The Philosophers of China
Classical and Contemporary

By

CLARENCE BURTON DAY, Ph.D.
Former Chairman, Department of Foreign Languages
and Instructor in Philosophy, College of Arts in
Hangchow University; Member of the North China
Branch of the Royal Asiatic Society

PHILOSOPHICAL LIBRARY
New York
Chapter 5

The School of Legalism

“All words and actions not in accord with the law must be prohibited. . . . For one good man who can be trusted, there will be a thousand who must be ‘bent’ or ‘stretched’ in order to make them conform to the laws.”

—Han Fei Tzu in The Han-fei-tzu*

Bearing in mind the fact that the rise of ideas antedates their crystallization into formal schools of thought, the probable order of early, indigenous Chinese philosophic schools may be taken as the Pre-Sinistic, Taoist, Confucian, Mohist, Yin-Yang, and Legalist. Whereas most of these schools discussed the principles of government from the point of view of the people, the last named Legalist School argued from the vantage-point of the ruler and the ruling class. As the Legalists aided the movement toward centralization of power, they naturally incurred the enmity of feudal nobles and their advisers.1

In the Period of the Warring States (403-221 B.C.), when the trend away from feudalism placed more power in the hands of state rulers, government by customary morality (li) gave way to government by law (fa). At first, the personal relationship existing between over-lord and vassal was preserved as far as possible, but with the frequent shifting of masters this relationship became increasingly tenuous. Then was felt the need for codes, and the earliest codes were drafted as penal

* Fung Yu-lan paraphrase.
laws for criminal cases. As feudal control passed, the rulers wanted written legal principles to place in the hands of magistrates and advisers on court procedure. The first written law-code has been dated as early as 536 B.C. and this may have served as a prototype for later codes.

Shang Yang—The Code-Maker of Wei

The best known of the earliest code-makers was Shang Yang (c. 400-338 B.C.), or Kung-sun Yang, known also as Wei Yang, because he served the King of Wei. Believing that society could be governed best by means of a rigidly administered system of rewards and punishments, he drew up a code of laws to be enforced under dire threat of heavy penalties for violations. He may, therefore, rightly be called the father of the School of Legalism. His scheme was based on three simple principles: a penal law written in black and white; complete confidence in the justice of the code; and strict enforcement of the law. Whether or not Shang Yang was made warden of the state penitentiary and was killed by escaping prisoners is not definitely known, but tradition has it that the codifier of this early penal code suffered a violent death in the year 338 B.C.

Kuan Tzu, Han Fei Tzu, and the Principles of Legalism

During the century that followed, Shang Yang’s ideas became further crystallized in the writings of Kuan Tzu and Han Fei Tzu, two outstanding exponents of the legalistic philosophy. Formerly, *The Kuan-tzu*—a speculative work of twenty-four sections—was attributed to Kuan Chung, or Kuan I-wu, who was born about 710 B.C. and died in c. 645. As a native of Ch‘i and Duke Huan’s Minister of State, he is said to have instituted

*Recently edited and published under the title: *Economic Dialogues in Ancient China: Selections from The Kuan-Tzu* by Lewis A. Maverick; (With the collaboration of T’an Po-fu and Wên Kung-wên).
salt and iron taxes, thereby strengthening the hand of government by increasing its revenue. Later scholars, however, believe the work was probably put into its extant form late in the fourth century B.C. The section on “The Meaning of Laws” argues that written regulations will prevent craftiness on the part of officials and people alike.

Han Fei Tzu (ca. 280-233 B.C.), a prince of the state of Han, who lived also in the state of Ch’in, was a strong advocate of the principles of the Legalists. In the biography of this philosopher in the Shih Chi,* he is represented as one who “delighted in the study of punishments . . . laws, and methods of government” . . . (and who) constantly urged upon the King of Han the necessity of enforcing . . . (authority) so as to command ‘obligatory respect’ from his subjects.

As royal adviser, Han Fei Tzu thoroughly believed in promulgating well-defined laws and having them obeyed without question. Furthermore, he urged that policies of statecraft be carefully enunciated for the guidance of all officials. As the sine qua non of all administration, he held to the principle of rewards for the observance and strict but fair penalties for the violation of laws.

In general, the Legalists, using the Taoist concept of Tao as a principle of change, opposed entrenched custom and any appeal to history or tradition, if these hindered change. To their mind, new times demanded new ways and old customs must die or be modified by changing conditions. “All words and actions not in accord with the law must be prohibited.”

This doctrine found great favor with Ch’in Shih Huang Ti (221-207 B.C.)** and his prime minister, Li Ssu, who kept a close watch on the scholars, whose teachings were often con-

---

* The Shih Chi or Historical Records of Ssu-ma Ch’ien (ca. 100 B.C.), most of which has been translated into French by Edouard Chavannes.
** Actually, the House of Ch’in (roughly modern Kansu and Shensi) had ended the rule of the House of Chou in 256 B.C. and Ch’in Shih Huang Ti had come to power in 247 B.C. Hence the death of Han Fei Tzu in 233 B.C. is said to have occurred “in the fourteenth year of Ch’in Shih Huang.” (Cf. Fung, History, I, p. 320.)
sidered subversive. Before long, in 213 B.C., this early “Strong Man of China” found it necessary to mete out death by immolation to hundreds of ‘parasite scholars’ and burn as many of their books as his henchmen could lay hands on. It was his way of interpreting the old principle of “absolute agreement of names and actualities.” 10

Legalistic Cynicism in Regard to Human Nature

As former pupils of Hsün Tzu, both Han Fei Tzu and Li Ssu followed his cynical bent in their estimate of the potential good in young men. In The Han-fei-tzu, the great leader of the Legalist School expressed his firm conviction that, as all men are by nature self-seeking, they can be governed only by a system of rewards and punishments. He argued that a government which trusts to people’s goodness and tries to govern by reason alone, gets nowhere. For one good man who could be trusted, there would be a thousand who must be ‘bent’ or ‘stretched’ (like the wood used in making bows or wheel-rims) in order to make them conform to the laws. 11

Another axiom of the Legalists stated that inferiors will always interpret kindliness in superiors as weakness. Strictness, therefore, is the secret of control. Non-activity (wu wei) can be exercised only by a puissant sage-ruler whose subjects know he will brook no recalcitrance on their part. Where the Taoists had taught that you could harmonize the Tao of Nature (in the ruler) with the Tao of Man (in the subject), 12 the Legalists, though much influenced by the Taoists, leaned away toward Hsün Tzu’s dour skepticism. 13

Yet, in strange contrast to his general approval of regimentation, Han Fei Tzu took issue with the Confucian theory of land-equalization on the ground that men should be given as much chance as possible for free competition. 14 Under this laissez faire theory, the farmers were expected to be more frugal and produce more if rulers did not take away their private initiative. In practice, this plan presumably worked more suc-
cessfully in the case of those who had received fiefs for having supported a usurping ruler.

However far they may come from actual realization, ancient and modern ideals are not too widely divergent. The highest ideal of the Legalist School was that all persons, from king to peasant, should obey the law of the land. Great as his defense of high ideals was, and great as his reputation was for good writing, Han Fei Tzu never seemed to enjoy the confidence of either the King of Han or the King of Ch'in enough to be given official status. Finally, through the machination of his arch-rival Li Ssu, he was thrown into prison and suffered death by poisoning.