

Lecture 8

The Rise and Progress of Legalism

We have observed that the various philosophies of the pre-Qin era were directed at the problems of a Zhou culture in decline. This was true of Confucianism, Daoism, and Mohism. In the latter part of the period Mohism dwindled in influence, leaving Confucianism and Daoism as the two dominant schools of thought. Neither Confucianism nor Daoism, however, were keyed to the objective political and social questions of the declining Zhou culture, with the result that they were unable to solve the problem of Zhou decline. But though they failed to provide a solution to Zhou decline and decadence, both Confucianism and Daoism succeeded in opening up new vistas.

Confucianism undertook the responsibility of “establishing the true ritualist moral teaching [*lijiao*禮教],” for Chinese culture. It turned its attention to the educative and cultural process, thus opening up the path to its position in Chinese culture. Daoism moved on a plane parallel to Confucianism, its content also running parallel to Confucianism. But Daoism is a collateral branch in Chinese culture. Despite this, Daoism is important in determining the basic direction of life, and as such has had a great impact on succeeding generations. Both Confucianism and Daoism can determine a person’s fundamental direction, their difference being that while Confucianism addresses the question of *jiaohua*教化 [formative education], where the emphasis is on doctrine, doctrine does not play a major role in Daoism. The position of Confucianism in Chinese culture is analogous to that of Christianity in the West. Christianity is the most crucial nexus of Western culture. This is the sense in which we speak of the Confucian emphasis on *jiao*[doctrine, teaching]. It is the same with Buddhism. Although Buddhism did not attain the same position as Brahmanism in India, yet generally speaking (with respect to the human spirit), its doctrinal flavor is very strong. In Daoism, the doctrinal flavor is weak while the philosophical flavor is strong.

Culturally speaking, the Chinese scientific tradition may be said to have begun with the officials Xi and He in the “堯典[Code of Yao]”.¹ Xi and He were celestial officials, with responsibilities in astronomy, the calendar, forecasting, and so forth. They

evolved into the *shi guan* [officials of record-keeping]. The *Zhou Li* [*Zhou Rites*] says that the official record-keepers had two kinds of responsibilities, namely, they “kept records to assist governance and they monitored the calendar to order practical affairs.”² “Kept records to assist governance” meant that they kept official records and documents in support of governance. This was the origin of the tradition of “*shi*,” history, in China. “Monitored the calendar to order practical affairs” meant that they constructed and corrected the calendar so as to give order to the affairs of the people. In the agricultural society, farmers had to coordinate their farming, planting and so on closely with the seasons of the year. There were officials responsible for astronomy and the calendar. This was real science, and the Chinese were good in this area. This represented the Chinese scientific tradition, while official record-keeping represented the Chinese historiographical tradition. Daoism and School of Names represented the Chinese philosophical tradition. (See Lecture 10 for School of Names.) Both Daoism and School of Names were light in doctrinal flavor and heavy in philosophical flavor. Later on, even though there was the Daoist religion, its doctrinal flavor was weak and so it was unable to supplant Confucianism.

While they were both directed at the malaise of Zhou [1122?-255 BCE] culture, Confucianism developed in the direction of establishing moral doctrine while Daoism became *xuan li* 玄理 [Neo-Daoist metaphysics]. These developments resulted from the Confucian and Daoist positions on fundamental aspects of the attitude towards human life. They therefore did not provide immediate answers to objective problems of contemporary society. Since they were unable to solve these problems, who was able solve them? The answer was, the Legalists. We see then that while they all addressed Zhou decline and decadence, they produced two different attitudes: one directed at the fundamental questions of man’s life; the other looking at Zhou malaise as an objective political and social problem to be addressed. The latter was directed at urgent problems of the day that demanded solutions, whereas the former, which addressed the fundamental questions of human life, was of a universal and eternal nature, and is still meaningful today. But since it was of a universal and eternal nature, it did not provide immediate solutions to contemporary problems. Only Legalism could provide immediate solutions. Thus we must all confront this problem carefully, and must fully understand

the thought that Legalists gave to this problem, and the responsibilities they took upon themselves. Normally when we discuss the history of philosophy we seldom discuss this area because it does not belong to pure philosophy. Nonetheless it is an important question in the development of Chinese culture.

The question is a political one. Although the average student is concerned with contemporary problems, he does not necessarily understand political questions, nor does he necessarily have an understanding of the political questions of China. The crux lies in a lack of political consciousness. Political consciousness is not always found in the young, and even if they have it, it is not always for the better. There is the saying: “When Dao prevails in the land, the common people do not discuss politics.” (*Analects*, 16.2). These questions are by no means easy to understand. However, one must have a thorough understanding of them, otherwise one becomes “a scholar who, while shunning public office, discusses politics recklessly [處士橫議].”³ That is not always a good situation. And if those in power are intolerant, it could lead to sorry consequences for oneself and the nation. The reckless discussion of politics by reclusive scholars in the Spring and Autumn period [722-481 BCE] and Warring States period [489-222 BCE] brought about the burning of books [213 BCE] and burying alive of scholars by the emperor Qin Shi Huang [r. 221-209 BCE]. Whenever Wang Chuanshan [1619-1692] spoke of these questions it was always with bitter sorrow. Ever since the establishment [1912] of the Republic, the plight of China has led the Chinese people to take an interest in political questions in the hope of finding political solutions. That is why there have been so many student riots and demonstrations and student movements. These, however, are only immediate responses. They cannot really solve the problem. That is why these questions have also to be discussed. My discussion of these questions are gathered in the book *Lishi Zhexue* [*Philosophy of History*], and *Zhengdao yu Zhidao* [*The Dao of Polity and The Dao of Governance*].⁴

The rule of law [*fazhi*] that the Chinese normally talk about and the modern rule of law of the West are two disparate things. In the West, as, for instance, in democratic government in England, the rule of law means the separation of three powers, and comes about when a democratic government protects liberty and civil rights. In contrast, what

the Chinese mean by “rule of law” is the outcome of the ideas of Legalism; “rule of law” is used to mean the opposite of the Confucian “rule of propriety” or “rule of virtue”. Confucianism advocates government transformed by virtue. It stresses *li* [propriety]. Thus it says: “If guided by control [correction] and ordered by punishment, the people will be evasive and shameless. If guided by virtue and ordered by propriety, they will have shame and will moreover regulate themselves.” (*Analects* 2.3) Confucianism espouses the rule of propriety [*lizhi*] and Legalism espouses the rule of law [*fazhi*], while democratic government in Britain and American is based on an independent judiciary and the protection of civil rights without use of the term “rule of law” [*fazhi*]. Traditionally [in China] the term rule of law refers to the Legalist tradition, which is why the term has a menacing connotation for the Chinese. That is why we should have a correct understanding of Legalism and its rise.

The Legalism of the pre-Qin period was formed in several stages. Confucius had high praise for Guan Zhong [d. 645 BCE]. In later ages Guan [Guan Zhong], Shang [Shang Yang [d. 338 BCE], Shen [Shen Buhai [d. 337 BCE], and Han [Han Fei, [d. 233 BCE] were always mentioned in the same breath as representing Legalism. But if Guan Zhong simply meant this Guan Zhong, he would not have been praised by Confucius. For Confucius said: “Were it not for Guan Zhong, we would be wearing our hair down and fastening our lapels on the left.” “What humanity [*ren*], what humanity!” [*Analects*, 14.17]. Mencius judged Guan Zhong from the highest level; therefore he rated him low.⁵ That was another era and another level of discussion. There was a reason why Guan Zhong was Guan Zhong and we cannot belittle him. Of course he cannot measure up to the highest moral ideal, but we cannot judge politics from that level. Once we know that politics and moral ideals belong to different levels, then we will be able to understand Guan Zhong’s greatness as a statesman. He was not a Legalist, however, a Legalist and a statesman being two disparate things. Guan Zhong was a man deserving our admiration. He had breadth of mind, a statesman who was a highly cultivated product of the aristocratic society. Unless we look at him from this point of view, we will not be able to understand why Confucius spoke so highly of him.

The two hundred years of the Spring and Autumn period [722-481 BCE] are truly the age of Duke Huan of Qi [Qi Huan Gong, 685-643 BCE] and Guan Zhong. It was

only through Guan Zhong that Duke Huan of Qi could become a hegemon. You may say that Duke Huan, an aristocrat, lived a luxurious life. But we should not over-stress that point. Aristocrats had their own upbringing and of course were not saints. But even if their private lives were reprehensible, they had considerable breeding. The Prince of Qi and Guan Zhong were products of the aristocratic society and cultural tradition of the Spring and Autumn period. The *Zuo Zhuan* has vividly presented the high level of cultural breeding that prevailed in the Spring and Autumn period. Moreover it was written in so elegant a style that people used to speak of a “*Zuo Zhuan* addiction.” So it is clear that we should not despise the aristocratic society. Spengler [1880-1936], who believed that all great cultural traditions were formed by aristocratic cultures, realized this. In China, the great tradition was that of the Xia [2205?-1766? BCE], Shang [1766?-1122? BCE], and Zhou [1122?-255 BCE] dynasties, especially the Zhou cultural tradition. What shaped aristocratic cultures was not only wealth and position but also the spirit. There were moral and intellectual factors that made the nobility noble. What Spengler dreamt of was the aristocratic tradition. Nietzsche [1844-1900] too dreamed of building a new aristocracy.

Spengler’s dream arose out of his opposition to the landscape of the nineteenth and twentieth centuries, where everywhere the many intimidated the few and the strong oppressed the weak, where everywhere the majority was seen as the solution to problems. Using the majority to solve problems was an unavoidable path of democratic government. However, while some questions can be solved by resorting to the majority, other questions cannot be solved in that way. Wang Chuanshan [1619-1692] said that while the common people were “the most stupid,” in some other respects the common people were “the most godly.” Here the boundaries defining the most stupid and the most godly were different. In terms of the statement “Heaven hears as my people hear, Heaven sees as my people see,”⁶ the people are the ultimate gods, with definite and natural reactions to the actions of the ruler. But the ordinary citizen cannot be familiar with certain special questions or specialized policies and thus these cannot be decided by the vote of the majority. Therefore there are two levels to the problem. In one respect, the majority may be appealed to; in another respect, the majority is unreliable. There is a dilemma here that can be described by Wang Chuanshan’s observation that the common

man is both “the most stupid and the most godly”, which is an elusive statement. The *Yijing Commentaries [Yi Zhuan]* says: “The great man is he whose essence is joined to heaven and earth, whose brightness is joined to the sun and moon, whose rhythm is joined to the four seasons, and whose fortune and misfortune are joined to the ghosts and spirits. [大人者與天地合其德，與日月合其明，與四時合其序，與鬼神合其吉凶]” (*Yi Jing*, Appendix I4, I:“Qian Wen Yan,” 6.34). The meaning of this is similar to the statements “In fortune and misfortune they shared the troubles of the people [吉凶與民同患],”⁷ “Heaven hears as my people hear, Heaven sees as my people see [天聽自我民聽，天視自我民視].” These refer to the response of the sage. The sage’s response is the same as the most godly response of the common people, from the perspective of the results produced by the direction and measures of government in general. From this perspective, the people are the gods. But from the perspective of certain specialized questions, or questions regarding special policies, or questions determining the broad direction of government, we cannot, strictly speaking, decide them by a majority vote. There is a Legalist saying: “With the people one may celebrate the end-result but not plan the beginning [民可與樂成，不可與謀始].”⁸ These are honest words, which will no doubt anger the multitude, and which only the Legalists dared utter. The *Analects* also said: “The people can be made to follow it but not to know it [民可使由之，不可使知之].” (*Analects*, 8.9). From the perspective of modern democracy, this statement of the Sage seems to be wrong, and therefore there are those who rack their brains trying to explain it, for example, by saying that the statement should be read as: “If the people can, then make them follow it; if they cannot, then let them know it.” In fact, there are different levels in this question. Why can the Sage not speak these words? This statement is analogous to the Legalist statement that “[With the people one may] not plan the beginning” and Wang Chuanshan’s statement that the common people are the most stupid. Why can he not speak them? There are several levels to this problem. How can we use one level to compass all levels?

It was when he saw one level of the question in the nineteenth and twentieth centuries that Spengler longed for the aristocratic society that could create a great cultural tradition. Likewise with Nietzsche. On the one hand Nietzsche opposed Christianity; on

the other hand he opposed pan-democracy. He was not completely opposed to democratic governance, liberty, or civil rights (liberty and civil rights being the fundamental spirit of democratic governance), but when democracy went unchecked everywhere it became loathsome. What Nietzsche opposed was the mob violence that resulted from pan-democracy, when man became the “masses,” became what Heidegger [1889-1976]’s existentialist philosophy called das Man, the material, physical, man. It was from this idea of value that Nietzsche opposed pan-democracy. He, however, had his irrational side; hence, his was a romantic idealism, not a rational idealism. The new nobility that Nietzsche longed for was represented by the idea of the “overman [*Übermensch*, also superman].” When he talked about the overman he wanted man to be a lion and not a sheep. He opposed Christianity because Christianity wanted men to become sheep. The overman resorted to natural life. In Nietzsche’s view, men who had a strong life force were men of high morals and high intelligence, and they are the ones who should rule the world, not the masses. Such was the basic tenor of Nietzsche’s thought.

Nietzsche based his philosophy entirely on the natural life force. That won’t do, however. The fact is that men with a strong life force are not necessarily men of high morals and high intelligence, whereas it is men of high morals and high intelligence who have strong life force. Strength of life force does not refer to strength of flesh and muscle but refers to mind energy. Since we cannot say that it is men with strong life force that have high morals and high intelligence, then we cannot use the strong life force as a standard for morality or intelligence, but must use reason as the standard. Therefore the philosophy of the life force is unacceptable. It was because of this philosophy of Nietzsche’s that we later had Hitler [1889-1945]. What Hitler practiced was not Hegel [1770-1831]’s philosophy but Nietzsche’s philosophy. Hitler held that Jews and the masses ought to be ruled. This is hero-worship, the ideology of the hero, in its extreme form, and resulted from the influence of Nietzsche.

Fundamentally the aristocratic society was able to nurture a great tradition. All great cultural traditions grew out of the nurture of aristocratic societies. Thus we cannot belittle aristocratic societies. These days, people’s lives are completely without restraint. They follow the natural path to decadence and rot, as a result of which they are no longer

able to carry any responsibility. Human life should rise above the natural path and should not be entirely without restraint. Lin Yutang [1895-1976] once said: “Medieval civilization was a fettered civilization; modern civilization is a liberated civilization.” Here liberated means without restraint. The medieval man was governed by rules of deportment and dress, which was true of China until a few decades ago. These are constraints as well as rules of conduct, all of which are no more. For people of today the emphasis is on comfort. A bit of loosening is not bad because too many restraints are disagreeable. But if loosening goes on unchecked, it becomes absence of restraint. When that happens, one will no longer be able to shoulder any form of responsibility. A certain degree of restraint, “controlling oneself and returning to propriety [克己復禮]” is not all bad. It is to pick up one’s life and be able to shoulder responsibility. To be completely abandoned and unable to bear responsibility is a fearful state. It is evident from a little reflection that restraint has its importance.

From this we can also understand how aristocratic society can create culture. We should not only focus on the practical side, filling ourselves with envy and a sense of injustice when we see the wealth, power, and ruling position of the aristocracy. Actually there is a reason why the nobles are noble. Even the ordinary fortune-teller who reads physiognomies knows that nobility and wealth are different things. Nobility pertains to the spiritual; wealth to the material. For example, the emperors of old were so rich that they owned the whole empire, were so noble as to be emperors; they could be termed the ultimate in wealth but not the ultimate in nobility. That is why there was the old saying that there were in the empire village magistrates belonging to two and a half houses. One house was the descendants of Confucius, the members of scholarly families being the most noble. Another house was that of Zhang Tian Shi [Celestial Preceptor Zhang], who belonged to Daoism. And the remaining half a house referred to the emperor. This was the old standard of value in the Chinese tradition. From this it is clear that nobility is a matter of the spirit. It is only from this perspective that we can explain why the aristocratic society could create a great cultural tradition. The Duke of Zhou [Zhou Gong] created propriety and music. Propriety meant form. It requires the greatest strength of the human spirit to support this form and uphold and practice propriety. Many talented men emerged in the Spring and Autumn period for the very reason that

there was a relatively large number of men who were able to rouse their lives, uphold form, and shoulder great responsibilities. Of course it goes without saying that there was also the rotten and depraved side.

Duke Huan of Qi and Guan Zhong were products of this aristocratic society. Legalists can be summed up in the words of Sima Qian [145-c.86 BCE]: "... by nature mean and cruel."⁹ Guan Zhong and Duke Huan of Qi, however, were not of this breed. In the main, the state of Qi attained strength by virtue of its traditional style, namely the wisdom of "yin因 [follow]" and "shun順 [flow along with]." *Yin* and *shun* are the greatest secrets of practical politics. To operate within the sphere of *yin* and *shun* is in a sense a wisdom derived from Daoism, a wisdom of the kind possessed by Guan Zhong. For example, when Duke Huan of Qi wanted to attack the states of Chu and Yan, Guan Zhong proposed a proper pretext for it, as a result of which success was attained. This was an instance of the wisdom that operated within the sphere of *yin* and *shun*.¹⁰ From this we can see that Guan Zhong cannot be regarded as a Legalist but as a great statesman.

When did the true Legalist emerge? In other words, when did people start to solve the political and social questions that stemmed from the decline and decay of Zhou culture? Ostensibly it started with Shang Yang [d.338 BCE]. Actually it had started when Li Ke [455?-395? BCE] became prime minister of Wei [403-241 BCE] and Wu Qi [440-318 BCE] became prime minister of Chu. During a time when the political and social institutions of the aristocratic society were undergoing transition, these men arose to address the problems of the time. They were all men of practical affairs who had a strong sense of reality. Philosophers, lacking a sufficient sense of reality, were inadequate to the task, and were often criticized as being "quixotic" [*yukuo*].

When Li Ke served as prime minister to Duke Wen of Wei [403-241 BCE], he directed his efforts at "the doctrine of fulfilling the potential of the land [*jin dili zhi jiao*盡地力之教]." This referred to breaking the chains of the well-field system, developing arable land and increasing the output and income of farmers. Politically speaking, the first step in Legalist work was to abolish feudalism and establish commanderies and prefectures [*junxian*郡縣]. Economically speaking, it was to abolish the well-field system. The well-field system, a tradition dating back to the Xia, Shang, and Zhou

dynasties, was a system in which land was not privately owned by the farmer but was developed collectively by a clan. “*Fengjian* [feudalism]”, referred to “*fenghou jianguo*,” enfeoffing a vassal and establishing a state, the original meaning of the term. For example, the Duke of Zhou’s descendants were enfeoffed at Lu; Grand Duke Jiang’s descendants were enfeoffed at Qi. Wherever they were enfeoffed, there they established their state. Economically speaking, establishing a state meant collectively developing and farming the land. This was the positive meaning of “*fengjian*”; it was how the Zhou dynasty maintained a unified empire. This was different from feudalism (*fengjian*) as it is understood in the West. Feudalism in the West refers to the power previously wielded by the Roman Empire being distributed, after the collapse of the Roman Empire, among the different localities. In contrast, feudalism in China meant the power of the different localities being upwardly concentrated in the Zhou emperor. The two meanings of feudalism were different. At present the Communist Party is, on the basis of a materialistic interpretation of history, explaining feudalism in China in terms of the slave societies of Greece and Rome totally, which is completely at variance with the social tradition of China.

In terms of the well-field system, collective cultivation of the land and absence of private ownership were natural. But it was difficult to sustain this system when the small vassal states grew bigger and stronger, societies became more prosperous, and populations increased. By the time of the Warring States period [489-222 BCE], the structure had to change. Thus politically speaking, it was natural to abolish feudalism and establish commanderies and prefectures. Under feudalism, the emperor conferred land on the vassal nobles, who in turn conferred land on the grand masters [*dafu*], who were in turn their vassals. Thus ownership of the land was divided among the dukes, grand masters, and so on down, who received the land as their fiefs. When feudalism was abolished, the fiefs were taken away from the aristocracy and transferred to the jurisdiction of the central government as commanderies and prefectures. Commanderies and prefectures were objective political units and no longer fiefs belonging to the nobles. The first stage of political transition was the conversion of fiefs to national political units.

Abolition of feudalism and establishment of commanderies and prefectures represented a political change whereas the abolition of the well-field was an economic

change. This simple statement has a profound meaning. By the time of the Warring States, the aristocracy could no longer be sustained and had to undergo change. This may be said to have been a natural trend. In terms of mankind's development and awareness, it of course held a positive value. It was of course unreasonable for the land to be only fiefs of the vassal nobles and grand masters. There was of course a positive side to freeing the land from this unreasonable system. There was also a positive side to liberating the peasantry from the fiefs of the vassal nobles.

From the economic perspective, the well-field system gave the people the right to cultivate the land but not the right of private ownership of the land. It also bound their lives to the confines of the well-field. Although every three years there was “*yuan tian* 爰田[change in land distribution and tillage],” the rights of distribution and transfer lay in the hands of the nobility. The people had to deliver the proceeds of the middle 100 *mou* to the nobles, with contribution in the form of crops. In general the contribution represented a tithe. When the Communist Party says that the well-field system was a slave society they were of course wrong. But when the people were confined to the well-field system, without private ownership of land, there was little freedom of maneuvering in their life. This was indeed an unreasonable position and one not fully objectified.

With the abolition of the well-field system, the taxation system emerged. In the *Zuo Zhuan* of the *Spring and Autumn Annals* [*Chun Qiu Zuo Zhuan*], there is the statement in the fifteenth year of Duke Xuan [Xuan Gong]: “Taxing of the *mou* has begun. This does not accord with propriety.” “Taxing of the *mou*” means that tax was levied on the land cultivated. This was “taxing according to acreage [*mou*].”¹¹ This was the beginning of the abolition of the well-field system. “Did not accord with propriety” meant that it was not the ancient propriety of the three dynasties of the Xia, Shang, and Zhou. Past scholars have criticized the Spring and Autumn and Warring States periods as an “age of decline.” Although it was an age of decline it was not without its value. In terms of the political and social transition of the period as a historical necessity, it had positive value and positive significance. We should understand in what respect it was an age of decline and then regard it as an objective question. Then the political and social need for change will have a positive value. Only then can we explain the historical development.

Society started to undergo structural change with the fifteenth year of Duke Xuan when it was noted that “Taxing of the *mou* has begun.” The men who bore this responsibility were Li Ke, Wu Qi, ShangYang, and others. Structural change began when Li Ke, who became prime minister to Duke Wen of Wei, began promoting the doctrine of exploiting the full potential of the land. Henceforth this would gradually break down the well-field system. Abolition of feudalism and of the well-field system would naturally give rise to conflict with the aristocracy. But structural change took place without revolution, although Wu Qi and Shang Yang met violent deaths themselves; instead, structural change was effected by means of changing the laws. Li Ke, Wu Qi, and Shang Yang, who were Legalists of the earlier period, were all men of practical achievement. They introduced the concept of “*fa*” [law]. However, they did not introduce an **ideology** and as such cannot be considered bad.

Objective affairs cannot be conducted without law. In terms of moral education and culture, propriety was necessary. The Sage spoke from the standpoint of moral education and culture and therefore he emphasized propriety and virtue. He did not teach from the perspective of objective affairs. Besides, in Confucius’s time society was simple and objective affairs were not clearly delineated. When objective affairs became clear, the concept of law emerged accordingly as a necessity. Even though the concept of law did not emerge in the Sage’s time, when objective affairs presented themselves clearly, the Sage would have recognized law with respect to the later age. Law is an objective standard. Before the law all men are equal, a concept that even the Sage could not dispute. For if he opposed it he would not be a sage.

The simpler a society, the less likely will there be the emergence of objective affairs, for most actions will be direct. Direct actions are generally subjective, being always personal, subjective actions. In other words, they are your and my personal matters. On the other hand, objective affairs do not pertain to the individual but are public affairs. Public matters ought to have an objective standard. Thus it was necessary to introduce the concept of law as an objective standard in the conduct of public affairs, and as such it cannot be considered bad. Under the well-field system, the people and the land were all subjected to the nobility, they were all subjective. When liberated from this system, they acquired an objective nature, and an objective nature required that there be

law. But law can only take effect if it is implemented. As a result there arose what was described as “Faithful reward and certain punishment [信賞必罰].”¹² There arose the concepts of “Before the law all men are equal”, and “When a prince violates the law he is judged the same as a commoner [王子犯法與庶民同罪].” Since the objectivity of the law maintained by the Legalists was necessary and cannot be considered bad, even the Sage cannot oppose it. Such being the work of the Legalists of the first period, it was natural that they would come into conflict with the aristocracy. For example, since the king was hereditary, it was not possible to subject the crown prince to punishment under the criminal law. For this reason, when Shang Yang implemented the law he applied punishment prescribed by the law to the crown prince’s tutor. That is why when Duke Xiao of Qin [362-338 BCE] died and the crown prince ascended the throne, he prosecuted Shang Yang for the offense, and Shang Yang died a very cruel death. That is what is meant by sacrifice. The careers of the Legalists of the earlier period cannot be deemed blameworthy. And they deserve our sympathy when they were sacrificed for shouldering the responsibility for the structural change demanded by the governance and the society of the time.

Legalism has never been properly understood by scholars of the past. Legalism advocated “Faithful reward and certain punishment.” If Legalism is held to be all wrong, then is “Faithful reward and certain punishment” also wrong? If so then reward should not be faithful and punishment not be certain. If that be the case what need would we have for law? That is why we cannot simply condemn Legalism wholesale. Then there are those who maintain that Zhu Geliang [3rd cent. CE] was also a Legalist, but Zhu Geliang insisted on taking a personal hand in all matters. How could he have been a Legalist? The true Legalist spirit was to conduct affairs according to law, with each man having specific responsibilities. What need would there be to take part in all matters personally? So Zhu Geliang was not a Legalist. In the past 2000 years, only Zhang Juzheng [1525-1582] of the Ming dynasty had an essential appreciation of Legalism, although what he admired was the Legalism of the later period. For it was not the objective aspect that he admired but the aspect of subjective manipulation. For in the temples and halls of the Ming dynasty it was still Confucianism that was venerated.

Since pre-Qin Legalists who shouldered the responsibility for the structural change of the time cannot be viewed as bad, then at what period did Legalism become bad? In the process of Legalism becoming repugnant Shen Buhai 申不害 [d. 337 BCE] was a pivotal figure. Shen Buhai down to Li Si 李斯 [fl. 221-213 BCE] and Han Fei [d. 233 BCE] represented Legalism of the later period. Because Legalists of the first period introduced law in response to the objective affairs of society, no one objected to them. But when Legalism formed an ideology, then Legalism degenerated. The crux lay in Shen Buhai's introduction of the concept of *shu* 術 [technique, artfulness]. Shang Yang had law but no artfulness, which is why he died a cruel death, an event which led Shen Buhai to appreciate the importance of *shu* [artfulness]. He then proposed the concept of artfulness. Scholars of the past have said that Legalism was connected to Daoism. It was not through the concept of law that it was connected to Daoism but through the concept of “artfulness.” Artfulness employed law, and therefore it required the Daoist practice of self-cultivation. Once that happened, Daoism also became repugnant. This came about when Daoism was exploited for the purpose of artfulness in manipulating political power, for it was not the inherent nature of Daoism. When we teach Daoism, it is for the purpose of absorbing its wisdom, its metaphysics, its attitude towards human life. These are the inherent nature of Daoism. The exploitation of Daoism for the purpose of political artfulness began with Shen Buhai's discussion of artfulness. When Legalism and Daoism are conjoined in the discussion of *fashu* [the artful exercise of law], then that is the use of Daoism for political purposes.

Han Fei Zi [Han Fei] advocated that one should be equipped with both law and artfulness [*fashu*]. Law is promulgated in the centers of government while artfulness lies in the hands of the emperor. Law is objective while artfulness is manipulated by the great emperor alone and is secret. This is an evil concept. It is monarchy as absolutism, making the great emperor an infinite being, beyond the pale of law.

An almighty emperor who is an infinite being must on the one hand control his generals and officials and on the other hand enable objective law to take effect. This is where artfulness comes in. To exercise artfulness requires an enormous set of skills; hence the formation of an ideology. The great emperor exercises artfulness in controlling his generals and officials. To enable objective law to take effect, he implements “Faithful

reward and certain punishment.” Where controlling the generals and officials are concerned, he is inscrutable and moreover “unpredictable in reward and punishment.” “Unpredictability in reward and punishment” is practiced by the emperor alone and does not contradict the exercise of “faithful reward and certain punishment” where objective law is concerned because they belong to two levels. Thus the emperor’s exercise of artfulness lies mainly in maintaining inscrutability and “unpredictability in reward and punishment.”

The Chinese have a strong faculty for artful power machinations [*quanshu* 權術], and have even created a tradition in this regard. But it cannot appear in the dignified precincts of temple and hall; it can only lurk in the shadows. In temple and hall, only Confucianism is upheld. What in the past was called “the imperial science [*diwang zhi xue* 帝王之道] referred to *quanshu* [power techniques]. It is for this reason that Cheng Yichuan [1033-1108], Zhu Zi [1130-1200], and the others taught the emperor such ideas as sincerity, integrity, self-cultivation, ordering [of the family], governing [of the state], and pacification [of the empire]. In the end all proved in vain. It was a rare emperor who had true belief in Confucianism. Invariably it was from Daoism or Buddhism that he drew a measure of wisdom.

In terms of addressing the governing of the empire, sincerity and rectification of the mind and so on were only necessary, not sufficient, conditions. Realizing this, Han Fei Zi stressed *shu*, artfulness. To exercise artfulness one had to become familiar with Daoism, but once Daoism was exploited by the Legalists and became artful power manipulation, its character changed and it became loathsome. Xun Zi [fl. 298-238] decried this kind of artfulness, saying in his "Rectification of Discourse [Zheng Lun Pian]" chapter: “In espousing Dao...it is advantageous to be open [*xuan*] and disadvantageous to be secretive [*zhou* 周].” He advocated *xuan* 宣 [openness] and not *zhou* 周 [secrecy]. This was in direct opposition to Han Fei Zi, who advocated that the emperor be inscrutable and secretive, which meant to “be secretive and not open” [*zhou er bu xuan*].

Once united to Daoism, Legalism became bad. As a result Han Fei Zi formed an ideology with a set of principles for practice. When law was united to artfulness, the machinations of the emperor could not be revealed, resulting in “the dark den of secrecy.”

Historically the emperors have been past masters of the artful manipulation of power. I have often remarked that in the discussion of statecraft the British have the highest acumen while in the artful manipulation of political power the Chinese are intellectually supreme. We therefore should not look down on the British. China, being an old country, is rich in experience and therefore has the highest aptitude for machinations. But statesmen should rely on the positive side of their intelligence if they hope to gain positive fruits. It is not enough to rely on the artful manipulation of power alone. Strictly speaking, the artful manipulation of power cannot be called intelligence.

The British recognize the power of society, recognize phenomena, recognize objective social organization, and the sacredness of the right to liberty. That is why Russell [1872-1970] on his tour of the Soviet Union was chilled by the struggle [campaign] against the peasants, finding it intolerable. Lenin and Mao Zedong [1893-1976], on the other hand, were totally unmoved. In fact, they were very pleased. That is why Russell was immediately struck by the fact that although both were alike in being authoritarian systems, Britain's Gladstone obtained good results because his was a practical, functional, autocracy, and he had, moreover, a positive creed, namely the Western cultural tradition; Lenin's autocracy, on the other hand, was extremely violent and cruel, and therefore evil.

In strictly philosophical terms, we can be dissatisfied with the philosophy of the British. Nonetheless we ought to understand why British philosophy had to adopt the position of realism. Among British philosophers Whitehead [1861-1947]'s philosophy placed a relatively greater emphasis on metaphysics and cosmology, but he too maintained atomistic principles, in other words, pluralistic principles. Even when the British speak of metaphysics they will invariably descend into reality and posit individual substances; they are averse to the “*hunran yiti* 渾然一體 [literally, one blurry blob], one undifferentiated body” so often brought up by the Chinese. As soon as they hear of this they think of “dissolved into one,” without individuality. They cannot accept the absence of individuality. This is a peculiarity of British philosophy, which has its validity in the practical world. *Hunran yiti*, one undifferentiated body, of course has its subtleties and is not wrong. However, when in discussing Chinese philosophy we speak of the one body of heaven, earth and the myriad things we must be careful to make our distinctions clear.

For example, when you encounter Cheng Mingdao [1032-1085]'s statement "He who is *ren* [humane] views heaven, earth and the myriad things as one body,"¹³ you should acknowledge this as the highest wisdom and not oppose it. On the other hand, you ought to understand the level [*cengmian*] of this statement and not be vague about it. The level is crucial. Unless level is clarified, others can use it to denounce you as being absolutist and totalitarian. Of course that would be a misapprehension. But unless your own mind is clear on it, you will not be able to defend yourself. Such misapprehension is not confined to Westerners, for there are many Chinese who also fall into this kind of misapprehension. But it all comes from following the same line of thought, one that is not totally wrong. We must therefore be cautious at all times and make careful distinctions. I acknowledge all the values affirmed by them, such as liberty, science, respect for the individual, and so forth, which are fairly acceptable. To deny "He who is *ren* [humane] views heaven, earth and the myriad things as one body" and "a single undifferentiated body" may be wrong, but it is equally wrong to speak of "one undifferentiated body" vaguely without understanding the levels of meaning. So we have to have a clear head and clearly distinguish the levels of meaning. There are many people who think that totalitarianism is meant whenever the absolute is mentioned. That is a mistake. For example, God is absolute but God is not totalitarian. The absolute and totalitarianism are two different concepts which should be distinguished. One must address the question, which is by no means easy. But unless they are clarified, the life of Chinese culture will not flow unimpeded. Hence discussing Chinese philosophy in this day and age is an extremely arduous task, with each concept requiring clarification. Otherwise we will have chaos.

Confucianism often speaks of "Viewing heaven, earth and the myriad things as one body." Zhuang Zi [c.369-c.286 BCE] was fond of saying "Heaven and earth were born together with me; the myriad things are one with me." ("Equalizing Things" [Qi Wu Lun]). These are statements often quoted by the Chinese. German scholars also quote them sometimes, and so it is comparatively easy for them to understand Chinese thought. British and American scholars, however, have difficulty understanding Chinese thought, and they find such statements objectionable. We must sort out the meaning of these statements clearly. On the objective side Confucianism affirms Dao; on the subjective

side it affirms *liangzhi* [good knowing; one's moral ability]. Dao and *liangzhi* are both absolutes, but the basic spirit of Confucianism is not totalitarianism. The basic Confucian spirit resides in the statement "Each thing is subject to the thing" [*wuh ge fu wuh*物各付物],¹⁴ meaning that each thing belongs to itself. This is extreme democracy, extreme enlightenment. Why is this fact forgotten by everyone? Although the statement "He who is *ren* views heaven, earth and the myriad things as one body" was uttered by Cheng Mingdao [1032-1085], the statement "Each thing is subject to the thing" also came from him. Why does everyone fail to pay attention? "Each thing is subject to the thing," "For the old, to give them peace; for friends, to give them trust; for the young, to give them tenderness." (*Analects*, 5.25) and "the atmosphere of heaven and earth."¹⁵ They are all words from Confucianism. "Each gets his place," "Each lives out his life, each suits his nature." These are Daoist sayings. Clearly these do not describe totalitarianism. Nor is Zhuang Zi's "Equalizing Things" chapter totalitarianism. Equalizing things does not mean that everything is subject to a subjective standard of right and wrong. If that were the case, others would be forced to obey themselves, and everyone would castigate one another. "Thus there is the right and the wrong of the Confucians and the Mohists, each side taking the other's wrong to be right and the other's right to be wrong. If one wishes to treat the other's wrong to be right and the other's right to be wrong, then there is no better way than to use clarity." ["Equalizing things" chapter]. Zhuang Zi develops his "Equalizing Things" chapter from this "*ming*" [clarity]. The main point of "Equalizing Things" is that when all things are laid out flat, they are all in the right. This is extreme individualism. According to Zhuang Zi's point of view, dispute arises when each person treats his subjective view as the standard. If this happens, how can the human, the monkey, or the fish know where best to reside? If one place is right, then all places are right. If wrong, then all places are wrong. So goes "Equalizing Things". From this we may see that "Equalizing Things" is a most enlightened, most liberated approach, and of course far from totalitarianism. From this we may be certain that neither Confucianism nor Daoism is totalitarianism. These distinctions must be clearly made.

English politics is a pluralistic one which affirms the objective existence of the different social organizations in society. They are legal and no one has the right to extinguish them. This is acknowledgement of phenomena and the attitude of realism.

Confucianism is the same. In teaching morality, it says that becoming a sage is a personal matter. In teaching the kingly way, in teaching governance, it stresses that “Only after people are fed and clothed will they know glory and shame,”¹⁶ “Wealth precedes education [cultivation],”¹⁷ “Within there was no murmuring woman [i.e., spinster or widow], without there was no unattached man,”¹⁸ each one having his/her place, everyone living his/her life to the full, everyone being able to suit his/her own nature. That is the Way of the King [*wangdao*]. It is the open society. That is not forcing the comparison because it is truly the fundamental spirit of Confucianism. Unless we understand this, we will believe that the political tradition of China was one of absolutism [*zhuanzhi*] and that Communist totalitarianism is not completely at variance with the intrinsic nature of the Chinese political tradition. But how can that be? Totalitarian absolutism [*zhuanzhi jiquan*] was an undercurrent represented by Han Fei Zi, a point that should be clearly distinguished by Chinese intellectuals.

When in the later stage of Legalism the idea of *shu* [technique, artfulness] emerged, Dao was used to accomplish the great emperor’s autocratic rule, Legalism got bad. We call the place of the great emperor “the dark den of secrecy”. Why? Because this artfulness came from Daoism. The Dao of Daoism is without moral content. Thus although we may view Daoist knowledge as wisdom, it is still a collateral branch of truth because its “Dao” is empty of moral content and is therefore dark and lustreless. Consequently the place where artful manipulation of power is practiced is “the dark den of secrecy,” which is the crime of Legalism.

Historically, emperors have made use of either Daoism or Buddhism. Now the Communists have another set of artfulness, namely the “Dao” of communism. If they had continued to use Daoism or Buddhism that would have been alright and then they would not have been communists. Their “Dao” is none other than Marxism. Besides class struggle Marxism has two other components, one historical materialism and the other dialectical materialism. On the basis of these, Marxism claims to be able to discern change. In a certain sense, the discernment of change is a Daoist contribution, which is why I have observed: “In discerning change none can equal the Daoists; in discerning *karma* consciousness none can equal the Buddhists.” In the affairs of the world,

especially political affairs, “opportunity” [*ji*幾] and “situation” [*shi*勢] are most crucial. This was best understood by Daoism, and the discernment of Marxism is similar.

Here I might remind all of you that in handling the Communists commonsense is not enough. That is because every member of the Communist Party has been trained in the use of the Marxist “Dao” (artfulness). In other words their minds have been raised to the conceptual level, which is not just commonsense. Even if one made use of Han Fei’s artful manipulation of law [*fashu*], such as inscrutability, one would still need cultivation and training. Thus we have to equip our minds, and move from the emotional level to the conceptual level. Vertically, we should throw ourselves into the great stream of Chinese culture; horizontally, we should throw ourselves into the great river of the world. Using this great opening and great union we should enrich, enlarge, and strengthen ourselves. Only then will we be ready to resist the demonic Dao of communism. Otherwise not only will we not be able to combat them, we will very easily become their dupes.

This lecture today has distinguished the Legalists of the earlier and later periods in the light of the objective work of responding to the need for change in the political and economic structure of society in the Warring States period. It was the Legalists of the later period who made Legalism loathsome. The pivotal figures were Shen Buhai and Han Fei. The earlier Legalists were hardly bad. They performed the mission the age called for, completing the structural change of the Warring States period and paving the way for the autocratic monarchy of the unified Qin [255-209 BCE] and Han [BCE 206-CE 221] empires. The progress from an aristocratic government to an autocratic monarchy to modern democracy represents the three modes of governance. Progress in the modes of governance is extremely difficult and new paradigms do not come frequently. Although the autocratic monarchy falls short of being ideal, it has nonetheless continued for 2000 years, an indication that it has its responsive features. Much as it can breed discontentment, a change is difficult to bring about. This is the age of democracy. Does that mean that there will be other modalities of governance in the future? My opinion is that as long as this world is not the kingdom of God, and as long as mankind needs government, then democracy is the final modality of governance. Once democracy emerges and becomes the political structure, then it will be perpetual. In the future progress will not take the shape of change in the political structure but will

be the rationalization of the content of society. These two aspects should be separated. These are the reasons why I have determined that democracy will be the final political mode. There will be no such thing as third-stage democracy, fourth-stage democracy, or American civil rights and communist civil rights. Democracy is simply democracy and civil rights is simply civil rights. Future progress will be in the direction of the rationalization of social content: social content will move towards enrichment and towards the ideal. The highest ideal is what Kant called "the Kingdom of Ends". Beyond that is the "Kingdom of God", by which time politics will no longer be necessary. But in the sublunary world mankind cannot do without political structure. The conduct of objective affairs also requires law. Consequently democratic governance is the final structure. Future problems will be concerned with social content, culture, and education, and not with the question of democracy as political structure.

Transcribed by Shu-ching Ho 何淑靜

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¹The *Shang Shu [Book of History]*, Part I, "Yao Dian [The Canon of Yao]" says: "Then Yao ordered Xi and He to reverently follow the august heavens and calculate and delineate the sun, moon, stars and planets and respectfully give the time and seasons to the people." In James Legge, *The Chinese Classics*, 5 vols. (Hong Kong: Hong Kong University Press, 1960), vol. III, *The Shoo King*, p. 18.

² See Mou Zongsan, *Lishi Zhexue [Philosophy of History]* (Taipei: Xuesheng Shuju, 1974), pp.6-14.

³ *Mencius*, 3B.9.9: "Sage kings did not arise, the feudal lords were unbridled, scholars who shunned public office debated politics with abandon, and the empire was filled with the words of Yang Zhu [ca.479 - 289 BCE] and Mo Di 墨翟 [c.479-381BCE]."

⁴ See Mou, *Lishi Zhexue [Philosophy of History]*; and Mou Zongsan, *Zhengdao yu Zhidao [The Dao of Polity and the Dao of Governance]*, 2nd ed. (Taipei: Xuesheng Shuju, 1980).

⁵ *Mencius*, 2A,1: “Gongsun Chou asked: ‘If you, Master, were to serve as prime minister of Qi, would you approve of the work of Guan Zhong and Yan Zi?’ Mencius replied: ‘You are truly a person of Qi. You’ve only heard of Guan Zhong and Yan Zi. Someone once asked Zeng Xi: “Who is wiser? You, sir, or Zi Lu?” Zeng Xi said with some embarrassment: “He was someone of whom my late father stood in awe.” “And who is wiser, sir, you or Guan Zhong?” Zeng Xi was displeased and said: “How can you compare me with Guan Zhong! How can you compare me with someone who, when he found the right prince to serve, was so tyrannical, who when carrying out his policies, held on to power so long, and whose achievements though renowned were so base?” And Mencius said: ‘Guan Zhong was someone whom Zeng Xi scorned to emulate. Do you think that I would do so?’”

⁶ See the quote from *Shang Shu* [*Shu Jing*], "Tai Shi [The Great Declaration]", in *Mencius*, 5A.5 .

⁷ See *Yi Jing*, *Xici Shang Zhuan* [The Great Appendix I], ch.11, sect. 67.

⁸ A quote from the words of Wei Yang in "Biography of Shang Jun 商君 [Shang Yang, d. 338 BCE]" in Sima Qian, *Shiji* [*Records of the Grand Scribe*]: "The people must not participate in the conception of policy but may participate in the celebration of its fruition. Those of the highest virtue do not chime with the vulgar; those who accomplish great deeds do not consult with the multitude."

⁹ Sima Qian, *Shiji*, "Biography of Lord of Shang": "The Lord Grand Scribe [*taishigong*] said: 'The Lord of Shang was by nature mean and cruel.'"

¹⁰ Sima Qian, *Shiji*, "Biography of Guan Yan"[Guan Yan Liezhuan]: "In governing he (Guan Zhong) followed [made the best of] misfortune to create fortune, turned around defeat to create success. He valued the weighing of punishment and was cautious in the balancing of mitigating circumstances. Duke Huan in truth attacked Cai in the south

because he was angry with the lady Shaoji. Guan Zhong followed [made the best of] this by attacking Chu, castigating Baomao for not submitting tribute to the imperial house of Zhou. Duke Huan in truth marched north to attack the Mountain Rung tribes; Guan Zhong followed it by commanding the state of Yan to revive the policies of Duke Zhao. At the meeting at Ke, Duke Huan wanted to break the treaty of Caome; Guan Zhong followed and upheld it. As a result, all the feudal lords flocked to him. Therefore it is said: ‘To know that to give is to get is the treasure of governance.’”

¹¹ *Gongyang Commentary* [*Gongyang Zhuan*] of the *Spring and Autumn Annals*, “Duke Xuan 15” says: “*Chu shui mou* 初稅畝 [Began taxation on the *mou*]. What is *chu*? It means began. What is *shui mou*? It means taxing by each *mou*.”

¹² See Sima Qian, *Shiji*, “Biography of Lord of Shang” [*shangjun liezhuan*]. “Faithful reward and certain punishment” [*xinshang bifa* 信賞必罰] refers to the Lord of Shang's measures.

¹³ *Er Cheng Quan Shu* [*Complete Works of the Cheng Brothers*], *Yi Shu* [*Literary Legacy*] 22A “*Er Xiansheng Yu* [Conversations of the Cheng Brothers] 2A”: “Medical science tells us that numbness of the hands and feet means lack of *ren*. These words are best in describing the condition. He who is *ren* regards heaven, earth and the myriad things as one body, nothing that is not oneself. If you recognize that it is all oneself, where does one not reach? If it is not possessed in oneself, it would naturally have nothing to do with oneself. If the hands and feet are not *ren*, it means that *qi* [material force, vital energy] is not spread throughout the body, and does not belong to oneself. That is why to bestow widely and rescue the multitude is the work and function of the blessed sage. The furthest attainment of *ren* is difficult to articulate, which is why it is only said: ‘If one erects another as one wants to erect oneself, if one helps another to reach that which one wants to reach oneself, and if one can take instruction from that which is nearby, that can be called the method of achieving *ren*. If one looks at *ren* in

this way, then one can acquire the substance [ti] of *ren*.” (This passage is followed by the note "Ming", which means that it was spoken by Cheng Mingdao.)

¹⁴ *Er Cheng Quan Shu, Yishu 6, Er Xiansheng Yu 6*: "Attaining knowledge lies in investigating things. When things come then knowledge arises, each thing belonging to [fu付] the thing. When one is not servant to one's knowledge, then the will can be honest and immovable. When the will's honesty is fixed then the heart-mind is straight. This is the work of the beginning student."

¹⁵ *Er Cheng Quan Shu, Yishu 22A, Yichuan Xiansheng Yu [Yichuan Conversations] 8A*: "Yongxiu asked about 'The old receives comfort in him, the young cherishes him, the friend trusts him.' He answered: 'These are most excellent sentences. First contemplate the words of Zi Lu and Yan Yuan. Then contemplate the words of the Sage. Clearly the Sage is the energy-image [qixiang] of heaven and earth."

¹⁶ Sima Qian, *Shiji*, "Biography of Guan Yan": "When Guan Zhong became prime minister, Qi, a little land on the coast, expanded trade and amassed wealth, enriched the state and strengthened the army, and he made the wants and aversions of the common people his own. And so they praised him saying: 'When the granaries and storehouses are full the people will know propriety and restraint, when they are adequately clothed and fed then they will know pride and shame....'"

¹⁷ *Analects*, 8.9: "When Confucius went to Wei, Ran You accompanied him as attendant. Confucius said: 'There is an abundance of people.' Ran You asked: 'After an abundance of people has been achieved, what improvement can be made?' Confucius said: 'Improve their lot.' 'After their lot is improved, what other improvement can be made?' 'Educate them.'"

¹⁸ See *Mencius*, 1B.5.