

2010

Pluralism and Minority Rights in Music Education: Implications of the Legal and Social Philosophical Dimension

Marja Heimonen
Sibelius Academy

David G. Hebert
Sibelius Academy

Follow this and additional works at: <https://opencommons.uconn.edu/vrme>

Recommended Citation

Heimonen, Marja and Hebert, David G. (2010) "Pluralism and Minority Rights in Music Education: Implications of the Legal and Social Philosophical Dimension," *Visions of Research in Music Education*: Vol. 15 , Article 2.

Available at: <https://opencommons.uconn.edu/vrme/vol15/iss1/2>

Pluralism and Minority Rights in Music Education: Implications of the Legal and Social Philosophical Dimension

By

Marja Heimonen and David G. Hebert

Sibelius Academy, Finland

Abstract

This paper explores the issue of minority rights in music education, taking an interdisciplinary approach informed by both social and legal philosophy and interpretation of music research findings. An international-comparative perspective is offered to consider the problem of balancing between a universal good, in other words, rights entitled to every human being, with the rights of ethnic minorities. The principal research question is: To what extent may children and adolescents of cultural minorities have rights to their 'own music(s)', and how may such rights inform contemporary educational practice? Examples to be discussed in relation to education in contemporary Europe include such minority peoples as Maori and Pacific Islanders in New Zealand, Zainichi Koreans and Okinawans in Japan, and Native Americans in the United States.

The first of these aforementioned rights (e.g., human rights) is regarded to form – at least partly – the foundation of international law, and in education this may be extended to include the learning of intercultural understanding and tolerance among all children. The case of ethnic minorities, however, entails additional issues and concerns, particularly in the field of music education. Policies based on the pluralistic objective of respecting cultural self-determination face challenges in implementation due in part to political and religious orientations that sometimes conflict with the majority musical culture. Rather than aiming to give a single "right answer" to such challenges, this paper discusses the multiple dimensions – and inherent tensions in practice – of rights to music of minority children and adolescents and offers a rationale and strategic framework for scholarship in this field. Our conclusion, while acknowledging the validity and importance of efforts to support preservation of cultural heritage, emphasizes a discursive view on rights and of recourse to "one's own music" based on recognition of the evolutionary hybridity of musical genres that is ongoing in contemporary multicultural societies, in which it may be difficult, or even impossible in some cases, to definitively know what actually is "one's own music."

Heimonen, M., & Hebert, D. G. (2010). Pluralism and minority rights in music education: Implications of the legal and social philosophical dimension. *Visions of Research in Music Education*, 15. Retrieved from <http://www-usr.rider.edu/~vrme/>

Pluralism and Minority Rights in Music Education: Implications of the Legal and Social Philosophical Dimension

Introduction: Indigenous Peoples and Ethnic Minorities

The European Charter for Regional or Minority Languages is a treaty conceived by the Council of Europe that seeks to support the preservation of languages associated with various minority groups residing in regions in which a majority language is dominant. It is “the only binding convention seeking to safeguard regional and minority languages at international level” (Council of Europe, 1992). It appears to be the first actual legal charter of its kind. In Finland, the rights of Swedes to study in their language – which is a minority (and official) language in this nation – has long been recognized. Similar kinds of opportunities to study at the basic level are provided for the Sami children as well. But what of the right to one’s ‘own’ music, another form of deeply symbolic discourse that is closely linked to cultural heritage? Scholarly examination of the fundamental legal foundations associated with this theme requires the use of an interdisciplinary approach informed by both social and legal philosophy and interpretation of music research findings. We will use an international-comparative approach to consider the problem of balancing between different kinds of rights in the field of music education. Our principal research question is the following: To what extent might children and adolescents of cultural minorities have rights to their ‘own music(s)’, and how may this inform contemporary educational practice? Our discussion will consider this question in relation to examples that include Maori and Pacific Islanders in New Zealand, Zainichi Koreans and Okinawans

in Japan, and Native Americans in the United States. As these cases will demonstrate, policies based on the pluralistic objective of respecting cultural self-determination face challenges in implementation due to political and religious orientations that sometimes conflict with the majority musical culture. Rather than aiming to give one right answer, we aim here to discuss the multiple dimensions – and inherent tensions in practice – of rights to music of minority children and adolescents.

Legal and Social-Philosophical Frameworks

In Inuit societies – and in old Finnish societies, as described in the national epic Kalevala – music (in the form of song duels) was used to resolve conflicts between individuals. The aim of song duels was to reintegrate conflicting members into the community, and the ritualistic, psychotherapeutic and cathartic elements of this practice were widely recognized (Petersen, 1998). The role of a song duel was to create a shared experience. The audience served as a judge, and the importance of public opinion and community participation in the conflict was stressed. Consequently, in contemporary Greenland, the logo of the Judiciary has also been a drum and a drumstick, rather than the internationally familiar Goddess of Justice, who is typically blindfolded and holding a scale or sword (Petersen 1998.) As this example illustrates, in some indigenous cultures, traditional music is very closely linked to communication and beliefs regarding law and justice. What are the functions of law in contemporary societies? Law may be regarded as an intervention by the state that establishes the legitimacy of government, promotes social stability, and protects citizens from violence, yet at the same time it may decrease

individual freedoms or the activities of a free market (see, e.g., Nozick 1974). Law can also be seen as a means of creating conditions and circumstances for beneficial activities (such as educational and artistic endeavors), or as an instrument or means of protecting the rights of minorities, for example the Sami people's right to their own cultural heritage and its preservation to new generations (see, e.g. Siltala 2003, 192). Fundamental legal rights (basic rights) are usually secured for all citizens in national Constitutions, and may include rights such as the right to free speech, to education (in the Nordic countries, this includes the right to basic education free of charge), and the right to language. Language rights are connected with educational rights, and they have been the topic of political debate in several countries. For instance, post-apartheid South Africa's new constitution (Act No. 108 of 1996) embraces language as a basic human right, and multilingualism as a national resource, and raises nine major African languages to official status alongside English and Afrikaans (Constitution No. 108 of 1996, Chapter 1, Section 6; Hornberger 1998, 443, 445). In Durban, for instance, approximately 40 % of the population is of Pakistan or Indian origin, and the languages of India belong to the kinds of other languages commonly used by communities in South Africa that the Constitution also promotes besides the eleven official languages. (Constitution of the Republic of South Africa No. 108 of 1996, chapter 1, Section 6; Hornberger 1998, 446.) It may be utopian to believe that the aforementioned right could be realized in every school across the entire nation of South Africa. However, this situation demonstrates that the era when minority language rights were regarded as a problem of equal rights has ended (Hornberger 1998, 443). Presently, the problem is mainly economic: insufficient financial resources to provide education of the same standard in every official language, and a large gap is evident between rich schools (that use English in their

teaching) and poor schools. In Finland, the rights of Swedish-speaking and of Sami people may be taken as an example of minority rights promoted by law. As these examples illustrate, law is an instrument that has been used to protect minority rights and to support pluralism in various nations. However, several problematic questions have arisen concerning the rights of minority children and adolescents, particularly in relation to education (May, 2009). According to Unni Wikan (2002, 16), a multicultural welfare society (such as Norway) must not distinguish between the rights of natives and immigrants, nor the children of immigrants. Why not? Wikan tells how an immigrant father enjoys all the benefits of the Norwegian welfare society that provides him with social and health care without demanding anything from his side. In contrast, the child welfare authorities - who respect minority parents' rights and are afraid of being called "racist" - are unable to protect his daughter. She is a 14-year-old, born in Norway, who is sent to the home country by her father although she pleads to authorities for help and desires to remain in Norway (Wikan 2002, 20-24).

The same question is relevant in music education if minority parents deny their children the opportunity to participate in lessons that include Christmas carols, pop or rock music, or dancing, for instance. Should children of immigrants have the right to listen to all kinds of music, as other children do, regardless of the views of their parents? Or, should the rights of the parents of cultural minorities have precedence in such cases? Similar questions have been asked of sex education, and whether children should be required to learn basic facts about reproduction for the sake of their own personal health, despite the positions their parents may have on the question of abstinence, for example. Seyla Benhabib states that children and adolescents of minority groups should have the right to

an open future, and they should be educated as majority children in a multicultural society. The rights of parents should also be respected, but parents could nurture their cultural traditions for their children at home (Benhabib 2004). Questions regarding rights are always complex; thus, it is crucial to consider whose rights are in question, since a judicious balancing between different kinds of rights is often necessary. For example, such an empathetic understanding informed by moral imagination (Johnson, 1994) would acknowledge that the appropriateness of some forms of censorship (e.g. of explicitly prurient or violent content in media to which children are exposed) must be carefully balanced with the fundamental right to freedom of expression. Several rights of children, for instance, the principle of the best interests of the child, are secured in the United Nations Convention on the Rights of the Child, particularly its article 3. However, in practice the rights of children have to be weighed with others' rights, and in several societies the father's right to decide what is best for the children may take priority. Moreover, it is widely accepted that it is not necessarily the children themselves who always know what is in their own best interests (see, e.g., Nieminen 1990). In short, there is no one right answer to this question, and the complexity remains. Understanding this need for carefully assessing and balancing, and taking into account the relevant features and complexities of each particular case, is most important. Rights are closely connected with, and even grounded on, duties (Raz 1988, 180). A related problem that therefore requires consideration is whether it is more a duty of the state to promote cultural rights (e.g., rights to music, including the rights of minorities, even non-citizens and children), or is it a matter of local decision-making at the community-level, in schools, or in the home?

Educational Practices: Three Cases

We will now briefly consider cases of minority cultures in three nations from outside Europe in terms of our theme of rights to music in contemporary educational practice. Consistent with basic principles of the field of international-comparative education research (Crossley & Watson, 2003), we offer this description to illustrate aspects of practices that may have relevant implications for educational systems in Europe and elsewhere. Following a brief introduction to the three cases, we will introduce specific concepts from international law, later using these cases to more vividly illustrate various principles.

Case 1: Maori and Pacific Islanders in New Zealand

The south Pacific island nation of New Zealand is particularly important as a center for progressive ideas relating to postcolonial law and indigenous rights (May 1999; May 2001; Smith, 1999). Indigenous Maori currently comprise 14.6% of New Zealand's population. Migrant peoples from various Pacific islands – such as Tonga, Samoa, Fiji – are also highly visible and well represented in urban enclaves, particularly in suburbs of Auckland, the nation's largest municipality. However, Pacific Islanders, which in the New Zealand case includes all Polynesians except for Maori, are not well represented in the national curriculum nor most teacher education programs. Maori, as the original inhabitants, are provided unique opportunities to contribute to national policy-making, which place them at a distinct advantage over other minorities, such as Asians and Pacific Islanders. Te Kura are state-sponsored indigenous schools for Maori students that emphasize Maori language and indigenous fine and performing arts, and New Zealand also

has three Maori colleges (Te Wananga) that function as the equivalent of universities, offering degrees through the doctoral level: Te Wananga o Aotearoa, Te Wananga o Raukawa, Te Whare Wananga o Awanuiarangi. Consistent with New Zealand's national policy of "biculturalism" (Thwaites, 2008), Maori are also provided unique opportunities to promote their music through state sponsored television and radio for Maori-oriented programming, and Maori music features prominently in the national music curriculum.

Case 2: Okinawans and Zainichi Koreans in Japan

Music education in Japan is situated in the context of a highly prescriptive mandatory national curriculum (Ogawa, 2004), which includes some lessons in Okinawan music (by the ethnically-distinct indigenous minority Ryukyu islanders) for all students throughout the nation. There are also some opportunities for minorities such as Okinawans, Koreans, and Ainu to perform music in ensembles (club activities) that are loosely affiliated with local schools (Thompson, 2008; Okinawa Prefectural Government, 2004). Although Zainichi Koreans are the largest ethnic minority in Japan (with an approximated 600,000 residents), Korean music – unlike its Okinawan counterpart – is not well represented in the national curriculum, partly due to political pressures. Most Korean residents of Japan are the descendants of immigrants from North Korea, which although it used to be part of the Japanese Empire (1910-1945) is now regarded as a hostile nation. Nevertheless, there are several private Korean schools in Japan which provide Korean-language instruction. Minorities in Japan tend to have fewer educational opportunities and are very rarely able to become school teachers or to directly contribute to policy-making relevant to such fields as music and education. Recent research has determined that community festivals play a particularly important role in the preservation

and popularization of minority musics in Japan. The Korean zainichi minority of Kyoto, for example, attains visibility through its music festival, without which its presence might otherwise be relatively unknown. The festival is founded on the belief that if children develop an appreciation for multiculturalism by learning about the positive side of the Korean minority community, discrimination may be reduced (Caron, 1997; Isoda, 2009). It is well documented that in recent decades many leaders of Japan's ruling Liberal Democratic Party had shown little regard for the concerns of minority residents and the views of neighboring nations, particularly China and Korea, and had even advocated an increasingly nationalistic ideology in school education. However, on August 30th, 2009, in a landslide victory unlike any other in Japan's history, the Democratic Party of Japan seized power from the Liberal Democratic Party, which had controlled Japan, virtually uninterrupted, since 1955. The Democratic Party has promised major policy changes in order to build stronger relationships with other Asian nations.

Case 3: Native Americans in the USA

In 2006, 2.5 million Native Americans were officially registered in the United States census, a figure that roughly equates to the total population of Finnish men in the world, which we tend to feel is a significant group. North America is an enormous continent, and a great diversity may be found across its indigenous cultures, including the vast breadth of Native American musical traditions (Boyea, 2000). By the 1990s, there was finally clear government recognition of both the unique educational challenges faced by Native Americans and the reality of cultural extinction, embodied in the landmark report *Indian Nations at Risk* by the United States Department of Education (1991). As Gilbert (2005) recently observed at the Sherman Institute, "Hopi students continue to sing and dance their

traditional songs,” and this “reflects a trend that emerged at most of the off-reservation boarding schools” (p. 8). However, it is also quite evident that the Hopi have been among the few relatively positive “success stories” of Native American nations facing the onslaught of colonization. Many other Native American nations have barely managed to survive, if at all. At the Mount Adams School District, situated on the edge of the largest piece of Indian tribal land in the United States – the Yakama reservation – the population of some local schools is 70% Native American. Due to a lack of local funding for music programs, a partnership was established with University of Washington to bring prospective music educators for intensive teaching workshops from which they also learn songs of Native American and Hispanic communities (So, 2001; Soto, Lum & Campbell, 2009). There has traditionally tended to be little interest in authentic Native American music among most mainstream music education programs in the United States, although attitudes have changed in recent decades with the development of multicultural music education (Boyea, 1999; Burton, 1994). The most substantial research study of Native American music education to date appears to have demonstrated under a variety of experimental conditions that stereotypical perceptions about Native American music and culture could be effectively dispelled through multicultural music instruction (Edwards, 1994). Critical reviews of studies in this field have demonstrated that multicultural music education can be effective not only in terms of such “social justice” related objectives, but also in terms of the kinds of instructional objectives that typically serve as the rationale for any traditional mainstream music program (Abril, 2006; Hebert, in press). Nowadays, Native Americans affiliated with powerful ethnic groups tend to have some opportunities to study their own music in tribal schools. However, there appear to be very few options

for students from smaller and relatively disadvantaged tribes. If the objective of developing significant Native American music programs in schools is to be attained, clearly more work is needed at the level of music teacher education to ensure that sufficient numbers of qualified teachers are available with the specialized skills and experience necessary to effectively teach these traditions. This objective may require greater efforts to actively recruit Native American students into music teacher education programs.

A brief look at these three nations reveals that minority musics are treated in rather diverse ways, with unequal opportunities amongst minority groups within each nation examined. Previous research has suggested that despite a widespread emphasis on cultural pluralism at the policy level in many nations, effective implementation of multicultural music education has remained a considerable challenge through the first decade of the 21st century, which is evident both in actual practice and in scholarly representations of educational history (Hebert, 2009; Hebert, in press). Political and religious factors may especially represent formidable challenges in this regard, for an array of research studies has demonstrated how music is deeply intertwined with world views and cultural values (Nettl, 2005). While it is possible through a review of research to obtain relevant information regarding many current musical and educational practices, it has become clear that our question of the precedence of adult's rights versus children's rights requires further inquiry in each nation considered here. Moreover, this situation poses some fundamental questions for consideration: How might law play a positive role in the field of music education, leading to improvements in terms of both the concerns of social justice and preservation of cultural heritage? To what extent are similar conditions evident among minorities in various parts of Europe, and what lessons may we learn in this regard? With

these questions in mind, we will now proceed to consideration of how key concepts relevant to these concerns are defined and applied in the field of international law.

Key Concepts and their Applications

Some detailed discussion of specialized terminology and its application is necessary prior to embarking upon our analysis and interpretation of relevant legal documents. Specifically, the notion of soft law, the legal definition of "intangible cultural heritage", and the various kinds of legal documents in this field may require explanation.

Soft Law and Intangible Cultural Heritage

What is meant by "soft law"? Soft law is a concept that cannot be precisely defined. Usually, it is seen as a grey area between white law, i.e. legislation with clearly binding legal norms, and a black area that is not covered or regulated by law at all. As concrete examples, international treaties are usually mentioned as soft law, and recommendations and guidelines as well. These kinds of regulations may also be national in scope, although, international relations in particular tend to favor soft law-type regulation. The United Nations' conventions are typical examples, and so are conventions of international societies, such as the International Society for Music Education (ISME), or International Society for Philosophy of Music Education (ISPME) (Heimonen 2002, 168-177). On the one hand, soft law is flexible, but on the other hand, it is non-binding. This means that soft law type regulations are like recommendations, usually followed de facto,

without fear of legal sanctions. State parties can ratify United Nations' conventions, for instance, or not - that is voluntary. Compared with customary practice, soft law usually aims to create a regulatory set of norms. So, it may be considered as "hard" (from the viewpoint of content), and "soft" from the viewpoint of existence and obligation. Usually it is seen as a continuum, with hard norms at the one end, and soft at the other end. The UNESCO World Heritage list is one such example of a notable soft law program, which currently designates 890 locations worldwide as important sites of global human heritage that arguably call for respectful consideration even in wartime and periods of economic difficulty. As we consider the national cases mentioned above, notable examples include the Tongariro National Park (New Zealand), the Historic Monuments of Ancient Kyoto (Japan), and Mesa Verde (United States). The most crucial problem regarding soft law might be that it is said to be ineffective: usually there are no obligations or sanctions to put this kind of law into force. The United Nations uses a report system: states are asked to give reports on how the conventions have been put into practice, and the United Nations organizations may give the states feedback in the form of recommendations that may be critical in some cases. However, if a government prefers not to heed these recommendations or guidelines, this is legally acceptable. Moral or ethical norms and duties are outside the scope of this article; so, we will just mention that their non-legal influence is sometimes very strong, since moral norms are usually the basis of legal norms (such a close connection may be seen especially in Islamic Law, for example).

In this article, we aim to take a fresh look into soft law; rather than analyzing its limits, we will discuss its possibilities for the objective of securing minority rights. We are particularly interested in contributing to some resolution of an array of thorny issues

associated with the challenge of making "soft law" guidelines and declarations more effective, so we might avoid creating conventions that nobody in music education follows, or even knows about.

What is meant by “intangible cultural heritage”? In the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003), the term "intangible cultural heritage" is defined as referring to "the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage." The term intangible cultural heritage is applied in reference to highly significant practices, yet is to be regarded as neither fixed nor inflexible, although this kind of cultural heritage is said to be "transmitted from generation to generation," since it is also "constantly recreated by communities and groups in response to their environment, and their interaction with nature and their history." The relation between heritage and a sense of identity is also mentioned as follows: this kind of heritage provides human beings with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. The following limitation is made for the purposes of the Convention: "consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development": "Intangible cultural heritage" is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional

craftsmanship. While we recognize that the aforementioned UN Convention (2003) includes musical practices, we also must recognize that institutions such as the United Nations (with its normative instruments) are imperfect, and this declaration may be regarded as merely a kind of idealistic global position statement rather than a mandate with any form of accountability. Various institutions associated with the United Nations have faced legitimate criticisms for being undemocratic (e.g., often just a few states are allowed to use power in decision-making) and ineffective (e.g., offering mere recommendations with little accountability nor incentives or penalties) (e.g., Patomäki & Teivainen 2003). Consequently, the declarations of such institutions often remain completely unknown to school teachers and appear at times to have little practical impact. However, we also see evidence that some international “soft law” treaties have produced positive results in terms of human rights, minority rights, and children’s rights. Bearing in mind our earlier discussion about the commonalities between music and language, and how music is also a critically valuable form of communicative discourse closely linked to the preservation of cultural identity and heritage, we assert that there is just as valid an argument supporting the advancement of relatively stronger forms of soft law treaties for music as for language. This may be a novel assertion, yet one that we find to be philosophically sound. In terms of the national cases introduced above, relevant examples would include legal efforts to promote sustenance of hiva kakala songs among the Tongan migrant community of New Zealand, of samulnori among the Zainichi Koreans in Japan, and of powwow performance among various Native American communities, all within the context of public education. Writing from Finland, we naturally also acknowledge the

modicum of attention currently given to Sami (Laplander) music traditions in some Finnish schools.

Protection of Cultural Ownership

How might we plan the development of an international network capable of producing meaningful treaties regarding music rights, and how would such treaties be ratified, implemented, and evaluated with accountability mechanisms based on the abilities of each signatory nation? Could a system resembling recent developments in environmental law be devised, enabling incentives to be offered to nations that succeed in attaining mutually agreed upon standards in the area of cultural policy? Such questions must be considered in light of the fact that there is enormous economic inequality among nations, and some have far greater resources than others by which to enact such reforms. However, soft-law treaties would be flexible; they would resemble more the idea of "law as rhetorics" than hierarchical, imperative state-law. Soft law allows a sociological perspective into the enactment of law: a discursive, argumentative view of norms that resemble cultural norms, rather than imperatives (Petersen 2005). Does soft law offer sufficiently effective protection of minority rights? The question of the rights of minority cultures, and how to protect them, is relevant in France, for instance, a country that has a long and well-known tradition of enacting national legislation, from the time of the Code Napoleon. Breillat (n.d.) describes the situation there as follows:

There is no place for regional languages and cultures in a France which intends to put its mark on Europe, said President Pompidou on June 14th, 1972, in Sarre-Union, a small town located in Alsace, a French region where the dialect is deeply rooted and very rich. However, ten years later, President François Mitterrand declared in Lorient, the Mecca of the Breton and Celtic culture: "The time has come for a statute of the languages and cultures of France which recognizes in them a true existence. The time has come to open the doors of schools, of radio and television in order to allow their diffusion and to give them the place they deserve."

As we can see, national legislation may be used to protect minority cultures, and promote their status within a state, or politicians may sometimes advocate the opposing position. Compared with soft law, this kind of law is usually felt to be a more effective way of securing activities and the rights of minority cultures.

A discursive view on rights to "one's own music" leads to the notion that in contemporary multicultural societies it may be very difficult to know what actually qualifies as "one's own music." Different musical genres are mixed; a process of fusion is continuously ongoing (Eskola 2009, 34-35). Sometimes it is even difficult to determine who can be counted as representative of a particular minority group since children may have one parent from a majority culture, while the other identifies with a minority group. Moreover, as the example of Finland shows, when special state financial support is allocated specifically to immigrant artists to support their artistic activity (and to promote their integration into the Finnish society), such practices may in time be criticized by immigrant artists themselves; many resist the idea of being granted support based on their minority status as opposed to their expertise and talent in the arts (Kuusisaari 2009a, 5). Moreover, an ensemble specializing in Arabic music in Finland is said to perform Arabic music more "purely" than this music is performed nowadays in Arabic countries; so, Arabic

musicians might conceivably ask a Finnish musician how to authentically play "their own music". Presently, a music school in Vantaa (Finland) is planning to offer a programme in Arabic music taught by members of the aforementioned ensemble (Kuusisaari 2009b). This means that an ongoing discussion may determine what is regarded as "pure" music of a minority group, and that this music may be performed not only by minorities themselves but also by representatives of the majority groups in a society. In contemporary multicultural societies, facing the conditions of globalization, to what extent is there still a need to protect minority rights, and by what means? We will next shed some light on soft law instruments that aim to protect minority rights in this field.

Specific International Declarations, Charters, Conventions

Declarations, conventions, and charters are all used by the United Nations and its affiliated organizations. A declaration is an official statement, and a charter or convention is a document based on the official position or intentions of an organization, which may or may not be ratified by the state, thus in actual practice absent ratification there is often little noticeable difference between these kinds of documents, which are variously defined. Such documents are regarded as instruments of soft law, as defined above. We will now consider the implications of some relevant legal developments in this area, specifically one United Nations convention, a United Nations declaration, a UNESCO Convention, and a charter of the Council of Europe.

United Nations Convention on the Rights of the Child

In 1989, a convention was adopted by the UN, entitled United Nations Convention on the Rights of the Child (United Nations, 1989). This convention (which followed the

Declaration of the Rights of the Child) aims to protect the rights of children (i.e., persons under the age of 18). The convention's 54 articles cover numerous issues relevant of the life of each child in the world, including rights to life, education, health, etc. Several of its articles are closely connected with education, and it has even been stated that aims in the United Nations' declarations may serve as the fundamental legal basis for education in all fields. The following articles, in particular, are connected with music education: The third article, including the principle of the best interest of the child, is applied especially in matters concerning children, and has been applied in music education. This principle (one of the fundamental principles in child law) states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." This principle resembles the principle of "a good relationship to music," one of the key principles in the Finnish framework curricula for basic arts education in music. The child's best interests principle has been adopted in some Swedish cultural schools referring to a flexible, child-centered education in music that takes into account the needs of every child (Heimonen 2002). The fourth article promotes the cultural rights of children, and article 27 says that children have the right to a standard of living adequate to the spiritual, mental and social development of each child. Article 29 is of special interest of the viewpoint of music education since it states that education should be directed to promote the development of the child's talents and personality to their fullest potential. Article 30 is of relevance especially regarding ethnic, religious or linguistic minorities. It indicates that states must ensure minority children have the right to enjoy their own culture and to practice their own religion and use their own language. According

to article 31, children have the right to rest and leisure and to engage in recreational activities appropriate to their age. Moreover, this article secures the rights of children to participate freely in cultural life and the arts. Equal opportunities to cultural, artistic, recreational and leisure activities are to be encouraged by the states. This Convention celebrates its 20th anniversary this year with various events in schools, for instance, promoting the right of each child to express oneself and to take part in cultural activities (Eurochild, n.d.). This convention is often discussed by Japanese music educators, both in music curricula and research publications, and it similarly receives some attention in New Zealand schools, but there appears to be little evidence of its impact on North American music education.

European Charter for Minority and Regional Languages

In 1992, the Council of the European Union adopted a landmark charter recognizing the importance of respecting and preserving minority languages across Europe (Council of Europe, 1992). Promotion of minority languages is seen as an important contribution to principles of democracy and cultural diversity within this unique document. Article 1 defines the concept "regional or minority languages" to mean languages that are traditionally used (a) within a state (b) by nationals of that state (c) who form a group numerically smaller than the rest of the state's populations; and (d) that these languages are different from the official language(s) of that state. However, article 1 does not include dialects of the official languages mentioned above, nor does it include languages of migrants. Education is included in Article 8, in which pre-school, primary, secondary, vocational, higher, and adult and continuing education are mentioned, and the right to receive such education in the relevant regional or minority language is secured. How could

this Charter affect minorities' rights to music education? The relevance for music education of this kind of charter protecting minority rights will be one of the questions for future research, since the cases mentioned above are taken from outside of Europe.

United Nations Declaration on the Rights of Indigenous Peoples

In 2007, the UN developed and voted upon its United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2007). At this time, 143 Member States voted in favor, with 11 abstaining and four – Australia, Canada, New Zealand and the United States – voting in opposition to the declaration. The relevance for music education will be examined in future research. This Declaration promotes "the individual and collective rights of indigenous peoples." It aims to secure their rights to culture and education and emphasizes their rights to maintain and strengthen their own institutions, cultures and traditions. On one hand, it promotes their full and effective participation in all matters that concern them, and on the other hand, it promotes their right to remain distinct. Educational rights are promoted in Article 14, according to which these peoples have the right to establish their educational institutions providing education not only in their own languages but also in a manner appropriate to their own cultural methods of teaching. Children, in particular, have the right to public education, including the right to an education in their own cultural heritage. Article 18 supports these peoples' rights to participate in decision-making, and to maintain as well as develop their own decision-making bodies. Article 24 aims to secure indigenous peoples rights to their traditional medicines and health practices, and, on the other hand, their equal rights to receive the highest attainable standard of physical and mental health. Spiritual rights are promoted in Article 25, and the right to lands and territories in Article 26. Visual and performing arts

are mentioned in Article 31, according to which indigenous peoples have the right to maintain, control, protect and develop their traditional cultural expressions, as well as manifestations of their cultural heritage, including oral traditions and performing arts. As mentioned earlier, the only four nations that opposed this declaration were major western powers in which highly significant populations of indigenous peoples may be found. Despite the position taken by the governments of New Zealand and the United States, various indigenous people's organizations, especially the World Indigenous Nations Higher Education Consortium (WINHEC), have been active in promoting research and policy writing that supports reconsideration of this declaration within non-signatory nations. In recent decades, as the population of Ainu have dwindled to such an extent that cultural survival becomes a genuine concern, the Japanese government has instituted more programs to support these indigenous people of its far Northern territories. Similar programs, including arts-related projects, have been instituted for Okinawans in the southernmost reaches of the Japanese archipelago, but Zainichi Koreans appear to have not yet received a significant form of similar recognition.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage

Education is also mentioned in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003). According to its Article 14, each state party shall endeavour, by all appropriate means to ensure respect for the intangible cultural heritage in society, in particular through educational and training programmes within the communities and groups concerned. The Convention (2003) acknowledges that "the processes of globalization and social transformation, alongside the conditions they create

for renewed dialogue among communities” include both opportunities and “grave threats” that include “destruction of the intangible cultural heritage.” It also states that “communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity.” In China, the Uyghur Mukam Music of Xinjiang has reportedly received additional support through its formal acknowledgement via nomination to this convention (Editorial, 2005). The relevance of this convention for music education in various nations certainly appears to require examination in future research.

Problems of Practical Application in Music Education

The challenges associated with applying the aims and recommendations of the aforementioned conventions in music education are related to the fact that very few teachers are aware of these conventions. Teachers generally appear to be unaware of their existence, and therefore have no opinions on the contents of these conventions. Even if we assert that the aims in these conventions is to some extent described more specifically in special by-laws of international societies, such as of the International Society for Music Education, information even in this form appears to only seldom reach the musical and educational practice in schools and studios. If information is offered, teachers may not have knowledge or experience of how to adapt and apply these conventions in practice, although there might be several justifications and rationales to be adapted into music education if they were known by teachers and educational administrators.

Included above are a United Nations convention, a United Nations declaration, a UNESCO convention, and a European Commission charter. These documents are examples of soft law instruments that might have relevance for music education. Obviously, the European document is only applicable to Europe, yet some features of this document and its enactment may have enabled its effects to be felt relatively strongly in comparison with the other documents mentioned here. The United Nation's Convention on the Rights of the Child has some relevance for music education in the Nordic countries, for instance. In fact, the example of the influence of this principle in Finland might show how soft law may become binding when the principles of it are included in national legislation or national guidelines and framework curricula.

Concluding Remarks

As ethnomusicologist Martin Stokes (1994) has observed, “music is socially meaningful not entirely but largely because it provides means by which people recognize identities and places, and the boundaries which separate them” (p.5). In our view, this prominent feature of musical meaning resonates with a salience that particularly striking for indigenous people, including, for example, the Sami of the Nordic region (Todal, 2003). Although it appears that ethnic minorities in many nations arguably have a right to receive instruction in “their own” music, at the same time we must recognize that musical traditions are constantly evolving and fusing through rapid globalization, and there is an obligation to offer an array of global musics in education to the extent that this is realistically possible. Again, this would bring music instruction more closely into line with

the model of foreign language instruction offered in schools. English is typically offered as a major international language, comparable in some ways to contemporary popular music and European classical art music. However, some schools may also offer Chinese, Spanish, or Arabic: languages which open a new world of opportunities to students (much like music from Africa or India), or schools may even offer instruction in a basic topic such as mathematics in Swedish, Sami, or Russian language, for example, so students may simultaneously preserve knowledge of their native tongue while learning new material. This may be compared with other cultural immersion programs in which traditional songs play a vitally important role as part of the rituals of school culture. Education is mentioned in the United Nations Convention on the Rights of the Child (Art. 24), and its articles open the door to national legislation of the countries that have ratified it. Although music is not directly mentioned, some music schools in Sweden have referred to the principles of this Convention. (UN Convention 1989; Nilsson 2006; Heimonen 2008.) In theory, children appear to have some rights of access to music related activities, yet in actual practice it is unclear in each of these nations whether the rights of adults (e.g. teachers, parents, state officials, etc.) are taking precedence over those of children. Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples from 2007 states that

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected.

Here we would interpret “oral traditions” as including music, since this category is listed directly after “languages.” Research on musical practices throughout the world has clearly demonstrated the extent to which music is inextricably connected to language and culture in traditional societies, which brings us directly to our conclusions.

Coda: IRME Strategy

We will conclude by proposing our initial sketch of a tripartite model for supporting the objectives of pluralism and minority rights in music education through international research and policy development: the Information-Sharing, Research and Music Education Strategy, or "IRME Strategy".

1. Information

One of the most important means for enhancing the influence of soft law is to systematically inform both policy-makers and the public about existent declarations and guidelines. United Nations organizations (e.g. UNESCO) have criticized Finland, for instance, for not having widely disseminated information regarding its Convention on Children's Rights. It seems important to determine the extent to which musicians, professors, and music pedagogues even know about the contents of UN conventions that are related to music. Moreover, authorities of National Boards and Ministries of Education, state authorities and municipalities that are responsible for both cultural policy and financial backing of the arts and education should be provided information on soft law treaties related to music and related arts. This issue is particularly a challenge for enormous nations, such as the United States, in which educational policy is mostly decided

at the local rather than national level. Innovative procedures that make use of the latest technologies may need to be developed for the wider dissemination of relevant information in this field. Development of a Virtual Center, for example, with formal relationships to relevant organizations and educational boards, appears to be an especially promising proposition that could harness the latest technologies for information-sharing, leading to measurable improvements in this area.

2. Research

Systematic research is sorely needed on music education practices among minority cultures with particular attention to this complex issue of music rights. Moreover, research is needed on the effects of various soft law treaties on music and others arts. How is "intangible cultural heritage" interpreted in practice in various societies, for instance? The content of soft law treaties seem to include numerous aims that are admirable in theory, yet little is known regarding their actual effects in practice. Specific themes that require further research include the following: Under the conditions of globalization, how do changing patterns of migration, new media technologies, and cultural hybridity affect the musical identities of minority youth in schools? In what ways, and to what extent, do the legal and educational systems of contemporary societies contribute to the sustainability of both mainstream and minority musical traditions? Research findings must also be more effectively communicated to the public, which is why this Research branch of the IRME Strategy naturally integrates with the aforementioned Information-Sharing branch, particularly through the use of new technologies that enable rapid and global dissemination of ideas through the internet.

3. Music Education

Music education at all levels - namely, guidance and effective support for innovation that engenders measurable improvements to the actual practice of music teaching and learning - is one of the most vital aspects of this strategy. Music education requires creative innovation in order to remain relevant to the contemporary world, and dissemination of information and rigorous research is necessary in order to provide robust foundations by which to guide systemic curricular and pedagogical improvements that serve to strengthen the practice of music education (Schippers, 2009). In higher music education, particularly in the education of professional musicians and in music teacher training, the contents of soft law treaties – at least the most important ones – may need to be explicitly discussed with students. In fact, it is the teachers that in many cases will apply these treaties in practice, in classrooms and studios, if these documents are to be of any practical value. Moreover, in the education of future cultural administrators and politicians, and in arts management, it is most important to provide reliable knowledge of soft law. This is partly because convincing justification for investment in the arts can be found within these international conventions.

As a conclusion, further research and policy development is sorely needed on music education practices among minority cultures with particular attention to this complex issue of music rights. Due to the inherent epistemological threats associated with the interpretation of diverse studies, we propose that future studies in this field would best be implemented in a coordinated fashion with unified methodologies and analytical procedures, in the context of carefully designed international-comparative projects.

References

- Abril, C. R. (2006). Learning outcomes of two approaches to multicultural music education. *International Journal of Music Education, 24*(1), 30-42.
- Benhabib, S. (2004). *The right to have rights*. Cambridge: Cambridge University Press.
- Boyea, A. (2000). Teaching Native American music with story for multicultural ends. *Philosophy of Music Education Review, 8*(1), 14-23.
- Boyea, A. (1999). Native American music and curriculum: Controversies and cultural issues. *Philosophy of Music Education Review, 7*(2), 105-117.
- Breillat, D. (2001). The European charter for regional or minority languages: The French case. Paper for the Coimbra-Group Conference "Migration, Minorities, Compensation," Siena, Italy.
- Burton, B. (1994). Preservation, destruction or evolution? The impact of music technology upon Native American musics. *ISME Yearbook (Musical Connections: Tradition and Change), XXI*. Tampa, FL: International Society for Music Education.
- Caron, B. R. (1997). *Performing democracy: Kyoto's Higashi-kujo Madang festival as a counter-public event*. Ann Arbor: Proquest/UMI.
- Constitution of the Republic of South Africa No 108 of 1996. Retrieved from <http://www.info.gov.za/documents/constitution/index.htm>
- Council of Europe. (1992). *European charter for regional or minority languages*. Brussels: European Union. Retrieved from <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>
- Crossley, M., & Watson, K. (2003). *Comparative and international research in education: Globalisation, context, and difference*. London: Routledge.

- Editorial, (2005). Intangible Cultural Heritage. *China Heritage Newsletter*, 2. Retrieved from <http://www.chinaheritagenewsletter.org/editorial.php?issue=002>
- Edwards, K. L. (1994). *North American Indian music instruction: Influences upon attitudes, cultural perceptions, and achievement*. Tempe, AZ: Arizona State University.
- Eskola, K. (2009). Afrikkalainen mielen ja ruumiin kuntokoulu (An African fitness school of mind and body). *Rondo* 5, 34-35.
- Eurochild (n.d.). *Eurochild: Promoting the welfare and rights of children and young people*. Retrieved from: <http://www.eurochild.org>
- Gilbert, M. T. S. (2005). The Hopi followers': Chief Tawaquaptewa and Hopi student advancement at Sherman institute, 1906-1909. *Journal of American Indian Education*, 44(2), 1-23.
- Hebert, D. G. (in press). Ethnicity and music education: Sociological dimensions. In R. Wright (Ed.), *Sociology and Music Education*. Aldershot: Ashgate Press.
- Hebert, D. G. (2009). Rethinking the historiography of hybrid genres in music education. In V. Kurkela & L. Vakeva & (Eds.), *De-Canonizing music history* (pp. 163-184). Newcastle: Cambridge Scholars Publishing.
- Heimonen, M. (2002). *Music education & law: Regulation as an instrument*. Helsinki: Sibelius Academy (Studia Musica, 17).
- Heimonen, M. (2008). Music education as one aspect of cultural and welfare rights. *Nordic Research in Music Education Yearbook* 10, 245-258.
- Hornberger, N. H. (1998). Language policy, language education, language rights: Indigenous, immigrant, and international perspectives. *Language in Society*, 27, 439-458.

- Isoda, M. (2009). The concept of multicultural symbiosis in the Kyoto Higashi-Kujyo Madang festival: Research toward construction of multicultural lesson plans for Korean-Japanese music. *Kokusai Rikai Kyoiku*, 15, 44-59.
- Johnson, M. (1994). *Moral imagination: Implications of cognitive science for ethics*. Chicago: University of Chicago Press.
- Kuusisaari, H. (2009a). Ei etnoa eikä eksotiikkaa (Not ethno, nor exotics). *Rondo* 5, 5.
- Kuusisaari, H. (2009b). Arabialainen musiikki pyrkii musiikkiopistoon (Arabic music applies for music school). *Rondo* 5, 36-37.
- May, S. (2009). Critical multiculturalism and education. In J. A. Banks (Ed.), *Routledge international companion to multicultural education* (pp. 33-48). New York: Routledge.
- May, S. (2001). *Language and minority rights: Ethnicity, nationalism and the politics of language*. London: Longman.
- May, S. (Ed.). (1999). *Indigenous community-based education*. Clevedon: Multilingual Matters.
- Nettl, B. (2005). *The study of ethnomusicology: Thirty-one issues and concepts*. Urbana: University of Illinois Press.
- Nieminen, L. (1990). *Lasten perusoikeudet*. Helsinki: Lakimiesliiton Kustannus.
- Nilsson, S. (2006). *New Directions: Transforming the Stockholm school of the arts*. Stockholm: Katarina Tryck.
- Nozick, R. (1974). *Anarchy, state and utopia*. Oxford: Blackwell.
- Ogawa, M. (2004). Music teacher education in Japan: Structure, problems, and perspectives. *Philosophy of Music Education Review*, 12(2), 139-153.

- Okinawa Prefectural Government (2004). This is Okinawa. Retrieved from http://www.pref.okinawa.jp/english/thisis/images/this_is_okinawa.pdf
- Patomäki, H., & Teivainen, T. (2003). *Gloaali demokratia*. Helsinki: Gaudeamus.
- Petersen, H. (1998). On law and music: From song duels to rhythmic legal orders? *Journal of Legal Pluralism and Unofficial Law*, 41, 75-87.
- Raz, J. (1988). *The morality of freedom*. Oxford: Clarendon.
- Schippers, H. (2009). *Facing the music: Shaping music education from a global perspective*. Oxford: Oxford University Press.
- Siltala, R. (2003). Response to Marja Heimonen, Music Education and Law. In *Dialogue. Philosophy of Music Education Review*, 11(2), 185-193.
- Smith, L. T. (1999). *Decolonizing methodologies: Research and indigenous peoples*. London: ZED Books.
- So, J. (2001, January 30). Teaching and learning Harrah's opus. *The Daily of University of Washington*. Retrieved from <http://archives.dailyuw.com/2001/013001/N1.yakimafeat.html>
- Soto, A. C., Lum, C., & Campbell, P. S. (2009). A university school music partnership for music education majors in a culturally distinctive community. *Journal of Research in Music Education*, 56(4), 338-356.
- Stokes, M. (Ed.). (1994). *Ethnicity, identity and music: The musical construction of place*. Oxford: Berg.
- Thompson, R. (2008). The music of Ryukyu. In A. M. Tokita & D. W. Hughes, (Eds.), *Ashgate Research Companion to Japanese Music* (pp. 303-322). Aldershot: Ashgate.
- Thwaites, T. (2008). Music education in a new key: The dissonance of competence,

- connectedness, culture and curriculum. *New Zealand Journal of Research in Performing Arts and Education*, 1. Retrieved from <http://www2.drama.org.nz/?p=391>
- Todal, J. (2003). The Sami school system in Norway and international cooperation. *Comparative Education*, 39(2), 185-192.
- United Nations Convention on the Rights of the Child (1989). New York: United Nations. Retrieved from <http://untreaty.un.org/English/TreatyEvent2001/pdf/03e.pdf>
- United Nations Declaration on the Rights of Indigenous Peoples (2007). New York: United Nations. Retrieved from <http://www.un.org/esa/socdev/unpfii/en/drip.html>
- United Nations Educational, Scientific and Cultural Organization (2003). *Convention for the Safeguarding of the Intangible Cultural Heritage*. Paris: UNESCO. Retrieved from <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>
- United States Department of Education (1991). *Indian Nations at risk: An educational strategy for action*. Final report of the Indian Nations at Risk task force. Washington, DC: U.S. Department of Education. Retrieved from <http://www.tedna.org/pubs/nationsatrisk.pdf>
- Wikan, U. (2002). *Generous betrayal: Politics of culture in the new Europe*. Chicago: University of Chicago Press.

Authors' Note:

The first version of this paper was presented at the Beyond Musicology conference in Turku, Finland (University of Turku, 27 March 2009). We would like to express our sincere thanks for the insightful comments of audience members, particularly Tia DeNora and Richard Leppert.