

THE NATURAL LAW IN THE CHINESE TRADITION

Hu Shih

(Fellow of the Princeton University Library, Curator of the Gest Oriental Library, Princeton University, Ambassador of China to the United States, 1938-1942; President, National Peking University, 1946-1949; author of *History of Chinese Philosophy*; *History of the Living Literature of China*; *Selected Essays*; and numerous books and articles in Chinese and in English on various phases of Chinese philosophy and literature.)

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I

THE subject for our present inquiry is,—Did China in her long history develop any moral or juridical concept or concepts which may be compared with what has been known as “Natural Law” or “the Law of Nature” in the European, and particularly the Anglo-Saxon juristic and constitutional tradition?

I consider this as a very difficult assignment to be undertaken by one who knows little about law in general and “natural law” in particular. I have to ask myself these two preliminary questions: first, what is Natural Law? What do I understand to be the essential attributes of Natural Law? And secondly, what shall be the method of our comparative study of the conception of Natural Law in the Eastern and Western countries? Can I draw some historical lesson from the evolution of the concept of Natural Law in the West and then test it by applying it to the study of any counterpart concept in the East?

Without an opportunity to consult my distinguished colleagues of the Natural Law Institute, I venture to suggest, for my own guidance at least, that the conception of Natural Law as it has been developed in Europe and in the Anglo-Saxon world, seems to imply these four meanings:

- (1) Natural law is law or principles of justice readily discernible to human reason. It is, says Aristotle, “that which all men, by a natural intuition, feel to be

common right and wrong, even if they have no common association and no covenant with one another.”

(2) Natural law is divine law, the law of God. In the *Decretum* of Gratian, Natural Law is identified with the Golden Rule. “The Law of Nature,” said Coke, “is that which God, at the time of creation of the nature of man, infused into his heart for his preservation and direction and this is the eternal law, the moral law, called also the Law of Nature.”

(3) Natural law is fundamental law,—more fundamental than, and superior to, all man-made law. The Law of Nature, said Blackstone, “being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. No human laws are of any validity if contrary to this.”

(4) Natural law has always been regarded as the highest authority to which critics and reformers of law and government and revolutionaries against misrule make appeal for moral and spiritual support. Thus, the American Declaration of Independence made appeal to the “Laws of Nature and of Nature’s God.”

What was the historical lesson I have learned from the story of the evolution of the conception of Natural Law in the Western World? I have studied all the published lectures of the Institute, and I am particularly interested in the papers by Dean Manion, Professor Ernst Levy, Mr. Richard O’Sullivan, and Professor Edward S. Corwin. The moral I read in the three historical papers by Manion, O’Sullivan and Corwin seems to be this: That the greatest and most important role which the concept of Natural Law has played in history has been the role of a

supreme fundamental law which (in the words of Professor Corwin), "may be appealed to by human beings against injustices sanctioned by human authority."

This historical role is most explicit in the development of the common law tradition and of the Constitutional Law in the Anglo-Saxon world. Speaking of the great constitutional principle of Henry de Bracton—"The King is under God and the Law,"—Mr. O'Sullivan says:

With this principle, which is implicit in Magna Carta, Sir Edward Coke will meet the claim of the first Stuart King to rule by divine right. With these words, the President of a scarcely constitutional tribunal will condemn a second Stuart King to death. With these words, another Stuart King will be admonished in the hour of the Restoration.

And speaking of Coke's dictum of "common right and reason," Professor Corwin says:

Just as Coke had forged his celebrated dictum as a possible weapon for the struggle which he already foresaw, against the divine right claims of James I, so its definitive reception in this country (the Colonies in America) was motivated by the rising agitation against the Mother Country.

As Professor Ernst Levy points out in his paper on "Natural Law in the Roman Period," the great moments of the Natural Law occur only "when mankind in general or some country in particular faces a cataclysm threatening to destroy or distort the fundamental liberties," and responsible men, "confronted with the complete inadequacy of their usual resources," turn and appeal to "that higher law which holds out the promise

of ensuring their basic individual rights against the encroachments of tyrannical powers.”

In short, the most significant historical role of the concepts of Natural Law and Natural Rights has been that of a fighting weapon in Man's struggle against the tyranny of unlimited power and authority. I believe it may be a useful and fruitful procedure in my present comparative study to try to test and verify the validity or universality of this historical lesson or thesis. I shall not, therefore, be contented by merely seeking to establish that a certain Chinese idea seems to possess some of the meanings of the Western concepts of Natural Law. I shall try to find out whether it could be understood in its historical context: whether it has served as the rational criterion or ground for judging and criticizing the laws and government or social institutions of its time; and whether it has been set up as an ideal and appealed to as the supreme authority in the nation's fight against the injustices of human laws and institutions sanctioned by the unlimited powers of political authority.

II

All social and political thinking usually begins as a criticism of existing government, laws and institutions which have become unsatisfactory, harmful or oppressive. In passing adverse judgment on time-honored institutions sanctioned by the political authority of the state and in proposing new and possibly radical theories or measures of reform, it has always been necessary for critics and reformers to appeal to some authority higher and more trustworthy than the highest political or ecclesiastical authority of the time.

This is true at least of the long history of Chinese social and political thought, in which the student can discern a number of superficially different but essentially similar patterns in an endeavor to appeal to a higher law or a higher authority.

In the Chinese tradition, this appeal to a higher authority has taken these main forms. (1) Sometimes it takes the form of appealing to the authority of an imagined and quite freely idealized antiquity,—the Golden Age of the ancient sage-rulers. (2) Sometimes it takes the form of appealing to the Will of God (*t'ien-chih* or *t'ien-i*) as the highest norm or law. (3) Sometimes the appeal is made to the Way (*tao*) of Heaven or Nature, which is the Law of Nature. (4) Sometimes, especially under the long, long centuries of the vast unified empire, the appeal is made to the authority of the Canon (*ching*, meaning the invariable, immutable way) of the Sacred Scriptures of Confucianism as the highest authority on all matters of moral and political justice. (5) And sometimes the appeal is made to Reason or Law or Universal Reason or Natural Law (*li*, or *tao-li*, or *t'ien-li*) as it is intuitively evident in the moral conscience of men,—what may be termed in the words of Coke “the common right and reason” of man.

All these bear some essential resemblance to the historical appeals in the Western world to Natural Law and Natural Right. Even the first of these patterns, namely, the idealization of remote antiquity as the Golden Age, is not so strange or so unreasonable when one recalls the numerous “utopias” designed by the social and political thinkers of the West, and especially when one recalls that the doctrine of Natural Rights was orig-

inally conceived as rights of men "in the state of nature" before they entered into the Social Compact or Social Contract. The Chinese thinkers, notably the Confucianists, who read their ideal social and political order into the remote reigns of sage-rulers, were merely inventing their "utopias" and populating them with supposedly historical personages, such as Yao, Shun and Yü, whom traditional chronology placed in the third millenium B. C.

When Confucius said: "If there was any ruler who did nothing (*wu-wei*), yet governed well,—was it not Shun? For what in effect did Shun do? Religiously self-disciplined, he sat reverently on the throne, and that was all,"—he was eulogizing the political ideal of non-interference or *laissez-faire* (which, as we shall soon see, had been taught by his teacher Lao-tze) and making it more real by projecting it into the ancient reign of Shun, of whom we know as little as of the state of nature of Locke or of Rousseau. And when Mencius and the other political philosophers of ancient China vividly and sometimes dramatically described how the great sage-ruler Yao handed down the throne and the empire, not to his own son, but to Shun, the wisest man of the age and the choice of the people; and how Shun, in his turn, handed down the throne and the empire, again not to his own son, but to the great Yü who had controlled the Great Flood and was the choice of the people,—they were not deliberately fabricating histry, but were merely using their utopian ideals to voice their own criticism of the evils of the hereditary monarchy and were covertly advocating a new and radical system of selection of the worthiest men to be rulers.

After this brief explanation of what may seem to have been a peculiarly Chinese appeal to the authority of the utopian antiquity, I propose to take up in greater detail four concepts in Chinese thought which in my humble opinion have played an historical role not unlike that of the Natural Law concepts of the Western World. They are:

1. The concept of the way (*tao*) of Heaven or Nature as taught by Lao-tze.
2. The concept of the Will of God (*t'ien-chih*) as taught by Mo Ti.
3. The concept of the Sacred Canon (*ching*) as developed in medieval China.
4. The concept of Reason or Law (*li*) or Universal Reason or Law (*t'ien-li* or *tao-li*),—Natural Law in the sense of “common right and reason,”—as developed in relatively modern times.

III

The first Chinese concept to be studied is that of *tao* or *t'ien-tao* as it was taught by Lao-tze. *Tao* means the road, the way, the law of action or movement. *T'ien* is God or Heaven or Nature. *Tao* or *t'ien-tao* may be translated “the way of Heaven,” the “way of Nature,” or the “law of Nature.”

Lao-tze, the senior contemporary and teacher of Confucius, lived in the 6th century B. C. His age was one of frequent wars among the many rival states. A few great Powers were rising and developing a number of centers of population, commerce and civilization. Taxation was heavy, labor and service were conscripted, and government was mostly autocratic and oppressive. Here is what

Lao-tze himself said about the conditions of his own time:

“There are more and more restrictions and prohibitions, but the people are becoming poorer. The people are using more cunning implements, but the states are in worse troubles. More and more laws and ordinances are being promulgated, but there are more thieves and robbers than ever.”

“The people starve because those above them eat too much tax-grain. The people are difficult to keep in order, because those above them interfere. The people are risking death [to commit crime] because they want very much to live.”

“The people are not frightened of death. What then is the use of trying to intimidate them with death-penalty?”

Against this age of war, disorder and restrictions, Lao-tze postulated the concept of “the Way” (*tao*) or “the Way of Heaven,” as the fundamental principle of individual conduct, political action and civilization in general. The words were old words, but he had given them an entirely new meaning. “The Way,” says Lao-tze, “does nothing (*wu wei*), and yet there is nothing that remains undone.” “The Way of Heaven strives not, but it is sure to conquer. It speaks not, but it is sure to respond. It beckons not, but things will come to it of themselves. The net of Heaven is vast, very vast: it is wide-meshed, but it loses nothing.”

This basic conception of the Way of Heaven as non-action, as do-nothing was applied to many aspects of life and activity. In Ethics, it developed the doctrine of non-striving, of not-resisting, of water as the example of the highest virtue because water benefits all things and resists

none,—a doctrine not unlike the Christian doctrine of non-resistance to evil. In his opposition to the artificiality and over refinement of civilization, Lao-tze anticipated Rousseau and Tolstoy by more than twenty-three centuries.

This concept was fully developed as a theory of government by non-interference and non-assertion, — by *laissez-faire*. Says Lao-tze: “I do nothing, and the people will be transformed of themselves. I love quietude, and the people will of themselves go straight. I do not interfere, and the people will of themselves become prosperous.” “The best kind of government is one whose existence is not noticed by the people,”—which is a more forceful way of saying that that government is best which governs least.

So, twenty-five hundred years ago Lao-tze was preaching in ancient China a political philosophy of non-interference and non-assertion based on his conception of the Way of the Law of Nature, a philosophy which bears striking resemblance to the *laissez-faire* philosophy of eighteenth century Europe and America, and to the Natural Law philosophy of Herbert Spencer and William Graham Sumner late in the nineteenth century. Behind it all there was a deep distrust of the blundering clumsiness in human interference as contrasted to what was idealized as the unerring efficacy of the Way of Heaven or the Law of Nature. Thus says Lao-tze: “There is always the Great Executioner who does the executing. Now to attempt to do the Great Executioner’s executing for him is like offering oneself to do the master-carpenter’s chipping for him. He who offers to do the master-

carpenter's chipping for him rarely escapes the fate of cutting his hand."

This appeal to the concept of the Way of Heaven as non-action which yet achieves everything, must have sounded timely and convincing twenty five centuries ago. Confucius more than once referred favorably to the idea of "*wu wei*" (do nothing) in his conversations with his students. In the course of the next three centuries, the concept of *wu wei* as the Way of the Law of Nature was accepted by most of the political and juridical thinkers. In the third century B.C., when the wave of military conquest and authoritarian control by the militant state of Ch'in was threatening to sweep over all the States in the East, those philosophers and intellectuals taking shelter on the southeastern coast of Ch'i (modern eastern Shantung) made a desperate effort to develop the philosophy of non-action in all its possible implications. It was probably this group of refugee intellectuals that had tried to invent the legendary person of Huang-ti (the Yellow Emperor) and make him father of a large number of "taoistic" work of all kinds. That is why the "taoist" school of the philosophy of *wu-wei* was also known as "the school of Huang-ti and Lao-tze."

Out of the refugee philosophers on the eastern coast, came the philosopher Kai Kung who in the early years of the Han Empire, succeeded in converting the great general Ts'ao Ts'an to the political thinking of the *wu-wei* school. Ts'ao Ts'an tried it in his administration of the eastern coastal area of Ch'i and found it eminently successful. When Ts'ao was called in 193 B.C. to become the Prime Minister of the Han Empire, he was able to put this philosophy into practice on a national scale.

Historians tell us that the deliberate experimentation with the political philosophy of non-interference by Ts'ao Ts'an and later by the wise Emperor Wen-ti (179-157 B.C.) and his wife, the Empress Tou (in power from 179 to 135 B.C.) brought prosperity to the people and wealth to the national treasury and succeeded in giving the nation a chance to recuperate from the long years of war and revolution and to learn to appreciate the real benefits of a vast unified empire with no tariff walls, with no standing army, and with little interference from the authorities of the government.

IV

The conception of the Way of Heaven or Nature as taught by Lao-tze and accepted by Confucius was too naturalistic and too radical to please the vast majority of the people who were followers of the traditional Sin-itic religion, which in its broadest terms comprised the worship of ancestors, of spirits and gods, a belief in retribution of good and evil, and a vague notion of a Supreme Being still known as Heaven (*t'ien*) but undoubtedly regarded as all-knowing and all-powerful, and as the highest of all the gods.

The learned professional masters of religious rites and rituals generically known as the Ju (of which profession both Lao-tze and Confucius were the most outstanding leaders), while still busily practicing their traditional profession and presiding or assisting at funerals, burials and sacrifices, had already been intellectually breaking away from many of the fundamental beliefs of the popular religion.

When asked by a student how to serve the gods and the

spirits, Confucius answered: "We have not yet learned how to serve men, how can we serve the gods?" The same inquirer went on to ask about death. Confucius said: "We know not what life is, how can we know what death is?" And on a different occasion, he told the same questioning disciple: "Shall I tell you what knowledge is? To say you know when you do know, and to say you do not know when you do not know; that is knowledge."

From this agnostic position, it was probably an easy step to a frank denial of the existence of the spirits and the gods. And it was recorded that at least some followers of Confucius in the fifth century B.C. openly declared that there were no gods and spirits.

It was in that age of rising naturalism and skepticism that there arose a great religious leader to champion the cause of the religion of the people, and to preach a greatly revitalized theistic religion. This leader was Mo Ti, who lived from about 500 B.C. to about 420 B.C. He severely criticized the Ju for their atheism, for their expensive and extravagant but insincere ritualism in mourning, burial and sacrifices, and for their naturalism as expressed in their fatalistic determinism. Against all this, Mo taught a vital and vigorous religion of an all-loving God, a religion which preached "love for all men without distinction" and which condemned all wars.

Mo Ti declared that the Will of God (*t'ien-chih*) should be the criterion of all judgment of right and wrong, the standard of all measures, the highest norm and law. He said: "The Will of God is to me what the compasses and the carpenter's square are to the artisan. The artisan measures all circles by his compasses which are the standard form of the circle. And he measures all squares by

the carpenter's square which is the standard form of the square. Now I have the Will of God, I shall use it to measure and judge the laws, penalties, and governments of the kings, princes, and grand officers of all states in the world; and I shall use it to measure and judge the words and acts of all the people. Whatever is in accordance with the Will of God is right; whatever is opposed to it is wrong."

Now, what is the Will of God? Mo Ti repeatedly said: "The Will of God is to love all the people in the world without distinction, and to benefit all the people in the world without distinction. How do I know that the Will of God is to love all people without distinction? Because God fathers all people without distinction and feeds all people without distinction."

To show the moral vigor and the logical consistency of Mo Ti, who was undoubtedly the greatest religious leader that China has ever had, I cite here a part of the first of his three chapters on "Condemnation of War":

"... Killing one man constitutes one crime punishable by death. Applying this principle, the killing of ten men makes the crime ten times greater and ten times as punishable. And the killing of one hundred men increases the crime a hundred-fold and makes it a hundred times as punishable.

All these are condemned by the gentlemen of the world as wrong.

But when these gentlemen come to judge the greatest of all wrongs—the invasion of one state by another—which is a hundred thousand times more criminal than the killing of one man), they no longer condemn it. On the contrary, they praise it and

pronounce it to be 'right'. Indeed, they know not that it is wrong . . .

Here is a man who sees a few black objects and calls them black, but who, after seeing many black things, calls them white. We must say that this man does not know the distinction between black and white . . .

Here are the gentlemen of the world who condemn a small wrong but praise the greatest of wrongs—the attack of one country on another—and call it 'right'. Can we say that they know the distinction between right and wrong?"

This strong opposition to war was not merely preached in words, but actually undertaken by Mo Ti and his followers as a course of practical conduct and policy. They would travel far to persuade states to abandon wars and would sometimes volunteer to help weak states to defend themselves against attack.

The religion of Mo or Moism (the only Chinese religion that bore the name of its founder)—the religion which followed the Will of God, condemned all wars, and practiced the love for all men without distinction—had a great following for more than two centuries. Then it seems to have died out toward the end of the third century B.C. One of the main causes of its decline and final disappearance was that its doctrine of universal love and anti-militarism was incompatible with the age, which was an age of great wars and conquests resulting ultimately in the military unification of China by the State of Ch'in in 221 B.C.

But the spirit of the Mo religion—notably its theism and its inspiring doctrine of love for all men without distinc-

tion (*chien-ai*) as the Will of God, as the highest law,—seems to have lived on and become no mean part of the content of the State Religion of Confucianism of the Han Empire.

V

Another Chinese concept I propose to take up is that of the supreme authority of the Canon (*ching*) or Canonical Scripture of Confucianism. The underlying idea was to establish a body of sacred scripture that could be revered and appealed to as the basic law of the land with supreme authority above the absolute monarch and his laws and government.

China became a unified empire in 221 B.C. The first empire which brought about the unification by military conquest, lasted only fifteen years (221-206). Its authoritarian regime which burned books and prohibited private teaching, was overthrown by a revolution. The second empire—the Han Empire—lasted over four hundred years (200 B.C to 220 A.D.).

The political thinkers of the age, especially of the second century B.C., were faced with a dual problem: the consolidation of the government of the empire to insure peace and stability, and, at the same time, the safeguarding of the nation against the dangers of the unlimited power of the hereditary monarchy in a vast unified empire within which there was no longer any asylum for rebels and political refugees. "Between heaven and earth, there is no escape from the tie of the subject to the ruler." The difficult problem was how to check the powers of the unlimited monarchy. It was like "begging the tiger to give you his skin." But the Chinese philosophers wanted to make an earnest try at it.

It must be admitted that the Chinese statesmen-philosophers had a fair measure of success in the attempt to establish the *ching*, the Canon of the state religion of Confucianism, as a source of moral and legal authority higher than the highest political authority in the land.

The Canon originally consisted of five major works:

1. The Book of Changes.
2. The Book of Songs.
3. The Book of History.
4. The Book of I Li (a collection of 17 books of ancient ceremonies).
5. The Ch'un Ch'iu Annals (chronological record of events from 722 to 481 B.C. supposedly written by Confucius himself).

Each of these formed the subject of specialized study by a Doctor or Professor in the National University which began to have fifty students in 124 B.C. and grew to ten thousand students in the early years of the Christian Era and to thirty thousand students in the second century A.D. A number of minor works of the Canon such as the *Analects* of Confucius, the *Book of Mencius*, and the *Hsiao ching* (*The Canon of Filial Duty*), because of their linguistic simplicity, were required to be read as primary texts in the learning of the classical literature.

The term *ching* means "the constant," "the invariable standard," the "immutable law." A classical scholar of the fifth century A.D. said: "The times may change, dynasties may come and go, and metal and rock may decay and perish, but the Canon (*ching*) will always remain as the unchanging rule and as the immutable law for a hundred generations to come."

The authority of the Confucianist Canon was gradually established not only because these books were read and studied by the thousands in the University and at the private schools, but also because it was strongly supported by the theology and philosophy of the state religion of Confucianism. One of the most important founders of this religion was the philosopher Tung Chung-shu (200?-123? B.C.) who built up a strange but powerful theology of Heavenly warnings on the basis of the *Ch'un Ch'iu Annals*. Among the recorded events in that chronological work, there were numerous entries of floods, great fires, famine, pestilence, eclipses of the sun and other disastrous and unusual occurrences. These were interpreted as meaningful records of "Warnings from Heaven" to the rulers on earth. Such heavenly warnings were of two categories: the Catastrophes (*tsai*) and the Anomalies (*i*). A famine or a great fire is a catastrophe, but an eclipse of the sun is an anomaly which is a more serious warning than a catastrophe.

Tung Chung-shu sums up the central idea of this theology in one sentence: "The action of man, when it reaches the highest level of good and evil (that is, when it becomes governmental action affecting the welfare of vast numbers of men), will flow into the universal course of Heaven and Earth and cause reciprocal reverberations in their manifestations."

Tung Chung-shu taught that it is the Will of God (*t'ien-i*) to love and benefit all the people. It is the duty of the ruler to obey and carry out the Will of God. When the rulers fail to do their duty, they are warned by God through the catastrophes and abnormalities. "When a state is set on its ruinous course, Heaven will cause catas-

trophes to befall it as warnings to the ruler. When these warnings are not heeded, then Heaven will cause strange anomalies to appear to terrify the ruler into repentance. But when even these more serious warnings fail to check his evil acts, then ruin will come. From this,—so Tung Chung-shu told the emperor Wu-ti, “we can see that Heaven is always kind to the ruler and anxious to protect him from destruction. Heaven will always try to protect him and lead him back to the right way if he is not beyond correction. All depends upon one’s determination and earnest endeavor.”

These courageous words were written as an answer to questions which the young emperor Wu-ti (140-87 B.C.) had put to the several famous Confucian scholars whom the provinces had recommended to the Court. Tung Chung-shu spoke like a prophet and with authority. On the basis of these words there was built up a highly complicated and terrifying theology of Han Confucianism, which is in reality Confucianism as it was interpreted by Tung and other theologians of the second and first centuries B.C.

This theology was centered on the *Ch’un Ch’iu Annals*, the only work in the major Canon which was supposed to have been written by Confucius himself, the other four being all pre-Confucian and belonging to the “Old Testament” part of Confucianism. According to Tung Chung-shu and other eminent authorities of the age, the *Ch’un Ch’iu Annals* were written by Confucius *as laws for the future Han Dynasty!* The great sage (who was conceived by the Han theologians and by the people in general as having been endowed with divinity and prophetic pow-

ers) was said to have actually "legislated for the great Han Dynasty."

One of the important works written by Tung Chungshu was entitled "Judicial Precedents from the *Ch'un Ch'iu*" in which he listed 232 events recorded in that Canonical work and interpreted their juridical meaning for the guidance of future legal decisions. That work (which has been lost and is only fragmentally preserved through a number of quotations cited in medieval law books) had great influence in the development of medieval law and jurisprudence.

This theistic religion of Han Confucianism with its vividly personal and theological conception of Heaven and God and with its terrifying theology of Catastrophes and Anomalies, became in the first century B.C. the established religion of the Empire. It became the duty of the Doctors of the University and of the ranking ministers of state to interpret every new catastrophe or anomaly as it occurred, and to censure the government for any particular act of misrule which, according to their interpretation, had brought about the Heavenly warning. Such interpretations often differed with the different interpreters. So every flood, or great fire, or earthquake, or eclipse of the sun, became a lively and free-for-all occasion for frank criticism and censure of the government, the **Emperor or the Prime Minister**. And at least on a number of historic occasions, such frank criticism based on Heavenly warnings did bring about redresses of legal or political injustices or reforms in government policy.

It is beyond doubt that throughout medieval China and down to fairly recent centuries, the Canon of Sacred Scripture of Confucianism, including the *Analects* of Con-

fucius, the *Book of Mencius* and the *Canon of Filial Duty*, was revered and regarded as the highest authority in all matters of morals, law, social relations and government policy. It had the authority of Divine Law, an authority comparable to that of the Bible in the Christian countries.

The Confucianist Canon acquired this authority not merely because of the establishment of Confucianism as a state religion, nor merely because it was required reading in all Chinese schools and used in all civil service examinations for the selection of men for public offices, but primarily because some of the books included in the Canon in its broader sense do contain some of the universal principles of justice which, in the words of Aristotle, "all men, by a natural intuition, feel to be common right and wrong." For instance, in the *Analects*, Confucius twice laid down the negative (therefore logically, the universal) form of the Golden Rule: "What you do not want to have done to you, do not do to others." And the *Book of History* has contributed to Chinese jurisprudence a number of universal maxims such as "When in doubt, give the lighter sentence"; "Rather miss a guilty one than condemn an innocent one"; "Heaven sees through what my people see, and Heaven hears through what my people hear."

A few historical events may help us to understand this supreme authority as universal natural law of common right and wrong which the Confucian Canon achieved in historic China throughout the ages.

In the year 74 B.C. there occurred an unprecedented event of the impeachment and dethronement of a young emperor who had been on the throne only twenty-seven days. Ho Kuang, the Prime Minister of the Empire, called a meeting of the Council of Ministers, Generals, Peers,

Grand Officers, Doctors of the University, and Councilors of the court to discuss the disorderly conduct of the young sovereign and decide what should be done. The meeting decided upon a Petition of Impeachment against the emperor. The Empress Dowager was requested to hear the petition in the presence of the young emperor. The Empress Dowager, after hearing the Petition signed by all members of the Council, decreed that the emperor be forthwith dismissed from the throne.

There was no legal provision or precedent for this. The historical precedent privately cited to the Prime Minister by his friend and adviser was the dethronement of King T'ai Chia by his chief minister I Yin, which allegedly took place about 1753 B.C. and was recorded in such Canonical works as the *Book of History* and the *Book of Mencius*. And the main argument in the Petition of Impeachment was that the young sovereign had violated his filial duties as the adopted heir of the recently deceased emperor. As authority for the charges, the Petition cited two works of the Canon: the Kung-yang Commentary of the *Ch'un Ch'iu Annals* and the *Canon of Filial Piety*.

And as the young emperor was being led away from the throne, he turned to the powerful Prime Minister and quoted to him these words of Confucius: "If the Son of Heaven has seven outspoken ministers, he, though guilty of misrule, will not lose his empire." That quotation, too, is from the *Canon of Filial Piety*.

In the year 9 A.D., the reformer Emperor Wang Mang issued his most famous edict proclaiming the emancipation of all male and female slaves in the empire and the nationalization of all land. His arguments for both policies were based on moral and political principles con-

tained in the Canonical books. For example, he condemned the institution of slavery and the sale and buying of slaves in the same market with horses and cows as "opposed to the Will of Heaven, and in violation of the principle 'Of all that are born of Heaven and Earth, Man is of the highest worth'." That quotation is also from that little classic, the *Canon of Filial Piety*.

I shall cite one more historical event to show how firmly established was the authority of the Confucianist Canon over and above the arbitrary power of rulers and governments. This event involved the *Book of Mencius*, one of the most popular works in the Canon.

Mencius (327-289 B.C.) was a radical and democratic thinker who wrote in a most brilliant and most forceful prose style which makes his book the most indispensable and enjoyable reading to all students of classical literature. But his political views were often found to be disquieting and disturbing to some people. He has taught for instance, that "in a state, the people are of first importance, the shrines of the state gods (symbols of the state itself) come next, but the ruler is least important." He has taught us that "when a prince treats his subjects like dirt and grass, then the people will naturally regard him as a bandit and as an enemy." And he has, in plain language, justified the right of the people to rebel against a despotic ruler and even to kill him, for he who violates the principles of benevolence and justice, is no longer a ruler, but a nobody to whom no one owes allegiance.

In the last decades of the fourteenth century, Emperor Hung-wu (1368-1398), the founder of the Ming Dynasty, who was one of the most tyrannical rulers in Chinese history, found the *Book of Mencius* to be too

dangerous to be read by everybody in the schools. So he decreed that Mencius' tablet should be removed from the Temple of Confucius where he had occupied a place second only to Confucius himself; and that the *Book of Mencius* should be thoroughly expurgated. *Mencius* was duly expelled. The Emperor appointed a trusted scholar to prepare an expurgated edition of the *Book of Mencius*. About a third of the book was stricken out and an Imperial Edition was published under the title *Mencius Expurgated* (*Meng-tzu chieh-wen*).

But a few years later, the Emperor, probably troubled by his own conscience, ordered that Mencius be restored to the Temple of Confucius to be worshipped as before. And his *Mencius Expurgated* was ignored by the people who continued to read Mencius *in toto* throughout the two hundred and seventy-odd years of the Ming Dynasty. There is only one copy of the Imperial expurgated edition left in the world,—it is in the National Library of Peiping.

This is the story of the concept of the Sacred Canon of Confucianism as “the invariable rule,” “the immutable law,” in all matters of morals, law and government. It is true that neither the Canon, nor the state religion founded on it, succeeded very far in limiting the unlimited monarchy. Nevertheless the Confucian Canon did succeed in serving as a body of “Divine Law” or Sacred Law, as Natural Law in the sense of its many universal principles or morality and justice, and as Natural Law in the sense of the supreme fundamental law to which social and political critics and reformers constantly appealed for support and justification, and which even the most unscrupulous despot never quite dared to challenge.

VI

There are two Chinese words which, though different in written form, have the same modern pronunciation of *li*, and which have often been translated as "natural law" or regarded as equivalent to or comparable to the idea of natural law in the Western World. Professor Joseph Needham of Cambridge University has tried to differentiate the two words by transcribing them as *li^a* and *li^b*. I shall distinguish them by using their older pronunciation as preserved in the Cantonese dialect: thus:

the first *li* (*li^a*) becomes *lai*, and
the second *li* (*li^b*) becomes *lei*.

The first *li* (*lai*) I shall discuss briefly; the second *li* (*lei*) I shall treat in some detail.

The word *lai* originally means a religious sacrifice, and has come to mean ceremony, ritual, good customs, and rules of propriety. The body of such customs and rules of propriety generally covered by the name *lai* is very large and includes rules or principles of family relations, clan relations, social relations, religious worship in its various aspects such as ancestor-worship, funeral, burial and mourning.

The concept of *lai* has often been regarded by Western observers as comparable to that of Natural Law in the West. Professor Kenneth Scott Latourette of Yale University, for example, says

Originally quite possibly employed to designate the manners and customs of the aristocracy, in the course of the centuries *li* [*lai*] came to be regarded as binding on all civilized mankind. It was conceived of as conforming to the will of Heaven and akin to, al-

though not identical with, the concept of natural law which was present in the Graeco-Roman world and has been transmitted to the modern Occident.

Professor Joseph Needham says:

The body of ancient customs, usage, and ceremonial, which included all those practices, such as filial piety, which unnumbered generations of the Chinese people had instinctively felt to be right—this was *li* [*lai*], and we may equate it with natural law.

Personally I am not inclined to accept these views which more or less “equate” the Chinese concept of *lai* with natural law. Much of what has come down to us as ancient *lai* is so extravagantly elaborate that is very difficult for us to believe that it was actually practiced at any time, even by the most leisurely classes. It was most probably worked out by a professional priesthood — the Ju, the priesthood of the conquered people of Yin or Shang, the professional teachers and masters of the rituals of funeral, burial, mourning and sacrifice which, five or six centuries after the conquest of the Yin people by the Chou, were already exerting some considerable influence on the ruling classes of the States of Chou origin ruling over a population in which the Yin people formed an ethnographic majority. Thus we find in the most authentic Confucian and post-Confucian records many instances of the Ju serving as masters of ceremony at the funerals of nobles and officials of such States as Lu and Wei, both of which were ruled by direct descendants of the founding Kings of Chou. The religion and culture of the conquered people of Yin were beginning to conquer their conquerors. The conquest took many long centuries to complete and it was greatly accelerated by the remarkable leadership of Con-

fucius, who was always conscious of his royal lineage from the Kings of Yin.

Much of the ancient *lai* as most fully represented in the seventeen books of the *I Li*, was frankly labeled as "*lai* of the *shih* classes." The *shih*, the sword-carrying class of gentlemen, formed the middle or upper-middle class in the various States. It is inconceivable that the elaborate and extravagant rituals prescribed in that Canonical work could have been carried out by that class or any other class. Therefore it is incorrect historically to say that the *lai* represented that which "unnumbered generations of the Chinese people had instinctively felt to be right." No man could instinctively feel such labored extravagance to be right.

Let us take as an example the practice of three-year period of mourning for one's dead parent. Although Confucius spoke of it as "the general practice of all the people in the world," it was openly opposed by one of his own disciples. When two centuries later Mencius persuaded the young Duke of T'eng to practice it, it was strongly opposed by all the nobles and officials of the Duke's Court, who said: "Our past rulers never practiced it. Nor did the rulers of the State of Lo [which was the home State of Confucius]." And it was vehemently attacked by Mo Ti and his followers. It was not practiced by the Court and the officials of the Han Empire from the reign of Wen Ti (179-157 B.C.) to 116 A.D. It was the cumulative political influence of the established State religion of Confucianism that made the Court and the people gradually adopt the custom of three-year mourning. There is very little naturalness, or instinctiveness, or universality

in this practice, which has made mourning expensive, wasteful and insincere.

But I want to add that the *lai* is an important part of the Canon (*ching*) of Confucianist Scriptures. The *lai* group of the later enlarged Canon includes the *I Li*; the forty-six books of the *Li Chi* collected in the first century B.C.; and an ambitious utopian "constitution" entitled the *Chou Li* which was supposed to represent the organization of the Chou empire as it was worked out by the Duke of Chou of the eleventh century B.C. The historical role of *lai* as a higher law and higher authority to which appeal was made from time to time in the interest of economic, juridical and, political reforms,—such as the reforms of Wang Mang of the first century A.D. and Wang An-shih of the eleventh century A.D.—is therefore an integral part of the story of the establishment of the supreme authority of the Sacred Canon (*ching*) which has already been told in an earlier section of this paper.

VII

I shall now return to the second *li* for which I shall use the Cantonese pronunciation of *lei*. This is one of the four major concepts which I originally set out to study as Chinese counterparts of the idea of natural law.

Lei etymologically means "markings of the divisions in the fields," "markings or veins in the jade," "grains in wood," "fibres in muscles." Hence it has come to mean the form and texture of a thing, or the quality or nature of a thing. Hence it acquires the meanings of the reason or *raison d'être* or the law of a thing or of things.

In a collection of miscellaneous writings attributed (often wrongly) to the political philosopher Hain Fei who

died in 233 B.C., there are two books which are the earliest extant commentaries on the *Book of Lao-tze*. In one of these, there are some interesting definitions of the terms *tao* and *lei*:

Tao (the way of the law of Heaven or Nature) is that by which all things become what they are; it is that with which all *lei* (the law of things) is commensurable.

Each of the ten thousand things has its own distinct law (*lei*) but the *tao* commensures the law (*lei*) of all things.

The *lei* of things comprises their qualities of squareness or roundness, shortness or length, coarseness or fineness, hardness, or brittleness, weight and color.

From these we can discern an effort to differentiate the meaning of these two words, making *tao* stand for the concept of "the Way or Law of Nature" in the universal and all-pervading sense, and *lei* confined to the meaning of "the reason or law of things," that is, the law of nature as manifested in all things. But in spite of such attempts at definition and distinction, the two terms have continued to be interchangeable in use.

In an interesting passage, Mencius (c. 372-c. 289 B.C.) used the word *lei* in the sense of universal truth, in the sense of what agrees with "common right and wrong." He said:

"All mouths of men agree in enjoying the same relishes; all ears agree in enjoying the same (musical) sounds; all eyes agree in recognizing the same beauty. Is there nothing which all minds agree in affirming to be true? What is it then which all minds recognize to be true? It is *lei* (universal truth or law) and *i* (uni-

versal right or righteousness) . . . Universal truth and right are agreeable to our mind, just as tasty meals are pleasing to our taste."

The monosyllabic word *lei* often appears in the two bi-syllabic forms both in the classical language and in popular parlance: (1) *tao-lei*, literally, the way and reason, that is, universal truth or natural law; and (2) *t'ien-lei*, the reason or law of God or Nature.

In the Han Fei book already referred to, the term *tao-lei* occurs many times. The following passage is typical:

For those who work in accordance with the universal laws of nature (*tao-lei*), there is nothing that they cannot accomplish. . . . For those who act foolishly and in disregard of the universal laws of nature, even though they may possess the power and authority of Kings and princes and the fabulous wealth of an I-tun or Tao-chu, they will alienate the support of the people and lose all their possessions.

In the popular language of the people, *tao-lei* means what Mencius regards as that which all minds agree in affirming to be true and just. It is Natural Law in the sense of "common right and reason." A story is told of the first Emperor (960-975 A.D.) of the Sung Dynasty who one day asked his chief minister and adviser, Chao Pu, "What is the greatest thing in the world?" Chao Pu was thinking over the question when the Emperor again asked, "What is the greatest thing in the world?" Chao Pu replied: "*Tao-lei* is the greatest." The Emperor was so pleased with the answer that he repeatedly said, "How right you are!"

The term *t'ien-lei* originally means "the natural arrangement of muscles in the animal body." It has come to

be used in philosophical literature in the sense of the original pure and unsullied nature of man, and also in the sense of the Law of God or the Natural Law. In the latter sense, it is sometimes interchangeable with *t'ien-tao* (the Way of God, the Law of Nature), and sometimes distinct from it in that whereas *t'ien-tao* stands for the universal, all-pervading and immutable Law of God or Nature, *t'ien-lei* seems to mean certain more specific truths which are generally recognized as natural laws in things, that is, as the Law of God or Nature in its manifold manifestations in the things of the universe.

In the following pages, I shall cite a few facts to show the historical role played by these natural law concepts of *lei* and *t'ien-lei* to which the Chinese philosopher-statesmen from time to time made appeal in their criticism of government policy and in their fight against injustice and misrule.

Tung Chung-shu, one of the most influential founders of the State Religion of Confucianism in the Han Empire, was probably the first man to make appeal to the Law of God (*t'ien-lei*) in his attack on the nobles and officials of the Empire who engaged in commerce and industry in competition with the common people. He said to the Emperor Wu-ti:

. . . Now the world of antiquity is the same world of the present day. Why then are we so far behind the ancients in the peace and welfare of the people? Is it possible that there has been failure in following the Way (*tao*) of the ancients and that there has been deviation from the Law (*lei*) of God?

Even God has had to divide his creatures into groups or classes. Those creatures which are given the upper

teeth, have no horns or antlers. Those which have wings, are given only two feet. The meaning of all this is that whosoever receives the greater gift, must not take the smaller one.

In ancient society, those who received their pay from the State had to refrain from manual work for gain and must not engage in commercial business. That is the same principle that recipients of higher gifts must not take the lower one: that is in agreement with the Will of Heaven.

Even God could not satisfy those who, having gotten the greater gifts, wanted to take in all the minor ones. How can man ever satisfy them? That is why the people today are crying out in their poverty.

Then he went on to attack the powerful families who abused their power and wealth and competed with the people in all gainful professions, with the result that the rich became richer, and the poor became poorer and poorer. "Therefore," said Tung Chung-shu, "those who live on their official salary or hereditary pensions, must not compete with the common people in the profitable trades and professions. That is the law of Heaven and also the Way of the ancients. The government should make this a law of the empire which all officials must obey."

In the eleventh century, the great statesman Wang An-shih (1021-1086) succeeded in converting the young Emperor Shen-tsung (reigning 1068-1085) to his political philosophy that the time had arrived for carrying out a program of fundamental reforms in every sphere of the government. It was called "the New Policy" or New Deal, which involved a reorganization of the government structure, of the army, of the civil service ex-

amination system, of taxation and finances, and many economic measures of a mildly socialistic nature. The reform government lasted nearly sixteen years (1069-1085). Wang An-shih had the complete confidence of his sovereign, so he had no great need to appeal to any higher law or authority. It was even rumored that the reform leaders maintained that "the great Ancestors of the dynasty were not worthy of emulation, the Heavenly Warnings in the form of catastrophes and abnormalities were not to be feared, and public opposition was not to be heeded."

But the opposition, which was led by a remarkable group of conservative but upright statesmen, felt the necessity to appeal to a higher authority than the Government and the Monarch. So it was the opposition party that often upheld such concepts as the Way of Nature and the Law of Nature (*t'ien-lei*) as the authoritative basis of their criticism and opposition to the reforms. It was Ssu-ma Kuang (1019-1086) the historian and leader of the opposition party, who in his famous letter to Wang An-shih, quoted Lao-tze's doctrine of non-action and non-interference as the Way of Nature, and censured his friend and political enemy for having apparently disregarded what he had studied and admired. It was Cheng Hao (1032-1085), one of the great philosophers of the age, who, in his memorials to the throne, often referred to the Natural Law (*t'ien-lei*) which he conceived as immutable and not varying with the change of time.

And when China came under the exceedingly despotic rule of the Ming dynasty (1368-1644), it was once more the concepts of *lei* and *t'ien-lei* that were appealed

to by those hundreds of heroic scholars, philosophers, censors and statesmen, who in the course of two centuries and a half, fought against strong-willed Prime Ministers, wicked and powerful eunuchs, and ignorant and despotic monarchs. The Ming period was undoubtedly the most tyrannical age in Chinese history. There was the most infamous practice of publicly flogging censors and ministers of state in the Imperial Palaces. There were the Special Police Courts presided over by powerful eunuchs and armed with arbitrary powers to make arrests, hold secret trials, and use the worst kinds of torture to obtain confessions of guilt and to intimidate and punish all those who dared criticize and oppose the Government. Hundreds of prominent statesmen and philosophers (including the great philosopher Wang Shou-jen, better known as Wang Yang-ming) suffered torture, and not a few perished under its horrors. It was the absolute monarchy at its worst.

Against such despotism run amok, neither the doctrine of the Way of Heaven or Nature as Lao-tze conceived it, nor the Will of God as Mo Ti and Tung Chung-shu taught it, nor the supreme authority of the Sacred Canon of Confucian Scriptures could furnish any effective check or control.

Yet the Chinese fighters for justice and better government and for the traditional right of outspoken criticism against the government and the sovereign, fought on. The only moral and spiritual weapon which gave them courage and strength to fight on in such an apparently hopeless battle, was the concept of *lei* or *t'ien-lei* in the sense of Universal Truth or Reason or Natural Law.

But the concept of *lei* or *t'ien-lei* had undergone a

fundamental change. The preeminent and most influential school of philosophy of the age was the School of Wang Yang-ming (1472-1528) who taught that there is no *lei* (reason or law) outside the mind, and that there is in every man the "innate and intuitive knowledge" (*liang-chih*) which is the moral conscience of man and which "knows right to be right and wrong to be wrong." The Natural Law is what every man's innate and intuitive moral conscience perceived to be the truth and the law which it is his duty to "extend and apply to all things and all events."

It was this new conception of the Natural Law (*lei*) within everyman's intuitive moral conscience that gave the spiritual strength to those courageous men to fight on with a vivid conviction that, flogged they might be, banished they might be, tortured and martyred they might be,—they were fighting and suffering for a just and right cause which would ultimately be vindicated. One of the philosophers of the age, Lü K'uen (1538-1618), left a volume of his thoughts and reflections under the title of "Groaning Words," in which I find this observation on the moral and political struggle of his time: "There are only two things supreme in this world: one is *lei*, the other is political authority. Of the two, *lei* is the more supreme. When *lei* is discussed in the Imperial Court or Palace, even the Emperor cannot suppress it by his authority. And even when *lei* is temporarily suppressed, it will always triumph in the end and will prevail in the world throughout the ages."

Let these "groaning words" of an old philosopher conclude my study of the Natural Law concepts in the Chinese tradition. None of these concepts was able to achieve

the objective of checking or limiting the absolute powers of the unlimited monarchy. No concept of the Natural Law alone can ever achieve that objective, in China or in any other country on earth. But the story is worth telling. It confirms and verifies an historical thesis, namely, that the concept or concepts of Natural Law or Natural Right have always played the historical role of a fighting weapon in mankind's struggle against the injustice and the tyranny of unlimited human authority.

