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A Moderate, A-metaphysical, and Hierarchical Proposal to Save Liberal Orders—Response to Critics

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Abstract

In this article, I respond to four critics of my book, *Against Political Equality: The Confucian Case*. Although sharing my concerns with democracy, Yarren Hominh argues that I fail to appreciate the role of capitalism in corrupting democracy. The cure I propose, then, is doomed to fail, and the real hope lies in the power to the working people. After clarifying our differences, I argue that the meritocratic design in my proposal can be considered to be a compromise before all people are lifted up, if they can ever be lifted up. Both Steven Wall and Thomas Mulligan criticize me from the "right," pressuring me to adopt the position of natural aristocracy instead of merely defending meritocracy on a consequentialist ground. But considering myself to be a Wittgensteinian, my worry with concepts such as natural aristocracy and desert is that they will lead us back to a metaphysical and potentially oppressive path. Daniel Corrigan questions me on how I determine the content of rights, especially in light of how Rawls did it. On the one hand, I argue that the way Rawls "determines" the content of rights is metaphysical and even arbitrary, which is why I leave this issue aside completely. On the other hand, I argue that we should have more rights than liberal neutrality allows in order to preserve liberalism.

Keywords: Multiple Modernities, Capitalism, Social Egalitarianism, Natural Aristocracy, Rawls

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In my book, *Against Political Equality: The Confucian Case* (Bai 2021)—the hardcover edition was first published at the end of 2019—I show how Confucianism, as a political philosophy, can (1) correct the excesses of democracy by introducing meritocratic elements to governance while preserving the liberal elements of liberal democracy, i.e., the rule of law and the protection of some basic human rights, and (2) correct the excesses of nation-states by introducing humane duty to global order while preserving states and not taking the path of cosmopolitanism.

In this issue, four critics have offered oftentimes very charitable readings and illuminating and constructive criticisms of my book. In response, let me first offer a slightly more detailed and structured summary of my book, so that the readers can orient themselves when reading the critics and my responses.

The optimistic mood of "the end of history" in the 1990s and early 2000s has been quickly disappearing in the recent decade as liberal democratic orders have encountered problems both domestically and globally, and various discussions, celebratory or critical, of China Model(s) have been gaining ground. Though deeply suspicious of the hype surrounding such discussions, being a political philosopher, I am merely trying to offer critical and constructive proposals to address the ills of liberal democratic orders, proposals that are inspired by a certain coherent reading of Confucianism. Despite being very explicit about this, some reviewers still mistake my proposals as a defense of some China models. Luckily, there are not many of them, and none of the critics in this issue have that misunderstanding. They all address my proposals in the realm of political philosophy, as normative ideals.

But can Confucianism be read as a political philosophy? In my book, I argue that we can, and then I show how we can do so. Mindful of competing interpretations of Confucianism, I try to offer a coherent system of Confucian ideas that are based on two early Confucian classics, the *Analects* and the *Mencius*. I organize these ideas around three fundamental political questions: who should rule (legitimacy), how to bond a political entity together, and how to deal with entity-entity relations. Moreover, I argue that the early Confucians, Confucius and Mencius in particular, lived in a politically transitional period, the Spring and Autumn and Warring States Periods in Chinese history

(SAWS, ca. 770-221 BCE), which resembles in some fundamental ways the European transition to early modernity (ca. 1500-1800 CE) in that in both transitions, the nobility-based, "feudalistic" hierarchy of close-knit and autonomous communities on various levels collapsed, and large, populous, well-connected, mobile, plebeianized societies of strangers emerged. The above three fundamental political questions have to be answered anew, under these "modern conditions." I argue in the following chapters that the early Confucian answers, as I have already summarized in the first paragraph, can still be relevant today.

On the issue of political legitimacy and the selection of rulers, I begin with illustrating Mencius's idea of human nature, which Yarren Hominh calls "the Mencian assumption" in his article in this issue. That is, human beings are all equal in that they all have a universal moral sentiment of compassion and have the potential to develop it to the fullest degree. But in reality, only the few can actualize it, even if the government fulfils its duty to help all to actualize this potential. Put it in another way, early Confucians embraced the ideas of equality (in a way), upward mobility, and accountability, which can be interpreted as embracing two elements of democracy: "of the people" and "for the people." But they differ from the mainstream understanding of democracy in their embrace of actual inequality among human beings and apparent reservations of the democratic idea of "by the people," or self-governing. However, I argue that it is precisely this idea, or the ultimate reliance on the institution of "one person, one vote," that is the root cause of the ills of democracy.

In particular, there are four problems of democracy that are all structural and inherent in the theoretical design of the institution of "one person, one vote." That is, these problems are about the ideal, and not the real, although I use real-world examples to illustrate these problems. Therefore, I have been puzzled by some critics who argue that I use the ideal (an idealized version of meritocracy) to criticize the real (real-world democracies). True to my profession as an arm-chair philosopher, I try to stay in the realm of the ideal, and use the real only to illustrate the ideal. Fortunately, among the criticisms in this issue, there is only one mention in passing by Hominh, who says, "[Bai] still idealizes meritocracy in a way that he does not do for democracy." This

is different from the aforementioned misunderstanding. To be clear, even a theoretical physicist would have idealized reality as the starting point of his or her theorizing—concepts such as matter, motion, etc., that have roots in reality but are abstracted from the multitudes of it (e.g., an object with the mass of 1 kilogram instead of that particular chair or this stone). What Hominh actually says or should have said, then, is that I use certain idealized reality conditions (the sixth fact, in particular) to criticize democracy, but I fail to take another fundamental element of the reality of today's world into my idealization. This element, that of capitalism, will seriously challenge my proposal of meritocracy. I will come back to this point in the next section.

In fact, many liberal democratic theorists also see (some of) the problems of democracy, but most of them propose solutions that promote "true" equality and "real" self-governance. In my book, I argue that these and other corrections from within liberal democracy are fundamentally inadequate to address the four problems of democracy, and a regime that is based on the aforementioned Confucian ideas—a hybrid that combines popular participation with the intervention by meritocrats—can address these problems more adequately. This hybrid is premised on the conviction that "true" equality is fundamentally evasive, and what we should look for is not "true equality," but a kind of "inequality" that brings the greatest benefit to the least advantaged members of society. Though an apparent departure from democracy, I argue that this regime could be embraced or envisioned by earlier thinkers such as the Federalists and John Stuart Mill. Even John Rawls never took "one person, one vote" as a basic human right, and he flirts with ideas of meritocracy in his own writings. Indeed, the Confucian hybrid regime can even be considered to be based on a political version of his Difference Principle and is projecting the de facto hierarchical global order in his *Law of Peoples* back to domestic governance, thus making his theories coherent and symmetric. The hybrid regime is only in conflict with a radical form of equality, the idea that what is essential to equality is the equal participation in political decision-making, or the ultimate reliance on "one person, one vote" for political decision-making. In Stephen Wall's article in this issue, he correctly points out that my design is only in conflict with this kind of equality. In fact, he

offers a very illuminating distinction between basic moral equality and social equality and argues that my design is only in conflict with the latter, not the former.

On the two other issues under the conditions of modernity, that is, how to bond a society of strangers and how to deal with international relations, I again appeal to the early Confucian ideas of humaneness and compassion, especially Mencius's idea that compassion is universal and is applicable to strangers. But this universal moral sentiment is rather weak, and thus needs to be cultivated. The most important institution of cultivation is family. By expanding one's care outward, one can eventually embrace the whole world. This continuity picture potentially challenges an underlying assumption of liberal neutrality, the separation between the private and the public. To acknowledge this continuity is not to reject the conflict of duties one may have to different spheres of expanding care. After discussing how early Confucians can resolve this kind of conflicts, and offering a conceptual analysis of the early Confucian idea of universal and hierarchical care, I show how it can be used, together with the early Confucian distinction between *yi* 夷 and *xia* 夏, to develop what I would call the Confucian New Tian Xia model of state identity and international relations. This model, I argue, is superior to both certain versions of the nation-state model and the cosmopolitan model. I also apply this model to the issue of war, or interventions in general. The overarching principle here is "humane responsibility overrides sovereignty," and I argue that it has merits compared to the liberal theory of humanitarian intervention that is based on the principle of "human rights override sovereignty."

On both domestic and global governance, the models I propose have hierarchical elements, hence the title of my book. Though critical of some form of equality and democracy, I am deeply sympathetic to the liberal side of liberal democracy and global order. Indeed, in both reality and in conceptualization, democracy and liberalism are different and often in conflict. Although I have offered some Confucianism-based reservations of liberal neutrality, I think liberalism is the real gem of liberal democratic orders that should be preserved, by restricting the democratic and equal aspects of governance. That is, instead of trying to preserve both the liberal and the democratic/egalitarian

components of liberal democratic orders, and to save liberal democracy by strengthening equality, I acknowledge the unbridgeable discrepancy between the liberal and the democratic (as well as the egalitarian) and try to save liberalism by putting (Confucianism-inspired) limits on democracy and equality.

But can Confucianism be compatible with liberalism, especially, the protection of basic human rights through the rule of law? In the last chapter of my book, inspired by a fundamental insight of Rawls in his *Political Liberalism*, I argue that for liberal democracy to be compatible with different doctrines and political conceptions, Confucianism included, we need to make rights free-standing, i.e., free from metaphysical ideas such as the Kantian idea of autonomy. Using this (revised) Rawlsian maneuver, I show how Confucianism can be made compatible with the rights regime by offering its own readings of rights that bear enough resemblance to, or have enough "overlapping consensus" with, typical liberal readings. In particular, I appeal to three tactics: "(1) replace rights talk with duties talk; (2) use the fallback apparatus; (3) refer rights to some higher good in Confucianism" (Bai 2021, 260), which Daniel Corrigan also quotes in his article in this issue. But there are some remaining differences between the Confucian readings and the typical liberal readings, and again I argue that there are merits in the Confucian readings.

I. The System Is Rigged by Capitalism? — A Response to Hominh

In his paper in this issue, Hominh praises me for challenging the West-centric understanding of modernity, but our agreement ends pretty quickly. To put it crudely, my criticism of the West is a revisionist and "conservative" one, while Hominh's is revolutionary, anti-colonial, post-capitalistic, and even post-modern.

To illustrate his position, Hominh points out the similarity between my position and Gandhi's, which is rather flattering, and then uses B. R. Ambedkar's criticism of Gandhi to criticize my proposals. According to Hominh, Gandhi accepted the idea of *varna*, a system of divisions that

are based on the thoughts and actions of one's previous lives. It seems to me that this system implies an inborn inequality among people, but it is not clear to me how this can be used to argue "worth instead of birth." More importantly, the birth-based caste system remained a key feature to traditional Indian society, while this class system collapsed during the SAWS in China and a system of upward mobility had since been the mainstream throughout traditional China. This is a fundamental disanalogy between traditional India and traditional China. Confucians embraced the equality that emerged from the collapse of feudal hierarchy. For Mencius, all human beings are born with the same potential to become a sage, although in actuality, people drift apart. The equality in potentiality is the key for Confucians to defend equal opportunities and upward mobility.

Despite these differences, Hominh suggests that Gandhi's reformed interpretation can be similar to my reading of Mencius. In his criticism, Ambedkar argued that this reformed and more egalitarian notion of *varna* "is, under existing economic and social conditions, indistinguishable from caste." That is, without reforming these economic and social conditions, Gandhi's *varna* would degenerate into caste. Similarly, Hominh argues that "(w)ithout transformative change to those economic and social institutions with their concomitant ways of thinking, even a Confucian meritocracy will be corrupted and fall into a simple oligarchy."

The institutions Hominh refers to are those of capitalism. Indeed, despite his very strong sympathy to my underlying idea of multiple modernities, he argues that I fail to appreciate a distinctive feature of the European modernization, that is, capitalism. In my defense, I distinguish between Europe's early modernity (roughly from 1500 to 1800), i.e., "modernity 1.0," and late, industrialized modernity (from 1800 and onward), i.e., "modernity 2.0," and argue that the transition in SAWS in China is a transition to early modernity, and not to late modernity. Hominh acknowledges this, but then argues that capitalism is different from mere industrialization.

Missing the role of capitalism in my discussion, according to Hominh, is very serious, if not fatal. He argues that upward mobility and competition (which I heartily embrace), when done in the social and

economic setting of capitalism (which "constantly trains us to prioritize our own interests ahead of those of others and the general will"), are precisely a root cause of "overweening self-interest" (which I consider to be an evil that makes people unfit to self-govern). He continues that, in order to cure the ills of democracy, capitalism needs to be addressed, stating that "meritocracies under capitalism become apologies for unjust hierarchies," and that the hope lies in the power of those who labor with their hands, i.e., the workers. In other words, Hominh suggests that despite my more "cosmopolitan" approach and the correct recognition of the ills of democracy, I miss the role of capitalism, which makes my cure only a perpetuation of the underlying sickness.

In my book, I have expressed my sympathy toward this frustration with radical capitalism and individualism (Bai 2021, 169). The concern with their influence is an important reason why I consider liberal neutrality to be deeply problematic and embrace moderate perfectionism instead. The government has a crucial role and duty to prepare a level playing field for people to pursue true diversity. It cannot be hands-off and leave everything to the "free" market—even the "free" market of ideas—for the market can be rigged by the influence of Money and Capitalism (*intentionally capitalized*). Hominh notices my own reservations, but he apparently considers them to be fundamentally inadequate.

So here lies an irony. My criticism of some internal corrections of democracy, embraced by many democratic theorists, is that they fail to address the structural problems. But I am sure many of them consider my proposed solution of the hybrid regime to be unnecessary or even too radical. Hominh's criticism of my proposal is that it is internal tinkering, and fails to address the structural problems. But I consider his implied solution, although he claims that it is not necessarily a call for revolution, to be too radical. Both of us think that the system is rigged, but we differ as to the extent.

I don't think Hominh and I can persuade each other, because the differences are about fundamental observations of human existence. Surely what is fundamental in my theoretical construction, for example, the moral and intellectual limit of the masses, can be a derivative that is explainable in Hominh's theory, but I can do the same to fundamental

elements in his theory as well. We theorists all have to start from somewhere, and the differences about where that "somewhere" is may not be resolvable. But we can at least be clear and honest about it. For me, I have to confess that deep down, I have always been a conservative in the Burkean or Confucian sense. I tend to be both sympathetic to and suspicious of the revolutionary spirit. Of the human conditions, my own life experience has repeatedly corroborated the Mencian assumption. While Hominh sees progress as being often made by "unionization and the politics of organized labor," I see the failure of communism and the fact that all workers divide (rather than unite) in international conflicts. While Hominh sees the ills of competition in the setting of capitalism, I see the good things that come out of it, especially when it is done well. After all, there have been societies that are capitalistic, but are duty-bound and have a sense of the collective, while revolutions in the real world that are meant to eliminate the rigged systems only bring about evils worse than the ones they try to eliminate. But again, I don't think Hominh (or Bernie Sanders, or many Trump supporters) can be persuaded by my conservative suspicion of revolution.

In addition to recognizing and clarifying these fundamental differences, I do have some direct responses to Hominh's criticism. He argues, "(a) view like Bai's, that politics is for the great and noble and not for the ordinary, does not and cannot have room for a politics *of* the ordinary." But although Hominh considers "the recognizing of the equal potentials of all" to make merely nominal differences, with this recognition, the kind of Confucian proposal that I propose *does* leave room for popular participation, even full popular participation on the communal level. It merely poses some checks and balances by the meritocrats on the popular will at the higher levels of political decision bodies.[1] But why don't we give the people full and unrestricted access to

[1] On the use of the language of checks and balances (both here and perhaps more importantly, in my defense of the rule of law and rights in Confucianism), Hominh argues, "As Russell Hardin and others have pointed out, checks and balances are institutionalized forms of *distrust*." But I also argue for people's respect for authority. There seems to be a need of a balancing act, as Hominh correctly points out. Nevertheless, I consider it to be just that, a balancing act, which is quite common in our travel through the complexity of life, but not a contradiction.

political decision-making by lifting them up, as Hominh would like to have? My response is, "until then!" Until all are lifted to the same level, let's give those with greater moral and intellectual capacities a bigger voice.

Hominh's hero, Ambedkar, embraced Buddhism, which can be understood as a form of radical egalitarianism. I defend Confucianism. Indeed, the introduction of Buddhism to China eventually led to a Confucian revival in the attempt to counter the Buddhist teachings. The battle seems to continue even today.

II. Not Elitist Enough?—A Response to Wall and Mulligan

In contrast to Hominh's criticism of me, which comes from the egalitarian side, both Steven Wall and Thomas Mulligan criticize me from the other end of the spectrum by suggesting that I ought to offer a stronger version of meritocracy. It is somewhat unusual. In the English-speaking world, democracy and equality often enjoy quasi-sacred status, and thus my main concern is to defend the hybrid regime against egalitarian and democratic challenges. I was once caught completely off-guard when I was asked, after presenting the proposal of a hybrid regime, why I didn't defend a regime of pure meritocracy? It was at University Paris 1-Pantheon Sorbonne, and so I shouldn't have been surprised. Wall and Mulligan may not go as far as that questioner would like, but they are deeply sympathetic to my meritocracy-based proposal. In fact, Wall offers very clear and helpful reformulations of and conceptual frameworks to some of my defense of meritocracy (or the meritocratic elements in the hybrid regime).[2] As already mentioned, despite the book's title, the politically unequal elements I introduce to domestic governance are only in conflict with a special kind of equality, which Wall called "social equality," according to which members of a society should "relate to one another on a footing of equality," to which I will add, in all aspects of life. In politics, social equality calls not for "equal

[2] The best example of this is the "pleasing symmetry" of my view that is pleasingly revealed by him.

chances to rule unequally over others, but equal rule with others." But the Confucian hybrid regime does preserve the democratic element in the lower house of the bicameral legislature, thus addressing the "diversity trumps ability" thesis—a typical defense of equal rule—by being inclusive of the voice of the people. This reason was not explicitly offered when I answered the question of why the ideal regime should not be purely meritocratic. In short, the Confucian hybrid regime does take into account egalitarian considerations, and only violates equality in a limited manner. As Wall indicates in his paraphrasing of Robert Nozick,

> [T]he most promising way for a society to avoid widespread feelings of social superiority and inferiority is not to try to eliminate recognized differences in merit but to have no common social ranking of attributes of excellence. Rather than establishing a single or dominant society-wide scale a wide plurality of rankings should be encouraged.

Or, as in his equally beautiful paraphrasing of Michael Walzer,

> His version of social equality does not require the elimination of hierarchy within each sphere of social life, but rather excludes the dominance of any one type of inequality over the others.

In sum, the most promising way to counter wide-spread inequality is to temper "the claims of excellence in politics" with "the claims of excellence in other spheres of social life." This, I would add, is also a good answer to the pluralist worry about perfectionism.

Both Wall and Mulligan, however, question my justification of meritocracy, which they consider to be on a "consequentialist" or "instrumentalist" ground—a ground that is not very popular among Western normative theorists. Instead, they defend meritocracy on the ground of justice (desert) or fittingness. An example Mulligan offers is about a black worker whose productivity is reduced to a non-competitive level in a racist environment, and he implies that from a consequentialist point of view, this black worker shouldn't be hired. But this racist environment clearly endangers equal opportunities. This is similar to the situations where blacks are not given equal access to education

and to getting informed, and then are excluded from voting under the excuse that they are not educated and informed. This is unacceptable to a Confucian meritocrat who embraces the aforementioned "Mencian assumption."

On the broader issue of whether Confucian meritocracy is consequentialist or not, Mencius, whose ideas I rely on in my reconstruction, is ambivalent. On the surface, in the very opening passage of the *Mencius* (1A.1), Mencius angrily rejects a king's plea to offer him some profitable advice and condemns the king's obsession with profit. In other places, he distinguished between the noble rank by heaven and the noble rank by humans (*Mencius* 6A.16). He clearly favored the former, which is a form of natural aristocracy suggested by Wall. But this is what we could call one's inner worth, which doesn't have to be manifested in politics. More importantly, going back to *Mencius* (1A.1), the argument Mencius offered after the condemnation is that, if, following the king's model, everyone in the king's court is driven by profit, the kingdom will become a jungle and be in peril. This is, if we think carefully, a consequentialist objection to being obsessed with consequences.

We can argue that Mencius only made this argument because this is something the king could understand. Indeed, Mencius insisted on the distinction the "great people" and "small people." The former can hold onto virtue in spite of challenging circumstances, and the latter can only be virtuous when basic needs are met (*Mencius* 1A.7). Nevertheless, I suspect that there is a reason for Mencius to frequently offer arguments that are implicitly consequence-oriented. And even if I were wrong about Mencius, this reason is what *I* have, under the influence of Han Fei Zi, a harsh critic of early Confucians, for refusing to go down the road of natural aristocracy in a whole-hearted manner. To put it simply, how do we know that someone is a natural aristocrat? How do we know he deserves or is fitting to rule if not for the fact that he has actually ruled well?

Wall's example to challenge an instrumentalist defense of meritocracy is whether it can distinguish between a true pilot in the parable of the ship in Plato's *Republic*, and a lucky pilot. My rejoinder is, can we still be convinced of the judgment that someone is a true pilot if he keeps

failing to right the ship? He could have been extremely unlucky, and he could claim "noble rank by heaven" by *himself*, if this is of any comfort. For the public, however, there have to be some signs that suggest that he is indeed a good pilot. Sadly, the world is not always in human control. But unless we take a radically relativist view of human effort, we have to accept the idea that there are more and less competent rulers, and their competence is revealed *somehow*. To be sure, luck and contingent factors play a role in the consequences of a ruler's action, and we should not hold a meritocrat accountable for every accidental consequence. Instead, we should identify stable and reliable proxies, character or "merits," that are shown to be connected with ruling well and build institutions to examine a large number of actions by the contestant, in order to see if these actions lead to good consequences and to see if they reveal this person's character. On the basis of this kind of examination, we can then claim that he is justified, fitting, or deserving to rule. If we reject even this moderate consideration of consequences and insist on the identification and the inner worth of a true pilot, the *Republic*, in which the ship parable is introduced, has already told us where we will end up: we will be eventually guided by the Good, which, unfortunately, is not accessible to us. Socrates acknowledged this and said explicitly that the accounts he offered about the Good are merely analogies and allegories. Indeed, this also reveals my hidden, or maybe not so hidden, worry that the claim to *natural* aristocracy may have been implicitly on a metaphysical or doctrinal ground. Having been deeply influenced by both later Wittgenstein and later Rawls, I try to stay away from talks of inner worth or natural aristocracy. In fact, my own reading of Mencius's idea of universal compassion is to focus on its utility, i.e., its usefulness to bond a society of strangers together. Mencius, in contrast, understood it as essential to humans *qua* human. As I mentioned in my book, my reading is a rather in the vein of Xun Zi, a rival to Mencius among early Confucian thinkers (Bai 2021, 122).

Wall argues that both the natural aristocrat and the social egalitarian recognize that "the character of the political relationship itself has value." In this recognition, "the natural aristocrat has an advantage over the instrumentalist in responding to the social egalitarian insofar as he or she presents an alternative positive vision of the political rela-

tionship itself." In my book, I acknowledge the fact that my version of meritocracy is defended on the ground of good governance, which is clearly consequence-oriented, and cannot be defended if self-governing through "one person, one vote" is considered a fundamental value, which is implied by the positive vision of social egalitarianism. With regard to the recognition of the positive vision of meritocracy, I defend meritocracy by arguing that, even if meritocrats do not always make good decisions, meritocracy still has its value in that the existence and prestige of the meritocrats in the political decision-making process is a lesson to the masses: to participate in politics is not an inborn right, but a right to be earned by moral and intellectual effort and by exhibiting motivational and cognitive merits. But this defense is still consequence-based, although consequence is understood more broadly. It doesn't, as Wall correctly points out, offer an alternative positive vision of the political relationship itself. Wall's aristocracy does offer such a vision. But to me, this is just thumping on a metaphysical table different from the social egalitarian one. In addition to the aforementioned aversion to metaphysics, I am worried about the political implications of a political regime that is built on some metaphysical and practically oppressive idea of the Good.

Despite my almost kneejerk aversion to something that appears to be metaphysical, I deeply appreciate many of Wall's reformulations and even his defense of natural aristocracy. For the key to his defense is that it has the consequence of answering one more challenge from social egalitarianism, and is thus superior, in consequence, to a consequence-oriented defense of meritocracy. Mulligan's defense of meritocracy, however, is more based on the consideration of (distributive) justice, a deontological and not a consequentialist justification, which he calls "Western meritocracy." As he later acknowledges, what he calls "Eastern meritocracy" (the consequence-based kind) is not necessarily Eastern, while I would add, as I indicated above, Mencius could be interpreted as being concerned with the inner worth and can be "Western" in this regard. My reading of Mencius is a revisionist one, revised by two of his theoretical rivals, Xun Zi and Han Fei Zi.

But Mulligan's distinction does reveal some deeper difference between his theorizing and mine. In fact, he suspects that what I am

doing is not political theorizing. He considers Rawls' *A Theory of Justice* to be a proper political theory, for "[it] is just that: a theory of justice." As I have shown, my theorizing is organized by looking into how early Confucians answer three fundamental political questions under the conditions of modernity. The kind of early Confucianism I use can be summarized with a coherent and very limited set of basic tenets, such as the Mencian assumption, and, related to it, the moral psychological structure of compassion and its political implications. I try to avoid using ideas that are broadly speaking "Confucian" and are convenient to use but are not made coherent with the set of ideas I am using. In the same vein, although, as Mulligan points out, the idea of meritocracy is certainly in line with Mohism, I don't appeal to Mohism because other ideas I use to construct the hybrid regime and the Confucian New Tian Xia order are in conflict with the ideas of Mohism. Despite my attempt to be coherent, Mulligan is still suspicious of whether what I am doing is theorizing. I suspect that his suspicion, just like his reservation about "Eastern meritocracy," comes from the lack of discussion of justice in my book. To me, however, the obsession with justice is indeed West-centric. Early Chinese thinkers didn't discuss justice as it is understood by Plato or Aristotle, although this doesn't mean that they didn't discuss other issues and didn't use other theoretical tools that could be related to the issue of justice. Indeed, I have found the contemporary "mainstream" (read as "Western") obsessions with concepts such as agency and representation sometimes nauseating. There are other very important political issues that need to be addressed, and we can address them with a language that is more accessible to different philosophical, religious, and cultural traditions, a language of a greater overlapping consensus, rather than the technical language of Kant or the narrow focus on justice.

In Mulligan's paper, he also mentions the famous case of the Upright Gong. In his reading, in the conflict between protecting one's father who has committed a crime and reporting him to the authorities, the Duke of She chooses the side of criminal justice, and the Confucians or the Eastern meritocrats endorse the protection of the family member. He agrees with the Confucians on this point. I discuss this and other related cases in detail in my book (Bai 2021, 141-49, as well as the

whole Chap. 6). To me, the conflict is between one's duty to the public and one's duty to the private. The former includes not only what we could call criminal justice, but also concern for the person the father has wronged. The Confucian resolution of this conflict is not to endorse one's private (family) duty, but to try to find a solution that can address *both* duties. Another important factor Mulligan fails to notice is that the crime in question is a petty crime (taking a sheep from the street). I have discussed some more challenging cases. In the most serious ones, perhaps we cannot find a good compromise, such as the ticking bomb case Mulligan offers. I discuss a similar case in my book (Bai 2021, 153-54, fn21). Although a good compromise cannot be found, as one can see from my discussion there, perhaps not being merely obsessed with justice and rather trying to take the complexity of human life into account could be more productive, both theoretically and practically.

III. A Liberal Confucianism That Is Both Thinner and Thicker than Liberalism—A Response to Corrigan

Daniel Corrigan's criticisms are centered on how liberal my liberal Confucianism is, especially with regard to rights. He realizes that although I am deeply influenced by the later Rawls, there are some key differences between my approach and that of Rawls'. As he points out, "(t)he content of Rawls' theory of justice is determined by using the Original Position," while "Bai determines much of the content of his theory of justice by relying on the works of the early Confucians." I will address the second claim later. On Rawls' approach, the veil of ignorance already implies what will come out of it, and to me, it is merely a beautiful illustration of the principle of justice that is already inherent in the design of the veil of ignorance. We shouldn't pretend that this offers any a priori justification of the principle. Or, as Corrigan put it, liberal rights that "are the domestic rights of people within liberal societies" "are justified by the principles of justice chosen in the Original Position." This is not really a justification. It is a kind of tautology. If you accept the Rawlsian Veil of ignorance and enter the Original Position, you will have liberal rights; and if you accept liberal rights, you will accept

the conditions stipulated by the veil of ignorance and thus enter the Original Position. A Hobbesian, for example, would reject both. Put it in another way, although Rawls tried to become more a-metaphysical, Wittgensteinian, and pluralistic in his *Political Liberalism* by taking liberal democracy as a freestanding political concept that is detached from any particular metaphysical or religious doctrine, the core of this concept, the principle of justice, still enjoys the fundamental status that is (very thinly) metaphysical and a priori. Maybe this is not fair to Rawls or to any a-metaphysical philosopher. For unless we philosophize as Wittgenstein did, that is, as a "therapist," and as long as we try to construct something, we have to start from *somewhere.* As Wittgenstein put it in Section 343 of *On Certainty*, "If I want the door to turn, the hinges must stay put" (Wittgenstein 1969, 44e).

With this understanding, I am not intending to determine the content of Rawls' (or my) theory of justice or his liberal rights. Instead, I simply assume that these rights, or a significant chunk of them, are where we begin, and I try to see if some of these rights can be endorsed by Confucianism through a pluralistic reading that is implied by overlapping consensus, a convenient tool introduced by the later Rawls. Otherwise put, my project is to acknowledge the existence of certain rights, such as the right to free speech, and see if we can offer a Confucian endorsement of these rights. The Confucian endorsement can be different from how these rights are endorsed by or are derived from other comprehensive doctrines but bears enough overlapping consensus with the endorsements by other doctrines. My project is thus not as "fundamental" as Rawls'. But if we carry through the Wittgensteinian spirit that is underlying Rawls' later philosophy, then less (fundamental) is more. Since my project is rather moderate, it is not necessary for me to show, contrary to Corrigan's claim, that the rights I try to endorse are part of the overlapping consensus that includes "other reasonable comprehensive doctrines, such as those found in African societies."

As Corrigan points out, on the international level,[3] "(i)n order to

[3] Rawls avoided using "state" and "nation" in his *Law of Peoples* for some very sensible reasons. I use the word "international" only for the sake of convenience.

justify the Law of Peoples and determine its content, Rawls introduces the idea of a second Original Position." But as Corrigan quickly acknowledges, peoples in the second Original Position are merely choosing among different formulations and interpretations of eight principles that are presented to them. The contingent nature of the starting point becomes even more apparent in the second Original Position than the first. Later, Corrigan refers to revisions by some other liberal thinkers such as Charles Beitz, but the revisions are based on a more comprehensive survey of existing rights that are not justified or determined within a theory. These rights are used to justify other things in the theory, and they are the hinges on which the door of theory turns.

The rights endorsed in the second Original Position are called "human rights," distinguished from Rawls' "liberal rights." But defenders of global justice often point out asymmetries between *A Theory of Justice and The Law of Peoples*, and question Rawls on why the veil of ignorance in the former cannot be used to derive rights on a global scale by putting persons, and not peoples, behind the veil of ignorance. I am actually sympathetic to the moderate or even conservative attempt by Rawls on the international level. Indeed, as mentioned, I argue that if Rawls acknowledges a de facto hierarchy globally, then why don't we carry this project through and acknowledge hierarchy within a state?

As mentioned, what I am trying to do in my book is to correct domestic and global governance with arrangements inspired by Confucianism, and on the liberal side of liberal democracy, I am mostly just trying to show that Confucianism can endorse various arrangements of liberalism. Simply put, I try to show that liberal Confucianism is possible. Although this attempt is rather modest, I do deviate from typical liberal orders on a few occasions. For one, I do talk about rights to education and health care, i.e., socio-economic rights. But Rawls also argued, in *Political Liberalism*, that rights, without certain basic goods offered, are merely formal.[4] Whether you call them rights or not—indeed, my version of liberal Confucianism doesn't really call them rights—they are the basic goods the government has a duty to provide to its citizens.

4 For my discussion of this on Bai (2021, 61).

On the international level, I differ even more from Rawls or the typical liberal line of thought. In his extension from liberal rights to human rights, Rawls tried to include so-called decent people. The example of a decent people Rawls offered is an imagined and idealized people, the people of "Kazanistan" (Rawls 1999, 75-78). From the name of this people and from Rawls's own description, we can see that what he has in mind is an Islamic people that is nevertheless tolerant and non-aggressive. Despite his attempt to be non-parochial, he had a curious obsession with Islam that is typical of a Western thinker, and only argued for tolerating this people from the moral high ground that is his liberalism.[5] It is a small wonder, then, that Corrigan thinks that the Confucian regime I propose should be categorized as an "unspecified" decent people. Well, it is Rawls' own fault.

The ideal global order I propose is the New Tian Xia Order (NTX). One can see some resemblance between this order and the one proposed by Rawls in his *Law of Peoples*. Nevertheless, in NTX, international interventions can be justified when a state fails to perform the humane duty to the people—first and foremost to its own people, and second to other peoples. As mentioned, the underlying principle is "humane duty overrides sovereignty." I argue that this principle is better than the principle "human rights override sovereignty," especially when being applied to the justification of a military intervention. It can justify the intervention of the domestic politics of even a decent or a liberal people, if their state pollutes the environment that endangers the well-being of its own people, future generations, and other peoples. That is, it can justify more expansive interventions than the Law of Peoples could. At the same time, it can be more prudent than the liberal theory that justifies interventions on the basis of human rights violations. For I argue that according to Mencius, military interventions can only be justified when the suffering of a people is so great that they are ready to welcome any invaders who have the sole intention of liberating them and when their liberation is proven long-lasting and is celebrated by other peoples. The flip side of this is that defensive war, such as the defense of a completely inhumane state, is not automatically justified,

5 For a more detailed criticism, see Bai (2015).

contrary to Rawls' "principle that permits war only in cases of self-defense," according to Corrigan.

It is true that, as Corrigan points out, human rights violations can be merely a necessary condition of military intervention, and there can be other cautionary factors against it. But as I illustrate in Chapter 8 of my book, the cautionary mechanism is built into NTX. There are complexities when we apply NTX to military intervention, which I acknowledge in my book. This recognition is the reason I argue that in the case of military intervention, we should offer more concrete criteria such as mass starvation and genocide (not something like the so-called cultural genocide, but the physical elimination of a people). In this revised version, NTX comes pretty close to the Responsibility to Protect doctrine, which I also happily acknowledge. This way, we can avoid using the principle of "humane duty overrides sovereignty" to defend colonialism, as Corrigan warns against.

How do I justify all these additional duties (or rights)? Corrigan accuses me of failing to do so. I confess that I am indeed guilty of this. What I try to do is to illustrate a coherent Confucian proposal that is based on a limited set of basic ideas and can address today's problems, and to defend it as best as I can. How do I justify these basic ideas, such as compassion or humaneness? I don't think that I have a justification. All I can do is to make them as "thin" (as a-metaphysical or as freestanding from any peculiar metaphysical baggage, early Confucianism included) as possible, and hope that other reasonable peoples could endorse them as a part of an overlapping consensus. In my own understanding, Rawls doesn't offer real justification for his liberal rights and human rights, and he merely throws them out there, hoping that they can be endorsed by reasonable peoples with different comprehensive doctrines. So, if I am guilty of failing to offer the ultimate justification, so is Rawls.

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