is also the reason for why this thesis will employ Habermas' theory of communicative action rather than the post-structural theories corresponding to the WPR approach.

5.4. Ethical considerations, reliability and validity

The empirical materials in this research are all under the law of public access to official documents, therefore few ethical considerations have been considered during the course of this thesis. Furthermore, the aim is not to achieve any sort of generalizability of how students and teachers in Sweden perceive the education system. This study intends to focus on problem representations leading up to the new education act and School Inspectorate, to then provide examples of how the effects of such representations are visible in the practice of upholding the

¹⁶⁴ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 24.

legislation. This thesis will follow a qualitative research approach, transparency throughout the research process will therefore be important to motivate the steps taken and preserve reliability and validity in an otherwise subjective tradition. The inspection verdicts and notes from the Swedish Schools Inspectorate were overviewed and censored by the investigators to make sure no sensitive information was handed out.

In terms of reliability, this study intends to use a critical policy analysis to interpret the problem representations of the 2010 Education Act and Introduction of the Swedish Schools' Inspectorate. In every kind of document analysis, there is always the danger of interpretations varying depending on the observer or assessor.¹⁶⁵ Therefore, the data analysis will be conducted in close collaboration with the steps provided in the WPR methodology to provide full transparency. The objective is to follow these steps as closely as possible so that other researchers may replicate and come to the same conclusions as in this study with the same methodological and theoretical tools. Furthermore, the theoretical considerations and conclusions made about the data will be motivated in a manner that reflects the thought process.

Regarding the validity of this study; whether or not the methodology and analytical strategy is suitable for answering the research questions, the WPR methodology is a good tool for understanding and reflecting on the government's reasoning behind new legislation. The problem representations do not only represent the hidden agenda of the government, but also how it connects to the concept of juridification and the effects it has on the social norms in Swedish elementary schools.

6. Results and Analysis

The following chapter will consist of analysing the empirical material in two parts. The first part will make up the bulk of the analysis, depicting problem representations in the propositions for the new 2010 Swedish Education Act and the new governmental agency The

¹⁶⁵ Bryman, Alan. *Samhällsvetenskapliga metoder*. Liber AB, Stockholm, 2015. 2:7 Edition. p. 160.

Swedish Schools Inspectorate from 2008, with Bacchi's WPR methodology.

The second part will provide concrete examples and contextualise how the effects of such problem representations may be manifested in practical school environments, with specific focus on students and teachers. The empirical data used in this part will consist of protocols containing interviews and observations with school staff and students, as well as verdicts from regular school supervisions performed by investigators from the Swedish Schools Inspectorate.

6.1. Problems presented in the 2010 Education Act and Introduction of a Swedish Schools Inspectorate

6.1.1 Security and study tranquility

In terms of which problems are presented in the proposition to the 2010 Swedish Education Act and, more specifically, the right to security, a good working environment and measures against degrading treatment, certain aspects can be shed light on. Principal points of departure for the suggested new Education Act include knowledge, freedom of choice and security. Furthermore, the ongoing ambition in the new Education Act is to strengthen quality, equivalence and freedom of choice in the education and other operations regulated by this law.

¹⁶⁶ One of the most important conditions for children and adolescents to obtain and develop knowledge about the world is a secure and stimulating working environment.¹⁶⁷ Furthermore, when presenting the most extensive changes compared to the previous legislation, the government brings forward that the rule of law will be strengthened, increasing the incentives to appeal decisions such as school placement and action plans. The increased efficiency of the Swedish Schools Inspectorate's operation is also presented as an extensive change compared to the previous legislation, with better supervision and opportunities for sanctions.¹⁶⁸ One can hence draw the conclusion that the problems presented in the suggestion for a new Education Act are lack of rights for students and parents as well as the Swedish Schools Inspectorate's

¹⁶⁶ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 203.

¹⁶⁷ *Ibid*, p. 203.

¹⁶⁸ *Ibid*, p. 203.

lacking efficiency.

Furthermore, in the specific chapter on the right to security and study tranquility in the proposition to the 2010 Education Act the government presents *reasons for the government's suggestions*.¹⁶⁹ Bacchi proclaims that to find problem representations, one should start with investigating stated solutions.¹⁷⁰ The reasons for the government's suggestions to a new Education Act could thus prove to be a good starting point in uncovering the problem representations. One of such reasons highlighted in the proposition is to achieve an active dialogue between students and teachers or other school staff, as well as the students' parents to involve them in how the study plan and environment is set up. Although many schools already work actively to achieve a good working environment for their students, the government also denotes that in many schools that is not the case.¹⁷¹ Discrimination, vandalism and lack of study tranquility is a common occurrence in Swedish schools for students and teachers, resulting in failure to achieve desired school operation. Lack of dialogue between teachers, students and their parents is thus a clearly presented problem in the proposition for a new Education Act.

Continuously, in the context of security and study tranquility, the proposition makes clear that there are certain situations in which preventive measures are not enough to ensure a good working environment for students. Therefore, the government suggested the solution that mandators, principals and teachers should be given extended authority to ensure a good working environment.¹⁷² These authorities may include decisions which intervene towards the individual student. For example, confiscate objects which are used to disturb the working environment or cause harm for the operation. Teachers should also be given the opportunity to remove a student from the classroom during certain circumstances.¹⁷³ Another intervention is

¹⁶⁹ Ibid, p. 319.

¹⁷⁰ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 18.

¹⁷¹ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 319,

¹⁷² Ibid, p. 320.

SFS 2010:800. *Education Act*. 6 § Chapter 5.

¹⁷³ Ibid, p. 324.

SFS 2010:800. *Education Act*. 6 § Chapter 5.

the possibility to make a student transfer school or be suspended, if necessary to ensure other students' right to study tranquility and security.¹⁷⁴ The problems presented in this context can thus be understood as lack of sufficient authority and sanctions for mandators, principals and teachers to ensure security and study tranquility for all students.

6.1.2. Measures against degrading treatment

In the chapter on measures against degrading treatment in the proposition to a new Education Act, the government made clear that in terms of content this chapter remains the same as in the previous Education Act. Every school mandator is expected to conduct a goal oriented operation to prevent degrading treatment against students and children in their schools.¹⁷⁵ Furthermore, the school mandator as well as other school staff are upon noticing a student being subjected to degrading treatment obligated to investigate the incident and take measures.

Therefore, in the 2008 proposition to a new Education Act, the government suggested adding a chapter in the Education Act for all school personnel on obligatory notification to the school mandator or principal upon noticing a student being subjected to degrading treatment.¹⁷⁶ The reason for this being ensuring and encouraging a quick process from the time of the notification to it being investigated by the school mandator.

The presented problem in this aspect can thus be understood as the lack of a methodical system which encourages the documentation of possible cases of degrading treatment against students. Such documentation and notification obliged by all school staff, also make it easier for third party investigators, such as those from the Swedish Schools Inspectorate, to inspect and evaluate wheter or not proportional measures have been taken to prevent further degrading treatment.

¹⁷⁴ Ibid, p. 321.

SFS 2010:800. *Education Act*. 6 § Chapter 5.

¹⁷⁵ Ibid, p. 331.

¹⁷⁶ Ibid, p. 332.

6.1.3. *The Swedish Schools' Inspectorate*

In the 2007 proposition *New governmental school agencies* the government, among other suggestions, brought forward the suggestion to form a new governmental school agency referred to as the *Swedish Schools Inspectorate*.¹⁷⁷ In the proposition's chapter regarding this new governmental agency, the government referred to the changes to come in the new Education Act. The new Education Act is expected to include significant changes regarding increased sanctions against school mandators who fail to comply with the legislation.¹⁷⁸ Furthermore, in the proposition to the new school agency the government wrote that they expect clarified goals, syllabuses and other steer documents as well as strengthening the supervision of student results and knowledge.¹⁷⁹ Therefore, the government suggests that there is a need for a new governmental agency tasked with the follow up and supervision of school results and knowledge. Additionally, the formation of a new governmental agency with focus on supervision will increase the efficiency of governmental action in an otherwise decentralized school system.¹⁸⁰

The problems represented in the proposition for the Swedish Schools Inspectorate can hence be understood as a need for a supervisory agency which can inspect and evaluate the performance of Swedish schools with a new goal oriented Education Act soon coming into force. The problems presented in the proposition to the new Swedish Schools Inspectorate and measures against degrading treatment, study tranquility and security in the 2008 Education act are intertwined. The problems are presented in a manner which calls for increased accountability when failing to comply with the goals in the legislation. Insight and pressure from third parties such as parents and investigators from a governmental agency is a recurring theme when proposing the new legislation, suggesting that schools previously to some extent could interpret and apply the law in a manner that was not under abundant scrutiny.

¹⁷⁷ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. p. 35.

¹⁷⁸ *Ibid*, p. 38.

¹⁷⁹ *Ibid*, p. 38.

¹⁸⁰ *Ibid*, p. 39.

Without jumping to conclusions, which evidently are still to come, the problem representations in these specific chapters of the Education Act and the proposition for a new Swedish Schools Inspectorate can clearly be linked to Habermas' instrumental rationality and juridification processes. The formation of a new supervisory governmental school agency could be understood as an apparatus tasked with monitoring and evaluating an Education Act characterised by goal orientation. The arguments made in the propositions are rooted in efficiency and goal fulfilments, implying that these changes will improve knowledge, study environments and results. However one can also make the case that the specific problem representations made in the context of security and study tranquility include elements of Habermas' communicative rationality. The government explicitly lists increased dialogue between teachers, students and parents as areas in need of improvement to ensure a good school operation.¹⁸¹ In this regard the problem representations are aimed at dialogue and mutual understanding.

5.2. The government's construction of the problem

6.2.1. Assumptions, Presuppositions, knowledges/discourses

Identifying meanings (assumptions, presuppositions, knowledge/discourses) which enable the problem representations and make them intelligible can be a complicated procedure.¹⁸² As explained in the theoretical chapter, this thesis will correspond to Habermas' description of discourse where language is central, rather than the post structural Foucauldian understanding of truth, knowledge and discourse in which one is expected to critically interrogate "unexamined ways of thinking" with a method Foucauld refers to as "Archaeology".¹⁸³

Firstly, the child rights discourse and traditional welfare state discourse are visible throughout both propositions. Assumptions about the need of ensuring child rights and everyone's' right to succeed in school is a general theme in the propositions. This is often the case in the process of

¹⁸¹ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 319.

¹⁸² Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 21.

¹⁸³ *Ibid*, p. 22.

juridification; identifying groups in society who are in need of additional protection and thus creating legislation aimed at this with governmental agencies supervising such legislation, in this case the Swedish Schools Inspectorate. Quotes in the proposition to the 2010 Education Act where the child rights and welfare state discourse can be identified include:

“The government has emanated from the fundamental view that principals and teachers’ obligation to ensure a good working environment and security for students will be clarified in the law”.¹⁸⁴

and

“It demands active value based work where basic democratic values and human rights are expressed in a practical manner”.¹⁸⁵

The language used in these quotes suggest that there is emphasise on principals and teachers’ responsibility to uphold the rights of the students and children, further adding to the idea and assumptions that certain groups in society are considered especially vulnerable (in this case students and children) and thus need additional protection, more often than not through juridification processes with increased rights based and goal oriented legislation. Referring to basic democratic values and human rights enforces and legitimises the making of legislation in this direction. The implementation of the United Nations’ convention on the rights of the child in Swedish law has also contributed to the making of a child rights discourse in the Education Act. When emphasizing that some measures may need to be taken to ensure the students’ right to study tranquility and security, the proposition refers to article 28 in the UN’s convention on the rights of the child about the obligation to uphold the discipline in school.¹⁸⁶ This ought to be done in a manner which correlates to the dignity of the child and what is written in the child rights convention. Such measures can “of course”¹⁸⁷, as put in the proposition, never inhibit

¹⁸⁴ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 320.

¹⁸⁵ *Ibid*, p. 320.

¹⁸⁶ *Ibid*, p. 323.

¹⁸⁷ *Ibid*, p. 323.

the constitutional rights and freedoms of the students.¹⁸⁸

Furthermore, the chapter on measures against degrading treatment in the proposition presupposes that there is a legal gap in need of addressing for behaviour not categorized as discrimination according to the law on discrimination, though still degrades the dignity of a student or child.¹⁸⁹ The obligation to investigate and take measures against such behaviour remains unchanged in the legislation, however compared to the 1985 education act the government suggests that measures against degrading treatment is clarified in a specific chapter (chapter 6) of the new 2010 Education Act.¹⁹⁰ Awarding the contents of measures against degrading treatment with a specific chapter is an additional sign of moving in the direction of a school regulated by a law with rights based and welfare state discourses.

The only significant change regarding measures against degrading treatment in the 2010 Education Act compared to the 1985 Education Act is teachers, principals and other school personnel's obligation to report incidents where children are subjected to degrading treatment. The introduction of a Swedish Schools Inspectorate enforcing these obligations and rights is also new.¹⁹¹ Previously in the 1985 Education Act there was no legal obligation of reporting degrading treatment for teachers, principals and other school personnel. In this aspect the assumptions and presuppositions enabling the problem representation are evidently characterised by efficiency. Quote from this chapter of the proposition confirming this assertion goes as follows:

“To ensure that the regulation on the obligation to investigate and take measures against degrading treatment are efficient enough, there is also a need for regulation on the obligation to report degrading treatment for teachers, principals and other school personnel.”¹⁹²

and

¹⁸⁸ Ibid, p. 323.

¹⁸⁹ Ibid, p. 331.

¹⁹⁰ Ibid, p. 331.

¹⁹¹ Ibid, p. 332.

¹⁹² Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 332.

“To further emphasize the importance of efficiency in these regards the government suggests that the law should add that the school’s mandator is obliged to hastily investigate a report”.¹⁹³

The language used in these quotes and in the chapter of degrading treatment contain elements of instrumental rationality. The assumptions and presuppositions about this part of the legislation being in need of efficiency creates the narrative enabling the problem representations explained in the previous chapter. The emphasis on introducing obligations among all school personnel to report possible incidents of degrading treatment and the assumptions and presuppositions corresponding to instrumental goal-oriented rationality with increased efficiency, transitions well into how the problem representations were constructed in the proposition to the introduction of the Swedish Schools Inspectorate.

The main objective of the Swedish Schools Inspectorate is in the proposition depicted as a supervisory governmental agency responsible for inspecting the quality of the school system. A good examination of the goal fulfilment and operation within pre-school education, elementary school and adult education secure their quality.¹⁹⁴ Assumptions and presuppositions enabling the problem representations in this aspect can hence without reaching too far be understood as making the discourse on

“improving the goal fulfilment” and “strengthening the monitoring of students’ knowledge and results”.¹⁹⁵

The results based instrumental rationality therefore makes up the bulk of the assumptions and presuppositions making sense of the problem representations in the proposition to the Swedish Schools Inspectorate.

Additionally a neoliberal discourse can be identified in the making of the problem representations in the proposition to the Swedish Schools Inspectorate. A new supervisory school agency is legitimised and demanded to respond to the expansion of free schools and

¹⁹³ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 332.

¹⁹⁴ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. p. 38.

¹⁹⁵ *Ibid*, p. 39.

decentralization of the school operation. As explained in previous chapters the neoliberal discourse could be made visible from the literature review as a development in many European countries. The freedom and right to choose one's school, operate a school to make profit and the overall decentralization of responsibility and funding (especially the case in Sweden) have transformed the manner in which the government regulates education. Quotes from the principled starting points in the proposition to the Swedish Schools Inspectorate such as:

“In a goal - and results oriented school operation the quality control on local level is first and foremost a responsibility of every mandator, school and operation. The operation's self determination and the professional freedom for teachers and principals should be increased. Compared to today, the national measures for development should be limited. These measures should mainly concentrate on carrying out reforms, competence development and information about the scope of the operation.”¹⁹⁶

and

“By creating a clear and lucid government structure with transparent shared responsibilities the governmental agency is provided with conditions for an effective endeavour to support a good goal fulfilment within the school operation.”¹⁹⁷

Emphasise self determination for schools, professional freedom for school personnel and as limited governmental detail control as possible with respect to the subsidiarity principle. The responsibility to produce results and expected goals in the school operation is ultimately in the hands of the school mandator, whether that be municipality or privately owned.

6.2.2. Concepts and binaries

In this step of Bacchi's six question approach one is also expected to identify concepts and binaries enabling the construction of the problem representations. One of such key concepts in the propositions to a new Education Act and introduction of a Swedish Schools Inspectorate,

¹⁹⁶ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. p. 30.

¹⁹⁷ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. p. 31.

which make the problem representations possible and emerges multiple times in both propositions is *supervision*. It can hence be interpreted that the Swedish school operation has to some extent distanced itself from the control of the government, something which was depicted in the literature of this thesis. The increased range of free schools, municipalization of schooling and the students' right to choose one's school has enabled the problem representations of "an unequal school system", "declining results" and "insufficient measures to secure students' rights", all of which constructing the implicit solution of more quality control and supervision. Binaries in this regard which help construct the problem representations are old (referring to the previous education act from 1985) and new (The new 2010 Education Act). The reforming of a new Education Act helps produce implicit demands and problems which the "old" legislation did not have. In the proposition to the Swedish Schools Inspectorate it is also evident that the government expected a broader sanction-apparatus in the reforming Education Act. Mandators breaching their obligations to secure study tranquility, security and measures against degrading treatment in their schools had to be sanctioned, hence increasing the demand for a special governmental agency in charge of inspecting and sanctioning mandators failing to comply with their obligations.

Additionally, a concept emerging more than once in the propositions is *obligation*. In the proposition to the 2010 Education Act's chapters on security, measures against degrading treatment and study tranquility the obligations of the school mandator, principal, teacher and government do not go unnoticed. The principal is obliged to make sure the students right to special support is investigated and met¹⁹⁸, the teacher is obliged to ensure every students right to a good working environment by taking measures against a single student if necessary¹⁹⁹ and the school mandator is obliged and responsible for making sure that there is a goal oriented endeavour within the school operation to prevent degrading treatment.²⁰⁰ Continuously, it is the responsibility for all school personnel to document and report situations where one suspects a

¹⁹⁸ SFS 2010:800. *Education Act*. 5 § Chapter 3.

¹⁹⁹ SFS 2010:800. *Education Act*. § 6 Chapter 5.

²⁰⁰ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 331.
SFS 2010:800. *Education Act*. § 8 Chapter 6.

student has been subjected to degrading treatment.²⁰¹ If the school personnel or mandator fail to comply with these obligations the mandator could be compelled to pay indemnity to the student or child in question.²⁰² Consequently, the Swedish Schools Inspectorate is obliged to make sure that the school mandator and his/her staff do not breach their obligations.²⁰³

In terms of the concept of *obligation*, and more specifically the obligation to ensure everyone's right to a good study environment and the individual student's right to special support²⁰⁴, binaries in this sense can consist of *including/excluding* students. The teachers' obligation to secure everyone a good study environment does come at the expense of the excluded individual disobedient student. As quoted from the proposition:

“Come to terms with the disobedient conduct of a student”²⁰⁵,

and in the Education Act:

“The teacher may dismiss a student from the classroom if the student disturbs the teaching and/or when the student does not change his/her behaviour after being requested to.”²⁰⁶

Daniel Ryffén elaborates on the student exclusion and inclusion in Swedish schools. According to Ryffén the legislation is structured in a manner beneficial to the collective, rather than the individual student.²⁰⁷ When the school in question suspects that a student is in danger of not fulfilling the requirements, it is obliged to provide tailored education or special support to the student. However the right to special education is regulated in a complicated manner, resulting in segregating measures in conflict with the collective ideals.²⁰⁸ For students in need of more

²⁰¹ SFS 2010:800. *Education Act*. § 10 Chapter 6.

²⁰² *Ibid*, p. 332.

²⁰³ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. Stockholm 7/2 - 2008. p. 35.

²⁰⁴ SFS 2010:800. *Education Act*. § 5 Chapter 3.

SFS 2010:800. *Education Act*. § 6 Chapter 5.

²⁰⁵ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. Stockholm 18/3 - 2010. p.

²⁰⁶ SFS 2010:800. *Education Act*. § 7 Chapter 5.

²⁰⁷ Ryffén, David. 2020. *Vem vill styra skolan?* In: *Skolledaren*, 2020 (3), 22-25. p. 24.

²⁰⁸ *Ibid*, p. 23.

comprehensive measures, such as allocation to a special school unit (in Sweden referred to as “resource school”), can be considered moving the larger collective to a smaller collective.²⁰⁹ If the measures are too drastic the individual student’s rights can be considered degraded, while on the contrary the individual’s right to support is not fulfilled if the school does not take drastic measures.²¹⁰ The ambiguity in the legislation regarding special support to a student often results in schools providing the student with a teacher assistant to benefit the larger group of students, rather than an extra teacher who benefits not only the individual student but also the larger group.²¹¹ This is according to Ryffén an illustration of how the regulation of school operations with conflicting ideals lacks in its goal fulfilment.²¹²

It is hence all part of a machinery which helps constitute students and children as a group in need of protection and their rights are to be activated and upheld by teachers, principals and school mandators. The patterns in the identified problems presented thus signals the operation of a certain political and governmental rationality. A rationality which makes the problem representations in the propositions to the 2010 Education Act and introduction of a Swedish Schools Inspectorate intelligible. The concepts and binaries exemplified in this section further prove the existence of juridification processes in Education legislation with instrumental goal oriented characteristics to help ensure knowledge, results and rights. The making of increased demands from the lifeworld, which in this case can be applied to students and children in education, results in the institutionalization of social rights in an otherwise systemically dominant society. However the institutionalization of social rights encourages complicated bureaucratic procedures when activating and protecting these rights. In this case such procedures can be increased obligations for teachers and school personnel to document and report incidents which consequently are to be investigated by the school mandator in an administrative manner before action can be taken. The introduction of a Swedish School Inspectorate enforces these bureaucratic and administrative systems aimed at protecting the

²⁰⁹ Ibid, p. 23.

²¹⁰ Ibid.

²¹¹ Ibid, p. 24.

²¹² Ibid.

students and children in school operations with supervisory measures.

6.3. *What is missing*

Next step of Bacchi's six question methodology is to reflect upon what is missing and how a certain problem representation has come to be. What is left unproblematic and can the problems be depicted in a different way?²¹³ As has been argued in the previous sections and in the literature review, the suggestion to a new education act and introduction of a Swedish Schools Inspectorate are reforms aimed at responding and adapting to a new educational system. A system where the operation of schools are distanced from the control of the state with the municipalization of schooling and expansion of independent schools. Consequently this has led to juridification processes with rights based, goal oriented legislation to protect students and children from potential harm with the Swedish Schools Inspectorate tasked with following up and ensuring these rights are upheld.

However, the specific manner in which the government has represented the problems with the legislation prior to the extensive education reforms must be critically examined and considered from alternative conceptualizations. One way to do this is to consider limits in the underlying problem representations; what fails to be problematised?²¹⁴ In the proposition to the 2010 Education Act the government presents problems of lacking incentives for teachers to uphold a good study environment for all students.²¹⁵ It also includes additional tools for students and parents to report and issue complaints about insufficient help, being subjected to degrading treatment and lack of study tranquility.²¹⁶ Although the rise of rights based legislation in education by no means is to be considered ill meaning, it does bring with it certain problems which are important to bring forward. The assumption that the legislation automatically solves problems often leaves out certain important aspects which need to be considered. It can be argued that the manner in which the government presents the problems in the proposition to the 2010

²¹³ Bacchi, Carol & Goodwill, Susan, 2016, *Poststructuralist Policy Analysis - A Guide to Practice*. p. 23.

²¹⁴ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 12.

²¹⁵ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. Stockholm 18/3 - 2010. p. 321.

²¹⁶ *Ibid*, p. 319-332.

Education Act and the introduction of a Swedish Schools Inspectorate, fail to consider the big picture and therefore the implicit solutions can have ill intended consequences.

To delve more into this there is reason to build upon the points brought forward in the literature review of this thesis. What fails to be problematised are the consequences caused by an overreliance on law to fix problems. The juridification of welfare state legislation with rights based goal oriented language causes a transition in administrative power from professionals to the lawyers tasked with upholding the legislation.²¹⁷²¹⁸ Therefore, the “correct” way to operate a school is decided by lawyers at the Swedish Schools Inspectorate rather than the teachers²¹⁹, principals and school mandators. The power to sanction the school mandator based on breaching certain legislative aspects is also situated within the Swedish Schools Inspectorate, this could vary from small indemnity sums to closing down the entire operation.²²⁰ As argued by Ryffén, the Swedish Education Act is structured with vague goal oriented language, teachers and principals therefore have lots of room for interpretation when deciding upon solutions best fit for the specific school operation.²²¹ Meanwhile lawyers at the Swedish Schools Inspectorate are in charge of assessing whether these interpretations have support in the law or not. Consequently this combination gives rise to significant differences in school operations throughout the country, adding to the inequalities within the education system²²². In the propositions there is surprisingly no or little mention of the inequalities embedded in the Swedish education system, which is unfortunate when goal oriented legislation open to interpretation adds to these inequalities.

It can be argued that the problem representations are too narrow, silencing the broader problem of the juridification of education legislation and how it affects the language, dynamics and everyday conduct in school operations. As has been argued (section 5.1.), there is a theme running

²¹⁷ Ryffén, David. 2020. *Vem vill styra skolan?* In: *Skolledaren*, 2020 (3), 22-25.

²¹⁸ Lundahl, L., 2002. *From Centralisation to Decentralisation: governance of education in Sweden*. *European Educational Research Journal*. Vol. 1(4). p. 629.

²¹⁹ Andenæs, Kristian. 2005. *Om maktens rettsliggjøring og rettsliggjøringens maktpotensial*. In: *Tidsskrift for samfunnsforskning*, vol 47, nr 4. p. 597.

²²⁰ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 42.

²²¹ Ryffén, David. “Vad behöver skolledare kunna om juridik”. In: Blossing, Ulf (red.) *Rektor i fokus: Kunskap, värden och verktyg*. Edition 2. Studentlitteratur AB. 2020. p. 51.

²²² *Ibid*, p. 52.

throughout both propositions that there is a *lack* of legislation to respond to the demands of the new decentralized and marketized educational system. Representing the problem in this manner silences the possibility of discussing and considering whether increased legislation is indeed the solution. Hence, a debate about the branching of instrumental rationality in the educational sector with its administrative and bureaucratic anatomy is not given the opportunity to surface.

The spread of instrumental rationality in the educational sector is important to consider. Teachers, principals, school mandators and other school personnel have had to adapt to a school culture with increased judicial language and cope with new demands in their work such as documentation, reporting possible cases of degrading treatment and thus solving disputes with legal processes (initiated by the school mandator) rather than communicatively with dialogue²²³. As put by Habermas:

“The rationalization of the lifeworld encourages a systemic integration which competes with the fundamental principles of reaching understanding and can thus have disintegrative effects on the lifeworld.”²²⁴²²⁵

Problems arising in school operations such as disputes between teachers and students, the ongoing “report culture” as mentioned in the introduction of this thesis and overall increased stress put on teachers having to cope with new demands in their work could be interpreted as disintegrative effects in the lifeworld. The practice of solving disputes with dialogue and mutual understanding has to some extent been replaced by the administrative and bureaucratic systems put into place for students to activate their rights. One could therefore argue that the power to decide how the environment in the classroom should be set up is transitioned to those supervising and upholding the legislation, as was argued by Ryffén (section 3.4). Every student complaint is put into a machinery from a teacher to the school mandator and then followed up by a lawyer at

²²³ Novak, Judit (2019). *Juridification of educational spheres: The case of Sweden*, Educational Philosophy and Theory, 51:12, 1262-1272. p. 1263.

²²⁴ Habermas, J. (1984). *The theory of communicative action Vol. 1 Reason and the rationalization of society*. Cambridge: Polity Press. p. 343.

²²⁵ Joakim Lindgren , Agneta Hult , Sara Carlbaum & Christina Segerholm (2020): *To See or Not to See: Juridification and Challenges for Teachers in Enacting Policies on Degrading Treatment in Sweden*, Scandinavian Journal of Educational Research, DOI: 10.1080/00313831.2020.1788150, p. 11.

the Swedish Schools Inspectorate. These instrumental systems have in a sense colonised the lifeworld of the school operations, making those involved in it learn and adapt to it. Although the increase of rights based legislation by no means is to be considered ill meaning, it does bring with it certain problems which are important to bring forward.

Another aspect important to bring up in regards to the limits in the problem representations is the absence of a discussion about the possible implications of a decentralized and to some extent marketized school. In a sense one could argue that there is a neoliberal discourse present in the propositions where the government suggests legislation aimed at upholding and adapting to the decentralized education system in Sweden in a better way than current legislation with a supervisory audit system issuing permits and controlling quality²²⁶. In doing so, the government limits and silences the presentation of possible problems on unequal resource distribution and funding which are important factors on the outcome of study environment, security and measures against degrading treatment. The government emphasizes self governance while simultaneously controlling the school operations with investigative actions in the propositions. Furthermore, in the propositions there is strong mention of the lack of legislative authority among teachers to uphold the study environment in their classrooms. Meanwhile, one could argue that the decentralization of the education system has put more strain on teachers, who to a much increased degree are expected to listen to students and their parents in a climate where they risk losing their students to competitors. As mentioned in the literature review the voucher system (the freedom to choose one's school) creates a sense of competition where teachers and principals compete to offer the parents what they are demanding. Such demands can consist of parents expecting teachers and principals to take bullying, security and a good study environment seriously.

Conclusively, this section has merely had the purpose to critically examine the problem representations identified in the material. It is important to display ingenuity when considering

²²⁶ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. Stockholm 7/2 - 2008. p. 35-42.

what is missing in the existing material and the idea is to challenge the government's conspicuous portrayal of what needs to be done. The Swedish education system is complex and there are many contributing factors affecting the students' right to a good working environment, security and measures against degrading treatment. It is thus important to challenge the problem representations and implicit obvious solutions made by the government.

6.4. Effects produced by the problem representations

The effects of problem representations are not to be measured in terms of outcome but ought instead to be measured in subtle *discursive* and *subjectification* effects caused by the manner in which the problems are represented, in this section these effects will be considered.

6.4.1. Discursive effects

Discursive effects have clear links to question 2, 3 and 4 in the WPR approach, identifying assumptions and presuppositions within problem representations, discourses giving expression to them and the silences they contain.²²⁷ The silencing effect limiting the kinds of social analysis that can be produced is an important effect that needs to be monitored.²²⁸

The discursive effects of the problem representations in the propositions to the 2010 Education Act and the introduction of a Swedish Schools Inspectorate can arguably be described as a shift in responsibility to protect the rights of the students and children from the teachers, principals and other school personnel to judicial processes and administrative procedures. Although the new education act has emphasized the rights of the students and obligations of teachers, these rights and obligations are put into a judicial process rather than being solved communicatively with dialogue. As mentioned before the problem representations in the propositions emphasizing rights based legislation and introducing agencies tasked with supervising these rights signals an overreliance in the legislation and its procedures. This overreliance may undermine the importance of dialogue, mutual understanding and communicative problem solving. A school

²²⁷ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 16.

²²⁸ *Ibid*, p. 17.

culture where disputes and breaching of rights are documented, reported and investigated by third parties (lawyers at the Swedish Schools Inspectorate) may affect the relationship and dynamics of students, teachers and other school personnel. Again, the problem representations in the propositions emphasizing increased legislation and supervision do not allow this discussion to surface.

As argued in the previous section (5.3) one could argue that there are elements of neoliberal discourses in the government's proposition; the main objective of the suggested legislation is after all to conform better to the decentralized and marketized education system in Sweden. The making of such a discourse may leave out certain important aspects of the problem. For example, problems corresponding to an unequal education system, considered an important aspect in Swedish education, do not gain as much visibility. The problem representations in the legislative chapters on security, study tranquility, measures against degrading treatment and introduction of a Swedish Schools Inspectorate do not raise the aspect of an unequal school. Decentralization, marketization of school operations and the "voucher system" (the freedom to choose one's school) arguably influences the security, study environment and measures against degrading treatment just as much as the lack of teacher authority and student rights. In July of 2018 the government commissioned an investigation which was given the purpose to analyse and suggest measures to reduce school segregation and improve resource distribution to pre - schools and elementary schools in order to improve quality of education.²²⁹ This investigation provides different problem representations than in the proposition to the 2010 Education Act, claiming that the presumed advantages of a decentralized and marketized education system only to a limited extent have been met.²³⁰ Although the discourses in this investigation are also characterized by instrumental rationality with a rights based and welfare state approach, the hostility towards the decentralization of education is much emphasized compared to the propositions analyzed in this thesis. This investigation gives context to Bacchi's policy discourse analysis and the practise of creating problem representations. 10 years apart the problem representations today compared to

²²⁹ SOU 2020:28. *En mer likvärdig skola – minskad skolsegregation och förbättrad resurstilldelning*. Department of Education. p. 2.

²³⁰ *Ibid*, p. 16.

those portrayed in the proposition to the 2010 Education Act illustrate significant differences to ensure students' right to good quality education.

6.4.2. *Subjectification effects*

According to Bacchi one issue important to address when considering the subjectification issues is the way in which problem representations set groups of people in opposition to each other, a dynamic referred to as *dividing practises* according to Foucault.²³¹ Bacchi refers to the scholar Fulcher who makes the case that discourse surrounding education policy and disability frames the “disabled” children as part of the problem, thus silencing the attention from disabling structures which shape the possibility of their lives.²³² One can very much apply the reasoning of Fulcher to the problem representations in the propositions to the 2010 Swedish Education Act and introduction of a Swedish Schools Inspectorate. The legislation aimed at improving the “legal authority” of teachers²³³ can be interpreted as dividing practises in the sense that it portrays the disobedient students as one of the problems in upholding security, study tranquility and absence of degrading treatment and bullying. Teachers and principals should, according to the 2010 Education Act proposition,

“Be given the opportunity to take immediate and necessary measures to ensure students’ study environment and security, or come to terms with a student’s disruptive behaviour.”²³⁴

This quote is a good example of how the discourse in the problem representations help frame the disobedient students as the main problem and in doing so also build an invisible wall between obedient students in need of protection and disobedient students. As was argued by David Ryffén in the section on “concepts and binaries” (section 5.2.2.) the legislation is structured in a manner which benefits the collective group. For the most demanding students a teachers’ assistant is distributed to help the teacher focus on the larger group of students.²³⁵ In doing so the disobedient

²³¹ Bacchi, Carol. 2009. *Policy discourse analysis: What’s the problem represented to be?* p. 16.

²³² Ibid, p. 17.

²³³ SFS 2010:800. *Education Act*. 6 § Chapter 5.

Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 320.

²³⁴ Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 321.

²³⁵ Ryffén, David. 2020. *Vem vill styra skolan?* Skolledaren, 2020 (3), 22-25. p. 24.

students who most likely are in need of most help are excluded. An education system with better allocation of resources might respond better to students having trouble fulfilling their potential in school, and therefore prevent them from disturbing the order in the classroom.²³⁶

In a broader sense, the goal and rights based oriented legislation aimed at students as a group in terms of their right to a good study environment, security and not being subjected to degrading treatment also constitute a targeted group in need of further protection. In Bacchi's words;

“In a society that prizes initiative and frowns upon dependence, members of targeted groups are therefore often deterred from supporting the reform.” The political implications that accompany how subjects are constituted within problem representations, therefore, deserve a good deal of attention.”²³⁷

Her reasoning can be linked to the effects of juridification processes. As has been previously mentioned, the demands of the lifeworld in an otherwise systemically dominant society results in a surge of instrumental goal oriented legislature aimed at protecting these groups considered most vulnerable in society. According to Bacchi members of such vulnerable groups can often be deterred from supporting the reform, reinforcing the social status quo.²³⁸ Although legislation aimed at enforcing students' rights does not necessarily mean certain power relations are upheld to remain the social status quo, one could argue that it is a sign of a much broader development in modern welfare societies where identifying specific groups in the legislation is a common occurrence. The next step is appointing a governmental agency tasked with upholding the legislation and sanctioning those who breach it. Ironically the endeavour to enforce certain vulnerable groups rights result in an instrumental colonisation of the lifeworld, causing these groups to activate their rights in administrative and beauracatic systems, which can be complicated. The communicative rationality where mutual understanding and dialogue are the preferred ways to solve disputes is replaced by judicial procedures. Students are to an increased

²³⁶ Ibid, p. 25.

²³⁷ Bacchi, Carol. 2009. *Policy discourse analysis: What's the problem represented to be?* p. 17.

²³⁸ Ibid, p. 18.

extent encouraged to file complaints and reports to third parties such as the Swedish School Inspectorate rather than directly addressing the issues with their peers, teachers and principals.

6.5 Examples of effects in practise

The goal in this section is by no means to present any form of representability, rather it is intended to contextualize the findings in the WPR approach with practical examples and so give it opportunity for further understanding. In accordance with the theme of the thesis specific focus will be on security, study tranquility and measures against degrading treatment. Two school supervisions have been selected; one school situated in an area with lower socioeconomic status and one situated in an area with higher socioeconomic status.

6.5.1. Child rights discourse and Welfare state discourse

The following examples illustrate the emergence of child rights and welfare state discourses, linking well to the goal oriented instrumental rationality permeating the Swedish education legislation. The first example is from an independant elementary school situated in the Swedish city of “Malmö” and was shortly after the inspection in february 2020 closed down on the initiative of the school mandator. The protocol containing notes from interviews with students, teachers and principals suggest that a big portion of the questions asked by the inspectors from the Swedish Schools Inspectorate are in regards to the study environment, security and measures against degrading treatment. Questions towards students such as “Do the teachers talk to you about what to do if someone gets subjected to degrading treatment?” and “Do the teachers talk to you about what to do if something is said which is not perceived as a joke?” illustrates that the inspectors are interested in whether or not the students are aware of the administrative procedures in place to report inappropriate behaviour.²³⁹ Once again it displays the making of a rights based preferential discourse characterised by instrumental rationality.

When interviewing teachers the inspectors from the Swedish Schools Inspectorate asks about what the teachers do to tailor the education for certain individuals. In this discussion there are

²³⁹ Skolinspektionen. Dnr 2019:6082. *Protocol*. p. 17.

clear signs of the inspectors' instrumentally oriented questions. "Do you document the tailored education provided to certain students?" and "Do you follow up these tailored educational measures after a period of time". It can be argued that the inspectors to some extent speak a "foreign" language, expecting certain administrative procedures and documentation routines to be in place. The teachers respond with "You run around like crazy to manage it, it is always a dilemma to keep up with time".²⁴⁰ Managing classrooms and teaching while simultaneously documenting the customizations made for certain students can be time consuming and stressful for teachers. The inspectors proceed to ask questions regarding if the teachers systematize their knowledge, if they document their work on basic values, and if there are systems in place to collect information from previous teachers who quit.²⁴¹ The teachers respond that there are systems in place to document but most teachers do not. Some teachers respond that they do not document because they have had the same classes since preschool and thus know their students and parents.²⁴² A clash between instrumental and communicative rationality is hence illustrated.

Questions regarding the school's study environment are also asked to the principal. When asked how the school finds out about the students' study environment, the principal answers:

"We are a small school and the teachers walk around the classrooms and talk to their colleagues. We know who the students are who diminish the study environment or how it can improve. We are going in the right direction."²⁴³

The inspectors proceed to ask if the school uses measures such as employing teacher assistants to relieve the workload for teachers. The principal answers with:

"If we can make it work. We have a student in year 6 with "tillägsbelopp" (special support from the municipality) and a teacher's assistant, but it is not for full time. We also use the 'konsekvenstrappan' (consequence-stairs) but mostly for other problems such as discrimination. During the fall we have focused mostly on study environments where every breach against the

²⁴⁰ Ibid, p. 22.

²⁴¹ Ibid, p. 28.

²⁴² Ibid, p. 29.

²⁴³ Ibid, p. 40.

rules resulted in a phone call to the parents. It has had an effect but it is important to find the balance where you can talk and students can feel like they can talk to the grown-ups.”²⁴⁴

While the inspectors attempt to understand the systems in place to enforce a good study environment the principal answers with a different approach, emphasizing how the school detects potential shortcomings in the study environment with it being a small school and talks between colleagues. Furthermore in the context of security and discrimination, the inspectors ask:

“Do you have specific measures in place to work with security and discrimination between students?”²⁴⁵

and

“Is there a system in place for it?”²⁴⁶

Regarding these questions the principal answers with:

“It is a question of basic values. The measures taken by the school counsellor were focused on discrimination and there we noticed it being more frequent in certain classes. There has been an improvement but it is still not good enough. There is still a parlance among the students which is not good but we do not tolerate it.”²⁴⁷

It can hence be argued that the social norms in the lifeworld of teachers, students, parents and other school personnel are encouraged by the legislation and those in charge of enforcing it to adapt and develop in order to better fit a system with legal obligations and rights. Dialogue and communication are consequently substituted with bureaucratic and administrative procedures such as filing complaints, having systems in place to follow-up and prevent unwanted behaviour in schools and sanctions.

²⁴⁴ Ibid, p. 41.

²⁴⁵ Ibid, p. 41.

²⁴⁶ Ibid, p. 42.

²⁴⁷ Ibid, p. 43.

Continuously, the instrumental rationality encouraged by the problem representations in the Swedish education legislation is also visible in the supervision of school operations' obligation to conduct a goal oriented operation on measures against degrading treatment. In the protocol from the other regular supervision used as a concrete example in this section, conducted on an elementary school in the Swedish city "Lund", the inspectors ask about what they do if a student is subjected to degrading treatment.²⁴⁸ The teachers respond saying if it is serious they write a report and take contact with the parents to the student in question. The inspectors proceed to ask about on which occasions a report is written.²⁴⁹ The teachers respond with that you feel it. Always when it involved physical violence and degrading treatment. Furthermore, the teachers respond that "There are things students can tell each other without it resulting in a report, but the teacher deals with it".²⁵⁰ In a way, this is an illustration of teachers not necessarily always conforming to the judicial procedures, reporting it to the mandator and waiting for an investigation to take place. Where the line is drawn on which behaviour is reported and which behaviour is solved communicatively remains unsaid. However reading these notes do display a struggle between the instrumental goal oriented rationality with efficiency and the communicative rationality with mutual understanding and dialogue.

In the protocols, the child right and welfare state discourse also emerge in the sense that inspectors attempt to get the perspective of the children in the specific schools they audit. Questions to children in the years 4-6 and 7-9 include:

"How does the school ensure a good and safe environment for the students"²⁵¹,

"What happens if there is violence in school"²⁵²

and

²⁴⁸ Skolinspektionen. Dnr 2019:10164. *Protocol*.

²⁴⁹ *Ibid*, p. 12.

²⁵⁰ *Ibid*, p. 12.

²⁵¹ *Ibid*, p. 2.

²⁵² *Ibid*, p. 5.

“How do teachers ensure it is a secure environment in school.”²⁵³

Furthermore, the principal of the school in question is asked whether the school works with something specific in regards to the students wellbeing.²⁵⁴ The principal responds with

“The common denominator is the close relationship. Teachers take responsibility in their own classrooms. It is important to adapt to the group of students in question. With younger students it is important to explain things directly to make sure they do not carry with them the unwanted behaviour. For example it is vital to find patterns in surveys. I want to see which patterns exist in the different classes.”²⁵⁵

This quote is interesting because of the principal emphasizing flexibility when striving for the wellbeing of the students. A close relationship with the students in order to adapt to the different needs of each respective group is considered important for the principal. Different patterns can be identified in different classes. There is a clear child rights discourse, although from the perspective of the teachers and principals this discourse is presented in a communicative rationality with emphasis on relationships and strong social norms in the specific lifeworld of their school. Consequently the question arises as to how these social norms and communicative rationality merge with the legislation and inspectors’ instrumental rationality where systems with sanctions and follow-up procedures are encouraged. If every school is expected to have a specific system in place to ensure *everybody’s* right to a good study environment, security and protection from discrimination, the flexibility and adaptability could arguably decline.

6.5.2. Neoliberal Discourse

A neoliberal discourse can also be identified in the inspectors’ discussions with the respective school mandator. Both protocols display questions regarding how the school mandator expects the school operation to economically function in the future. As mentioned in the early stages of this thesis the role of the Swedish Schools Inspectorate is to provide permits to independent

²⁵³ Ibid, p. 2.

²⁵⁴ Ibid, p. 13.

²⁵⁵ Ibid, p. 13.

school operations and assess whether their operation is expected to financially profit in order to stay operational. In the protocol from the supervision of the school operation in Lund, a representative from the school mandator group is expected to elaborate on this. A comprehensive review regarding results, bookkeeping and portend staff is performed by the representative.²⁵⁶ “This is a non-profit operation and we all want it to work out. There is an awareness of it being difficult times and we use the money in the operation in an open and transparent process”.²⁵⁷ The same discussion is raised in the interview with the mandator for the school in the Malmö case. When asked if there is a risk of not being able to financially operate next year, the mandator responds that there is always a risk and that they hope to improve the situation soon.²⁵⁸ The inspectors proceed to ask if the mandator has any experience of economic operations. The mandator responds with

“We started in 2008. At that time there were not as high demands on knowledge about the financial parts. We have learned along the way.”.²⁵⁹

When asked whether many students have quit the school, the mandator confirms that such is the case. “That is the downside of the voucher system”.²⁶⁰

This is an endeavour put into practice by the 2010 Education Act’s and Swedish Schools Inspectorate’s problem representations of the “old” education legislation not being sufficiently adapted to the decentralized and to some extent marketized education system. Proving that the school operation flows financially is equally as important as upholding students’ right to a good student environment, security and measures against degrading treatment. In the inspection verdicts based on the supervisions, a big part of the assesement is made in regards to the school operation’s financial conditions. In the supervisory verdict made on the school situated in Lund,

²⁵⁶ Ibid, p. 18.

²⁵⁷ Ibid, p. 18.

²⁵⁸ Dnr 2019:6082. *Protocol*. p. 35.

²⁵⁹ Ibid, p. 35.

²⁶⁰ Ibid, p. 34.

the Swedish Schools Inspectorate imposed that the school before a set date show proof of measures taken to improve the financial situation.²⁶¹

The verdicts are also based on assessments about the school operations' obligations to uphold security, study tranquility and measures against degrading treatment for their students, displaying the rights based discourse with instrumental rationality. The verdicts are structured in a manner corresponding to whether or not the school operations have fulfilled their goals set out in the legislation. In the verdict from the school situated in Malmö, the Swedish Schools Inspectorate did not consider the school to comply with chapter 5 paragraph 3 in the Education Act regarding ensuring students' right to a school environment tinged by security and study tranquility.²⁶² In the assessment the School Inspectorate referred to their interviews and observations when proclaiming that there is a significant lack of study tranquility in the classrooms.

“Teachers and principals do not always make sure the standards of conduct are upheld.”²⁶³

“Lack of study tranquility entails that all students are not given the possibility to retrieve the education they are entitled to”.²⁶⁴

The practical examples of regular supervised portrayed in this section further proves that the Swedish education system is measured in terms of results. However in the endeavour to protect the students from insufficient education the juridification processes have simultaneously increased the demands and obligations for the school operations. Being able to present a financially stable operation while also putting more strain on teachers, principals and other school personnel to secure the rights of the students (a good study environment, security and measures against degrading treatment) leaves room for discussing and further examining the problem representations in the 2010 education act and the introduction of the supervisory governmental agency the Swedish Schools Inspectorate.

²⁶¹ Skolinspektionen. Dnr 2019:10164. *Verdict*. 2020-03-05. p. 2.

²⁶² Skolinspektionen. Dnr 2020-06-11. *Verdict*. 2020-06-11. p. 3.

²⁶³ *Ibid*, p. 10.

²⁶⁴ *Ibid*, p. 10.

7. Conclusion

This thesis had the objective to examine the government's construction of the problem representations in the propositions to the 2010 Swedish Education Act and introduction of the 2008 Swedish Schools' Inspectorate. This to unveil the arguments, discourses and rationales used to motivate and legitimize the reforms made on the Swedish Education legislation and their effects. The combined tools of Carol Bacchi's WPR approach, a literature review and the theoretical framework of Jurgen Habermas' communicative action were employed to delve into this field of inquiry. The research questions to which this thesis has been analytically encouraged were as follows:

- How did the Swedish government represent the problems when suggesting the 2010 Education act and the introduction of a Swedish Schools Inspectorate?

- How have the juridification processes of Swedish education legislation developed the social norms in the lifeworld of students, teachers and other school personnel in Swedish schools?

In regards to the first question, Bacchi's WPR analysis was implemented to unveil the politics of constructing problems and put the problem representations under scrutiny. There are two clear patterns emerging throughout the propositions' problem representations which are lack of legislation and efficiency. The government has in the endeavour to reform the Swedish education system painted a picture that the then current Education Act was old and dated, not fit for the current climate in which Swedish schools operate. An education system which for the past years has been subject to neoliberal development with the municipalization of schools, voucher system and expansion of free schools, has by the government been proclaimed in need of new legislation ensuring the rights of the students and the overall school operation is properly managed. The Swedish Schools Inspectorate was hence introduced first, tasked with supervising and auditing schools throughout the country, followed by the 2010 Education Act emphasizing the rights of students and obligations of schools. As has been made evident from the analysis of the propositions, there is emphasis on increased efficiency in the arguments

made by the government for the new legislation:

“The formation of a new governmental agency with focus on supervision will increase the efficiency of governmental action in an otherwise decentralized school system ”.²⁶⁵

Furthermore the thesis has identified child rights, welfare state and neoliberal discourses emerging throughout the literature review and propositions. The identified discourses can be argued to supplement rather than contrast each other. To elaborate, in the pursuit of ensuring the rights of the students and an overall good education system, the “new” legislation needs to adapt to the new decentralized school system. A new Education Act with increased emphasis on rights and obligations together with a supervisory governmental agency can thus be argued to sustain the neoliberal reforms made on Swedish education. Quotes such as

“In a goal and results oriented education system, quality development locally is first and foremost the responsibility of every mandator, school and operation ”²⁶⁶

and

“Compared to today national measures for development shall be limited regarding focus and work procedure ”²⁶⁷

strengthen this claim. Although these quotes illustrate the importance of the principle of subsidiarity regarding school operations locally, self determination is supplemented with explicit obligations to ensure students with a good study environment, security and measures against degrading treatment.²⁶⁸

In terms of the second question regarding the juridification process in Swedish Education and its practical effects, it can be argued that in the process of emphasizing the rights of the students and the obligations of schools in the legislation, the social norms in the lifeworld of teachers, students

²⁶⁵ Prop. 2007/08:50. *New Governmental School Agencies*. Department of Education. p. 37.

²⁶⁶ Ibid, p. 31.

²⁶⁷ Ibid, p. 32.

²⁶⁸ SFS 2010:800. *Education Act*. Chapter 5.
SFS 2010:800. *Education Act*. Chapter 6.

and other school personnel have been altered. In the students, the government has identified a vulnerable group in need of further protection which has resulted in increased formal and/or written law with goal oriented and rights based characteristics. This process, explained as juridification by the scholars in the literature review and the theoretical chapter, does indeed come with some repercussions on the dynamics between students, teachers and other personnel involved in school operations. This can be portrayed as an example of Habermas' colonisation of the lifeworld. The system which represents the neoliberal reforms of decentralization and marketization has influenced the government to secure the rights of those considered most vulnerable and affected by these reforms. However in doing so there are unintended consequences on the lifeworld (school operations and those involved in it), creating complicated systems to activate one's' right with administrative and bureaucratic characteristics. When explaining the concept of juridification and its implications, the socio-legal scholar Thomas Mathiesen refers to Rudiger Voigt about it being three criterias for juridification: Increased legislation, bureaucratisation and political initiatives transferring to parts of the judicial system.²⁶⁹ Furthermore, Mathiesen also refers to Habermas who suggested that the expansion of legal problemsolving methods is harmful for honest, factual dialogue and affects the communicative rationality between conflicting groups of interest in society.²⁷⁰ This is evident in the depicted education context where students are encouraged to report their teachers or peers to the Swedish Schools Inspectorate when their rights have been breached rather than communicatively solving the disputes. It can also be argued to have unintended consequences such as a school with more inequality, benefitting those who understand the legal language and are able to activate their rights while others find it difficult to. This is an effect of juridification which Habermas has considered. Welfare law is aimed at addressing social ills caused by the functioning of the capitalist economy. However the circumstances in which these problems are legally responded to are cloaked in terms fitting the economic and administrative systems.²⁷¹ Hence, knowledge

²⁶⁹ Mathiese, Thomas. 2005. *Rätten i Samhället*. 5th Edition. Studentlitteratur AB, Lund. p. 185.

²⁷⁰ Ibid, p. 185.

²⁷¹ Deflem, Mathieu. 2013. "The legal theory of Jürgen Habermas" in Banakar, Reza & Travers, Max (red.) *Law and social theory*, Hart Publishing, 2. Uppl., 2013, p. 82.

corresponding to the language used in the economic and administrative systems is required to activate one's rights.

The notion of the development of a legal language and transfer of power to lawyers is a common subject for socio-legal scholars when discussing juridification. Mathiesen argues with reference to Nils Christie that with juridification, lawyers and other experts steal conflicts from the people²⁷², as is the case with the lawyers at the Swedish Schools Inspectorate stealing the conflicts between teachers, students and parents in schools. The judicial language and way of thinking is firstly distinguished by simplifying societal and interpersonal relations, such as conflicts.²⁷³ Secondly, it is distinguished as a cerebral tool to delimit, describe and solve conflicts in a certain manner.²⁷⁴ Transferring the dissolution of conflicts between teachers and students in schools to lawyers at the Swedish Schools Inspectorate thus oversimplifies, delimit and solve such conflicts in a manner which most likely fails to capture the complexities of interpersonal dimensions. Meanwhile the legislation on discrimination, right to a good working environment and security lack normative content and encourages interpretation, which further adds to the confusion when applying it.

Furthermore, to build upon the findings of “what is missing” (section 5.3) and “subjectification effects” (section 5.4.2.), the juridification processes can be argued to have resulted in a legislation of “collective rights”, identifying students as a vulnerable group in need of protection. A legislation adapted to the rights of the collective on behalf of the individual does give context to the findings in chapter 5.3 about missing problem representations on the inequalities in the education system. To elaborate, the right to a good study environment and teachers’ obligation to uphold such an environment benefits the collective group of students, rather than the individual. As depicted in the analysis chapter the wording used in the propositions and Education Act emphasizes teachers’ right to withdraw “disobedient students” from the classroom to ensure the

²⁷² Ibid, p. 182.

²⁷³ Ibid, p. 182.

²⁷⁴ Ibid, p. 183.

security and study environment²⁷⁵ for the larger group of students. This does have an excluding effect on those struggling to meet the requirements in school. Although there are chapters in the legislation emphasizing the individual student's right to special support²⁷⁶, the regulation on how this support should be distributed is rather ambiguous with open ended legislation up to interpretation rather than normative content²⁷⁷. Meanwhile the process for students to appeal decisions made by schools on special support and tailored education are oriented by instrumental rationality with complicated administrative and bureaucratic characteristics, resulting in even more exclusion and inequality for those not mastering it.

The concrete examples provided in the analysis' last section (section 5.6.) with interview protocols and inspection verdicts from the Swedish Schools Inspectorate did confirm the assumption that instrumentally oriented systems such as documenting, following up and students being aware of their rights to file complaints, are encouraged by the Swedish Schools Inspectorate. Instead of asking the students about their relationship with their teachers, the inspectors are obliged to ask them if they are aware of the administrative procedures in place to report inappropriate behaviour. Filing complaints when being subjected to degrading treatment is hence encouraged for students. Additionally when the inspectors ask the teachers if they know what to do when they suspect a student being subjected to degrading treatment, the teachers respond saying there is certain behaviour which "does not need to" be reported.²⁷⁸ Furthermore, teachers' obligation to report suspected degrading treatment and document every decision made in the classroom increases their workload. Quotes from the interview protocols such as "Inspector: Do you document the tailored education provided to certain students?"²⁷⁹ and "Teacher: You run around like crazy to manage it, it is always a dilemma to keep up with time"²⁸⁰ confirms this statement. These small samples of dialogue illustrate examples of when

²⁷⁵ SFS 2010:800. *Education Act*. 6 § Chapter 5.

Prop 2009/10:165. *Suggestion to a new Education Act*. Department of Education. p. 320.

²⁷⁶ SFS 2010:800. *Education Act*. 5 § Chapter 3.

²⁷⁷ Ryffén, David. 2020. *Vem vill styra skolan?* Skolledaren, 2020 (3), 22-25. p. 24.

²⁷⁸ Skolinspektionen. Dnr 2019:10164. *Protocol*. p. 12.

²⁷⁹ Skolinspektionen. Dnr 2019:6082. *Protocol*. p. 17.

²⁸⁰ *Ibid*, p. 22.

instrumental rationality contrasts the communicative rationality where dialogue and mutual understanding is central. The Swedish Schools Inspectorate machinery and the system put into place by rights based and goal oriented legislation can thus be argued to have colonized the lifeworld in school operations, supplementing the communicative dynamics between teachers, students and parents with documentation, complaints, follow up systems and additional strain put on teachers. One could argue that the flexibility and adaptability brought forward by the principals and teachers might diminish on behalf of the manner in which the Swedish education legislation is structured. The legislation encourages structured systems with documentation, follow-up and sanctions to enforce the rights of the students and obligations of schools. However these systems are supposed to apply for everyone, distancing from the fact that certain students and classes might require different needs in order to reach the goals.

How the entanglement of the legislation's legal norms and the schools' social norms changes the professional role of teachers and principals is also an important conclusive remark to reflect on. Connecting to the socio-legal dissertation of Ulf Leo and the field of sociology of law, a normperspective gives one the possibility to see and understand how society and law interact and affect each other. A goal and results oriented legislation with emphasis on the obligations of teachers and principals as well as the rights of the students open up space for interpretation to enforce these obligations. Meanwhile the legislation and inspectors at the Swedish Schools' Inspectorate expect there to be systems and procedures in place to address issues in a structured manner which undermines the flexibility and social norms of those involved.

The institutinalisation of moral norms and juridification are common occurrences in modern societies implementing international conventions and demands in their legislation. Although by no means ill-intended, consequences do follow in the endeavour to supervise and uphold these moral rights with complicated administrative and bureaucratic judicial systems. This thesis has simply examined one sector of society subjected to juridification processes, and there are many more with similar patterns. More socio-legal studies on sectors with related development is

needed to shed more light on the unintended consequences of instrumental legislation and supervisory systems.

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