

Functions and effects of administrative law in education systems

Pablo Meix Cereceda. 0000-0001-7126-9603

01/2026

Serie EU Digital and Social Policy

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union.

Functions and effects of administrative law in education systems

Author:

Pablo Meix Cereceda. Universidad de Castilla-La Mancha

Suggested citation: Meix Cereceda, P. (2026). “Functions and effects of administrative law in education systems”, 1/26 Preprints Series in EU Digital and Social Policy, Centre for European Studies “Luis Ortega Álvarez”- Jean Monnet Centre of Excellence, 2026.



Functions and effects of administrative law in education systems

Pablo Meix Cereceda

Associate professor of Administrative Law

*Universidad de Castilla–La Mancha**

Abstract

This chapter is primarily intended as an interdisciplinary, theoretical approach to the role of administrative law in education, but it also includes suggestions for rule- and decision-making. Planning a school system for a population of millions should be compatible with attending to the needs and preferences of pupils, and law is in a unique position to strike this balance and maintain social cohesion, given its ability to legitimise decisions that follow legal procedures (1). These introductory ideas pave the way for a critical discussion of efficiency and effectiveness in education, and of why administrative law cannot escape this perspective (2). The notion of adaptability in education is explored in relation to diversity, freedom and democracy (3), before a theoretical discussion of the role of law in society and education is presented, considering the desirable function of law in legitimising societal balances, as well as its effect of conforming society to capitalist logic (Habermas's notion of juridification) (4). The discussion then becomes more concrete as it turns to the role of law in four controversial topics in education: the scope of individual preferences in school activities; administrative sanctions on pupils; the problem of security in educational settings and the evaluation of teachers (5). The chapter closes with some concluding observations (6).

Keywords

Efficiency – Adaptability – Legitimacy – Compulsory education – Sanctions – Security – Teacher evaluation

1. Introduction

This chapter seeks to discuss whether the expansion of administrative law is inevitable in the education system of a welfare state, or whether it can distort the liberating intent of education. As with any complex societal debate, an attempt as broad as this could hardly

*This research is funded by the Castilla–La Mancha regional government and the ERDF (reference SBPLY/24/180225/000012), by the Spanish Ministry of Science and Universities and the ERDF (reference PID2023-147570NB) and by the University of Castilla–La Mancha and the ERDF (reference 2025-GRIN-38281).

be solved to every reader's satisfaction. For this reason, the chapter seeks to identify some risks of this expansion and to provide reasons for addressing such risks, rather than arguing for specific solutions. The text is primarily intended as an interdisciplinary, theoretical approach to the role of administrative law in education, and as such, it is chiefly addressed at academics. However, it also includes suggestions for rule- and decision-making, and therefore it could be of some interest for practitioners (in particular, section 5, on "controversial topics").

The argument can be divided into two broad parts. Sections 1 to 4 provide a theoretical inquiry into the role of law in education systems; section 5, on the other hand, reflects on the application of theory to four specific problems of educational policy. The attempt to anchor the subsequent legal discussion has led to an interdisciplinary approach – perhaps an overly ambitious one – drawing from organisation theory, political theory and sociology, human rights theory and human-rights case law (from the ECtHR), as well as classic administrative law theory. This theoretical apparatus is then employed to analyse four specific aspects of educational practice and settings: the curriculum and the scope of individual preference, sanctions, security and teacher assessment. The chapter seeks to facilitate a theoretical reflection enabling readers to address practical questions, such as where are the limits of administrative law in structuring teacher–pupil relations, or under which conditions can juridification enhance – or undermine – the legitimacy of education systems.

It may be useful to present the argument more in detail.

In this regard, the primary function of law is arguably to strike a balance between the different priorities and aspirations that exist within society¹. In the context of education, it is essential that efficiency and adaptability are granted adequate consideration. More specifically, planning a school system for a population of millions ought to be compatible with a certain degree of adaptability to the particular needs and preferences of the direct recipients of education, who are pupils and students. Adaptability, moreover, has a collective projection in the idea of democratic participation in education, which has been deemed central to establishing and preserving a democratic culture in societies².

It is therefore important to define the notion of efficiency and its relevance for the present book. Efficiency is a classical concept from economic studies pertaining to the relationship between the means and the results of an organisation or a system. This will be discussed in section 2.

Adaptability, on the other hand, is linked to educational inclusion, a characteristic of education systems that regard diversity and difference as normal³. It is also relevant from

¹ Alexander Aleinikoff, 'Constitutional Law in the Age of Balancing' (1987) 96(5) Yale LJ 943, 945

² The Preamble of the South African School Act no. 84 of 1996 links the 'redress of past injustices in educational provision' and 'the democratic transformation of society' (among other aims) to 'the organisation, governance and funding of schools' and the acceptance by 'learners, parents and educators' of 'responsibility for the organisation, governance and funding of schools in partnership with the State'.

³ Peter Mittler, *Working Towards Inclusive education* (David Fulton 2000) 9

the perspective of freedom and pluralism within society. This will be further examined in section 3.

Administrative law is of particular importance in the task of finding the balance between the allocation of limited resources and the adaptability to individual needs. The previous ideas relate to “internal” aims of administrative law, those that laws and regulations on education help to define. However, administrative law plays a significant role in a broader task: legitimising the exercise of power (also the power to educate) and the very existence of an organization, such as the education system. Legitimacy has been defined as the social acceptance of a political organisation, based on ‘the peaceful interests and preferences of the people, serving and reflecting the popular will.’⁴ The legitimising role of law will be discussed in section 4.

Finally, the practical interplay of these notions will be explored in four specific topics pertaining to the education system. In this context, administrative law is often interpreted as a system to control teachers and schools rather than to promote professional autonomy (section 5).

2. Aims, means and results in education

2.1. The notions of efficiency and effectiveness in organization studies and their critics

As economic science points out, the scarcity of resources is the starting point in the allocation of desirable goods and services⁵. Accordingly, the notion of efficiency is a central dimension in management studies, including nonprofit entities, such as university and college foundations⁶. Efficiency is sometimes used as a synonym of effectiveness, and the conflation of the two notions was not uncommon in the 1970’s⁷. However, a more precise distinction considers that the two are separate aspects of organizations that can be assessed independently⁸, and this concerns both private companies and public institutions. To introduce the distinction, the following definitions may be relevant: *efficiency* refers to ‘the use of as minimum resources as possible (in terms of finance, inputs or time) to

⁴ David Roberts, ‘Post-Conflict Peacebuilding, Liberal Irrelevance and the Locus of Legitimacy’ (2011) 18(4) *International Peacekeeping* 410, 420

⁵ Miles Fleming, *Introduction to economic analysis* (George Allen & Unwin 1969) 5

⁶ Jessica L. Berret and Jayce Sudweeks, ‘Understanding nonprofit leaders’ perceptions of organizational efficiency’ (2023) 33 *Nonprofit Management and Leadership* 491, 492

⁷ Kim Cameron, ‘Critical questions in assessing organizational effectiveness’ (1980) *Autumn, Organizational Dynamics* 66, 69: ‘Economists frequently equate internal efficiency with organizational health; they argue that the most effective organizations are those that are most efficient (that is, that produce the least waste) or that have the smoothest internal processes.’

⁸ Cameron (1980) 69

achieve a desired result'. By contrast, '*effectiveness* (...) indicates bringing about the desired result'⁹.

Nevertheless, practical conceptions of efficiency are often more limited and perhaps less rational. Especially from the perspective of managers of non-profits (and their donors), financial efficiency has been described as 'the proportion of the donated dollar that goes directly to programs'¹⁰. This perspective has been labelled 'normative' in some studies, because 'managerial actions are based on a *set of rules* where the organization is defined by a specific institutionalized identity or role'. These rules and the organization's self-perceived 'identity' would often prevail over 'rational expectations' in managerial decisions¹¹. It is important to realize that this conception focuses solely on the distribution of resources, thus excluding any consideration of how they contribute to achieving the aims of the organization (outputs).

Even if the abovementioned analyses concern non-profits in the USA, they may have some value for the purposes of our study. In this regard, they reveal how organizations that need to compete for resources (schools, universities, research units) are often more concerned with the expectations and perceptions of their funders than with addressing efficiency rationally.

Secondly, the idea of effectiveness deserves some consideration. Effectiveness focuses specifically on results, although means are also mentioned in some discussions. When this happens, however, means are generally considered to be of secondary importance. This is the case of the following definition: 'an effective organization (...) makes the best use of its *resources* to attain high levels of *performance*, thus successfully achieving its *purpose* and *objectives*, while also meeting its *responsibilities to its stakeholders*' (including owners, employees, customers, suppliers and even 'the community in which the organization operates')¹².

Concerning in particular the effectiveness of colleges and universities, these kinds of organizations have been included in the broader category of *organised anarchies*. According to Cameron (1980), organised anarchies are organizations where 'common purposes and goals and the formalized hierarchy of authority' lack a strong linking power¹³. Due to the loose connections and diverse interests within them, measuring effectiveness in organised anarchies can be a complex task. In particular, this could involve selecting indicators from the perspective of one powerful constituency or selecting more general indicators that address the perspectives of multiple

⁹ Boushra W. Najar, 'Efficiency and/or Effectiveness in Managing Organizations' (2020) 4(2) Journal of Education and Culture Studies 131

¹⁰ Shena Ashley and Lewis Faulk, 'Nonprofit Competition in the Grants Marketplace Exploring the Relationship Between Nonprofit Financial Ratios and Grant Amount' (2010) 21 Nonprofit Management and Leadership 43, 45

¹¹ Berrett and Sudweeks (2023) 493

¹² Michael Armstrong, *Improving organizational effectiveness* (Kogan Page 1994) 11

¹³ Cameron (1980) 73

constituencies¹⁴. To summarize this author's proposal, measuring effectiveness may require adopting different approaches depending on the scope, purpose, dependency and other features of organizations¹⁵.

This reveals that different variables may be taken into consideration when assessing effectiveness, depending on the specific results that are relevant from each stakeholder's perspective. In this regard, comparative studies based on data have been criticised for providing a seemingly comprehensive view of education systems or creating the impression that they can assess the effects of education systems regardless of the political, economic and cultural factors of a society¹⁶. It therefore seems important to remind that the emphasis on efficiency, measuring practices and data-driven governance in education has been linked 'with an enduring ideological faith in technocratic solutions to complex social problems' and neglect of 'a century's worth of evidence about the limitations of managerial reforms'¹⁷.

The preceding discussion sought to present the notions of efficiency and effectiveness and the risks of overemphasising their ability to guide educational policy. However, it seems difficult to dispute that some attention to these two dimensions is necessary in any system that has limited resources. In this regard, administrative law has been described as a technique of 'social engineering' within the framework of the 'modern welfare state'¹⁸. It therefore seems logical to suggest that the regulation of means represents the natural province of administrative law. This statement may, however, require some elaboration.

2.2. Administrative law as 'social engineering'

The legal system performs a number of functions in the organisation of a political community. These include the establishment of the community's objectives, the selection and implementation of the means to achieve these objectives, and the evaluation of both the means employed and the results achieved. None of the three dimensions are purely legal (solely defined by law), but different branches of the legal system appear to have significance in each of them.

¹⁴ Cameron (1980) 74

¹⁵ Cameron (1980). The author proposed that organizations should address six "critical questions" in order to improve their effectiveness. The questions were the following: (1) What domain of activity should be the focus of evaluation? (2) Whose perspective or which constituency's point of view should be considered? (3) What level of analysis should be used? (4) What time frame should be employed? (5) What type of data should be used? (6) What referent should be employed?

¹⁶ Klaus D. Beiter, 'Why neoliberal ideology, privatisation, and other challenges make a reframing of the right to education in international law necessary' (2023) 27(3) *Intl J Hum Rts* 425, 436

¹⁷ Tina Trujillo, 'The Modern Cult of Efficiency: Intermediary Organizations and the New Scientific Management' (2014) 28(2) *Educational Policy* 207, 211

¹⁸ Martin Burgi, 'Public Administration and Law' in Geert Bouckaert and Werner Jann (eds), *European Perspectives for Public Administration: The Way Forward* (Leuven University Press 2020) 151. Also Ramón Martín Mateo, 'La ingeniería social garantiza la eficacia del Derecho Administrativo' (speech delivered on 28 November 2012 on the occasion of an honorary doctorate at the University of Murcia): <<https://digitum.um.es/server/api/core/bitstreams/f7e3149a-e222-4365-a35f-d8385f358f83/content>> accessed 20 February 2026

In this respect, while clarity about the aims of the education system is essential for educational administrative bodies, these aims are not primarily defined by administrative law in the strict sense of the term. It would probably seem naïve to conceive that the aspirations of a society could be limited to the correct functioning of public administrations. In the continental European tradition of law, it has been said that public administrations are service-oriented organizations seeking to satisfy societal needs, defined by their aim ‘to care for the public interest’, an idea that can be traced back to the famous Roman scholar Ulpian¹⁹. And from an economic perspective, they are expected to ensure the provision of public goods²⁰, a notion encompassing public services, too.

The aims of public administrations are partly defined through legally regulated procedures but are rarely the result of purely technical reasons. They tend to reflect interests or values of a majority (or those of a dominating group, as Bourdieu and Passeron denounced in the 1970s²¹). Among the procedures that influence the aims of public administrations, some examples include constitutional drafting (‘ensure school education for all’); debates within political parties (‘raise public expenditure to 6% of GDP’); parliamentary votes in law-making (‘the use of niqabs and burkas in public spaces is prohibited’²²) or even administrative regulations (‘the regional Department of Education shall issue an annual call for applications to early childhood schools’²³). In essence, the previous examples illustrate how the aims of public administrations are based on a society’s priorities, which also incorporate irrational elements, as is common in human decisions. The term *irrational* is not meant as an accurate synonym of ‘unreasonable’ or ‘illegitimate’, but as involving dimensions that are not inherently rational (affections, aversions, habits within a society). Some of these non-rational dimensions may, in fact, influence a political community’s conception of itself regarding appearance, language or religion. These conceptions and priorities evolve over time²⁴, thus requiring adaptations of the community’s means (regulated by legal frameworks and organized through institutional structures).

Regarding results (such as those of a public policy), the role of law is controversial. In this respect, it appears difficult to ensure certain results solely through the enactment of laws. Some legal provisions, nevertheless, do prioritise attention to results. This is the case, for example, of requirements for enrolling in many universities: the grades of previous stages are often the primary criterion for selecting candidates to highly

¹⁹ Stefan Storr and Rainer Schröder, *Allgemeines Verwaltungsrecht* (Kohlhammer 2021) 9

²⁰ Julian Reiss, ‘Public Goods’ in Edward N. Zalta (ed) *The Stanford Encyclopedia of Philosophy* (2021)

²¹ Pierre Bourdieu and Jean-Claude Passeron, *Reproduction in Education, Society and Culture* (Sage 1977)

²² A proposal to prohibit and even punish the wearing of niqabs and burkas in public spaces in Spain was introduced into Parliament by the far right and received the support of the major conservative party. The proposal was rejected with the votes of all the other forces in a plenary vote on February 17, 2026.

²³ Regulation (Orden) of the regional Department of Education of Castilla–La Mancha, 3 February 2011 (publication in the official gazette ‘Diario Oficial de Castilla–La Mancha’ no 30, 14 February 2011)

²⁴ Rostam J. Neuwirth, *Law in the Time of Oxymora. A Synestheasia of Language, Logic and Law* (Routledge 2018) 4

demanded study programs, or even for enrolment in the second or later terms²⁵. However, legal provisions tend not to consider results as the only relevant factor in a given situation (for instance, an after-school learning centre would hardly sign a contract that a student ‘will’ be successful in a specific examination). More commonly, the applicability of legal rules depends on the adoption of a certain conduct by the subject. This is especially the case of rules concerning pupils or students, given the educational culture present in school environments. For example: ‘Whoever directly or indirectly commits, participates in, abets or instigates ragging within or outside any educational institution shall be suspended (...)’²⁶.

The previous considerations on results emphasise the importance of means as the prevalent object of administrative law in our time. Means are often technical, in the sense that our societies have produced a high professionalization and specialization of many services. This is applicable to education in many countries and, especially in countries where teaching staff and educational materials are often scarce, the availability of specialized resources is regarded as crucial objective²⁷. Given this technical nature, means appear more susceptible of being framed into standards than aims or even than (qualitative) results. For these reasons, means are the natural object of administrative law: the legal system can regulate, require and eventually assess their validity.

To show the importance of this statement, it is interesting to remember that Maurice Hauriou conceived the entire system of administrative law based on the specificity of certain administrative means: the powers at the Administration’s disposal (*puissance publique*)²⁸. More recently, general approaches to administrative law in the 21st century still reveal an inclination to reflect on the strategies of public agencies much more than on the legitimacy or importance of their aims²⁹. Therefore, the reflection on means and efficiency seems adequate for the purpose of this chapter, which is to discuss the (desirable) role of law in education.

Given that economic resources are finite, and that education systems require significant investment that is sustainable over time, the importance of critically assessing the efficiency and effectiveness seems difficult to deny³⁰. However, this approach should be complemented with a critical analysis of the aims and results of educational policy, as

²⁵ For example, according to Art. 16 of the University of Castilla – La Mancha’s rules on progression and continuity in bachelor’s and master’s programs: ‘in order to remain enrolled in the bachelor’s programme, students must pass at least one subject’ (my translation).

²⁶ From India’s University Grants Commission’s directive no. 9 on ragging (‘penalty for ragging’), reproduced in the Statutes and Regulations of the National Law University Delhi.

²⁷ Klaus D. Beiter, ‘Not the African Copyright Pirate is Perverse, but the Situation in Which (S)he Lives – Textbooks for Education, Extraterritorial Human Rights Obligations and Constitutionalization “from below” in IP Law’, in (2019) 26 Buff Hum Rts L Rev 1, 26. The author also quotes (see p. 24) Art 28.3 of the Convention on the Rights of the Child: ‘States parties shall promote (...) international cooperation in matters relating to education (...) facilitating access to scientific and technical knowledge and modern teaching methods’.

²⁸ Maurice Hauriou, *Précis de droit administratif et de droit public général* (Larose 1900) 226

²⁹ Richard Stewart, ‘Administrative law in the 21st century’ (2003) 78(2) NYU Law Rev 437, 444

³⁰ Luis Arroyo Jiménez, ‘Administrative allocation of scarce resources’ (2015) 1 Indret

will be discussed in the following section. In this regard, it is important to remember Trujillo's admonition that 'data are as much a reflection of values and political or economic interests as are informal, intuitive forms of knowing', and are not 'immediately valid, objective forms of knowledge', because 'the choice of which data to collect, which questions to ask of it, and what procedures will be used to inform its analysis is inherently ideological.'³¹

This points to the preliminary conclusion that administrative law, even with a very specific attention to means and results, can hardly suffice to attain the aims of a society, especially in the highly complex task of modelling the personality of its newest members. Excessive reliance on law can even create a bureaucratic culture where a complex endeavour like education is viewed as a technical and formalized process, where actors constrict themselves to perfunctory attitudes in order to avoid conflict. Conversely, a society that requires schools to successfully address every societal expectation (such as immediate economic growth, poverty eradication, or the integration of communities with migration backgrounds) may paradoxically end up with a school system that underperforms even in the instructional tasks that it is better suited to fulfil³². This is precisely what the debates on juridification seek to analyse.

3. Adaptability of education and administrative law

The need to balance efficiency (the acknowledgment of limited means) with adaptability of education to individual needs was mentioned at the beginning of this chapter.

However, before discussing the adaptability of education systems specifically, it is important to consider education in light of the previous distinction between aims, means, and results. From this perspective, education functions as a means of facilitating certain political (societal) aims. These include the 'full development of the child's personality'³³, as well as other aims that are important from a collective point of view, such as successful participation in society³⁴, promoting peace and other aims that sometimes find their way into human rights treaties³⁵.

Despite the elevated terms of human right treaties, these aims appear to be central for the existence of society itself. However, this does not entail that school is the only instrument -or even the primary one- to attain a peaceful society, as mentioned in the previous section. More accurately, the discussion of education as a *means* seeks to draw attention to the idea that administrative law finds in it a suitable object of regulation. While this

³¹ Trujillo (2014) 228

³² Alexandre Moreira, *Curricular Rights: Defining Essential Learning in the Context of Human Rights* (Ethics International Press 2025). Chapter V discusses the notion of literacy and advocates a narrow definition (reading, comprehending, writing) in contrast with a multidimensional conception of literacy (digital literacy, human rights literacy, environmental literacy, among others).

³³ Universal Declaration of Human Rights, art. 26.2.

³⁴ John Dewey, *Democracy and education* (Forgotten Books 2015, original from 1916) 271

³⁵ Pablo Meix Cereceda, 'Educational Values in Human Rights Treaties: UN, European, and African International Law' (2020) 21 Hum Rts Rev 437

idea is generally valid, some caution should be exercised. In this regard, education has its own complex dynamics, its own delicate balances to attend, and is not always appropriate for a full-fledged legal intervention. One example is sanctions imposed on pupils in educational environments, where very specific aims, such as restoring mutual respect after a dispute, can be essential. In this kind of situations, it can be problematic to apply all the rules on administrative sanctions, such as the fixed legal content of a sanction, instead of taking a more flexible approach tailored to the circumstances. It can also be problematic to involve independent judicial authorities that may not be familiar with school environments³⁶.

To summarise the preceding points, education is a means to enable a peaceful society and, at the same time, it is a unique environment where the rigour of adult society laws is often misplaced. These two observations underscore the necessity to take into account the specificity of educational environments. In this respect, the first special rapporteur on the right to education, Katarina Tomasevski, suggested that adaptability should be one of the four essential features of education systems from a human rights perspective, together with availability, accessibility and acceptability³⁷.

Therefore, adaptability can be viewed as a necessary pathway to address diversity in education systems. While diversity is an inherent characteristic of any community, the significance of individual preferences in Western societies has given rise to a rhetoric of inclusion, particularly in the context of education systems. This rhetoric is certainly accompanied of significant efforts to analyse and justify the need for educational inclusion and for integrating – or at least de-segregating – educational communities. However, the trends towards inclusion are in tension with majoritarian drives for assimilation, even if this tension is sometimes obscured by the notion of *neutrality*³⁸.

One source of diversity is what we call *freedom*, which has been prominently studied, from a comparative educational perspective, by Glenn and De Groof³⁹. However, as our understanding of the brain gradually progresses, the very existence of free will is discussed both in philosophical and in scientific terms, even if ‘the current state of

³⁶ The role of judges when controlling administrative decisions sparks debate in many other domains apart from education: to what extent can judicial authorities correct and replace administrative discretion? Most discussions of judicial review, especially those focusing on common law jurisdictions, reveal a tension between the democracy principle and judicial independence. See for example David Dyzenhaus, ‘The politics of deference: judicial review and democracy’ in Michael Taggart (ed) *The Province of Administrative Law* (Hart 1997) 279

³⁷ Katarina Tomasevski, ‘Human rights obligations: making education available, accessible, acceptable and adaptable’ (2001) 3 *Right to Education Primers* 31

³⁸ Examples of neutrality as an equivalent of majority views can be found in the CJEU’s case law on Islamic headscarves in the workplace (cases C-344/20 *SCRL*; C-157/15 *G4S Secure Solutions*; C-188/15 *Bouagnaoui and ADDH*; or C-804/18 and C-341/19 *WABE and MH Müller Handels*). These cases are critically discussed in Pablo Meix Cereceda, ‘The Hijab in European Union Law: Considerations on the Principle of Religious Neutrality and the Concept of Discrimination’ (2023) 61 *Revista General de Derecho Europeo*, 295, 316. A similar approach, but concerning the US Supreme Court conception of state neutrality in religious matters, in Curtis Kelsey, ‘The partiality of neutrality’ (2014) 41 *Harvard J Law & Pub Policy* 935, 940

³⁹ Charles L. Glenn, Jan De Groof and Cara S. Candall (eds), *Balancing freedom, autonomy and accountability in education* (Wolf 2012) 4 vols.

neuroscience is unable to provide a reliable way of assessing whether a particular individual meets the required conditions for legal responsibility'⁴⁰. This is a highly interesting controversy that has not yet diminished the centrality of freedom in debates on democracy and power, or in legal discussions of education. One of the reasons for this could be precisely the importance of diversity and pluralism in large societies. In particular, the concept of freedom serves as a reminder that respecting certain individual preferences is necessary for the survival of complex societies. Nevertheless, this understanding does not seek to deny the significance of freedom from the perspective of individuals, but to put it in the broader context of its societal implications.

Having introduced diversity and freedom, we can now discuss the controversial function of adaptability. In this context, adaptability is one of the most complex aspects of education, as it represents the need to strike a balance between equality and freedom. And law is precisely the technical instrument to establish the organizational framework for this balance. Indeed, as noted by Mauro Zamboni and Maria Refors Legge (2020), 'the activity of legislating implies forcing a general solution upon specific and often extremely differentiated individual situations'⁴¹. In light of this tension, a suitable channel for adaptability to influence the organization of education is the participation of the different sectors in the governance of schools, universities and even the entire education system.

Law, hence, has the task of reconciling the provision of mass services that are affordable to all (public services or 'services of general interest', as termed by EU law) while respecting some space for individual autonomy. Such a general definition is bound to generate dissatisfaction and be met by criticism from different perspectives. Therefore, we will attempt to explain how ambitious this purpose can be.

Firstly, critics might reject the application of the term 'mass services' to education if it implied an attempt to impose uniformity instead of promoting pluralism. However, in a strict sense, education can only be conceived as being opposed to this risk. Education encompasses more than mere knowledge- or skill-based instruction (technical dimensions); it is more ambitious than this, as it also includes linguistic and ethical dimensions that are essential to its holistic purpose⁴². As Glenn has written, schools inevitably convey 'countless messages about what qualities and behaviours are admirable'⁴³. However, education is also clearly opposed to indoctrination, which is characterised by the teacher's intent to persuade a pupil with neglect of reasoning and

⁴⁰ Claire Delnatte, Emmanuel Roze, Pierre Pouget, Cécile Galléa, Quentin Welniarz, 'Can neuroscience enlighten the philosophical debate about free will?' (2023) 188 *Neuropsychologia* 1, 5

⁴¹ Mauro Zamboni and Maria Refors Legge, 'Legislating Education: Finding the Right Model...But Not in Sweden!' (2020) 10(2) *KLRI Journal of Law and Legislation* 297

⁴² Pablo Meix Cereceda, 'The right to education in the age of digital technologies' (2024) 36(1) *Eur Rev Pub L* 309

⁴³ 'Of course, whether intentionally or not, every school tends to educate as well as to instruct; inevitably it immerses its pupils in a school culture that conveys countless messages about what qualities and behaviors are admirable': Charles L. Glenn, 'What is at Stake in Debates over Education and Religion' in Pablo Meix Cereceda and Jan De Groof (eds) *Religious and ideological rights in education* (Wolf 2017) 29.

‘evidence’ (in the sense of perceptions pointing towards alternative conclusions)⁴⁴. It can be challenging to ascertain a teacher’s intent, but prioritising reasoning and maturation of the student over persuasion defines the purpose of education and seems like a plausible solution in terms of adaptability.

Nevertheless, the main challenge in conceiving education as a ‘mass service’ is perhaps ensuring a higher quality than the ‘minimum standard’. It is difficult to dispute that economic differences exert a significant influence on educational conditions, and hence on the ability of schools to adapt to diversity. Legal thinking could encourage more flexible interpretations of institutions, as Beiter (2019) has suggested with regard to textbook copyright in Africa.

Furthermore, the definition previously proposed could be challenged from the perspective of freedom and autonomy. It could be criticized that constitutional states should pursue a higher standard of freedom than simply ‘respecting some space for individual autonomy’. In this regard, a constitutional philosopher like Peter Häberle could argue that ‘the keystone (of pluralism) is the constitutional principle of -active- tolerance and non-violence’⁴⁵. In addition, an education law specialist like Jan De Groof might emphasise ‘the uncompromising nature of academic freedom as a basic requirement for any democracy’⁴⁶, a freedom pertaining to ‘non-conformist, critical, non-marketable knowledge’ to be pursued by professors, researchers and students⁴⁷. These liberal conceptions enrich the meaning of individual autonomy and freedom by appealing to ‘active tolerance’ (rather than mere indifference or acquiescence), the pursuit of peace, and the ‘non-conformist’ quest for knowledge. In doing so, they also serve as guidelines for determining the scope of adaptability in education.

4. Law and the legitimization of power

In the preceding sections, law has been discussed from a technical perspective, ie, considering its ability to strike balances between different interests that operate within complex societies. However, in broader terms, law can be seen as a bridge between reality and ideals⁴⁸. It is indeed important to state that the increasing significance of law in education systems has deeper implications than a purely technical discussion would reveal. In this regard, law has a significant role in legitimizing power and, consequently, binding societies together. Given that legitimacy is the precondition of a non-authoritarian

⁴⁴ Tom Nachtigal, ‘Responsible education: Responsibility under international law for indoctrination to hatred and violence in education systems’ (2019) 57(3) Columbia Journal of Transnational Law 600, 610

⁴⁵ The text continues as follows: ‘This begins in the classrooms and “ends” in scientific pluralism of universities, and from there back to the classrooms (and to society). This principle should neither be strange to the politician. To the extent that pluralism is an aim of learning and education, the pluralistic constitution becomes a matter of teaching.’ Peter Häberle, *Die Verfassung des Pluralismus* (Athenäum 1980) 61 (my translation).

⁴⁶ Jan De Groof, ‘On the “Innovative University”. A few Challenging Reflections’ (2018) 26 (S1) European Review 114, 117

⁴⁷ Jan De Groof (2018) 115

⁴⁸ Neuwirth (2018) 62

ruling power, a discussion on the functions of law should consider this perspective beyond addressing the specific goals of any particular organization. Therefore, this section discusses the notion of state legitimacy and how law can contribute to its realization. It also takes educational institutions and the education system into consideration. Lastly, the section outlines three definitions of “juridification”, two of which may be understood as the reverse of law’s legitimising function: an excess that would contribute to the delegitimisation of the education system.

The study of legitimacy has been developed primarily by two modern thinkers: Guglielmo Ferrero and Max Weber. Both adopted a ‘phenomenological’ approach to power, although Ferrero was essentially a historian and Weber is often considered a founder of sociological studies. But the notion of power may be too formidable to be discussed in purely ‘ontological’ terms, and therefore the study of legitimacy and its manifestations provides a useful framework to analyse power⁴⁹.

In his book *The Principles of Power*, Ferrero examined different historical stages from the perspective of four ‘principles of legitimacy’: the monarchic, hereditary, elective and democratic principles. The first two often appear in combination, as do the elective and democratic principles. However, the most interesting idea behind Ferrero’s analysis is possibly the understanding that any form of legitimacy -whether it can be ascribed to one or two of these principles- is nothing but a social convention, one that can be deemed ‘just and rational (...) under certain conditions, and becoming absurd when these conditions are lacking; and by never being able to force themselves immediately and irresistibly on man’s conscience’⁵⁰. In this respect, he acknowledges that these principles are ‘limited, conventional, instable, extremely vulnerable to reason’ in every society. However, Ferrero immediately makes another claim that seems of particular importance for our analysis: ‘Despite their fragility, these principles are different from other fragile conventions of social life in that they have a magical power: just as men allow themselves to be persuaded by the revolutionary spirit to breach them, they are seized with fear; the tremendous fear that results from the violation of a law’⁵¹. Ferrero does not use the term ‘law’ in a strict sense (the Italian word he chose is literally closer to ‘rule’), but he introduces the idea of bindingness and obligatory force, which are considered characteristics of Western legal systems. Later in his book, Ferrero will address the importance of ‘stability’, which is the paramount effect of legitimacy. He considers that, in a legitimate government, ‘the power is established and exercised according to rules long predetermined, recognized and accepted by everyone, interpreted and applied without vacillation or hesitancy but with unanimous agreement, in accordance with the letter and the spirit of the laws, re-enforced by traditions’⁵². Any lawyer would easily identify the elements of legal certainty in the

⁴⁹ Eloy García, ‘Estudio preliminar’ to his Spanish translation of Guglielmo Ferrero’s *The Principles of Power*, titled *Poder. Los genios invisibles de la ciudad* (Tecnos 2022) XIII, XXXV

⁵⁰ Guglielmo Ferrero, *The Principles of Power. The Great Political Crises of History* (Putnam 1942) 23.

⁵¹ Guglielmo Ferrero, *Potere. I geni invisibili della città* (Sugarco, 1981) 33 (my translation)

⁵² Ferrero (1942) 187

previous excerpt, which is perhaps the most common feature of legal systems and one of their main underlying principles.

While Ferrero's approach is the synthesis of a historian –and engaged intellectual against fascism– at the end of his life, Max Weber's views on legitimacy are perhaps more concrete for those familiarised with the study of public administrations. In his book *Economy and Society*, Weber reflected on the function of law concerning 'the types of legitimate domination'⁵³. In particular, he distinguished three 'pure' types of authority. These are based on rational, traditional and charismatic grounds. In Weber's conception, law is particularly relevant in the first type, that he links to the bureaucratic administration. Rational grounds, thus, would rest 'on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority)⁵⁴'. Weber identifies eight 'fundamental categories of rational legal authority', which summarise many features of bureaucratic organisations, such as 'rule-bound conduct' of the officials; (2) 'a specified sphere of competence (jurisdiction)'; (3) a principle of hierarchy in the organization of offices (...); or (7) the use of writing to formulate and record 'administrative acts, decisions, and rules', among others⁵⁵. He then goes on to explicate that 'bureaucratic administration means fundamentally domination through knowledge. This is the feature of it which makes it specifically rational. This consists on the one hand in technical knowledge which, by itself, is sufficient to ensure it a position of extraordinary power.'⁵⁶ Weber also claims that the bureaucratic administration 'is at the root of the modern Western state'⁵⁷.

Both Ferrero and Weber stress the link between law and rationality in the legal system's ability to legitimise power. But rationality is not abstract and immutable for either of the two thinkers: it is historical, culturally rooted (Ferrero), built on knowledge (Weber).

In technical terms, the legitimising role of law reflects on the principle of legality. This concept typically refers to the supremacy of law over the will of the executive branch and is particularly associated with Acts of Parliament. However, it has also come to encompass other forms of statutory law and legal principles, such as the observance of legally defined competence and procedure (often including an individual right to be heard) and the existence of appeal rights. In continental European jurisdictions, this concept forms an integral part of the rule of law (*État de droit*).

In addition, the discussion of legitimacy has benefitted from Habermas's critical reflections on law and democracy in capitalistic societies. According to Habermas, the growing recourse to law ('juridification') is an instrument for the 'colonization of the lifeworld' by capitalist logic. The expansion of law, however, reveals an ambivalence

⁵³ Max Weber, *Economy and Society* (University of California Press, 1978) 212

⁵⁴ Weber (1978) 215

⁵⁵ Weber (1978) 219

⁵⁶ Weber (1978) 225

⁵⁷ Weber (1978) 223

between the declared aim to guarantee freedom and the result of taking it away⁵⁸, as formally equal laws contrast with factually diverse conditions of the citizens affected by these laws. Indeed, many authoritarian regimes tend to a strong juridification of the relations between the state and its citizens and even of relations between citizens themselves. Applying Kriele's theory of the state, authoritarian regimes would use juridification with the purpose of social control (sovereignty principle) and not for justifying the use of power (legitimacy principle)⁵⁹.

In this regard, the existence of a legal system does not necessarily entail that a society is ruled according to (materially) democratic principles. Even formally democratic procedures are insufficient by themselves for the purpose of legitimising the state apparatus. Certain results are also necessary ('capital realization', in the words of Habermas⁶⁰). And, most importantly, 'mass loyalty' requires that 'the state apparatus must fulfil its tasks (...) in accord with universalistic value systems'⁶¹. However, none of these forms of legitimacy seems sufficient, by itself, to legitimise power on a permanent basis. On the contrary, as Ferrero explicated in his historical analysis, the sources of legitimacy are grounded in the society's cultural (and changing) set of values. How to discover or even build a society's will has been the task of democratic theorists (another of Jürgen Habermas's preferred fields of study), some of whom have claimed that deliberative democracy requires a discussion between *informed* individuals who accord greater importance to the *common good* than to their own individual interests⁶². However, this model has a significant limitation in that it is almost impossible to ascertain the reasons for a discussant's position, even when plausible arguments are presented. This means that democratic deliberation runs the risk of becoming a mere bargaining process, which shows that deliberation has its own limits. For this reason, the reference to 'universalistic value systems', to use Habermas's words, appears as a valuable means to anchor and frame democratic deliberation.

Habermas's thinking on juridification has also taken the education system into consideration. In particular, Habermas expressed that 'the protection of pupils' and parents' rights against educational measures (such as promotion or nonpromotion, examinations and tests, and so forth), or from acts of the school or the department of education that restrict basic rights (disciplinary penalties), is gained at the cost of a judicialization and bureaucratization that penetrates deep into the teaching and learning process'⁶³. In this line of thought, for Bergh et al, the role of law in education is better comprehended when it is seen in the light of two specific ideologies: marketisation and

⁵⁸ Jürgen Habermas, *Between Facts and Norms* (MIT Press 1996) 416

⁵⁹ Martin Kriele, *Einführung in die Staatslehre: die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates* (Kohlhammer 2003) 8

⁶⁰ Jürgen Habermas, *Legitimation crisis* (Beacon, 1975) 58

⁶¹ Habermas (1975) 58

⁶² Carlos Santiago Nino: *La construcción de la democracia deliberativa* (Gedisa 1997) 154-166

⁶³ Jürgen Habermas, *The Theory of Communicative Action. Vol 2. Lifeworld and System: A Critique of Functionalist Reason* (Beacon, 1985) 371

managerialism⁶⁴. With regard to marketisation, the increasing recourse to law could be viewed as an attempt of politics to regain some control of education systems, which had been heavily deregulated and marketized in the 1990s. Concerning managerialism, juridification would serve the purpose of increasing accountability, with schools often turned into ‘sites of surveillance’⁶⁵. According to these authors, it is also important to consider how human rights discourses may involve ‘a shift from educational problems to legal solutions’ and entail, once again, a risk of excessive ‘bureaucratisation of teachers’ work’⁶⁶. These ideas reflect the essence of the discussions included in the present book.

Lastly, it may be useful to attempt a definition of juridification basing on the different disciplines that have discussed this phenomenon (sociology, philosophy, public administration or law). Firstly, juridification can be understood in a broad sense, as the growing importance of formalised (regulated) relationships within society, at the expense of trust, expertise or prestige. This broad definition can also encompass at least two more specific and rather critical conceptions. The first appears to be linked to the ‘bureaucratization of the world’⁶⁷, or the excessive rigidity imposed on citizens and professionals when taking decisions that may affect (for the purpose of this book, on teachers and schools in their daily work). Following the previous discussion in this section, a drive for control can be detected in this bureaucratic emphasis. The second specific meaning of juridification refers to the growing recourse to legal action (judicial review) and hence, to the extended influence of courts on societal disputes. The most extreme version of the latter trend has been critically discussed under the notion of ‘lawfare’, which is, however, polysemic⁶⁸.

To conclude, it should be noted that the three definitions of juridification are often intertwined. Therefore, understanding their respective nuances could help to comprehend the debates on the ‘juridification of educational spheres’. The following section will provide an overview of relevant relationships within the education system and explore how juridification has affected them.

5. Juridification in education: controversial topics

Different actors and the relationships between them should be considered when examining juridification in the education system. The following discussion will consider

⁶⁴ Andreas Bergh, Mark Murphy and Mattias Nylund, ‘The rise of law in education - exploring three drivers of juridification in the context of a changing welfare state’ (2025) *Journal of Education Policy* 1, 7, 9

⁶⁵ Craig Skerit, ‘School autonomy and the surveillance of teachers’ (2023) 26(4) *Int’l J Leadership in Edu* 553

⁶⁶ Bergh et al (2025) 12

⁶⁷ Gunther Teubner, ‘Juridification. Concepts, Aspects, Limits, Solutions’ in Gunther Teubner (ed) *Juridification of Social Spheres* (Walter de Gruyter, 1987) 3

⁶⁸ The term ‘lawfare’ has been used for different purposes: for instance, to describe the use of law to justify military actions, such as the destruction of educational facilities by the Israeli military in Gaza, see César Domínguez, ‘Scholasticide: Educational Lawfare as a Marker of the End of Civilianness’ (2024) 52(1) *Diacritics* 120. However, the term is here understood as the use ‘by ideologically opposed groups’ of ‘rights, law and courts as tools and sites of battle’: Siri Gloppen, ‘Conceptualizing Lawfare: A Typology & Theoretical Framework’ (2018) *Centre on Law & Social Transformation Paper*

four topics. The selection is based on the importance of administrative law in each of the topics and because they appear as particularly relevant concerning the legitimacy of education systems within current societies.

Considering the non-compulsory nature of higher education, and the fact that most students enrolled in universities are essentially adults, the following considerations concern schools and stages where pupils are generally underage – except in the last topic, where some real examples from universities are also discussed. Finally, the case law of the European Court of Human Rights (ECHR) will be taken into account as a common European reference in some of these matters.

5.1. Individual preferences in learning activities, curricula and grading

The first kind of relationship that should be considered is participation in activities designed to promote learning, such as lessons, lectures, seminars, workshops, etc. Some of these activities are compulsory according to laws and government regulations; in other cases, school bodies or individual teachers have decided to include them in the curriculum. At least since the decade of 1970, there have been sporadic contestations of certain topics in national education systems: sex education⁶⁹, national celebrations⁷⁰, and in more recent times, subjects concerning ethical principles (especially when this was done from the perspective of a majoritarian religion)⁷¹. Even the general duty of school attendance has been contested⁷².

Summarising the ECtHR's responses, pupils (or their families) may not object and hence avoid attending activities that state authorities have declared compulsory. Or at least they may not do so freely. Exceptions to this principle have been accepted for religious denominational activities, but mainly under the right of parents to have their religious and philosophical convictions 'respected'⁷³ – to the best of my knowledge, no claims have based on a differentiated right of pupils to object (or at least none has been successful). In this regard, law can be considered to fulfil its task.

To which extent these contestations have driven states to increase juridification is a difficult question to answer. In some jurisdictions, nevertheless, detailed legal definitions of the notion of curriculum have been adopted. Furthermore, the different elements of curricula have often been the object of highly detailed administrative regulations. For instance, in Spain's secondary education, it applies to the contents of teaching, skills to be acquired, standards for measuring proficiency, and occasionally even methodologies.

⁶⁹ *Kjeldsen, Busk Madsen and Pedersen v Denmark* App no 5095/71; 5920/72; 5926/72 (ECtHR, 7 December 1976)

⁷⁰ *Valsamis v Greece* App no 21787/93 (ECtHR, 18 December 1996) and *Efstratiou v Greece* App no 24095/94 (ECtHR, 18 December 1996)

⁷¹ *Folgerø v Norway* App 15472/02 (ECtHR 29 June 2007); *Hasan and Eylem Zengin v Turkey* App no 1448/04 (ECtHR 9 October 2007); *Mansur Yalçın v Turkey* App no 21163/11 (ECtHR 16 September 2014)

⁷² *Konrad v Germany* App no 35504/03 (ECtHR 11 September 2006)

⁷³ This right has been discussed in one way or another in all of the cases mentioned in notes 69 to 72.

Laws and regulations also specify the competent administrative levels to decide on each of these elements: national administrations, regional departments, school boards or individual teachers. As a result, teachers and schools now face a severe increase in programming and planning obligations, sometimes to the extent of impairing adaptability to the specific circumstances and evolution of each class. For example, Spanish teachers are required to assess each pupil based on numerous evaluation criteria (sometimes 40 or above) and calculate the total score based on the weighting of all these criteria.

However, there may be some problematic incentives for teachers and schools. The appearance that grading is determined by sophisticated scientific procedures will undoubtedly discourage many pupils from requesting a review of their gradings, and even courts may be less inclined to conduct a thorough analysis. Consequently, administrative authorities (and even individual teachers) may perceive complaints about grading as less frequent and easier to refute. Paradoxically, while the protective aim of administrative law is profoundly distorted, educational authorities could boast widespread – yet only apparent – acceptance of their own decisions, and thus appear legitimate.

5.2. Administrative sanctions in educational contexts

Besides strict teaching and learning activities, school attendance involves a strong, yet less formalised, social dimension. This dimension is realized through the many interactions that occur chiefly between pupils, both within and outside school premises, and often without the supervision of staff members or any other adults. Because they are commonly the result of free and often spontaneous choices, these interactions take place without the need for a systematic legal regulation.

However, school is arguably the first and most significant experience of community life beyond the protective environment of the family, which makes friction and disputes almost inevitable. The ECHR had the opportunity of discussing school discipline and sanctions in a British case in 1982⁷⁴. The case concerned the right of parents to oppose corporal punishment, which the school was known to practice as a general response to many transgressions and, in view of the state should be seen as a purely organisational matter and therefore excluded from the sphere of parental choice. According to the state, validating the objection of certain parents would create a perception of discriminatory treatment and hinder the school's ability to maintain order. The Court held that school discipline was not merely an organisational matter but had significant implications from the perspective of education and, therefore, for the development of the child's personality, and upheld the complaint.

However, at least one of the United Kingdom's arguments in the proceedings is of the utmost interest. When school regulations are violated, the pupil community remains expectant as to how the adult authority will respond, namely whether it will assert its position as a guarantor of order or leave the challenge unanswered; and whether the

⁷⁴ *Campbell and Cosans v United Kingdom* App no 7511/76 and 7743/76 (ECHR 25 February 1982)

offender is treated equally to previous transgressors, or if, conversely, greater leniency or severity is applied. Before adopting a decision, the school should consider the specific circumstances of the case, but also the effects of the transgression itself on the school environment, and the consequences of its own response -or inaction- on the offender and on the entire school community. For any decision to be effective from all these perspectives, it should not be delayed by more than a few days. Sometimes, the response should occur immediately after the infraction, or even before it takes place if staff have the necessary information and ability to prevent it. In the latter case, sending a pupil to the headteacher just before they commit an offence may be perceived by the potential wrongdoer as a serious response, and even a sanction, but, as criminologists have put it, 'the dominant *raison d'être* of security is to pre-empt, minimize and displace loss'⁷⁵. This however, does not seem in conformity with the principle of presumption of innocence, which again underscores the complexities of a full-fledged application of law to educational contexts.

While some of the values in educational responses ('sanctions') to transgressions are similar in nature to those in the adult world (safety of the group vs. rehabilitation of the offender), their intensity may be different, as the notion of 'second chances' illustrates. In addition, certain aims seem to be of even greater importance in school environments than in wider society, such as maintaining peace and ensuring equal treatment.

In summary, there are significant differences with ordinary administrative infractions. One concerns the balances and time constraints of educational environments. Another difference has to do with the privileged position of educational authorities, which may have a greater understanding of the milieu's subtleties. The experience gathered can help them foresee the behaviour of groups and individuals to a greater extent than administrative authorities in other domains.

In this context, applying the rigidity of law and administrative procedure could hinder the school's discretion and affect its ability to strike the necessary balances. Therefore, strict juridification seems pertinent only in extreme situations involving particularly serious transgressions, such as violent incidents, or when severe measures such as expulsion from school are being considered. As a consequence, full procedural safeguards could be applied for expulsions and other serious disciplinary measures, while more flexible, internal responses should be allowed when addressing minor incidents.

5.3. The problem of security

The growing importance attached to safety and security in societies⁷⁶ contrasts with the awareness that bullying is not only present in schools, but sometimes in society

⁷⁵ Lucia Zedner, 'Pre-crime and post-criminology' (2007) 11(2) *Theoretical Criminology* 261, 265

⁷⁶ Zedner (2007) 262: 'In a post-crime society there are crimes, offenders and victims, crime control, policing, investigation, trial and punishment, (...) In a pre-crime society, there is calculation, risk and uncertainty, surveillance, precaution, prudentialism, moral hazard, prevention and, arching over all these, there is the pursuit of security'.

generally⁷⁷. This awareness, often raised as a result of violent and even lethal attacks on schools, has sometimes stimulated a juridification that affects the aforementioned non-formal relationships, especially when they take place within school premises. In this regard, some schools have occasionally – or permanently – implemented stringent security measures, including personal frisks, CCTV, metal detectors and other searches and security controls in schools⁷⁸.

While some of these measures may be challenged on the grounds of privacy or freedom, juridification does not seem to be the source of the problem. On the contrary, strict regulation of these procedures could be a valuable safeguard for the school community. In contrast to the imposition of sanctions on pupils, two reasons justify legally regulating security measures and ensuring a scrupulous implementation of the laws enacted.

The first reason has to do with the technical nature of security procedures. In this respect, the perception of risks is often highly subjective and specialized training to detect and address these risks is therefore required. Moreover, the implementation of security often affects a large number of pupils, thus increasing the risk of profiling, stigmatisation or any other discriminatory practices. A clear regulatory framework, at national or regional level, could help limit these risks and ensure non-discrimination, privacy and proportionality.

Nonetheless, the problem of specialisation points to the difficulties of conferring rigorous controlling powers upon teachers. While urgent situations may require any adult present to intervene, teachers may not always be trained to deal with certain risks. This could be remedied by providing basic safety training for all teaching staff. Nevertheless, turning teachers into the primary agents of security could hinder their educational role, limit their ability to generate trust and affect the perception of their role by pupils, eventually transforming a school into a controlling facility.

The second reason for advocating a higher juridification than in the case of educational sanctions concerns the addressees of the rules. In the case of security procedures, rules are addressed primarily at adults (security officials), even if their implementation affects also underage pupils. This asymmetry, coupled with the wide visibility of security checks, requires strict adherence to procedural safeguards to reduce the probability of abuse and discrimination. From this perspective, enhanced regulation protects those who may be less prepared to assert their rights, but also the staff on duty, especially against the risk of false complaints. Again, a sound legal framework could mitigate the inevitable consequences of security measures in the perception of schools as controlling rather than liberating institutions, which bears implications from the perspective of legitimacy.

⁷⁷ Oliver Mahon, 'The Protection of Children from Violence in Schools in Ireland' in Gracienne Lauwers and Jan De Groof (eds), *Dignity and Safety in Education* (2012) 26, 29

⁷⁸ Drew Chambers, 'How school security measures harm schools and their students' (2022) 72(2) *Educational Theory*, 123

5.4. Evaluation and contestation of teachers' performance

The managerialist approach mentioned by Bergh et al (2025) has been particularly visible in the assessment of teachers' performance concerning academic results. For instance, in some Spanish universities, teachers are required to submit 'evidence' of cooperation with other teachers before, during and after a course, including every teacher involved in the course and those who teach the same course in different programs or campuses. For every subject taught, the teacher responsible must provide a written report including observations on the teaching and the grades, assessing the effectiveness of prior innovations and proposing new innovations for the following term. Besides the increased paperwork, other elements reflect a serious mistrust of teachers, such as a systematic control of the worktime of predoctoral staff, electronic control of the beginning of lectures and even office meetings, or onsite visits by inspectors during lectures – all of them linked to the periodical assessment of individual teachers.

At the same time, and especially in the context of underage education, the law has established a framework through which parents can challenge decisions made by teachers or schools. With the declared aim to promote a culture of accountability and justification in education, schools have been equated to public authorities and educational action is partly viewed as an administrative procedure. Pedagogical decisions may thus be challenged by pupils, and especially by their families, who often find the support of politically-headed Education Departments when controversy arises.

The increased focus on accountability within education systems is reinforced by two ideas that appear to be gaining ground in our societies. One is the belief in technical processes as a driver of social progress⁷⁹ ('experts know best'), which at the same time creates the risk that technocracy and technology will replace democracy. Another convergent idea is the individual tendency to 'externalise', or defer, responsibilities to other entities, a concept analysed by Fromm in his book *The Fear of Freedom*⁸⁰. This concept seems particularly relevant when considering the fundamental complexities of educating a child.

Parental mistrust of teachers would seem to contradict the idea that they can have high expectations of schooling. In reality, however, the two result from two related impulses: the parental urge to protect and care for their children against external interference, and the rational fear of making mistakes in guiding them in increasingly complex and competitive societies⁸¹. In this context, the legal emphasis on procedural safeguards

⁷⁹ Lewis Mumford, *Technics and Civilization* (first published 1934, University of Chicago Press 2010) 4: 'All the critical instruments of modern technology (...) existed in other cultures. The Chinese, the Arabs, the Greeks, long before the Northern European, had taken most of the steps toward the machine (...) They had machines, but they did not develop "the machine." It remained for the peoples of Western Europe to carry the physical sciences and the exact arts to a point no other culture had reached, and to adapt the whole mode of life to the pace and the capacities of the machine (...) How (...) could the machine take possession of European society until that society had, by inner accommodation, surrendered to the machine?'

⁸⁰ Erich Fromm, *The Fear of Freedom* (first published 1941, Routledge 2001)

⁸¹ Kai Wu, Feng Wang, Wei Wang and Yongxin Li, 'Parents' Education Anxiety and Children's Academic Burnout: The Role of Parental Burnout and Family Function' (2022) 12:764824 *Frontiers in Psychology* 12

typical of administrative law can contribute to a worrying situation of burn-out on the part of teachers⁸² and greater inclination to leaving the profession⁸³.

In conclusion, the effects of a legal culture of control should be considered from the perspectives of effectiveness, adaptability and legitimacy. A legal framework characterised by strict supervision of teachers' obligations (or at least the appearance of it) would hinder teachers' ability to create a flexible, freedom-oriented learning environment. If teachers are not trusted by their school, it is unlikely that they will be trusted by students or pupils. They will be even less likely to be trusted to promote new ways of learning, and adaptation to specific needs will be more easily challenged as discriminatory. Furthermore, institutional legitimacy is bound to suffer if universities and departments of education do not appear to rely on their agents to fulfil even the most basic obligations, such as delivering lessons on schedule.

Section 5 has sought to present four topics where juridification seems controversial. While strict regulation and implementation of administrative law seems adequate in the case of security procedures, the role of formalised administrative procedures should be more nuanced in the three other issues: curricular choices, educational sanctions and the assessment of teachers' performance. In a previous section, the role of administrative law was described as regulating the means of public administrations in light of the aims prescribed by law. From this perspective, security procedures are difficult to conceive as inherently educational actions; they are rather a "necessary evil" when no other measures suffice to ensure safety. Conversely, sanctions within a school setting can have a clear educational purpose if emphasis is placed on peace, acceptance of diversity and reparation of moral or material damages. Lastly, with regard to curricular choices and teacher assessment, a nuanced or even limited implementation is advocated. Enhancing these procedures would entail a limitation of school and teacher discretion, thus impairing their ability to promote awareness of diversity within society and flexible approaches to complex and evolving problems. Admitting a broad scope for individual preferences and empowering pupils to legally challenge teacher and school decisions on a wide range of topics would affect the school system's legitimacy and its ability to instil common values.

6. Concluding observations

This chapter has discussed how law can reinforce the social legitimacy of the school system in four specific dimensions. Nevertheless, under certain conditions, law can

⁸² Dragan Mijakoski et al, 'Determinants of Burnout among Teachers: A Systematic Review of Longitudinal Studies' (2022) 19(5776) *Int'l J Environ Res Public Health* 1. The article analysed research papers on teacher burnout conducted between 1990 and 2021 and identified at least eight studies linking burnout positively with the following factors: parental criticism, conflicts and interpersonal problems, stress due to societal demands, stress due to the relationship with a not functional school management, among other factors; and negatively (inversely) to the social support from the broader community or from colleagues, among other factors.

⁸³ Fiona Longmuir et al, 'Australian Teachers' Perceptions of Safety, Violence and Limited Support in Their Workplaces' (2025) 24(1) *J School Violence* 1, 9

become counterproductive by increasing social pressure on teachers and schools to deliver results in areas they are ill-equipped to address, such as security.

Moreover, even in dimensions that schools are better suited to promote – such as learning – a legal culture of challenging teacher decisions can be problematic, especially when upholding parental wishes becomes a priority for educational administrations preoccupied with public opinion and lawsuits. From a comparative perspective, school effectiveness and individual academic success are difficult to measure with a single formula, as they are culturally dependent dimensions.

On the other hand, juridification (understood as the growing recourse to legal remedies on the part of families), may lead to schools viewing law as a “defence” mechanism to avoid damage claims – by gathering evidence that safeguards were applied, rather than seeking effective solutions to existing problems. This is where juridification may degenerate into pure bureaucratic burdening for those involved in education.

However, it is difficult to conceptualise juridification simply as a response to attitudes challenging the legitimacy of the education system. In line with Habermas’s notion, increased regulation has also acted as a vehicle for managerialism and accountability as values that are typical of the advanced capitalistic societies.

In this complex scenario, the role of pure administrative law in educational contexts – and its balance with educational objectives, the rehabilitation of offenders, peaceful schools, etc. – should be critically assessed in the phase of law-making, but also through specific decision-making by administrative and judicial bodies. Whether this conclusion supports a broad reappraisal of juridification in welfare-state governance is possibly a matter for further consideration⁸⁴.

Bibliography

- Aleinikoff A, ‘Constitutional Law in the Age of Balancing’ (1987) 96(5) Yale LJ 943
- Armstrong M, *Improving organizational effectiveness* (Kogan Page 1994)
- Arroyo Jiménez L, ‘Administrative allocation of scarce resources’ (2015) 1 Indret
- Ashley S and Faulk L, ‘Nonprofit Competition in the Grants Marketplace Exploring the Relationship Between Nonprofit Financial Ratios and Grant Amount’ (2010) 21 Nonprofit Management and Leadership 43
- Beiter KD, ‘Not the African Copyright Pirate is Perverse, but the Situation in Which (S)he Lives – Textbooks for Education, Extraterritorial Human Rights Obligations and Constitutionalization “from below” in IP Law’, in (2019) 26 Buff Hum Rts L Rev 1

⁸⁴ The author would like to thank Mauro Zamboni and Maria Refors Legge for their meticulous and highly valuable observations to the original manuscript.

- Beiter KD, ‘Why neoliberal ideology, privatisation, and other challenges make a reframing of the right to education in international law necessary’ (2023) 27(3) Intl J Hum Rts 425
- Berret JL and Sudweeks J, ‘Understanding nonprofit leaders’ perceptions of organizational efficiency’ (2023) 33 Nonprofit Management and Leadership 491
- Bergh A, Murphy M and Nylund M, ‘The rise of law in education - exploring three drivers of juridification in the context of a changing welfare state’ (2025) Journal of Education Policy 1
- Bourdieu P and Passeron JC, *Reproduction in Education, Society and Culture* (Sage 1977)
- Burgi M, ‘Public Administration and Law’ in Geert Bouckaert and Werner Jann (eds), *European Perspectives for Public Administration: The Way Forward* (Leuven University Press 2020)
- Cameron K, ‘Critical questions in assessing organizational effectiveness’ (1980) Autumn, Organizational Dynamics 66
- Chambers D, ‘How school security measures harm schools and their students’ (2022) 72(2) Educational Theory 123
- De Groof J, ‘On the “Innovative University”. A few Challenging Reflections’ (2018) 26 (S1) European Review 114
- Delnatte C, Roze E, Pouget P, Galléa C and Welniarz Q, ‘Can neuroscience enlighten the philosophical debate about free will?’ (2023) 188 Neuropsychologia 1
- Dewey J, *Democracy and education* (Forgotten Books 2015, original from 1916)
- Domínguez C, ‘Scholasticide: Educational Lawfare as a Marker of the End of Civilianness’ (2024) 52(1) Diacritics 120
- Dyzenhaus D, ‘The politics of deference: judicial review and democracy’ in Michael Taggart (ed) *The Province of Administrative Law* (Hart 1997) 279
- Ferrero G, *Potere. I geni invisibili della città* (Sugarco, 1981). English translation: *The Principles of Power. The Great Political Crises of History* (Putnam 1942). Spanish translation: *Poder. Los genios invisibles de la ciudad* (Tecnos, 2022)
- Fleming M, *Introduction to economic analysis* (George Allen & Unwin 1969)
- Fromm E, *The Fear of Freedom* (first published 1941, Routledge 2001)
- García E, ‘Estudio preliminar’ to his Spanish translation of Guglielmo Ferrero’s *The Principles of Power*, titled *Poder. Los genios invisibles de la ciudad* (Tecnos 2022)
- Glenn CL, De Groof J and Candall CS (eds), *Balancing freedom, autonomy and accountability in education* (Wolf 2012) 4 vols.
- Glenn CL, ‘What is at Stake in Debates over Education and Religion’ in Meix Cereceda P and De Groof J (eds) *Religious and ideological rights in education* (Wolf 2017)

- Gloppen S, ‘Conceptualizing Lawfare: A Typology & Theoretical Framework’ (2018) Centre on Law & Social Transformation Paper
- Häberle P, *Die Verfassung des Pluralismus* (Athenäum 1980)
- Habermas J, *Legitimation crisis* (Beacon, 1975)
- Habermas J, *The Theory of Communicative Action. Vol 2. Lifeworld and System: A Critique of Functionalist Reason* (Beacon, 1985)
- Habermas J, *Between Facts and Norms* (MIT Press 1996)
- Hauriou M, *Précis de droit administratif et de droit public général* (Larose 1900)
- Kelsey C, ‘The partiality of neutrality’ (2014) 41 Harvard J Law & Pub Policy 935
- Kriele M, *Einführung in die Staatslehre: die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates* (Kohlhammer 2003)
- Longmuir F et al, ‘Australian Teachers’ Perceptions of Safety, Violence and Limited Support in Their Workplaces’ (2025) 24(1) J School Violence 1
- Mahon O, ‘The Protection of Children from Violence in Schools in Ireland’ in Lauwers L and De Groof J (eds), *Dignity and Safety in Education* (2012)
- Martín Mateo, R ‘La ingeniería social garantiza la eficacia del Derecho Administrativo’ (speech delivered on 28 November 2012 on the occasion of an honorary doctorate at the University of Murcia)
- Meix Cereceda P, ‘Educational Values in Human Rights Treaties: UN, European, and African International Law’ (2020) 21 Hum Rts Rev 437
- Meix Cereceda P, ‘The Hijab in European Union Law: Considerations on the Principle of Religious Neutrality and the Concept of Discrimination’ (2023) 61 Revista General de Derecho Europeo 295
- Meix Cereceda P, ‘The right to education in the age of digital technologies’ (2024) 36(1) Eur Rev Pub L 309
- Mijakoski D et al, ‘Determinants of Burnout among Teachers: A Systematic Review of Longitudinal Studies’ (2022) 19(5776) Int’l J Environ Res Public Health 1
- Mittler P, *Working Towards Inclusive education* (David Fulton 2000)
- Moreira, AMF, *Curricular Rights: Defining Essential Learning in the Context of Human Rights* (Ethics International Press 2025)
- Mumford L, *Technics and Civilization* (first published 1934, University of Chicago Press 2010)
- Nachtigal T, ‘Responsible education: Responsibility under international law for indoctrination to hatred and violence in education systems’ (2019) 57(3) Columbia Journal of Transnational Law 600

- Najar BW, ‘Efficiency and/or Effectiveness in Managing Organizations’ (2020) 4(2) Journal of Education and Culture Studies 131
- Neuwirth RJ, *Law in the Time of Oxymora. A Synestheasia of Language, Logic and Law* (Routledge 2018)
- Nino CS: *La construcción de la democracia deliberativa* (Gedisa 1997)
- Reiss J, ‘Public Goods’ in Zalta EN (ed) *The Stanford Encyclopedia of Philosophy* (2021)
- Roberts D, ‘Post-Conflict Peacebuilding, Liberal Irrelevance and the Locus of Legitimacy’ (2011) 18(4) International Peacekeeping 410
- Skerrit C, ‘School autonomy and the surveillance of teachers’ (2023) 26(4) Int’l J Leadership in Edu 553
- Stewart R, ‘Administrative law in the 21st century’ (2003) 78(2) NYU Law Rev 437
- Storr S and Schröder R, *Allgemeines Verwaltungsrecht* (Kohlhammer 2021)
- Teubner G, ‘Juridification. Concepts, Aspects, Limits, Solutions’ in Gunther Teubner (ed) *Juridification of Social Spheres* (Walter de Gruyter, 1987)
- Tomasevski K, ‘Human rights obligations: making education available, accessible, acceptable and adaptable’ (2001) 3 Right to Education Primers 31
- Trujillo T, ‘The Modern Cult of Efficiency: Intermediary Organizations and the New Scientific Management’ (2014) 28(2) Educational Policy 207
- Weber M, *Economy and Society* (University of California Press, 1978)
- Wu K, Wang F, Wang W and Li Y, ‘Parents’ Education Anxiety and Children’s Academic Burnout: The Role of Parental Burnout and Family Function’ (2022) 12:764824 Frontiers in Psychology 12
- Zamboni M and Refors Legge M, ‘Legislating Education: Finding the Right Model...But Not in Sweden!’ (2020) 10(2) KLRI Journal of Law and Legislation 297
- Zedner L, ‘Pre-crime and post-criminology’ (2007) 11(2) Theoretical Criminology 261