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Chinese Cultural Studies:

Han Fei. A Legalist Writer:

Selections from The Writings of Han Fei (c. 230 BCE)

from W.L. Liano, trans, *The Complete Works of Han Fei Tzu*, (London: Arthur Probsthain, 1939), pp. 40, 45-47 repr. in Alfred J. Andrea and James H. Overfield, *The Human Record: Sources of Global History*, Vol 1, 2d. ed., (Boston: Houghton Mifflin, 1994), pp. 95-97

[Andrea Introduction] Daoism offered no active political program, whereas Confucius and his disciples preached a doctrine of benevolent reform based on virtuous imitation of the past. A third school of thought that emerged in the chaos of the late Zhou era was Legalism, which rejected both the Way of nature, as embraced by Daoists, and Confucianism's emphasis on the primacy of the moral way of antiquity.

Legalist writers, to the contrary, emphasized law as government's formulative force and advocated a radical restructuring of society in ways that were totally rational and up-to-date.

Legalism reached its apogee in the late third century B.C. in the writings of Han Feizi (Master Han Fei) and the policies of Emperor Qin Shi

Huangdi. Han Fei was a prince of the state of Han who defected to its chief rival, the state of Qin, but eventually he ran afoul of Qin's chief minister, Li Si (d. 208 BCE) and was forced to commit suicide in 233 BCE. Before he died, he composed a number of essays on how to construct a stable and peaceful state. The following selections present Han Fei's major principles of political philosophy.

HAVING REGULATIONS

No country is permanently strong. Nor is any country permanently weak. If conformers to law are strong, the country is strong; if conformers to law are weak, the country is weak....

Any ruler able to expel private crookedness and uphold public law, finds the people safe and the state in order; and any ruler able to expunge private action and act on public law, finds his army strong and his enemy weak. So, find out men following the discipline of laws and regulations, and place

them above the body of officials. Then the sovereign cannot be deceived by anybody with fraud and falsehood....

Therefore, the intelligent sovereign makes the law select men and makes no arbitrary promotion himself. He makes the law measure merits and makes no arbitrary regulation himself. In consequence, able men cannot be obscured, bad characters cannot be disguised; falsely praised fellows cannot be advanced, wrongly defamed people cannot be degraded.

To govern the state by law is to praise the right and blame the wrong.

The law does not fawn on the noble....Whatever the law applies to, the wise cannot reject nor can the brave defy. Punishment for fault never skips ministers, reward for good never misses commoners. Therefore, to correct the faults of the high, to rebuke the vices of the low, to suppress disorders, to decide against mistakes, to subdue the arrogant, to straighten the crooked, and to unify the folkways of the masses, nothing could match the law. To warn the officials and overawe the people, to rebuke obscenity and danger, and to forbid falsehood and deceit, nothing could match penalty. If penalty is severe, the noble cannot discriminate against the humble. If law is definite, the superiors are esteemed and not violated. If the superiors are not violated, the sovereign will become strong and able to maintain the proper course of government. Such was the reason why the early kings esteemed Legalism and handed it down to posterity. Should the lord of men discard law and practice selfishness, high and law would have no distinction.

THE TWO HANDLES

The means whereby the intelligent ruler controls his ministers are two handles only. The two handles are chastisement and commendation. What are meant by chastisement and commendation? To inflict death or torture upon culprits, is called chastisement; to bestow encouragements or rewards on men of merit, is called commendation.

Ministers are afraid of censure and punishment but fond of encouragement and reward. Therefore, if the lord of men uses the handles of chastisement and commendation, all ministers will dread his severity and turn to his liberality. The villainous ministers of the age are different. To men they hate they would by securing the handle of chastisement from the sovereign ascribe crimes; on men they love they would by securing the handle of commendation from the sovereign bestow rewards. Now supposing the lord of men placed the authority of punishment and the profit of reward not in his hands but let the ministers administer the affairs of reward and punishment instead, then everybody in the country would fear the ministers and slight the ruler, and turn to the ministers and away from the ruler. This is the calamity of the ruler's loss of the handles of chastisement and commendation.

QUESTIONS FOR ANALYSIS

1. In Han Fei's ideal state what is the supreme governing authority, the will of the ruler or the law?
2. What are the "Two Handles" and how important are they to a legalist state? Why must the sovereign never surrender control over the two handles?
3. What roles do individuality and private initiative play in Han Fei's ideal state?
4. Why do you think Legalism appealed to some people?
5. Imagine a series of conversations among a Daoist, a Confucian, and a Legalist. How would each respond on the following issues: What is the purpose of good government? What role does morality play in formulating law? What are the qualities of a superior ruler? The proposition "Might makes right."