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 德), relying on human being's ethical integrity (ren 仁), rightness (yi 義), ethical code of conduct (li 禮) and wisdom (zhi 智)
- rule by law (fa 法), relying on a well-designed system of punishments (xing 刑) and rewards (shang 賞)

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

- Thus, what saves a country is not 仁(ren) or 義(yi). A loving person (仁者) is compassionate, generous and spends money easily. A violent person (暴者) has a heart full of anger (毅) 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." 故存國者，非仁義也。仁者，慈惠而輕財者也；暴者，心毅而易誅者也。慈惠則不忍，輕財則好與。心毅則憎心見於下，易誅則妄殺加於人。不忍則罰多宥赦，好與則賞多無功。憎心見則下怨其上，妄誅則民將背叛… 故曰：仁暴者，皆亡國者也。(韓非子， 八說 6)

- 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 仁義 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. 儒以文亂法，俠以武犯禁，而人主兼禮之，此所以亂也。… 故行仁義者非所譽，譽之則害功；文學者非所用，用之則亂法。(韓非子, 五蠹 8)
- If you abandon the compass and ruler and instead rely on your arbitrary feel, even Xie Zhong [a legendary master carpenter] cannot finish a wheel. If you throw away the meter and try to guess the length, even Wang Ni [a legendary craftsman] cannot divide a stick in halves. (韓非子, 用人 2) (But compare what Xun Zi says about Li at 王霸 9 and 禮論 15)
- Five vermins
    - 其學者則稱先王之道，以籍仁義，盛容服而飾辯說，以疑當世之法而貳人主之心。(Learned persons cite the ways of the ancient kings and invoke ren yi (仁義). With impressive appearance and attire and with eloquence, they question the present day’s law and make the king’s mind torn between the two)
    - 其言古者，為設詐稱，借於外力，以成其私而遺社稷之利 (Antiquarians talk about the ancient time but in fact they tell lies. Borrowing foreign nations’ power, they achieve their private gain and abandon the government’s interests.)
    - 其帶劍者，聚徒屬，立節操，以顯其名而犯五官之禁。(Militia will gather together and boast about their unbending spirit. And they become famous and violate all sorts of rules.)
    - 其患御者，積於私門，盡貨賂而用重人之謁，退汗馬之勞。(Courtiers and lobbyists will emerge from influential families. They spend lots of money to bribe important people and evade the burdensome military duties.)

    - 其商工之民，修治苦窳之器，聚弗靡之財，蓄積待時而侔農夫之利。(Merchants and craftsmen make useless items. They buy up things cheap, bide their time and rob farmers of their income.)
- 殺身以成仁, 衛靈公, 15.9
- 子曰：「朝聞道，夕死可矣。」 (Lunyu 4.8)
- 子曰：「觚不觚，觚哉！觚哉！」 (Lunyu 6.24)
- 子曰：「君子之於天下也，無適也，無莫也，義之與比。」 (Lunyu 4.10)
- Having explained the choices made by Bo Yi, Shu Qi, Yu Zhong, Yi Yi, Zhu Zhang, Hui of Liu Xia, and Shao Lian, Confucius says, 「我則異於是，無可無不可。」 (Lunyu, 18.8)

2. Thoroughly “rational” approach

- Bright ruler’s way of governing is that even the base may challenge the noble on matters of virtue and rightness. The subordinates should be entitled to press charges against the superiors, judgments must be based on evidence, petitions must be heard without any hurdles. In this manner, the clever may not defraud others. Rewards should be based on assessment of achievement. Commissioning must be based on evaluation of ability. Through a surveillance of originating causes and observation of bad result, those who are at fault must be punished and those who are capable must be employed. Thus, stupid ones will not be given a task. The clever would not dare defraud others. When the stupid are not allowed to decide the matter, things would work without fail. 明君之道，賤德義貴，下必坐上，決誠以參，聽無門戶，故智者不得詐欺。計功而行賞，程能而授事，察端而觀失，有過者罪，有能者得，故愚者不任事。智者不敢欺，愚者不得斷，則事無失矣。(韓非子, 八說 2)
- In order to rule the world, you need to rely on human nature. To like and to dislike is part of human nature and this is why reward and punishment can work. Reward and punishment working, prohibitions and commands can have effect. This is all there is to the true method of governance. 凡治天下，必因人情。人情者，有好惡，故賞罰可用；賞罰可用則禁令可立而

治道具矣 (韓非子 , 八經 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. (韓非子 , 外儲說左上 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. 古者丈夫不耕，草木之實足食也；婦人不織，禽獸之皮足衣也。不事力而養足，人民少而財有餘，故民不爭。是以厚賞不行，重罰不用而民自治。(五蠹 2)
- But nowadays, people have lots of kids. There are too many people with too scarce resources. People therefore started to fight. Chaos…
- ‘There cannot be two authorities to an order; there cannot be two right answers to a legal question.’ ‘If the law is not one, it brings disaster to the country. … When the ruler as well as the ministers, the employer as well as the employee, the magnates as well as the lowly people all follow the (uniform) law, that’s what we call great governance.’
- ‘These days, those who spend their time with learning

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 墨子 , 尚同上 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. (古者民始生，未有刑政之時，蓋其語『人異義』。是以一人則一義，二人則二義，十人則十義，其人茲眾，其所謂義者亦茲眾。是以人是其義，以非人之義，故文相非也。是以內者父子兄弟作怨惡，離散不能相和合。天下之百姓，皆以水火毒藥相虧害，至有餘力不能以相勞，腐臭餘財不以相分，隱匿良道不以相教，天下之亂，若禽獸然。)

  [The Heaven, therefore, installed the Son of Heaven, who then installed three grand dukes, who then installed the feudal rulers (kings), who then installed regional governors, who then installed village chiefs. There came into existence the intelligence gathering, reporting and pomulgating the uniform standard of what is right and what is wrong. The whole world was properly governed once there is a uniform standard of what is right and what is wrong.]

- Thomas Hobbes, *Leviathan* (1651), ch. 13:

> *[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.”

- 子曰：「周監於二代，郁郁乎文哉！吾從周。」 (Lunyu 3.14)

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(仁), yi(義) and wu wei (無爲)

- ‘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.’ (故不憚亂主闇上之患禍，而必思以齊民萌之資利者，仁智之行也。憚亂主闇上之患禍，而避乎死亡之害，知明夫身而不見民萌之資利者，貪鄙之為也； 問田 2)
- ‘to rule without ruling (wu wei er zhi; 無爲而治)’ – everything must be driven by pursuit of self-interest.
- 子曰：「君子喻於義，小人喻於利」(里仁 4.16)