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LEGALISM: AN ALTERNATIVE SYSTEM

A student of the Confucian Xunzi, Han Feizi (d. 233 B.C.E.) was the principal theoretician of Legalism, a school of philosophy adopted by the Qin after unifying China in 256 B.C.E. This former Confucian adopted the pragmatic view that the Chinese, perceived as antisocial and inherently evil, must be firmly controlled by an authoritative central government through strictly applied punitive laws. This harsh but effective solution for resolving the chaotic conditions that plagued the Zhou dynasty included the introduction of new managerial techniques, an improved bureaucracy, enhanced communications, land reforms, and standardization of weights, measures, and coinage. Han Feizi, who served as an official for the powerful but short-lived Qin dynasty (that gave China its name), died from poison at the hands of Li Si, a jealous Legalist rival. Han Feizi wrote 20 books and was honored by the grand historian, Sima Qian, with a biographical sketch.

How did Legalism differ from Confucianism in its view of human nature and the proper organization of the state? Officially, Legalism died with the demise of the Ch'in and the renewed interest in Confucian values. In fact, though, the Chinese state continued to combine Confucian ideals with the harsher police-like approach urged by Legalists—so this division of political approach was of more than passing importance. Both Legalism and Confucianism, somewhat ironically, promoted a strong state.

HAN FEIZI

If orders are made trim, laws never deviate; if laws are equable, there will be no culprit among the officials. Once the law is fixed, nobody can damage it by means of virtuous words. If men of merit are appointed to office, the people will have little to say; if men of virtue are appointed to office the people will have much to talk about. The enforcement of laws depends upon the method of judicial administration. Who administers judicial affairs with ease . . . attains supremacy. . . . Whoever procrastinates in creating order, will see his state dismembered.

Govern by penalties; wage war by rewards; and enlarge the bounties so as to put the principles of statecraft into practice. If so, there will be no wicked people in the state nor will there be any wicked trade at the market. If things are many and trifles are numerous, and if farming is relaxed and villainy prevails, the state will certainly be dismembered.

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If the people have a surplus of food, make them receive rank by giving grain to the state. If only through their own effort they can receive rank, then farmers will not idle.

If a tube three inches long has no bottom, it can never be filled. Conferring office and rank or granting profit and bounty without reference to merit, is like a tube having no bottom.

If the state confers office and bestows rank, it can be said to devise plans with complete wisdom and wage war with complete courage. Such a state will find a rival. Again, if the state confers office and bestows rank according to merit, then rules will be simplified and opponents barred; this can be said to abolish government by means of government, abolish words by means of words, and bestow rank according to merit. Therefore the state will have much strength and none else in All-under-Heaven will dare to invade it. When its soldiers march out, they will take the objective and, having taken it, will certainly be able to hold it. When it keeps its soldiers in reserve and does not attack, it will certainly become rich.

The affairs of the government, however small, should never be abandoned. For instance, office and rank are always obtained according to the acquired merit; though there may be flattering words, it will be impossible thereby to make any interference in the state affairs. This is said to be "government by figures." For instance, in attacking with force, ten points are taken for every point given out; but in attacking with words, one hundred are lost for every one marched out. If a state is fond of force, it is called hard to attack; if a state is fond of words, it is called easy to attack.

If the ability of the official is equal to his post, if his duty is lightened and he never reserves any surplus energy in mind, and if he does not shift any responsibility of additional offices back to the ruler, then there will be no hidden grudge inside. If the intelligent ruler makes the state affairs never mutually interfere, there will be no dispute; if he allows no official to hold any kind of additional post, everybody will develop his talent or skill; and if he allows no two persons to share the same meritorious achievement, there will be no quarrel.

If penalties are heavy and rewards are few, it means that the superior loves the people, wherefore the people will die for rewards. If rewards are many and penalties are light, it means that the superior does not love the people, wherefore the people will never die for rewards.

If the profit issues from one outlet only, the state will have no rival; if it issues from two outlets, its soldiers will be half useful; and if the profit comes from ten outlets, the people will not observe the law. If heavy penalties are clear and if the people are always well disciplined and then if men are engaged in case of emergency, the superior will have all the advantage.

In inflicting penalties light offences should be punished severely; if light offences do not appear, heavy offences will not come. This is said to abolish penalties by means of penalties. And the state will certainly become strong. If crimes are serious but penalties are light, light penalties breed further troubles. This is said to create penalties through penalties, and such a state will infallibly be dismembered.

The sage in governing the people considers their springs of action, never tolerates their wicked desires, but seeks only for the people's benefit. Therefore, the penalty he inflicts is not due to any hatred for the people but to his motive of loving

the people. If penalty triumphs, the people are quiet; if reward overflows, culprits appear. Therefore the triumph of penalty is the beginning of order; the overflow of reward, the origin of chaos.

Indeed, it is the people's nature to delight in disorder and detach themselves from legal restraints. Therefore, when the intelligent sovereign governs the state, if he makes rewards clear, the people will be encouraged to render meritorious services; if he makes penalties severe, the people will attach themselves to the law. If they are encouraged to render meritorious services, public affairs will not be obstructed; if they attach themselves to the law, culprits will not appear. Therefore, he who governs the people should nip the evil in the bud; he who commands troops, should inculcate warfare in the people's mind. If prohibitions can uproot causes of villainy, there will always be order; if soldiers can imagine warfare in mind, there will always be victory. When the sage is governing the people, he attains order first, wherefore he is strong; he prepares for war first, wherefore he wins.

Indeed, the administration of the state affairs requires the attention to the causes of human action so as to unify the people's mental trends; the exclusive elevation of public welfare so as to stop self-seeking elements; the reward for denunciation of crime so as to suppress culprits; and finally the clarification of laws so as to facilitate governmental procedures. Whoever is able to apply these four measures, will become strong; whoever is unable to apply these four measures, will become weak. Indeed, the strength of the state is due to the administration of its political affairs; the honour of the sovereign is due to his supreme power. Now, the enlightened ruler possesses the supreme power and the administrative organs; the ignoble ruler possesses both the supreme power and the administrative organs, too. Yet the results are not the same, because their standpoints are different. Thus, as the enlightened ruler has the supreme power in his grip, the superior is held in high esteem; as he unifies the administrative organs, the state is in order. Hence law is the origin of supremacy and penalty is the beginning of love.

Indeed, it is the people's nature to abhor toil and enjoy ease. However, if they pursue ease, the land will waste; if the land wastes, the state will not be in order. If the state is not orderly, it will become chaotic. If reward and penalty take no effect among the inferiors, government will come to a deadlock. Therefore, he who wants to accomplish a great achievement but hesitates to apply his full strength, can not hope for the accomplishment of the achievement; he who wants to settle the people's disorder but hesitates to change their traditions, can not hope to banish the people's disorder. Hence there is no constant method for the government of men. The law alone leads to political order. If laws are adjusted to the time, there is good government. If government fits the age, there will be great accomplishment. Therefore, when the people are naïve, if you regulate them with fame, there will be good government; when everybody in the world is intelligent, if you discipline them with penalties, they will obey. While time is moving on, if laws do not shift accordingly, there will be misrule; while abilities are diverse, if prohibitions are not changed, the state will be dismembered. Therefore, the sage in governing the people makes laws move with time and prohibitions change with abilities. Who can exert his forces to land-utilization, will become rich; who can rush his forces at enemies, will become strong. The strong man not obstructed in his way will attain supremacy.

Therefore, the way to supremacy lies in the way of shutting culprits off and the way of blocking up wicked men. Who is able to block up wicked men, will eventually attain supremacy. The policy of attaining supremacy relies not on foreign states' abstention from disturbing your state, but on their inability to disturb your state. Who has to rely on foreign powers' abstention from disturbing his state before he can maintain his own independence, will see his state dismembered; who relies on their inability to disturb his state and willingly enacts the law, will prosper.

Therefore, the worthy ruler in governing the state follows the statecraft of invulnerability. When rank is esteemed, the superior will increase his dignity. He will accordingly bestow rewards on men of merit, confer ranks upon holders of posts, and appoint wicked men to no office. Who devotes himself to practical forces, gets a high rank. If the rank is esteemed, the superior will be honoured. The superior, if honoured, will attain supremacy. On the contrary, if the state does not strive after practical forces but counts on private studies, its rank will be lowered. If the rank is lowered, the superior will be humbled. If the superior is humbled, the state will be dismembered. Therefore, if the way of founding the state and using the people can shut off foreign invaders and block up self-seeking subjects, and if the superior relies on himself, supremacy will be attained. . . .

In general, wherever the state is extensive and the ruler is honourable, their laws are so strict that whatever is ordered works and whatever is prohibited stops. Therefore, the ruler of men who distinguishes between ranks and regulates bounties, makes laws severe and thereby makes the distinction strict.

Indeed, if the state is orderly, the people are safe; if affairs are confused, the country falls into peril. Who makes laws strict, hits on the true nature of mankind; who makes prohibitions lenient, misses the apparent fact. Moreover, everybody is, indeed, gifted with desperate courage. To exert desperate courage to get what one wants, is human nature. Yet everybody's likes and dislikes should be regulated by the superior. Now the people like to have profit and bounty and hate to be punished; if the superior catches their likes and dislikes and thereby holds their desperate courage under control, he will not miss the realities of affairs.

However, if prohibitions are lenient and facts are missed, reward and penalty will be misused. Again, when governing the people, if you do not regard conformity to law as right, you will eventually observe no law. Therefore, the science and philosophy of politics should by all means emphasize the distinction between degrees of penalty and of reward.

Who governs the state, should always uphold the law. In life there are ups and downs. If any ruler goes down, it is because in regulating rewards and penalties he makes no distinction between different degrees. Who governs the state, always distinguishes between reward and punishment. Therefore, some people might regard the distinction between reward and punishment as distinction, which should not be called distinction in the strict sense.

As regards the distinction made by the clear-sighted ruler, it is the distinction between different grades of reward and of punishment. Therefore, his subjects respect laws and fear prohibitions. They try to avoid crime rather than dare to

expect any reward. Hence the saying: "Without expecting penalty and reward the people attend to public affairs."

For this reason, the state at the height of order is able to take the suppression of villainy for its duty. Why? Because its law comprehends human nature and accords with the principles of government.

If so, how to get rid of delicate villainy? By making the people watch one another in their hidden affairs. Then how to make them watch one another? By implicating the people of the same hamlet in one another's crime. When everyone knows that the penalty or reward will directly affect him, if the people of the same hamlet fail to watch one another, they will fear they may not be able to escape the implication, and those who are evil-minded, will not be allowed to forget so many people watching them. Were such the law, everybody would mind his own doings, watch everybody else, and disclose the secrets of any culprit. For, whosoever denounces a criminal offence, is not held guilty but is given a reward; whosoever misses any culprit, is definitely censured and given the same penalty as the culprit. Were such the law, all types of culprits would be detected. If the minutest villainy is not tolerated, it is due to the system of personal denunciation and mutual implication.

Indeed, the most enlightened method of governing a state is to trust measures and not men. For this reason, the tactful state is never mistaken if it does not trust the empty fame of men. If the land within the boundary is always in order it is because measures are employed. If any falling state lets foreign soldiers walk all over its territory and can neither resist nor prevent them, it is because that state trusts men and uses no measures. Men may jeopardize their own country, but measures can invade others' countries. Therefore, the tactful state spurns words and trusts laws.

Broadly speaking, it is hard to uncover a crooked merit that appears to fulfill the promise; it is hard to disclose the feature of the fault that is ornamented with beautiful words. Therefore, penalty and reward are often misled by double-dealers. What is alleged to be fulfilling the promise but is hard to uncover, is a villainous merit. Any minister's fault is hard to disclose, because its motive is missed. However, if by following reason you can not disclose the false merit and by analyzing feelings you are still deceived by the villainous motive, then can both reward and punishment have no mistake respectively?

For such reasons, false scholars establish names inside, while itinerants devise plans outside, till the stupid and the coward mix themselves with the brave and the clever. Inasmuch as the false path is customary, they are tolerated by their age. Therefore, their law does not work and their penalty affects nobody. If so, both reward and penalty have to be double-dealings.

Therefore, concrete facts have their limits of extension, but abstract principles involve no accurate measures. The absence of such measures is due not to the law but to the abandonment of law and the dependence on cleverness. If the law is abandoned and cleverness is employed, how can the appointee to office perform his duty? If duty and office are not equivalent to each other, then how can the law evade mistakes and how can penalty evade troubles? For this reason reward and punishment will be thrown into confusion and disorder, and the state policy will deviate and err, because neither penalty nor reward has any clear distinction of degree as in the difference between black and white.

STUDY QUESTIONS

1. What was the purpose of government according to the Legalists? How did these views compare with Confucianism?
2. Did Legalists judge human nature to be good or bad?
3. Could Confucianists and Legalists agree on any major points? How might their views and recommendations be combined?
4. Can Legalism and Confucianism be explained by the different political contexts in which they arose?
5. Why was Legalism ultimately less successful than Confucianism in East Asian history?