

## Fakultetsopponenten sammanfattar

Guy Neave

CIPES - Centre for Research in Higher Education Policies, Portugal

### **Judit Novak – Juridification of Educational Spheres: The Case of Swedish School Inspection.** (Uppsala: Uppsala universitet, 2018)

Few Nations in Europe remain untouched by the press to adapt the school system to Neo-Liberalism, to take on the imperatives of globalisation, accountability and efficiency, to shift toward the values they represent and, above all, the way the instrumentality put in place to verify and to advance these values, itself functions. Sweden is no exception. The Education Act of 2010 was the outcome of long-term Reform, which began in the 1990s. It is also the empirical focus of Judit Novak's doctoral thesis.

Education policy aimed to municipalise school governance, make financial allocation a municipal responsibility and in the name of “New Public Management” laid out new school objectives. Reform set out to decentralise and convert government into governance as a way to enhance individual choice for both parents and students. In short, Swedish education policy shifted from being in-put based – the hallmark of social reconstruction in the 50s and 60s – the better to tackle economic reconstruction and improve individual economic opportunity in the decade following the 90s. It evolved to become out-put based and ostensibly locally focussed. This latter development stressed output, services provided, student performance and student and parental choice, priorities that required the central state to step back from detailed control. It placed finance as well as adapting the school curriculum to interests operative at, and familiar with, the local level.

Novak's thesis focuses on three primary questions: What is juridification? Is it a scholarly construction or a political and educational reality? Most important, what are the implications of juridification for education policies and practices? (Novak, 2018, p. 11) Novak demonstrates empirically that a

good part of juridification materializes in a variety of microprocesses of policy – processes that have the power to reorient particular aims of educational institutions and specific practices away from historically shaped national logics and towards global logics. This is the central and original feature of this analysis.

Novak's exploration goes beyond the obvious characteristics that previous literature - for instance the Evaluative State – have emphasised (Neave, 1998, pp. 265 – 284): assessment modes, statistical indicators of student performance, in short the focus of policy as control, institutional performance and outcome; the re-definition of policy as outcomes assessment rather than focusing on input and control factors stands as one of the more radical features of education policy in Western Europe from the 90s onward.

Novak's is a more comprehensive Swedish saga. It provides a broader-ranging perspective by placing reform as part of a process that draws heavily on an interplay that is historical, political, sociological and legal. By drawing on Habermas' and Weber's work on Juridification, Novak forces our attention to that multi-dimensional phenomenon which earlier, more technical accounts have been content merely to note – namely the way context influenced the policy it was designed to create. Such a technical perspective is less sensitive to the strength of that continuity often long wielded by participant interests. And, moreover, earlier approaches tended to assign less weight to changes in views and priorities brought about by government policy upon the views and priorities that head teachers, teachers and above all, parents feel they can demand from the system once it had been overhauled.

By casting Juridification as the central theoretical construct within which educational policy and subsequent shifts in public values may be set, Novak develops successfully a longer term oversight, a view which is not easily to be had from inherently short-term technical accounts. Rather, by building her analysis around the concept of Juridification, shifts in public values or priority may be set against the backdrop of historical continuity. This approach is markedly more insightful than defining the significance of reform simply in the light of what it did away with. There is almost always continuity in the midst of change, as Valéry Giscard d'Estaing, one of the Presidents of the French Republic, once remarked.

Like the Policeman's Lot in Gilbert and Sullivan's light opera "The Pirates of Penzance", so with the bid in Sweden to set education policy on a new, decentralized footing. Its 'lot was not a happy one'. Shared responsibility for policy and the goals set was vested in the National Agency for Education, the National Agency for Special Needs Education and the Swedish Institute for Educational Research. Equally significant, Novak argues, was the strengthening of the role of the Schools Inspectorate. The latter's intermediary role between State and education institutions was set out in the

*Ordinance for Instruction of The Swedish Schools Inspectorate [Förordning med instruktion för Statens skolinspektion]* (SFS 2011:556) of 2011. The 2010 Education Act had already placed responsibility regularly to supervise, audit quality, deal with complaints – student or parental - on the Schools Inspectorate. This latter also acquired the legal mandate to ensure schools’ compliance with the law and, most significant of all, it could impose sanctions in the event of the principle organizing power proving to be non-compliant. Put succinctly, the then recently launched Swedish Schools Inspectorate saw its powers grow, and acquire the weight of law. Despite the decentralization of governance, despite the commodification of the school system, the Inspectorate had the latitude to enforce a state agenda and in effect to re-define the legitimacy of the central State.

#### A THESIS TRIPARTITE

Novak’s thesis falls into two main parts. A third part consists of a summary of the first two, together with conclusions to be drawn therefrom, as well as suggestions for future research agendas and policy issues concerning the education sector in Sweden and other countries.

#### **Part I.**

The first part establishes Novak’s basic contention: school education policy cannot fully be grasped by examining overall directives and institutional response alone. Equally important is the attention paid to process, to procedures involved in setting out principles, how the latter are formulated, to which bodies responsibility is assigned for their operationalization and ultimately their evaluation.

Novak argues that the consequences of such action may be both indirect and not always foreseen. Thus, defining competence, setting out the responsibilities of head teachers as too pupil performance as a pointer to teacher competence may assume greater significance than was estimated at the outset. Such tasks take on more operational detail as they penetrate down to the “chalk face” thus re-imposing centralized oversight. What appears at central government level as an abstract principle may indeed emerge as a central and operational element to be evaluated at classroom level. The knowledge available has, because of its widespread availability, to be centrally tested and most certainly so when local interests and importance vary, and when different interest constituencies make varied definition of their rights. There is a world of difference between policy execution and policy formulation.

In Part I, Novak draws a clear line between a negative and a positive right. This distinction constitutes the underlying theme of the thesis. A negative right is the individual’s right to act freely and without restraint of a

third party. By contrast, a positive right is the entitlement to enjoy something – in this case, education. While both types of rights define relationships, positive rights inevitably require the State to ensure the realization of certain rights claims. Accordingly, different policy-making frameworks reflect different perspectives on the protection of rights in the democratic policy process. In this context, Juridification is the application of legal principle to operational activities and the degree they are incorporated or correspond to the principles contained in that law. Succinctly stated, Juridification has bearing as much as socialisation and enculturation in schools. It may equally be revised when and if educational research presents new insights to educational policy.

## **Part II. Empirical investigation**

The decision by government to decentralize school governance is broached in Part II. It analyses and that in considerable detail what may conveniently be termed “the anatomy of rights quâ claims”. Almost by definition, a policy that draws its strength from prior claims bids fair to be radical by nature. It requires both sensitive negotiation and complex procedures of bargaining, within and without Parliament. Happily, Sweden has long been aware of this through the *remiss* system inter alia. (Neave, 1973, pp. 304 - 315)

Novak examines the long-term dynamic of Juridification along two different foci and at two different chronological points. The former covers the period 2003 to 2007. It homes in on quality issues in schooling seen as a formal legal issue. The latter, from 2008 to 2010, attends to the growing importance of Juridification, and to its legal and regulative role in society. Key to dissecting these last three years were the interviews of 20 head teachers at compulsory schools then under inspection. What changes – emotional, cognitive or behavioural – as were detected took place during that event.

Key to both chronology and the role of Juridification in Sweden’s school system is the view that the prime driving force was not decentralisation. Changes for legislating schooling effectively fragmented responsibility, shifting it from detailed regulation towards an indirect mode. Despite change, the basic Education Act of 1985 applied until well on in the present century. Novak’s interpretation holds the publication of the Report *An Education Act for Quality and Equity* in December 2002 as a crucial development. The Report called for legally enforced underpinning to student rights. By so doing, the basis for their status shifted from the status of obligation to become instrumental in a process designed to enhance democracy. Democracy was in turn re-defined away from educational opportunity and was instead regarded as central to the achievement of equity, which held outcome as an economic right.

Central to the concerns the Education Commission tackled was the inspection of schools. It was presented as an integral part of their

governance, and reintroduced under the aegis of the National Education Agency. In 2008, the role of inspection was assigned to a new government agency, the Swedish Schools Inspectorate. Under the 2010 Education Act, as we have seen, further responsibilities were assigned it and became operative the year following.

It was, Novak argues, a watershed. The Schools Inspectorate was thus endowed with the power of sanction. For its part, the school organizing body, school staff included, became accountable within the legal framework thus defined. It was highly significant; first, these were centrally specified powers, actively to be used in drawing up an exact regulatory framework; second, they could be regarded as a shift in government oversight from a facilitative to a regulatory setting. In short, the Schools Inspectorate incarnated a new interpretation of the rule of law and its nature.

The interpretation of the Schools Inspectorate placed upon the rule of law involved a dual displacement: first, the rights and liberties it was assigned to uphold, were those of the (future) citizen in the marketplace rather than as citizen in a democratic order; second, judicial review focussed less on government and principle than on conditions as they were in schools. It focused on the quality of the information teacher assessment provided on pupil performance as a pointer to the degree both parents and students were able to exercise in reality their right to choose curriculum, course or school. In short, the Schools Inspectorate embarked on verifying process and practice as key to determining whether the principle of parental and student rights were effectively observed.

Amongst the issues the Inspectorate set out to verify were how accurate or consistent was student grading by teacher assessment? Did practical assessment at national level create those conditions by which individual rights might be exercised by parents, students – or by both?

In three rounds of assessment, the Inspectorate evaluated how far pupil performance, verified by a teacher control group itself nominated by the Inspectorate, compared with grades awarded by ordinary teachers. The Inspectorate's purpose sought to ascertain how far student performance met the conditions it had itself outlined. The results raised comment. Teachers were accused in the press of over-generosity in their grading if not occasional gross inaccuracy.

Such unfavourable comments on the inaccuracy of information used to uphold the individual's right to choose placed a further and influential lever in the hands of the SSI. In a bid to strengthen both institutional practice and to thus uphold parental rights the SSI issued more powerful directives still. Training programmes for both principals and teachers were launched. Written statements were set out, which drew up further conditions practitioners were expected to meet. They multiplied.

Yet, the recourse to verification in ascertaining how far the section of the 2010 Education Act governing parental and student choice – in effect a strengthening of school management - was nevertheless seen as valuable, not least by the teaching profession itself. This example of operational definition that followed the Juridification of education policy has consequences that go beyond the straightforward issue of parental or student choice. In fine, Juridification of educational policy has consequences elsewhere, not least upon the teaching career. It strengthens and adds weight, responsibility and consequence to the management of the individual school. How then does the growing weight assigned to school management, legally set out and its achievement operationally defined, subsequently affect the teaching career? Is the latter altered? In what way? Does the process of Juridification in any way change, diminish or enhance the prospects of teachers and school-based administrators?

Agreed, this particular problematique may be seen as a further, albeit indirect, influence of Juridification and mayhap will attract Novak's attention at a later date. Yet, perceptions and performance of today's teaching corps remain a central concern. Granted, teacher career and prospects are still subject to decisions made today at municipal level. It is clear nonetheless both activities are influenced by the overall process of Juridification, which is a national phenomenon in education policy, just as it is also determined by the other level of decision-making in the shape of municipalisation, even the opportunities that may arise may heavily be influenced by key national agencies which as Novak argues the SSI is exemplary.

#### ACHIEVEMENT

What has this study revealed? The most evident achievement Judit Novak presents is a new perspective for dissecting the interplay between central government control, excised through Law, defined and operationalized by the Swedish Schools' Inspectorate and decentralized local governance. By making legal enactment as the focal point of educational policy-making in Sweden, by tracing down its interpretation, the consequences it has for the interplay between centrally defined intent and local execution and by linking the two, this study opens up a new perspective to educational policy making. As such, the Juridical perspective developed in this study holds out considerable promise for more far-ranging issues in the future. The author is well aware of the potential her work has. She is rightly - in my judgement – aware of her thesis as a first investment in future work. Not for nothing she modestly qualifies it as a 'prolegommon', - an enquiry leading on to further development and elaboration.

Education policy is nothing if not dynamic. By attending to the legal dimension and the consequences it produces on Education, schooling, the

changing values at play and the way they are received and interpreted by different interests – some official, others more spontaneous and all in possession of a remit or agenda that may – or may not – be satisfied, re-negotiated, re-stated or sink without trace save for the most demanding of educational historians, Novak has set before us a highly complex and nuanced account of the interplay between Law and Education Policy.

The Juridification of Educational Spheres, as the title puts it, adds substantially to the many disciplines and perspectives that open up our scholarship, analyses and insight to the study of Education and the school system. Novak injects into the Swedish setting the concept of Juridification, initially developed, elaborated and explored by Max Weber and Jürgen Habermas, those giants of Sociology. Like Habermas, her central argument is that legal norms are increasingly brought to bear on an already communicable context of action with the upshot that the law itself becomes a medium of communication – and negotiation.

However, the conditions under which negotiation may unfurl are determined by those correct procedures as defined and operationalized by the appropriate legal authority, which may appear to be to the advantage of that self-same legal authority. Nor does the potential for deadlock always cease there, as Novak notes. Here, I would revert to an issue I touched upon earlier – namely, the self-perception and professional values of the teaching corps, in short, its public status. Its one-time “professional authority” is now made conditional and identified with the individual teacher’s ability to execute tasks, meet norms and fulfil activities as they have been operationalized by the agency on which formal legal authority has been conferred. This appears not far short of an apparent and permanent subordination.

My thanks for your attention!

#### REFERENCES

- Lundgren Ulf (1990) “Introducing policy-making, decentralization into a national, decentralized education system”, in Granheim, M. Kogan, M. and Lundgren, U. Evaluation as policy-making, Introducing evaluation into a nationalized, decentralized education system, London. J. Kingsley
- Neave, Guy (1973) "R&D for education: Britain compared with Sweden," *Political Quarterly*, vol. 44, No.3 July-September, 1973 pp. 304 - 315)
- Neave, Guy (1998), "The Evaluative State Reconsidered", *European Journal of Education*, vol. 33, no. 3. September 1998, pp. 265 – 284 (2860)

SFS 2011:556 *Förordning med instruktion för Statens skolinspektion* [*Ordinance for Instruction of The Swedish Schools Inspectorate*]. Online: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2011556-med-instruktion-for-statens\\_sfs-2011-556](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2011556-med-instruktion-for-statens_sfs-2011-556)

SOU 2002:121 (Government Official Report). *Skollag för kvalitet och likvärdighet. [An Education Act for Quality and Equity]*. Stockholm: Utbildningsdepartementet.