Title: Human Rights, Dignity, Confucianism and Capability: An East and West Debate

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Abstract

In the debate of the universality of human rights between the East and the West, scholars argue whether human rights are universal or culturally relative. On one side, some scholars argue that East Asian cultures, especially Confucianism, affect the justification of human rights, and hence at least some items of human rights (e.g., political rights, economic rights, or rights to health) are not universal. On the other side, some scholars emphasize the universality of human rights from Liberalism and deny that cultural factors play any role in the justification of human rights.

While I agree that East Asian cultures (especially Confucianism) are important, I do not think that cultural justification would limit the list of human rights. In my paper, I develop a philosophical argument as a cultural justification of human rights. This argument is based on the idea that all human rights derive from human dignity, as mentioned in many international human rights documents. I first examine the ideas from some philosophers (such as Irene Bloom) on the Mencian notion of human dignity. I then discuss the notion of dignity in the capability approach from Amartya Sen and Martha Nussbaum. I compare these notions and argue that based on my comparison, we can easily explain why human rights are universal and still justified by East Asian cultures, especially Confucianism. My argument shows that Confucian factors can be one of the jointly sufficient conditions to the justification of human rights, and such a cultural justification does not limit the list of the items of human rights. I use examples from the debates of rights to health to explain my argument.

Key Words: Human Rights, Capability Approach, Confucianism, East Asian Cultures, Minimal Values

Introduction

There are many human rights debates between the East and the West since nineteenth century (the "Asian Values Debate" is one of the famous examples). Although these debates do not aim at constructing any profound philosophical argument, they have stimulated many
prominent political philosophers to discuss whether the cultural differences between the East and the West have anything to do with the philosophy of human rights. Among these philosophical discussions, one is about whether human rights are universal or culturally-sensitive. Some people argue that human rights are not universal but particular or relative to different cultures, and they especially discuss the differences between East Asian cultures and Western cultures to support such a claim. On the other side, some scholars argue that human rights are universal and cultures do not play any role in determining the universality of human rights.

In this presentation, I discuss some ideas on developing what may be called “a minimal account of human rights.” Developing such an account is a big project that can involve a book or several papers. Due to the limitation of time, this presentation cannot explain everything in detail. Nevertheless, the purpose of this presentation is simply to introduce some ideas of the project to audiences, and some details will be skipped in the presentation and will only be discussed in the Q&A section if audiences are interested.

The presentation can be divided into two parts. The first part is mainly a reply to Bell’s East Asian challenge to human rights. I will use security rights and political rights as examples to illustrate my view for this part. The second part of the presentation will focus on some further development on the ideas of minimal values. This part is not conclusive, but some ideas are still interesting and I believe that it is meaningful to share my observations to audiences.

After this introduction, in the first part of the presentation, I will discuss the ideas from two political philosophers, Jack Donnelly and Daniel Bell, as the representatives of the two sides in the debate of the universality of human rights. And then I will discuss the meaning of maximal theories and the meaning of minimal values. In the second part of the presentation, I will discuss some further development and observation on the ideas of minimal values.
Part I: East Asian Challenge to Human Rights

Section 1: The Debate of the Universality and Relativity of Human Rights

Are human rights universal? Or are they relative to different cultures? There are several senses in which human rights are held as universal or relative. This section discusses the ideas from political philosophers Jack Donnelly and Daniel Bell as two typical models of universality and relativity of human rights, respectively.

According to Donnelly, “[t]o claim that there are human rights is to claim that all human beings, simply because they are human, have rights in this sense. Such rights are universal, held by all human beings. They are equal: One is or is not human, and thus has or does not have (the same) human rights, equally” (Donnelly, 1999, p. 61). He thinks that human rights are “rooted in an attractive moral vision of human beings as equal and autonomous agents living in states that treat each citizen with equal concern and respect”; he also argues that “a certain kind of liberalism provides, if not the best, then at least a good justification for this system of rights” (Donnelly, 2003, p. 38). Donnelly especially borrows some notions from Dworkin (1977) and Rawls (1993, 1999) to support his own argument on human rights. Concurring with Dworkin (1977), Donnelly argues that every government should treat every citizen with equal concern and respect (Donnelly, 2003, pp. 43-45). Donnelly also borrows the notions from Rawls, especially the notion of “overlapping consensus,” to support his idea on human rights (e.g., Donnelly, 2003, pp. 41-51). Donnelly supports the list (substance) of human rights in the Universal Declaration of Human rights; he calls his view “the Universal Declaration model” (Donnelly, 2003, pp. 23-37, 45-46). When he discusses the importance of cultures, he introduces a “three-tiered scheme”
of human rights: the concept or substance of human rights; the interpretations of human rights, and the implementation or form of human rights (Donnelly, 2003, pp. 93-98; 2007, p. 299). His general idea is that the interpretations and the implementation of human rights are relative to different cultures, but the concept and substance of human rights are universal.¹

On the other hand, Daniel Bell discusses human rights differently. He mainly focuses on how cultures may affect human rights. When he talks about the concept of human rights, he argues that human rights “are universal because they apply in all cultural contexts,” and then he thinks that the controversial part “is to specify the content of universal human rights. Which rights are fundamental, universally valid human rights, and which ones are locally valid, ‘peripheral’ rights?” (Bell, 1999, p. 849) Bell thinks that the answer is based on cultural contexts, and this is exactly where Bell and others believe that the East and the West have different answers. He writes:

A human rights regime is supposed to protect our basic humanity—the fundamental human goods (or needs or interests) that underpin any “reasonable” conception of human flourishing. But which human goods are fundamental? … It is possible that most politically relevant actors, both officials and intellectuals, in East Asian societies

¹ Donnelly writes: “Particular human rights are like ‘essentially contested concepts,’ in which there is a substantial but rather general consensus on basic meaning coupled with no less important, systematic, and apparently irresolvable conflicts of interpretations… In such circumstances, culture provides one plausible and defensible mechanism for selecting interpretations (and forms)” (Donnelly, 2003, p. 96). He also thinks that there are different ways to implement human rights in legal and political practices (Donnelly, 2003, pp. 97-98), and he has a longer list of what can be considered as the relativity of human rights in Donnelly (2007). On the other hand, he insists on the conceptual universality and substantive universality of human rights. For example, he claims that “The Universal Declaration generally formulates rights at the level of what I will call the concept, an abstract, general statement of an orienting value…Only at this level do I claim that there is a consensus on the rights of the Universal Declaration, and at this level, most appeals to cultural relativism fail” (Donnelly, 2003, p. 94. His Italics); “My argument is for universality only at the level of the concept” (Donnelly, 2003, p. 97); “Human rights are (relatively) universal at the level of the concept, broad formulations such as the claims in Articles 3 and 22 of the Universal Declaration that ‘everyone has the right to life, liberty and security of person’ and ‘the right to social security’” (Donnelly, 2007, p. 299. His italics). This paper focuses on the debate and the argument on why human rights are conceptually and substantively universal.
typically endorse a somewhat different set of fundamental human goods than their counterparts in Western societies now and for the foreseeable future…It may mean that some Western conceptions of human rights are actually culturally specific conceptions of fundamental human goods, not readily accepted elsewhere, too encompassing in some cases and too narrow in others. (Bell, 2006a, p. 72-73)²

He discusses many examples in East Asian cultures, such as examples in China, South Korea, Singapore, and Thailand to support his view.³ In general, he believes that only items like against slavery, genocide, murder, torture, etc. are human rights (e.g., Bell, 2006a, p.79). On the other hand, many traditional political rights in the West, such as freedom of political speech and democratic rights, are not human rights because they conflict with some East Asian cultures (e.g., Bell, 2000, pp. 106-172; 2004, pp.25-43; 2006a, p.9; 2006b, pp. 180-205).⁴

Bell has a challenge to Donnelly. Bell thinks that Donnelly’s view (especially Donnelly 1989, 1999, & 2003) is solely a “West-centric perspective” because Donnelly does not emphasize East Asian cultures enough. Bell writes:

There are a number of West-centric perspectives which simply assume that their views are universally applicable to other cultures…For example, Jack Donnelly, who I think represents the best of human rights activists and theorists, never allows for the possibility that non-Western values could shape international human rights regime. Western political

² Similar ideas can also be found in Bell (1996), pp. 660-663; Bell (2000), pp. 83-88.
³ For the discussion of China, see e.g., Bell (2000), pp. 277-336; Bell (2006a), pp.152-205. For the discussion of Singapore, see e.g., Bell (2000), pp. 173-275; Bell (2006a), pp.74-75. For the discussion of South Korea, see e.g., Bell (1996), pp.664; Bell (2000), pp. 92-93; Bell (2006a), p. 75. For the discussion of Thailand, see e.g., Bell (2006a), pp. 73-74.
⁴ For convenience, let me call the former group of rights “rights to physical security” and the latter group “rights to political liberty.” In other words, Bell thinks that rights to physical security are human rights but rights to political liberty are not human rights. Bell thinks that rights to physical security are human rights they are what Michael Walzer calls “minimal and universal codes.” Such an idea will be discussed in detail in the next section.
theorists also claim that their theories are universal, but only draw on the moral practices and moral aspirations found in Western societies...The problem with these West-centric outlooks is that they block the development of a truly international human rights regime that can accommodate the ends and aspirations of non-Western peoples, and that they fail to allow for the possibility of areas of justifiable difference between “the west” and “the rest.” (Bell, 1998a, pp. 14 & 16)

Note that Bell is not criticizing Donnelly for not mentioning East Asian cultures. The real challenge from Bell is that Donnelly does not realize or does not agree that East Asian cultures are important or even essential in the human rights debate. For example, Bell thinks that Donnelly’s view is too “West-centric” because Donnelly borrows Dworkin’s notion of “equal concern and respect” to support his view, and Bell thinks that Dworkin’s view is also a West-centric perspective. Bell writes, “Dworkin made no serious attempt to learn about Chinese philosophy, to identify aspects worth defending and learning from, and to relate his own ideas to those of Chinese political traditions such as Confucianism and Legalism...Dworkin merely put forward his own ideas and identified fellow ‘liberal’, and the ‘debate’ rarely moved beyond this starting point” (Bell, 2006a, p. 4). For another example, Donnelly also borrows Rawls’ notion of overlapping consensus to argue that different cultures have a consensus on the concept of human rights, but Bell considers that Rawls’ view is just another Western view.

A reply from Donnelly is that it does not matter whether human rights are foreign to East Asian (or other cultures). Indeed, he believes that “the idea that all human beings, simply because they are human, have inalienable political rights was foreign to all major premodern
However, he argues that the origin of human rights is not a problem:

I want to emphasize that the “Western” origins of human rights ideas and practices is a simple historical fact. It is not a matter for praise (or blame). Human rights initially emerged—were created or “discovered”—in Europe not because of superior Western virtue or insight but because, for better or worse, modern states and capitalism first appeared there. This history does not make these rights any more irrelevantly “Western” than the origins and initial spread of both Newtonian and quantum physics makes them “Western” physics inapplicable to Asia. Whatever applicability—or inapplicability—internationally recognized human rights have is independent of their place of origin. (Donnelly, 1999, p. 69)

How does Bell reply to Donnelly? Bell actually agrees with Donnelly that it does not matter whether the origin of human rights is from the West. Indeed, Bell thinks that the origination is not a problem; otherwise his view and other views (such as Walzer’s view) are all problematic because they also originate from the West. The real problem is, using Donnelly’s term, whether human rights are only “applicable” in the West but not in the East. Bell argues that East Asian cultures are important because they determine that some rights (such as rights to political liberty) do not “apply” in East Asia. No matter what “applicability” means, Bell disagrees with Donnelly because Bell believes that Donnelly does not emphasize East Asian

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5 In Donnelly (1999), “major premodern societies” also include “traditional Asian societies” (p. 62).
cultures enough.\textsuperscript{6} Therefore, Donnelly’s claim on the origins and his analogy on quantum physics are irrelevant and cannot save his argument from Bell’s challenge.

Another reply from Donnelly is that he borrows Rawls’ ideas and argues that “human rights can be grounded in a variety of comprehensive doctrines… Over the past few decades more and more adherents of a growing range of comprehensive doctrines in all regions of the world have come to endorse human rights—(but only) as a political conception of justice” (Donnelly, 2007, p. 290). That is, his aim is to show that comprehensive doctrines in different cultures have an overlapping consensus on the list of the \textit{Universal Declaration of Human Rights} (i.e., the concept and substance of human rights). He also realizes that some values in different cultures may be incompatible to human rights or may even reject human rights. But he reminds us that “virtually all Western religious and philosophical doctrines through most of their history have either rejected or ignored human rights” (Donnelly, 2007, p. 290), but now human rights are accepted in the West. He thinks that other cultures may also be in a similar situation. For example, he writes: “Asian values—like Western values, African values, and most other sets of values—can be, and have been, understood as incompatible with human rights. But they also can be and have been interpreted to support human rights, as they regularly are today in Japan, Taiwan, and South Korea. And political developments in a growing number of Asian countries suggest that ordinary people and even governments are increasingly viewing human rights as a contemporary political expression of their deepest ethical, cultural, and political values and aspirations” (Donnelly, 2007, p. 290). In other words, he thinks that Asian values either are being changed or can be changed, and so he thinks that human rights are more and more acceptable in East Asia.

\textsuperscript{6} Dallmayr (2002) has a similar reply to Donnelly. See especially Dallmayr (2002), pp.177-178.
It is a more promising reply from Donnelly to the challenge that his argument is too West-centric. However, there are still many gaps to fill in. One gap is what Asia values (or values in other cultures) can be changed and what values cannot be changed. Another gap is what those “comprehensive doctrines” are and how they have an “overlapping consensus “on human rights (especially on political liberty).\(^7\) Furthermore, it is not clear why using these notions (comprehensive doctrines, overlapping consensus, etc.) can make his approach not West-centric. It is also quite controversial for Donnelly to argue that different cultures have an overlapping consensus on the whole list of the *Universal Declaration of Human Rights*—the list is even controversial in the Western cultures.\(^8\) With all of these questions, it is hard to say that Donnelly has completely replied to Bell’s cultural challenge.

In conclusion of this section, it appears that Donnelly is correct to claim that the concept and substance of human rights are universal in principle, but a better argument is needed in order to support such a claim. The purpose of this paper is to construct such a better argument, i.e., an argument which is both culturally sensitive and able to argue for the universality of human rights.

**Section 2: From Maximal Theories to Minimal Values**

As mentioned in the last section, Bell believes that some rights such as against slavery, torture, etc. are human rights because they are “what Michael Walzer terms the ‘minimal and

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\(^7\) Donnelly also claims that equal concern and respect is also a political conception of justice. For example, he argues that “equal concern and respect, understood as a political conception of justice, can be endorsed by a variety of comprehensive doctrines.” (Donnelly, 2003, p. 46). It is hard to tell whether he actually thinks that Dworkin’s equal concern and respect is a comprehensive doctrine or a political conception of justice, and how these notions are related to human rights.

\(^8\) For example, some may wonder whether social and economic rights are human rights.
universal moral code’” (Bell, 2006a, p.79). Also, he believes that rights to political liberty are not human rights because they conflict with East Asian cultures. What is “minimal and universal code” (or, in short, “minimal values”)? And how are minimal values related to East Asian cultures (or any culture)? Here is what Walzer says:

It is nonetheless true that the moral question is commonly put in more general terms than the legal question. The reason for this can only be that morality is in fact more general than law. Morality provides those basic prohibitions—of murder, deception, betrayal, gross cruelty—that the law specifies and the police sometimes enforce…These prohibitions constitute a kind of minimal and universal moral code. Because they are minimal and universal (I should say almost universal, just to protect myself against the odd anthropological example), they can be represented as philosophical discoveries or inventions. (Walzer, 1987, pp. 23-24)

Walzer focuses a lot on how minimal values are relevant to cultural factors. The core idea from Walzer is that minimal values are embedded in different maximal theories in each culture. Walzer points out that a main difference between minimal values and maximal theories is that minimal values are realized in all cultures, but maximal theories are particular and unique in each culture. Walzer believes that maximal theories are not based on minimal values; the reverse is

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9 There is a footnote after the term “minimal and universal code” in this quotation from Bell. The footnote says that the references are Walzer (1987), p. 24 and Walzer (1994). Therefore, I mainly focus on Walzer (1987) and Walzer (1994) in our discussion as well.

10 Although Walzer uses the term “minimal and universal moral code” in his early writings (e.g., Walzer 1987), Walzer mainly focuses on the notion of “minimal” only; it does not matter whether it is a moral code or not. Indeed, in his later writings (e.g. Walzer 1994), Walzer also uses other terms such as “minimal morality,” “minimalism,” “minimal moral values,” “thin account of morality,” etc. It seems that Walzer uses all of these terms interchangeably. Therefore, in this paper, only the term “minimal values” is used.
more likely—that is, minimal values come from maximal theories. Each culture has its own maximal theories, and maximal theories in every culture have the same set of moral values, which are minimal moral values. Walzer thinks this is what is meant by saying that minimal values are embedded in maximal theories. This is how he thinks minimal values are related to cultural factors.\(^\text{11}\) I argue in this paper that this is a key concept for us to solve the debate on the universality of human rights. In this section, I discuss further on the meaning of maximal theories. In the next section, I discuss further on the meaning of minimal values.

Each culture has its own maximal theories, and maximal theories in every culture have the same set of moral values, which are minimal values. Let me discuss two examples from Walzer so that I can explain his idea further.

The first example is about the protest in Prague in 1989. Walzer claims that he understands the signs “truth” and “justice” in the protest. He writes: “It is a picture of people marching in the streets of Prague; they carry signs, some of which say, simply, ‘Truth’ and others ‘Justice’. When I saw the picture, I knew immediately what the signs meant—and so did everyone else who saw the same picture.”\(^\text{12}\) But he also thinks that American knows some extra meanings of these signs from American culture. He argues that “while we march in spirit with the men and women of Prague, we have in fact our own parade.”\(^\text{13}\) Walzer believes that some minimal values of justice are very simple, such as “an end to arbitrary arrests, equal and impartial law enforcement, the abolition of the privileges and prerogatives of the party elite—

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\(^{11}\) He writes, “Philosophers most often describe it [the dualism of minimalism and maximalism] in terms of a (thin) set of universal principles adapted (thickly) to these or those historical circumstances. I have in the past suggested the image of a core morality differently elaborated in different cultures. …But our intuition is wrong here. Morality is thick from the beginning, culturally integrated, fully resonant, and it reveals itself thinly only on special occasions, when moral language is turned to specific purposes” (Walzer, 1994, p.4).

\(^{12}\) Ibid., 1.

\(^{13}\) Ibid., 8.
common, garden variety justice.”¹⁴ These minimal values can be found in both cultures. Nevertheless, Walzer also believes that maximal theories in Prague or Czech are different from some American theories of justice, such as “utilitarian equality or John Rawls’ difference principle or any philosophical theory of desert or merit or entitlement.”¹⁵ In short, Walzer believes that different cultures have different maximal theories but same minimal values.

Walzer does not explain directly how many maximal theories are there in each culture, but based on this example, a reasonable assumption is that there can be more than one maximal theory in each culture. Again, Walzer argues that maximal theories in Prague or Czech are probably different from maximal theories in America, such as utilitarianism or Rawls’s theory of justice. I think Walzer assumes that utilitarianism, Rawls’s theory of justice, or even some other moral and political theories, are all maximal theories in American cultures. This means that there can be different maximal theories in each culture. In general, when Walzer claims that a minimal value is embedded in a maximal theory, this only means that a minimal value is embedded in some (i.e., at least one) maximal theories of each culture. There can be different maximal theories in a culture, and some of them may even be incompatible to some others. It is not necessary to assume that a minimal value is embedded in all maximal theories of each culture.

The second example from Walzer is about China. Walzer claims that he supports the request of democracy in China from the Chinese students in Tiananmen Square in 1989. Then he argues the following:

But this readiness reflected a morally (and politically) minimalist position: solidarity with all the students, despite the disagreements among them, against the tyrants. I certainly did

¹⁴ Ibid., 2.
¹⁵ Ibid.
not believe then that American political idealism was about to be realized in China, or that it should be realized. Nor did I have an abstract and universal theory of ‘true democracy’ to urge upon the Chinese…I do defend the minimal rights of Chinese, as of Czech, demonstrators. But there are unknown and therefore abstract individuals: minimal rights are all they have… Since I know very little about their society, I cannot foist upon the Chinese this or that set of rights—certainly not my own preferred set. So I defer to them as empirical and social individuals. They must make their own claims, their own codifications (a Chinese bill of rights?), and their own interpretative arguments.\textsuperscript{16}

In this example, something such as “against the tyrants” is a minimal value; something such as “American political idealism” is only a maximal theory in America. Walzer argues that such an American maximal theory should not be realized in China, but he also agrees that such a minimal value is shared by both American culture and Chinese culture. Moreover, I think all Walzer requires in this example is that it is possible to develop a maximal theory of “against the tyrants” in Confucianism. Let me explain.

I agree that “against the tyrants” is a minimal value in Confucianism; some Confucian philosophers have proposed such a value. For example, in \textit{Mencius} 7B:14, Mencius thinks that “The people are of supreme importance; the altars to the gods of earth and grain come next; last comes the ruler.”\textsuperscript{17} For another example, in \textit{Mencius} 1B:8, Mencius also shows that he is strongly against the tyrants:

\begin{itemize}
\item \textit{Ibid.}, 59-61.
\item \textit{Mencius, Mencius}, trans. D.C. Lau (Hong Kong: Chinese University Press, 2003), 315.
\end{itemize}
King Xuan of Qi asked, “Is it true that Tang banished Jie and King Wu marched against Zhou?”

“It is so recorded,” answered Mencius.

“Is regicide permissible?”

“He who mutilates benevolence is a mutilator; he who cripples rightness is a crippler; and a man who is both a mutilator and a crippler is an ‘outcast.’ I have indeed heard of the punishment of the ‘outcast Zhou,’ but I have not heard of any regicide.”18

In this passage, Mencius even claims that killing a tyrant (King Zhou) is not a problem at all; this shows that Mencius is strongly against tyrant.19 Mencius is not the only Confucian who proposes the value of “against the tyrants.” Confucius also has a similar thought; one may even argue that Mencius’ idea on “against the tyrants” comes from Confucius.20 It is safe to conclude that “against the tyrants” is an important value in at least a part of the Confucian tradition.

However, in the history of East Asia (such as China, Korea, and Japan), there is no such a maximal theory of “against the tyrants” in Confucianism. Indeed, Confucianism, or at least a part of the Confucian tradition, was frequently used as a school of thought to support tyrants in the history of East Asia. When Walzer says that “They must make their own claims, their own codifications (a Chinese bill of rights?), and their own interpretative arguments,”21 there is simply no such a complete maximal theory in Chinese culture.

18 Mencius, p. 43. D.C. Lau translates all the names by the Wade-Giles translation. For the consistency of the translation in this essay, I change them to the Pinyin translation.
19 See also Wing-Tsit Chan, A Source Book in Chinese Philosophy (Princeton: Princeton University Press, 1963), 63 & 76 for his comments on Mencius.
20 For example, in The Analects 14:2, 14:22, Confucius thinks that it does not matter to say something that is true but offensive to the king.
21 Walzer, Thick and Thin, 59-61.
But it is possible to develop a Confucian maximal theory based on the minimal value “against the tyrants.” For example, Yu-Lan Fung interprets Mencius’ philosophy in this way:

If a ruler lacks the ethical qualities that make a good leader, the people have the moral right of revolution. In that case, even the killing of the ruler is no longer a crime of regicide. This is because, according to Mencius, if a sovereign does not act as he ideally ought to do, he morally ceases to be a sovereign and, following Confucius’ theory of the rectification of names, is a “mere fellow.” as Mencius says. … These ideas of Mencius have exercised a tremendous influence in Chinese history, even as late as the revolution of 1911, which led to the establishment of the Chinese Republic. It is true that modern democratic ideas from the West played their role too in this event, but the ancient native concept of the “right of revolution” had a greater influence on the mass of the people.22

In the above passage, Fung discusses how the idea from Mencius on “against the tyrants” influences the revolution and establishment of Chinese Republic in 1911. This is an example of how it is possible to develop a Confucian maximal theory in Chinese culture. And Fung is not the only philosopher who thinks that it is possible to develop a Confucian maximal theory of the minimal value “against the tyrants.” For another example, Amartya Sen also thinks that based on the philosophy of Confucius, it is possible to develop a maximal theory of human rights and democracy (which include “against the tyrants”) in East Asia, and such a theory is against the idea that Asian values conflict with democracy and human rights. For example, he writes: “Indeed, the reading of Confucianism that is now standard among authoritarian champions of

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Asian values does less than justice to the variety within Confucius’s own teachings. Confucius did not recommend blind allegiance to the state. … Confucius is not averse to practical caution and tact, but does not forgo the recommendation to oppose a bad government.”

For another possible example, some contemporary Chinese philosophers, such as Hsu Foo-kwan, Mou Chung-san and T'ang Chun-I, also argue that Confucianism has the “seed” of democracy. Their idea may also be considered as another possibility to develop a Confucian maximal theory of “against the tyrants.”

We do not always have a maximal theory of a minimal value, but all we need here is simply a possibility to develop a maximal theory of a minimal value. There are different possibilities to develop a maximal theory of a minimal value, but all of them must fulfill the following two requirements. The first requirement is like this: it does not matter whether a minimal value is in the main stream of the culture, but at least the minimal value is an important value in a part of the culture. For example, “against the tyrants” was not a major value in the history of Confucianism. However, we still find such a value in the philosophy of Confucius and the philosophy of Mencius. In other words, we find such a value in at least a part of Confucianism. Therefore, the first requirement is fulfilled. The second requirement is that every maximal theory is required to be logically consistent with its minimal value. A maximal theory has more information than its minimal value, but they do not have any conflict. In the above example, the suggestions from Fung or Sen are all consistent with the minimal value “against the tyrants.” In this sense, the second requirement is also fulfilled. It is possible to develop a

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maximal theory of a minimal value only when these two requirements are fulfilled. This is all Walzer requires in his Chinese example, and the above discussion shows that it is possible to develop some maximal theories of “against the tyrants” in East Asian cultures.

In summary, I have analyzed Walzer’s idea on maximal theories in this section. In the next section, I discuss further on the meaning of minimal values.

Section 3: From Minimal Values to Dignity

What are minimal values? Walzer emphasizes in his writings that the word “minimal” does not refer to anything minor or unimportant. Indeed, he thinks that “the opposite is more likely true,” that is, minimal values are something so basic and important that no one should violate or deny it. He writes:

I want to stress (though it should already be obvious) that “minimalism” does not describe a morality that is substantively minor or emotionally shallow. The opposite is more likely true: this is morality close to the bone…the minimal demands that we make on one another are, when denied, repeated with passionate insistence. (Walzer, 1994, p. 6)

In other words, minimal value is a minimal moral demand. Such a moral demand is minimal in the sense that no one should deny this demand because it is “close to the bone.” But what is “close to the bone”? And what demands are so “close to the bone” and hence no one should deny them?
It is not easy to find the answers simply based on Walzer’s idea. He has only briefly mentioned the idea of minimal moral demand. Therefore, in addition to Walzer’s idea, several other ideas and examples will be discussed. Since this is a debate on human rights, the focus will be on the ideas about what minimal moral demands are relevant to human rights (e.g., Shue, 1996; Li, 2006; and Nickel, 2007).

Henry Shue’s basic rights (physical security, subsistence, and liberty) are human rights. He believes that basic rights protect people that are too weak to protect themselves and that this protection is a moral shield. He writes, “Basic rights are a shield for the defenseless against at least some of the more devastating and more common of life’s threats…Basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink” (Shue, 1996, p. 18). Shue also thinks that such a protection of the defenseless should be extended to everyone. He argues that basic rights are “everyone’s minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept” (Shue, 1996, p. 19).

Xiaorong Li (2006) generally shares a similar view with Shue. She also thinks that “no human being should be allowed to sink below the minimal threshold of human life, where a life would be so deprived or harmed to be minimally good or dignified” (Li, 2006, p. 132). Li also writes that “this fundamental value claim, ‘it is right (or good) to safeguard the essential necessities of a minimally decent human life,’ will be referred to as the minimalist conception of human good or human dignity, i.e. the notion that the necessary conditions for a minimally good or dignified life

\[25\] Shue himself focuses more on the following claim: “rights are basic in the sense used here only if enjoyment of them is essential to the enjoyment of all other rights” (Shue, 1996, p. 19). However, we are not discussing the relationship of rights here. I discuss Shue’s idea further in chapter 4, section 4.3.

\[26\] Notice that unlike Shue, Li thinks that liberal rights are neither basic nor minimal rights (in her terminology, liberal rights are extrinsic rights but not inherent rights). Their views are similar in terms of the meaning of the minimal moral demand, not the list of minimal rights. For further detail of the difference between Li and Shue, see Li (2006), pp. 163-165.
are a common fundamental value” (Li, 2006, p. 132). Note that many human rights advocates generally agree on the concept of minimal moral demand (though they may disagree on the content of it). For example, James Nickel also thinks that human rights provide a minimal protection to people. He writes, “Human rights set minimum standards; they do not attempt to describe an ideal social and political world. They leave most political decisions in the hands of national leaders and electorates. Still, they are demanding standards that impose significant constraints on legislation, policy-making, and official behavior” (Nickel, 2007, p. 10). In summary, their general claim, which may be called a “minimal account of human rights,” is that human rights provide a minimal protection to everyone, and no one should be allowed to sink below a minimal threshold of human life.\footnote{Other philosophers who also hold a minimal account of human rights include Michael Ignatieff (2001) and Joshua Cohen (2004). On the other hand, Joseph Raz (2010) and Charles Beitz (2009) argue against such a minimal account of human rights.}

For the purpose of this section, the important common point among all the above ideas is that the minimal threshold of human life is a line that no one should sink below. When Walzer thinks that no one should deny a minimal moral demand, Shue and Li argue that such a demand is a line that no one should sink below it. When Walzer thinks that minimal moral demands are moral values that are “close to the bone” (Walzer, 1994, p. 6), Shue and Li have shown us that one of these “bones” is a minimal threshold of human life. We can combine their points together and summarize into the following statement: a minimal moral demand is a minimal threshold of human life which no one should sink below.

The above statement helps us to understand further why rights to physical security are minimal moral demands. They are minimal moral demands if they are minimal thresholds of human life, and no one should sink below these minimal thresholds. For example, prohibition to
slavery and torture are all minimal thresholds of human life and no one should sink below these lines (i.e., no one should be enslaved, tortured, etc.).

A minimal threshold of human life is not only about the necessary conditions for survival. For example, air is a necessary element for the survival of human beings, but this is not the concern here. A minimal threshold of human life is a line that if anyone sinks below it, he or she “would be so deprived or harmed to be minimally good or dignified” (Li, 2006, p. 132). In other words, a minimal threshold of human life is about how to protect the dignity of every individual.

The term “dignity” appears frequently in many international human rights documents. In these documents, dignity seems to be recognized as a moral foundation of human rights. In other words, human rights are based on dignity or derived from dignity. For example, the Vienna Declaration and Programme of Action, which was adopted by the World Conference on Human Rights on June 25th, 1993, recognizes and affirms that “all human rights derive from the dignity and worth inherent in the human person.”

In the preamble and article 1 of the Universal Declaration of Human Rights, the authors write: “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…All human beings are born free and equal in dignity and rights” A similar idea is also written in the International Covenant on Civil and Political Rights and many other international human rights documents.

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28 See United Nations (1993a) for the detail.
29 In the preamble, the document says, “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, 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… Recognizing that these rights derive from the inherent dignity of the human person.” (United Nations, 1966a)
documents, human dignity is a basic moral foundation of human rights; human rights are derived from human dignity.

These international documents show us why dignity is so important. Some philosophers of human rights develop their own arguments in order to explain how human rights are derived from the dignity.\(^{31}\) In this sense, it is not surprising to see that some of them consider that a dignified life is a minimal threshold of human life. The next questions is, in the East and West debate on human rights, do philosophers who emphasize the importance of cultures (such as Bell and Walzer) also agree that dignity is important?

Although they have not directly discussed the importance of dignity, it is quite likely that they do not deny the importance of dignity in general. For example, Walzer mentions the importance of dignity when he develops his just war theory (e.g., Walzer, 1977, p. xi, 120, 205). Bell also recognizes the importance of dignity in the human rights debate (e.g., Bell, 2000, p. 56, 98; 2006a, p. 62, 66). The only possible objection from them would be: is dignity merely a Western concept? For a classic example, dignity is a central concept in Kant’s moral philosophy (the Kantian tradition connects dignity to autonomy); for a contemporary example, Dworkin also believes that one purpose of rights is to protect dignity (Dworkin, 1977, p. 198). We know that dignity is an important concept in the Western philosophy, but is dignity also recognized in the East Asian cultures? Some philosophers argue that dignity is merely a Western concept.\(^{32}\) If dignity is only recognized in the West but not the East, then a dignified life may not be a minimal threshold for everyone.

\(^{31}\) E.g., Donnelly (2003), Griffin (2008), Li (2006), Nickel (2007), and Shue (1996).

\(^{32}\) For example, Onuma Yasuaki (1999) has such an idea, and Taylor also agrees with Onuma Yasuaki that dignity is a Western concept only (Taylor, 1999, p. 125).
To reply to this possible objection, let us consider two examples of dignity in the Chinese tradition. The first example is from Irene Bloom (1998) and the second example is from John Fitzgerald (1999). The Chinese term of dignity, “zunyan,” did not exist in the ancient China tradition. Nevertheless, Bloom argues that a notion in Mencius’ philosophy is close enough to be an ancient Chinese version of dignity. This notion is the “nobility of heaven” (Bloom, 1998, pp. 104-111; see also The Analects 4:5 and Mencius 6A: 10, 16 & 17). For the second example, Fitzgerald discusses a unique understanding of dignity in modern China. He argues that national prestige is emphasized as a dignity for everyone in modern China, and this national prestige is based on national defense. This understanding of dignity is probably based on the history that China was frequently conquered by Western countries (and Japan) from the nineteenth century to the first half of the twentieth century. Since China was so weak in the past, most Chinese consider that a strong national defense is important to the national prestige, which is important for their dignity. Note that this idea is also recognized in some other East Asian countries (except Japan) because all of them share a similar history of being conquered by Western countries.

There may be many interpretations of dignity in East Asian cultures. But the intention here is not to discuss all interpretations of dignity in East Asia. The intention here is simply to illustrate that dignity is not only a Western concept; East Asians also discuss that a dignified life is suitable for them. It is possible that there are cultural differences for the interpretations of dignity; the East and the West may treat dignity differently. But we do not need to discuss these cultural differences, nor would these cultural differences affect the discussion here. The reason is that no matter how many interpretations of dignity there are among different cultures (or even

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33 Bloom also mentions that classical Greek also lacks a term for “dignity”. Indeed, he also mentions that “dignity” is a term appearing rather late in the Western traditions. See Bloom (1998), p. 104 for detail.

34 See Onuma Yasuaki (1999), pp. 104-106 for further detail.
different interpretations within one culture), there must be at least some common points among all interpretations, otherwise they cannot be all considered as interpretations of dignity. It seems that one of the common points among them is that there are essential necessities of a dignified life.

For example, rights to physical security are essential necessities of a dignified life; this means that without physical security, no one can really have a dignified life. Protecting one’s physical security is a necessary condition for one having a dignified life. It is impossible for one having dignity without having physical securities. For example, no one can have dignity if one is being tortured. Notice that it does not mean that such a relationship needs to be as strong as a logical or analytical impossibility. It is not sure if it is logically or analytically possible for one having dignity without having physical security. We cannot rule out the chance that one may be able to conceive some logical situations in which one is having dignity without having physical securities. However, in our real world, one cannot have a dignified life if one is (for example) being tortured. This is more like a causal or empirical impossibility. That is, most (if not all) evidences in human history show that dignity and physical security do have a causal or empirical relationship. It is safe to conclude from the trend of human history that it is causally, empirically, or practically impossible for one having dignity without having physical securities. For convenience, instead of saying “causal, empirical, practical, and not logical or analytical necessities,” we can simply call them “essential necessities.” This is what it means by saying that rights to physical security are essential necessities of dignity.

This explanation is not controversial in the East and West debate on human rights. Both sides agree that rights to physical security are important. No one in the debate really tries to deny that rights to physical security are essential necessities for every kind of decent life, including a
dignified life. Bell and others focus a lot on the empirical findings; they probably would agree that it is empirically impossible for one having dignity without having rights to physical security. And they would think that the logical possibility is not an issue here. Therefore, it is safe to conclude that rights to physical security are essential necessities of dignity—at least this is not controversial in the East and West debate on human rights.

In summary, a minimal value is a minimal moral demand. A minimal moral demand is a minimal threshold of human life that no one should sink below. We also find that an essential necessity of dignity is such a minimal moral demand. Hence we can summarize all of these points in the following statement: X is a minimal value if X is an essential necessity of dignity.

Based on the above discussion, an argument for the universality of human rights can be formulated like this:

**Argument**

1. X is a human right if X is a minimal value.
2. X is a minimal value if X is a minimal moral demand that embedded in different cultures.
3. X is such a minimal moral demand if X is an essential necessity of dignity.
4. X is an essential necessity of dignity.
5. (Conclusion) X is a human right.

Bell’s approach relies a lot on empirical findings. For example, he discusses several empirical examples in which liberties conflict with some East Asian cultural factors. Therefore, it is safe to assume that Bell would accept an empirical approach which shows that physical securities are empirically essential to dignity.

One may compare this statement with the “claim-rights formula” in the Hohfeldian analytical system. One may also discuss further the relationship between minimal values and duty. Due to the limitation of time, I skip all these discussions in the presentation.
This is a valid argument. If all the premises are true, then the conclusion is also true as well. Note that the aim of this argument is to construct a jointly sufficient condition for X being a human right. In other words, if X meets all the conditions described in these premises, then X is a human right. But this argument does not tell us any necessary condition for X being a human right. In other words, even if X does not meet one or more of the conditions described in the premises, X may still be a human right.\(^{37}\) In short, the purpose here is simply to figure out why some items are human rights, and so we only need to focus on the sufficient conditions. The necessary conditions for being human rights do not concern us here.

Some may argue that this explanation is too “Western” or too “culturally imperialistic.” They may think that minimal moral demand is a Western concept and I am using it to deny the importance of cultural factors. However, even Walzer and Bell emphasize the importance of minimal moral demand. As it is quoted before, Walzer thinks that the minimal moral demands are “close to the bone” and “when denied, repeated with passionate insistence” (Walzer, 1994, p. 6), and Bell thinks that “there is little debate over the desirability of a core set of human rights…what Michael Walzer terms the ‘minimal and universal code’” (Bell, 2006a, p. 79).

Some may think that dignity is only a Western concept (e.g., a Western concept from Kant). But as I have argued in this paper, dignity is prima facie recognized and accepted globally. Some essential necessities of dignity are basic capabilities or conditions protecting or promoting basic capabilities, and they are universal. In a word, the concept of minimal value is not merely a Western concept.

The X in the argument is a variable that may be substituted with different items. As I have discussed in the above sections, some of these items are rights to physical security. In other

\(^{37}\) I do not exclude the possibility that some of these premises are also necessary conditions for physical securities being East Asian rights. But the argument itself only focuses on the sufficient condition. Therefore, I do not discuss whether any of these premises is also a necessary condition.
words, rights to physical security are human rights because they are minimal values, i.e., essential necessities to human dignity. Indeed, we can also apply this reasoning to political rights. This is because they all are also essential necessities of dignity. Therefore, they are also human rights. In other words, these statements can be added in the above argument:

(6) Items in security rights and political rights are also essential necessities of dignity.

(7) Therefore, security rights and political rights are human rights.

Part II: From Minimal Values to Capabilities and Beyond.

The above is a reply to the East Asian challenge to human rights. Although the above argument is sufficient to be a reply, one may wonder if it is possible to develop the argument further into a more complete account of human rights. Specifically, one may wonder if we may develop the ideas of minimal values further. In the rest of the presentation, I would like to discuss such a possibility and explain some observations I have so far. Although what I am going to say is not conclusive, it may still be an interesting topic to some of us.

As mentioned before, minimal values are related to essential necessities of dignity. However, dignity itself is not a very clear concept. One may wonder if we may develop the account further by discussing more normative values. Let me illustrative such an approach by capabilities, and then I will discuss other possible options.

One may suggest that minimal values are also essential necessities of dignity because they are basic capabilities or conditions protecting or promoting basic capabilities. Such an idea is compatible with the capability approach developed by Martha Nussbaum and Amartya Sen (e.g., Nussbaum 2000, Sen 1999). In the capability approach, both “capabilities” and

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38 Due to the limitation of time, I skip the detail of the argument for political rights here. See Chan (2014) for further detail.
“functionings” are technical terms. Ingrid Robeyns has nicely summarized these terms as follows: “Functionings are ‘beings and doings’, that is, various states of human beings and activities that a person can undertake… Capabilities are a person's real freedoms or opportunities to achieve functionings” (Robeyns, 2011, section 2.1). Both Nussbaum and Sen have their own ways to discuss the relationship between human rights and the capability approach (e.g., Nussbaum 1997, 2006; Sen 2004, 2009). Indeed, Nussbaum and Sen have different ideas on the details of the capability approach. It is out of the scope of this paper to discuss their differences. I simply want to sketch how my analysis is compatible with their ideas, and in what sense they are compatible.

Comparing to the Sen’s version, Nussbaum’s version is more relevant to my analysis. There are two points from Nussbaum that are particularly related to the debate in this paper. First, Nussbaum has discussed dignity and capabilities, and how they are related to human rights. Although she does not say that human rights are directly based on dignity and capabilities, she argues that her capability approach “focuses on the protection of areas of freedom so central that their removal makes a life not worthy of human dignity” (Nussbaum, 2011, p. 31). This idea also leads us to discuss her second point. Unlike Sen who refuses to give us a detailed list of capabilities, Nussbaum has listed ten “basic capabilities” or “central capabilities,” including items such as life, bodily health, bodily integrity, emotion, practical reason, affiliation, etc., and argues that they are especially important and fundamental in her approach (e.g., Nussbaum, 2000, pp. 78-80; 2011, pp.33-34). As Nussbaum says, “What does a life worthy of human

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39 The terminology has changed over time. In her early writings (such as Nussbaum 2000; 2006), she simply calls these items “basic capabilities.” In her later writings, she uses the term “basic capabilities” a bit differently and calls the ten items “central capabilities.” In addition, Sen also uses these terms differently. To avoid confusion, I simply use these terms interchangeably and refer to the ten items suggested by Nussbaum.
dignity require? At a bare minimum, an ample threshold level of ten Central Capabilities is required” (Nussbaum, 2011, p. 32).

Nussbaum applies these ideas in her theory of human rights, social justice and many other areas. It is also possible to apply her ideas into my analysis in this section. As I have discussed above, human rights are minimal moral demands, which is a minimal threshold of human life that no one should sink below. In other words, they are essential necessities of dignity. Basic capabilities can also be considered as a further interpretation of these essential necessities of human dignity. In this sense, this is a moral foundation of the universality of human rights.

It is also interesting to discuss whether the analysis discussed above is compatible with the mainstream of Confucian thought. From Mencius to Song-Ming Confucians and Contemporary Confucians, they all believe that we should develop our moral senses. More precisely, we should develop our four beginnings to the four virtues and apply that to the whole world (e.g., *Mencius 2A6*, *The Great Learning*, Chang et al. 1958). It is interesting to figure out whether Nussbaum’s basic capabilities, especially emotion, practical reason and affiliation, are compatible with Confucianism or not.

Capability is not the only possible candidate as a normative foundation for minimal values. For example, some other candidates include interests (e.g., Raz, 1986), primary goods (Rawls, 1971), Well-being (Parfit, 1984; Griffin, 1986), utility (Mill, 1863), and many others. Comparing all of them is definitely beyond the scope of this presentation. Indeed, one may realize that there are a lot of discussions of them in the debates on normative ethics. In other words, this is not solely a debate on human rights anymore. This is a topic in both normative ethics and applied ethics.
The reason to talk about the above points is that this means that our debate on human rights and minimal values can be embedded into a bigger picture of normative ethics. For example, one may embed the discussion into John Rawls’s method of reflective equilibrium (Rawls, 1971, pp. 17-19, 40-46). Using this method, theorists first examine people’s considered ideas about human rights and look for a set of general principles that systematize them. They then work back and forth between these principles and ideas, revising some to fit their theories while refining their theories to accommodate the strongest ideas. In this sense, asking the normative foundation and explanation of minimal values is just the same as trying to look for the general normative principles behind human rights. It is open for debate as to whether such an approach implies that there is no independently normative theory of human rights. It is also open for debate which normative theory suits the discussion here more. For example, Griffin (2008) talks about human rights as protection of normative agency, Talbott (2010) talks about human rights in terms of consequentialism and well-being, or Beitz (2009) discus human rights based on international documents. Or one may simply use utilitarianism or Kantian deontology to discuss human rights. Another possibility is that we may not need the idea of minimal values anymore in the debates of human rights (as we can reduce all the ideas to those normative theories). One may try to find a reflective equilibrium of human rights among these normative theories.

Conclusion

In the beginning of this presentation, I have discussed the East Asian challenge to human rights and how one may reply to it by discussing minimal values. And then I discuss in the second part of the presentation some possible normative foundations of minimal values. Although the second part of the presentation is much shorter than the first part, the second part is
as important as (or even more important than) the first part of the presentation. I wish that through this discussion, one may develop an account of human rights and contribute to the East-West discourses. I look forward to doing further research on this topic in the future, and I look forward to discussing the comments and questions we are going to have.

References:


