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Comments on Joseph Chan, Confucian Perfectionism

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Confucian Justification of Limited Government: Comments on Joseph Chan, *Confucian Perfectionism*

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I approach this encounter with Joseph Chan's important work on Confucian perfectionism from a fundamentally sympathetic standpoint. Most basically, I agree with two of his key premises. Confucianism is more than a rich historical tradition: it is a live strand of political (and other types of) theory, able to criticize and contribute to our lives today. But for modern Confucianism to be plausible and attractive, it must find a way to embrace the idea of limited government or constitutionalism in a deeper fashion than it did historically. There are many other issues that Joseph covers in his book, and on many of these I am also in agreement with him. But my interest here is in the grounding of limited government, and I will argue for two primary theses. First, distinguishing political authority from traditional Confucianism's more general species of monistic (ethical) authority, and justifying the independence of the former from the latter, are more difficult than Joseph currently allows. Second, the contribution of socio-political participation toward individual ethical development is more critical than Joseph has so far acknowledged, and this tie between participation and development, in turn, leads to the need for "self-restriction" and thus provides a satisfactory basis for the independence of political from

ethical authority. Joseph and I have already discussed some aspects of these issues in print, and I will build upon our previous exchange in developing my arguments here.

Joseph defines limited government as follows: “limited political authority refers to a kind of authority or government that is effectively restrained by law, in the sense that the source, scope, and exercise of authority are defined and regulated by law” (46).¹ I believe that he is also comfortable calling this same idea “constitutionalism,” and I will use the two terms interchangeably. One of the key arguments in Chapter 2 concerning limited government is that the traditional Confucian stance toward it is paradoxical: on the one hand, it embraces several ideas that should push it toward constitutionalism, but on the other hand it not only does not move in this direction, but actually actively opposes constitutionalism. Traditional Confucianism, Joseph says, holds that “political authority...should be monistic and supreme, and not subject to any higher legal constraints” (47). This is in paradoxical tension with three ideas:

1. Authority as imperium: Political authority is a legitimate right to rule (imperium) rather than an ownership right possessed by the ruler or people (dominium).
2. Service conception of authority: Political authority is justified by its service to the well-being of the people.
3. Dao-based perfectionist politics: Dao is a set of objective principles and rituals regarding the well-being (or the good life) of the people that is used to guide and assess politics. (50)

Each of these three ideas suggests the need for limits on political authority, but even though “*Dao* [道] and *li* [礼] did at times function as constitutional conventions,” they were not backed by any higher institutional authority and thus could “not bind rulers who chose not to follow them” (51). In the balance of Chapter 2, Joseph argues that the reasons on which traditional

Confucians based their insistence on monistic political authority are unpersuasive; modern Confucians should instead develop the idea of limited government, in keeping with reasons 1–3 just cited.

All of this is elegant and attractive, but I think that in one critical way, Joseph is making things too easy for us. Joseph assumes throughout this discussion that in the context of traditional Confucianism, it makes sense to talk about something called “political authority,” and that this authority is the sort of thing that might, in principle, be limited in accord with an objective, institutional source of authority like law. Once we have granted that such a concept was in play, then we can see why it is surprising that it did not develop in the direction of constitutionalism, given all the ways in which it already seemed to be limited by quasi-institutional, quasi-independent sources of authority already (i.e., 1–3 from above). But I think we should consider the possibility that there was no such thing as “political authority” in this sense. This is to put the point very strongly, perhaps too strongly, and I will reflect in a moment on whether the complex reality might require caveats to my claim here. I propose we consider the possibility that according to traditional Confucianism, all authority is relational, particularist, and fundamentally ethical. It is primarily role-based and reciprocal, such that the authority of a specific ruler or spouse or teacher or even parent is at least partly defeasible. And it is all of a piece, all fundamentally the same kind of authority. *Li* and *ren* [仁] are not “political norms,” as Joseph calls them (49): they are just norms—ethical norms, if you like—that have application to public, political contexts among others. There is a deep insight in Roger Ames and David Hall’s translation-cum-interpretation of *ren* as “authoritative humanity,” and this authority applies equally—indeed, in just the same ways—in private contexts as in public ones.

Let us consider some objections to my claim that all authority (for early Confucianism) is ethical. To begin with, there is attention in Confucian texts to procedural matters and to the norm of “order.” Some interpreters have argued that this means the Confucians recognized a distinct species of “political” norms, and that such political concerns were more important to the Confucians than the achievement of individual, rarified ethical states. For example, in his discussion of under what circumstances Mencius judges a rebellion to be justified, Justin Tiwald emphasizes that Mencius “puts a great deal of weight on the essentially procedural requirement that the ruler be properly *designated* for the task.”² Even more explicitly, Loubna El Amine argues at length in her recent *Classical Confucian Political Thought* for the importance of a distinct sphere of politics. She argues that while “the realm of politics is not completely distinct from the realm of ethics, . . . political order, not moral edification, is the end”; and furthermore that “political order is an end in itself, not a means toward virtue.”³

In response to these points, let me first make clear that there evidently is a narrow kind of political legitimacy in play, of the type that tells one who the legitimate heir to the throne should be. According to *Mencius*, in the earliest days, political power was passed on via sagely, particularistic assessment of who was most qualified to rule, coupled with the endorsement of *Tian* 天, as viewed through the actions of the people; this is how the throne was passed from Yao to Shun, and from Shun to Yu. This practice quickly fell apart, though, and in its (supposed) place arose the mechanisms of hereditary monarchy.⁴ Mencius offers an ingenious explanation for the shift that also helps to explain why Confucius was never tapped to rule in the way that Shun had been. As Mou Zongsan’s analysis can help us to see, though, the shift from sagely judgment on who is best fit to rule, to hereditary monarchy, is a shift from a holistic form of ethical authority to what is merely an effective technology for the administration of power

instead of genuine political authority.⁵ This distinction can also be compared to the Neo-Confucian contrast between *zhengtong* 政统 (narrow political legitimacy) and *daotong* 道统 (monistic ethical authority). Neither of these pairs has room for the broader, independent-from-ethics type of political authority for which Mou and I are calling.

El Amine's reading of Mencius's account of early successions is importantly different from mine. She takes Mencius to be articulating a justification of hereditary monarchy that is based on an independent political norm, namely "order (*zhi* 治)." One dimension of our difference here is based on different readings of the passage itself; she writes that on her interpretation, "Mencius dwells on the cases of Yao and Shun not because he takes merit-based accession to the throne to be the model to follow but, on the contrary, because these cases depart from his preferred option—hereditary succession—and thus require justification."⁶ I believe that El Amine will agree with me, though, that our difference of interpretation is unlikely to be solved by the text itself, which seems compatible with either reading. The key issue, rather, is her claim that "order" exists as an end in itself, since it is this idea that makes it possible for her to claim that there may be a justification of hereditary succession that is independent from any holistic ethical considerations.

El Amine's subtle arguments raise issues that are beyond the ability of the present essay to fully address. Certainly she succeeds in showing, as she puts it at one point, that there is an important space between "ethical politics," on the one hand, and "crass politics," on the other; that Confucian thinkers pay this space considerable attention; and that "order" is a central norm for this space.⁷ El Amine resists calling this space the realm of "non-ideal theory," as Joseph does, since she argues that the early Confucians do not offer "an ideal political theory at all, if what is meant by [this] is a political theory that directly follows upon their moral theory.... They

never delineate a society where all members are engaged in a life of virtue, pursuing reciprocal relationships of care and trust, and coming together in a harmonious society, merit-based and ritual-centered, allowing all to flourish.”⁸ Part of her case for denying the relevance of “ideal theory” rests on rejecting the Confucian pedigree of the explicit textual foundation that Joseph cites, namely the *Li Yun* 礼运 chapter for the *Book of Rites*, and admittedly we see nothing like its utopian society depicted in *Analects*, *Mencius*, or *Xunzi* themselves. Still, the ease with which she is able to sketch what such an ideal society would look like, and the resonance between her quick sketch and more abstract statements that we do find in texts like *Mencius*, are telling. I am not yet convinced that “order” defines a stand-alone realm of politics, let alone one that can bear the theoretical weight that would be needed to imagine where the Confucian justification for limited government might come from, and what shape it should take. Admittedly, these constructive projects are very different from El Amine’s own goals, but the upshot is still that she has not demonstrated the existence of a species of political authority sufficient to Joseph’s purposes.

There is one final reason for insisting that ethical authority is understood to underlie the public, objective, explicit norms of ritual and legal codes, which is that while they are highly useful for practical and pedagogical purposes—including the attainment of order—we are told in numerous places that they are not ultimately authoritative. They are are *jing* 经, the standard (as in typical) measure, but they are always subject to *quan* 权, discretion. It is the virtue-based judgments of agents in relation with one another, in particular situations, that have ultimate authority. This is a theme in many Confucian texts, prominently including *Mengzi* and *Xunzi*.⁹ We know this also through the discussion of rule-by-people (*ren zhi* 人治) versus rule-by-law (or institution or standard: *fa zhi* 法治), starting with *Xunzi* and continuing through the Neo-

Confucian era. Few Confucians doubt the pedagogical importance of institutions like ritual and legal codes (and schools and contracts and so on), but even Huang Zongxi, the most famous advocate of a central role for institutions, did not see them as the source of authority.¹⁰ It is true that “statecraft” Neo-Confucians like Ye Shi and Chen Liang put their primary emphasis on institutions and order, but when push comes to shove, they too are monists who see all authority as particular ethical authority.¹¹ Thomas Stephens may go a bit far in his characterization of traditional Chinese law as a disciplinary system, but he is right that laws were conceived of as the orders of the emperor—Stephens likens this to the standing orders of an army’s commander-in-chief—and their authority derives from the emperor’s ethical authority, not from any independent source.¹²

The reason all this matters is that it means that any modern Confucian interested in limited government—which, again, means that a ruler’s authority would be restrained by law—must engage in conceptual innovation at a more fundamental level than Joseph’s arguments acknowledge. He takes political authority already to be in play, but I have been arguing that this is not the case. The question we need to ask is: how could Confucians be persuaded that there is a distinct kind of authority, grounded not in persons but in institutions, which can trump the individual judgment of the best among us (however good that may be)? It is striking that two otherwise deeply opposed modern Confucian thinkers, Jiang Qing and Mou Zongsan, both recognize this need. Mou is explicit on this score, and I will turn to it shortly. But note that Jiang agrees with Mou on the need for a “new politics (*xin waiwang* 新外王),” and the “three-fold legitimacy” on which Jiang bases his ideas is every bit as novel as Mou’s idea of self-restriction, although Jiang does not make its novelty explicit—indeed, he tries to manufacture a classical pedigree for the idea. Furthermore, three-fold legitimacy creates a new type of authority,

grounded in “legitimate” institutions, that is the lifeblood of Jiang’s “political Confucianism,” and is quite distinct from the individual, ethical authority that he now limits to the sphere of “ethical Confucianism (*xinxing ruxue* 心性儒学).”¹³

One thing that Joseph might say at this juncture is: but I do make arguments for limiting individual power and limiting government. For example, he maintains that absent a sage-ruler, shared and balanced power is instrumentally better for the people’s well-being than having a single power-holder. Since sages are notoriously rare, the “zealous search for a godlike ruler” (63) is a poor approach to politics. The problem with this is that without the kind of conceptual innovation I am calling for, Confucians can—indeed, did—accept this basic idea but respond in inadequately radical ways. There are a host of ways in which historical Confucians sought to balance the ruler’s power, and improve the ruler’s judgment, by juxtaposing them or supporting them or criticizing them with the power and judgment of other individuals (ministers, censors, parents, wives, and so on). But what Joseph’s “limited government” requires is a re-basing of political power on a constitution, and that requires deciding that political authority is something different from personal, ethical authority.

In recent work I have been defending the idea that a version of Mou Zongsan’s idea of *ziwo kanxian* 自我坎陷, or self-restriction, can ground the independent, institutional political authority that both Joseph and I agree is necessary. Roughly, the argument is that in order to make possible the kind of personal ethical development that is central to Confucianism, we need to recognize and acknowledge that political authority is distinct from ethical authority, and that political authority is based in institutions. In short, for sagehood—the maximal development of humans as ethical agents—to be possible (in principle), we must grant a type of authority to a constitution. Last year Joseph published an extended review of my book *Contemporary*

Confucian Political Philosophy: Toward Progressive Confucianism and made this idea of self-restriction his particular focus. In the review and in the follow-up exchange between us that was also published, Joseph acknowledged the appeal of the self-restriction strategy but criticized it on several fronts. Referring to the two main arguments he makes for democratic, limited government, he concludes:

Stephen says that he agrees with the Confucian instrumental and expressive arguments for democracy expressed in my *Confucian Perfectionism* but registers his concern with the fact that I do not appeal to individual moral progress toward sagehood. True, my book does not draw upon the Confucian core idea of sagehood in making a Confucian case for constitutional democracy, but this is because I do not feel that it is feasible. I wish it was. With the instrumental and expressive arguments, it would provide a more direct and powerful Confucian case for constitutional democracy. Although I would wholeheartedly welcome a persuasive counter-suggestion, I am yet to be convinced.¹⁴

As I understand it, he believes that I have not successfully made the kind of argument he would welcome for two reasons. First, once we take publically identified sages out of the picture, he no longer sees the relevance of or need for self-restriction. Second, he feels that the connection between participation and ethical development is neither an example of self-restriction nor particularly plausible in its own right. In the balance of this essay, my goal is to show that self-restriction is necessary whether or not we think the idea of publically identified sages makes sense, and that the participation/development argument does indeed give us a persuasive Confucian reason for endorsing self-restriction and limited government.

First of all, let me expand on a theme that I begin to articulate in my response to Joseph's review.¹⁵ Although I write about sages and sagehood, and see no principled barrier to the

possibility of attaining such a state, the idea of publically identified sages plays no role in my thinking. In fact, if “publically identified sage” means someone whom we all know, correctly, to be a sage, then I am inclined to doubt the coherence of the very idea, for two reasons. First, notwithstanding the way that the honorific is applied to certain legendary or long-dead individuals, much Confucian theorizing about sagehood suggests that it is not a state that one attains once-and-for-all. Neo-Confucians write about moments of holistic awakening to Pattern (or Coherence), but these are followed by more work, more challenges. The “precariousness” of the “human heartmind” may well be a permanent feature of our psychology; at the very least, the dynamic nature of the cosmos means that we will continue to face new challenges.¹⁶ Second, even supposing that permanent achievement of sagehood were possible, there is no good reason to think that it is identifiable as such by others. Sagehood does not come with a special glow. Indeed, it is not obvious to me that it would even be identifiable to oneself. We all, already, have moments of non-self-centered, perfect responsiveness to our environment. Just because things have seemed like this for quite a while neither guarantees that we are right, nor that it will continue.

If this is right, then the question of how we should respond, politically, to the presence of a sage is a non-starter. But the upshot of this essay’s first half has been that self-restriction is vital even for non-sages. Self-restriction means to understand and accept that there is a type of authority—Mou loosely calls it political authority, but constitutional authority might be better—that has a claim on us independently of how things look to us ethically. In most circumstances, in fact, constitutional authority trumps ethical authority. (I have written a bit elsewhere about the main exception, namely civil disobedience.¹⁷) The idea that one’s individual ethical judgment might not be the proper norm to follow is not unique to Mou. As Joseph points out in his initial

review of my book, rule utilitarianism has a somewhat similar structure. In a recent essay, I have also argued that Western virtue-ethical schools of thought face serious and under-recognized challenges when it comes to balancing moral versus political norms, and thus that Aristotelians, Humeans, and the like can all benefit from the idea of self-restriction.¹⁸ Our concern is with Confucians, though, and with why Confucians need to recognize that there is not just one, monistic, ethical species of authority; instead there is also constitutional authority, and we should typically “restrict” our adherence to the specific ethical calls on us and instead adhere to the constitutional calls when the two types of demands conflict.

This brings us to my claims concerning the necessity of participation for ethical development. In his review, Joseph has a three-part response to my participation argument. First, he finds the basic idea very plausible. He explains:

What is important to our moral growth is that we participate in a common life and are given certain tasks and responsibilities in a social group or institution. To discharge these responsibilities, we need to acquire an appropriate understanding of certain aspects of the world and of the people we live and work with, discern relevant practical and ethical dimensions of the situations in which we find ourselves, make balanced judgments and decisions after considering competing concerns, and implement these decisions.¹⁹

Second, he argues that the participation in question need not be *political* participation:

In a modern society there are numerous social groups that present such opportunities, whether they exist in the context of families, the workplace, schools, religious organizations, civil society groups, or political parties. While these social groups, taken together, constitute a fertile soil for people’s moral growth, there seems to be no

particular group in which participation is indispensable, except perhaps, from the Confucian point of view, the family.²⁰

Third and finally, he cites evidence to the effect that participation in political democracies can actually be inimical to ethical development:

Empirical studies have shown that voters in well-established democracies remain relatively ignorant about public affairs, that the more active that people are in political participation, the more one-sided and intolerant of opposing views their thinking tends to be, and that active political participation can sometimes bring about deep frustration, disillusion, and cynicism.²¹

Because the positive types of participation need not be political, and political participation may even have negative effects, Joseph concludes that the necessity of participation does not provide a strong justification for the necessity of “political democracy.”

I accept each of these three points, but let me clarify my original intention. The participation argument is not meant as a direct justification of political democracy. It is a justification of the need to acknowledge what I am here calling constitutional authority and thus for self-restriction. More specifically, it aims to show that a specific kind of constitutional authority, namely a constitution that protects civil and political rights, is necessary in order to guarantee the possibility of socio-political participation; and such participation, in turn, is needed for ethical development. Joseph is right that the many varieties of participation he discusses can all work, and he is right that many of them are not directly political. But virtually all of them depend on a background of constitutional protections. Workplace, school, religious organization, civil society organization, and even family: all of these contexts can be threatened, can fail to provide healthy opportunities for participation, as China experienced during the cultural

revolution. I grant that justifying the need for a constitution that defends civil and political rights is not yet a justification of democracy. The theme of this essay, though, has been to show the need for a justification for the concept of political authority as a foundation for limited government, and the participation argument satisfactorily gives us that justification.

I believe that further arguments can show why Confucians should not only endorse the general idea of constitutionalism, but also more specific and robust forms of political democracy. I have argued, for example, that limiting the available forms of participation to local or purely social matters—that is, cutting off the possibility for full-fledged participation in matters of national, political significance—serves to infantilize a state’s citizens. Joseph’s instrumental and expressive arguments are also highly relevant, and perhaps even more powerful, at this point. My goal has been to suggest that there is a prior question, however, of why a Confucian should acknowledge distinctively political authority at all, and in this context, I continue to believe that self-restriction and the participation argument can play vital roles.

¹ All parenthetical references are to Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times* (Princeton: Princeton University Press, 2014).

² Justin Tiwald, “A Right of Rebellion in the *Mengzi*?” *Dao: A Journal of Comparative Philosophy* 7:3 (2008), 274.

³ Loubna El Amine, *Classical Confucian Political Thought: A New Interpretation* (Princeton: Princeton University Press, 2015), 15.

⁴ See *Mencius* 5A:5 and especially 5A:6.

⁵ Mou’s main treatise on political philosophy, *Authority and Governance* (or *Zhengdao yu Zhidao* 政道与治道), takes its title from precisely such a distinction. For Mou’s discussion of

hereditary monarchy, see Mou Zongsan 牟宗三. *政道與治道* [*Authority and Governance*].

Taipei: Xuesheng Shuju, 1991, 132.

⁶ El Amine, *Classical Confucian Political Thought*, 39. On this reading, Mencius is quite similar to Xunzi, who justifies the cases of Yao and Shun by arguing that “in the absence of a worthy descendant, the accession of a virtuous high-ranking minister to the throne does not cause significant interruption of the government.” El Amine, *Classical Confucian Political Thought*, 41.

⁷ El Amine, *Classical Confucian Political Thought*, 59.

⁸ El Amine, *Classical Confucian Political Thought*, 11-12.

⁹ *Mencius* 4A:17 is the most famous discussion of discretion, but as Bryan Van Norden’s translation-and-commentary on *Mencius* makes quite clear, discretion is a theme that one can find throughout the text. See Bryan Van Norden, trans., *Mengzi: With Selections From Traditional Commentaries* (Indianapolis: Hackett, 2008). Despite his emphasis on procedure in *Mencius*, Tiwald allows that sometimes procedure can be appropriately violated; Tiwald, “A Right of Rebellion in the *Mengzi*?,” 274.

¹⁰ See Stephen C. Angle, *Contemporary Confucian Political Philosophy: Toward Progressive Confucianism* (Cambridge, UK: Polity Press, 2012), 58-61; and compare El Amine, *Classical Confucian Political Thought*, 137-8.

¹¹ See Stephen C. Angle and Justin Tiwald, *Neo-Confucianism: A Philosophical Introduction* (Oxford, U.K.: Polity, forthcoming), Ch. 9, and also the related analysis in Mou Zongsan 牟宗三. *政道與治道*, 202-3. This suggests that a figure like Chen Liang may not be as solid a foundation for a purely “political” philosophy as El Amine speculates; see El Amine, *Classical Confucian Political Thought*, 9.

¹² See Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court 1911-27* (Seattle: University of Washington Press, 1992); and the following, related analysis of Song dynasty law: “All officially enacted law, as opposed to socially enforced custom, derived its force from the emperor, even if it had not been handed down directly by him.” Brian E. McKnight, “From Statute to Precedent: An Introduction to Sung Law and Its Transformation,” in *Law and the State in Traditional East Asia: Six Studies on the Sources of East Asian Law*, edited by Brian E. McKnight (Honolulu: University of Hawaii Press, 1987), 113.

¹³ Jiang Qing. *A Confucian Constitutional Order: How China’s Ancient Past Can Shape Its Political Future*, Translated by Edmund Ryden; Edited by Daniel A Bell and Ruiping Fan (Princeton: Princeton University Press, 2013).

¹⁴ Joseph Chan, “‘Self-Restriction’ and the Confucian Case for Democracy,” *Philosophy East & West* 64:3 (2014): 799.

¹⁵ “Sages and Self-Restriction: A Response to Joseph Chan,” *Philosophy East & West* 64:3 (2014): 795-98.

¹⁶ The *locus classicus* for the idea that the “human heartmind (*renxin* 人心)” is precarious and prone to err is the *Book of History*, “Counsels of the Great Yu.” For some discussion, see Angle and Tiwald, *Neo-Confucianism: A Philosophical Introduction*, Ch. 4.

¹⁷ *Contemporary Confucian Political Philosophy: Toward Progressive Confucianism* (Cambridge, UK: Polity Press, 2012), 35 and 76.

¹⁸ “Virtue Ethics, the Rule of Law, and Self-Restriction,” in Brian Bruya, ed., *The Challenge from China* (MIT Press, 2015).

¹⁹ Chan, “Self-Restriction,” 790.

²⁰ Chan, “Self-Restriction,” 790-1.

²¹ Chan, “Self-Restriction,” 793.