

# The Universal Right to Education: Freedom, Equality and *Fraternity*

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**Abstract** The overall aim of the article is to analyse how the universal right to education have been built, legitimized and used. And more specifically ask who is addressed by the universal right to education, and who is given access to rights and to education. The first part of the article focus on the history of declarations, the notion of the universal right to education, emphasizing differences in matters of detail—for example, the meaning of ‘compulsory’, ‘children’s rights’ or ‘parents’ rights’—and critically examining the right of the child and the right of the parent in terms of tensions between ‘social rights’ and ‘private autonomy rights’. Despite differences in detail, the iterations of the universal right to education do share to the full in the idea of education as such. In the second part the attempt to scrutinize the underlying assumptions legitimizing the consensus on education, focusing again on the notion of the child. In conclusion I argue that a certain notion of what it is to be a human being is inscribed within the circle of access to rights and education. These notions of what it means to be a child, a parent, a citizen or a member of the ‘human family’ are notions of enlightenment and humanity and, to my understanding, aspects of how democracy is configured around freedom, equality and fraternity.

**Keywords** Education · Human rights · The child · Philosophy

Nearly 60 years after its proclamation, the declaration of Human Rights has become the text of what Michael Ignatieff (2001, p. 53) once called the ‘major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global economy’. Ignatieff discuss what it means to *believe* in human rights. Is it a belief like faith or is it more like hope or is it something entirely different? The aim of this article is to raise a different question about the rhetoric on human rights. The question is how the universal right to education have been built, legitimized and used. More specifically the

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question is, *who* is addressed by the universal right to education, and who is given access to rights and to education?

It is difficult to deny that universal human rights and international law have gained a prominent place in contemporary debates about the global, national and local character of society. Since 1989, when the UN General Assembly adopted the Convention on the Rights of the Child, it has also become more and more common to speak about education from the point of view of children's rights. With focus on the 'nature' of right, the relationship between children and parents on matters of right, and conceptions of the child, the overall aim is to shed some light on the limits to the universal rights to education. There is a certain notion of what it is to be a child, a parent, a citizen or member of the 'human family'—a human being—is inscribed within the circle of access to rights and education. The article is concluded in a discussion on the affinity between rights and education and its intersections with how democracy is configured around freedom, equality and *fraternity*. These are important issues in the debate on cosmopolitanism. *Kosmo politês* (citizen of the world) address the ideal that all human beings—regardless of national and cultural belongings, religious or political affiliation—belong to the same community and, with the Kantian (1992a, 2006) notion, this community should be cultivated! The ideals of *kosmo politês* was reformulated with the emergence of nation states social contracts, citizenship, and later on with the post-world war declarations on human rights.

## The Universal Right to Education

The right to education is what is known as a second-generation right. As such, it does not appear in the initial declarations of the modern period, nor does it appear in the declarations from the dawn of United States independence or the Déclaration des Droits de l'homme et du citoyen of 1789. It was when social rights became prominent in the second half of the nineteenth century that the right to education was included, first in national normative instruments and later, in the second half of the twentieth century, in international declarations and conventions: the Universal Declaration of Human Rights (1948), the European Convention on Human Rights and Fundamental Freedoms (1953), the International Covenant on Economic, Social and Cultural Rights (1966), and the Convention on the Rights of the Child (1989). The various ways of conjugating such sets of rights give rise to several tensions, including those between the state and the individual, the parent and the child, autonomy and belonging, inclusion and exclusion, sovereignty and authority.

The first internationally agreed definition of the right to education was formulated in Article 26 of the 1948 Universal Declaration of Human Rights. It includes three paragraphs:

1. 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.
2. 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.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

The aim and contents of the universal right to education is determined and shaped through a number of iterations. Emerging from its earlier versions, including a basic right to free and compulsory education, it developed to explicate aims and purposes, and finally; the adoption of the prior responsibility (right) of parents to choose the kind of education that their children are to be given.

At first sight, the universal right to education ascribes rights not only to the individual, but to someone other than the addressed individual (the child), i.e. to the parent. The tension between children's and parents' rights in the Universal Declaration of Human Rights is not an isolated exception. The right to education was one of the most controversial articles in the European Convention on Human Rights and Fundamental Freedoms (1950, 213. U.N.T.S. 221) and had to be included in a separate protocol due to the difficulties in reaching an agreement on its wording. The difficulties and disagreements related to the formulation of compulsory education and the demand on individual (and families) autonomy (Wahlström 2007). The Consultative Assembly came to the following agreement:

No person shall be denied the right to an education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (First Protocol to the European Convention on Human Rights 1953, 213. U.N.T.S. 262).

The tension between parents' and children's rights is evident, and as such it is reasonable to ask whose right to education that's at issue? Emphasizing *children's* rights the articulation of the Convention on the Rights of the Child, in 1989, further ignited the discussion on the meaning of the rights of the child and the rights of parents. Article 28 of that Convention emphasizes that:

State Parties recognize the right of the child to education, and with a view to achieving this right progressively on the basis of equal opportunity, they shall, in particular make: (a) Primary education compulsory and available free to all; (b) 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 (Convention on the Rights of the Child, 1990, art. 28).

In line with the Universal Declaration of Human Rights, the Convention continues, in article 29:

No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State (Convention on the Rights of the Child, 1990, art. 29.2).

The Universal Declaration, the European Convention on Human Rights and the Convention on the Rights of the Child do contain a tension between children's and parents' rights. This controversy over children's vs. parents' rights touches upon a typical tension in the development of modern citizenship and human rights; the clash between civil rights (to private life) and social rights (to compulsory education). The universal right to education, including the basic right to free and compulsory education and the adoption of the prior

right of parents to choose the kind of education that their children are to be given, address the right to share to the full in the social heritage (social right) and the freedom of thought and belief (civil right and private autonomy).

### Universal and National Citizenship Rights

Marshall (1992) analysis of the development of nation-state citizenship right, the distinction between the *civil*, *social* and *political* dimensions of (national) *citizenship*, and Bobbio's (1996) analysis of human rights disclose how development of national and human rights are entwined with the emerging modern societies continued demands on freedom and equality. Rights were fought for and established gradually over time in relation to specific needs and circumstances:

Religious freedom resulted from the religious wars, civil liberties from the parliamentary struggles against absolutism, and political and social freedoms from the birth, growth and experience of movements representing workers, landless peasants and smallholders (Bobbio 1996, p. xi).

Further; social rights, unlike libertarian rights, require active intervention by the state and they can only be satisfied by a certain level of economic and social development. Hence, these rights are of a social nature and are interdependent on social change (Bobbio 1996, p. 55):

While libertarian rights originate from the excessive power of the state and therefore limit its power, social rights require practical implementation. Thus their transition from a purely verbal declaration to their effective protection involves an increase in the powers of the state (Bobbio 1996, p. 51).

Marshall's analysis mainly revolves around civil inequality, on the one hand and, on the other, social inequalities. The point is that the struggles for civil and social rights were based on different reasons, and here we can recognize a clash between different ideologies, where the appearance of social rights within the setting of the welfare state became a "threat" to civil rights (cf. Marshall 1992). The clash between parents' and children's rights to education reflect the clash between civil (private) rights and social rights. Following Bobbio's and Marshall's analysis of the development of citizenship rights, we learn that what are referred to as fundamental human rights are first of all historical rights, brought into being and characterized by an ongoing contest between new demands for freedom and old power structures. Consequently, 'universal' rights are historical recognitions of certain rights and common values formulated in the document of the Universal Declaration of Human Rights by the General Assembly in December 1948. 'Universal' means 'subjectively accepted by the universe of humanity' (Bobbio 1996, p. 15). Social rights, embedded in certain historical and social conditions, have been achieved gradually and the field is undergoing continuous change (Bobbio 1996, p. 20). Thus rights are what Derrida (1988) called iterable, repeatable, and as such, in their repetition, open to constant discussions, contests and negotiations.<sup>1</sup>

<sup>1</sup> Thereby understanding the documents as readable, determined in general, and repeatable, or iterable, an iterability that ties repetition to alterity (1988, p. 7).

## Education: Social Right and Private Autonomy

According to Marshall there was no conflict between the social right to education and civil rights as they were interpreted in an age of individualism, although the right to education is a genuine social citizenship right. 'For civil rights are designed for use by reasonable and intelligent persons, who have learned to read and write' (Marshall 1992, p. 16). Thus, in Marshall's perspective, since education is a necessary precondition for civil freedom it could not be in contradiction of civil rights.<sup>2</sup>

By the end of the nineteenth century, education was not only elementary and free, it departed from *laissez-faire* and became compulsory. The word compulsory could be 'justified on the grounds that the free choice is a right only for matured minds, that children are naturally subject to discipline, and that parents cannot be trusted to do what is in the best interest of their children' (Marshall 1992, p. 16). It is such *distrust* in parents' ability to do what is in the best interest of the child that invoked, among the delegates on the UN drafting committee, a fear of totalitarianism, authoritarian governments and political paternalism; subsequently, it has invoked a clash between civil rights and the social right to education. In the deliberations on the appropriate wording of article 26 of the Universal Declaration of Human Rights, the meaning of the word 'compulsory' became an issue. The concept of compulsion appeared contradictory to the statement of a right, since in totalitarian regimes as a concept of state education would deprive individuals of their right. The suggested compromise of the amendment gave parents a primary responsibility to choose education for their children without preventing the children from receiving education:

The rights of children were sacred because the child itself could not demand their implementation; parents were the most natural persons to do so. Parents would be unable to bear the primary responsibility unless they were able to choose the kind of education their children should have. Nazi Germany, where the Hitler Youth deprived parents of control over their children, had provided an experience which should never be permitted to occur (UN, [Economic and Social Council](#), Commission on Human Rights, E/800, p. 582).

With the overall aim of establishing effective guarantees for individuals concerning human rights included in the 1948 Universal Declaration of Human Rights, those rights were transformed into a European Convention with legal status through the juridical exercise of an independent European Court. The right to education among two other areas caused the most controversy regarding their inclusion in a European Convention on Human Rights. The Committee of Ministers finally signed an article on education in the First Protocol in Paris in 1952, reading as follows:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (TP Vol. VIII (1985), p. 214).

The basic controversy concerned the role of the state in a democratic society. Previous to the period when these discussions took place (1949–52), Europe had experienced totalitarian regimes with a concentration of power in the hands of the state. So there was

<sup>2</sup> Later in this article I argue that such preconditions, per se, disclose a paradox in that the right to education could not be a right on its own. Both civil and political rights require a certain level of education, a certain know-how and capability. It seems that education is a precondition for *understanding* one's right to rights.

certainly a fear of an oppressive state controlling people's private lives. There was no agreement, however, about where the limits of privacy were to be drawn. Freedom of religion was provided for in Article 9 of the Convention, but in the case of education the interpretation of 'freedom' became a source of conflict. The contest stood between the right of the parent, as a civil right, to choose an education for their child in accordance with their own beliefs, and the child's right, as a social right, to be educated, equipped with qualifications to make his or her own choices concerning religious or philosophical convictions.

In the post-world-war context, positive state intervention invoked a discussion according to which neither a public nor a private institution that contributed to education could replace the responsibility of the family. Recall the third paragraph in the Universal Declaration: 'Parents have *a prior right* to choose the kind of education that shall be given to their children' (Universal Declaration of Human Rights, art. 26, italics added). In similar wordings, the European Convention on Human Rights emphasized a respect for parents' presumptive right to keep their care of the child in the settings of privacy: 'the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions' (First Protocol to the European Convention on Human Rights 1953, 213. U.N.T.S. 262). This tension between the right of the child and the right of the parent has become a central issue in contemporary educational policy debates. There seems to be a number of fundamental ideas that provide a stage for playing out the script of this tension between parent and child. I want to emphasize that the rhetoric on rights enclose a specific conceptualization of the child. In the following the concept of the child and childhood is taken into consideration.

### **The Immature Child and Paternalistic Treatment**

This far it is possible to recognize two related concepts for thinking about rights of children. On the one hand, we can recognize that we have rights which protect individuals from undue interference by the state and from the harmful acts of others; and on the other, we have rights which permit persons to make choices which have significant long-term consequences—choices which seem to require mature capacities not at the disposal of 'the child'. Although children are the primary beneficiaries of education, there is a focus in international law on the rights of parents to exercise control over their children's education. The international declaration on the right to education consequently treats parents as consumers of education, and as their children's representatives in educational choices (Fortin 1999).

Jeffrey Murphy (1977), on the other hand, distinguishes between (private) autonomy rights and (public) social contract rights. Autonomy rights mark out what kind of treatment is appropriate towards autonomous persons whose rational choices are to be respected. Social contract rights guarantee certain moral claims that rational agents under a veil of ignorance would find morally reasonable to ensure, where the right to education, as a social contract right, can be understood as a right to 'paternalistic treatment', which includes protection against immaturity—against not knowing what right one has or of not being in a position to exercise such a right. Murphy (1977) argues that the child's right to paternalistic treatment loses its sense of paradox once it is understood as a social contract right. His argument relies on a certain conception of the child, a concept of the child as not yet rational, not yet an 'agent'—as immature. Consequently, and in summary, 'the right to education' seems to mark out the way in which the person who has the right to education is

not generally ascribed to rights; rather, it ascribes rights to others (parents).<sup>3</sup> It is worth noticing that Marshall's (1992) sociological perspective on the development of citizenship rights emphasizes that the right to education should be understood 'as the right of the adult citizens to have been educated' (Marshall 1992, p. 16). The right to education as a human right is ascribed, retrospectively in future, to the child who will be an adult, an educated adult. The right to education is a social contract right in Murphy's terms, a guarantee of an education that rational moral agents (adults) find morally reasonable to ensure. The addressed individual (child) is either not in a position to exercise their right or does not know what is in their best interests (or both), and therefore is not recognized as an autonomous bearer of rights. It is only in the Convention on the Rights of the Child (1990) that the child is recognized (cf. Roche 1999; Freeman 2000). That Convention emphasizes the autonomy of the child and the importance of taking the child's views into consideration. However, the ostensible paradox is that maturity circumscribes the range of capacity that everybody needs to master in order to access rights, thereby drawing a dividing line in relation to those who *cannot* count as being capable of having rights.

There are four basic tenets that inform an interpretation of the articles of the Convention on the Rights of the Child. Among these are 'the best interests of the child' (article 3) and 'the right to express views and to be heard' (article 12), and they are often mentioned as challenging the traditional role towards children and widening the view of the child as a citizen and bearer of rights. The first paragraph of article 3 states that 'the best interests of the child shall be a primary consideration' (Convention on the Rights of the Child, 1990, art. 3). The requirement for the child to be allowed to express what is in her/his interests is stated in article 12. Article 12 also gives us some guidance on the underlying assumptions as to what child/childhood means:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (Convention on the Rights of the Child, 1990, article 12).

Who, or what child, is to be/not to be assured the right to express her or his views freely? The child who is *capable* of forming his or her own views has the right to express those views freely. Access to the right is here based on capability—to have the capability to, is to have the ability to, is to have the right to. The question then is who is capable, who has the ability to, who has the right to give or take some right, to give her- or himself some right? Capability is in turn related to maturity, since the views of the child are to be 'given due weight in accordance with the age and maturity of the child'. The limit of access to being heard is drawn by maturity, which in turn distinguishes childhood from the adult world. Childhood could here be understood as *infantia*, which literally means being incapable of speech and is the generic term for not-being-able-to.

It is striking how the right to education is conceptualized in terms of paternalistic treatment, either by the parent or the state (*parens patriae*). The right to education addresses all persons, but not just any person. It addresses those who are not yet adults, not yet rational, not yet mature, the parents' children or those who are not generally ascribed to rights. From the viewpoint of Marshall's sociological analysis, it turns out that the right to

<sup>3</sup> See Hafen (1976): 'Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their Rights'. For a further insight into related concepts, see Hart (1964): 'Are there any Natural Rights?', Feinberg (1966): 'Duties, Rights, and Claims', and Lyons (1969): 'Rights Claimants, and Beneficiaries'.



education refers to a stimulation of growth of ‘citizens in the making’, the achievement of an educated adult citizen.

### Beyond Children’s Versus Parents’ Right to Education

This preoccupation with the right of the child vs. the right of the parent is related to the overall aim of human freedom: either the state or the family/parent is to guarantee the freedom of the child. However, we might ask ourselves if it is possible to respond adequately to the question of how to bring about human freedom by advocating either state paternalism or parental paternalism—to my understanding, this question is a genuinely educational philosophical one. If we accept the idea of childhood as not yet, not yet rational, not yet able to name, identify, reproduce or recognize what it is that is affecting us, then someone’s childhood is something that cannot be known or represented. And by necessity, then, our language cannot grasp *infantia* any more than *infantia* can speak for itself. Once we bring our own or someone else’s childhood to consciousness it must become less like childhood. Childhood is not simply a lack of knowledge, a matter of what we do not yet know. It is, rather, that which escapes objectification as something to be *known*. To reinterpret the problems adults and parents would have in promoting the best interests of the child as a lack of knowledge or information about children ignores the personal and ethical dimensions of the relationship between children and adults and intrudes an artificial distance into the relationship. Childhood does manifest itself; it manifests itself as affecting, and yet laying claims on us. The presumption that we can understand children fully or represent what is in their best interests amounts to something that looks like an ethical failure. An important question is thus: what is the moral basis for thinking that parents have a presumptive right to keep their children under their care in the setting of privacy usually accorded to the family? It might not be solely a concern for the child’s best interests that is essential to understanding the parents’ moral claim to care for the child in a context of responsibility, but more a kind of significance of intimacy.

To talk about the relationship between parents and children in the way that the language of rights is forged to is in a sense limited from the very beginning. We typically pay attention to the rights of individuals in order to stress their moral independence and autonomy. That is, the language of rights helps us to sharpen our appreciation of the moral boundaries which relate people to each other, emphasizing the appropriateness of seeing other persons as independent and autonomous. The relationship between child and parent ideally involves an awareness that is more a kind of union, an intimacy which is perhaps more suitably described in a poetic language than in moral terminology. The etymology of ‘intimate’ is related to ‘to bring within’, and the meanings of ‘intimate’ relate to this character of being innermost for a person. Traditional moral boundaries give rigid shape to the self but are transparent to this kind of sharing. This makes for non-abstract moral relationships in which to talk about the rights of others, respect for others and even (perhaps) the welfare of others is to a certain extent irrelevant.<sup>4</sup> Intimacy has to do with shared moments, and is linked to feelings of closeness, safety, trust and vulnerability among partners in a collaborative relationship.

While the right of the parent is directed towards promoting the best interests of the child, or safeguarding the convictions of the family, it disregards the possibilities of a two-

<sup>4</sup> It is perhaps worth mentioning that in Hegel’s *Philosophy of Right* (2005 [1896]) we can note that once civil society makes its appearance, the abstract relations which aim for social well-being become predominant over the rights of intimacy and privacy.



way sharing of benefits and gives shape to quasi-contractual thinking about the relationship between parent and child, limited and directed towards the promotion of an abstract public good and an anticipated future. Such concepts not only neglect the way children and young people are integral to society, they fail to call into question past certitudes and assumptions (Biesta and Lawy 2006; Lawy and Biesta 2006). They constitute a neglect of otherness.

In *Time and the Other*, Levinas (1987) expressed a way of conceiving the relationship between parent and child which captures a sense of being innermost for someone that goes beyond that of possessing someone. To Levinas, 'Paternity is a relationship with a stranger who, entirely while being Other, is me. It is the relationship of ego with a selfsame ego who is nonetheless a stranger to the ego' (1987, p. 82). Being a child's parent stretches beyond the possibility of being. Paternity is seeing the possibilities of the other as your possibilities, of being able to escape what is bestowed on you and the closure of your identity, towards something that is not bestowed on you and therefore not yours. The son is not simply my work, neither is he my property. Nor can the categories of having or of power indicate the relationship between a parent and a child. Levinas wrote:

I do not have my child, I *am* in some way my child. Only the words 'I am' have a signification different from the Eleatic or Platonic signification. ... Moreover, the son is not any event whatsoever that happens to me, as for example my sadness, my trial or my suffering. It is an ego, a person. Lastly the alterity of the son is not that of an alter ego; paternity is not some sympathy through which I can put myself in the son's place; it is through my being that I am my son and not through sympathy (Levinas 1987, pp. 82–87).

Paternity is not simply a renewal of the parent in the child and the child's confusion with his/her parent. Promoting the best interests of the child, or safeguarding the convictions of the family, might disregard the possibilities of being (other).

The history of declarations of rights shows differences in matters of detail. Despite the differences in conceptualizing 'children's and parents' rights' or 'compulsory education', it is strikingly clear that there is a deep consensus concerning the *idea* of education. The second part of the article discuss what this idea of education assumes, how is education legitimized?

## The Affinity Between Rights and Education

Although Marshall's analysis placed most emphasis on the (im)balance between civil and social rights, his discussion of the fundamental right to education goes deeper than that. In Marshall's perspective, the right to education is a personal right combined with a public duty to exercise it, and this public duty is not imposed merely for the benefit of the individual. As the nineteenth century wore on, it was increasingly recognized that political democracy needed educated persons (an educated electorate) and that scientific manufacturing needed educated technicians (Marshall 1992, p. 16). 'The education of children has direct bearing on citizenship, and, when the state guarantees that all children shall be educated, it has the requirements of and the nature of citizenship in mind. It is trying to stimulate the growth of citizens in the making' (Marshall 1992, p. 16). In other words: the right to education addresses the making of someone 'who is not yet'. The (citizenship) right to education implies a concept of 'citizenship' as something to be achieved, and the idea that educational strategies should aim at creating, or achieving, a particular human being or (good) citizen (cf. Biesta and Lawy 2006 and Marshall 1992, p. 16).

The concept of a universal right to education is in a similar vein linked to an *ideal* of a humanity formulated in terms of what it means to be a member of ‘the human family’. The second paragraph of article 26 addresses this:

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 (Universal Declaration of Human Rights 1948, art. 26, para. 2).

### Already/Not Yet

The concept of rights and education is closely linked to the concept of enlightenment that goes back to Immanuel Kant. In Kant’s (1992a, p. 54) famous essay on, and answer to, the question ‘What is Enlightenment?’, immaturity or tutelage (Unmündigkeit) is the inability to think for yourself, caused by a lack of either understanding (Verstand) or courage. Here, being able to reason without the guidance of another is a motto of maturity and a condition of autonomy (being one’s own lawgiver). In Kant’s essay, enlightenment is formulated as a natural necessity. We find an anthropological basis for a socio-political order (democracy), which appears under the conditions of *courage* (to make use of reason), *freedom* (to make public use of reason) and *sovereignty* (with a monarch who grants this freedom):<sup>5</sup>

Enlightenment is man’s release from his self-incurred tutelage (Unmündigkeit). Tutelage is man’s inability to make use of his understanding (Verstand) without direction from another. It is self-incurred when its cause lies not in lack of understanding but in lack of resolution and courage to use it without direction from another. Sapere aude! Have courage to exercise your own understanding!—that is the motto of enlightenment (Kant 1992a, p. 54).

In Kant’s writings, enlightenment is implicitly entwined with a theory of education, since it aims for rational autonomy (which is already present in human nature and needs only to be released), and involves a trajectory from heteronomy to autonomy and a process (pedagogy) whereby it gradually gives more freedom. There is a passage in Kant’s short essay in which he argues that nothing else is required for this enlightenment than freedom, and it is the most harmless sort of freedom that Kant promoted: namely, the freedom to make public use of one’s reason (Vernunft) at every point. Now, does this mean that freedom and autonomy need to be taught? Recall Kant’s explicit theory of education in his writings on education: ‘man<sup>6</sup> is the only being who needs education’ (Kant 1992b, p. 1). The human being is born with a capacity to reason, and yet this capacity needs to be released; the human being is *already* and not *yet* rational. Article 1 of the Universal Declaration of Human Rights declares that human beings are free, naturally free, ‘endowed with reason and conscience’ (art. 1). But human beings seem not yet to be what they already are. Again; does this mean that freedom has to be taught?

Rights and laws are formulated, thinkable and thus knowable by everyone, at least from the moment they are taught, instructed and propagated in school. As Derrida puts it, they

<sup>5</sup> Frederick the Great, who was King of Prussia from 1740 to 1786, is often cited as the ideal of enlightened despotism, famous for his interest in philosophy and the arts and sciences. His career went through a period of anti-authoritarianism, followed by a cultivation of military virtues.

<sup>6</sup> Kant uses the German word *Der Mensch*, speaking of the human being.

*will have to be* taught: ‘We will have to decide to teach them in schools if we want to train free men, men who would be what they are and who would know, no, who know what they are’ (Derrida 2002a, p. 34). Knowledge of these laws and rights is a philosophical precondition for the intelligible declaration of the rights of human beings. ‘The time of teaching as a time of training lodges itself in the fold between the already and the not yet, the indicative and the future or subjunctive’ (Derrida 2002a, p. 35).

Derrida distinguished between the semantic content of the rights of man and their expression in language. As the syntax, modes and tenses of these statements indicate, they are matters of wishes or demands. The moment it is a matter of wishes, that implies that the aforesaid declaration of the ideal is always in the making, always a declaration-to-come. But as maxims they already exist. The word ‘maxim’ in Kantian terms plays an important role between what is already and what is not yet. A maxim is not a law, but the rule of action in conformity with the law, the rule of action and its subjective relationship to the law. As such, teaching would be an act on the level of maxims, as the place in which the consistent rules of a subjective action in conformity with the law are deployed. In Marshall’s analysis, this is conceptualized as political socialization (inclusion) of a citizenry—as shaping an educated electorate—in which ‘civil rights are designed for use by reasonable and intelligent persons, who have learned to read and write’ (Marshall 1992, p. 16). In Derrida’s terms, I think Marshall’s analysis could be understood as circular reasoning inscribed in the concept of power and ability. The right to education assumes the knowledge and teaching of rights, since the ‘right to’ as the ‘right of’ assumes access to rights, which in turn assumes a capability to read and write, or in other words access to teaching and education. ‘Power’ (*pouvoir*) as a verb: to be able/to be allowed; and ‘can’ (*pouvoir*) as a noun akin to the term empowerment, in play with concepts of authorization and ability. On the one hand, not every citizen *can* speak, write, print and interpret at this moment (that is, not everyone is capable of so doing), but every citizen must be able (permitted) to do so, (taught) to speak, write, print and interpret freely. On the other hand, as soon as the human being is recognized as a citizen the state power (*pouvoir*) ensures this ability (Derrida 2002a, b, p. 37). The state ought to guarantee that the citizen’s ability, her or his power (*pouvoir*), will not remain formal, not only belong to the order of the abstract prescription. Derrida asks how it is possible to ensure the passage (or transition) between the two meanings of power (*pouvoir*) and ability (*pouvoir*), and answers: through an ability[right]-to-speak, an ability[right]-to-write and an ability[right]-to-interpret and decipher (Derrida 2002a, b, p. 37):

This later passes by way of the practice of language and, to the extent that it is a matter of universal principles, by way of philosophy. By way of the training of ability as linguistic and philosophical competence. This latter ability is of course inscribed in the circle, but it is also the condition of circulation of the circle. It is the becoming effective of right, as *right to* (Derrida 2002a, b, p. 37).

Derrida’s writing reveals an affinity between right and education. A common understanding of rights turns into a precondition for recognizing the universal right. The universal right claims to describe what each person (everyone) knows to be and to be true.<sup>7</sup>

<sup>7</sup> It is perhaps worth mentioning that the idea of childhood as not yet adult, or as a becoming adult, is entwined with the concept of the child and childhood in developmental psychology (that of Jean Piaget) and sociology (that of Talcott Parsons). The child is viewed as unfinished, not fully human, or incomplete and juxtaposed with adulthood (completion). In consequence, these concepts of socialization include a dichotomy where the child is socially immature and the adult is socially mature (cf. Qvortrup 1990, 1994; Jenks 1996).

## What Everyone Knows to be and to be True

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Universal Declaration of Human Rights 1948, art. 1).

How could we fail to recall Rousseau's famous introduction to *The Social Contract*: 'Man is born free; and everywhere he is in chains. One thinks himself the master of others, and still remains a greater slave than they' (Rousseau 2003, p 1). The Universal Declaration echoes this claim of a natural right, precisely because men are not born free and equal. The freedom of human beings is not an existing state of affairs, but a value or duty.

In the long introduction to *Who's Afraid of Philosophy?* Derrida (2002) discusses what he sees as a paradox of human rights. He shows how the Universal Declaration of Human Rights is dependent upon a *topos*, and a 'lexic of justification or jurisdiction, legitimation or foundation' (Derrida 2002a, p. 31). Following Derrida, the Declaration legitimizes itself by denying its performative power and by rooting itself in a constative self-representation. It does not proclaim its principles as juridical norms, but as general directions for all people and all nations. The Declaration is thus something more than an educative system and something less than a system of juridical norms. It claims to describe what each person (everyone) knows to be and to be true. The concept of human rights implies 'a philosophy which often claims to be universal, a reminder that will surprise no one' (cf. Derrida 2002a, p. 33). While philosophy has been considered to be a universal discourse that crosses the borders of languages and contexts and which claims to address the universal problem, its concepts of culture, teaching, education etc. also have a history, a 'genealogy (*Paideia*, *skholē*, *cultura*, *Bildung* etc.), and a highly complex structure: the jurists, the actors or writers of the declarations have few doubts about this subject when they formulate the universal right to culture' (Derrida 2002a, p. 32). From the beginning they have been linked to specific cities and languages (Greek, Latin, German and French) and with a familiar tradition outside which the words would not mean the same. The universal human rights are what Derrida (2002b) called *philosophemes*, they are philosophical acts, philosophical productions and products, for at least two reasons. The concepts that legitimate them have a philosophical history, which is thus inscribed in the declarations, and as such these institutions imply a sharing in culture and philosophical language, which in turn, Derrida (2002b, p. 331) noticed, implies a commitment to making access to this culture, philosophy and language possible. Such a commitment implies education.

Derrida's (2002a, p. 33) point is that the very access to the Declaration, to the content of what it says, that which gives the right to all rights, already assumes instruction (education) and knowledge of language. Only instruction (or education) can make a person aware of rights, and notably of the right to education. As such, right and education envelop one another. It is possible to spot this doubleness in the preamble to the Universal Declaration of Human Rights, since it emphasizes:

Whereas *recognition* of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

...

Whereas a common *understanding* of these rights and freedoms is of the greatest importance for the full *realization* of this pledge,

Now, therefore, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms (Preamble to Universal Declaration of Human Rights 1948, italics added).

The words ‘recognition’, ‘understanding’ and ‘realization’ are emphasized in order to underline the following reading: Whereas the inherent dignity and equal and inalienable rights (of all members of the human family) assume a ‘recognition’, which, in turn, is the foundation of justice, and whereas the ‘realization’ of these rights assumes a common ‘understanding’ of the same, therefore human rights are to be achieved through teaching, education and promotion. Human rights, as a right to rights, constitute a capacity that needs to be achieved. *Knowledge* of these rights, of this natural justice, is a precondition for the intelligibility of the Declaration. Therefore, again:

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 (Universal Declaration of Human Rights 1948, art. 26, para. 2).

The development of human personality involves knowledge of the rights that natural justice grants to everyone in the ‘human family’. It involves a capacity to recognize, understand and realize the inherent dignity and the equal and inalienable rights of all. When signing the Universal Declaration, a state and its people make a commitment to uphold the culture and the philosophical heritage that are inscribed in it. Derrida (2002b, p. 331) stressed that such a commitment entails an education in culture and philosophy, which seems to be of paramount importance for the ‘understanding and implementation of these commitments to these international institutions, which are philosophical in essence’.

## Dēmos and Belief

Finally, I want to return to the affinity between rights and education in yet another respect, namely the link between the human rights concept and democracy, which is evident on several levels. There is a classical and canonical antinomy at the heart of the democratic which has long been recognized, and which has also been an issue in this article. It is the clash between freedom and equality, where freedom is by essence unconditional and equality tends to introduce measurement and calculation. Among other examples, Derrida (2005) points to a passage in Aristotle’s *Politics* where this aporia of democracy is formulated and offers a reading whereby equality becomes an integral part of freedom. I find this reading thought-provoking in terms that shed some light on the way in which the universal rights refer to ‘the human family’ and ‘brotherhood’, and are thus universal *and* particular.

In Book V of *Politics*, Aristotle gives an answer to the question how the people—*dēmos*—is born:<sup>8</sup>

democracy (*dēmos*), for example, arises out the notion that those who are equal in any respect are equal in all respects; because men are equally free, they claim to be absolutely equally. Oligarchy is based on the notion that those who are unequal in one respect are in all respects unequal; being unequal, that is, in property, they suppose themselves to be unequal absolutely. The democrats think that as they are equal they ought to be equal in all things (Aristotle 2005, book V, 1301b, p 120).

This passage reveals that *dēmos* is related to belief, that the birth of *the people* is related to ‘a notion’, a presumption, an imagining, a ‘suppose that’ that gives credit to democracy. There is no democracy without credit, without a ‘suppose that’: because they are all equal in one respect, they believe and imagine themselves as absolutely equal and thus represent themselves as being equal absolutely (cf. Derrida 2005, p. 48). The passage to absolute equality is each time the result of a belief, of a presumption or a speculation which Aristotle considers unjustified (Derrida 2005, p. 48). Derrida’s point is that the diabolic couple of democracy is not always a matter of opposing or rival terms; equality, as a sharing of freedom, becomes the unconditional condition of freedom. Freedom is assigned to ‘the people of democracy’, or the ‘each one of democracy’, by birth; equality is born through the belief that all alike are free. Remember article 1 of the Universal Declaration of Human Rights:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Freedom is not to be understood as the ‘I can’ of free will, as the power of a voluntary subject who is assumed to be in charge. Freedom is shared equally, and the measure of this ‘community of sharing’ is brotherhood, acting in brotherhood. With reference to Jean-Luc Nancy, Derrida (2005) configures the question of democracy around a concept of freedom as a transcendental force, and asks how far democracy is to be extended: to each and all and every thing in the world? In his radical essays on reason, Derrida (2005) disclose how the people (*dēmos*) who constitute themselves as a sovereign power (or force, *cratos*) repeatedly is distinguished in the name of democracy. In ancient democracies, only free men gained the right to vote, in western democracies black men once were represented by white, women by men, etc. Democracy has always wanted, simultaneously, two incompatible things. On the one hand, it has wanted only to welcome men on condition that they be citizens, brothers, equals and compeers. On the other hand democracy has wanted to open itself up to all those not included. Why is it that democratic hospitality is conditioned and limited from the very beginning? Derrida answers with reference to the most aged ideal of the democratic tradition: *fraternité*—brotherhood! Democracy has only been able to exist among brothers and equals, among people united by the same family, among those who share the same home, culture and language. Brotherhood or *fraternité* is associated with determining and naming the common, the community, the human family, the sharing of the [incommensurable] freedom or equality of all human beings, and this naming has been a concern of this article. In *Politics of Friendship*, Derrida demonstrated how the figure of the brother is privileged by Greek, Abrahamic, Jewish and Christian

<sup>8</sup> Derrida notes that the English translation says, ‘somewhat abusively’, ‘democracy where Aristotle says only *dēmos*’ (Derrida 2005, p. 48).

conceptualizations of law, ethics, politics and, not least, democracy. What is privileged is the masculine authority of the brother, the family, birth and nation. Brotherhood is equality in the sharing of the incommensurable freedom. Recall again the first article of the Universal Declaration of Human Rights, emphasizing that all human beings are born free, endowed with reason ‘and should act towards one another in a spirit of *brotherhood*’ (italics added)

This notion of birth—by birth, by nature, being born with—and filiality used to forge a relationship between democracy/citizenship rights and the nation-state is of course troublesome since it entails a risk of ‘fraternocracy’. In the globalized society such boundaries are fatal. Today’s politics need to count on a demos that comprise the global world, a kosmo politê beyond nation states, and national citizenship, beyond nationhood. It is no less important to ask: Who are the others of brothers, who are non-brothers? Who are the ones excluded, and what makes them wayward, displaced, separate beings?

Finally, if access to rights, to the declaration of universal rights, what the declaration says, already assumes a sharing of culture, language and philosophy, a responsibility to learn to know what comes before us, it is of some avail to recall Derrida’s (1992) reflections on today’s Europe. He considers the idea of being *responsible* towards a cultural and philosophical heritage, and catches the doubleness of both being responsible towards its origins and going beyond its limits. A heritage is borne by individuals, and in order to keep a heritage alive individuals need to know how to acquire and exercise the necessary habits, disciplines, conventions and methods. The disappearance of individuals who can retain the memory of a heritage, ‘who know how to read... how to hear, and even how to listen... how to see...to read, hear and see again’, is a threat to heritage (Derrida 1992, p. 70). But to Derrida a heritage is not received passively; it is necessary to call it into question, and to rethink the so-called certainties. With confirmation comes the necessity to interpret, reinterpret, transform, critique and displace. While being true to the memory of a culture, what one receives from the past, one must also break with tradition and inaugurate something new. Here, knowing of a history and still having no way to anticipate the future means that the unicity of the *other today* must be awaited: ‘it should be awaited as the unforeseeable, the unanticipatable, the non-masterable,... in short, as that of which one has yet no memory’ (Derrida 1992, p. 18). What is most convincing in this plea for an orientation towards what is coming to us in the future, is not an acceptance of just anything that will arrive, it is a posture that holds that we should not do away with judgement before the event. This undecidability is also a reason for constantly asking: what right, what education, and whose right to education?

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