Chapter 8
The Juridification of School Bullying in Sweden: The Emerging Struggle Between the Scientific-Based Pedagogical Discourse and the Legal Discourse

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Introduction

Bullying is a pervasive problem in schools throughout the world, including Sweden, although its prevalence varies between countries (Chester et al. 2015; Craig et al. 2009; Due et al. 2005; Molcho et al. 2009). In addition to the direct suffering of the victims, a large and growing body of studies has shown that bullying victims are at a heightened risk of developing psychological health problems such as depression, low self-esteem, anxiety, suicidal ideation and behaviour, and psychosomatic symptoms and problems (Gini and Pozzoli 2013; Holt et al. 2015; Silberg et al. 2016; Tsaousis 2016). Furthermore, a growing body of research has revealed that victims of school bullying are also at a greater risk of suffering from both psychological health problems, such as depression, anxiety and suicidal ideation and behaviour, and physical health problems in adulthood (Copeland et al. 2013; Copeland et al. 2014; Evans-Lacko et al. 2017; Farrington et al. 2012; Klomek et al. 2015; Lereya et al. 2015; Meltzer et al. 2011; Silberg et al. 2016). In this chapter, I will discuss the juridification of school bullying and the emerging struggle between a scientific discourse and a legal discourse as the guiding national discourse for schools' anti-bullying practises in Sweden by giving a very brief review of how the definition and understanding of bullying have been disputed, including in Sweden, and the historical changes in the Swedish school policy from a scientific-based pedagogical discourse to a de-professionalizing legal discourse in relation to how schools should understand and counteract bullying.

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The Struggle Over the Definition and Understanding of Bullying

As early as 1969, the Swedish physician Peter-Paul Heinemann introduced the term "mobbing" in Sweden through a debate article (Heinemann 1969) and then later, and in greater depth, the term "mobbning" in a book (1972; the Swedish term "mobb(n)ing" has then been translated to bullying in English). His ideas were, however, not based on empirical research on bullying among children, adolescents or adults but more speculative and with reference to the ethologist Konrad Lorenz (1968), from whom he also borrowed the term "mobb(n)ing". Heinemann argued that bullying was a form of group violence toward deviant members, rooted in our human biology and a result of crowding and lack of stimulation. The term "bullying" and his ideas became widespread in Sweden in 1969 through a series of articles in one of Sweden's most influential daily newspapers, *Dagens Nyheter* (Larsson 2008; Nordgren 2009).

In the early 1970s, the Scandinavian psychologist Dan Olweus (1973) conducted the first series of scientific studies on bullying among schoolboys in Stockholm. Olweus (1973) criticized Heinemann's main focus on the group and argued that the connation of the social psychological term "mob" and the idea about collective violence toward a deviant member could easily lead to inappropriate expectations and significant individual aspects being overlooked (also see Olweus 1978). As Olweus (2010) later put it, "The notion that school mobbing is a matter of collective aggression by a relatively homogeneous group did in my view obscure the relative contributions made by individual members. More specifically, the role of particularly active perpetrators or bullies could easily be lost sight of within this group framework" (pp. 9–10). Based on his empirical findings, Olweus (1973, 1978) concluded that the psychological characteristics of the bullies and victims were far more important in order to explain bullying. Olweus (1993) defines *bullying* as repeated aggression directed at individuals who are less powerful. Thus, according to Olweus, the definition of bullying includes three criteria: intention of harm (as in aggression), repetitiveness, and power imbalance. This is the most widely spread and used definition of bullying in the international school bullying research field. At the same time, there has been and still is an ongoing debate and critique regarding the definition among international scholars (e.g., Canty et al. 2016; Carrera et al. 2011; Ringrose and Renold 2010; Volk et al. 2014), including Nordic scholars (e.g. Bliding 2002, 2004; Frånberg and Wrethander 2011; Horton 2011; Kofoed and Søndergaard 2009; Kousholt and Fisker 2015; Schott and Søndergaard 2014; Wrethander 2007).

In a Swedish context, Bliding (2002, 2004, also see Wrethander 2007, which is her current surname), claims that the traditional definition of bullying is too limited and simplified in relation to the complexity of events in which students are excluding and offending each other. She also stated that there is a risk that situations in which students are excluded from the peer group or are targets of degrading treatment will not be recognized as problems, but could be ignored or explained away if they cannot be defined as bullying (also see Frånberg and Wrethander 2011).

Moreover, because the international research field of school bullying has its origin in developmental psychology and was initiated by the work of Olweus (1973, 1978), the traditional definition of bullying has been criticized for reducing our understanding of bullying to individual psychological characteristics of the bullies and the victims. The critique reflects competing discourses (cf., Foucault 1978) within social science described as the "paradigm war" between epistemological and methodological traditions (Guba 1990). In this context, Olweus' position has been associated as a positivistic and quantitative approach, whereas the opponents have positioned themselves within social-constructionist, poststructuralist, and sociocultural approaches associated with qualitative research methodology (e.g., Carrera et al. 2011; Ringrose and Renold 2010; Schott 2014). This critique has been brought up in Sweden as well (Bliding 2002; Frånberg and Wrethander 2011; Horton 2011; Wrethander 2007). Nevertheless, it is possible to counterargue that the definition is actually simply a description – not an explanation – of a specific social phenomenon, which in turn may be examined and explained in individual as well as in contextual terms (cf. Espelage and Swearer 2004, 2011; Thornberg 2015), and from a wide range of different theories and methods. The critique of the term bullying and its traditional definition and individual-psychological understanding has, nevertheless, played a critical role in the shift from a scientific-based discourse to a legal discourse in the national policy-making in Sweden.

From Bullying as a Psychological and Pedagogical Issue to Its Juridification

During the 1980s, demands on schools to counteract bullying were raised in Sweden and a market for various anti-bullying programmes emerged (Nordgren 2009). A new national curriculum was adopted in 1980 (Lgr 80), and the concept of bullying was now mentioned for the first time in the Swedish national curriculum (Nordgren 2009), which at the same time reflected progressive and social psychological ideas. "The students shall actively participate in designing the work environment of the school. Collective assignments to different student groups are applied to break alienation, to counteract tendencies of bullying and vandalism, and to give students increased self-confidence. Activities that demand cooperation and accountability contribute in a decisive way to illustrating the significance of democratically decided agreements and rules" (Lgr 80, p. 47, author's translation). The concept of bullying became established in schools, and efforts to develop approaches to prevent and counteract bullying took shape in Sweden during the 1980s. Programmes to counteract bullying were developed and disseminated (Nordgren 2009). Olweus developed and empirically evaluated his so-called Olweus Bullying Prevention Program in Norway (see Olweus and Limber 2007, 2010), which was also adopted by some schools in Sweden. Other well-known programmes in Sweden at this time were Anatol Pikas' Method of Shared Concern and the teacher Karl Ljungström's Farsta

method (Nordgren 2009). Many other programmes have been developed and used in Swedish schools to counteract bullying since then (Swedish National Agency for Education 2009), but the majority of the programmes adopted by schools were not scientifically evaluated (Agency for School Improvement 2007).

The term "bullying" was also included in the national curriculum (Lpo 94) that replaced Lgr 80 during the 1990s. The new national curriculum emphasized that "no one at school shall be targets of bullying. Tendencies of harassment shall be actively counteracted" (Lpo 94, p. 3, author's translation). Furthermore, Lpo 94 also stated that the principal has a special responsibility to "establish, implement, follow up, and evaluate the school's action programme in order to prevent and counteract all forms of degrading treatment, such as bullying and racist behaviour among students and employees" (p. 17, author's translation). At the end of the 1990s, the term "bullying" was also included in the Swedish Education Act (1985:1100) with the additional complement 1999:886, and as an example of degrading treatment in chap. 1, paragraph 2:

> School activities shall be designed in accordance with basic democratic values. Everyone who works within the school shall promote respect for each human's intrinsic value and respect for our shared environment. Those who work within schools shall in particular 1. promote equality between the sexes, and 2. actively counteract all forms of degrading treatment such as bullying and racist behaviour. (Author's translation)

A new Swedish term, *värdegrunden* ("value foundation"), which refers to the democratic, basic values of Swedish society, together with *values education*, was emphasized in Swedish school policy documents, reports and recommendations from the Swedish National Agency for Education in the 1990s and the early 2000s (e.g., Lpo 94; Swedish National Agency for Education 1998, 1999, 2001). At school policy level, bullying seemed to be understood as a symptom of flaws in the democratic school climate and a lack of equality among the students. Instead of considering bullying as a result of the antisocial personality traits of bullies or an instance of group violence towards a deviant member, bullying was seen as a moral transgression that violated the "value foundation", and thus a failure of values education, as well as a legal violation of the law (Nordgren 2009). During the 1980s and 1990s, the main focus was on how the professionals in school could and should work to prevent and counteract bullying. It was a pedagogical and psychological matter. As we can see in the national curriculum (Lpo 94) and the Swedish Education Act (1985:1100), as these were developed during the 1990s, the term "bullying" was closely linked to the term "degrading treatment" by being mentioned as a form or example of this.

Nevertheless, whereas the term "degrading treatment" is a legal concept (Nordgren 2009), the term "bullying" belongs to the discourse of social science (e.g., Jimerson et al. 2010). Instead of being treated as a psychological and pedagogical matter (and as an internal concern for the school), from the second half of the 1990s until today, there has been a strong tendency to treat bullying and other forms of degrading treatment as a legal issue (Hammarén et al. 2015; Nordgren 2009). According to the law, every school in Sweden is obliged to formulate and

document its work against bullying and all other forms of degrading treatment and harassment, and to a certain degree, this work has also been transferred beyond the school setting to criminal courts (Nordgren 2009). In other words, there has been a movement away from a scientific-based pedagogical discourse to a de-professionalizing legal discourse on how to counteract school bullying in Sweden. As stated by Hammarén et al. (2015), "Actions previously described as teasing and fighting have gradually come to be positioned within the legal discourse, making them a police matter rather than a pedagogical matter" (p. 273). This change in perspective in the school policy is termed *juridification.*

From Bullying to Degrading Treatment and Harassment

During the 2000s, there has been a shift from the concept of bullying to the more inclusive term "degrading treatment" ("kränkande behandling") and, later on, together with the term "harassment" ("trakasserier"). Some Swedish educational researchers started to criticize the concept of bullying. They argued that it would obscure the sight of other forms of degrading treatment (Bliding 2002, 2004; Frånberg and Gill 2009; Frånberg and Wrethander 2011). Instead of focusing on bullying, every single instance of degrading treatment or harassment should be addressed and counteracted. Hence, repetitiveness and also the intention of harm in the definition of bullying were problematized. Nordgren (2009) also pointed out that similar arguments were used in a national official report regarding the Swedish Education Act (SOU 2002:121). In this report, the terms "bullying" and "racism" were proposed to be deleted from the Swedish Education Act as examples of degrading treatment. "According to the committee, a procedure in which certain behaviours are especially mentioned would involve a risk that other forms of degrading treatment might be perceived as less serious and thereby less illicit" (SOU 2002:121, p. 386, author's translation) Thus, whereas bullying was mentioned explicitly in the former Swedish Education Act (1985:1100), the word was actually deleted from the new Swedish Education Act (2010:801), which has applied since 2011. The only terms used are "degrading treatment", "harassment" and "sexual harassment". Whereas *degrading treatment* means that a student's dignity has been violated, if such offences also express discrimination, they are called *harassment* (Swedish National Agency for Education 2014). According the new Swedish Education Act, the term "harassment" was used with reference to the Swedish Discrimination Act (2008:567), meaning that harassment means discriminating offences that are exclusively based on sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

Nevertheless, if there was a risk that other forms of harassment or degrading treatment might not be recognized as problems in schools if the school staff were too occupied with addressing bullying, as Bliding (2002, 2004) claims, there might now be a risk in Sweden that school bullying might not be recognized or be trivialized if the term were to fade away from school practice. The good news is that the word

"bullying" is widely used by students and teachers at Swedish schools, as noted by the Swedish National Agency for Education (2016). In relation to the Swedish Education Act (2010:801), I would argue that bullying could be understood as *repeated* degrading treatment and/or harassment directed at targeted individuals, who are *disadvantaged* or *less powerful* than those who repeatedly offend or harass them. Considering the concept of harassment in the Swedish Education Act, an international body of research has revealed that members of certain social categories are overrepresented as victims of school bullying. For instance, students with disabilities and special education needs (for reviews, see Rose 2011; Rose et al. 2011; Sentenac et al. 2012; Thornberg 2015), students who transgress established socio-cultural gender norms (Aspenlieder et al. 2009; Friedman et al. 2006; Young and Sweeting 2004), and students who identify themselves with a sexual orientation other than hegemonic heterosexuality (for a review, see Hong and Garbarino 2012) are at a higher risk of being bullied. In addition, according to the report from the Swedish National Agency for Education (2016), students with an immigrant background reported that they were bullied more than students with a Swedish ethnic background. In the bullying literature, bullying based on discrimination is called *bias-based bullying* or *discriminatory bullying*, meaning that someone is bullied because they belong to a particular group, for instance someone defined by ethnicity, religion, gender, sexual orientation or disability (e.g., Elamé 2013; Palmer and Abbott 2018).

In fact, the Swedish National Agency for Education (2014) explicitly recognized bullying as repeated degrading treatment or harassment intended to inflict harm. However, in omitting the term "bullying" from the Swedish Education Act (2010:801) and the Swedish official curriculum document (Lgr 11; Lgr 11 [rev. 2016]), the aspects of repetitiveness and power imbalance have also been omitted. The Swedish National Agency for Education (2014) states that one of the reasons why the term "bullying" is no longer used in its official curriculum document is that the Swedish Education Act demands that every single instance of degrading treatment has to be counteracted. Thus, the Swedish Education Act has a problem with the repetitiveness included in the traditional definition of bullying, which is a serious mistake considering the research showing that there is a so-called "dose effect" in bullying, meaning that children who are frequently involved in bullying during childhood, in other words, chronic victims and chronic bullies, are at a greater risk of adverse outcomes compared to occasional victims and occasional bullies (for a review, see Klomek et al. 2015). Both the intensity and the frequency of harm need to be recognized, as recent studies indicate that severity, repetition and the presence of power imbalance amplify the perceived harm of an action (for a review, see Volk et al. 2017). Thus, we need to recognize the importance of addressing degrading treatment and harassment as well as the more systematic case of bullying with its power imbalance and repetitiveness, both in policy and in practice. Another problem with replacing a scientific-based pedagogical discourse with a legal discourse is the tendency to focus on legal interventions in terms of documenting and reporting bullying as legal offenses instead of focusing on both prevention and interventions based on research on bullying among children and adolescents, and scientific evaluations of anti-bullying methods, practices, and programmes.

The Struggle of Anti-bullying Policy, Programmes and Practice in Sweden

Even though there has been a market for various anti-bullying programmes in Sweden since the 1980s (Nordgren 2009), the Swedish National Agency for Education does not recommend any anti-bullying programmes for schools. In a report by the Swedish National Agency for Education from 2009, Frånberg and Wrethander (2009) concluded that in the law and policy documents regarding Swedish schools (the Swedish Education Act, the national curriculum, national syllabuses, ordinances and general recommendations), there were demands for counteracting bullying but no demands for using a particular method or programme. A couple of years later, the Swedish National Agency for Education (2011) published an evaluation report on anti-bullying methods used in a sample of 39 Swedish schools. The original aim was to evaluate eight programmes that had previously been found to be widespread and used in Swedish schools in order to counteract bullying (Frånberg and Wrethander 2009). Some of them were designed to counteract bullying (e.g., Olweus Bullying Prevention Program and the Farsta method), whereas other programmes were not developed anti-bullying programmes but had other aims (e.g., SET [Socio-Emotional Training] and School Comet [a CBT-based programme to manage student behaviour in general]). However, the evaluators observed that none of the included schools adopted one singular programme but instead had some contact with or used parts of many programmes. Therefore, the evaluation shifted focus from evaluating programmes to evaluating separate anti-bullying efforts or components.

Among the anti-bullying components that were found to be associated with a low or reduced prevalence of bullying were multi-professional cooperative teams (e.g. anti-bullying teams or school safety teams including both teachers and specialized professionals such as school nurses, school counsellors and special educators); clear routines for intervening, following up on and supporting identified bullies and victims; regular surveys/evaluations of students' situations concerning bullying and degrading treatment to be used as a basis for designing the ongoing anti-bullying work; efforts to increase the quality of student relationships; staff training; disciplinary strategies; a well-developed system of staff being on duty during scheduled breaks; regular general meetings at which information about bullying and degrading treatment is given to students; and school rules developed in collaboration between school staff and students. These components can be found in evidence-based programs such as Olweus Bullying Prevention Program and the KiVa programme. However, among the anti-bullying components that were found to be associated with a greater or increased prevalence of bullying was the component "special lessons that are scheduled for all school classes", which also can be found in the two above mentioned programmes. As a result of the national evaluation report, the Swedish National Agency for Education (2011) declared that it could not recommend any anti-bullying programmes.

It is, however, important to note some limitations of this evaluation study. The component of special lessons was measured and analysed as a general category (a

global construct). In other words, differences in classroom activities, lesson contents, teaching methods, educational materials, and instruction quality were not taking into account in the statistical analysis. Another limitation is that the evaluation did not adopt a randomized control trial design to evaluate the effects of *implementing* the programmes on bullying prevalence, but relied on identified correlations in natural school settings. In other words, we do not know the prevalence of bullying in these schools before they implemented the various anti-bullying components, and thus, we do not know in what degree the components might have change the prevalence as a result of being implemented. Another limitation is that the treatment fidelity, which refers to in what degree to which intervention is implemented as intended, seemed to be so low in the schools that the evaluators were forced to abandon their original intention to evaluate programmes to evaluate components instead. Although the evaluation study demonstrated valuable knowledge in terms of how different anti-bullying components were associated with bullying prevalence in a Swedish context, it did not evaluate specific anti-bullying programmes.

In contrast to the Swedish National Agency for Education, the Swedish National Council for Crime Prevention published a report in 2009 on the effects of anti-bullying programmes (Swedish National Council for Crime Prevention 2009). This report was based on a meta-analysis of international research. This meta-analysis was conducted by Ttofi, Farrington and Baldry and presented in an earlier report from the Swedish National Council for Crime Prevention (2008). Their meta-analysis showed that, overall, school-based anti-bullying programmes were effective in reducing bullying and victimization, although the effect size was rather small. In particular, they found that programmes inspired by Olweus worked best. In addition to scientific evaluations demonstrating the positive effects of the Olweus Prevention Bullying Program (Limber 2011; Olweus and Limber 2002, 2010; for more recent meta-analyses, see Gaffney et al. 2019; Ttofi and Farrington 2011), the Finnish KiVa programme has also been found to decrease bullying (Gaffney et al. 2019; Herkama and Salmivalli 2016; Salmivalli et al. 2011; Salmivalli and Poskiparta 2012; Yang and Salmivalli 2015).

Despite the reports from the Swedish National Council for Crime Prevention (2008, 2009) and international and peer-reviewed published scientific evaluations (including randomized controlled trials) demonstrating the effects of the Olweus Prevention Bullying Program (a programme rooted in Norway) and the KiVa programme (a programme rooted in Finland), the Swedish National Agency for Education cannot recommend any anti-bullying programmes. In addition to its evaluation report (Swedish National Agency for Education 2011), its stance can be understood in light of the juridification and movement away from the term "bullying", but also in light of the general debate on evidence-based programmes in which opponents argue that universalist programmes are not sensitive to cultural and contextual variations. A general criticism among opponents of evidence-based programmes within the educational research field is that such programmes rely on the assumption that causation is based on "fixed, universal relationships, rather than local, context-sensitive patterns in which interpretation and decision on the part of teachers and students play an important role" (Hammersley 2007, p. 23). This kind of criticism is also made by the

Swedish National Agency for Education (2011). Hammarén et al. (2015) conclude, in relation to the situation in Sweden today, that "criticism of bullying prevention programmes has an almost hegemonic position in the documents that schools have to comply with" (p. 281). As a result of the juridification and the replacement of a scientific-based pedagogical discourse with a legal discourse, the current challenge in Sweden concerning bullying prevention and interventions in schools can be addressed with the following question: Is it possible to establish bullying prevention and interventions as well as prevention and interventions regarding the more general phenomena of harassment and degrading treatment, based on science and research in Swedish school policy and practice? The question is also crucial with regard to juridification and the legal discourse since, according the Swedish Education Act (2010:801), schooling shall be grounded in science and well-tried experience.

Conclusion

Bullying does not vanish in Swedish schools just because it has vanished as a term in the current Swedish Education Act and the national curriculum document. On the contrary, school bullying has increased over the past decade in Sweden (Folkhälsomyndigheten 2018). Recognizing degrading treatment and harassment is crucial, but there is no necessity for this to be done at the expense of bullying. Considering the repetitiveness, power imbalance and "dose effect" of bullying and how this is associated with a greater risk of adverse outcomes, it would be irresponsible to neglect or trivialize this problem in school policy and practice. Furthermore, claiming that the scientific-based pedagogical discourse of bullying represents, and thus, reduces bullying to individual psychological explanations is no longer a valid argument. Within the international school bullying research field, there is a large and growing body of research examining contextual factors and how individual and contextual factors interact in order to better understand how bullying arises, continues, increases, decreases and ends.

An obvious problem with juridification is the tendency to focus on legal interventions instead of focusing on both prevention and interventions based on international, Nordic and Swedish research on school bullying. Bullying and other forms of degrading treatment and harassment in school need to be a pedagogical and a student health matter with a strong emphasis on research-based preventions and interventions that are data-driven (i.e. regular survey and evaluation) and context-sensitive to the local school and particular peer groups, individuals and situations. In contrast to the assumption that knowledge is exclusively local, schools should consider "the advantages of 'external to school' knowledge in improving schools" (Reynolds 2005, p. 248) and avoid spending a lot of time and effort on "re-inventing the wheel". However, when research-based knowledge and scientifically evaluated programmes are imported by schools and their school staff to their own local practice, it is important that this transfer is done in terms of treatment fidelity as well as with a sensitivity to contexts and situations, and not applied in an uncritical,

mechanical and soulless way. It should always be combined with careful evaluation and collection of data. In line with the Swedish Education Act, bullying prevention and interventions in school must be grounded in science and well-tried experience.

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