Sungmoon Kim, *Confucian Constitutionalism: Dignity, Rights, and Democracy,* (Oxford: Oxford University Press, 2023), 304 pages. ISBN: 9780197630617 (hbk.).

Hardback: £ 54.00.

*Confucian Constitutionalism* builds on Sungmoon Kim’s other attempts to justify and defend a place for Confucian perfectionism within a pluralistic society in East Asia. In *Public Reason Confucianism* (Cambridge: Cambridge University Press, 2016),Kim defended a view of public reason on which Confucian values can be legitimately promoted in East Asia. This work was followed by *Democracy After Virtue* (Oxford: Oxford University Press, 2018), a pragmatic justification for Confucian democracy in the East Asian context and *Theorizing Confucian Virtue Politics* (Cambridge: Cambridge University Press, 2019)*,* a history of political thought focusing on Mengzi [Mencius] and Xunzi’s political theory. *Confucian Constitutionalism* now sets out to offer a theory for democratic constitutionalism involving three aspects: “an overarching and coherent normative perspective on the foundational moral worth or dignity of human beings, as conceived by Confucianism, the rights it generates as the legally entrenched moral entitlements by which the people can protect their basic interests against the unjustified intrusion of the state, and the legal and political institutions that safeguard such rights in a way that is consistent with Confucian values and moral reasoning” (p. 1). Kim thus aims to provide principled moral reasons for Confucian constitutional democracy, resting on a defense of human dignity.

In pursuing these aims, Kim is responding to and criticizing the projects of other Confucians. While Confucians who endorse an inegalitarian approach to dignity, such as Joseph Chan, Tongdong Bai, or Jiang Qing, end up endorsing some democratic institutions, they often downplay the role of popular participation and valorize non-elected meritocratic ‘upper house’-type checks on a popularly elected legislature or reject ‘one person, one vote’ schemes. Chan, for instance, endorses a ‘service conception of legitimacy’ and ‘human rights as fallback measures,’ where legal rights are instrumentally valuable for promoting community well-being. Legislatures are conceived of by such democratic or meritocratic Confucians as barometers of public opinion, not reliable means for promoting well-being, and so as needing to be checked by various measures that will ensure that knowledgeable elites control which legislative proposals become effective as state policy. By contrast, Kim’s other opponents are liberals who argue that the perfectionist nature of Confucianism, and the moral or political privilege/priority Kim’s theory affords to Confucianism, undercuts respect for pluralism.

Kim’s theory stands between these extremes. Kim wants to extract many elements of historical Confucian political and ethical thinking, while developing those elements into a modern theory. His constitutional democratic proposals are informed by historical views of Mengzi and Xunzi, Zhu Xi, and modern period Confucian constitutionalists Liang Qichao (d. 1929) and Liang Shunming (d. 1988). Appeal to historical Confucianism also involves, for Kim, distinguishing what is theoretically critical while eschewing the political institutions endorsed by some of those historical figures. He also aims to satisfy not only theoretical desiderata but to propose his Confucian theory as appropriate to the particular social circumstances of pluralism in East Asia. Confucian mores and values continue to pervade society (he argues), and thus these values should be incorporated into the theory of constitutional democracy as it exists ‘on the ground’ within East Asian societies. There are thus two aspects of the project – the theoretical and the practical – which Kim aims to work out in systematic and coherent fashion together.

The first chapter aims to ground Kim’s project in a Confucian account of human dignity. Meritocratic Confucians who hold an inegalitarian view of dignity hold that dignity is earned by morally good action. Dignity is not had by those who are vicious or underdeveloped. Kim sides with Confucian egalitarians who hold that dignity rests on the potential for moral development possessed by every human being. Kim proposes that not only Mengzi but also Xunzi – who is usually associated with the meritocratic conception of dignity – can be read as affirming the egalitarian view of dignity as innate and universal. Kim then spends much of his time arguing dialectically against Confucian meritocrats who also endorse democratic institutions (such as Joseph Chan or Ni Peimin) as having a conflicted or confused justification of democratic institutions.

Kim points out that meritocratic conceptions of dignity cannot sustain a consistent justification for constitutionalism or equality of all citizens before the law. In essence, Confucian meritocrats are committed to an elitism of non-elected rulers, which generates serious tension in attempting to simultaneously endorse democratic institutions. He further argues that the contemporary political scene in East Asia pragmatically demands a universal conception of human dignity, as value pluralism and moral disagreement will lead people to reject the Confucian meritocratic conception on which the state can, for instance, distribute higher or lesser social status to different persons (e.g., men and women) and deny equal opportunities. Meritocrats also do not provide a ‘right of remedy’ against the autocratic ruler and arbitrarily decouple political from civil rights. Kim concludes that an egalitarian notion of human dignity is compatible with, if not derivable from, classical Confucian sources, and is both theoretically and pragmatically preferable to the inegalitarian notion. To this end, he concludes that an egalitarian notion of human dignity, possessed by all citizens, can ground two political rights: rights to political participation by each citizen and to the equal protection of their rights before the law. Subsequent chapters work out this project of justifying democratic constitutionalism on Confucian principles.

The second chapter aims to justify a unique place to Confucianism in public justification, despite the dilemma of pluralism, in which many citizens do not adhere to Confucianism as a ‘comprehensive doctrine.’ In short, Kim argues (as he has in prior work) that the political aim of establishing societal institutions in East Asia legitimates employing Confucian political perfectionism in public justification for these institutions and their policies, since many citizens already accept Confucian norms and values. He aims to endorse a more comprehensive Confucian perfectionism than Joseph Chan or Franz Mang. Kim distinguishes a moderate civic form of (partially) comprehensive Confucianism, those cultural values or practices which are widely accepted in East Asia, from a fully comprehensive Confucian philosophical or religious framework, and argues that the former can be endorsed in public justification as it does not rule out other permissible comprehensive doctrines.

The third chapter then applies this theory to showing that public reason Confucianism can resolve moral disagreement in ways that are publicly justifiable within East Asia. Kim develops his own proposals in favor of partially comprehensive Confucian doctrines which can tolerate other reasonable comprehensive doctrines and treat them as moral equals in aiming to establish common (moral) ground. Kim holds that the resulting picture of Confucian public reason is preferable to those Confucian pictures which entail various forms of implicit discrimination against non-Confucian citizens, or which do not take moral pluralism seriously. The subsequent chapters deal with specific institutional proposals, criticizing Confucian meritocratic proposals in the process.

The fourth chapter argues primarily against a second non-elected meritocratic chamber in the legislature, in favor of the morally normative status of lawmaking. The legislative process is not merely instrumentally valuable considering the societal outcomes policy produces or the performative legitimacy it gives the regime, Kim argues, but lawmaking represents the political agency of the people.

The fifth chapter argues against a view of constitutionalism envisioned as aiming to constrain legislative outcomes and protecting basic rights, in favor of a further aim, broadly, to respect or protect equal public standing of citizens. Instead of meritocratic ‘strong well-being consequentialism,’ where public procedures are valued only considering their ability to produce material well-being, Kim argues in favor of the protection of the equality of citizens before the law alongside well-being (‘weak’ well-being consequentialism).

Finally, in the sixth chapter, Kim points out that Confucian meritocrats leave essentially no normative place for the judiciary. He argues that this represents a theoretical failure rather than an accident, as their (consequentialist) approach to rights is largely focused on the legislative process. Kim argues by contrast that the two basic rights of his Confucian democratic project – equal rights to political participation and equal standing before the law – justifies an independent judiciary with the power of judicial review.

Apart from Kim’s lucid exposition, arguments, and his commonsense, informed proposals, what was striking about the dialectic – and what needs exploration – is the way in which many Confucians accept a consequentialist picture of government as aiming primarily/largely at maximizing material well-being. Calling attention to the un-Confucian nature of strong well-being consequentialism, as Kim does, is a deeply Confucian criticism of the kind of meritocratic elitism that besets other Confucian political theorists. Kim correctly focuses on the judiciary as highlighting that government has important roles in ensuring something beyond that: right relationships among citizens. Beyond internecine discussion among Confucians, *Confucian Constitutionalism* should also spark reconsideration of Confucianism, with its notion of human dignity, as providing a more morally robust foundation for modern democratic constitutionalism than classical liberal alternatives.

Fr. James Dominic Rooney, OP
Department of Religion and Philosophy

Hong Kong Baptist University

Hong Kong SAR

China

Jdrooney@hkbu.edu.hk