

## The Historical Origin of the Right to Education in the West: a Chinese Perspective

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**Abstract:** The right to education is a fundamental human right. However, human rights in the context of the West are not innate and natural. Even in the subsequent revolutions and movements, education was not an appeal with the attribute of "should". Moreover, in the legislation of modern Western countries, the right to education rarely appears in the written law. The reason why the right to education can become a human right is more from people's demand for social justice and the influence of Marxism.

### 1. Introduction

In China, rights include "actual rights", "due rights", and "legal rights". Among them, the "actual rights" are the rights that people generally enjoy in the society; "Due rights" refer to rights that people do not enjoy but generally think they should enjoy; "Legal rights" is what specifically embodied in the rights in the Constitution and the law of a country. According to the above classification of rights, this paper includes the following three parts: in part2, it mainly discusses the question "whether the right to education exists in the western tradition"; In part3, it mainly discusses whether the right to education is an important demand in the modern revolution and social change in Europe. In part4, it mainly discusses the basic situation of the legislation of the right to education in various countries. The last part is a brief conclusion, which points out that the pursuit of social justice and the thought of socialism are the main reasons why the right to education has become a human right.

### 2. Is Education A Right In The Western Tradition?

In the West, education is a right rather than anything else, which is quite late. First, receiving formal education was long seen as a privilege of the aristocracy, monks, and the upper class of society.

In ancient Greece and Rome, it has an "education." Firstly, Homer's Iliad and Odyssey provided the earliest textbooks for the western educational tradition. Secondly, "Athenian education" and "Spartan education," also appeared in the earliest time. Moreover, sophist philosophers Socrates, Plato, and others have conducted in-depth discussions on many philosophical issues of education.

No theory or view of "rights" on education has ever appeared, either in the works or in the relevant historical documents. Were many people already "de facto" educated at that time? The answer is also no. Education was unnecessary for the etymology of the old Greek word "schole" itself means leisure. In other words, the leisure class saw education more as an ornament of character than a guarantee of "being human."

There is a view that in ancient Rome, education was universal than before. For example, according to Professor Yang, "It is estimated that between 300,000 and 900,000 slaves were employed in the household, education, copying, and handicrafts of Rome during Octavian's reign." <sup>[1]</sup> This view probably comes from the exaggerated descriptions of Roman prosperity and civilization by ancient scholars. Because if The city of Rome had close to a million inhabitants, its population density is comparable to that of modern Hong Kong. Therefore, the judgment that the

slaves in ancient Rome qualified as the subject of the right of education in Chinese academic circles lacks sufficient factual basis.

In the Middle Ages, monks gained a monopoly on education, which permeated education with theological qualities. At that time, the relatively limited access to school and the social system sought to preserve the trust of religious education. Even if it is true that a small number of poor children or orphans get some degree of education through adoption by monasteries, in essence, such behaviour of monasteries is mere relief or a necessary guarantee for missionary work. It cannot promote the popularization of education in a broader range in terms of purpose and practical effect.

In fact, during the long Middle Ages, the literacy rate of ordinary people in European countries was not high. In Britain, for example, one archaeologist believed that until the 12th century AD, every village in England could guarantee at least one person with the ability to read, so they called this phenomenon "collective literacy." And since most of the English aristocracy's privileges came from blood, they believed that knowledge had nothing to do with wealth or honour. For this reason, there was a general anti-intellectualism tendency among the British ruling class, while German historians pointed out more candidly that "the majority of Germans around 1500 were illiterate".

Limited by the medieval social structure, serfs and peasants, who made up a large proportion of the society, had little access to formal education. In some feudal dynasties, the parliament or the Lord would even pass legislation to deprive the ordinary people of education. In 1391, for example, the House of Commons petitioned Richard II in Parliament: "Henceforth the children of serfs and sharecroppers shall not be sent to schools, to ensure that they may receive guidance from the clergy. Even for freemen, parents who send their children to school need the clergy's permission, or they may pay the fine. Not only that, but the Laws of 1662 also stipulated that "no priest shall be a primary school teacher without permission." Thus further depriving most members of society of the possibility of formal education by law. <sup>[2]</sup>

In terms of educational practice, a series of "public schools" appeared in Europe from the 13th century to the 16th century. For example, Six public schools, such as Eton and Harrow, appeared in England from the 14th century to the 16th century. Even today, these public schools are still noble schools with high tuition fees and difficult admission.

In the late Renaissance and the Enlightenment, the works of outstanding thinkers such as Rabelais, Montaigne, Rousseau, and Montesquieu have indeed greatly enriched people's understanding of the nature and methods of education. In the 16th and 17th centuries, Rabelais and Montaigne put forward the idea that education should be "acceptable" and "adaptable" in their "Biography of the Giant," "On Pedantry," and "On The Education of Children," respectively. In The Biography of the Giant, Rabelais argues that the content of the course should be commensurate with the understanding and needs of an educated person." Otherwise, even if they spend all their time studying, they will have nothing to gain. Instead, he became stupid, ignorant, confused, and stubborn.

Montaigne was more explicit in saying that "we should try to guide children to know the effective knowledge, not by hearsay and rote learning, but by the test of action, not only by words and lessons, but mainly by example and work to make them alive." <sup>[3]</sup>

Later, Locke, Rousseau, and panellists further improved and developed Rabelais and Montaigne's theories in a series of works. In the view of these philosophers, the essence of education lies in respect of individual talent. The education process should reflect the free development of human beings, and the content of education should consider moral education, academic education, and physical education. Undoubtedly, these insights provide an important theoretical source for the subsequent education legislation, and many of their theoretical views are still instructive even for the education reform in modern China. But in 16th-18th century Europe, where class tensions were acute and education were still low, such views were inevitably empty talk. In other words, at least in much of 17th-century Europe, education was still the preserve of the upper classes. For all these reasons, education is not a right in western tradition.

### **3. Is Education A Desirable Request In Western Social Change?**

A series of social reforms and revolutions in Europe, though related to education, should provide education to process as a tool, a means, not a goal. For example, in the 16th century, John Calvin, a leader of the Religious Reform, pointed out that the reason for the corruption of the church at that time was the "ignorant credulity" of the people, so he believed that religious education should be a helpful method to solve the problem. In his plan, the giver of education should be an "accomplished friar," a "well-educated person who believes in God. The purpose of education is nothing more than to help people strengthen "systematic reflection on the understanding of the Bible and the degree to which the church is adhering to its teachings. In practice, Calvin's religious education found expression in establishing the "Geneva education system." It turned out that Calvin and his Geneva-based education system did provide a good supply of teachers for the Reformation in Europe. In formulating educational norms, Calvin's influence mainly reflected in enacting laws, schools, and compulsory enrollment in Switzerland, Holland, Scotland, and other places. For example, the Presbyterian Church of Scotland, which issued the Rules of Schools and Colleges in 1561, was a typical branch of Calvinism.

In contrast to Calvin's claim, Martin Luther's propositions and practices on education were more direct: on the ideological level, Luther quoted Psalm 78:5 in his letter to the Mayor and the aedile, that is, "He neutered the law in Jacob and established the law in Israel; He commanded our fathers to pass it on to our children, "and Deuteronomy 32:7, which says, "When thou rememberest the days of old, when thou rememberest the years of the past; Ask your father and he will tell you; Ask your elder and he will tell you, "argues that parents first have a responsibility to educate the younger generation, and makes it clear that this responsibility should begin with teaching their children the Ten Commandments.<sup>[4]</sup>

However, due to the low literacy rate in German society, which seriously affected the fulfilment of this sacred responsibility, Luther believed that investing considerable social resources should ensure that more people have access to education. In his letter to mayors and municipal officials, Luther asked the German bureaucrats of the time: "If we petition to spend a great deal of money every year on guns, on roads, bridges, and dams, for the temporary peace and ease of our cities, why should we not spend an equal amount to save our poor and neglected youth, so that we may have a few skilled and capable teachers?"<sup>[5]</sup> In practice, Luther not only directly established many schools, thus promoting the universalization of education, but also was able to constantly reflect in practice and establish many essential principles of education. In 1524, Luther opened two schools on his estate at the invitation of the Duke of Mansfield. In running the school, Luther modified the "Saxony School Plan" formulated by Philip Melancthon based on teaching feedback. In the revision opinions, Luther proposed :(1) the language of Christian education should be in German (mother tongue) as far as possible; (2) Teaching materials should be unified and simplified as far as possible; (3) Teaching should be done in grades. More important, as Lutheran Protestantism spread, public schools sprang up that could cater to "everyone." Despite the protestant reformation, people got a chance to accept education, which makes people have a higher literacy rate of northern Germany, but Luther and his friends and disciples Melancthon, Trozendorf, once more, Anid 's efforts are likely to remain the protestant factions battle for voice or exclude all others.<sup>[6]</sup> For almost every Protestant denomination thinks it alone can understand God correctly, "not just Jews, Catholics, heathen, but other denominations of Christianity... They speak for the devil."<sup>[7]</sup>

The subsequent rise of Prussia and the reunification of Germany also led to several historical theories. For example, German educator Rathke once pointed out that "children have the right to education for their own secular and spiritual welfare... Neither age nor gender is sufficient to prevent anyone from enjoying the benefits of education ". In addition, Rathke also advocated establishing more general primary and secondary education matching with university education and proposed using methods similar to logic to ensure the matching between professional and subject education and teaching objectives, teaching means, and other viewpoints.

Rathke's views above had a profound impact on the educational practice of the Duchy in Germany. Some scholars believe that "In 1624, The Duke of Gotha Alvinstadt I promulgated the School Decree and compulsory education system, which was encouraged by the Educators of the

Rathke school". Rathke's theory also indirectly influenced the devotional educator Frank and others and finally contributed to establishing the "Prussian education system."<sup>[8]</sup> The General School Decree and the General Local School Decree play an essential role in the world's compulsory education history. However, the purpose of the ruling class and its successors to promote education legislation is to realize the centralization of power, strengthen the military and enrich the country.

Before Frederick William I, "the clergy were entirely dependent on the patronage of the gentry, and their income came from the graces of the gentry." In other words, the lords and gentry of the duchy in Germany could exercise local control by establishing a personal relationship with the clergy, which was not common in Europe. Frederick William I reformed the Ritter-Akademien (Warrior Academy) to limit the control of the Junker gentry by making officers out of the gentry's sons. Second, although the General School Decree, which he authorized, significantly increased the enrolment of Prussian subjects. However, why both Rathke's "education should be universal" and "diligence" and "discipline" advocated by the devout school? The answer supported and vigorously promoted by Frederick William I was to cultivate many loyal soldiers who could consolidate the king's power. In those days, corporal punishment seemed to have become the norm, and students were reluctant to perform routine tasks to instil a habit of obedience. To strengthen the army's control over education, Frederick the Great, Frederick's successor, even appointed former soldiers as school administrators.<sup>[9]</sup> The high overlap between the Prussian education system and the administrative system led to a solid academic atmosphere among teachers. The over-policy teaching plan and evaluation system made Prussian education unable to meet the individualized needs of students.

After Frederick the Great, Hohenzollern's successors tried to maintain the monopoly of education through legislation. For example, the Prussian Law of 1794 explicitly recognized schools as state organs; The School Supervision Law introduced by Bismarck in 1872 tried to limit the influence of the Holy See on German society by sending supervisors to Protestant and Catholic schools. On the other hand, it attempted to restrict the socialist movement and ideological trends emerging by controlling schools.<sup>[10]</sup>

#### **4. Is It Late For Education To Be A Legal Right In The West?**

The history of the right to education as a legal right did not last long. Even in the bourgeois revolution after the Enlightenment movement, the right to education was not recognized as a fundamental legal right in the constitutional documents of major Western countries such as Britain, The United States, and France. The legal document that defines the fundamental rights attribute of the right to education in a constitution is the 1849 Constitution of the German Empire (also known as the Paul Church Constitution). Articles 152 to 158 of the Law have established the concepts of "freedom of science and teaching" (152), "separation of religion and state" (153), "freedom of running schools" (154), and "freedom of learning" (158). Of course, the emergence of these progressive ideas was also closely related to the Revolutions of 1848 in Europe. Yet, even so, rejected by most of the German city-states at the time, the ideologically written Constitution never came to fruition.

Education became an essential part of the constitutional documents, but only back to the Weimar Constitution of Germany in 1919. However, even though part II of the Weimar Constitution, Chapter IV (articles 142 to 150), has something to do with education, it is more of civic duty than a fundamental right according to the Constitution. In other words, even in the turbulent revolutionary struggle of the western bourgeoisie for nearly 200 years, the right to education has not been universally and sufficiently respected by the west social elites.

As to why "the right to education was considered as a fundamental right late in life," western academic circles give the following reasons:

Firstly, the human rights attribute of the right to education is contrary to the laissez-faire thought at that time. One scholar argued that at that time, "the state was seen as a potential threat to individual freedom and should therefore refrain from interfering in civil society."<sup>[11]</sup> After all, the

pervasive memories of the Middle Ages and the church's murky past created an almost obsessive desire among the elite for "personal independence.

Secondly, in the Western tradition, parents have been regarded as the main undertaker of the educational obligation for a long time. Luther even believed that neglecting or failing to fulfil the academic obligation for children was a grave sin in itself. For this reason, Article 120 of the Weimar Constitution of 1919 stipulates that "it is the supreme duty and natural right of parents to bring up their children to a good physical, spiritual and social relationship." In the Anglo-Saxon discourse system, Mill also put forward similar propositions in his work *On Liberty*. Apart from religious reasons, moral responsibility is also a compelling reason why parents should be obliged to do so. For example, English jurist Blackstone argued that the obligation of parents to provide education is essentially a moral obligation arising from their reproductive behaviour. For this point of view, western educational circles have provided sufficient arguments, shown as follows. (1) the development of productive forces and the refinement of the social division of labour brought about by the industrial revolution led to the emergence of many nuclear families to avoid the interference of traditional families on individual rational choice. (2) Many women enter the social labour force, which further frees the internal family relations from the influence of the husband's power as a derivative of paternity. (3) Human innovation in contraceptive technology and equipment has also significantly reduced the number of newborns, thus making the inter-generational behaviour of parents based on fertility more rational. If it proved that parents' fertility is rational, then it is duty-bound for people to take responsibility for their rational behaviour. Accordingly, in the textbook by Eide et al., Professor Manfred Nowak clearly states that liberal human rights concepts focus on the obligation of parents to provide education on the issue of the right to education.<sup>[12]</sup> Of course, although the above views and arguments are pretty consistent and persuasive, at least in modern society and country, it is not feasible to expect families to complete the task of education alone.

Moreover, the Influence of Catholicism on European and American countries is still considerable. Even in the eyes of religious people, the Holy See and its clergy are more likely than the State to provide a good or acceptable education. For example, in a lecture in Boston in 1887, reverend McCarthy, the representative of the Holy See, stated clearly: "The State has no right to teach, and it has no right to educate. When the State intervenes and assumes the work of teachers, it violates the rights of individuals, the rights of citizens, the rights of the church, and the rights of God."<sup>[13]</sup> In 1929, Pope Pius XI stressed in the Official Catholic document "The Education of saints" (*Divini Illius Magistri*) that education is a social act... Everyone can develop and use their abilities in groups or communities at different levels throughout political society. There is no denying that, even in modern times, The Catholic community is one of the most influential in many countries. Religious organizations organize formal education and push educational activities into community education and adult education. It permeates industry education and family education. Therefore, religion inevitably influences education legislation and policymaking in western countries.

The fourth reason is the limitation of the bourgeois revolution. Marx has in *On the Jewish Question*, *Communist Manifesto*, and *Holy Family* and other works for the bourgeoisie selfish and hypocritical nature of profound expose. In the Article *The Jewish Question*, Marx pointed out: "Any so-called human rights are not beyond the self-interested person, that is, not beyond the closed to their own private interests and their own arbitrary behavior, detached from the community."<sup>[14]</sup> That is to say, the religious belief, political revolution, and legal system persisted by the German bourgeoisie at that time were just a means for the specific class to safeguard or fight for its interests. For this reason, Marx pointed out in *The Holy Family* that "the recognition of human rights by modern states has the same meaning as the recognition of slavery by ancient states." For Marx's criticism of the western mainstream ideology to give the corresponding response, but even so, they also have to admit that both in the pursuit of social justice and the pursuit of labour rights, education rights. The existing frame of economic, social, and cultural rights is mainly thanks to the untiring efforts of the communist movement. After all, "without the Soviet Revolution... And the recognition and recognition of economic and social rights will undoubtedly take decades."<sup>[15]</sup>

## 5. Conclusion

The above discussion indicates that the right to education is not an indispensable issue in the western cultural tradition, the demand for social change and the subsequent legislation. In the legislation of many countries, such as Britain and the United States, the right to education is not a constitutional right of citizens. Another fact is that the right to education has become a human right because people pursued social justice, especially the influence of Marxism. Of course, people may have many doubts about whether the right to education is a human right or what kind of human right it is to protect personal freedom. These problems will appear in subsequent studies and articles.

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