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HAN FEI

Legalism, c. 230 B.C.E.

Legalism was the alternative to Confucianism that appealed to the First Emperor of the Qin dynasty. Han Fei (280–233 B.C.E.) had been raised on Confucianism but broke with the tradition as he developed very different ideas about human nature and government. A son of a noble family from the enemy state of Han, Han Fei fell under suspicion

Source: *Sources of Chinese Tradition*, comp. William Theodore de Bary et al. (New York: Columbia University Press, 1963), 1: 127–29, 133–35.

as an advisor of the Qin king Zheng, who became First Emperor. His rival had him arrested and poisoned. The following was taken from the *Han Fei Tzu* (Master Han Fei), as his collected political essays have become known. What is Han Fei's criticism of Confucianism? How would you characterize the ideas of Han Fei? How might these ideas appeal to an empire-builder like the First Emperor?

THINKING HISTORICALLY

To fully understand Han Fei's argument, you need to consider them in relation to those of Confucius. Compare this document to the previous one. Just how different are Han Fei's ideas from those of Confucius? What aspects of Legalism would you expect empire-builders in history to find appealing? Think of two very different rulers from history and compare how they did or did not apply aspects of Legalism to their rule. Do empires require Legalists? Do they require Moralists?

When the sage rules the state, he does not count on people doing good of themselves, but employs such measures as will keep them from doing any evil. If he counts on people doing good of themselves, there will not be enough such people to be numbered by the tens in the whole country. But if he employs such measures as will keep them from doing evil, then the entire state can be brought up to a uniform standard. Inasmuch as the administrator has to consider the many but disregard the few, he does not busy himself with morals but with laws.

Evidently, if one should have to count on arrows which are straight of themselves, there would not be any arrows in a hundred generations; if one should only count on pieces of wood which are circular of themselves, there would not be any wheels in a thousand generations. Though in a hundred generations there is neither an arrow that is straight of itself nor a wheel that is circular of itself, yet people in every generation ride carts and shoot birds. Why is that? It is because the tools for straightening and bending are used. Though without the use of such tools there might happen to be an arrow straight of itself or a wheel circular of itself, the skilled carpenter will not prize it. Why? Because it is not just one person who wishes to ride, or just one shot that the archers wish to shoot. Similarly, though without the use of rewards and punishments there might happen to be an individual good of himself, the intelligent ruler will not prize him. The reason is that the law of the state must not be sidetracked and government is not for one man. Therefore, the capable prince will not be swayed by occasional virtue, but will pursue a course that will assure certainty. . . .

Now, when witches and priests pray for people, they say: "May you live as long as one thousand and ten thousand years!" . . . [T]here

is no sign that even a single day has been added to the age of any man. That is the reason why people despise witches and priests. Likewise, when the Confucianists of the present day counsel the rulers they do not discuss the way to bring about order now, but exalt the achievement of good order in the past. They neither study affairs pertaining to law and government nor observe the realities of vice and wickedness, but all exalt the reputed glories of remote antiquity and the achievements of the ancient kings. Sugar-coating their speech, the Confucianists say: "If you listen to our words, you will be able to become the leader of all feudal lords." Such people are but witches and priests among the itinerant counselors, and are not to be accepted by rulers with principles. Therefore, the intelligent ruler upholds solid facts and discards useless frills. He does not speak about deeds of humanity and righteousness, and he does not listen to the words of learned men.

Those who are ignorant about government insistently say: "Win the hearts of the people." If order could be procured by winning the hearts of the people, then even the wise ministers Yi Yin and Kuan Chung would be of no use. For all that the ruler would need to do would be just to listen to the people. Actually, the intelligence of the people is not to be relied upon any more than the mind of a baby. If the baby does not have his head shaved, his sores will recur; if he does not have his boil cut open, his illness will go from bad to worse. However, in order to shave his head or open the boil someone has to hold the baby while the affectionate mother is performing the work, and yet he keeps crying and yelling incessantly. The baby does not understand that suffering a small pain is the way to obtain a great benefit.

Now, the sovereign urges the tillage of land and the cultivation of pastures for the purpose of increasing production for the people, but they think the sovereign is cruel. The sovereign regulates penalties and increases punishments for the purpose of repressing the wicked, but the people think the sovereign is severe. Again, he levies taxes in cash and in grain to fill up the granaries and treasuries in order to relieve famine and provide for the army, but they think the sovereign is greedy. Finally, he insists upon universal military training without personal favoritism, and urges his forces to fight hard in order to take the enemy captive, but the people think the sovereign is violent. These four measures are methods for attaining order and maintaining peace, but the people are too ignorant to appreciate them. . . .

The literati by means of letters upset laws; the cavaliers¹ by means of their prowess transgress prohibitions. Yet the ruler treats them both with decorum. This is actually the cause of all the disorder. Every

¹ Horse-mounted soldiers, knights. [Ed.]

departure from the law ought to be apprehended, and yet scholars are nevertheless taken into office on account of their literary learning. Again, the transgression of every prohibition ought to be censured, and yet cavaliers are patronized because of their readiness to draw the sword. Thus, those whom the law reproves turn out to be those whom the ruler employs, and those whom the magistrates suppress are those whom the sovereign patronizes. Thus legal standard and personal inclination as well as ruler and ministers are sharply opposed to each other and all fixed standards are lost. Then, even if there were ten Yellow Emperors,² they would not be able to establish any order. Therefore, those who practice humanity and righteousness should not be upheld, for if upheld, they would hinder concrete accomplishments. Again, those who specialize in refinement and learning should not be employed, for if employed, they would disturb the laws. There was in Ch'u an upright man named Kung, who, when his father stole a sheep, reported it to the authorities. The magistrate said: "Put him to death," as he thought the man was faithful to the ruler but disloyal to his father. So the man was apprehended and convicted. From this we can see that the faithful subject of the ruler was an outrageous son to his father. Again, there was a man of Lu who followed his ruler to war, fought three battles, and ran away three times. Confucius interrogated him. The man replied: "I have an old father. Should I die, nobody would take care of him." Confucius regarded him as virtuous in filial piety, commended and exalted him. From this we can see that the dutiful son of the father was a rebellious subject to the ruler. Naturally, following the censure of the honest man by the magistrate, no more culprits in Ch'u were reported to the authorities; and following the reward of the runaway by Confucius, the people of Lu were prone to surrender and run away. The interests of superior and subordinate being so different, it would be hopeless for any ruler to try to exalt the deeds of private individuals and, at the same time, to promote the public welfare of the state. . . .

Today one cannot count even ten men of devotion and faithfulness, yet official posts in the country are counted by the hundreds. If only men of devotion and faithfulness were appointed to office, there would be an insufficiency of candidates, and in that case guardians of order would be few, while disturbers of peace would be many. Therefore the way of the enlightened sovereign consists in making laws uniform and not depending upon the wisdom of men, in making statecraft firm and not yearning after faithful persons, so that the laws do not fail to function and the multitude of officials will commit neither villainy nor deception. . . .

²Legendary Chinese ruler and culture hero. [Ed.]