

A preliminary consequential evaluation of the roles of cultures in human rights debates

CHAN, Shing Bun Benedict

Published in:
Filosofia Theoretica

DOI:
[10.4314/ft.v8i1.11](https://doi.org/10.4314/ft.v8i1.11)

Published: 17/05/2019

[Link to publication](#)

Citation for published version (APA):

CHAN, S. B. B. (2019). A preliminary consequential evaluation of the roles of cultures in human rights debates. *Filosofia Theoretica*, 8(1), 162-181. <https://doi.org/10.4314/ft.v8i1.11>

General rights

Copyright and intellectual property rights for the publications made accessible in HKBU Scholars are retained by the authors and/or other copyright owners. In addition to the restrictions prescribed by the Copyright Ordinance of Hong Kong, all users and readers must also observe the following terms of use:

- Users may download and print one copy of any publication from HKBU Scholars for the purpose of private study or research
- Users cannot further distribute the material or use it for any profit-making activity or commercial gain
- To share publications in HKBU Scholars with others, users are welcome to freely distribute the permanent publication URLs

A PRELIMINARY CONSEQUENTIAL EVALUATION OF THE ROLES OF CULTURES IN HUMAN RIGHTS Debates*

Benedict Shing Bun Chan, PhD
Assistant Professor, Department of Religion and Philosophy
Research Fellow, Centre of Applied Ethics
Hong Kong Baptist University
Email: benedictchan@hkbu.edu.hk

Abstract

In the debates on the roles of cultures in the ethics of human rights, one of them concerns Confucianism and Ubuntu, two prominent cultures in East Asia and Southern Africa, respectively. Some scholars assert that both cultures have values that are sharply different from the West, and conclude that the West should learn from these cultures. The aim of this paper is to philosophically investigate the roles of cultures in the ethics of human rights. I first introduce the works of Bell, Metz and others on community values such as relationships and harmony in Confucianism and Ubuntu. I then argue that even if their interpretations were correct, their works still would not justify the conclusion they want. I show that it is better to use consequential evaluation rather than cultural evaluation to justify human rights. An example of human rights to health and privacy is discussed. This paper thus offers some preliminary but important philosophical investigations and addresses practical issues of consequential evaluation related to human rights.

Keywords: Confucianism, Ubuntu, Cultural Evaluation, Consequential Evaluation, Human Rights, Health, Privacy

I. Introduction

In the past, comparative philosophy was a subject that primarily focused on the one-to-one comparison between the West and another region, such as East Asia or Africa. Yet the

situation has been changing in recent years. Increasingly more philosophers now compare different cultures without considering the West, or they compare all cultures together. One of the dialogues pertains to Confucianism and Ubuntu. Philosophers discuss the similarities and differences between these two prominent East Asian and Southern African cultures.¹ Most of them believe that Confucianism and Ubuntu have more similarities than differences (BELL and METZ 2011, LI 2016, METZ 2016a, 2017b, METZ 2016b). These scholars also assert that both cultures have values that sharply diverge from those of the West. They argue that the West and the rest treat certain issues differently, or even in opposite ways. One of these issues is the ethics of human rights.

There are many philosophical debates on the ethics of human rights. One of the most famous human rights debates on East Asia is the Asian values debate. Daniel Bell calls this the “East Asian challenge to human rights” (BELL 1996, 2000, 2006a). This debate compares East Asian and Western cultures in general, or Confucianism and liberalism in particular, and asks whether cultural differences affect the justification of human rights. In recent years, Bell and other scholars have extended this kind of debate to include more cultures. They contend that cultural debates are not necessarily “West-centric” and they directly compare non-Western cultures, such as Confucianism and Ubuntu, in human rights debates. One of the leading philosophers of Ubuntu ethics is Thaddeus Metz. Metz has written extensively on the differences between Ubuntu ethics and Western cultures in areas such as animal ethics, bioethics, the capability approach, environmental ethics, and the ethics of care (HOFFMANN and METZ 2017, METZ 2007, 2010a, b, c, 2012b, 2013, 2014, 2017a, METZ and GAIE 2010). He has also compared Ubuntu ethics with different views of human rights (METZ 2011, 2012a).

By evaluating and comparing different ethical theories and cultural traditions, this paper seeks to investigate the role of these cultures in human rights ethics. In addition, there are increasingly more discussions on how consequentialism or consequential evaluation is relevant to human rights (SEN 1979, 1982, 2000, TALBOTT 2010, 2013, 2017). Consequentialism deserves more attention than what is currently found in the human rights literature. This paper contributes to a preliminary consequential evaluation of human rights. I argue that it is better to use consequential evaluation than cultural evaluation to justify human

¹ Sometimes people distinct the meanings of the terms “cultures” and “traditions” sharply. In that sense, Confucianism and Ubuntu are more like “traditions” rather than “cultures.” Nevertheless, this detailed distinction does not concern us here. In this paper, I use these two terms interchangeably.

rights. I do not think that Confucianism or Ubuntu are forms of consequentialism, but this does not mean that they cannot tell us what good consequences are in some situations. Confucian ethics and Ubuntu ethics play unique roles within this analytical framework. However, this is quite different from the cultural evaluation developed by Bell or Metz. To illustrate this, a case about human rights to health and privacy is discussed.

Also, I want to emphasize in advance that I realize the interpretations of Confucianism and Ubuntu are controversial, and many ideas are still open to debate. Indeed, there are already many challenges to Bell's interpretation of Confucianism (CHAN 2014, 2015, 2019b) and Metz's interpretation of Ubuntu ethics (MOLEFE 2015, 2017). I also disagree with Bell's and Metz's interpretations and I discuss some of these points in later sections. However, the focus of this paper should be *the role* of these cultures in international human rights debates, not *the interpretation* of these cultures.

In this paper, I first introduce the works of Bell, Metz and others on community values such as relationships and harmony in the Confucian and Ubuntu contexts. I then argue that even if their interpretations were correct, their works still cannot justify the conclusion they want. I use a consequential evaluation to justify international human rights and explain the roles of cultures in the debates. An example of human rights to health and privacy is discussed. Although one paper cannot answer all of the questions emerging from human rights debates, at least some preliminary but important philosophical investigations and practical issues of consequential evaluation related to human rights can be addressed.

II. A Dialogue between Confucianism, Ubuntu, and Western Cultures

Confucianism has a long history of around 2500 years in East Asia (China, Korea, Japan, and many other East Asian regions). Confucius (551–479 BC) is usually viewed as the founder of Confucianism, and there are many other important Confucians (e.g., Mencius, Xunzi, and Song-Ming Confucians). When people introduce the ideas of Confucianism, they usually begin by discussing important Confucian virtues, such as *ren* (benevolence/humanity/compassion), *yi* (righteousness), and *li* (ritual/propriety). Among these, *ren* is the most basic. Of course, with such a long history, it is difficult to summarize all of the important thoughts on these Confucian virtues. Nonetheless, this does not suggest that some important Confucian ideas cannot be relied on to address certain contemporary social and political issues, such as human rights.

According to Metz, Ubuntu, is “the term for humanness that Zulu and Xhosa speakers in South Africa use to capture morality as a whole” (BELL and METZ 2011, 79). The word “Ubuntu” comes from the Nguni languages and can be roughly translated as humanness or humanity. Compared to Confucianism, Ubuntu has a shorter history. “It is a largely oral tradition that only in the postwar era has been discussed in written form by academics, or at least by those who are sympathetic and informed” (METZ 2017b, 443). Nevertheless, having a shorter history does not mean that Ubuntu is less important. Indeed, it is a meaningful and far-reaching cultural tradition in southern Africa, or more precisely, the sub-Saharan region.

I should raise another important point from Metz. He does not follow what he calls the “essentialist” approach when discussing a culture’s important values. For example, if he says that value X exists in a culture, it does not mean that X is:

To be found only in a certain location, throughout that location, or necessarily in it. Instead, to call a value “Chinese” simply means that it has for a long while been recurrently encountered in China and among those from China to a noticeable extent, in contrast with many other places. Similar remarks go for the use of terms such as “African” (or “Sub-Saharan”), “Western,” and the like (METZ 2017b, 442).

That is, when we say a culture treasures value X, it does not mean that X can only be found in a certain location or a particular culture. It only means that X has been in that culture for a long time and it has been “recurrently encountered and salient” in that place or within the culture. According to Metz, this is not a constructivist approach because he still contends cultural values are objective. However, it is not essentialist either because he does not require the values to be exclusively found in that culture. All he suggests is that a value is prominent in a particular culture and place (METZ 2011, 535-536, 2015, 1176-1177, 2017b, 442-444). Such a non-essentialist approach applies not only to Ubuntu but also Confucianism (indeed, it applies to every culture).

Keeping this non-essentialist approach in mind, we can now discuss some important values in both Confucian and Ubuntu ethics. Both Confucianism and Ubuntu have so many elements that they cannot be completely described in one paper. Accordingly, I focus on a dialogue between the two cultural traditions. Bell, Metz, and other philosophers (LI 2016, METZ 2016a), argue that the dialogue primarily concerns the values the two cultures have in common. They also recognize that these cultures understand things differently; for example, they have different perspectives on the value of aging (BELL and METZ 2011, 90-92). While

Bell contends that Confucians prefer meritocracy, Metz argues that Ubuntu subscribes to consensual democracy (Bell and Metz 2011, 85-87, METZ 2014, 151-152, 2017b, 452-453). However, they prefer to focus on the similarities. More importantly, they argue that the two cultures have some common values that are contrary to values in the West. In other words, it is East Asia and Sub-Sahara Africa on one side and the Western cultures on the other. Such a comparison is the basic framework of their works.

Based on this framework, scholars such as Metz and Bell argue that both Confucianism and Ubuntu emphasize community values. Sometimes they even refer to Confucianism and Ubuntu as “Asian communitarianism” or “Afro-communitarianism,” respectively (BELL 1998, METZ 2015, METZ and GAIE 2010).² Bell and Metz argue that the ethics of these two cultures “have begun with the intuition that the two traditions share ‘communitarian’ concerns.” They compare the similarities and differences between the two cultures, and how they contrast with the West (BELL and METZ 2011, 80). There are at least two important elements in these versions of communitarianism. First, they emphasize relationships, such as the family relationship and relationships among people within a community. Metz argues that most of the moral theories in the West are based on “individualism,” whereas Ubuntu ethics are a kind of “relationalism” (METZ 2014, 146-148). Second, these scholars also discuss the importance of harmony. Although they acknowledge that Confucianism and Ubuntu may interpret the details of harmony differently (LI 2016, METZ 2016a), most of them point out that harmony is another value that contrasts with the West (METZ 2014, 148-151). This understanding of community values (in terms of relationships and harmony) motivates Bell, Metz and other scholars to argue that Confucian and Ubuntu ethics are different from most of the values found in Western moral theories, such as utility (Utilitarianism), autonomy (Kantian), and capability (the capability approach) (METZ 2014). Metz also discusses the ethics of care, which also emphasizes caring and relationships (METZ 2013, NODDINGS 2013). Nevertheless, Metz argues that Confucianism and Ubuntu explain and justify the values of relationships and harmony better than the ethics of care (METZ 2014, 148).

² In his earlier works, Bell favors communitarianism and considers himself as a communitarian (BELL 1993, 1998). In recent works, however, Bell has modified his position and no longer says that Confucianism is a version of communitarianism. Nevertheless, he simply thinks that the term “communitarianism,” especially the views of “communitarians” such as Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer, cannot fully explain the importance of Confucianism. This does not mean that he denies the importance of community values in Confucianism (BELL 2019, xxiv-xxvi, FRENKIEL 2012). Therefore, I still use the term “communitarianism” in this paper simply to refer to the discussion on the importance of community values in Confucianism or Ubuntu.

According to Bell and Metz, these Asian and African values of community are important to human rights debates. Allow me to discuss each of their ideas on human rights briefly. Bell argues that many Confucian or East Asian values derived from Confucianism are community values. They are local, national, or family based (BELL 2004, 35-37). More importantly, Bell does not only aim at pointing out cultural differences but also argues that “Cultural factors can affect the justification of rights” (BELL 2004, 29, 2006b, 267), and:

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... 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 (2006a, 73).

Given that East and West have different cultural values, Bell argues that some human rights, such as political rights, are not East Asian rights (BELL 2006a, 72-76 & 79).

Metz argues that African values affect the perception of dignity, and such a perception affects the foundation of human rights. Briefly, he argues that Africans view dignity in two ways: vitality and community. Vitality does not provide enough of a foundation upon which to ground human rights, but the community does (METZ 2012a). This is roughly similar to Bell’s idea of East-West differences on human rights. Even though African and East Asian cultures may not have the exact same list of human rights, they both focus on community values (in terms of relationships and harmony) rather than on values such as autonomy found in Western individualism.

This idea can be further illustrated by discussing some items of human rights in detail. In this paper, I want to particularly focus on human rights to health and human rights to privacy. Human rights to health are addressed in many international documents, such as Article 25(1) of the *Universal Declaration of Human rights*, Article 12 of the *International Covenant on Economic, Social and Cultural Rights*, and the preamble to the *Constitution of the World Health Organization*. Human rights to privacy are also addressed in many international documents, such as Article 12 of the *Universal Declaration of Human rights*. Due to length limitations, here I do not discuss the definition of health or privacy, nor whether these rights really exist.³ Instead, I assume that health and privacy are important

³ For discussions on human rights to health, see Norman Daniels (2008) and Daniel Hausman (2015). For discussions on human rights to privacy, see Leslie Francis and John Francis (2017) and Judith Jarvis Thomson (1975).

values so that they are human rights. Our question is: what are the roles of cultural traditions in the debates of human rights to health and human rights to privacy?

Metz and Joseph B. R. Gaie (2010) discuss a case that is relevant to this question. They ask whether medical professionals should keep private information about a patient's diagnosis and treatment from the patient's family. They argue that Western moral theories, such as Kantianism and utilitarianism, assume that a patient has an absolute right to privacy wherever her health information is concerned. In other words, without her consent, no medical professional should reveal her information to anyone, including family members (278). However, they argue that this is not the case in Ubuntu ethics. Because Ubuntu ethics emphasize community values, it is not the individual's (i.e., the patient's) right to decide what information should be revealed. Community members, especially family members, also have a role. Metz and Gaie conclude that "an individual's illness is a collective affair to some degree, that is, that considerations of confidentiality have less moral significance than in the typical Western approach" (279). It can be deduced from this conclusion that human rights to privacy are not so important in this African perspective, and that even though human rights to health are important, they should be framed within the context of community values under Ubuntu ethics.⁴

Having briefly summarized the ideas of Bell, Metz, and others, it is time to evaluate them. Objections to their ideas can be divided into two groups, and they are not mutually exclusive. The first group focuses on the accuracy of interpretations of these cultures. Most research opposing the ideas of Bell and Metz (including my previous works) involves some discussion of this. For example, Bell and Metz have been independently criticized by others who allege that although each focuses on community values such as relationships and harmony, both ignore the metaphysics of morality found in Confucianism and Ubuntu (CHAN 2014, MOLEFE 2015). Although Confucianism emphasizes family relationships and harmony, the moral foundation of these values is *ren* (benevolence) and other Confucian virtues. In the mainstream of Song-Ming Confucianism, these virtues are related to "the Principle of Universe." Mainstream Confucians state that this metaphysical tradition begins with Mencius (such as in *Mencius* 2A6), the *Great Learning*, and the *Doctrine of Mean*, and is completely developed in the stage of Song-Ming Confucianism. Although Bell and Metz claim that they do not "deny that Confucianism has a religious dimension," (BELL and

⁴ Ruiping Fan (2010) also discusses the importance of family values in Confucianism, and compares that with values in Western cultures.

METZ 2011, 82), they underestimate the importance of such a metaphysical tradition in Confucianism. They focus on family relationships and other community values, but this is a selective way to discuss Confucianism. Motsamai Molefe (2015) also argues that Metz's interpretation of Ubuntu ethics totally relies on humanism. However, Metz ignores Ubuntu's grounding in spiritual and supernatural properties. It is argued that without the metaphysical aspect, both Bell's interpretation of Confucianism and Metz's interpretation of Ubuntu are incomplete. In addition to the metaphysics of morality, it is suggested that some of their other interpretations are also problematic. For example, Bell is accused of being selective and biased with regards to the ideas of security and liberty in the Confucian tradition (CHAN 2014).

Even if their interpretations were correct, this would not imply that their application of cultural values to practical issues such as human rights debates was accurate. This problem belongs to the second group of objections, which focuses on the methodology of evaluation. I think there are fewer works focused on this group of objections. Hence, I would like to fill in the gap. For the rest of this paper, let us ignore the accuracy of the interpretations of Confucianism and Ubuntu, and focus on the key methodological concerns. In a nutshell, Bell, Metz, and many others claim that there are cultural differences between the West and East Asia or Southern Africa. They assume that these cultural differences are the only reason to justify or deny some human rights. Notice that their arguments do not simply claim that there are conflicting moral intuitions or values between these cultures. They also claim that based on these differences, there should be plural justifications for human rights, or that there are more than one list of human rights. This is to suggest that some items of human rights are not universal. For example, as mentioned before, based on cultural differences, Bell argues that we should both limit some items and expand other items in the "set of human rights for an East Asian context" (BELL 2006a, 73-79). Metz also not only aims at pointing out the cultural differences but also discussing the results of these differences.

Let me generalize the moral reasoning behind these arguments. This methodology of evaluation can be called "cultural evaluation." The reasoning of this evaluation is that every culture determines the importance of a value in that culture. When people rely on this reasoning, they assume that the cultural differences are so important that it is legitimate to make different moral justifications merely based on disparate cultures. However, this is not the only reasoning or evaluation we can use. There are still many alternative ways to evaluate the roles of cultures in human rights debates. For the rest of this paper, I will advocate for the

use of one of these alternative methodologies to evaluate the roles of cultures in human rights debates. Next section introduces such an evaluation. Thereafter, in Section IV, I discuss why this evaluation is better than the cultural evaluation suggested by Bell and Metz, and why neither Bell nor Metz successfully shows that their reasoning is better than this alternative. I also revisit the patient's privacy example and argue that the claim from Metz and Gaie (2010) is problematic.

III: Consequential Evaluation and International Human Rights

This section introduces a consequential evaluation to human rights debates. Given that consequential evaluation is such a big name, I explain it in detail point by point. Before I begin the discussion, I want to emphasize that this paper does not try to compare consequential and non-consequential approaches. It is open for debate whether there is any non-consequential evaluation, and whether a consequential evaluation is better than non-consequential evaluation. I simply set aside any non-consequential reasoning and leave it as a topic for another paper.

So far, I have used the term "consequentialism" and "consequential evaluation" interchangeably. I should further explain the use of these terms. In doing so, I borrow the idea from Amartya Sen (1979, 1982, 2000). In this paper, I do not use the term "consequentialism" in the following two ways. First, as Sen observes, "consequentialism" is sometimes used negatively by people who are against it. In this sense, supporters of consequentialism may not want to label themselves as consequentialists (SEN 2000, 477-478). As Sen writes, "To admit to being a 'consequentialist' is almost like introducing oneself as a 'wog' or a 'frog' or a 'limey,' which can be instantly delineating without being descriptively rich." (478). This negative label is not how I use the term "consequentialism" in this paper. Second, one may claim that consequentialism is a moral theory that says the only moral foundation or justification for the rightness of an action is determined by its consequences. Nevertheless, this is also not what Sen suggests. If this can be called "strong consequentialism," then Sen's consequential evaluation is only a version of "weak consequentialism." That is, based on consequential evaluation, Sen argues against making consequence-independent judgments. He also argues against moral constraints that deny trade-offs in every situation. Sen claims that broadly speaking, deontology without consequence-independent and trade-off-barred factors is close enough to his consequential evaluation (479-480). One may assert that Sen's consequential evaluation is a methodology for practical reasoning, not a comprehensive

moral theory. One implication of Sen's idea is that consequential evaluation is unavoidable in normative ethics. I follow Sen's notion on consequential evaluation in this paper and use the terms "consequential evaluation" and "consequentialism" interchangeably.

One may wonder how consequential evaluation is different from utilitarianism. Sen divides utilitarianism into three major components: consequential evaluation, welfarism, and sum-ranking (SEN 1979, 468). He distinguishes consequential evaluation from utilitarianism, because there are good consequences other than welfare (happiness or desire-satisfaction), and we do not always need to add up all the good consequences to determine whether an action is right. Another advantage of this thought is that many traditional objections against utilitarianism are merely against welfarism or sum-ranking, but not consequential evaluation (468–479). As Sen writes:

Some of the alleged limitations of consequential reasoning can be seen to be generated not by the discipline of consequential evaluation itself, but by additional assumptions—entirely separate and by no means necessary—with which a consequential approach is frequently combined (2000, 502).

In summary, although we can renounce some of the controversial aspects of utilitarianism (i.e., welfarism and sum-ranking), the consequential component is still useful or even necessary to moral evaluation.

The most obvious problem of consequential evaluation is that it is unclear what values should be viewed as good consequences when determining whether an action is right. Utilitarians can avoid this problem because they consider welfare to be the only intrinsic good. To say the least, supporters of non-utilitarian consequentialism should work further on what consequences may be good enough if welfare is not the only intrinsic value. Some philosophers, such as Judith Jarvis Thomson, argue that it is impossible to have a complete list of good consequences, and the commensurable problem is unsolvable (2001, 152–159). Martha Nussbaum, who collaborated with Sen in developing the capability approach, also doubts Sen's optimistic view of consequential evaluation, especially on its application to human rights (2011, 34–35).

Sen's reply to these objections is to defend the possibility of the incompleteness of ranking in consequential evaluation (SEN 2000, 486–487). That is, even if we do not have a complete list of good consequences, we can still compare and rank the options. For example, when he talks about maximization, he clarifies that in mathematics:

Maximization does not, in fact, demand that all alternatives be comparable, and does not even require that a best alternative be identifiable. It only requires that we do not choose an alternative that is worse than another that can be chosen instead (486).

The debate on consequential evaluation is ongoing. Because the purpose of this paper is to determine the role of culture in human rights debates, below I first discuss how to apply the above discussion on the consequential evaluation of human rights debates, and then I return to the discussion on the roles of cultures in next section.

One may wonder if it is possible to develop a consequential evaluation of human rights. The problem is that people often assume that human rights are absolute moral rights. For example, one important feature of absolute rights is that they are generally considered to be exceptionalness or have priorities other than goods (as the title of Ronald Dworkin's paper says: "Rights as Trumps") (1984). Hence, there is no space for consequential evaluation in human rights debates (NOZICK 1974, 28-51, SEN 1982, 4-7). Nevertheless, it is a mistake to make such an assumption. Here I want to borrow some ideas from Allen Buchanan to explain my point, even though Buchanan's ideas are not exactly the same as mine (later I will explain our differences further). In general, he argues that human rights in international legal documents (in short, "international human rights") have their own significance. We should directly focus on the importance of international human rights in practice, rather than on the relationship between international human rights and moral rights (2013, 50-84).

The history of international human rights starts from the *Universal Declaration of Human Rights*, approved by the United Nations in 1948. Since then, there have been many international human rights documents, treaties, and covenants signed and recognized by most countries in the world. These international human rights documents have become important rights in both global and local politics from a practical point of view. Yet it is exactly because international human rights are already so politically important that we no longer need to treat them as absolute moral rights. Otherwise, it would be very difficult to justify some international human rights based on absolute moral rights. For example, Article 24 of the *Universal Declaration of Human Rights* says that everyone should have a right to "periodic holidays with pay." How can this be justified by absolute moral rights? Instead, it makes more sense if we justify it as an important global political agenda to protect workers. In short, we do not need to rely on the notion of absolute moral rights to secure periodic holidays with pay.

The above is a clarification on the meaning and importance of international human rights. I generally agree with Buchanan's idea that we should focus on the importance of international human rights and distinguish them from absolute moral rights. Indeed, such an idea is useful to different kinds of human rights debates.⁵ Nevertheless, there are some differences between Buchanan's ideas and my argument here. First, one of Buchanan's major arguments concerns the moral justification for international human rights. He mainly argues against what he calls "the mirroring view," which says that "to justify an international legal human right typically involves defending the claim that a corresponding moral human right exists" (BUCHANAN 2013, 17). He argues that some philosophers (BEITZ 2009, GRIFFIN 2008, NICKEL 2007) wrongly assume such a mirroring view. Instead, Buchanan argues that we should have an ethically pluralistic justification of human rights, based on two functions of international human rights: well-being function and status egalitarian function. In his own words: "constraining sovereignty in order to affirm and protect equal basic status and to ensure that all have the opportunity to lead a minimally good or decent life" (BUCHANAN 2013, 37). Yet, he does not deny the existence of moral rights, and he does not deny that some moral rights may still be one of the plural justifications for some international human rights (BUCHANAN 2016, 503). For the purpose of this paper, this further idea from Buchanan does not concern us. I only need to take into account his idea of the significance of international human rights in practice.

Second, it appears that Buchanan does not endorse consequentialism (2013, 64, 171, 276). However, I think his argument against consequentialism is merely against utilitarianism, such as the claim that happiness is the only intrinsic value. Since consequentialism is different from utilitarianism, Buchanan's objection is irrelevant to my argument. My claim here is further supported by a dialogue between Buchanan and William Talbott. In response to Talbott's concern, Buchanan clarifies that he does not completely exclude the possibility that some forms of consequentialism can remain as the fundamental moral theory behind the plural justifications of international human rights (BUCHANAN 2017, 196-197, TALBOTT 2017). In general, it is unclear whether Buchanan accepts some forms of consequentialism. Given that he does not directly discuss Sen's consequential evaluation, Buchanan's idea is not a direct challenge to the consequential evaluation I discuss here. Yet the part on the

⁵ For example, the notion of consequential evaluation and international human rights are useful to debates on human rights and other religious or traditional theories, such as the capability approach or Reformation, and they are also useful to human rights debates against torture, human rights to liberty, and human rights to health as well (CHAN 2019a, b, forthcoming-a, b).

significance of international human rights in practice is important to our discussion. Accordingly, I think it is safe to preliminarily combine them as a consequential evaluation of international human rights. In the remainder of the paper, I will discuss how this is relevant to our discussion on the roles of cultures in human rights debates.

IV: A Comparison between Consequential Evaluation and Cultural Evaluation

In this section, I explain why consequential evaluation is better than cultural evaluation to explain and justify the role of culture. I use the example of health and privacy mentioned in Section II to illustrate my idea. I argue why the conclusion should be different from the one Metz and Gaie (2010) suggest.

In human rights debates, both of the following two moral intuitions appear to be reasonable. On the one hand, we intuitively think that many human rights are very important in the world, and hence we tend to agree that human rights are universal. On the other hand, some people intuitively think that no one can escape from his or her own culture in making moral judgments. In this sense, the universality of human rights does not imply culturally independent judgments. As we have already discussed, some people even believe that cultural differences affect the justification of human rights. One extreme of this can fall into cultural relativism.⁶ Some agree that human rights are important or even universal, but others say it is impossible to ignore culture in our moral considerations and judgments. Some philosophers, such as Donnelly, agree that human rights are universal, but propose combining the relativity and universality of human rights (DONNELLY 2007, 2013). Other philosophers, such as Bell and Metz, emphasize that cultures determine moral considerations and judgments.

Which side is correct? To answer this question, allow me to revisit the example mentioned in Section II to illustrate my idea. Again, the example concerns the patient's right to confidentiality with regard to her health situation, i.e., her right to privacy and health. As quoted in Section II, Metz and Gaie contend that this is a collective affair in Ubuntu and an individual affair in the West (METZ and GAIE 2010, 279). Nevertheless, it is difficult to understand why this is a problem of cultural differences. Why is the collective issue less significant in the West? Metz and Gaie assume that both Kantian and utilitarian philosophy would support the patient's right to confidentiality whereas Ubuntu (and probably Confucianism) would not. However, even in the West, the moral judgment in a situation

⁶ Bell prefers to call himself a "pluralist" rather than a "relativist" (BELL 2006a, 328-329).

similar to this case always depends on the details of the patient, the family, and the medical system of the society, rather than merely on cultures. Let us imagine a situation in which family members are so evil that they are waiting for the patient to die (to obtain her money). It is difficult to imagine anyone who would find it reasonable to violate the patient's right of privacy to fulfill the evil wish (and probably violate her right to health, because the family members may not want the patient to be healed). I want to emphasize that this does not mean that Confucian or Ubuntu ethicists would blindly follow the evil intention of the family members. They might simply say that the evil intent is not a prominent part of the culture (indeed, it conflicts with many values in these cultures, such as the Confucian virtues of *ren* and *yi*). Moreover, this example does not suggest that Western cultures are better than others. The point here is, we should not acknowledge the cultural differences and ignore the details of a situation then jump to a conclusion too quickly. In short, we need to understand the details, not merely the cultures, to determine the answer.

When we go into the details of cultures, there are many important factors we should not ignore as well. When we talk about Western cultures, we should realize that some philosophers also have doubts about the rights to health and privacy. For example, Thomson argues that there is no right to privacy because the contents of privacy can be reduced to other rights (THOMSON 1975). Practically, human rights in the *International Covenant on Economic, Social and Cultural Rights*, including human rights to health, have not yet been legally ratified by the Senate of the United States of America.⁷ This means that human rights to health are not fully implemented in every Western country. Notice that the term "rights" is ambiguous here. If it simply refers to absolute moral rights, then utilitarians also disagree with this kind of rights. If it means human rights in international documents, as discussed in Section III, then we need to make additional arguments to justify these rights. One way or another, it is not merely about the differences among Western, Southern African, or East Asian cultures.

Metz and Gaie also discuss impartiality. This is another important factor we should not ignore because it is unclear whether impartiality plays a role in the human rights debate on health and privacy. Metz and Gaie argue that Ubuntu ethics treat impartiality in a different way than most Western moral theories, such as Kantian ethics, utilitarianism, or even Lawrence Kohlberg's moral development theory (KOHLBERG 1981, 1984, METZ and

⁷ The *International Covenant on Economic, Social and Cultural Rights* was signed in 1979 under the Carter administration, but it has not yet been ratified by the Senate of the United States of America.

GAIE 2010, 281-286). Although the ethics of care is arguably the closest to Ubuntu ethics, they argue that Ubuntu ethics discuss relationships in a better way (METZ 2013, METZ and GAIE 2010, 284).⁸ Given that relationships are so important, they argue that Kohlberg should not emphasize impartiality as the highest stage of moral development, or ask why family factors are also important in the example of patient privacy (METZ and GAIE 2010, 281-283). Yet again, this is not about cultural differences between the West and others. There are many debates in the West on impartiality, and it is not necessary for impartiality and (family) relationships to be mutually exclusive. Some Western philosophers acknowledge that people have special obligations to others. The most obvious example is the family obligation, such as the special obligation parents have to their children.⁹ In short, this is not a debate on cultural differences. Even if there were cultural differences in the understanding of impartiality, we still would need further details in order to justify which side is better.

I hope now it is clear why the issue between the West and others is not black-and-white. The details are what matters. Only when the details are considered can culture play a role. Based on that reasoning, we can admit that Bell, Metz and other scholars on their side have raised an important point: it is also our moral intuition that values such as harmony or family relationships are important in some contexts and situations. These scholars show us that these values are important to Confucianism and Ubuntu. It is worth discussing these values further, especially in terms of the contexts and situations they are morally good for. We need to realize that even though these values are emphasized by both Confucianism and Ubuntu, they should actually be good for everyone in the world. In other words, they are important universal values that exist in different cultures. For our concern here, the question should be how important they are and what roles they play in normative ethics, such as the debate on the ethics of international human rights. Conducting research to answer these questions is meaningful.

Yet, how important are these values? This is not a question we can answer merely by *cultural evaluation*. This is why it is better to use consequential evaluation. In consequential evaluation, a value is important because it gives us a good consequence in some situations. The kinds of good and situations that are relevant depend on the details. We may not be able

⁸ There is also a dialogue between Confucianism and the ethics of care on the value of relationships and harmony (LI 1994, 2002, STAR 2002, YUAN 2002). Due to the limit of length limitations, I omit the discussion of this dialogue here.

⁹ A relevant example (but more complicated than the current discussion) is the debate on agent-relative/agent-neutral distinction (NAGEL 1970, PARFIT 1984). Sen (1982) argues in detail about how agent-relativity can fit well into his goal rights system, which is based on consequential evaluation.

to answer everything abstractly, but at least we can compare two situations to determine the one that is better and the one that is worse.¹⁰ In this sense, consequential evaluation does not exclude cultural factors completely. Some people argue that there is a problem with consequential evaluation because it cannot tell us in principle exactly what is good and what is bad. However, this is also one of its advantages because it does not exclude any culture. Such a consequential evaluation can be used generally in normative ethics, or particularly to address certain ethical issues. One example of these issues is the significance of international human rights in practice. As mentioned in the last section, it is not necessary to assume that international human rights are justified by absolute moral rights, or that international human rights are the equivalent of absolute moral human rights. This opens a door for consequential evaluation to be a (if not “the”) justification for some international human rights.

In the health and privacy example, we are reminded that the values of family relationships are important in Confucianism and Ubuntu. However, they do not necessarily relate to Confucianism or Ubuntu, because most people believe family relationships are important anyway. In other words, they are some kinds of good consequences. Nevertheless, to consider whether medical professionals should violate a patient’s right to privacy, we need more details on the situation. We should consider the consequences from different dimensions. We should evaluate the details of the patient, the family, and the medical system of the society. Cultures play some roles in such a complicated evaluation, but they are not the only crucial factor. More importantly, even though cultures have their roles, they do not directly imply whether we should have human rights to health and privacy in international legal documents. Given that international human rights to health and privacy are not necessarily justified or equivalent to moral human rights, consequential evaluation is a good candidate to become the moral reasoning underpinning the justification of these international human rights. That is, we have items about health or privacy in international legal documents of human rights because they are generally important to every society and also important globally. They bring about good consequences on their own and they promote other good consequences. It is normal to believe that we need health and privacy protection at the level of international politics, and we need them as international human rights. Therefore, we have international human rights to health and privacy. Of course, this is just a very brief

¹⁰ This is what Sen calls the “comparative approach.” It also involves the difference between optimization and maximization mentioned in Section III. Sen discusses the approach of consequential evaluation to rights and human rights, and later extends the discussion to the comparative approach to justice (SEN 1982, 2000, 486-487, 2009, 15-18, 208-221, 355-387).

description. We need another paper to discuss the full argument of this consequential evaluation of international human rights. Nevertheless, at least it is now clear why cultural evaluation is inadequate for our purpose. In short, consequential evaluation can preserve the advantages of cultural evaluation, but it does not have the disadvantages of the latter. Therefore, consequential evaluation is better than cultural evaluation in the debates on international human rights, or even generally better for normative ethics.

V. Conclusion

I would like to conclude this paper by pointing out some possible directions for future research. In this paper, I have only discussed the preliminary idea of consequential evaluation and have not set out to defend it as *the best* methodology. I have not yet compared consequential evaluation with non-consequential evaluation. Although I have pointed out that international human rights are not necessarily absolute moral rights, I have not discussed other options to the justification of international human rights. Particularly, Buchanan suggests a pluralistic justificatory methodology for human rights and he is against utilitarianism. Yet I have not compared his idea with mine. All I have done in this paper is to argue that by understanding consequential evaluation and cultural evaluation in detail, we should support the former rather than the latter. In other words, consequential evaluation is better than cultural evaluation. Other comparisons are beyond the scope of this paper and should be discussed in other works.

Although I agree that values of relationships and harmony are important, I have not compared these values with other possible options. For now, I leave the question open to whether they are intrinsic values or they are important because they lead us to other intrinsic values (and these two options are not mutually exclusive). I cannot discuss all of the details of moral values in one paper. What I have done is to deny the reasoning that they are important values simply because they are endorsed by some cultures. I suggest that it is better to evaluate them within the framework of consequential evaluation rather than cultural evaluation. How important they are, or whether they are on the list of intrinsic values (or whether there is such a complete list), are all important questions worthy of future research. I look forward to answering some of these questions in the future. Unfortunately, we can only answer the questions one step at a time. The first step is to suggest the preliminary idea of

consequential evaluation. In that respect, this paper has fulfilled its purpose by showing that consequential evaluation is better than cultural evaluation in human rights debates.

Disclaimer

Research related to this paper, conducted under the project title “A Philosophical Investigation of the Ethics of Human Rights to Health,” has been funded by the Early Career Scheme from the University Grants Committee, Hong Kong S.A.R., China (No. 22611516) from January 1, 2017 to December 31, 2019. This paper does not represent the official positions of the University Grants Committee or the Hong Kong S.A.R. Government.

Acknowledgements

The author thanks the organizer, Dr. Muk Yan WONG, and the participants of the “Inclusive Development Workshop: Greater China and Beyond” (held at Hang Seng University of Hong Kong on August 10–11, 2018) for their valuable comments and suggestions that helped to improve the quality of this paper.

Relevant Literature

1. BEITZ, Charles. [The Idea of Human Rights], 2009. Oxford University Press: Oxford.
2. BELL, Daniel. [Communitarianism and its Critics], 1993. Clarendon Press: Oxford.
3. —“The East Asian Challenge to Human Rights: Reflections on an East West Dialogue,” [Human Rights Quarterly], pp641–667, 1996. Vol 18. No3.
4. —“Asian Communitarianism,” [Confucian Democracy, Why & How, Chaibong HAHM, Chaihark HAHM, and Hall DAVID Eds.], pp14-23, 1998. Chõnt'ong kwa Hyõndae: Kyõnggi-do Koyang-si.
5. —[East Meets West: Human Rights and Democracy in East Asia], 2000. Princeton University Press: Princeton, New Jersey.
6. —“Communitarian Philosophy and East Asian Politics,” [Communitarian Politics in Asia, Beng CHUA Ed.] pp25-45, 2004. Routledge: New York.
7. —[Beyond Liberal Democracy: Political Thinking for an East Asian Context], 2006a. Princeton University Press: Princeton.
8. —“East Asia and the West: The Impact of Confucianism on Anglo-American Political Theory,” [Oxford Handbook of Political Theory, John DRYZEK, Bonnie HONIG and Anne PHILLIPS Eds.], pp262-280, 2006b. Oxford University Press: Oxford.

9. —[Confucian Political Philosophy: Politics, Cities and Daily Life (in Traditional Chinese Characters, Translated by Wanwei WU)], 2019. City University of Hong Kong Press: Hong Kong.
10. BELL, D., and METZ, T. "Confucianism and Ubuntu: Reflections on a Dialogue between Chinese and African Traditions," [Journal of Chinese Philosophy], pp78–95, 2011. Vol 38 NoS1.
11. BUCHANAN, Allen. [The Heart of Human Rights], 2013. Oxford University Press: Oxford.
12. —"Human Rights: A Plea for Taking the Law and Institutions Seriously," [Ethics & International Affairs], pp501–510, 2016. Vol 30. No4.
13. —"Reply to Talbott, Ackerly, Kelly, and Risse," [Law and Philosophy], pp191–213, 2017. Vol 36. No2.
14. CHAN, Benedict S. "A Human Rights Debate on Physical Security, Political Liberty, and the Confucian Tradition," [Dao: A Journal of Comparative Philosophy], pp567-588, 2014. Vol 13. No4.
15. —"Do Economic Rights Conflict with Political Rights? An East and West Cultural Debate," [Conflict and Harmony in Comparative Philosophy, AARON B. Creller Ed.], pp139-147, 2015. Cambridge Scholars Publishing: Newcastle upon Tyne.
16. —"Are International Human Rights Universal? – East-West Philosophical Debates on Human Rights to Liberty and Health," [Metaphysics of Human Rights 1948-2018: On the Occasion of the 70th Anniversary of the UDHR, Luca Di DONATO and Elisa GRIMI Eds.], pp135-152, 2019a. Vernon Press: Malaga, Spain.
17. —"East Asia: Challenges to Political Rights," [Routledge Handbook of Development Ethics, JAY Drydyk and LORI Keleher Eds.], pp382-386, 2019b. Routledge: New York.
18. —"Enhanced Interrogation, Consequential Evaluation, and Human Rights to Health," [Journal of Bioethical Inquiry], Forthcoming.
19. —"The Confucian Tradition and the Reformed Tradition in International Human Rights Debates: A Comparison," Forthcoming-b.
20. DANIELS, Norman. [Just Health: Meeting Health Needs Fairly], 2008. Cambridge University Press: Cambridge.
21. DONNELLY, Jack. "The Relative Universality of Human Rights," [Human Rights Quarterly] pp281-306, 2007. Vol 29. No2.
22. —[Universal Human Rights in Theory and Practice], 2013. Cornell University Press: Ithaca, NY.
23. DWORKIN, Ronald. "Rights as Trumps." [Theories of Rights, Jeremy WALDRON Ed.], 1984. pp153-167. Oxford University Press: Oxford.

24. FAN, Ruiping. [Reconstructionist Confucianism: Rethinking Morality after the West], 2010. Springer: Dordrecht, Netherlands.
25. FRANCIS, L., and FRANCIS, J. [Privacy: What Everyone Needs to Know], 2017. Oxford University Press: Oxford.
26. FRENKIEL, Émilie. "Choosing Confucianism: Departing from the Liberal Framework-- An Interview with Daniel A. Bell," [Books and Ideas], N.P., 2012. Accessed March 22, 2019.
27. GRIFFIN, James. [On Human Rights], 2008. Oxford University Press: Oxford.
28. HAUSMAN, Daniel. [Valuing Health: Well-being, Freedom, and Suffering], 2015. Oxford University Press: Oxford.
29. HOFFMANN, N., and METZ, T. "What Can the Capabilities Approach Learn from an Ubuntu Ethic? A Relational Approach to Development Theory," [World Development], pp153-164, September. 2017. Vol. 97 Septemeber.
30. KOHLBERG, Lawrence. [The Philosophy of Moral Development: Moral Stages and the Idea of Justice], 1981. Harper & Row: San Francisco.
31. —[The Psychology of Moral Development: The Nature and Validity of Moral Stages], 1984. Harper & Row: San Francisco.
32. LI, Chenyang. 1994. "The Confucian Concept of Jen and the Feminist Ethics of Care: A Comparative Study," [Hypatia], pp70–89, 1994. Vol 9. No1.
33. —"Revisiting Confucian Jen Ethics and Feminist Care Ethics: A Reply to Daniel Star and Lijun Yuan," [Hypatia], pp130–140, 2002. Vol 17. No1.
34. —"Confucian Harmony in Dialogue with African Harmony: A Response," [African and Asian Studies]) pp23-32, 2016. Vol 15. No1.
35. METZ, Thaddeus. 2007. "Toward an African Moral Theory, [Journal of Political Philosophy], pp321-341, 2007. Vol 15 No3.
36. —"African and Western Moral Theories in a Bioethical Context," (Developing World Bioethics), pp49-58, 2010a. Vol 10. No1.
37. —"Animal Rights and the Interpretation of the South African Constitution," [Southern African Public Law], pp301-311, 2010b. Vol 25. No2.
38. —"For the Sake of the Friendship: Relationality and Relationship as Grounds of Beneficence," [Theoria], pp54-76, 2010c. Vol 57. No125.
39. — "Ubuntu as a Moral Theory and Human Rights in South Africa," [African Human Rights Law Journal], pp532-559, 2011. Vol 11. No2.
40. — "African Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights," [Human Rights Review], pp1937, 2012a. Vol. 13 No. 1.

41. —2012b. "An African Theory of Moral Status: A Relational Alternative to Individualism and Holism," [Ethical Theory and Moral Practice], pp387-402, 2012b. Vol 15. No3.
42. —"The Western Ethic of Care or an Afro-communitarian Ethic? Specifying the Right Relational Morality," [Journal of Global Ethics], pp77-92, 2013. Vol 9. No1.
43. —2014. "Harmonizing Global Ethics in the Future: A Proposal to Add South and East to West," [Journal of Global Ethics], pp146-155, 2014. Vol 10. No2.
44. —"How the West Was One: The Western as Individualist, the African as Communitarian," [Educational Philosophy and Theory], pp1175-1184, 2015. Vol 47. No11.
45. —"Confucian Harmony from an African Perspective," [African and Asian Studies], pp1-22, 2016a. Vol 15. No1.
46. —"Confucianism and African Conceptions of Value, Reality and Knowledge," [International Social Science Journal], pp159-170, 2016b. Vol 33. No4.
47. —"How to Ground Animal Rights on African Values: Reply to Horsthemke," [Journal of Animal Ethics], pp163-174, 2017a. Vol 7. No2.
48. —"Values in China as Compared to Africa: Two Conceptions of Harmony," [Philosophy East and West], pp441-465, 2017b. Vol 67. No2.
49. METZ, T., and GAIE J. B. R. 2010. "The African Ethic of Ubuntu/Botho: Implications for Research on Morality," [Journal of Moral Education], pp273-290, 2010. Vol 39. No3.
50. MOLEFE, Motsamai. "A Rejection of Humanism in African Moral Tradition," [Theoria], pp59-77, 2015. Vol 62. No143.
51. —"Relational Ethics and Partiality: A Critique of Thad Metz's 'Towards an African Moral Theory'," [Theoria], pp53-76, 2017. Vol 64. No152.
52. NAGEL, Thomas. [The Possibility of Altruism], 1970. Princeton University Press: Princeton.
53. NICKEL, James. [Making Sense of Human Rights], 2007. Blackwell Publishing: Malden, MA.
54. NODDINGS, Nel. [Caring: A Relational Approach to Ethics and Moral Education], 2013. University of California Press: Berkeley, CA.
55. NOZICK, Robert. [Anarchy, State, and Utopia], 1974. Basic Books, Inc.: New York.
56. NUSSBAUM, Martha. "Capabilities, Entitlements, Rights: Supplementation and Critique." [Journal of Human Development and Capabilities], pp23-37, 2011. Vol 12. No1.
57. PARFIT, Derek. [Reasons and Persons], 1984. Clarendon Press: Oxford.

58. SEN, Amartya. "Utilitarianism and Welfarism," [Journal of Philosophy], pp463-489, 1979. Vol 76. No9.
59. —"Rights and Agency." [Philosophy & Public Affairs], pp3-39, 1982. Vol 11. No1.
60. —"Consequential Evaluation and Practical Reason," [Journal of Philosophy], pp477-502, 2000. Vol 97. No9.
61. — [The Idea of Justice], 2009. Belknap Press of Harvard University Press: Cambridge, Mass.
62. STAR, Daniel. "Do Confucians Really Care? A Defense of the Distinctiveness of Care Ethics: A Reply to Chenyang Li," [Hypatia], pp77-106, 2002. Vol 17. No1.
63. TALBOTT, William. [Human Rights and Human Well-Being], 2010. Oxford University Press: Oxford.
64. —"Consequentialism and Human Rights," [Philosophy Compass], pp1030-1040, 2013. Vol 8. No. 11.
65. —"A Social Practice Prioritarian Response to Allen Buchanan's The Heart of Human Rights," [Law and Philosophy], pp121-133, 2017. Vol 36. No2.
66. THOMSON, Judith Jarvis. [Goodness & Advice. Amy Gutmann, Ed.], 2001. Princeton University Press: Princeton.
67. —"The Right to Privacy," [Philosophy & Public Affairs], pp295-314, 1975. Vol 4. No4.
68. YUAN, Lijun. "Ethics of Care and Concept of Jen: A Reply to Chenyang Li," [Hypatia], pp107-129, 2002. Vol 17. No1.