Education as a Human Right: A Confucian Perspective

Chenyang Li

Philosophy East and West, Volume 67, Number 1, January 2017, pp. 37-46
(Article)

Published by University of Hawai'i Press
DOI: *https://doi.org/10.1353/pew.2017.0004*

Philosophy East and West

For additional information about this article
https://muse.jhu.edu/article/643857

Access provided by your subscribing institution. (3 Sep 2018 06:15 GMT)

Education as a Human Right: A Confucian Perspective

Chenyang Li
Nanyang Technological University (Singapore)
cyli@ntu.edu.sg

Joseph Chan's *Confucian Perfectionism: A Political Philosophy for Modern Times* is a milestone in the contemporary study of Confucian political philosophy. In this remarkable work, Chan presents his version of Confucian perfectionism, aiming to balance liberalism and Confucianism as a solution to reconstructing a political philosophy in response to contemporary challenges. I am sympathetic to much of what Chan has to say in the book. I agree that, rather than merely being an ethical theory, Confucianism can and should have a place in political philosophy. I also agree that Confucianism can coexist with democracy[1] and that human rights can and should be instituted as a fallback apparatus. This essay is not meant to give a comprehensive assessment of Chan's book, nor is it about praise. This essay is about how his version of Confucian perfectionism can be strengthened—from a Confucian standpoint.

In the broad spectrum of contemporary Confucian thinkers, Joseph Chan is a leader in the camp of what may be called "liberal Confucianism," as opposed to conservative Confucian thinkers on the right. Even though Chan's position is on the whole more plausible in comparison with such conservative thinkers as Jiang Qing, Chan's version of Confucianism is not robust enough to be satisfactory. For example, while the family has occupied a central place in Confucian philosophy, it finds little significance in Chan's system. He seems to maintain implicitly the liberal separation between the public and the private spheres, with family falling in the latter, out of the realm of politics. When the family is discussed in the book, it is more for its role in providing care for the elderly than its vital role in constructing a good society.

Education does not receive much priority either. When Chan discusses education, it is in the form of moral education, in the sense that perfectionist republicans understand the term, for the purpose of promoting "the health of democratic institutions and processes" (Chan 2014, pp. 97, 99). I believe that education is vital to the Confucian conception of the good life. For Confucians, it is the foundation of humanity. As such, its significance far exceeds its instrumental value for political purposes. Any contemporary Confucian society must take education as a fundamental right. I share Chan's implicit presumption that what counts as a human right is not an objective fact to be discovered but is something to be decided by society. I see the issue of human rights as an ongoing discourse, an effort to create a pool of strong, common moral values applicable to all societies and cultures in the world. These values have cultural roots. Every culture should have a voice in the creative process. Because different cultures have maintained various value configurations, which give

© 2017 by University of Hawai'i Press

different priorities to certain values, what have been and are considered strong values also vary.[2] Participation in the discourse affects the outcome of the global human rights regime. In the process, we need competition but also dialogue and persuasion.[3] So far, the Kantian stream of Western thought has made great contributions to the generation of a pool of strong common values under the name of human rights. What contribution can Confucian thinkers make in this regard? I believe that education is one important item on which Confucianism should and can make a contribution in the discourse.

In what follows, I will focus on issues related to education. I will first summarize and discuss Chan's view on rights. Then I will present a brief sketch of classic Confucian thinkers on education to show its particular importance to Confucian society. Finally, I will argue that in the kind of overall philosophical framework that Chan has presented, education must be a human right.

Chan on Rights

Chan's central claims regarding rights rest on two main points. First, rights in general, and human rights in particular, are compatible with Confucianism. Second, a good Confucian society is not dependent on rights for flourishing; rights exist as a "fallback apparatus." When things do not go well, we resort to rights in order to ensure the healthy operation of society. Chan writes that in nonideal situations rights "can serve as an important fallback apparatus to protect one's basic interests and needs" (p. 125). In particular, rights are important instruments with which the vulnerable can protect themselves against exploitation and harm (p. 124). Chan's justification of rights is sound. Rights exist in order to protect people's interests and needs. It is not that a society like Joel Feinberg's Nowheresville is intrinsically undesirable, where "the virtues of moral sensibility" and "the sense of duty" flourish, and is filled with "as much benevolence, compassion, sympathy, and pity as it will conveniently hold without strain" (p. 121). It is rather that such a virtuous society is most likely unattainable, at least unattainable for an extended period of time. Therefore rights are needed, even for Confucian society.

Rights as a "fallback apparatus" are comparable to the Confucian idea that an ideal society will have law without having to resort to it. The *Luxiang,* the first chapter of *Kongzi jiayu,* records that when Confucius served as the minister of justice in the state of Lu, he established the law but did not have to resort to it because there were no wicked people (設法而不用，無姦民). While the reliability of this record is highly suspect, the ideal it expresses is straightforward. The law here means penal law for preventing social transgressions. If there were no bad people in transgression, why would the state need penal law in the first place? Why didn't the text say that Confucius did such a good job that penal law was neither needed nor existent? A reasonable reading is that penal law is needed, even in a society led by sages, in order to serve a fallback apparatus. Ideally, penal law should not need to be used, but, if needed, it is readily available to help society correct wrongs.

Chan's Confucian perfectionism, however, restricts the list of human rights only to civil and political rights (p. 21):

> Confucians would prefer a short list of human rights consisting of (1) those rights whose violation (often by governments) poses serious setbacks to social order and individual interests, and (2) those rights that can most easily be implemented and protected by law. The first-generation of rights—civil rights and political rights—appears to fit these two criteria more so than social, economic, or other types of rights. (p. 127)

Chan's short list of human rights includes such rights as the right to freedom from torture and arbitrary detention and arrest; equality before the law; the right to a fair trial; and the right to freedom of peaceful assembly and association (p. 197). If we can say that Chan's Confucian perfectionism aims to integrate liberalism with Confucianism, his treatment of rights has little to do with Confucianism and everything to do with liberalism. As far as rights are concerned, Chan is unmistakably a liberal. Saying that someone is a liberal is not a criticism in itself, of course. It becomes a criticism when it is lodged against a Confucian thinker or Confucian-inspired thinker who purports to present a Confucian version of perfectionism as "an attractive philosophical alternative to liberal democratic theory" (p. 23). In regard to what human rights should exist in society, Chan's philosophy is attractive to liberals, not to Confucians. Chan's list of civil and political rights excludes rights to education. Yet, education is essential to a flourishing Confucian society.

Confucianism on Education

Like its English counterpart "education," the Confucian notion of *jiao* 教 denotes a domain broader than that of the proper meaning of "schooling." In this essay, we discuss "education" primarily in the sense of systematic instructions for acquiring knowledge and practical skills, moral as well as scientific. Confucian philosophy has taken education as its foundation from the very beginning. According to the Chinese historian Hu Shi, the Chinese word that we use today for "Confucian," *ru* 儒, originally denoted teachers of religious rituals (Hu 1998, p. 676). Education was the livelihood of early Confucians. The rise of Confucianism accompanied the shift from hereditary aristocracy toward meritocratic social mobility in ancient China.[4] As social mobility became more meritocratic, personal qualities played a more important factor in determining people's social stations. Attaining good personal qualities called for education. In the Confucian tradition, education is usually understood in terms of *jiao* 教 and *xue* 學. *Jiao* mainly means teaching or educating others; *xue* means learning or educating oneself. Classic Confucian thinkers take education as a top priority in society. The *Liji* chapter "On Learning" *(Xueji)* states:

> 玉不琢，不成器；人不學，不知道. 是故古之王者建國君民，教學為先
> Jade does not become a product without carving; people do not understand the Dao without learning. Therefore, the ancient kings placed education as the top priority when they established the state and ruled the people. (my translation)

Confucius is well-known for emphasizing education in his teaching. He held the view that people are similar by nature but become different by learning and practice (性相近也，習相遠也) (*Analects* 17.2). Similarly, the *Analects* records Zi Xia, one of Confucius' top disciples, as saying that the *junzi* promotes or achieves the Dao through learning (君子學以致其道) (19.7). Confucius advocated education without class distinctions (有教無類) (15.39). Being a teacher by profession, Confucius spent most of his life teaching students. It is believed that he had over three thousand students and seventy-two disciples.

Mencius held that humans are born with seeds for becoming virtuous, but they must grow these seeds in order to make virtue a reality. An indispensable dimension of this growth is education and learning. In the *Mencius,* when the duke of Teng asked Mencius' advice for good government, Mencius replied that government must establish schools for education so that people could understand human relationships and become affectionate with one another (*Mencius* 3A3). Good human relationships signify a harmonious society and human flourishing. Mencius held that a good ruler should be good at both governance and education:

> Good government does not win the people as does good education. He who practises good government is feared by the people; he who gives the people good education is loved by them. Good government wins the wealth of the people; good education wins their hearts. (*Mencius* 7A14; Lau 1970, p. 184)

Winning people's hearts is more important than accumulating wealth. The kind of education that Mencius had in mind here is probably mainly moral education or education in the virtues, which Chan advocates in his book. But Mencius' notion of education is more than moral education narrowly defined:

> A gentleman teaches in five ways. The first is by a transforming influence like that of timely rain. The second is by helping the student to realize his virtue to the full. The third is by helping him to develop his talent. The fourth is by answering his questions. And the fifth is by setting an example others not in contact with him can emulate. These five are the ways in which a gentleman teaches. (*Mencius* 7A40; Lau 1970, p. 191)

While educating people toward virtue remains Mencius' primary goal, education also aims to develop people's talents. By developing both virtue and talent, students become responsible and productive members of society. Without effective education, neither virtue nor talent is possible regardless of a person's inborn capacity to be good.

Xunzi was of the view that people are born with a tendency to compete for self-interest. Without intervention, competition will lead to contention and, furthermore, result in social chaos. Humans must transform their natural tendency toward chaos in order to construct a good society. Such a transformation takes place through learning. Like Confucius, Xunzi also held that education and learning make fundamental differences in people:

> The children of the Han, Yue, Yi, and Mo peoples all cry with the same sound at birth, but when grown they have different customs, because education (教) makes them thus. (*Xunzi,* chap. 1; Hutton 2014, p. 1, modified[5])

The Han, Yue, Yi, and Mo were four "barbarian" tribes. No matter to which tribe a child was born, if he learned the rituals, he became a cultivated person; otherwise, he remained a "barbarian." For Xunzi, what is important is the way of transformation:[6]

> Where does learning begin? Where does learning end? I say: Its order begins with reciting the classics, and ends with studying ritual. Its purpose begins with becoming a well-bred man, and ends with becoming a sage. (Xunzi, chap. 1; Hutton 2014, p. 5)

Through learning, people transform their original tendency and become morally cultivated. The ultimate goal is to become a sage. Xunzi also emphasized that learning is done for the sake of improving oneself (学者为己; 君子之学也，以美其身) (*Xunzi,* chap. 1; Hutton 2014, pp. 5–6). Moreover,

> If you truly accumulate effort for a long time, then you will advance. Learning proceeds until death and only then does it stop. And so, the order of learning has a stopping point, but its purpose cannot be given up for even a moment. To pursue it is to be human, to give it up is to be a beast. (ibid.)

Xunzi believed that there are no innate moral qualities in us. If we give up on our effort at learning, we regress back to "beasts." Only by advancing do we become cultivated people who can contribute to society. Therefore, learning is indispensable for achieving humanity.

The other side of learning is education. Xunzi said that "[the sages] Yao and Shun were ones who were absolutely best in the world at educating and transforming people" (*Xunzi,* chap. 18; Hutton 2014, p. 193). When education prevails, people learn to be good and transform themselves. Through effective education, good human society is constructed and maintained. Human flourishing depends on education.

From these classic Confucian thinkers of over two thousand years ago, it is evident that education is of paramount importance to Confucianism. In the Confucian view, education must play a fundamental role in any good society. This view remains relevant today. In fact, it may be argued that this Confucian commitment to education is even more compelling than ever in the age of democracy. A contemporary Confucian argument for education as a human right rests not only on its metaphysical conviction of the necessity of education for humanity but also on the practical necessity of citizens' effective exercise of other civic and political rights. In her celebrated book *Democratic Education,* Amy Gutmann argues for the necessity of education in a democratic society. She maintains that a democratic state must "provide its members with an education adequate to participating in democratic politics," and one of the reasons for this necessity is that education helps prepare citizens to engage in rational deliberation, which is indispensable for the healthy operation of a democracy (Gutmann 1987, pp. 42, 44). Jason Brennan also argues for the need for

education in a democratic society. He maintains that improving citizen's knowledge of relevant philosophical and social-scientific issues can improve democratic decision making: "If every citizen had a firm grasp of basic economics, basic political science, and basic sociology, they would vote better than they now do" (Brennan 2012, p. 110). Conversely, if citizens are ignorant, they cannot effectively exercise other civic and political rights; the lack of education undercuts all other liberties in a democratic society. For similar reasons, Confucians today should insist that education be guaranteed as a human right and that education as a human right has primacy over other civic and political rights.

Education as a Human Right

Given the importance of education to Confucianism, it would seem that education is qualified as a human right under Chan's two criteria for human rights. His first criterion is that human rights are those rights whose violation poses serious setbacks to social order and individual interests. Education is the very foundation of Confucian society. Without it, not only does society suffer serious setbacks but also individuals are deprived of a vital need. The second criterion is that those rights should most easily be implemented and protected by law. Education definitely can be implemented and protected by law. One such example is a case in the state of Minnesota. The Minnesota State Constitution, Article XIII, stipulates:

> It is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state. (http://www.revisor.leg.state.mn.us/constitution/)

In the 1993 "Keen v. State of Minnesota" case, the Minnesota Supreme Court ruled that this constitutional provision elevated education to a "fundamental right," which mandates that the state legislature allocate funding for "a general and uniform system of education" (http://www.house.leg.state.mn.us/hrd/pubs/skeenmn.pdf). The Minnesota constitution does not deal with human rights. But the case clearly shows that education as a right can be implemented by law, and other U.S. state constitutions contain similar requirements. The Constitution of the People's Republic of China, Article 46, stipulates that "Citizens of the People's Republic of China have the duty as well as the right to receive education" (http://www.for68.com/new/201007/he60492159127010212383.shtml).

These are rights within particular states. When such a right as education is held as valid across societies, it becomes a human right. So, why not include the right to education in the list of human rights? To be sure, Chan does not hold that education is unimportant to Confucianism. He sees moral education to be preferable to civic education and accords it a prominent place in constructing a functional democratic society. He does not specifically say why education should not be a human right; instead, he argues that "social and economic" rights should not be human rights. Here I assume that some of Chan's reasons for excluding "social and economic"

rights from human rights apply to his resistance to making education a human right. Let me examine these reasons.

Chan's first reason is to avoid "the rise of rights talk" (p. 129):

> To avoid the pitfalls of a discourse focused largely on rights, the Confucian perfectionist perspective prefers to keep the list of human rights as legal instruments short, restricting it to civil and political rights. (p. 197)

Rights talk, as powerfully argued in Mary Ann Glendon's influential book *Rights Talk,* has permeated contemporary political vocabularies to a dangerous level. Rights talk makes meaningful political discourse difficult or impossible, it promotes extreme individualism to the detriment of social cohesion, and it erodes our sense of duty and obligation to the community (Glendon 1993). Presumably for Chan, a Confucian culture does not reject rights altogether, but it should definitely avoid "rights talk."

Chan's second reason for not accepting education as a human right is because civil and political rights "are more suitable for legal implementation, while the promotion of economic rights requires sound economic institutions and policies that cannot be easily captured by legal human rights language" (p. 197). In his view, social and economic rights are not as easily protected by litigation as civil and political interests are, and hence these matters should be secured through government policies and institutions (p. 127).

Chan's third reason for excluding education as a human right is that, whereas political and civil rights redress a strong tendency within traditional Confucianism to place too much power in the hands of political leaders, other rights do not serve such a purpose (p. 21). Traditionally, at least since the Han period, many Confucian thinkers have accepted a centralized power structure under the imperial house and have relied on government to manage social affairs. In our present time, democratic society calls for decentralizing political power in society, and hence there is the need for upholding political and civil rights.

Chan's fourth reason is that Confucianism already possesses rich conceptual and ethical resources to promote people's economic and social needs. Finally, the fifth reason is that classic Confucian thinkers indicate that severe poverty and famine are mainly caused by political corruption and despotism. A robust set of political and civil rights can prevent political ills and hence protect people's fundamental material needs and interests (p. 130).

I do not believe these reasons are adequate for excluding education as a human right. The third and fifth reasons bear little relevance to whether education should be a human right. In what follows, I will focus on Chan's other three reasons.

First of all, avoiding rights talk is not a good reason to deny education as a human right. The main problems with excessive levels of rights talk, according to Glendon, are that it inhibits meaningful political discourse and encourages extreme individualism at the expense of duty and obligation to the community. I do not see how making education a Confucian human right leads to either of these. The United Nations "Universal Declaration of Human Rights," Article 26, explicitly includes education as a human right. UNESCO proclaims that "education is a fundamental

human right and essential for the exercise of all other human rights" (http://www.unesco.org/new/en/right2education). As shown in the second section of this essay, education is vital to the Confucian conception of the good life. If people are not educated, they will not be able to adequately exercise other important rights. Poor education also results in bad democracy. If education is so important, it should be made a human right from a Confucian perspective, even though it means one more human right on the list.

Chan's second reason for not allowing education to be a human right is that such a right is difficult to implement and should be handled through government policies and institutions. Education, of course, can be handled through government policies. If so, why do we need to make it a human right? Well, I think we need it as a human right for reasons similar to why we make, say, freedom of association a human right. As the 1993 Minnesota case shows, one difference between a right and a government policy is that, unlike policies, a right stands on its own rather than on the good will of government. A constitutional right, for example, mandates the government to do or not to do certain things. In fact, the constitutional right to education has been the most effective means to protect and sustain public education in many states in the United States in the recent decades of public financial woes. In contrast, without the same constitutional right, public higher education has been subject to reduction in state support. According to an article in the *Chronicle of Higher Education,* from 2008 to 2013 higher education suffered a nearly 37 percent cut in state financial support in Arizona and a 36 percent cut in New Hampshire.[7] Human rights extend beyond state borders. Making education a human right is an effective way to protect education in society. In the case of China, for example, making education a human right would mandate all parts of the country, including the provinces, the autonomous regions, Hong Kong SAR, and Macau SAR, to provide education to all citizens. Thus, making education a human right is by no means a superfluous gesture. It has practical implications. Substantiated in (human) rights, government policies on education are secured with greater binding force.

Chan's fourth reason is that, in Confucianism, there are already rich conceptual and ethical resources to promote people's economic and social needs. To be sure, Confucianism definitely has rich resources in this regard. But traditional values and classic teachings do not always translate into actual practice in society. Since Chan wisely makes rights a fallback apparatus, I do not see why we cannot make a human right to education a fallback apparatus. The ideal situation would be that governments want to provide education to all citizens and parents want to support their children's education. But rights—I agree with Chan in this regard—exist for non-ideal situations. When the legislature is short of funds to allocate, a right to education provides a much-needed safety net for education. In normal circumstances, parents support children's education. But in abnormal situations, if parents refuse their children's education (e.g., want them to work for family income), the state or children's court-appointed guardians may take action to implement their right to education. Only by standing as a human right can education in contemporary society unwaveringly serve the vital needs of humanity, as Confucians envision.[8]

Let me close with a recap. Human rights are needed because they provide security for us to live as human beings. In the Confucian view, education is the very thing that makes us human. Accordingly, all people, regardless of their gender or religion, are entitled to education. Like family, education should occupy a prominent place in contemporary Confucian political philosophy. If we accept human rights as a fallback apparatus, as Chan persuasively advocates, we should accept not only political and civil rights, but also education as a human right as well. Without such a fundamental right, any version of Confucian political philosophy is seriously inadequate. Joseph Chan has presented us with a promising starting point for developing a contemporary Confucian perfectionism as well as an occasion for us to reflect on human rights from a Confucian perspective. While I admire his work, I also believe that the Confucian side of his Confucian perfectionism needs to be further strengthened, especially with regard to family and education.

Notes

An early version of this essay was presented at "A Wary Embrace of Democracy: Workshop on *Confucian Perfectionism: A Political Philosophy for Modern Times* by Joseph Chan," Hong Kong, May 15, 2015. I thank the audience, especially Jiwei Ci, Stephen Angle, Chad Hansen, Yvonne Chiu, P. J. Ivanhoe, Albert Chen, Elton Chan, and Joseph Chan for their comments. The essay was completed while I was a Berggruen Fellow at the Center for Advanced Study in the Behavioral Sciences (CASBS) of Stanford University. I thank the Berggruen Center for Philosophy and Culture and CASBS for their generous support. The research was also partially supported by a grant from Nanyang Technological University (M4011397).

1 – My own discussion can be found in Li 2012.

2 – For a detailed account of value configurations see Li 2008.

3 – For an argument of human rights discourse as moral persuasion see Li 2013.

4 – For an excellent study of this historical phenomenon see Yuri Pines 2013.

5 – Here Hutton translates *jiao* 教 as "teaching." He also uses "educating" for the same word in rendering the statement "Yao and Shun were ones who were absolutely best in the world at educating and transforming people" (Hutton 2014, p. 193). Both are appropriate. I use "education" to be consistent with the thematic term in this essay.

6 – Hutton translates *"Shen moda yu hua dao"* 神莫大於化道 (*Xunzi,* chap. 1.3) as "No spirit-like state is greater than having transformed oneself with the Way" (Hutton 2014, p. 2). *Shen* 神 connotes magic power.

7 – "State Spending on Higher Education Rebounds in Most States after Years of Decline," by Eric Kelderman, January 21, 2013 (http://chronicle.com/article/State-Spending-on-Higher/136745/; accessed on May 16, 2015).

8 – For the sake of space, I will not get into issues regarding what the kind of education that is guaranteed by a human right should be. My basic view is that the specific contents of education in each society should be decided by the members of a society through rational deliberation.

References

Brennan, Jason. 2012. *The Ethics of Voting.* Princeton: Princeton University Press.

Chan, Joseph. 2014. *Confucian Perfectionism: A Political Philosophy for Modern Times.* Princeton and Oxford: Princeton University Press.

Glendon, Mary Ann. 1993. *Rights Talk: The Impoverishment of Political Discourse.* New York: Free Press.

Gutmann, Amy. 1987. *Democratic Education.* Princeton: Princeton University Press.

Hu Shi 胡适. 1998. "说儒" (On *ru*). In Wang Yuanhua 王元化, ed.,《释中国》(Interpreting China), pp. 676–711. Shanghai: Shanghai Wenyi Chubanshe.

Hutton, Eric L. 2014. *Xunzi: The Complete Text.* Princeton and Oxford: Princeton University Press.

Lau, D. C., trans. with an introd. 1970. *Mencius.* London: Penguin Books.

Li, Chenyang. 2008. "Cultural Configurations of Values." *World Affairs: The Journal of International Issues* 12, no. 2:28–49.

———. 2012. "民主的形式和儒家的內容－再论儒家与民主的关系" (Confucianism and democracy revisited).《中国哲学与文化》(Chinese philosophy and culture) 10 (2012): 131–146.

———. 2013. "Globalizing Cultural Values: International Human Rights Discourse as Moral Persuasion." *Journal of East-West Thought* 3, no. 4:79–94.

Pines, Yuri. 2013. "Between Merit and Pedigree: Evolution of the Concept of 'Elevating the Worthy' in Pre-imperial China." In *The East Asian Challenge for Democracy,* edited by Daniel A. Bell and Chenyang Li, pp. 161–202. New York: Cambridge University Press.