

A NEW CONCEPT OF LAW. A STUDY OF DR. SUN YAT-SEN'S POLITICAL PHILOSOPHY *

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IMMANUEL KANT ONCE REMARKED THAT THE JURIST IS STILL ENDLESSLY searching for the definition of the concept of law. Sir Frederick Pollock has stated also that while a student in a law school would not hesitate to define the concept of real estate in an examination, a serious jurist would take his time to answer the superficially simple question: "what is law"? After a careful study of the philosophy of law in a historical perspective, Friedrich found it difficult to select from "among the mass of available materials and viewpoints" a meaningful summary.¹ Apparently up to the present, there is no universally accepted definition of law; paradoxically, the more one studies, the more one finds it difficult to define the concept of law.

Based on his fundamental philosophy of *San Min Chu I* (*The Three Principles of the People*), Dr. Sun Yat-sen had tried to develop a new concept of law. Since the main purpose of *San Min Chu I* was to solve the three categories of all problems in a society—national, political, and social—accordingly, the new concept of law derived from this basic philosophy would also be expected to work satisfactorily in solving present day problems. Being well versed in both Western and Chinese thinking, Dr. Sun was able to develop a new concept of law which characteristically coincided with other aspects of his political philosophy.² Dr. Sun was, however, more a political thinker, and his philosophical reflections upon the general foundations of law are more implied than expressed. The essence of his new concept of law could, however, be easily summarized as (1) theory of social service; (2) interweaving of Ch'ing, li, and law; (3) li as a part of law.

Theory of Social Service

First, his new concept of law is based on a theory of social service. To him, law is a kind of mandatory norm which regulates man's daily life in a society. It varies in form and substance from time to time and from place to place according to kinds of people and life in the society. Thus, law—whether flexible or strict—is a social product. It can be changed or modified at will by the people. Based on a "social cathexis," the legal system of a society is centered around a basic underlying concept in a given time. Historically, as society evolves, the legal system varies. The evolution of the cathexis of the legal system, according to Dr. Sun, may be explained primarily in three chro-

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¹ Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective* (1963), ix.

² Shia-ling Liu, "Theory of the State in Dr. Sun Yat-sen's Political Philosophy," *Chinese Culture* (March, 1960), 32-72.

nological periods: the period of individual obligation, the period of individual rights, and the period of social service.³

In the primitive totem, as well as in a relatively advanced feudal society, the basis of the legal system is dependent on the underlying principle of individual obligations. Those who were subdued by war, conquest, or otherwise, were treated as slaves or serfs. The lives of those slaves or serfs were under the whims of the masters, the lords, and ultimately the king. Although the lords were obligated for the protection of life of the serfs, these obligations were not more than measures of safeguards taken by a person over his own properties. Under this legal system, individual obligations or services were demanded one-sidedly upon those who were subdued. For those who were subdued, no rights, individually or as a group, were ever emphasized or demanded. Under the feudal hierarchy, the seemingly complicated lord-vassal feudal relationship could be simply explained by this basic principle. The manorial system of the Middle Ages as the prevailing economic system at the time was crystallized on the same legal foundation. This system prevails even in the modern period. For the purpose of acquiring wealth based on labor of others, the ruling classes in the imperialist countries institutionalized a uniform pattern to guarantee the permanence of the social situation at home and abroad. In spite of all the "noble testimony" to the contrary, the so-called proletariat dictatorship in the Communist countries is simply a political system of personal, or at the best, group exploitation based on the legal principle of individual obligation in the name of social service to the state.

With the introduction of the doctrine of the "inalienable, indivisible, infallible and indestructible natural rights" by Locke and Rousseau in the eighteenth century, a modern concept of law emerged in which individualism is glorified. As a result, the substance of law changed from the principal of individual obligations to the principle of individual rights. It was asserted that man was born with the natural rights of "life, liberty, and estate" or property. Each individual is entitled to such innate rights which must be respected by others and the society. The concept of law at this period was consequently based on this principle of individual rights. As an individual, one must insist upon his freedom to exercise such rights and at same time he may also insist that others respect his rights. However, with a view of sustaining the rights of each individual, it was found necessary to put certain limitations upon each individual in his exercising of such rights. The theory of social contract as advocated by Rousseau and Locke may seem to be the logical answer to the paradox.

The theory of social contract presumed the existence of individual rights prior to the creation of society and professed the protection of such rights after its organization. By way of a political contract following the initial social contract, a government is thus set up with the authority to see that individual rights are well protected and mutually respected in the society. Based upon this legal concept, the right of private property is therefore inviolable. Freedom of contract, unlimited right to inheritance and the like are the contents or substance of all civil codes. All legal protections under such legal

³ Shia-ling Liu, "Law and Society," *Culture Herald* (Nanking, Dec. 7, 1946), 30-33.

system would be for the protection of individual rights. Government is necessary only to the extent that it enhances individual rights. Individuals are socially obligated only to the extent that it is necessary for the protection of their own rights. Locke expressed the underlying idea very well when he used the natural rights of man to preserve himself and to support all political and legal order and moreover to participate in the founding and molding of a legal and political order which satisfies him.

Locke's theory of law, as based upon individual rights, was generally accepted by some leading thinkers of his time. From a slightly different point of view, Bentham lent support to the same theory. His celebrated principle of "the greatest happiness of the greatest number" used man's self-interest rather than man's natural rights as the basis of law.⁴ The constitutional principle of separation of powers associated with Montesquieu, the famous document of Declaration of Independence penned by Jefferson, and the Bill of Rights incorporated in the U.S. Constitution bore strong testimony to the general acceptance of the individualistic concept of law. This relatively simple concept of law was indeed a stabilizing force in a relatively simple society at the early modern period. According to Dr. Sun, however, social interaction became too complex for the individualistic legal system to cope with, as a result of the Industrial Revolution. Artificially created social stratification began to appear and the equilibrium of modern society was threatened. As a reaction to the agitation of Marxism, a new and socially oriented legal theory began to take shape and to develop in France and Germany which has a direct bearing upon the legal theory of Dr. Sun.⁵

In the second half of the nineteenth century, Rudolph von Ihering of Germany tried to substitute the idea of individual interest with the idea of social interest as the foundation of law. To his way of thinking, there are two major interests: the interest of the individual and the interest of the community or society. The first is the egoistic purpose of self-preservation. The second is the social purpose, "a sentiment of the ethical meaning of individual existence": that man is "meant to serve mankind." This side of human purposiveness is called ethical self-preservation.⁶ Consequently, human institutions are to be explained by their purposes, not by their causes. We find the conditions for a legal system of society only when individual egoism has been transformed into a social egoism—that is, where social ends are desired in, and for, themselves.⁷ Although Ihering puts "I" at the center of social order, he nevertheless rejects pure egoism as too one-sided. In synthesizing, he develops the doctrine of "a coincidence of purposes," which is the realization of the principle "of liking of one's own purpose with the interests of others."⁸ The law is therefore made for the masses rather than for any individual, yet it coincidentally takes care of the interests of individuals in the end. The law is a means to an end, and the end is not primarily the right of individuals but the interest of society. "Thus the law recognizes property rights only in so far

⁴ George H. Sabine, *A History of Political Theory* (1950), 653.

⁵ C. H. Mei, *Introduction to Jurisprudence* (1955), 30.

⁶ Friedrich, *op. cit.*, 157.

⁷ Francis W. Coker, *Recent Political Thought* (1936), 527.

⁸ Friedrich, *op. cit.*, 156.

as the exercise of such rights promoted the social welfare. When law fails to satisfy human needs it should, like other human institutions, be changed by deliberate human effort. Laws, then, are the rules which men in society apply to their political agencies for the purpose of guaranteeing the conditions necessary for the life and welfare of society."⁹ It is, therefore, not the purpose of law to emphasize so much the protection of individual rights but to harmonize the interests of society as a whole. Similarly, Roscoe Pound¹⁰ founded his theory of law also upon social interests. "The task is one of satisfying claims of demands with the least of friction and the least waste, whereby the means of satisfaction may be made to go as far as possible."¹¹ To him, the law must strike a balance between social and individual interests, and the theory of law must consider not only the making of law but the administration as well.

Dr. Sun was in agreement with Ihering, Pound, and other sociological jurists when he observed:¹²

Society progresses through the adjustment of major economic interests rather than through the clash of interests. If most of the economic interests of society be harmonized, the majority of people will benefit and society will progress. The reason why we want to make these adjustments is simply because of the living problem. From ancient times until now man has exerted his energies in order to maintain his existence. And mankind's struggle for continuous existence has been the reason for society's unceasing development, the law of social progress."

Dr. Sun, however, went a step further in his advocacy of a new concept of law. While Ihering stressed social interest, Stammer emphasized "social ideal," Holmes, Pound, and others elaborated on "sociological jurisprudence,"¹³ Dr. Sun pointed out the positive function of law. His theory not only stressed the importance of social interest or social life as the basis of law, it also generated an activist doctrine which emphasized the importance of social service to be rendered by all concerned within a society. This is not simply the "sociological jurisprudence" but a theory of social service or social obligation of people.¹⁴ With respect to this idea, Dr. Sun asserted:¹⁵

Every one should make service, not exploitation, his aim. Those with greater intelligence and ability should serve thousands and tens of thousands to the limit of their power and make thousands and tens of thousands happy. Those with less intelligence and ability should serve tens and hundreds to the limit of their power and make tens and hundreds happy. The saying: 'The skillful are the slaves of the stupid' is just this principle. Those who have neither intelligence nor ability should each nevertheless, serve one another to the limit of their individual power

⁹ Coker, *op. cit.*, 527.

¹⁰ Roscoe Pound has been a legal adviser to the Chinese National Government in Nanking. He was in China in the summer of 1946 and from September, 1947 to November, 1948 when the Communist take-over was eminent. He showed high respect for Dr. Sun's political and legal concepts and offered valuable suggestions in Chinese legal reform. Cf. K. S. Hsia's partially published diary in memory of Professor Pound, *Central Daily News* (Taipei, July 18, 1964), 1.

¹¹ Roscoe Pound, *Law and Morals*, McNair Lectures, 1923.

¹² Sun Yat-sen, *San Min Chu I*, translated by Frank W. Price, 391-392.

¹³ Coker, *op. cit.*, 539 and notes.

¹⁴ This concept of people in Dr. Sun's theory should not be confused with the Communist phraseology of people as in "People's Democracy" or "People's Dictatorship." To Dr. Sun, the concept of people includes all the people, rich or poor, not just the "proletariat" or the "party functionaries" alone.

¹⁵ Price, *op. cit.*, 245.

and make one another happy. In this way, although men may vary in natural intelligence and ability, yet, as moral ideals and the spirit of service, prevail, they will certainly become more and more equal. This is the essence of quality.

This passage carries three significant aspects: first, every one should make service, not exploitation, his aim; second, the amount of service is based on the individual's level of intelligence and ability. The more intelligent or able a person is, the more service he should render—this is in essence, the principle of progressive service. Third, the purpose of the principle of progressive service is to remedy the inequality of natural endowment of individuals in order to achieve real equality.

Similar to the theory of sociological jurists, the new concept of law advanced by Dr. Sun would de-emphasize the importance of individual rights and it would stress the importance of social interests. However, there is a significant difference between Dr. Sun's theory and the principles of sociological jurisprudence. While sociological jurisprudence still retains individual end as the main goal of society, Dr. Sun would exalt the corporate political community above individuals, as the state, being the representative of the people as a whole, is different from the multitude of individuals.¹⁶ Consequently, the application of the principle of progressive service is to the society and not to any individual or a privileged group of individuals. It would harmonize social life and advance social interest as a whole.

The difference between the theory of Ihering and that of Dr. Sun is likewise significant. While Ihering emphasized individual egoism as the major motivating force in achieving the social goal and has to use the principle of *quid pro quo* in achieving it, Dr. Sun stressed natural human sympathy and the sense of social duty in the Confucianist tradition as the basic psychological foundation of law and justice. In this respect, Dr. Sun's theory also presents a sharp contrast to the doctrine of Social Darwinism and Marxism.

According to Dr. Sun, Social Darwinism is wrong because of its misapplication of the theory of natural selection to the progress of human evolution, which is the governing principle of the plants and animals, but not of the human species. On the other hand, Marxism is also wrong. Dr. Sun asserted that Marx himself is only a social pathologist, not a social psychologist, because his assumption that class struggle is the cause of social progress puts the cart before the horse. On the contrary, observed Dr. Sun,¹⁷

Since man entered the stage of civilization he has been instinctively following the principle of cooperation to attain the end of evolution... What is the end of human evolution. It is, as Confucius said, 'When the Great Principle (of Truth) prevails, the whole world rests on a common trusteeship' as well as what Jesus said, 'Thy will be done on earth as it is in Heaven.'

Aside from the psychological basis of law, Dr. Sun, like Leon Duguit, accepts the theory of social solidarity as the sociological foundation of law and regards law as the rules of conduct actually controlling men who live in society. Its obligations arise not only from having been commanded, so to speak, by one's conscience or self-consciousness but also directly from the

¹⁶ Shia-ling Liu, "Theory of the State in Dr. Sun Yat-sen's Political Philosophy," *op. cit.*, 63-69.

¹⁷ Cited by Wei Yung, *The Cult of Dr. Sun*, 92.

necessities of social life. Even though man may realize the value of law as evolved from ethics, however, the fact that man lives in society and must so live in order to survive, reinforces the importance of such rules of conduct. Such rules may be entered into by different means, either by social contract as asserted by Rousseau, Locke, or Hobbes, or by command of the sovereign state or rulers. The fact is that if the advantages of social life are to be maintained, certain rules must be observed: otherwise society disintegrates. Men are naturally conscious of these rules and are impelled by self-interest or conscience to obey them. They are instinctively aware (or learn naturally from experience) that they have common needs and desires which can be satisfied only by living together; that they have diverse capabilities, as a consequence of which, their several needs can be satisfied only by an exchange of service; that, in short, they live longer and suffer less in association with other men. This fact constitutes social solidarity or social interdependence. The whole of law can be reduced to three general rules: respect all acts determined by the end of social solidarity; abstain from acts determined by any contrary ends; do everything possible to develop that solidarity. This kind of social relationship based upon mutual sympathy and upon the feeling of duty or even necessity arising from it, according to Tonnies, would lie hidden, which could be called the "natural law of community."¹⁸ This system of law would, in every one of its institutions, express the principles of solidarity within the community and of the immediately interdependence of rights and duties.

Aside from such a built-in enforcing element, Dr. Sun recognizes that these rules must have some objectively enforceable guaranty. While the principle of social solidarity provides the necessity for the observance of such rules, this socially enforceable guaranty need not be just a simple system of organized coercion. Being predominantly influenced by the Confucianist tradition, Dr. Sun rejected the doctrines advocated by the Chinese Legalists. To him, the sanction of law is primarily ethical and psychological, resting in each individual's awareness of the social approval or reprobation of his conduct according to its conformity or non-conformity to fundamental social rules. Since this type of law is motivated by the common good of the people, it would not permit any disparity between law and morality. Thus, Dr. Sun emphasized the discipline of the mind in the true tradition of Confucianism.¹⁹ As a matter of fact, one of his noted works *Sun-Wen Doctrine* is based wholly on this premise.²⁰

Therefore, in the new concept of law, ideas such as "right" and "freedom" must be redefined. The concept of "right" is different from the one based on the individualistic legal system. Under an individualistic legal system, "right" is divine, inviolable, and inalienable which could be exercised at the discretion of individuals with the least possible limitation from any external authority or source. The idea of "right" under the new concept is

¹⁸ Cited by Rudolf Herberle in "The Sociological System of Ferdinand Tonnies: Community and Society," ed. by Harry E. Barnes, *An Introduction to the History of Sociology* (1948), 227-248.

¹⁹ Wei Yung, *op. cit.*, chapter V.

²⁰ Sun Yat-sen, *Collected Writings*, Part IV.

conditional, relative. It is never absolute and could be exercised only in the interest of furthering the social solidarity or social cohesion desired by society, in general, as visualized to a certain extent by the individual concerned.

Individuals work for the advancement of social solidarity out of necessity and through self-realization. Individual conduct is governed by the rules of law based on the principle of social solidarity. In advancing social solidarity, individuals as well as the society have the "right" to limit those acts which are adverse to the harmony of society. In this sense, the idea of "right" is no more than a sort of "power" exercised collectively and in the interest of the society to prohibit or to prevent adverse acts from taking place. In other words, such "rights" are only instruments in bringing about the best of the individual in order to serve the people, to further the interest of society, and to advance the solidarity of that society. There is no "right" other than the "right" to serve. However, such "right" is still limited by the law of the society.

This new concept of "right" eventually led Dr. Sun to remark that "there is no natural right, there are only revolutionary rights."²¹ However, this position did not lead him to conclude, as the Marxist did, that there is no necessity to provide for, or to protect, individual rights. His contention is only that individual service should take precedence over individual rights. In other words, the law should protect such rights which work for the advancement of social solidarity but not those which work only for the purpose of advancing one's self-interest at the expense of the society. In determining such goals, Dr. Sun, unlike the Marxists, favored democratic process and he actually introduced the doctrine of "distinction between power and capacity" as against the idea of "separation of powers" in the West to balance interests of individuals and society.²²

The same principle applies to "freedom" as well. With the purpose of advancing social solidarity, the law provides that, within certain limits, individuals may exercise their free will in doing what they choose to do. In this sense, "freedom" may be considered as a part of individual rights. However, such individual freedom would serve its meaningful purpose only when it furthers the social solidarity or, as with Russell, social cohesion. This concept differs sharply with the individualistic idea of unlimited or unlimitable freedom. This so-called freedom is, therefore, the "freedom" to serve humanity or the "freedom" to advance social solidarity.

Under this new concept, the so-called "private ownership" of property could also be explained in terms of limited freedom rather than absolute "right." Because of personal ownership, the individual may have "freedom" to dispose of his private property with the purpose to further the interest of society as a whole. As with Charmont,²³ Dr. Sun argued that ownership of property creates for the owner as many obligations as rights by the mere fact of his ownership, and not by any undertaking or any fault on his part, he incurs liabilities: to his employees and to the public. Basically, the ownership of an individual to a certain property is merely coincidental. The added

²¹ Price, *op. cit.*, 180.

²² Shia-ling Liu, *op. cit.*, 69-72.

²³ Joseph Charmont, *Modern Legal Philosophy*, chapter VII.

value to privately owned property is "the benefit of social life." Therefore, it should not be claimed by the owner alone, but rather, it should be shared by the public as a whole. Consequently, Dr. Sun, in his *Principle of Social Welfare* (or of *People's Livelihood*), devised a practical scheme by which the owner is entitled to the original value of the land as self-reported, while the added value to the land is afforded to the public.²⁴ In the same manner, the progressive taxation system and the usually burdensome inheritance tax rate, as institutionalized in the United States today, could be fully and philosophically justified.

Incidentally, as Dr. Sun was highly influenced by the German and French sociological jurists, his doctrine of social service was not without any historical roots in the Chinese legal system. The *Miscellaneous Codes of the Law of T'ang* (618-907 A.D.), for instance, stipulated that "in case of a fire, those who could report and did not and those who could have terminated the fire and did not, be punished in the third degree for accidental fire."²⁵ It also stipulated that "in case of robbery and murder in the neighborhood, those who reported and did not render assistance be punished by 100 heavy blows; those who have heard and did not render assistance be punished at the next degree."²⁶ The underlying principle of such provisions is a crystallization of the doctrine of social obligation which seems to be odd and strange under the individualistic legal system.

Interweaving of "Ch'ing," "Li," and Law.

The second ingredient of Dr. Sun's new concept of law is the interweaving of *ch'ing*, *li*, and law. In the final analysis, there are two major schools regarding the nature of law. One school maintains that there is an unwritten, divinely or naturally appointed law-universal in application and immutable in time, which is normative. The other school rejects the natural law doctrine of such absolute, universal, and unalterable rules of law, and maintains that there is a written, humanly decreed law — limited in application to the boundaries of particular communities and changing within any community with changing conditions. The ultimate sanctions of the law are either the habits, opinions, and emotions of the body of the people, or the improvement of human welfare and happiness in a given community or, as with the positivists, the penalties which either legislatures or courts lay down. The new concept of law advanced by Dr. Sun is a synthesis of these two major schools.

According to Dr. Sun, the legal system is based on the social solidarity of any given society, yet it could be modified according to the free will of the people within that society. It is real, positive, and rational. As with Stammler, the right law is "natural law with variable content."²⁷ This universal standard is, however, only a formal measure of the law. The actual content of right law varies infinitely. To use the proper Chinese expression, the law is the embodiment of *ch'ing* and *li*. The former, concerns the proper relationships of the people and feelings toward each other; the latter, concerns the

²⁴ Price, *op. cit.*, 435.

²⁵ D. H. Mei, *op. cit.*, 25.

²⁶ *Ibid.*, 26.

²⁷ Coker, *op. cit.*, 529.

rationale of the subject matter in point of its logical consequences or implications. The first point is best illustrated by an old Chinese proverb that "the law is not outside human feelings." The interweaving of *ch'ing*, *li*, and law is best expressed in the frequently quoted statement: "Eternal reason, national law, and human feelings." Chu Hsi, the 12th century St. Thomas of China, used to say that "nature is nothing else than law."²⁸ It means that law is not outside of nature or against nature.

As a consequence of human nature, personal considerations should be granted in the application of law. It is, therefore, inconceivable for a father to testify against his children, a husband against his wife, a brother against another brother, or vice versa, in court proceedings. According to Dr. Sun, socialization is human nature. Since the beginning of time, individuals have lived in groups, and the life of the group is the life of the individual. Until the life of the group is well protected, individual development is impossible.

Among human groups, there is a certain set of common norms which governs the interactions between one individual and another, and between the individual and the group; otherwise, group life is impossible. Such set of norms could be either the mores or the laws of the society. As the group grew from families to villages, and from villages to a nation, the function of moral codes and the law tended to be increasingly important. The power to sustain the enforcement of the law is usually the government within a given body. Thus, Dr. Sun believed that morality and law share the same origin, perform the function, and differ only in the mode of their enforcement. Law is therefore derived from *ch'ing* and *li*, not outside of them.

In amplifying the doctrine of Dr. Sun, President Chiang once remarked that "the reason why human beings are different from, and superior to, the animals and the reason why human beings can continuously work for their own advancement and their own evolution is that human beings have feelings, observe law and possess reasoning power. Feelings, law, and reason are the three essential and necessary ingredients which sustain the existence of human beings and promote human evolution. None of the three is dispensable. Accordingly, in the *Three Principles of the People* (as advocated by Dr. Sun), the Principle of Nationalism is based on feelings, the Principle of Democracy is based on law, and the Principle of People's Livelihood is based on reason. Thus, the *Three Principles of the People* is more adequate than any other doctrine in solving contemporary problems."²⁹

In most cases, law coincides with morality. Morality is based on the feelings (*ch'ing*), following the reason (*li*). Accordingly, *ch'ing* and *li* must be channelled into law in order to obtain justice. The law must be in accordance with *ch'ing* and *li* in order to be practicable. Once of the most noted Chinese legalists—Lu Shih Wu (ca. 300 B.C.)—said that "law is codified according to the eternal principles of right or divine reason and human feelings," and that "law is the unavodiable feelings."³⁰ In the same manner, a modern jurist also stressed the ethical aspect of law when he said that "ethical

²⁸ Chu Hsi, "Philosophy of Human Nature," quoted by W. Durant in *Our Oriental Heritage* (1954), 732.

²⁹ Chiang Kai-shek, *Collected Works*, I, chapter 4.

³⁰ C. C. Chang, "Law and Morality," *Chinese Culture* (May, 1960)6.

consideration of justice which is the end and purpose of all civil laws than one can exclude the vital air from his room and live."³¹ The new concept of law, as advocated by Dr. Sun, as with other noted jurists, is therefore interwoven with a heavy dash of morality which is different from the concept of law under individualism based mainly on the self-interest of individuals.³²

"Li" as a Part of Law.

The third ingredient of Dr. Sun's new concept of law is that he regards *li*³³ as a part of law. Based on its form, there are two kinds of law. One, is what has been precisely stated; the other, is what has been enforced informally. The first is usually formulated or proclaimed according to formal legal procedures by legislative body or other legally competitive agencies. Since the end of the Chou Dynasty (1122-222 B.C.), such laws were in existence in China. Tsu Ch'an codified the Criminal Code and Li K'uei wrote the Six Chapters on Legal Institutes. These were the beginning of formally written Chinese law.³⁴ However, according to legal history in China, the formally written law is only a part of the law which was binding upon the people. In addition to the written law, there is the ever significant substance of law which is *li*. Although in the early period of Chinese history, the legalists and the Confucianists had sharply disagreed as to the origin and function of law and *li*. Confucius said: "guide the people with political measures and control or regulate them by the threat of punishment, and the people will try to keep out of jail, but will have no sense of honor or shame. Guide the people by virtue and control or regulate them by *li*, and the people will have a sense of honor and respect."³⁵ In the Book of Etiquette (or *li*) it was asserted that "*li* does not apply to the common people, and punishment cannot be imposed on officials with the rank of *ta fu*."³⁶ The basic difference between *li* and law is that "*li* forbids trespasses before they are committed whereas law punishes criminal acts after their commission."³⁷

However, ever since the time of Confucius, the coordination or alteration of *li* and law had been started. As Prime Minister of Lu, Confucius himself ordered the execution of Shao Cheng-mow and defended his action eloquently against his disciples' questioning. He once said that "if *li* and *yueh* do not flourish, punishments, are not likely to be just right. If punishments are not just right, the people will not know what to do."³⁸ In speaking of *li*, *yueh*, and punishment in the shame breath, Confucius was worrying that punishments imposed by the authorities might not be justifiable. Even if they were,

³¹ C. H. Dillion, "Laws and Jurisprudence of England and America," 18, quoted by Pound, *Harvard Law Review*, XXVII, 731.

³² It should be noted that the Western concept came to be combined with a plural conception of society in which the scope of law is limited. Morality, in short, which is still considered to be far above the law in the U. S. Government, is but one social institution. Other social organizations and even single individuals define morality while government and law do not.

³³ This is not to be confused with *li* discussed in the previous section. These two words sound alike in Chinese, yet the meaning are quite different.

³⁴ Mei, *op. cit.*, 56.

³⁵ Chang, *op. cit.*, 5.

³⁶ *Ibid.*, 9.

³⁷ *Ibid.*, 4.

³⁸ Chang, *op. cit.*, 14.

he was still in favor of using *li* and *yueh* as instruments of government to buttress the rule of it.

Tung Chung-shu, one of the eminent Confucianist scholars in the time of Emperor Wu (140-87 B.C.) of the Han Dynasty, maintained as traditional and classical position in the interrelationship of the law and *li*. On the one hand, he held theoretically that one can dispense with punishment or moral persuasion and put sole reliance on the other. On the other hand, he also made judicial judgments on the basis of the principles enunciated in *The Book of Spring Autumn* and interpreted laws in the light of Confucianist classical teachings. It was he who at once steeped himself in Confucianism and administered the affairs of state in accordance with law. It was also he who built a bridge between rule by moral persuasion and rule by law and reconciled the teachings of Confucianism with those of the legalists.

Following this tradition, Dr. Sun emphasized the intermixing of *li* and law. According to him, *li* is something that regulates our ethical relations; it is designed to curb the excessive natural desires of man; and it helps us to cultivate moral habits. In essence, *li* is a form of social control which operates to prevent evil from happening rather than punishment after occurrence. In this regard, the Chinese concept of *li* is not unlike the Western concept of natural law that prevailed in the seventeenth and eighteenth centuries. As most of the legal concepts in the Western world have their origin from natural law, most modern Chinese legal concepts have also originated from well developed concepts of both *li* and law and are now applied to all the people regardless of their social or official status.

In summary, Dr. Sun's new concept of law is based on (1) his theory of social service, (2) the interweaving of *ch'ing*, *li*, and law and (3) *li* as an essential part of law. In fact, his theory is a synthesis of progressive western legal concept and traditional Chinese ethical system. In a country which had never been exposed to the Western legal system, his acceptance of sociological foundation of law is indeed new and revolutionary. His theory of progressive social service went even a step further than sociological jurisprudence by emphasizing the traditional Chinese virtue of self-sacrifice in serving mankind. In the interweaving of national law with eternal reason (*li*) and human feeling (*ch'ing*), he has at one stroke defined the idea of justice, explained the desirability of rule by law over the rule by man, and provided justification for revolution if and when law is anti-reason and anti-nature. In the incorporation of *li* (etiquette) with law, he settled once and for all the age-old arguments between the Confucianists and Legalists, by giving law a much broader meaning than mere punishment which, in all respects, is in full agreement with his new concept. Although Dr. Sun was more of a political thinker, yet his philosophical reflections on the concept of law are more than implied throughout his major works. This short paper is an attempt to examine some of the essence of his theory in the hope that more scholarly endeavors will be taken to explore the richness of this legal philosophy, probably most desirable in the modern Orient.