

THE EARLY LEGALIST SCHOOL OF
CHINESE POLITICAL THOUGHT

BY LEONARD TOMKINSON

THE TAO AND WU WEI IN THE LEGALIST WRITINGS.

THE word, "tao", has many meanings in the writings of the various Chinese philosophers of various ages, but to the Taoists it means the spontaneous, natural way of the universe, and that is perhaps its fundamental conception, from which the ideas which other philosophers have connected with the term have been derived. That is certainly the basic meaning of the word as used by the Legalists, through their emphasis on the idea of spontaneity varies, indeed it sometimes disappears. Where they do emphasize it, it is connected with the idea of "wu wei" or non-assertion. This idea, especially as applied to rulers, had a vogue far wider than the Taoists and Legalists. Even Confucius himself was influenced by it, and his followers were fond of quoting observations as to how the ancient sages merely "sat facing the south" and the whole empire was well ruled. The implications of the doctrine, however, as expounded by the Legalists differed considerably from the lessons drawn by Confucianists.

A classic exposition of some aspects of the practice of "wu wei" is the description of certain Legalist writers in the T'ien Sha P'ien appended to "Chuang Tse": "Public spirited and with nothing of the partisan, easy and compliant without any selfish partialities; capable of being led without any positive tendencies; following in the wake of others without any double mind; not looking round because of anxious thoughts; not scheming in the exercise of their wisdom, not choosing between parties, but going along with all; all such courses belonged to the Taoists of antiquity, and they were appreciated by P'eng Meng, T'ien P'ien and Shen Tao. When they

heard of such ways they were delighted with them. . . . The great Tao embraces all things but does not discriminate between them. They knew that all things have what they can do and what they cannot do. Hence they said 'If you select some you do not reach all, training will not reach in all directions, but the Tao is comprehensive.' Therefore Shen Tao discarded all knowledge and also all thought of himself; passivity was his guiding principle. . . . He said that the best knowledge was to have no knowledge. Conscious of his unfitness he took no charge, and laughed at those who valued ability and virtue. Remiss and evasive he did nothing and disallowed the greatest sages which the world had known. . . . He disregarded right and wrong, his only concern being to avoid trouble; he learned nothing from the wise and thoughtful and took no note of the succession of events, thinking only of carrying himself with a lofty disregard of everything. . . . What was the reason that he appeared thus complete doing nothing wrong? that whether in motion or at rest he committed no error and could be charged with no transgression? Creatures that have no knowledge are free from the troubles that arise from self-assertion and the entanglements that spring from the use of knowledge. Moving or at rest they do not depart from their proper course, and all their lives long they do not receive any praise. Hence Shen Tao said, 'Let me become like a creature without knowledge. Of what use are the minds of the sages and worthies. But a clod of earth never fails in the course proper to it.' So men of eminence and spirit laughed at him, saying 'The way of Shen Tao does not describe the conduct of living men; that it should be predicable only of the dead is strange indeed.''' (Legge—with emendations).

The reader may likewise feel that it is indeed strange that such views should have anything to do with the theories of such practical statesmen as those described in an earlier chapter. We shall have to show later how from such principles were deduced those doctrines of the importance of objective standards and unalterable laws which were the characteristic mark of the Legalist school. Here we may note that in general such inactivity and non-assertion as described in the above character were generally considered as proper to the sovereign rather than to his ministers. Yet not to him alone, for simplicity which might be considered one aspect of "wu wei" should characterise the people.

The general view of the Legalists seems to have been that the sovereign should reign rather than rule, but this view was founded on severely practical considerations. Thus the "Kuan Chung" says that a prince should practise calmness and non-assertiveness so that his ministers will not be able to assess his strong and weak points, his desires and dislikes, and so pretend to satisfy them. Thus "activity loses the throne, while calmness attains its goal." He shows that by doing away with all individual ideas and remaining silent a mysteriousness is brought about. This is desirable because "the strongest cannot assert his strength everywhere, the wisest cannot plan for every emergency. . . . The ruler who follows the way is as still as if he knew nothing and responds to circumstances like a statue."

Lu P'u Wei tells a story concerning Shen Pu Hai which illustrates this view-point: Chao Li, Marquis of Han, observed the pig selected for the sacrifice at the ancestral shrine. He decided that it was too small and ordered it to be removed. In a little while the official brought back the same animal. Chao Li asked if it were not the pig he had condemned as unfit. The official made no answer and was punished. His followers asked the Marquis how he had recognized it. The latter replied, "By its ear," for the animal's behaviour had shown that it was deaf. Shen who was present commented on the incident thus: "Deafness is recognized from the fact that the ear is the organ of hearing, blindness from the fact that the eye is the organ of sight, idle boasting may be recognized from the fact that the words should be seemly. If looking and listening are not put into action there will be no degrees of distinctness in what is seen and heard, by not seeking information the knowledge gained will be impartial. By dispensing with these three things, personal bias will not exist and order will prevail—otherwise there will be disorder. For there are limits to what can be seen, heard and known. A hundred years is not sufficient to hear all that has occurred within ten li, the clearest vision cannot penetrate the walls of a room, and the wisest cannot know every detail even in a palace covering only three mo. The wisest despise knowledge, the most benevolent forget benevolence, the most virtuous are not set upon virtue. Without word or thought calmly await events, and then to each event make the appropriate response. The part of the minister is activity, of the ruler inactivity."

The last sentence especially is reminiscent of a passage attributed to Shen Tao: "These are the respective paths of the sovereign and of his ministers:—the minister has duties, the sovereign has none; the sovereign ease and pleasure, his ministers toil and responsibility; the minister uses his utmost wisdom and strength to do his duties well, the sovereign does nothing but wait for the results. . . . If the sovereign delights to try to act well before his subjects, then his subjects will not dare to compete with him in well-doing lest they should seem to be rivalling him; all will praise what they know he favours, and if things go wrong they will blame their sovereign; this is the way to produce disorder. The wisdom of the sovereign is not bound to be superior to that of the whole multitude; if he uses that not wholly superior ability to try to surpass all his subjects, then they will make no efforts. But if his wisdom should surpass all, yet if he tries to undertake all the responsibilities of all his subjects, he will become exhausted and so deteriorate and become inferior."

These same ideas appear in the writings of Han Fei. In his chapter on "Displaying Authority" he says, "If the ruler shows pleasure there will be much trouble; if he shows dislike there will be hatred. . . . Let punishments and rewards descend as of themselves. . . . If the sovereign is not mysterious, his subjects will find out the causes of his actions; if things do not seem to happen inevitably people will seek out his tendencies. . . . Those who can be like heaven and earth are sages." Again he says, "A ruler who should try personally to investigate the work of all the government departments would find his time and strength insufficient. Further if such a ruler should depend on his sight then his subjects would pay attention to outward appearances; if he depended on his ears his officials would take care that things sounded right; if the ruler depended on his own thought then his ministers would make their schemes specious. It was because the former kings realised the inadequacy of these three methods that they gave up such personal and private efforts and distributed rewards and punishments according to laws and statistics."

There is a well known passage in Chuang Tse in which that philosopher describes how a certain pig-sticker was able to do his deed with one effortless thrust, because by studying the physical structure of the animal he was able to run his knife through the joints and along the line of least resistance. The doctrine of study-

ing in this case the psychology of the people and then following the line of least resistance was also applied to the science of government by some of the Legalists. In the chapter on "Paying Attention to Standards" in the "Kuan Tse" this is put somewhat crudely thus: "If the principles are not too lofty they can easily be put into practice." Again in the same compilation the observation is made that "The people hate death and like rewards; the ruler should recognise this and make use of it instead of trying to change." In discussing the methods of Kuan Tse, Sze-ma Chien recalls the story of the granting of the fiefs of Lu and Ch'i. Duke Chow enfeoffed Peh Ching with the territory which became the state of Lu. After three years the latter returned having tried to alter the habits of the people. The fief of Ch'i was granted to Duke T'ai who returned successful after five months, for he had used the customs and habits of the people and turned his efforts in the direction of making trade to flourish. These traditions, the historian observed, remained in Lu and Ch'i respectively and Kuan Chung followed the example of Duke T'ai. Kuan Tse is thus reported as saying, "The prosperity of Government depends on following the mind of the people, its failure in opposing their mind: the people hate toil and poverty and danger, so the ruler should seek to give them wealth and security." Similarly Shen Tao says, "All men have a mind to seek their own interests, to make use of this fact in employing them is to follow the Way of Nature (tao)."

We shall see later how some of the Legalists developed this idea in the direction of cynicism and Machiavellianism. In the Kuan Tse, however, the application of the idea of "tao" to government is often treated in a broader manner. From the third chapter of "External Teachings" we may quote the following passage in illustration of this: "The 'tao' is as the sun in the heavens and as his heart in man; wherefore it is said that he who has the ethereal essence lives and he who has not dies. . . . Establishing order by means of naming implies: loving and benefiting, profiting and making secure. These four come from the "tao." The ancient emperors used them and the empire was well governed. . . . Those who are timely win Heaven, those who are just win men The sage-kings did

not depend upon a show of force to protect their borders and yet there was peace on their frontiers and consequently good relations with neighbouring countries. For this again they had to promote suitable policies." Similar ideas are contained in the chapter entitled "On the Establishment of Government"; "The Earth is the basis of government, by which one can maintain order in the state; if this government is not just, secure and harmonious...the affairs of the state will not be conducted with equity...The Court is the instrument of justice, so when posts are conferred and filled according to justice the people are content, peaceable and submissive. In the contrary case government and order is impossible...The ancient kings who acquired an illustrious name, and rendered signal services and gained a fame which spread throughout the empire, which was not extinguished in after ages, would never have attained all this if they had not won the people. Today among all the rulers there is none that does not desire repose in leisure, great power in action, victory in combat and unshakeable strength in defence. But the most powerful seek to dominate the whole world while the weaker seek to preside at the confederation of princes, and yet they hardly trouble to win the hearts of the people and thus their fall is inevitable...So it is absolutely necessary to take account of the people...To win the people the best means is to render them services...and the principal service is to instruct them and govern them wisely,...to clothe the cold, nourish the hungry, be generous towards the poor, cover the naked and to provide for those who are deprived of everything...Such are the causes of virtue; when they produce their effects the people obtain what they desire, they obey their rulers and the state is well governed."

This general conception of the application of "tao" to government had a wide influence extending far beyond those who can properly be styled Legalists. This is very marked in the writings of Tong Chong Hsu, the greatest of the Han Confucianists, as the following quotations with which we may close the chapter will show:

"If the people desire nothing the ruler has no means of encouraging them; if the people dislike nothing the ruler has no means of deterring them. Without means of encouraging and de-

tering the ruler cannot enforce prohibitions and that will mean equality, the levelling of authority and the disappearance of rank. Wherefore the sages in the government of states followed the natural way of Heaven and Earth." ("On Maintaining Position and Authority").

"Heaven maintains His position on high, but bestows His mercy below. He hides His form, but makes manifest His light. His position causes respect, His mercy below displays His benevolence. Because He hides His form He is mysterious; because He makes manifest His light there is understanding. These are the characteristics of Heaven, wherefore the rulers of men should imitate them. By remaining hidden far within they should be mysterious, but by publishing abroad they should give enlightenment. They should entrust to all the capable men the carrying out of their policy, not wearying themselves with activities for thus they will be revered The way of the rulers of men should be the Way of Inactivity and unselfishness should be their treasure. They should occupy a position of inactivity and entrust the practical administration to their officials. . . . Thus without any activity on their part being manifest their work will be accomplished. Thus should the rulers of men imitate Heaven." ("The Roots of Separation and of Unity").

CHANGE AND SOCIAL EVOLUTION

If the "tao" is the spontaneous way of nature it must involve constant adaptation to a changing environment. This is also implied by the idea of ever following the line of least resistance already referred to. It is not surprising therefore to find that this conception is applied to politics by many of the Legalists, and brought them into conflict with the traditionalism of popular Confucianism. It is true that Confucius spent much time in pouring over the "Book of Change," and that many eminent interpreters of Confucianism have found spontaneous response to environment a fundamental concept of the teaching of the Sage. The actual, bold application of the principle to practical politics, however, was left largely to the Legalists.

This idea of the importance of changing with the changing times is not greatly stressed in the "Kuan Tse," but it holds an important place in the system of Shang Yang. This will already have been suggested by the remarks of his recorded by Sze-ma Ch'ien and

summarised in the biographical sketch. In the chapter entitled "The Removal of Obstructions" ("K'ai Sai") in the work attributed to him we find this view expressed in aphoristic form, "To imitate the ancients is to be always behind the times; to have regard only to the present is to be deflected by authority." Again in the same work we have this, "In national affairs sages do not imitate the ancients, nor are they bound by contemporary ideas; they act to suit the occasion, they measure the practices of the time and make laws accordingly."

Hirth tells us that when some of his ministers remonstrated with Wu Ling, King of Chao, for changing the traditional Chinese court dress for that of a Tartar ruler he replied that the manners and customs of antiquity were good enough for the ancients, but the modern man had to conform to the requirements of his time.

Han Fei Tse sums up his views on this subject somewhat neatly thus: "Not to be able to adapt to circumstances is sufficient to bring to confusion." For the same action will produce different effects under different circumstances; a truth which he brings home with the following homely illustration: "It is clear that water can overcome fire, yet if the water is put in a saucepan and a fire lit under it, the water will boil and evaporate, and so the fire will overcome the water, because the water has lost that condition by which it can overcome the fire." ("Preparedness At Home"—"Pei Nei").

But the characteristic way in which many of the Legalists expound the necessity of change is to sketch (largely from their imaginations, one suspects) the evolution of the state. Let us first take some examples from the "Shang Yang":

"Fu Hsi and Shen Nung only used persuasion and not punishment; Huang Ti, Yao and Shun used punishment but not in anger, but from then till the time of Wen and Wu each ruler established laws and appointed rites to fit the times, . . . The Yin and Hsia dynasties perished because they would not alter the rites."

"In the days when Heaven and Earth were first established and people came to be, the people knew their mothers but not their fathers; the way of life was to love their respective families and to love their own. This resulted in the making of distinctions and dangers, and when the people became numerous this resulted in disorder. In those days men strove to overcome each other by force, and this caused struggles and dissensions. Justice was not attained

by this means, and lives were lost. Wherefore the wise set up impartiality as against individualistic judgments and conduct, and this the people called benevolence ("ren"). Then affection and the nurture of the individual's family gave way to the promotion of the best men. The benevolent gave themselves to the practice of love. The best men thought the right way of life was to try to excel each other and so the multitude of the people had no government, and thus in the course of time there was again confusion. Then the sages gave their attention to land and wealth and the separation between the sexes. But distinctions without government are impracticable and so they prescribed prohibitions. Wherefore they set up officials, but when there were officials unity became necessary and so sovereigns were set up. Then the promotion of the most capable was set aside in favour of honouring those of high rank. . . . Thus each system in turn replaces the previous one. . . . What people regard as important changes, and as the age changes so the right way to act varies."

"When the ancients had not sovereigns and ministers, rulers and subjects, the people were in confusion and there was no government and so the sages made the distinctions between the noble and the lowly. They established grades, stipends and ranks. They appointed titles to distinguish between the idea of sovereign and of minister, ruler and subject. When the land became extensive and the people numerous then appeared irregularities and conspiracies; wherefore laws were established that standards might be fixed. Thus came about the idea of sovereign and minister, the distinction between the various departmental officials and the limitations fixed by law." ("On Sovereigns and Ministers").

This was quite a favorite theme of Han Fei Tse, from whose writings we will now give several extracts:

"In the most ancient times when men were few and beasts many and men could not overcome the beasts and reptiles, the sages invented nest-like buildings in the trees where they could escape all harm and danger. The people were delighted and made these sages the rulers of the Earth. . . . Then again the people ate raw fruit and gourds which sometimes went rotten and upset their stomachs so that many were ill; wherefore the sage invented fire so that they could cook their food. The people were delighted and made him ruler. In the Middle-Ancient times the Earth was covered

with water, and then Kuen and Yu confined the streams within their banks. In the Later-Ancient times Chieh and Cheo were tyrannical and violent and T'ang and Wu suppressed them. In the days of Hsia had one constructed nest-like houses, Kuen and Yu would have regarded it as a joke. In the times of Yin and Chow if one had built dykes, T'ang and Wu would have laughed. So, too, those who now praise the way of Yao and Shun, Tang, Wu and Yu as suited to the present time must be laughed at by the sages of today. Thus the sages are not ever imitating the ancients; they do not take the commonplace as their pattern, but having regard to the time are ever trying to perfect things." ("Five Kinds of Maggots").

In the following passage Han Fei expounds a materialistic—not to say an economic—interpretation of history, which should endear him to the Marxian:

"In ancient times, without the labour of men the herbs and trees produced food to eat, and though the women did not weave, the animals provided pelts for clothes; without any expenditure of effort there was sufficient for their needs, for the people were few and products abundant. Consequently people did not struggle with each other; without heavy rewards and severe punishments the people themselves maintained order. But now if a man has five sons it is not considered many, thus in his own lifetime a man may have twenty-five grandchildren. So now the population is great and produce scanty, and after much effort men have not enough for their needs; wherefore there is strife and thus rewards are increased and punishments multiplied and yet disorder cannot be avoided. . . . When Yu ruled the empire he first seized the plough before the people and himself worked the hair off his legs. . . . today no servant would toil like that. . . . Today one of those emperors would find the duties of a country magistracy beyond him. . . . In the spring when food is scarce a farmer may not adequately feed his own children, in the autumn when food abounds he may entertain distant guests. It is not that he is indifferent to his flesh and blood and loves passing strangers; the difference is one of scarcity and plenty. Thus in ancient times when they were generous with their wealth that was not a sign of benevolence but of abundance, and today when there is strife and theft that is not a sign of moral depravity but of scarcity. . . . Light punishments do not connote compassion, nor severe ones cruelty; the lightness or severity should depend on circumstances

...King Wen practised benevolence and justice ("ren i") and obtained the imperial throne; King Yen practised benevolence and justice and lost his state." (ibid.)..

Before concluding this chapter we may note that the idea of adapting the government to varying conditions was treated by Yin Wen Tse in a somewhat broader and more humane manner than by the typical Legalists. In the brief fragment attributed to him occurs the following: "When the 'tao' is not sufficient to give good government, then law must be used; when the law is not effective, policy (shu) must be used; when policy fails to give good government, force must be used; but when force has been used there must be a return to authority and then to law, and then again to 'tao'; and when this has been attained, without assertion on the part of the rulers, good government will exist of itself."

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