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## Confucian Authority, Political Right, and Democracy



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In the past two decades, normative Confucian political theory has emerged as one of the most vibrant subfields of political theory, spawning a variety of philosophical thoughts, normative ideas, and institutional suggestions that are relevant to the modern societal context of Confucian East Asia. Ideas such as “Confucian democracy” and “Confucian constitutionalism” are no longer considered oxymoronic or conceptually impossible, and scholars in this field continue to develop their theories from a wide range of philosophical perspectives. What is still missing, though, is a philosophical construction that intertwines Confucianism not only with democracy (or constitutionalism) but also with other important philosophical values that are integral to any viable idea of the good life, such as legitimate political authority, personal autonomy, distributive principle, and human rights. Joseph Chan’s *Confucian Perfectionism: A Political Philosophy for Modern Times* fills this important lacuna in contemporary Confucian political theory by providing one of the most sophisticated philosophical accounts of modern Confucianism in which classical Confucian philosophy is reconstructed from a perfectionist standpoint in a way compatible with democracy and other normative concepts and values. In the present essay, I focus on Chan’s perfectionist justification of democracy with special attention to his service conception of authority, from which he derives the service conception of political rights and the largely instrumental conception of democracy. I critically discuss whether Chan’s service conception of authority and political rights can consistently support his political theory of democracy and human rights.<sup>1</sup>

### *Extending the Service Conception to Political Rights*

Chan’s Confucian perfectionism is premised on the foundational idea of political authority, the central purpose of which lies in serving for the benefit of the governed. Drawing on classical Confucian texts such as the *Analects*, *Mencius*, and *Xunzi* (as well as a pre-Confucian text like the *Book of History*), Chan is strongly convinced that the sole justification of political authority in Confucianism consists in protecting and promoting the people’s well-being. According to Chan, the service conception of political authority stipulates that “the office’s value is entirely instrumental to, or derived from, the worth of the people, and the features of the office—the power, respect, and emolument that come with it—are justified ultimately with reference to its instrumental function” (p. 30).<sup>2</sup> It should be noted that although Chan borrows the term “service” from the much celebrated idea of the service conception of political authority of Joseph Raz, and that the service conceptions of both Raz and Chan share

similar instrumental justification, Chan's conception of service differs importantly from that of Raz, focused on practical *reason* for better compliance rather than good consequences or outputs of governance.<sup>3</sup>

Chan's interpretation of the Confucian conception of political authority in terms of *imperium* (i.e., the legitimate right to govern within a jurisdiction) as opposed to *dominium* (i.e., ownership right) is thought-provoking, not only in light of the long-held view of Confucian authority in terms of Oriental despotism but also given the traditional Confucian endorsement of one-man monarchism and royal transmission by hereditary right.<sup>4</sup> Putting aside the exegetical issue, what is even more thought-provoking about the service conception of Confucian authority is the normative implications that Chan draws from it for political rights in general (as well as for democracy, as will be discussed shortly). Since the sole justification of political authority is to serve the ruled, argues Chan, "political rights attached to this authority are justified instrumentally by the contribution they make to the betterment of people's lives" (p. 32). That is, there is no natural right to political power as such, by either the ruler or the people. Here Chan is not merely saying that this is what ancient Confucians believed—a claim that is less controversial, if not hardly surprising. Rather, he draws a general normative principle, which he then directly applies to his modern Confucian political theory. He says:

Political rights are not fundamental moral rights that belong to individuals but are more on a par with the rights of officials such as the police, who have rights because their proper exercise of them can protect and promote the well-being of the people. Theoretically one could extend this view to a general view about all political rights, a view that is not articulated in Confucianism but which can be regarded as a natural extension of, or at least fully compatible with, its core political ideas. The general view is that the distribution of political rights or powers, and the institutional form that these rights or powers take, should be evaluated by the service conception. (p. 32)

I agree that the service conception of authority, granting its interpretative validity, can justify the claim that there is no natural right for the ruler to rule and that his government must be a sort of limited government. I also agree that the Confucian discourse of the Mandate of Heaven (*tianming* 天命) can lend support to the idea of political authority as *imperium*.<sup>5</sup> What is unclear is how the general view that concerns *all* political rights, which are directly relevant to contemporary East Asians, can be derived from the service conception of authority itself. The textual evidence that Chan appeals to uniformly points to the ruler's legitimate (and arguably limited) authority, but it says nothing about the rights possessed (or not possessed) by the people. Apparently, what Chan has in mind here is not just to reinforce the truism that Confucianism is a total stranger to the discourse of rights. Underlying Chan's statement is a new normative conception of political right, the exercise of which is justified *only if* it serves the well-being of the people. Its political implications are rather dramatic if we apply this conception of political right to ordinary citizens. For instance, in this conception of political right, not all human beings have the right to belong to a particular political community unless one has proven his or her service

in the interests of others. But if one's right to citizenship itself is justified only instrumentally, how can one (say, an immigrant or a refugee) acquire citizenship in the first place?

Another troubling case is the right to political participation, the right to have rights according to some political theorists.<sup>6</sup> Suppose that someone who is extremely poor has been unable to make substantive contributions to the well-being of others due to his or her dire condition. Does this mean that this person has no right to register his or her political opinions with the government? Would Chan argue that this person has no right to political participation? It is one thing for the Confucian conception of political authority (which concerns only the ruler) to be best interpreted in terms of *imperium* or service, but it is quite another for all political rights (which concern everyone), *therefore*, to be justified by the service conception. It seems implausible to derive the latter claim from the former. There is a logical jump between two claims, and, as Chan admits, there is no direct Confucian evidence to support the latter claim.

Alternatively, we can make sense of Chan's statement as meaning that one's political right is not absolute and should always be put in balance with others' rights and the common good.<sup>7</sup> I think this is a more sensible view because it gives serious attention to the importance of care and responsibility in the exercise of one's rights, the values Confucian virtue ethics strongly endorses, without radically reconceptualizing the idea of political right itself. However, Chan's service conception of political right does not seem to go in this direction as it denies one's *prima facie* right, *qua* human being, to have any political right in the first place unless the right in question has (reasonable) instrumental justification. A series of questions arises. Who decides whether or not one has political rights, and how is this authority to be selected where people have no right to vote? Who decides what kinds of political rights one has a legitimate claim to have? If one's political rights are proportional to his or her service for the well-being of others, how can their weight and scope be determined without violating the moral standards of impartiality and fairness? Even if the weight and scope of political right can somehow be determined, if they vary depending on one's contribution to the well-being of others, in what sense can we call this a *right* rather than merit?

### *Human Rights as a Fallback Apparatus?*

In chapter 5, Chan fully engages with the question of human rights from a classical Confucian perspective and advocates what he calls a moderate compatibility thesis, which he summarizes as follows:

Confucians today, therefore, would approach the value and function of human rights in the same way that early Confucian thinkers approached litigation. Human rights are not necessary to the expression of human dignity, nor are they constitutive of virtues or virtuous relationships. In a nonideal situation, however, they can serve as an important fallback apparatus to protect one's basic interests and needs. (pp. 125–126)

If approached independently of Chan's earlier discussion of the service conception of political rights and if it is agreed that human rights are distinct from political rights, this statement should not be problematic among Confucian political theorists. Chan's discussion of an undignified relationship between a husband and a wife in John Tomasi's imaginary story is quite compelling—that "[t]he basis of self-respect . . . need not lie in the fact that [the wife] has rights, but in the belief that she is worthy of care and concern and that her well-being matters. . . . What she ought to do [then] is to remind her husband of the ideal of mutual love and caring" (p. 123). But when the marriage breaks down completely, Chan continues, the wife can fall back on formal and legal rights in order to protect her interests.

The question is whether Chan's endorsement of Confucian rights as a fallback apparatus comports well with his service conception of political rights. There are several problems. First, Chan's service conception of political rights is based on the ethics of consequentialism, but the idea of rights as a fallback mechanism, which Chan took from Jeremy Waldron, is purely deontological (and Waldron famously begins his essay by defending Kant against communitarians, old and new, including Hegel).<sup>8</sup>

The second problem is more serious and requires a bit more of an explanation. Following the claim above, Chan may then argue that political rights and human rights are categorically different, and that while human rights can be justified deontologically as a fallback apparatus when affection dries out and virtuous relationships break down, political rights must be justified instrumentally by the service conception. I am not sure that political rights can be completely severed from human rights, and as far as I know no (contemporary) legal and political philosopher maintains such a rigid severance between the two. Waldron's own discussion of rights as a fallback mechanism would be helpful here, precisely because Chan borrowed this concept from Waldron and made no qualification when doing so (unlike when he borrowed the concept of "service" from Raz as noted earlier). First of all, when advancing his idea of rights as a fallback, Waldron discusses "rights" in general, not specifically "human rights," understood as categorically distinct from political rights. His overall goal in his essay was to shed new light on the liberal-communitarian controversy. Consider Waldron's concluding statement:

The debate is not between those who see social life as constitutively communal and those who do not. Nor is it between community and the values of bare individualism. It is between those who, on the one hand, yearn for communal bonds so rigid that the question of what happens when they come apart will not arise or need to be faced, and, on the other hand, those who are, first, realistic enough to notice the tragedy of the broken bond and ask "What happens next?"; and, second, optimistic enough to embrace the possibility of the construction of new bonds and new connections, and ask "How is that possible?"<sup>9</sup>

So, when advancing the idea of rights as a fallback, Waldron is not concerned with the (problematic) distinction between human and political rights. His concern is thoroughly political in the sense that he advocates rights to be something for those

who find themselves outside the existing communal bonds—such as refugees, immigrants, gays, and other minorities and marginalized individuals—to be able to fall back on to challenge the existing types of relationships and further launch new and legitimate social relationships without fear. (Here Waldron draws renewed attention to Shakespeare's *Romeo and Juliet*.) Waldron asserts that the job of legal rules and legal rights is "to constitute a nonaffective framework for actions which are novel from a communal point of view [without which] the creative human desire for new initiatives faces a terrifying vacuum."<sup>10</sup>

Chan's appropriation of Waldron's fallback idea goes in a different direction. Not only does he (seem to) distinguish between human rights and political rights, but, more importantly, he relocates the rights-as-fallback idea in the ideal-nonideal framework and endorses (human) rights only in the nonideal situation. Furthermore, by "nonideal situation" Chan largely means a complete breakdown of otherwise happy familial or communal bonds, which gives rise to the circumstances of legal justice, but not the kinds of situations in which minorities and marginalized individuals often find themselves. The result is a rather quotidian, philosophically less interesting statement about rights-as-fallback—namely, that rights are unnecessary in the ideal situation, but necessary in the nonideal situation. But here the real question that is philosophically far more interesting and politically more important remains untouched: Can rights play a part in generating new relationships, such as civil relationships among strangers, which enable them to enter into meaningful and legitimate social, economic, and political interactions? The rights in question are fundamental *human* rights as they are supremely concerned with people's survival and flourishing as social beings, while at the same time they are quintessentially *political* rights as they are conceived of as "rights" against the backdrop of inequality, discrimination, oppression, or even annihilation. Given Chan's service conception of political rights, I do not know how these sorts of rights can ever be justified in his political theory.

Of course, Chan can only borrow the concept of "fallback" from Waldron and advance his own theory of rights in a different way. Perhaps he could reconceptualize the very concept of rights from the Confucian perspective, with closer attention to virtue, relationship, or ritual.<sup>11</sup> Or he could argue that the service conception of political authority gives lexical priority to socioeconomic rights over civil and political rights,<sup>12</sup> or that the Confucian service conception of political authority enables us to regard socioeconomic rights as core political rights and embrace these rights as constitutional essentials, which even liberals who are deeply concerned with economic inequalities (including John Rawls, the champion of the "difference principle") are most reluctant to do.<sup>13</sup> At any rate, Chan's understanding of rights-as-fallback is qualitatively different from that of Waldron, who is an anti-perfectionist,<sup>14</sup> and he explores neither a uniquely Confucian conception of rights nor a distinctively Confucian way of thinking about the lexical ordering among various kinds of rights. Most importantly, Chan's idea of a rights-as-fallback apparatus is disjointed, even incompatible, with his general view of (political) rights, justified by the service conception. It is difficult to understand how Chan's idea of rights-as-fallback, the justification of

which is strongly deontological, can be simultaneously justified instrumentally, that is, in a way consistent with his overall perfectionist standpoint.

### *Democracy without Popular Sovereignty or Political Equality*

While Chan does not establish a vivid philosophical connection between his service conception of political rights and his idea of rights-as-fallback, he draws direct implications from the service conception of political authority and political rights for his normative idea of democracy. Following David Beetham,<sup>15</sup> Chan defines democracy as “a mode of decision making about collectively binding rules and policies over which the people exercise control” (p. 83). This is a rather conventional definition of democracy. What is striking, however, is Chan’s substantive understanding of democracy when he says,

No doubt democracy as a political system gives power to the people and distributes votes equally. But such a system need not be justified by, or be seen to express, popular sovereignty or political equality as a moral principle or ideal. . . . I suggest that the institution of democracy can be disconnected from such moral principles. (p. 85)

Before discussing this “striking” aspect of Chan’s idea of democracy, let us first examine how he justifies his particular conception of democracy with reference to the service conception of political authority and political rights.

As noted, in Chan’s view, the service conception “affirms the primacy of the people, not in terms of their political rights, but in terms of their worth” (p. 33). The implication, again as noted earlier, is that neither the ruler nor the ruled (i.e., the people) possess a natural right to political power. Convinced that the service conception of political authority applies to both the ruler and the ruled, and perhaps identifying the people, as conceived by ancient Confucians, directly with modern citizens, Chan then says something remarkable about “citizenship”:

Because citizenship is a form of political office, it too needs to be justified according to the service conception. It is necessary to ask whether such an institutional arrangement serves the well-being of the people. There is no natural citizenship just as there is no natural rulership. . . . [T]his view is not a rejection of democracy as a set of political institutions but a rejection of a certain way of justifying democracy, one that appeals to a fundamental moral right of political participation or sovereign rule of the people. Rejecting such a rights-based justification of democracy is entirely compatible with justifying democracy instrumentally as a means of achieving certain goods, such as the protection and promotion of the people’s well-being. (pp. 32–33)

There is no denying that citizenship is a form of political office, but this does not necessarily lead to Chan’s subsequent claim that citizenship, *therefore*, “needs” to be justified according to the service conception. Where does this “need” come from? But even before raising this question, there are even more fundamental questions. Chan takes for granted that citizenship is a form of political office, but he offers no explanation as to why this is so, nor why we (should) even have citizenship in a modern Confucian society.

Traditional Confucianism is, admittedly, a total stranger to the institution of citizenship. Until the late nineteenth century the term “citizenship,” let alone its political office, was nonexistent in the pre-republican Confucian societies of both China and Korea. What this implies is that citizenship is not analogous, conceptually as well as politically, to “the people” or “the ruled.” Citizenship is a political relationship among free and equal citizens—however we define “free” and “equal” here—and in modern society its institution or political office is established by the constitution. In East Asia, citizenship was not created by the internal evolution of Confucianism, but was rather externally introduced with the collapse of one-man monarchies and the subsequent establishment of republics. In a sense, modern East Asian history can be recapitulated in terms of a radical and painstaking transformation of the people (*min* 民) as royal subjects into self-governing citizens. Citizenship is an important political office precisely because it presupposes collective self-government, and Beetham’s definition of democracy above points precisely to this self-governing (and self-binding) aspect of democracy. Seen in this way, Chan’s claim that “there is no natural citizenship just as there is no natural rulership” is hard to make sense of because the first part (“there is no natural citizenship”) is logically independent of whether or not there is natural rulership. Citizenship is inconceivable in the absence of free and equal citizens, and citizens are created *politically* (and legally). In other words, “natural citizenship” is an oxymoron from a philosophical standpoint.

The trouble is that Chan employs the term “citizenship” as a political concept and institution without embracing the underlying substantive moral values, most importantly political equality. Instead, he argues that given its political importance, citizenship must be morally justified by the service conception, implying that citizenship (and I suppose the rights and duties associated with it) ought to be distributed unequally in proportion to one’s contribution to the well-being of others. Though this line of reasoning brings us back to our earlier questions of who should be the distributor of citizenship in the virtual absence of the Son of Heaven (more accurately the sage-king) and how this authority can be selected without any moral controversy, I do not necessarily find the normative position itself implausible, *if* the regime in question is not a democracy. And if this is to advocate a nondemocratic form of regime, we can enter a different kind of philosophical debate, for instance, on the dis/value of democracy or the de/merit of its nondemocratic alternative. (One should be reminded that Aristotle defined aristocracy in terms of merit and democracy in terms of equal power.) However, this is not what Chan intends here because he explicitly frames his political theory in terms of democratic theory. This leads us to one of the most striking parts of his normative theory.

Once again, let us begin by revisiting Chan’s service conception of political authority. Chan argues based on ancient classics that the single justification of rulership in Confucianism lies in serving the well-being of the people, then draws the same service implication for political rights *of the people*. We can make sense of, and even concede to, Chan’s reasoning in the ancient Chinese context because, after all, as Chan rightly notes, ancient Confucians, particularly Xunzi, justified class distinctions



and social differentiations (or, in today's terms, social and political rights) on the basis of differing merits achieved by individuals.<sup>16</sup> Here we see neither an idea nor an institution of citizenship, and the overall character of this ideal Confucian regime is aristocratic, which is institutionally buttressed by the monarchical political structure. Of course, the regime's nondemocratic character is not a problem for Xunzi or other ancient Confucians as they held no commitment to democracy or equal citizenship.<sup>17</sup>

Chan, however, attempts to apply this ancient Confucian insight without much modification to the modern world and to make it compatible with the ideas of citizenship and representative democracy—hence his service conception of citizenship and instrumental justification of democracy. More specifically, Chan embraces only democracy's political institutions (mainly election) while rejecting democracy's constitutive moral principles such as popular sovereignty, political equality, and the right to political participation—values incompatible with ancient Confucianism. But how can one have both—ancient Confucian aristocracy and modern representative democracy—without developing an internal contradiction? In the ancient Confucian (say, Xunzian) monarchical-cum-aristocratic world, the agency problem that we have been grappling with so far (i.e., who distributes citizenship and other political rights and how this distributor is selected) does not even arise because the agent (i.e., the Son of Heaven) is always *there*, predetermined by his hereditary right to the throne, and he (and his officials) can legitimately distribute political power and rights among the people equitably but not equally, based on their merits or contributions.<sup>18</sup>

In marked contrast, the agency problem is at the heart of democracy. If people do not have the right to govern themselves as citizens (note that here we are talking about political or constitutional rights, not natural rights), on what moral ground can we employ election to select their political representatives? If people are not politically equal as citizens and their political rights are proportional to their services, contributions, or merits, on what moral ground should they each equally have one vote? In chapter 3, however, when Chan upholds the selection model of political representation (following Jane Mansbridge), he does not seem to deny the democratic principle of one person, one vote. However, if *all* political rights must be justified by the service conception, on what moral ground can Chan consistently support this principle? If, to be consistent with his general idea of the service conception of political rights, Chan indeed believes that a right to vote should be distributed proportionally according to one's service, contribution, or merit, then who performs the initial distribution in a democratic society? Also, if some people deserve more votes (or more political rights in general) because of their merit, what is the point of having an election? Why not just let *them* govern us, if we can identify them with any objectivity?

Election as such is not a democratic institution, if it is decoupled from democratic principles of popular election, political equality, and the right to political participation. The early J. S. Mill believed in the plural voting system, which allowed the educated elites multiple votes, and no one regards him a democratic thinker. Like-

wise, many African countries have institutionalized competitive and regular elections after democratization in the 1960s, but few of them are considered truly democratic precisely because elections there are not tethered with underlying democratic principles of popular sovereignty and political equality. In many newly “democratized” African countries, competitive election is casually juxtaposed with a variety of forms of authoritarianism—hence a new neologism like “competitive authoritarianism.”<sup>19</sup> We cannot call this sort of polity a democracy.

Certainly, Chan does not advocate any semblance of competitive authoritarianism. But when political perfectionism is connected to the service conception of political rights (including the right to vote) and democracy is severed from its constitutive principles, I am not sure how the regime in question can be called democratic. All in all, there is a striking tension between Chan’s substantive understanding of democracy and his definition of democracy, which he borrowed from David Beetham, who, quite ironically, believes in political equality and free and equal rights, including the right to vote.<sup>20</sup>

### *Democracy’s Expressive Value: A Rescue?*

Chan may challenge this undemocratic interpretation of his political theory by drawing attention to what he calls the expressive value of democracy. In fact, Chan does not understand the value of democracy purely in terms of its instrumental value or its service in “bring[ing] about certain effects that are desirable in the view of Confucian thought” (p. 85). He also notes a positive expressive relationship between democracy and Confucianism:

Recall that the Confucian ideal political relationship is marked by mutual commitment and trust—the rulers are committed to governing the people in a trustworthy and caring manner, and the ruled, in return, express their willing endorsement and support of their rulers. Democracy can also be understood as a political system that expresses such an ideal political relationship. (p. 85)

Chan may challenge the notion that as long as democracy is *additionally* (in addition to the service conception) justified by its expressive value of mutual commitment and trust between the ruler and the ruled, there is virtually no possibility for his Confucian democracy to deteriorate into a state of competitive authoritarianism. The challenge is fair enough but does this say anything about democracy itself? Note that just as he previously derived the general service conception of political rights for modern East Asians directly from the ancient Confucian service conception of political authority, so Chan here derives the expressive value of democratic authority, germane to modern East Asians, directly from the ancient Confucian accounts of the constitutive relationship between the ruler and the ruled.

As Chan rightly notes, the constitutive or ethical relationship between the ruler and the ruled is in itself good from the perspective of Confucianism, and thus is justified noninstrumentally *in* Confucianism. From the standpoint of democracy,

however, the ethical relationship between the ruler and the ruled is one of the positive byproducts of democratic procedures such as election, not an intrinsic value of democracy. That is, we do not pursue democracy primarily for the sake of the ethical relationship between the ruler and the ruled (which was the telos of traditional Confucian virtue politics) but rather as a political arrangement that can best realize collective self-government by free and equal citizens—which could and often does result in an ethical relationship between the ruler and the ruled. Democracy's non-instrumental or intrinsic values consist of moral principles and values that underlie what democracy as a political ideal and practice stands for—again, popular sovereignty, political equality, and the right to political participation. If (Confucian) democracy's noninstrumental values lie solely in the ethical relationship between the ruler and the ruled, but not in democracy's core intrinsic values, why should we prefer democracy as a political system to other alternative forms of political regime that may better achieve an ethical relationship between the ruler and the ruled—say, rule by nondemocratically selected judges, rule by Confucian scholar-officials, or rule by the enlightened benevolent monarch? What is the moral ground for choosing democracy in the presence of such viable competitors?

For ancient Confucians, this was not a problem because who should be the ruler and the ruled was a settled question. Their sole task was to make the *existing* relationship between the ruler and the ruled ethical. In a democracy, however, the ruled (the co-subjects) themselves are simultaneously the co-rulers. Put differently, while the traditional Confucian idea of “people” captures only the co-subject dimension, the idea of democratic citizenship speaks for both the co-ruler and co-subject dimensions of the sovereign people. After all, ancient Confucians were fully convinced that an ethical relationship between the ruler and the ruled is perfectly achievable under one-man absolutism. Then, the question boils down to this: how does Chan's perfectionist Confucian democracy account for the co-ruler dimension of democracy? If he rejects this dimension of democracy along with popular sovereignty and political equality, how can the regime he espouses reasonably be called a democracy, and how can the citizenship he seems to acknowledge be qualitatively different from ancient Confucian peoplehood?

### *Conclusion*

I must acknowledge that critiquing is a much easier job than constructing a theory, and to that extent this essay does not do full justice to Chan's complex political theory of Confucian perfectionism, to which many important contemporary philosophical concepts and political practices are integral. My primary task in this essay has been to raise questions regarding some further-reaching philosophical implications of Chan's service conception of political authority for political rights and democracy and to examine how they cohere with his overall philosophical framework. It is my hope that clarifying the issues discussed in this essay will engage Confucian political theorists in more exciting philosophical explorations.

## Notes

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- 1 – For my engagement with Chan’s idea of Confucian political perfectionism, see Sungmoon Kim, *Public Reason Confucianism: Democratic Perfectionism and Constitutionalism in East Asia* (New York: Cambridge University Press, 2016).
- 2 – All paginations in parentheses in this essay are taken from Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times* (Princeton: Princeton University Press, 2014).
- 3 – For Raz’ service conception of political authority, see his *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 53–57. Chan acknowledges this crucial difference on p. 30 n. 4.
- 4 – See Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu: University of Hawai’i Press, 2009), pp. 71–76; Henry Rosemont, Jr., “State and Society in the *Xunzi*: A Philosophical Commentary,” in *Virtue, Nature, and Moral Agency in the Xunzi*, ed. T. C. Kline III and Philip J. Ivanhoe (Indianapolis: Hackett, 2000), pp. 1–38.
- 5 – But we should not forget that *tianming* can simultaneously justify the ruler’s absolute authority as it actually did during the Han dynasty. It should also be noted that throughout Chinese history, *tianming* has occasionally been appealed to for the *ex post facto* justification of usurpation of power or dynastic change. On this double-edged aspect of *tianming*, see Alan T. Wood, *Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights* (Honolulu: University of Hawai’i Press, 1995), pp. 8–16.
- 6 – See Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), chap. 11.
- 7 – This line of argument has been pursued by David B. Wong, “Rights and Community in Confucianism,” in *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, ed. Kwong-loi Shun and David B. Wong (Cambridge: Cambridge University Press, 2004), pp. 31–48.
- 8 – Jeremy Waldron, “When Justice Replaces Affection: The Need of Rights,” in *Liberal Rights: Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993), pp. 370–391.

- 9 – Ibid., p. 391.
- 10 – Ibid., p. 377.
- 11 – For such attempts, see D.W.Y. Kwok, “On the Rites and Rights of Being Human,” and Chung-ying Cheng, “Transforming Confucian Virtues into Human Rights,” both in *Confucianism and Human Rights*, ed. Wm. Theodore de Bary and Tu Weiming (New York: Columbia University Press, 1998), pp. 83–93 and 142–153, respectively.
- 12 – Daniel A. Bell, *Beyond Liberal Democracy: Political Thinking for an East Asian Context* (Princeton: Princeton University Press, 2006), pp. 237–243.
- 13 – Sungmoon Kim, “Confucianism, Moral Equality, and Human Rights: A Mencian Perspective,” *American Journal of Economics and Sociology* 74, no. 1 (2015): 149–185, at pp. 177–178.
- 14 – See Jeremy Waldron, “Autonomy and Perfectionism in Raz’s *Morality of Freedom*,” *Southern California Law Review* 62 (1988): 1097–1152.
- 15 – David Beetham, “Liberal Democracy and the Limits of Democratization,” in *Prospects for Democracy: North, South, East, West*, ed. David Held (Stanford: Stanford University Press, 1993), p. 55.
- 16 – Also see Chenyang Li, “Equality and Inequality in Confucianism,” *Dao* 11 (2012), pp. 295–313.
- 17 – Eric L. Hutton, “Un-Democratic Values in Plato and Xunzi,” in *Polishing the Chinese Mirror*, ed. Marthe Chandler and Ronnie Littlejohn (New York: Global Scholarly Publications, 2008), pp. 313–330.
- 18 – I also take issue with Chan’s separation between democratic institutions and democratic social conditions, in Sungmoon Kim, *Confucian Democracy in East Asia: Theory and Practice* (New York: Cambridge University Press, 2014), pp. 82–86.
- 19 – Steven Levitsky and Lucian A. Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York: Cambridge University Press, 2010).
- 20 – See David Beetham, “Democratic Quality: Freedom and Rights,” an unpublished essay available online at [http://iis-db.stanford.edu/pubs/20433/Freedom\\_and\\_Rights.pdf](http://iis-db.stanford.edu/pubs/20433/Freedom_and_Rights.pdf).