CRIME AND PUNISHMENT:
CHINESE PHILOSOPHIES AND PERSPECTIVES

by
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ABSTRACT

This paper gives a chronological description (from the earliest written records to premodern China) of the origin and development of Chinese criminological thinking.

Because China has such a long history and so many different schools of thought, the treatment in this paper can only focus on a few significant periods. For instance, the Spring and Autumn and the Warring States Periods, the seventh to the third centuries B.C., during which time many theories flourished, left a profound impact on the later years. The pronouncements on criminology of the various schools of thought are discussed, with the emphasis placed on the dominating schools, Confucianism, Legalism, Taoism, and Mohism.

The change of status of different schools through history, which signifies turning points in the social system of managing criminality, is discussed. The definitive T'ang Code, formulated during the eighth and ninth centuries A.D., is used to illustrate the distinct character of Chinese law prior to the introduction of Western concepts in the twentieth century.

The earliest Chinese written discussion of crime and punishment traditionally dates to the third millennium B.C., in the Shun Code which listed law as the guide of behavior; four types of punishment included exile, whipping, spanking, and a monetary fine. It indicated that under certain conditions, such as an accident or in a situation beyond a person's control, the person can be pardoned or the punishment reduced. And under certain other conditions, such as intentional viciousness, the punishment can be increased to the death penalty. The stated purpose of the law is to be kind to people. The Da Yu Code, promulgated by the first emperor of the Hsia Dynasty (c. 1994-1523 B.C.) further stated that the ultimate goal of punishment is to never have to use punishment (Yu T'ieh-ning, 1977, p. 22).

During the Chou Dynasty (1027-256 B.C.) most of China's political and legal systems were established. There were
general statements of principle regarding the control of government officials and common people. However, Chou was a feudal society with the Chou King exercising considerable control over the affairs of his vassals. Apparently law and punishment were used by the nobility as tools to threaten and control the common people, and therefore it was purposely concealed from the people. Some scholars speculate that the Chou Dynasty during the first three and-one-half centuries might not have had written criminal law, because in a stable, hierarchic society, there was no need for it, and it was to the advantage of the nobility not to have written law (Chang Chinch'hein, 1974, p. 16). In addition, the principle of inequality before the law can be seen in the exemption from the law of "Eight Special Considerations," including the royal family, its old friends, the nobility, foreign guests or diplomats, especially talented persons, or those who had made special contributions (Hsu Chan-yung, 1968, p. 88).

In 771 B.C., however, the Chou King was forced to abandon his capital to barbarian invaders and establish his court at Loyang in the east. As his power waned, the former vassals were increasingly free to ignore their duties to their sovereign and to each other. As the political situation became less stable, there was a demand for equality and written law.

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