

## **Reframing the universal right to education**

Tristan McCowan\*

*Institute of Education, University of London, London, UK*

The universal right to education has been enshrined in a range of international rights instruments. Yet despite the considerable secondary literature on the subject, there has been little discussion of the notion of education underpinning the right. This article presents a theoretical exploration of the question, leading to a normative reassessment. The article first assesses the expression of the right in the Universal Declaration of Human Rights, identifying limitations in its focus on primary schooling. Other candidates for a basis for the right – namely learning outcomes and engagement in educational processes – are then assessed, and the latter is found to provide the most coherent foundation. Nevertheless, the positional benefits of formal schooling cannot be ignored. Consequently, a two-pronged expression of the right is proposed, involving access both to meaningful learning and to institutions that confer positional advantage.

### **Introduction**

The right to education was enshrined in the Universal Declaration of Human Rights (UDHR), established in 1948 by the countries of the newly formed United Nations. Since that date there have been increases in enrolments at all levels around the world, with many countries achieving near universal primary and, in some cases, secondary access. However, some regions of the globe are still far from realising the right. There are, at the very least, 75 million children out of school altogether – nearly half of these in sub-Saharan Africa – with many more having sporadic attendance and dropping out before completion. Of those out of school, 55% are girls, and a disproportionate number are from disadvantaged groups such as children with disabilities, street and working children, and those living in shantytowns or remote rural areas. There are also 3/4 billion adults without basic literacy, and secondary enrolments worldwide stand at only 58%, with only a quarter of the age group enrolled in sub-Saharan Africa (UNESCO 2008).

Most would agree that this is a deeply worrying state of affairs. The unjust distribution of educational opportunities worldwide, along with the perceived importance of education for national development, have led to sustained international attention. The quest for universal access has been given momentum by world conferences on Education for All in Jomtien (1990) and Dakar (2000), the Millennium Development Goals and subsequent programmes such as the Fast Track Initiative. While efforts to expand access have had diverse motivations such as human capital theory and nation-building, the ‘Education for All’ movement as a whole is underpinned by a clear notion of an educational entitlement for all children. Yet to

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\* Email: [t.mccowan@ioe.ac.uk](mailto:t.mccowan@ioe.ac.uk)

what exactly does the right to education actually relate? Does it correspond to access to educational institutions, to a particular form of educational experience, or to some educational effect?

Despite the considerable literature on the right to education and Education for All (EFA), there is surprisingly little discussion of the nature of education that might correspond to the right. This article aims to address this omission, focusing particularly on the question of the extent to which schools are a necessary and sufficient condition for the realisation of the right. The right to education is not like the rights to clothing and housing, for example, in the case of which it is relatively easy to say whether they are or are not being fulfilled. There are three aspects of education that create particular complexities. First, education exists in a variety of different forms, some of which may in fact be negative (though we may choose to restrict the use of the term ‘education’ to the positive ones). Second, education points beyond itself, being a preparation for other activities as well as a potentially valuable experience in itself, and therefore decisions also need to be made about these external goals. Third, students do not necessarily leave the classroom with what has been presented to them (and it is very difficult to predict exactly what will be learnt).

For these reasons, considerable attention needs to be given not just to the implementation of the right, but also to its conceptualisation. Only once we have a clear picture of what the right to education applies to can we gauge our progress in realising it. This article will provide a predominantly theoretical treatment of the question, though it will draw on empirical cases to provide illustrations. In relation to a commonly drawn distinction (e.g. Verhellen 1993; Verheyde 2006), this article will focus mainly on the right *to* education, rather than rights *in* education or rights *through* education, although as discussed in the final sections, the former is necessarily linked to the latter two.

After a brief discussion of the notion of a ‘right’, the article will start with an analysis of the right to education as expressed in the UDHR, identifying limitations in its focus on primary schooling. The article subsequently assesses other candidates for a basis for the right – namely, learning outcomes and engagement in educational processes – highlighting the advantages of these over an institutional focus, while at the same time identifying significant difficulties. Subsequently, a proposal is put forward for the right to education to have two components: one relating to educational experience, and the other to positional advantage. This proposal entails both a re-expression of the right to education as it appears in international declarations, and a re-orientation of research on EFA.

### **Universal rights**

As stated above, existing studies (e.g. Wringe 1986; Hodgson 1998; Tomasevski 2003; Beiter 2006; Friboulet et al. 2006) have made extensive explorations of the legal frameworks of the right to education, its justifications and implementation, but, with a few exceptions (e.g. Vandenberg 1990; Spring 2000) have devoted little space to discussing possible meanings of education.<sup>1</sup> All too often, education is taken to be synonymous with schooling, and even then without an acknowledgement of the complexities of the school experience. This study, therefore, will focus on the educational aspects of the question, rather than those relating to the broader concept of rights and their universality. Nevertheless, something at least must be said about the understanding of rights in this article. I am here referring to a ‘universal’ right, as distinct from the rights accorded to the citizens of particular states. Universal rights

are primarily *moral* rather than *legal* rights, although they have official status through non-binding declarations such as the UDHR, and in some cases (such as in the United Nations Convention on the Rights of the Child [CRC]) they are turned into legally binding treaties. I will here take ‘universal rights’ and ‘human rights’ to be synonymous: in the latter the emphasis is on the fact that these rights are held by all human beings equally, and only by human beings.<sup>2</sup> In this article I will broadly follow Pogge’s (2002, 58) definition of human rights:

A commitment to human rights involves one in recognizing that human persons with a past or potential future ability to engage in moral conversation and practice have certain basic needs, and that these needs give rise to weighty moral demands. The object of each of these basic human needs is the object of a human right. Recognizing these basic needs as giving rise to human rights involves a commitment to oppose official disrespect of these needs on the part of one’s own society (and other comparable social systems in which one is a participant).

While this article does not engage with the specifically legal debates surrounding the right to education, it does aim to establish principles that can underlie a formulation expressible and universally acceptable in a declaration such as the UDHR. Although consideration of current feasibility in all contexts should not be a constraint on the expression of rights (Sen 2004), attention is also paid to the ways in which countries can realise this conceptualisation in practice.

### **The right to education in the Universal Declaration of Human Rights**

The right to education is firmly established in international agreements. As well as forming part of the UDHR, it has been reinforced in a number of covenants, conventions, declarations and frameworks relating to education, human rights and the rights of children in the six decades since its signing. Yet the legal right to education is a strange hotchpotch. It is in some aspects remarkably specific and prescriptive, and in others remarkably silent. Unusually, it is strongly suggestive in relation to the forms of institution that must provide education, and to its duration, but (despite some broad recommendations concerning aims) not in relation to the types of process that are undertaken within them. In this section I will argue that the right to education should consist of the exact reverse.

The analysis here will focus on the relevant article of the UDHR. Some modifications can be seen in the later Declaration of the Rights of the Child (1959), International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) and Convention on the Rights of the Child (CRC) (1989). In particular, much more substantial accounts of education are provided in the *General Comments* to article 13 of the ICESCR (1999) and to article 29 of the CRC (2001). More extensive treatments can also be seen in the documents emerging from the Jomtien (1990) and Dakar (2000) conferences on Education for All. However, the subsequent statements remain largely faithful to the principles established in the original UDHR: because of this, and for reasons of economy, the current analysis will restrict itself to the initial declaration.

There are three parts to Article 26 of the UDHR (1948):

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Two highly controversial aspects of the right to education in the UDHR will not be covered in this article. The first is the third section of the article, namely, the prior right of parents to educate their children in accordance with their beliefs (as explored in Curren 2009). The second is the assertion that elementary education should be made compulsory. These are highly complex questions, and go beyond the remit of this particular study. I will here focus on the forms of education to which individuals may (or may not) have rights, rather than questions of public and private, and the balance of power and potential conflicts between state, parents and other stakeholders.

It is important to start by noting that the existence of a right to education of this sort at the international level is highly desirable and that those providing written expression to this and other rights have by and large done well in creating a form that is both demanding of states and inclusive of the conceptions of different cultures. There are nonetheless some problematic elements. Three of these will be outlined here: the identification of education with schooling; the restriction of the absolute right to the elementary level; and the lack of discussion of the forms taken by education.

### ***Identification of education with schooling***

Rights in international treaties are generally expressed in terms of principles – with the strategies for enforcing them left largely to individual states. In education, however, a particular approach is stipulated for the realisation of the right: namely, the institution of school (and, to a lesser extent, university). The word ‘school’ does not appear in Article 26, but the categorisation into elementary, technical, higher, etc. makes its presence clear. In later documents, such as the Jomtien Declaration and the *General Comments* to article 13 of the ICESCR, *primary* education is distinguished from *basic* education<sup>3</sup>, with the latter being seen as the entitlement, and the former as the delivery system. Yet in practice the two are often conflated, and interpretations of the right (e.g. Beiter 2006; Coomans 2007) and campaigns stemming from it do on the whole interpret it as meaning school.<sup>4</sup>

As a pragmatic strategy, a focus on schools may be sensible. They are a tried and tested method of delivery of instruction to large numbers of children, and while in their contemporary form having their origins in Europe, have been developed throughout the globe (either through conscious adoption or colonial obligation) and have near universal recognition. They also allow for ease of monitoring of access and achievement. However, there is an obvious limitation in equating education and schooling. If we imagine the two in a Venn diagram, there is a significant amount of each that lies outside the realm of the other. There is much that goes on in schools that is not education (e.g. child minding, provision of food and health care, and some less savoury aspects such as social control and indoctrination, not to mention Dore’s (1976, xi) ‘mere qualification earning’); and much education that does not occur in schools or

universities (in families, community groups, religious institutions, libraries, political campaigns, etc.).

In the context of the quest for EFA, there are two strong reasons for not equating education and schooling. First, many schools around the world fail to provide an experience that can meaningfully be called education. To take one of a number of possible examples, Palme's (1999) ethnographic study of schools in Northern Mozambique provides a vivid illustration of this fact. Pupils are seen to spend to the vast majority of their time listening without comprehension, copying without comprehension and simply waiting. Quantitative research on learning outcomes in many countries paints a similarly dismal picture of the effects of schooling (e.g. Watkins 2000; World Bank 2006). Yet in addition to being largely ineffective, school can be positively harmful. In Palme's study, the disjuncture between school and the local community is seen to lead to a radical devaluing and disowning of the latter amongst those few who survive through the grades. This long passage is worth quoting in full:

Since actual teaching practices with few exceptions affirm student passivity, and since the use of Portuguese as the sole language of instruction imposes severe constraints on conceptual understanding and verbal exchange, virtually no negotiating...takes place between pupils' previous conceptions and experiences on the one hand, and new experiences and information handed to them in the classroom or by the textbook on the other. It is no wonder, then, that the few students who manage to survive throughout the years are profoundly transformed by the education process and, because of the general amnesia produced by the nature of this transformation, normally conceive of the modern, educated world into which they had managed to enter being totally different from, and superior to, the backward world from which they came. (Palme 1999, 267)

Serpell's (1999, 132–133) account of the role of schooling in Africa reaffirms this radical disjuncture:

The consequence of this formalisation of education is that small numbers of individuals with great potential to contribute to the life of their local communities of origin are systematically extracted into a separate and largely alien culture of bureaucratic power, while the majority of those enrolled in school leave it with a sense of frustration and personal inadequacy.

Furthermore, there are many activities and experiences undergone by children in schools that not only fall short of fulfilling the right to education, but actually represent abuses of their other human rights (Wilson 2004). These abuses have been well documented in empirical research, such as that seen in Unterhalter (2003) on sexual violence against girls in South African schools, and the links with HIV/AIDS infection: 'Going to school for young black South African women may well not provide openings for what they are able to do or be, but may be placing them at grave risk of severe trauma, infection and early death' (16).

As indicated above, there may also be infringements of cultural rights, when indigenous peoples and minority ethnic groups (and in some post-colonial contexts majority groups too) are subjected to formal education systems that are at best unresponsive to and at worst actively repressive of their cultures. Another way in which schooling can infringe rights is in cases where – through high-stakes testing and other pressures – children are exposed to extreme stress and very long hours of study (Spring 2000).

Of course, this is not to say that schooling is a meaningless or harmful experience for all children in all low- and middle-income countries. For a great many, even in

very challenging conditions, school is an inspiring and even liberating experience that opens horizons and provides previously undreamt of opportunities. The point is that it is not always so. The right to education, therefore, cannot just be equated with a right to schooling, even if we add the epithet ‘quality’ to it. School *can* fulfil the right to education, but it is neither a necessary nor sufficient condition for its fulfilment.

On the other hand, there may be ways in which the right to education may be provided even in the absence of a formal school system.<sup>5</sup> As outlined above, there are many arenas in which education can occur, such as in apprenticeships, voluntary organisations and local community settings. Targeted educational initiatives outside school (commonly termed ‘non-formal education’) encompass both compensatory school-like experiences for ‘hard to reach’ populations, and learning experiences of a very different nature and format (Rogers 2004; Hoppers 2007; Rose 2007). In order to assess whether the right to education is actually being upheld in these initiatives, it is necessary to look a little more closely at the notion of education, as will be discussed in the latter stages of the article.

### ***Restriction of the absolute right***

Article 26 does not only refer to primary education. It states that technical and professional education must be made generally available and higher education too on the basis of merit. Yet it is only primary education that is seen as an absolute right for all.<sup>6</sup> There seems, however, to be little justification for restricting the right to this level. From the perspective of qualifications, a primary school leaving certificate is of little use in a society in which an increasing proportion of people complete secondary school and university. We could say that basic literacy and numeracy – skills that can be mastered at the primary level – are the threshold of access to key functionings in society. Yet even here, there is no clear cut-off point: literacy is not something we either do or do not have, but a practice that is continually developed through our lives, often giving us greater opportunities and influence as it develops. Wherever the line is drawn, clear rationales are hard to come by. In terms of knowledge of the world, analytical skills, communication, aesthetic development and so forth it is difficult to declare a point at which education ceases to be a *right* and becomes just a *good*. The implication here is not that we reject the notion of a right to education, but that we recognise that the right has a much broader application than is commonly thought.

There are clear practical reasons for limiting the right to education to the primary level. It is a tangible goal, in that the institution is clearly recognisable, and the achievement of universal access can be relatively easily monitored. In some cases, primary education is established as a complete cycle in itself, rather than merely a preparation for further levels. Most importantly from a pragmatic perspective, it is not feasible for the poorest countries in the world to fund universal secondary education at the present moment, and it is beyond even most of the wealthiest countries to fund universal higher education. So there are many good reasons for conceiving of primary education as the key universal entitlement. Yet this pragmatic strategy must not be confused with a moral right. Someone who has only completed primary schooling is likely to be severely disadvantaged in most spheres of life in a society in which the majority of people have had 12 or more years of schooling. There are also strong arguments for pre-school education being considered a right, given its fundamental importance for subsequent child development (UNESCO 2006).<sup>7</sup> Furthermore, if



there is a human right to education, it seems appropriate to apply it not only across all levels of formal education, but in some way throughout life.

### *The nature of education*

Lastly, an aspect closely related to the previous two points is that Article 26 says little about what education should involve. Some possible aims of education are mentioned, namely:

- The full development of the human personality
- Strengthening of respect for human rights and fundamental freedoms
- Promoting understanding, tolerance and friendship among all nations, racial or religious groups
- Furthering the activities of the United Nations for the maintenance of peace

We could take issue with the choice of aims here, the omission of others, and the vagueness of the idea of ‘development of the human personality’. Yet the most important aspect is that there is no mention of the characteristics of the educational process, nor of the ways it should and should not be carried out. The later *General Comments* do provide a fuller picture of the aims and highlight an important constraint on methods, namely that corporal punishment must not be employed (this feature is also emphasised in Article 28 of the CRC). The Convention on the Elimination of All Forms of Discrimination Against Women (1979) also addresses aspects of educational processes, such as co-education, portrayals of gender in textbooks and teaching methods.

Yet for the most part, mention of what education actually involves is conspicuously absent in these statements of rights. This silence is highlighted by Spring (2000), who recalls Isaac Kandel’s critique of the conceptualisation of the right to education as early as 1947. Kandel (1948) raised the key question, discussed above in relation to schooling, of how the right of access to education might result in the infringement of other rights, pointing particularly to nationalistic indoctrination, but also to racial segregation and reinforcement of social class inequalities. While the requirement in the UDHR for education to ‘promote understanding, tolerance and friendship among all nations, racial or religious groups’ (Article 26, UDHR) would appear to address these concerns, attention is not paid to the ways in which teaching and learning are actually carried out. It is clear that there must be constraints on what can count as educational methods, both in terms of moral considerations and, as argued by Peters (1966), in terms of consistency with the concept of education. While respect for human rights and for the dignity of all human beings are certainly desirable outcomes of an educational process for young people, it is clearly not enough to state this as an aim and imagine that the problems of the content of education have been resolved.

In summary, schooling is a pragmatically convenient, but ultimately flawed basis for the right to education. Yet is it possible, in the absence of an institutional focus, to conceptualise the form of education underlying the universal right?

### **A right to what?**

In 2003, Kenya introduced free primary education, following other sub-Saharan African countries such as Malawi, Uganda and Zambia. In the year of implementation,

grade one intake rose by a staggering 35%, although enrolments declined slightly afterwards (Somerset 2009). The initiative has made significant gains in ensuring *availability* and *accessibility* of education (in the language of the ‘4 As’ [Tomasevski 2006]), removing direct fees, making the purchase of school uniform voluntary and limiting parental contributions (Somerset 2009). However, the aspect of *acceptability* has been less successful. While provision has been made for wider distribution of textbooks, the sudden expansion in enrolment has led to a shortage of teachers and a lack of adequate classrooms, leading to a general decline in quality (UNESCO 2005). In the light of these effects on the quality of provision, questions can legitimately be asked about whether the right to education has in fact been extended.

Access to schooling, as the basis of the right to education, is an ‘input’ factor. We could go further and define the type of curriculum, the physical infrastructure and qualified teaching force needed to deliver the right, thus responding to the challenges raised by the Kenyan example above. Yet as seen in discussions of the quality of education (e.g. Alexander 2008), the problem with input factors, generally speaking, is that they tell us little about how resources are used and which outcomes they lead to. There are, therefore, two other aspects of education that can serve as candidates for a basis of the right: the outcomes of education, and the educational processes themselves.

### ***Learning outcomes***

Given the problems of focusing exclusively on access to primary schools, *learning outcomes* appear at first sight a very promising candidate for the basis of the right to education. In place of a focus on inputs, many international agencies are now using output indicators to gauge progress towards the EFA goals. The World Bank has of late paid particular attention to learning outcomes (particularly in the form of cognitive skills), seeing them as being largely synonymous with quality of education (World Bank 2006; Hanushek and Woessmann 2007; Vegas and Petrow 2008). This type of approach has also gained popularity in the form of ‘outcomes-based education’, introduced in a number of countries (e.g. Australia and South Africa).

The outcomes that on the whole have received most attention have been performance of students on mathematics, science and language tests. Yet while these indicators may facilitate international comparison, it is clear that a gauge of the specific skills based on written tests at a single point in time is an inadequate measure of educational outcomes broadly speaking. As Hahn (1987, 229) points out, in addition to achievement tests, we may take a number of different gauges of ‘success’ of education, including, ‘The observation of children interacting in the playground with those from other cultural groups or of youth willing to educate others in their community about their rights...’ Even setting aside the question of how best to measure educational impact, a focus on outcomes can be seen as problematic *per se*. It is clear that some educational achievements such as literacy, analytical skills and the ability to communicate are essential prerequisites to a full life. There are nevertheless problems with the identification of the right to education with specified learning outcomes. Three of these will be outlined here.

### ***Determining the level of outcome***

It is hard to determine specific levels of outcome that would form part of a right. As discussed above in relation to the problematic nature of the restriction of the right to



education to primary schooling, so any stipulated level of outcome can be questioned. We could say, for example, that there is a right to the skills of basic literacy (leaving aside for the moment the question of whether such a thing can be defined). Yet lacking *advanced* literacy in most societies will seriously restrict the individual's ability to gain access to valued forms of employment and further study, not to mention enjoyment of many forms of art and entertainment. It is hard to say confidently then that there is a right to basic literacy and not to advanced literacy. Outcomes, therefore, can only be put forward in very general terms.

Another problem is that when a particular objective is reached, by implication the right to education ends: i.e. if a child were taught basic literacy at home at a very young age, there would be no further human right to literacy development. Or if we see outcomes in terms of particular cognitive skills, then the child who displayed these skills before going to school would have no further right to education at all. While very challenging in practice, the right to education should have some lifelong applicability at least. At a more profound level, it is misleading to see learning as leading to fixed outcomes of knowledge, skills and values – it being a more fluid experience, one of constant development. Education does not lead us to a particular point; it is an ever continuing process.

#### *Ensuring the outcome*

Furthermore, there can be no guarantee that outcomes will be achieved. This element of uncertainty is due to two main factors: first, differences in individual inclination and ability; and second, the inherent uncertainties of the educational process. The first factor does not make achieving pre-specified outcomes impossible, but it does make necessary considerable resources and highly effective deployment of them. The second factor, however, does make it impossible to achieve all pre-specified outcomes. If we are dealing with education as opposed to training (in Peters' (1966) stipulation) then there will always be an element of openness in the process, with the learners able to reinterpret or discard the messages presented to them (McCowan 2008).

These factors mean that regardless of the quality of educational provision, outcomes cannot be guaranteed. It might be argued that it is impossible to guarantee that any one of the human rights in the UDHR will be achieved in practice. However, the case of education is different in that these effects may not occur *however appropriate the provision*.

#### *The constrictive effect of outcomes*

There is a further problem with the use of aims and objectives in education (Jansen 1998; McCowan 2009). Contemporary societies customarily view education as a means of achieving a range of diverse aims, both national and individual. However, aims cannot easily be imposed on education in this way. In part this difficulty relates to the inherently unpredictable nature of education referred to above. Yet the subordination of education to particular aims can also have a constricting effect. Education (as opposed to training, conditioning or indoctrination) is characterised by openness, and tying it down to particular results will constrain its potential. This is not to say, of course, that it should not have aims or purposes. On the contrary, it is impossible to conceive of education without purposes. Yet as Dewey (1916) argues, these aims must

emerge from and be consonant with the nature of educational processes, and teachers and learners should have some involvement in shaping them.

It is absolutely right for there to be educational goals such as literacy, financial competence, awareness of the history of the community and of the world, and so forth, as long as these do not restrict the possibilities of learning. It is also valid to take effectiveness in achieving particular cognitive outcomes as one criterion of quality in education (amongst others). Yet while these are valid aims of education, the *achievement* of these aims cannot be the basis for a *right* to education.

### *Educational processes*

Instead of learning outcomes, an alternative focus of attention is the educational processes that learners engage in. The right to education, in this case, would be to engage in *processes* of, say, literacy development – rather than to achieve a specific level of literacy. For example, the focus could be on students engaging in research into a local environmental problem from which a range of knowledge, skills and values would emerge, rather than predefining the exact attributes to be acquired. This focus allows us to avoid the problematic task of determining specific outcomes, meaning both that educational experiences are not unduly restricted by predefined objectives and that we are not forced to stipulate an arbitrary level of achievement. As outlined above, there are always (and should be) purposes to educational endeavours, so we could say that the right in this case would be to *purposeful* processes.<sup>8</sup>

Beyond the educational advantages of avoiding an objectives-based approach – such as allowing for unplanned but nevertheless valuable pedagogical creativity and student responses (see Stenhouse 1975) – there is a further reason why processes should be at the centre of the right to education. Human rights must be a compatible set: while distinctions are made between *absolute* and *prima facie* rights, in a declaration such as the UDHR trade-offs should not be necessary – the rights can, in theory at least, be upheld at the same time. (In practice, when countries are working towards upholding universal rights, there may well be decisions about whether one or another may be worked towards first). This essential compatibility with the other rights makes the way in which education is conducted highly relevant. With the recent emphasis on rights-based approaches to development, international agencies are rightly paying more attention to the upholding of human rights *within* education (UNICEF/UNESCO 2007) – the second of the three relationships between education and rights outlined at the beginning of the article. As discussed above, Wilson (2004) outlines a number of ways in which contemporary practices of schooling infringe human rights, including discrimination against minority and disadvantaged groups, degrading treatment of children, as well as lack of recognition of the rights of teachers. The literature on the ‘4As’ (e.g. Tomasevski 2003, 2006) of the right to education also highlights principles to which educational practices must conform, particularly in relation to acceptability (issues of indoctrination, textbook censorship, medium of instruction, corporal punishment, etc.) and adaptability (in relation to age, ability, gender, religion, etc.).

The above studies identify key *restrictions* on what can pass as educational practices within the right – in Wilson’s (2004, 3) words, ‘a lower limit on quality’.<sup>9</sup> However, there are also positive ways of thinking about the manner in which education is undertaken. In any form of education that involves values, the principles contained in the ends should be embodied in some form in the means (McCowan

2009). In this case, the implication is that the human rights, respect for them and active exercising of them should be incorporated within the educational process. The UDHR does call for education to promote respect for human rights, yet as a proposed outcome, rather than a principle intended to underlie the educational processes themselves. Instead, means should emerge from ends in the sense that the values (e.g. human dignity, active participation, freedom of expression, etc.) underpinning the human rights are upheld in teaching and learning, and in the management of schools.

As outlined above, processes are largely ignored in current treatments. While the Jomtien Declaration (WCEFA 1990) provides an expansive vision of education, acknowledging multiple arenas of learning throughout life, it places emphasis primarily on learning outcomes:

The focus of basic education must, therefore, be on actual learning acquisition and outcome, rather than exclusively upon enrolment, continued participation in organized programmes and completion of certification requirements. (Article IV)

In relation to the nature of the outcomes, the Declaration proposes that all should acquire particular skills and knowledge to prepare them for life – though it does not define these precisely. The Declaration does in places pay attention to processes, but subordinates them to the outcomes:

Active and participatory approaches are particularly valuable in assuring learning acquisition and allowing learners to reach their fullest potential. It is, therefore, necessary to define acceptable levels of learning acquisition for educational programmes and to improve and apply systems of assessing learning achievement. (Article IV)

One recent report that does give due attention to processes within school is UNICEF/UNESCO (2007), with principles of human rights applied to curriculum, pedagogy and assessment, on the basis that, ‘A rights-based approach to education calls for simultaneous attention to outcome and processes’ (15).

There are, however, difficulties with placing the emphasis on process. It is much harder to monitor than a focus on, say, enrolment in primary schooling or specific learning outcomes. In addition, there remains the task of determining *which* educational processes are valuable (beyond compatibility with other human rights), an essential question that cannot be addressed in this paper.

### **A two-pronged right**

Unterhalter and Brighouse (2007), in their analysis of social justice and EFA, identify three intersecting spheres of benefit of education: the intrinsic (enhancing quality of life through educational development itself), the instrumental (enabling access to employment and other opportunities) and the positional (one’s opportunities relative to those of others in society). It is essential to acknowledge all of these aspects of schooling, and the implications they have for justice in society. The intrinsic aspect of education clearly constitutes a basis for the right. There cannot be a right to education unless there is some intrinsic value to it: if it were only valued because of its contribution to, say, work skills or political participation, then the rights in question would be those of work and political participation, with education merely a strategy for realising them. In addition, as Snook and Lankshear (1979, 36) point out: ‘[I]f education is justified instrumentally any claim to a right to education rests on the correctness of

the means–end model. The link remains an empirical one and may be broken by changes in the world’.

Nevertheless, the instrumental aspects are fundamental too, with education acting as a conduit for other rights, enhancing people’s capabilities to function in and influence the world around them (Wringe 1986) – the third of the relationships outlined at the start (rights *through* education). It is also important to bear in mind the significance of schooling for redress in relation to historical inequalities relating to gender, race and social class. However, there are complications in conceiving the *right* to education as relating to the positional aspect, in the sense of there being a universal entitlement to positional advantage in relation to others. For example, one of the key aspects of positionality is certification, with qualifications being essential for opportunities and influence in most contemporary societies. It is difficult to include them in the *right* to education since they normally function as a sorting mechanism for the employment market and higher levels of education, and to make them universally available would destroy their *raison d’être*. Yet while there cannot be a right to qualifications, we could argue that there is a right not to be unfairly denied the opportunity to achieve them and access to the opportunities currently made available by them. People, therefore, would have a right not to suffer unfair positional disadvantage from schooling (or lack of it).

Some empirical illustrations are of use here. King-Calneck (2006), for example, explores the educational work of the Brazilian percussion group Olodum. In addition to its musical work, Olodum since 1991 has run educational programmes as part of its broader mission to promote African Brazilian identity and culture, to campaign against discrimination and prevent the absorption of young black people into crime and drugs violence. These activities serve children from kindergarten through to teenagers and young adults who have dropped out of school, and are free of charge. While Olodum for a time provided conventional primary school classes, for the most part educational activities have been run in parallel to the formal system. Students can study computing, English language or cultural activities such as painting, music and puppetry, all infused with aspects of African Brazilian culture and history. This focus allows the children to develop understanding of and positive attitudes towards their heritage – one which is systematically ignored and devalued in the mainstream school curriculum. It is clear that these activities are fulfilling the right to education, through enhancing children’s knowledge and understanding of their culture, developing work skills and the ability to live fulfilling lives through cultural and artistic expression, via educational processes that respect their human rights.

Nevertheless, there is no question of these children and their families choosing this form of education in place of the formal system. In fact, there is abundant evidence from around the world that parents are reluctant to move to non-formal education in place of the formal system, even when it is more meaningful, relevant, enjoyable and effective than the available schools. In Dyer’s (2000) study of Rabari pastoralists in Western India, the community rejected peripatetic non-formal education that appeared to fit well with their working patterns, in favour of sedentary formal education, even though the latter schools were perceived as being of poor quality. It is clear that the positional advantages gained through the formal system are considered indispensable in many cases, even in the absence of meaningful learning. As Dore (1976, 3) put it, ‘Who would not want a visa into the bridge-head zone?’ There is also a sense that initiation into the esoteric rituals of formal schooling enables understanding of other esoteric rituals in a modern bureaucratic society:

Parents constantly reiterated that their children should ‘improve’ (*sudhare*) and become ‘clever’ (*hoshiar*), qualities that Rabaris associate with people who attend formal schools. Schools are also seen as places where people go to learn ‘how to talk’. Knowing ‘how to talk’ seemed to represent for the Rabaris liberation from feeling disempowered and intimidated by modern institutions. (Dyer 2000, 246)

It is, therefore, possible to propose two separate rights relating to education, or two distinct aspects of the right to education:

- (1) *The right to engage in educational processes that are both intrinsically and instrumentally valuable, and that embody respect for human rights.*
- (2) *The right of access to educational institutions and experiences that confer positional advantage.*

The above is intended as a set of principles to orient expression of the right to education, rather than as a legal formulation of the right. It is important to remember that while childhood is of particular importance, the first part of the right has application throughout life. Schools and universities can be effective in upholding this aspect, but it cannot be assumed that they will be in all cases. In addition, it is important to remember that there are a number of preconditions that must be in place for people to engage fully in educational processes, for example, ‘freedom from harassment, freedom to concentrate ... freedom to access information about education, engage in discussion...’ (Unterhalter and Brighouse 2007, 81), highlighting interdependence between different human rights. Valuable learning experiences can of course also be gained in a variety of other settings. However, informal and non-formal education rarely leads to the type of certification that grants positional advantage to individuals, with ‘success’ in the formal system in most societies being key to desirable employment and other valuable opportunities. However much one learns through non-formal education, and whatever the knowledge, skills and understanding one has, these opportunities are not available in most societies without this certification. This means that the right to education must also include a component relating to the ‘sorting’ aspect of formal education (part 2). In reality, it is the first aspect that is the essence of the right to education *per se*: the second aspect is contingent on the way that education systems are organised in most contemporary societies and on the pivotal role of ‘success’ in the system in determining other opportunities.

### **Realising the dual right**

This reformulation of the right to education provides us with three alternatives for the development of educational opportunities in society. First, procedures for entry into employment and further study could be changed so that formal education certification was no longer necessary (as proposed by Dore 1976). These changes would make the second part of the right unnecessary, allowing efforts to be focused on meaningful learning. However, despite qualifications inflation and the pernicious effects of the diploma disease, this type of change is highly unlikely anywhere in the world, and indications are that the reverse is taking place.

Second, formal education could be reformed so that in addition to the desired certification, it provided the necessary experiences of meaningful learning, and was in harmony with other human rights. There are considerable efforts in this direction around the world, many associated with the very welcome emphasis on ‘quality of

education' after initial enthusiasm focusing predominantly on initial enrolment. Nevertheless, while there are significant exceptions (see Farrell and Hartwell 2008) the institution of school proves largely resistant to reform.

Last, an alternative strategy is to accept that formal education is both highly desired in terms of its certification and often flawed in terms of the provision of learning experiences. The response, therefore, would be to ensure that people have access both to formal education and to high-quality non-formal education. The two aspects of the right, in this case, would be ensured through two different types of institution or experience. This may not be an ideal solution, and presents significant challenges in terms of provision, but is perhaps the most viable option at the present moment.

An example of successful combination of both meaningful learning and positional elements is the Landless Movement in Brazil (see McCowan 2009). This social movement has created a large network of primary schools in its rural communities, as well as early years provision, adult education and teacher education courses. In all its educational work, it aims to promote positive valuing of the rural environment, equip people for productive work (principally in agriculture), and develop political awareness so that community members can defend their own rights and engage in campaigns for social justice more broadly. Whether or not we endorse these particular aims, the Landless Movement has certainly been successful in combining the two elements of the right to education proposed in this article. In relation to the second aspect of the right, it has a network of primary schools within the state system that allow children in the communities access to the formal qualifications that will allow them to progress to secondary and higher education and employment opportunities. Yet it has also undertaken a fundamental reworking of the school environment, involving management, pedagogy and curriculum, with the aim of providing meaningful and empowering learning experiences. In addition to formal education there is also a range of non-formal opportunities available, of a vocational, political and cultural nature.

The Landless Movement is, of course, not alone in finding innovative ways of resolving the tension between intrinsic, instrumental and positional aspects of schooling. A research agenda that emerges from this study is the need to provide a much more extensive documentation of these experiences around the world.

In the view of Robeyns (2006, 70):

A rights discourse can induce policymakers to being contented when they have strictly followed the rules that a limited interpretation of the rights imposes on them, even when additional efforts are necessary to meet the goal that underlies the right.

While the possibility outlined by Robeyns does not constitute a reason for abandoning a rights approach, it does highlight the need to redefine the right to education, emphasising the centrality of engagement in educational processes that are meaningful, and that respect the full range of human rights.

The conception put forward in this article gives us cause both to celebrate and lament. On the one hand, much of the expansion of primary access in the decades since the signing of the UDHR does not fully constitute an extension of the right to education. Yet at the same time there are existing educational practices, even in the most impoverished countries, that do serve that function in conjunction with, or even in the absence of formal schooling. Our actions must be directed towards the encouragement – and further understanding – of these educational practices wherever they occur.



## Notes

1. The literature on the '4 As' (availability, accessibility, acceptability and adaptability) (e.g. Tomasevski 2003, 2006) does stipulate criteria by which we can judge the equitable and effective provision of education, but concerns itself less with the fundamental nature of 'education'.
2. Pogge (2002), however, emphasises a more specific aspect of human rights in that they always involve the relationship between individuals and the state or government – someone acting in an individual capacity in this sense cannot infringe another individual's human rights.
3. Coomans (2007, 199) defines basic education as including 'literacy, arithmetic, skills relating to one's health, hygiene and personal care, and social skills such as oral expression and problem solving', as well as aspects relating to respect for human rights.
4. According to Verheyde (2006), the CRC is silent over the question of formal/non-formal education, although the Committee established to monitor the convention interprets the right as relating to both.
5. For the purposes of this study, formal education is taken to be synonymous with schooling, whether provided by the state or a private body, although following Rogers (2004) it is acknowledged that there are significant difficulties in providing a satisfactory definition of formal as opposed to non-formal education.
6. Progressive realisation of this right, even at primary level, is accepted in the case of states with insufficient resources.
7. Article 18 of the CRC provides a limited endorsement of a right to early childhood care and education.
8. We may also want to provide a universal stipulation of what these purposes are, but the right is not to the fulfilment of the objectives associated with them.
9. An exception to this is the discussion of pluralistic curricula within the 'acceptability' criterion, which might be considered a positive embodiment of underlying principles, as is reference to 'the acceptability of content from the perspective of promoting gender equality, the recognition of the religious identities of members of distinct communities' in Wilson (2004, 9).

## Notes on contributor

Tristan McCowan is lecturer in education and international development at the Institute of Education, University of London. His research focuses on education, human rights and citizenship in an international context, and he is the author of *Rethinking Citizenship Education: a Curriculum for Participatory Democracy* (Continuum, 2009).

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