The Confucian Approach to Justifying Human Rights: Beyond the Opposition between Universality and Particularity

Qiuqi LI
PhD, Philosophy,
The College of Humanities,
East China University of Science and Technology, PR, China
2734545322@qq.com

Abstract: In the discussion whether Confucianism supports human rights, it is necessary to distinguish between the content and the form of human rights. Regarding the content of human rights, only the normative texts in Confucianism can contribute to the discussion. Even though Confucianism concedes that people are equal in nature, this equality is restricted in certain areas of normative justification. Regarding the form of human rights, the Confucian idea of graded love is against the universal nature of human rights. However, the pre-ontology of Heidegger shows us how graded love can actually be the ground of the Confucian approach to universality, which overcomes the opposition between universality and particularity within Western metaphysics. Therefore, in the Confucian approach to universality, graded love can be the motivation to universalizing of human rights. Moreover, as the Confucian approach to universality is not a principle that transcends all particularities, it helps construct an inclusive form of human rights.
Keywords: Confucianism, Human Rights, Universality, Particularity, Heidegger

INTRODUCTION

In both the Western and Chinese academic worlds during the recent thirty years, the discussion of human rights has always been framed using a pair of opposite concepts, universality and particularity. Are human rights universal or particular ? There has not been any solid conclusion to this argument until now. Moreover, if the dispute might be unsolvable, the point of raising it becomes doubtful.

This gives rise to the question of whether the only way to understand universality is in its opposition to particularity. If not, it is then possible to ask which kind of universality is more suitable for justifying human rights, instead of pursuing the question whether human rights are universal or particular.

In using the concept of universality, many human rights scholars are presupposing that they already know what this concept means, hence

that it is not necessary to define what universality is. Though it is taken as a self-evident concept, universality is actually a complex of varieties. The polysemousness of universality does not undermine the necessity of defining it. On the contrary, distinguishing between the varieties of universality frees us from the opposition between universality and particularity.

In this article, I discuss whether Confucianism can be a suitable candidate to justify universal human rights. The relation between Confucianism and human rights has been a popular topic for about thirty years and a wide range of ideas have developed from it. Up to now, the understanding of Confucianism has divided into different positions which in some cases are even contrary to each other. In order to distinguish and compare those ideas, I discuss the possibility of taking Heidegger's pre-ontology as an approach to universalism. This will show us whether Confucianism can develop a form of universalism that supports universal human rights.

As human rights are embodied in international law, their validity does not rely on any kind of universalism. From another perspective, however, the international community is not only obligated to be bound by the law of rights, but also needs its members to understand in what sense are human rights universal. For example, as a result of the refugee crisis, the UK has decided to exit the EU after its referendum on June 23rd in 2016. Under these circumstances, it cannot be taken for granted that globalization will lead human rights to a more progressive direction. As the theories of human rights fail to meet the challenges in the practice of human rights, it is crucial to reconstruct the concept of universality in the justification of human rights.

CONFUCIANISM AND THE CONTENT OF HUMAN RIGHTS

In the context of East Asian societies, such as Singapore and Malaysia, Confucian thought raises questions about the individual and juristic character of human rights[1]. For example, are individual rights superior to the development rights of developing countries ? Do the institutions of human rights undermine the Confucian ideal of *li* (rites) ? In these debates, Confucian thought is used to justify the particularity of human rights in non-Western countries. In other words, those countries are not only culturally different from Western countries in a factual sense, but should also differ in a normative sense.

Nevertheless, there are scholars who argue that non-Western societies are not so particular as those particularists claim. For instance, Habermas points out that individualistic rights are the key factor in the modernization of both Western and East Asian societies. Based on an individualistic principle, rights create a stable environment of interaction environment in the highly complicated modern economic system, making rational choices and fair trade possible. Therefore, Habermas comes to the conclusion that cultural particularities cannot be used to justify an essentially different set of rights interpretations (Habermas, 2004: 281).

Despite its role in modernization, rights also find a basis in the classic Confucian texts. As Tu Weiming suggests, Confucianism focuses on the social characters of human beings, which can actually contribute to the realization of individual rights. Confucius tells us to "establish yourself by establishing others and become successful by helping others succeed." (*Analects* 6: 30) From the view of Western individualism, this expresses a kind of altruism. In contrast, because Confucianism defines human beings in terms of their social character, there is no clear boundary between "establishing yourself" and "establishing others," "your success" and "the success of others." (Tu, 2012: 15) For this reason, there is no contradiction in recognizing your own rights and the rights of others. In some cases, recognizing both is even a win-win situation.

If rights are compatible with Confucianism, how does it come about that the classic Confucian texts are used to justify the particularities about rights ? Craig Williams argues that this is a matter of how we interpret Confucian texts. For example, it is overly-simplified to see the idea of *ren* (benevolence) as equivalent to authoritarianism. By discussing Confucian political ideas in each Chinese dynasty, Williams finds that Confucianism is always trying to limit the abuse of power. However, Confucian politicians never succeed in institutionalizing their ideas. In modern Chinese society, the authority of Confucianism has been officially removed from the legal system, which make it nearly impossible for Confucianism to make any actual change. Rights happen to serve the same goal as Confucianism in the face of the challenges of abuses of power. As Williams points out, the juristic features of rights manage to make up for the weakness of Confucianism (Craig, 2006: 44-60).

Nonetheless, those scholars that optimistically find supporting materials for rights in Confucianism are also easily be challenged by others who are more loyal to the classic Confucian texts. For human rights activists,

it is necessary that people protect their rights by law, which violates the basic value of the Confucian ideal society. Confucius says, "I am as good as others to be a judge, but I'd rather there is no lawsuit." (*Analects* 12: 13) In other words, if everyone can only protect her rights by law, this society has already become out of order in the sense of Confucianism. On this issue, when Craig Williams emphasizes that the juristic meaning of human rights can help realize the idea of *ren*, he is actually ignoring the fact that Confucianism prefers a society of no lawsuits. Human rights in their original sense not only define what individuals should have, but also guarantee what they should have by law. In order to reach a compromise between the juristic meaning of human rights and the no-lawsuit ideal of Confucianism, some scholars try to give them different roles in the society.

For example, Joseph Chan suggests that the no-lawsuit ideal of Confucianism does not oppose the concept of rights, but rather the abuse of rights. When there is a conflict between people, they should first seek to restrain themselves and compromise as demanded by the Confucian idea of *li*. Only when there is no possibility of compromise may people appeal to the law for resolution (Chan, 1999: 226-227). After all, no-lawsuit is a goal worth pursuing and it is superior to rights. If this goal cannot be achieved, people are still able to guarantee their rights by appealing to the law.

By assigning different roles to human rights and Confucian ideas, does Joseph Chan really resolve the conflicts between them ? Justin Tiwald gives another perspective on this argument – as long as rights are embodied in the legal system, they will undermine people's trust, no matter whether or not they are asserted. The law of rights assumes that there is no trust between people. Accordingly, there is no point to sacrificing or restraining oneself for others because one cannot expect others to do the same. For this reason, the mutual benefit cannot be produced from the beginning (Tiwald, 2012: 250).

In fact, in discussions about whether Confucianism and human rights can be compatible, there is little point in asking who represents the Confucian orthodoxy. After all, classic Confucian texts such as the *Analects* and *Mencius* are not written to be accurate. For example, Confucius explains to his students what *ren* is many times, and in every case he reveals various particular characters of *ren*. However, it is hard to say which one of them accords with his original thinking. Under these circumstances, should

we consider the differing readings of classic Confucian texts to all be equal ? In my opinion, we can distinguish Confucianism in two senses. One concerns the content of Confucianism and the other the form of universalism that Confucianism can possibly develop.

To see whether the content in classic Confucian texts supports human rights, it is necessary to distinguish between descriptions of human nature and normative judgments. The former concerns "what a human being is" and the latter "what people should do accordingly." Those two questions are embodied distinctly in the Confucian interpretation of equality. Even though Confucianism admits that people are equal in their nature, they do not have equal social status. As Confucius says, "human beings are close in nature but often practice in different ways." (*Analects* 17: 2) This understanding of equality is the initial way that Confucianism formulates human nature. Still, the crucial question here is how the Confucian descriptions of human nature help to justify its normative justifications, such as unequal social status.

The best illustration of Confucian social status is the concept of *li*, which explicitly shows the principle of inequality. In *the Book of Rites*, Confucius defines the function of *li*. *Li* is the principle that defines close and distant relationships, corrects misunderstanding, distinguishes similarities and differences, teaches people right from wrong. However, in the principle of *li*, differentiating people is not an intrinsic value as such. Confucianism believes that moral qualities can be cultivated by giving people different roles in the society. Justified by this causal effect, *li* becomes one of the grounding principles of Confucianism. Confucius says, "By teaching people moral principles and unifying those principles as *li*, all people know what they should and should not do." (*Analects* 2:3) In other words, with the principle of inequality in social status, Confucianism aims to realize the ideal of human equality that "everyone has the potential to be Yao and Shun." (*Mencius* 12B2)

On the other hand, this inequality in social status is restricted to certain areas, such as manners and style of dress. When Confucius talks about public policy, he is very careful about the damage inequality can cause to a society. As Confucius says: "Regarding a family or a country, I'd rather it is poor than it cannot distribute its wealth equally. I'd rather it is impoverished than it is unstable." (*Analects* 16: 1) If the gap in wealth is too big, the society will become unstable and the Confucian ideal of *ren* cannot be realized. Therefore, in the view of Confucianism, wealth

inequality should be controlled by the government. Confucius is asked, "What else can be done to the society if people are prosperous enough." He replies, "Civilize them." (*Analects* 13:9) Ultimately, the problem of wealth distribution goes back to the cultivation of people's moral qualities. As for the educational system, Confucius thinks everyone should be given the same educational opportunity because people are equal in their nature. As his famous saying goes: "Every type of student has the potential to be excellent by proper education." (*Analects* 15:39)

While Confucianism can offer support for a certain part of the content of human rights, such as the right to basic means of living and the right to education, the norm of *li* also shows the possibility that inequality is helpful to the cultivation of people's moral qualities. Given that equality is a means as well as an end for human rights, Confucianism actually has a very different view of equality than the human rights view. Donald J. Munro has found that the Confucian view of equality in human nature has its limitations in the sense of normative justification. For example, although Confucianism takes people as equals in the cultivation of moral qualities, this does not mean that Confucianism supports equal political rights (Munro, 1969: 12). Tracing back the ideas of equality in western and Chinese history, Xu Fuguan finds that initially equality only existed in metaphysical discussions in the Western academic world, which then spread to political life in the course of the modernization of western societies. On the contrary, the Confucian idea of equality first appears as a radical idea in the understanding of human nature. Then, as Confucianism does not try to justify political norms by its understanding of human nature, its idea of equality gradually gets narrowed down to the area of education (Xu, 2014: 143-146).

Therefore in the debate about Confucianism and human rights, Craig Williams and Joseph Chan should not use classic Confucian texts indiscriminately. On the contrary, before we discuss whether Confucianism supports human rights, it is necessary to distinguish between the descriptive contexts and the normative contexts in Confucianism. If a quotation from classic Confucian texts belongs to a description of human nature, we still have to discuss how this description enters into the normative argument in Confucianism. For instance, Sor-hoon Tan points out that equality is a value as such in the view of Western democracy. However, neither equality nor inequality is the standard by which Confucianism evaluates a government. In a normative discussion, the realization of *ren* and the cultivation of moral qualities determine how much

equality is allowed (Tan, 2016: 507). This approach to equality shows that Confucianism does not simply approve or disapprove human rights. The key question is whether the normative discussion in Confucianism can be used to justify human rights.

CONFUCIANISM AND THE FORM OF HUMAN RIGHTS

Besides the distinction between descriptions of human nature and normative justification, there is another important question: what type of normative justification can Confucianism be used in ? Here it is necessary to distinguish between the content and the universal form of human rights. In the last thirty years, the discussion in Western and Chinese academic worlds has mainly concerned whether Confucianism supports the content of human rights. However, even if the classic Confucian texts met with the conditions: (a) they are crucial in the normative justification of human rights and (b) they supports certain content of human rights, such as free speech and the right for education, these texts still cannot lead to the conclusion that Confucianism supports human rights. As I will discuss in the following paragraphs, whether Confucianism supports the universal form of human rights is an inseparable part of the argument that classic Confucian texts can be used to justify human rights.

Article 1 of the Universal Declaration of Human Rights claims that all human beings are born free and equal in dignity and rights. Furthermore, Article 2 explains this sentence as meaning that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In the justification of human rights, their universal form is even more important than their content. Every cultural tradition claims that certain people have certain rights in the society that it does not seek to extend to everyone unconditionally. Jack Donnelly tries to address human rights in their specific form of universality:

> Human rights, following the manifest literal sense of the term, are ordinarily understood to be the rights that one has simply because one is human. As such, they are equal rights, because we either are or are not human beings, equally. Human rights are also inalienable rights, because being or not being human usually is seen as an inalterable fact of nature, not something that is either earned or can be lost. Human rights are thus "universal" rights in the sense that they are held "universally" by all human beings. Conceptual universality is in effect just

> another way of saying that human rights are, by definition, equal and inalienable. (Donnelly, 2007: 282-283)

Rights as understood in the concept of human rights were newly invented in the middle of the twentieth century. It is not until the Universal Declaration of Human Rights was issued that human rights became the international principle of law. Before that, rights had always been justified by the approaches rooted in Western traditions, such as natural law and religious law. In the case of natural rights, the justification of their universal form relies on the validity of natural law. By contrast, human rights are valid for a human being just because she is a human. Here the key factor that distinguishes human rights from natural rights is their specific form of universality. For this reason, the universal form of human rights is even more important than their content. Hence the discussion of whether Confucianism supports the content of human rights can only be meaningful if the universality underlying the universal form of human rights can be developed from Confucianism.

Then is Confucianism a potential supporter of universality ? If it is, what kind of universality does it support ? On this matter, we find two totally opposite opinions from scholars, which can be seen from the discussions by Mou Zongsan and Fei Xiaotong.

In Mou Zongsan's opinion, Confucianism contains perpetual values for the Chinese society. However, the realization of the values should be different in modern China than that in pre-modern China, which turn into *xin wai wang* (new outer kingship), democracy and science (Mou, 1987: 12). Democracy and science cannot be developed from the traditional Confucian approach to universality, namely *nei sheng* (inner sagehood). Dialectically, only when people make efforts in the opposite way of *nei sheng* can they find the universal principles that democracy and science require (Mou, 2010: 151-158). On the one hand, Mou Zongsan affirms that *ren* is an everlasting principle regardless of time and place. For example, in the sense of metaphysics, *ren* and the Western concept of rationality are identical. On the other hand, universality itself is a complex of varieties and every form of universality is connected to every other in some way. According to Mou Zongsan, *ren* is the principle of substantial universality and rationality is the principle of abstract universality (Mou, 2015: 28-33). He tries to interpret *ren* in a Hegelian way and concludes that although *nei sheng* cannot directly lead to *xin wai wang*, it nevertheless finds its way to *xin wai wang* in the dialectical sense.

Apart from Mou Zongsan's interpretation, Confucianism falls more easily into the category of anti-universalism. The concept of universality, as the form of human rights, generally refers to the universality of equality. However, it is also possible in theory that universality might lead to the sense of universal inequality. For instance, there is a kind of criticism that focuses on the idea of graded love in Confucianism. Fei Xiaotong has used a wave of concentric circles as a vivid metaphor for this inequality: everyone in China develops his own social network and everyone is the center of his own circle. The more distant others are to him in this circle, the less he should care for these people. Because this circle holds for everyone in China, it cannot be denied that this is a kind of universality, which is very different from the universality of human rights. In the view of Fei Xiaotong, in one's own circle, nation is in a relatively distant place from the center, and certainly the international community is even more distant than one's nation. In the process of Chinese modernization, the value of graded love has always been challenging the values of equality (Fei, 2012: 42).

Why do Mou Zongsan and Fei Xiaotong have completely different interpretations of Confucianism on the subject of universality ? The reason lies in the paradox of Confucian texts. It cannot be denied that there is graded love as well as universal love regardless of people's status, gender and identity. This universal love is required by the idea of *ren*. When Fan Chi asked what *ren* is, Confucius replied that love people indifferently (*Analects* 12: 22). Mencius also mentions that the people of *ren* love others and the people of *li* respect others (*Mencius* 8B28). Meanwhile, the universal love in Confucianism is based on a self-relational principle. There is a famous saying by Confucius that do not force others to do something you do not want to do yourself (*Analects* 15: 24). This represents the negative and passive side. More positively, Confucius tells people to establish yourself by establishing others and become successful by helping others succeed (*Analects* 6: 30). This teaching from Confucius is not so absolute as Kant's categorical imperative. In different contexts, graded love and universal love can be given different priorities.

For example, in *the Book of Rites*, there is a general ranking of a person's love. In ancient times, the people who want to pursue cosmopolitanism have to govern their country first; the people who want to govern their country have to strengthen their family first; the people who want to strengthen their family have to cultivate themselves first. In the view of Mencius, the condition of universal love is one's own self-fulfillment.

"If you are poor, help yourself live a good life. If you are successful, help others live a good life." (*Mencius* 13A9)

As we can see, there is both graded love and universal love in classic Confucian texts. Thus, it is hard to believe that Confucianism sincerely establishes any kind of universality for itself. Confusingly, *ren* is the embodiment of both graded love and universal love. In Zhao Tingyang's criticism, Confucianism is quite aware of its lack of universal norms and never succeeds in solving this problem. For Confucianism, action can deconstruct the validity of norms. In other words, the norms of *ren* do not exceed the practice of *ren*. On the contrary, the norms of *ren* are defined by how it is practiced in different conditions (Zhao, 2007: 16).

In my opinion, Zhao Tingyang's criticism is problematic because of the concept of universality he uses – it is the universality of Western metaphysics, which has to exceed any particularity unconditionally. However, it is not likely that Confucianism was already aware of this kind of universality in the time of Confucius and took it seriously. For this reason, it is necessary that we figure out how Confucianism itself defines universality, which helps to clarify the question whether Confucianism supports the universal form of human rights.

HEIDEGGER AND THE CONFUCIAN APPROACH TO UNIVERSALITY: OVERCOMING THE OPPOSITION OF UNIVERSALITY AND PARTICULARITIES

Supposing that Confucianism sets up a self-relational principle of universality, how is it different from the metaphysical principle of universality ? There are two aspects involved in this question. Firstly, it is necessary to clarify whether the concept of universality has only one meaning or multiple meanings. If universality has only one meaning, it is not possible to discuss the difference between the universality of Confucianism and the universality of metaphysics. Instead, we can only discuss whether the concept of universality is true or false. Secondly, if universality has multiple meanings, it is inappropriate to understand Confucianism from the perspective of metaphysics or to understand metaphysics from the perspective of Confucianism. The only way of explaining their essential difference is to intervene with a third theory.

Starting from a recognition of these two aspects, I argue that the pre-ontology of Heidegger can be introduced to clarify the difference between the universality of Confucianism and the universality of meta-

physics so that we can then discuss which one of them is more suitable for justifying human rights. The crucial question of Heidegger's pre-ontology is how to maintain the validity of universality beyond the framework of metaphysics. This question can also be helpful to the justification of human rights because the universality of human rights needs to be reconsidered in a cross-cultural way. By pointing out the limitation of metaphysics, Heidegger creates a new way of understanding universality.

From the perspective of Western metaphysics, the most universal concept is the concept of being, the meaning of which is beyond what can be defined by traditional logistics. "Being cannot be derived from higher concepts by way of definition and cannot be represented by lower ones." (Heidegger, 1996: 3) Therefore, in the traditional view of metaphysics, "Being" is indefinable and self-evident. What is the most universal concept ? Once there is an answer to this question, there is a limitation, premise or condition of this concept. However, in the context of metaphysics, universality should be infinite, unpremised and unconditional. To solve such a contradiction, Heidegger try to propose a more original theory, the pre-ontology, thus making "being" transparent and discussible (Heidegger, 1998: 97-100).

In the sense of pre-ontology, the reason why the highest universality exists is that it has already been understood and unveiled. What is "being" ? This questions depends on how beings are conceived. In other words, the validity of universality relies on its limitation and an infinite, unpremised and unconditional universality does not really exist. The reinterpretation of metaphysics by Heidegger is not simply a reversal. He does not claim that particularity exceeds universality, because this would still leave particularity the opposite of universality. The premises and conditions of universality vary according to the different ways universality is conceived, making it possible to distinguish between different kinds of universality. Every kind of universality is particular and their differences are related in the context of pre-ontology. Heidegger offers an interrelation between different kinds of universality so that they can be compared, which is not possible if they just coexist as unrelated concepts.

Therefore, Heidegger opens up the possibility of distinguishing different kinds of universality and showing that the universality of Confucianism is not conceived the same way as the universality of metaphysics is. The universality of metaphysics is formulated by the way that a unified and highest principle is set as the ground of universality. Under this condition, particularity can only be understood as inferior to universality.

Here that the principle is unified means that it combines every other principles into a whole and that it is the highest principle means that this connection forms relations of domination, of superior and inferior. In the sense of metaphysics, if Confucianism defines itself in terms of particularities, its validity will always face the challenge of universality. If Confucianism tries to understand itself in terms of the universality of metaphysics, it has to be reconstructed and loses its own character. For example, Zhang Xianglong criticizes New Confucianism for becoming the otherness of Western culture in the pursuit of universality (Zhang, 2011: 237). For this reason, a constructive understanding of Confucianism can no longer rely on the opposition between universality and particularity. Instead, it is necessary that we discuss the universality of Confucianism in the context of pre-ontology and clarify the initial form of universality it establishes.

So what is the ground of Confucian universality ? Based on the interpretations of Confucian scholars, the universality of Confucianism is actually based on graded love. Wang Yangming offers a representative interpretation of *ren*. When asked why the universal love proposed by Micius cannot be called *ren*, he tells us to think of the specific nature of *ren*. "*Ren* is the principle that continually creates itself. The reason why it is embodied in everything, presented in every particular way of practice, is that it creates itself in a living process that is from nothing to everything, from particularity to universality. For this creation is continually in motion, *ren* is the principle of universality." (Wang, 2014: 80) He points out that *ren* is always in a process of creating itself like a tree germinates and grows its leaves. Accordingly, one has to consider what one likes and dislikes and cultivate oneself first. After that, one can offer other people what they want and develop this care for everyone.

The important point is what can be the ground of universality. If the opposition of universality and particularity cannot be overcome, a self-relational principle can never be the ground of universality. As Wang Yangming suggests, every person has her own social relations so she can only develop universal love from her love for closer people. However, in the opposition of universal and particularity, universality is superior to particularity and so universality can only be the ground of particularity, not the other way round[2].

From the perspective of pre-ontology, the form of universality depends on how beings are conceived, which leads us to the question of how *ren* can be understood in the ontological sense. Wang Yangming's *ren* is

understood as a concept creating itself continually, which grounds itself on the love for one's close people (graded love) and develops care gradually to everyone. In this way, Mencius' ideal that the people of *ren* love others and the people of *li* respect others can be realized:

> The love between fathers and sons, between brothers is the ground of universal love as trees grow their branches. From the love for close people, one learns to love everyone and take care of everything as leaves grow from branches. Micius argues that universal love is loving people as absolute equals. However, if one sees his father and brother as strangers, universal love does not have the ground of creating itself. When a tree does not grow branches, we can know that it is rootless. Without its root, *ren* is not truly universal. (Wang, 2014: 80)

In the context of pre-ontology, different approaches to universality can be distinguished in the ways that they are formulated. In other words, the ground of universality means the origin of universality. As Wang Yangming points out, the universal love of Micius lack its initial power of motivation so it is only a rootless utopia. In order to universalize *ren*, the ground of *ren* has to be something easily shared by everyone. For Confucianism, family relations in the broad sense happen to qualify as the ground of *ren*. Therefore, in Chinese history, Confucianism has always insisted on its trinity of family, state and cosmopolitanism. Mencius tells people that the love for each part of this trinity has to be distinguished and graded so that all kinds of love can be united. "Gentlemen care for things but this care cannot be called *ren*. Gentlemen love people generally but this love is different from the love for family members. Love your family first and then spread this love to everyone." (*Mencius* 13A45) On the one hand, graded love means loving people differently. One the other hand, different kinds of love are origin and ending, cause and effect, reason and consequence.

Going back now to the origin of Western metaphysics, a unified and highest principle is initially set up and all other principles are deduced from it. In this sense, the highest principle is the universal principle, which dominates the formulations of all other principles. In taking the universality of Western metaphysics as the only form of universality, Fei Xiaotong argues that graded love cannot be the ground of universality. He admits that Confucianism encourages selfless love and tries to spread this love to the extent of state and cosmopolitanism. Nevertheless, as he points out, once there is conflict of interest between family and state, to sacrifice one's state for one's family is also rational in the view of

Confucianism. Thus, in the self-relational ethics of Confucian society, there cannot be a principle that is both highest and universal. Instead, there is only a web connecting all personal relations.

On the issue of universality, Fei Xiaotong's criticism of Confucianism is typical. Zhao Tingyang also argues that *ren* neither tries to go beyond its practice nor to transform itself to absolute universality. However, it is a rather simplified argument to regard Confucian universality as equal to a web of personal relations. In the context of pre-ontology, Western metaphysics initially sets up the first principle that dominates all other principles. Under this condition, the graded love of Confucianism is criticized for only admitting particular principles, which vary according to different situations or people's preference. Does Confucianism really not try to pursue a universal principle that unifies all interpretations of *ren* ? It is apparently not true in Cheng Yi's understanding of *ren:*

> The problem of graded love is that personal interests are likely to undermine the practice of *ren*. Meanwhile, the problem of loving everyone as equals is that it ignores people's natural sense of justice, which is called Yi. Grade different kinds of love first and then generalize a universal principle from them, thus preventing the bad influence of personal interests. This is the way that *ren* enlightens people. If there is no distinction between different kinds of love and family members are no different than strangers, people's moral intuition cannot be embodied in *ren* anymore. Besides, focusing on the dogma of loving everyone as equals does no help to the practice of universal love. If you want to make everyone act according to the teachings of *ren*, *ren* is actually a practical principle. In this condition, advocating indistinguishable love makes it even harder to practice universal love. Isn't that strange ? (Cheng and Cheng, 1981: 609)

In this sense, not only does *ren* admit particular principles in a different context but it also seeks to generalize one universal principle from all those particular principles. Confucianism is quite aware that personal interests can damage public interests without this universal principle. Therefore, Confucianism admits the importance of *ren* as a unified principle and even calls *ren* the essence of all values. The problem here, as Cheng Yi argues, is that the universal principle has to be realized by practice in the end, so an unpractical and universal principle is meaningless. In order to extend one's love to everyone, Confucianism has to compromise with the practical and particular principles. From this point of view, Zhao Tingyang's criticism of Confucianism can simply be refuted. The practice of *ren* does not deconstruct the principle of *ren*. Instead, a universal principle of *ren* still exists, which presents itself as

particular principles in the different contexts of practice. Cheng Yi tries to interpret *ren* in its separation of norm and practice. Zhu Xi develops this interpretation and points out that people cannot even cognize the universal principle if they do not start with particular principles:

> The saints rarely talk about the universal principle but always talk about particular principles. The reason is that people can only see the nature of things in their own particular principles and then get to know that there is a universal principle that unifies all other particular principles. If people do not know that everything has its own principle and only talk about the universal principle in theory, they actually have no idea of universal principles of any kind. (Zhu, 1988: 677-678)

Therefore, either in practice or cognition, the universal principle and particular principles are unified. The difference is that universality and particularity are not opposed in Confucianism. Instead, they are arranged in an inseparable entity and each acquire indispensable values according to their own purposes.

In the context of pre-ontology, the origins of universality explain the first difference between Confucianism and Western metaphysics and the priority of universality and particulars clarifies the second difference. For Confucianism, *ren* exists in the universal principle. Moreover, *ren* is understood to be the universal principle on the sense that it unifies all particular principles. However, the universal principle in Confucianism is not the highest principle in the ranking of values. At least in practice, it can only be universalized by transforming itself into particular principles. Meanwhile, the universal principle in Western metaphysics is both the unified principle and the highest principle.

CONCLUSION

So between the universality of Confucianism and that of Western metaphysics, which is superior ? Summarizing the discussion above, we can see that those two kinds of universality focus on different issues, so they are formulated in different approaches in the context of pre-ontology. Therefore, it is meaningless to compare those two kinds of universality generally and the comparison has to be made according to a specific object or issue. For example, for the justification of human rights, it is necessary to clarify which kind of universality human rights need first. We would then have a standard for discussing which kind of universality is superior in this context.

In the justification of human rights, formulating a new concept of universality is a crucial task for the international community. In order to unite countries from different cultural backgrounds and avoid depriving anyone of rights, the drafters of "Universal Declaration of Human Rights" changed the concept of natural rights into human rights, which was highly approved by the representatives of non-Western countries. Compared with other parts of "Universal Declaration of Human Rights", the preface that advanced the philosophical ground of human rights caused the least dispute (11 vote in favor and 5 abstain) (Morsink, 2009: 27). Although the concept of human rights manages to get rid of the complicated system of natural law, it also creates certain difficulties for its justification.

The difficulties also cause disputes in the practice of human rights. As a matter of fact, most countries in the international community have already admitted the validity of the "Universal Declaration of Human Rights". However, since there is no systematic theory of human rights justification, it is still possible that each country might interpret international human rights law arbitrarily. That is not to say only one or some interpretations are valid. Instead, the key point is to find the proper form of universality that could determine to what extent human rights are able to compromise with cultural particularity and how strong the enforcement of human rights law is to be. For instance, under what circumstances may military force be used to intervene in a human rights violation ? If there is no appropriate theory of universality, it is impossible to justify the practice of human rights on the international scale[3].

Moreover, the justification of human rights on the international scale is not the same as on domestic scale. More precisely, the transition from natural rights to human rights reflects a change of the justification on the international scale. In Western societies, whether the natural law tradition can still be used to justify human rights is the question within the Western tradition, which has to deal with its own metaphysical universality. Meanwhile, in the context of the international community, the main concern shifts to whether a form of universality can be inclusive of all cultural traditions and create a universally effective norm despite the difference between those traditions. If we regard the international community after World War Two as the agent of human rights, the validity of universal human rights is not readily available but rather has to be constructed.

On this issue, the characteristics of *ren* can contribute to constructing an inclusive form of universality in the context of pre-ontology. As more and more countries admit the validity of "Universal Declaration of Human Rights", non-Western countries need to engage in the construction of human rights. Moreover, just as the concept of natural rights in the Western tradition cannot be used on an international scale, the Confucian approach to universality can only be seen as the resource for constructing human rights but not for justifying human rights directly. In other words using Confucian tradition as the resource for universality while also *not* grounding the discussion on classic Confucian texts is the key to showing cultural inclusiveness in the justification of human rights. On the international scale, the reason why Confucianism is helpful for the justification of human rights is not that it is the "teaching of the saints", but it is suitable for an inclusive and multicultural international society.

As *ren* creates itself continually, it breaks through the opposition between universality and particularity, which makes the love for one's family the starting point of practicing human rights. Personal relations do not initially follow a universal principle of equality. For example, Confucianism teaches people to care for others according to how close their relationship is, i.e. graded love. Based on graded love, the principle of *ren* is able to extend itself to distant people or strangers. In the view of Confucianism, the reason for advocating "graded love" is that *ren* needs the motive power to develop itself. In the sense of practice, *ren* does not show its universality at its initial form, while the universal principle of metaphysics requires that people cannot violate the principle from the beginning. Generally, these two kinds of universality share the same goal, which is to love everyone. However, on the matter of how to achieve this goal, these two kinds of universality differ. In non-Confucian societies, graded love might not work as the motive power for developing universality of human rights. At least, it can be argued that the Confucian approach of universality is an example of how to practice human rights within a local tradition and not against it. In contrast enforcing an absolute form of universal human rights on societies from different cultural backgrounds might actually make it more difficult to practice human rights locally.

As Confucianism does not try to set up a highest principle or dominate all particular principles, it can only be used to justify a thin theory of universality. From this point of view, Confucianism is not capable of

giving priorities to values. For example, are individual rights superior to group rights ? Are human rights superior to the traditional concept of goodness ? Only when the highest principle is established can those problems be solved. Therefore, the inclusiveness of Confucianism does not support the radical interpretations of human rights, which regard these rights as the highest value of all and try to justify any means that helps achieve human rights.

Acknowledgements: This paper was first prepared for my speech at Centre for Chinese Research, University of British Columbia. Thanks to the valuable advice from Professor Cheek and my fellow colleagues at CCR, I was able to develop my speech into a paper. I also wish to thank the China Scholarship Council, which funded my visit at UBC. The follow-up research was funded by Shanghai Philosophy and Social Science Planning Project (2019EZ20026).

Notes

[1] See the Bangkok Declaration and Vienna Declaration in 1993, both emphasizing cultural particularities in the interpretation of human rights.

[2] In order to develop a new form of universality, Mou Zongsan tries to replace the concept of particularity with the concept of specificity. Particularity would mean that different people have different starting points of universal love and that those approaches are not related. However, specificity means that *ren* is embodied in different contexts and remains a unified principle of universality. To be more accurate, specificity is an inseparable part of universality (Mou, 2005: 31). In contrast, as he is limited by the opposition of universality and particularity, Zhao Tingyang can only see the deconstruction of *ren* in its particular practice but he never questions the validity of such universality.

[3] In order to avoid an imperial form of universality, Jack Donnelly uses "overlapping consensus" as the universal ground of human rights. (Donnelly, 2007: 282)

References

Chan, Joseph. "A Confucian Perspective on Human Rights: for Contemporary China." In: *The East Asian Challenge for Human Rights*. ed. by Joanne R. Bauer and Daniel A. Bell. Cambridge: Cambridge University Press, 1999.

Cheng, Hao, and Cheng, Yi. *Henan Chen Shi Wen Ji*. Beijing: Zhong Hua Shu Ju Chu Ban, 1981.

Donnelly, Jack. "The Relative Universality of Human Rights," *Human Rights Quarterly* 29(2), 2007: 282-283.

Fei, Xiaotong. *The Peasant Life in China*. Beijing: Beijing University Press, 2012.

Habermas, Jürgen. "On the Inter-cultural Human Rights: Imagined Problems and Real Problems." In: *The Selective Readings of Habermas*. Trans. by Weidong Cao. Nanjing: the Nanjing University Press, 2004.

Heidegger, Martin. "On the Essence of Ground." In: *Pathmarks*. Trans. and ed. by W. McNeill. Cambridge: Cambridge University Press, 1998.

Heidegger, Martin. *Being and Time*. Trans. by Joan Stambaugh. New York: State University of New York Press, 1996.

Morsink, Johannes. *Inherent Human Rights: Philosophical Roots of the Universal Declaration*. Philadelphia: University of Pennsylvania Press, 2009.

Mou, Zongsan. "The Use of Rationality and the Construction of Rationality." In: *Speeches on Humanities*. Changchun: Jilin Publishing Group, 2010.

Mou, Zongsan. "Two Kinds of Truths and Their Universalities." In: *The 19 Speeches on Chinese Philosophy*. Shanghai: Shanghai Press of Classic Texts, 2005.

Mou, Zongsan. *The Ideas of Politics and Governing*. Taipei: Taiwan Students Press, 1987.

Munro, Donald J. *The Concept of Man in Early China*. Stanford: Stanford University Press, 1969.

Perry, Michael J. *The Idea of Human Rights: Four Inquiries*. Oxford: Oxford University Press, 1998.

Tan, Sor-hoon. "Why Equality and Which Inequalities ? A Modern Confucian Approach to Democracy," *Philosophy East and West* 66(2), 2016: 488-514.

Tiwald, Justin. "Confucianism and Human Rights." In: *Handbooks of Human Rights*. ed. by Thomas Cushman. Abingdon: Routledge, 2012.

Tu, Weiming. "A Confucian Perspective on Human Rights." In: *Confucianism, Chinese History and Society*. ed. by Wong Sin Kiong. Singapore: World Scientific Publishing, 2012.

Wang, Yangming. *Chuan Xi Lu Quan Jian*. Beijing: Zhong Guo Fang Zhi Chu Ban She, 2014.

Williams, Craig. "International Human Rights and Confucianism," *Asia-Pacific Journal on Human Rights and the Law* 7(1), 2006: 44-60.

Xu, Fuguan. "The Concept of Equality in Chinese Culture". In: *Confucian Thought and Modern Society*. Beijing: Jiuzhou Press, 2014.

Zhang, Xianglong, "Is Political Confucianism a Universalism: An Analysis of Jiang Qing's Philosophical Tendency." In: *The Renaissance of Confucianism in Contemporary China*. ed. by Ruiping Fan. Dordrecht: Springer, 2011.

Zhao, Tingyang. "In or out One's Body: the Unsettled Problem of Confucianism," *Journal of Renmin University of China* 1, 2007: 15-21.

Zhu, Xi. *Zhu Zi Yu Lei*. ed. by Li Jingde. Beijing: Zhong Hua Shu Ju Chu Ban, 1988.