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Different forms of juridification – an Analysis of two cases in Swedish Education Law

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ABSTRACT

This article explores the phenomenon of juridification in education with a focus on Swedish education law. Two key legislative areas are analysed: regulations on the discrimination and degrading treatment of students (DDT) and the incorporation of the United Nations Convention on the Rights of the Child (CRC) into Swedish law. Using Blichner and Molander's (2008) framework for the dimensions of juridification with an additional dimension by Rosén, Arneback, and Bergh (2021), the article examines how the laws manifest different forms of juridification within the educational system. The findings reveal distinct patterns, with DDT representing an accountability-oriented juridification characterised by detailed legal obligations and enforcement mechanisms, while CRC exemplifies an elusive juridification with a symbolic legal status and uncertainty regarding how the law should be enacted and implemented. The study highlights the complexities of the juridification *of* and *in* education and the implications for legal and pedagogical practices, contributing to a nuanced understanding of how law reshapes educational contexts.

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Juridification; education; law; conceptualisation; discrimination and degrading treatment; convention on the rights of the child

Introduction[1]

An important aspect of education policy is the regulation of laws. On one hand, laws arguably fall under the umbrella of education policy and therefore can be analysed in the same way as other forms of policy. We partially agree with this. Just as it is possible to analyse, for example, policy enactment (Ball, Maguire, and Braun 2012; Braun et al. 2011; Braun, Maguire, and Ball 2010) or policy transformation (Cowen 2009) within education policy in general, it is also possible to specifically study the enactment and transformation of laws in education. In fact, this article is inspired by the work on policy enactment. On the other hand, laws represent a specific form of policy that integrates legal discourses and the legal profession into the educational system (cf. Murphy 2022; Rosén, Arneback, and Bergh 2021). Thus, laws reflect a specific kind of education policy that needs more attention, especially in times when legal measures increasingly seem to be political

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responses to societal and educational problems. This trend can be referred to as juridification.

Broadly speaking, juridification refers to a situation or issue acquiring a legal character or a changed legal character (cf. Blichner and Molander 2008; Brännström 2009; Habermas 1987; Honneth 2015; Teubner 1987). This text specifically focuses on juridification in education, a research area that has attracted increasing attention in recent years, especially in the Nordic countries (cf. Bergh and Arneback 2019; Colnerud 2014; Hult and Segerholm 2016; Karseth and Møller 2020; Lindgren et al. 2021; Lunneblad 2019; Novak 2018; Rosén 2023) but also in the United Kingdom (Murphy 2022), Germany (Freier, Thams, and Wermke 2023), and Belgium (Dom and Verhoeven 2006). These studies highlight changes in the legal regulation of education and the outcomes of juridification. In Sweden, numerous indications of the juridification of the educational system are evident, such as the massive increase in provisions in school legislation, from 64 in the 1962 Education Act (SFS 1962:319) to over 900 today. The increased number of sections in the Education Act (EA; SFS 2010:800) is in itself a kind of juridification. Moreover, the content of the legislation has changed over time, where children's rights, the possibility to complain to state authorities, access to trials, and the ability to sue for damages are all signs of increased juridification.

When juridification is discussed, it is often understood in general and simplified terms as either good or bad, right or wrong, without specific reference to any actual legislation. In addition, when researchers focus on *one* area of interest (cf. Brännström 2009; Horton, Forsberg, and Thornberg 2023; Karseth and Møller 2020; Lindgren et al. 2021; Lunneblad 2019; Refors Legge 2021), this entails the risk of juridification being understood as a single phenomenon with a specific form. In contrast, our starting point is that we must empirically study the outcomes of *various* forms of legislation in education to discuss the relationship between education and law in a nuanced way. Furthermore, this article is co-authored by researchers in both education (Emma Arneback) and law (Lotta Lerwall), each contributing from their respective fields of expertise. Consequently, we employ analytical methods and text genres from both research fields to address the study's aim and research questions (see below). Additionally, we hope that our article can provide methodological inspiration for similar collaborations in the future.

Aim and research questions

Our aim with this article is to offer conceptualisations of different forms of juridification. This is done to better understand the *implications* of different forms of juridification for those working in the educational system. A more nuanced conceptualisation would also help in establishing the *function* of legislation in relation to the legislators' aims and in depicting the *bridges and tensions* in the governance of education. We approach conceptualising different forms of juridification by analysing the *design* and *enactment* of two legal areas within education law to identify the dimensions of juridification that are visible in each and whether they represent different forms of juridification. The concept of design in this article encompasses the legal aspects of legislation, pertaining to both the formulation of a legal act and the provisions within it, and to the legislation's content and meaning. The concept of enactment derives from previous research on education policy

that has focused on how policy is enacted within the educational system (Ball, Maguire, and Braun 2012; Braun et al. 2011; Braun, Maguire, and Ball 2010). This concept highlights that policies (and laws) create the circumstances for actions but rarely specify exactly what to do. Therefore, there is space for different enactments when turning policies into practice.

In the analytical work, we utilise Blichner and Molander's (2008) framework for the different dimensions of juridification and add a dimension by Rosén, Arneback, and Bergh (2021) to study two areas of legislation in Swedish education: regulations on the protection of students from discrimination and degrading treatment (DDT) in the EA (SFS 2010:800) and the Discrimination Act (DA; SFS 2008:567), and the recently adopted Act on the United Nations (UN) Convention on the Rights of the Child (CRC; SFS 2018:1197). These three acts that the Parliament (the Riksdag) adopted are at the same level, meaning that none of them is hierarchically superior to the other. The study is guided by three research questions: (1) What dimensions of juridification are evident in the design and enactment of DDT and CRC in Swedish education; (2) what differences distinguish them as different forms of juridification; and (3) how can these forms of juridification be conceptualised?

Children as rights holders

The Swedish legislation regarding DDT and CRC offers empirical cases to discuss different forms of juridification. Therefore, we must introduce the legislation in question. From a legal perspective, there has been movement towards recognising children as rights holders, both broadly speaking and in education law specifically (Lerwall 2024). This has strengthened the students' legal position. Rights in this context are provisions that confer protection from, or entitlement to, something stated in law. These rights may be formulated as enforceable or non-enforceable rights depending on whether legal means to enforce them are provided. From a pedagogical perspective, earlier research has shown that this development has led to changes in the framing of the teacher profession (Bergh and Arneback 2019; Hammarén et al. 2015) and in interactions within schools (Horton, Forsberg, and Thornberg 2023; Hult and Lindgren 2016; Lindgren et al. 2021; Lunneblad 2019; Runesdotter 2016).

This development of seeing children as rights holders in education has taken place during the last 30 years. Yet when Sweden ratified CRC in 1990, the convention was only a binding commitment for the Swedish state in relation to the other State Parties and thus was not part of Swedish national law (as Sweden is a dualistic state). At that point, students' rights were not strong in the EA. However, over time, children's rights have gradually become increasingly present within Swedish education legislation (Lerwall 2024). One important milestone was the former Child and Pupil Protection Act (SFS 2006:67) which contained a prohibition on the discrimination and degrading treatment of students and required school providers[2] to take active measures to prevent and counteract these phenomena. For different reasons, this act was subsequently divided in two different acts (the DA, SFS 2008:567, and the EA, SFS 1985:1100[3]) although the content remained the same.

The prohibitions in DDT target the school provider and school staff (DA Ch. 2 sec. 5; EA Ch. 6 sec. 9). There is no prohibition on students abusing each other. Instead,

the legislation places the legal responsibility on the school provider and staff to take active measures to prevent and counteract degrading treatment among the students (DA Ch. 3 sec. 15–18; EA Ch. 6 sec. 6–8). Failure to fulfil these obligations may result in legal proceedings (DA Ch. 6; EA Ch. 6 sec. 13–16), where students can press charges and claim damages. When the Child and Pupil Protection Act was adopted in 2006, this was a completely new phenomenon in the Swedish educational system (Prop. 2005/06:38).

The 2010 EA was the next milestone in recognising children as rights holders. In this Act, the government set out as a specific goal to transform the rights in CRC into the EA (Prop. 2009/10:165, 203, 230–231). This was a clear statement acknowledging children as rights holders. Finally, the Swedish parliament decided in 2018 to incorporate CRC into Swedish law (SFS 2018:1197).[4] Giving CRC legal status in Sweden meant that it could be directly applied by the courts and authorities and that all public organs would have to comply with the articles within the convention (Prop. 2017/18:186, 72–80). CRC's incorporation into Swedish law indicated Swedish legislators' clear stance on the importance of seeing children as rights holders (Prop. 2017/18:186, 74, 112–115). This decision can be described as the culmination of a long process of asserting children's rights in legal documents regarding education (Lerwall 2024). Thus, DDT and CRC are critical milestones in the development of the status of children as rights holders, although their designs differ considerably. This makes them highly relevant for an analysis concerning whether they can also be said to represent different forms of juridification.

Theoretical framing and analytical steps

An important starting point for this article is the view that the design and enactment of law can lead to both enabling and disabling processes in society and schools. This duality has been discussed by researchers in social theory, who have stated that law, on the one hand, can have a positive effect on the development of a democratic society, especially when trust is low (cf. Habermas 1987; Sztompka 1999). On the other hand, legislation can lead to negative effects, such as the instrumentalisation of actions, lack of trust, accountability, and over-bureaucracy (cf. Habermas 1987; Honneth 2015; Murphy 2022). Given our interest in conceptualising the different forms of juridification in education, based on empirical cases in Swedish education, we are committed to maintaining an openness to what we refer to as the 'duality of juridification'.

In this article, we draw from earlier research concerning the dimensions of juridification, which highlights the need to understand juridification as a multi-layered concept. Blichner and Molander's (2008) seminal work identifies five dimensions of juridification (labelled A to E). In our study, these dimensions serve as tools for analysing the design and enactment of DDT acts and CRC within Swedish education. Each dimension will be briefly introduced below and discussed in detail in the results section. Blichner and Molander's five dimensions are as follows:

(A) *Constitutive juridification*: This dimension involves the establishment or alteration of norms that are foundational to a legal order, which may lead to the acceptance of state power or the separation of powers.

(B) *Juridification as law's expansion and differentiation*: This dimension refers to activities becoming increasingly regulated by law (expansion) or split into several laws (differentiation).
(C) *Juridification as increased conflict solving with reference to law*: This dimension highlights how conflicts within a society are increasingly resolved through legal means. It is further divided into:
  (I) Juridical conflict solving: Resolution within the judicial system.
  (II) Legal conflict solving: Legal reasoning conducted outside the judiciary.
  (III) Lay conflict solving: Conflict resolution employing legal reasoning without expertise or precision.
(D) *Juridification as increased juridical power*: This dimension occurs when indeterminacy in law or lack of transparency results in legal experts, both internal and external, gaining increased influence.
(E) *Juridification as legal framing*: This involves an increased tendency to perceive oneself and others, as well as human relationships, in legal terms. It distinguishes four types of legal status: negative status, positive status, passive status, and active status.

Altogether, these dimensions (A – E) capture processes of juridification that occur at different societal levels. In education, these dimensions also depict different levels in the educational system. Rosén, Arneback, and Bergh (2021) therefore address the importance of understanding the juridification *of* and *in* education. That is, some of the dimensions of juridification address the regulation *of* education, whereas others concern the enactment of new legislation *in* the educational system. In addition, based on earlier research on juridification in education, Rosén, Arneback, and Bergh (2021) developed a more general sixth dimension (F), depicting how a law can challenge pedagogical discourses and work:

(F) *Juridification as the redistribution of power*: This dimension refers to shifts in power between legal and pedagogical professionals (increased juridical power) and/or between legal and pedagogical discourses (a discursive shift towards law).

Step 1: analysing the different dimensions of juridification in DDT and CRC

The analysis in this article comprises two steps. The first step entails analysing the two case studies, DDT and CRC, with a focus on the following research question: What dimensions of juridification are evident in the *design* and the *enactment* of DDT and CRC in Swedish education?

As mentioned, the design refers to the legal aspects of legislation, both to the formulation of a legal act and the provisions within it, and to the legislation's content and meaning. The legal perspective relates foremost to the issue of the juridification *of* education (Rosén, Arneback, and Bergh 2021). A legal analysis is required, for instance, to identify how the legislation and the provisions within it are formulated and modified. It also entails an analysis of the content and meaning of the law. However, the legal perspective also relates to juridification *in* education. For example, it contributes conclusions on how the law is interpreted, understood, and/or

misunderstood by school staff regarding the content and requirements in the law and how these conceptions relate to the legislators' intentions. Another example relates to the understanding of the redistribution of power as it helps in identifying tensions between politics and law.

The concept of enactment is drawn from previous research on education policy focused on how policy is enacted within the educational system (Ball, Maguire, and Braun 2012; Braun et al. 2011; Braun, Maguire, and Ball 2010). The pedagogical perspective relates foremost to juridification *in* education (Rosén, Arneback, and Bergh 2021). An analysis of the policy enactment of laws contributes knowledge of how legal areas are enacted in the educational system by different actors at the national and local levels. It can also depict bridges and tensions between education and law, and thereby lend important insights regarding the juridification *of* education.

We use different kinds of data to analyse the designs and enactments of DDT and CRC. In the data selection, we aimed to make the basis for the analysis as rich as possible. These data are necessary to answer our research questions. The analysis of the design of legislation is based on legal sources (e.g. legal acts, preparatory works, and legal literature). The data also include empirical studies concerning the enactment of legislation in education. In the case of DDT, a wide range of research has already been conducted on the implementation of this law in Swedish education, which we draw from. For CRC, as less research is available, we conducted interviews over the past few years on the national-level enactment of CRC, which we use in our analysis. These data comprise interviews with 19 civil servants from three national school agencies and the Ombudsman for Children.

It is also important to emphasise that the analysis of the different dimensions of juridification is not a strict deductive examination of what is present or absent. Instead, we adopt an abductive approach (Frankfurt 1958; Peirce 1931) to analyse the empirical cases in relation to the different dimensions of juridification while simultaneously adapting these dimensions as necessary on the basis of the empirical data (cf. Rosén, Arneback, and Bergh 2021). This approach also leads to the slight renaming of some dimensions to highlight overarching patterns observed in the design and enactment of the laws.

Step 2: conceptualising different forms of juridification

The second step of the analysis entails addressing the following research questions: What differences distinguish the two cases (DDT and CRC) as different forms of juridification, and how can these forms be conceptualised? Here, we compare the overall patterns observed in the enactment of DDT and CRC with the aim of conceptualising the different forms of juridification in education. In addition, this step necessitates both pedagogical and legal analyses to be able to draw conclusions on the patterns that can be observed. This analytical comparison is crucial as it not only underlines the nuances within the legal designs and enactments but also contributes to a broader understanding of whether and how different forms of juridification reshape educational contexts. The following result section will be followed by a concluding discussion on why knowledge of different forms of juridification is important.

Results

Step 1: Analysing the different dimensions of juridification in DDT and CRC

Constitutive juridification

The first dimension of juridification that we analyse in relation to DDT and CRC is what Blichner and Molander (2008) term constitutive juridification. They describe this as 'a process where norms constitutive for a political order are established or changed to the effect of adding to the competencies of the legal system' (Blichner and Molander 2008, 38). Juridification takes place when a legal order is established. 'A highly legalised institution would be one that is obliged to follow certain rules that are precisely stated and where the final judgment is being made by a third party' (9). Constitutive norms may also be articulated through legal doctrines, legal or jurisprudential regimes, or legal paradigms. This dimension of juridification can be placed at the meta level; it concerns 'the system'. According to Blichner and Molander, constitutive juridification also includes the acceptance of state power or separations of power. As our empirical data focus on the legal order, we exclude this aspect from our analysis. Both DDT and CRC can be understood as the juridification *of* education (Rosén, Arneback, and Bergh 2021). They represent areas where legislation has been adopted in fields where no previous provisions existed. For a long time, the EA has provided a framework for what education should be about and how schools should be organised without regulating children's rights specifically, or the protection against discrimination and degrading treatment. Now, these areas are legislated through the EA, DA and CRC.

When comparing the levels of constitutive juridification of DDT and CRC, we focus on the following indicators: legal definitions, legal prohibitions, state control, judicial review (in court), and the possibility to claim economic compensation.

The provisions concerning DDT can be described as 'a system' within the educational system. We consider them as such, first, because there were no provisions of that kind earlier, and they were initially placed separately in a specific act on DDT (The Child and Pupil Protection Act 2006). Second, the content of the new provisions formed a coherent set of rules regarding discrimination and degrading treatment. The content of this act was subsequently divided into the DA and the EA, but the content was preserved. Thus, the obligations of the school provider and school staff remained the same. In addition, the provisions were formulated in a detailed and precise way with clear definitions, prohibitions, and obligations (e.g. DA Ch. 1 sec. 4, Ch. 2 sec. 5, Ch. 3 sec. 15–18; EA Ch. 6). Third, the acts established a set of rules for accountability through state supervision and judicial review. The school provider faces the risk of being liable to pay damages as students can press charges claiming breaches of the DDT provisions. The school provider also faces the risk of different types of sanctions issued by the Schools Inspectorate (EA Ch. 26) for failing to comply with the standards set in the law. There is even a possibility of the state supervisory bodies (the Equality Ombudsman and the Child and School Student Representative at the Schools Inspectorate) suing for damages and claiming compensation on behalf of a student. Altogether, these provisions form a system to protect students from discrimination and degrading treatment, thus constituting a form of constitutive juridification.

On the contrary, CRC provides a set of rules that do not qualify as a coherent system and thus not as constitutive juridification. The common denominator in CRC is children's rights, which concern various topics. Admittedly, there is a prohibition on discrimination (article 2), but this lacks definitions and is not combined with any specific judicial review, supervision, or sanctions. Furthermore, the articles of CRC (especially those concerning education, articles 28 and 29) are not precisely stated. In addition, the Swedish government has not set up any specific supervisory or follow-up system to ensure adherence to the convention. One could argue that the Schools Inspectorate would bear the responsibility to supervise the conformity of school activities with CRC, but our interviews at the Schools Inspectorate revealed that CRC is not (at least not yet) under its supervision, nor is there a possibility of judicial review, and students cannot sue for damages solely on the basis of the convention. All in all, the features of DDT as a form of constitutive juridification are absent from CRC.

Juridification as law's expansion and differentiation

The second dimension of juridification is juridification as law's expansion. This refers to the situation where an activity becomes subjected to legal regulation or more detailed regulation. This may occur at both the vertical and horizontal levels. Blichner and Molander (2008) refer the division of law into two or more laws as horizontal differentiation and the specifying a law to differentiate an increasing number of cases as vertical differentiation. Thus, this dimension of juridification concerns both how the legislation is expanded to cover more areas but also becoming increasingly detailed and sometimes fragmented.

In relation to DDT and CRC in education, this dimension is also an example of the juridification *of* education (Rosén, Arneback, and Bergh 2021). In one sense, both DDT and CRC have expanded the legal scope of the educational system as they represent the creation of laws in previously unregulated fields. They also constitute examples of horizontal differentiation as they both were initially positioned as separate from the EA. In addition, DDT exemplifies horizontal differentiation as it was subsequently divided into two separate acts (the DA and the EA).

The designs of the acts differ quite considerably. DDT contains detailed provisions on the obligations of the school provider. For instance, the school provider and staff 'must not subject a child or pupil to abusive behaviour' (EA Ch. 6 sec. 9) or 'If the school provider or staff fail to fulfil their obligations under Sections 7, 8, 9, 10 or 11, the school provider shall pay damages to the child or pupil for the offence this entails' (EA Ch. 6 sec. 12). We see this as an example of law's vertical differentiation as DDT is designed to address all forms of discrimination and degrading treatment.

However, it is evident that the articles in CRC are quite less detailed than the DDT provisions. The articles in CRC are widely formulated and target the State Parties as acceding states, not as stringent rules applicable in courts. This is especially evident in article 28 regarding the right to education: the states parties shall '[e]ncourage the development of different forms of secondary education' (article 28 (1) (b)) and 'shall promote and encourage international cooperation in matters relating to education' (article 28 (3)).

In conclusion, both DDT and CRC represent a juridification through law's expansion by horizontal differentiation as they extended the area legally regulated and were adopted in separate acts (and DDT was subsequently divided). Further, DDT, but not CRC, exemplifies law's vertical differentiation as the DDT provisions are specified to cover as many situations as possible.

Juridification as increased conflict solving with reference to law

The third dimension of juridification – 'juridification as increased conflict resolution with reference to law' – refers to an increase in the use of references to law. This dimension entails three different forms of conflict solving:

— *Judicial conflict solving*, which involves the judiciary and therefore 'a highly specialized and standardized form of legal reasoning' (Blichner and Molander 2008, 44).
— *Legal conflict solving*, which 'involves the use of legal reasoning outside the judiciary' (44).
— *Lay conflict solving*, without expertise and precision, and therefore involves legal reasoning that contains mistakes, misunderstandings, and misinterpretations.

In relation to the empirical cases, this dimension includes both the juridification *of* and *in* education since conflict solving can occur both in the juridical conflict resolution of education and the legal and lay conflict solving *in* the educational system (Rosén, Arneback, and Bergh 2021).

DDT clearly represents *judicial conflict solving*. The DDT provisions are formulated as enforceable rights. Students and their legal guardians may sue for damages if the school provider has failed to comply with the legal requirements, and the matter is settled in court. This may even be done with the supervisory bodies (the Schools Inspectorate and the Equality Ombudsman) representing the student in the legal proceedings. Legal matters of this kind are quite common (Diskrimineringsombudsmannen 2025-02-05; Skolinspektionen 2023, 29).

In contrast, CRC does not provide for any specific possibilities to claim any form of compensation. The act might be referred to in different cases in the court (especially article 3 regarding the best interests of the child), but the court cannot establish any financial liability solely based on CRC.

DDT also represents an area of *legal conflict solving*. Both the Equality Ombudsman and the Child and School Student Representative are obliged to, as their first objective, try to reach a voluntarily conciliation agreement between the parties outside of court (DA Ch. 4 sec. 1; Instruction for the Schools Inspectorate sec. 13).[5] There is no equivalent in CRC. The state supervision through the Equality Ombudsman and the Schools Inspectorate can in itself also be seen as a tool for conflict resolution outside the judiciary as the supervision may stem from individual complaints and result in the school provider's adherence to the law. Again, this applies only to DDT and not CRC.

There are elements of *lay conflict solving* in relation to both DDT and CRC. Earlier research has contributed knowledge of how legal concepts, such as 'violation' and 'degrading treatment', can be used in educational settings for purposes other than what

the legislators intended (Horton, Forsberg, and Thornberg 2023; Rosén, Arneback, and Bergh 2021). The interviews in our research project also confirm that misconceptions and misinterpretations regarding CRC are common. In our interviews, respondents expressed a recurrent misinterpretation in easily, without deeper reflection, concluding that CRC is already covered by the EA. The following quotations illustrate this:

> What the Convention on the Rights of the Child states, it has actually long been transformed into the Education Act . . . So, in that sense, there was no difference when the Convention on the Rights of the Child became law. It was already there; it had been transformed. (Informant A)

> We supervise local school authorities to ensure that they follow the Education Act, and the Education Act is written from a child rights perspective. The entire Education Act is based on the Convention on the Rights of the Child. So, it's the requirements of the Education Act that are used. (Informant B)

Even if the conclusion were true, the misconception reveals an overconfidence in the understanding of the meaning of CRC in relation to the EA. We therefore conclude that DDT entails all three forms of juridification as increased conflict solving with reference to law, whereas CRC only entails lay conflict resolution. Evidently, juridification regarding the dimension of conflict solving is largely determined by whether the right in question is enforceable or not.

Juridification as an increased need for juridical competence

The fourth dimension of juridification identified by Blichner and Molander (2008) is termed 'juridification as increased juridical power'. In their analysis, they highlight that this form of juridification surfaces when indeterminacies must be managed within the legal system and when there is a lack of understanding of the laws outside the legal system. In this section, we focus on a specific aspect of this dimension commonly addressed in relation to the enactment of DDT and CRC in Swedish education: that new laws can lead to an increased need for juridical competence. In line with this focus, we renamed the fourth dimension to better capture the main content of the empirical cases in this article – that is, 'juridification as an increased need for juridical competence'.

DDT and CRC have both similarities and differences concerning this dimension of juridification. One similarity is that this dimension focuses on juridification *in* the educational system (Rosén, Arneback, and Bergh 2021). In the enactment of DDT, earlier research has shown the presence of this form of juridification at both the national and local levels. For example, this can be seen in the increased number of lawyers employed by school authorities and at the local level with a focus on this topic. However, at the local level, earlier research has reported differences in the economic capacity for recruitment between smaller and larger municipalities and school boards (Runesdotter 2016), leading to geographical disparities in juridical competence. DDT has also led to an increased focus on juridical knowledge among school staff (Horton, Forsberg, and Thornberg 2023; Hult and Lindgren 2016; Lindgren et al. 2021; Runesdotter 2016). To support local work, national authorities (National Agency for Education, National Agency for Special Needs Education) have provided information online about how to interpret the legislation on

DDT through general recommendations[6] and competence development initiatives for school staff.

CRC's enactment differs somewhat regarding 'juridification as an increased need for juridical competence'. According to our interviews with civil servants about the enactment of CRC in education, the topic of children's rights received increased attention once it became national law. However, the informants did not commonly perceive it as requiring increased juridical competence, since CRC is often understood as already being in place (through the EA), as illustrated in the citation below:

> What does it mean that the Convention on the Rights of the Child become a law? . . . What is the Swedish National Agency for Education's responsibility towards the school system, and what does it mean for us? . . . But they did investigate it together with the Ombudsman for Children's legal experts, and they concluded that there is no difference. That the Convention on the Rights of the Child being a law doesn't mean more now than before because it's already in the Education Act. (Informant C)

Therefore, the need for increased legal expertise to handle CRC is not seen as urgent. Instead, CRC is described as a general topic that has received increased focus. On the websites of the National Agency for Education and the National Agency for Special Needs Education, schools are informed that activities must comply with CRC, but there are no general recommendations on how to follow the law. Additionally, the Ombudsman for Children published general information on CRC both before and after it became national law. In interviews with civil servants at the school authorities, it was sometimes mentioned that schools find better information there.

In conclusion, DDT has led to processes of juridification in terms of an increased need for juridical competence in the school authorities, municipalities, and schools. In CRC's enactment, this dimension of juridification was weaker. While there were traces of juridical indeterminacy in interpreting the law, it did not lead to discussions on the need for juridical competence in the same way. Instead, CRC seems to be understood more as a general framework focused on children's rights than as a strictly legal matter.

Juridification as increased legal framing

The fifth dimension of juridification described by Blichner and Molander (2008) is termed 'juridification as increased legal framing'. This concept refers to how new legislation can lead to shifts in how individuals perceive themselves, others, and interpersonal relationships through a legal lens. They distinguish four different framings of a legal status: the negative, positive, passive, and active statuses of a legal person. Juridification as a *passive status of a legal person* refers to processes where individuals accept the duty to follow the law, often at the expense of other beliefs. Juridification as a *negative status of a legal person* involves individuals focusing on the law as a benchmark for permissible actions (if the law is not violated). Juridification as a *positive status of a legal person* occurs when individuals see themselves (and others) as entitled to certain rights under the law. Juridification as an *active status of a legal person* refers to when individuals actively navigate and operate within the legal framework. In the following section, these perspectives on the legal framing of a person are applied to the enactments

of DDT and CRC in Sweden. This dimension addresses juridification *in* education, which is enacted at both the national and local levels (Rosén, Arneback, and Bergh 2021).

Previous research on DDT has presented several perspectives on juridification as legal framing, particularly in relation to changes in teachers' professionalism. For instance, teachers have described a need to develop a legal understanding of their work and accept the duty to follow the law (passive framing), which has required them to reframe some of their old habits and perspectives on what it means to be a teacher (cf. Horton, Forsberg, and Thornberg 2023; Hult and Lindgren 2016; Lindgren et al. 2021; Runesdotter 2016). This shift has also led to an increased focus on safeguarding students' rights (positive framing) and discussions about the legal benchmarks for when school staff are obligated to act (active framing) or not (passive framing) according to the DDT laws (Arneback 2012; Lindgren et al. 2021; Refors Legge 2021; Rosén 2023).

Turning to CRC, there are limited data available on its enactment in Swedish schools in legal terms. However, our empirical data from interviews with civil servants primarily revolve around the child as a rights holder (positive framing) and the necessity for school staff to work towards this goal. On the school authorities' (National Agency for Education and National Agency for Special Needs Education) websites, the focus is again on safeguarding children's rights (positive framing) and actively working with CRC (active framing). The following quotation exemplifies this:

> To *protect* the rights of children and students, there are laws that adults *must* follow. This is stated in the Education Act, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities. [. . .] In the Convention on the Rights of the Child, it is stated that all children have special rights and that all children are equally valuable. This includes, for example, that adults *should* listen to children, and that children have the right to attend school (www.spsm.se/stod-och-rad/for-dig-som-ar-elev/delaktighet-tillganglighet-och-trygghet/, 2024-10-03)

This excerpt illustrates the framing of CRC's enactment in terms of children's rights in positive and active wording. It obliges employees to actively work with children's rights in education. There are no indications of a passive or negative framing of the legal subject in relation to CRC in the data. Instead, CRC is primarily discussed as a pedagogical tool to enhance children's rights (cf. Brantefors and Quennerstedt 2016; Isenström and Qunnerstedt 2020), which has now been given a new emphasis. Overall, the legal framing in DDT's enactment shows a broader variation in the legal framing of school staff and children, compared to CRC's enactment, which is predominantly framed in positive and active terms.

Juridification as the redistribution of power

The sixth dimension, 'juridification as the redistribution of power', was developed by Rosén, Arneback, and Bergh (2021) to capture processes involving 'shifts in the power balance between legal experts and pedagogical professionals (increased judicial power), and between legal and pedagogical discourses (discursive shift towards law)' (834). This dimension of juridification spans the juridification *of* and *in* education as it describes shifts in power. In this article, we expand this dimension to capture the redistribution of power among three groups of people and their

related discourses: politicians and the political discourse, legal experts and the juridical discourse, and pedagogical professionals and the pedagogical discourse. This extension allows us to depict how redistributions of power are navigated differently in the enactment of DDT and CRC in Sweden.

In the case of DDT, previous research has highlighted tensions between law and education (cf. Bergh and Arneback 2019; Horton, Forsberg, and Thornberg 2023; Hult and Lindgren 2016; Lindgren et al. 2021; Rosén 2023; Runesdotter 2016). This tension has been further explored in relation to dimensions A – E, illustrating a clear shift within the educational system. One way to describe this tension is that political decisions led to a strong legal framing of the school, which partially challenged traditional views of what it means to work in schools. A few examples include the introduction of legal vocabulary, general guidelines, and reporting obligations, which partly challenged the existing pedagogical vocabulary and practices. This also led to new approaches to addressing students' rights in education, providing new legal avenues to hold the school accountable if these rights were neglected. Overall, DDT contributed to a legal framing that pressured teachers and other school staff to change their practices, leading to discussions on DDT's pedagogical implications.

Regarding CRC, the tension between law and pedagogy is not as pronounced, probably because the legislation is not as closely linked to accountability mechanisms. As mentioned earlier, there is neither any state supervision regarding adherence to CRC, nor are there any sanctions or other legal remedies linked to non-compliance. Instead, the tension appears to be between politics and law. When the legislation was discussed by the Council of Legislation (Lagrådet) before the incorporation of CRC, the Council opposed the proposal (Lagrådet 2017). Among the reasons given were that CRC's general wording made it unsuitable for handling individual cases and that it was doubtful whether its incorporation would be useful for addressing shortcomings in children's rights. The Council instead favoured transforming CRC's content into existing national laws (see also responses from several referral bodies to the legislative proposal, Prop. 2017/18:186).

The decision to incorporate CRC was discussed in terms of 'symbolic law' and 'symbolic politics' since the decision ran counter to the general legal structure in Sweden and raised questions about CRC's legal impact. The law is viewed as a tool to signal the importance of recognising children as rights holders, with its primary function being to ensure that children's rights are considered in all decision-making processes (Prop. 2017/18:186,, 74–75; SOU 2016:19, Ch. 7.4.3). CRC is also seen as a goal in line with the school's overall goals (SOU 2020:63). Legislators expressed high expectations for CRC's application by the courts and administrative authorities (including school providers and school staff). However, the responsibility for realising the rights set forth in CRC is not accompanied by clear guidance on the content of these obligations. The responsibility for making complex assessments and prioritisations, which are fundamentally political, is left to practitioners. Leviner (2018) refers to this as 'political problem dumping', leading to ambiguity and uncertainty for those who practise the law.

In summary, while tensions existed in the enactments of both DDT and CRC, they occurred between different groups and discourses. For DDT, the tension was primarily between the legal and pedagogical discourses, whereas in the case of CRC, the tension was more between politics and law. In both instances, tensions arose as political decisions imposed new frameworks on the practices of pedagogy or law.

Step 2: conceptualising the different forms of juridification

Having concluded the first step of the analysis, we next conceptualise how the outcome can be understood in terms of different forms of juridification in education. The overall pattern is described in the table below and highlights the similarities and differences between DDT and CRC. As mentioned earlier, DDT and CRC are at the same hierarchical level; therefore, the outcome cannot be explained by their different legal weights (Table 1).

Table 1. Two forms of juridification.

Dimensions of juridification	Discrimination and Degrading Treatment (DDT)	Convention on the Rights of the Child (CRC)
A. Constitutive juridification	Yes – a coherent system within the system	No coherent system
B. Juridification as law's expansion and differentiation	Yes – both through expansion and as horizontal and vertical differentiations	Yes (partly) – through expansion and as horizontal differentiation
C. Juridification as increased conflict solving with reference to law	Yes – judicial, legal and lay conflict solving	Partly – lay conflict solving
D. Juridification and the need for increased juridical competence	Yes, focus on increased juridical competence at the national and local levels	No, according to the informants
E. Juridification as increased legal framing	Yes – passive, active, negative, and positive framings	Partly – positive and active framings
F. Juridification and the redistribution of power	Yes – tensions between pedagogy and law	Yes – tensions between law and politics
Forms of juridification	**Accountability-oriented juridification**	**Elusive juridification**

An overall pattern is that *all* dimensions of juridification are evident in relation to DDT. Therefore, owing to this outcome and our strong focus on accountability, we conceptualise this form of juridification *as accountability oriented*. In contrast, the pattern associated with CRC is more varied, with some dimensions of juridification being less visible and harder to grasp. We conceptualise this form of juridification as *elusive*.

Accountability-oriented juridification: the case of DDT

The analysis of the different dimensions of juridification illustrates how DDT's enactment in Sweden represents a case of accountability-oriented juridification. It is characterised by detailed legislation, legal obligations for school providers and staff, and sanctions for non-compliance. The legal framework of DDT requires schools to adapt and operate according to these directives. If they fail to do so, the school provider will be held accountable. In this sense, it is a strong form of juridification. The association of the law with accountability also creates pressure that influences the actions of authorities and schools. For example, it has led to an increased need for legal expertise and changes in how degrading treatment should be addressed and managed in education (cf. Bergh and Arneback 2019; Runesdotter 2016). These outcomes are unsurprising as DDT's goal is to secure students' rights in school. However, it has also raised concerns, such as whether and how previous pedagogical methods can be used within the legal framing (cf. Arneback 2012; Horton, Forsberg, and Thornberg 2023; Lindgren et al. 2021; Rosén 2023). Working with issues related to DDT can be extremely complex,

such as being responsible for upholding zero tolerance for degrading treatment or working with preventive and corrective measures in a way that maintains (pedagogical) trust between students and school staff, including students who exhibit negative behaviour (Odenbring et al. 2019). Previous research also indicates that DDT's goals are set too high, and that the accountability-oriented system of DDT is ineffective (Refors Legge 2021).

Elusive juridification: the case of CRC

The case of CRC represents a different form of juridification. Firstly, it is not legal questions that dominate the discussion surrounding this act. Instead, it serves more of a symbolic and political function, emphasising that children's rights must be taken seriously. Additionally, there is uncertainty regarding the legal implications of incorporating the CRC. This results in a weaker form of juridification that is somewhat difficult to grasp. We call this elusive juridification. Its hallmark is that while there is a clear symbolic objective, it remains partly unclear how this should be implemented legally and what the consequences are if one fails to fulfil the responsibilities.

A clear indication of this elusive juridification is the vague wording of the articles in CRC, leading to uncertainty about what is truly required. In interviews with civil servants at the authorities, it became clear that they often struggled to grasp and concretise the requirements imposed by the act. Another characteristic is the widespread lack of reflection on the need for legal interpretations of CRC in relation to the EA. There also appears to be uncertainty regarding the role that various national authorities should play in supporting school providers concerning CRC.

Two forms of juridification

When comparing accountability-oriented juridification and elusive juridification, clear differences emerge in how increased legal regulation impacts the educational system. Facing accountability-oriented juridification may challenge pedagogical practices although there is clarity about the expectations. Elusive juridification results in uncertainty about its legal implications. The absence of clear provisions makes the legislation difficult to grasp for those affected by it, leading to weak regulation by the authorities. However, regarding the pedagogical sphere, the occurrence of elusive juridification can also be less demanding (for better and worse) as the framework is more open and there is less emphasis on accountability.

Two factors seem especially important in the design and enactments of DDT and CRC in Sweden: how a law is formulated (in terms of clarity and details) and how the compliance with the law is followed up (e.g. judicial review and supervision). If the law is vague in its design and follow-up, there are legal challenges to address. If the law focuses on accountability, it can create pressure within the educational system. Even if the starting point is the same in both cases – new regulations for education – the outcomes differ. In the concluding section, we will discuss the potential importance of this knowledge for those working with and within the educational system in different countries.

Concluding discussion

The discussion on juridification often tends to single out juridification as *one* phenomenon; as such, it is referred to in predominantly negative terms. Our standpoint is that there is a *duality of juridification* that must be taken seriously. On the negative side of juridification, we find, for instance, over-regulation, lack of trust, and excessive bureaucracy that can have a negative impact on education activities (cf. Murphy 2022; Refors Legge 2021; Runesdotter 2016). Legislation is not necessarily the solution to societal problems. Nonetheless, juridification is necessary for the organisation of society, the development of democracy, and the protection of human rights, for example, in asserting students' right to education (cf. Karseth and Møller 2020). In addition, various instruments of state control are needed to ensure that public funds are used as intended, that individuals are not harmed and have access to remedies, and so on. Few people would likely advocate for a society without a legal order.[7] What matters is *what* is to be regulated and *how* this is done but also what consequences this entails. In this article, we avoid the question of whether juridification is 'good' or 'bad'. Instead, we disaggregate juridification to identify its different forms and their implications in the educational system. Our aim is to contribute to a more nuanced picture of juridification.

Blichner and Molander (2008) and Rosén, Arneback, and Bergh (2021) have made important contributions to the discussion on juridification by adding different dimensions of juridification. Having used these different dimensions in two specific cases, our conclusion is that there are also different *forms* of juridification. Therefore, juridification should not be discussed as a single phenomenon. Plausibly, other forms of juridification can be identified in the education sector. One could ask why this is important. Before answering this, we must comment that the conclusion that different forms of juridification exist might not in itself be seen as particularly ground-breaking. It is well known that different areas of society are regulated to different extents and in different ways, and it would not be surprising if this leads to different consequences. It is also not revelatory that some legislation, such as the CRC Act, has a primarily symbolic function. The fact that the different designs and purposes of different laws would lead to their different functions and impacts is therefore not a revolutionary conclusion. Why then, do we need knowledge of different forms of juridification in education?

First, the different forms of juridification address *the implications of legislation* in education. Here, the concepts of accountability-oriented and elusive juridification illustrate how new laws can have very different consequences for those working in education both at the national and local levels. It can also be useful to address and discuss the outcomes of different legislation in the domains of education, law, and politics (Bergh and Forsberg 2023). Accountability-oriented juridification has had a dramatic impact on both the national authorities (including courts), school providers, and their staff. CRC and elusive juridification have had very little juridical impact on the school authorities; it seems like a symbolic politic that has led to symbolic laws and that has more of a symbolic outcome in school practices.

Second, the different forms of juridification help in setting the *function of legislation* in relation to the different aims of the legalisation and the political interests in education. The conceptualisation of juridification as taking on different forms facilitates analysing the relationship between the design and components of the legislation as well as its actual

functioning in relation to the purpose of the legislation and the legislators' intentions. The identification of different forms of juridification also aids in identifying key factors in the formulation of the legislation, such as the precision of the wording of provisions, the legal standing of individuals, complaint systems, state supervision, access to courts, and remedies, as well as the possible tensions in the legislation's formulation within the law. It may also help in analysing the design of the law and its functioning in relation to the legislators' interests and ambitions for regulation more generally.

Third, the analytical work in this article on the different forms of juridification *depicts bridges and tensions in the governance of education*. One important finding in this article is that tensions arise when political decisions impose new frameworks on the practices within education and/or a law that challenges earlier structures and habits. Political decisions are supposed to have implications, but the cases of DDT and CRC have helped us depict bridges and tensions in the governance of education. The political decision concerning DDT was legally rather unproblematic since it was in line with the legal system in place, but accountability-oriented juridification put pressure on the educational system for better and worse (cf. Horton, Forsberg, and Thornberg 2023; Lindgren et al. 2021; Lunneblad 2019). In turn, the political decision regarding CRC resulted in elusive legislation that challenged the Swedish legal system but which was rather unproblematic in relation to education since it was aligned with the work of schools. All in all, this pattern reminds us that the outcome and effect of different forms of juridification must be understood in relation to political decisions regarding the form and content of different laws. In this respect, the outcome of this article is also of importance for people in the political arena to reflect upon.

Fourth, we hope that the *interdisciplinary work* in the article can provide inspiration for similar collaborations in the future. For us, it is clear that research on the juridification *of* and *in* education benefits from assembling researchers in education and law. This requires methodological flexibility and creativity and contributes to in-depth analyses, enabling a deeper understanding and further conceptualisation. Therefore, we believe that research on juridification not only benefits from interdisciplinary collaboration but is sometimes necessary.

Lastly, we would like to promote further research on different forms of juridification. As mentioned, there is reason to believe that various forms of juridification may be identified which would add knowledge of the implications and function of laws. In addition, different forms of juridification could be used in further research to compare juridification in different countries (Rosén, Arneback, and Bergh 2021) and the transformation of laws concerning education between countries (Cowen 2009).

Notes

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2. In Sweden, the school provider holds the overall responsibility for ensuring that education is conducted in accordance with the EA and underlying regulations. Municipalities are primarily responsible for schools, but private entities (such as companies and foundations) can also act as school providers.

3. Chapter 14 a, now Chapter 6 in the Education Act 2010:800.
4. Lag 2018:1197 om FN:s konvention om barnets rättigheter [Act 2018:1197 on the UN Convention on the Rights of the Child].
5. Förordning (2011:556) med instruktion för Statens skolinspektion [Ordinance (2011:556) with instructions for the Swedish Schools Inspectorate].
6. However, the general recommendations have expired due to updates and changes in the legal arena.
7. See Johansen (2020), who describes various 'revolutionary' theories of state organisation without rules and who himself proposes a middle ground where a minimum of rules is advocated.

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