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Han Feizi and Laozi: Legalism and Public Law

The legalist system of thought in early Chinese philosophy diverged from the Confucian school of thought in that it formally divorced ethics from governance and proposed that amoral laws should be the foundation of an orderly society. Han Feizi was an early prominent contributor to the legalist tradition in the 3rd century BCE, but he was, in fact, preceded by an unwitting legalist thinker, Laozi. Although their writings exist in different historical contexts, they both propose a government that is structured around a system of laws that are implemented through a top-down hierarchy. They do not present a unified approach to ethics, but nonetheless suggest that ethics are not to be enshrined in law. Instead, they propose an amoral conception of order should be the origin of governance. Both philosophers would generally agree over these tenets of a legalist tradition of thought, but they would not necessarily agree upon the mechanism utilized to achieve such ends. Laozi’s philosophy suggests that laws are to be implemented such that people remain unaware of the consequences, while Han Feizi’s philosophy features known consequences of reward and punishment through public law.

In order to understand where Laozi and Han Feizi diverge, one must first understand the commonalities between their philosophies and use this point to contextualize the divergence. There are several main tenets consistent between both philosophies, the first being the divorce of ethical considerations from governance. Laozi’s philosophy develops from the assumption that distinctions of “good” or “bad” are artificial and run contrary to the “Way,” and as such they promulgate disorder. Han Feizi does not make such a dogmatic claim about ethics, but simply does not believe in their viability as a framework for laws. This leads into the second commonality between their philosophies, which is the imperative of creating a strict legal framework. Han Feizi denounces the role of ethics in political decision-making and proposes an objective legal standard coercively imposed upon society that dictates all behaviors. In this respect Laozi is much subtler and more nuanced. Laozi’s vision of a legal framework lacks a public bureaucracy or codified public laws. For Laozi, laws are permeated throughout a society through a top-down hierarchy without ever acknowledging public law; laws become naturally realized by the common people. The third consistent assumption between these philosophies is the necessity for the “shadowy presence” of rulers, that is to say the rulers are not to be public figures directly imposing laws but should dictate law from a position removed from recognized public power (170). Han Feizi even appropriated Laozi’s idea of “nonaction” that embodies this nature of rulers (165 and 315). The power of this position is such that the ruler can implement law down a structured hierarchy to the common people. However, it is at this point that their philosophies diverge in the mechanism through which they implement this law.

The primary notion of Laozi’s philosophy is to disseminate legal edicts from above such that the common people are not aware of their existence, that is, the ruler “[produces] without possessing...[leads] without lording over,” (167) so that “when their task is done and work complete, their people all say, ‘This is just how we are,” (171). These sentiments reflect a fundamental assumption about human nature that people are naturally inclined to submit to ordered systems. He denounces legal systems that rely on fundamental ethical codes and proposes that the very act of making ethical distinctions misrepresents reality. From this assumption he asserts that the source of disorder is artificially enshrining ethical codes in laws. Rather, Laozi would suggest that ruling authority should be invested in an individual who can dictate amoral laws motivated to promulgate order. The ruler practices “nonaction” in the sense that he does not publicly project edicts onto people, but through dissemination of informal laws down a hierarchy the “law” (perhaps “patterns” would be a more appropriate word) will naturally be realized by the people. Thus, the “shadowy presence” of the ruler extends to the laws themselves; there are no public laws and therefore no known consequences. For Laozi it is the system, not necessarily the laws, themselves, that perpetuates order.

Han Feizi assumes the same premises as Laozi but gives much more weight to the significance of an active and visible codified set of public laws. To begin, Han Feizi proposes a strict hierarchy of ministers that answer to a single ruler. Han Feizi interprets the notion of a “shadowy presence” as an austere ruler who “never [reveals] what he desires...[and] never [reveals] what he intends” (314). Moreover, Han Feizi charges rulers to “see others but do not allow [themselves] to be seen...know others but do not allow [themselves] to be known” (315). By observing these qualities, rulers simultaneously maintain a distance from the rhetoric of ministers who may attempt to seek personal gains, as well as distance from the system of governance, itself. From a removed, impartial position of power, rulers allow the comprehensive system of laws to govern internal and external political activities. Han Feizi, like Laozi, operates under the assumption that humans submit to systems of governance, but his political philosophy relies on implementing a public, objective standard of law and governance

The objective standards of governance that maintain this self-sustaining system are based off of the “two handles” identified by Han Feizi as “punishment and favor” (323). Through the institutionalization of law and punishment, rulers apply a consistent objective standard by acknowledging known consequences of public laws. Government ministers are subjected to the public edicts, as are the common people. Han Feizi even proposes an internal objective standard of merit to evaluate the ministers’ accomplishments; a ruler must “examine the correspondence between form and name, and look to see how what is said differs from what is done,” (324). In this way, there is no opportunity for rhetoric or moralism to influence the ruler. This entire set of laws presupposes an inherent faith in the efficacy of institutionalized public law. Like Laozi, Han Feizi trusts the system that institutionalized law creates to naturally attract common people and permeate order amongst them. However, he diverges from Laozi in asserting that this system is upheld through coercive public law that is known by the people, as well as the corresponding known consequences of these laws.

As an illustrative example, it is practical to compare both philosophers’ interpretation of the conditions in which thieves, or criminals more broadly, emerge within a system of law. Laozi asserts that “the more clear the laws and edicts, the more thieves and robbers” (191). That is to say, by artificially creating law, informed by ethical codes in this context, rulers create the conditions in which thieves are a defined societal evil. Laozi’s solution to this would be to dispose of artificial ethical distinctions and promulgate order through top-down distribution of informal behavioral patterns so that the common people naturally follow law without the knowledge that that they are complying. In contrast, Han Feizi instructs rulers that “if [their] greatness cannot be measured and [their] depth cannot be gauged, if [they]match up form and name and examine laws and models...the state will have no thieves” (316). Han Feizi is implying that if rulers uphold the rule of public law but remove themselves from a visible position of power within the public sphere, the system will function such that no individual will be inclined to violate laws. More ideally, the laws and incentives of reward will completely eliminate even the thought of violating law. Although Laozi and Han Feizi pursue distinct approaches, the result is the same: a system in which people naturally submit to an external system of order, meanwhile systematically eliminating the notion of dissent.

It is at this point that Laozi’s and Han Feizi’s philosophies actually converge again because regardless of how public the laws are, the result is a legalist system that inherently limits the freedoms of its participants. If the desired effect is achieved, it does not matter if people consciously or unconsciously adhere to law, the system creates the circumstances in which the thought of violating the law does not emerge. Laozi asserts that “nameless unhewn wood is but freedom from desire. Without desire and still, the world will settle itself” (180). Although cloaked in the rhetoric of personal freedom, Laozi is actually suggesting that common people will dispose of the ability to think beyond the system in which they are functioning. Han Feizi echoes these sentiments when he asserts that “an enlightened ruler makes sure that his assembled ministers do not let their intentions wander into areas outside the scope of law...so that no action negates the law” (322). Perhaps both philosophers would defend these positions within the context of their philosophy, but that debate is beyond the scope of this paper. What is clear is that these systems, if implemented properly, systematically strip people of personal liberties and the freedom of autonomous thought for the sake of establishing an ordered society.

Both Laozi and Han Feizi are concerned with creating an ordered and functional state, and while they both adhere to some variation of legalism, they differ in their prescription. Han Feizi’s philosophy presents a more perverse if not abject interpretation of the same underlying principles that Laozi assumed. For Han Feizi, through threat of punishment people are molded to unquestionably default to the behaviors dictated by law and coerced into restricting thoughts confined within the realm of law. Laozi stands in stark contrast to this approach and suggests that no public law or coercion is necessary for people to submit to legal systems because they naturally are inclined to do so. It is through non-public governance that Laozi’s laws come to be realized in society. It is in this manner that Han Feizi’s philosophy differs from Laozi’s in that it requires active coercive measures to create the environment in which the ruler has power and order is maintained, whereas for Laozi this state is simply human nature; the system is inherent to nature and through influence rulers can manipulate it to disseminate new patterns of behavior unbeknownst to the common people.