

Contemporary  
Confucian Political  
Philosophy  
Toward Progressive Confucianism

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STEPHEN C. ANGLE

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## The Rights of All Under Heaven: Human Rights and Contemporary Confucianism

There is a deep tension in much of today's international legal and ethical thinking between national sovereignty and universal human rights. We value both the self-determination of individual nation-states and yet also the border-transcending rights of individual people. This tension is exacerbated because, as Jack Donnelly has observed, the state is both the "principal violator and essential protector" of human rights.<sup>1</sup> The immense power and reach of the modern nation-state puts individual rights in danger as never before, yet the state is also uniquely capable of enabling citizens to realize their rights. Furthermore, the international human rights regime that has developed since the Second World War is primarily a set of institutions agreed to by nation-states. From the Universal Declaration of Human Rights in 1948, to the subsequent International Covenants, other treaties, various regional documents and institutions, and UN-based committees: all these are "international" because set up among nations.

Two sets of countervailing trends are important to note. First, there are the many economic and social changes that we can roughly refer to as "globalization." This is a vastly complicated subject, but it is at least approximately true that global and social interdependence has increased dramatically. Transnational or multinational actors (like corporations and NGOs) are now important parts of everyday experience in many parts of the world. Whether these various actors genuinely count as "global" – in the sense of being of or being responsible to the whole world – is a further question. A scientist who works with other researchers from many places and is concerned with global climate change might count. A corporation with far-flung business interests and shareholders around the world might also make a claim, though the class-based nature of its objectives is an obvious constraint.

Second, and relatedly, international institutions that try to govern aspects of this increasingly "globalized" world have been gradually undermining strong claims of national self-determination. This is of course true in the economic realm (think of the WTO); for our purposes, efforts to

protect human rights across national boundaries are most relevant. At the moment, one cutting-edge effort is the "Responsibility to Protect" doctrine that was first articulated by the International Commission on Intervention and State Sovereignty in 2001, and then substantially endorsed by the UN's Sixtieth Anniversary World Summit in 2005.<sup>2</sup> The core ideas of this doctrine are first, that state sovereignty implies responsibility for the well-being of the state's people; and second, if this responsibility is seriously neglected, then "the principle of nonintervention yields to the international responsibility to protect."<sup>3</sup> Where does this latter kind of responsibility come from? The document summarizes as follows:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under article 24 of the UN Charter, for the maintenance of international peace and security;
- C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law, and national law;
- D. the developing practice of states, regional organizations and the Security Council itself.

In other words, the international responsibility to protect is really an articulation of internationally negotiated laws and practices; this responsibility comes into play when (and only when) the responsibility inherent in national sovereignty is abandoned by the state's rulers.

While the responsibility to protect is concerned with individuals no matter where they may be, it is still framed in terms of agreements among nations. Recently, the Chinese philosopher Zhao Tingyang has argued that a crucial failing in the current world lies precisely on this point: the obsession with national sovereignty obscures a broader commonality which could actually lead to solutions of world problems.<sup>4</sup> Drawing on ancient Chinese thinking, Zhao suggests that a framework in which individuals, families, and nations were all seen as constituents of "all-under-heaven (*tianxia*)" would enable us better to realize our moral and political responsibilities to one another. In this chapter, I will use Zhao's ideas as my point of departure toward developing a Progressive Confucian framework for human rights, which I will call the rights of all-under-heaven. This is not Zhao's own view; he neither identifies himself as a Confucian nor is he enthusiastic about current views of human rights. Once again in this chapter I will draw significantly on Mou Zongsan to help answer some of the worries that Zhao has about Confucianism and about rights.

Mou himself had little to say about human rights that was very concrete, though, so in the end I will have to take final responsibility for the position I put forward here.

The rights of all-under-heaven may sound superficially similar to the Western idea of “God-given rights,” which is of course an important grounding for human rights in the West, both historically and even today, at least based on the language one finds in many contemporary Constitutions. This legacy of divine sanction for human rights is one of the great conundrums within the current philosophy of human rights, though: we find we have inherited a concept that has enormous value, but we no longer accept its justification. It goes without saying that philosophers have been working assiduously to articulate plausible justifications. For many, this means showing how a specific conception of human rights is demanded by the theory of morality which they find most plausible. A very different approach was employed by Jacques Maritain when he convened a conference of world philosophers in 1947, as part of the discussions surrounding the emerging Universal Declaration of Human Rights. Without denying the value of rational justification, he nonetheless highlights the importance of practical agreement, relating a story in which “champions of violently opposed ideologies had agreed on a list of rights” . . . They said: “We agree about the rights, but on the condition that no one asks us why.”<sup>5</sup> That is, they disagree about the reasons the rights are important – some adopting a Kantian justification, others a Christian, and so on – but they still can agree on a list of fundamental rights. The core of my argument here is that contemporary Confucians have good reasons to endorse an approach to human rights that shares something of Maritain’s pragmatism.<sup>6</sup> Drawing on the idea of self-restriction, Progressive Confucians can make a principled distinction between moral and political values. This enables such Confucians to both allow for, and indeed insist upon actual agreements on the political values which are to govern all of us – thus avoiding what Habermas has called “human rights fundamentalism.” Human rights fundamentalism is much the same as Mou’s idea of “morality swallowing politics”: a “sham legal legitimation” is used to conceal what is really a “moral legitimation” to justify an intervention.<sup>7</sup> The legal legitimation is a sham, Habermas thinks, whenever there is not a genuine agreement on the relevant legal or political norms, which is independent of whether one group is morally convinced that it is in the right. In short, my argument here is not so much about the specific content or list of human rights, as about the means by which contemporary Confucians should approach the topic.

## Zhao Tingyang and the “All Under Heaven” System

Upon hearing the title of this chapter, anyone familiar with the contemporary Chinese philosophical scene would likely think of Zhao Tingyang, a prominent philosopher whose *The All-Under-Heaven System: An Introduction to the Philosophy of a World Institution* was widely read and discussed upon its publication in 2005.<sup>8</sup> Zhao has written important books and essays on ethics, political philosophy, and philosophical methodology, and is a leader in the creative development of Chinese philosophy today. While I will ultimately part company with Zhao on the best way to develop a Confucian conception of human rights, there is much we can learn from him about how to undertake our project.

The central methodological idea that I want to embrace is Zhao’s insistence on the need to “rethink China (*chongsi zhongguo*).”<sup>9</sup> This means to re-think the significance of China, and to do so from China’s standpoint. He says, “The historical significance of ‘rethinking China’ lies in striving to restore China’s own ability to think, so that China once again begins thinking, re-establishes its own frameworks of thought and fundamental concepts, once again creates its own worldview, values, and methodology, and . . . reflects on China’s future . . . and on China’s role and responsibilities in the world.”<sup>10</sup> He contrasts “rethinking” China with “critically investigating (*jiantao*)” China, in which China is the object of analysis but not necessarily the active subject undertaking the analysis.<sup>11</sup> Often the frameworks used to “critically investigate” China – including most discussions by Chinese intellectuals – are imported from outside. Such discussions are not necessarily wrong or unhelpful, but Zhao worries about the potential misfit between China and the various analytical categories used to discuss it, given the origin of the categories in very different contexts. More generally, he argues that it is important to recover a sense of agency for China and Chinese philosophy. It must be “creative” and “constructive.”<sup>12</sup> Elsewhere, specifically addressing Confucianism, he urges that Confucianism not be understood as “finished” or complete; it needs to respond dynamically to challenges. It needs to move from “local knowledge” to “universal knowledge.” He writes: “Renewing Confucianism means abandoning the negative stance as ‘the interpreted,’ and the recovery of the positive place as ‘interpreter.’ Confucianism should be used to analyze all political problems and explain every society in the world. If it cannot do [this] . . . , then Confucianism cannot be a universally valid theory.”<sup>13</sup>

Zhao is not confident that Confucianism itself can rise to the challenge

of becoming universal knowledge; he says that to do so, Confucianism would have to undergo a “great theoretical breakthrough.”<sup>14</sup> When he surveys his twentieth-century predecessors in rethinking China, in fact, he prefers those (like Liang Shuming and Li Zehou) whom he sees as drawing broadly on all aspects of the Chinese tradition, which he argues should be seen as a whole made up of various complementary aspects. Zhao is critical of Mou Zongsan for confining himself too narrowly to Confucianism, thus losing the ability to fundamentally “rethink China.”<sup>15</sup> A more careful reading of Mou’s oeuvre would have shown Zhao that despite the fact that he considered himself a Confucian, Mou draws extremely widely on Daoist, Buddhist, and to some degree Legalist concepts and values: I would argue that Mou is actually an excellent example of the approach that Zhao favors, both in Mou’s creativity and his broad scope. Furthermore, I will argue later in this chapter that Mou made precisely the “great theoretical breakthrough” that Confucianism – and Zhao’s own theory – need in order to articulate properly the meaning and status of human rights.

For the time being, though, let us turn to the specific contributions that Zhao makes concerning the “all-under-heaven” idea. “*Tianxia*” or “all-under-heaven” is an ancient Chinese term.<sup>16</sup> As Zhao uses the term, all-under-heaven has three dimensions: the physical world, the psychological world (by which he means the “general sentiment of peoples”<sup>17</sup>), and the institutional world (that is, a world institution). Building on ideas he sees in various early Chinese texts and on the political structure of the early Zhou dynasty, Zhao argues that a genuine world exists only when it is unified along all three dimensions implicit in the all-under-heaven concept. Some sort of world government supported by the general will of all people is required; without it, we are left with a “failed world.”<sup>18</sup> Currently, he says, we are stuck with a political philosophy based on the idea of the nation-state, but neither this nor the concept of internationalism can provide the concept of justified “worldness” that we need, especially as globalization accelerates. An important value of Chinese philosophy is its ability to articulate a world perspective, which is rooted in the fact that unlike Greek political philosophy with its central notion of *polis*, Chinese politics was framed in terms of “all-under-heaven.”<sup>19</sup>

An immediate objection that one might raise is that many philosophies, whatever their origins, have universalist aspirations. They aim to say true things that apply to everyone. Zhao replies: “Anybody can have a world philosophy in accordance with his own horizons . . . However, we need a world philosophy which speaks on behalf of the world. The world is absent because of our refusal to see it from its own perspective.”<sup>20</sup> The

aim of his “all-under-heaven” concept is to bring forward a framework that is designed from the outset as a way to view the world from the world. Some scholars, particularly those attending to the ways that “all-under-heaven” might be used in an International Relations context, have charged that Zhao’s rhetoric masks an effort to replace Western hegemony with Chinese hegemony.<sup>21</sup> This might be true if Zhao’s goal was simply to insist that an ancient Chinese notion – or, for that matter, his own, updated version of that notion – be accepted by everyone. This does not seem to be his intention, however. He says that a cornerstone of Chinese philosophy is a broad openness to diverse perspectives, though this is different from toleration. Toleration is a kind of acceptance of something that one more deeply rejects. The “openness” he finds in Chinese philosophy instead involves a magnanimous learning process, ultimately leading to a transformation of the underlying unity to accommodate the new element.<sup>22</sup> More concretely, Zhao ends a recent essay by stressing that a justifiable “world” will depend not just on “all-under-heaven,” but also on rethinking and incorporating the Greek idea of rational dialogue (*agora*): “In my opinion, a suitable world could be based on two key concepts, *agora* and *all-under-heaven*, where Greek and Chinese traditions meet in harmony. Of course, both these concepts should be renewed or rewritten in keeping with contemporary ways.”<sup>23</sup>

To this point, I find myself largely in sympathy with Zhao’s method and goals, and in later sections of this chapter I will myself make use of the “all-under-heaven” concept. As critics have pointed out, though, a significant problem with Zhao’s approach is the lack of any clear path toward what looks to be a quite utopian objective.<sup>24</sup> One manifestation of this is his overly narrow reading of the UN and associated international agreements. This is not to challenge Zhao’s distinction between “international” and “global,” but to suggest that it may be easier to move from existing international institutions toward a more genuinely global institution, than to reject the existing institutions and try to start from scratch. Zhao asserts that the UN is “only an organization for negotiating and bargaining each nation’s interests. As a result, it can never lead to any real agreements, since everyone is defined as being a rational selfish creature intent only upon maximizing its own interests.”<sup>25</sup> There is certainly some truth to this, both conceptually and in practice, but the “Responsibility to Protect” idea, not to mention the human rights movement more generally, show efforts to begin to rethink the nature and responsibilities of, as well as the relationships among, the UN’s constituent entities (states and individuals).

If we turn to Zhao’s writings specifically about human rights, we also

find problems. Although I will not go into details, I again find Zhao's methodology to be quite appropriate and to ground an ability to engage in a genuinely open world conversation about human rights – one in which Chinese ideas were neither privileged nor ignored.<sup>26</sup> However, his own “credit” theory of human rights – according to which one begins life with a set of rights that one can lose if one does not shoulder one’s just social responsibilities – is troubling, and seems clearly vulnerable to an arbitrary authority’s judgment that one no longer merits one’s rights. Zhao is driven to this view because he does not believe that it makes sense for rights to have priority over particular judgments of justice or injustice. In what follows, I will suggest that Mou Zongsan gives us a way to ground the priority of rights without the problems to which Zhao worries this will lead. In so doing, it also will allow a contemporary Confucian to work more constructively with existing human rights institutions toward the goal of concretely recognizing and protecting the rights of all under heaven.

### Confucians and Human Rights

Human rights are a special kind of protection for some of our most basic values or interests. Theorists disagree on exactly how to articulate this special protection – Dworkin’s theory that rights “trump” interests is one well-known view – but the idea that human rights are somehow distinct from and have priority over other values is central to their meaning. I mentioned a moment ago that Zhao Tingyang could not accept that human rights had priority over justice, and sought to resolve this conflict by making human rights provisional. Since Confucians have traditionally recognized but a single realm of value, which we can label as “ethical” value, they too face a challenge in explaining why there might be human rights. It is not that Confucians ignore the existence of putative conflicts among values, such as when filial devotion and public responsibilities seem to pull in different directions, but they have long argued that when situations are understood and seen correctly, a harmonious solution is always achievable. There seems to be no room in this framework for a special set of distinctly protected interests. To be sure, Confucians have said that we should benevolently care about the well-being of all-under-heaven, but this should be harmonized with other sorts of more local responsibilities. Such harmonizing is a particularistic matter, to be judged on a case-by-case basis. The idea that there are straightforward, public, unbendable constraints on each of us does not fit well into a Confucian framework.<sup>27</sup>

Still, many contemporary Confucians have looked for a way to endorse

some version of human rights. It may be helpful to list a range of possible positions:

1. Confucianism has *recognized* human rights from the beginning. Confucians (and a hypothetical modern Confucian polity) have no difficulty endorsing human rights today.
2. Confucianism is *incompatible* with human rights, and should reject them today as parochial and problematic.
3. Confucianism did not historically develop a doctrine of human rights, but it is *compatible* with such an idea, and can endorse it today.
4. Confucianism did not historically develop a doctrine of human rights, but in order to realize its own core commitments, it is *necessary* that it now develop the resources to do so.
5. Confucianism did not historically develop a doctrine of human rights; it is necessary that it now develop the resources to do so, and the result will be *transforming* Confucianism into Western liberalism. Confucianism as a distinct philosophical position will cease to exist.

Position 1 has had its adherents. In 1947, as the Universal Declaration of Human Rights was being drafted, a major conference of world philosophers was held to explore attitudes toward human rights from around the globe. Chinese philosopher Lo Chung-shu wrote that, while the “problem of human rights was seldom discussed by Chinese thinkers in the past,” nonetheless “the idea of human rights developed very early in China.”<sup>28</sup> As immediately becomes clear from reading the balance of Lo’s essay, though, he is using “human rights” very loosely, and moving quickly from the fact that early Confucianism recognized responsibilities of, for example, ruler to subject, to the conclusion that subjects had right against their rulers. This is a misreading of the texts, for reasons I have indicated already.

Henry Rosemont, an American philosopher who is both very sympathetic to Confucianism and highly critical of Western neo-liberalism, argues that Confucians should embrace Position 2. His argument has three main premises: (1) classical Confucian ethical language is very different from, and indeed incompatible with, the language of rights-based morality; (2) contemporary societies based on individualistic rights-claiming are suffering from grave problems; and (3) with certain emendations, a Confucian vision can serve as a successful alternative to the Western rights-based tradition.<sup>29</sup> The key question is what sorts of emendations might be necessary in order to deal with the dangers posed by modern

phenomena like powerful states and global corporations – to say nothing of the problems China traditionally had with despotic rulers.<sup>30</sup> These are the very real problems that have led a wide range of Confucians (including Mou Zongsan) to argue that Confucianism needs a significantly different political philosophy. Rosemont's solution seems to depend heavily on a thorough-going ritualization of society, which I will discuss (and reject) in the next chapter.<sup>31</sup>

Many writers about Confucianism and human rights have taken Position 3, arguing that since Confucianism is compatible with human rights, if we desire to have a doctrine of human rights (for reasons that may be external to central Confucian concerns), Confucians can go along. Joseph Chan, whom I identified in Chapter 1 as a Neo-Classical Confucian, offers a notable instance of this kind of argument. Chan suggests that a justification of human rights from multiple cultural or religious perspectives may be preferable to a one-size-fits-all universalist justification, and proceeds to argue both that Confucianism and human rights are not incompatible, and that a version of human rights can be justified based on classical Confucian ideas. Chan says: "the Confucian perspective would take rights as a fallback auxiliary apparatus that serves to protect basic human interests in case virtues do not obtain or human relationships clearly break down."<sup>32</sup> Chan's reasoning is that if one wants to justify human rights from within Confucianism, then one can find the resources to do so without causing a fundamental conflict, but note that Chan does not say that Confucianism *needs* human rights. We can find a structurally similar argument in the writings of Kantian New Confucian Lee Ming-huei. Lee says that Confucianism has the key resources needed to develop human rights: a doctrine of universal human nature; respect for individual persons; the distinction between righteousness and profit, which Lee interprets as leading to a rights-friendly deontological approach to ethics; and a politics that is "of the people" and "for the people," if not "by the people." Lee emphasizes that he is not claiming that Confucianism had the idea of human rights all along: after all, he says, it is a modern idea in the West as well. Since it has become so widely accepted around the world, though, it would be well if Confucians can endorse it too – and perhaps along the way contribute to enriching the significance and grounding of human rights.<sup>33</sup>

For his part, Fan Ruiping also recognizes that classical Confucianism did not make use of a concept of human rights, and follows Chan in arguing that Confucianism can add a kind of rights language to its moral and legal framework. "Establishing Confucian rights would amount to adding a minimal self-asserting, entitlement language to the rich, other-regarding,

virtue language of the Confucian framework."<sup>34</sup> So far, this sounds like adding a "fallback" mechanism à la Chan. Fan goes farther, though, and in so doing comes to adopt Position 4: he says that Confucianism *needs* (some version of) human rights. "Even if rights are not necessary when the virtues prevail in society . . . , they are necessary when the virtues do not prevail."<sup>35</sup> This makes good sense: after all, rights are designed to protect key interests – just the sorts of interests that might fail to be protected in a society without widespread virtue. Fan says that Confucian rights should be derived from a Confucian conception of virtues; the latter are more basic than are the rights. He proposes the following method for deriving rights: (1) For each Confucian virtue, determine the characteristic obligations that are entailed in exercising the virtue. For example, exercising the virtue of filial devotion (*xiao*) entails an obligation to care for one's elderly parents' well-being. (2) The entitlements entailed by these obligations – in our example, the elderly parents' entitlement to receive care – are then set down as human rights. Fan emphasizes that, in keeping with Confucian particularism, the rights emerging from such a process will be "specific, agent-relative, context-sensitive, and role-based."<sup>36</sup>

If rights are to be able to serve their requisite function, they must have a status that allows them to overcome tendentious claims based on virtue. Fan sees that rights must be available in cases of "virtue failure," but then owes us an account of their status that allows them to function in such a context. For two reasons, I worry that the strategy Fan adopts is not up to this challenge. First, there is a set of features critical to the power and thus importance of human rights that Fan's version of human rights lacks. In order to play their role in protecting vital interests against powerful entities like modern states and global corporations, human rights must be clear, publically known, readily enforceable, and maximally unambiguous.<sup>37</sup> Fan's rights are not. Instead they are highly specific and even subject, under some possible situations, to be traded-off against other goods or interests.<sup>38</sup> Rather than serving as a critical kind of protection on which individuals can rely, Fan's human rights seem more like one mechanism among others in a government's toolkit for seeking to realize general well-being and social order. My second concern covers both Fan's proposal and others, like Chan's, that rely on the idea of rights as a "fallback." It is certainly true that a society in which people's main mechanism of problem solving was to claim rights against one another would be deeply problematic, but not even the most committed liberal thinks otherwise.<sup>39</sup> So in some sense we all agree that human rights should be a fallback: they only need to be claimed in the (hopefully rare) circumstances when things have gone badly

wrong and other sorts of mechanisms fail to help. The question is whether Confucians can find a way to be comfortable with what Justin Tiwald has called the “passive ways in which rights can influence the moral contours of human behavior.” Tiwald points out that “the mere existence of [a] right, even when unclaimed, has a remarkable effect on group dynamics.” Rights consciousness – the awareness of claimable rights – may encourage people to think of their interests as competitive with one another, warping feelings and motives in ways fundamentally at odds with what one would expect in a healthy Confucian society.<sup>40</sup>

My conclusion is not that Fan’s (or Chan’s) approach is hopeless, but I think they face significant challenges. I believe that Confucians entering into negotiations about what rights should be protected in a domestic constitution, or what rights should be recognized as human rights, would do well to take seriously the arguments that Fan, Chan, and others make concerning the contents of rights, but that we should look elsewhere for our understanding of the form and source of rights. Mou Zongsan’s idea of self-restriction offers a way of understanding the value of human rights such that Confucians can embrace them without thereby loosening their commitment to a harmonious world.<sup>41,42</sup>

## Mou Zongsan

While some have labeled Mou Zongsan a “cultural conservative” and others criticize him for turning Confucianism into an imitation of liberal democracy, I see Mou as engaged in a genuine project of “rethinking China.” He operated under somewhat different constraints than Zhao Tingyang, though, because – notwithstanding Mou’s broad reliance on other philosophical schools – Mou saw himself as self-consciously developing Confucian ideas, and thus was beholden to what he took to be the core commitments of that tradition. In terms of the list of positions from the last section, Mou fits in Position 4. He believed that there were shortcomings in the Confucian tradition, including a failure to understand the true status of laws and rights, and that New Confucianism needed to address this failure through conceptual and normative innovation. In the eyes of some of Mou’s critics, the result of this rethinking of China is actually Position 5, but in my view this is a mistake: Mou’s version of Position 4 is coherent and attractive, and well worth our while to investigate. For present purposes I am only going to sketch the argument, both because I have discussed it extensively elsewhere in this book, and because Mou in fact only takes us part of the way to my goal of a Confucian theory of the

rights of all-under-heaven and I want to leave room to explore the issues that remain even after one accepts Mou’s argument. Specifically, while Mou occasionally mentions “human rights,” he actually focuses primarily on other sorts of “political” constraints on ethical value, like the laws and rights enshrined in a domestic constitution. One of my objectives here is to see whether Mou’s position can be extended to the broader realm of the world.

In previous chapters we have already encountered Mou’s self-restriction argument. Its key ideas, recall, are (i) that full virtue must be realized in the public, political world, and (ii) that without objective structures (like laws), the public goals of full virtue are inaccessible. Notice that this argument has the structure of Position 4 from above: the constitution, laws, and rights are not merely *compatible* with Confucianism; these objective political structures are *required* by Confucianism if it is to realize its own goals. Mou’s argument does not depend on an independent commitment to constitutional democracy, but is a critique internal to the Confucian tradition. The fact that he draws on Hegelian language does not change this fact, just as the ways in which earlier Confucians drew on Buddhist ideas does not render their critiques external to the tradition. For further discussion of this argument, see Chapters 2 and 3. Here, let us focus on the precise meaning of his conclusion, namely, that even sages “cannot override the relevant limits (that is, the highest principles (*lǐzè*) of the political world), and in fact must devote [their] august character to the realization of these limits.” What is the “political world,” what are its highest principles, and how do we come to know what these principles are? As noted above, these “principles” are distinct from the particularistic ethical judgments sages make: the principles are general, public, and are articulated through institutions. The “political world” is appropriately governed by the kind of political authority that a proper constitution – one that institutes genuine laws and rights – will enable. These laws offer the main examples that Mou uses of “political principles,” and it is important to my subsequent argument to recognize that they are domestic laws that are founded in a nation-state’s constitutional process.

I will ask about state-transcending human rights in a moment, but first let us also note that Mou offers us an answer to where a given nation-state’s constitution comes from. The crucial dynamic, Mou argues, is the struggle and eventual negotiation between distinct social classes. As he puts it in one place, “It is the mutual struggle by class groups to attain their rights, and the resulting specification of a constitution, that creates democratic politics.<sup>43</sup>” According to Mou, this process took place in the West

but not in China, because in China there was no theoretical correlation between economic groups and political prerogatives. In principle, at least, the political roles (of bureaucratic minister, for example) were “variables” that could be filled by someone with any economic background;<sup>44</sup> an individual just had to pass the civil service exams. In actuality, Mou recognizes, this was enormously more difficult for a poor farmer’s son than for a rich landowner’s son, with the result that in practice, China’s political system was rigidified into ruling and ruled classes. The “people (*min*)” had no kind of citizenship. The theory, though, remained one in which each person could potentially play a leading political role, and this undermined the possibility of groups debating over the rights properly accruing to group members, and thus never led to the articulation of public political rules in a constitution.<sup>45</sup> The upshot is that only when you have distinct groups with distinct perspectives on their interests do you get the hammering out of rights and laws, and only when you have rights and laws do you have genuine political authority. Groups are important, in part, because they push one in the direction of articulating institutionalized general principles instead of relying only on particularistic ethical judgments.

My final topic in this section is to expand on the significance of Mou’s focus on the domestic. It is true that Mou does occasionally make explicit reference to “human rights,” but this is invariably in a list of various values he associates with the West or with democratic institutions; he does not offer an account of how “human rights” might differ from the general account he has provided of rights in the framework of a domestic constitution. More significant for our purposes is Mou’s discussion of “all-under-heaven.” Mou argues that any individual unit (*geti*) will be characterized by individuality and yet Coherence is capable of being realized through the unit’s praxis. Without the practices of concrete units, in fact, there is no way for Coherence to be realized. He says that individuals, families, and states are all instances of such “units.” Furthermore, Mou suggests that “all-under-heaven,” seen as an organized grouping of states in which “the practical lives of the states are combined,” is also a concrete “individual unit” that can manifest humaneness and Coherence.<sup>46</sup> Mou’s language strongly suggests that as we move to units based on broader syntheses, and especially to all-under-heaven, the process of synthesizing diverse perspectives will push the emerging unit toward Coherence. However, Mou emphasizes that it would be a mistake to think that one could conceptualize human life and value using only “all-under-heaven.” He writes: “In the process of moral practice, the realization of moral rationality must pass through the affirmation of the family and the state before

it can be expanded to all-under-heaven.”<sup>47</sup> If one tries to simply operate at the level of all-under-heaven – as did the early twentieth-century utopian Confucian Kang Youwei, and as did the Communists – one will actually be imposing an artificial, external set of norms. One will have lost touch with actual human life and the crucial subjective meaning of our values. We can conclude two things about Mou’s understanding of “all-under-heaven”: first, even though it is very broad, it is not an abstraction, but a concrete universal (a “unit” composed out of the “practical lives of states”); and second, such a unit only has meaning for Mou when it emerges out of the interaction of lower-level concrete units like states and families.

### Synthesis and Development: The Rights of All Under Heaven

It is time to take stock. After an introduction that laid out one of the key challenges facing current international discussion of human rights, I proposed that by working through the ideas of two Chinese philosophers – both of them committed to “rethinking China,” though only one of them an avowed Confucian – we could gather the materials needed to spell out a Confucian theory of human rights, and furthermore that its central concept, the “rights of all-under-heaven,” would offer a solution to the current conundrum concerning nation-states. From Zhao Tingyang we gained the methodological framework of “rethinking China” and the idea of “all-under-heaven” as a putative way of talking about the world from the perspective of the world. On the other hand, Zhao saw no way to justify the priority that human rights are thought to have over specific claims of justice, and seems committed to a utopian framework of creating a world government out of whole cloth. Mou Zongsan’s distinction between ethical value and political value, together with the idea that the former was indirectly related to the latter, since ethical value could only be fully realized via “self-restriction,” offered a way to understand the priority of rights claims. Mou briefly discusses a notion of all-under-heaven that is similar in some striking ways to Zhao’s – particularly in the homologous relations among family, nation-state, and all-under-heaven when each is understood as a concrete “unit” – but neither all-under-heaven nor human rights play a significant role in Mou’s political thinking, which focuses much more on nations and their constitutions, laws, and rights. Mou has some ideas about how constitutions might have emerged and been justified, but he gives little hint as to how his ideas might extend to an international or global context.

As we build upon these foundations, let us first attend to the idea of seeing the world from the world's perspective. What would it mean to view all-under-heaven from the perspective of all-under-heaven? Recall that all-under-heaven has three dimensions: the geographical, psychological, and institutional. We need say little about the geographical; it simply means that the scope of all-under-heaven is the entire known world. For Zhao, it seems that the psychological and institutional dimensions might be quite distinct from one another. What I mean is that one could have an institution representing the world (e.g., the Zhou dynasty "son of heaven," royal family, and retainers), without any institutional mechanism that manifests the psychological support of the people. According to early Confucian thinking, the people's support is crucial, but they "vote" with their feet: people migrate toward good rulers and flee (or resist) bad ones. If the world is peaceful and harmonious, that means that the son of heaven has legitimacy.

We saw in Chapter 3, though, that there is a serious tension in the early Confucian conception of political authority, which seems simultaneously to insist upon and yet deny the ability of individual common people to see what is good for them and for their communities. We can see this reflected in the Zhou political arrangement I have just described, since the people are only allowed to serve as a reactive sign of legitimacy, rather than having any actual input into what policies to pursue. The solution to this problem surrounding Confucian political authority, I believe, is to vest authority more completely in the people (*min*). "The people" will be the collection of all individuals, rather than a reactive mass. Each of us will be part of this authoritative entity because each of us has a unique and valuable, though of course also limited, perspective on how we can all fit together in an ideally harmonious way (that is, achieve Coherence). "The people" will therefore not be functioning as a passive indicator of the will of heaven, but as our best and indeed only access to what is genuinely valuable.

Supposing that we accept my proposed amendment to the Confucian conception of political authority, then we will need to rethink the psychological and institutional dimensions of all-under-heaven – and, in particular, the relation between these two dimensions. The "institutional" will need to encompass not just an authoritative world institution, but also the processes by which that institution and its norms become established and then maintain their authority. Here *Mou* can be of assistance. In the context of domestic constitutions, we saw that only when there are distinct groups with distinct perspectives on their interests will there be the ham-

merging out of rights and laws. Negotiations between groups encourage the articulation of institutionalized general principles. We will therefore need to find a way for groups with distinctive perspectives on the world – for economic, cultural, or perhaps other reasons – to be involved in the process of global norm-articulation. Rights or laws to which they can agree would then have a claim to be authorized by all-under-heaven, for all-under-heaven. Viewing the world from the perspective of the world, in other words, requires us to arrive at the universal, world perspective through an inclusive process, rather than universalizing a single perspective. To be clear, therefore, I am arguing that a Confucian perspective on the rights of all-under-heaven tells us that these rights would not come solely or directly from pre-existing Confucian values.<sup>48</sup>

One of the criticisms of Zhao that I have mentioned is the lack of any path toward his ambitious goals. Is the perspective that I am offering here subject to the same criticism? Some will think that counting on an inclusive process resulting in an agreement about the rights of all people is truly naive. To the contrary, I want to suggest that the process is already well underway. While the United Nations, the Universal Declaration of Human Rights (UDHR), and the many human rights treaties that have been negotiated since the Second World War are not perfect, they do collectively represent the kind of process that a concern for all-under-heaven would demand. As mentioned above, Zhao himself is quite skeptical about the United Nations. Recall that he says that "the UN is not a world organization with substantial power to govern the world, but only an organization for negotiating and bargaining each nation's interests. As a result, it can never lead to any real agreements, since everyone is defined as being a rational selfish creature intent only upon maximizing its own interests."<sup>49</sup> Zhao recognizes the efforts of the UN to promote "rational dialogue," but notes that without a broader entity to which all are committed (like a world), even "understanding" cannot reliably lead to "acceptance" and agreement. Furthermore, the UN's lack of real power makes it unable to resist the dominance of a single superpower over the world.

I accept some of these criticisms as important, but believe that they are significantly overstated. Even though the UN is an organization composed of member states, it has from the beginning also been more than that. According to its Charter, it was founded in part to "to save succeeding generations from the scourge of war" and "to promote social progress and better standards of life in larger freedom." Its many committees and offices have been spaces in which collective goals can be discovered and pursued, as well as training grounds for public-spirited individuals who have the

whole world in view, rather than just the interests of their country. The efforts of such individuals to articulate a “responsibility to protect” that I mentioned at the outset are surely evidence that within the confines of the UN, individuals are not understood solely as selfish creatures focused on their own interests; the very idea of “responsibility” – of sovereign states, and of the international community – clearly refers to relationships rather than just to individuals on their own. In addition, when we look at the many perspectives that mutually contributed to the UDHR and at the complex and diverse processes of communication and negotiation involved in the various existing and emerging human rights treaties, it seems clear that the current human rights regime is far more promising than Zhao’s critique suggests. (It is surely relevant, for example, that the reference to a “spirit of brotherhood” in Article One of the UDHR was inserted at the request of Chinese representative P. C. Chang, who meant it to express the Confucian idea of humaneness (*ren*).)<sup>50</sup> Indeed, as both Zhao and Mou have said, all-under-heaven is not an abstraction but a concrete entity that emerges from the interactions of constituent groups. Theorists cannot will such a concrete universal into existence; only the coordinated interactions of individuals can do that. Insofar as Confucians are concerned with bringing an ideal like Coherence into more concrete realization, they should participate in the human rights regime. Their moral and metaphysical commitments give Confucians firm reasons for confidence in the value and intelligibility of all-under-heaven and their attendant rights.<sup>51</sup>

Zhao Tingyang does not write as a “Confucian,” but his stress on the perspective of all-under-heaven is tailor-made to articulate what Confucians should say about human rights, in an effort to move international rights discourse forward, beyond what Confucians should see as a false dichotomy between nation and world. Confucians see great value in the responsibilities that we have to intimate and local groups (paradigmatically, families), and they also see importance in our wider networks of relationships. Seeing Coherence is precisely seeing a way to balance or harmonize these different kinds of responsibilities. And our wider networks of relationships are themselves diverse. As Mou emphasized, our nationality is significant to our moral and political identity, but so is our place within (and perspective on) all-under-heaven. We have moral responsibilities to our fellow humans, and because of the existence of political institutions on a global scale, we can also say that we share with all humans the rights of all-under-heaven.

## Neither Ethics nor Law: Ritual Propriety as Confucian Civility

“Ritual,” “propriety,” and “civility” are all possible translations for a crucial Confucian idea – the Chinese term is *li*<sup>1</sup> – about which I have so far had little to say. Emphasizing the importance of ritual is at the heart of much of the work of contemporary Confucian Revivalists and Institutional Confucians, among others. Mou Zongsan and many of the contemporary Kantian New Confucians, on the other hand, have regularly come in for criticism (from Institutional Confucians, among others) for not taking ritual seriously enough. This is an instance in which I agree with criticisms of Mou, at least partly. Progressive Confucianism needs to find more room for ritual to play a constructive role than Mou was able to accommodate. At the same time, we must not exaggerate the role that ritual or civility should play in our overall philosophy: it needs to be balanced against the distinct and equally critical roles served by ethics and law. Together, the three form the tripod on which Progressive Confucianism rests.

• Thomas Metzger is among the most insightful analysts of Chinese political thinking, whether traditional or contemporary. In a typically provocative style, he raises the topic of “doable virtues that any decent person could practice,” and then asserts that:

such virtues cannot even be conceptualized in Chinese without concocting a preposterous term, such as *xiangyuan de daode* (the morality of the person who seeks to seem respectable but actually lacks a commitment to doing what is right) . . . In the West, however, [doable virtues] were emphasized in a cultural context accepting the permanent moral dissonance of political life. Thus virtue in public life could be emphasized without implying the need to realize a society and a political life free of the pursuit of selfish interest. Indeed, “civility” as the public virtue of the merely decent person is not even a word that can be translated into Chinese.<sup>2</sup>

If Metzger is right, then it looks like our quest to learn something about civility from Confucian philosophers may be over before it begins. And there is considerable truth in what he says. Both the *Analects* and the