

ISSN 1015-8383

# 哲學與文化

Monthly Review of Philosophy and Culture 422

第六卷第七期

07. 2009

專題／謝仁真、陳強立 主編

## 人權的應用倫理學反思專題

貧窮與人權

他人簽字與病人權利

人權的基礎是經驗嗎？——評論德蕭維奇（Alan Dershowitz）的人權論

人權價值實踐的語境與語義

作為普遍性道德權利的人權——應用倫理學視域的人權理念



[訂講](#)

哲學與文化期刊(36卷7期)：  
人權的應用倫理學反思專題

主編：謝仁真、陳強立

人權的應用倫理學反思專題

陳強立 Jonathan K.L. Chan	導言：人權的應用倫理學反思專題
陳強立 Jonathan K.L. Chan	貧窮與人權 Poverty and Human Rights
龔 群 Gong Qun	他人簽字與病人權利 Other Signing and Patients' Rights
關啟文 Kwan Kai-Man	人權的基礎是經驗嗎？ —評德蕭維奇(Alan Dershowitz)的人權論 Are Human Rights Based on Human Experience? An Evaluation of Alan Dershowitz's Theory of Human Rights
高兆明 Gao Zhao-Ming	人權價值實踐的語境與語義 Human Rights and Context of Their Application
任 丑 Ren Chou	作為普遍性道德權利的人權—應用倫理學視闡的人權 理念 Human Rights as Universal Moral Rights
專題書評	
謝仁真	書評：甘紹平：《人權倫理學》

一般論著	
沈清松	關於上帝之知的哲學論述：與佛智的比較研究
關永中	理智神見－聖女大德蘭的提示
劉梅琴	列斐伏爾的“日常生活批判”與現代藝術的世俗化
青年哲學	
李建欣	評述張純甫之《非墨十說》－以〈非利說〉、〈墨子非兼愛說〉、〈墨子非非攻說〉為例
學界訊息	
陳瓊霞	學界訊息
中國哲學會秘書處	第十六屆國際中國哲學大會：“2009 迎向世界的哲學對話與文化交談” (2009 Towards the World: Philosophical Dialogue and Cultural Conversation) 會議報導

#### 摘要

我們有責任救助貧窮的人嗎？認為我們有這樣的一種責任，在不同的宗教和文化裏面都可以找到道德根據。我們甚至可以說，它是一種具有高度普遍性的道德直覺。那麼我們能否進一步為這個道德直覺找到哲學上的根據？有些哲學家嘗試從人權理論的視角來說明它的合理性。他們認為從人的某些基本權利可以引申出我們有救助貧窮的人以減低貧窮對他們所帶來的影響（以下簡稱「減貧」）的責任。本文即旨在探討通過人權理論的進路來說明有關的「減貧」的責任所涉及的哲學上的問題。

---

目錄

#### 摘要

在我國，病人的知情同意權普遍存在著親屬和關係人代理的狀況。這不僅是對於那些無民事能力的病人、而且對於精神意識正常的人而言也是如此。同時，我國醫療機構對於知情同意權的行使職能的理解多在於對醫療糾紛的防患上，因而有悖於確立知情同意權在於保障病人的生命權和健康權的宗旨，並因此而產生了病人權益得不到相應保護的醫療糾紛。在醫療實務中，必須在尊重病人生命權和健康權的前提下，確立具有民事能力的正常意識狀況下的病人的知情同意權，同時，對於代理處於無民事能力狀態的病人的代理者，同樣也需要在遵循病人最佳利益原則下，確保病人的生命權和健康權得到充分實現。

---

目錄

### 摘要

人權往往被視為理所當然，然而「人權的基礎是甚麼？」這問題不易回答，德蕭維奇(Alan Dershowitz)在他 2004 的書中(Rights from Wrongs: A Secular Theory of the Origins of Rights)探討這棘手問題。他主要考慮了以下四種理論：一、外在論：人權的根源是在法律以外，如人權神授論；二、內在論：人權的根源是在法律以內—法實證論(legal positivism)；三、理性主義進路：人權的基礎在於理性直覺(rational intuition)；四、以經驗為本的進路：人權來自人類的經驗，特別是體驗不公義的經驗。他對前三種理論都提出猛烈批評，而提倡第四種以經驗為本的進路。本文指出雖然德蕭維奇的經驗論有不少優點，然而它在證立人權標準方面有含糊和不一致之處，而它的發明論則更不能為人權提供穩實的基礎。其實這些問題德蕭維奇或多或少是覺察的，他多次指出人權需要外在於法律的標準，我認為人權神授論是可能為人權提供基礎的世界觀之一。德蕭維奇對人權神授論的批評有很好的提醒作用，但我認為這仍不能排除以基督為中心的當代基督教人權論。

---

目錄

---

## 人權價值實踐的語境與語義

高兆明

### 摘要

人權普遍價值的特殊實踐，是現代社會人權問題的核心。人權價值具有家族多樣性特質。人權價值的應用過程，是一個在具體理解、詮釋中具體實踐，在具體實踐中具體理解詮釋的過程；在知中行、在行中知的知行一體過程；是一個讓抽象原則活化，進而可理解、可詮釋、可實踐的過程。對於人權價值精神的一般原則認肯，並不能消除實踐中的無窮分歧與爭論。其緣由主要在於：具體情境中的人權問題內容差別，以及在這種人權問題差別中所進一步形成的理解、詮釋、實踐的差別。人權價值的實踐不是一個簡單的機械功能表操作，而是一種生活的智慧。行為主體不僅要有對於人權價值的篤信與良知，而且還要有道德能力：能夠在特殊境遇中具體理解與把握普遍人權價值，理解與把握特殊境遇，以及在這種特殊境遇中的特殊行動的能力。

---

目錄

摘要

應用倫理學視闡的人權回擊各種權利懷疑論的同時，肯定了權利的存在，批判地吸取權利理性派和經驗派的合理思想，並與應用倫理學的民主商談精神和程式方法相綜合，主張作為普遍性道德權利的人權理念。這並不僅僅是在傳統人權基礎上對人權外延的全面擴展，而且是對人性尊嚴等人權內涵的深化和提升。作為原初的、絕對的、沒有任何附加條件的道德權利，人權以人性自身為目的，優先於任何其他權利和義務，這就徹底顛覆了以義務為本位的無根的倫理學，為有根的倫理學－應用倫理學奠定了堅實的人權基礎。

**Abstract**

Do we have the moral duty to help the poor? Many people think that we have. And some may argue that such a moral duty is so basic that it can find its support from the moral perspectives of different religions and cultures. Some may even say that it is a universally held moral intuition that we have the moral duty to help the poor. But can we find a philosophical justification for the universality of such a moral intuition? Some philosophers attempt to provide such a philosophical justification from the perspective of human rights theory by arguing that the moral duty can be derived from some basic human rights. This paper aims to discuss some philosophical problems inherent in the aforementioned approach to the moral duty to help the poor.

**Abstract**

The rights of informed consent of patients who are not only unable to take and but also able to take the responsibility for their actions in the meaning of law are universally replaced by relatives and others in PRC. And in the meantime, the role of informed consent understood by hospitals in PRC lies mainly in defense and reducing disputes in medical treatments, which is contrary to the primary aim at protecting the rights of life and health of patients so that there are a lot of disputes of medical treatments because that rights of patients cannot be protected. Presuppose to respect rights of life and health of patients is to make sure the rights of informed consent of patients who have normally consciousness belonged to themselves in the medical treatments. And in the meantime, for agents who replaced to use the rights of informed consent of patients, they should use the rights under the principle of patients' best interest in order to fully realize and protect rights of life and health of patients.



---

## **Are Human Rights Based on Human Experience?**

### **An Evaluation of Alan Dershowitz's Theory of Human Rights**

**Kwan Kai-Man**

#### Abstract

Human rights are often taken for granted but in fact the origin or foundation of human rights is not an easy question. Alan Dershowitz tries to tackle this thorny issue in his 2004 book: *Rights from Wrongs: A Secular Theory of the Origins of Rights*. He mainly considers four theories: 1) externalism, e.g., the divine source of human rights theory; 2) Internalism, e.g., legal positivism; 3) Rationalism, e.g., the claim that human rights are founded upon rational intuitions; 4) Experiential approach, i.e., human rights are derived from our historical experience of serious wrongs or injustice. He severely criticizes the first three theories, and defends the fourth. In this article, I will point out that despite quite a few merits of Dershowitz's theory; his criteria for the validation of human rights are vague or even inconsistent. His general stance of constructivism towards moral and human rights claims, moreover, are unable to provide solid foundations for human rights. In fact Dershowitz is to some extent aware of these problems, and he feels that human rights do need an objective external source, if only it is possible. I think the theistic worldview is indeed able to provide this objective external source. Dershowitz has raised a lot of good questions for the divine source theory but I argue that in the end they cannot exclude the possibility of a contemporary Christocentric theory of human rights.

---

Table of Contents

**Abstract**

The particular application of the universal values of human rights, is the core problem on human rights in modern society. The concept of human rights is a living and growing value with its own regulations. The kindred diversities of the value of human rights determine its own internal contradictions. The application of human rights is a concrete process of understanding and interpreting them in practice. Such a process is the integrated one of acting in knowing and knowing in acting. It is also the one of activating abstract principles to be understood, to be interpreted and to be put into practice. The acceptance of the universal principles of human rights cannot end the endless debates and disagreements in practice, mainly because the contents of human rights will be different in different contexts and then this will determine the further different understandings, interpretations and practices of human rights. The practice of human rights is not a simple mechanical operation of clicking on the menu, but the wisdom of living. The moral agent not only has to keep the faith and conscience in human rights, but also possesses the moral capacity-being capable of acting in particular situations as well as comprehending and grasping the universal values of human rights in such situations.

**Abstract**

By replying to all kinds of Skepticism, affirming the existence of rights, assimilating critically good idea of rationalism and empiricism, and synthesizing the spirit of democracy and discussion and the procedure of discussion, human rights in perspective of applied ethnics affirm the idea of human rights as universal moral rights. It not only expands extension of traditional human rights, but also deepens and upgrades intension of human rights such as human dignity. As original and absolute moral rights without any annex condition, Human rights take human nature as its intent, prior to any other rights and duties, so as to overthrow rootless ethnics for the sake of duty and lay stable foundation on ethnics having roots, namely applied ethnics.