Legalist ideas of law, human nature and statecraft

Reading:

Burton Watson, *Han Feizi: Basic Writings* (New York, 2003) PP. 97-130

0. Confucianism v Legalism

- rule by virtue (de □), relying on human being's ethical integrity (ren □), rightness (yi □), ethical code of conduct (li □) and wisdom (zhi □)
- rule by law (fa □), relying on a well-designed system of punishments (xing □) and rewards (shang □)

1. Criticism directed to Confucian "chaos" and "□□"

- Thus, what saves a country is not □(ren) or □(yi). A loving person (□□) is compassionate, generous and spends money easily. A violent person (□□) has a heart full of anger (□) and easily carries out executions. If you are compassionate and generous, you won't bear to see hardship. You spend money easily, you would love to donate. If you have a heart full of anger, your hatred will appear to people below you. You easily carry out executions and people will be wasted. If you cannot bear to see hardship, pardons will be liberally given. If you love to donate, rewards will be showered where there is no achievement. If your hatred shows itself, those below you would have grievances against their superiors. If you easily execute people, people will eventually rebel. … Therefore, it is said, "Both benevolent men and violent men are the ones ruining a country." □□□□

- Followers of Confucius disrupt law with their erudition. The brave ones break the prohibition with their martial valor. And yet, kings treat them with courtesy and ceremony. This is why there is chaos. … Thus, those who practise □□ should not be given honours. Honouring them means that other people's achievements will be harmed. People with erudition and learning should not be employed. Employing them would mean that the law will be disrupted. □□□□□□□□□□□□□□□□□□□□□□□□□□□… □□□□□□□□□□□□□□□□□□□□

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□□□□ (□□□ , □□ 1)

- When people pursue self interest, things will work out fine. … Suppose you hire a labourer to plough and sow your field. If you spend money to prepare nice food and pay him good wage, that is not because you love him. That is because, if you do that, your employee will plough more deeply and sow more carefully. If your labourer puts in a great deal of effort to plough and sow your field, that is not because he loves you. That is because, if he does that, he will get nice food and decent wage. … What moves our mind is ultimately our self-interest. (□□□ , □□□□□ 3 , 30)

3. Promoting “uniformity” by eliminating dissension

- In olden days, even when men did not till the ground, the fruits from the plants were sufficient to feed us and even when women did not weave, the skins of the wild animals were sufficient to cloth us. Even though efforts were not made, there was plenty to eat. People were not numerous but the resources were more than enough. Thus people did not fight. For this reason, even without rewards and punishments, people governed themselves. □□□ □□□□□

and training their sophistry can make a comfortable living without tilling the field and be respected without facing the risk of war. Then, who would not do that?’

- When the ‘five vermin’ (scholars, itinerant speakers, wearers of private swords, courtiers and those engaged in service industry) are utterly eradicated, the ruler can truly emerge and the so-called wise men will have no more use.
- War and basic industry (agriculture) are the only activities which bring real benefit to the State.
    - In the area of basic industry, reward and punishment sort out themselves (you reap what you sow).
    - ‘profits and emoluments, office and rank should be based exclusively on military merit, and there should be no other reasons for distributing them.’
- Mozi □□ , □□□ 1:

  In the beginning, when people started to appear, punishment and governance were not yet in place. Everybody had his own standard of what is right and what is wrong … The whole world was in a chaos just like the animal world. (□□□

[In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.

- Also see Jean Bodin, *Les Six Livres de la République* (1576), I.111-112

4. Clear Notice

- 'Law must be compiled and written down in books, be made available in public offices and be widely promulgated to people.'
- If the potential loss from a conduct is set sufficiently higher than the potential gain from the conduct, and if this situation is well publicised, people will 'voluntarily' refrain from doing the conduct in question (ni er bu wei: though they don't like it, they would not fail to do it).
- Qin Codification

5. Updating the Law

- 'Earlier ages had different ideology. How can you rely on their law? The legendary saints will never come back. How can you follow their principles?'
- 'Thus the [real] saint never tried to practise the old stuff. How can there be a permanent law? You need to analyse the things of this world and equip yourself accordingly.'
- "A farmer in the State of Song one day saw a rabbit bumping into a stump to death in the middle of his farm.

From that day one, he sat by the stump in the hope of getting many more rabbits that way. Those who insist on going back to the good old days are just like this farmer.”

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6. Perfect “techniques” of social engineering?

- no room for ethical integrity
- no room for criticising the legimacy of the law and exercise of governmental power.
- Superior *technique (shu)* which exploits human psychology of love and hate, likes and dislikes, fear and desire
- “Free”, borderless competition for techniques of governance
- ‘Those who rule a country must choose [a technique] which works for many and discard the ones which work for fewer people.’

7. Ren(□), yi(□) and wu wei (□□)

- ‘Thus, we do not fear the accusations that we undermine the ruler’s interest. We do not mind the sufferings which would follow such accusations. Our determined quest for material resources to bring all the people to their fulfilment is an act of moral fortitude and wisdom. To fear the accusations about harming the ruler’s interest and to shun the risk of death following from such accusations is to know how to look after yourself and to ignore the comfort and well-being of all the people. It is a base conduct.’ (□□□□□□□□□□□□□□□□□□□