ABSTRACT

Title of Document: AN EAST AND WEST DEBATE ON HUMAN RIGHTS

Benedict Shing Bun Chan, Ph.D., 2011

Directed By: Professor Christopher W. Morris
Department of Philosophy

In an East and West debate on human rights, scholars from different cultures disagree on whether all civil and political rights are human rights. While they generally agree that basic civil rights such as rights against torture and slavery (i.e., physical security rights) are human rights, some of them argue that traditional political rights in the West such as freedom of speech and political participation (i.e., liberal rights) are not human rights. Some scholars, such as Daniel A. Bell, argue that liberal rights are not human rights because liberal rights conflict with some East Asian cultures.

In this dissertation, I argue that both physical security rights and liberal rights are human rights, and explain the relationship between these rights and East Asian cultures. First, I argue that if liberal rights are not human rights because they conflict with some East Asian cultures, then physical security rights are also not human rights because physical security rights also conflict with some East Asian cultures.

Next, I discuss the idea from Daniel Bell and Michael Walzer that physical security rights are human rights because they are minimal values. Based on their idea, I explain what minimal values are, and why it is possible to develop some maximal theories of physical security rights in East Asian cultures. I argue that since physical security rights are minimal values, they are still human rights even they conflict with some East Asian cultures.

I then argue that liberal rights, similar to physical security rights, are also minimal values, and it is possible to develop some maximal theories of them in East Asian cultures. Therefore, similar to physical security rights, liberal rights are also human rights even they also conflict with some East Asian cultures.

I also discuss other human rights debates, especially the debates between Daniel Bell and other philosophers. Charles Taylor argues for an overlapping consensus approach on human rights; Jack Donnelly argues for a Western liberalist approach on human rights. I explain the relationship between these approaches and my arguments, and how my arguments can help them to reply to the challenges from Daniel Bell.

AN EAST AND WEST DEBATE ON HUMAN RIGHTS

By

Benedict Shing Bun Chan

Dissertation submitted to the Faculty of the Graduate School of the
University of Maryland, College Park, in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
2011

Advisory Committee:
Professor Christopher Morris, Chair
Professor David Crocker
Professor Xiaorong Li
Professor Dan Moller
Professor Karol Soltan

Dedication

To My Parents

Chan Yu Shun 陳如順

And

Lee Yeh Wah Sandra 李月華

Acknowledgements

I would like to express my heartfelt gratitude to many people; without them, this dissertation would not be accomplished.

First, I must thank my supervisor, Professor Christopher Morris. He has given me freedom to find a research topic that I like a lot, and he is very patient and supportive in assisting my writing. I thank him for his time and valuable comments.

My appreciation should also extend to other dissertation committee members: David Crocker, Xiaorong Li, Dan Moller, and Karol Soltan. Professor Crocker has helped me to know more on Sen's philosophy and the ethics of development. Professor Li has helped me to know more on the relationship between East Asian cultures and the philosophy of human rights, and also the debate between Daniel Bell and Jack Donnelly. Professor Moller has helped me to refine many philosophy concepts in my dissertation. Professor Soltan has helped me to think more on the notions of minimal values and maximal theories. All of their comments and criticism are very valuable and helpful. I thank all of them.

A part of an initial draft of my dissertation was presented in a Confucianism conference organized by the Confucius Institute at the University of Maryland in 2008, and another part of a later draft of my dissertation was presented in a human rights conference organized by the Chinese Academy of Social Sciences in 2010. I thank all the participants in these conferences, especially Professor Chuan Sheng Liu and Professor Weiming Tu in the Confucianism conference, and Professor Stephen Angle and Professor James Nickel in the human rights conference, for their valuable comments and encouragement.

I would also like to thank all other graduate students and faculty in the philosophy department; each has some influences on my research project. Thanks especially to Wei Zhang, who has patiently listened to my immature ideas on human rights and many other things.

I also want to thank my friends in Hong Kong and in Maryland, especially friends in the Greenbelt Fellowship of the Chinese Bible Church of College Park. I thank them for their long-time support and encouragement. Thanks especially to some Hong Kong graduate students in other departments at the University of Maryland, including Kan-Leung Cheng, Stephen Ho, King Lam Hui, Horace Ip, Martin Ma, and many others. They have helped me passing many boring and lonely days in Maryland.

Last but not least, I must thank my parents again; without them, I could not have come this far. I am also grateful to my fiancée, Louise Lok Man Law, for her patience, encouragement, and everything.

I am sorry if I have forgotten someone; thanks to them as well.

Table of Contents

Chapter 1: Introduction

There are different human rights debates between the East and the West. One of these debates is about the list of human rights. Scholars from different cultures disagree on which rights are human rights and which rights are not human rights. Some scholars, such as Daniel A. Bell, emphasize the importance of East Asian cultures, and try to limit the list of human rights for East Asian cultures. In this chapter, I briefly introduce such a human rights debate, and then I describe the aim of my project and outline what I am going to argue in this dissertation.

First of all, I want to identify what is meant by "the East" and "the West." According to Daniel Bell, "'East Asia' refers to countries in the East Asian region that have been subject to prolonged Chinese cultural influence and that have demonstrated economic prowess in the post-World War II era: mainland China, Hong Kong, Taiwan, South Korea, and Japan. Singapore is also included because it is predominantly Chinese, though it is located in the Southeast Asian region" (2006a, p.6n13). He also mentions some other countries in the Southeast Asian region, such as Indonesia, Malaysia, Philippines, and Thailand. In general, the "East Asian cultures and regions" he focuses on are countries and regions affected by Chinese culture (especially Confucianism) in Northeast Asia and Southeast Asia. This definition is also shared by other political philosophers and politicians.[1] In this dissertation, I also assume that "the East" refers to these regions.

[1] For example, Langlois (2001) and Wan (2008) also share a similar definition of East Asia or the East. The only exception is that Bell himself explicitly excludes Vietnam because of its "relatively undeveloped economic status and unique recent history" (Bell, 2006b, p. 6 n13), while other people

Similar to "the East," "the West" also refers to many different regions, such as Western Europe (including United Kingdom), United States, etc. For the purpose of this dissertation, I will focus on the Anglo-American cultural contexts (especially liberalism). In a word, I simply assume that the East is China and other countries in East Asia, while the West is America and other countries in Western Europe. Later we shall also see that Chinese culture (especially Confucianism) is the East Asian cultural context that we need to discuss, and Anglo-American culture (especially liberalism) is the relevant Western cultural context. These definitions of the East and the West are the foundations of the human rights debate that I assume in this dissertation.

The history of East and West debates on human rights can be traced back to the end of the nineteenth century, when East Asian began to discuss the concepts of rights from the West.[2] Since then, there have been many different debates and dialogues. The most famous one is the "Asian values debate." This debate began in the early 1990s and lasted until around the economic crisis in East Asia in 1997-1998. In the Asian values debate, some politicians and scholars in East Asia argue against "Western values" (such as human rights, liberties, democracy, etc.). They argue that East Asians should abandon these Western values (especially civil and political rights) because these values undermine the values and cultures in East Asia. For example, Lee Kuan Yew,[3] a former prime minister and now a political elder of

---

usually include Vietnam in East Asia. Nevertheless, we shall only focus on regions affected by Chinese culture (especially Confucianism). Therefore, we may simply ignore such an exception.

[2] For further detail, see An-na'im (1995), Angle & Svensson (2002), and Svensson (2002).

[3] In this dissertation, I mainly use the pinyin system to translate names and terms from Chinese to English. But there are some exceptions. Some Chinese names and terms are already translated by other systems and are well-known in the Western world (e.g., "Confucianism," "Mencius," or "Lee Kuan

Singapore, claims that "Asian values" are culturally unique and some Western values should not be considered as rights for East Asians.[4] Lee's view is also shared by some politicians in East Asia, such as Dr. Mahathir Mohamad, a former prime minister of Malaysia.[5] Their views are also adopted in "the Bangkok Declaration"—this declaration emphasizes the cultural and socio-economical differences between the East and the West, and it undermines the notion of universal human rights.[6] In a word, the Asian values debate aims at showing us how some Western values, such as human rights (especially civil and political rights), conflict with Asian values.[7]

In addition to the Asian values debate, there are also many other human rights debates between the East and the West. Another famous debate is the long dispute between the Chinese government and the American government, in which the American government has continuously accused the Chinese government of violating human rights. The Chinese government has responded to these challenges in a series of white papers (e.g., China, 1991, 2000, 2004, 2005, 2009). A core idea in these white papers is that China has its own cultural background, and so China has a different standard of human rights and other "Western values." For example, in 1991,

---

Yew"). For these names and terms, I keep the well-known translations instead of using the pinyin translation. In addition, some references I use in this dissertation do not use the pinyin system (most of them use the Wade-Giles system). For the purpose of citation and reference, I also do not re-translate these names and terms (especially the names of the authors) by the pinyin system. At the end of this dissertation, I provide a Chinese glossary to list the traditional Chinese characters and the English translation of these names and terms.

[4] For the detail of Lee's view, see Gardels (1992) and Zakaria (1994).

[5] However, some East Asian politicians disagree with Lee. For example, Kim Dae Jung, the president of South Korea in 1998-2003, disagrees with Lee (see Kim, 1994).

[6] See Davis (1995), pp. 205-209 for the full text of *the Bangkok Declaration*

[7] For further discussions on the Asian values debate, see Avonius & Kingsbury (2008), Dallmayr (2002), and Jacobsen & Bruun (2000).

the Chinese government published a white paper called *Human Rights in China*. The preface of this white paper says, "Despite its international aspect, the issue of human rights falls by and large within the sovereignty of each country. Therefore, a country's human rights situation should not be judged in total disregard of its history and national conditions, nor can it be evaluated according to a preconceived model or the conditions of another country or region…From their own historical conditions, the realities of their own country and their long practical experience, the Chinese people have derived their own viewpoints on the human rights issue and formulated relevant laws and policies." In a word, these white papers argue for a view that China does not strictly follow the Western values and standards because China has its own cultural conditions.

Although the Asian values debate and other political debates in East Asia do not aim at constructing any profound philosophical argument, these debates have stimulated many prominent political theorists and philosophers to think about the cultural differences between the East and the West. One of these philosophers is Daniel Bell.[8] In general, Bell thinks that the Asian values debate itself "generated more heat than light" (Bell, 2006a, p. 52), but he also argues that "it would be a mistake to assume that nothing of theoretical significance has emerged from East Asia. The debate on Asian values has also prompted critical intellectuals in the region to reflect on how they can locate themselves in a debate on human rights and

[8] Other philosophers who also discuss human rights and East Asian cultures include Roger Ames, Stephen Angle, Joseph Chan, Ci Jiwei, Wm. Theodore de Bary, Li Xiaorong, Liu Shu-Hsien, Henry Rosemont Jr., Shun Kwong-Loi, Tu Weiming, David Wong, and many others. They hold different views on the relationship between human rights and East Asian cultures. I mainly focus on the arguments from Daniel Bell, but in the following chapters I shall also discuss arguments from some of these philosophers as well.

democracy in which they had not previously played a substantial part" (Bell, 2006b, p. 266). He believes that "we need to identify areas of commonality and justifiable difference. Regrettably, though, there is a dearth of constructive dialogue between the East and the West" (Bell, 1998a, p. 14). His aim is "to get beyond the rhetoric that has dogged the human rights debate and identify relatively persuasive East Asian criticisms of traditional Western approaches to human rights" (2006a, p. 53). He concludes that if human rights and other Western values "also need to be *adapted* in China," then these values "need to be enriched, and sometimes constrained, by Confucian values" (Bell, 2008, p. xvi. His italics). In other words, if human rights and other Western values "are to take root and produce beneficial outcomes in East Asia, they must be adjusted to contemporary East Asian political and economic realities and to the values of non-liberal East Asian political traditions such as Confucianism and Legalism" (2006a, p. 9).

Bell's idea is very persuasive and interesting. Indeed, he has argued over the cultural differences between the East and the West on many topics. For example, he argues that the East and the West have many cultural differences on democracy and capitalism (e.g., Bell, 2000, pp. 286-289; 2006a, pp.152-179, 231-280). For the purpose of this dissertation, I will focus on the part of his view on human rights, which is about the cultural differences on the list of human rights between the East and the West.

Bell's view on regarding the list of human rights can be called "the East Asian challenge to human rights." This is the title of one of his articles (Bell, 1996), and this article is his first article directly aimed at identifying a list of human rights. His

arguments focus on which rights are to be included in a list of human rights and which rights are not. Bell argues that physical security rights (e.g., rights against torture, rights against slavery, rights against genocide) are human rights, but liberal rights (e.g., freedom of speech, freedom of political participation) are not human rights.[9] He considers that liberal rights are not human rights because they are culturally determined as Western rights but not East Asian rights. They are not East Asian rights because they conflict with East Asian cultures. In short, he argues that East Asian cultures can affect the justification of rights, and this leads to the conclusion that only physical security rights are human rights, while liberal rights are not human rights. This reasoning can be roughly summarized in the following argument:

Argument 1

(1) Human rights are universal rights.

(2) Universal rights are accepted in all major cultures in the world.

(3) Physical security rights are accepted in all major cultures in the world.

(4) Physical security rights are universal rights. (from 2 and 3)

(5) Liberal rights are not accepted in East Asian cultures.

(6) Liberal rights are not accepted in all major cultures in the world. (from 5)

(7) Liberal rights are not universal rights. (from 2 and 6)

[9] Bell also discusses whether East Asian cultures can extend the list of human rights (e.g. Bell, 2000, pp. 95-103; 2006a, pp. 76-78). For example, Bell discusses some economics and social rights that are not in the list of the *Universal Declaration of Human Rights* (e.g. "rights to elderly parents"), but he thinks that these rights are also East Asian rights or even universal rights (e.g. Bell, 2006a, pp. 76-78. See also Chan, 1999.) However, this dissertation only aims at civil and political rights, and so I skip the discussion of economic and social rights.

(8) (Therefore) physical security rights are human rights, but liberal rights are not human rights. (from 1, 4 and 7)

This is a valid argument. Statements (4), (6) to (8) are all derived from the previous statements. Statement (1) is a definition that I shall discuss further in chapter 2, but this definition is not controversial. The real controversial statements are (2), (3) and (5). If they are all true, then the argument will be a sound argument. But these premises are ambiguous and vague. What does it mean that a right is accepted in a culture? And why are cultures so important to rights? In the following chapters, I shall explain everything in depth.

Let me outline what I am going to discuss in the other chapters of this dissertation. I shall introduce in chapter 2 what "the East Asian challenge to human rights" is and discuss how Bell and others argue for a philosophical account of "the cultural justification of rights." I shall show how Confucianism is the relevant East Asian cultural context for the human rights debate, and why Bell concludes that physical security rights are human rights, but liberal rights are not human rights. I shall show how Bell's arguments are different from some classical challenges to human rights, and why his arguments are comparatively more promising than other challenges to human rights. I shall also discuss the problems and explanatory gaps in his arguments.

I shall develop my own arguments in chapter 3 and 4. In chapter 3, I shall discuss physical security rights and East Asian cultures. Bell argues that physical securities are what Michael Walzer calls "minimal and universal moral codes"

(Walzer, 1994), but both Bell and Walzer have not explained his idea clearly. I shall discuss different notions of the minimal and universal moral code in depth. Moreover, some people believe that human rights are based on dignity or humanity. I shall develop my own arguments based on these notions (minimal, dignity, etc.), and my arguments aim at showing why physical security rights are East Asian rights and human rights.

In chapter 4, I shall discuss liberal rights and East Asian cultures. Bell claims that liberal rights are not East Asian rights (and hence not human rights) because liberties conflict with some East Asian cultural factors. I shall develop my own arguments to explain why liberal rights are also East Asian rights and human rights. I shall argue why liberties are essential necessities of dignity, and I shall discuss the relationship between liberties and Confucianism. I shall also show why my arguments for physical security rights and liberal rights can refute Bell's East Asian challenge to human rights.

In chapter 5 I shall discuss some applications of my arguments in reference to debates between Bell and other philosophers. I shall discuss the debate between Bell and Charles Taylor (Taylor, 1999) and the debate between Bell and Jack Donnelly (e.g., Donnelly, 1999, 2003). Bell argues that the approaches from Taylor and Donnelly are problematic and mistaken. I shall argue that Bell has successfully challenged the approaches from Taylor and Donnelly, but it does not mean that Bell has refuted all of their conclusions as well. I shall argue that my arguments can save their conclusions from Bell's challenge. I shall also summarize what my arguments

can do, and explain how my arguments can contribute to the East and West debate on human rights in general.

I shall conclude my project in chapter 6. I shall conclude that the arguments from Bell (and many others who concur with Bell) cannot successfully explain why physical security rights are human rights but liberal rights are not human rights. The main purpose of this project is not only to refute Bell's arguments but also to develop my own arguments to solve problems in this East and West debate on human rights. Without neglecting the importance of East Asian cultures, I conclude that both physical security rights and liberal rights are human rights. Lastly, I shall also discuss some possible directions of further research based on my arguments and conclusions.

Chapter 2: The East Asian Challenge to Human Rights

Section 2.1 Introduction

In the East and West debate on human rights, some scholars, such as Daniel A. Bell, aim to limit the list of human rights for the East Asian cultural contexts. Such a view can be called "the East Asian challenge to human rights." Bell's conclusion is that physical security rights are human rights but liberal rights are not human rights. The aim of this chapter is to provide a literature review to "the East Asian challenge to human rights." In this chapter, I discuss the arguments from Bell and others in depth. I also discuss some problems and explanatory gaps of their arguments.

In section 2.2, I discuss the relationship among human rights, universal rights, Western rights, and East Asian rights. I explain why the discussion of East Asian rights is the core part of the East and West debate on human rights. The aim of this section is to discuss some background information and set up a framework for the discussions in other sections. In section 2.3, I explain how Bell and others argue that "cultural factors can affect the justification of rights" (e.g. Bell, 2004, pp. 29). In other words, I discuss a philosophical account for the "cultural justification of rights." In section 2.4, I discuss some cultural contexts that are relevant to the East and West debate on human rights. Particularly, I discuss what Bell terms "Western liberalism" and "values in Asia" in Confucianism.

In section 2.5, I use the contents of the previous sections to explain how Bell argues that physical security rights are human rights but liberal rights are not human

rights. In section 2.6, I also discuss some advantages and disadvantages of Bell's arguments. In section 2.7, I summarize all the points in this chapter. In general, this chapter will tell us why we need detailed research on the East and West debate on human rights.

Section 2.2 Human Rights, Universal Rights, Western Rights, and East Asian Rights

As I said in chapter 1, Bell's view can be called "the East Asian challenge to human rights." Roughly, his view is about the list of human rights, i.e., which rights are human rights? Bell argues that physical security rights are human rights, but civil and political liberal rights (i.e., liberal rights) are not human rights. Liberal rights are not human rights because they are not universal rights; they are only Western rights but not East Asian rights**.** I shall elaborate and evaluate Bell's view in detail. But before I discuss his view, I need to clarify the notions of human rights, universal rights, Western rights, and East Asian rights clearly.

To begin with, let me quote some words from Jack Donnelly and Daniel Bell. Donnelly is one of the Western philosophers of human rights that Bell always discusses in his writings.[10] 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). Donnelly (2003) also explains that human rights are

[10] I discuss their debate in chapter 5, section 5.3 in detail.

universal rights in this sense: "human rights are, literally, the rights that one has simply because one is a human being…they are universal rights, in the sense that today we consider all members of the species Homo sapiens 'human beings,' and thus holders of human rights" (p. 10. Donnelly's italics)

Bell tends to agree with the above passages from Donnelly (e.g. Bell, 2000, p. 50; 2006a, p. 62). But Bell also has his own and unique idea of human rights. For example, he describes human rights as follows:

> Human rights are held by individuals. They protect individuals against the actions of other individuals and/or collectivities (including political and economic organizations). They are egalitarian because they are held equally by all individuals. They are universal because they apply in all cultural contexts. Finally, human rights are fundamental, meaning that they override other political goods in cases of conflict (barring exceptional circumstances). Most people, I suspect, can endorse this definition of universal human rights…The controversial part, however, 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)

Both Donnelly and Bell agree that if X is a human right, then X is also a universal right. Although human rights may be something more than universal rights (e.g., human rights may also be equal or inalienable rights), I only focus on universal rights in this dissertation. In other words, the notion of universal right is our concern

here, and I assume in this dissertation that universal rights and human rights are just the same.

What are universal rights? Universal rights are, obviously, rights. But the rights with which we are concerned here are *moral* rights. In other words, we focus on whether some *moral* rights are universal rights. *Legal* rights are not the main concern here. In the East and West debate on human rights, people argue that some moral rights (such as civil and political rights) are or are not universal rights, but it does not matter whether these rights are also *legal* rights.[11] Therefore, in this dissertation, I assume that most of our discussions are limited to moral rights; I explicitly say so if legal rights are involved in some parts of the debate.

Who are the holders of universal rights and who are responsible for these rights (i.e., the subjects and objects of universal rights)? Bell realizes that "human rights are held by individuals." Human (universal) rights pertain to those who are right-holders. Therefore, we may also assume that all right-holders of universal rights are individuals. It also seems that the word "universal" in universal rights directly refers to *all* individuals (human beings or human persons). In other words, universal rights are rights that are held by all (human) individuals (i.e., pertain to all human individuals).

This is controversial. One may ask further whether human rights are rights for all *human beings* or only for all *human persons*. One may also ask whether all human beings include human beings at all times, including the past, present and future. Another controversy is that some human rights are considered held by *collectivities*

[11] Indeed, it seems that most countries in East Asia have written civil and political rights in their constitutions and legal systems. However, their governments frequently ignore, disrespect, and violate these rights.

rather than individuals. The universal quantifier (i.e., all) is also controversial. It is doubtful whether universal rights are really held by virtually *all* human individuals. Some scholars even restrict the domain of this universal quantifier. For example, Talbott restricts the holders of universal rights as "all adult human beings who reach a minimum level of cognitive, emotional, and behavioral functioning" (Talbott, 2005, pp. 6-7). It seems that Bell's idea here is controversial. However, for the sake of argument, we do not need to discuss these controversies in depth. This is because the debate mainly focuses on the relationship between East Asian cultural contexts and human rights. The real concern here is whether some rights are rights for (present) East Asians. If some rights are not rights for East Asians now, then they definitely are not human rights. Therefore, these controversies are not directly relevant to the debate. For the purpose of this project, I skip all these controversies and use the term "individuals" or "human individuals" without further clarification**.**

Bell also thinks that "human rights are held by individuals" and these rights "protect individuals against the actions of other individuals and/or collectivities (including political and economic organizations)" (Bell, 1999, p. 849). In other words, others have *correlative duties* to the right-holders.[12] This correlation between rights and duties (or more precisely, *moral* rights and *moral* duties) explains what it means by saying that a right is held by an individual. In general, universal rights (and human rights) are claim-rights,[13] and so there are also correlative duties. That is, if an individual holds a right, then others have a correlative duty to the right-holder to have

[12] In this dissertation, the terms "duty" and "obligation" are interchangeable.

[13] Besides claim-rights, there are privileges-, power-, and immunity-rights. See Hohfeld (1919) and Wenar (2010) for detail. I do not mean that universal rights cannot be rights other than claim-rights. Nevertheless, we only focus on claim-rights in this project.

this right. Since universal rights are held by all individuals, duty-holders have correlative duties to all individuals. In summary, universal rights are moral claim rights held by all individuals. Both sides of the East and West debate on human rights agree with such a notion of universal rights. Although such a notion is not without question, it is good enough to serve as an assumption or a common ground in the East and West debate on human rights.

From the above analysis, we know that human rights are universal rights, and universal rights are moral claim rights held by all individuals. We may divide human rights into some smaller groups. Occasionally, people call these rights "human rights for East Asians," "human rights in the West," etc., but these expressions are confusing. If X is a *human* right, then how can X only be a *human* right in *the East or* in *the West*? Does it mean that there is no human in the rest of the world? To avoid such confusion, I suggest that "East Asian rights" and "Western rights" are better terms for our discussion here. East Asian rights are moral claim rights held by East Asians; Western rights are moral claim rights held by Western people. While universal rights are held by all human individuals, East Asian rights and Western rights are only held by some human individuals (i.e., East Asian and Western people).[14] This implies that if some rights are not East Asian rights, then these rights are not universal rights as well; being a right in East Asia (i.e., East Asian right) is a necessary condition for being a right everywhere (i.e., universal right). This is why

[14] When I say that East Asian rights are rights for East Asian, I focus on people who live in East Asia and are influenced by East Asian cultures. Similarly, Western rights are rights for people who live in the West and are influenced by Western cultures. There are controversial cases, such as Westerners living in East Asia (e.g., Daniel Bell) or East Asian living in the Western world (e.g., Asian-American). I ignore these controversies in this dissertation.

the debate of East Asian rights is a core part of the East and West debate on human rights.

Although the above notions are not without controversies, they are generally accepted in the East and West debate on human rights, and hence they can be considered as some assumptions or backgrounds of the debate.[15] As I have already quoted above, the real 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 cultures somehow determine which rights are universal and which rights are not. In the next sections, I shall discuss his idea in depth.

Section 2.3 Can Cultural Factors Affect the Justification of Rights?

Which rights are universal? Bell thinks that the answer is based on cultural contexts.[16] Why and how are universal rights relevant to cultural contexts? Bell argues that "cultural factors can affect the justification of rights" (e.g., Bell 2004, pp. 29). I discuss Bell's idea in detail in this section.

Before discussing Bell's idea, I want to answer a question first. One may wonder whether it is necessary to define culture in this project. Culture is not a well-defined subject even in empirical research such as anthropology or sociology; there

[15] It is unclear whether Bell also assumes that human rights are rights that are held by virtue of being human or by virtue of humanity. But Bell disagrees with the natural rights or natural law tradition because he thinks that it is only a Western tradition. I discuss Bell's idea on the Western tradition further in section 2.4.

[16] "Culture," "cultural context," and "cultural factor" are all interchangeable in the writings of Bell and others. Therefore, I do not distinguish these terms further in this dissertation as well.

are many different and controversial definitions of culture.[17] Nevertheless, we do not need to define culture in this project. This is because later we will see that only Western cultures and East Asian cultures (especially liberalism and Confucianism) are important in the debate. One may explain these cultures with specific content and examples. Bell and others also discuss East Asian cultures with specific content and examples. I shall discuss Western and East Asian cultures further in the next sections. Hence we do not need to discuss any definition of culture now.

Instead, we need to focus on the relationship between cultures and rights. Why and how are cultures relevant to universal rights? A reasonable assumption is that universal rights are held by all human individuals, and hence they are somehow related to, or even determined by, the culture of these individuals. East Asian rights are only held by East Asians, and so East Asian rights are related to East Asian cultures. Bell and others provide a more philosophical explanation here. Bell thinks that "cultural factors can affect the justification of rights". Let me quote a paragraph from Bell:

> Cultural factors can affect the justification of rights. In line with the arguments of '1980s communitarians' such as Michael Walzer, it is argued that justifications for particular practices valued by Western-style liberal democrats should not be made by relying on the abstract and unhistorical

[17] For example, Benedict (1934) discusses a classical view of culture in anthropology; Donnelly has discussed the similarities and differences between culture and civilization (Donnelly, 2003, pp. 86-88, 100-103). Li (2006) summarizes different definitions from anthropology and sociology into a "textbook definition": "A culture is an inherited body of informal knowledge embodied in traditions, transmitted through social learning in a community, and incorporated in practices" (Li, 2006, p.9). Nevertheless, she also emphasizes that even such a textbook definition is controversial.

> universalism that often disables Western liberal democrats. Rather, they should be made from the inside, from specific examples and argumentative strategies that East Asians themselves use in everyday moral and political debate. For example, the moral language (shared even by some local critics of authoritarianism) tends to appeal to the value of community in East Asia, and this is relevant for social critics concerned with practical effect. One such communitarian argument is that democratic rights in Singapore can be justified on the grounds that they contribute to strengthening ties to such communities as the family and the nation.[18]

The first statement, "cultural factors can affect the justification of rights," is the key statement here. Generally, to justify something is to show something to be just, right, or reasonable. Justification is also generally contextual, that is, it addresses doubts or questions relevant to some specific contexts. But there are still many questions about this claim. For example, one may ask why Bell and others believe that cultural factors are important. One may also ask what justification of rights is relevant to our debate. And one may also ask why Bell and others think that cultural factors *can affect* the justification of rights. In the following I explain these topics in detail.

Why is culture so important? From the passage I quoted above, Bell argues that his statement "cultural factors can affect the justification of rights" is based on or "in line with the arguments of '1980s communitarians' such as Michael Walzer" (e.g., Bell, 2009, section 1). I need to clarify what Bell means by "communitarians" in

[18] This passage appears in exactly the same wordings in the following references: Bell (2004), pp. 29-31; Bell (2006b), pp. 267-268; and Bell (2009), section 1 no.2. See also Bell (1996), pp. 660-667; Bell (2000), pp.82-103; Bell (2006a), pp. 72-78 for details.

this quotation. Some philosophers are called “communitarians”; these philosophers include Alasdair MacIntyre (1989; 2007), Michael Sandel (1998), Michael Walzer (1983, 1994), and others. Indeed, Daniel Bell is also considered as a “communitarian” as well. For example, William Kymlicka writes, “the kind of communitarianism which has recently come to prominence with the writings of Michael Sandel, Michael Walzer, Alasdair MacIntyre, Daniel A. Bell, and Charles Taylor is quite different from traditional Marxism” (Kymlicka, 2002, p. 209). Bell explicitly declares that he belongs to the campaign of “communitarianism” (e.g., Bell 1993, 2009). He even once calls his philosophy “Asian Communitarianism” (The title of Bell 1998a). However, the term “communitarianism” is also ambiguous and vague. Bell himself also realizes that many philosophers deny that they are “communitarians.” For example, Bell writes, “These critics of liberal theory never did identify themselves with the communitarian movement (the communitarian label was pinned on them by others, usually critics)… Both Taylor and Walzer identify themselves as liberals in Gutmann 1992. MacIntyre (1991) says ‘In spite of rumors to the contrary, I am not and never have been a communitarian’. Sandel (1998) uses the label republican rather than communitarian” (Bell, 2009, introduction and footnote 1). Buchanan even writes, “There are perhaps almost as many communitarian positions as there are communitarian writers” (Buchanan, 1989, p. 852). In a word, it is unclear what “communitarianism” is. To avoid confusion, I discuss their arguments directly without using the term “communitarianism.”

Among these philosophers, Bell especially agrees with Walzer. Let me discuss how Bell develops his arguments based on Walzer’s philosophy. Walzer thinks that

culture is important in many moral discourses. As Walzer writes, "We are (all of us) culture-producing creatures; we make and inhabit meaningful worlds. Since there is no way to rank and order these worlds with regard to their understanding of social goods, we do justice to actual men and women by respecting their particular creations…Justice is rooted in the distinct understandings of places, honors, jobs, things of all sorts, that constitute a shared way of life. To override those understandings is (always) to act unjustly" (Walzer, 1983, p. 314). Generally, these philosophers (Walzer and others) emphasize the importance of culture because they want to argue against liberalism, especially Rawls' liberal principles of justice (Rawls, 1971). Buchanan clearly summarizes their thoughts in a simple sentence: "Liberalism devalues, neglects, and/or undermines community, and community is a fundamental and irreplaceable ingredient in the good life for human beings" (Buchanan, 1989, p. 852).[19] Although Walzer and others aim to challenge liberalism,[20] their ideas on culture can also apply in other debates, such as in our debate on human rights.

Bell concurs with Walzer and others on the challenges to Rawls' liberalism.[21] But for the discussion here, the more important point is that Bell also borrows their

[19] The terms "community" and "culture" can be used interchangeably in this sentence.

[20] For the detail of this liberalism-communitarianism debate, see Delaney (1994)

[21] Here is an example from Bell. He writes, "A critic who tries to push beyond the limits of community consciousness cannot generate any politically relevant knowledge…all knowledge is context-bound—the critic cannot extricate herself from her context so as to be true to principles of rational justification independent of any context, even if she tries…once we recognize that our knowledge is context-bound, that there is no 'objective' standpoint from which to evaluate how we think, act, and judge, this should lead us to abandon this project [Rawls' liberalism] that aims at finding independent rational justification for morality, an external and universal perspective that's to serve as a critical standard from which to evaluate the morality of actual communities. And if there's no trans-communal ground from which to seek independent vindication for the moral standards of communities, this means that standards of justification emerge from and are part of a community's history and tradition in which

ideas to construct his own arguments on human rights.[22] A part he borrows from Walzer is that Bell believes that "abstract and unhistorical universalism" cannot justify rights. Instead, rights should only be justified from "inside," i.e., from culture or community. For example, Bell writes, "Rather, they should be made from the inside, from specific examples and argumentative strategies that East Asians themselves use in everyday moral and political debate" (e.g. Bell, 2006b, pp. 267-268). In a word, on top of Walzer's idea, Bell develops his own arguments on why rights should only be justified from "inside."[23]

But what does it mean that rights should only be justified from "inside"? Bell does not explicitly define how to justify a right from "inside." But we may be able to understand what he means from some of his writings:

> The second challenge is an argument over the *justification* of rights. As against the claim that the Western liberal tradition is the only possible moral foundation for human rights, many East Asian human rights activists argue that their own cultural traditions can provide the resources for local justifications of ideas and practices normally realized through a human rights regime in Western countries. This argument is not merely theoretical, it also

---

they are vindicated" (Bell, 1993, pp. 65-67) There is also a footnote for this passage. This footnote says that Bell concurs with Rorty in this passage. See Bell (1993), pp. 82-83, n25.

[22] As I mentioned in some paragraphs earlier, Bell has used the ideas from Walzer and others to develop his arguments on other areas as well. For example, he argues that "cultural factors can provide moral foundations for distinctive political practices and institutions (or at least different from those found in Western-style liberal democracies)." In addition to the justification of rights, he also argues that "cultural factors can affect the prioritizing of rights, and this matters when rights conflict and it must be decided which one to sacrifice." See Bell (2004), pp. 29-31; Bell (2006b), pp. 267-268; and Bell (2009), section 1. See also Bell (1993), pp. 140-143 & 183; Bell (2000), pp. 23-105. However, these areas are not directly related to our debate here, hence I do not discuss them in detail.

[23] I shall discuss Walzer's idea in section 2.5 and chapter 3 with further detail.

> has strategic importance for advocates of human rights reforms in East Asia…cultural particularities in East Asia may justify a different moral standpoint vis-à-vis the human rights regime typically endorsed by Western governments, scholars, and human rights activists… some values in Asia may be more persistent than others and may diverge from some human rights ideas and practices typically endorsed in Western countries. If these values are widely shared by both defenders and critics of the political status quo, there is a strong presumption in favor of respect for those values. (Bell, 2006a, pp. 54-55. Bell's italics)[24]

In this passage, Bell thinks that different cultures have different "moral foundations for human rights." These different moral foundations can provide different justifications for human rights. But what do "moral foundations" mean? And why can they provide different justifications? To answer these questions, I need to discuss not only Bell's own writings, but also the interest accounts of rights and some arguments from other philosophers as well.

In the contemporary literature of rights, it is common to distinguish two different accounts of rights: choice (or will) accounts and interest (or benefit) accounts. Choice accounts understand rights (and the correlative duties) to be protected choices, while interest accounts understand rights to be protected interests. In the East and West debate on human rights, it seems that many Eastern philosophers prefer interest accounts more than choice accounts. I am not sure why they like

[24] See also Bell (1996), pp.650-660; Bell (2000), pp.49-82, and Bell (2006a), pp. 62-72 for further detail.

interest accounts more, but one possibility is that it is easier for East Asian cultures to play some roles in interest accounts of rights. Comparatively, choice accounts are too "Western," and many East Asian cultures do not emphasize choice.[25]

Bell and other philosophers also like interest accounts of rights. In addition to Bell's view, I also discuss the views from Stephen Angle and Joseph Chan as well. Although Angle, Bell, and Chan have different conclusions on the list of human rights (i.e., they disagree on which rights are universal rights), they all agree that East Asian cultures are important and should play some roles in the human rights debate. Indeed, Bell has agreed and quoted their works quite often (e.g., Bell, 2000, pp. 50, 73-91; 2004, pp. 397-400; 2006, pp.34, 63-75). Therefore, in the rest of this section, I shall discuss their views together in detail.[26]

Their particular interest account of rights is probably similar to or consistent with the following formula from Joseph Raz: "'X has a right' if and only if…other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty" (Raz, 1986, p. 166).[27] It seems that Bell and others generally agree with Raz's account of rights. For example, Angle argues that "As we turn now to Chinese rights theories, we will see that rights are taken by most theorists to protect interests in a manner quite consistent with Raz's

[25] For further detail on choice accounts and interest accounts of rights, see Rainbolt (2006), Sumner (1987), and Wenar (2010). Some philosophers argue that both choice accounts and interest accounts are problematic. However, most philosophers in the East argue for interest accounts of rights. Therefore, I also only focus on interest accounts of rights here.

[26] I discuss their differences in chapter 4, section 4.4.

[27] In the original formula, Raz has also discussed who the right-holder is ("'X has a right' if and only if X can have rights…"). But this is not relevant to our current discussion, and so I ignore this part of his formula. It is also controversial whether Raz's account is only an interest account of rights, or it can also be considered as a choice account of rights (because its formula may also suggest that we have rights to free choice in many circumstances). Again, this is not relevant to our current discussion, and so I ignore this controversy as well.

ideas" (Angle, 2002, p. 213). Angle also argues that "it is clear that the dominant view of rights, both now and throughout the history of Chinese rights discourse, has been that rights are closely tied to interests. Indeed, we saw that 'quanli' was originally adopted as an equivalent for 'rights' in large part because it readily expressed the ideas of both legitimate powers and legitimate benefits or interests—ideas with which one strand of the Confucian tradition had been concerned for centuries" (Angle, 2002, p. 214).[28] In summary of these two quotations, Angle clearly states that some Chinese versions of the interest accounts of rights are quite consistent with Raz's interest account of rights.

In another example, Joseph Chan also follows Raz's idea in developing his own Asian or Confucian account of human rights (Chan, 1995a; 1995b; 1998, p. 31; 1999, p. 230, especially n55; 2000, pp.63-64). Bell himself has not directly discussed Raz's idea; he only mentions Raz when he discusses Angle's arguments (Bell, 2004, p. 398; 2006a, p. 63). But there is no evidence that he disagrees with Raz's interest account of rights. Indeed, not every part of Raz's account is our concern here; the concern here is simply limited to how a right is justified by interest. And Joseph Chan has summarized the idea as follows: "To justify a right, we need to show that the interests of the right-holder are weighty enough to place some other person or people under some obligation or duty" (Chan, 1998, p. 31). It seems that Bell also agrees with this idea (e.g. Bell, 2006a, pp.72-73)**.** In a word, such an idea is consistent with or similar to Raz's idea, and such an idea provides a consensus among Bell and others.

[28] "Quanli" is the pinyin translation of the Chinese term "rights."

Now we know that the justification of rights in the debate is an interest account of rights. But what interests are weighty-enough to place others under some duty? This is exactly where Bell and others believe that the East and the West have different answers. This is also why cultural factors are moral foundations that can affect the justification of rights. Another quotation from Bell will help us to understand further the issue at hand:

> 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 typically endorse a somewhat different set of fundamental human goods than their counterparts in Western societies now and for the foreseeable future. Different societies may typically have different ideas regarding which human goods must be protected regardless of competing considerations, and which human goods can be legitimately subject to trade-offs with other goods as part of everyday politics. If there is some truth in these propositions, it is essential for purposes of improving mutual understanding and minimizing cross-cultural conflict to take them into account. 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)[29]

From the above quotation, we know that at least one of the interests that are so important is "the fundamental human goods." What are these fundamental human goods? Bell does not explain that very clearly. Joseph Chan argues that some fundamental human goods in East Asia are "Razian common goods,"[30] but it is unclear whether other philosophers agree with him or not. Nevertheless, we do not need to define fundamental human goods, nor do we need to find a complete list of fundamental human goods here. This is because the focus in this East and West debate on human rights are physical securities and liberties. Therefore, all we need to discuss in this dissertation is whether physical securities and liberties are fundamental human goods, and we shall discuss that in the later sections and chapters.

Bell and others believe that generally there are different fundamental human goods in different cultures. Since each culture has its own fundamental goods that are weighty enough to place other under duties, Bell and others believe that rights are justified differently in different cultures. They also believe that cultures can affect the justification of rights in a positive and a negative way. In a positive way, cultures can

[29] Similar ideas can also be found in Bell (1996), pp. 660-663; Bell (2000), pp. 83-88.

[30] Raz considers that common goods are goods "which, in a certain community, serve the interest of people generally in a conflict-free, non-exclusive, and non-excludable way" (Raz, 1992, p. 135). Raz also believes that common goods do not conflict with individual interests. For example, Raz writes, "the right is justified by the fact that by serving the interest of the right-holder it serves the interest of some others, and their interest contributes to determining the weight due to the right" (Raz 1992, p. 133). Joseph Chan explains further that common goods are not individual interests but general interests (Chan, 1995b, pp.17-18). Chan writes, "A common good is non-exclusive, in that the enjoyment of one person of that good does not detract from that of others. It is non-excludable, in the sense that once it is available in a community, no members of that community can be excluded from enjoying it" (Chan, 1995, p.18). See also Chan (1999, especially pp. 216-217) for his discussion on Razian common goods and Confucianism.

affect “which human goods must be protected regardless of competing considerations” (Bell, 2006a, 73). In other words, human goods that must be protected are also interests that are important (and sufficient) enough to place other under moral duties, and Bell and others believe that these interests are different in different cultures. In a negative way, cultures can affect “which human goods can be legitimately subject to trade-offs with other goods as part of everyday politics” (Bell, 2006a, 73). This tells us that that a right is not justified if the correlative human goods are subject to trade-offs with other goods. That is, since these goods are subject to trade-offs, they are not weighty enough to place others under some duties. Notice that both ways are empirical. In other words, cultures empirically affect the justification of rights. While the positive way states that cultures tell us which human goods are weighty enough to place others under duties (i.e., which rights are justified), the negative way focuses more on how cultures determine which human goods are not weighty enough to place others under duties (i.e., which rights are not justified).

Since cultures can affect the justification of rights positively and negatively, this is probably why Bell and others think that different cultures are grounds or “moral foundations” for rights (e.g., Bell, 2006a, pp. 62-72). In summary, Bell and others argue that “cultural factors can affect the justification of rights” (e.g., Bell, 2006b, pp. 267) because there are fundamental human goods or interests that are weighty enough to place others under some duties, and cultures can affect these fundamental human goods or interests positively and negatively. Following the reasoning here, universal rights are fundamental human goods that are weighty enough to place others under some duties in every culture. When we focus

specifically on East Asian rights, we can conclude the following two statements from the above analysis:

(1) X is an East Asian right if and only if X is an interest of East Asians (i.e. the right-holders) that is weighty enough to place others under some duties.

(2) X is such an interest if and only if X is a fundamental human good in East Asian cultures.

These statements can be considered as the first two premises of the argument on the justification of East Asian rights. For convenience, we may call such an approach to the justification of rights "the cultural justification of rights." So far, I can only briefly and abstractly discuss such a conceptual framework of the cultural justification of rights. To discuss the details, we need to discuss what Western and East Asian cultural contexts are relevant to the debate, and we need to discuss which rights are justified by the East Asian cultures and which rights are not. I shall discuss these topics in the next two sections.

Section 2.4 Western Liberalism and Confucianism

In this section, I am going to introduce the Western and East Asian cultural contexts that are relevant to the East and West debate on human rights. The relevant part of the Western cultures is what Bell calls "Western liberalism," and the relevant

part of the East Asian cultures is Confucianism. I discuss why Bell thinks that liberalism is only for Western people but not East Asian. I also introduce what Confucianism is, and why Confucianism is so important to our debate on human rights.

Similar to East Asia, "the West" also includes many different regions. Bell and others mainly focus on the Anglo-American culture, especially on "Western liberalism."[31] It appears that Bell and others use "Western liberalism" as an umbrella term for many different views. For example, Bell has discussed views from traditional liberals such as John Locke (1689/2002) and John Stuart Mill (1859/2002),[32] and has also discussed views from contemporary philosophers such as Brian Barry (1995), Jack Donnelly (1999, 2003), Ronald Dworkin (1977, 2002), and John Rawls (1971, 1993).[33] Bell and others argue that Western liberalism is solely "Western perspectives" or "Western traditions." Western liberalism originated in the West, but Bell and others do not think that the origin is a problem. Indeed, if the origin were a problem, then the views from Bell and many others (such as Angle, Walzer, etc.) would also be problematic because they are also from the West. The real problem is that liberals do not realize or they do not agree that East Asian cultures are so important. For example, Bell writes:

[31] Sometimes, they also call it "liberalism," "liberal tradition" or "Western liberal tradition."

[32] For examples, see Bell (2000), pp. 50-51, 114-115; Bell (2006a), p. 62, 190-191, & 280n113.

[33] For the discussion of Rawls, see Bell (1993). For the discussion of Barry, see Bell (1998b), Bell (1999). For the discussion of Donnelly and Dworkin, see Bell (1996), Bell (1998a), Bell (2000), Bell (2006a), Bell (2006b). As I mentioned before, I shall discuss the debate between Bell and Donnelly in chapter 5, section 5.3 in detail.

> 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 activist and theorist, never allows for the possibility that non-Western values could shape international human rights regime. Western political theorists also claim that their theories are universal, but only draw on the moral practices and moral aspirations found in Western societies. Brian Barry would be an instance of this. 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)

For another example, Bell believes that Barry (1995) is also too "West-centric". In addition to the above citation, Bell also writes:

> However, the most important distinguishing characteristic of Barry's approach…is the attempt to put forward a universally valid theory of justice that draws only on the moral aspirations and political practices found in liberal Western societies. Barry's theory, for example, does not draw on anything worthwhile from the Chinese political tradition. This should worry those concerned with promoting human rights in a Chinese context, for Barry's book can be seized upon as yet another arrogant attempt by Western liberals

> to push forward a 'universal' theory that rides roughshod over the cultural particularities for non-Western societies. (Bell, 1998b, p. 568)

For another example, when Bell comments on Dworkin's presentations in China in 2002, Bell thinks that Dworkin is too hegemonic. 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. Whereas earlier luminaries such as Dewey and Russell had expressed their admiration of Chinese culture and argued for a synthesis of 'East' and 'West', Dworkin merely put forward his own ideas and identified fellow 'liberal', and the 'debate' rarely moved beyond this starting point. (Bell, 2006a, p. 4)[34]

Although some of these liberals mention East Asian cultures,[35] East Asian cultures are not the core part of their arguments. Bell does not discuss every liberal argument in detail, but he argues that all of them suffer from the same weakness, which is failing to recognize the importance of East Asian cultures. When Bell particularly focuses on the human rights debate, he argues that "Western liberal

[34] Bell also summarizes some comments to Dworkin's visit from other Chinese scholars. See Bell (2006a) pp. 2-4. For Dworkin's presentations in China, see Dworkin (2002). See also Dworkin (1977) for his philosophy related to these presentations.

[35] For example, Donnelly has discussed the Asian values debate (Donnelly, 2003, pp.107-123); Dworkin (2002) discusses his observation during his trip in China.

tradition may not be the only moral foundation for realizing the values and practices associated with human rights regimes" (Bell, 2006a, p. 65). Instead, "awareness of 'values in Asia' allows the human rights activist to draw on the most compelling *justifications* for human rights practices" (Bell, 2006a, p. 69. Bell's italics). In other words, Bell argues that Western liberalism is not the only moral foundation for human rights; some East Asian cultural contexts can also be moral foundations for human rights.

Why are East Asian cultural contexts so important? And what are they? Bell and others realize that East Asia includes many regions with different and plural cultural contexts. Since East Asia covers such a large geographical area, its traditions sometimes vary greatly among different regions. Nevertheless, as I have mentioned in chapter 1, Bell and others focus on the East Asian regions affected by Chinese culture, which is probably one of the oldest cultures in the world. Bell and others believe that East Asian regions share some values in common. Bell and others calls these common values "values in Asia" or "Asian values" (e.g. Bell, 2006a, p. 54; Chan, 1998, p. 35). These values are not really distinct values that can only be found in Asia but not the rest of the world; they are only local values emphasized in Asia. As Joseph Chan writes, "'Asian values' need not be understood as a set of values entirely distinct from and in opposition to Western values, but simply as those values that many people in Asia would endorse and that would guide them in their search for a political morality…Thus the search for a political morality is the business of each individual country in Asia; each country's quest must take into account its own particular cultural, historical, and religious background. Whether or not we label the

underlying values 'Asian' is irrelevant" (Chan, 1998, p. 35). Bell generally agrees with Joseph Chan on this point, and Bell also argues that some values in Asia are different from the West. He writes, "some values in Asia may be more persistent than others and may diverge from some human rights ideas and practices typically endorsed in Western countries. If these values are widely shared by both defenders and critics of the political status quo, there is a strong presumption in favor of respect of those values" (Bell, 2006a, p. 55). Among these common traditions and values, Bell particularly focuses on the Confucian tradition and its values.[36]

Confucianism has a very long history—it has lasted for more than two thousand years. Confucius (551-479 B.C.) is usually considered as the founder of Confucianism, and Mencius (c. 372-289 B.C.) is the second most important Confucian (the "Second-Sage"). They are probably the two most famous Confucian philosophers who are recognized even in the Western world. But there are other Confucian philosophers throughout the history of Confucianism. Although Confucianism originated from China, it has also influenced other regions in East Asia. Confucianism is still one of the main schools of thought in contemporary East Asia such as South Korea, Taiwan, Singapore, etc. In China, Confucianism is rising again after the era of "cultural revolution" (1966-1976).[37] With such a long history and so many Confucians in different periods and regions, "Confucianism" is actually a big name for many diverse thoughts. As Bell writes, "Confucianism is a long

[36] Another one is Buddhism. However, Bell and others focus more on Confucianism than Buddhism, and so I also focus on Confucianism more. I shall discuss Buddhism further with some particular cultural examples in section 2.5 and chapter 5, section 5.2.

[37] For a detailed introduction to the classical and contemporary history of Confucianism, see Liu (1998) and Liu (2003).

tradition with different strands and different combinations of values with different traditions" (Bell, 2008, p.xv). In other words, similar to the term "liberalism," "Confucianism" can also be considered as an umbrella term for many different philosophical views in East Asia. Since Confucianism is such a long tradition, it is necessary to discuss which parts of Confucianism are closely related to our discussion.

Shu-Hsien Liu (2007) discusses different parts of Confucianism, and his division is helpful for our discussion. He writes:

> I find a threefold division helpful in distinguishing between three distinct but related meanings of the term ["Confucianism"]:
>
> 1. Spiritual Confucianism. The tradition of great thinkers such as Confucius, Mencius, Ch'eng Chu (Cheng Zhu), and Lu Wang that has been revived by Contemporary Neo-Confucians as their ultimate commitment.
>
> 2. Politicized Confucianism. The tradition of Tung Chung-shu (Dong Zhongshu), P'an Ku (Ban Gu), and others that served as the official ideology of the dynasties and had taken in ingredients from schools of thought such as Taoism, Legalism, and the Yin Yang school.
>
> 3. Popular Confucianism. Belief at the grassroots level that emphasizes concepts such as family values, diligence, and education and can hardly be separated from other beliefs in popular Buddhism and Taoism, including, for example, various kinds of superstitions.
>
> (Liu, 2007, p. 259-260)

Liu's division of Confucianism can be summarized and interpreted as follows. Spiritual Confucianism is not only about the metaphysics and religion of Confucianism, but also relates to moral, social and political philosophy of Confucianism. Indeed, some scholars believe that some parts of Confucianism are moral theories. For example, Van Norden argues that Confucius's and Mencius's philosophies are theories of virtue ethics (2007). Confucianism in this sense is more related to moral and metaphysical theories. Some important values in Confucianism, such as ren (benevolent) and yi (righteousness), are moral virtues, and Confucian philosophers use different moral theories to explain and express them. For convenience, we may simply call this the "theoretical Confucian tradition."

On the other hand, there is also a "practical Confucian tradition." Politicized Confucianism is about the influence of Confucianism on real world politics. Popular Confucianism is about the influence of Confucianism on East Asians in their daily lives. In general, Liu reminds us that Confucianism is not only a school of thought in an ivory tower, but also a practical cultural habit in East Asia. In some situations, the theoretical Confucian tradition and the practical Confucian tradition may even conflict with each other. This division is important to our discussion on the cultural justification of physical security rights and liberal rights. I shall discuss them further in chapters 3 and 4.

Now let me introduce different views on the relationship between Confucianism and human rights. On one side, some scholars believe that

Confucianism rejects human rights in general. On the other side, some believe that Confucianism and human rights are quite compatible.

Some scholars argue that the Confucian tradition lacks the concepts of rights or human rights (Ackerly 2005; Ames 1988; Hansen 1985a, b, 2004; Henkin 1986; Ihara 2004; Rosemont 1988, 1991, 1998, 2004, 2007, etc.). They think that rights or human rights are only Western concepts and cannot be found in the East Asian cultures (especially Confucianism). For example, Louis Henkin writes, "In the Chinese tradition the individual was not central, and no conception of individual rights existed in the sense known to the United States. The individual's participation in society was not voluntary, and the legitimacy of government did not depend on his consent or the consent of the whole people of individuals" (Henkin, 1986, p.21). For another example, Henry Rosement Jr. writes, "But now consider specifically the classical Chinese language in which the early Confucians wrote their philosophical views. That language not only contains no lexical item for *moral*; it also has no terms, for example, corresponding to *freedom, liberty, autonomy, individual, utility, principles, rationality, rational agent, action, objective, subjective, choice, dilemma, duty,* or *rights*; and, probably most eerie of all for a moralist, classical Chinese has no lexical item corresponding to *ought*—prudential or obligatory" (Rosement, 1988, p. 173. Rosement's italics). However, Rosement's view may be too strong; many scholars argue that Confucianism has at least some of these so called "Western concepts." But at least all of the scholars mentioned above think that rights and human rights are only Western concepts.

These scholars also believe that the concepts of rights and human rights do not have any role in Confucianism. For example, Rosemont argues that Confucianism is already morally sufficient for the Chinese society (Rosement, 1991, 2004, 2007). In an article replying to Dworkin, Rosemont argues that it is not necessary to take rights seriously in China (Rosemont 1988).[38] Craig Ihara (2004) also holds a similar view that individual rights are not required for the moral philosophy of Confucianism. Roger Ames (1988) argues that Confucianism uses *li* (rites) instead of law and rights as an apparatus for the order of a society.[39] Most of these scholars suggest that the concepts of rights and human rights have no place in the Confucian tradition and probably no place in East Asia at all.

On the other hand, some scholars hold a more moderate position (e.g., Chan, 1998, 1999, 2000, 2007; de Bary 1983, 1985, 1998a, b; Lee 1992, 1996; Wong 1984, 2004, 2006). These scholars believe that the concepts of rights or human rights may have some roles in the Confucian tradition. For example, Chan (1999) argues that the Confucian tradition is partially compatible with the rights to freedom of speech. He argues that early Confucian philosophers would allow freedom of speech whenever freedom of speech benefits *ren* (the most important moral value in Confucianism). But he also argues that only freedom of "good speech" but not freedom of "bad

[38] It appears that Rosemont and Bell share the same perspective on the importance of Confucianism. For example, Rosemont writes, "if rights are borne by human beings regardless of these differentiations, then those rights must obtain for human beings altogether independently of their cultures. But then it becomes extremely difficult to imagine actual bearers of rights, because there are no culturally independent human beings. And if our culture has no concept of rights, or has concepts incompatible with that concept, then how could we imagine what it would be like to have rights, or that it would be right and good and proper for us to so imagine" (Rosemont, 1988, p. 167). A main difference between Rosemont and Bell is that Rosemont probably denies all human rights, while Bell still agrees that physical security rights are human rights. See also Dallmayr (2002, pp.178-182) for further details on Rosemont and Ames.

[39] Ames focuses more on legal rights, but his argument may apply to moral rights as well.

speech" would be allowed in the Confucian tradition (Chan, 1999, pp. 228-230).[40] For another example, Both Lee (1996) and Wong (2004) argue that either a "virtue-based" or "community-based" of rights would be compatible with Confucianism. De Bary (1983) discusses "the liberal tradition in China" (this is also the title of his book). He particularly focuses on two topics: liberal education and individualism in Ancient China. This liberal tradition in China is quite different from the Western liberal tradition, but they are probably compatible with each other.[41]

The works from the above scholars mainly focus on whether the concepts of rights and human rights are compatible with Confucianism. There are also some other scholars who try to determine whether East Asian cultures or Confucianism can contribute to human rights in some way. For example, Angle argues that the concepts of rights and human rights have been developed in a distinctive way in East Asia, especially in China.[42] He argues that "Chinese discussions of rights emerged and developed in a distinctive way, sharing some but not all features with developments outside China … I will look at three aspects of Chinese rights discourse…The three aspects are (1) the ways in which rights are related to interests, (2) the degree to which different people's rights are can be harmonized, and (3) the interrelation between economic and political rights" (Angle, 2002, pp. 205-206). And then he argues specifically how the Chinese concepts of rights enrich Western theories of

[40] His argument mainly focuses on Mencius' philosophy. I shall discuss his argument further in chapter 4, section 4.4.

[41] I shall discuss de Bary's argument further in chapter 4, section 4.4.

[42] For the English translation of some human rights documents in the modern China, see the collection from Angle & Svensson (2002). See "The Chinese Human Rights Web" for supplementary information of this collection http://www.chinesehumanrightsreader.org (Angle & Svensson, 2001). See also Angle (2002) and Svensoon (2002) for further analysis. For commentaries from other regions in East Asia, see An-Na'im (1995).

rights and human rights, such as Raz's interest account of rights (Angle, 2002, pp. 208-225). It is important to note that the Chinese rights discourse is mainly in terms of Confucianism. In other words, Angle's argument is also about how Confucianism can benefit the human rights debate.

How about Bell? In general, Bell realizes that we need to treat East Asian cultures and Confucianism in the human right debates carefully. He realizes that Confucianism is more popular in the past than in the present, but he also thinks that Confucianism is beginning to revive in contemporary China and East Asia (Bell, 2008, p. xv). He asks "how we might 'modernize' traditional Confucian values" (Bell, 1998a, p. 20):

> There is a tendency to overestimate the social and political importance of traditional cultural values in contemporary societies, and I think this is a fallacy we need to be aware of and take care to avoid. This is because, while systematic comparisons between Eastern and Western philosophies can be interesting, they become problematic when attempts are made to draw some political implications in modern Asian societies on the basis of traditional cultural values. For example, comparisons between liberal democracy and Confucianism often take the form of looking to some ancient texts and saying that some elements were similar or dissimilar to liberal democracy. The problem is that such arguments are often irrelevant because they ignore the particular context of the recovered references. The teachings of the ancient texts are flexible, to be sure, but there is a point at which it is hard to know the

> contemporary relevance of, say, the detailed ancient rituals prescribed in the Confucian Analects. (Bell, 1998a, p. 18 & 20)

In short, Bell thinks that we cannot just apply the ancient texts of Confucianism directly into the human rights debate. Otherwise we may suffer from the problem that these ancient texts are not relevant in the contemporary era anymore.

To avoid this problem, Bell believes that we should "bridge the gap between the political philosophy of the ancient texts and the political reality of contemporary society" (Bell, 1998a, p.20) by doing the following two things. First, he tries "to distinguish between traditional values which are still relevant today and others which have been relegated to the 'dustbin' of history. That is, we need to know that values continue to have widespread impact on people's political behavior in contemporary societies" (Bell, 1998a, p.20). Second, he also tries to "develop *normative arguments* which would explain why certain values should continue to remain influential and why others shouldn't. Also, in light of the fact that even within East Asian societies there exist many differences, we should always remember to specify the relevant context for which we are developing the empirical, historical, and normative analyses" (Bell, 1998a, p. 20. My italics). In summary, some Confucian values are still relevant today, and they can be used to develop normative arguments in the East and West debate on human rights. In a word, Bell wants to find some "modernized traditional Confucian values" in East Asia. As I mentioned before, Bell also calls these values "values in Asia."

Bell argues that these Confucian values or values in Asia are "community values,"[43] and some examples of these community values include local values, national values, family values, etc. These community values in East Asia are Confucian values, or at least they are derived from Confucianism. Bell believes that these Confucian values are important to the East and West debate on human rights. For example, when he discusses *ren* (the most important moral virtue in Confucianism), he writes: "values similar to aspects of Western conceptions of human rights can also be found in Asian cultural traditions. The notion of *ren* in Confucianism, for example, expresses the value of impartial concern to relive human suffering…The same sort of idea, presumably, animates concern for human rights in Western countries" (Bell, 2000, p. 50. Bell's italic).

Bell also thinks that some East Asian societies are Confucian societies because Confucian values are important to these societies. He believes that in these societies, "Values originating from the Confucian tradition's sacred texts continue to have widespread impact on people's behavior…Confucianism is more than an official ideology manipulated by elites for their own purposes…[and] it is crucial that one be able to demonstrate (at least in principle) by means of an historical investigation precisely how it is that the values espoused in 'high culture' Confucian texts came to exert an influence on the culture of the people" (Bell, 1995, p. 19). For example, Bell discusses why Elites (or "Gentlemen") pay more important roles in public service in Confucian societies (pp. 26-28). For another example, Bell discusses the importance of the family values in Confucian societies. Bell argues that "Confucian societies

[43] Bell discusses three different types of community values, See Bell (2004), pp.35-37. See also Bell (1993); Bell (2009).

place greater value on the family than their Western counterparts" (Bell, 1995, p. 21). He also argues that "Confucians say that the family is the first and most important school of virtue" (Bell, 1995, p.21); "Confucians say that proper behavior in the family context has important implications not just for ethics and everyday social life, but also with respect to politics" (Bell, 1995, p. 22); "Confucians say that family obligations should outweigh all other obligations, including one's obligation to obey the law" (Bell, 1995, p.23); and "East Asian have supported and strengthened the family even at great cost" (Bell, 1995, p.24). In a word, Bell believes that Confucianism and its values play many important roles in East Asia, and they are important moral foundations in East Asia for human rights.[44]

Let me summarize what I have discussed in this section. I have discussed why Bell and others believe that Western liberalism is not a moral foundation in East Asia. I have also introduced some elements of Confucianism that are relevant to the East and West debate on Human rights. Specifically, I have discussed the distinction between the theoretical Confucian tradition and the practical Confucian tradition; I have also introduced the arguments from different scholars about the relationship between Confucianism and human rights. Lastly, I have also introduced why Bell believes that Confucian values (values in Asia) play important roles in East Asia. In the next section, I shall discuss how to put Confucianism and East Asian cultures together with the cultural justification of rights, and what roles they play in the East and West debate on human rights.

[44] It seems to me the Confucian values Bell prefers come from the practical Confucian tradition rather than the theoretical Confucian tradition. But I wait until chapter 3 and 4 to discuss this issue further.

Section 2.5 Physical Securities and Liberties

In the previous sections, I have discussed the cultural justification of rights and the relevant East Asian cultural contexts (i.e., the Confucian tradition and its values). I have summarized in section 2.3 that X is an East Asian right if and only if X is an interest of East Asians (i.e., the right-holders) that is weighty enough to place others under some duties; and X is such an interest if and only if X is a fundamental human good in East Asian cultures. In this section, I continue the discussion of Bell's arguments in detail. Based on the cultural justification of rights and some Confucian values, Bell concludes that physical securities are East Asian rights and universal rights, but liberties are not. I shall explain how he argues for this conclusion.

In the East and West debate on human rights, people wonder which moral rights are universal (human) rights and which rights are not. Bell and others believe that some moral rights are held by Western people (i.e., Western rights) and they are justified by the Western cultures; some other rights are held by East Asian (i.e., East Asian rights) and they are justified by the East Asian cultures. If some rights are only Western rights but not East Asian rights, then they are not universal rights, and hence they are not human rights. Bell admits that there are some universal rights in this world, but he also argues that some rights are not East Asian rights, and so they are not universal rights. What are these rights? Bell writes:

> [T]here is little debate over the desirability of a core set of human rights, such as prohibitions against slavery, genocide, murder, torture, prolonged arbitrary

> detention, and systematic racial discrimination. These rights have become part of international customary law, and they are not contested in the public rhetoric of the international arena. But political thinkers and activists around the world can and do take different sides on many pressing human rights concerns that fall outside what Michael Walzer terms the "minimal and universal code." This gray area of debate includes criminal law, family law, women's rights, social and economic rights, the rights of indigenous peoples, and the attempt to universalize Western-style democratic practices. (Bell, 2006a, p. 79)

From the above quotation, we find that Bell considers that the following moral rights are universal rights: rights against slavery, rights against genocide, rights against murder, rights against torture, rights against prolonged arbitrary detention, and rights against systematic racial discrimination. Bell has also discussed the list of universal rights somewhere else, and murder, torture, slavery and genocide are in the list everywhere in his writings.[45] Most of these rights are related to physical securities. For convenience, I call them physical security rights.[46] Bell's position is

[45] Bell has also mentioned something similar in Bell (1996), p. 642 and Bell (2000), p. 3. The only difference is that prolonged arbitrary detention, systematic racial discrimination and women's rights are not in the list in Bell (1996). He writes, "The disputed area of human rights therefore falls outside what Michael Walzer terms the 'minimal and universal moral code', namely rights against murder, slavery, torture, and genocide. This 'grey' area of debate includes criminal law, family law, social and economic rights, the rights of indigenous peoples, and the attempt to universalize Western-style democratic practices" (Bell, 1996, p. 642). For another example, Bell also writes, "There is a little public dispute over rights against murder, torture, slavery, and genocide" (Bell, 2006a, p. 72) Indeed, Bell has repeatedly mentioned these rights in his writings.

[46] I borrow this term from Shue (1996). Shue's list of physical security rights includes "murder, torture, mayhem, rape, or assault" (p. 20). Although the list is not exactly the same as Bell's list, they are quite similar. The only exception is the prohibition against slavery. Prohibition against slavery is sometimes categorized as basic liberty (e.g. Nickel, 2007, p.11), and it is also related to economic rights. But it is

that physical security rights are universal rights because they are minimal and universal moral codes.

Now let us focus on which rights are not universal rights. As I have quoted above, Bell claims that some moral rights are in a "grey area": "This gray area of debate includes criminal law, family law, women's rights, social and economic rights, the rights of indigenous peoples, and the attempt to universalize Western-style democratic practices" (Bell, 2006a, p. 79). For the purpose of this project, I only focus on the rights to "Western-style democratic practices." Bell argues that Western-style democratic practices are not universal rights. What are Western-style democratic practices?

There are different Western-style democratic practices. It is reasonable to think that some democratic practices are relative to cultures. For example, Western countries have different electoral systems. Some countries, such as United States and United Kingdom, use majority methods ("winner-take-all" methods) in the election of congressperson; some other countries, such as Italy and Germany, use proportional representation methods (Lijphart, 1999, pp. 143-170). For another example, there are different political institutions in different countries. United States has a presidential system and divides the legislative power and the executive power sharply, but United Kingdom has a cabinet system and the prime minister is answerable to the House of

---

also related to physical security as well. For convenience, I also put prohibition against slavery into the list of physical security rights.

Commons.[47] Although electoral systems and political institutions vary in Western countries, they are all considered as democratic practices.

It may not be controversial to claim that East Asian countries and cultures can also have different electoral systems or political institutions. For example, some scholars try to develop what they call "Confucian democracy."[48] Bell even suggests that Chinese government should grant more power to the educated elites than popularly elected congressperson (Bell, 2000, pp.279-336; 2006a, pp. 152-179).[49] However, the real controversy here is not about electoral systems or political institutions; the controversy here is about some basic rights in democracy practices, especially the rights to the civil and political liberties.[50]

Let me explain this further. Bell believes that protecting individual rights is one of the most important practices in Western-style democracy. He writes:

> Western democracies are *constitutional* democracies, meaning that their constitutional systems are meant to protect certain individual rights. These rights are held to be so fundamental that they 'trump' the ephemeral decisions of democratically elected politicians in case of conflict. When this notion is

[47] For different "patterns" or "models" of democracy, see Lijphart (1999). It seems to me that one of the implications of Lijphart's book is that different patterns or models of democracy are relative to cultural factors.

[48] See Chang et al. (1958), He (1996), and Tan (2004, 2010).

[49] But Bell's proposal is controversial even from the perspective of Confucianism. For example, He claims that his proposal is based on the philosophy from an ancient Confucian, Huang Zongxi (1610-1695 A.D.) (Bell, 2006a, pp. 164-165), but it is controversial whether he interprets Huang's philosophy correctly. For an objection to Bell's proposal, see Li (2000).

[50] I use the term "liberty" and "freedom" interchangeably in this dissertation. Roughly, these civil and political liberties are the social or civil liberties discussed in the tradition of liberalism. For example, Mill writes, "The subject of this essay is not the so-called Liberty of the Will…but Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual" (Mill, 1859/2002, p. 3).

> exported abroad, it takes the form of campaigns to promote human rights, and non-Western governments are criticized for failing to live up to these standards. But is it really appropriate to uphold standards of human rights derived from the Western experience in East Asian societies? (Bell, 2006a, p. 9. His italic)

Among all individual rights, Bell mainly focuses on rights to civil and political liberties. For example, Bell discusses freedom of speech and freedom of political participation in Thailand, Singapore and mainland China.[51] He believes that many people in Thailand, Singapore, Korea, and Mainland China also "question the 'American' idea that individuals have a vital interest in speaking freely, so long as they do not physically harm others, along with the political implication that the government has a 'sacred' obligation to respect this interest" (Bell, 2006a, p. 73. See also pp. 73-76). In a word, he believes that these East Asian cultures deny freedom of speech as a right in East Asia.

Bell also discusses political rights in article 25 of the *International Covenant on Civil and Political Rights*. These political rights include rights to "take part in the conduct of public affairs," rights to "vote and to be elected at genuine periodic election," and rights to "have access, on general terms of equality, to public service in

[51] For the discussion of Thailand, see e.g. Bell (2006a), pp. 73-74. For the discussion of Singapore, see e.g. Bell (2000), pp. 173-275; Bell (2006a), pp.74-75. For the discussion of Mainland China, see e.g., Bell (2000), pp. 277-336; Bell (2006a), pp.152-205. See also Angle (2002) and de Bary (1998b).

his country."[52] Bell explicitly criticizes these political rights in East Asia (Bell, 2004, pp.25-43; 2006b, pp. 180-205).

In summary, for the purpose of our discussion, the "Western-style democratic practices" that I focus on are civil and political liberties. Particularly, I mainly focus on the following two rights: freedom of speech and freedom to political participation. Occasionally, Bell also describes these rights (especially freedom to political participation) as "democratic rights" (e.g. Bell, 2000, Chapter 2). However, it is hard to tell whether he wants to discuss democracy as a human right or democracy as a political institution. To avoid confusion and for the convenience of our discussion, I call freedom of speech and freedom to political participation "liberties" and their rights "liberal rights."

In Bell's own expression, we should "limit the set of human rights for an East Asian context" (Bell, 2006a, p. 73). Liberal rights are the rights excluded from "the set of human rights." Generally, Bell believes that liberal rights are only Western rights in Western cultural contexts. But the East Asian cultural contexts are quite different from the Western cultural contexts. Furthermore, Bell argues that liberal rights conflict with some East Asian cultural contexts (especially values in the Confucian tradition). I now discuss some examples in different East Asian regions. These examples illustrate how liberal rights conflict with "values in Asia" in the Confucian tradition.

The first example is about liberties in China. According to Bell, some civil and political liberties conflict with values in Asia. For example, he discusses the

[52] For the full detail of these rights, see United Nation (1966a), the *International Covenant on Civil and Political Rights*, article 25, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

rights to political participation in Mainland China and Hong Kong (e.g. Bell, 2000, pp. 106-170, 279-334; 2006a, pp.152-179). He also discusses some conflicts between liberal rights and minority rights in Mainland China and Taiwan (Bell, 2006a, pp.180-205). His point is that the local-knowledge or community values in China are quite different from the West, and hence not all Western values are suitable for China. Since Confucianism is beginning to revive in China (Bell, 2008), Bell and others usually refer to Confucianism to support their ideas about the community values in China. In these particular instances, liberal rights, especially rights to political liberties, are forbidden because of the community values.[53]

The second example is about the political environment in Singapore. Singapore has universal suffrage, but Singaporeans are not free to express their political views and have no equal right to access public services. Bell thinks that the denial of liberal rights strengthens family and community values in Singapore (Bell, 2000, pp.213-218; 236-270). He also thinks that liberal rights can be justified in Singapore only if they can contribute to the community values for families and the nation of Singapore. He writes, "On this communitarian view, democratic rights can be justified on the ground that they contribute to strengthening ties to such communities as the family and the nation" (Bell, 2000, p. 16). But it appears that he also implies that the current violation of liberal rights in Singapore (or at least a part of it) is justified (Bell, 1996, p.664; 2000, pp. 173-275; 2004, pp. 39-40; 2006a, pp. 74-75). In summary, he argues that Singaporean focuses more on the values of the

[53] I should emphasize that Bell does not deny all liberal rights in China in these instances. For example, he also agrees that democracy (or rights to political participation) is valuable. But he thinks that these rights should be different from the liberal rights in the West (see, e.g. Bell, 2006a, pp. 152-179 for further detail).

family and the nation, and these values have their roots in the Confucian tradition. When such values and traditions conflict with some Western values (especially liberal rights), Singaporeans should follow their own values and tradition instead of the Western values.

The third example is taken from South Korea. Although South Korea is already a fully democratic state, it appears that some cultural habits violate individual liberal rights, but Bell thinks that these cultural habits are acceptable, and liberal rights should be denied. For example, he writes:

> In democratic South Korea, each household is required to attend monthly neighborhood meetings to receive government directives and discuss local affairs. What may be viewed as a minor inconvenience in Korea would almost certainly outrage most U.S. citizens, and it is likely that the U.S. Supreme Court would strike down a governmental policy that forced citizens to associate for political purposes of this sort as a violation of the First Amendment. Once again there seems to be more willingness in East Asia among the general population to serve the common good by limiting individual freedom, perhaps as a residue of the Confucian cultural tradition. (Bell, 2006a, p. 75)[54]

In other words, Bell believes that this kind of compulsory neighborhood meeting in South Korea is a violation of some civil and political liberties, but these policies are

[54] See also Bell (1996), pp.664; Bell (2000), pp. 92-93.

still justified in the Korean culture (and the Korean culture is also a Confucian cultural tradition). Therefore, some civil and political liberties are not rights in South Korea.

All of the above examples are taken from those regions in East Asia where Confucianism has played a special role in the communities. Although Bell focuses more on the Confucian tradition, he has also occasionally discussed other East Asian traditions. The following are two of these examples.

Bell discusses freedom of speech in Thailand (Bell, 2000, pp.88-89; 2006a, pp. 73-74). Thais consider respecting their king, Bhumibol Adulyadej, a very important value. Freedom of speech to disrespect the king is forbidden not only legally but also morally in Thailand. For example, in 1992, when a pro-democracy leader, Dr. Sulak Sivaraksa, was charged by the dictator government in court, Dr. Sulak explicitly claimed that having democracy in Thailand "did not mean advocating the removal of the existing constraint on direct criticism of the Thai king" (Bell, 2006a, p. 74). In 2007, a Swiss man, who was convicted of destroying images of the king publicly in Thailand, was sentenced to ten years in prison (he was pardoned by the king later). YouTube, a popular video sharing website, was also blocked in Thailand because it contained some video clips insulting the king.[55] In summary, freedom of speech (to disrespect the king) directly conflicts with the duty to respect the king, and so such a freedom is forbidden in Thailand. Bell suggests that this is

[55] For the news of the last two events, see New York Times (April 5, 2007), "Thailand Bans YouTube" http://www.nytimes.com/2007/04/05/business/worldbusiness/05tube.html?_r=1&adxnnl=1&oref=slogin&adxnnlx=1175918626-vLbSOqJXgus57fEEluNYWg and New York Times (April 13, 2007), "Man Who Insulted King Pardoned," http://query.nytimes.com/gst/fullpage.html?res=9A00E4D9133FF930A25757C0A9619C8B63&scp=2&sq=Thai+King+&st=nyt&emc=eta1

another example showing that if liberties conflict with some values in East Asia, then liberties are not East Asian rights.

The last example is about the conflict between liberties and the Islamic tradition in East Asia (Bell, 1996, pp. 664-665; 2000, pp. 93-95; 2006a, pp.75-76). Bell refers to the view from An-Na'im (1995, p. 34) and argues that Islamic criminal law "is endorsed in principle by the vast majority of Muslims today, whereas most Western liberals and human rights activists would almost certainly regard it as a violation of the human right not to be subjected to cruel, inhuman, or degrading treatment or punishment" (Bell, 2006a, p.76). Indeed, this example is not only for East Asia but also for the whole Islamic tradition. But again, the point is that liberties are not East Asian rights because they conflict with the Islamic tradition in East Asia.

In the previous sections, I have discussed the cultural justification of rights and the relevant East Asian cultural contexts (i.e., the Confucian tradition and the values in Asia). Now it is time to bring everything together. According to such an account, a right is justified when the interest of the right-holder is weighty enough to place others under some duty. Bell and others believe that culture is an important factor to determine which interests are so important. They conclude that fundamental human goods in different cultures are such important interests. Bell and others also argue that there are different fundamental human goods in East Asia and in the West (e.g., Bell, 2006a, pp.72-73). The examples I described in this section are about the fundamental human goods in East Asia. These fundamental goods in East Asia are values in Asia from the Confucian tradition or other East Asian traditions, or they are cultural habits derived from these values and traditions. Bell believes that liberties

and these fundamental goods conflict. They conflict in the sense that some of these fundamental goods violate liberties. For example, Bell believes that compulsory attendance at the monthly neighborhood meeting in South Korea is a direct violation of civil and political liberties. The meeting is a cultural habit in Korea, and Bell believes that this is derived from the Confucian tradition, and it represents the family values and the national values in Korea. And liberties conflict with this cultural habit and the values behind it.

Based on these empirical examples in different East Asian regions, Bell believes that liberties are not important human goods that must be protected in East Asian cultures and societies. The Confucian tradition and values in Asia have priorities in East Asia (e.g., Bell, 2006a, pp.55-62). Bell believes that liberties can be sacrificed and can be legitimately subject to trade-offs with the Confucian tradition and values in Asia. In short, liberties are not fundamental goods in East Asia. Therefore, they are not East Asian rights, and hence they are not universal rights.

Now let me summarize what I have discussed so far. Bell argues that physical securities are East Asian rights while liberties are not East Asian rights. His argument can be summarized as follows:

Argument 2

(1) X is an East Asian right if and only if X is an interest of East Asians (i.e. the right-holders) that is weighty enough to place others under some duties.

(2) X is such an interest if and only if X is a fundamental human good in East Asian cultures.

(3) Physical securities are fundamental human goods in East Asian cultures because they are "minimal and universal moral codes."

(4) Liberties are not fundamental human goods in East Asian cultures because they conflict with some East Asian cultural factors.

(5) Therefore, physical securities are East Asian rights but liberties are not East Asian rights.

Premises (1) and (2) are statements summarized from the previous sections, and (3) to (5) are what I have discussed in this section. Notice that this argument only aims at East Asian rights but not universal rights. If liberties are not East Asian rights, then they are not universal rights as well. But even if physical securities are East Asian rights, this does not imply that they are also universal rights. Physical securities are universal rights only if we can construct the argument in another way. The argument can be written as follows:

Argument 3

(1) X is a universal right if and only if X is an interest of all people (i.e. the right-holders) that is weighty enough to place others under some duties.

(2) X is such an interest if and only if X is a fundamental human good in all cultures in the world.

(3) Physical securities are fundamental human goods in all cultures in the world because they are "minimal and universal moral codes."

(4) Liberties are not universal rights because they conflict with some East Asian cultural factors.

(5) Therefore, physical securities are universal rights but liberties are not universal rights.

These arguments summarize what Bell tries to argue in his project "the East Asian challenge to human rights." In the next section, I shall discuss some significances and weaknesses of his arguments.

Section 2.6 Why is it important to discuss the "East Asian Challenge to Human Rights"?

In this section, I explain why Bell's project is significant and unique, but I also argue that his project has some problems and explanatory gaps.

One advantage of Bell's project is that it does not only emphasize the importance of East Asian cultures in the human rights debate, but also avoids some traditional objections to those views that emphasize the importance of cultures (such as the view from Alasdair MacIntyre or Michael Walzer). To illustrate, I discuss Allen Buchanan's view as an example. Buchanan (2004) argues against Alasdair MacIntyre, Richard Rorty (1991), Michael Walzer and others; specifically, Buchanan disagrees with them on the importance of cultures.[56] Roughly, Buchanan does not

[56] Buchanan calls them "cultural ethical relativists." However, this name is confusing. Besides, Bell explicitly denies that he is a cultural relativist (Bell, 2006a, p328-329), even though Bell concurs with

believe that different cultures provide different moral foundations to human rights, and he does not think that human rights are "relative" to cultures. Since Bell agrees with MacIntyre, Walzer and others (especially Walzer) as well, it is important to see how Bell would reply to Buchanan's arguments.

Buchanan develops the following arguments to argue against these philosophers. First, Buchanan thinks that it is ambiguous to claim that different cultures have different moral foundations. He thinks that "different ethical values and principles are also found within the same culture (Cultural groups are not monolithic in their values and principles, ethical or otherwise)," and "It could mean that some ethical values or principles that are encountered in some societies but not in others. Or it could mean that for each culture there is a different set of *basic* ethical values or principles" (Buchanan, 2004, p. 148). Buchanan argues further that it is nearly impossible that different human cultures hold no common human values at all. He claims that "it would be very surprising if different cultures held no ethical principles at all in common; they are after all, human cultures" (Buchanan, 2004, p. 148). The real problem is to identify what values are common values among different cultures. He argues that human rights are common values among different cultures. He writes, "Human rights are rather minimal moral requirements specifying what is owed to all persons; hence agreement on them leaves open a great deal of room for disagreements on other ethical matters" (Buchanan, 2004, p. 149).[57] In a word, cultural

---

MacIntyre, Walzer and others (especially Walzer). Therefore, I do not use the term "cultural (ethical) relativism" here; instead, I directly discuss the challenge from Buchanan to these philosophers. See Brandt (1967) and Gowans (2004) for more details on cultural or ethical relativism.

[57] Buchanan argues further that if two conditions are satisfied, then at least some human rights can be considered as common values in different cultures. The first condition is that "the language of basic human rights is or can become accessible to people across a broad spectrum of societies". The second

disagreements on ethical values and principles do not imply cultural disagreements on every human right.

Second, Buchanan thinks that different cultures can resolve at least some of their disagreements (on human rights or other ethical values) by reasoning. Buchanan argues that this is a direct challenge to MacIntyre, but this can also be a reply to other philosophers (such as Walzer) in general. Buchanan summarizes MacIntyre's idea as follows: "the justification of ethical judgments does occur, but can only occur within the framework of a cultural tradition, and that the differences that exist among cultural traditions make universally valid justifications for some ethical judgments impossible" (Buchanan, 2004, p. 152). In contrast with MacIntyre, Buchanan argues that cultural differences do not preclude a converging justification for ethical values. Particularly, Buchanan argues that cultural differences do not preclude rational agreements on human rights. If different cultures disagree on human rights, they can be changed in ways "that make such rational agreement [on human rights] possible" (Buchanan, 2004, p. 152).

In summary, Buchanan concludes that different cultures either agree on the same list of human rights, or their disagreements can be resolved by reasoning (Buchanan, 2004, pp. 152-157). In other words, Buchanan thinks that (1) different cultures also have common values, and (2) different cultures can resolve their differences.

Now let me discuss how Bell would reply to Buchanan**.** Generally, Bell neither thinks that different cultures hold no common value at all, nor does he think

---

condition is that "from an institutional standpoint, principles formulated in terms of human rights are likely to do the best job of protecting the most important interests common to persons" (Buchanan, 2004, p. 150). But I ignore these details here because they are out of the scope of our discussion.

that none of the cultural disagreements can be resolved by reasoning. Therefore, it appears that Bell can reply to Buchanan's view easily. Regarding Buchanan's first point (i.e., different cultures have common values), Bell agrees that different cultures have some common values. Indeed, he argues that physical securities are common values between the East and the West. While Buchanan thinks that it is ambiguous to claim that different cultures have different ethical values or principles, Bell discusses such a difference clearly. The cultural difference between the East and the West is about the difference between Confucianism and liberalism. And the conclusion to such a cultural difference is that liberties are not human rights because liberties conflict with East Asian cultures. In other words, he simply denies that liberties are common values between the East and the West.

Regarding Buchanan's second point (i.e., different cultures can resolve their differences), Bell may agree that different cultures can resolve some of their disagreements by reasoning and rationality. However, Buchanan cannot show that *all* cultural differences can eventually be resolved. Bell can still argue that the East and the West cannot resolve all differences. In this particular situation, Bell argues that the East and the West cannot resolve their differences on liberties. Bell can also argue that his argument is a rational argument. Although his argument is based on the cultural differences between the East and the West, it does not mean that the argument is not rational. It is simply the conclusion of his argument that liberties are only Western rights but not East Asian rights (and hence not human rights). In other words, "liberties are not East Asian rights" is a conclusion of a rational argument, and hence Buchanan's challenge is irrelevant.

The above example illustrates why Bell's arguments are unique and significant. While Walzer and others claim that cultures are essential factors to the justification of human rights, Bell develops this claim further with substantial East Asian cultural contexts. And Bell's arguments seem *prima facie* reasonable. On one side, he neither thinks that cultures have no common values, nor they can never resolve their differences. Indeed, Bell thinks that physical securities are common values between the East and the West. Therefore, his arguments can avoid many challenges from human rights advocates. On the other side, he still emphasizes on the importance of East Asian cultures, and he concludes that liberties are not East Asian rights. Therefore, his arguments can satisfy those "cultural relativists" or other people who believe that cultures should play some roles in the human rights debate. In a word, his arguments can avoid the challenges from both sides. Therefore, his arguments are significant and unique.

Now we have seen why Bell's arguments are significant and unique, but there are also some problems and explanatory gaps in his arguments. He thinks that physical securities are universal rights. But why are physical securities universal rights? Or more precisely, why are they justified by every culture? Unfortunately, Bell does not explain that in detail. The only hint is that physical securities are "what Michael Walzer terms the 'minimal and universal code'" (Bell, 2006a, p.79). But why is the "minimal and universal code" so important and sufficient to justify physical securities as universal rights? If physical securities are not East Asian rights, then they are not universal rights. Are physical securities East Asian rights? Particularly, are physical securities justified by East Asian cultures? There is no further

explanation from Bell. I think this is a big explanatory gap in his argument. In the next chapter, I shall discuss in depth how I am going to fill this gap.

There are even more problems about his conclusion on liberties. He thinks that liberties are not East Asian rights, and hence they are not universal rights. Liberties are not East Asian rights because liberties conflict with some values in Asia in the Confucian tradition. However, this explanation is not good enough. One may wonder if his examples are too biased or selective. There are so many different East Asian cultural factors. One may wonder if liberties conflict with all East Asian cultural factors. If not, then why should we just focus on those East Asian cultural factors that conflict with liberties? How should we choose between different East Asian cultural factors? Even if we limit the discussion to the Confucian tradition, the same problems still exist. As I have discussed in section 2.4, different scholars argue differently about the relationship between Confucianism and human rights. Since there are different parts of Confucianism, it is still unclear which parts of Confucianism should be selected. Even if we assume that the selection of East Asian cultural factors (or Confucian values) is not a problem, we can still ask another question. The question is: why liberties cannot be fundamental human goods in East Asia even if liberties conflict with some East Asian cultural factors? All of these questions require further explanation and analysis, but Bell has not successfully replied to any of these questions. Hence it appears that his arguments are still problematic because there are still many unsolved questions in his arguments. They are the questions and problems I intend to discuss further in chapter 4.

The above questions focus on Bell's two claims (i.e., physical securities are universal rights because they are minimal and universal codes; liberties are not universal rights because they conflict with some East Asian cultural contexts) independently. But even if we assume that each of these two claims has no problem at all, there are still some questions when we put them together. We can ask the following questions: Are liberties also minimal and universal codes? Do physical securities also conflict with some East Asian cultural contexts? If the answers for both of them are yes, then we shall raise another question: If both physical securities and liberties meet both of these conditions (i.e., they are minimal and universal codes; they conflict with some East Asian cultural contexts), then why are only physical securities universal rights but liberties are not universal rights? These are also the questions that Bell has not replied successfully. Again, I shall discuss them in the next chapters.

In summary, I have discussed in this section the significances and the problems of Bell's arguments. I have discussed that Bell's arguments can avoid some traditional challenges to his side in the East and West debate on human rights. However, I have also discussed that his explanation is not clear enough, as to why physical securities are universal rights because they are minimal and universal moral codes. It is also not clear why liberties are not universal rights because they conflict with some East Asian cultural factors. It is even not clear how to put these two claims together. All of them require further explanation, and Bell does not explain them clearly enough.

Section 2.7 Summary and Conclusion

Bell and others try to argue that East Asian cultures have some specific roles in the East and West debate on human rights. Their goal is to limit the list of human rights for the East Asian cultural contexts. In this chapter, I have discussed two arguments which summarize and represent how they try to achieve such a goal.

At the beginning of this chapter, I have discussed why human rights are universal rights. I have also shown that if X is not an East Asian right, then X is not a universal right. This means that the core part of the debate is about East Asian rights. And then I have discussed several essential elements appropriate to East Asian rights. I have discussed the philosophical account of the cultural justification of rights, and I have also discussed what East Asian cultural contexts are relevant to our discussion—the relevant parts are Confucianism and its values.

I have summarized Bell's arguments in Argument 2 and 3. Bell argues that physical securities are East Asian rights or even universal rights because physical securities are minimal and universal codes. On the other hand, (civil and political) liberties are not justified in East Asia. Bell and others believe that there are different fundamental human goods in the West and in the East. Liberties are fundamental human goods in the West, but they are not fundamental human goods in the East. This is because liberties conflict with the Confucian tradition and values in Asia. In other words, liberties are not East Asian rights and hence they are not universal rights. Therefore, Bell concludes that physical securities are human rights but liberties are not human rights.

Such arguments about physical securities and liberties are quite significant and unique, and these arguments can avoid many challenges (such as the challenges from Buchanan). However, Bell and others have not successfully defended their arguments. It is unclear why the notion of a minimal and universal code is so important so that physical securities are universal rights. There are even more questions for their arguments on liberties. Are liberties really in conflict with the Confucian tradition and values in Asia? And even if they are, does it really mean that liberties are not East Asian rights? We also have questions on how to put all of these conditions together. In short, there are many questions of why physical securities are East Asian (and universal) rights but liberties are not, but Bell has not answered these questions successfully—indeed, he has not even answered or mentioned some of the questions I have discussed in this chapter.

I would like to discuss these questions further in the next chapters. Specifically, I shall discuss physical securities and East Asian cultures in chapter 3, and then liberties and East Asian cultures in chapter 4. My aims are to analyze and improve the account of the cultural justification of rights, and I shall figure out whether it is really the case that physical securities are East Asian rights and universal rights, while liberties are not East Asian rights and hence not universal rights.

Chapter 3: Physical Security Rights and East Asian Cultures

Section 3.1 Introduction

If X is a universal right, then X is also an East Asian right. Since Bell argues that physical security rights are universal rights, and physical security rights are universal rights only if physical security rights are East Asian rights, Bell also needs to show that physical security rights are East Asian rights. However, Bell's arguments cannot successfully defend that physical security rights are East Asian rights. In this chapter, I discuss the problem of Bell's arguments in detail, and I develop my own arguments to explain why physical security rights are both East Asian rights and universal rights.

Bell argues that liberties conflict with some Confucian values in Asia (i.e., values in the practical Confucian tradition). Similar to liberties, physical securities also conflict with some values in Asia. In section 3.2, I argue that physical securities also conflict with the practical Confucian tradition, but physical securities are compatible with the theoretical Confucian tradition. I argue that Bell cannot successfully explain the relationship between physical securities and different parts of Confucianism.

Bell mentions that physical securities are minimal values. However, he does not explain his idea further. I fill this explanatory gap in sections 3.3 and 3.4. In section 3.3, I discuss how minimal values are "embedded" in different maximal theories, and I also discuss whether physical securities are "embedded" in

Confucianism. In section 3.4, I discuss what a minimal moral demand is, and why physical securities are minimal moral demands.

I develop two arguments in sections 3.5 and 3.6. I use the results from other sections in this chapter to defend the premises of these arguments. In section 3.5, I argue that the premises are a jointly sufficient condition for physical security rights being East Asian rights. In other words, this argument shows that physical security rights are East Asian rights because physical security rights meet all the premises of the argument. In section 3.6, I construct an argument to determine that physical security rights are universal rights. Moreover, an aim of these two sections is to develop some arguments that may also apply to liberties, which I discuss in the next chapter.

Lastly, I conclude by pointing out the significance of my arguments in section 3.7.

Section 3.2 Physical Securities and Confucianism

Physical security rights are universal rights only if physical security rights are also East Asian rights. According to our discussion in chapter 2, this reasoning involves the account of the cultural justification of rights. A right is justified when the interest of the right-holder is weighty enough to place others under some duty, and the interest is a fundamental good in the right-holder's culture. Are physical securities fundamental human goods in East Asian cultures? In the last chapter, I have described two conditions suggested by Bell. The first one is that physical securities are

fundamental human goods in East Asian cultures because physical securities are minimal and universal codes. I shall discuss this condition in the next sections. In this section, I focus on the second condition, which says that liberties are not fundamental human goods in East Asian cultures because liberties conflict with some values in Asia. We may also ask the same question to physical securities: do physical securities conflict with some values in Asia? If physical securities conflict with some values in Asia, then physical securities are not East Asian rights as well.

Since Bell thinks that physical security rights are universal rights (and hence East Asian rights), he probably would think that physical securities do not conflict with some values in Asia. However, this is unclear. In this section, I argue that physical securities conflict with some values in Asia, and I argue that this raises a problem for Bell's arguments, i.e., what cultural factors are relevant to his arguments? I explain this question clearly in this section.

In chapter 2, I mentioned that some scholars (such as Liu, 2007) divide Confucianism into different parts, such as a theoretical Confucian tradition and a practical Confucian tradition. Roughly, the theoretical Confucian tradition concerns the systematic thoughts of the metaphysics, ethics and political philosophy of Confucianism. On the other hand, the practical Confucian tradition is how Confucianism affects the real politics and people's daily lives. Since Confucianism is the main tradition in East Asia, both theoretical and practical parts are important in East Asian regions. This division is important to our discussion because it seems that the theoretical Confucian tradition and the practical Confucian tradition treat physical securities differently. I argue in this section that physical securities are important

values in the theoretical Confucian tradition, but physical securities also conflict with the practical Confucian tradition and with some values in this tradition.

Let me begin with the theoretical Confucian tradition. It seems that most of the Confucian philosophers agree that physical securities are important values in the theoretical Confucian tradition. Some scholars argue that the prohibitions against slavery, genocide, murder, torture, etc. (i.e., the list of physical securities we discussed before. See Bell, 2006a, pp. 23-51 &79) can be derived from basic Confucian virtues. Now let me use slavery and torture as two typical examples to illustrate such a view.[58]

Unlike Aristotle or some ancient Greek philosophers, no Confucian philosopher supports slavery explicitly. It even seems that slavery conflicts with some basic Confucian virtues in the theoretical Confucian tradition. For example, humanity is a central concern in Confucianism, and some scholars believe that slavery conflicts with humanity.[59] Slavery existed in ancient China for a long time, but some ancient Confucian philosophers tried to speak for the humane treatment to slaves. For example, Dong Zhongshu (179-104 B.C.), a Confucian philosopher in Han dynasty (206 B.C.-220 A.D.), argued that masters did not have the unequivocal power to kill their slaves; he also argues that law should have been made to prevent any cruelty to the slaves.[60] Some contemporary scholars argue that slavery is incompatible with the theoretical Confucian tradition. For example, Leonard Shihlien Hsü writes, "The

[58] Due to the limited length of my dissertation, I only focus on slavery and torture. But the points I am going to make in this section are generally related to all physical securities.

[59] For example, in *Hou Hanshu (Book of the Later Han)*, there is a Confucian saying "Of all things brought forth by Heaven, man is the most precious". See the entry "Confucianism and Slavery" in Rodriguez (Ed.) (1997), pp. 186-187.

[60] See the entry "Confucianism and Slavery" in Rodriguez (Ed.) (1997), pp. 186-187 for details.

Confucian School does not advocate slavery. In enumerating the six classes of people in the state… no mention is made of a slave class. According to the Confucian system of social organization, all the manual work should be done in the family by the children, in society, by young men; in the government, by the government employees. There is no need for slaves" (Hsü, 1932, p. 188). Most ancient Confucian philosophers not only disagreed with slavery, but they also had no slave.[61] Hsü's conclusion is that "Slavery has no place in the Confucian system" (p.197). Although this conclusion is debatable, it at least shows that slavery is controversial in the theoretical Confucian tradition, and at least some Confucian philosophers are inclined to reject slavery.

Now let us discuss torture in East Asia. For convenience, I only discuss torture in the laws of East Asia. Similar to slavery, torture is also denied in the theoretical Confucian tradition. In the ancient China, torture was used in trials and legal punishment. Yet it is argued that the theoretical Confucian tradition rejects torture being used in both ways. Let me discuss two evidences here.

First, torture conflicts with the most basic Confucian virtue, ren. According to Mencius, "no man is devoid of a heart sensitive to the suffering of others [compassion]…whoever is devoid of the heart of compassion is not human." Mencius then further argues that "the heart of compassion is the germ of benevolence [ren]."[62] In other words, the beginning point of ren is compassion, that is, a mind that cannot

[61] For example, Hsü writes, "Confucius himself, for example, had no slave. The drivers of his carriage were his pupils; and he said that for himself he would 'take up driving as a profession'. The idea is that everyone should learn the duties of a servant and thus serve himself" (Hsü, 1932, p. 188). Hsü also cites *The Analects* 10:2 to support his view.

[62] This is taken from *Mencius* 2A:6 (Mencius, 2003, p. 73).

bear to see the suffering of others. Some scholars argue that torture directly conflicts with such compassion.[63] Since every Confucian agrees that ren is the most basic virtue for everyone, and ren is based on such compassion, ideally Confucianism should reject torture in any circumstance.

Second, the theoretical Confucian tradition also rejects torture as a means in a trial or for legal punishment. In the theoretical Confucian tradition, legal punishment is often considered inferior to education and li (translated as rites or rituals). They argue that it is better to focus on education or li rather than legal punishment or legal system in general. For example, Confucius writes, "Lead the people with government regulations and organize them with penal law ("xing"), and they will avoid punishments but will be without shame. Lead them with virtue and organize them through the li, and the people will have a sense of shame and moreover will become humane people of good character."[64] In short, scholars argue that law and legal punishment is not important in the theoretical Confucian tradition. Since torture conflicts with ren, and law and legal punishment are not that important in the theoretical Confucian tradition, scholars generally believe that Confucianism rejects torture as a tool in trials or legal punishment.[65]

We may conclude from the above examples that the theoretical Confucian tradition does not accept slavery or torture. In other words, the prohibitions of slavery and torture do not conflict with the theoretical Confucian tradition. In general, the

---

[63] For example, Sam Crane (2009) has informally discussed this point in his blog: http://uselesstree.typepad.com/useless_tree/2009/04/mencius-on-torture.html
Although he has not provided a solid argument there, I think it is worth considering such a possible interpretation to torture and ren. He also refers to *Mencius* 6A:14 and 7A:17 to support his point.

[64] *The Analects* 2:3. The translation is from Peerenboom (1998), p. 445.

[65] For further references and details, see Peerenboom (1998), pp. 445-447; Hsü (1932), pp. 160-173.

theoretical Confucian tradition also has the same attitude to other physical securities. That is, physical securities do not conflict with the values in the theoretical Confucian tradition or the tradition itself.

Compared to the theoretical Confucian tradition, the practical Confucian tradition treated slavery and torture differently. Generally, slavery and torture happened frequently and regularly in the history of East Asia. And more importantly, slavery and torture were even considered as useful instruments to maintain order in family and society. In other words, slavery and torture could be instruments to protect some values in Asia.

Slavery existed in East Asia for a long period. Some scholars suggests that slavery existed in China as early as the time of Xia dynasty (around 2205-1706 B.C.). Historians disagree on whether slavery really existed in China in such an early period, but they generally agree that slavery existed in China at least before Qin dynasty (i.e., before 221 B.C.). In the Han dynasty, when Confucian began to be the official ideology of ruler-ship in real politics, slavery was also legally established in China. Since then, slavery has existed in every dynasty when Confucianism was the official ideology. There was state slavery and private slavery. State slaves were usually major criminals, family members or relatives of major criminals, prisoners of war, and the offspring of state slaves. Private slaves were traded in the market; owners were usually government officials, landlords, or rich merchants. Private slaves were not used primarily for profit-making production. Private slaves were primarily used for household services. In other words, they were employed as personal servants and their servitude was of a domestic nature. The legal abolishment of slavery did not

come until 1909 A.D. (and Confucianism, as the official ideology in China, was also criticized heavily at that time). Slavery also existed in other East Asian (Confucian) regions. For example, Korea had slavery until its abolition in 1895 A.D. In short, slavery existed in East Asia until recent decades (around a century ago).[66]

In the practical Confucian tradition, torture was approved and occurred frequently. Let me discuss two examples in the legal system of imperial China before 1911 A.D. The first example is about confession in a trial. According to Conner, in order to determine if a defendant was guilty, a confession from the defendant was often required. Conner writes, "In theory, requiring confessions should have provided the highest protection for the innocent…in practice, of course, this insistence on the confession led inevitably and fatally to the use of torture, as did the requirement of a 'complete proof' in the European inquisitorial system. In China, as in Europe, there developed jurisprudence of torture rather than simply of confessions or proof: the law of confessions was in reality the law of torture" (Conner, 1999, p. 181). There were many ways to torture a defendant, such as "the use of pressing sticks to squeeze the ankles or fingers [of the defendant]" (p. 182). The purpose of this kind of torture was to force the defendant to confess his or her crime whenever the evidence is clear and certain. Although there were regulations and codes to prohibit improper use of torture, torture was undoubtedly abused frequently.[67]

Torture was also used as a legal punishment in East Asia. The most famous torture penalty in China was called "lingchi" (translated as "slow slicing" or "death

[66] The history and information I discuss in this paragraph is taken from: entries of "China," "Korea" in Finkelman & Miller (Eds.) (1998); entries of "China, Ancient," "China, Later Imperial," "China, Medieval," "Confucianism and Slavery," "East Asia," and "Korea" in Rodriguez (Ed.) (1997).

[67] See Conner (1998) for further detail.

by a thousand cut").[68] Lingchi was a death penalty, but the purpose of this penalty was not only to kill the person, but also to cause great pain to the person. It involved some degree of dismemberment while the person was living. The execution consisted of cuts to different parts of the body, such as amputation of limbs. It was a penalty of both torture and execution. Although lingchi was so cruel and inhumane, it was not abolished in China until 1905 A.D.—only a bit more than a century ago.[69]

From the above examples, we find that slavery and torture were important tools in the practical Confucian tradition. State slavery was a legal punishment for criminals and prisoners of war. Private slavery was also important to many families in East Asia because these families had many members living in the same place, and so these families needed many domestic servants. And in the past, private slavery was the only source of domestic servants. Torture was also an important tool in trial and legal punishment. One may argue that slavery and torture were important tools to protect and promote family values and national values in East Asia. In the practical Confucian tradition, physical securities are subject to trade-offs with these values in Asia. Physical securities, in this sense, conflict with some other values in the practical Confucian tradition.

I do not deny that this is an incomplete picture of how different parts of Confucianism treat physical securities differently. But the purpose here is not to discuss every detail of the history of physical securities and Confucianism in East Asia. The purpose of the above discussion is simply to conclude that physical securities are controversial in different parts of the Confucian tradition, and I believe

[68] It is unclear whether lingchi originated in China or in other countries.

[69] For the detail of linchi, see Brook, Bourgon & Blue (2008).

that I have already discussed enough details to support such a conclusion. Now let me put this conclusion back into our debate.

At the beginning of this section, I have mentioned that the main debate here is whether physical securities are fundamental human goods in every culture so that physical security rights are universal rights. One question of this debate is whether physical securities conflict with some values in the Confucian tradition. We can now see that the answer to this question is complicated. We have already seen that "the Confucian tradition" is a long name with different parts, and some parts may even conflict with others. Generally, it is quite common that culture itself has internal conflicts and contradictory social phenomenon.[70] Different parts of a culture (or a tradition) may treat things differently, and the Confucian tradition is no exception in this. In this particular situation, physical securities conflict with the practical Confucian tradition but not the theoretical Confucian tradition. This is a problem for Bell's arguments. Bell thinks that X is not an East Asian right if X conflicts with some values in Asia. But it is always unclear which values should be selected, especially when some values in Asia may even conflict with some other values in Asia. Therefore, it is a general problem for Bell because he needs to explain how to select the cultural factors that are relevant to his arguments.

Which part of the Confucian tradition is relevant here? And why is it relevant? Bell has mentioned that he wants to "modernize" Confucianism.[71] He believes that we should "bridge the gap between the political philosophy of the ancient texts and the political reality of contemporary society," and he tries "to distinguish between

[70] For example, Li argues that there are three "paradoxes of culture." See Li (2006), pp. 14-19.

[71] See Bell (1998a), pp. 18-20. See also chapter 2, section 2.4 of this dissertation.

traditional values which are still relevant today and others which have been relegated to the 'dustbin' of history. That is, we need to know that values continue to have widespread impact on people's political behavior in contemporary societies"; he also wants to "develop normative arguments which would explain why certain values should continue to remain influential and why others shouldn't" (Bell, 1998a, p.20). In this particular situation, Bell would probably argue that when physical securities conflict with the practical Confucian tradition, East Asian should give up the practical Confucian tradition rather than physical securities. He probably would think that the practical Confucian tradition (especially the part against physical securities) is a part of Confucian tradition that should be abandoned. Otherwise he cannot hold a position that physical securities are East Asian rights and universal rights. Since he thinks that physical securities are universal rights, he should give up the practical Confucian tradition.

It seems that most contemporary East Asian countries would agree with Bell. Nowadays, most East Asians do not believe in the values against physical securities anymore. In the past, most countries with the practical Confucian tradition implemented torture in the legal system, and slavery was essential to maintain the daily running of a big family. Nevertheless, in current East Asia, such a practical Confucian tradition is not a dominant ideology in politics and society anymore. With the exception of Singapore and Malaysia, many East Asian countries have changed their attitude to slavery and torture; most of them now legally prohibit slavery and torture.[72] Indeed, every culture is continuously changing and developing. In the past,

[72] Caning, a form of judicial corporal punishment, is still in use in Singapore and Malaysia, and this may be considered as an exception of prohibiting torture as a tool in the legal system.

slavery and torture were accepted in many cultures. But now, prohibitions of slavery and torture can be found in most countries in the world. These changes (from accepting to prohibiting slavery and torture) are occurring not only in East Asia but throughout the whole world (including the Western world).

Therefore, it seems that Bell is not mistaken to think that we should give up the practical Confucian tradition rather than physical securities. I also agree that we should give up the practical Confucian tradition rather than physical securities. But this does not solve all our problems here. Generally, it is unclear which cultural factors should be preserved, and which cultural factors should be abandoned. Particularly, we still need to ask *why* we should give up the practical Confucian tradition rather than other East Asian traditions or physical securities.[73]

In summary, it is now clear why it is not easy to determine whether physical securities are important fundamental human goods in East Asian cultures (especially in the Confucian tradition). Bell and others believe that physical security rights are universal rights and hence East Asian rights. However, physical securities conflict with some values in the practical Confucian tradition. But it seems that these Confucian values can be changed or even abandoned in East Asia. So, how do we determine which cultural factors should remain influential, and which should not? Bell does not explain this further, but I think there is a hint here. The hint is that Bell claims that physical securities are "minimal and universal codes." In the next sections, I shall discuss this in depth.

[73] Another question we need to ask is why we do not give up the Confucian tradition if liberties conflict with it. I discuss this in detail in chapter 4.

Section 3.3 Minimal Values and Maximal Theories

As discussed in the last section, it is not easy to figure out which East Asian cultural factors, especially which parts of Confucianism, are relevant to our discussion. And the main purpose of this chapter is to figure out why physical securities are universal rights (and East Asian rights), which we have not answered in the last section. Bell has suggested a hint to answer both questions, but he has not elaborated it. The hint is that he thinks that physical securities are "minimal and universal moral codes."

In chapter 2, I have discussed a passage from Bell, which says that "there is little debate over the desirability of a core set of human rights, such as prohibitions against slavery, genocide, murder, torture, prolonged arbitrary detention, and systematic racial discrimination," and these rights are not controversial because they are "what Michael Walzer terms the 'minimal and universal moral code'" (Bell, 2006a, p.79).[74] What is "minimal and universal code"? Unfortunately, Bell does not explain this term at all. All we know is that it is from Walzer (e.g. 1987, 1994). So, the first step here is to figure out what Walzer says about minimal and universal code.

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

[74] 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.

> 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)

Before I begin the discussion of Walzer's idea, I need to clarify one point. 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 to me that Walzer uses all of these terms interchangeably. Therefore, in this dissertation, I also consider them meaning the same, and only use the term "minimal values."

Walzer discusses minimal values in many different ways. For the purpose of our discussion, three questions are especially important: (1) How are minimal values relevant to cultural factors? (2) What are minimal values? (3) Why physical securities are universal rights because they are minimal values? None of these questions can be answered in a simple way. Therefore, I discuss each of them in detail in different sections. In this section, I discuss the first question. I discuss the second question in the next section (section 3.4) and then the third question in sections 3.5 and 3.6.

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 maximal theories. 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 does not think that minimal values and maximal theories are two independent moralities. In his early writings (e.g., Walzer 1987), Walzer used the term *elaboration* to explain the relationship between minimal values and maximal theories. He once believed that minimal values are elaborated as different maximal theories in different cultures, but later thinks that elaboration cannot catch his meaning completely.[75] Walzer changes his mind and believes that maximal theories are not based on minimal values; the reverse is 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. To illustrate, let me discuss two examples from Walzer to explain his idea in depth.

The first example is about the protest in Prague in 1989. Walzer claims that he understands the signs "truth" and "justice" in the protest. For example, 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

[75] 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).

immediately what the signs meant—and so did everyone else who saw the same picture" (Walzer, 1994, p. 1). But he also claims that we (non-Prague people) know some extra meanings of these signs from our own cultural perspectives. He argues that "while we march in spirit with the men and women of Prague, we have in fact our own parade" (Walzer, 1994, p. 8).

According to Walzer, "we march in spirit with the men and women of Prague" is a minimal value, but "we have in fact our own parade" is a maximal theory. More precisely, 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—common, garden variety justice" (Walzer, 1994, p.2). These minimal values can be found in both maximal moral theories of Prague and maximal moral theories of America. Nevertheless, Walzer also emphasizes that those maximal moral theories in America are different from those in Prague. For example, he believes that maximal theories in Prague 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" (Walzer, 1994, p.2). In short, Walzer believes that people from different cultures have different maximal moral theories. Although the maximal theories are different, some minimal values are shared by both cultures. He therefore also believes that we can all agree that there can be some minimal values of justice and truth shared by different cultures.

Perhaps the second example, the development of democracy in China, is more relevant to our discussion. Walzer claims that he supports the request of democracy

and human rights 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 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. (Walzer, 1994, pp. 59-61)

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, and there should be other maximal theories in China. In general, Walzer emphasizes the importance of maximal theories; he argues that each culture has its own maximal theories and one should not apply maximal theories of one culture to another culture. But Walzer also agrees that there are minimal values shared by both maximal theories in American culture and Chinese culture. It is simply

that Chinese culture probably has some unique claims on these minimal values as well, and these minimal values are limited and rely on maximal moral theories. In short, he believes that minimal values such as minimal rights and against the tyrants can be found in maximal theories of both American and Chinese cultures.

Although Walzer's main purpose is to emphasize the importance of maximal theories, Walzer does not deny minimal values at all. In summary, Walzer uses these examples to illustrate how minimal values are embedded in maximal theories. Generally, Walzer believes that everyone in the world would agree that something like justice, minimal rights, against the tyrants, etc. are important. But their agreement is very limited —they only agree that these minimal values are important, but they do not agree on why and how they are important. In other words, they do not agree on those maximal moral theories in different cultures. In this sense, Walzer emphasizes the importance of maximal theories, and he points out that minimal values have their limits. In addition to the minimal values, we also need maximal theories. Maximal theories can be some interpretations of minimal values, or they may be reasons and arguments to support minimal values. This is why Walzer believes that minimal values are "not the foundation of the maximalism, only a piece of it" (Walzer, 1994, p.18). This is how Walzer thinks that minimal values are embedded in maximal theories, and how minimal values are relevant to different cultural factors.

Now let me put all of these points back into our discussion of physical securities and East Asian cultures. Bell believes that physical securities are minimal values. Are they? Walzer has listed different minimal values in his writings. For our purpose here, we do not need to discuss a complete list of them; all we need here is to

see whether physical securities are minimal values. As I have discussed at the beginning of this section, Walzer lists prohibitions of murder, deception, betrayal, and gross cruelty as "minimal and universal codes" (Walzer, 1987, pp.23-24). He also recognizes elsewhere that prohibitions of torture, slavery, and genocide are also minimal values (e.g. Walzer, 1977; 1995, p. 293). Therefore, it is safe to conclude that Walzer agrees that physical securities are minimal values. And it is now easier for us to understand why Bell agrees with Walzer. This is because Bell may use Walzer's notion to support his argument. Bell wishes to conclude that physical securities are universal rights, and then the main question is whether physical securities are fundamental human goods that are weighty enough to place others under some duty. Bell can answer that physical securities are such fundamental human goods because physical securities are minimal values. Therefore, physical securities are universal rights.[76]

But if physical securities are universal rights, then how are physical securities related to East Asian cultures, especially Confucianism? As I discussed in section 3.2, a problem is that the Confucian tradition has internet conflicts on this issue; that is, different parts of the Confucian tradition treat physical securities differently. While the theoretical Confucian tradition can accept physical securities as important values, the practical Confucian tradition denies physical securities, especially when physical

[76] Although Walzer thinks that the language of rights is the language of Western moral maximalism, he also believes that the language of rights is "translatable" to other cultures. Therefore, it is likely that Walzer will agree with Bell that physical securities are universal rights. Walzer writes, "Perhaps the end product of this effort will be a set of standards to which all societies can be held… Among ourselves, late twentieth century Americans or Europeans, these standards will probably be expressed in the language of rights, which is the language of our own moral maximalism… But that is not a bad way of talking about injuries and wrongs that no one should have to endure, and I assume that it is translatable" (Walzer, 1994, p. 10). Moreover, Walzer has also argued elsewhere that life, liberty, and subsistence are human rights (Walzer, 2007, pp. 251-263). I discuss Walzer's view on liberties further in chapter 4, section 4.2.

securities conflict with national values and family values. In short, physical securities conflict with the practical Confucian tradition but are quite compatible with the theoretical Confucian tradition. How should we explain the relationship between physical securities and different parts of Confucianism?

Walzer would probably say that physical securities are minimal values, but they are also embedded in maximal moral theories of different cultures; particularly, they are embedded in Confucianism. But we need to explain how physical securities are embedded in Confucianism. Walzer does not explain this very precisely, even though he emphasizes the importance and particularity of each culture. I need to explain this further for him. It seems to me that two important points are especially relevant to the explanation of how physical securities are embedded in Confucianism. Let me discuss them one by one.

The first point is that Walzer does not directly explain how many maximal moral theories there are in each culture, but a reasonable assumption is that there can be more than one maximal moral theory in each culture. For example, Walzer argues in his Prague example that maximal theories in Prague or Czech are probably different from maximal theories in America, such as utilitarianism or Rawls's theory of justice (Walzer, 1994, p. 2). I think Walzer assumes that utilitarianism, Rawls's theory of justice, or even some other moral and political theories, are all maximal moral theories in American or Western cultures. This means that there can be many different maximal moral theories in each culture. In general, when Walzer claims that minimal values are embedded in maximal theories, this only means that minimal values are embedded in *some* (i.e., at least one) but not all maximal moral theories of

each culture. There can be different maximal moral theories in a culture, and they may be incompatible. It is not necessary to assume that minimal values are embedded in *all* maximal moral theories of each culture.

Now let me put this idea back into our discussion of Confucianism. As I have already discussed, physical securities conflict with the practical Confucian tradition but not the theoretical Confucian tradition. Walzer or Bell has not directly discussed how many maximal theories there can be in Confucianism or East Asian cultures. But it is reasonable to assume that there can be many maximal theories in the practical Confucian tradition and maximal theories in the theoretical Confucian tradition. I think Walzer would agree that physical securities are only embedded in some maximal theories in the theoretical Confucian tradition but not embedded in other maximal theories in the practical Confucian tradition.

The second point is more complicated. Walzer thinks that minimal values are shared by all cultures; we always find minimal values somewhere in each culture. But it seems that he treats maximal theories differently; all he requires is that *it is possible to develop* some maximal theories of the minimal values in the culture. Let me discuss an example to illustrate this view.

Walzer mentions that "against the tyrants" is a minimal value shared by both Western and Chinese cultures (Walzer, 1994, pp. 59-61), but he has not explained how "against the tyrants" is embedded in some maximal theories in Chinese culture, especially in Confucianism. I agree that "against the tyrants" is a minimal value in Confucianism; some Confucian philosophers have proposed such a value. For example, in *Mencius* 7B:14, he thinks that "The people are of supreme importance;

the altars to the gods of earth and grain come next; last comes the ruler" (Mencius, 2003, p. 315). For another example, in *Mencius* 1B:8, Mencius also shows that he is strongly against the tyrants:

> King Hsüan of Ch'I [King Xuan of Qi] asked, "Is it true that T'ang [Tang] banished Chieh [Jie] and King Wu marched against Tchou [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 Tchou [Zhou],' but I have not heard of any regicide." (Mencius, 2003, p. 43)[77]

In this passage, Mencius even claims that killing a tyrant (King Tchou [Zhou]) is not a problem at all; this shows that Mencius is strongly against the tyrants.[78] Mencius is not the only philosopher 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.[79] It seems that it is safe to conclude that "against the tyrants" is a minimal value in the theoretical Confucian tradition.

However, in the history of East Asia (such as China, Korea, and Japan), there was no fully developed maximal theory of "against the tyrants" in Confucianism.

---

[77] D.C. Lau translates all these names by the Wade-Giles system; hence I also provide the pinyin translation in square-parentheses.
[78] See also Wing-Tsit Chan (1963), pp. 63&76 for his comments on *Mencius.*
[79] For example, Confucius thinks that it does not matter to say something that is true but offensive to the king. See, e.g., *The Analects* 14:2, 14:22 (Confucius, 1992, pp.133 & 141)

Indeed, Confucianism, or at least the practical Confucian tradition, was always used as a school of thought to support tyrants in history. But it is possible to develop a Confucian maximal theory based on the minimal value "against the tyrants." For example**,** Fung (1948) 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. (Fung, 1948, p. 74)

In the above passage, Fung discusses how the idea from Mencius (i.e., the idea of "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. Fung is not the only philosopher who develops a Confucian maximal theory of the minimal value "against the tyrants." For another example, Sen (1999) also thinks that based on the philosophy of Confucius, it is

possible to develop a maximal theory of human rights and democracy 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 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" (pp.234-235).[80]

These examples show that it is possible to develop some maximal theories of "against the tyrants" in East Asian cultures. 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. This means that it is also good enough when it is possible to develop a maximal theory of physical securities in the theoretical Confucian tradition. This possibility is all we need to say that physical securities are embedded in some maximal theories of the theoretical Confucian tradition.

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 we find the minimal value somewhere in the culture. For example, the minimal values such as "against the tyrants," "against torture," or "against slavery" were not major values in the history of Confucianism (especially in the practical Confucian tradition). However, we still find them in the philosophy of

[80] See Sen (1999), pp. 227-248 for more details. 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 and against the tyrants. See Chang et al. (1958), pp. 530-543.

Confucius and the philosophy of Mencius. In other words, we find these values in 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 says something more than its minimal values does, but they do not have any conflict. In the above example, the maximal theories from Fung and Sen are all consistent with the minimal value "against the tyrants." The maximal theories of physical securities in the theoretical Confucian tradition (such as the one from Hsü, 1932) are all consistent with the minimal values such as "against slavery," "against torture," etc. In this sense, the second requirement is also fulfilled. It is possible to develop a maximal theory of a minimal value only when these two requirements are fulfilled.

In summary, I have clarified two points here. I have shown that minimal values are embedded in maximal theories if (1) it is *possible* to develop (2) *some* (i.e., at least one) maximal theories of the minimal values. I also have shown that why it is possible to develop some maximal theories of physical securities in the theoretical Confucian tradition. This answers one of our questions (i.e., how are minimal values relevant to cultural factors?). However, we still need to answer other questions. We need to explain what a minimal value is, and we also need to discuss why physical securities are East Asian rights and universal rights. I shall discuss them one by one in the next sections.

Section 3.4 From Minimal Moral Demand to Human Dignity

Walzer focuses a lot on how minimal values are embedded in maximal theories. But what is a minimal value? A suggestion is that it is a minimal moral demand. In this section, I discuss what a minimal moral demand is, and then I discuss why physical securities are minimal moral demands.

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 morality is 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? Furthermore, we know that Walzer and Bell believe that physical securities are minimal moral demands, so we can ask this further question: Why are physical securities minimal moral demands?

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, and then he focuses more on how it is embedded in maximalism. In addition to Walzer's idea, I want to discuss other ideas as well. Since this is a debate on human rights, I am going to focus on the ideas about what minimal moral demands are relevant to human rights. Let me discuss the works from some philosophers (e.g., Shue, 1996; Li. 2006; and Nickel, 2007) as examples of these ideas.

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).[81] Xiaorong Li (2006) generally shares a similar view with Shue.[82] 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"

[81] 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.

[82] 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.

(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 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.[83]

For the purpose of this section, we do not need to discuss why and how human rights provide a minimal protection to everyone. The important part 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,

[83] 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. I discuss Beitz's idea further in chapter 5, section 5.4.

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 physical securities are minimal moral demands. Physical securities are minimal moral demands if physical securities 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.). But we need further explanations about what it means by saying that something is a minimal threshold of human life.

The 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 our concern here. The 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, the 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."[84] 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*[85] and many other international human rights documents.[86] In a word, according to these 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.[87] 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?

I cannot find any direct answer from them, but 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,

[84] See United Nations (1993a) for the detail.

[85] 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)

[86] An example relevant to the East Asian countries is *the Bangkok Declaration of Human Rights*. See United Nations (1993b) in Davis (1995), pp. 205-209.

[87] E.g., Donnelly (2003), Griffin (2008), Li (2006), Nickel (2007), and Shue (1996).

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.[88] If dignity is only recognized in the West but not the East, then a dignified life may not be a minimal threshold for everyone.

To reply to this possible objection, let me discuss two examples of dignity in the Chinese tradition. The first example is from Irene Bloom (1999) and the second example is from John Fitzgerald (1999). The Chinese term of dignity, "zunyan," did not exist in the ancient China tradition.[89] 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, 1999, 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

[88] 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).

[89] 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 (1999), p. 104 for detail.

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.[90]

I do not know whether the interpretations of dignity in these two examples are the only interpretations of dignity in East Asian cultures. But my intention here is not to discuss all interpretations of dignity in East Asia. My 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. I cannot rule out the possibility 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 our discussion here. The reason is that no matter how many interpretations of dignity there are among different cultures (or even 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.

Let me explain what an essential necessity is. Physical securities are essential necessities of a dignified life; this means that without physical securities, no one can really have a dignified life. Protecting one's physical securities is a necessary

[90] See Onuma Yasuaki (1999), pp. 104-106 for further detail.

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 I do not mean that such a relationship needs to be as strong as a *logical or analytical* impossibility. I am not sure if it is *logically or analytically* possible for one having dignity without having physical securities. I 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 securities 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," I simply call them "essential necessities." This is what I mean when I say that physical securities are essential necessities of dignity.

This explanation is not controversial in the East and West debate on human rights. Both sides agree that physical securities are important. No one in the debate really tries to deny that physical securities are essential necessities for every kind of decent life, including a dignified life. Bell and others focus a lot of on the empirical findings; they probably would agree that it is empirically impossible for one having dignity without having physical securities. And they would think that the logical possibility is not an issue here[91]. Therefore, it is safe to conclude that physical

[91] 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 (See chapter 2, section 2.5).

securities are essential necessities of dignity—at least this is not controversial in the East and West debate on human rights.

Let me summarize what I have discussed in this section. 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 moral demand if X is an essential necessity of dignity. Since physical securities are essential necessities of dignity, physical securities are minimal moral demands. In the next sections, I shall discuss why this conclusion is important in the East and West debate on human rights.

Section 3.5 Are Physical Securities East Asian Rights?

In the previous sections, I have discussed what a minimal moral demand is, and how it is embedded in some maximal theories in different cultures. In this section, I develop an argument based on the materials we have discussed in chapter 2 and the previous sections in this chapter. Bell believes that physical securities are universal rights, which means that physical securities are also East Asian rights. But why are physical securities East Asian rights? The aim of this section is to develop an argument with the conclusion that physical securities are East Asian rights. This argument can also solve the problem I have discussed in section 3.2; that is, if

---

Therefore, it is safe to assume that Bell would accept an empirical approach which shows that physical securities are empirically essential to dignity.

different East Asian cultures (the theoretical and the practical Confucian traditions) treat physical securities differently, how can physical securities be East Asian rights?

Let me discuss the argument first, and then I shall defend each of its premises. The argument is like this:

Argument 4

(1) X is an East Asian right if X is an interest of East Asians (i.e. the right-holders) that is weighty enough to place others under some duty.

(2) X is such an interest if X is a fundamental human good in East Asian cultures.

(3) X is such a fundamental human good if X is a minimal value in East Asia.

(4) X is a minimal value if (i) X is embedded in some maximal theories in East Asian cultures and (ii) X is a minimal moral demand.

(5) X is embedded in some maximal theories of East Asian cultures if it is possible to develop a maximal theory of X in East Asian cultures.

(6) X is a minimal moral demand if X is an essential necessity of dignity.

(7) It is possible to develop a maximal theory of physical securities in the theoretical Confucian tradition.

(8) Physical securities are essential necessities of dignity.

(9) (Conclusion) Physical securities are East Asian rights.

This is a valid argument. If all the premises are true, then the conclusion is also true as well. Now let me discuss and defend each of these premises.[92]

[92] Raz thinks that "An interest is sufficient to base a right on if and only if there is a sound argument of which the conclusion is that a certain right exists and among its non-redundant premises is a statement

Premise (1) and (2) are statements from the materials we have discussed in chapter 2. Bell believes that "cultural factors can affect the justification of rights" (e.g., Bell, 2006b, p. 267). In other words, Bell (and others) holds an account of the cultural justification of rights. As I have discussed in chapter 2, this cultural justification of rights is also an interest account of rights. According to this interest account of rights, a right is justified if and only if the correlative interest is weighty enough to place others under some duty. For the sake of the argument, I only need half of the formula, i.e. a right is justified *if* the correlative interest is weighty enough to place others under some duty. In addition, the cultural justification of rights also tells us that the fundamental human goods in the culture are weighty-enough interests. Particularly, premise (1) and (2) are limited to East Asian cultures. They tell us that if X is a fundamental human good in East Asian cultures, then X is an East Asian right.

After arguing for the cultural justification of rights, Bell and others focus on why civil and political liberties are not fundamental human goods in East Asian cultures. They have not explained why physical securities are fundamental human goods in East Asian cultures. The only hint from them is that Bell has mentioned that physical securities are minimal values (e.g., Bell, 2006a, p79). As I have said at the beginning of this chapter, this is the gap that I intend to fill in here, and premises (3) to (8) serve this purpose.

---

of some interest of the right-holder, the other premises supplying grounds for attributing to it the required importance, or for holding it to be relevant to a particular person or class of persons so that they rather than others are obligated to the right-holder. These premises must be sufficient by themselves to entail that if there are no contrary considerations then the individuals concerned have the right" (Raz, 1986, p. 181). I borrow this idea to construct my own argument. In other words, I want to construct a sound argument that all the premises joining together are a sufficient condition to the conclusion.

Bell thinks that there are different fundamental human goods that are weighty enough to place others under some duty. He also thinks that physical securities are minimal values. Premise (3) joins them together. There may be many fundamental human goods in East Asia, but something that is a minimal value is also an important fundamental human good that can be a right. It seems that this premise is not controversial. The main point of this premise is that we are asking for something that is weighty enough to place others under some duty, and something that is a minimal value seems to be weighty or important enough. Why is a minimal value so important? This is explained by premises (4) to (8).

Premise (4) to (8) are from section 3.3 and section 3.4. Premise (4) tells us a minimal moral demand that is embedded in some maximal theories is minimal. Premises (5) and (7) conclude my analysis in section 3.3, and premises (6) and (8) conclude my analysis in section 3.4. After we have all these premises, the reasoning of this argument is very clear. We can join premises (7) and (8) together, and then we can apply the logical rule *Modus Ponens* to the previous premises. We then get a conclusion that physical securities are East Asian rights.

Note that the aim of this argument is to construct a jointly sufficient condition for X being an East Asian right. In other words, if X meets all the conditions described in these premises, then X is an East Asian right. But this argument does not tell us any necessary condition for X being an East Asian right. In other words, even if X does not meet one or more of the conditions described in the premises, X may

still be an East Asian right[93]. In short, the purpose here is simply to figure out why and how physical securities can be East Asian rights, and so we only need to focus on the sufficient conditions. The necessary conditions for physical securities being East Asian rights do not concern us here.

As introduced at the beginning of this section, one advantage of this argument is that it can solve the problem I discussed in section 3.2. Roughly, the problem is that some East Asian cultural factors (the practical Confucian tradition) deny physical securities, while some other cultural factors (the theoretical Confucian tradition) accept physical securities. This conflict causes a problem because Bell believes that "cultural factors can affect the justification of rights" (e.g. Bell, 2006b, p. 267), while there are conflicting cultural factors that can affect the justification of rights with different results. The argument here explains how we can solve this problem.

The key to solve this problem is that physical securities are minimal values. As I said in premise (4), X is a minimal value in East Asia if (i) X is embedded in some maximal theories in East Asian cultures and (ii) X is a minimal moral demand. Part (i) explains how cultural factors can affect the justification of rights. As I discussed in section 3.3, minimal values are embedded in maximal theories, and maximal theories are developed from some cultural factors. Therefore, we know that when some cultural factors become maximal theories, they can affect the justification of rights (premise (1) to (3)). However, Walzer (or others) never requires a minimal value to be embedded in *all* maximal theories; *some* maximal theories are already sufficient. In other words, it is not a requirement to include all conflicting cultural

[93] 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.

factors into our consideration. In our particular discussion, we do not require that physical securities are embedded in all maximal theories in both the theoretical and the practical Confucian traditions. We only require that physical securities are embedded in at least one of them (i.e., a part of Confucianism). So, the next question is: which tradition is more important? Since we know that the theoretical Confucian tradition accepts physical securities, we prefer the theoretical Confucian tradition. But why we should choose the theoretical Confucian tradition?

We can find the answer in part (ii) of premise (4), premise (6), and premise (8), i.e. the premises related to the notion of minimal moral demand. As I discussed in section 3.4, a minimal threshold of human life, which no one should sink below, is a minimal moral demand. The essential necessities of dignity are such a minimal threshold of human life (premise (6)). Physical securities are essential necessities of dignity (premise (8)). Therefore, physical securities are minimal moral demands. Notice that this reasoning is independent from any conflict in the East Asian cultures, and so it is not a circular reasoning. That is, once we know that physical securities are minimal moral demands, we select the cultural factors that are relevant to them. In other words, minimal moral demand is the standard for us to judge which cultural factors are relevant. In our particular case, this means that we may select the theoretical Confucian tradition rather than the practical Confucian tradition. This is because physical securities are minimal moral demands, and the theoretical Confucian tradition is compatible with these minimal moral demands, while the practical Confucian tradition conflicts with them.

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 some East Asian cultural factors (i.e., the practical Confucian tradition). I have two replies to this possible objection. First, even Walzer and Bell emphasize the importance of minimal moral demand. As I 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 I have already discussed in section 3.4 that dignity is prima facie recognized and accepted globally, and some essential necessities of dignity are universal. In a word, the concept of minimal moral demand is not merely a Western concept.

My second reply is that some East Asian cultural factors (i.e., the theoretical Confucian tradition) play important roles in this argument (e.g., premise (7)). My explanation here is not about the conflict between East Asian cultures and Western cultures. It is only about the conflict within the East Asian cultures (i.e., the conflict between the theoretical Confucian tradition and the practical Confucian tradition). I simply suggest a way to select one East Asian cultural tradition over another. So this is not a Western argument or cultural imperialism whatsoever. It is simply not true to say that I use some Western concepts (minimal moral demands, dignity, etc.) to deny East Asian cultures.

In summary, I have constructed an argument in this section (Argument 4) to explain why physical securities are East Asian rights. More precisely, I have argued that the premises of this argument are a jointly sufficient condition for physical securities being East Asian rights. This argument explains why physical securities are East Asian rights, and it also tells us what and how East Asian cultural factors can affect the justification of rights. In a word, this argument fills the explanatory gap in the East and West debate on physical security rights.

Section 3.6 Are Physical Securities Universal Rights?

The discussion in the last section focuses merely on East Asian rights. However, Bell (and even Walzer) thinks that physical securities are not only East Asian rights but also universal rights. Bell thinks that physical securities are universal rights because they are minimal values. In this section, I extend the argument in the last section; I discuss why physical securities are also universal rights because they are minimal values. I explain the significances and weaknesses of the argument, and I explain the role it plays in the East and West debate on human rights.

The argument here is quite similar to Argument 4. The only difference is that this argument is about universal rights, and so it is related to (almost) all cultures rather than just East Asian cultures. The argument is like this:

Argument 5

(1) X is universal right if X is an interest of all individuals (i.e. the right-holders) that is weighty enough to place others under some duties.

(2) X is such an interest if X is a fundamental human good in all cultures.

(3) X is such a fundamental human good if X is a minimal value.

(4) X is a minimal value if (i) X is embedded in some maximal theories of all cultures and (ii) X is a minimal moral demand.

(5) X is embedded in some maximal theories of all cultures if it is possible to develop a maximal theory of X in all cultures.

(6) X is a minimal moral demand if X is an essential necessity of dignity.

(7) It is possible to develop a maximal theory of physical securities in all cultures.

(8) Physical securities are essential necessities of dignity.

(9) (Conclusion) Physical securities are universal rights.

Argument 5 is a valid argument; if, in addition, all the premises are true, then it is a sound argument, and hence the conclusion is also true as well. Are these premises true? It is quite obvious that Argument 5 resembles Argument 4. Since the reasoning of Argument 5 is basically the same as the reasoning of Argument 4, I do not need to repeat most of the points here. The only difference between them is that Argument 5 is about universal rights and all cultures, while Argument 4 is just about East Asian rights and East Asian cultures. So, let me now focus on the discussion of this point.

Let me clarify the word "all" in this argument. Some may wonder whether it is really about *every* culture in the world without any exception. But it seems that what Walzer wants is simply "almost universal". As he writes, "they are minimal and universal (I should say almost universal, just to protect myself against the odd anthropological example)" (Walzer, 1987, pp. 23-24). In other words, it seems that Walzer (or even Bell) can allow some rare exceptions. But they do insist that physical securities are embedded in almost all cultures (especially almost all major cultures). I have to admit that Walzer does not explain in detail what cultures are considered "major" and what are "minor." But for the purpose of our discussion, all we need to know is that it does not matter whether it is strictly about all cultures without a single exception; some rare examples (e.g., "odd anthropological example") are allowed here. The word "all" in Argument 5 only means "almost all cultures". So, when we are talking about all (or every) cultures, the question here will actually be: are physical securities, as minimal values, are embedded in nearly all different major cultures?

It is quite hard to show directly that physical securities are embedded in every culture. One obvious problem is that I cannot discuss every culture in this project. So, what I need to do here is to defend this argument in an indirect way. Let me discuss an indirect way by discussing premise (7) in Argument 5 more precisely. Premise (7) in Argument 5 is quite similar to premises (7) in Argument 4. However, while premise (7) in Argument 4 focuses only on East Asian cultures (especially Confucianism), premise (7) in Argument 5 focuses on more cultures; it says that it is possible to develop at least one maximal theory of physical securities in all cultures.

Although it appears that "all cultures" is a very strong requirement, it is actually not too hard to meet this requirement. This is because the real requirement here is that it is *possible* to develop *some (i.e., at least one)* maximal theory of physical securities in every culture. In other words, the requirement of "all cultures" is weakened by a possibility (it is *possible* to develop) and an existential quantifier (*some* maximal theories). And we know that physical securities are essential necessities of dignity. It seems that it is reasonable to assume that every culture has at least one maximal moral theory that *may be* compatible with physical securities. It is reasonable to make this assumption because it is quite likely that at least some maximal moral theories may prefer essential necessities of dignity. In other words, based on this reasonable assumption, it is very likely that premise (7) is true. This is an indirect defense to premise (7). In other words, although I cannot directly discuss every culture here, such a reasonable explanation shows that premise (7) is true.

I admit that what I am saying here is not a conclusive reason. At most I can only say that it is likely that physical securities are embedded in some maximal theories of all cultures, and hence it is most likely that physical securities are universal rights. This may be considered as a weakness of Argument 5. Nevertheless, Bell and others agree that physical securities are universal rights, and they have not discussed every culture in detail as well. Indeed, physical securities are not controversial in the East and West debate on human rights; both sides agree that physical securities are universal rights. Therefore, I assume that physical securities are at least most likely to be universal rights.[94]

[94] Walzer has not explained what we should do to those "rare cultures." For the sake of my argument, I leave this problem behind and do not discuss it further.

The main concern between the two sides of the East and West debate on human rights is about whether liberties are universal rights. The aim to discuss physical securities in this chapter is to find out the reasons why they agree that physical securities are universal rights, and then I shall figure out whether the same reasons can also apply to liberties. It seems that Argument 5 is already good enough to serve this purpose. It gives us a jointly sufficient condition for physical securities being universal rights. In other words, when physical securities meet all of the premises (conditions), then physical securities are universal rights.

Similar to Argument 4, Argument 5 does not say that the premises are also necessary conditions. In other words, Argument 5 does not say that if physical securities are universal rights, then physical securities meet all of these premises. The argument does not tell us whether physical securities are or are not universal rights if physical securities do not meet any of these premises. Argument 5 is only one way to show that physical securities are universal rights, but it does not exclude the possibility that there may also be other ways. In this sense, the premises of these arguments are only "positive conditions" (i.e., if physical securities meet all of them, then physical securities are universal rights) but not "negative conditions" (i.e., if physical securities do not meet all of them, then physical securities are not universal rights).

Argument 5 also refutes the following statement: if physical securities conflict with some cultural factors, then physical securities are not universal rights. The general reasoning behind this statement is that conflicting with some cultural factors is a sufficient condition for X not being a universal right. In other words, if X

conflicts with some cultural factors, then X is not a universal right. According to this reasoning, physical securities cannot be universal rights because physical securities also conflict with some cultural factors (e.g., the practical Confucian tradition). However, such reasoning is refuted by Argument 5. I have shown that when physical securities fulfill all premises of Argument 4, they are East Asian rights; when physical securities fulfill all premises of Argument 5, they are universal rights. These arguments refute the reasoning that physical securities are not universal rights when they conflict with some cultural factors.

In the next chapter, I shall discuss whether liberties are also East Asian rights and universal rights, just like physical securities are East Asian rights and universal rights.

Section 3.7 Summary and Conclusion

At the beginning of this chapter, we wondered whether physical securities are East Asian rights and universal rights. The aim of this chapter is to develop persuasive arguments to show that physical securities are East Asian rights and universal rights.

To do so, I have begun the discussion from the evaluation of Bell's argument. Bell believes that any moral value that conflicts with East Asian cultural factors is not an East Asian right. I have argued in section 3.2 that physical securities conflict with the practical Confucian tradition, but physical securities are also compatible with the

theoretical Confucian tradition. I have argued that Bell cannot successfully explain the relationship between physical securities and different parts of Confucianism.

Bell and others also believes that physical securities are universal rights because physical securities are minimal. In section 3.3 and 3.4, I have discussed the notions of minimal value in depth. I have argued in section 3.3 how minimal values are embedded in maximal theories of different cultures, especially how physical securities are embedded in some maximal theories in the theoretical Confucian tradition. I have argued in section 3.4 what a minimal moral demand is, and why physical securities are minimal moral demands.

I have developed two arguments (Argument 4 and Argument 5) in section 3.5 and 3.6. The premises of these arguments are jointly sufficient conditions for physical securities being East Asian rights and universal rights. These arguments also tell us how to select the relevant cultural factors, and hence it solves the problem in section 3.2. These arguments are important to the East and West debate on human rights. They argue that physical securities are East Asian rights and universal rights. One may wonder whether a similar reasoning can also apply to liberties as well. I shall discuss this in depth in the next chapter.

Chapter 4: Liberal Rights and East Asian Cultures

Section 4.1 Introduction

In the last chapter, I have discussed two arguments to explain why physical securities are East Asian rights and universal rights. In the following sections of this chapter, I argue why liberties are also East Asian rights and universal rights. I develop two arguments to explain why liberties are East Asian rights and universal rights; these two arguments are similar to the arguments I have developed in the last chapter. I also argue why my arguments for physical securities and liberties are important to the East and West debate on human rights.

I develop an argument in section 4.2. The reasoning of this argument is similar to the argument I have defended in chapter 3. I shall focus on two premises of this argument. In section 4.3, I focus on why liberties are essential necessities of dignity. In section 4.4, I argue that although liberties conflict with the practical Confucian tradition, liberties are compatible with the theoretical Confucian tradition. Bell cannot successfully explain the relationship between physical securities and different parts of Confucianism; similarly, Bell also cannot successfully explain the relationship between liberties and different parts of Confucianism. I argue that it is also possible to develop some maximal theories of liberties in East Asian cultures (i.e., the theoretical Confucian tradition). My conclusion of these two sections is that liberties are East Asian rights**.**

In section 4.5, I discuss whether liberties are universal rights. I argue that if physical securities are universal rights because they are minimal values, then liberties are also universal rights. Since it is most likely that physical securities are universal rights, it is also most likely that liberties are also universal rights.

In section 4.6, I compare my arguments with Bell's arguments. I explain why my arguments can contribute to the East and West debate on human rights in a better way. My arguments show not only that physical securities and liberties are East Asian rights and universal rights, but also that Bell's project, "the East Asian challenge to human rights," is mistaken and problematic.

Section 4.2 Are Liberties East Asian Rights?

Before I begin the discussion, let me review very briefly what I have discussed in the previous chapters. As I said in chapter 2, we limit our discussion to liberties to freedom of speech and political liberties (such as freedom to vote, freedom of political participation, etc.).[95] I have also discussed Bell's arguments in chapter 2, and I have pointed out that some of his claims are not clear enough. Roughly, he claims that liberties are not fundamental human goods in East Asia because liberties conflict with some values in the Confucian tradition. Based on the cultural justification of rights, he believes that liberties are not weighty-enough interests in East Asia, and hence liberties are not East Asian rights.[96] However, as I have already pointed out in chapter 2, it is unclear how he draws from the conflicts between

[95] See chapter 2, section 2.5.

[96] See Argument 2 in chapter 2, section 2.5.

liberties and some East Asian cultural factors to get to the conclusion that liberties are not East Asian rights.

On the other hand, Bell also thinks that physical securities are universal rights because physical securities are minimal values. Bell himself has not explained this view further. In chapter 3, I have elaborated this view in detail. I have developed two arguments that show that physical securities are East Asian rights and universal rights. In addition, I have also shown that even though physical securities conflict with some East Asian values, physical securities are still East Asian rights. In this chapter, I argue that the same reasoning also applies to liberties. That is, I develop similar arguments to show that liberties are East Asian rights and universal rights, even though liberties conflict with some East Asian values.

The first step here is to develop an argument that shows that liberties are East Asian rights. This argument is similar to Argument 4 in Chapter 3, section 3.5. The only difference is that Argument 4 focuses on physical securities, while the argument here focuses on liberties. The argument is as follows:

Argument 6

(1) X is an East Asian right if X is an interest of East Asians (i.e., the right-holders) that is weighty enough to place others under some duty.

(2) X is such an interest if X is a fundamental human good in East Asian cultures.

(3) X is such a fundamental human good if X is a minimal value in East Asia.

(4) X is a minimal value if (i) X is embedded in some maximal theories in East Asian cultures and (ii) X is a minimal moral demand.

(5) X is embedded in some maximal theories of East Asian cultures if it is possible to develop a maximal theory of X in East Asian cultures.

(6) X is a minimal moral demand if X is an essential necessity of dignity.

(7) It is possible to develop a maximal theory of liberties in the theoretical Confucian tradition.

(8) Liberties are essential necessities of dignity.

(9) (Conclusion) Liberties are East Asian rights.

This argument is similar to the argument I defended in chapter 3. They are similar in terms of the cultural justification of rights and the idea that both physical securities and liberties are minimal values. We get premises (1) and (2) from the cultural justification of rights. Premises (1) to (3) together tell us that if liberties are minimal values, then liberties are also East Asian rights. In chapter 3, we have used exactly the same reasoning to explain why physical securities are East Asian rights. In other words, the idea here is that physical securities are East Asian rights because physical securities are minimal values; if liberties are also minimal values, then by the same reasoning, liberties are also East Asian rights.

Since we have discussed Walzer's idea on physical securities, let me also begin the discussion of liberties from his idea. Walzer argues that physical securities are minimal values. Does Walzer also think that liberties are minimal values? Unfortunately, it seems that the answer to this question is complicated. Walzer argues in his *Just and Unjust Wars* that "individual rights (to life and liberty) underlie the most important judgments that we make about war," and then he argues further that,

"It is enough to say that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world" (Walzer, 1977, p. 54). Walzer also argues elsewhere that life, liberty, and subsistence are all human rights (Walzer, 2007, pp. 251-263). Some scholars, such as Orend, argue that Walzer's just war theory is about some minimal values (Orend, 2002, p. 76), and individual rights to life and liberty are also recognized as minimal values (Orend, 2000, pp.35-37). However, it is not clear what "individual rights to life and liberty" are. Are they also rights to civil and political liberties? Or are they simply some rights to physical securities, such as liberties against slavery or torture? It seems that Walzer has not provided a clear answer.[97] Therefore, it is hard to use his idea to determine whether liberties are minimal values or not.

I argue that liberties are minimal values in another way. Premise (4) here tells us how liberties can be minimal values. Following the reasoning of the argument, our real concern is whether premises (7) and (8) are true. If they are both true, then liberties are minimal values. If liberties are minimal values, then the conclusion is also true, i.e., liberties are East Asian rights. So, I need to discuss premises (7) and (8) in depth.

It is not easy to defend these premises. Premise (7) says that liberties can be somehow related to Confucianism, while premise (8) says that liberties are essential necessities of dignity. While both sides in the East and West debate on human rights

[97] It is not hard to see that "the individual rights to life and liberty" include physical security rights. But it is unclear whether civil and political liberties are also in the list. Bell, for example, considers that liberties are maximal and Western, and so liberties are not minimal and universal. Bell thinks that he borrows Walzer's idea. Does Walzer really think that civil and political liberties are maximal?

basically agree that physical securities are East Asian rights (and universal rights), they disagree on whether liberties are East Asian rights. It turns out that they disagree on how liberties are related to Confucianism, and they also disagree on whether liberties are so essential. Therefore, the defense for liberties (i.e., liberties are East Asian rights) is more complicated than the defense for physical securities. For example, people generally agree that physical securities are essential necessities of dignity, and hence in the last chapter, I did not focus a lot on why physical securities are essential necessities of dignity. But people disagree on whether liberties are also essential necessities of dignity. Therefore, I need to spend more effort on defending such a view by defending premises (7) and (8).

I shall discuss each of these premises in detail in the following two sections. I shall discuss these premises in a reverse order; that is, I shall discuss premise (8) in section 4.3 and then premise (7) in section 4.4. If both of these two premises are true, then by the inference of Modus Ponens, we can reach to the conclusion that liberties are East Asian rights.

Section 4.3 Liberties as Minimal Moral Demands

An essential necessity of dignity, as I have argued in chapter 3, is a minimal threshold of human life, which is a minimal moral demand. Physical securities are essential necessities of dignity. The absence of physical securities guarantees the absence of dignity. Therefore, it is not so controversial to claim that physical securities are essential necessities of dignity. Liberties, on the other hand, are more controversial. Can we apply the same reasoning to liberties? Are liberties essential

necessities of dignity? In this section, I am going to argue that they are essential necessities of dignity. I first introduce some arguments from different philosophers. These philosophers independently argue why liberties are important. After introducing their arguments, I put their points together and argue that liberties are essential necessities of dignity.

The first argument is from Henry Shue (1996). Shue argues that liberal rights are "everyone's minimum reasonable demands upon the rest of humanity" (Shue, 1996, p. 19) because they are basic rights. Basic rights are basic "only if enjoyment of them is essential to the enjoyment of all other rights" (Shue, 1996, p. 67). Shue also discusses the relationship between physical security rights and liberal rights. He writes:

> Not only does the enjoyment of rights to some liberties depend upon the enjoyment of security and subsistence, but the enjoyment of rights to security and subsistence depends upon the enjoyment of some liberties…And if, as I will now try to show, the enjoyment of some liberties is an essential component of enjoying security and subsistence as rights, then one also has equally basic rights to those liberties." (Shue, 1996, p. 70)[98]

Shue then argues why liberties are so important to physical security rights and subsistence rights (Shue, 1996, pp. 71-87).[99] In other words, liberties are important because their rights are essential to the enjoyment of all other rights, including

[98] Shue discusses liberties to political participation in Shue (1996), pp. 71-78.

[99] For the sake of the argument, I shall ignore subsistence rights in our discussion.

physical security rights. At least a part of his argument is empirical because Shue uses some empirical evidence to show that liberties are essential to other rights (e.g., Shue, 1996, pp.71-78).[100] In other words, Shue argues that liberties or liberal rights are empirically essential to other rights.

This shows that liberties are relevant to dignity in the following ways. First, as I have argued in chapter 3, physical securities are essential necessities of dignity. If Shue is correct, then liberties are at least indirectly important to dignity because the enjoyment of physical security rights depends upon the enjoyment of liberties and their rights. We may say that liberties are indirectly essential to dignity in this sense. Second, many human rights documents say that human rights are derived from dignity. If liberal rights are basic rights, then liberal rights are also essential to all human rights to dignity. Shue's idea alone cannot show that liberties are essential necessities of dignity, but his idea can support what I want to argue in this section. After I introduce the arguments from other philosophers, I discuss how to combine all of their points together and show that liberties are an essential necessity of dignity.

The second argument is from Allen Buchanan (1989, 2004). Buchanan also argues that cultural values are important to the interest-based justification of rights (e.g., Buchanan 1989, pp. 878-880; 2004, pp. 152-155). But, he argues further that values of culture or community will be preserved in a better way if people have liberal rights (Buchanan, 1989, pp.865-871). As he argues, liberties and their rights "allow individuals to partake of the alleged essential human good of community by protecting existing communities from interference from without and by giving

[100] See also Li (2006), pp. 162-165 & 243n22 for more details.

individuals the freedom to unite with like-minded others to create new communities" (Buchanan, 1989, p. 858). In other words, liberties are important because liberal rights protect community or cultural values. For the purpose of our discussion, all we need to know is that this implies that liberties and liberal rights protect East Asian cultures.

The third argument is from Amartya Sen (1999).[101] Sen has developed a famous argument on the relationship between famine and democracy. Roughly, he argues that famines do not occur in democratic countries. His argument is much more complicated than this general claim, but what I want to focus on here is how he emphasizes the importance of liberties in his argument. He argues for the causal relationship between civil and political liberties and the avoidance of famine. For example, he argues that the freedom of information exchange is essential for the avoidance of famine. He discusses "the Great Leap Forward" period in China (around 1959-1962) as an example. In that period, a widespread famine caused up to thirty millions of deaths. Sen argues that a cause of this famine is the lack of democracy (especially liberties) in China. He even quotes the Chinese leader, Mao Zedong, to support his claim. Sen writes, "Interestingly enough, even Chairman Mao, whose radical hopes and beliefs had much to do with the initiation of, and official persistence with, the Great Leap Forward, himself identified the informational role of democracy, once the failure was belatedly acknowledged" (Sen, 1999, p. 182).[102] In a

[101] Sen has developed his own theory of human rights (e.g., Sen, 2004). He has also replied to the Asian values debate (e.g., Sen, 1997). Here I only focus on his idea on the importance of freedom.

[102] Sen cites the following words from Mao to support his view. Mao writes, "Without democracy, you have no understanding of what is happening down below; the situation will be unclear; you will be unable to collect sufficient opinions from all sides; there can be no communication between top and bottom; top-level organs of leadership will depend on one-sided and incorrect material to decide

word, Sen emphasizes the importance of liberties (especially freedom of information exchange, freedom for political participation, etc.) because he thinks that liberties are essential to the avoidance of famine.

The last argument is from Michael Doyle (1983a, b; 1997). Doyle generally agrees with Immanuel Kant's *Perpetual Peace* (1795/2006) and argues that democracy promotes peace.[103] More precisely, Doyle argues that what he calls "liberal countries" never or almost never go to war with other liberal countries.[104] Liberal countries are not only countries with universal suffrage, but also holding a basic principle, which is "the importance of the freedom of the individual." As he writes, "above all, this is a belief in the importance of moral freedom, of the right to be treated and a duty to treat others as ethical subjects, not as objects or means only. A commitment to this principle has generated rights and institutions" (Doyle, 1997, p. 207). He argues that much historical evidence supports his liberal peace proposal. He lists all liberal states from the 18th century to 1990 (Doyle, 1997, pp. 261-264) and international wars from the 18th century to 1980 (Doyle, 1997, pp. 266-267). He concludes that historically, liberal state do not go to war with each other. In a word, Doyle thinks that liberties are important because liberties are essential to the promotion of peace.

---

issues, thus you will find it difficult to avoid being subjectivist; it will be impossible to achieve unity of understanding and unity of action, and impossible to achieve true centralism" (Schram (Ed.), 1974, pp. 277-278)

[103] Kant distinguishes "republic" from "democracy," but Doyle does not make such a difference. For our purpose, it does not matter whether Doyle interprets Kant correctly on this point. See Kant (1795/2006), pp. 74-78 and Doyle (1997), pp. 251-300.

[104] Doyle also notices that although empirically liberal countries are peace-prone to each other, they are war-prone to non-liberal countries (e.g. Doyle, 1997, pp. 269-277)

I only introduce these arguments briefly because not every part of their arguments is relevant to our discussion. The focus here is that each of them tells us an importance factor of liberties. Let me summarize these factors here:

(1) Shue suggests that liberties (and their rights) are essential to the enjoyment of other rights (including physical security rights).
(2) Buchanan suggests that liberties are essential to the promotion of cultural values (including values in East Asian cultures)
(3) Sen suggests that liberties are essential to the avoidance of famine.
(4) Doyle suggests that liberties are essential to the promotion of peace.

Liberties are "essential" to all of these factors in the sense that liberties are necessary causal and empirical conditions for these factors, and it is impossible or unlikely to have these factors without liberties. The absence of liberties causes the absence of these factors as well. Notice that this relationship is an empirical relationship. Liberties are empirically necessary for these factors.[105] The absence of liberties will have the consequences of the absence of these factors. I have no reason to reject any of this empirical evidence. Therefore, I simply assume that their empirical findings are accurate, and if their empirical findings are accurate, then liberties do have these consequences (i.e., essential to these factors).

All the factors listed above (the enjoyment of physical security rights, the promotion of peace, etc.) are important because they are also essential to dignity. That

[105] Similar to what I have discussed in chapter 3, the terms "possibility" and "necessity" in our current discussion do not refer to something so strong as logical possibility or analytical possibility. They are simply empirical possibility and empirical necessity.

is, no one can really have a dignified life without these factors. For example, one can easily lose his or her dignified life if there is a widespread famine in the society. The above factors are basic or fundamental factors for a dignified life. This is an empirical approach. This approach tells us why liberties are essential necessities of dignity. An essential necessity of dignity is that the absence of such a necessity will cause the absence of dignity. Now, we have already seen that the absence of liberties causes the absence of the above factors, and the absence of these factors causes the absence of dignity. Therefore, the absence of liberties causes the absence of dignity. Again, this reasoning is based on empirical evidence. If we do not have any objection to argue against this reasoning or the empirical evidence behind it, then we may conclude that liberties are essential necessities of dignity. In a word, based on the above empirical evidence, we may conclude that liberties are minimal moral demands.

Although this conclusion mainly relies on empirical evidence, this is already good enough in the East and West debate on human rights because Bell's approach also relies on empirical findings. For example, he argues that liberties empirically conflict with some East Asian cultural factors (see my discussion on his examples in chapter 2, section 2.5). For convenience, we may simply think that the empirical approach is acceptable, or it is considered as an assumption in the debate. Therefore, in the East and West debate on human rights, it is acceptable to use some empirical findings to argue that liberties are minimal moral demands.[106]

[106] This is also why I avoid using or discussing any non-empirical approach (such as Kantian approach) in the East and West debate on human rights. Bell and others would probably think that something such as Kant's philosophy is too Western. It is arguable whether Kant's philosophy is really too Western, but this is another debate. Since my arguments are already good enough to refute Bell's

But we need to reply to an important objection to the above explanation. One may wonder if I am simply using a "Western perspective" to construct this explanation. One may even point out that most (if not all) of the scholars and their arguments I discussed above are from the West.[107] Some may think that their arguments may only apply in the West but not the East, and hence liberties may only be essential necessities of dignity in the West but not in the East.

I have two replies to this objection. My first reply is that the arguments and empirical evidence from these scholars cannot be simply considered as "Western perspectives." I do not deny that these arguments are originated from the West. However, as I have discussed in chapter 2, section 2.4, the origin of an argument (or the nationality of a scholar) cannot be a reason to determine whether an argument is Western or not. For example, Angle, Bell, Walzer, etc., are all from the West, but their arguments are not merely "Western perspectives." An argument is a Western argument when it focuses only on the Western cultures but not other cultures (such as East Asian cultures). So, the real question is: Do these arguments only focus on the Western cultures?

It is quite obvious that Sen's and Doyle's arguments do not focus only on the Western cultures. For example, Sen discusses famine in China (e.g., Sen, 1999, pp. 181-182). Doyle has collected a set of data of the international wars occurred between 18th century to 1980 (e.g., Doyle, 1997, pp. 266-267), and his data includes the international wars occurred in East Asia. In other words, they collect the empirical

---

approach, and my arguments are also based on Bell's own assumption (i.e., the empirical approach), we do not need to start another debate in this project.

[107] Shue, Buchanan, and Doyle are all Westerners. Sen is an Indian, but he has spent a lot of time in the Western world.

evidence globally. One may argue whether their arguments are good or bad, but their arguments are not only good in the West but bad in the East. Shue's and Buchanan's arguments are more philosophical and they do not discuss a lot of empirical evidence in detail.[108] But their arguments do not just accept Western cultures and deny East Asian cultures. If their arguments are good, then they are good in both East and West; if their arguments are bad, then they are also bad in both East and West. In general, all of these four arguments do not argue against or deny East Asian cultures. They simply argue that liberties have some good consequences, and this applies globally rather than applies only in the Western world.

My second reply to the above objection (i.e., the arguments from Shue, Buchanan, Sen and Doyle are only Western perspectives) is that their views only support one premise but not the whole Argument 6. I am not arguing for a simple inference that their arguments are good and so liberties are East Asian rights. Instead, I am using some parts of their arguments to support only one premise (premise (8)). Premise (8) focuses on whether liberties are essential necessities of dignity. These arguments provide some empirical evidence, which show that liberties have some good consequences, and then we can use them to support premise (8). Although the reasons to support premise (8) do not emphasize East Asian culture, they do not emphasize Western cultures as well. Indeed, none of these reasons denies East Asian cultures. As I shall argue in the next section, Argument 6 in general is also related to East Asian cultures. It is just that premise (8) alone does not emphasize the importance of East Asian cultures. However, this does not mean that the reasons I use

[108] Note that they do mention East Asia and East Asian cultures in their writings. For example, Shue mentions the Asian values debate (Shue, 1996, p. 66). Buchanan also mentions China and Asia (e.g. Buchanan, 2004, p. 77 & 353). But their arguments do not focus on these empirical evidences.

here are Western perspectives, nor does this mean that Argument 6 in general denies the importance of East Asian cultures.

In summary, I have argued why liberties are minimal moral demands in this section. Liberties are minimal moral demands because they are empirically important to dignity. This explains why premise (8) in Argument 6 is true. In the next section, I shall discuss premise (7) in Argument 6.

Section 4.4 Liberties and Confucianism

Premises (5) and (7) in Argument 6 are relevant to East Asian cultures. I have already argued for the reason to support premise (5) in chapter 3, section 3.3. That is, minimal values are embedded in maximal theories if the minimal value can be found or developed in some maximal theories. In this particular case, we need to know whether liberties can be found or developed in a maximal theory in East Asian cultures. Premise (7) serves this purpose. If this premise is true, then it is possible to develop liberties in the theoretical Confucian tradition. The defense to premise (7) in Argument 6 is quite similar to the defense to premise (7) in Argument 4. Similar to physical securities, liberties are also embedded in the theoretical Confucian tradition but not in the practical Confucian tradition. I argue that both physical securities and liberties can be found or developed in the theoretical Confucian tradition. To do so, I need to discuss the relationship between liberties and Confucianism in detail.

Let me begin the discussion from some objections to Bell's idea. I have discussed in chapter 2 that Bell argues that liberties conflict with some East Asian

cultural factors (especially some values in Confucianism). Do liberties always conflict with Confucianism? I am going to discuss some arguments that show that liberties do not conflict with some other East Asian cultural factors. Indeed, some arguments even show that liberties are important values in some East Asian cultures. Then there is a question: Which East Asian cultural factors should be selected? This question is quite similar to the question we have discussed in chapter 3, section 3.2. In other words, both physical securities and liberties are treated differently in different parts of East Asian cultures, and hence both securities and liberties face the same problem.

In chapter 2, I have introduced some philosophers who share similar views with Bell on the cultural justification of rights. They all believe that East Asian cultures play or should play some roles in the justification of rights. However, not all of them believe that liberties conflict with East Asian cultures. Some of them even believe that at least some liberties are East Asian rights. Now let me discuss the works from some of these philosophers.

Stephen Angle (2002) argues that there is a distinctive discourse on rights (and human rights) in China. His arguments rely heavily on historical research. He does not think that liberties are an alien concept in China; he believes that the situation is quite the opposite. He discusses different concepts of liberties in the history of Chinese philosophy. For example, he quotes and analyzes a Chinese scholar's argument on freedom in Confucianism and Daoism.[109] He also discusses some important debates on freedom and human rights in the history of China. For

[109] The scholar Angle discussed is Liu Shiu Pei. The discussion is about how to understand freedom ("ziyou") in *Zhuangzi* (and Daoism) and Confucian virtues such as ren and yi in Confucianism. See Angle (2002), pp 162-175, especially p. 170, for details.

example, he discusses the debate on "freedom and popular authority" or "freedom and popular rights" in the 19th century in China (Angle, 2002, pp. 101-139). Angle also introduces some early cross-cultural dialogues on liberties and human rights. For example, he discusses how John Dewey affected the debate of freedom and rights in China during and after Dewey's visit in China in 1919 (Angle, 2002, pp. 194-200; see also pp.178-193). Although Angle mainly focuses on China, he also discusses other East Asian countries. For example, he discusses the discourse of freedom and rights in Japan in the 19th century (Angle, 2002, pp. 115-123).[110] Based on his historical research in China and East Asia, he denies that East Asian cultures put greater stress on social and economic rights than civil and political rights (Angle, 2002, pp. 239-249).[111] For the purpose of this section, I only need to introduce Angle's arguments briefly. My purpose here is not to discuss his arguments in detail. I simply want to point out that liberties are not an alien concept in the history of East Asian philosophy.

Angle is not the only one who argues for this point. For example, de Bary also argues for a similar view. He writes:

> Both in early China and in later imperial China the Confucians emphasized the benefits of free political discussion and open criticism of those in power…We have here some of the elements of free speech and glimpses of

[110] In addition to Angle (2002), Angle & Svensson (2002) have also edited a collection of human rights documents in 1900-2000 in China. Svensson shares a similar view with Angle that historically, Chinese culture affirms freedom and human rights. See Svensson (2002) for details.

[111] Bell argues against Angle's claim. Bell thinks that East Asian cultures put greater stress on social and economic rights than civil and political rights. See Bell (2004), pp. 397-400.

> how a civil society might be conceived in China. It would be easy to cite other evidence in Chinese history of a Confucian tradition that supports and protects liberal human values—especially in schools and ruling councils—but usually defines them in terms of consensual rites, not legal compulsion. (de Bary, 1998a, p.53).[112]

Both Angle and de Bary emphasize the importance of East Asian cultures in the human rights debate, but they do not think that liberties were alien in the history of East Asian cultures. In other words, their arguments show that liberties and East Asian cultures (such as Confucianism) were not so distant in history. This conclusion corrects the common (but wrong) assumption that liberties are completely foreign to East Asia. However, the application of this conclusion is very limited. The arguments from Angle and de Bary are mainly related to the history of East Asia. We may use these arguments as supplemental materials for our discussion here, but these arguments do not directly show us whether liberties conflict with Confucian values. In other words, they do not directly reply to Bell's arguments. In the following paragraphs, I shall discuss some arguments that focus directly on whether liberties conflict with Confucian values.

Let me discuss freedom of expression as an example. Joseph Chan argues that Confucianism plays important roles in the human rights debate (Chan, 1999, pp.212-227), and he discusses how Confucianism can affect the rights to freedom of expression. He argues that only some but not all liberties are compatible with

[112] See also de Bary (1985), de Bary (1998b), and de Bary & Tu (Eds.) (1998).

Confucian values. When he discusses freedom of expression, he writes, "If freedom of expression is generally conducive to …the pursuit of *ren*, there is no reason why the Confucian perspective would reject it outright" (Chan, 1999, p. 229. His italics). In general, Chan believes that Confucianism can accept the liberties that can promote ren or other Confucian values. However, he also argues that Confucianism only accepts freedom of "good" expression but denies freedom of "bad" expression. He writes, "We have rights only insofar as we use them to promote the ethical life of *ren*. The Confucian perspective would find it hard to recognize the rights of people who would use them to promote the bad instead of the good" (Chan, 1999, p. 230. His italics). He extends this view to the justification of rights, and concludes that Confucianism denies that "individuals have the moral right to say or do debased things" (Chan, 1999, p. 232). In summary, he believes that only freedom of good expression would be allowed in Confucianism; Confucianism does not tolerate any bad expression because freedom of bad expression conflicts with Confucian values.

It seems that his argument is not clear enough; it is not clear how to decide whether an expression is good or bad. Chan uses pornography as an example of bad expression, and he argues that there is a cultural difference between the East and West on pornography. That is, he believes that Western liberalism affirms the freedom to pornography while Confucianism denies such a freedom (Chan, 1999, pp. 230-232 & 234). But pornography is also controversial in the West.[113] It is hard to see why the debate on pornography becomes a cultural debate between liberalism and Confucianism. Even if there could be such a cultural debate, it still would not explain

[113] For example, see the debate on pornography between Altman and Brison in Cohen & Wellman (Eds.) (2005), pp.221-250.

what freedom to good expression would be accepted and what freedom to bad expression would be denied by Confucianism.[114] Nevertheless, Joseph Chan at least shows us that freedom of expression does not *always* conflict with Confucianism.

Some scholars explain the role of liberties in Confucianism with better arguments. For example, Seung-hwan Lee introduces Berlin's positive liberties and negative liberties to the discussion of liberties and Confucianism (Lee, 1996).[115] Roughly, Lee argues that Confucianism focuses more on positive liberties than negative liberties. For example, Lee writes, "The Confucian conception of freedom consists in self-overcoming and self-realization. It derives from the desire of human beings to be able to make their own decisions. Confucians, as proponents of positive freedom, want their lives and decisions to depend on the higher-self, not on the lower-self. According to the Confucian self-realization view of freedom, mere absence of external constraints cannot be accepted as a sufficient condition of being free" (Lee, 1996, p. 371). Lee's explanation is better than Chan's explanation because Lee tells us more on how liberties (as positive liberties) are involved in Confucianism.

Although the above arguments mainly focus on freedom of expression, their reasoning generally applies to all civil and political liberties.[116] But my intention here

---

[114] In another article (Chan, 2002), Chan explains the limitation of liberties in Confucianism by discussing the East and West cultural differences on "moral autonomy". His argument in Chan (2002) is more precise than his argument in Chan (1999), but the problem of the distinction between good expression and bad expression remains unsolved.

[115] See also Lee (2002), In addition to Lee Seung-Hwan, T'ang Chun-I and He Xinquan also express a similar view in Chinese language. See T'ang (1988); T'ang (1974), pp. 323-381 and He (1996), pp.100-108, 176-194 for further detail. For Berlin's distinction on positive liberty and negative liberty, see Berlin (1969/1997).

[116] Bell and Chan have discussed political liberties (e.g. freedom to vote) when they discuss democracy and meritocracy. See Bell (2000), pp.106-172; Bell (2006a), pp. 152-179, and Chan (2007). Some philosophers believe that Confucianism should promote political liberties and democracy. For example, see T'ang (1988), pp. 530-535.

is not to evaluate these arguments in detail; my intention is to argue that they all share an important point for our discussion—they show that liberties do not always conflict with Confucian values. Joseph Chan argues that freedom of good expression (no matter what it means) should not be rejected by Confucianism. Lee even argues that Confucianism emphasizes positive freedom. All of these points suggest that at least some liberties do not conflict with some Confucian values.

As I have discussed in Chapter 2, section 2.5, Bell lists and discusses some situations in which liberties conflict with values in Asia and the Confucian tradition. When we compare Bell's arguments with the arguments I discussed above, we will find that Bell has not shown us the whole picture of the relationship between liberties and Confucianism. Assuming that Bell has accurately described those conflicts between liberties and Confucianism, we can still conclude from the above arguments that sometimes Confucianism emphasizes the importance of liberties. We can roughly divide this difference into the theoretical Confucian tradition and the practical Confucian tradition. On the one hand, Angle, de Bary, Chan, Lee and others focus more on the philosophical or theoretical part of Confucianism. They analyze concepts in the Confucian philosophy, and argue about the relationship between these concepts and liberties. On the other hand, Bell focuses more on the practical situations. He discusses politicized Confucianism and popular Confucianism in East Asia. For example, he discusses the political systems in Mainland China and Singapore (e.g., Bell, 2000, pp. 106-170, 213-218, 236-270, 279-334; 2006a, pp.152-179), and he

discusses the cultural habit in South Korea (e.g., Bell, 1996, pp.664; 2000, pp. 92-93).[117] All of them belong to the practical Confucian tradition.

As mentioned at the beginning of this section, the question of liberties we are discussing here is quite similar to the question of physical securities we discussed in Chapter 3, section 3.2. While the theoretical Confucian tradition inclines to accept that physical securities and liberties are important values, the practical Confucian tradition inclines to deny that physical securities and liberties are important values. This is a problem for Bell's arguments. Bell thinks that liberties are not universal rights because liberties are not East Asian rights. Liberties are not East Asian rights because liberties are not fundamental human goods in East Asia; and liberties are not fundamental human goods in East Asia because liberties conflict with some Confucian values. Now it is also clear what Bell argues is that liberties are not accepted in the practical Confucian tradition. However, the theoretical Confucian tradition treats liberties differently. This means that Bell's reason to deny liberties as universal rights is not conclusive. So, we may ask the following question: Which Confucian tradition, the theoretical or the practical, is more important for our human rights debate?

Bell has a reply to this problem. He wonders why we should care about the part of Confucianism that is compatible with liberties. He realizes that some philosophers argue that liberties are essential to some good consequences. He also realizes that some scholars try to develop a Confucian theory for liberties. But he challenges them by arguing that all of them are too "Western."

[117] I have discussed these examples in chapter 2, section 2.5.

For example, as I have discussed in the last section, Buchanan thinks that liberties are essential to the protection and promotion of cultural values (Buchanan 1989). Bell thinks that Buchanan's view is that only cultural values that are compatible with liberties can be protected and promoted by liberal rights. Bell argues that this is a Western and liberal view. He writes:

> This is the view that liberal individual rights in fact protect and facilitate genuinely communal ways of life … But this is a peculiar response—liberal individual rights seem alive and well in contemporary Western societies, and yet atomistic tendencies seem to be getting stronger as well, communal relationships not coming about as a happy by-product of individual rights any more than socially desirable results have inevitably come about as a result of the (now largely lost) liberal faith in the unhampered workings of the free market. (Bell, 1993, pp. 12-13)

We may understand Bell's argument as follows. Bell believes that "atomistic tendencies" and "communal relationships" are two kinds of cultural values, and they are incompatible. Liberal rights only promote the former but not the latter. In other words, Buchanan merely shows that liberal rights can protect or promote cultural values that are compatible with liberties. Bell thinks that Western liberalism is "atomistic" while East Asian cultures (especially Confucianism) are "communal" (e.g., Bell, 1993, pp. 7-13; 2004, pp. 35-37; 2009). Therefore, Buchanan's argument

is a Western argument because it does not show that liberties and liberal rights can protect or promote East Asian cultures.[118]

The following passage from Bell may express his idea more clearly. Bell uses the term "Liberal Confucianism" to refer to those views that try to develop a Confucian theory of liberties. He writes:

> One such is "Liberal Confucianism" promoted largely by scholars outside of mainland China. According to "liberal Confucians," Confucianism need not conflict with values such as human rights and democracy; it can be used to promote those values. But that's also the problem: liberalism is used as the moral standpoint to evaluate Confucianism. The parts of Confucianism that are consistent with liberalism should be promoted, and the parts that conflict should be rejected. But this sort of approach doesn't take Confucianism seriously as a tradition that can enrich and challenge the liberal tradition. Is it not possible that Confucianism can offer a compelling alternative to Western liberalism? Liberal Confucianism tends to reject such possibilities and, not surprisingly, is not popular among Chinese intellectuals. Confucianism is not just a vehicle to promote liberal values. (Bell, 2010a, pp. 92-93)

[118] An-Na'im also argues how freedom of speech is essential to the guarantee of cultural norms (An-Na'im, 1999, pp. 151-157). The reasoning from An-Na'im is basically the same as the reasoning from Buchanan. Bell has a similar challenge to An-Na'im as the one he challenges Buchanan. See Bell (2000), p. 88 for detail.

In this passage, Bell seems to assume that liberties (or "liberal values") are only values in Western liberalism. Although he realizes that liberties are compatible with some parts of Confucianism (e.g., the theoretical Confucian tradition, or what he calls "Liberal Confucianism"), he denies that we should choose these parts of Confucianism. It appears that he assumes that this is a choice between Western liberalism and Confucianism. He also thinks that Western liberalism is the real moral foundation of Liberal Confucianism; Confucianism is only a supplement and is not important in Liberal Confucianism. Therefore, Liberal Confucianism is still only a Western perspective; Liberal Confucianism does not emphasize the East Asian cultures enough, especially Confucianism.

Both of the above examples show that Bell denies the importance of liberties in East Asian cultures, especially Confucianism. He thinks that we should not choose the theoretical Confucian tradition simply because the theoretical Confucian tradition is consistent with liberal values. However, his argument actually contains several problematic assumptions. He assumes that this is a problem between East Asian cultures and Western cultures (especially between Confucianism and Western liberalism). He assumes that we should not use Western values to evaluate Confucianism. He also assumes that liberties are merely Western values. In the following, I shall explain why none of these assumptions has a solid ground.

First, the problem we are discussing here is not exactly a problem between the East and the West, or Confucianism and Western liberalism. This is more like an internal conflict between different parts of Confucianism. The conclusion here is that liberties are more important in the theoretical Confucian tradition than in the practical

Confucian tradition. This conclusion is independent from Western liberalism. No matter which Confucian tradition we choose, theoretical or practical, we are still choosing between different parts of Confucianism. It is simply not a selection between Confucianism and Western liberalism whatsoever.

Second, I cannot see any ground to support that we should not use any Western value to evaluate or even to challenge Confucianism. In the history of Confucianism, Confucianism always faces many challenges from others. Sometimes, Confucianism even changes its concepts and theories in response to the challenges. For example, Buddhism once challenged Confucianism a thousand years ago. In response to the challenges from Buddhism, the first-stage Confucianism has developed into the second-stage Confucianism (or Song-Ming Confucianism), which absorbed some Buddhist values and concepts into its own theory.[119] Now contemporary Confucianism is facing the challenge from the West. Why should we assume that Confucianism should not be changed in response to the challenge from the West? In a word, there is nothing wrong with evaluating Confucianism by some Western values.

Indeed, it seems that Bell is contradicting himself on this matter. He favors some parts of Confucianism, especially politicized Confucianism in the practical Confucian tradition. In order to put Confucianism back into the mainstream of political philosophy in China, he suggests some possibilities to combine Confucianism with socialism. He calls it "Left Confucianism" or "Social Confucianism" (Bell, 2009; 2010a, b). However, as Walzer points out, "Left

[119] For detail, see Liu (1998), pp.113-130.

Confucianism, as Bell wishes for it, seems heavily dependent on Western ideologies—at least as dependent as the 'liberal Confucianism' that he criticizes" (Walzer, 2010, p. 100). In other words, Bell's approach is simply another way to use Western values (socialism) to evaluate Confucianism. Therefore, he is contradicting himself. One possible way for him to avoid this contradiction is to argue that socialism has already developed uniquely in China, and so we may consider it as "Chinese socialism" rather than "Western socialism." But, if socialism can be developed in China, why can't liberalism?

Despite arguing that liberties are Western values, Bell does not provide any other reason against the promotion of liberties in East Asia. But now it is clear that the problem is not whether liberties are Western values. Indeed, liberties are also important in some East Asian cultures (e.g., the theoretical Confucian tradition). The problem is whether we have any reason to reject liberties in East Asia. It seems that Bell cannot successfully provide any reason to reject liberties in East Asia. He also has not shown that liberties are not important in *all* parts of Confucianism (i.e., liberties are at least important in *some* parts of Confucianism).

Let me summarize what I have discussed so far. Bell thinks that liberties conflict with some values in the practical Confucian tradition. Even if we assume that he is correct, it still does not mean that liberties conflict with *all* Confucian values. On the other hand, some scholars (e.g., Angle, de Bary) argue that we can find the concepts of liberties in the ancient Chinese culture, especially in Confucianism. Some scholars (e.g., He, Lee, and T'ang) even argue that there is a Confucian maximal theory of liberties, or at least we may develop one. So, it is safe to conclude that

liberties are at least important in *some* maximal theories in the theoretical Confucian tradition.

We can use this important conclusion to support premise (7) in Argument 6. This premise does not say that liberties are important to all East Asian cultural factors. It only says that it is possible to develop a maximal theory of liberties in Confucianism. In other words, what is needed here is a *possibility* to link liberties with *some* parts of Confucianism. The works from the scholars discussed above have sufficiently proved what is needed. In other words, their works have already shown that liberties can be found and developed in the theoretical Confucian tradition; it is possible that liberties are important values in some parts of Confucianism. With this possibility, we can conclude that premise (7) is true.

In chapter 3, I have argued that even though physical securities also conflict with some values in Confucianism, physical securities are still East Asian rights because physical securities meet all the conditions in Argument 4. Now, the same reasoning applies to liberties as well. As I have already argued in the last section, liberties are essential necessities of dignity, and so liberties are minimal moral demands (i.e., premises (6) and (8)). This is an independent reason for the promotion of liberties in East Asia. And we now know that liberties can be found or developed in the theoretical Confucian tradition. In other words, liberties meet all the conditions in Argument 6. Therefore, we can reach to the conclusion that liberties are East Asian rights. This argument also shows that liberties are still East Asian rights even if liberties conflict with some East Asian cultural contexts. This is why it is reasonable

to select the theoretical Confucian tradition and reject the practical Confucian tradition.

Section 4.5 Are Liberties Universal Rights?

Bell thinks that liberties are not universal rights because liberties are not East Asian rights. Now, I have already developed an argument that shows that liberties are East Asian rights. However, it does not imply that liberties are universal rights. We need another argument that shows that liberties are universal rights. In this section, I argue whether liberties are also universal rights. My conclusion is a conditional statement, which is: If physical securities are universal rights because they are minimal values, then liberties are also universal rights. I explain the significance and weakness of this argument, and I also explain the role it plays in the East and West debate on human rights.

The argument I am going to discuss here is similar to Argument 5 in chapter 3, section 3.6. The argument is as follows:

Argument 7

(1) X is universal right if X is an interest of all individuals (i.e., the right-holders) that is weighty enough to place others under some duties.

(2) X is such an interest if X is a fundamental human good in all cultures.

(3) X is such a fundamental human good if X is a minimal value.

(4) X is a minimal value if (i) X is embedded in some maximal theories of all cultures and (ii) X is a minimal moral demand.

(5) X is embedded in some maximal theories of all cultures if it is possible to develop a maximal theory of X in all cultures.

(6) X is a minimal moral demand if X is an essential necessity of dignity.

(7) It is possible to develop a maximal theory of liberties in all cultures.

(8) Liberties are essential necessities of dignity.

(9) (Conclusion) Liberties are universal rights.

Argument 7 is a valid argument; if all the premises are true, then it is a sound argument, and hence the conclusion is also true as well. Are these premises true?

It is quite obvious that Argument 7 resembles Argument 5. Indeed, premises (1) to (6) are exactly the same in both arguments. The only difference between them is that Argument 7 is about liberties but not physical securities. This means that I have already discussed most of these premises. Premises (1) to (6) are the same in Argument 5, and premise (8) is just the same in this argument and in Argument 6. In other words, I have discussed these premises in chapter 3 and section 4.3 in this chapter already. The only one left is premise (7). Premise (7) is probably the most controversial premise in Argument 7.

Premise (7) says that liberties are related to *all* cultures in the world. More precisely, it says that liberties can be found or developed in some (i.e., at least one) maximal theories of every culture. As I said in chapter 3, we may accept some exceptions from minor cultures, but at least we want that liberties are related to

almost all major cultures in the world. This is what Walzer says about physical securities (Walzer, 1987, pp. 23-24. See also chapter 3, section 3.6); liberties are the same here as well.

Let me list what cultures I have discussed so far. I have already discussed East Asian cultures (especially Confucianism). It is also not controversial to assume that liberties are important in Western cultures (especially liberalism). Some scholars argue that liberties are important in some other cultures as well. For example, Charles Taylor (1999) argues that liberties are compatible with Buddhism in Thailand,[120] and An-Na'im (1995) argues that liberties are important in Islam. However, there are still many other cultures in this world, and I have not discussed all of them. Indeed, it is also quite obvious that I cannot discuss all major cultures in this dissertation. In a word, it is hard to discuss every culture directly. We need another way to defend premise (7).

It seems that it is possible to defend premise (7) indirectly. I argue for premise (7) in a way that is similar to my discussion of physical securities in chapter 3, section 3.6. Although I cannot prove that premise (7) is absolutely true, I argue that based on some conditions, it is most likely that premise (7) is true.

As I said in chapter 3, although it appears that "every culture" is a very strong requirement, it is actually not so hard to meet this requirement. This is because the real requirement here is that it is *possible* to develop *some (i.e., at least one)* maximal theories in every culture. In other words, the requirement of "every culture" is weakened by a possibility (*it is possible to develop*) and an existential quantifier

[120] I discuss Taylor's view further in chapter 5, section 5.2.

(*some* maximal theories). Indeed, this is how I argued that liberties are related to Confucianism in the last section. Liberties do not need to be found or developed in all maximal moral theories in East Asia; they only need to have a possibility to be found or developed in the theoretical Confucian tradition (a maximal moral theory in East Asia). This is only a possibility. It seems that this reasoning can be easily repeated in every other culture. That is, in every culture, if we find that liberties have a possibility to be found or developed in at least one maximal theory, then the requirement is met.

I have discussed in section 4.3 that liberties are minimal moral demands because liberties have many good consequences. According to Shue (1996), liberties are basic rights with respect to all other rights (including physical security rights and subsistence rights). According to Buchanan (1989), liberties are essential to the protection and promotion of cultural values. According to Sen (e.g., 1999), liberties are essential to avoiding famine. According to Doyle (e.g., 1997), liberties are essential to promoting peace. Based on these consequences, liberties are essential necessities of dignity, and hence liberties are minimal moral demands. Since we already know that liberties have a lot of good empirical consequences and hence they are minimal moral demands, it is reasonable to assume that every culture has at least one maximal moral theory that may be compatible with liberties. It is reasonable to make this assumption because it is most likely that at least some maximal moral theories may prefer those good consequences from liberties. In other words, based on this reasonable assumption, it is most likely that premise (7) (i.e., it is possible to develop a maximal theory of liberties in all cultures) is true.

This is what I call an indirect proof to premise (7). In other words, although I cannot discuss the detail of every culture here, such a reasonable explanation indirectly shows that premise (7) is true. I admit that this is not a conclusive reason. But this is also exactly the same way I argue for physical securities in chapter 3. I try to argue that both physical securities and liberties are minimal moral demands, i.e., they are essential necessities of dignity. Since they are so essential, I argue that it is most likely that they can be found or developed in some maximal theories in every culture. In other words, both premises (7) in Argument 5 and Argument 7 are most likely to be true.

Bell and others think that physical securities are universal rights. I have argued in chapter 3 that physical securities are universal rights because they are minimal values, even though physical securities also conflict with some cultural factors. Now I am simply using exactly the same logic for liberties. In other words, liberties are universal rights because they are also minimal values, and this is exactly the same reason that physical securities are universal rights.

Therefore, it seems that I have at least indirectly showed that liberties are universal rights. I have argued that it is most likely that it is possible to develop some maximal theories of liberties in all cultures (i.e., it is most likely that premise (7) is true). I have also showed that liberties are universal rights in the same way that physical securities are universal rights. In other words, if physical securities are also universal rights because they are minimal values, then liberties are also universal rights because they are also minimal values. I realize that what I have argued here does not absolutely prove that liberties are universal rights. However, I have already

indirectly argued that liberties are also universal rights. More importantly, what I have argued here is already sufficient to refute Bell's "East Asian challenge to human rights." In the next section, I shall explain this point in depth.

Section 4.6 Why is the "East Asian Challenge to Human Rights" not really a Challenge?

In the previous sections, I have argued that liberties are East Asian rights and universal rights. In this section, I summarize these arguments and use them to explain why Bell's "the East Asian challenge to human rights" is not really a "challenge."

The main issue in the East and West debate on human rights is to argue how and why East Asian cultures can affect human rights and in what sense they are affected. Bell himself thinks that "it would be a mistake to assume that nothing of theoretical significance has emerged from East Asia" (Bell, 2006b, p. 266), and he aims to "get beyond the rhetoric that has dogged the human rights debate and identify relatively persuasive East Asian criticisms of traditional Western approaches to human rights" (Bell, 2006a, p. 53). In general, his project, "the East Asian challenge to human rights," begins from "cultural factors can affect the justification of rights" (e.g., Bell 2004, pp. 29), and concludes that we should be "limiting the set of human rights for an East Asian context" (e.g., Bell, 2006a, pp. 73-76). More precisely, he and many others argue for a philosophical account of the cultural justification of rights, and based on such an account, Bell argues further and concludes that only

physical securities are universal rights; liberties are not universal rights because liberties are not East Asian rights. Liberties are not East Asian rights because liberties conflict with some values in the practical Confucian tradition. I have summarized his view on physical securities and liberties into the following statements in Argument 3 (in chapter 2, section 2.5):

(1) X is universal right if and only if X is an interest of everyone (i.e., the right-holders) that is weighty enough to place others under some duty.
(2) X is such an interest if and only if X is a fundamental human good.
(3) Physical securities are fundamental human goods because they are minimal values.
(4) Liberties are not fundamental human goods because they conflict with some East Asian cultural factors (i.e., values in the practical Confucian tradition).

(1) and (2) express the cultural justification of rights, and (3) and (4) are the reasons that physical securities are universal rights (and also East Asian rights), and liberties are not East Asian rights (and hence not universal rights). However, according to my arguments in chapter 3 and 4 (i.e., Argument 4 to Argument 7), the following two statements are also true:

(5) Physical securities conflict with some East Asian cultural factors.
(6) Liberties are also minimal values.

When we put statements (5) and (6) together with the above statements, we can see why Bell's argument is problematic. If physical securities are universal rights because they are minimal values, then liberties are also universal rights because they are also minimal values. If liberties are not East Asian rights because they conflict with some East Asian cultural factors, then physical securities are not East Asian rights as well because they also conflict with some East Asian cultural factors.

In general, Bell has suggested two conditions in "the East Asian challenge to human rights." The positive condition says that X is a universal right (and an East Asian right) when X is a minimal value. The negative condition says that X is not an East Asian right (and hence not a universal right) when X conflicts with some East Asian cultural factors. However, Bell has not discussed which condition is more important, and he does not realize that both physical securities and liberties meet both of these conditions. As I have argued, it seems that he underestimates the importance of the positive condition and overestimates the importance of the negative condition. Therefore, his arguments do not support his conclusion that physical securities are universal rights and East Asian rights but liberties are not East Asian rights and universal rights.

My arguments, on the other hand, show that only the positive condition is important. Argument 4 and Argument 6 focus on East Asian rights. I have argued that X is an East Asian right if X meets all the premises. In other words, my premises are a sufficient condition for X being an East Asian right. I have also argued why X can still be an East Asian right even if X conflicts with some East Asian cultural factors.

In other words, it is possible for an East Asian right to conflict with some East Asian cultural factors. In short, I have argued that if X meets all the premises, then even if X also conflicts with some East Asian cultural factors, X is still an East Asian right.

I have applied this general reasoning to the cases of physical securities and liberties. Although both physical securities and liberties conflict with the practical Confucian tradition, they are quite compatible with the theoretical Confucian tradition. I have argued that both physical securities and liberties are minimal values, and they are embedded in the theoretical Confucian tradition in different ways. Therefore, although both physical securities and liberties conflict with the practical Confucian tradition, they are still East Asian rights.

Arguments 4 and 6 focus on East Asian rights only. They show that both physical securities and liberties are East Asian rights, and the justification of these rights does not undermine the importance of East Asian cultures. If physical securities or liberties are not East Asian rights, then they are not universal rights. This is why we need to confirm that they are East Asian rights. But even if they are East Asian rights, it does not imply that they are universal rights. This is why I also develop Arguments 5 and 7 to argue that physical securities and liberties are probably universal rights as well. The idea of these arguments is that if we apply the same reasoning of Arguments 4 and 6 to all major cultures in the world, then we may be able to show that both physical securities and liberties are universal rights. Since I cannot discuss all major cultures in this project, I can only argue indirectly that physical securities and liberties are universal rights. But it seems to me that it is already sufficient to refute Bell's project "East Asian challenge to human rights."

First, this is because Bell's project is also an empirical approach. It is quite enough to refute his project by indirectly showing that physical securities and liberties are universal rights. Second, this is because Bell also agrees that physical securities are universal rights because physical securities are minimal values. Since I have shown that liberties are also minimal values, according to the logic for physical securities being universal rights, liberties are also universal rights as well. In other words, liberties are as likely as physical securities to be universal rights.

In short, my argument contributes to the East and West debate on human rights in the following ways. First, I have showed that physical securities and liberties are East Asian rights, even though both of them conflict with some East Asian cultural factors. Second, I have also shown that both physical securities and liberties are also universal rights. Therefore, I can conclude that Bell's "the East Asian challenge to human rights" is not really a challenge to the list of human rights because it does not show that liberties are not universal rights.

Section 4.7 Summary and Conclusion

In this chapter, I have constructed some arguments that show that liberties are East Asian rights and universal rights. I have shown that liberties are essential necessities of dignity, and I have shown that liberties do not conflict with all East Asian cultures. Liberties are quite important in the theoretical Confucian tradition, and it is possible to develop some maximal theories of liberties in Confucianism. Therefore, liberties are East Asian rights. I have also explained why both physical

securities and liberties are universal rights. Therefore, Bell is mistaken to claim that liberties are not universal rights because they are not East Asian rights.

But I cannot finish my project here. People argue for different positions in the East and West debate on human rights. Bell's project represents a position that emphasizes the importance of East Asian cultures but denies liberties as universal rights. But Bell has also argued against some positions in other East and West debates on human rights. In the next chapter, I shall discuss these debates between Bell and other philosophers, and I shall also explain how my arguments can contribute to these debates.

Chapter 5: Other Debates on Human Rights

Section 5.1 Introduction

In the previous chapters, I have discussed Bell's arguments and argued against them. Roughly, Bell argues that liberties are not universal rights because they are not East Asian rights. They are not East Asian rights because they conflict with Confucian values. In chapters 3 and 4, I have developed four arguments (Argument 4 to Argument 7); these arguments explain why both physical securities and liberties are East Asian rights and universal rights. In this chapter, I explain further the applications of these arguments. In other words, I explain how these arguments contribute to other debates on human rights.

In this chapter, I first discuss two debates between Bell and other philosophers: the debate between Bell and Charles Taylor and the debate between Bell and Jack Donnelly. Taylor calls his approach "an unforced consensus on human rights" (Taylor, 1999); Donnelly uses some notions in Western philosophy (such as "equal concern and respect," "overlapping consensus," etc.) to argue for human rights. Bell argues that both of their approaches are problematic and mistaken. In section 5.2 and 5.3, I discuss their debates in detail. I argue that Bell has successfully challenged the approaches from Taylor and Donnelly. But it does not mean that Bell has refuted all of their conclusions as well. I argue that my arguments can save their conclusions from Bell's challenge.

In section 5.4, I summarize what my arguments can do, and explain how my arguments can contribute to other debates on human rights in general.

Section 5.2 The Debate between Bell and Taylor

In this section, I discuss an approach to human rights which is called "an unforced consensus on human rights" (Taylor, 1999). I first discuss what it is, and then discuss the challenge to this approach from Daniel Bell. I argue that both Taylor's approach and Bell's approach are problematic. I also explain how my arguments contribute to their debate—how my arguments can save Taylor's conclusion.

Taylor thinks that people in different cultures would come to a consensus on human rights. He writes:

> What would it mean to come to a genuine, unforced international consensus on human rights? I suppose it would be something like what Rawls describes in his *Political Liberalism* as an "overlapping consensus." That is, different groups, countries, religious communities, and civilizations, although holding incompatible fundamental views on theology, metaphysics, human nature, and so on, would come to an agreement on certain norms that ought to govern human behavior. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they were the rights norms, and we would be content to live in this consensus, undisturbed by the differences of profound underlying belief. (Taylor, 1999, p. 124)

From this passage, we know that Taylor mentions the idea of "overlapping consensus" from Rawls (1993). But Taylor does not explain how Rawls' idea is affecting his approach. The only thing relevant to Rawls is that Taylor thinks that all cultures in the world agree on something about human rights, despite the fact that these cultures have different views on "theology, metaphysics, human nature, and so on." It seems that his aim is simply to argue for an unforced consensus on human rights among different cultures. He does not discuss how Rawls' idea is involved in this debate, and he does not mention other relevant notions from Rawls (e.g., comprehensive doctrines, political conception of justice, etc.). In a word, Taylor wants to argue for a consensus on human rights among different cultures; it does not matter whether Taylor's approach is really based on Rawls' idea.

In general, Taylor divides human rights into three parts. He writes:

> It might help to structure our thinking if we made a tripartite distinction. What we are looking for, in the end is a world consensus on certain norms of conduct enforceable on governments. To be accepted in any given society, these would in each case have to response on some widely acknowledged philosophical justification, and to be enforced, they would have to find expression in legal mechanisms. One way of putting our central question might be this: what variations can we imagine in philosophical justifications or in legal forms that would still be compatible with a meaningful universal consensus on what really matters to us, the enforceable norms? (Taylor, 1999, p. 129)

In other words, his "tripartite distinction" is as follows. The first is "the legal forms of human rights," the second is "the philosophical justifications of human rights," and the third is "the norms of human rights." Taylor thinks that different cultures may have different legal forms and different philosophical justifications of human rights. Sometimes, legal forms or philosophical justifications in different cultures are even incompatible. But, he also argues that different cultures have a consensus on the norms of human rights. Taylor also discusses the Buddhist tradition in Thailand. He uses the Thailand example to illustrate his view and to support his conclusion (Taylor, 1999, pp.133-137). Next, I shall discuss the tripartite distinctions and the Thailand example in further detail.

It is not too hard to understand what the legal forms of human rights are. They are about how a state enforces human rights by its legal or even political system. Taylor argues that different legal systems enforce human rights in different ways. For example, he compares the situations in America and Thailand.[121] He argues that in many Western countries, "the judges and the judicial process enjoy in general a great deal of prestige and respect. In some countries, this respect is based on a long tradition in which some notion of fundamental law played an important part, and hence in which its guardians had a special place" (Taylor, 1999, pp. 131-132). But, in Thailand, judges or even the judicial process do not enjoy such a moral prestige. Instead, Taylor argues that the king of Thailand has a very high moral prestige in

[121] Taylor also discusses Confucianism in Singapore (Taylor, 1999, pp. 129-131). But he generally thinks that Singapore's legal and political system violates some norms of human rights, and so it is not a good example for his purpose.

Thailand; indeed, the king has some special roles in the history of Thailand. Taylors writes:

> Averting to another tradition, we note that in Thailand, at certain crucial junctions, the immense moral prestige of the monarchy has been used to confer legitimacy and force on moves to end military violence and repression and return to constitutional rule. This was the case following the student demonstrations in October 1973, and again in the wake of the popular reactions against the seizure of power by General Suchinda Kraprayoon in May 1992. In both cases, a military junta responded with violence, only to find its position unsustainable and to be forced to give way to a civilian régime and renewed elections. In both these cases, King Bhumibhol played a critical role. The king was able to play this role because of elements in the traditions that have contributed to the Thai conception of monarchy, some of which go way back. For example, the conception of the king as *dharmaraja*, in the tradition of Asoka, sees the ruler as charged with establishing dharma in the world. (Taylor, 1999, p. 132. Taylor's italics)

Taylor's point, in summary, is that the king of Thailand can enforce some human rights (or some values of human rights) in Thailand. He stopped the military violence in 1973, and even protected and promoted democracy in 1992. In other words, some physical securities or even liberties were enforced in Thailand because of the king. Although this tradition is quite different from the American or Western tradition,

Taylor argues that this is an acceptable cultural difference. In a word, Taylors thinks that it is acceptable to have different legal forms of human rights in different cultures.[122]

Taylor also discusses "the philosophical justification of human rights". He thinks that we should allow different philosophical justifications of human rights in different cultures. He discusses the natural law and natural rights tradition as a philosophical justification of human rights in the Western cultures (Taylor, 1999, pp.126-129),[123] and then he argues that there are different philosophical justifications of human rights in other cultures. He discusses Buddhism in Thailand as an example. He thinks that the major religion in Thailand, Theravada Buddhism, can also be a philosophical justification to democracy and human rights (Taylor, 1999, pp. 136). For example, he argues that the concept of *ahimsa* (the avoidance of violence) in Buddhism may develop a philosophical justification to physical security rights (Taylor, 1999, pp. 133-137). He also argues that Buddhism may help us to understand some controversial concepts (such as equality) in a better way (Taylor, 1999, pp. 137-140). In a word, he thinks that Buddhism in Thailand can also be a philosophical justification of human rights, and hence we should allow such a cultural difference between the East and the West.

The third distinction is the norms of human rights. Taylor thinks that different cultures have an overlapping consensus on the norms of human rights. What are these

[122] Note that Taylor also realizes that this tradition in Thailand may lead to some bad consequences as well. He discusses another example: in 1976, the right–wing groups in Thailand attacked democracy with the slogan "Nation, King and Religion" (Taylor, 1999, p. 132). But he still thinks that in general, the traditional role of the king of Thailand can protect or even enforce human rights in Thailand.

[123] Notice that Taylor seems to think that human dignity is solely a Western concept (e.g., Taylor, 1999, p. 125). I have argued against this point in chapter 3, section 3.4, so that discussion won't be repeated here.

"norms of human rights"? Taylor does not provide a complete list in his article, but he has mentioned several of them when he talks about the legal forms and the philosophical justifications of human rights. For example, he discusses "security of person" when he talks about the differences of the legal and political forms in Thailand and America (Taylor, 1999, p. 132). He thinks that if we realize that the king of Thailand can also protect "human beings from violence and oppression", then "we would have in fact achieved convergence on the substance of human rights, in spite of differences in form" (Taylor, 1999, p. 133). He also talks about democracy, liberties and immunities as norms of human rights throughout his discussion on the legal forms and philosophical justifications of human rights (Taylor, 1999, pp.126-143). This dissertation focuses on physical securities and liberties; it seems that Taylor also agrees that physical securities and liberties are also norms of human rights.

In summary, he concludes that the "example drawn from Thailand provides one model for what the path to world consensus might look like—a convergence on certain norms from out of very different philosophical and spiritual backgrounds" (Taylor, 1999, p. 137). In other words, Taylor's approach is that different cultures have a consensus on the norms of human rights, even though different cultures have different legal forms and philosophical justifications of human rights.

How does Bell reply to Taylor's approach? Bell has discussed Taylor's approach in his writing (Bell, 2006a, pp. 81-83). It seems that Bell would agree with Taylor partially, i.e., Bell would agree with Taylor that there are cultural differences on the legal forms and philosophical justifications of human rights. However, Bell

does not agree with Taylor's unforced consensus on the norms of human rights. In general, Bell does not think that there is such a consensus. Bell mainly has two reasons to argue against Taylor's approach.

First, Bell wonders whether it is possible to separate the norms of human rights from the legal forms and the philosophical justifications of human rights. Bell thinks that Taylor's approach is trying to "abstract" the norms from the legal forms and the philosophical justifications. That is, Bell thinks that Taylor's approach is trying "to abstract from those beliefs for the purpose of working out an 'overlapping consensus' of human rights norms". And then Bell writes: "For one thing, it may not be realistic to expect that people will be willing to abstract from the values they care deeply about during the course of a global dialogue on human rights. Even if people agree to abstract from culturally specific ways of justifying and implementing norms, the likely outcome is a withdrawal to a highly general, abstract realm of agreement that fails to resolve actual disputes over contested rights" (Bell, 2006a, p. 81). In short, Bell's idea is that we cannot really separate the norms of human rights from the other parts of a culture. In other words, we may not be able to separate the norms from the legal forms or the philosophical justifications.

For example, he thinks that even though both American and Singaporeans use the name "political participation", they understand this term very differently because they have a lot of cultural differences. Bell wonders whether it is really possible to find any consensus on the abstract norms of political participation between Singapore and America. He writes that "participants in a cross-cultural dialogue can agree on the right to political participation, while radically disagreeing upon what this means

in practice: a Singaporean official may argue that competitive elections are sufficient, whereas a Western liberal will argue that meaningful elections must be accompanied by the freedoms of speech and association" (Bell, 2006a, p. 81). In summary, Bell would agree that there are cultural differences on the legal forms and the philosophical justifications of human rights. However, Bell wonders whether we can really separate the norms from other parts of the cultures. Bell would argue that if the legal forms and the philosophical justifications are different, then the norms are also different.

Bell's example on Singapore and America is also related to the second reason against Taylor's approach. Bell argues that the cross-cultural dialogue between the East and the West can only realize their differences rather than any consensus on liberties. As he argues, American and Singaporeans have different ideas on the rights to political participation. It is quite obvious that they have different legal forms and philosophical justifications, but it is hard to see how they can have a consensus on the norms of human rights. He also writes:

> In the last decade or so, there have been many attempts to put forward truly universal moral values, and the response has ranged from hostility to indifference. None has come even close to supplanting the Universal Declaration of Human Rights as a normative frame of reference, notwithstanding the ongoing controversy regarding the "Westcentric" perspective of this document… In short, the aspiration to develop values of more universal scope with substantive content may not be realizable. Cross-

> cultural dialogue will lead to either empty platitudes or politically controversial conclusions likely to be rejected by affected constituents. (Bell, 2006a, pp. 82-83)

In general, Bell agrees that it is good to have some cross-cultural dialogues, but he does not believe that such dialogues can reach any consensus on liberties. Instead, he thinks that people from different cultures and traditions should tolerate and respect each other on the perspective on liberties. Bell believes that the cross-cultural dialogue between the East and the West only confirms that "Western rights" (especially liberal rights) cannot be East Asian rights (and hence not human rights). He believes that "the main aim [of a cross-cultural dialogue] would be to identify areas of justifiable moral difference… as well as learning from other cultures with the aim of improving flaws in one's own culture" (Bell, 2006a, p. 83).

In summary, Bell wonders if it is possible to abstract the same norms from different legal forms and philosophical justifications in different cultures, and he also thinks that cross-cultural dialogues between the East and the West can only confirm the differences between these cultures. Based on these two objections, Bell concludes that the East and the West has no consensus on the norms, philosophical justifications, or legal forms of liberties. Therefore, Bell concludes that Taylor's unforced consensus on human rights (especially on liberal rights) is problematic and mistaken.

Bell has provided some strong objections against Taylor's approach on human rights, and Taylor's tripartite distinction also seems unclear. However, it does not

mean that the purpose of Taylor's approach is totally defeated, and it does not mean that Bell's approach is better than Taylor's. In below, I shall argue that both approaches have some problems.

Their debate is mainly about whether there is any consensus on liberties among different cultures. While Taylor thinks that there is a consensus on the norms, Bell thinks that cross-cultural dialogues will only confirm the differences among cultures. They both discuss some cultural factors in Thailand to support their own view. It seems that both of them only focus on the part of the Thai culture that fits into their arguments; they ignore or discuss very little on the part of the Thai culture that does not fit into their arguments. However, as we have discussed in the previous chapters, we may divide every culture into different parts, and different parts of a culture may even conflict with each other. It seems that every culture has such an "internal conflict". For example, I have discussed that the theoretical Confucian tradition and the practical Confucian tradition treat physical securities and liberties differently. The Thailand example is also like this. Both Taylor and Bell discusses some special roles of the king of Thailand. While Taylor focuses on how the king may stop military violence and protect democracy (Taylor, 1999, pp. 131-133), Bell focuses on how the freedom of speech may be forbidden in Thailand because people respect the king (e.g. Bell, 2006a, pp.73-74. See also chapter 2, section 2.5). It seems that both of them are only taking a part of the Thailand culture to support their own view, which presents a problem for both of them.

In the previous chapters, I have already discussed this problem for Bell's approach. Roughly, he wants to argue that liberties are not human rights because

liberties conflict with some East Asian cultural factors. However, I have argued that liberties are also important in some East Asian cultural contexts. The problem is how we should decide which cultural factors are important, and Bell has not provided a satisfied answer. Taylor's approach is also refuted by this problem. Since there are internal conflicts within a culture, it is hard to see how to get a consensus on human rights (or the norms of human rights) within a culture; and this means that it is even harder to get a consensus among different cultures. In other words, a main problem of Taylor's approach is that he wants to have a consensus among different cultures, which is quite hard to achieve.

But why do we want a *consensus* on human rights? I suppose Taylor's answer is that some values of human rights (such as physical securities and liberties) are important, but he also realizes that there are cultural differences on human rights. He wants to ensure both the importance of human rights and the importance of cultural factors. However, his consensus approach cannot successfully defend this conclusion. It seems that it is better to have another approach to defend such a conclusion, and my arguments can defend his conclusion. Let me explain.

According to the arguments I have discussed in the previous chapters, physical securities and liberties are human rights (i.e., universal rights) even though there are cultural differences between the East and the West. Physical securities and liberties are human rights because they are minimal values. I have argued that physical securities and liberties are minimal moral demands, and they can be found or developed in some maximal theories. I ask for neither a consensus among different cultures nor a consensus within a culture. I realize that there are internal conflicts

within a culture (such as the differences between the theoretical Confucian tradition and the practical Confucian tradition), but I also argue that such conflicts cannot deny that liberties are human rights. In other words, I believe that the human rights debate is not about whether there is a consensus among different cultures; this is only about whether a minimal moral demand can be found or developed in some maximal theories in cultures. My approach can avoid the problem of consensus, and my approach can refute Bell's challenge, yet it still does not ignore the role of cultures in the human rights debate.

In summary, I have discussed in this section why both Bell's approach and Taylor's approach are mistaken and problematic. Taylor argues for a consensus on the norms of human rights, but Bell argues that it is impossible to have such a consensus. It seems that to me both of their approaches are problematic, and I have explained why my arguments solve the problem better than both of their approaches.

Section 5.3 The Debate between Bell and Donnelly

Bell has a debate with Donnelly on human rights. In this section, I discuss this debate in detail. I first introduce Donnelly's original argument on human rights, and then I discuss Bell's challenge to Donnelly's argument. I then discuss Donnelly's replies, and finally I explain my view. The aim of this section is to show how my arguments can contribute to their debate. I show that Bell has successfully challenged Donnelly's approach, but Donnelly's conclusion can be saved by my arguments.

I have discussed in chapter 3 that many human rights philosophers agree with the international documents of human rights (such as the *Universal Declaration of*

Human Right) that human rights are derived from dignity. Donnelly is also one of these human rights philosophers. He argues that human dignity is a universal value (Donnelly, 1989, pp. 66-87). He explains further 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 also believes that the list of human rights is exactly the same as the list in the *Universal Declaration of Human rights*; he calls his view "the Universal Declaration model" (Donnelly, 2003, pp. 23-37). I now explain his view in detail.

First, Donnelly believes that "equal concern and respect" is a reason why some moral rights (such as liberal rights) are 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). Roughly, this is because we are all moral individuals and so we deserve equal concern and respect. Note that "equal concern and respect" is a controversial notion. Some may argue that it is only one of the many interpretations of equality. For example, one may interpret equality as some forms of equal opportunity. Dworkin is actually aware of the ambiguity and vagueness of the notion of equal concern and respect, and he has explained it further (e.g. Dworkin, 1977, pp.180-181). But it seems that Donnelly does not explain this notion in detail. I simply assume that Donnelly agrees with Dworkin. Donnelly writes, "I want to suggest that it is something very much like Ronald Dworkin's idea that the state is required to treat each citizen with equal concern and respect…The

state must treat each person as a moral and political equal. Inequalities in goods or opportunities that arise directly or indirectly from political decisions must be compatible with a political conception of justice founded in equal concern and respect" (Donnelly, 2003, pp. 43-44).

Second, Donnelly also borrows some notions from Rawls. For example, he borrows the notion of "overlapping consensus" from Rawls (1993, 1999). Although both Taylor and Donnelly claim that they are using this notion in their own approach, they use this notion differently. Donnelly argues that different societies and cultures do not only have an overlapping consensus on human rights, but they also have an overlapping consensus on equal concern and respect. He writes, "Today…the basic moral equality [equal concern and respect] of all human beings is not merely accepted but strongly endorsed by all leading comprehensive doctrines in all regions of the world. This convergence on egalitarian comprehensive doctrines, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration" (Donnelly, 2003, p. 41). In other words, Donnelly thinks that equal concern and respect is a "political conception of justice" to which most "comprehensive religious, philosophical, and moral doctrines" consent (Donnelly, 2003, p. 43). Donnelly argues further that "equal concern and respect, understood as a political conception of justice, can be endorsed by a variety of comprehensive doctrines. I turn now to one, liberalism" (Donnelly, 2003, p. 46). He discusses different versions of liberalism and defends his version of "equalitarian liberalism". He concludes that "equalitarian liberalism" is a comprehensive doctrine that endorses

this political conception of justice (i.e., equal concern and respect) (Donnelly, 2003, pp. 46-51).

Finally, he uses all these notions to support his argument on human rights, i.e., human rights are universal, equal and inalienable rights, and the list of human rights is exactly the list in the *Universal Declaration of Human Rights* (p. 45-46). For example, he writes, "It is a relatively simple matter to derive the full list of rights in the Universal Declaration from the political principle of equal concern and respect…To treat someone with concern and respect, an individual must first be recognized as a moral and legal person. This in turn requires certain basic personal rights" (Donnelly, 2003, p. 45).

It is unclear whether Donnelly has used the notions from Dworkin and Rawls accurately. Donnelly does not explain that further. For example, Donnelly wants to argue for the whole list of human rights in the *Universal Declaration of Human Rights*, but Rawls only supports a shorter list of human rights (e.g., Rawls, 1999, p.65), so it is hard to tell whether Donnelly completely agrees with Rawls or not. Although Donnelly sometimes claims that he is using Rawls' ideas to develop his argument, he also once says that his argument "is Rawlsian in inspiration but not that of John Rawls" (Donnelly, 2007, p. 289n22). It is hard to tell what "inspiration" Donnelly wants from Rawls, so, it is not really clear whether Donnelly describes Rawls' ideas accurately enough. But the aim here is not to evaluate whether Donnelly describes Dworkin's view and Rawls' view accurately; the aim here is to see how Bell challenges Donnelly's view, and how Donnelly replies to Bell. Therefore,

although I cannot discuss every detail of Donnelly's argument, this sketch of his argument is sufficient enough for our discussion.

I now discuss how Bell challenges Donnelly's view. Bell's challenge focuses on East Asian cultures. In general, Bell thinks that Donnelly's view (especially Donnelly 1989, 1999, & 2003) is solely a "West-centric perspective." Bell claims that Donnelly does not emphasize on the importance of East Asian cultures. 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 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. Even if we assume that Donnelly describes Dworkin's view correctly, 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). It seems that this criticism to Dworkin also applies to Donnelly. 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. No matter whether Donnelly has used Rawls' ideas accurately, Rawls' ideas are considered as Western, and so Donnelly is still using some Western perspectives to support his argument; at least this is what Bell thinks about Donnelly's argument. This is why Bell argues against Donnelly's view.

In summary, Donnelly uses notions of "equal concern and respect," "equalitarian liberalism," etc. as the main notions for his argument; he does not focus on East Asian cultures. Donnelly simply thinks that his argument on human rights is universal, but Bell believes that Donnelly has not shown that his argument "works" in East Asia as well. In other words, Bell thinks that the real problem for Donnelly is that he does not realize or agree that East Asian cultures are *determining factors* for East Asian rights or even human rights. Therefore, Bell thinks that Donnelly's argument is only a West-centric perspective. Let me call this the cultural challenge.

Donnelly thinks that his argument is not merely a West-centric perspective, and he has several replies to the cultural challenge. The first reply can be found in Donnelly (1999), but it seems that Donnelly may have misunderstood the cultural challenge there. Donnelly (1999) believes that the concept and language of human rights were foreign to East Asian. He writes, "The idea that all human beings, simply because they are human, have inalienable political rights was foreign to all major premodern societies" (Donnelly, 1999, p. 62).[124] However, he argues that this should not be a problem for non-Westerners. He argues that the origin of human rights is not relevant to the "applicability" of human rights in East Asia. He writes:

> 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)

[124] In Donnelly (1999), "major premodern societies" also include "traditional Asian societies" (p. 62).

How does Bell reply to Donnelly? Bell disagrees with Donnelly that human rights are "essentially foreign to traditional Asian political thought as well as to premodern Western political thought" (Bell, 2006a, p. 62).[125] Bell discusses several historical events in East Asia in the last two centuries. He also discusses some traditional concepts in East Asia (Bell, 1996, pp. 650-651; 2000, pp. 49-55; 2006a, p.62-65). His conclusion is that "the claim that the concept of human rights is foreign to East Asian political traditions may be out of date" and "the functional equivalents of some human rights practices can be found in Asian traditions" (Bell, 2006a, pp. 62-65). Specifically, Bell actually agrees with Donnelly that it does not matter whether the origin is in 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 the East Asian traditions affect the "applicability" of human rights in East Asia. He argues that East Asian traditions are important because these traditions determine that some rights (such as liberal rights) do not "apply" in East Asia. No matter what "applicability" means, Bell disagrees with Donnelly because Donnelly thinks that East Asian traditions have nothing to do with the current debate of human rights in East Asia.[126] It is obvious that Donnelly's claim on the origins and his analogy on quantum physics does not save his argument from Bell's challenge—his claim and his analogy are irrelevant to Bell's challenge at all.

[125] Bell's point here is a reply to Donnelly (1999), p. 62.

[126] Dallmayr (2002) has a similar reply to Donnelly. See especially Dallmayr (2002), pp.177-178.

Donnelly has another reply (e.g., Donnelly, 2003, 2007) that focuses more on the "strategic consideration." Bell has also discussed this strategic consideration. Bell thinks that Western views may hurt the promotion of human rights in East Asia. He argues that "if the ultimate aim of human rights diplomacy is to persuade others of the value of human rights, it is more likely that the struggle to promote human rights can be won if it is fought in ways that build on, rather than challenge, local cultural traditions" (Bell, 2006a, p. 65). Indeed, he thinks that if we simply use liberalism or other Western cultures as the only moral foundations for human rights, then there will be several drawbacks (Bell, 2006a, pp. 65-72). This is why strategically, it is better to promote human rights in East Asia based on some East Asian cultural contexts.[127]

Bell's strategic consideration is thoughtful and considerate to people in non-Western societies. Donnelly once pointed out that this strategic consideration is at most "a practical, not a theoretical argument", and this strategic consideration does not show that "culture trumps international norms" (Donnelly, 2003, p. 100). But it seems that Donnelly also wants to give cultures several "strategic" roles in the human rights debate, and so he introduces a "three-tiered scheme" to 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). Donnelly's general idea is that cultures can affect the interpretations and the implementation of human rights, but cultures do not affect the concept or substance of human rights.

[127] For further detail of this strategic consideration, see Bell (1996), pp. 652-660; Bell (2000), pp. 55-82; and Bell (2006a), pp. 65-72

What does he mean by the concept or substance of human rights? Donnelly introduces it in Donnelly (2003) and explains it further in Donnelly (2007). Roughly, he thinks that human rights in the *Universal Declaration of Human Rights* are universal, equal and inalienable rights. He believes that this list is universal and different cultures have a consensus on such a concept or substance of human rights. This is also where he applies the notions of "equal concern and respect," "overlapping consensus," etc. 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).

The interpretations and implementation of human rights are comparatively more relative to different cultures. He believes that there can be different interpretations of human rights among different cultures. He 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).

In general, it seems that he can allow cultural differences in the level of interpretations and implementation. He only insists that "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). In a word, he has a "strategic consideration" that cultures may affect the interpretations and implementation of human rights, but the concept or substance of human rights is still universal.

Note that even some human rights advocates think that Donnelly's three-tiered scheme to human rights is controversial. For example, Michael Goodhart thinks that he agrees with "many of Donnelly's substantive arguments" (Goodhart, 2008, p. 184), but he also disagrees with this three-tiered scheme to human rights.[128] But for the purpose of the discussion here, I only focus on Donnelly and Bell. Can this three-tiered scheme successfully reply to Bell's challenge? Although Donnelly thinks that his idea is affected by Bell,[129] it seems that Donnelly cannot reply to Bell successfully. Although Bell would probably agree that the interpretations and implementation of human rights can be affected by cultural factors, he would not agree that the concept or substance of human rights cannot be affected by cultural factors. More precisely, the challenge from Bell is that Donnelly's concept of human rights in this three-tiered scheme is Western-centric. Donnelly replies that the interpretations and the implementation can be affected by cultures, but this reply is not really to the point. At

[128] For the debate between Goodhart and Donnelly, see Goodhart (2008) and Donnelly (2008) for further details.

[129] In Donnelly (2007), Donnelly says that "The tone of this essay owes much to a long conversation with Daniel Bell and Joseph Chan in Japan nearly a decade ago. I thank them for the sort of deep engagement of fundamental differences that represents one of the best and most exhilarating features of intellectual life." (p. 281)

least, Donnelly needs a further explanation on why the concept or substance of human rights is universal.

Such a further explanation can be found in another reply to Bell in Donnelly (2007). No matter whether Donnelly describes Rawls' ideas accurately, Donnelly wants to argue 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 *Universal Declaration of Human Rights* (i.e., the concept or 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 also 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.

It seems that this reply from Donnelly is better than his other replies because Donnelly realizes that although values in some cultures conflict with human rights, those values can be changed. Thus, he thinks that now more and more "comprehensive doctrines" in different cultures have an "overlapping consensus" on human rights. All of these points have at least partially responded to the challenge that his argument is too West-centric. However, this reply still has several weaknesses. One weakness is that it is not clear what Asia values (or values in other cultures) can be changed and what values cannot be changed. Bell would probably argue that when Asian values conflict with human rights, we should accept Asian values and deny human rights. Since Bell considers that some human rights (such as liberal rights) are only Western rights, he would probably argue that changing Asian values for these rights is still too West-centric. At least, Donnelly needs a better explanation here. In other words, Donnelly needs to explain further how and why some Asian values can be changed when they conflict with human rights. Another weakness is that Donnelly has not explained further what those "comprehensive doctrines" are; he also has not explained further how they have an "overlapping consensus "on human rights (especially on liberal rights).[130] Furthermore, it is not clear why using these notions (comprehensive doctrines, overlapping consensus, etc.) can make his approach not

[130] As I said before, 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. It is also quite unclear how these notions are related to human rights. This is unclear because it seems that he talks about these notions differently in different writings.

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*. As far as we know, the list is even controversial in the Western cultures.[131] With all of these weaknesses, it is hard to say that Donnelly has successfully replied to Bell's cultural challenge.

All replies from Donnelly to Bell appear to have some problems. In other words, Donnelly's original argument and his replies cannot refute Bell's cultural challenge. But it does not mean that Donnelly has to agree with Bell and give up his whole position. I suggest that Donnelly may use my arguments (Argument 4 to Argument 7) to reply to Bell's challenge. Donnelly can generally accept my arguments, and I see no reason why he needs to reject any premise of my arguments. Moreover, Donnelly also agrees with my conclusions, i.e., physical securities and liberties are human rights. He agrees with these conclusions because physical security rights and liberal rights are also in the list of the *Universal Declaration of Human Rights*. Since Donnelly wants to argue for the whole list in the *Universal Declaration of Human Rights*, his conclusion has a longer list of rights than I have argued in this dissertation. For example, he also supports social and economic rights, but I have not discussed any of these rights in this dissertation. He also argues for universal, equal and inalienable human rights, but my dissertation only focuses on universal rights. What Donnelly argues is more than what my arguments have shown, but at least my

[131] For example, some may wonder whether social and economic rights are human rights.

arguments can support a part of his position, i.e., physical securities and liberties are universal rights.[132]

More importantly, my arguments can reply to the cultural challenge. I have explained why physical securities and liberties are minimal moral demands, and I have also explained how these minimal moral demands can be found or developed in some maximal theories in East Asian cultures. As I have argued in the last section, it is not necessary to require a consensus among cultures. All I ask is a possibility to find or develop those minimal moral demands in only some maximal theories of a culture. Since physical securities and liberties are minimal values, other Asian values that conflict with them should be given up. In a word, my arguments explain why physical securities and liberties are human rights, and they also explain that some Asian values (i.e., the practical Confucian tradition) can be changed or denied.

Therefore, it seems to me that we may use my arguments to help Donnelly reply to Bell's challenge. Although Donnelly's replies cannot refute Bell's challenge, my arguments can refute Bell's challenge. In addition, my arguments can support a part of Donnelly's position, which is that physical securities and liberties are universal rights. In other words, my arguments show that it is not really West-centric to claim that physical securities and liberties are human rights. This conclusion saves at least a part of Donnelly's position.

[132] It may be possible to expand my arguments to support social and economic rights and equal and inalienable rights, but this is out of the scope of this dissertation. Therefore, I leave them here and not discuss any of them in detail.

Section 5.4 Beyond These Debates?

In the previous sections, I have discussed in detail how my arguments can contribute to the debate between Bell and Taylor and the debate between Bell and Donnelly. There are still many other debates of human rights, and I cannot describe all of them in this dissertation. But I want to summarize some important points of my arguments. In this section, I explain generally how my arguments can contribute to other approaches to human rights which also support that physical securities and liberties are human rights.

Let me review some important features of my arguments. Arguments 4 to 7 provide some jointly sufficient conditions for physical securities and liberties being East Asian rights and universal rights (human rights). In other words, if physical securities or liberties meet all of the premises of the arguments, then they are East Asian rights or universal rights. Let me uses Argument 7 to illustrate such a view. Argument 7 tells us that if liberties meet all of the premises, then liberties are universal rights. The premises of Argument 7 are a jointly sufficient condition for liberties being universal rights. But Argument 7 does not say that its premises are also necessary conditions.[133] In other words, Argument 7 does not say that if liberties are universal rights, then liberties meet all of these premises. The argument does not tell us whether liberties are or are not universal rights if liberties do not meet one or more of these premises. In this sense, the premises of these arguments are only "positive conditions" (i.e., if liberties meet all of them, then liberties are universal rights) but

[133] I do not exclude the possibility that some of these premises are also necessary conditions. But the argument itself does not tell us whether any of these premises is a necessary condition; the argument merely focuses on sufficient conditions.

not "negative conditions" (i.e., if liberties do not meet any of them, then liberties are not universal rights). This means that Argument 7 is neither a complete theory nor a complete justification to universal rights. Indeed, constructing a theory or a complete justification is not a purpose of my project. The argument is only one way to show that liberties are universal rights, but it does not exclude the possibility that there are also other ways to prove that liberties are universal rights. In other words, Argument 7 does not exclude the possibility that there are other necessary or sufficient conditions for liberties to be universal rights, unless the other conditions exclude my way to show that liberties are universal rights.[134]

Of course, it does not mean that my arguments are compatible with every approach to human rights. Indeed, the main purpose of these arguments is to refute Bell's approach to human rights. Bell and others believe that cultural factors should be "limiting the set of human rights" (e.g., Bell, 2006a, p. 73). More precisely, Bell and others believe that liberties are not universal rights because liberties conflict with some East Asian cultural factors. The general reasoning behind their view is that conflicting with some cultural factors is a sufficient condition for X not being a universal right. In other words, if X conflicts with some cultural factors, then X is not a universal right. By the logic rule of contraposition, non-conflict with cultural factors is a necessary condition for X being a universal right. However, such a view is refuted by my arguments. My arguments have shown that when X (physical securities or liberties) fulfill all premises of my arguments, then it is already sufficient for X

[134]Based on the same reasoning, Argument 4 is only one way to show that physical securities are East Asian rights; Argument 5 is only one way to show that physical securities are universal rights; and Argument 6 is only one way to show that liberties are East Asian rights. These arguments do not exclude the possibilities that there are other ways to prove the same conclusions.

being a universal right. If X is a universal right, but X conflicts with some cultural factors, then non-conflicting with cultural factors is not a necessary condition for X being a universal right. This explains why physical securities and liberties are universal rights, even though physical securities and liberties conflict with some cultural factors (such as the practical Confucian tradition).

We now find that my arguments do not deny other ways which also show that physical securities and liberties are universal rights (unless the other ways deny my arguments), but my arguments show that it does not matter whether physical securities and liberties conflict with some cultural factors. In general, this means that my arguments have the following important function. There are many different approaches to human rights. Some of them are not directly related to or do not concern the East and West debate on human rights. But, it is not hard to imagine that Bell or others would argue that those approaches are too West-centric as well. The main function of my arguments is that if my arguments and these approaches to human rights are compatible, then at least these approaches do not need to concern whether their approaches are too West-centric. Let me use two recent approaches to human rights to illustrate my view here.

Recently, James Griffin (2008) and Charles Beitz (2009) have developed two different approaches to human rights. Let me discuss Griffin's approach first. As I mentioned earlier (chapter 3, section 3.4), one of the human rights traditions is that human rights are somehow derived from dignity. Griffin also follows this tradition, and he tries to interpret dignity further. He thinks that there are two grounds for his account of human rights: "personhood" and "practicalities". In his account, dignity is

interpreted as "personhood", which is further interpreted as "normative agency" (Griffin, 2008, pp. 29-367). He also divides "normative agency" into three components: "autonomy" (Griffin, 2008, pp.149-158), "liberty" (Griffin, 2008, pp. 159-175), and "minimum provision" (Griffin, 2008, pp. 176-187). Based on some practical considerations (i.e., "practicalities", see Griffin, 2008, pp. 37-39), human rights are justified by this account. In his own words, "Human rights can then be seen as protections of our human standing or, as I shall put it, our personhood" (Griffin, 2008, p. 33). According to such an account, human rights are universal because "they are possessed by human agents simply in virtue of their normative agency" (Griffin, 2008, p. 48).

Beitz thinks that Griffin's account is a naturalistic account, which holds that "human rights belong to human beings 'as such' or 'simply in virtue of their humanity'" (Beitz, 2009, p. 49). Beitz disagrees with such an approach.[135] Instead, he argues for a "practical" approach that is grounded on the international order. He writes, "A practical conception takes the doctrine and practice of human rights as we find them in international political life as the source materials for constructing a conception of human rights. It understands questions about the nature and content of human rights to refer to objects of the sort called 'human rights' in international practice" (Beitz, 2009, p. 102). According to this account, human rights are universal because human rights are based on the international politics and international order.[136]

Since the purpose here is not to discuss or compare these approaches, I am not going to discuss or compare them in detail. Let me focus on how they meet the

[135] For Beitz's comment on Griffin's account, see Beitz (2009), pp. 59-68.

[136] In addition to Beitz (2009), see also Beitz (2001).

cultural challenge, such as the one from Bell. None of these approaches is directly relevant to the East and West debate on human rights, but both of them can be treated as too West-centric. Griffin thinks that human rights are justified by his personhood account, and Beitz thinks that human rights are justified by international political life. Both of them do not concern East Asian cultures. Griffin's explanation on personhood is based on Western moral and political philosophy (e.g., Kant's philosophy). Beitz's international political account is also West-centric because the international political status he describes is mainly shaped by the Western world. For example, he argues that the norms of human rights he wants to argue for "are expressed in the main international human rights instruments—the Universal Declaration of 1948 and the major treaties intended to give legal effect to its provisions" (Beitz, 2009, p. 8). But this is exactly what Bell and others argue against—they think that the *Universal Declaration of Human Rights* is also West-centric. For example, Bell argues that "Since the UDHR [i.e., the *Universal Declaration of Human Rights*] was formulated without significant input from East Asia, it is not always clear to East Asians why the UDHR should constitute 'our' human rights norms … Although the UDHR is normatively binding, most East Asian states endorsed it for pragmatic, political reasons and not because of a deeply held commitment to the human rights norms it contains" (Bell, 2006a, p. 68).[137] In a word, the approaches from Griffin and Beitz would both be considered as West-centric approaches. This is a cultural challenge to Griffin and Beitz.

[137] Bell realizes that a Chinese representative might have contribute to the idea of the article 1 of the *Universal Declaration of Human Rights*, but Bell thinks that this is not enough to show that the *Universal Declaration of Human Rights* is not a Western product. See Bell (2006a), p. 68n46. See also Twiss (1998, p. 41) for the detail of how East Asians contribute to the *Universal Declaration of Human Rights.*

Griffin and Beitz may be able to reply to such a challenge by their own arguments, and there may be more than one way to reply to this cultural challenge, but the focus here is what my arguments can do for them. For the purpose here, let us assume that their approaches can accept my arguments. If my arguments are compatible with their approaches, then these approaches can definitely reply to the cultural challenge successfully and easily. The key point is that my arguments accept other approaches which also show that physical securities and liberties are human rights. If their approaches also accept other arguments such as mine, then they do not need to worry the cultural challenge. This is because my arguments have already successfully refuted such a challenge. In general, this means that any approach to human rights that can accept my arguments can refute the cultural challenge easily.

I admit that what I am saying here is simply an abstract and general solution, and I have not discussed whether my arguments are compatible with Griffin's and Beitz's approaches (this is another topic and beyond of the scope of the East and West debate on human rights). But my purpose here is not to discuss the detail of these approaches. I simply want to illustrate how my arguments in general can help other approaches to human rights. In conclusion, since my arguments can allow other ways to show that physical securities and liberties are human rights, and my arguments refute the cultural challenge, any approach to human rights that can accept my arguments can also refute the cultural challenge easily. This is another contribution and application of my arguments to the East and West debate on human rights.

Section 5.5 Summary and Conclusion

In this chapter, I have explained some applications of my arguments (i.e., Argument 4 to Argument 7). The general idea is that my arguments can contribute to some approaches to human rights in the East and West debate on human rights. I have discussed in detail what my arguments can do to the debate between Bell and Taylor and the debate between Bell and Donnelly. I have discussed why their original approaches cannot successfully reply to Bell's cultural challenge, and how my arguments can help them to refute Bell's challenge. I have also summarized some special features of my arguments, and then I have explained how my arguments in general may help other approaches to human rights. All of these points have concluded the applications and contributions of my arguments in the East and West debate on human rights.

Chapter 6: Conclusion

In this dissertation, I have developed arguments which explain why physical securities and liberties are East Asian rights and (universal) human rights. Since "the East Asian challenge to human rights" claims that liberties are not human rights because they are not East Asian rights, my arguments also successfully refute the East Asian challenge to human rights.

Although the East Asian challenge to human rights has some problems, this does not mean that it is not worthwhile to discuss it. On one side, most philosophers of human rights in the English-speaking world do not pay attention to East Asian culture or Asian philosophy. Even Walzer or other "communitarians" do not discuss Asian philosophy very deeply. On the other side, philosophers in East Asia usually focus solely on the contents of East Asian cultures, but they seldom explain clearly how East Asian cultures are related to human rights. Daniel Bell's East Asian challenge to human rights is significant because he explains comparatively clearly how East Asian cultural contexts seem to show that liberal rights are not human rights. In this sense, it is worth discussing the East Asian challenge to human rights in detail. This is why I have discussed Bell's arguments in chapter 2 in depth. I have discussed that his arguments show us not only how cultures abstractly affect the justification of rights, but also how liberties seem to conflict with values in Asia. He concludes that physical securities are human rights (and hence also East Asian rights) because they are minimal values, and liberties are not East Asian rights (and hence not human rights) because they conflict with some East Asian cultural contexts.

Bell's arguments of physical securities and liberties are quite special, but Bell has not successfully defended his arguments and conclusions. I agree that physical securities are human rights (and hence also East Asian rights) because they are minimal values, but I do not agree that liberties are not human rights (and hence not East Asian rights) because liberties conflict with some East Asian cultural contexts. In chapters 3 and 4, I have developed my own arguments to support my view. In chapter 3, I have discussed the notions of minimal values in depth and have developed two arguments which show that physical security rights are East Asian rights and universal rights. In other words, the premises of these arguments are jointly sufficient conditions for physical securities being East Asian rights and universal rights. In chapter 4, I have applied a similar reasoning to liberties. I have argued that liberties are essential necessities of dignity, and I have also argued that liberties do not conflict with all East Asian cultural contexts. Then I have developed two other arguments which show that liberties are East Asian rights and universal rights. Based on these arguments, I have proved that Bell is mistaken to claim that liberties are not universal rights because they are not East Asian rights.

In chapter 5, I have discussed the contributions of my arguments to the debate between Bell and Taylor and the debate between Bell and Donnelly. In general, I have also explained how my arguments may help other approaches to human rights. This explains how my arguments contribute to the East and West debate on human rights.

As I have mentioned at the beginning of this dissertation, there are many East and West debates on human rights, and I have only focused on one of them, i.e.,

whether physical securities and liberties are human rights. But in addition to this debate, the East and the West also have many other debates on human rights. Let me mention three of them here. First, I have only provided some jointly sufficient conditions for physical securities and liberties being human rights, but one may wonder what the necessary conditions are for physical securities and liberties being human rights. Second, while my dissertation only focuses on civil and political rights, some may also wonder whether both the East and the West agree that social and economic rights (such as property rights, subsistence rights, etc.) are human rights or not. Indeed, Bell has also discussed property rights (e.g., Bell, 2006a, pp. 231-280) and subsistence rights (e.g., Bell, 2006a, p. 64, pp. 76-78), but I have not discussed his view on these rights in this dissertation. Third, some people think that the East and the West have different priorities on different rights. For example, Bell argues that in the East, social and economic rights have a higher priority than civil and political rights (e.g., Bell, 2006a, pp. 55-62). Such a debate does not focus on which rights are human rights and which rights are not human rights; it focuses on which rights are more important and why they are more important.

Although my dissertation does not discuss any of these three debates directly, it is possible that my arguments in this dissertation can be used in these debates. For example, one may argue that some of the premises in my arguments are also necessary conditions for physical securities and liberties being human rights. Based on the same reasoning of my arguments for physical security rights and liberal rights, one may also argue that property rights or subsistence rights are also human rights. One may even argue that all of these rights are all equally important because they are

all minimal values. All of these debates are possible research topics that I look forward to continuing in the future.

This dissertation can be considered as a first attempt at constructing a theory or a complete justification of human rights. This dissertation can also be considered as a first step to solve different East and West debates on human rights. There remains much to be done before a theory of human rights is fully developed. I leave these works for another time.

Chinese Glossary

Chan, Joseph 陳祖爲

Chan Wing-Tsit 陳榮捷

Chang, Carson 張君勱

Ci Jewei 慈繼偉

Confucianism 儒家

Confucius 孔子

Daoism 道家

Dong Zhongshu 董仲舒

Fung Yu-Lan 馮友蘭

Han dynasty 漢朝

He Xinquan 何信全

Hou Hanshu 後漢書

Hsieh Yu-wei 謝幼偉

Hsu Foo-kwan 徐復觀

Hsü, Leonard Shihlien 許仕廉

Huang Zongxi 黃宗羲

Jie 桀

King Xuan of Qi 齊宣王

King Wu 武王

King Zhou 紂王

Lee Kuan Yew 李光耀

Li 禮

Li Xiaorong 李曉蓉

Lingchi 凌遲

Liu Shiu Pei 劉師培

Liu Shu-Hsien 劉述先

Mao Zedong 毛澤東

Mencius 孟子

Mou Chung-san 牟宗三

Qin dynasty 秦朝

Quanli 權利

Ren 仁

Shun Kwong-Loi 信廣來

Song-Ming Confucianism 宋明儒學

Tang 湯

T'ang Chun-I 唐君毅

Tu Weiming 杜維明

Wong, David 黃百銳

Xia dynasty 夏朝

Xing 刑

Yi 義

Zhuangzi 莊子

Ziyou 自由

Zunyan 尊嚴

Bibliography

Ackerly, Brooke (2005). Is Liberalism the Only Way toward Democracy? Confucianism and Democracy. *Political Theory, 33* (no.4, August): 547-576.

Ames, Roger (1988). Rites as Rights: The Confucian Alternative. In *Human Rights and the World's Religions*, Leroy S. Rouner (Ed.). Notre Dame, University of Notre Dame Press**:** 199-216.

Angle, Stephen (2002). *Human Rights and Chinese Thought: A Cross-Cultural Inquiry*. New York: Cambridge University Press.

Angle, Stephen and Svensson, Marina (2001). Chinese Human Rights Web. Retrieved September 27, 2010, from http://www.chinesehumanrightsreader.org.

Angle, Stephen and Svensson, Marina (Eds.). (2002). *The Chinese Human Rights Reader: Documents and Commentary, 1900-2000*. East Gate Book.

An-Na'im, Abdullahi Ahmed (Ed.). (1995). *Human Rights in Cross-Cultural Perspectives*. University of Pennsylvania Press.

An-Na'im, Abdullahi Ahmed (1999). The Cultural Mediation of Human Rights: The Al-Arqam Case in Malaysia. In *The East Asian Challenge for Human Rights*, J. R. Bauer and D. Bell (Ed.). New York, Cambridge University Press**:** 147-168.

Avonius, Leena and Kingsbury, Damien (Eds.). (2008). *Human Rights in Asia: A Reassessment of the Asian Values Debate*. New York: Palgrave Macmillan.

Barry, Brian (1995). *Justice as Impartiality*. Oxford University Press.

Bauer, Joanne and Bell, Daniel (Eds.). (1999). *The East Asian Challenge for Human Rights*. Cambridge University Press.

Beitz, Charles (2001). Human Rights as a Common Concern. *American Political Science Review, 95*: 269-282.

Beitz, Charles (2009). *The Idea of Human Rights*. New York, U.S.A.: Oxford University Press.

Bell, Daniel (1993). *Communitarianism and Its Critics*. Oxford: Clarendon Press.

Bell, Daniel (1995). Democracy in Confucian Societies: The Challenge of Justification. In *Towards Illiberal Democracy in Pacific Asia*, Daniel Bell,

David Brown, Kanishka Jayasuriya and David Jones (Eds.). St. Martin's Press**:** 17-40.

Bell, Daniel (1996). The East Asian Challenge to Human Rights: Reflections on an East West Dialogue. *Human Rights Quarterly, 18*: 660-667.

Bell, Daniel (1998a). Asian Communitarianism. In *Confucian Democracy, Why & How*, Hahm Chaibong, Hahm Chaihark and David Hall (Eds.). Korea, Kyŏnggi-do Koyang-si : Chŏnt'ong kwa Hyŏndae.

Bell, Daniel (1998b). The Limits of Liberal Justice. *Political Theory, 26* (4): 557-582.

Bell, Daniel (1999). Which Rights Are Universal? *Political Theory, 27* (6): 849-856.

Bell, Daniel (2000). *East Meets West: Human Rights and Democracy in East Asia*. Princeton, New Jersey: Princeton University Press.

Bell, Daniel (2004). Communitarian Philosophy and East Asian Politics. In *Communitarian Politics in Asia*, Chua Beng Huat (Ed.). New York, Routledge**:** 25-45.

Bell, Daniel (2006a). *Beyond Liberal Democracy: Political Thinking for an East Asian Context*. Princeton, New Jersey: Princeton University Press.

Bell, Daniel (2006b). East Asia and the West: The Impact of Confucianism on Anglo-American Political Theory. In *Oxford Handbook of Political Theory*, John Dryzek, Bonnie Honig and Anne Phillips (Eds.). Oxford University Press**:** 262-280.

Bell, Daniel (2008). *China's New Confucianism*. Princeton, New Jersey: Princeton University Press.

Bell, Daniel (2009). Communitarianism. *Stanford Encyclopedia of Philosophy*. Retrieved April 3, 2011, from http://plato.stanford.edu/archives/fall2010/entries/communitarianism/.

Bell, Daniel (2010a). Reconciling Socialism and Confucianism? Reviving Tradition in China. *Dissent, Winter 2010*: 91-99.

Bell, Daniel (2010b). Daniel A. Bell Replies. *Dissent, Winter 2010*: 101-102.

Bell, Daniel (Ed.). (2007). *Confucian Political Ethics*. Princeton University Press.

Bell, Daniel, Brown, David, Jayasuriya, Kanishka and Jones, David (Eds.). (1995). *Towards Illiberal Democracy in Pacific Asia*. Macmillan Press Ltd.

Bell, Daniel and Chaibong, Hahm (Eds.). (2003). *Confucianism for the Modern World*. Cambridge University Press.

Bell, Daniel and Coicaud, Jean-Marc (Eds.). (2007). *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*. New York: Cambridge University Press.

Benedict, Ruth (1934). *Patterns of Culture*. Boston MA: Houghton Mifflin.

Berlin, Isaiah (1969/1997). Two Concepts of Liberty. In *The Proper Study of Mankind: An Anthology of Essays*, New York, Farrar, Straus and Giroux**:** 197-242.

Bloom, Irene (1999). Mencius and Human Rights. In *Confucianism and Human Rights*, Wm. Theodore de Bary and Weiming Tu (Eds.). New York, Columbia University Press**:** 94-116.

Brandt, Richard (1967). Ethical Relativism. In *The Encyclopedia of Philosophy*, Paul Edwards (Ed.). NY, Macmillan. Volume 3.

Brook, Timothy, Bourgon, Jerome and Blue, Gregory (2008). *Death by a Thousand Cuts*. Cambridge, MA: Harvard University Press.

Buchanan, Allen (1989). Assessing the Communitarian Critique of Liberalism. *Ethics, 99*: 852-882.

Buchanan, Allen (2004). *Justice, Legitimacy, and Self-Determination*. Oxford University Press.

Buchanan, Allen (2006). Taking the Human out of Human Rights. In *Rawls's Law of Peoples*, Rex Martin and David A. Reidy (Eds.). Blackwell Publishing.

Caney, Simon (2005). *Justice Beyond Borders: A Global Political Theory*. Oxford University Press.

Chan, Joseph (1995a). The Asian Challenge to Universal Human Rights: A Philosophical Appraisal. In *Human Rights and International Relations in the Asia-Pacific Region*, James T. H. Tang (Ed.). London, Pinter**:** 25-38.

Chan, Joseph (1995b). Raz on Liberal Rights and Common Goods. *Oxford Journal of Legal Studies, 15* (1): 15-31.

Chan, Joseph (1998). Asian Values & Human Rights: An Alternative View. In *Democracy in East Asia*, Larry Diamond and Marc F. Plattner (Eds.). Baltimore, Maryland, The Johns Hopkins Press**:** 28-41.

Chan, Joseph (1999). A Confucian Perspective on Human Rights for Contemporary China. In *The East Asian Challenge for Human Rights*, Joanne Bauer and Daniel Bell (Eds.). Cambridge University Press**:** 212-240.

Chan, Joseph (2000). Thick and Thin Accounts of Human Rights. In *Human Rights and Asian Values*, Michael Jacobsen and Ole Bruun (Eds.). Curzon Press**:** 59-74.

Chan, Joseph (2002). Moral Autonomy, Civil Liberties, and Confucianism. *Philosophy East and West, 52* (3): 281-310.

Chan, Joseph (2007). Democracy and Meritocracy: Toward a Confucian Perspective. *Journal of Chinese Philosophy, 34* (2): 179-193.

Chan, Joseph (2009). Is There a Confucian Perspective on Social Justice? In *Western Political Thought in Dialogue with Asia*, Takashi Shogimen and Cary Nederman (Eds.). United Kingdom, Lexington Books**:** 261-277.

Chan, Wing-Tsit (1963). *A Source Book in Chinese Philosophy*. Princeton University Press.

Chang, Carson, Hsieh, Yu-wei, Hsu, Foo-kwan, Mou, Chung-san and T'ang, Chun-i (1958). A Manifesto on the Reappraisal of Chinese Culture. Reprinted in *Essays on Chinese Philosophy and Culture* (Chun-i T'ang,1988). Taiwan, Student Book Co., Ltd**:** 492-562.

Charney, Evan (1999). Cultural Interpretation and Universal Human Rights. *Political Theory, 27* (6): 840-848.

China, People's Republic of (1991). Human Rights in China. Retrieved September 27, 2010, from http://www.china.org.cn/e-white/7/index.htm.

China, People's Republic of (2000). Fifty Years of Progress in China's Human Rights. Retrieved September 27, 2010, from http://www.china.org.cn/e-white/3/index.htm.

China, People's Republic of (2004). China's Progress in Human Rights in 2004. Retrieved September 27, 2010, from http://china.org.cn/e-white/20050418/index.htm.

China, People's Republic of (2005). Building of Political Democracy in China. Retrieved September 27, 2010, from http://www.china.org.cn/english/2005/Oct/145718.htm.

China, People's Republic of (2009). China's Progress in Human Rights in 2009. Retrieved September 27, 2010, from

http://www.china.org.cn/government/whitepaper/node_7101466.htm.

Ci, Jewei (2005). Taking the Reasons for Human Rights Seriously. *Political Theory, 33* (2): 243-265.

Cohen, Andrew and Wellman, Christopher (Eds.). (2005). *Contemporary Debates in Applied Ethics*. Malden, MA: Blackwell Publishing Ltd.

Cohen, Joshua (2004). Minimalism About Human Rights: The Most We Can Hope For? *Journal of Political Philosophy, 12* (2): 190-213.

Confucius (1992). *The Analects*. (D.C. Lau, Translator). Hong Kong: Chinese University Press.

Conner, Alison (1999). Confucianism and Due Process. In *Confucianism and Human Rights*, Wm. Theodore de Bary and Weiming Tu (Eds.). New York, Columbia University Press**:** 179-192.

Crane, Sam (2009, April 29). Mencius on Torture. Retrieved September 27, 2010, from http://uselesstree.typepad.com/useless_tree/2009/04/mencius-on-torture.html.

Dallmayr, Fred (2002). 'Asian Values' and Global Human Rights. *Philosophy East and West, 52* (2): 173-189.

Davis, Michael (Ed.). (1995). *Human Rights and Chinese Values: Legal, Philosophical, and Political Perspectives*. Hong Kong: Oxford University Press.

de Bary, Wm. Theodore (1983). *The Liberal Tradition in China*. Chinese University Press.

de Bary, Wm. Theodore (1985). Confucian Liberalism and Western Parochialism: A Response to Paul A. Cohen. *Philosophy East and West, 35* (4): 399-412.

de Bary, Wm. Theodore (1998a). *Asian Values and Human Rights: A Confucian Communitarian Perspective*. Cambridge, MA: Harvard University Press.

de Bary, Wm. Theodore (1998b). Confucianism and Human Rights in China. In *Democracy in East Asia*, Larry Diamond and Marc Plattner (Eds.). Baltimore, Maryland, Johns Hopkins University Press**:** 42-54.

de Bary, Wm. Theodore and Tu, Weiming (Eds.). (1998). *Confucianism and Human Rights*. New York: Columbia University Press.

Delaney, C.F. (Ed.). (1994). *The Liberalism-Communitarianism Debate: Liberty and*

Community Values. Lanham, Md.: Rowman & Littlefield.

Donnelly, Jack (1989). *Universal Human Rights: In Theory and Practice*. Ithaca, New York: Cornell University Press.

Donnelly, Jack (1999). Human Rights and Asian Values: A Defense Of "Western" Universalism. In *The East Asian Challenge for Human Rights*, Joanne Bauer and Daniel Bell (Eds.). Cambridge University Press**:** 60-87.

Donnelly, Jack (2003). *Universal Human Rights: In Theory and Practice*. Ithaca, New York: Cornell University Press.

Donnelly, Jack (2007). The Relative Universality of Human Rights. *Human Rights Quarterly, 29*: 281-306.

Donnelly, Jack (2008). Human Rights: Both Universal and Relative (a Reply to Michael Goodhart). *Human Rights Quarterly, 30*: 194-204.

Doyle, Michael (1983a). Kant, Liberal Legacies, and Foreign Affairs (Part 1). *Philosophy and Public Affairs, 12* (3 summer): 205-235.

Doyle, Michael (1983b). Kant, Liberal Legacies, and Foreign Affairs (Part 2). *Philosophy and Public Affairs, 12* (4 Autumn): 323-353.

Doyle, Michael (1997). *Ways of War and Peace*. New York: W.W. Norton & Company, Inc.

Dworkin, Ronald (1977). *Taking Rights Seriously*. Cambridge, MA: Harvard University Press.

Dworkin, Ronald (2002). Taking Rights Seriously in Beijing. *The New York Review of Books, 49* (14).

Finkelman, Paul and Miller, Joseph (Eds.). (1998). *Macmillan Encyclopedia of World Slavery*. MacMillan

Fitzgerald, John (1999). China and the Quest for Dignity. *The National Interest, 55* (Spring 1999): 47-59.

Fung, Yu-Lan (1948). *A Short History of Chinese Philosophy*. New York: The Free Press.

Gardels, Nathan (1992). Interview with Lee Kuan Yew. *New Perspective Quarterly, 9* (1).

Ghai, Yash (2000). Human Rights and Governance: The Asia Debate. *Asia-Pacific*

Journal on Human Rights and the Law, *1*: 9-52.

Goodhart, Michael (2008). Neither Relative nor Universal: A Response to Donnelly. *Human Rights Quarterly*, *30*: 183-193.

Gowans, Chris (2004). Moral Relativism. *Stanford Encyclopedia of Philosophy*. Retrieved April 3, 2011, from http://plato.stanford.edu/archives/spr2011/entries/moral-relativism/.

Griffin, James (2008). *On Human Rights*. New York: Oxford University Press.

Hansen, Chad (1985a). Individualism in Chinese Thought. In *Individualism and Holism*, Donald Munro (Ed.). Ann Arbor, Michigan, Center of Chinese Studies, University of Michigan**:** 35-55.

Hansen, Chad (2004). The Normative Impact of Comparative Ethics: Human Rights. In *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, Kwong-Loi Shun and David Wong (Eds.). Cambridge University Press**:** 72-99.

Hansen, Chad (1985b). Punishment and Dignity in China. In *Individualism and Holism*, Donald Munro (Ed.). Ann Arbor, The University of Michigan.

He, Xinquan (1996). *Ru Xue Yu Xian Dai Min Zhu: Dang Dai Xin Rujia Zheng Zhi Zhe Xue Yan Jiu [Confucianism and the Contemporary Democracy: A Research on the Political Philosophy of Neo-Confucianism]*. Taiwan: Zhong yang yan jiu yuan Zhongguo wen zhe yan jiu suo chou bei chu [In Chinese: 儒學與現代民主: 當代新儒家政治哲學研究 / 何信全著. 中央研究院中國文哲研究所籌備處].

Henkin, Louis (1986). The Human Rights Idea in Contemporary China: A Comparative Perspective. In *Human Rights in Contemporary China*, Randle Edwards, Louis Henkin and Andrew Nathan (Eds.). New York, Columbia University Press**:** 7-39.

Hohfeld, Wesley (1919). *Fundamental Legal Conceptions*. New Haven: Yale University Press.

Hsü, Leonard Shihlien (1932). *The Political Philosophy of Confucianism*. New York: E.P. Button & Co.

Ignatieff, Michael (2001). *Human Rights as Politics and as Idolatry*. New York: Princeton University Press.

Ihara, Craig (2004). Are Individual Rights Necessary? A Confucian Perspective. In *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*,

Kwong-Loi Shun and David Wong (Eds.). Cambridge University Press**:** 11-30.

Jacobsen, Michael and Bruun, Ole (Eds.). (2000). *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*. Curzon Press.

Kant, Immanuel (1795/2006). *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*. Yale University Press.

Kim, Dae Jung (1994). Is Culture Destiny? The Myth of Asia's Anti-Democratic Values. *Foreign Affairs, 73* (6 Nov/Dec): 189-194.

Kymlicka, Will (2002). *Contemporary Political Philosophy: An Introduction*. New York: Oxford University Press.

Langlois, Anthony (2001). *The Politics of Justice and Human Rights*. New York: Cambridge University Press.

Lee, Seung-Hwan (1992). Was There a Concept of Rights in Confucian Virtue-Based Morality? *Journal of Chinese Philosophy, 19*: 241-261.

Lee, Seung-Hwan (1996). Liberal Rights or/and Confucian Virtues? *Philosophy East and West, 46* (3): 367-379.

Li, Xiaorong (2000). The East Is East, Silly (Book Review of *East Meets West* by Daniel Bell). *Human Rights in China*. Retrieved March 15, 2008, from http://www.hrichina.org/public/contents/article?revision%5fid=3514&item%5fid=3513.

Li, Xiaorong (2006). *Ethics, Human Rights and Culture*. Palgrave Macmillan.

Lijphart, Arend (1999). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. Yale University Press.

Liu, Shu-Hsien (1998). *Understanding Confucian Philosophy: Classical and Sung-Ming*. Westport, Connecticut: Praeger Publishers.

Liu, Shu-Hsien (2003). *Essentials of Contemporary Neo-Confucian Philosophy*. Praeger Publishers.

Liu, Shu-Hsien (2007). Democratic Ideal and Practice: A Critical Reflection. *Journal of Chinese Philosophy, 34* (2): 257-275.

Locke, John (1689/2002). *The Two Treatise of Government*. Dover Publications, Inc.

MacIntyre, Alasdair (1989). *Whose Justice? Which Rationality?* University of Notre Dame Press.

MacIntyre, Alasdair (1991). Letter. *The Responsive Community*, *Summer* (1991).

MacIntyre, Alasdair (2007). *After Virtue: A Study in Moral Theory (3rd Edition)*. University of Notre Dame Press.

Macleod, Alistair (2006). Rawls's Narrow Doctrine of Human Rights. In *Rawls's Law of Peoples*, Rex Martin and David A. Reidy (Eds.). Blackwell Publishing.

Martin, Rex and Reidy, David A. (Eds.). (2006). *Rawls's Law of Peoples*. Blackwell Publishing.

Mencius (2003). *Mencius*. (D.C. Lau, Translator). Hong Kong: Chinese University Press.

Mill, John Stuart (1859/2002). *On Liberty* New York, U.S.A.: Dover Publications, Inc.

New York Times (2007, April 5). Man Who Insulted King Pardoned. Retrieved March 28, 2011, from http://www.nytimes.com/2007/04/05/business/worldbusiness/05tube.html?_r=1&adxnnl=1&oref=slogin&adxnnlx=1175918626-vLbSOqJXgus57fEEluNYWg

New York Times (2007, April 13). Thailand Bans YouTube. Retrieved March 28, 2011, from http://query.nytimes.com/gst/fullpage.html?res=9A00E4D9133FF930A25757C0A9619C8B63&scp=2&sq=Thai+King+&st=nyt&emc=eta1

Nickel, James (2007). *Making Sense of Human Rights*. Malden, MA: Blackwell Publishing.

Nozick, Robert (1974). *Anarchy, State, and Utopia*. Basic Books, Inc.

Nussbaum, Martha (2000). *Women and Human Development*. Cambridge: Cambridge University Press.

Orend, Brian (2000). *Michael Walzer on War and Justice*. McGill-Gueen's University Press.

Orend, Brian (2002). *Human Rights: Concept and Context*. Peterborought, Ontario, Canada: Broadview Press Ltd.

Peerenboom, Randall (1998). Law and Ritual in Chinese Philosophy. In *Routledge of*

Encyclopedia of Philosophy, Edward Craig (Ed.). New York, Routledge. 5**:** 442-454.

Peerenboom, Randall (1999). Confucian Harmony and Freedom of Thought. In *Confucianism and Human Rights*, Wm. Theodore de Bary and Weiming Tu (Eds.). New York, Columbia University Press**:** 234-260.

Pogge, Thomas (2002). *World Poverty and Human Rights*. Polity Press.

Rainblot, George (2006). *The Concept of Rights*. Netherlands: Springer.

Rawls, John (1971). *A Theory of Justice*. Harvard University Press.

Rawls, John (1993). *Political Liberalism*. Columbia University Press.

Rawls, John (1999). *The Law of Peoples*. Harvard University Press.

Raz, Joseph (1986). *The Morality of Freedom*. New York: Oxford University Press.

Raz, Joseph (1992). Rights and Individual Well-Being. *Ratio Furis, 5* (2): 127-142.

Raz, Joseph (2010). Human Rights without Foundations. In *The Philosophy of International Law*, Samantha Besson and John Tasioulas (Eds.). Oxford University Press**:** 321-337.

Rodriguez, Junius P. (Ed.). (1997). *The Historical Encyclopedia of World Slavery*. Santa Barbara, California: ABC-CLIO.

Rorty, Richard (1991). *Objectivity, Relativism, and Truth: Philosophical Papers Volume 1*. Cambridge University Press.

Rosemont, Henry Jr. (1988). Why Take Rights Seriously? A Confucian Critique. In *Human Rights and the World's Religions*, Leroy S. Rouner (Ed.). Notre Dame, University of Notre Dame Press**:** 167-182.

Rosemont, Henry Jr. (1991). *A Chinese Mirror: Moral Reflections on Political Economy and Society*. La Salle, Illinois: Open Court Publishing Company.

Rosemont, Henry Jr. (1998). Human Rights: A Bill of Worries. In *Confucianism and Human Rights*, Wm. Theodore de Bary and Weiming Tu (Eds.). New York, Columbia University Press**:** 54-66.

Rosemont, Henry Jr. (2004). Whose Democracy? Which Rights? A Confucian Critique of Modern Western Liberalism. In *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, Shun and Wong (Eds.). Cambridge University Press**:** 49-71.

Rosemont, Henry Jr. (2007). Civil Society, Government, and Confucianism: A Commentary. In *Confucian Political Ethics,* Daniel Bell (Ed.). Princeton, New Jersey, Princeton University Press.

Sandel, Michael (1998). *Liberalism and the Limits of Justice (2nd Edition)*. Cambridge University Press.

Schram, Stuart R. (Ed.). (1974). *Mao Tse-Tung Unrehearsed: Talks and Letters, 1956-1971*. Harmondsworth: Penguin Books.

Sen, Amartya (1997). *Human Rights and Asian Values*. Sixteenth Morgenthau Memorial Lecture. New York: Carnegie Council on Ethics and International Affairs, Published in a shortened form in *The New Republic*, 14-21 July 1997.

Sen, Amartya (1999). *Development as Freedom*. New York: Knopf.

Sen, Amartya (2004). Elements of a Theory of Human Rights. *Philosophy and Public Affairs, 32* (4): 315-356.

Shue, Henry (1996). *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton University Press.

Shun, Kwong-Loi and Wong, David (Eds.). (2004). *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*. Cambridge University Press.

Sumner, Leonard Wayne (1987). *The Moral Foundation of Rights* U.S.A.: Oxford University Press.

Svensson, Marina (2002). *Debating Human Rights in China: A Conceptual and Political History*. Rowman & Littlefield Publishers, Inc.

Talbott, William (2005). *Which Rights Should Be Universal?* Oxford University Press.

Tan, Sor-hoon (2004). *Confucian Democracy: A Deweyan Reconstruction*. State University of New York Press.

Tan, Sor-hoon (2010). Confucianism and Democracy. In *Confucianism in Context: Classic Philosophy and Contemporary Issues, East Asia and Beyond,* Wonsuk Chang and Leah Kalmanson (Eds.). State University of New York Press**:** 103-120.

T'ang, Chun-I (1974). *Ren Wen Jing Shen Zhi Zhong Jian [the Reconstruction of Humanity]*. Taiwan: Student Book Co., Ltd [In Chinese: 唐君毅：《人文精神之重建》，學生書局，台灣].

T'ang, Chun-I (1988). *Essays on Chinese Philosophy and Culture*. Taiwan: Student Book Co., Ltd.

Taylor, Charles (1979). What's Wrong with Negative Liberty. In *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, Alan Ryan (Ed.). Oxford University Press**:** 175-193.

Taylor, Charles (1999). Conditions of an Unforced Consensus on Human Rights. In *The East Asian Challenge for Human Rights*, Joanne Bauer and Daniel Bell (Eds.). New York, Cambridge University Press**:** 124-144.

Twiss, Sumner (1998). A Constructive Framework for Discussing Confucianism and Human Rights. In *Confucianism and Human Rights*, Wm. Theodore de Bary and Weiming Tu (Eds.). New York, Columbia University Press**:** 27-53.

United Nations (1948). Universal Declaration of Human Rights. Retrieved September 27, 2010, from http://www.un.org/Overview/rights.html.

United Nations (1966a). International Covenant on Civil and Political Rights. Retrieved September 27, 2010, from http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

United Nations (1966b). International Covenant on Economic, Social and Cultural Rights. Retrieved September 27, 2010, from http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

United Nations (1993a). Vienna Declaration and Programme of Action. Retrieved September 27, 2010, from http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.CONF.157.23.En.

United Nations (1993b). *Bangkok Declaration on Human Rights*. See Davis (1995), pp. 205-209.

Van Norden, Bryan (2007). *Virtue Ethics and Consequentialism in Early Chinese Philosophy*. Cambridge University Press

Walzer, Michael (1977). *Just and Unjust Wars*. New York: Basic Books.

Walzer, Michael (1983). *Spheres of Justice: A Defense of Pluralism and Equality*. Blackwell.

Walzer, Michael (1987). *Interpretation and Social Criticism: The Tanner Lectures on Human Values 1985*. Cambridge, MA: Harvard University Press.

Walzer, Michael (1994). *Thick and Thin: Moral Argument at Home and Abroad*. University of Notre Dame Press.

Walzer, Michael (1995). Response. In *Pluralism, Justice, and Equality*, Michael Walzer and David Miller (Eds.). Oxford, Oxford University Press**:** 281-298.

Walzer, Michael (2007). Beyond Humanitarian Intervention: Human Rights in Global Society. In *Thinking Politically: Essays in Political Theory*, David Miller (Ed.). N.Y., Yale University Press**:** 251-263.

Walzer, Michael (2010). Michael Walzer Responds. *Dissent, Winter 2010*: 100-101.

Wan, Ming (2008). *The Political Economy of East Asia*. Washington, D.C.: CQ Press.

Wenar, Leif (2010). Rights. *The Stanford Encyclopedia of Philosophy*. Retrieved April 2, 2011, from http://plato.stanford.edu/archives/fall2010/entries/rights.

Wong, David (1984). *Moral Relativity*. Berkeley, California: University of California Press.

Wong, David (2004). Rights and Community in Confucianism. In *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, Kwong-Loi Shun and David Wong (Eds.). Cambridge University Press**:** 31-48.

Wong, David (2006). *Natural Moralities: A Defense of Pluralistic Relativism*. Oxford University Press.

Wong, Xi (1998). China. In *Macmillan Encyclopedia of World Slavery*, Paul Finkelman and Jospeh Miller (Eds.). 1**:** 179-180.

Woo, Peter K.Y. (1980). A Metaphysical Approach to Human Rights from a Chinese Point of View. In *The Philosophy of Human Rights: International Perspectives*, Alan Rosenbaum (Ed.). Westport, Connecticut, Greenwood Press**:** 113-124.

Yasuaki, Onuma (1999). Toward an Intercivilizational Approach to Human Rights. In *The East Asian Challenge for Human Rights*, Joanne Bauer and Daniel Bell (Eds.). New York, Cambridge University Press**:** 103-123.

Zakaria, Fareed (1994). Culture Is Destiny: A Conversation with Lee Kuan Yew. *Foreign Affairs, 73* (2, March/April): 109-126.