

8 LEGALIST TEACHINGS

By the third century B.C., as small states one after another were conquered by large ones and the number of surviving states dwindled, those rulers still in contention were receptive to political theorists who claimed to understand power and the techniques that would allow rulers to strengthen control over officials and subjects. These advisors argued that strong government depended not on the moral qualities of the ruler and his officials, as Confucians claimed, but on establishing effective institutional structures. Because of their emphasis on laws, these thinkers are usually labeled the Legalists.

Below are selections from the two fullest Legalist treatises. The first has traditionally been ascribed to Lord Shang (Gongsun Yang, died in 338 B.C.), long chief minister of the state of Qin, the state most fully to adopt legalist policies. The second is from the major synthesizer of Legalist thought, Han Feizi. Han Feizi once studied with Xunzi and eventually traveled to Qin, where he had access to high court politics. Slandered by his former fellow student Li Si, then in power, he was forced to commit suicide in 233 B.C.

SELECTIONS FROM *THE BOOK OF LORD SHANG*

Changing the Laws

Duke Xiao was discussing policies. Three great officers, Gongsun Yang, Gan Long, and Du Zhi, were assisting him. They considered changes in social practices, debated the basis for laws, and searched for ways to lead the people.

The ruler said, “The proper course for the ruler is to keep in mind the sacrifices to the soil and grain from the time he first succeeds to his position. The job of the minister is to shape the laws and devote himself to the lord of the people. Now I wish to change the laws in order to govern better and reform the rituals in order to instruct the common people. I am afraid that everyone will criticize me.”

Gongsun Yang said, “I have heard that those who hesitate to act accomplish nothing. Your Highness should quickly make up your mind about reforming the laws, ignoring everyone’s criticisms. After all, those who excel in what they do

or have independent thoughts are always condemned by their contemporaries. There is a saying, 'The dull cannot even see what has already happened, but the intelligent can see what is yet to sprout.' The people should not be consulted in the beginning; but they should join in enjoying the results. The laws of Guo Yan said, 'Those who discuss the highest virtues do not accord with common sentiments; those who attain the greatest feats do not ask ordinary people for advice.' Laws exist to love the people; rites exist to make affairs go smoothly. Therefore, the sage does not stick to ancient laws if he can strengthen his state by changing them and does not keep ancient rituals if he can benefit the people by altering them."

Duke Xiao said, "Good."

Gan Long objected, "I disagree. I have heard that a sage teaches the people without changing them and a wise man governs without altering the laws. One can attain success without much effort when one teaches on the basis of the people's ways. When one governs on the basis of the established laws, the officials will have experience and the common people will feel secure. If you now change the laws, abandoning the old practices of the state of Qin, and alter the rituals to instruct the people, I fear that everyone will criticize Your Highness. Please give the matter careful consideration."

Gongsun Yang responded, "You have expressed the conventional wisdom. Ordinary people feel secure with old habits and scholars are mired in what they have heard. Both may be all right for occupying offices and enforcing laws, but they cannot be brought into discussion of matters outside the law. The founders of the three dynasties became kings using different rituals; the five hegemony established their supremacy using different laws. Therefore the wise person creates laws while the ignorant are controlled by them; the worthy alter the rites while the unworthy are held fast by them. Those held fast by rituals or controlled by laws are not the people with whom to discuss policies. Your Highness, have no doubts."

Du Zhi countered, "I have heard that unless the advantage is a hundredfold, one does not change the laws, and unless the success will be up tenfold, one does not alter the equipment. I have also heard that modeling on the past eliminates errors and preserving rituals eliminates deviance. Let Your Highness plan that way."

Gongsun Yang said, "Former ages did not all have the same teachings. Which past will you use as a model? The great kings did not repeat each other. Which rituals will you follow? Fu Xi and Shen Nong taught but did not punish; the Yellow Emperor, Yao, and Shun punished but not in anger. More recently,

Kings Wen and Wu each created laws suited to their time and rituals suited to the circumstances. Rituals and laws should be established according to the times, rules and regulations according to what is right, and military equipment according to what is needed. Therefore I say, 'There is more than one way to bring peace to the world and no need to follow the past.' The kings Tang and Wu flourished without copying the past; the Shang and Xia dynasties fell despite preserving their rituals. Consequently opposing the past is not necessarily wrong; following conventions is not worth much praise. Your Highness, have no doubts."

Duke Xiao said, "Good. I have heard that poor villagers are easily alarmed and pedantic scholars love to argue. What amuses the ignorant grieves the wise; what gives joy to the foolish gives grief to the wise. I will not worry about what people say." Thereupon he issued the law on reclaiming wastelands.

SELECTIONS FROM *HAN FEIZI*

Precautions with Regard to the Inner Quarters

The ruler gets into difficulties through placing his trust in others. When he trusts someone, he falls under the person's control. Ministers are not attached to their ruler through kinship, but serve only because they suit his needs. Therefore ministers observe their ruler's moods constantly while the ruler gets to take his ease. This is the reason some rulers are deposed or assassinated.

When a ruler puts great confidence in his son, treacherous ministers will make use of the son to achieve their private ends. Li Dai, for instance, helped the King of Zhao starve his father. When a ruler places great trust in his wife, then treacherous ministers will make use of her to achieve their private ends. The actor Shi, for instance, helped Lady Li kill [the heir apparent] Shensheng and set up Xiqi in his stead. Since one cannot trust even someone as close as a wife or child, there is no one who should be trusted.

Among the wives, concubines, and sons of a ruler of a state, large or small, there will probably be someone who would like to see the ruler die early. How do I know this? A wife is not tied by flesh and blood. When the ruler loves her, they are close; when he does not love her, they are distant. It is like the saying, "The child whose mother is loved is cherished." The opposite also holds true: The child whose mother is hated is cast aside. A man of fifty has not lost his interest in women, but a woman begins to lose her looks before thirty. When a woman

whose looks are deteriorating serves a man who still loves sex, she will be despised and her son is not likely to be made heir. This is the reason queens, consorts, and concubines plot the death of the ruler. When the mother of the ruler is the queen, all orders are carried out and all prohibitions are effective. She enjoys male-female relations as much as when the previous ruler lived and can control all the powers of a large state without raising suspicions. [To preserve this situation she may well] poison (her son) the ruler or hang him in secret. It is for these reasons that Tao Zuo, in the *Spring and Autumn Annals*, said, “Not even half of all rulers die of illness.” When a ruler does not realize this, his troubles will worsen. Hence the saying, “When many people will profit from his death, a ruler is in danger.”

Lords

Lords’ lives are endangered and their states perish when the high ministers are too honored and the rulers’ attendants are too influential. Those too highly honored will act on their own authority, disregarding the law and manipulating the organs of the state for their selfish ends. Those too influential will take advantage of the situation and act arbitrarily. One must be on guard for both of these.

The strength of their muscles is what makes it possible for horses to carry heavy loads and pull carriages long distances. The power of position is what makes it possible for lords of large or small states to control the world and subjugate the feudal lords. The power of position is a ruler’s muscular strength. Now for senior officials to get influence and attendants to get power reduces the ruler’s strength. Not one ruler in a thousand can keep his state if he loses his power. Tigers and leopards can win over men and catch other animals because of their claws and fangs, without which they would be dominated by men. Now, superior power constitutes the lords’s claws and fangs, loss of it is comparable to tigers and leopards losing their claws and fangs. The ruler of Song lost his claws and fangs to Zihan, and Duke Jian lost his to Tian Chang. Because they could not get them back quickly enough, they lost their lives and their states were destroyed. Today, even rulers with no knowledge of techniques of control understand Song Jian’s error. Still, they do not see their own failings and how similar they are.

Men of law and techniques of control [i.e., Legalists] do not get along with these sorts of ministers. How can I show this? When the ruler has men who know techniques of control, then the high ministers are not able to act arbitrarily and the close attendants will not dare to sell favors. When the influence of the

ministers and attendants ceases, the ruler's way will be bright. This is not the case today. These sorts of ministers have the power to protect their private interests and the attendants and intimates form factions and control access in order to keep out those more distant from the ruler. When, then, can men of law and techniques of control get the chance to be employed? When can the lord get to discuss strategy and make decisions? It is for these reasons that techniques of control are not always employed and legalists cannot coexist with these ministers and attendants.

Six Examples of Having It Backwards

The sort of person who out of fear of death avoids trouble and surrenders or retreats is honored by the world as a man who values life. The sort of person who studies the Way and proposes plans but distances himself from the law is honored by the world as a man of learning. The sort of person who travels around letting others support him is honored by the world as a man of talent. The sort of person who twists words, pretends to have knowledge, and practices deception, the world honors as a skilled debater. The sort of person who wields a sword to kill or intimidate is honored by the world as a man of courage. The sort of person who deserves to die because he has harbored criminals is honored by the world as a man of chivalry. The world praises these six sorts of people.

By contrast, the sort of person who will risk his life for matters of principle, the world belittles as a person who cannot calculate the odds. The sort of person who knows little but obeys the law, the world belittles as a simple rustic. The sort of person who does productive work, feeding himself through his own efforts, the world belittles as a fellow of little ability. The sort of person who is generous, honest, and good, the world belittles as silly. The sort of person who obeys orders and respects authority, the world belittles as timid. The sort of person who resists criminals and informs the authorities about them, the world belittles as a slanderer. The world belittles these six sorts of people.

The six sorts who plot, deceive, and do nothing of value the world honors; the six sorts who farm, wage war, and prove of use the world disparages. These are the six examples of having it backwards. Ordinary people, out of partiality, praise someone; then the ruler, hearing of his undeserved reputation, treats him with courtesy. Those who are treated courteously always end up gaining profit as well. Ordinary people, because of a private grudge, slander someone; then the ruler, following convention, despises him. Those who are despised always come to harm. Thus rewards go to selfish and evil people who ought to be punished

and harm comes to public-minded men who ought to be rewarded. Consequently there is no hope of enriching and strengthening the state.

The ancients had a saying, "Governing is like washing hair. Even if some hairs fall out, it must be done." Anyone who begrudges the loss of some hair and forgets the advantage to the growing hair has no understanding of expediency. Lancing boils hurts, drinking medicine tastes bitter. But if on that account one does not lance them or drink them, one will not recover.

Now, the relationship between superior and subordinate is not based on affection like that between father and son. So if one wishes to curb subordinates by acting righteously, the relationship will be flawed. Think of parents' relations to their children. They congratulate each other when a son is born, but complain to each other when a daughter is born. Why do parents have these divergent responses when both are equally their offspring? It is because they calculate their long-term advantage. Since even parents deal with their children in this calculating way, what can one expect where there are no parent-child bonds? When present-day scholars counsel rulers, they all tell them to rid themselves of thoughts of profit and follow the path of mutual love. This is expecting rulers to go further than parents. These are immature ideas, false and deceptive. Therefore the intelligent ruler does not accept them.

The sage's method of governing is as follows. He scrutinizes the laws and prohibitions, and once they are made clear, his officials are orderly. He defines the rewards and punishments, and when they are fair, the people can be employed by the officials. When the officials are orderly and the people are employed, the state will get rich and from that the army will be strong. Then it is possible to succeed in establishing hegemony over other states. For rulers, becoming hegemon or king is the ultimate benefit. A ruler must keep this ultimate benefit in mind in governing. Therefore he must employ officials according to their talents and give rewards and punishments impartially so that all can see. When men work hard and risk their lives, military campaigns can succeed and rewards of rank and salary are deserved. Thus one succeeds in gaining wealth and high rank. For subjects, wealth and high rank are the ultimate benefit. When subjects attend to their work with these goals in mind, they will face danger and risk their lives, putting out every last bit of effort. This is what is meant by the saying that unless the ruler is generous and the subjects loyal hegemony cannot be achieved.

Criminals are careful if they are likely to be discovered and stop if they are likely to be executed. But they are reckless if they will not be discovered and carry out their plans if they will not be punished. If goods of little value are left

in a deserted place, even Zeng and Shi could be tempted. But if a hundred pieces of gold are hung up in the marketplace, even great robbers will not take them. When no one will know, even Zeng and Shi can be suspected. When sure to be discovered, then even great robbers do not take the gold hung in the marketplace. Therefore the enlightened ruler, in ruling his country, increases the guards and makes the penalties heavier; he depends on laws and prohibitions to control the people, not on their sense of decency. A mother loves her son twice as much as a father does, but a father's orders are ten times more effective than a mother's. The relationship between officials and the people is not based on love and their orders are ten thousand times more effective than parents'. Parents pile up love, but their orders fail; officials are strict and the people obey. Such is the basis for choosing between severity and love.

Furthermore, parents make every effort to keep their children safe and far from trouble, but a ruler's relation to his people is different. In times of difficulty he needs them to risk death and in times of peace he needs them to exhaust their strength for him. Parents, who lovingly consider their children's comfort and benefit, are not obeyed. Rulers, who with no concern for their benefit demand that they risk their lives or work hard, have their orders followed. The intelligent ruler recognizes this and so does not cultivate feelings of empathy but builds up awe for his power. Indulgent mothers generally spoil their sons through their love. Harsh fathers generally rear good sons through their strictness.

Esteemed Scholars

When a sage rules a state he does not count on people doing good on their own but rather takes measures to keep them from doing wrong. If he depended on people who do good of themselves, he could hardly find a few dozen in the whole realm. But if he uses methods to keep them from doing wrong, then everyone in the state can be made to act the same. In governing it is better to disregard the small minority to make use of the bulk of the population. Thus the ruler should concentrate on laws rather than on moral influence. After all, if one had to depend on shafts that were naturally straight, a hundred generations would go by before one could make an arrow, and if one had to depend on wood that was naturally curved, a thousand generations would go by without a wheel. Naturally straight shafts and naturally curved wood appear not even once in a hundred generations yet people ride carriages and shoot birds in every generation. How do they accomplish this? They use the techniques for straightening and bending. A skilled craftsman places no particular value on shafts that are straight or boards that are round of themselves even before

straightening or bending. Why? Because there isn't only one person who wants to ride or shoot. In the same way, a ruler does not value people who are good of themselves even without rewards and punishments. Why? Because the state's laws should not be ignored and it is not enough to govern just one man. Therefore a ruler who knows the techniques is not swayed by accidental goodness but carries out policies that will assure success....

Those who do not understand how to govern all say: "Obtain the hearts of the people." ... The people are no more intelligent than an infant. If an infant's head is not shaved, his sores will not heal; if his boils are not lanced, his illness will worsen. Even when someone holds him and his loving mother does the shaving or lancing, he will howl without stop, for a baby cannot see that a small discomfort will result in a major improvement. Now the ruler wants to people to till land and maintain pastures to increase their production, but they think he is cruel. He imposes heavy penalties to prevent wickedness, but they think he is harsh. He levies taxes in cash and grain to fill the storehouses and thus relieve them in time of famine and have funds for the army, but they consider him greedy. He imposes military training on everyone in the land and makes his forces fight hard in order to capture the enemy, but they consider him violent. In all four cases, he uses means that will lead to peace, but the people are not happy.

Translated by Patricia Ebrey