

## A CRITIQUE OF CONFUCIAN LEGITIMACY

Sihang Luo

### *I. Introduction*

The revival of Confucianism has been a heated topic in the field of philosophy as well as political science for at least fifteen years. Confucianism, a school of thought which was founded over two thousand years ago by the ancient Chinese intellectual Confucius, has a long history that is filled with twists and turns. Dating back to the imperial dynasties that lasted for thousands of years in the history of China, Confucianism was broadly embraced, at least on appearance, as an official ideology even through dynasty changes. However, in China's modern history, it suffered intense theoretical criticism as well as political attacks. At the beginning of the 20th century, it was abandoned by Chinese intellectuals who were eager to embrace Western culture and thoughts, setting Confucianism as a symbol of conservatism. It was also wrecked during the Cultural Revolution—a countrywide social movement that aimed to break up traditions and produce proletarian culture.

Chinese Confucian scholars are making an attempt to build a bridge between the early glory days and latter-day breakage

### *II. History of Confucianism in China*

Confucianism is undoubtedly one of the most influential ancient philosophies in China. Built by Confucius during the Spring and Autumn Period (Approximately 771 BC to 476 BC), Confucianism was firstly concentrated on ethical, political and educational thoughts. Meanwhile, the early rise of Confucianism did not lead to intense

of Confucianism. Educational measures and social propaganda aside, they are also trying to reintroduce Confucianism into China's political system, both normatively and practically. Jiang Qing, a contemporary Chinese Confucian, is one of the most active intellectuals in promoting political Confucianism. Jiang is best known for his proposition of constitutional Confucianism, which is not only obviously different from liberalism and democracy but also serves as a critique of Neo-Confucianism. Jiang criticizes the status quo of the Chinese political system for lacking legitimacy, and he believes that employing a western democratic system cannot solve the problem. On the contrary, a Confucian constitution must be built in order to exist as a political system rooted in eastern culture and history. Jiang's reading of Confucianism as well as his design of an eastern political system is now under intense debate in China. Taking this into consideration, the following analysis attempts to analyze Jiang's criticism of modern democratic theories and his construction of a Confucian constitutional system, criticize his theoretical shortcomings and raise a suggestion.

political impact: Confucius himself had had few chances to practice his thoughts, spending a long period of his life touring multiple kingdoms to sell his thoughts but receiving limited attention. Early political influence of Confucianism should date back to the Han Dynasty when Confucianism, combined with other schools of thought, was developed into a theory that embraced

cosmology and was employed by emperors of the Han Dynasty as the foundation of legitimacy for the regime.

However, it is argued that Confucianism was applied only at the ideological surface. While it initially appeared to have been abandoned, legalism—a school of thought to some extent identical to utilitarianism—remained embedded deep in the governmental system of the Han Dynasty. Moreover, an influx of Buddhism in late Western Han Dynasty and the emergence of Taoism, a homogeneous doctrine, strongly challenged the leading status of Confucianism.

The first Confucianist revival started around the Tang Dynasty (618–907 AD), and reached its peak in the Song Dynasty (Northern Song Dynasty: 960–1127 AD; Southern Song Dynasty: 1127–1279 AD). Returning to ancient Confucian thinkers and absorbing some notions of Buddhism and Taoism, this revival was led by scholars such as Zhou Dunyi, Cheng Hao, Cheng Yi and Zhu Xi. The founding of the imperial examination system<sup>1</sup> also proved to be helpful in strengthening the class of scholar-gentry. The second rise of Confucianism basically lasted until the abolition of the examination system in 1905, which was the symbol of the end of Confucianism as an official ideology. After that, China experienced a strong impact between Eastern, traditional thoughts and Western, heterogeneous ones. Confucianism was blamed for practically all the problems China had to face in the modern era; this was why the popular catchword during the May Fourth cultural movement in 1919 was

“Down with the Confucian Shop” (Liu Shu-Hsien 1996, 39).

The founding of the People’s Republic of China in 1949 pushed Confucianism into a tougher place. The official ideology of the People’s Republic of China (PRC), Maoism, showed little tolerance to Confucianism. In the Cultural Revolution, anti-Confucianist sentiments thrived with the guidance of the government, resulting in its theoretical and material wreckage.

Up until the employment of the Reforming and Opening-up Policy<sup>2</sup> in late 1970s, Confucianism in China was abandoned for over seven decades. Its third revival corresponded to China’s economic rejuvenation, acquiring a popularity, firstly in China and then abroad. Liu Shu-Hsien suggested that on December 7, 1984 an editorial was published in the *People’s Daily* which declared that the works of Marx were the product of the nineteenth century and could not possibly solve all the problems in the twentieth century, people were urged to further develop Marxist thought in order to cope with the present situation (Liu Shu-Hsien 1996, 41). Following the editorial, viewed as the early step of reopening and re-allowing the discussion of official and orthodox ideology. Classic passages from ancient Confucian works were again put into textbooks of primary and secondary schools. Government leaders like former Chairman Hu Jintao and Prime Minister Wen Jiabao have also adopted notions from Confucianism in open lectures or governmental documents. Confucianism is now enjoying its resurrection in both academia and the daily lives of people.

### ***III. A Confucian Constitution***

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<sup>1</sup> Imperial examination system is an examination system majorly based on testing candidates’ abilities of knowledge of Confucian works, aiming at selecting governmental officials and breaking the barriers of ancestry. The system was firstly founded in 605 AD, Sui Dynasty and lasted for approximately 1,300 years.

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<sup>2</sup> The Reforming and Opening-up Policy is a liberal economic policy that was put into practice in late 1970s, allowing market economy in China.

In his work *A Confucian Constitutional Order*, Jiang clearly takes a position that is against Western democratic system, which is based on his criticism of two main characteristics of democracy: electoral system and popular legitimacy. Jiang contends that although an electoral system promises to elect candidates to serve for the common will, it is often distorted into a system that produces immoral characteristics. In Daniel A. Bell's summarization, Jiang believes that "succeeding in democratic elections means taking part in 'secularism, pursuit of interests, agitation, demagoguery, self-projection, performance, fawning, hypocrisy, pretense, pandering to the populace, including even absurdities, farce, and a great waste of money'" (Jiang Qing 2012, 15). By stating that winning an election pushes candidates to abandon moral characteristics and to embrace immoral ones, Jiang criticizes democratic election as an immoral system. Moreover, democracy cares only about head counting rather than moral tendencies beyond the numbers. In this sense, a new political system that promotes morality in the modern society must be constructed to counteract the disadvantages brought about by Western democracy.

Jiang also criticizes democratic system for placing legitimacy solely on citizens. It is usually commonsensical in democracy that powers of governments must either directly or indirectly come from those who are governed. It is an ingrained notion founded almost at the same time as the theoretical appearance of theory of social contract, which was an original mode of the modern democratic system. Modern regimes are built because citizens want to keep liberty. If they have to be dominated, they want to be and should be dominated by themselves. Placing political legitimacy on population is certainly a direct result of the

original and philosophical pursuit of liberty. According to Jiang's observation, people in the modern society are playing the role of God in the medieval ages, "the sovereignty of the people is simply the secular equivalent of the sovereignty of God" (Jiang Qing 2012, 30). In this sense, there is no logically possible check when a decision is made by the population. Furthermore, Jiang believes that above all, between immediate interests and long-term interests, people possess a tendency towards the former. Giving the sole legitimacy to people leads to an outcome based on popularity and the general decision is only concerned with what is going to happen in a short period of time; there is no ideal in the system to hold back this tendency. Jiang further believes that the problem results from the separation of state and church.

Jiang elaborates that political system is not a rational selection. Rather, it is a fruit of "historical continuity and traditional inheritance" (Jiang Qing 2012, 36). Democracy prevails in Western societies because it coincides with western culture and history. However, it does not identify with eastern ones. As a result the forecasting of eastern political systems should not be based on democracy. Jiang's solution of the route of eastern political system lies in a Confucian way, which he calls a Confucian constitutional order.

Jiang provides for a system with multi-source legitimacy. He claims that in a Confucian constitution, legitimacy comes from three sources: heaven, earth, and human. Heaven stands for natural morality; earth stands for history and culture; human stands for will of the people. Also, assemblies are correspondingly divided into three: House of *Ru*<sup>3</sup> represents the Way of Heaven; House of the Nation represents the Way of Earth and House of People

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<sup>3</sup> *Ru*, Confucians.

represents the Way of Human. The system, which is originally outlined in *Gongyang Zhuan*, was called The Way of the Humane Authority.

The first legitimacy, namely the legitimacy of heaven, is a “sacred legitimacy”. It places strong emphasis on ecological values in the sense that the ecological environment is given by heaven to human beings instead of being only as the object of human beings. Traditional Confucianism shows a double-sided ecological attitude: firstly, human beings and the nature are homogeneous; secondly, human beings and the nature should live in balance and accordance. In this sense, it allows ecological values to set checks and limits to popular will. If a popular will is against the way of heaven, it will be restrained by it, in which sense Jiang calls the first legitimacy as a politics of ecology.

The second legitimacy of The Way of Humane Authority embraces historical and cultural legitimacy. Jiang believes that political systems should not be in rupture with local history and culture, or it would be rootless, lacking “the nourishing sustenance of the resources” (Jiang Qing 2012, 39). A mechanism of the way of the earth thus provides what is in need in the democratic systems. A political system that follows the way of earth will be able to develop the resources of a given countries’ own experience of politics as well as its citizens’ psychological and moral tendencies. According to Jiang, political systems built upon history and culture will be more stable and will be able to last longer. The Way of Humane Authority does not simply reject popular will, as Jiang elaborates. However, it must be placed in a proper position in the political system, instead of being as a general and sole source of political power. It has to obey the rule set by the first two legitimacies, or it would not be able to carry out its decision.

Jiang’s trilateral political system is obviously designed to overcome the shortcomings of the western democratic system pointed out by himself. A sacred legitimacy is placed in a position which precedes other legitimacies. In this sense, a popular decision should not prevail if it is against the sacred legitimacy. The trilateral system is also designed to alter the situation that winning an election precludes moral values in democracy. Also, a historical and cultural legitimacy exists to solve the incompatibility between democratic system and eastern societies. Jiang admits that the Way of Humane Authority has borrowed spirits from monarchy and theocratic rules; however, the combination of different types of regimes could be a “mutual equilibrium” and a “refusal to allow anyone to exclude the others or become unrestrained” (Jiang Qing 2012, 39). Jiang refers to Confucius and Aristotle, the former combining the spirit of three ancient Chinese dynasties and the latter giving credit to a mixed form of government. Jiang thus believes that the mutual equilibrium of three legitimacies is the best way to tackle problems in current-existing political systems, which is dominated by one single source of legitimacy.

#### ***IV. A Critique of Trilateral Confucian Legitimacies***

Though seeming to be a bit of an enchanted theory of politics, Jiang’s design of a trilateral system of legitimacy deserves to be carefully discussed and analyzed. He does point out several problems of the current-existing democratic political systems, which are also recognized by scholars and intellectuals in western societies. First of all, Jiang is vigilant in detecting one problem of one-man-one-vote, which is that immediate interests are more likely to overwhelm long-term benefits. What is more important and profound is that there are people, or

even non-living resources, that are unable to be represented in a one-man-one-vote system. For instance, infants or teenagers under the legal age cannot be represented in such system. Prisoners who are disfranchised may also suffer a similar predicament of protecting their own rights and benefits. Two theories are sometimes employed to solve this problem. On the one hand, infants, teenagers or prisoners, though unable to be represented by themselves, are able to be represented by other groups of people, say parents, relatives or specialists in the field of child-caring or criminology. On the other hand, people who possess the right of voting may consider their rights and benefits due to the fear of getting in the situation of unrepresented people themselves. However, both of these two reasons seem to be a bit weak. One-man-one-vote system is under an important presumption that the person who knows one's benefits best is one himself. Then, if those who are unrepresented by some groups of people, no matter their relatives or specialists, it is possible that interests are distorted. Moreover, it is even possible that interests of the unrepresented conflict with interests of their agents, which create a practical contradictory that, will not be easily solved. As for the second reason, it applies to only a part of the whole unrepresented group of people. One may be afraid of being in the situation of a disfranchised prisoner, but the fear of being an unprotected infant is not likely to prevent one from not considering infants' rights since an adult with voting power is impossible to become an infant again. It then has to involve love or sympathy between voting persons and the unrepresented, which returns to the first reason. When the problem is extended to non-living resources, it seems even more difficult to find a solution. Even though the benefits of non-living resources, in some schools of moral philosophy and ethics, is

said to be related or even amounted by benefits of human beings, under the presumption of preferring immediate interests rather than long-term benefits it is not easy to persuade at least some people to care about the future status of the environment. In this sense, the one-man-one-vote system does have inefficiencies in limiting the consideration to those who are represented.

In addition, Jiang also presents a powerful discussion of political legitimacy in his design of trilateral legitimacies. He questions the commonsense of democracy that people should be the only source of political legitimacy. Though it might seem anti-democratic, Jiang is not alone in suggesting alternate sources of legitimacy. In the discussion of legitimacy of judicial review, Richard Fallon, a professor in Harvard Law School, suggests that legitimacy comes from both moral and social resources to answer to a powerful doubt raised by Jeremy Waldron. In the case of judicial review, Fallon believes that it is possible for judicial review to promote the overall legitimacy of a political system even if it lacks a strong legitimacy on the basis of majority principle. Jiang's suggestion of trilateral legitimacies may echo Fallon's answer. If historical legitimacy or sacred legitimacy can be counted as social legitimacy in Fallon's sense, and if they can work together to promote the overall legitimacy of a Confucian constitution, it may not be unacceptable to place institutions whose connection with voters is weak in a Confucian political system. Clearly, Jiang's elaboration of "mutual equilibrium" is an attempt to make the three legitimacies work in accordance while at the same time efficiently and positively. Furthermore, as Fallon suggests, a reason why the court is given the right to veto legislation is that court is able to provide a perspective that is distinct from the popular decision. Jiang

does try to ensure different perspectives among his three legitimacies. The differentiation of heaven, earth and human is theoretically endowed with distinct standpoints.

It is not exaggerating to say that Jiang's observation of western democratic system is at least insightful. Meanwhile, a powerful criticism does not necessarily lead to a successful or flawless construction of theory. In other words, although Jiang seems to be correct about several flaws of democratic system, his own design of a Confucian constitutional order is open to criticism. But before reaching into Jiang's Confucian constitution, it is still worth mentioning that Jiang's understanding of democracy is not completely right.

First of all, Jiang believes that in contemporary democratic societies, citizens play the role of God in the medieval ages. It seems to suggest that in a democratic system, it is unable to stop a popular decision even when it violates morality since people is endowed with a highest position just like God. However, modern democracy has never presupposed the flawlessness of citizens. On the contrary, it takes into consideration all the potential flaws of human beings. For instance, at the point of departure of a Hobbesian theory of social contract, which is often accepted as a beginning of democratic theory, human society before the foundation of state is described as a war of all-against-all. In the developmental history of democracy, the threat of the majority over the minority is always considered as one of the biggest potential crisis in political praxis. Institutions with veto power against legislation are created to counteract the possibility of abuse of the majority over the minority. Citizens' rights are never unlimited like God in any period of history of democracy. There is always a boundary restricting violations of other people's

rights.

Jiang's misunderstanding of majority threat is then linked to a second mistaken observation of democracy made by Jiang. Jiang believes that by counting heads democracy dismiss morality. However, in the process of making a decision, every voter is restricted by the rights of others. To respect other people's rights is a basic rule of democracy, which can also be regarded as a basic from of morality. Admittedly, it is possible for one voter to neglect other people's cares and concerns, or to ignore long-term benefits just like Jiang has observed. But it is hasty to attribute this problem to democracy. Lacking information about other people's concerns and about the future may be the biggest reason behind the problem. As a solution, deliberation has been introduced as a supplementary method normatively as well as practically in some political systems. By deliberation, voters who have to make a decision are equipped with knowledge of the problem they face as well as with of other people's concerns. Deliberation can be seen as a self-adjustment of democratic system, and it is also a typical sign of the development of democracy, in the sense that democracy is not a stiff system but a dynamic and moving one that is able to face its own shortcomings and find solutions. It is then unfair to attribute all the shortcomings of neglecting morality to democracy, and it is also unfair to presuppose that democracy is a static system, which is unable to solve its own problems.

As we mentioned above, good observations do not necessarily lead to a successful design of political system. Besides these two mistaken observations, Jiang's own design of Confucian political system should be carefully investigated; I believe there are problems inside which should not be easily ignored.

The most serious problem is Jiang's

confusion of the original purpose of a political institution and the actual outcome produced by the institution. It seems even self-contradictory when it is compared with Jiang's criticism of democracy. Democracy is designed to protect liberty of all citizens who are governed by the state. Nonetheless, it is widely recognized by critics, both from inside and outside democracy including Jiang, that sometimes the original purpose of protecting liberty is not fulfilled. Otherwise, there is no need to place any critique on the currently existing democratic systems. If "protection of liberty" can be described as an input of a democratic system, it is open to challenge whether the output of the system coincides with the input. But when it turns to Jiang's own design, it seems that he cares much more about the input of the system but less about the output. The most significant problem in this sense lies in a very important, if not the most important, part in Jiang's system, which is the House of *Ru*. The House of *Ru*, obtaining a permanent power of veto, is designed to correspond to the Way of the heaven, which consists of Confucian scholars chosen by recommendation or nomination. However, Jiang's discussion about the implementation of the House of *Ru* is far from sophisticated. Even though he mentions the way scholars in this House are generated, through either recommendation or nomination, there is no guarantee that these selected ones will make decisions abiding to the idea of heaven. Even though they may probably be the group of people who knows best the way of heaven (it is still in doubt though), the knowledge of the way of heaven hardly parallels to an implementation the knowledge. Again, a case of judicial review helps in explaining the relation between input and output. Judicial review is endowed with a vetoing power against a popular decision, and then the input of judicial review can be seen as similar to the House

of *Ru*. Supposing that, despite all controversies of the function of judicial review, the system is working roughly fulfilling its original purpose, or in other words, the input is approximately equal to the output, the reason behind it is that courts have to obey a Bill of Rights and cases happened in the past. The Bill of Rights and the cases serve as the connection between the input and the output of judicial review, which enhances the coincidence of the two. In the case of House of *Ru*, there is nothing existing to be the connection. Classic Confucian theories are not able to fill the role in the sense that they are nothing more than philosophical or moral values, just like "liberty" or "equality" in a democratic system. They can be a metaphysical pursuit of a political system, but they cannot be a practical measure to ensure the pursuit.

Jiang's design of House of Nation is even more confusing in this sense. He elaborates that the leader of the House of Nation should be a direct descendant of Confucius. The mechanism of selecting members in the House of Nation is that "[The leader] personally selects the members of the House from among the descendants of great sages of the past...of patriots, university professors of Chinese history" (Jiang Qing 2012, 41). If we return to the input of the House of Nation, it is designed to assimilate historical and cultural elements into decision-making process. The relation between the members of the House of Nation and the original purpose of the institution, yet, seems to be vastly weak. An honorable family background provides no guarantee of one's being a qualified member in the decision-making process that emphasizes either history or culture. Avoiding a critique of being illogical in the construction of the House of Nation will be a hard task for Jiang and his proponents.

A second problem in Jiang's trilateral legitimacies may lie in the

perspectives of the three legitimacies. Richard Fallon, answering the doubt of why giving courts the vetoing power, suggests that institutions which bears the vetoing power should be equipped with a distinctive perspective from the legislation. Jiang claims that the trilateral legitimacies come from three distinct sources, as far as I am concerned, it is a dubious claim. The distinction between legitimacy of earth and of human is vague. Jiang seems to abstract culture and history out from citizens, while in fact elements of culture and history are taken into consideration in the function of legitimacy of human. A voter, when involved in a decision-making process, makes consideration on the basis of his or her own cultural background. If Jiang believes that legitimacy of culture and legitimacy of human can be distinctly separated, it seems to suggest that Jiang's understanding of culture is not in accordance with popular understanding of culture. Thus, Jiang is trying to promote a type of culture that is not rooted in the society, which necessarily leads to a question of the reason of promoting this culture.

And the question is even related to a third problem of Jiang's theory, which is more of a historical objection of Confucian constitution. Confucianism has been employed as a method, both by foreign theorists as well as native scholars, to understand imperial Chinese society. However, the influence of Confucianism in Chinese imperial dynasties is questionable. Indeed, Confucianism is a school of thoughts that is embraced by a number of emperors in ancient China, but the function of Confucianism differs according to different approaches and understandings of Chinese history. Though Confucianism was set as the official ideology in many dynasties, some historians argue that the major function of it lies in propaganda, while in fact the school of thoughts that is in

position of leading ideology in ancient Chinese politics is *Fa*<sup>4</sup>. Besides, in the sense of society, ancient Chinese society was highly influenced by not only Confucianism but also Buddhism and Taoism, or maybe even other schools of thoughts. In the long history of China, it is hard to conclude that any single school of thought is the leading ideology of the country. Jiang's promotion of Confucianism, in this sense, lacks strong evidence of necessity. And a political system that is built upon promotion of Confucianism may not be seen as valid if that is its only foundation.

#### ***V. A Suggestion: A Confucian Deliberation***

Though Jiang's theoretical construction of a trilateral system of legitimacy is open to criticism, and though Confucianism may not be the only school of thoughts exerting influence on China's history and culture, Jiang does make a point in emphasizing the modern significance of Confucianism, which is more noticeable in a democratic society or a society that is building its democratic system. Confucianism's core notion is not coincident with a democratic theory. However, it does not necessarily mean that Confucianism is not compatible within any democratic system. Confucianism encourages personal cultivation of an individual, emphasizing the significance of education, underlining familial relationship and social interaction, all of which are not necessarily anti-democratic. In contrast, Confucianism can be employed as a supplementary method in a democratic system, which helps in solving several problems in current democracies.

A Confucian deliberative system may be a feasible way to connect Confucianism and modern democracy. Deliberation is also a supplementary

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<sup>4</sup> *Fa*, legalism.



mechanism rather than an alternative of electoral system. It provides an opportunity, before election, for voters to get relevant knowledge and background information about the decisions they will make. A discussion or forum is held in advance for the voters to exchange their viewpoints mutually as well as for specialists and experts to provide their professional knowledge. Voters are shaped into people with knowledge and information; they are not elites making decisions for other people and then dominating them. After deliberation, the quality of a popular decision is expected to be better than without deliberation, in the sense that voters' understanding of their decision becomes more clear and profound.

Jiang's emphasis of Confucianism, namely ecological thoughts as well as historical and cultural concerns, can be introduced into political system in the process of deliberation. Confucian scholars can be invited to share their understanding of politics, of society and of specific problems to the voters. When a decision is waiting to be done, information about its cultural and historical backgrounds should be clarified to the voters. Confucianism's emphasis on education and personal cultivation can also help in this process. It may potentially enhance citizens' willingness of public participation and keep the deliberative system working in good order.

#### ***VI. Conclusion***

Jiang Qing, standing on a ground that is opposed to Western democracy, designs a trilateral system of legitimacy to replace a democratic sense of legitimacy that he claims is solely based on election and majority principle. Jiang does make some insightful observations on democracy and does find shortcomings of democracy, but there are also misunderstandings in his analysis. Moreover, his design of a

Confucian constitution is not flawless. Problems inside the system not only negatively influence the feasibility but also undermine the moral ground of the trilateral system. Thus, Jiang's design of a trilateral system of legitimacy in China's political praxis is far from applicable. However, as this analysis has demonstrated, there are tangible and important ways in which features of Confucianism can be absorbed into the political decision-making process.

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