



1959

## The 'Fa Chia' Political Theory and its Application in the Ch'in Empire

Jack Larry Hill

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THE 'FA CHIA' POLITICAL THEORY AND ITS APPLICATION IN  
THE CH'IN EMPIRE

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A Thesis  
Presented to  
the Faculty of the American Academy of Asian Studies  
A School of the College of the Pacific

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In Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts

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by  
Jack Larry Hill  
June 1959

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## CHAPTER I

### HISTORICAL BACKGROUND

China was already old in its own eyes by the year 221 B.C. To picture that age in its proper perspective, it will be necessary, for a while, to look backwards toward an even more distant time, adjusting sight onto a day when China was young, and with what memories still extant, try to reconstruct, uncovering and making clear, that complex which caused a dawn, one magnificent moment, to explode, brilliantly and deadly, into the day of the Legalist, fortunately brief, where a God reigned on high in the guise of cruel Law--and the People suffered. . . .

#### I. PREHISTORY

China had its own explanation for its being. Told as a tale to those born and nurtured of her soil, it was recounted through innumerable generations that they owed their emergence as a nation and consolidation as a people to Huang Ti, the Yellow Emperor (ca. 2697 B.C.), who was the founder-hero of their civilization. Under him and his successors, among whom were the sages Chuan Hsiu, K'u, Yao and Shun (ca. 2400-2205 B.C.), the people were first taught the rudiments basic to civilization, and under their rule

the people rested tranquil. It was later recalled as the Golden Age, when the government of the world was perfect.<sup>1</sup>

In the thirteenth paragraph to his twelfth book

Chuang Tzu says:

In the age of perfect virtue they attached no value to wisdom, nor employed men of ability. Superiors were (but) as the higher branches of a tree; and the people were like the deer of the wild. They were upright and correct, without knowing that to be so was Righteousness; they loved one another, without knowing that to do so was Benevolence; they were honest and leal-hearted, without knowing that it was Loyalty; they fulfilled their engagements, without knowing that to do so was Good Faith; in their simple movements they employed the services of one another, without thinking that they were conferring or receiving any gift. Therefore their actions left no trace, and there was no record of their affairs.<sup>2</sup>

Nothing exists today to tell how long this condition lasted, but as was afterwards noted: "The Great Tao ceased to be observed."<sup>3</sup>

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<sup>1</sup>James Legge (trans.), The Texts of Taoism: The Writings of Kwang-Tzu (London: Oxford University Press, 1927), pp. 287-288.

<sup>2</sup>Ibid., p. 325.

<sup>3</sup>James Legge (trans.), The Texts of Taoism: The Tao Teh King (London: Oxford University Press, 1927), p. 61.

## II. THE MANDATE OF HEAVEN

There arose, in consequence, probably during the Shang period (1557-1050 B.C.), as explanation for the existence of the first hereditary dynasty in China, the Hsia (2205-1557 B.C.), which due to its tyrannical rule was afterwards overthrown by Shang, what later came to be called the theory of The Mandate of Heaven (T'ien Meng), derived from the classical Chinese Book of History (Shu Ching).<sup>4</sup>

This theory held that the worship Heaven and of Earth was the prerogative of the king, alone. In those days it was the king who was entitled to perform the sacred rites by which the harmony of Heaven and Earth was maintained and the stability of the seasons assured. Between the ruler of mankind and the powers of nature, it was believed, there existed this close and vital relationship. The fortunes of man depended upon this balance of forces, beneficent so long as in harmony, destructive once that balance destroyed. The king, or Son of Heaven, was the only instrument through which this precarious position could possibly be hoped to be maintained. It was demanded, therefore, that his character be

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<sup>4</sup>Charles P. Fitzgerald, China, A Short Cultural History (London: The Cresset Press, 1954), p. 51.

pure, his conduct irreproachable, and his government bountiful with such qualities as benevolence (jen), justice (yi), propriety (li), and wisdom (chih), always citing as example, Huang Ti, the first emperor, under whom the people were unified and in accord, and from whom all subsequent kings and princes of ancient China sought to claim descent, desiring to establish their legitimacy to rule before the eyes of their people.<sup>5</sup>

If, however, the king was licentious in his conduct and oppressed his people, then, it was reasoned, Heaven, or Shang Ti (The Supreme Ancestor) became offended, the balance of the forces of nature growing deranged, and this was reflected in calamity for the people. Under these circumstances it was held, then, that the people possessed the right to revolution, and their leader, if successful, became the Choice of Heaven, receiving its mandate to rule.<sup>6</sup>

Wu, the first king of the Chou dynasty, established the validity of this premise in the latter half of the eleventh century, when he overthrew Chou Hsin, the last

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<sup>5</sup>Homer H. Dubs (trans.), The Works of Hsuntzu (London: Arthur Probsthain, 1928), pp. 189-191.

<sup>6</sup>Ibid.

tyrannous ruler of the Shang dynasty, regarding whom Mencius commented: "I have heard of the cutting off of the fellow Chow, but I have not heard of the putting a sovereign to death, in his case."<sup>7</sup>

### III. THE CHOU DYNASTY

Early Chou Period. The Chou people had originated from the western regions of China, somewhere in the present provinces of Kansu and Shensi, and they conquered the Yellow River valley in the North China plain, quickly adapting themselves to the agricultural character of the unfolding Chinese civilization.<sup>8</sup>

This empire, under Wu, was partitioned into fiefs, and these were held by the new aristocratic class. The system evolved into a division of five titled classes, which are now translated as Duke, Marquis, Count, Viscount, and Baron.<sup>9</sup> Below these were those of innumerable smaller fiefs, comparable to Baronettes, and those men were known as the Chun Tzu, or Sons of the Lords. Being hereditary, this nobility

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<sup>7</sup>James Legge (trans.), The Four Books: The Works of Mencius (n.p., n.d.), p. 494.

<sup>8</sup>Fitzgerald, op. cit., p. 28.

<sup>9</sup>Ibid., p. 59.

was circumscribed, and those of whom it was composed were expected to be both scholars and warriors.<sup>10</sup>

In that age (1050-772 B.C.), the king was more priest than either scholar or warrior.<sup>11</sup> It was he, the Son of Heaven, who was the ultimate source of all legitimate authority. He, alone, could invest the authority to grant title to the feudal princes and to distribute the land.<sup>12</sup> Therefore, conformity to the codes of conduct emphasized the inferior conditions of the princes and lords. In this feudal hierarchy, tribute was passed up from rank to rank, always ultimately reaching the imperial court. All these actions, for the nobles, were performed in the name of Heaven, since they had no real religion, aside from ancestor worship--and the Supreme Ancestor was Heaven, Shang Ti.<sup>13</sup> Thus, chivalry, the necessary derivative of the feudal community, in ancient China, was more than the courtesy of the polite society; rather, it was an expression of the moral order approved by Heaven.<sup>14</sup> Therefore, as in the times of the Shang, the var-

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<sup>10</sup>Ibid., p. 61.

<sup>11</sup>Ibid., p. 41.

<sup>12</sup>Ibid., p. 59.

<sup>13</sup>Joseph Needham, Science and Civilization in China (Cambridge: Cambridge University Press, 1956), II, p. 555.

<sup>14</sup>Ibid.

ious feudal lords were expected to remain in a condition of humble obedience to the dictates of their king, who was the medium through which, they believed, spoke Heaven.

Ultimately, the whole system of the Lords rested on the labor of their peasant-farmers; for the scholars were usually landlords, and the farmers were the peasants who actually cultivated the land. These were the two honorable professions in China. Although the scholars did not actually cultivate the land themselves, yet, since they were usually landlords, their fortunes were tied up with agriculture.<sup>15</sup> A good or bad harvest meant their good or bad fortune.

Although traditionally honored through the medium of their profession upon which this nobility was dependent, yet, the peasants, Min, or, classically, Hsiao Jen (Little People), though the class that comprised by far the greater part of the population, were precluded in those ancient and feudal times from playing any part in the clan system. Ancestor worship, the religious belief of the nobility, was confined to that class, alone. Consequently, having no surnames, possessing little background, and separated in way of life and customs of marriage from the nobility, the peasants

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<sup>15</sup> Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 37.

lived out their existences on a level low to that known to their Lords. Provided with no real certainty that their lives were significant, hanging, as it were, between Heaven and Earth, at rest nowhere, the peasants, to worship something meaningful related to their lives, turned to that which they, naturally and most intimately, knew best: the soil, their land. It was this great foundation that provided these men a foothold and a religion in that feudal period.<sup>16</sup>

Ch'un Ch'iu Period. During the course of these centuries, the Chou society began gradually to manifest its instability. Wars with the barbarians constantly increased as the population sought expansion. The barbarians to the north and northwest, pressured, reacted with incursions of their own into Chinese territory. In 772 B.C. there occurred a catastrophe, destroying the fiction that a tightly knit feudal empire existed, which transferred the then nominal power of the king to the rulers of the feudal states, who, increasing their autonomy, had begun to usurp the powers of the king. In that year the Ch'uan Jung, barbarous "Dogs," a nomadic people living somewhere in present-day Inner-Mongolia, attacked and sacked the royal capital of Chou, a city near the

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<sup>16</sup>Fitzgerald, op. cit., pp. 44-45.

modern Sian in Shensi Province in northwest China.

The House of Chou was forced to abandon their homeland and flee to the east, where their capital was then established at Loyang in Honan Province, approximately four hundred miles east of the old capital and a few miles south of the Yellow River. This middle period of the Chou dynasty, 772 to 481 B.C., is what is now called the Ch'un (Spring) Ch'iu (Autumn) period, from the famous historical work of that title.<sup>17</sup>

During the next few centuries the domain actually ruled by the Chou emperor was quite small, the countries inhabited by peoples of Chinese culture being divided between fifteen major feudal states and many smaller fiefs, all acknowledging but a shadowy authority from Loyang, and contending among themselves for the hegemony.<sup>18</sup> These feudal states can be classed into two categories: (1) those "truly members" of the Chinese confederacy, the so-called Middle Kingdom (Cen-

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<sup>17</sup>A chronicle of Confucius' native state, Lu, the book is the first accurate chronological history written in China, highly respected by Confucian scholars due to its choice of words to record the facts; being not the matter, but the manner of words that conveyed a moral lesson. This emphasis upon the correct use of words was what Confucius called the "Rectification of Terms." When words, as was common in that conflicting time, no longer meant what they were intended to mean, they lost their value.

<sup>18</sup>Liu Wu-Chi, op. cit., p. 36.

Flowering Kingdom), and (2) those that were barbarous.<sup>19</sup>

The central, "true Chinese," group were eleven in number, occupying the flat land of northern China. The other four, Ch'in in the west, approximately in present Shensi, Pa and Shu in the southwest, in the present province of Szechuan, and Ch'u, located in the middle course of the Yangtzu river, were all regarded as part of the Chinese realm, but still barbarous. However, Wu, along the lower regions of the Yangtzu delta where, today, Shanghai is located, and Yueh, along the southeast coast, outside of these fifteen, were not accepted as Chinese, and, therefore, were regarded as barbarous.<sup>20</sup>

Period of the Warring States. It was towards the end of this time that the struggle for overlordship grew increasingly intense, as the feudal princes usurped both the legitimate king's power and title. It was a period of what, today, might be called Power Politics. The smaller aristocracies were absorbed by their more powerful neighbors. By about 300 B.C., the two most important states were Ch'u in the south,

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<sup>19</sup>Fitzgerald, op. cit., p. 56.

<sup>20</sup>The acceptance of Chinese culture and the corresponding degree of Chinese civilizing influence, rather than racial ties, throughout Chinese history, have established a people as either Chinese or barbarian.

occupying eastern Szechuan, Chiangsi, and Hunan, and Ch'in in Shensi in the northwest.<sup>21</sup> In 318 B.C. a confederation of states was overwhelmingly defeated in the field by Chin. In 256 B.C. the ancient Chou domains were entirely surrounded.<sup>22</sup> Finally, the last and greatest of the opponents, Ch'u, was formally annexed. 481 B.C. to 221 B.C. is called the Period of the Warring States, which ended in the conquest of the whole empire by the state of Ch'in; for it was then, finally, that "the sacrifices were discontinued,"<sup>23</sup> and King Cheng of Ch'in found himself at the head of a united China, adopting the title Ch'in Shih Huang Ti, or the First Emperor of Ch'in.<sup>24</sup>

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<sup>21</sup>Arthur Waley, Three Ways of Thought in Ancient China (New York: Doubleday and Company, Inc., 1956), p. 62.

<sup>22</sup>Fitzgerald, op. cit., p. 72.

<sup>23</sup>Dubs, op. cit., p. 23.

<sup>24</sup>Ibid., p. 24.

## CHAPTER II

### THE HUNDRED SCHOOLS OF PHILOSOPHY

In China, philosophic thinking arose in protest to, not as a result of, the social and political decay of the times. During this last period of the Chou Dynasty, that of the Warring States, the country was plunged into utter confusion and violence. It was a period not only of bitter military strife, but, also, one in which a far more memorable kind of contest took place: The Rivalry of Philosophers-- The great Debate.

#### I. SOCIAL AND POLITICAL BACKGROUND

Since the rise of what, today, is called the Hundred Schools of Philosophy coincided with the death rattles of the feudal age, not accidentally did the general anarchy into which the feudal world was disintegrating stimulate intellectual activity. With provincial isolation broken down, loyalties destroyed, and the established order overthrown, it was only natural that man should begin to question the world order which he had, heretofore, accepted as matter of course, coming face to face with problems demanding of solution--immediate matters of his survival and being. The aim of these thinkers was political, practical, and necessary.

They were endeavoring to discover some dependable principle of moral authority upon which to base their code of behavior, and from out that chaos of their changing world to formulate their thought.

## II. THE WANDERING SCHOLARS

Admidst that tumultuous age a new class of men arose: the so-called Wandering Scholars, the dispossessed, of whom Confucius, himself, can be said to have been the first; for it was after he had created this precedent that others followed in his footsteps.<sup>1</sup> However, not all these men were aristocrats searching for the Ideal Prince as did Confucius; rather, most were political adventurers, members of the unemployed aristocracy, seeking for power and aggrandisement in the service of the Warring States. Physically and spiritually they sold themselves, the kings valuing these counselings more than those of the true scholars, who, generally, were not heeded in the practical conduct of affairs.<sup>2</sup> A characteristic comment directed towards the scholars was that

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<sup>1</sup>Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 19.

<sup>2</sup>Joseph Needham, Science and Civilization in China (Cambridge: Cambridge University Press, 1956), II, p.6.

of Sang Hung-yang:

Your learned men in their arguments would either try to reach high Heaven or penetrate the Abyss. Then they would attempt, and how ineffectively, to compare the conduct of the affairs of some village or hamlet with the great business of the nation . . . They have certainly proved unfit to take part in discussions.<sup>3</sup>

These new Wandering Scholars did not feel bound by the traditional ties of loyalty to his prince, for the destruction of the feudal states had broken down that bond which had, heretofore, existed between the Chun Tzu and the prince. The aristocrat, his land and home destroyed, felt none of those binding ties which had, before, been the basis of the old society. Thus did they set out to travel the world in search of fortune and glory, and it was toward the state of Ch'in that many of these men set their sight.

However, the generals, who were members of the native aristocratic class, were the men upon whose loyalty and lives the warring princes generally relied, for as a common characteristic these Wandering Scholars were not restrained by any strong sense of right and wrong, frequently serving three or four princes at a time, playing one against the other, moving from kingdom to kingdom, always with some scheme in

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<sup>3</sup>Charles P. Fitzgerald, China, A Short Cultural History (London: The Cresset Press, 1954), p. 173.

their pockets, forgetting the partialities of the feudal, trying to impress the idea of consolidated empire upon the king. Now it was no longer Hegemony, but Unified Empire that had become the aim of state politics.<sup>4</sup> The lives of these scholars were tortures, and their deaths quite often terrible.<sup>5</sup>

### III. CONFUCIANISTS

Confucius. Confucius (K'ung Ch'iu) lived in this feudal period. A native of Lu in Shantung province facing southern Japan, he belonged to that class of disenfranchised nobles who claimed their ancestry from the ducal house of Sung, and, thence, from the fallen house of Shang.<sup>6</sup> Living in the Sixth Century B.C. (552-479 B.C.), at a time when the peasants of those days were oppressed by their autocratic rulers, there still existing that great gap between the aristocracy and commonality, Confucius was the First Teacher,<sup>7</sup> who pronounced that such distinctions did not exist

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<sup>4</sup>Ibid., p. 70.

<sup>5</sup>Shang Yang was torn to pieces by chariots driven in opposite directions. Han Fei Tzu was poisoned.

<sup>6</sup>Needham, op. cit., p. 3.

<sup>7</sup>Ibid., p. 6.

in learning, saying: "In teaching there should be no distinction of classes."<sup>8</sup> The gateway to his teachings was always open to those individuals possessing intelligence, willingness, and enthusiasm. In his early years teaching ceremony (Li), as well as such other subjects as might prove beneficial in qualifying his students for government jobs and stewardships in aristocratic households, his early career was that of a ritual expert, known then as Ju.<sup>9</sup> Since Confucius was the greatest representative of the Ju class, eventually the term evolved to be synonymous with the teachings of the Confucian school.

What were these teachings? First, must be noted the transition of Confucius, having grown more experienced in human affairs and more advanced in learning, from a mere teacher of ceremony into the most erudite scholar of the Chinese world. As Confucius, himself, stated, he played the role of transmitter,<sup>10</sup> but what he did was to transmit no more than the main bulk of the ancient Chinese culture, bringing together for the first time the Chou classics under

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<sup>8</sup>James Legge (trans.), The Four Books: Confucian Analects (n.p., n.d.), p. 235.

<sup>9</sup>Liu Wu-Chi, op. cit., p. 19.

<sup>10</sup>Legge, op. cit., p. 87.

the name of his school.<sup>11</sup> However, his real greatness lies in his transforming the feudal code of rites and etiquette into a universal system of ethics; this humble practitioner of Li becoming, ultimately, the greatest teacher of morality.<sup>12</sup>

Confucius, a conservative, defended the past and based his teaching on the authority of the sage kings of antiquity and the orthodox feudal concepts of his time, attributing the difficulties of his age to manifested breaches of old ethical principles.<sup>13</sup> He strove to recall to the princes their forgotten duty to the Son of Heaven, preaching a return to the Golden Age of Wu, founder of the feudal, and rebuked the ambitions of intriguing aristocrats, who should, rather, have served their lords and the Son of Heaven with lifelong loyalty.<sup>14</sup> He supported the idea of paternal government, in which the ruler should govern his people benevolently as a father his family. Just as the parent is bound to his children by the ties of blood, which accounted for their attach-

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<sup>11</sup>Liu Wu-Chi, op. cit., p. 22.

<sup>12</sup>Ibid., p. 25.

<sup>13</sup>Legge, op. cit., p. 96.

<sup>14</sup>Ibid., p. 164.

ment to one another, so should a prince be bound to his subjects by the same indivisible ties of love and kindness.<sup>15</sup> Confucius conception of the basic virtues were faithfulness to oneself and others (chung), altruism (shu), human-heartedness (jen), righteousness (yi), propriety (li), wisdom (chih), and realness of sincerity (hsin).<sup>16</sup> It was this insistence on Man's moral cultivation, irrespective of rank and class, that has caused Confucius to be remembered. He said:

Some are born with the knowledge of those duties; some know them by study; and some acquire the knowledge after a painful feeling of their ignorance. But the knowledge being possessed, it comes to the same thing. Some practice them with a natural ease; some from a desire for their advantages; and some by strenuous effort. But the achievement being made, it comes to the same thing.<sup>17</sup>

In that new age, however, man cared for none of these things. The Son of Heaven was now only a name.

Confucius desired to put first things first. In the Classic of Filial Piety (Hsiao Ching) he is represented as saying:

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<sup>15</sup>James Legge (trans.), The Four Books: The Doctrine of the Mean (n.p., n.d.), pp. 387-389

<sup>16</sup>Ibid., p. 383.

<sup>17</sup>Ibid., pp. 385-386.

The body and the limbs, the hair and the skin, are given one by one's parents, and to them no injury should come. This is where filial piety begins. To establish oneself in the world and to promote tao is to immortalize one's name and thereby to glorify one's parents. This is where filial piety ends.<sup>18</sup>

This way of life, or truth, which he called tao, was the greatest endeavor of Confucius' life.<sup>19</sup> Often wandering, he sought those who might listen to his instructions and place into practice his doctrines. While studying with him, his pupils might seek many things from his service, but few left him without being instilled with his great sense of morality. When Confucius died in 479 B.C. at the age of seventy-three, his mission of embodying in himself and his school the best of orthodox Chou culture had been accomplished. Those men who had come to him to learn a profession turned out to be the heralds of a new philosophy, the Ju philosophy, whose ultimate achievement was to be the Superior Man.

After Confucius' death in 479 B.C. began a process of promulgation that was to lead, one future Han-day, to the unfolding of his doctrine into state deification of that dream. Wherever they went, and in whatever capacity they served,

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<sup>18</sup>Liu Wu-Chi, op. cit., p. 28.

<sup>19</sup>Legge, op. cit., p. 355.

those who remembered pronounced their Master's views on government and ethics. In that conflicting time, those who ruled heeded little these men of mind and morals, seeking strength not in the promise of Superior Men, but, rather, in strength of state, befitting the stature they sought in the Chinese Warring world--for it was difficult to believe that goodness might win an empire that was almost certain to be grasped through might.

Tseng Ts'an: The Four Books. One belabored conscience of that time, which found its way to expression, belonged to Tseng Ts'an, a Confucian scholar, who stressed moral cultivation rather than the observance of ritual as the basis of human endeavor. He is said to have examined himself every day on three points: "Whether, in transacting business for others, I may have been not faithful;--whether, in intercourse with friends, I may have been not sincere;--whether I may have not mastered and practiced the instructions of my teacher."<sup>20</sup> Tseng Ts'an is credited with having firmly established the ethical school as Confucian orthodoxy.<sup>21</sup>

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<sup>20</sup>James Legge (trans.), The Four Books: Confucian Analects (n.p., n.d.), p. 4.

<sup>21</sup>Liu Wu-Chi, op. cit., p. 28.

The famous Confucian Four Books are attributed to the school of Tseng Ts'an.<sup>22</sup> The first, a collection of Confucius' attributed sayings, is known as the Analects (Lun-yu). It is the basic document to the Confucians. Next in order to the Analects stands The Great Learning (Ta-hsueh), this representing a more explicit and mature interpretation of Confucius' political and ethical views. The Great Learning and the Doctrine of the Mean (Chung-yung), the third book, have both been attributed to Tzu-ssu, Confucius' grandson had a pupil of Tseng Ts'an.<sup>23</sup>

In The Mean it reads:

While there are no stirrings of pleasure, anger, sorrow, or joy, the mind may be said to be in the state of EQUILIBRIUM. When those feelings have been stirred, and they act in their due degree, there ensues what may be called the state of HARMONY. This EQUILIBRIUM is the great root from which grow all the human actings in the world, and this HARMONY is the universal path which they all should pursue.

Let the states of equilibrium and harmony exist in perfection, and a happy order will prevail throughout heaven and earth, and all things will be nourished and flourish.<sup>24</sup>

The Works of Mencius (Meng-tzu), the final book to

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<sup>22</sup>Ibid., p. 34.

<sup>23</sup>Ibid., pp. 30-31.

<sup>24</sup>James Legge (trans.), The Four Books: The Doctrine of the Mean (n.p., n.d.), pp. 351-352.

the four Confucian classics, stands in unique relation to its predecessors, for here is documented for the first time the exposition that man's basic nature is inclined towards goodness; for, stated Mencius (Meng K'o): "From the feelings proper to it, it is constituted for the practice of what is good. This is what I mean in saying that the nature is good."<sup>25</sup>

Mencius. Throughout his public life Mencius attempted to impress upon those who ruled this basic proposition, in his consideration the foundation to kingly rule and benevolent government, meeting, as always, with little success, for the feudal lords were interested in quick practical results rather than grand ethico-political ideals.

Mencius' life (ca. 372-289 B.C. ) paralleled that of his great predecessor, Confucius, for, like him, he emerged from comparative obscurity to become a great scholar of his time, devoting the best years of his life to the search for that sage ruler who would place his teachings into practice, and always, like Confucius, greeting the painted face of hypocrisy and failure rather than the regal beauty of an enlightened monarch.

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<sup>25</sup> James Legge (trans.), The Four Books: The Works of Mencius (n.p., n.d.), p. 861.

Living in the fourth century B.C., Mencius studied with a disciple of Tzu-ssu, emerging in his fortieth year as a great scholar with a band of faithful followers.<sup>26</sup> The greater part of his political life was spent as an officeholder in Ch'i during the reign of King Hsuan, a great patron of letters, who, along with Mencius, had assembled at his court a great galaxy of other notable intellectuals whose only duty was to advise the king on political affairs, discourse on their learning, and to compile books for the propagation of their teachings. In this way Ch'i became a great center of learning during the period of the Warring States and attracted many eminent scholars and philosophers.<sup>27</sup>

To understand Mencius and to know his mind a passage is important. He said: "The great man is he who does not lose his child's-heart."<sup>28</sup> Illustrating Mencius continued:

The trees of the New Mountain were once beautiful. Being situated, however, in the borders of a large state, they were hewn down with axes and bills;--and could they retain their beauty? Still through the activity of the vegetative life day and night, and the nourishing influence of the rain and dew, they were not without buds and

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<sup>26</sup>Liu Wu-Chi, op. cit., p. 61.

<sup>27</sup>Ibid., p. 65.

<sup>28</sup>Legge, op. cit., p. 739.

sprouts springing forth, but then came the cattle and goats and browsed upon them. To these things is owing the bare and stripped appearance of the mountain, which when people see, they think it was never finely wooded. But is this the nature of the mountain?

And so also of what properly belongs to man;--shall it be said that the mind of any man was without benevolence and righteousness? The way in which a man loses his proper goodness of mind is like the way in which the trees are denuded by axes and bills. Hewn down day after day, can it--the mind--retain its beauty? But there is a development of its life day and night, and in the calm air of the morning, just between night and day, the mind feels in a degree those desires and aversions which are proper to humanity, but the feeling is not strong, and it is fettered and destroyed by what takes place during the day. This fettering taking place again and again; the restorative influence of the night is not sufficient to preserve the proper goodness of the mind; and when this proves insufficient for that purpose, the nature becomes not much different from that of the irrational animals, which when people see, they think that it never had those powers which I assert. But does this condition represent the feelings proper to humanity?

Therefore, if it receive its proper nourishment, there is nothing which will not grow. If it lose its proper nourishment, there is nothing which will not decay away.

Confucius said, 'Hold it fast, and it remains with you. Let it go, and you lose it.'<sup>29</sup>

#### IV. TAOISTS

Lao Tzu. A school of thought which was, itself, a sign of the despair of the times--a symptom of that disease which plagued the people during this period of the Warring

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<sup>29</sup>Ibid., pp. 869-871.

States, was the Taoist, which, in terms of political theory, was directly opposed to Confucianism. Best exemplified in Lao Tzu, an elder contemporary of Confucius, and culminating in his Tao Te Ching, Taoism denied the value of any action, particularly participation in the affairs of mankind. To the Taoist, non-action was preferable to benevolent activity, advocating simplicity to the point of seeming nihilism.<sup>30</sup> Those virtues, praised by Confucius, such as chivalry, loyalty, and conformity were, to the Taoists, not virtues at all, but, rather, symptoms of decay.<sup>31</sup> Any active attempt to inculcate these virtues was worse than useless, because the more men were taught them, the more disorderly society had become. Rather than "putting forward your Benevolence and Righteousness, as if you were beating a drum, and seeking a fugitive son (only making him run away the more) . . ." Lao Tzu reputedly rebuked Confucius, saying, "Ah! Master, you are introducing disorder into the nature of man!"<sup>32</sup>

Legend recounts that Lao Tzu was "born old." Ssu-ma

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<sup>30</sup>James Legge (trans.), The Texts of Taoism: The Tao Teh King (London: Oxford University Press, 1927), p. 59.

<sup>31</sup>Ibid., p. 61

<sup>32</sup>James Legge (trans.), The Texts of Taoism: The Writings of Kwang-Tzo (London: Oxford University Press, 1927), p. 340.

Ch'ien, China's first great historian, who died around 85 B.C., opens his Biographies in the Shih Chi (Historical Record) with a brief account of Lao's life, and states that the year 604 B.C. was, probably, the year of his birth.<sup>33</sup> By this time, as Lao had noted in his eighteenth chapter: "The Great Tao ceased to be observed";<sup>34</sup> its manifestations were no longer to be found in individuals or government. The cause of the deterioration of the Tao and all the existing rampant evils of his time was attributed to the ever-growing pursuit of knowledge, and of what can be called the manners common to culture. It was this general corruption of society which disturbed Lao and caused him to comment: "If we could renounce our benevolence and discard our righteousness, the people would again become filial and kindly. If we could renounce our artful contrivances and discard our (scheming for) gain, there would be no thieves nor robbers."<sup>35</sup>

Such, however, were the ways of his world that Lao eventually decided to resign his position as curator of the

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<sup>33</sup>James Legge (trans.), The Texts of Taoism: (London: Oxford University Press, 1927), p. 4.

<sup>34</sup>James Legge (trans.), The Texts of Taoism: The Tao Teh King (London: Oxford University Press, 1927), p. 61.

<sup>35</sup>Ibid., p. 62.

Royal Library of Kan, and withdraw from China to other more encouraging domains. Thus he proceeded to the gateway of Hsien-ku in the present province of Honan, leading out from China to the West, where civilization apparently had not yet exercised its dreaded mandate. There he was recognized by the warden of the pass, Yin Hsi, who insisted that Lao Tzu leave him his views in writing before disappearing into oblivion. This, with possible reluctance, Lao did, leaving behind him a manuscript containing more than five thousand characters. He gave it to the warden and went his way.

In theory Tao--the Great Way--represented the principle underlying the tangible world of actuality.<sup>36</sup> Incommunicable and nameless, Tao was both the origin and the outcome, an elemental force entirely self-sufficient, which, through Te, its impersonal essence or "virtue," invested the "ten-thousand things" (universe), impelled only to follow a natural course.<sup>37</sup> In Taoism, undifferentiated wholeness preexisted before particulars arose, and nothingness was the generating principle of all things. The ultimate goal for man was

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<sup>36</sup>Edward Herbert, A Taoist Notebook (London: John Murray Ltd., 1955), p. 11.

<sup>37</sup>Ibid., p. 18.

to return to the root (nature) from whence he had spring.<sup>38</sup> Since, it was held, ego-center was the source of man's separation from the universe (nature), the Taoist endeavored to eliminate that ego, or self; for, said he, in the unconscious state we are all one, a unity, in harmony with the universe.<sup>39</sup> Taoism taught that at the bottom of all opposites was undifferentiated wholeness, and gave as example the seasons--Spring, Summer, Autumn, Winter--each combining with the other to create that unity found in a year, or, as the body and its respective parts formed a fundamental unity existing in diversity. Taoism stated that opposites must presuppose the unity, for if there was no unity there would be no opposites, because opposites could not exist in chaos and presupposed the existence of order.<sup>40</sup> If the one was eliminated, it was reasoned, so must be the other, and naught would remain. Opposites, therefore, presupposed a basic equality. The Taoist concluded that there was, really, no difference between opposites and unity and, in fact, found unity in the

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<sup>38</sup>Legge, op. cit., p. 59.

<sup>39</sup>Herbert, op. cit., p. 36.

<sup>40</sup>Ibid., p. 9.

opposites.<sup>41</sup> To many, this world is one of opposites (life and death, east and west), therefore, it is suffering; but to Taoist of a peaceful and tranquil mind, it was no cause for concern.

Chuang Tzu. Obscurity, so far as factual details are concerned, surrounds the life (3rd, century B.C.) of Chuang Tzu (Chuang Chou), credited with the thirty-three essays that compose the longest and (excluding the Tao Te Ching) best known classic of Taoism, the Chuang Tzu Book. Chuang Tzu exemplified the Taoist imperative: "When the work is done, and one's name is becoming distinguished, to withdraw into obscurity is the way of Heaven."<sup>42</sup> His work, today, is considered to contain the teachings of that original thinker as well as other interpolated matter, possibly the work of later Taoists.<sup>43</sup> At one time the Chuang Tzu Book was considerably longer, but through the centuries much has been lost.<sup>44</sup> Chuang Tzu--poet, metaphysician-mystic--was the typical and best known representative of Taoist thought. As a solution

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<sup>41</sup>Ibid.

<sup>42</sup>Legge, op. cit., p. 53.

<sup>43</sup>James Legge (trans.), The Texts of Taoism (London: Oxford University Press, 1927), p. 10.

<sup>44</sup>Ibid.

to the dilemmas of his day he proposed that mankind blend their lives back into harmony with the rhythm of nature (tao), and denied the omnipotent power, human reason, its traditional philosophic throne.<sup>45</sup> Regarding disputations he wrote:

If you have got the better of me and not I of you, are you indeed right, and I indeed wrong? If I have got the better of you and not you of me, am I indeed right and you indeed wrong? Is the one of us right and the other wrong? Are we both right or both wrong? (Since we cannot come to a mutual and common understanding, men will certainly continue in darkness on the subject.)

Whom shall I employ to adjudicate in the matter? If I employ one who agrees with you, how can he, agreeing with you, do so correctly? And the same may be said, if I employ one who differs from us both or one who agrees with us both. In this way I and you and those others would all not be able to come to a mutual understanding; and shall we then wait for that (great sage)?<sup>46</sup>

This Tao-saturated man concluded:

Let us forget the lapse of time; let us forget the conflict of opinions. Let us make our appeal to the Infinite, and take up our position there.<sup>47</sup>

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<sup>45</sup>James Legge (trans.), The Texts of Taoism: The Writings of Kwang-Tze (London: Oxford University Press, 1927), pp. 387-388.

<sup>46</sup>Ibid., p. 195.

<sup>47</sup>Ibid., p. 196.

Chuang Tzu's remarkable original genius is amply demonstrated in his famous anecdote of the butterfly, wherein he was compelled to question the reality of the world of appearances:

Formerly, I, Kwang Kau, dreamt that I was a butterfly, a butterfly flying about, feeling that it was enjoying itself. I did not know that it was Kau. Suddenly I awoke, and was myself again, the veritable Kau. I did not know whether it had formerly been Kau dreaming that he was a butterfly, or it was now a butterfly dreaming that it was Kau.<sup>48</sup>

Euripides express this sentiment another way when he said: "Who knoweth if to die be but to live, and that called life by mortals be but death?"<sup>49</sup>

Taoism was, politically, a mystical creed, ordinarily limited to those men of philosophic temperament, free from the vexing problems of the world. Because Taoism condemned the organization of society as folly, it, necessarily, was rejected by those rulers engaged, as they were, in the bitter struggle of that time of trying to lead their people to a new age. In the lives of those men, nevertheless, who were concerned to divine not just "a way," but, rather, "The Way,"

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<sup>48</sup>Ibid., p. 197.

<sup>49</sup>R. D. Hicks (trans.), Diogenes Laertius: Lives of Eminent Philosophers (London: William Heinemann Ltd., 1959), I, p. 167.

convinced that there could be no other--Taoism continued to thrive, undaunted.

#### V. MO TZU

Opposing both the Confucian reactionaries and the contemplative Taoists, Mo Tzu (Mo Ti), living approximately 468-382 B.C., somewhat earlier than Chuang Tzu, preached as the remedy for all evil, the cure for all disorder, the practice of all-embracing love. His followers were an organized body, and they constituted a flourishing school for more than a century after his death.<sup>50</sup>

A contemporary of Tzu-ssu, Mo Tzu opposed the Confucians because of their partial and restricted view of filial piety. According to the Confucians, since human relations were not the same, so different, too, should be one's feelings towards different people. Thus, one's love for one's father could not be the same as that for a neighbor's father. Mo Tzu, however, maintained that if every man loved strangers as he loved his own parents and children, there could be no crime or wickedness in the world; there-

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<sup>50</sup> Joseph Needham, Science and Civilization in China (Cambridge: Cambridge University Press, 1956), II, pp. 165-166.

fore, he announced that love should be equal and alike for everybody.<sup>51</sup> This universal love, he further contended, was, in fact, the only panacea for the strife-torn world of his time. He declared:

The way of universal love is to regard the country of others as one's own, the families of others as one's own, the persons of others as one's self. When feudal lords love one another there will be no more war. When heads of houses love one another there will be no more mutual injury . . . When all the people in the world love one another, then the strong will not overpower the weak, the many will not oppress the few, the wealthy will not mock the poor, the honored will not disdain the humble, the cunning will not deceive the simple.<sup>52</sup>

Regarding Mo Tzu, Chuang Tzu commented:

His way is one of great unkindliness. Causing men sorrow and melancholy, and difficult to be carried into practice, I fear it cannot be regarded as the way of a sage. Contrary to the minds of men everywhere, men will not endure it. Though Mo-tzu himself might be able to endure it, how can the aversion of the world to it be overcome? The world averse to it, it must be far from the way of the (ancient) kings.<sup>53</sup>

Mencius denounced his indiscriminate altruism.<sup>54</sup>

Mo Tzu held that the Confucian teaching of loyalty was

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<sup>51</sup>Charles P. Fitzgerald, China, A Short Cultural History (London: The Cresset Press, 1954), p. 79.

<sup>52</sup>Ibid., p. 97.

<sup>53</sup>Legge, op. cit., p. 219.

<sup>54</sup>Arthur Waley, Three Ways of Thought in Ancient China (New York: Doubleday and Company, Inc., 1956), p. 136.

inadequate, because it served only the prince--the feudal lord. Arising as he did from out the fold of common humanity, it was on behalf of that great mass he devoted his finest efforts.<sup>55</sup> While stressing the duties of the people, he directed his appeals to the rulers, and pronounced: "Be warned, take care! He who slays an innocent man is doomed to disaster, so sharp and fierce is the vengeance of the spirits.!"<sup>56</sup>

Deploring the blindness of his contemporaries, Mo Tzu condemned war as the greatest of crimes. What could be worse to this man than that hatred which culminated in the large-scale massacre of mankind known as war? Though he justified certain rebellions of the past, because they had substituted good rulers for bad, he would not sanction the plans of current princes who would conquer their neighbors, claiming ethical reasons. He insisted that Heaven has many ways of punishing men, and warned that they were not warranted in considering themselves instruments of Heaven's vengeance.<sup>57</sup>

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<sup>55</sup>Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 45.

<sup>56</sup>Waley, op. cit., p. 129.

<sup>57</sup>Liu Wu-Chi, op. cit., p. 57.

Mo Tzu argued:

The murder of one person is called unrighteous, and incurs a death penalty. Following this argument, the murder of ten persons is ten times as unrighteous and there should be a tenfold death penalty. The murder of one hundred persons is a hundred times as unrighteous, and there should be a hundred fold death penalty. But when it comes to the great unrighteousness of attacking states, the gentlemen of the world do not know that they should condemn it, on the contrary they applaud it, calling it righteous. Shall we say that these gentlemen know the difference between right and wrong?<sup>58</sup>

Not only was he especially emphatic and vehement in his denunciation of war, but went so far as to organize his followers into a strictly disciplined militant band, whose aim it was to stop aggressive war and die, if necessary, in defense of its victims.<sup>59</sup>

As a member of the underprivileged class, Mo Tzu was diametrically opposed to the aristocratic leanings of both the Confucians and Taoists. He had no great love for such arts as dancing, poetry, music, and those other refinements of life. Such things were detrimental to the economy of the people, who had to pay with their blood and sweat for all those costly performances of the nobles.<sup>60</sup> The improverish-

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<sup>58</sup>Fitzgerald, op. cit., pp. 97-98.

<sup>59</sup>Liu Wu-Chi, loc. cit.

<sup>60</sup>Fitzgerald, op. cit., p. 97.

ment of the country was, in Mo Tzu's eyes, one of the greatest evils, which brought not only misery upon the people, but, also, a curse from Heaven. His was an effort to stimulate cooperation, to eliminate counter-efforts and their waste, and to build up a maximum of production. He would cut down the expenditures of the upper class and, in general, would curtail consumption to needs.<sup>61</sup> Attacking the lavish burials of his time, Mo Tzu wrote:

Even when an ordinary person dies, the expenses of the funeral are such as to reduce the family almost to beggary. But when a ruler dies, by the time enough gold and jade, pearls and precious stones have been found to lay by the body, wrappings of fine stuff to bind round it, chariots and horses to inter with it, and immense quantity of tripods and drums, jars and bowls, halberds, swords, screens, banners, and objects in ivory and leather to bury in the tomb, the treasuries of the state would be completely exhausted.<sup>62</sup>

Mo Tzu not only preached but lived a life of rigid discipline and self-sacrifice. He had a strong belief that virtue would bring prompt reward, and opposed fatalism as heretical. His final test for any line of conduct was whether it conformed to the will of Heaven, omniscient and omnipotent, advocating a renewed Sinitic faith, using the ancient

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<sup>61</sup>Waley, op. cit., pp. 124-125.

<sup>62</sup>Liu-Wu-Chi, op. cit., p. 45.

Chinese religion as the motivating force for his doctrine.<sup>63</sup>

To those of his time, however, Mo Tzu offered a doctrine obviously incapable of application, no matter how admirable, and his thought to those who determined the trend of his times appeared both unreal and meaningless. Mohism was, therefore, discredited as being out of contact with the realities of those times, and died, never again to play an important part on the Chinese scene.

#### VI. HSUN TZU

One thinker during those difficult days, Hsun Tzu, a young contemporary of Mencius, differed from the Confucians in general and Mencius in particular, when he declared that human nature was essentially evil.<sup>64</sup> Though usually rated as a Confucian, Hsun Tzu's thought cannot be so completely categorized; some of his more outstanding contentions, consequently, provided a foundation for the more fully evolved tenets of the later Legalists. It was not too great a distance for logic to span between his beginning premise that man was by nature evil, and the concluding position that,

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<sup>63</sup>Liu Wu-Chi, op. cit., p. 46.

<sup>64</sup>Homer H. Dubs (trans.), The Works of Hsuntze (London: Arthur Probsthain, 1928), p. 301.

being thus, strong laws had to be, by necessity, implemented in order to compel right conduct. Hsun Tzu accurately projected the impacted image mankind compelled onto the more receptive natures of his time, declaring:

The nature of man is evil; his goodness is only acquired training. The original nature of man today is to seek for gain. If this desire is followed, strife and rapacity results, and courtesy dies. Man originally is envious and naturally hates others. If these tendencies are followed, injury and destruction follows; loyalty and faithfulness are destroyed. Man originally possesses the desires of the ear and eye; he likes praise and is lustful. If these are followed, impurity and disorder results, and the rules of proper conduct (Li) and justice (Yi) and etiquette are destroyed. Therefore to give reign to man's original nature, to follow man's feelings, inevitably results in strife and rapacity, together with violations of etiquette and confusion in the proper way of doing things, and reverts to a state of violence. Therefore, the civilizing influence of teachers and laws, the guidance of the rules of proper conduct (Li) and justice (Yi) is absolutely necessary.<sup>65</sup>

A realist, expressing that more practical aspect found so often dominant in the Chinese national character, Hsun Tzu held that it was futile to cling to the past, and rebuked those who refused to open their eyes to the rampant conditions which ruled their land. He argued:

Now suppose we try to remove the authority of the prince, and be with but the reforming influence of the rules of proper conduct (Li) and justice (Yi); suppose we try to remove the beneficent control of the laws and the government, and be without the restraining influence

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<sup>65</sup>Dubs, Ibid.

of punishments. Let us stand and see how the people of the country would behave. If this were the situation, then the strong would injure the weak and rob him; the many would treat cruelly the few and rend them. The whole country would be in a state of rebellion and disorder. It would not take an instant to get into this condition. By this line of reasoning, it is evident that the nature of man is evil and that his goodness is acquired . . . The man who is versed in the ancient times certainly sees its evidences in the present . . . Now Mencius says: Man's Nature is good. This is without discrimination or evidence. A person can sit and discuss it, but he cannot rise and establish it; he cannot act and exhibit it. Isn't this extraordinarily erroneous?<sup>66</sup>

Hsun Tzu recognized the nature of the all-pervading malady that afflicted the Chinese mind, and sought rectification through what he professed to be a return to the sagely rule of antiquity, relegating to those early rulers a method of government quite at odds with the traditional Confucian understanding of their part in that past. Expanding upon this basic theme, Hsun Tzu continued:

The original nature of man today is evil, so he needs to undergo the instruction of teachers and laws, then only will he be upright. He needs the rules of proper conduct (Li) and justice (Yi), then only will there be good government. But man today is without good teachers and laws; so he is selfish, vicious, and unrighteous. He is without the rules of proper conduct (Li) and justice (Yi), so there is rebellion, disorder, and no good government. In ancient times the Sage-Kings knew that man's nature was evil, selfish, vicious, unrighteous, rebellious, and of itself did not bring about good government. For this reason they created the rules of

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<sup>66</sup>Dubs, Ibid., pp. 308-309.

proper conduct (Li) and justice (Yi); they established laws and ordinances to force and beautify the natural feelings of man, thus rectifying them. They trained to obedience and civilized men's natural feelings, thus guiding them. Then good government arose and men followed the right Way (Tao).<sup>67</sup>

Though called a Confucian due to his association with those of that school, Hsun Tzu expressed those distinguishing doctrines which later proved to be the greatest weapons in the hands of the politically more powerful school, the enemy Legalists, and as a consequence can be considered, rather, a forerunner to that school. However, his influence upon later Confucianism cannot be denied. The Empire as reorganized following the Ch'in Dynasty professed to be based upon moral authority, not military force and legal sanction. Confucianism was then the foundation of Chinese society. Yet, legal penalties, the severe laws, were forever embraced as part of that system.

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<sup>67</sup>Dubs, Ibid., p. 302.

## CHAPTER III

### THE SCHOOL OF LAW

Emerging from the northern states, the School of Law (Fa Chia), also called Legalist, was amoral and did not seek a moral basis for human conduct and the organization of society, conquering by sheer political force rather than through strength of argument.<sup>1</sup> Agreeing with Hsun Tzu that man was by nature, evil, they held that strict and equal punishments should be meted out to all transgressors of law, irrespective of rank and class.<sup>2</sup> They rejected all appeals to tradition, and welcomed Hsun Tzu's distrust of the characteristically Confucian clinging to that past.<sup>3</sup> Practical statesmen rather than philosophers, they believed that power or "circumstance" (shih), statescraft, or the art of government (shu), and laws (fa) were the three indispensable requisites for successful rule. The School of Law was never a real

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<sup>1</sup>Arthur Waley, Three Ways of Thought in Ancient China (New York: Doubleday and Company, Inc., 1956), p. 151.

<sup>2</sup>Derk Bodde (trans.), Fung Yu-lan: A History of Chinese Philosophy (second edition; Princeton: Princeton University Press, 1952), I. 325-326.

<sup>3</sup>Ibid., p. 316.

<sup>4</sup>Ibid., p. 312.

school in the sense that it claimed a founder; rather, it represented the outcome of various currents of thought, which, in their practical application, stressed the importance of law in those turbulent times.<sup>5</sup> The Legalists were unwilling for any state to go on indefinitely with a despot governing according to whim. They wanted codes of laws, written and well known to all, and strictly enforced.<sup>6</sup> Typical Legalist logic expounded:

Of old, people lived densely together and all dwelt in disorder, so they desired that there should be a ruler. However, why the empire was glad to have a ruler, was because he would create order. Now, having rulers but no law, the evil is the same as if there were no rulers, and having laws that are not equal to the disorders, is the same as if there were no law. The empire does not feel tranquil without a prince, but it takes pleasure in being stronger than the law, and thus the whole world is perturbed. Indeed, there is no greater benefit for the people in the empire than order and there is no firmer order to be obtained than by establishing a prince; for establishing a prince, there is no more embracing method than making law supreme; for making law supreme, there is no more urgent task than banishing villainy, and for banishing villainy, there is no deeper basis than severe punishments. Therefore those, who attain supremacy, restrain by rewards and encourage by punishments, in order to abolish punishments.

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<sup>5</sup>Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 106.

<sup>6</sup>Fung Yu-lan, op. cit., p. 321.

<sup>7</sup>J.J.L. Duyvendak (trans.), The Book of the Lord Shang (London: Arthur Probsthain, 1928), pp. 232-233.

## I. ORIGINS

Wei. According to most accounts, the School of Law, or Legalists, was first founded in the state of Wei (Liang).<sup>8</sup> It was during this time that the Chou emperor, recognizing the growing power of Wei, first authorized its ruler and the rulers of the other feudal states to assume the title "king," rather than "duke." In this period of the Warring States there were several "academies," or groups of scholars, which helped to crystalize the Hundred Schools of philosophy and consolidate Legalist doctrine. One, in the state of Wei, was at the court of King Hui (370-319 B.C.), who, having been repeatedly defeated by both Ch'i and Ch'in, and his crown prince having been made prisoner, had been obliged, subsequently, to cede to Ch'in all the territory in his possession west of the Yellow River.<sup>9</sup> King Hui had adopted the royal title in 335 B.C. In his old age, frightened by threat of further ruin, he turned to the scholars for the preservation of his kingdom, encouraging these men to come to his court. Here came Mencius, who was greeted

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<sup>8</sup>Liu Wu-Chi, op. cit., p. 107.

<sup>9</sup>Waley, op. cit., p. 89.

by the king in a well-known conversation beginning:

Venerable sir, since you have not counted it far to come here, a distance of a thousand li, may I presume that you are likewise provided with counsels to profit my kingdom?

Mencius replied, "Why must Your Majesty use that word 'profit'? What I am 'likewise' provided with, are counsels to benevolence and righteousness, and these are my only topics."<sup>10</sup>

It can be supposed that some of the ideas of the School of Law were developed in this intellectual sphere.

Ch'i. Another center of scholars, previously mentioned, was the celebrated academy in the state of Ch'i, lying to the east. Here, during the second half of the fourth century B.C. and at the beginning of the third century, were assembled several of the leading minds of the times.<sup>11</sup> These scholars lived in a kind of academy which King Hsuan (319-301 B.C.) of Ch'i had built for them, and where they received rich subsidies. There were at least seventy-six of these privileged scholars belonging to this "Association of the Hua Mountain."<sup>12</sup> It

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<sup>10</sup>James Legge (trans.), The Four Books: The Works of Mencius (n.p., n.d.), pp. 429-430.

<sup>11</sup>Liu Wu-Chi, op. cit., p. 65.

<sup>12</sup>Ibid.

is known that Hsun Tzu came there, probably as a young man,<sup>13</sup> and through his expositions forms a link to the later, more mature Legalists. In the highly reliable work that carries his name, frequent reference is found to ideas as formulated in the Legalist work, The Book of Lord Shang.<sup>14</sup> It is said that Han Fei Tzu, often called the greatest of all the Legalists, was Hsun Tzu's pupil, along with Li Ssu, the Ch'in minister, who eventually betrayed him.<sup>15</sup>

Li K'uei: The Kuan Tzu. Another earlier source to Legalist doctrine is to be found in the person of Li K'uei, minister to Marquis Wen of the state of Wei, during the period 424-387 B.C., and author of the code called Fa Ching (Justice Classic), the ancestor of all later Chinese codes.<sup>16</sup> Li K'uei emphasized many of the policies stressed in the Kuan Tzu Book, reputed to be the oldest of the surviving Legalist scriptures, which

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<sup>13</sup>Ibid.

<sup>14</sup>Homer H. Dubs, (trans.), The Works of Hsuntze (London: Arthur Probsthain, 1928), p. 289.

<sup>15</sup>Joseph Needham, Science and Civilization In China (Cambridge: Cambridge University Press, 1956), II, 205.

<sup>16</sup>Ibid., p. 523.

appeared about this time.<sup>17</sup> In the section titled, "On Governing the People," it advised:

Place the state on an unshakable foundation; accumulate (grain) in inexhaustible granaries; hoard (other commodities) in storehouses that are too great to be drained; issue decrees as if from a spring of flowing water; see that the people (officers?) are engaged in suitable tasks that are above criticism; make clear the road to certain death (punishment for crimes); open the door to assured glory (rewards for worthy deeds); attempt nothing which cannot be achieved; desire nothing which cannot be obtained; adopt no policy which cannot be continued for a long time; do not do anything which cannot be repeated.<sup>18</sup>

Accomplishments most often credited to Li K'uei are that he surveyed the amount of land available, and stimulated vigorous cultivation, bringing about the utmost use of the strength of the land, causing increase in its yield.<sup>19</sup> He established a control system that brought about an equitable price for grain in the state, by purchase and storage in years of good harvest, followed by sale and distribution in years of famine. He said that if grain is very "light" (cheap), then it is harmful to the farmers, and that if it is very "heavy" (dear), then

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<sup>17</sup>Waley, op. cit., p. 154.

<sup>18</sup>Lewis Maverick (ed.), T'an Po-fu and Wen Kung-wen (trans.), The Kuan-tzu (New Haven: Far Eastern Publications, 1954), p. 33.

<sup>19</sup>Ibid., p. 12.

it is harmful to the consumers.<sup>20</sup>

## II. THE STATE OF CH'IN

The Lord of Shang. Shang Yang, also called Kung-sun Yang (380-338 B.C.), was the most prominent member of the Legalist School in the next generation. He was one of the earliest exponents of the School of Law, being for twenty years a minister of the state of Ch'in.<sup>21</sup> As a young man he had moved among the nobles of the state of Wei, distinguishing himself in the service of the Chancellor, Kung-shu Tao, who, thereupon had recommended to King Hui of Wei that Shang Yang succeed him upon his death. Not only, however, did the king deem him totally incapable of succeeding his master in high office, he had not even seemed it worth his while to have him killed in accordance with the dying minister's alternative request.<sup>22</sup> Spurned by his king, Shang Yang had left his native country of Wei, and traveled to the militaristic western land of Ch'in, where he obtained office in 359 B.C., and became

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<sup>20</sup>Ibid.

<sup>21</sup>Needham, op. cit., p. 205.

<sup>22</sup>Charles P. Fitzgerald, China: A Short Cultural History (London: The Cresset Press, 1954), p. 101.

prime minister in 356 B.C. His Legalist ideas were welcomed, and he was primary in strengthening that state.<sup>23</sup>

Book of the Lord Shang. While it is not likely that Shang Yang wrote anything himself, the book with his name survives.<sup>24</sup> Called Book of the Lord Shang (Shang Chou Chu), it was the chief authority for the Legalists. There is little doubt that the propositions set forth in it were taken from his policies, resulting in the rise of Ch'in to supreme imperial power.<sup>25</sup> In it Shang Yang argued that the perfect, or ideal, prince was not a frequent occurrence, and that, this being so, the authority of the sovereign could only be upheld by severe and rigid laws. The rule of law, to be effective, must hold sway for all.<sup>26</sup> Thus, even the reign of a weak and ineffectual prince would not be the signal for intrigues and rebellion, for the law would operate irrespective of the character of the ruler, and would shield the prince from his mistakes.<sup>27</sup> Concern-

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<sup>23</sup>Ibid.

<sup>24</sup>Liu Wu-Chi, op. cit., p. 109.

<sup>25</sup>Ibid.

<sup>26</sup>Duyvendak, op. cit., p. 262.

<sup>27</sup>Ibid., p. 278.

ing rule and law, he wrote:

The rulers of the present day all desire to govern the people, but their way of helping them is disorderly, not because they take pleasure in disorder, but because they rest on antiquity, and do not watch for the needs of the times; that is, that the ruler models himself on antiquity; and, as a result, is hampered by it; subordinates follow the present and do not change with the times, and, when the changes in the customs of the world are not understood, and the conditions for governing the people are not examined, then the multiplication of rewards only leads to punishments, and the lightening of punishments only eliminates rewards. Indeed, the ruler institutes punishments, but the people do not obey; his rewards are exhausted, but crimes continue to increase, for the people in their relation to the ruler, think first of punishments and only afterwards of rewards. The sage's way, therefore, of organizing a country, is not to imitate antiquity, nor to follow the present, but to govern in accordance with the needs of the times, and to make laws which take into account customs. For laws, which are established without examining people's conditions, do not succeed, but a government, which is enacted fittingly for the times, does not offend. Therefore, the government of the sage-kings examined attentively the people's occupations and concentrated their attention on unifying them and on nothing else.<sup>28</sup>

The teaching in the Book of Lord Shang was strongly opposed to the ideals of the feudal world and was revolutionary in nature.<sup>29</sup> It did not hesitate to teach a kind of social revolution directed from the ruler, alone above the law. The hereditary feudal aristocracy was an anachronism to be discarded and replaced by a hierarchy of sol-

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<sup>28</sup>Ibid., pp. 237-238.

<sup>29</sup>Needham, op. cit., p. 208.

diers, fitted to rule through merit acquired on the battlefield. Agriculture and war were the two pillars forming the support for national power.<sup>30</sup> The Lord of Shang advised:

Bring about a condition where people find it bitter not to till, and where they find it dangerous not to fight. These are two things, which filial sons, though they dislike them, do for their fathers' sake, and loyal ministers, though they dislike them, do for their sovereign's sake. Nowadays, if you wish to stimulate the multitude of people, to make them do what even filial sons and loyal ministers dislike doing, I think it is useless, unless you compel them by means of punishments, and stimulate them by means of rewards. . . . Therefore, my teaching is to issue such orders that people, if they are desirous of profit, can attain their aim, only by agriculture, and if they want to avoid harm, can only escape it by war. There will be no one within the borders, who will not devote himself at first to ploughing and fighting, in order thereby later to obtain that which gives him pleasure. Therefore, though the territory may be small, the produce will be plentiful, and though the population may be sparse, the army will be strong. If one can achieve these two things within the territory, then the road to becoming a lord-protector or king of the whole empire is fully prepared.<sup>31</sup>

The teaching of music, history, and philosophy, regarded by Confucius as regulative arts, were called by the Legalists a poison to corrupt the people and ruin the kingdom; for the ruler, to succeed, must have great strength, giving rise to supremacy.<sup>32</sup> The Legalist had little use

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<sup>30</sup>Duyvendak, *op. cit.*, p. 185.

<sup>31</sup>*Ibid.*, pp. 325-326.

<sup>32</sup>*Ibid.*, p. 197.

for tradition; he felt himself hampered by the old customs and immemorial institutions, by the privileges of the noble classes, barriers almost unsurmountable. Instead of drifting along the old ways, he realized, new systems, new methods of government had to be created. In the Book of Lord Shang it was reasoned:

To have people dying of hunger and cold, and to have unwillingness to fight for the sake of profit and emolument, are usual occurrences in a perishing state. The six parasites are: rites and music, odes and history, moral culture and virtue, filial piety and brotherly love, sincerity and faith, chastity and integrity, benevolence and righteousness, criticism of the army and being ashamed of fighting. If there are these twelve things, the ruler is unable to make people farm and fight, and then the state will be so poor that it will be dismembered. If these twelve things come together, then it may be said that the prince's administration is not stronger than his ministers and that the administration of his officials is not stronger than his people. This is said to be a condition where the six parasites are stronger than the government. When these twelve gain an attachment, then dismemberment ensues. Therefore to make a country prosperous, these twelve things should not be practised, then the state will have much strength and no one in the empire will be able to invade it. When it keeps its soldiers in reserve and does not attack, it will certainly become rich.<sup>33</sup>

The Experiment. They, therefore, determined to root-out all cultural influences, substituting for moral virtue the club of cruel law. Penalties must be severe, even for

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<sup>33</sup>Ibid., pp. 256-257.

lighter crimes, so that great crimes need never be committed.<sup>34</sup> Never had this idea of penalizing law any real relation to the conceptions of justice that lived in the hearts of the people; rather, it was law deemed expedient for the government's centralizing and imperialistic tendencies; more, it was the expression of the state's own growing self-consciousness. When publishing the laws was urged, it was not an expression of the popular wish to safeguard the people's rights and privileges for the future; rather, it was the government, itself, that desired their publication as a safeguard to its own power, as it expected that the laws would be better observed if people knew exactly what punishments the non-observance would entail. Consequently, to have a deterrent effect, the laws had to be severe.<sup>35</sup>

In this connection, the Chinese historian Ssu-ma Chien in his Shih Chi (Historical Record) recounts how, following Shang Yang's council, King Hsiao of Ch'in established the mandate by which he altered the laws:

He ordered the people to be organized into groups of fives and tens mutually to control one another and share one another's punishments. Whoever did not denounce a culprit would be cut in two; whoever denounced a culprit would receive the same reward as he,

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<sup>34</sup>Ibid., p. 60.

<sup>35</sup>Needham, op. cit., p. 214.

who decapitated an enemy; whoever concealed a culprit would receive the same punishment as he, who surrendered to any enemy. People, who had two males or more (in the family), without dividing the household, had to pay double taxes. Those, who had military merit, all received titles from the ruler, according to a hierarchic ladder. Those, who had private quarrels, were punished according to the severity of their offence. Great and small had to occupy themselves with united force, with the fundamental occupations of tilling and weaving, and those who produced a large quantity of grain or silk, were exempted from forced labor. Those, who occupied themselves with secondary sources of profit, and those who were poor through laziness, were taken on as slaves. Those of the princely family, who had no military merit, could not be regarded as belonging to the princely clan. He made clear the distinctions between high and low, and between the various ranks and degrees, each according to its place in the hierarchy. He apportioned fields, houses, servants, concubines, and clothes, all differently, according to the families. Those who had no merit, though they might be rich, had no glory whatever.<sup>36</sup>

The School of Law maintained that morality could not be taught, and regarded all hope of good government by moral regeneration as futile. It aimed at government by average rulers over men, who were inclined to do evil. More was needed than merely the restraining and guiding influence of li, the rules of good behavior, which presupposed the moral example of the ruler; rather, the law was needed with its compelling power. Confucius had held the old belief in the influence of the sage-king to trans-

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<sup>36</sup>Duyvendak, op. cit., p. 187.

form the world: "He who exercises government by means of his virtue may be compared to the north polar star, which keeps its place and all the stars turn towards it."<sup>37</sup>

Mencius no longer held to this belief, but for him the principles of jen (human heartedness) and yi (righteousness), which were practised by the sages, were able to transform mankind. He believed that all men were susceptible to moral influence: "He who nourishes the little belonging to him is a little man, and he who nourishes the great is a great man."<sup>38</sup> Morality, however, had to be cultivated. Even Hsun Tzu, although pessimistic about human nature, expected moral regeneration with the aid of li, the rules of right conduct, and law, alone, did not charm:

Treat those who are good who come to you, according to what is right and proper (li); treat those who are not good who come to you, with punishment. . . . For there has been bad government under good laws: but from ancient times to the present there has never been known to be a bad government under a superior man.<sup>39</sup>

The Legalist, however, held no concert with these opinions,

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<sup>37</sup>James Legge (trans.), The Four Books: Confucian Anaclets (n.p., n.d.), p. 12.

<sup>38</sup>James Legge (trans.), The Four Books: The Works of Mencius (n.p., n.d.), p. 882.

<sup>39</sup>Homer H. Dubs (trans.), The Works of Hsuntze (London: Arthur Probsthain, 1928), pp. 122-123.

and countered:

The benevolent (jen) may be benevolent towards others, but he cannot cause others to love. From this I know that benevolence and righteousness are not sufficient for governing the empire. A sage has a nature that insists on good faith, and he also has a law by which he compels the whole empire to have good faith.<sup>40</sup>

Sceptically, he doubted the regenerating influence of the sagely man:

Li Chu saw an autumn hair at a distance of more than 100 paces, but he could not transfer his sharp vision to others; Wu Huo was able to lift a weight of 1,000 chun, but he could not transfer his great strength to others. And, indeed, sages cannot transfer to others<sup>41</sup> the personality and nature that are inherent in them.

There has been preserved a vivid little conversation between Peng Meng, his student Pien Pien, and Sung Hsing, all scholars of the Academy at the gate of Ch'i, of which the beginning is interesting in this connection:

Pien-tzu sat reading the Shu-ching and said: "The period of Yao was one of great peace!" Sung-tzu said: "Was this due to the administration of the Sage?" Peng Meng, who stood at one side, breaking in replied: "This was due to the administration of a sage law, not to that of a sage man!"<sup>42</sup>

Relative to his accomplishments, Shang Yang is credited with bringing to an end the well and nine-field (ching

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<sup>40</sup>J.J.L. Duyvendak (trans.), The Book of the Lord Shang (London: Arthur Probsthain, 1928), 294.

<sup>41</sup>Ibid., p. 243.

<sup>42</sup>Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 111.

thien) system of land allotment and substituting private ownership.<sup>43</sup> He is said to have converted Ch'in from a conglomerate of small feudal territories into a highly centralized administrative unity. He retrenched the privileges of the noble families, even of those of the members of the princely clan, and instituted a hierarchy of officials who had distinguished themselves in warfare.<sup>44</sup> Severe punishments were enacted against brigands and the private fights of the semi-independent feudal cities, and a rigid bureaucratic organization into districts was instituted.<sup>45</sup> The unity of the old patriarchal family-system was attacked by discouraging people from living together, and mutual responsibility was introduced, with rewards for indictment of crime. Tilling the soil and weaving were encouraged, while measures were taken against trade.<sup>46</sup> In promoting agriculture, he suppressed merchants, artisans, and scholars. He tried to turn China back from a money economy to the use of grain as money. A new system

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<sup>43</sup> Joseph Needham, Science and Civilization in China, (Cambridge: Cambridge University Press, 1956), II, 213.

<sup>44</sup> Arthur Waley, Three Ways of Thought in Ancient China, (Cambridge: Cambridge University Press, 1956), p. 179.

<sup>45</sup> Maverick, op. cit., p. 436.

<sup>46</sup> Ibid.

of taxes was introduced and weights and measures were standardized. A land-reform was put into force.<sup>47</sup>

In a section of the Hsin-hsu by Liu Hsiang (first century B.C.), which has been preserved in Pei Yin's commentary on the Shih Chi, we find this concluding testimony:

Duke Hsiao of Ch'in defended the strongholds of the Hsiao Mountains and the Hsien-ku Pass, in order to extend the territory of Yung-chow. In the East he annexed Ho-hsi (Wei's territory west of the Yellow River) and in the North he occupied the Shang Chun (the territory comprised by the present Yen-an-fu and Yu-lin-fu in Shensi). His state became rich and the army strong and he dominated all the feudal lords. The House of Chou came under his control, and from all quarters of the Empire congratulations were addressed to Ch'in as the leader of the fighting states. Ch'in thereupon became so strong that in six generations it annexed all the feudal states; this likewise was the result of the plans laid by the Lord of Shang. Indeed the Lord of Shang worked with his whole person and had only one thought. He was entirely devoted to the public weal and did not think of himself; at home, he caused the people to be active in the work of agriculture and weaving, in order to enrich the state, and abroad, to attach importance to the rewards for fighting, so as to encourage brave soldiers; his laws and orders were enacted rigorously; in the capital he did not flatter nobles and favourites, and in the province he was impartial with regard to those who were distant, with the result that, when his orders were issued, forbidden actions stopped, when his laws were published, crime ceased.<sup>48</sup>

Han Fei Tzu (died 233 B.C.), a philosopher-statesman

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<sup>47</sup>Ibid.

<sup>48</sup>Duyvendak, op. cit., p. 86.

of the state of Han, which at that time was being endangered by Ch'in, grew so enthusiastic a Legalist that he first attempted to put his own state under the same political principles as were applied in the state of Ch'in, and failing, he went over to Ch'in to serve his former enemy.<sup>49</sup> Along with Li Ssu, Legalist administrator and friend who later betrayed him, Han Fei Tzu was the synthesizer of Legalist ideals which ultimately led to total Ch'in conquest.<sup>50</sup> The life of Han Fei Tzu consists almost entirely of extracts from his work.

Han Fei Tzu and Li Ssu had been students together under the great Hsun Tzu.<sup>51</sup> After Lu had been liquidated, Li Ssu became the prime minister to the king of Ch'in, who had not yet assumed the title of emperor. The king, having read some essays of Han Fei Tzu, and being startled by their logic; expressed the desire to meet the writer. Han Fei Tzu called upon the king, but Li Ssu, jealous and fearful of so brilliant a rival, set up an intrigue, whereby Han was poisoned.<sup>52</sup> Among his writings, Han Fei Tzu had said:

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<sup>49</sup>Derk Bodde (trans.), Fung Yu-lan: A History of Chinese Philosophy (second edition; Princeton: Princeton University Press, 1952), I, 320.

<sup>50</sup>Liu Wu-Chi, op. cit., p. 110.

<sup>51</sup>Waley, op. cit., p. 191.

<sup>52</sup>Maverick, op. cit., p. 15.

Those who do not know the right way to political order, always say, "Never change ancient traditions, never remove existing institutions." Change or no change, the sage does not mind. For he aims only at the rectification of government. Whether or not ancient traditions should be changed, whether or not existing institutions should be removed, all depends upon the question whether or not such traditions and such institutions are still useful for present-day political purposes.<sup>53</sup>

The triumph of the Legalists under the Ch'in empire was due to the fact that this school, alone, could point to a successful record of state policy. In the states of eastern China where the doctrines of Confucius, Lao Tzu and Mo Tzu, with their subdivisions, were applied, all were conquered by Ch'in. Thus, the rule of law proved to be the only effective doctrine which built a strong state, and other schools could only prove successful in undermining the ruler and destroying the country. Consequently, Han Fei Tzu justified the Legalist position as being founded on the facts of the world as it then existed, and could only rebuke those, such as the Confucians, who would try to employ the gentle methods of antiquity in such an age of violent disorder. He charged:

All stupid scholars in the world do not know the actual conditions of order and chaos but chatter nonsense and

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<sup>53</sup>W. K. Liao (trans.), The Complete Works of Han Fei Tzu: (London: Arthur Probsthain, 1939), p. 154.

chant too many hackneyed old books to disturb the government of the present age. Though their wisdom and thought are not sufficient to avoid pitfalls, they dare to absurdly reproach the upholders of tact. Whoever listens to their words, will incur danger. Whoever employs their schemes, will invite confusion. Such is the greatest height of stupidity as well as the greatest extreme of calamity. . . . Of course, the stupid men want order but dislike the true path to order. They all hate danger but welcome the way to danger. How do I know this? Indeed, severe penalty and heavy conviction are hated by the people, but by them the state is governed. Mercy and pity on the hundred surnames and mitigation of penalty and punishment are welcomed by the people, but by them the state is endangered. The sage who makes laws in the state is always acting contrary to the prevailing opinions of the age, but is in accord with Tao and Teh. (The natural course of the cosmos and to the standard of conduct derived from it.) Who understands Tao and Teh, will agree with the principles of justice but disagree with the commonplaces of the world. Who does not understand Tao and Teh, will disagree with the principles of justice but agree with the commonplaces of the world. If throughout All-Under-Heaven those who understand Tao and Teh are few, then the principles of justice will generally be disapproved.<sup>54</sup>

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<sup>54</sup>Ibid., pp. 123-125.

## CHAPTER IV

### THE TEST OF LEGALISM AS A POLITICAL SYSTEM

In 221 B.C., Ch'in, having triumphed over its rivals, including Ch'u, appropriated the remaining territory and symbols of the last Chou king. Ch'in took all, thus ending the feudal age and opening a new era for China.

The first ruler of Ch'in called himself Shih Huang Ti, or the "First Emperor." Shih Huang Ti is known as a great destroyer; he destroyed not only the kingdom of his rivals, but the whole of Chou--the political and social structure and literature of the past--even the heritage of his ancestors, his family, and himself.<sup>1</sup> However, that was not his intention. When he succeeded in his revolution and assumed the title, "First Emperor," it was his hope that the empire would be transmitted to his descendants for ten thousand years. He had hoped that his successors would commemorate his name and propagate it.<sup>2</sup> Unfortunately, his son and only successor

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<sup>1</sup>Derk Bodde (trans.), Fung Yu-lan, A History of Chinese Philosophy (second edition, Princeton: Princeton University Press, 1952), I, 15.

<sup>2</sup>Ibid., p. 404.

reigned only for five years before being destroyed.<sup>3</sup> The structure collapsed, and the imperial family was exterminated to the last man. This dismal fate of the Ch'in, however, did not trouble the first emperor. Shih Huang Ti died peacefully in 210 B.C., after thirty-seven years rule in the feudal kingdom of Ch'in and eleven years as emperor of China.<sup>4</sup> Ch'in Shih Huang Ti has always been regarded as the greatest tyrant in Chinese history.<sup>5</sup> Though the Ch'in dynasty lasted less than fifteen years, Shih Huang Ti earned the detestation of all succeeding generations of Chinese scholars for his burning of the books, his contempt for the past, and his iron rule.<sup>6</sup> However, the ideal of a unified empire, which is his true monument, cannot be denied him. A united China was left by him as a legacy for all succeeding dynasties.

#### I. THE APPLICATION OF LEGALIST POLICIES

The Ch'in empire had been built on the principles of

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<sup>3</sup>Herbert A. Giles, The Civilization of China (New York: Henry Holt and Company, 1911), p. 34.

<sup>4</sup>Ibid., p. 32.

<sup>5</sup>Fung Yu-lan, loc. cit.

<sup>6</sup>Liu Wu-Chi, A Short History of Confucian Philosophy (London: The Whitefriars Press Ltd., 1955), p. 117.

the Legalist School--the School of Law. The entire realm that Ch'in now held was, accordingly, reorganized on the Legalist basis that had worked so well in the feudal state of Ch'in. The ancient system of separate states governed by a hereditary ruler was abolished.<sup>7</sup> In place of the old forms of government, an appointive bureaucracy was installed.<sup>8</sup> This bureaucracy centered in the person of the emperor and was controlled by him.<sup>9</sup> The empire was divided into thirty-six, and later forty-one, provinces, each of these, in turn, being divided into prefectures.<sup>10</sup> Over each prefecture and province was placed a member of the bureaucracy: military governors and civil administrators, appointed by the emperor.<sup>11</sup> The imperial residence of Ch'in was in its hereditary capital in the valley of Wei, in a place called Hsienyang, near modern Sian in Shensi Province, along the Wei River.<sup>12</sup>

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<sup>7</sup> Joseph Needham, Science and Civilization in China (Cambridge: Cambridge University Press, 1956), II, 212.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Liu Wu-Chi, op. cit., p. 114.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

As soon as the new unified empire was established, strong measures were taken to circumscribe the old feudalism. The wealthy and powerful of the empire were required to move to the capital of Ch'in, and there maintain residence.<sup>13</sup> This was to better supervise and control the dangerous, reactionary element of the populace and, presumably, to aid in the prestige and wealth of the imperial capital.<sup>14</sup> Across the river from the capital, away from the main body of the city, the emperor built a vast palace, which he called "Avon," described as being one of the wonders of the world. Fifteen years later it was to take three months to burn down.<sup>15</sup>

As is known, agriculture and war were the basic concerns of the Ch'in empire. In addition, Shih Huang Ti unified and simplified the Chinese written language.<sup>16</sup> With his unification of weights and measures, he greatly helped to unify the economic life of the country, aiding in the

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<sup>13</sup>Charles P. Fitzgerald, China, A Short Cultural History (London: The Cresset Press, 1954), p. 141.

<sup>14</sup>Ibid.

<sup>15</sup>Liu Wu-Chi, op. cit., p. 117.

<sup>16</sup>Arthur Waley, Three Ways of Thought In Ancient China (New York: Doubleday and Company, 1956), p. 193.

promotion of internal trade and communications.<sup>17</sup> Since feudalism was destroyed, holders of vast feudal estates were expropriated, and a system introduced for the distribution of farmland, instituting private ownership, lasting until 1949, or more than two thousand years.<sup>18</sup> The farmers were given more rights over their land than they had in feudal times, but were subjected to clearly specified taxes.<sup>19</sup> Merchants were discriminated against by means of sumptuary and other laws. Revolution was discouraged.<sup>20</sup> Ch'in required that arms belonging to the feudal lords be confiscated. These were melted down into huge bells and statues.<sup>21</sup> The people were forbidden to possess any kind of arms, aside from knives needed in the kitchens.

Since the empire had been built on Legalist principles, an effort was made to give them dominance and stifle the free discussion that had characterized the period of the Warring States.<sup>22</sup> One Ideology, One Emperor, One Em-

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<sup>17</sup>Ibid.

<sup>18</sup>Needham, op. cit., p. 213.

<sup>19</sup>Ibid.

<sup>20</sup>Fitzgerald, op. cit., p. 139.

<sup>21</sup>Liu Wu-Chi, op. cit., p. 114.

<sup>22</sup>Fung Yu-lan, op. cit., p. 16.

pire--one body of laws and one set of theories--were what had been established for the empire. For this reason the books were burned and large numbers of scholars were killed.<sup>23</sup> The only books allowed to exist were those written by the Legalists, books dealing with medicines, divination, agriculture, and the official history of the state of Ch'in.<sup>24</sup> The memory of the past, with its many political discussions, the Legalist believed, should not be allowed to linger on; rather, the past should be wiped-out and references to it forbidden.

However, this loss, it should be remembered, was not so great as might be supposed. Copies of all books were preserved in the imperial palace.<sup>25</sup> In addition, scholars and others hid books between the walls of their homes, and some men preserved them by memory.<sup>26</sup> When conditions finally permitted, after the storm was over, once more these works were committed to writing. They, thus, became as they are known today.

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<sup>23</sup>Giles, loc. cit.

<sup>24</sup>Ibid.

<sup>25</sup>Fung Yu-lan, op. cit., p. 15.

<sup>26</sup>Fitzgerald, op. cit., pp. 145-146.

How much of this first empire was the result of the work of Shih Huang Ti, and how much resulted from the work of Li Ssu, his prime minister, it is very difficult to say. The historian Ssu-ma Chien credits Li Ssu primarily.<sup>27</sup> Both had a share in the organization of the regime. It was said that Shih Huang Ti worked indefatigably, handling a hugh volume of reports daily.<sup>28</sup>

The First Emperor, Shih Huang Ti, wanted to make himself appear a divine being in the eyes of the people, and for this purpose he hid himself, mysteriously, from them.<sup>29</sup> In the vast palaces he had constructed, he moved secretly, with but one or two eunuchs knowing of his whereabouts.<sup>30</sup> When he went out no one was allowed to raise his eyes on his imperial person. He lived and worked in such great secrecy, traveling with such strict security precautions, that when, finally, he died, there was nobody who knew that the emperor was no longer of this world; for it

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<sup>27</sup>Ibid., pp. 141-142.

<sup>28</sup>Liu Wu-Chi, op. cit., p. 115.

<sup>29</sup>Fitzgerald, op. cit., p. 147.

<sup>30</sup>Ibid.

was held a crime, punishable by death, to report his movements.<sup>31</sup> He died in the eastern provinces, traveling, and not even the imperial courtesans knew that he had died.<sup>32</sup>

## II. THE FAILURE OF LEGALIST POLICIES

There developed a political reason for keeping secret the death of the emperor. The eldest son of Shih Huang Ti had been opposed to Li Ssu's methods against the scholars. He had opposed the Legalist principles. Finally, he had protested against the burning of the books and the murder of the scholars.<sup>33</sup> In consequence, he had been ordered to leave his father's court to reside with the army in the north at the frontiers.<sup>34</sup> He was exiled "abroad."

Upon the demise of the emperor, Li Ssu and the Chief Eunuch, Chao Kao, realized that if the Crown Prince succeeded to the throne, then they would be destroyed. If the death of the emperor became known, the Crown Prince and the Army of the North would march into the capital long before the Prime Minister, the eunuchs, and the dead body of the

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<sup>31</sup>Ibid.

<sup>32</sup>Waley, op. cit., p. 192.

<sup>33</sup>Fitzgerald, op. cit., p. 148.

<sup>34</sup>Ibid.

emperor would arrive. Accordingly, Li Ssu suppressed the sealed letter by which Shih Huang Ti had designated the prince his successor.<sup>35</sup> In its place, signed with a forgery by Li Ssu, was a secret order forcing the Crown Prince and the Commander of Chief of Ch'in, Meng T'ien, to commit suicide.<sup>36</sup> Following their deaths, the second son, regarded by all a coward, was placed on the throne. He was called Er Shih Huang Ti, the "Second Emperor."<sup>37</sup>

This palace intrigue had been made possible by Shih Huang Ti's mode of life. He was a tragic figure, and his death portended tragic consequences. It was fatal for the Ch'in Dynasty. The new ruler was a youth of twenty-one years with no experience or capacity. He entrusted all authority to the Chief Eunuch, who, in turn, dismissed all ministers and generals and replaced them by his own creations, who were eunuchs, also.<sup>38</sup> Finally, Li Ssu was purged, too.<sup>39</sup> Five years later, in 206 B.C., the second emperor

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<sup>35</sup>Ibid.

<sup>36</sup>Ibid.

<sup>37</sup>Giles, loc. cit.

<sup>38</sup>Fitzgerald, loc. cit.

<sup>39</sup>Ibid.

was killed by Chou Kao.<sup>40</sup> He was then twenty-six years old. Finally, the grandson of Shih Huang Ti was placed on the throne and became the third emperor. He reigned for forty-three days.<sup>41</sup> Then, he and his entire imperial family were exterminated by the rebel leader, Hsiang Yu, who was the chief rival of Liu Pang, founder of the succeeding Han Dynasty.<sup>42</sup>

Thus, there were, ultimately, two contenders for the imperial throne: Hsiang Yu, an aristocrat and popular hero, and Liu Pang, a common man, sometimes called a "bandit."<sup>43</sup> Liu Pang, finally, emerged the victor and founded Han.<sup>44</sup>

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<sup>40</sup>Giles, op. cit., p. 34.

<sup>41</sup>Fitzgerald, op. cit., p. 150.

<sup>42</sup>Ibid., p. 151.

<sup>43</sup>Liu Wu-Chi, op. cit., p. 117.

<sup>44</sup>It is interesting to note that Liu Pang, under the old regime, having been in charge of a group of convicts who had escaped, and being himself, therefore, doomed to die, deserted and placed himself at the head of one of those groups of "bandits," whose fortune it proved many times in subsequent centuries to found new dynasties.

## CHAPTER V

### SUMMARY AND CONCLUSIONS

The Ch'in dynasty, thus, lasted less than fifteen years: 221-206 B.C. It was one of the most important, though shortest, periods in the history of the Far East. Positive accomplishments were, first, that the large area into which the Chinese and their culture had spread in the Chou dynasty was wielded together for the first time under one centralized administrative system. It was now a Unified Chinese Empire. Secondly, the imperial system of Ch'in was based on an officially supported economic and social theory: the Legalist doctrine.

The Legalists appeared to have succeeded in every way, but in one aspect they failed in the chief endeavor: the permanent suppression of every rival doctrine, epitomized in the famous burning of the books and burying alive of the scholars in 213 B.C. In the reactions against the brutal reign of Ch'in, the Legalists suffered the fate they had meted out to others. Chia I, one of the more famous of his time, commented contemporaneously in his work, the Kuo Ch'in Lun, or the Faults of Ch'in:

When Ch'in faced south and rules over the empire there was once more a Son of Heaven. Immediately the innumerable multitudes of the people began to hope for

the peace to which they are inclined by nature. There was not one that did not give Ch'in their allegiance and regard him with respect. In this was the true principle of security, of enduring glory and the elimination of danger. But the King of Ch'in was of a based and greedy character. He relied upon his own judgement, did not trust ministers of proved ability, and was not willing to conciliate the nobility and the people. He multiplied the tortures and made the punishment more terrible. His officers governed with the greatest severity. The rewards and penalties were unjust. The taxes and levies were unbearable. The empire was crushed under forced labour, the officials could not maintain order, the hundred families (the people) were in the last extremity of misery, and the sovereign had no pity for them and gave them no help. Then crime broke out in every place and the Emperor and his subjects deceived each other mutually. The condemned were an innumerable multitude; those who had been tortured and mutilated formed a long procession on the roads (on their way to exile). From the princes and ministers down to the humblest people every one was terrified and in fear their lives. No man felt secure in his office; all were easily degraded.

So Chen She, without needing to be a sage like Tang or Wu (founders of the Shang and Chou dynasties), had only to wave his arms for the whole empire to answer like an echo.

When a man has the rank of Son of Heaven, and all the wealth of the empire as his riches, and yet cannot escape being massacred, it is because he has failed to distinguish between the means by which power is safeguarded and the causes which lead to disaster.<sup>1</sup>

Revenge was taken and Confucianism emerged the ultimate victor. Confucius had never desired that his doctrines receive the force of law. He did not desire that men be

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<sup>1</sup>Charles P. Fitzgerald, China, A Short Cultural History (London: The Cresset Press, 1954), pp. 149-150.

constrained by any fear of penalties. He believed that man could be taught by brilliant virtue. It was, however, the Legalist ideal of a single orthodox doctrine, alone deserving of governmental patronage and support, that survived to invest his doctrine with a dignity, a sanctity, never before enjoyed.

The succeeding Han dynasty was to make important changes in details of the system lasting four hundred years. A modified Confucianism was substituted for Legalism as the basis for state and society; a bureaucracy, whose members were appointed and supported by the central authority, destined to continue for the next two thousand. The essentials, however, of Ch'in were preserved in the succeeding Han dynasty. This achievement was not only of major importance in this history of the Far East, it is unique in the history of the world; in fifteen years Ch'in determined the destiny of a nation for the next two thousand years. In spite of occasional disunion, China has remained united for over two thousand years. Never in history has an area been held together, politically, for so long a time. Truly, Shih Huang Ti, by his bare hands, wielded together an empire.

When the revolution had run its full course the old order of things did not come back under another name. The

myths of the feudal did not return in their former sanctity and integrity. Many elements reasserted themselves, but they expressed themselves in other ways. Shih Huang Ti had dated, once for all, the order of things he overthrew. Therefore, the form of government came from the Confucian school, while its real substance retained most of the ideals of the Legalists. To be a scholar in the imperial age of Han was to be a Confucian. Taoism, popularly, emerged as a religion for the uneducated classes, while Confucian doctrines became sacred and was the basis for all education and public instruction. Mohism died, never again to be seriously considered. Such was the final outcome of the disputes in that strife-torn time.

## BIBLIOGRAPHY

### A. PRIMARY SOURCES

- Dubs, Homer H. (trans.). The Works of Hsun Tzu. London: Arthur Probsthain, 1928.
- Duyvendak, J. J. L. (trans.). The Book of the Lord Shang. London: Arthur Probsthain, 1928.
- Duyvendak, J. J. L. (trans.). Tao Te Ching, The Book of the Way and its Virtue. London: John Murry Ltd., 1954.
- Giles, Lionel (trans.). Taoist Teachings from the Book of Lieh Tzu. London: John Murray Ltd., 1947.
- Giles, Lionel (trans.). A Gallery of Chinese Immortals. London: John Murray Ltd., 1948.
- Legge, James (trans.). The Four Books: Confucian Analects, The Great Learning, The Doctrine of the Mean, The Works of Mencius. n.p., n.d.
- Legge, James (trans.). The Texts of Taoism: Tao Te Ching, Chuang Tzu, Thai Shang Kan Ying Phien, Ching Ching Ching, Yin Fu Ching, Jih Yung Ching. London: Oxford University Press, 1891; photolitho reprint, 1927.
- Laio, W. K. (trans.). The Complete Works of Han Fei Tzu. London: Arthur Probsthain, 1939.
- Maverick, Lewis (trans.). The Kuan Tzu. New Haven: Far Eastern Publications, 1954.
- Waley, Arthur (trans.). The Way and Its Power. London: Allen and Unwin, 1934.
- Wilhelm, Richard (trans.). The I Ching. Trans. C. F. Baynes. 2 vols. New York: Pantheon Books, Inc., 1950.
- Wilhelm, Richard and C. G. Jung (trans.). The Secret of the Golden Flower. Trans. C. F. Baynes. London: Kegan Paul, 1931.

## B. BIOGRAPHIES

- Bodde, Derk. China's First Unifier: A Study of the Ch'in Dynasty as Seen in the Life of Li Ssu. Leiden: E. J. Brill, 1938.
- Creel, H. G. Confucius, the Man and the Myth. New York: John Day, 1949.
- Dubs, Homer H. Hsun Tzu, the Moulder of Ancient Confucianism. London: Arthur Probsthain, 1927.
- Laertius, Diogenes. Lives of Eminent Philosophers. Trans. R. D. Hicks. 2 vols. London: William Heinemann, 1950.
- Lin Yutang (trans.). The Wisdom of Lao Tzu. New York, Random House, 1948.

## C. HISTORIES

- Chi Li. The Formation of the Chinese People. Cambridge: Harvard University Press, 1928.
- Creel, H. G. The Birth of China. New York: John Day, 1937.
- Fitzgerald, Charles P. China, A Short Cultural History. London: The Cresset Press, 1954.
- Giles, Lionel. The Civilization of China. New York: Henry Holt and Company, 1911.
- Latourette, Kenneth Scott. The Chinese, Their History and Culture. 2 vols. New York: Macmillan Company, 1934.
- Lin Yutang. My Country and My People. London: Heinemann, 1936.
- Needham, Joseph. Science and Civilization in China. 2 vols. Cambridge: Cambridge University Press, 1954, 1956.

## D. PHILOSOPHY

- Creeel, H. G. Chinese Thought from Confucius to Mao Tse-Tung. Chicago: University of Chicago Press, 1953.
- Fung Yu-lan. A History of Chinese Philosophy. Trans. Derk Bodde. 2 vols. Princeton: Princeton University Press, 1952, 1953.
- Fung Yu-lan. The Spirit of Chinese Philosophy. Trans. E. R. Hughes. London: Kegan Paul, 1947.
- Herbert, Edward. A Taoist Notebook. London: John Murray Ltd., 1955.
- Hughes, E. R. Chinese Philosophy in Classical Times. London, Dent, 1942.
- Liang Chi-chao. History of Chinese Political Thought in the Early Ts'in. London: Harcourt-Brace, 1930.
- Lin Mousheng. Men and Ideas--Chinese Political Thought. New York: John Day, 1942.
- Lin Yutang. The Importance of Living. London: Heinemann, 1938.
- Liu Wu-Chi. A Short History of Confucian Philosophy. London: Whitefriars Press Ltd., 1955.
- Richards, I. A. Mencius on the Mind. London: Kegan Paul, 1932.
- Suzuki, Daisetz Teitaro. A Brief History of Early Chinese Philosophy. Arthur Probsthain, 1914.
- Thomas, Elbert Duncan. Chinese Political Thought. New York: Prentice-Hall, 1927.
- Waley, Arthur. Three Ways of Thought in Ancient China. London: Allen and Unwin, 1939.
- Wang Gung-hsing. The Chinese Mind. New York: John Day, 1946.