

Education as a Human Right in the 21st Century

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ABSTRACT

According to the United Nations, education is a right to which all human beings are entitled. Since 2000, the UN has been promoting the Millennium Development Goal to achieve free universal primary education for all, regardless of gender, by 2015. If the UN is correct to suggest that education is both a human right in itself and an indispensable means of realizing other human rights, then there is an important need to question the role that governments should play to support the institutional reforms necessary to achieve basic primary education for all. Moreover, there is an important need to question the role all individuals should play to ensure that the institutional structure dedicated to the provision of basic primary education is set up not only to provide children with access to a vague notion of education but to a notion of basic education that can provide children with the freedom to do something with that education once they have obtained it.

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HUMAN RIGHTS ADVOCATES claim that every child has a right to education. This claim is based primarily on two premises. First, rights advocates endorse the right to education because they believe that if children receive basic primary education, they will likely be literate and numerate and will have the basic social and life skills necessary to secure a job, to be an active member of a peaceful community, and to have a fulfilling life. Second, rights advocates recognize that, despite this recognition of education as a right by the Universal Declaration of Human Rights (UDHR), for example, many children fail to benefit from even basic primary education. This gap between the positive recognition of the right to education and the negative reality facing many children has led rights advocates to conclude that education must be considered a human rights issue on par with the right to food or the right to freedom. And as such, the Millennium Development Goal (MDG) to achieve universal primary education by 2015 was established to fight for the right for all children everywhere, regardless of gender, to a complete course of basic primary schooling. This is a goal that the 2010 Education for All report clearly indicates has achieved some progress (Watkins, 2010). According to this report, the number of children out of school has dropped by 33 million worldwide since 1999, the

gender gap is narrowing in many countries, and the adult literacy rate has increased (UNESCO Institute for Statistics, 2012). Nevertheless, in 2009 a total of 67 million children of primary school age still do not (or cannot) attend school (Naidoo, Saihjee, & Motivans, 2011; UNESCO Institute for Statistics, 2005; Watkins, 2010). The EFA team projects this number to remain unacceptably high at around 56 million by 2015 if the current status quo is maintained. Moreover, there are many who would suggest that while education is certainly important for children, it is not something that should necessarily be free, compulsory, public, or perhaps even a justified entitlement (e.g., Farson, 1974; Holt, 1964, 1967, 1974; Narveson, 2001, 2002; Purdy, 1992; O'Neill, 1988). This

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leads one to question, as representatives of organizations such as the UN (Tomasevski, 2005) and UNESCO (Report, 2002) have posed: What does having a right to education mean?

The standard definition of a right is “a justified claim on someone, or on some institution, for something which one is owed” (Orend, 2002, p. 17). For someone to claim a right to education, on this definition, suggests that there is a reason for that individual to claim entitlement and, similarly, there is a reason for someone else to honor this claim. So, what reason exists for the claim that an individual is entitled to an education and that others are responsible for honoring this claim? In the case of pure contractual arrangements, it is easy to provide reasons for such entitlements. I, as a customer, have paid for the services of a tutor, and the tutor, as a provider of teaching services, is obliged to tutor me. If either party fails to fulfill the obligations, there are established legal and social conventions for protection. Similarly, if I am a citizen of a country (a democratic one, at least), whose constitutional arrangements include the provision of basic schooling, the government, whose duty it is to carry out the constitutional provisions, is obliged to provide me with that service. The suggestion that a right to education is a *human* right, however, stakes a stronger claim on moral grounds, not purely conventional ones and, as such, elevates the right to education to what Orend referred to as, “a high-priority claim or authoritative entitlement, justified by sufficient reasons, to a set of objects that are owed to each human person as a matter of minimally decent treatment” (Orend, 2002, p. 34). To accept that the right to education is such a human right requires the need to establish what qualifies education as an object in the set of vitally needed material goods, personal freedoms, and secure protections that rights advocates claim each individual is owed.

Defending every child’s right to education is one way to advance every child’s chance to get at least a minimal level of protection and support as that child develops. It is an inert claim, however, to state that a child has a right to education if there are no means for that child to realize this claim. And as Orend recommended, “We do not know the full scope of our human rights until we know that the duties correlative to them can be performed at a reasonable cost” (Orend, 2002, p. 139). Providing children with educational opportunities can be expensive and, clearly, children (particularly young children) do not have the means to provide such resources for themselves. As a result, not only must consideration be given to what qualifies an object like education as a high-priority claim or human right, consideration must also be given to the social context necessary to acknowledge this claim and to accept the social cost to implement it (Orend, 2006). With this in mind, this paper first qualifies education as a human right. Second, it qualifies the kind of social context required to ensure that every child’s right to basic primary education is both meaningful and manageable. And finally, this paper offers policy implications regarding the implementation of education as a human right in the 21st century.

Education Qualified as a Human Right

Education is an institution that typically is established through a collective social desire to have civil and supportive societies. And if one considers the social dynamic found in many countries around the world, there is the suggestion that usually the more education people have, the better off they can be. With this in mind, many societies traditionally view education (at least primary and secondary education) as a genuine public good that adults and educators provide for children until such time that they outgrow their childhood vulnerabilities and inexperience to become contributing members of society themselves. Many existing international laws and UN documents have been created to promote and to protect this notion of education like the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).¹ These documents have helped to establish viable legal mechanisms from which nation-states can and have implemented, supported, and assessed effective social structures necessary to provide for appropriate educational opportunities. Consider for example, Article 13 (1) of the ICESCR, which stipulates:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

This stipulation highlights the need to recognize, beyond a loose symbolic suggestion, not only the fundamental nature of having a right to education but also the instrumental and intrinsic value of this right. Consider also Article 28 (1) of the CRC, which builds upon the ICESCR by stipulating:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

- *Make Primary education compulsory and available free to all;*
- *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
- *Make higher education accessible to all on the basis of capacity by every appropriate means;*
- *Make educational and vocational information and guidance available and accessible to all children;*
- *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

Further, Article 29 of the CRC stipulates the need to recognize both the human dignity and the inalienable rights of each child and the need to establish appropriate educational environments capable of promoting and modeling this as well. By focusing on the need to develop the diverse, evolving abilities of each child, these articles stipulate the importance of promoting and protecting an educational environment that strives to balance the child's ability with the child's familial and cultural identity and to be directly relevant to the child's socioeconomic circumstances.

While Articles 28 and 29 are dedicated most directly to education, four other articles in the CRC round out the need to establish an educational environment that is both rights respecting and child friendly. Article 2, for example, specifies the importance of respecting and ensuring the rights of all children regardless of background, ability, sex, or any other factor that might distinguish one child from the next. This is a stipulation that is particularly important when it comes to the education of girls in the developing world (e.g., UNESCO, 2009), and the education of racial and ethnic minorities in the developed world (e.g., Dickinson, 2004; Miller, 1987, 1996; O'Connor, 2000). Article 3 stipulates the best interests of the child should be the primary concern of all actions and decisions that may affect that child's life. To ensure that educational decisions are made in the best interests of the child, however, it is necessary for the child to be a participant in that decision-making process, not necessarily as an equal participant but as an age-appropriate contributor. Article 5 addresses the need to consider the significant role parental guidance can play in influencing the development of the child. The family, both the immediate and the extended community family, can and should be allowed to contribute positively to the evolving capacities of children, a condition that complements Article 6 and its stipulation that the child has an inherent right to life and to healthy development. These four articles, in conjunction with Articles 28 and 29, suggest that to realize the full rights a child is entitled to as a member of the human family, a holistic approach must be taken that recognizes the interconnected nature of this convention and, above all, the objects it specifies as necessary for a child to live a minimally decent life.

To complement the need to establish an educational environment that is child friendly, additional articles support the child's right to an educational environment that is also empowering. Article 12, for example, stresses the rights of those children capable of forming their own views to express those views when they are relevant to decisions that affect them directly. In accordance with appropriate consideration of the child's age and maturity, adults should give children the opportunity to participate in school life, including involvement in the creation of student councils, peer-mentoring programs, and the creation of curriculum materials that are both meaningful and relevant to their interests and experiences. The CRC also recognizes that having a voice is a meaningless entitlement if there is not a corresponding entitlement for children to access information freely. Article 17, for example, highlights both the importance of access to information, as well as the importance of access to information that remains open and flexible. Article 17 (a), in particular, highlights the value to be gained by encouraging the mass media to disseminate information and material of social

and cultural benefit to the child and in accordance with the spirit of Article 29. Article 17 (b) maintains the desire to advance intercultural understanding and education through international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources. Finally, Article 17 (e) reinforces the importance of recognizing that any rights granted to children must also account for the role parents play in the upbringing and development of their own children and the role public authorities, as stipulated in their laws, play in the protection and promotion of public order and national security. That is, the CRC recognizes the role the state must play in enabling children/families to develop their own cultural identities freely and fully while, at the same time, recognizing the role children/families play in the establishment of a peaceful and stable society. To do this is to recognize, as the UN does, that a right to education "goes beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society" (UN, 2001, "Appendix," p. 2). To uphold these goals of the CRC is to make a commitment to prepare children to live an individual life in society in the spirit of the ideals found in the UDHR and to provide children with a child-centered, child-friendly, and empowering educational environment.

While many countries (160 parties, as of December 10, 2012) have agreed to the principles embodied in the ICESCR (UN General Assembly, 1966), and most UN-recognized countries (193 parties, as of December 10, 2012) have agreed to the principles embodied in the CRC (UN General Assembly, 1989), the demanding nature of these stipulations has left doubt in the minds of many about the feasibility—the actual attainability—of a *universal* human right to free and compulsory basic primary education. One notable case in point is the United States, which has signed the CRC but has yet to ratify this treaty. To further qualify education as a human right outside of these codified national and international legal documents, it would be important to shift the existing robust worldwide commitment from the *idea* that children require special consideration of their right to have an education to a robust worldwide commitment to *public action*, which supports and sustains this right.

One of the most famous and influential articulations on the concept of social institutions and the need for a basic structure of society comes from John Rawls's magnum opus *Theory of Justice* (Rawls, 1971) and his later work *Political Liberalism* (Rawls, 1996). According to Rawls, the basic structure of society can be defined as "the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arise through social cooperation" (Rawls, 1996, p. 258). Rawls posited that, if people were given the blanket protection of a rational, mutually-disinterested persona (a veil of ignorance), they would be able to design a social structure in which all could live at least a minimally decent life once the veil is lifted (Rawls, 1971). From this state of ignorance, Rawls contended, rational individuals will choose two foundational principles necessary to shape a just society. First is the liberty principle, which

states: “Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.” Second is the difference principle, which states: “Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society” (Rawls, 2001, pp. 42–43).² He suggested that these two principles of justice will be selected because when biasing information is not available, rational agents will opt for a risk-averse distribution of fair and equitable treatment. He asserted this because he believed that reasonable individuals will not be willing to risk themselves not having at least a basic minimum set of social essentials or primary goods from which to pursue freely the things in life they wish to pursue (Orend, 2002, pp. 82–87). Although education is not the primary focus of Rawls’s work, education is one of the primary social institutions that he includes as an essential component in a just society. Moreover, given that children represent a large majority of those who are within the group of the least advantaged members of society, it would seem that defending a child’s right to education is both reasonable and rational.

Of course, while this Rawlsian understanding of the role of education in society provides a justifying framework for establishing education as a public good within a particular society, it fails to provide a satisfying justification for why society in general should actively support education as a *human right* as stipulated in documents like the ICESCR or the CRC, or why it is important to support the MDG to achieve free and universal basic primary education for all by 2015. To address this, we should consider another influential voice on the design of just social institutions: Thomas Pogge. Pogge reiterated Rawls’s belief that it is the design of social institutions that determine whether people get the objects of their vital needs (Pogge, 2002, especially ch. 2). Like Rawls, Pogge is interested in analyzing social institutions and in establishing how such an analysis can be used to justify the need for reform when these institutions are demonstrably unjust. Pogge recommended that it would be more beneficial to adapt Rawls’s theory of justice to the complexities of the real world, however, which is interconnected and global in scope (Pogge, 1988). Thus, Pogge importantly expanded upon the Rawlsian framework to recommend that it is no longer possible to limit ourselves to well-ordered ideal societies and to the provision of primary goods through well-organized social institutions as defended by Rawls. Pogge argued instead that given our interconnectedness it is vital that we broaden this notion to embrace the more global concept of human rights. Moreover, he favored a concept of human rights that is not bound by the historically arbitrary national borders or governmental bodies found in the Rawlsian Law of Peoples—for Pogge, human rights belong to humanity (Pogge, 1994). As such, the force of human rights comes not from legal or political compulsion but from moral compulsion—only if the legal lines up with the moral, so to speak. While acknowledging legal rights and enforceable obligations are important advancements in our understanding of natural law and natural rights, he argued that even “human rights

lawyers can acknowledge that the legal rights and obligations they draft and interpret are meant to give effect to pre-existing moral rights” (Pogge, 2002, p. 53).

This is a significant qualification because, as Pogge explained, human rights claims should be viewed as ethical guidelines for the actions of all members of a society to monitor the design of the basic social structure in which all members participate. For Pogge, human rights are not about fairness of treatment and consideration exclusively, nor are they about designing a specific way of life for all of humanity. Pogge’s realistically utopian approach to human rights represents a dynamic plan for the establishment of a “*single, universal*” criterion of justice which all persons and peoples can accept as the basis for moral judgements about the global order and about other social institutions with substantial causal effects” (Pogge, 2002, p. 33). It is important to note that Pogge was most interested in how to achieve *another* MDG (Pogge, 2004), one which focuses on the important and worthwhile task of cutting the world’s extreme poverty in half by 2015. It is possible, however, to extrapolate the essence of his claim onto the MDG for universal primary education for all. On this account then, to qualify education as a human rights claim, it must be a *vital concern* relevant to humans, to *all and only* humans, and must be *sufficient to outweigh other concerns* that may also require action. Basic primary education is clearly a vital concern relevant to all humans, and it is a claim that can be made regardless of economic or social status. The external attachments, group memberships, or social conventions to which a child belongs should have no bearing on the ability of that child to benefit from claiming a right to basic primary education. And yet, clearly there are many instances where these attachments, group memberships, and social conventions do affect one’s ability to realize one’s right to basic education.

The need to elevate basic primary education to the status of a human right rests on the idea that we stand in a certain moral relationship to each other—a relation that is outside of any societal structure in which we may find ourselves and that makes the claim to basic primary education unique and universal. The CRC provides a sufficient set of guidelines to assist us in understanding this indivisible relationship between one’s education and one’s ability to interact socially. By establishing careful limits to the scope of a child’s claim to education, we can conclude not only that education should clearly be considered a right from which all children can benefit but that education is a *human right* that is both intrinsically reasonable and socially indispensable, a conclusion that supports the UN challenge to the world to participate in an education revolution that would see every child learning and participating in a child-centered environment designed to meet the individual’s unique needs. Defenders of this global action plan suggest that, by embracing such a rights-respecting agenda, individual countries will be able to coordinate and improve international and national efforts to provide children with the skills and knowledge necessary to maximize their personal and intellectual development, which, in turn, will maximize each individual country’s social and economic returns. Moreover, these defenders also suggest that, by embracing the language of rights, as outlined in the CRC, it is possible to apply rights to children in an

appropriate way. According to defenders of the CRC, it makes no sense to talk about civil and political rights children have, because they do not have the same direct relationship with their government as adults do. Also, it makes no sense to limit children's rights to only those concerned with welfare obligations, because children do have a unique status outside of dependency—an individuality, an emerging autonomous personhood—that also needs to be considered.³

To realize the MDG to achieve free and compulsory basic primary education for all, it has been suggested that at least two things need to occur. First, the right itself needs to be acknowledged as a right worthy of recognizing and supporting. That is, all rights have associated costs (even if they are minimal) that must be met for their realization. If a right is real, then the individuals who have to bear the burden of the right must be morally compelled to act in such a way as to enable the claimant to realize the claim. Second, for the right to be meaningful for the claimant, there needs to be a social context in which the claimant can do something with the right once it has been obtained.

As it has already been suggested, Rawls and Pogge argued that everyone has both the capacity for a sense of justice and a capacity for a conception of the good. If a society treats all individuals as free and equal citizens, and establishes a basic structure built upon the principles of justice as fairness, citizens can use these capacities for mutual advantage to create a social infrastructure that can produce social benefits for everyone and manage those benefits in a fair and equitable way. Rawls and Pogge both took this to be the most reasonable model for the basic structure of society because not only can such a model provide individuals with great opportunities for a meaningful life but such a model can provide societies with greater opportunities for ongoing prosperity and permanence as well. And Pogge introduced the further need to consider human rights as ethical guidelines for the actions of all members of a society to monitor the design of the basic social structure in which all members participate to ensure that this structure is not arbitrarily unjust. To this end, children must be seen as citizens in training, and their education must reflect and encourage these ideals of social justice. An acceptance of a universal right to education can lead to the obvious benefits of economic efficiency and improvements in social welfare. More important, however, an acceptance of a universal right to education can enable a person to enjoy and to participate in the culture of her society as well. Ultimately, however, an acceptance of a universal right to education can lead to the main benefit that Rawls and Pogge suggest can be derived from participating in a public system of education: the ability to coordinate with others for mutual social advantage.

This conclusion provides a comprehensive explication for the need to reflect on both social institutions in general and on the specific causal effects that we bring to bear upon those social institutions in particular. This also provides a morally compelling justification for why we should make every effort to participate in, and to maintain, just social institutions and what effect this kind of active justice-seeking participation can have on achieving more equitable and just societies. Moreover, this conception of global social justice suitably addresses the concern often associated with

the notion that while it is important to understand the obligations we have toward others, such an understanding will only be applicable to all individuals if there is also an understanding of why we have these obligations in the first place—namely an understanding of moral human rights. But one thing that seems to be missing to any adequate degree is an account of how individuals, even influential ones, develop the capabilities to act on this knowledge.

The Social Context for Education for All Qualified

Advocates of Education for All (Colclough, 2002; UNICEF, 2009; Watkins, 2010) recommend, first, the obvious need to secure the political will to bring about such reforms, like securing full ratification of the CRC (including from the United States). They also recommend that citizens should be included as active, participating agents in these reforms. Such an approach requires a model for institutional reform that not only compels us to reflect upon the design of social institutions but also compels us to reflect on the capabilities that individuals actually have to contribute to just institutions. Amartya Sen is a prominent voice in this regard. Sen, like Pogge, is keenly interested in how to eradicate unjust inequities and to champion human rights, but he approaches this goal from the perspective of what individuals can do with the rights and resources that are available to them. With this in mind, he contended that, while it is correct to have concern for how certain institutional structures can deprive individuals of their basic rights, it is equally important to look to achieving certain levels of basic capabilities, below which people count as “scandalously deprived” (Sen, 1993, p. 41). To this end, it is necessary to examine the role institutions play in securing the child's right to education, and consideration needs to be given to a concept of human development *through* education as well (e.g., Alkire, 2002, 2005; Berges, 2007; Robeyns, 2006; Saito, 2003). According to Sen, having a right is only significant if that right enables you to do something which you value (Sen, 1993). By focusing on Sen's notion of freedom or capability as the proper content of rights in this regard, it is possible to deepen our understanding, in particular, of education as a human right because Sen develops an important understanding of human capabilities and translates this understanding into a capability-sensitive educational framework—a framework that, according to Sen (2003b), embraces an old Bengali suggestion:

Knowledge is a very special commodity: the more you give away, the more you have left. Imparting education not only enlightens the receiver, but also broadens the giver—the teachers, the parents, the friends. Schooling not only benefits the person being schooled, but also others who are close to those who are being schooled. Basic education is a truly social good, which people can share and from which they can jointly benefit, without having to snatch it from others. (p. 21)

Sen recommended, “One of the characteristics of human agency is the ability to scrutinize and re-examine our values and priorities in light of fresh information and new understanding. The process of institutional reform depends on such scrutiny and critique” (Sen & Anand, 1996, p. 25). Where many place the burden of institutional reform on the obligation of some to achieve secure

access for all to a universal set of fundamental rights, Sen recommended the additional stipulation that, while having these rights is essential to our well-being, they will only be effective in influencing our standard of living if individuals themselves are in a position to do something with those rights. Thus, Sen's focus is more on individual empowerment, as opposed to being a strategic plea to the powers-that-be.

For Sen, one's level of empowerment can be identified in more than one way—most obviously through the assessment of one's ability to secure basic necessities or rights. Most important, though, is the assessment of one's ability to convert these necessities into meaningful action. The value of this approach comes from looking beyond the question of whether or not we have fulfilled our duty not to interfere with the choices of others to considering whether the choices that people make are genuine choices—that is, choices that enable them to achieve what they value. Sen (1992) claimed that “a right gives a person a certain opportunity” (p. 141). Importantly, he added to this a caution that we also need to understand what capabilities are necessary to convert these rights into something meaningful and enabling. On this account, if we have real opportunities, we can achieve certain “functionings” (Dreze & Sen, 1995, p. 10), or beings and doings, that we value (like being nourished, being educated, or being confident to participate actively in our own social environment). Sen defined *capability*, then, as “the alternative combinations of functionings from which a person can choose. Thus the notion of capability is essentially one of freedom—the range of options a person has in deciding what kind of life to lead” (Dreze & Sen, 1995, pp. 10–11; see also Sen, 1984).

An emphasis on capabilities, or open-ended freedoms, in this way is important because not only do they enable individuals to be able to achieve a certain level of well-being, they distinguish having a certain standard of living from the value that can be gained from achieving that standard. For example, Sen suggested that, if you consider two people with identical functionings in a certain respect—they are both starving, say—the correct thing to do, if you are able, is to offer them some food. If you discover that one person is starving because that person lives in a country that is experiencing a famine, and the other is fasting to make a political statement, how you respond to this additional information is significant (Sen, 1985). Education ought to be accessible to every child. Having a right to education, however, does not mean having a right to the same education for all; it means having the same right for all to an education. The inclusion of the element of compulsion is necessary, not to penalize directly those countries that are incapable of fulfilling this goal but to highlight the nonoptional interdependent nature of basic primary education and the need to increase the level of awareness with regard to “international assistance and cooperation” (Committee on Economic, Social and Cultural Rights, 1999, pt. 9) to achieve this end. Similarly, the inclusion of the child's right to access a high-quality education within a framework that is flexible to meet each child's unique needs is not to burden educational systems inappropriately. The inclusion of this right to access is to highlight the nonoptional nature of the child's right to education. Even in countries that have

well-established educational programs, many children cannot realize their right to education because they are members of a group that is marginalized within its own society. To achieve the UN goal of education for all, however, consideration must be given to all children, including those children who have traditionally been hard to reach. This includes (but is not limited to): girls, especially in predominately patriarchal societies; rural children, who might not have the means to get themselves to school; ethnic minorities or indigenous groups who do not speak the common language taught at school; children with disabilities; children who do not officially belong to a school district because they are without a permanent address; and children caught in armed conflict.

In light of this, it is important to consider Sen's belief that the unfreedoms that an individual may suffer arise from two sources: inadequate processes and inadequate opportunities. While it is essential to analyze the social processes that we engage in, we must also develop fully the two-way relationship between processes and opportunities, a relationship which Sen argued is necessary for effective human agency and development. According to Sen, people often have adapted preferences, which might indicate that they are experiencing an improvement in their standard of living but that, in reality, reflect false improvements because these improvements bear no meaning on their actual situation or circumstances. A good example of this is the case of the right to education for Canadian aboriginal children, who seemed to experience an improvement in their standard of living based on the Canadian government's standards but, in reality experienced a false increase because they lost so much of the things which were of real value to their community. A situation such as this highlights the impact that aggregative measurements of a society's general well-being may hide or mask about the true reality of the individuals within that society. Moreover, blanket statements of the rights that individuals have can also hide or mask the reality of the opportunities that an individual has to act on those rights. At the very least, the rights talk only begs the further question of how to make rights real, and it is here that Sen's capability theory can add importantly to the debate. To determine whether an individual is actually experiencing an improvement in her standard of living requires a general sense of societal well-being, an understanding of the norms to which the society aspires, and the additional information to be gained from assessing the real opportunities or freedoms that an individual has.

What this capability approach allows is the possibility to move beyond the Rawlsian concept of equal liberties for all to a more robust concept of freedom that takes the “freedom of individuals as the basic building blocks of development” (Sen, 1999, p. 18)—building blocks that should integrate into a functioning whole the personal concerns that an individual has regarding life with the general concerns of society. Moreover, on Sen's recommendation, it is essential that the contingent personal and social circumstances, or “parametric variations” (Sen, 1999, p. 88) that are unique to individuals, need to be accounted for, and addressed, within public policy like that governing education. In a speech that Sen delivered to the 2003 Commonwealth education conference in Edinburgh, he asked the following question: “Why is it so

important to close the educational gaps, and to remove the enormous disparities in educational access, inclusion and achievement” (Sen, 2003a, para. 20)? To this question, Sen responded by providing six potent reasons why formal public education is both intrinsically and instrumentally important and why the public should be interested in supporting it by closing the educational gaps that currently exist around the world.

First, Sen highlighted the connection between education and security. Human insecurity is related to the obvious insecurities that result from the potential physical harms that others can inflict upon us, through things like terrorism and violence. But insecurity is multidimensional in nature. Not having the basic skills of being able to read, write, and calculate imposes insecurities upon individuals who are, at the least, equally significant, in that they also cause lifelong, inescapable capability deprivations. Not everyone is directly affected by terrorism, but all illiterate individuals are directly and constantly affected—and negatively so—by their lack of skill in this regard. If a country is willing to support the military and policing initiatives to protect the physical security of a society, then that country should be willing also to support the educational initiatives to protect the knowledge-based security of that society. Second, Sen highlighted the obvious potential for economic empowerment that comes from being literate and numerate. Related to this potential for job-skill development, Sen suggested further that with literacy comes understanding—a notion of understanding that goes beyond the factual information typically associated with schooling (like improvements in one’s level of social, historical, or geographical awareness) to the understanding of the social information typically associated with human rights and the concurrent obligations to those rights, which should be fulfilled. Fourth, Sen suggested that being able to read is essential to being able to participate in political decision-making. Fifth, Sen suggested that not only is formal education important for political participation, it is essential for accessing a wide variety of public services. For example, according to Sen, being educated can translate into being able to use, more extensively and more knowledgeably, the available public health services. While providing free public education is a significant public burden, maintaining a society’s general health and well-being is an equally significant encumbrance. If the observable correlation between level of education and level of general physical well-being is recognized, the indispensable influence that educational opportunities (especially those directed toward women) can have on preventative health care can go a long way to achieving general sustainable social well-being and to alleviating a significant portion of the public health burden. And finally, he highlighted the significance of recognizing the benefits to be gained from demanding that women receive the same educational opportunities as men. While it is true that having an education is highly relevant to men, because often men take on the role of economic provider for the family, this reality does not diminish the need to recognize the relevance of having an education to women. It is the women, after all, who often carry the burden of being the prime role model and mentor to children, especially in the formative years. If the education of women is not taken to be of equal significance to that of men, then

the potential for all children (male and female) to benefit from a comprehensive set of capabilities is diminished.

Conclusion

The claim that a right to education is a human right is an important claim. It is an important claim because there is a responsibility to enable children to develop an acquired set of capabilities to lead their own lives in a meaningful and fulfilling way. UNESCO’s aim to construct a 21st-century learning society by promoting the MDG to achieve free universal basic primary public education for all by 2015 is both an important and a worthwhile objective. Currently almost 70 million children of primary school age do not, or cannot, attend school—a staggering statistic that suggests that the establishment of a right to education is a high-priority claim in today’s world.

The establishment and maintenance of a stable society depends on social norms and institutions that all members can accept as reasonable without unnecessarily distorting their own sense of justice in the process. This understanding of the basic structure of society is important because it can achieve two things. First, it can deepen our understanding of the role institutions should play in the creation, and maintenance, of a mutually beneficial, rights-respecting social infrastructure. Second, it can deepen our understanding of why we should be morally motivated to recognize and support these institutions.

Typically, the institutions that are deemed to be essential to a society are institutions that govern property, security, politics, and the economy, but I have argued that education is an essential institution as well. Education plays a large role in achieving just societies because education can develop a child’s sense of self, sense of community, and sense of citizenship. While it is true that the provision of education is costly and multifaceted, a public institution of education needs to be in place to manage the kinds of educational opportunities that are available and to secure the kinds of resources that are necessary. A human-rights approach stipulates that there is a duty on the part of all governments, especially wealthy governments, to influence and support the institutional reforms necessary to achieve at least the provision of free basic primary education for all children—an important claim but one that cannot stand alone. It cannot stand alone because it fails to address adequately those cases where children are said to have a right to education but are unable to act on that right.

To address this concern requires the insight to be gained from the capability approach, which accounts for the further responsibility on the part of all individuals to ensure that the kinds of educational reforms that governments undertake can provide children with the freedom to act on their rights. Thus, to achieve the MDG of free compulsory basic primary education for all requires the active involvement both of official channels as represented by advocates of human rights and of civil society as represented by the actions of interested and involved individuals. So, while it is important to secure and protect a right to education, it is equally important to be able to convert this right into meaningful action. Having rights is only effective in influencing an individual’s standard of living if that individual can do something with that

right as well. Thus, to implement fully a global human right to education, we must have an unyielding commitment to capabilities as the proper content of children's rights and be encouraged to look beyond securing rights to determine whether an individual is actually experiencing an improvement in standard of living. That is, we must seek out a deeper understanding of the norms to which a society aspires. Also, we must seek out a richer measure of existing states of affairs.⁴ Finally, a commitment to capabilities encourages us to seek functional solutions that can assist children in achieving a level of well-being that is of value to them because it enables them to act on the rights that they have within the societies in which they exist.

Of course, the desire to make basic primary public education free to all is a demanding goal economically, socially, and culturally. A simple suggestion is to forcefully restate the need to ratify fully the CRC. Although this suggestion is largely symbolic, it is worthwhile because the United States is one of the remaining two countries who have yet to sign (the other being Somalia). Given that the United States is as powerful and influential as it is, its endorsement is significant. With regard to its own domestic responsibilities to the establishment of a stable and supportive system of education for its children, the significance of full ratification may have a limited effect. With regard to the responsibilities to the MDG to achieve free and universal basic primary education for all children, however, the significance of full ratification is noteworthy for a variety of reasons. Full ratification would represent: a universal acknowledgement of children's rights; a universal acknowledgement of the need for greater awareness of and accountability to the plight of all children; greater opportunities for resource sharing; and most important, a universal endorsement of the key role that education plays in the development of children and societies.

A more complex suggestion is to look beyond the symbolic act of full ratification of the CRC toward individual public actions. To answer the question "How should public action be directed to respond to the UN claim that education is a fundamental human right to which all children are entitled?" it is essential to recognize that basic primary education is a fundamental right that is of equal significance to the traditionally accepted rights to security and political freedom. This is so, because education is necessary for both individual initiative and social effectiveness. Further, I have argued that to realize this right to education for all in a meaningful and manageable way requires a model of institutional reform that motivates us to reflect upon the design of social institutions and upon the capabilities individuals have to contribute to those social institutions. The challenge for the 21st century is to establish a new human rights perspective from outside of the bowels of international law and governance—a perspective that takes education to be a vital human rights object that is as significant to an individual as is food or freedom but that is also significant to society as an indispensable means of realizing sustainable development, prosperity, and permanence. It is not enough simply to defend the child's right to access education—one must defend the child's right to an education, which is focused on the need to develop the child's own autonomy and potential for independence and individual

action both within the immediate society to which the child belongs and within the global society in which the child will interact.

Notes

1. In conjunction with other documents like Article 26 of the Universal Declaration of Human Rights (1948), Principle 7 of the Universal Declaration of the Rights of the Child (1959), Articles 7 and 10 of the European Social Charter (1961) (and 17 in the revised ESCR), Articles 10 and 11 of the UN Declaration Regarding Social Progress and Development (1969), and Articles 17 and 25 of the African Charter on Human and People's Rights (1981).
2. This is a revised statement of the principles of justice found in Rawls (1971), 52–78.
3. This is an important and complex topic worthy of another paper as it is beyond the scope of the current topic at hand.
4. Like the Human Development Index (HDI), United Nations Development Programme, *Defining and Measuring Human Development*. (New York: Oxford University Press 1990). See also UNDP website at <http://hdr.undp.org/en>

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