THE *DURA LEX* OF LEGALISM AND THE FIRST EMPIRE

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When a state is about to perish, many new laws will be found in it.
—*Commentary of Tso*, Duke Chao, VI (536 B. C.)

I

In the matter of law China has had a history different from that of Europe. "The people should fight for the law as they would for the city walls," said Heraclitus. The Chinese of the time would have been baffled by the declaration.

In Confucius' day China had little statutory law or legislation. Families, clans and villages worshipped, worked, played and settled their own disputes by customary law or morality. Inheriting a rural culture from the days of far antiquity, heads of families clans and villages knew the duties and privileges of persons according to age, sex, kinship, and station, and decided matters by local custom and equity. They would try to solve any controversy (one concerning goods, for example) through arbitration, compromise, and pressure along all local, non-judicial channels before getting involved with officials or magistrates.

The foundations of customary law were of course built upon ancestor worship and other religious beliefs that fascinating though they are need not be detailed here. Civil procedure did exist but it was the criminal penalities which apart from the unwritten law of custom, characterized most of that which was called *law* in China. Punishments to fit the crime along with the rules for their application and mitigation under varying circumstances in military, treason, and criminal cases appear as early as the oldest parts of the *Book of Documents,* the ancient collection of kingly pronouncements, counsels and principles, some of which go back prior to 1 000 B. C. "Be careful and enlightened in regard to your punishments", counsels King Wu (r. 1111-1104 B. C.), co-founder with King Wên of the Chou Dynasty. "Having tried a case of arrest, reflect upon it five or six days, nay even to ten or a season, and then grandly decide the tried case of arrest."

The *Book of Documents* contains some of the most fundamental political writings of China. In it the ancient constitution is set forth as the pattern of

"the active virtue of the ancients." [1] Created from the political theory of the great, early Chou rulers, Wên, Wu, and the Duke of Chou (r. 1104-1067), it proclaims a universal kingship deriving its just powers from the universal T'ien (Heaven). [2] When political thought first appears in China, a king of the imperial house would invest his dukes with a mandate to rule. The king himself could rule only because he too had received a mandate, the Mandate of T'ien. T'ien granted the Mandate only to one king on earth, who then became known as the Son of T'ien, a title equivalent to Emperor. As the *Book of Documents* puts it, "The Son of T'ien is father and mother of the people and thereby king over the whole world." The title does not denote divine heredity. Rather it describes how the Emperor should act: to maintain the peace and harmony of T'ien's design as an obedient, true son would do. And it prescribes one-man rule. Furthermore the charge to rule is conditional. Should the emperor be wicked, T'ien will withdraw the Mandate and wreak ruin and destruction on his head. The Chinese did not relinquish this theory of kingship until the twentieth century.

Confucius was the staunchest advocate of ancient Chou institutions and together with later followers had cannonized Chou literature. His words show a distrust of statutory and written penal laws. The Master said, "Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect" (*Analects* 2:3). The earliest written statutes seemed to have been inscribed on metal sacrificial cauldrons. [3] The *Commentary of Tso*, an exciting chronicle and great prose work covering events at court, 722-468 B. C., reported that in 512 B. C. when Confucius heard that the state of Chin was casting iron tripods on which to cast the penal code, he was aghast. "Chin is going to ruin", he said. "... People will study the tripods and not care to honor their men of rank." As the practice took hold, critics never tired of pointing out that incising the laws would lead people to respect engravings rather than men in authority and to invoke the script of the law rather than its spirit.

In China around the fourth century B. C. a new school arose —*Fa-chia* or School of Law, also referred to as Legalism, and its adherents as Legalists. The core of the school lies in two books, one the *Book of Lord Shang* attributed to Shang Yang, the other, the *Han Fei Tzŭ* written by Han Fei Tzŭ. [4] The state in which both had been advisors was Ch'in, an uncouth, partly Tatar land far to the west, with a promising military future.

[1] *Book of Documents, K'ang Kao.* Unless otherwise noted, these and other early Chinese writings cited in the text can be found in Sebastian de Grazia, ed., *Masters of Chinese Political thought: From the Beginnings to the Han Dynasty* (New York: Viking Press, 1973).

[2] Throughout this paper the Chinese *T'ien* shall be retained instead of the common translation "Heaven."

[3] See Joseph Needham, *The Development of Iron and Steel Technology in China* (Cambridge: W. Heffer and Sons, 1964).

[4] Others usually linked to the *Fa-chia* are Shen Pu-hai (d. 337 B. C.), Shen Tao

II

Legalism carried out what seems to have been an important legal experiment. Its lifespan fell within the fourth and third centuries, B. C. Its history ever since has been colored by partisan reporting and the overlays of time. The extent to which what the Legalists proposed was carried out cannot be told without uncertainty. Their explicit desire to change family law could not be fullfilled without enacting and codifying new inheritance and succession rules, and little is known of this. It is not even certain within what limits King Chêng, their ultimate ruler and later the First Emperor, agreed with their ideas. In the days of the First Empire at least, his dramatic politico-religious acts point to the charismatic beginnings of emperor worship, a not infrequent occurrence when empires are born, but not quite in keeping with the rational and secular jurisprudence of the Legalists. He also worked like a slave, going through it is said one hundred and twenty pounds of reports daily. The ideal Legalist ruler was to let his ministers do the work ("Let roosters herald the dawn . . ."); did he but read more than ten bamboo slips of the law codes, he would fall asleep; he was to rest on a counch, play the five-stringed guitar, and keep his girlish complexion (Han Fei Tzŭ 2:18, 11:32).

Though the history of the influence and ideas of the Legalists cannot always be spoken of with confidence, at least what has been reported so far —even if later discovered to be unfactual— raises questions of some interest for students of law and political philosophy. Recent years in modern China, moreover, have seen a resurgence of interest in Legalism. The current disposition there for a revival of classical learning comes from a new impulse: to learn as much as possible of the progressive Legalist thinkers of the past who, because of prejudice by conservative Confucians, have been forced to lead an underground life for two thousand years. Such is the present emphasis in the People's Republic of China. The past is being used to fight the past. Apparently the study of classical Chinese has never been held in such esteem; at the same time the pages of the newly revived Bulletin of Peking University reflect the dominating interest in Legalist thought. [5]

This in itself might increase the incentive to study the Legalists, but the purpose of the main part of this paper is simply to offer a characterization of and brief commentary on the Legalist doctrine of harsh punishment. I rely chiefly on the *Book of Lord Shang* and the *Han Fei Tzŭ*. While sometimes there arise in these works statements that seem at odds with one

(d. 275 B. C.), Li Ssŭ (d. 208 B. C.), chief minister under King Chêng (later the First Emperor), and as forefather, Kuan Chung (d. 645). See pp. 16 and 19, below.

[5] This information on the resurgence in present-day China of interest in Legalist thought appears in an unpublished travel report by Professor F. W. Mote entitled "China in 1950 and China in 1974 — Some Superficial Observations on the Changes of a Quarter-century", and is cited by kind permission of author.

or another of their own views, I have tried to choose their most stable positions. In the factual elements to go into this enterprise there is hardly anything new or controversial. In the commentary, I shall be using varied concepts of legal and political philosophy. In different parts of the world, admittedly, they may not cover the same phenomena. Even in Europe and America they would not always match the phenomena exactly, and besides, the concepts sometimes hold different meanings for different scholars. So there are both cross-cultural and analytic loosenesses to cope with, yet, I trust, the advantages of a loose fit here offer more than those of no fit at all.

At the close of the paper I shall offer what amounts to a few thoughts for further study in the larger perspective of the relation of Legalism to fundamental law. My speculation is that in the process of their experiment, the Legalists brought the country to the edge of a transformation in fundamental law. They brought about this crisis in law, curiously, in the name of a doctrine of law and a demand for its supremacy.

The people of Ch'in where Legalism took root, were on the periphery of Chinese culture. As the anthropologically-minded Hsün Tzŭ, the great Confucian philosopher (c. 312-c. 238 B. C.) noted, they were less observant of the Chinese emphasis on family propriety. They may have had other cultural differences too, for they most certainly took a different stand on law.

III

The Legalists insisted on written statutory law, indifferent to the common welfare, interest or good, free of metaphysics (but positive and relative), opposed to conventional morality and constitutional restraints, enacted on command of the ruler, proposed and clearly and widely promulgated by his ministers, uniformly applied without regard to family, status or region, changed according to reason and science (essentially the methods and results of social science research economic, statistical, administrative) and strictly enforced through irrevocable punishment that far exceeded the crime.

Their profession was that of advisors and ministers to the ruler. Their rivals were the Confucians whose position was that of constitutional advocates. As an ideological and occupational group the Legalists aimed to supplant the Confucians as policy makers and to strike at aristocratic privilege in the inheritance or assignment of government posts. Their proclaimed aim was to submerge family, religious, regional and other sentiment in a larger entity, a unified country or empire, conquered by war and pacified under a universally supreme law. On this nationalistic or imperial basis rested their deontology. They were sure that an able, ambitious and far-sighted ruler would want or need no other deontology than raison d'etat.

In trying to understand Legalist thought it is of utmost importance to keep in mind that they were speaking and writing primarily for the ear and eye of the ruler. They sided with him and his problems. They reasoned

with no other possibility in mind than one-man sovereignty. They had little interest in attracting the goodwill of anyone but the ruler. To a secondary degree they would in their writings be trying to unite the views of like-minded persons, the experts spoken of previously. They also wrote as if they believed their views were irrefutable, and they probably did so believe; their social scientific methodology covered their statutes with the mantle of reason for them, perhaps, even the *ratio legis*. Altogether, then, their language is seldom enhanced with expressions of the common welfare, public interest or good. On the contrary, to commoners they frankly offered little: a future order of unity and peace, a present order of toil, war, threats and punishments. (Of course they never expected commoners to read their vade mecum for the king.)

In the course of several centuries Legalism developed a thorough-going philosophy of utilitarian deterrence based on rudiments of a hedonistic, behavioral psychology. Punishment was to act the deterrent of the greatest number, perhaps of even 100%. "Take seriously one culprit's crime and suppress all wickednesses within the boundaries", repeats Han Fei Tzŭ (18:46) Through harsh, inflexible penalty, law was to reign supreme. If law is supreme, the ruler is safely ensconced, and order reigns —wich, for people, is the maximum social good. The Legalists' good of society is not maximum individual happiness or self-assertion but social order.

Laws were to be binding not for love or authority of the sovereign or for patriotism or the commonweal, not because recognized or accepted as binding, not because they met given ethical standards, nor because formal requirements of enacting, promulgating and enforcement were satisfied, but solely because their violation was to be punished swiftly, inevitably, uniformly, irrevocably and severely. Subjects are like babes in the woods: they do not understand what the king and his ministers are about with their various laws, punishments, labor drafts, taxes, and military service. Though law and order benefit his subjects, the ruler should not expect them to think of him or the state as anything but the gunman writ large.

The Legalists set up a number of supporting posts for their theory. First, one seemingly based on the acceptance of the principle that pain while a physical evil to the person, in the form of punishment becomes a relative evil. And punishment strictly, swiftly and inexorably executed will eventually result in less punishment having to be applied and thus in this form is a relative good. This is the Lord of Shang's meaning in saying, "Virtue has its origin in force". The Legalists were not much interested in virtue, though. Many crimes and many punishments were bad because they were costly financially and politically. Harsh punishment buys compliance at a cheaper rate than lenient punishment or other methods. Their medicine was force. Applied in heavy doses to persons it had a homeopathic effect on the country as a whole. "Therefore, if by war one wishes to abolish war, even war is permissible; if by killing one wants to abolish killing, even killing

is permissible; if by punishments one wishes to abolish punishments, even heavy punishments are permissible" (*Book of Lord Shang* 4:18).

Wishing won't make it so, of course, but if it could make it so, the Legalist position would be hard to refute, without bringing in a postulate that they would not admit, that harsh punishment is a *mala in se*. Their relativist stance would forbid admitting that. "It is no cruelty to enforce severe penalties" (*Han Fei Tzü* 19:49). Their postulate utilizes human quantities. To punish a few harshly and have few crimes is better than to punish many leniently and have many crimes.

Nor can another ethical question gain much headway here: whether punishing a few persons harshly is not selecting scapegoats or sacrificial victims. This objection would leave the Legalists untroubled. Individuals and families may have to be sacrificed for the higher ethical standard of raison d'etat.

In another sense one might object that the harshly punished cannot be guilty of the extra punishment. Being over-punished for a crime they did commit is like being punished for a more serious crime they did *not* commit. What did the Legalists mean by a "light" crime, as in Lord Shang's phrase, "Punish light crime severely?" They meant "light" not by their own but by conventional standards. The Legalist argument would be that in true perspective all criminals deserve more punishment than they get.

Now this last remark about the just deserts of criminals does not seem to fit the view that the Legalists were immoral or that they were trying to separate law from ethics. Again, unless one insists on the same *mala in se*, cruel punishment being an absolute evil, the view would seem to be incorrect. The Legalists did not suppose or ever concede that the ruler's aim in using cruel force should be that of a tyrant, to win power or glory or riches for himself. They presumed that his end was theirs: a powerful state, capable of conquering others, ending the wars between states, and uniting the country into an empire.

It also seems clear that the Legalists were not trying to separate law from ethics. At first blush this may not seem to be the case for they disapproved of ethical considerations in the enactment and enforcement of law. Yet their moral judgments if not conventional were fierce. Their ideal was the state. Criminals and all those who preached and practiced traditional virtues like filial piety, kindness, brotherly goodness, duty and love, were "lice" to be kept off the body of the tough, healthy state.

Here they may be charged with falling into inconsistency, but one almost characteristic of legal positivism. If law is to be obeyed only because of fear of punishment, one cannot in the same breath also demand that it be respected as valid for ethical superiority or moral urgency. Han Fei Tzŭ called the frivolous and dissolute, "vermin", and intellectuals who beclouded the law, "itinerant witches and priests". Through such moral indignation and imperativeness, retributivism stalks into the Legalist theory of utilitarian punishment. The guilty must be punished, regardless of utility. Indeed, the

Legalist position is super-maximalist: the criminal must be overpunished; he cannot be punished enough, for even the mildest wrongdoer is striking at the state, newly discovered as the highest ethical ideal.

A second and more unusual support for their theory rested on psychology. To punish people, you must do to them what they hate; then they will be compliant. What do they hate? Penalties, physical pain, death. In this behavioral scheme, the way to increase obedience is to raise punitive severity to one high plane. If there are no small crimes, they further reasoned, there can be no big crimes. At the lowest level of crime a kind of reflex to criminality will be conditioned that as a matter of course will operate also at the highest level. The advantage is that the whole atmosphere of criminality which in itself creates the environment for crime will thereby be eliminated.

The Legalists used their psychology not to define the good or overall happiness of society but to theorize about obedience or compliance with law. Punishment was only one of "two handles", to use Han Fei Tzŭ's phrase. The other was reward or priase. Whoever did deeds of merit or valor was to receive land, or tax exemption, or some form of commendation. One idea was to confer distinction through promotion in a graded system of honorary rank. This system later took hold and became part of the Chinese political hierarchy wherein one held an honorific as well as bureaucratic rank, which would, the Legalists hoped, rival aristocratic title.

Technically, the two handles would give Legalists a hedonistic psychology. In practice they put greater reliance on the handle of punishment. To parallel the rule, "Punish light crime severely", they never said, "Reward small good deeds hugely." In fact the *Book of Lord Shang* is not at all keen about giving prizes to do-gooders, "... it is like giving rewards for not stealing" (4:18).

The Legalists pleasure-pain calculus calculated largely on pain. States other than Ch'in used penalties similar to their but nowhere with a shorter easy-hard continuum, nowhere with so little chance of reprieve or lightening of sentence, nowhere in such terrible variety. To an already long Chinese list the Ch'in government in 749 B. C. [according to the *Historical Records* (c. 100 B. C.) of the great historian, Ssŭ-ma Ch'ien] contributed still another punishment (which Lord Shang recommends for lax magistrates): extermination of one's family to the third degree or generation,[6] a punishment not inconsistent of course with the ethics of utilitarian deterrence.

In their novel theory of eliminating the environment of crime by harsh punishment, the element of passionate crime (crime for love or honor or whatever motive that overrides all penalties) seems to have been overlooked. Yet annals of the period abound in such crime. The stimulus-response theory, of course, would have to overlook this idea because, theoretically,

[6] This sentence which had a varied usage, probably most commonly included in the punishment one's father and mother, siblings, and wife and sons. See A. F. P. Hulsewé, *Remnants of Han Law*, vol. I, Introductory Studies. Leiden: E. J. Brill, 1955.

in its system, all traits or acts, or propensities toward such, could be extinguished by negative stimuli. Putting the resemblance to a simple S-R scheme aside for the moment, one can see instead two different hypotheses of characteristic human response or human nature: man the calculating actor vs. man the passionate actor. But once admit passionate crime into the legalist system, the possibility arises that harsh punishment may eliminate routine or calculated crime and leave only passionate crime—which of course may include crimes against the state. The things men hate beyond calculation (or beyond negative stimuli) have been known to include insult or mortification, sexual attraction, injury to family or loved ones, and—injustice.

A further objection to this theory implicates the ethics of fitting the punishment to the crime. For, the Legalists, drawing further on their elementary stimulus-response psychology, concluded that punishment to fit the crime was unavailing. Punishment for even the smallest offense should be cruel. Though punishment may be various, it should all be on the one high plateau of harshness or cruelty. The lex talionis though in intent perhaps more retributive than utilitarian, still contains a primitive positive correlation of crime and punishment. In their insistence on harsh punishment as a deterrent the Legalists undoubtedly would not have settled for "two eyes for an eye". They never seemed to have considered that one may as well be hanged for a wolf as for a sheep, that if a man is to die for a small crime, why not for a big one? Theoretically the proposition breaks down: a steep rise in penalty for small crime increases the incentive to major crime. If the punishment exceeds the crime, then the crime will rise to fit the punishment.

Something like this last rule may have played a part in the turbulence that led to the overthrow of the First Empire.

After these few pages of comment it may be evident: a more unrelenting opposition than Legalism to the by-then almost fully developed Confucian synthesis would be hard to find or imagine. The Legalist was interested in obedience, the Confucian, in obligation. In government the basic Confucian question was not as it was for the Legalist, How do you (ruler and ministers) get people to do what you want? but, How do you (ruler and constitutional advocates) get people to see what is good or good for them?

The Confucian answer was, Through example, persuasion, politico-religious rites, ceremonies and music, education, and at last resort, penalties. The "law" conceived almost exclusively as penal law was not a favorite term. Confucian doctrine relied on traditional and customary law (which of course as in other parts of the world where such norms guide conduct were not the terms used to designate them). Ancestral and family law was above raison d'etat.[7] Being unfilial or unbrotherly was worse than being a thief

[7] For the continuity in written law of this central strand of traditional law, see T'ung-tsu Ch'ü, *Law and Society in traditional China* (Paris: Houton & Co., 1965).

or murderer, even worse than being a traitor. The family writ large permeated political, legal, and religious structures and observances. The source of authority or *Grundnorm* of the law was the politico-religious Mandate of T'ien. The ruler, the Son of T'ien, was charged by T'ien to have the care of the community. As in natural law, his ordinances must be directed toward the welfare of that community. Otherwise his ordinances are not law, nor having lost the Mandate is he any longer the Son of T'ien, the legitimate ruler. "If there is any fault, T'ien will punish and kill me". [8] In the working out of justice, his rulings were law, subject to the restraints of the norms of T'ien, "the norms given by T'ien to our people" and the constitutional law embodied in Chou literature as extracted, preserved, ordered and interpreted by Confucians. The Emperor's law was accordingly particularistic, hierarchical, ad hoc, directed to the common welfare, maintained and transmitted rather than enacted, and clear not because written and promulgated but because securely imbedded in ritual and timeless tradition.

IV

Legalism it is said is the doctrine on which the Ch'in state battened to form the First Chinese Empire. If so, its achievements were many and great. Winning and administering a huge state called for a vast communications network, the standardization of writing, weights and measures, and a measure of uniformity in bureaucratic methods. The Legalists discovered the possibilities of administration; they grasped the importance of written law, its clear promulgation and impartial execution; they glimpsed the need for a separate judiciary, for codification of accumulated precedent, and the growth of jurisprudence. They saw, too, that legislation should fit changing conditions, and brought to light a legal and political realism and social science. They ripped at feudalistic government to make way for an empire-wide military and civil administration. The founding of the First Empire was a major event in world history. It was the first time the idea of unity "within the Wall" had been realized. Ch'in Shih Huang Ti, the First Emperor, had finished the Great Wall. It differentiated those outside the wall as barbarians, beyond the pale. And the Ch'in, in the awe with which people across Asia spoke of their achievements, probably lent their name to the country that has ever since been called China.

These achievements are not necessarily those of law or jurisprudence. Nor are all the tenets of Legalism those of law (*fa*). Administrative methods (*shu*) and power handling (*shih*) also play notable roles, however subordinate as concepts. [9] The stunning achievements of Ch'in undoubtedly helped

[8] *Book of Documents* (K'ang kao).

[9] The figure who seems to have put most emphasis on *shu* is Shen Pu-hai [See Herrlee G. Creel, *Shen Pu-hai: A Chinese Political Philosopher of the Fourth Century B. C.* (Chicago: The University of Chicago Press, 1974).] while the one who seems to have stressed *shih* is Shen Tao [See Paul M. Thompson, *The Shen Tzu Fragments* (Ph. D. thesis, Seattle: University of Washington, 1970).]

support its law, however. Military victories would have given the state prestige and in a non sequitur added to its laws a luster that in turn begun to create a habit of obedience apart from the threat of legal force.

Apparently by 210 B. C. when after 36 years on the throne the First Emperor died, the habit of obedience was still not fully acquired. Revolt broke out in all the provinces. The Legalist machinery of law and administration collapsed. Hsün Tzŭ who had been the teacher of both Han Fei Tzŭ and Li Ssŭ (chief architect of Legalist practice in Ch'in and the First Empire) had pointed out that good laws without good men will not avail. The Empire the Emperor had struggled to make last for ten thousand generations had lasted two decades. His name became synonymous with monster, his law synonymous with terror.

Clearly the Legalists were trying to make the shift from customary to written law. Still, other sovereign political units have grown from smaller to larger size, other countries and embryonic empires have absorbed customary and written law without suffering so evil a reputation and such enduring trauma.

The Legalist attack was more than this. It was two pronged, one against unwritten customary law, the other against the constitution. There is no difficulty in identifying the second target as the Confucian constitution. The Legalists themselves acknowledge its persistence in their strikes at it. In the back of their minds they did have a new constitution but they found difficulty in advocating it openly. They were at a disadvantage. They had rejected the family and aristocratic morality of the Mandate of T'ien. (They must have thought it moribund, anyway: in practice the rulers of states paid it small heed.) What would they exchange for it? They could not use the old constitution; nor flushed with military and political triumphs did they —until too late— suspect that they needed a source for constitutional authority.

In the preceding pages of comparison between Confucian and Legalist law, something is lacking. No mention was made of the Legalists' source of authority or basic norm of the system of law and the constitution. They seemed to have no clear position on it. The realization that old authority may be gone is but one side of reality. Another is that new authority to define and support law, legitimacy, sovereignty, succession, and a host of other political necessities urgently awaits creation. This, it seems, the Legalists never fully grasped.

The ruling house of Ch'in had but distant and dubious claims to be related to T'ien.[10] Moreover, it had itself no powerful new gods to supplant or

[10] Little seems to be known of the original claims to legitimacy of the rulers of Ch'in. In the Age of Warring States (403-221 B. C.) the ruling house of Ch'in carried the name *Ying*. Its clan ancestress was said to have swallowed the egg of a dark bird and given birth to the progenitors of the Ying. Inscriptions have been found of Ch'in bronzes, possibly of the seventh century B. C. Professor Cho-yun [See his

syncretize with T'ien. (Such an approach might have been foreign to the Legalist secular outlook, in any case.) And the Legalists never dreamed of opening up the democratic possibilities in uniformly applied law into a blooming doctrine of the people as the source of authority.

Unable themselves to build a new foundation for obedience to law, believing that ordinary men no longer lived if ever they did by the old morality, that the lords of states no longer observed if ever they did the old rites, what then to the Legalists was obligation but what you could count on getting men to do by force or its threat? Despairing of men, they grew addicted to punishment, the greater the despair, the harsher the punishment.

What the Legalists had to try to do was to change the constitution from religiously limited monarchy to absolutism. They may have much preferred a legally limited monarchy, but they never said so. Though they spoke of the supremacy of law, they never dared say it was above the ruler. At most, they held, the ruler should leave law to the jurists and not change it often or capriciously. At most, the ruler needed their kind of law —as a tool, his supreme tool— to maintain the order he wanted. The law was above men, to be sure, but not above the One Man.

In its beginnings, possibly, in the fourth century, Legalist doctrine might have been more accomodating to the Confucian synthesis on the lines, one might guess, of Kuan Chung (d. 645),[11] brilliant chief minister of Duke Huan of Ch'i, for whom even Confucius had some good words. Later, perhaps, the Legalists grown more confident, grew more radical. They aimed not simply at a change from customary to written law. If fundamental law embraces custom and constitution, the Legalists provoked throughout the land a crisis in fundamental law.

So difficult and aggressive for Confucians were the problems raised by Legalism that in two thousand years Chinese political and legal thought was never able to face them squarely. Succeeding dynasties and governments all profited from and used much of Legalist advice in government and law. Never did they admit this. With Han Fei Tzŭ, openly Legalist literature came to an end. Aristotle in the *Politics* can cooly dismiss the *nomoi* of Draco: there was nothing worth mentioning in them except the severity of penalities. The change invoked by Legalism was fundamental.

Ancient China in Transition (Stanford: Stanford University Press, 1965).] kindly provided the original text of the following inscription:

> "Brillantly my ancestor received the mandate from T'ien to dwell in the land settled by Yü. The twelve dukes since that time are at the side of Ti, the god; duly and reverently they keep the mandate of T'ien and protect the state of Ch'in in order to let her be served by the barbarians and Chinese."

[11] See W. Allyn Rickett, tr., *The Kuan Tzu: A Repository of Early Chinese Thought* (Hong Kong: Hong Kong University Press, 1965).