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THEMATIC SECTION

Children’s rights at 21: policy, theory, practice
The Political Construction of Children’s Rights in Education – A Comparative Analysis of Sweden and New Zealand

Ann Quennerstedt*

Abstract
The study presented in this paper examines and compares how issues of children’s rights in education are constructed in policy in two nations: Sweden and New Zealand. Claims for human rights for children originate from international human rights agreements, but have to be incorporated into national policy. The central interest of the analysis is the process of the contextualisation of human rights, in which rights are transformed from their expressions at the universal level to concrete interpretations in a particular policy of an individual state. Similarities and differences in the political constructions of children’s rights in education in the two nations are identified, and their expression in policy is discussed as embedded in national particularity.

Keywords: children’s rights, human rights, comparative analysis, education policy, policy analysis

In recent years education has been increasingly discussed from a perspective of rights. A reason for this can be found in the growing worldwide attention given to human rights, and especially to children’s human rights, as expressed in the United Nations Convention on the Rights of the Child (CRC) (1989). The CRC provides a foundation for developing policies and making decisions about children, and signatories to the convention have committed to it as a starting point for change in society that will improve children’s lives and secure the human rights that are acknowledged for children. Education has been established as one of the human rights of the child, not only in the CRC, but also in several other human rights instruments (e.g. UN 1948; Council of Europe 1950). Not simply the right to access and receive education, but also the general aims of education and the role of education to respect and further develop the child’s possibilities to enjoy and enact his or her rights, are given attention at international levels as rights issues connected to education. However, since international treaties are often the result of compromise and intended to guide implementation in nations with disparate cultural, political and economic conditions, rights to and in education are expressed in international documents at a level of principle. Questions of how education can be understood as a matter of rights, and

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which aspects of education are particularly significant from the viewpoint of rights, are therefore open to interpretation.

The study presented in this paper examines and compares the outcome of the process of interpretation in which universal claims of the child’s rights to and in education are incorporated into the specific cultural, political and economic contexts of two individual states. Policy in two nations is analysed: Sweden and New Zealand. The specific aim of the analysis is to identify similarities and differences in the political constructions of children’s rights in education in the two nations, with regard to aspects of education that are proclaimed in policy to be matters of rights of the child. By giving a wide and comparative picture of policy formation regarding children’s rights in education, the analysis is expected to contribute to a better understanding of how universal rights claims may affect national policy, and how national particularity may affect how universal claims are interpreted.

**Children’s rights and education**

The idea that children are people like anyone else and are therefore holders of human rights is actually relatively new. Traditionally, children have been regarded as the possessions of their parents, and it is only in the last half century that the status of the child has developed from being someone’s property to being a human being in their own right (Hart and Pavlovic 1991; Quennerstedt 2009a). It is often pointed out (e.g. Alderson 1999; Bennet and Hart 2001, Quennerstedt 2010a) that children’s rights are part of a broader human rights framework. Various activities in the international arena during the latest few decades to pronounce and support rights for children is a result of the ongoing expansion of human rights, in which new groups are acknowledged as rights holders (Bobbio 1996).

The right to education is mainly regarded as a social human right (distribution of welfare and societal goods by the state). However, education stands out as a social right with special implications since it is a springboard to the civil and political rights for self and others. Civil rights encompass the right to life (including the right to security of the person), freedom rights (speech, conscience and religion), ownership rights and the right to equal value. Political rights acknowledge each person’s right to participate in the free formation of public opinion and to influence the exercise of political power. The CRC states that the child’s education not only aims to develop knowledge and skills, but also to develop respect and appreciation of human rights and of values such as tolerance, equality and friendship among people (Article 29). Being an important means of achieving other human rights, the right to education cannot only be addressed as a matter of welfare distribution in terms of having access to education. Its close connection to the full range of human rights also calls for considerations concerning how educational content, teaching methods and relations between adults and children in early childhood and school settings both respect the human rights of the child, and support the further devel-
The development of the child’s capability to enjoy his or her rights and to protect the rights of others (Lansdown, 2001).

**The link between transnational agreements and national policy**

Seyla Benhabib has in her work examined how international law and the autonomy of a democratic citizenry can be understood as being linked. Benhabib (2004) argues that universal human rights and citizens’ sovereign self-determination are both necessary foundations for the democratic state. A democratic state’s claim for sovereignty is first of all regarded as legitimate through the existence of a democratic constitution and, secondly, by this constitution’s conformity with universal principles of human rights.

Human rights and national sovereignty could be understood as contradictions in that universal rights transcend the national context while the autonomy of a people is highly directed towards the situation within the boundaries of a nation. Benhabib (2004) argues that, in contemporary society, the importance of international agreements and international law has increased to the extent that it is now possible to talk about a “human rights regime”. One consequence of such a regime is that state sovereignty is frayed: in some cases, national claims for the privilege of making decisions about citizens’ conditions are internationally contested with reference to norms or principles deriving from human rights (Benhabib 2007). Consequently, states are no longer sovereign in the sense that they can decide whatever they like; not even if the decisions that are made adhere to democratic procedures. Instead, the actions of states are monitored and reviewed from the viewpoint of internationally acknowledged norms.

Benhabib claims that rights cannot be viewed as pre-political but must instead be understood as open to renegotiation and reinterpretation by the sovereign people (within limits). Through a constantly ongoing process of national reformulation, the commitments articulated in transnational agreements are brought into harmony with the particular political, cultural and social situation of a specific state. There is accordingly “a space of interpretation and intervention between transcendent norms and the will of democratic majorities” (Benhabib 2004, p.181). Benhabib examines this space by developing the concept of *democratic iterations*:

Democratic iterations are complex processes of public argument, deliberation, and learning through which universalist right claims are contested and contextualized, invoked and revoked, throughout legal and political institutions as well as in the public sphere of liberal democracies (2004, p. 19).

To Benhabib, the concept of “iteration” provides a tool for understanding the recreation and re-interpretation of meaning that takes place in public conversations in various arenas, for instance policy and law. In this way, there is an opening for democratic argument and deliberation in the space between universal norms and
the will of democratic majorities (Benhabib 2007). The people of a democracy need, through deliberation and formation of public opinion, to assume policies and legislation that correspond with international norms. At the same time, however, through democratic iterations the meaning of human rights, expressed in national policy, will change in various directions. The rights will be understood in new ways compared to authoritative originals and previous interpretations. Benhabib (2007) underlines that, while justification for sovereignty is needed in a democratic state, the outcomes of democratic iterations are not necessarily positive in the sense that policies, law, discourses and public opinion will support the intentions in international human rights legislation. In other words, the democratic iterative process might also result in policies and decisions that other nations consider as contravening human rights.

**Design of the study and the analysed material**

An overarching objective of comparative policy research is to better understand the larger political world. By comparing nations, the research aims to clarify, understand and explain how political phenomena and processes take shape in different or similar ways (Landman 2008). Landman (2002) argues that comparative approaches have a lot to contribute to the field of human rights research. The interest in comparative human rights research has often been to examine or ‘measure’ the protection of human rights in different nations, which means that the right(s) measured is defined in advance. The objective of the comparison presented in this paper is different, however, in that it does not aspire to compare the extent to which a pre-defined right is met and protected. Instead, the interest is to compare how rights issues in the field of education take shape in policy as a result of the process of human rights contextualisation.

The study was carried out in two steps. In the first step, an analysis of authoritative national political documents was carried out separately for each state. The documents included in the study were selected from a larger accumulation of material. Criteria for inclusion were twofold: first, that both education and rights were discussed in the document; second, that the document could be regarded as an authoritative document in the sense that it constituted an important element in the formation of government policy (Englund & Quennerstedt 2008). Documents were considered as authoritative if they were core documents for the education sector, if they had the character of programmatic statements from the government, or if they were closely associated with the respective nation’s work to promote human rights. Authoritative documents are also frequently referenced and quoted in other documents.

The research method was text analysis. Text analyses are undertaken by repeated readings of documents. The first readings are selective and aim at identifying which texts to include. The following analytical readings are done from different perspectives; it can be described as putting on new ‘glasses’ for every reading. The idea is to slightly change the angle of approach between the readings by posing different and increasingly distancing questions to the material, thus making new insights possible.
The three questions asked were: What matters of education are related to children’s rights? Why are these matters of rights – underlying arguments? How can the arguments be related to civil, political and social human rights? Gradually, patterns and regularities develop from the readings. The result of the text analysis of national policy documents was the identification of a range of issues in education that are constructed in policy in the respective nations to be matters of children’s rights. The findings have been reported in Quennerstedt 2010b (Sweden) and in Quennerstedt 2009b (New Zealand).

In the study’s second step, the findings from the text analyses were brought together and compared. First, the respective political constructions of children’s rights in education in the two nations were put side by side. This comparison aimed to identify similarities and differences in the political constructions. Second, to explore how the identified similarities and differences might be understood as a result of the meeting between universal claims and particular circumstances, assertions expressed at the international level were set against the two nations’ political constructions of children’s rights issues in education. Explanations for the similarities and differences were also sought in the particular circumstances of the respective nation in terms of cultural, political and economic traditions and conditions.

Sweden and New Zealand share a host of common features, but there are also substantial differences between them. Both nations are stable and wealthy Western democracies and have extensive welfare systems, including renowned education systems. Both nations have also signed the UN Universal Declaration of Human Rights and the UN Convention on the Rights of the Child. Some differences between Sweden and New Zealand are, apart from geographical location, the nations’ histories and the character of the population. New Zealand’s dramatic colonial history differs greatly from Sweden’s peaceful and fairly harmonious recent history. The population of New Zealand includes two main groups: descendents of Europeans (78%, mainly British) and the indigenous Māori people (15%). The country’s two largest immigrant groups are the Pacific Island and Asian people. Up to the 1970s the Swedish population was fairly homogenous. Since the 1980s, however, the immigration of a variety of ethnic and cultural groups to Sweden has meant that these now make up about 20% of the population. The largest non-Nordic cultural/ethnic groups are Iraqi, Iranian, Somali and people from the Balkan area. If New Zealand can be described as bi-cultural, Sweden can be characterised as multiethnic with one dominant culture. Another dissimilarity between the nations is the different educational traditions, which are expressed both in the organisation of the education system and in the values and relations in education.

Findings
An overview of the major rights issues and the minor rights issues identified in the study’s first step is provided in Table 1. The major issues stand out as the most im-
important matters of rights in relation to education. They are discussed in many of the studied political documents, often thoroughly and at great length. The major issues also often relate to recent reforms and other political initiatives. Concerning the minor issues – although they are discussed in policy documents as being connected to children’s rights – their scope as rights issues is limited. The most important issues are found at the top of the listings.

Table 1
Rights issues in education in Sweden and New Zealand as constructed in policy

| Sweden                          | New Zealand                          |
|---------------------------------|--------------------------------------|
| **Major rights issues:**        | **Major rights issues:**              |
| Student influence               | Culturally responsive education       |
| Participation in early childhood education | Participation in early childhood education |
| Teacher’s knowledge about children’s rights | Learning outcomes          |
| Value formation                 | Value formation                       |
| Bullying                        |                                      |
| Right to education              |                                      |
| Learning outcomes               |                                      |
| **Minor rights issues:**        | **Minor rights issues:**              |
| Educational rights of students with disabilities | Bullying                            |
| Public funding                  | Educational rights of students with disabilities |
| Educational rights of students from minority groups | Costs of education for families |
| Children’s knowledge about their rights | Disciplinary measures |
|                                 | Student influence                     |

A number of the identified issues are constructed in both countries’ policies as matters of children’s rights in education. Some of these common issues have similar meanings and importance, and other common issues show differences in underlying meaning as concerns how much emphasis is given to the issue. Some issues are specific to one of the countries and do not appear at all in the other. In the following, the rights issues will be examined and discussed in three groups: 1) Common issues – similar meaning; 2) Common issues – disparate meaning; and 3) Diverging issues.

1. Common issues – similar meaning

The first common rights issue which is understood in policy in the same way in both nations is participation in early childhood education (ECE). Access for all children to ECE is held to be one of the most important matters of rights in the area of education (NZ Ministry of Education 2002, Skr 1999/2000:137). In both New Zealand and Sweden, ECE is situated within education policy and considered to be the first step in the education system. The right to education has thereby been extended in the studied nations to include ECE, even though the CRC does not state education before formal schooling to be a right of the child. Both nations have directed much policy attention to ECE, both in terms of attempts to improve quality, for example by raising qualification demands for teachers and in terms of removing barriers for access. With the purpose of increasing participation in ECE, both nations have car-
ried out large and expensive reforms to give children 15-20 hours free ECE per week (NZ Ministry of Education 2008a, Skr 2003/04:47). The motives for the reforms are that all children should have an equal opportunity to enjoy the benefits of ECE and that no child should be excluded due to formal regulations or fees.

Being a social human right, education is a societal good to be distributed to all equally. Questioning and deliberating on which education is to be arranged and financed by the state in order to meet this right are thereby important features in the contextualisation process. To explain why both nations have come to expand the scope of the right to education to include ECE, several aspects have to be taken into account. First, supranational pressure is being exerted on nations to increase children’s access to ECE, even though it is not a formal right of the child in the sense of being stated as such in international human rights legislation. In a General Comment (UN 2001), the UN Committee on the Rights on the Child, charged with guarding the implementation of the CRC, claims that ECE is connected both to the child’s right to development and the right to education. Second, a shift in the societies’ general view of ECE was already underway in Sweden and New Zealand when children’s rights first became a policy issue, paving the way for the rights perspective. A third aspect is the wealth of both nations, which means that the studied nations have access to the resources needed for extending the right to education to include ECE.

A second common rights issue that is similarly interpreted in policy is value formation. Both nations construct children receiving an education that cultivates the important values of society as a rights issue. Having embraced a certain value base is considered decisive for the child’s present and future capacity to live harmoniously in society and to act for societal change together with others. The responsibility of the education system for arranging an education that develops such values is clearly articulated in both nations’ policies (NZ Ministry of Youth Development 2008, Skr 2001/02:83). However, the values that education is expected to cultivate differ somewhat between the nations. Both nations emphasise some of the range of values expressed in Article 29 in the CRC as the aims of education. In New Zealand policy, the value of diversity and difference is accentuated, and education is given a central role in fostering tolerance and understanding of difference; embracing diversity is something positive and desirable (NZ Human Rights Commission 2005). Swedish policy expresses democracy as the most central value, and education is seen as an important site for developing a democratic citizen with the capacity to act democratically (Regeringskansliet 1997). While other values are of course also expressed in both nations, there is a focus in New Zealand on the role of education to promote respect and appreciation for diversity, and in Sweden to promote a democratic attitude and capacity.

The fact that value formation is regarded in both nations as a responsibility of education is not surprising since fostering values has always been at the core of education. What is more interesting, and perhaps a new insight, is that value formation
is connected to rights: it is a right of the child to be given an opportunity in education to develop central values. Such a right is justified in policy by referring to the present and future life of the child as experiencing a sense of belonging in society, “fitting in” and coexisting harmoniously with others and having the capacity to act for change. It is vital, too, that others have been educated to embrace these common values, since one’s right to be treated with respect by others depends on their allegiance to the central values. One explanation as to why value formation has been related to rights may be the impact of the CRC on signatory states. When states report to the Committee on the Rights of the Child on Article 29, value formation in education can hardly be ignored. The connection is made, and the matter is put on the political agenda.

That the accentuated values differ may be understood as a result of the process of contextualisation. When the wide set of values expressed in the CRC and other human rights instruments meet national circumstances and thinking, certain values are considered more vital to highlight than others. New Zealand’s history of colonisation and unjust treatment of the indigenous Māori population reverberates in the political mind of the nation. In the creation of a society in which two cultures co-exist equally, it becomes essential to foster not only respect for difference and diversity but also appreciation for them. In Sweden, following the experiences of the Second World War, education has been given a central role in the education of democratically minded citizens who are capable of resisting totalitarianism. A school where children meet and together come to embrace democratic values and capacities is regarded as essential.

The third common rights issue with considerable similarities is learning outcomes. In both nations’ policies the right of the child to develop knowledge and skills through education is acknowledged. This is pronounced to be a central aspect of the right to education. However, it is uncertain exactly which knowledge and skills are to be considered as belonging to the outcome that is everyone’s right. Are all skills and knowledge rights or just some? On one hand, by referring to national curricula and syllabi it is vaguely indicated in policy that the content of such documents altogether express the learning outcomes to which the child is entitled. On the other hand, there is a tendency in both nations to point to basic numeracy and literacy as especially important from a rights perspective (NZ Ministry of Education 2008a, SOU 1997:116).

Another aspect of constructing learning outcomes as a right is that some kind of equality in educational outcomes is regarded as important from a rights perspective. This means, for example, that students with special needs are to be given support to achieve the learning outcomes that are considered as a right. If this is not done their right to education is compromised. Further, in both nations’ policies it is considered a rights problem if students in some schools, or in some geographic or demographic areas, or belonging to a particular group, achieve significantly worse than average. All students are to be given education of good quality that provides them with op-
opportunities to succeed. Both nations express it as a serious rights problem when under-achieving students mirror structural inequalities (NZ Ministry of Education 2008a, Skr 1999/2000:137).

It should be noted that, in comparison with the level of detail in the CRC concerning which values education should aim to promote, the convention gives no direction as to which knowledge and skills education should provide the child with. Despite this, the studied nations’ policies concerning curriculum content and the right to learning outcome are almost identical (at least on the surface; a deeper analysis of the subject content may reveal differences).

The last common issue to be interpreted in a similar way in both nations is educational rights of students with disabilities. How students with disabilities are treated in the education system is raised in policy as a rights issue, although the question is not given much space and is not discussed in any depth or with real commitment (NZ Ministry of Youth Affairs 2000, Skr 2001/02:166). Accordingly, being a minor issue, in neither nation’s policy educational rights for disabled students is given any serious attention as a right related to education.

2. Common issues – disparate meaning

An issue that is present in both nations’ political constructions of children’s rights in education, but interpreted in different ways, is student influence. In Swedish policy, student influence is highlighted as the most important of all children’s rights issues in education. The political documents clearly state that children in early childhood education and in school have the right to participate in public will formation and decision-making (in school) and to influence activities, learning content and methods (Skr 2003/04:47). This claim is made with explicit references to national as well as international legislation. A student’s right to influence is connected to the promotion of democratic values and the education of the democratic citizen: children shall be given the opportunity to practice democracy in a democratic environment (Regeringskansliet 1997). However, there is a tendency in policy to discuss the democratic potential of student influence more in terms of rearing the future citizen than meeting the rights of the present citizen.

Contrary to Swedish policy, in New Zealand student influence is the least discussed rights issue related to education. Although the need to strengthen children’s influence and voice in society is pointed out in policy as an urgent concern, this need is very rarely related to education. The matter of student influence does not receive much attention in policy, and reflection about children participating in informal decision-making in classrooms is on the whole absent from the political discussion. When increased student influence is mentioned at all, it is mainly in terms of improving representation on the Board of Trustees, for example by having two student representatives instead of one or allowing younger students to be represented (NZ Ministry of Youth Affairs 2000).

These differences in meaning and importance can be understood as results of the
contextualisation process of human rights. A first difference to be noted between New Zealand and Sweden concerns the interpretation of Article 12 in the CRC (the right to be heard and have your views taken into account). Both nations maintain in the political documents that efforts need to be made to strengthen the voice of the child in society. While Sweden then relates the fulfilment of the obligations of Article 12 to education, New Zealand does not. A second difference is that such a view of how to implement Article 12 in Sweden is strengthened by a connection to democracy. In New Zealand, Article 12 is not explicitly connected to any basic value in education.

Bullying is highlighted in both nations’ policies as related to children’s rights in education, although the issue is approached rather differently in the two nations. In New Zealand, the matter of bullying is only sometimes raised in policy, and is more often conceptualised as a “serious issue” than a violation of human rights (NZ Ministry of Social Development 2002). In Sweden, bullying is constructed as an important rights issue in education with the argument that it violates the child’s right to be treated with respect and to be protected from violence (SOU 1997:116). Further, bullying is said to often include discrimination, with references to national discrimination legislation and to Article 2 of the CRC (non-discrimination) (Regeringskansliet 2007). In line with this construction of bullying as a rights issue in education, Sweden has strengthened its legislation on discrimination and other offensive or degrading treatment of students in school.

There is no reasonable explanation for the different attention and weight given by the two nations to bullying as a rights issue. However, what can be noted is the explicit connection made in Swedish policy between bullying and discrimination, which seems to augment the aspect of rights.

A theme present in both nations, however disparately interpreted, concerns how education is to meet the rights of cultural or ethnic minorities. In New Zealand policy, the cultural responsiveness of education stands out as one of the most important overall rights issues in education. The construction in policy of culturally responsive education as a major rights issue in education is supported by references to international human rights instruments (e.g. Article 30 of the CRC) and is also explicitly connected to obligations originating from the Treaty of Waitangi (NZ Ministry of Youth Affairs 2000). Cultural responsiveness stands out as mainly connected to the rights of the Māori group; the right of the Māori child to be met by an education system that acknowledges and supports her or his cultural belonging, and that provides her or him with the possibility of developing a Māori identity, including language and culture, thinking and world view, is in focus (NZ Ministry of Education 2001, 2008b). In New Zealand the state’s responsibility for arranging and funding a culturally responsive education system is perceived as very far-reaching.

This theme is perceived in a significantly different way in Sweden where claims for cultural responsiveness in education towards minority groups are rarely addressed in policy as matters of rights. What is privileged in policy as the essential meaning
of educational rights of students from minority groups is home language education for children belonging to a minority (Regeringskansliet 1997). The entitlement to receive home language education is not justified by cultural rights claims or an idea that education should meet cultural differences. It is instead promoted by arguments of beneficial effects for the child, such as a comprehensive home language being important for the child’s identity development, or how home language education promotes the integration of children from minority groups into Swedish society since the successful learning of Swedish is closely connected to a developed home language.

The different interpretations in policy of what education’s responsibility for cultural rights means are evident. New Zealand holds as a fundamental rights issue that children from the nation’s two official cultures are to be met by an education system that respects and advances their cultural belonging – an undertaking embodied in the design and funding of a parallel public school system with parallel curriculums for English and Māori schools. It may be noted, however, that the right to a culturally responsive education is not acknowledged for other cultural minorities in New Zealand. In Sweden, education is not perceived to uphold such an extensive responsibility for responding to the cultures of minorities, and the public education system is not designed and organised with the explicit aim to support minorities’ cultural specificity. These policies are both possible interpretations of international human rights legislation. In bi-cultural New Zealand’s understanding of human rights, the child’s right to grow and develop within its culture is augmented. The cultural rights of children belonging to one of the two official cultures of the nation are seen as important to meet and protect, and education is viewed as a crucial site for this endeavour. In Sweden, the dominance of Swedish culture in education is rarely contested in policy. In the Swedish perception of human rights, children’s cultural rights must be respected in everyday activities in educational settings, but cultural rights do not constitute a basis for organising the public education system. Developing a cultural identity is more understood as a private matter than a responsibility of public education.

3. Diverging issues

A number of issues take form as rights issues in education in only one of the studied nations. Disciplinary measures – the use of stand-downs, suspensions and exclusion as responses to bad behaviour – is occasionally raised in New Zealand policy as a possible rights concern in education (NZ Human Rights Commission 2004). The removal of students from school may be seen as an obstacle to equal access to education, and consequently to the very right to education. That these disciplinary measures disproportionally affect already disadvantaged children, and thereby increase educational inequalities, adds to the problem. This issue is not raised in Swedish policy. The two nations have very differing traditions concerning disciplinary measures in education. Legislation in New Zealand allows schools to practice stand-down, suspension and exclusion, Swedish legislation has up to the present not permitted these disciplinary
measures. However, the revised Swedish Education Act which will come into force during 2011 introduces short time suspensions as a possible response to severe behaviour problems. Whether objections to this development will be raised from a rights perspective remains to be seen.

In New Zealand, the cost of education for families takes shape as a rights issue, however minor. The Education Act states that primary and secondary education is free in New Zealand and does not mention or support the charging of school fees. Yet, schools ask parents for fees to cover certain educational activities and also request donations. The acceptance of this practice is widespread both generally in society and in policy, despite the lack of legal support (NZ Ministry of Youth Development 2008). However, some political documents argue that parents being required to pay or being pressured into doing this to ensure their child’s access to all school activities is indeed a rights concern (NZ Human Rights Commission 2005).

Also in Sweden economic aspects are raised in relation to educational rights, albeit in a different way. That public funding is sufficient is seen as a rights issue in Swedish policy. Cutbacks in the education sector are believed to have had a detrimental effect on the quality of education, particularly for those students who need more support in their education (Prop 1997/98:182). Resources directed towards, for example, students in learning difficulties, students with a disability or students with an immigrant background, tend to decrease significantly when the economy is strained. Accordingly, a certain level of economic resources allocated to education is constructed in policy to be a rights issue since insufficient resources may undermine the right to education.

Education is expensive and policy considerations about how matters of funding are relevant from a rights perspective are hardly surprising. In both nations, education is underfunded and different solutions have led to different rights concerns. In New Zealand, schools have turned to parents for an economic topping up, which has led to a situation where education is no longer free and the child’s right to free primary education can be questioned. In Sweden, legislation prohibits fees, which means that schools cannot ask parents for more than very minor contributions (e.g. a bus ticket). Instead, the Swedish discussion reflects the expectations of public funding for good quality schooling for all students. Reductions in public expenditure in times of economic restraint have had severe effects on some groups of students – giving rise to questions of whether the equal right to education is compromised in Sweden.

An issue brought up in Swedish policy, but not in New Zealand, concerns the meaning of the very right to education. The right to education is proclaimed in policy as a fundamental right of every child in Sweden, but the fact is that many children residing in Sweden lack the right to education due to not being citizens. This situation has increasingly come to be discussed as a violation of the human rights of the child (Skr 2005/06:95). In 2002, children seeking asylum were given the same right to education as Swedish citizens, although children avoiding expulsion were still, in 2010, denied the formal right to education. That these children may spend years in
isolation and out of education is argued as being indefensible from a children’s rights perspective, and not in line with Sweden’s commitment to children’s human rights. A recent government report has suggested an amendment (SOU 2010:5) which, if passed, would give children in hiding the right to education. Criticism from the UN on this matter has been an important incentive for change. The meaning of the right to education may be said to be under reconstruction in Sweden: a previous perspective where education is considered to be a citizenship right, acknowledged to the child as being a citizen, is now being replaced by a view of education as a human right, recognised for the child as being human.

In Swedish policy, the rights issue teachers’ knowledge about children’s rights is explicitly connected to a successful implementation of children’s rights in education. The worrisome lack of such competence is frequently pointed out as a rights concern (Skr 1999/2000:137, Skr 2001/02:83). It is noteworthy that although teachers’ knowledge is proclaimed as a very important rights issue, children’s knowledge about their rights is constructed as a minor issue, only occasionally mentioned and never thoroughly discussed. Accordingly, children’s own knowledge stands out as less important than adults’ knowledge. That teachers’ or children’s own knowledge about children’s rights could be an important matter is not brought up in New Zealand policy, nor is there any discussion in the analysed documents about whether the right to education should include non-citizens and children residing illegally in New Zealand.

Discussion and conclusions

This study set out to address how children’s rights issues in education are perceived in policy in the two nations of Sweden and New Zealand. Drawing on Benhabib’s (2004, 2007) work, national human rights policy is understood as taking form through democratic iterations influenced both by international human rights legislation and the cultural, social and historical particularity of the specific nation. The outcomes of the democratic iterations are expressed as political constructions of, in this case, children’s rights in education. In the space of interpretation and renegotiation, universal human rights are accordingly contextualised. Similarities and differences in the respective nations’ political construction of children’s rights in relation to education have been illuminated and discussed as embedded in the cultural, political and economic circumstances of the two nations studied. In this final section of the paper some of the findings will be drawn out and further discussed, and some overarching themes will be identified.

Concerning the rights issues in education that are common to both nations and similarly interpreted, two points can be made. First, it is noteworthy that both countries explicitly extend the social right to education to include early childhood education. There are no requirements in the present human rights legislation that signatories should offer education before formal schooling. Despite this, the UN Committee on the Rights of the Child has articulated that early childhood education is of vital im-
importance for the child and that such education may be viewed as a way of meeting the child’s right to development and to education (UN 2001). Bobbio (1996) emphasises that human rights are not carved in stone; on the contrary they continuously develop, expand and change as human society develops and changes. The standpoint taken by Sweden and New Zealand concerning ECE may well be understood as deriving from a more generally changing rights status of ECE, which in turn is part of the ongoing expansion of human rights.

A second point concerning the common and similarly interpreted issues is that both nations employ a rights-based approach to the two basic aims of education: the learning of knowledge and skills and the forming of values. In their respective policies the two nations underline that equal access to education for all is not enough to meet the right to education. If children participate in education but do not develop the required knowledge and skills, and are unable to embrace society’s basic values, their right to education has been violated. This points towards the content of education, teaching processes, methods and relations as aspects of fulfilling the right to education.

The two issues that most clearly elucidate how the process of contextualisation can affect the interpretation of human rights are the common, but differently interpreted, issues of student influence and culturally responsive education. Influence is about political rights, i.e. the right to participate in the formation of public will and to influence the exercise of power. In the CRC, the child’s political rights are specifically stated in Article 12. A difference between the studied nations is whether education is regarded as a central site for realising children’s political rights and for implementing Article 12. Sweden declares education to be a crucial place for this endeavour, whereas New Zealand points to other societal arenas for the implementation of Article 12. The situation is reversed when it comes to the issue of the responsibility of the school system to respond to cultural rights. As stated in Article 2 in the CRC, cultural rights connect to the civil right to equal value and non-discrimination. The right of minorities and indigenous people to uphold their culture is further elaborated in Article 30. In New Zealand education is proclaimed as a central site for meeting cultural rights, and the responsibility of the state in this matter is so extensive that the very design of the public school system departs from such a standpoint. Sweden takes a different position, and confines the responsibility to respect cultural rights to the everyday activities of education.

Both nations accordingly acknowledge the importance of children’s political right to be heard and be given influence in matters that affect them, as well as the importance of giving children possibilities to develop a cultural identity and meeting their cultural rights. The differences in how these rights are interpreted as relevant rights issues for education can be related to disparities in society and population and what is expected from education. Sweden’s accentuation of the role of education to foster democratic attitudes and capacities supports an emphasis on political rights as something that education should respect and develop. New Zealand strives to be a
society in which two cultures can co-exist equally, and here education is considered especially important in cultivating an appreciation of the prevailing bi-culturality and in meeting cultural rights.

Concerning the matter of whether the right to education is acknowledged for all children residing in the state, the contextual circumstances in the two nations are actually quite similar, although the issue is only considered to be a rights concern in Sweden. The legal situation for undocumented children is the same in both states; these children do not have the right to education. The UN Committee on the Rights of the Child has repeatedly criticised Sweden for not granting education to children in hiding and to undocumented children (UN 1999, 2005, 2009). Interestingly enough, no corresponding criticism has been pronounced for New Zealand in the concluding observations of the state’s reports. The question is to what extent the objection from the UN has been an incentive for debate on this matter in Sweden.

Although criticism from the UN may be sufficient to put a matter on the political rights agenda, this is not the case when it comes to professionals in education and children themselves having poor knowledge about children’s rights. New Zealand has, for example, been criticised by the UN for the lack of children’s, public and professional awareness of the Convention and the rights-based approach enshrined therein (UN 2003). Despite this critique, teachers’ and students’ knowledge about children’s rights has not been brought up in policy as a rights issue in education. The same criticism, albeit somewhat milder, has also been metered out to Sweden (UN 2005, 2009), which in policy emphasises the importance of teachers’ knowledge about children’s rights.

The two nations included in this study have put the matter of children’s human rights on the political agenda, and through their policy formation have acknowledged that children have rights and that different areas of society need to be considered from a children’s rights perspective. Although a range of issues are shared, the particular conditions and circumstances in the nations are mirrored in differing interpretations of the meaning and importance of rights issues in education. The matter of children’s rights, both generally and within specific areas of society, is a concern at both international and national levels. If we are to understand the political processes in which children’s rights are shaped in our societies and question how rights for children are understood in our own circumstances, we need to take both levels into account. This article has aimed to contribute to such an endeavour by broadening our knowledge of how children’s rights are interpreted in the area of education in different parts of the world.

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Endnotes

1 For the reason of restricted space, quotes from political documents to support the analysis are not presented in this paper. See Quennerstedt 2009b and 2010 for a more elaborated account of the national analyses.

2 The Treaty of Waitangi was signed in 1840 by representatives of the British Crown and Māori chiefs. The Treaty established a British governor in New Zealand, recognised Māori ownership of their lands and other properties, and gave Māori the same rights as British subjects. Today, it is generally considered to be the founding document of New Zealand as a nation, although disputes over what was agreed persist.

3 An exception is the Sami school, which is designed to support Sami culture. However, the Sami school only offers Years 1-6, and has a very small number of students; in total about 170 students in five schools. Further, the Sami school is not discussed in policy from a children’s rights perspective or a cultural rights perspective.
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