

THE EARLY LEGALIST SCHOOL OF CHINESE POLITICAL THOUGHT

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General Introduction

IT has become a commonplace of comment that China is disunited. This may be mere carping criticism, yet the idea may be expressed in a positive form: China is remarkable in its diversity. Diverse are its people alike in language, stature, customs, diet, manner of living, political and social organization—in all that affects the thought of a people. At last it is being admitted that it is an ever changing country, altering from month to month in incalculable ways. Yet popular Western writers used to speak of it as changeless, forgetting that the foundation of its philosophy was a “Book of Change”. So, too, it was often customary to speak of Chinese thought as a unity, as if there were no diversity even between writers of different ages, much less between contemporary writers and thinkers. Frequently what has been styled “Chinese” thought has been merely “Confucian” thought, and this has often been derived merely from the “Four Books” with occasional reference to the “Five Classics”. Where practical observers noticed that current practice differed widely from the precepts of the Confucian classics, it was either attributed to the common failure of people to live up to their ideals or to the corruptions of modern Western influence. Yet a closer observation would show that the alleged theories were not always even the accepted ideals of all Chinese and further investigation would reveal that there has always been a great diversity in the thought of China.

Perhaps the foregoing is something of an overstatement, for the names of Lao Tse and Chuang Tse have been well known and there have been many translations of their works and some of the super-

ficial effects of the wide-spread Chinese Buddhism have been too obvious to have been overlooked entirely. Yet even these have sometimes been omitted in discourses on "Chinese" thought, and many have failed to realise that aside from these there has been a great diversity of thought.

In view of some of the questions agitating the country today one of the most interesting of the unorthodox schools of Chinese thought was that of the Fah Chia or early Legalist School of thought. It is generally admitted that their theories were the controlling intellectual influence in the short lived Ch'in Dynasty, and it must be remembered that that Dynasty in spite of its brief duration made a permanent impress on the political system of China.

A considerable number of writings, showing a considerable diversity of opinion on some points produced during or not long before this dynasty have been classified under this heading. These have been connected with the following names: Kuan Tse, Wei Yang (Prince of Shang), Shen Tao, Li Kui, Peng Meng, Shen Pu Hai, Yin Wen Tse and Han Fei Tse—to mention only the most prominent. Many modern writers have called in question the authenticity of nearly all these writings, but it is not disputed that the bulk of them were produced in the period indicated above and their value and interest is in no way dependent upon their authorship. The two most interesting names in the above list are Kuan Tse and Wei Yang, but their authorship of the works under their names has been particularly called in question, whereas the Kuan Tse is perhaps the best known though not the most typical of all the works of Fah Chia.

It would appear that no living critic is prepared to attribute the whole of the "Kuan Tse" to the great minister of Duke Huan, or indeed to maintain that the whole work was written during one period. Parts of it appear to have been written even later than the Second Century B. C. Hirth and Grube, however, appear to have considered that the bulk of the work was actually contemporary with Kuan Chung. Hu Shih, on the other hand, refers to it in a somewhat off-hand manner as a work of the Third Century B. C. with even later additions. Sze-ma Ch'ien, however, lists some chapters as the work of Kuan Tse, and Liang Ch'i Ch'ao somewhat grudgingly admits that two or three of these may have been the work of that statesman. Hsie Yu Liang takes as usual a more conservative

view and appears to regard Kuan Tse's claim to authorship quite seriously. But perhaps we may take the view of Harlez as not far from the truth, namely, that the bulk of the book was the work of the disciples of Kuan Chung, based on oral if not written tradition. This finds support in the fact that the descendants of Kuan Chung for many years held hereditary office in Ch'i, and may well have kept the doctrines of their famous ancestor as a tradition in the family until with the changing of times and the loss of position they put them in writing and made them known.

The only other name connected with the authorship of the Kuan Tse is Yo Yi, the minister of Chao, who held office from 260 to 270 B. C., whose name is coupled with that of Kuan Chung as the author of works studied by Chu-ko Liang. Yo Yi was certainly a great admirer of Kuan Chung as may be seen from the public sacrifices to the earlier statesman which he instituted after the conquest of Ch'i.

In any case it was not by accident that the name of Kuan Chung became associated with the writings which have gone for so many centuries under his name and the same may be said of the other reputed authors of the Legalist writings. A brief study of the careers of some of them may therefore prove one useful avenue of approach to the study of these works.

Some Legalist Statesmen

KUAN CHUNG, or Kuan Yi Wu first came into prominence in the disorders arising out of the disputed succession to the Dukedom of Ch'i, which finally ended in the establishment of Huan as Duke. Kuan had espoused the cause of a rival claimant who seemed to him to have a better legal right and on the defeat and death of his chief he fled to Lu. Pao Su, the friend of his youth, however, was the chief adviser of Duke Huan and pointed out to his sovereign that the services of his late enemy would be invaluable to their state. As the story goes it was feared that the rival state of Lu would not be willing that Ch'i should obtain the services of so able a minister, so that the request was made that the Duke of Lu would hand over Kuan Chung to Ch'i that he might suffer death for his "rebellion". In order to promote friendship between the states Lu agreed to do this and Kuan was sent over in a sort of cage. When,

however, he crossed the border into his native state he was immediately set free and given high office. All writers, ancient and modern, are agreed that the fame and prominence soon attained by Duke Huan and Ch'i were due mainly to the wisdom of the famous minister. In his "Historical Records" Sze-ma Ch'ien observes that it was the aim of Kuan Chung to "establish Ch'i along the sea shore, to ensure transportation, to enrich the state and increase the military power". Huai Nan Tse says: "In the time of Duke Huan the imperial dignity was at a low ebb, the feudal lords were oppressive, the barbarians were making inroads on the "Central States" (Chong Kuoh). Ch'i was a narrow state between the sea and the River: Duke Huan wished to rectify all this and thus came the book Kuan Tse." We have seen that this last remark cannot be taken literally, but the paragraph is a good summary of the aims and accomplishments of Kuan Chung. It is perhaps the economic activities referred to by Sze-ma Ch'ien that have chiefly impressed modern writers. He is said to have made statistical calculations showing that in a state of ten thousand chariots there would be ten million consumers of salt and that iron was also essential for all, the women requiring it for needles and the men for ploughs. Taxes followed and eventually state monopolies. The "Historical Records" refer to "taxes on fish and salt to succour the poor and to reward the wise and capable", but the effect of these policies was far reaching. The salt monopoly remains to this day a chief source of revenue in China, and as regards iron, not only did the products of Ch'i become essential to the other states of the Confederacy but as production increased it was exported ever further, so that Pliny remarks that "sericum ferrum" is the best. We shall have occasion to speak later of the account in the Kuan Tse of how he is supposed to have brought about the submission of Lu and Liang by his policy in relation to silk.

To an earlier generation, however, Kuan Chung was more famous for his chivalry and his military exploits than for his fiscal devices. As already mentioned it was largely due to Kuan Chung that Ch'i attained the hegemony of the semi-independent states which acknowledged the suzerainty of the Chow emperor. At the conference at which Duke Huan was appointed the first "Pa" or overlord of these states, Tso Mu Yi, a general of Lu, suddenly drew his sword and threatened the life of Huan unless he promised to re-

store certain territories conquered from Lu. The Duke assented, but afterwards was about to break the promise extracted by "force majeure", but he allowed himself to be persuaded by his minister that the reputation of holding to his word at all costs—of "swearing to his own hurt and altering not"—would be of more value to him than a few acres of his neighbour's territory. When the Hill Yung invaded Yen, Huan and Kuan marched to the rescue and drove off the barbarian invaders. The ruler of Yen escorted his rescuers back crossing with them into their own territory. This was contrary to feudal custom, but was put right by a present from Ch'i to Yen of the territory crossed. The victors then marched on the semi-barbaric state of Ch'u which had been gaining great power, but withdrew their forces when Ch'u promised to send tribute to the Chow Emperor. Many other stories tell of Kuan Chung's insistence on the maintenance of the correct feudal procedure. When the degenerate holder of the imperial title sent presents to the powerful Duke Huan, Kuan Chung insisted that his master should prostrate himself before the gifts of his feeble suzerain. Similarly he restrained the Duke from the performance of the Feng and Shan sacrifices as this was part of the imperial prerogative. He was no less punctilious in his own behaviour. In the fourth year of the Emperor Siang his younger brother endeavoured to dethrone him by calling in the aid of the Western barbarians. Siang called on the Duke of Ch'i to come to his assistance. In response Kuan Chung was sent with a large army and defeated the invaders. Very grateful for his assistance Siang wished to treat Kuan as one of the nobles of the empire, but the latter refused to have this honour thrust upon him, insisting that he wished to be looked upon merely as the minister of the Duke. On his death bed (B. C. 645) he warned his master against trusting three men who had acted in an unnatural way in relation to son, parent, and self respectively in order to gain their master's favour. His advice was disregarded with disastrous results. The greatness of Ch'i had come to an end.

Following Legge we may sum up the achievements of Kuan Chung thus: He was the first to strengthen the resources of Ch'i. He then proceeded to cultivate the good will of his neighbours. Under his direction Ch'i showed forbearance and generosity in external relations, it became an asylum of fugitives and a helper of the weak and oppressed. The Duke and his minister called as-

semblies of princes where all engaged to observe the statutes of Chow and to take common measures against the unruly. "There has probably been no second example on record in which the results of philosophic thought were so immediately and successfully connected with state management as that of Kuan Chung".

Confucius's high opinion of him is well known, but it may be worth while to quote his estimate as recorded in the "Analects": "The Duke Huan assembled all the prince together, and that not with weapons of war and chariots;—it was all through the influence of Kuan Chung. Whose beneficence was like his? . . . Kuan Chung acted as prime minister to the Duke Huan, made him overlord of all the feudal chiefs and united and rectified the whole empire. Down to the present day, the people enjoy the gifts which he conferred."

It is remarkable how different from this was the opinion of Mencius, who in his discourse with Kung-sun Chow seems to refer to Kuan Chung almost with contempt more than once. The explanation of this may lie in the fact that by Mencius's day the name of Kuan Chung had already become attached to a body of Legalist theories often strongly anti-Confucianist in tendency, although these theories may have had little to do with the statesman himself.

WEI YANG (c. B.C. 370-338) was a much less "sympathetic" character than Kuan Chung. He was also known as Kung-sun Yang, being the descendant of a Duke of Wei by a concubine. He was early raised to high office in the state of Wei. His ability was recognized by Kung-shu Tso, the chief minister of that state, but before he could promote him Kung fell ill. Visited by King Huei the dying man recommended his sovereign to make Yang his chief minister, but when he saw that his sovereign was disinclined to take that advice he recommended him in that case to kill Yang. This advice the king agreed to take so Kung informed Yang and recommended him to flee, but the latter replied that as the King had disregarded his advice in the first instance he was not likely to follow it in the second and so he remained where he was.

However, when he heard that Duke Hsiao of Ch'in had issued a decree inviting men of ability from any state to seek office under him, Wei Yang betook himself thither. The following account of subsequent events is largely based on the account in the "Historical Records".

Wei Yang sought an interview with the duke through his minister, Ching Chien. At the first interview the duke slept and was afterwards indignant with his minister for introducing such a bore. Yang informed Ching that he had spoken to the duke concerning the "Imperial Way", but promised to be more interesting if he would give him another opportunity. At the next interview the sovereign did not sleep and was not annoyed, but was nevertheless not really interested. Yang told the minister he had spoken of the "Royal Way". At the third interview Hsiao evinced interest but did not speak of employing Yang, who had spoken this time of the "Way of the Overlords". Yang assured Chin that the next interview would clinch the matter. This proved to be the case. Hsiao listened enthralled and the interviews continued for several days. For, as he afterwards told his confidant, the Emperors (Yao and Shun and their predecessors) were too remote for the duke to be interested in rivalling them, whereas he was vitally interested in "strengthening the state". For, as he had said, "The fool is interested in what has been accomplished, the wise man in what has not yet sprouted", and as he went on to say, "Those who speak of perfect virtue and charity do not fit the customs of the time; those who do great things do not make their plans with the crowd." Such sentiments could not be accepted by the conservative literati and Tu Chi and Kan Long did their best to prevent the duke from employing such an adviser. Wei Yang, however, merely observed to the duke that the learned were bound to make the most of what they had read, but at best it only fitted them for minor administrative position. The ruler, he held, must know how to change with the times: "The Three Dynasties had different rites and all made the country to prosper, the five 'Pa' had different laws and yet each was in his turn supreme. T'ang and Wu by breaking with the past overthrew the dynasties that had preceded them."

This view of matters appealed to the Duke of Ch'in and he made Yang minister. Soon new laws were issued. Capital punishment was decreed for those who did not report conspiracy and rewards for those who did; double taxes for families with more than two adult sons who did not set up separate households. Those who won military glory in the service of the state were to be rewarded, whilst those who engaged in private feuds were to be punished. To en-

courage agriculture and weaving those who were poor were penalised by being subjected to forced labour. Only those with national merit were to be permitted to display wealth.

In order to make the people realise that these laws were to be obeyed, the story runs that he had a thirty foot pole raised at the south gate of the market and promised ten talents of gold to any one who should carry it to the north gate. No one touched it, so he raised the reward to fifty talents. Then one man seemed to think it worth trying and removed the pole according to the edict and was duly rewarded. The people were much impressed, but still fell short of perfect obedience. Wei Yang told the duke that this was because the heir apparent was breaking the laws with impunity and insisted accordingly that he should be punished in the person of his tutor. The duke authorised this and thereafter "gold left on the road would not be stolen". Steps were taken to insure that the laws should be known by every man in the state, but all who questioned the laws were deported. This fate even befell some who presumed to send in a memorial praising the laws.

Having thus attended to the internal administration, the state of Wei was attacked; on the first occasion without important results. Three years later he divided Ch'in into thirty one "hsien" or counties. Five years later a severe defeat was inflicted on Wei and the Duke of Ch'in received the congratulations of the Emperor. Yang now insisted that either Ch'in must destroy Wei or Wei would destroy Ch'in. He led the armies of Ch'in against his native state. The forces of the latter were led by his sometime colleague, Kung Tse Chiu. That general was decoyed into a conference on the plea that old friendship and the mutual interests of Wei and Ch'in called for peace and cooperation. Kung was treacherously seized and put to death after which the conquest of Wei was an easy matter. Ch'in annexed the country beyond the river and fifteen cities were granted Yang as the fief of Shang, whence he is often known as Shang Yang. But the old families of Ch'in were growing more and more envious, as Yang's friend Chao Liang warned him. The proud minister replied that in the past Ch'in had had the culture of the Yong and Ti barbarians, but now had learned the "distinction between father and son, men and women" (that is, the distinctive marks of Chinese civilization). Chao Liang, however, pointed out

that already Shang Yang dared not go forth without ten chariots before and armed men behind.

Five months after this interview of the great minister with Chao Liang, Duke Hsiao died and was succeeded by his son. Friends of the former tutor easily persuaded the new Duke that the hated minister was meditating rebellion. Yang fled, but when one night he endeavoured to take refuge in a cottage in disguise it was refused as being against the laws of Wei Yang, which none dared disobey, to harbour strangers without notice or passport. He fled to his native state but it is not surprising that Wei refused to receive him. Shang Yang then returned to his own fief and raised troops, but he was defeated by the forces of Ch'in, captured, and killed by being dragged asunder by four chariots, harnessed to spirited steeds.

Few historians have ventured to say any good of Wei Yang, yet Chu-ko Liang the hero of the Three Kingdoms is stated to have said that a study of Shang Yang (perhaps referring to the writings under that name) was essential for politicians and statesmen. In any case his policy was largely followed by Chang Yi, Kung-sung Yi and Wei Jan, all famous ministers of the state of Ch'in, which under such direction eventually established its military despotism over the whole of China. L. Wieger calls him "the most important of the Legalists because he was able to put his theories into practice."

HAN FEI, unlike Kuan Chung and Shang Yang, is less famous for his deeds than for his writings, but of the actual authorship of much that goes under his name there is less dispute. He was a scion of the ducal family which for many centuries had ruled the state of Han. In his youth he studied under Hsun Ch'ing, and had as fellow pupil Li Se, who is said to have admitted Fei's mental superiority.

At a later date Han Fei having observed that his state was steadily losing ground, memorialised his ruler many times. The purport of these memorials was much the same as that of his other writings. What the government needed was to make clear laws, to enrich the state and to strengthen the military forces. To give office to the clever and learned was merely to cultivate maggots (or grubs such as destroy trees). These memorials contained more than a hundred thousand words, but the ruler declined to give office to their author. Reports of them, however, found their way to

Ch'in, the ruler of which was greatly impressed with them. "If I could meet with the author I would not mind dying", he is reported to have said to his minister, Li Se. The latter recognized his sometime fellow pupil as the author. When the King of Ch'in, later the First Emperor of the Ch'in Dynasty, heard this, he prosecuted the more vigorously his war against the state of Han. The ruler of Han who had persistently refused to employ Fei now sent him hastily to the King of Ch'in. The latter was delighted but hesitated to employ him himself. Then his ministers, Li Se and Yao Chia, spake thus to the king: 'Han Fei is a scion of the ducal family of Han. Now Your Majesty is planning to absorb all the principalities, but Fei cannot but favour Han rather than Ch'in on the grounds of natural affection. To keep him here for a long time and then send him back is merely to store up trouble for yourself. How much better to slay him through the process of law!' The king was partially persuaded and had Han Fei arrested and thrown into prison. Li Se then sent him poison as from the king. The prisoner requested a personal interview with the king, but when this was denied he took the poison. The king repented too late: when he sent to the prison orders for the release of Han Fei the latter was already dead.

Sze-ma Ch'ien, to whose records most of the above account is due, says of him that he carried to excess the idea of measuring things to distinguish between right and wrong, that he was hard and merciless and that though he based his teaching on "tao teh" he was very far from Lao Tse. It is generally considered that the political theories of the Legalist School found their culmination in the writings of Han Fei.

Lesser Legalist Statesmen.

SHEN PU HAI was a contemporary of Shang Yang. He was a native of the state of Chen and was minister to the Prince of Han for fifteen years, during which period he gave Han good government and security.

LI KUI was minister to Prince Wen of Wei. He persuaded his prince that all cases of litigation in that state should be decided by the ordeal of archery. The result was that the skill of the bowmen of Wei enabled that state to defeat Ch'in. He is more deserving

of fame, however, for his theories concerning the grading of taxes according to the possible yield of the ground, based on careful statistical calculations.

SZE CHIAO, also known as Sze Tse was a native of the state of Lu, and a disciple of Shang Yang, on whose death he fled to the state of Ch'u.

TENG TSE, according to L. Wieger, was the first Legalist. He was a contemporary of Lao Tse and was put to death by Tse Ch'an for criticising his new code of laws.

Little is known beyond the writings under their names or the theories attributed to them by others of Shen Tao (one of those styled "the Masters of Ki Sha"), of Yin Wen or of most of the minor Legalists whose theories will be discussed later. Of the careers of some of the "Tsung Huen Chia" it will be best to speak when discussing the theories they illustrate.

The Early Taoist Background of Legalist Theory

The practical experience and political exigencies of the statesmen discussed in the previous chapter doubtless had much to do with the development of Legalist theory, but as already stated the tendency of most modern and much ancient criticism has been to deny their authorship of much of the writing which has gone under their names. The actual authors of much of these books being obscure it may be assumed that they were not great original thinkers. We may therefore infer that there was a considerable trend of thought which tended in the general direction of Legalist theories. It may thus be concluded to have affinity with some other existing school of thought. The logical tendencies of Mohism might not be without connection with some aspects of Legalist thought, but this latter certainly did not tend in the direction of "Universal Reciprocal Love".

But indeed there is no mystery. Many if not all the writers now classed as Legalists were often defined as Taoists by older critics and historians. In view of the realism, often cynical and even sordid, of some of the Legalist writings this may seem surprising to those who have imagined the Taoists to have been mystics of a visionary and dreamy description. But as a matter of fact Taoism was not merely mysticism; it had in it in its greatest philosophers

an element of scientific realism as opposed to what they regarded as the Utopian idealism of the Confucianists.

The earliest extant Taoist work is the "Tao Teh Ching". The tendency of modern criticism is definitely to deny the authorship of Lao Tse, yet it is generally admitted to contain some quite early elements. It has often been regarded as a particularly mystical work. It must be admitted that parts of it are scarcely intelligible, yet other sections are related to this world in a fairly obviously practical and sometimes not too idealistic way.

Let us look at these extracts, mostly taken from the translations of Giles, Wieger and others:

"Empty the minds and fill the bellies; remove all initiative and strengthen the bones." (L. Wieger comments: "Pratiquement la tyrannie absolue est la consequence logique des principes de Lao-Tseu").

Heaven and Earth are not good to the beings they produce but treat them like straw dogs (Chap. 5)—"Following this example the Sage should not be good to the people he governs, but should treat them like straw dogs".

"Hold the people in ignorance, that makes for the safety of the country." (Chap. 65).

"If I were the king of a state I would put aside all the intelligent men and lead the people back to primitive ignorance; I would hinder all communications with neighbouring countries." (Chap. 18)

"A small state with a few people, so that each can hear the dogs and cocks of the rest. The people remain where they are without coming or going and die there of old age." ("Such," says Liang Ch'i Ch'ao, "was the Taoist ideal").

Abandon wisdom and discard knowledge and the people will be benefited a hundred fold."

"If the government is tolerant the people will be without guile. If the government is meddling there will be constant infraction of the law".

"The empire is a divine trust and may not be ruled. He who rules ruins. He who holds by force loses."

"Do nothing and all things will be done."

"I do nothing and my people will become good of their own accord."

“That which has no substance enters where there is no fissure, and so I know there is advantage in inaction.”

“Lao Tse said, ‘By government rule the country, in the employment of troops make use of the unexpected, by inaction seize the empire.’” (Yin Wen Tse)

In the next chapter quotations will be given from the Legalist writings showing how the idea of the Tao, of the spontaneous and natural way of the Universe, and the doctrine of “wu wei” or non-assertion, or absence of fussy or deliberate activity, entered into the theories of all the Fah Chia.