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Awareness-raising, legitimation or backlash? Effects of the UN Convention on the Rights of Persons with Disabilities on education systems in Germany

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Global discourse about human rights, education for all, and inclusive education has altered social norms relating to dis/ability and schooling, especially through awareness-raising, by legitimating advocates' positions and by facilitating policy reforms. Affected by societal and educational change, special education systems and their participants have also transformed societies. Widespread recognition of education's impact – and of institutionalised discrimination that disabled pupils face – galvanises contemporary debates. If special education successfully provided learning opportunities to previously excluded pupils, the goal has shifted to inclusive education. In such settings, all children, regardless of their characteristics, attend neighbourhood schools where they are supported to reach their individual learning goals in diverse classrooms. This global ideal has gained legitimacy, as most countries have ratified the UN Convention on the Rights of Persons with Disabilities (UN-CRPD), which mandates inclusive education, specifying facilitated access and meaningful educational opportunities. This has considerable implications for all learners. Examining the effects of the UN-CRPD in Germany, one of the most highly stratified and segregated education systems in Europe, provides a hard test case of the (potential) impact of this international charter on national education systems. To meet its mandate, Germany's 16 states (*Bundesländer*) would have to radically reform their education systems, whose segregated structures remain antithetical to inclusive education. Examining education policy reform processes since the 1970s, we find contrasting path-dependent reactions: In Schleswig-Holstein, inclusive education has diffused broadly and attained broad legitimacy, but in Bavaria its development has stalled; school segregation remains pervasive. Below national level, the UN-CRPD's potential to affect the pace and scope of change depends considerably on the structures in place at ratification.

Keywords: inclusive education; special education; school segregation; institutional change; path dependence; UN Convention on the Rights of Persons with Disabilities; Germany

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Analysing internationalisation of special and inclusive education

As societal and educational change have transformed special education, so too have special education systems and their participants, from students and parents to teachers and other professionals, left their mark on societies. This mutual influence has been evident where special education was institutionalised – up to today. Widespread recognition of the impact of education for a host of private and public goods as well as of institutionalised discrimination that disadvantaged individuals and people with disabilities face galvanises contemporary debates. Historically, it is certainly true that special education successfully provided learning opportunities to children previously excluded. Yet, in many countries worldwide, special schools and classes have come under critique as the ideal has shifted to providing additional services and supports in 'inclusive' settings in general schools.[1] Research in education and related fields has shown that inclusive education, when understood as a complete educational concept guided by established principles, can benefit all learners. However, in many countries, interdependencies between special education, general education and other institutions along with vested professional interests have hindered inclusive education for all. Nevertheless, considerable differences between and within nation states demonstrate that change is possible, as ongoing education reforms and shifts in local practice have achieved inclusive schooling.

Over recent decades, global ideals, such as 'education for all' and inclusive education, have been advanced by UNESCO (1994, 2008) and the United Nations (2006), the World Bank (Peters 2004), the OECD (2007) and the European Union (EADSNE 2011; European Commission 2014): The goal is to reduce exclusion and segregation and to open up schooling to welcome diversity in student bodies. Various ideals of inclusive education are being prominently discussed across political levels and around the world, especially since the enactment of the UN Convention on the Rights of Persons with Disabilities (UN-CRPD; United Nations 2006). The Convention's Article 24 extends far beyond primary and secondary schooling, as it mandates inclusive education throughout the life course and challenges all educators and levels of education systems to embrace the diversity of (potential) learners: to 'ensure that persons with disabilities are able to access … education … without discrimination and on an equal basis with others' (Section 5). The UN-CRPD's provisions specify changed conditions that facilitate access and meaningful educational opportunities for disabled learners. Such transformations to enhance equality and excellence affect the political and social contexts in which special education programmes seek to offer support but have considerable implications for all learners. Discursively, inclusive education has diffused worldwide, facilitating institutional change in education, as special education has for decades, indeed, centuries (Richardson and Powell 2011).

However, there seem to be limits to such diffusion processes. The tremendous variance found in nearly every indicator relating to special (and inclusive) education and dis/ability – whether classification rates and distribution among categories, allocation to educational settings or achievement and attainment patterns – underscores the legacy of different developmental trajectories of (special) education and social welfare systems, many still exclusionary or segregated, some more integrative or inclusive (Powell 2011). In those countries in which special education was first conceived, the founding of influential organisations, usually devoted to serving members of one impairment category, such as blindness or deafness, preceded compulsory schooling (Richardson and Powell 2011). Where these original schools and institutions still exist, they testify to the universality of impairment and disability, the durability of institutions and the stability of institutional trajectories upon which contemporary special education has developed. Institutions and organisational forms introduced at an early point shape available options later on and may limit the feasibility of later reforms.[2] But even if international pressures to attain standards and reform structures may sometimes be hampered by national models and institutional arrangements, these exogenous pressures often also serve to legitimate endogenous reforms as pieces are picked up, translated and altered to fit local conditions.

Two theoretical expectations regarding the institutional developments of education systems compete: Whereas diffusion theory suggests that concepts such as inclusive education spread worldwide, facilitating change, path dependence theory emphasises that institutions are 'sticky' and change only gradually, unlikely to depart from a once-chosen path. We thus ask what have been the major effects of the UN-CRPD thus far? Can it facilitate the transformation of existing institutional structures, even where these are at odds with the global norm of inclusive schooling? To what extent are its effects mediated or even offset by the persistence and path-dependent development of existing educational institutions and organisations?

Such analyses must carefully interpret stability and change, requiring attention to temporal and spatial issues of scale and scope. Especially in countries with decentralised control of education, reform dynamics demand analysis on multiple levels. Addressing these questions, we need to confront the challenges of explaining variation in special and inclusive education structures within and between national contexts – and the resulting effects on students and social groups. Research on special or inclusive education has mostly not taken an internationally comparative approach (but see Booth and Ainscow 1998; Barton and Armstrong 2001; Artiles, Kozleski, and Waitoller 2011; Richardson and Powell 2011). Similarly, few studies have used multi-level analysis to chart institutional change facilitated by the UN-CRPD. Yet some studies – from descriptive country studies to more ambitious historical and geographical comparisons – have examined the effects of internationalisation more broadly,

compared developments in different countries, and delineated the rise of (special) education worldwide and the extraordinary variety of systems found (in English, see Carrier 1984; Peters 1993; Mazurek and Winzer 1994; McLaughlin and Rouse 2002; Powell 2011; Tomlinson 2013). Especially when explicitly historical and comparative, studies provide insights into the origins, evolution and logics of education systems.

The German school system stands in stark contrast to the described global developments: segregated special schools were established widely throughout the twentieth century and remain the main organisational form: Almost 5% of all students[3] are taught in special schools spatially separated from regular schools. To be sure, since the 1970s most of the 16 states (*Länder*) – albeit with varying intensity – have developed a range of organisational forms in regular schools in which special education services are provided (see Blanck 2014). But Germany still maintains among the most highly differentiated and well-resourced systems of special schooling in Europe. Compliance with the UN-CRPD, therefore, necessitates wide-ranging reforms. Accordingly, the case of Germany provides a hard test to assess the effects of the UN-CRPD, enabling us to analyse the relative importance of diffusion processes on the one hand and path dependence on the other hand.

Our analysis proceeds in three steps. First, we discuss the literature on institutional change, emphasising concepts of path dependence. Second, we chart the remarkable global rise of special education and inclusive education, focusing especially on the crowning achievement of the worldwide disability movement – the UN-CRPD and its global ratification. Third, delving below the national level, we report findings from a comparative case study of implementation relating to inclusive education (Article 24) in Germany, contrasting the *Länder* of Schleswig-Holstein and Bavaria. Thus, we analyse here the interaction between the international and (within Germany) regional levels, asking about the extent of influence of an international convention on institutional change within a federal country in which governance of schooling occurs below the national level. Divergent developments in these two *Länder*, within a single country, emphasise the interplay of international pressure, federal governance in education and the institutionalisation pathways of education systems. The chosen methods of process-tracing – based on scientific literature on these two states, government documents, laws and regulations, official statements of stakeholders as well as seven expert interviews (noted in the text, but anonymised) conducted with representatives of the executive branch, the educational administration and researchers on inclusive education in both *Länder* – enabled us to chart developments for several decades up to the present. The results of our study underscore the importance of in-depth comparative cultural and historical analysis to explain continuity and change in education systems and in the institutional discrimination of children and youth with disabilities and disadvantages. Far from

being self-reinforcing, the tenets of the UN-CRPD may be successfully implemented, but they may also be subverted, as they are idiosyncratically adapted by actors on (sub-)national levels within pre-existing educational structures. Thus, the effects of the UN-CRPD must be carefully examined, which in turn requires an understanding of education systems' diverse developmental paths prior to ratification.

Theorising ideational diffusion, institutional change and path dependence in education

From the beginning, researchers in comparative and international education have focused on issues of the diffusion of educational concepts, whether relating to individual learners, curricula or settings. Core questions relate to the potential of improving education systems by understanding them better through comparison – or even emulating elements of other education systems deemed successful. Educational transfer has been a continuous feature of comparative and international education, construed as a process in which a local problem is recognised, solutions to similar challenges found in other countries are identified, and these are imported and (more or less) adapted to the national or local context (Beech 2006). Works have examined these processes using concepts such as the global politics of educational borrowing and lending (Steiner-Khamsi and Waldow 2012), international arguments in education (Gonon 1998) or policy attraction in education (Phillips and Ochs 2004). The essence of the field has been distilled as 'unified around the objectives of understanding better the traditions of one's own system of education by studying those of others and assessing educational issues from a global perspective' (Cook, Hite, and Epstein 2004, 130). To explain policy diffusion worldwide, Dobbin, Simmons, and Garrett (2007) distinguish between social constructivist theories that emphasise knowledge networks and the influence of international organisations; learning theories that point out experiential developmental processes within and between geographical units; competition theories that attend to the costs and benefits of policy choices and global exchange; and coercion theories that point to power differentials among nation states and institutions operating internationally. The UN-CRPD evidences the influence of the disability movement and international organisations, it encourages developments in policy-making and practice, it leverages country comparisons to encourage the ratification and implementation of its tenets, and finally it applies global norms of human rights, yet its impact is not coercive.

Thus, we must show how imitation or emulation influences (education) policy-making as well as understand why diffusion has been limited in temporal or spatial reach, related to whether mechanisms of diffusion are mimetic, normative or coercive (DiMaggio and Powell 1983; Scott 2008). While the contribution of institutional theory thus far has been mainly to chart

how organisational forms and practices have been successfully diffused and reproduced, analyses of institutionalisation processes and institutional change have become increasingly central (Schneiberg and Clemens 2006, 217). Why do successful models often fail to be (successfully) implemented elsewhere? This perspective examines not only the policy-making process per se, but also the consequences and interplay of global, national, regional and local levels in the conception and implementation of reforms. Recent studies of institutional change explore the diffusion and translation of ideas, concepts, standards and policies as well as persistence or inertia as myriad change processes proceed on different levels (Bromley and Suárez, forthcoming).

In an increasingly globalised and interdependent world, long-term convergence may be expected or has been shown, especially when it comes to education discourse. Globalisation and Europeanisation have become favoured concepts in policy communities and rightfully have been increasingly examined to measure the influence on education of international organisations and supranational governments, such as the European Union (e.g., Dale and Robertson 2009; Powell, Bernhard, and Graf 2012). Yet despite the growing salience of global and regional levels, comparative institutional analyses question the ubiquity and speed of such often-discussed changes as they instead emphasise the mechanisms and causal concepts of evolutionary or gradual, incremental change as well as sustained national differences, even among advanced industrial societies (e.g., Streeck and Thelen 2005; Mahoney and Thelen 2010). Cross-national convergence theses need to be carefully tested, because the rhetoric of both policy-making and social science seems to outpace institutional and organisational change on national and local levels. Thus, what appears as institutional convergence at first glance may well reveal profound differences upon closer examination that delves below the level of discourse. Studies show that the diffusion of expectations, credentials and structures in education has been worldwide (Meyer and Ramirez 2007; Baker 2014), but simultaneously led to contrasting outcomes (Baker and LeTendre 2005), depending on pre-existing national policies and institutionalisation pathways, also in special and inclusive education (Powell 2011).

How have nations and regions responded to ongoing exogenous reform challenges? To what extent have contemporary changes, such as ‘education for all’ and inclusive education, remained at the level of discourse as mere labels? To what extent have they driven fundamental reforms altering established educational structures and practices? Are international pressures, at the levels of ideas, standards and policies, leading to convergence and policy harmonisation or does global diversity ultimately prevail?

Seeking to better understand the interplay of the multiple levels involved in such processes, analysis needs to centre on processes of (1) cross-border diffusion and (2) emulation that lead to institutional restructuring as well as (3) persistent developmental paths on various levels. In examining the effects

of globalisation on different levels in education, attention must be paid to the causal mechanisms of institutional reproduction, feedback loops and self-reinforcing (path-dependent) dynamics underlying the stability of educational institutions as well as the different institutionalisation pathways that have given rise to them, their starting points and the temporal sequences of their development. The concept of path dependence can help to explain why, despite powerful diffusion mechanisms, such as human rights charters, once established institutional arrangements tend to persist.

While the analysis of institutional stability in neo-institutionalism has a long tradition, the phenomenon of institutional change has only recently been given more systematic attention (see Pierson 2004; Thelen 2004; Djelic and Quack 2007; Ebbinghaus 2009; Mahoney and Thelen 2010). These authors emphasise that analyses of institutional change should not unilaterally focus on radical changes, but also on endogenous, incremental processes of change that take place below the surface of formal stability; these too, over time, may unfold cumulative effects, summing up to transformation (Thelen 2004). Therefore, we must aim to understand how actors within the existing institutional structures push reforms, 'working around elements they cannot change while attempting to harness and utilize others in novel ways' (Streeck and Thelen 2005, 19). Yet exogenous pressures, such as global human rights movements and international charters analysed here, may accumulate over long periods of time, only becoming visible as a 'shock' upon reaching a certain threshold (Pierson 2004). Consequently, stability and change of institutions are closely intertwined, requiring a theoretical perspective that can explain both phenomena, which the concept of path dependence can facilitate (Ebbinghaus 2009): The key is in the exact specification of the mechanisms that maintain the stability of an institution. Institutions are stable as long as their 'reproductive mechanisms' remain undisturbed, but when these erode, opportunities arise for reform-minded actors to bring about more or less far-reaching change (Goldstone 2003). Specifying an institution's reproductive mechanisms thus enables us to identify potential drivers of institutional change, as we can anticipate that certain events or processes (and not others) may interfere with specific reproductive mechanisms.

We distinguish four predominant mechanisms, with path-dependent developments arising from *utilitarian*, *functional*, *power-based* and *legitimacy-based* reproductive mechanisms (Mahoney 2000). While analytically distinct, these mechanisms often interact.

Power-based explanations attribute the inertia of established institutional arrangements to the interests of powerful actor coalitions. Institutions are not neutral coordination mechanisms, but rather reproduce, reflect and reinforce inequalities in the distribution of resources and political power (Thelen 2004). Institutions create incentive structures and patterns of resource allocation, that promote (or hinder) the development and expansion of certain social groups

and distribute privileges, causing beneficiaries to defend their maintenance and expansion (Pierson 1993). Power-based reproductive mechanisms may erode if power relations shift within social and/or political fields, such as when previously dominant interest groups lose influence and/or new stakeholders who use their influence enter the arena (Ebbinghaus 2009).

In a *legitimacy-based* logic, stability is attributed to the binding force of social institutions. The thoughts and actions of actors are shaped by social expectations and rules and logics within institutions that over time condense into extensive interpretations of reality, internalised and objectified by actors. Stability results from the dissemination of cultural guiding principles (see Krücken and Drori 2009). Alternative scripts and standards may become dominant as new ideas or paradigms diffuse, delegitimising established institutional practices (Ebbinghaus 2009). The establishment of alternative reality interpretations and practices in turn depends on socialisation processes that support change (Djelic and Quack 2007).

From the standpoint of *utilitarian* logic, institutions are reproduced based on cost–benefit considerations of rational agents (Mahoney 2000). If an institution enjoys increasing returns, the costs of path departure rise the longer the institution exists, because establishing an institution is associated with considerable start-up costs and often learning effects, coordination effects and adaptive expectations (North 1990). Through its design, incentives are established that cause individuals and organisations to continue to specialise in areas of activity, to develop lasting collaborative relationships and to assume social and political identities (Pierson 2004). Once individuals and organisations have made such 'investments', they have interests to maintain the status quo, especially if the adaptation costs incurred by reform are considered higher than potential long-term benefits. Nevertheless, utilitarian reproduction mechanisms can be overridden when – in the competition of alternative models – the status quo proves to be inferior and/or when information reveals previously unappreciated costs or demonstrates the higher performance of alternatives. Such learning can be promoted by change agents who have a clear understanding of future challenges and help to overcome collective action problems hindering reforms (Mahoney 2000).

In *functionalist* logic, institutional inertia results from embeddedness in broader institutional arrangements (Mahoney 2000), such that individual institutions are closely related and complementary, such as the relationship between special and general education. The existence and activities of its individual components bolster the functioning of institutionalised structures. Each component is viewed as essential. Due to interdependencies and complementarities, changing individual components would cause systemic destabilisation. Functionalist reproduction mechanisms can erode, however, when the needs of the overall system change and/or complementarities between the institutions disappear (Ebbinghaus 2009). But complementarities

may also promote change: With strong interdependence, the change of one institution makes necessary changes in others; the entire system is placed under pressure (Djelic and Quack 2007).

These four types of mechanisms are analysed in the case study of the UN-CRPD's effects on German education below. Yet first we must understand in what the global challenge of inclusive education consists. Why does institutionalised special education determine – to a large extent – how this ideal is thwarted or achieved? We now turn to the empirical investigation, charting stability and change in special and inclusive education.

Changing pathways from special to inclusive education?

In comparing special education around the world today, debates are ongoing about how best to organise schooling, to deal with deviant behaviour and to address social disadvantage. We find continuity in the settings in which supports are offered, with segregation and separation still prevalent. Changes include the gradual strengthening of human rights, 'education for all' and inclusive education in many places (Peters 2004). The global and regional variance and change over time demonstrate that the current situation in any given locale does not have to remain so – and there is no clinically defined necessity for certain school structures (Powell 2011). While in many societies children with disabilities and disadvantages continue to be excluded, in others nearly all children participate in their local (school) communities, receiving support and services to succeed. Around the world, contrasting models have been implemented with a wide range from exclusive or segregated to integrated or inclusive.

Worldwide, (special) education systems have developed along divergent development paths: Whereas there are unified school systems serving all children in the Nordic countries (with Iceland, Norway and Sweden among the most inclusive systems, see Biermann and Powell 2014), and binary-structured systems with general and special education systems in many countries of Continental Europe (including Germany), the trend in many countries, as in the USA, is towards systems with a 'continuum' of settings between segregated special schools and inclusive classrooms (Powell 2011). These contrasting pathways have been shown to persist. Once chosen, shifts or even departures from the established to an alternative institutional arrangement are difficult because positive feedback processes consolidate the selected path and limit the range of options for subsequent policy-making or institutional redesign (Ebbinghaus 2009). Formerly available institutional alternatives become increasingly difficult to choose because of cumulative commitments and investments that make switching costly (Pierson 2004).

In Germany, which maintains highly segregated and stratified education systems, the concept of path dependence facilitates investigation of gradual institutional change in 16 *Länder*, while at the same time elucidating why

segregated structures may persist despite national ratification of the UN-CRPD. Special schooling in particular has shown considerable inertia, especially due to ideational and normative barriers to inclusive education (Pfahl 2011; Powell 2011). Here, the influence of the special education profession oriented towards special school types and (since 1994) nine categories of support – reified in teacher training programmes – is a key factor (Pfahl and Powell 2011). Yet as a result of the ratification of the UN-CRPD, policy-makers in German states have been compelled to consider fundamental education reforms. These amount to a departure from the established institutional path of mainly offering special education supports and services outside general classrooms.

The continuing rise of education standards, together with recognition of the human right to (inclusive) education, has paradoxical consequences. In many countries, despite laudable educational expansion, stigmatisation and labour market marginalisation of less-educated young adults increased (Solga 2002) as transitions to vocational education and employment remain challenging (Pfahl 2011). The institutional linkages between education and employment systems and interactions between special and general education hamper comprehensive reform agendas like that of the UN-CRPD. Indeed:

> resistance to inclusive education stems not only from a web of ideological positions, entrenched interests, and education and social policies, but also from the organizational location of special education: at the nexus of education and social policies, a row ahead of social assistance and labour market programs for disadvantaged youth and young adults with disabilities, and parallel to the juvenile justice system. (Richardson and Powell 2011, 280)

Thus, reforms of special and general education imply significant changes in other organisational fields. Given the lack of societal engagement with and policy-makers' inattention to long-term and complex educational transformations, sustained efforts are needed to analyse these institutional complementarities – and to gauge both (un)foreseen and (un)intended consequences of such reforms. Exemplifying such consequences of older special education policies, the 'Achilles heel' of special education – disproportionality in participation rates of disadvantaged social groups – endures: worldwide, we find persistent overrepresentation in special education of children from families with low socio-economic status, boys and some groups of migrant and ethnic minority youth (Gabel et al. 2009). Certainly, the awareness, recognition and appreciation of diversity and equalised participation, as envisioned in international charters and good practice models, looks very different from the contemporary realities found in many places.

Most challenging, especially from an institutional perspective, is that the implementation of inclusive education programmes implies, to varying extents, the deinstitutionalisation of existing special education systems (e.g., Skrtic 1991;

Powell 2011; Tomlinson 2013). The struggle for control over the interpretation of the global norms relating to inclusive education and implementation processes must acknowledge special education's institutional interdependence with general education. Reforms of this magnitude call forth resistance of powerful groups, which mobilise to counter such changes. In sum, persistent disparities and disproportionality, rising standards alongside recognised human rights, the long-term individual and societal costs of exclusion, segregation and discrimination as well as needed investments in schooling and individualised supports set the stage for continued tensions as societies negotiate the complex relationship between special, general and inclusive education.

UN-CRPD: worldwide ratification and the inclusive education ideal

Passed in record time especially due to the dedication of disability activists and advocates in many countries, the UN-CRPD was the first human rights treaty adopted in the twenty-first century, on 13 December 2006 in New York. Its overarching goal is to promote and protect the human rights, dignity and freedom of disabled people around the world. Effectively, it has broadly raised awareness about issues of social justice and dis/ability, it has influenced national constituencies in policy-making, and it insists on the reduction of discriminatory practices and stigmatisation that have limited the participation and contributions of people with disabilities throughout history. Consequently, it emphasises the importance of physical and communicative accessibility, participation and inclusion in education and society as well as self-determination and employment opportunities, among other crucial aspects (see United Nations 2006).

The UN-CRPD is particularly significant because only a minority of the world's countries had anti-discrimination or other disability-specific laws when it was endorsed. Yet even in those countries where such laws have been enacted, struggles to realise social justice, participation and inclusion continue as the marginalisation of disabled youth and adults persists (Tomlinson 2013). Now signed by the vast majority of countries, the Convention's influence continues to expand in all world regions, with 152 state parties by September 2014 (see Figure 1). It testifies to the global consensus that all people need learning opportunities and support to develop their full potential. However, while ratification does significantly raise awareness, this does not by itself transform education and social systems to be more inclusive. Indeed, as examined here, national and local interpretations of the UN-CRPD are heterogeneous, with misunderstanding or even deliberate misinterpretation among possible responses. In fact, 'backlash' has been a prevalent response to disability anti-discrimination legislation over the past decades (Krieger 2003; Colker 2005). Thus, research on different levels is needed to analyse implementation patterns as the UN-CRPD is ratified and implemented in diverse contexts.

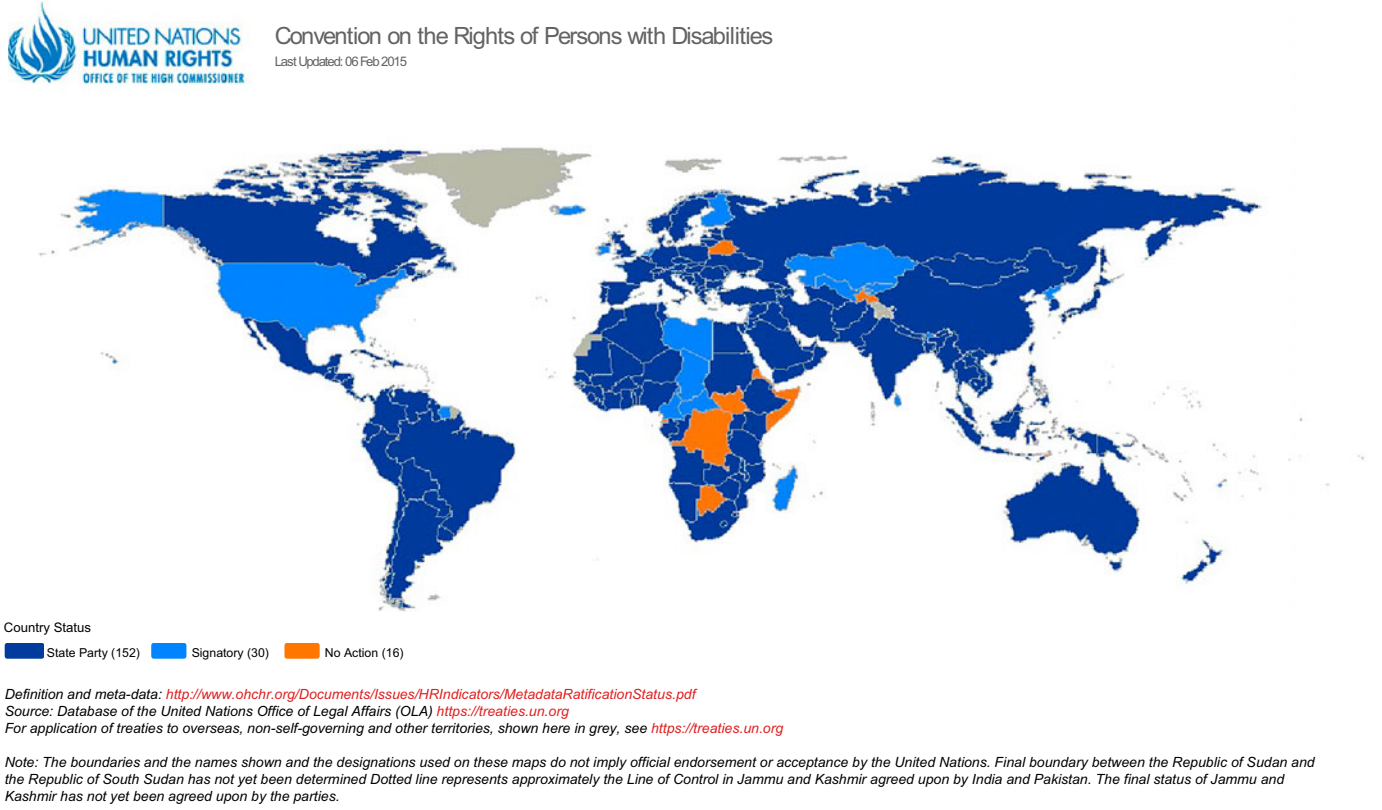

Figure 1. Signatory countries to the UN-CRPD 2006–September 2014.
Source: http://indicators.ohchr.org (last accessed 17 October 2014); used with permission of OHCHR.

International comparisons show that some countries successfully implement inclusive education reforms, even when this demands fundamental reforms (EADSNE 2011). Even in the developed world, the rates of inclusive education vary hugely (OECD 2007; Richardson and Powell 2011), emphasising the gap between the global rhetoric of inclusive education and the realities of special education's institutionalised organisational forms. Whereas, for example, most pupils with special educational needs (SEN) in Germany attend special schools (around 80%), in the USA only around 4% of pupils with SEN do, with most attending general schools, but spending some portion of their school day in special classrooms (Powell 2011). Such variation even among democratic, economically dominant countries underscores the continuity in special education and the persistence of particular organisational forms, which have evolved with other educational and welfare institutions that reflect cultural values, such as individualism or collectivism (see Richardson and Powell 2011). Whereas many societies emphasise group belonging regardless of student characteristics, others have favoured individual education rights and choices. Further, individuals and groups differ in whether they value the resources special education offers more than they fear the stigmatising effects of its labels – or vice versa. For most countries that have or have yet to ratify the UN-CRPD, the ideal of inclusive education throughout the life course espoused therein poses a significant challenge for educational policy and practice. To delve below the national level and chart the implementation of the UN-CRPD on state education systems, we examine Germany since the 1970s.

Diverging pathways of special and inclusive education in Germany

In Germany, a federal country with decentralised governance of education, the UN-CRPD took effect in 2009. However, while inclusive education (originally conceptualised as *Integrationspädagogik*) has been developed and practiced for decades in a growing number of schools in some *Länder*, it is still far from being the rule. To the contrary, in many states allocation to special schools continues to grow, especially rapidly in Eastern Germany (see von Below, Powell, and Roberts 2013). Germany remains one of the European countries with the highest levels of school segregation (EADSNE 2011). National aggregate figures tend to cover-up large regional disparities at *Länder* level. Looking at the special school enrolment rates at primary level in large *Länder* of Western Germany before UN-CRPD ratification, we find three below (Schleswig-Holstein, Rhineland-Palatinate and Saarland) and five above (North Rhine-Westphalia, Baden-Württemberg, Bavaria, Lower Saxony and Hesse) the national mean of around 3% (this rises to around 5% at secondary level (Destatis 2012 and earlier years). We then selected two *Länder* furthest from the mean and that diverge over time for in-depth process-tracing and comparison: While in Schleswig-Holstein only 1.36% of all primary school students were taught in special schools in 2010, in Bavaria this figure was 4.82% (three-and-a-half times as many).

In terms of schooling, Germany has made few, gradual changes towards meeting its commitment to the UN-CRPD; this is especially due to the institutionalisation of special schools, professional interests, complementarities with other institutions and federal governance. Professions, parents' associations and social movements have proved successful in initiating reforms, but not in transforming the 'institutional logic' of the education system, namely, segregation (Powell 2011). As we shall see, especially in a federal country such as Germany, considerable within-nation disparities persist, despite international objectives, standards and treaties. Recent advances in inclusive education practices from the 1970s onwards (Schnell 2003) have not led to education systems as fully inclusive as the UN-CRPD mandates. While fundamental barriers to inclusive school development may continue to exist, we analyse the conditions under which special education's institutional inertia may be overcome and the potential impact the UN-CRPD may have in this regard. To do so, we first must trace developments towards inclusive education *prior* to 2008 in our contrasting cases.

Institutional change and persistence in Schleswig-Holstein and Bavaria

Clearly, Schleswig-Holstein and Bavaria have diverged over the past decades in terms of duration and extent of reform (see Blanck, Edelstein, and Powell 2013): In Schleswig-Holstein, incremental changes due to progressive policy-making and administrative reform since the 1970s led to a *transformative* cumulative total effect. Quite the contrary, in Bavaria, this process began much later and was not supported (at best tolerated) by key decision-makers. Incremental changes have been isolated and have failed to develop any systemic effect.

The erosion of *power-based* reproductive mechanisms began with reform-oriented actors in the Ministry of Education in Schleswig-Holstein, who started to co-opt the profession of special education teachers. Through the harmonisation of professional interests (salary, working conditions) and reform targets (education of students with SEN in regular schools), these actors reduced resistance to inclusive education. Through the expansion of continuing education and training of teachers and awareness-raising programmes oriented towards the general public, inclusion-oriented actors gained voice and diffused education principles and practices; today, inclusive education is taught within all teacher training programmes in the state (Pluhar 2014, 187). In Bavaria, no such actions were taken, such that resistance to inclusive school development persists among both special and general educators.

With regard to the erosion of *legitimation-based* reproductive mechanisms, the conditions for the diffusion of ideas of inclusive schooling in Schleswig-Holstein were relatively favourable. Already in the 1970s, models of inclusive education had entered the educational policy agenda of the Social Democratic Party (SPD). Clear political objectives reduced the leeway for legal

interpretations and education administrators bolstered gradual reforms. On all levels of implementation, relevant actors were positively disposed towards inclusive school development also due to the inclusive models of neighbouring Nordic countries. By contrast, in Bavaria, especially given the persistence of the paradigm of the benefit of 'homogenous' learning groups and the dominance of the idea of charity and care (*Fürsorge*), the legitimacy of special schooling remained unquestioned. What effects the recent statutory mandate of inclusive schooling will unfold remains uncertain.

In terms of the erosion of *utilitarian* reproduction mechanisms, we found considerable differences between the *Länder*. As early as the 1980s, in Schleswig-Holstein a 'competition of systems' resulted enhanced understanding of advantages and disadvantages of various types and settings of special and inclusive education: Early on, the so-called 'school without pupils' – in which ambulant services are provided by special educators serving students in multiple schools – a financially sustainable counter-model to special schools was developed that served as a prototype for inclusive schooling across categories of SEN. Instead of students being transported to special schools, special educators serve students with SEN in general schools. The development of this model for the support category 'seeing' (*Förderschwerpunkt Sehen*) was much easier because in this *Land* there had been no independent schools for blind students and thus no path departure was required. Additionally, from the beginning, the reform strategy included ways to cap the funds required to expand school integration. By avoiding a complete and expensive double structure of segregated and integrated schools, and through long-term and systemic adjustments of cost-relevant parameters, conversion costs could be spread over a long period, holding total costs in check. In Bavaria, the absence of a recognised counter-model to special schooling and the lack of strategies to limit expenditures pose a major reform obstacle, because the expansion of integration and inclusion – while maintaining special schooling – costs more, which dissuades municipalities from carrying out reforms (Schöler, Merz-Atalik, and Dorrance 2010).

Finally, we observed significant differences in the erosion of *functionalist* reproduction mechanisms. In Schleswig-Holstein, far-reaching structural reforms have changed schooling considerably, for example, the 'community school' (*Gemeinschaftsschule*) represents a secondary school established to allow a diversity of learners to attend the same school, creating conditions favourable for inclusion (Pluhar 2011, 2014). In Bavaria, its implementation is currently hampered by the existence of the traditionally stratified secondary school system. In the absence of a functional equivalent to comprehensive secondary schooling and maintained demand that all pupils achieve at the same performance level, pupils with SEN, when integrated, mainly attend the lowest secondary school type (*Hauptschule*). This shows how very different the conditions were prior to ratification of the UN-CRPD.

The UN-CRPD's effects on reform processes in Schleswig-Holstein and Bavaria

The *power-based* reproductive mechanisms show that in both *Länder* the UN-CRPD has shifted the relative dominance of the special education profession to the extent that inclusion-oriented actors, such as parents, advocacy groups or Disability Officers, are increasingly involved in decision-making processes. The UN-CRPD strengthens the position of formerly marginalised actors (Interviews 112, 224). At the same time, in reducing special education policy's 'marginality', it also can lead to the mobilisation against school integration and inclusive education (Interview 111). As inclusion becomes a major theme in education policy, it leads to the resistance of powerful groups of actors, particularly of structurally conservative education policy actors who view inclusion as a threat to the traditional forms of school structure and thus mobilise to 'protect' stratified school systems. This includes forms of subversion or even 'backlash' seen after implementation of the *Americans with Disabilities Act* (see Krieger 2003; Colker 2005).

Regarding *legitimacy-based* reproductive mechanisms, the UN-CRPD has shaken the prevailing taken-for-grantedness of special schools: Its ratification unleashed a public debate unprecedented in intensity and breadth about whether segregated schooling is compatible with core values and norms of a democratic society. Although this debate is not yet resolved in favour of inclusion, the fact it is being carried out publicly evidences that the UN-CRPD has accelerated the legitimacy crisis of (segregated) special schooling. Proponents of the traditional special school system are under pressure to justify it and its legitimacy must be actively defended discursively by proponents of the status quo.

However, the loss of legitimacy of special schooling does not by itself result in the increasing legitimacy of inclusive schooling. Opponents of inclusion must deal with this and (at least partially) with increasingly public criticism of their categorical rejections of inclusion given the normative weight of the mandate of the UN-CRPD bolstering the human right of inclusive education. In both *Länder*, this also means that support for inclusive schooling has been widely adopted, yet sometimes only rhetorically. The concept of inclusion has sometimes been misinterpreted, such that existing structures can operate as before (Interviews 111, 224). Thus, inclusion has often been mistakenly equated with integration or mainstreaming, or even special schooling referred to as part of an 'inclusive' education system that has already enabled 'equal participation in education' (Interview 213), despite empirical evidence to the contrary. In Bavaria, where scepticism about inclusive education is still prevalent, this phenomenon is exemplified in the cut-and-paste renaming, in the school law, of the principle of 'integration through cooperation' with 'inclusion through cooperation' (Weigl 2009) without changing the content or structures at all (Müller 2010, 57).

Moreover, the diffusion of ideas and norms of inclusive education in Bavaria remains subject to a multi-level problem: Even if rhetorically inclusion has arrived in the Bavarian Ministry of Education, the principles of charity and care dominate the local level (Interview 224). Without a politically driven educational awareness-raising campaign, inclusive school development at the municipal level will only gradually gain legitimacy, while rapid implementation of the UN-CRPD targets remains politically challenging.

Less directly affected by the UN-CRPD are the *utilitarian* reproduction mechanisms, such as developments in Bavaria in particular revealed: Integrative and inclusive school projects, now considered flagship projects (Interview 224), strengthen networking among inclusion advocates and extend the sharing of knowledge about alternative models. However, contrary to our expectations, issues of funding and expenditures continue to be considerable barriers to inclusion. The impact of the UN-CRPD over the long term depends significantly on the interpretation of the term 'inclusion' by the German judiciary: Whether inclusive education is considered an individual right demands clarification before the Federal Constitutional Court (see Degener 2009). If interpreted as an individual rights claim, the costs of inclusive education – including a comprehensive transformation of the special school system – should no longer block its implementation.

The legal interpretation of the UN-CRPD conception of inclusion also affects *functionalist* reproductive mechanisms. These may not be directly affected, because as a normative agreement the UN-CRPD operates on a different level largely independent of drivers of change activated by shifts in a country's education participation rates, qualification needs and labour markets. An individual right to inclusive education, however, would repeal the long-established *de jure* division of labour between general and special schools; the latter not providing the required certificates needed to transition to vocational training. Even without such a legal right, education policies establishing school types with internal differentiation (e.g., comprehensive schools) would facilitate the erosion of this functional reproduction mechanism.

Thus, the UN-CRPD affected mainly the legitimacy-based and power-based reproduction mechanisms bolstering the special school system. Furthermore, depending on the interpretation of the concept of inclusion by German jurisprudence, the functionalist and utilitarian reproduction mechanisms could be significantly, if indirectly, disrupted. Nevertheless, the analysis also shows that the impact of the UN-CRPD on the various reproduction mechanisms cannot be understood independently of the starting point of education policy processes: In a federal country, long-term endogenous change processes within the *Länder* and the timing of ratification interact. If inclusive education structures are already established or the stage is set for change in this direction (as in Schleswig-Holstein) when the law goes into effect, the UN-CRPD can reinforce ongoing reform processes. If integrative school development remains

in its infancy (as in Bavaria), the UN-CRPD strengthens the power position of reformist forces as well as the legitimacy of inclusive education. At the same time, it may also mobilise opponents of reform who can prevent important steps towards inclusion in the sensitive initial phase of institutionalisation.

Examining drivers of change in the case of special education and inclusive education in Schleswig-Holstein and Bavaria from the 1970s through 2012 helps us understand the differential effects of the UN-CRPD, placing this source of reform pressure in the context of incremental changes over the past several decades.

Discussion

Because inclusive education promises to more fully utilise the diversity of interests and abilities found among all groups to develop each individual's intellectual and social competencies, supranational governments, nation-states and (non-)governmental organisations around the world have committed or are committing themselves to 'education for all' and to inclusive education. Globally, inclusive education continues to broadly spread as both goal and norm. In some contexts, it represents primarily the desegregation of students with SEN, while in others reforms have transformed schooling to embrace all forms of pupil diversity.

The UN-CRPD has unfolded tremendous awareness-raising power. Yet there are limits to the impact of mimetic and normative pressures – of international arguments or policy borrowing – as principles in education are translated locally. The divergence in institutionalisation pathways of special and inclusive education within one European country emphasises that analyses of implementation are necessary on multiple levels, reaching from the global to national and regional to local, particularly where education governance falls in the jurisdiction not of central government but of federal states. The German case, despite the legitimacy crisis of special schooling since ratification of the UN-CRPD, also reveals the remarkable path-dependent persistence of segregated and stratified schooling. The comparison of institutional change in Schleswig-Holstein and Bavaria shows that the conditions for diffusion of inclusive education reforms are shaped by processes begun long before ratification and the interplay of diverse mechanisms of institutional reproduction. Clearly, power differentials between political and professional groups affect the (potential) impact of the UN-CRPD. Locally, advocates and activists have succeeded in increasing access to integrated schools or even inclusive classrooms. However, transformative education reforms that would do most to enable inclusive schooling have thus far been hindered by powerful mechanisms of institutional reproduction. Among various forms of resistance, in Bavaria we found evidence of thwarting implementation, if not outright backlash. This is because the paradigm shift towards inclusive education not only affects special education but also deeply challenges the status quo, as

elaborated in interconnected (general) education, economic and justice systems (see Richardson and Powell 2011). Inclusive education principles call the stratification of education systems into question. Thus, battles continue, influencing whether and when the goal of inclusive education will be achieved.

Our analyses suggest that theorising diffusion – and the related vision of convergence in education systems worldwide – may underestimate the importance of historical legacies in shaping and constraining the outcome of diffusion processes on multiple levels. Transformative education reforms need broad societal support and expressions of political will, locally and nationally. International educational models are far less likely to be translated and implemented if they are not in sync with pre-existing legitimate cultural conceptions of education – especially in the absence of coercive forces. Path-breaking reforms, our case studies suggest, require the presence of change agents, who (1) are open to new solutions to old problems, (2) have a deep understanding of the obstacles to reform and (3) have viable solutions as well as the necessary power and resources to enforce them. If global charters, objectives and norms offer arguments and legitimacy for such reforms, they still require interpretation – and may effect diverse results or unintended consequences at lower levels. As we have shown, under international pressure, policies or programmes may be euphemistically renamed from 'special' or 'integrative' to 'inclusive' without significant change to actual contents or structures. Such inflationary usage bears the danger of undermining the potential of reform efforts, despite legal commitments.

Policy choices depend on nationally and regionally specific factors, especially the long-term institutionalisation of educational structures and cultures. Within Germany, institutionalization processes differ considerably between states. Diverse effects of the UN-CRPD on reform processes underway in the *Länder* – and heterogeneous reactions to primarily mimetic and normative (not coercive) pressure – would have been missed by solely investigating Germany in aggregate, national terms. If we are to understand the complex dynamics of educational reforms and identify the particular impact of international human rights charters in diverse national settings with distinct institutional histories, research must proceed on multiple levels, especially in countries with decentralised governance of education. Explicitly comparing the specific mechanisms that bolster segregated structures enables deeper understanding of barriers to inclusion and offers insights into how these may be overcome, manifesting the human rights charter of the UN-CRPD.

As reform processes continue to unfold in many of the 16 *Länder* in Germany, further research will need to attend to institutional change and persistence. Similar studies are needed in more than 152 countries that have already ratified the first human rights convention of the twenty-first century to show its influence and impact via learning from others. Evaluations of

UN-CRPD implementation must be embedded in context-sensitive, region-specific analyses, especially in federal countries. Such investigations offer the advantage that certain cultural factors, such as disability paradigms, can be kept constant without neglecting the advantages of comparative institutional analysis. Given the recent national ratification (2009) and the gradual, incremental nature of change in education systems in Germany, this analysis will require replication as the UN-CRPD unfolds its key effects of awareness-raising, legitimating inclusive education – as well as the potential for backlash.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes

1. Definitions and characteristics of the term 'inclusion' vary in breadth and scope (see Ainscow, Booth, and Dyson 2006); however, a full discussion is outside the remit of this paper. In the subsequent analysis, we pragmatically apply an understanding of inclusion that is consistent with most of these definitions: all children, regardless of their characteristics, attend neighbourhood schools and are supported to reach their individual learning goals in classrooms of diverse pupils. Whether or to what extent an education system is inclusive cannot be assessed solely based on quantitative indicators, such as the proportion of students with perceived SEN learning in general schools. Rather, to make such an assessment, qualitative characteristics such as the quality of instruction, accessibility and individualised support (among other characteristics) must be considered – characteristics about which currently available official statistics often cannot provide information. To assess whether an education system is *not* inclusive is somewhat more evident as segregation data have long been collected, especially since special education expansion in many countries since the 1960s. While the physical attendance of pupils with SEN in general schools is not a sufficient condition for inclusion, it certainly is a necessary condition. Thus, where segregated special schooling dominates, an education system should not be considered to be inclusive.
2. However, whether these institutions are barriers to inclusive education or, alternatively, necessary for its development remains a contentious matter requiring further research. These institutionalised organisational forms affect the speed and scope of implementation of the UN-CRPD.
3. According to the official statistics, three quarters of all pupils with SEN are taught in special schools. However, these figures are unreliable because the statistical concepts used by education administrations to count the number of students with SEN in regular schools vary considerably between the 16 *Länder* and are thus not comparable. Moreover, the Federal Statistical Office does not differentiate between the various organisational forms in which students with SEN are taught, e.g. in special classes within regular schools, which may be considered integrative, but not inclusive schooling (see Blanck 2014, for an overview).

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