

The Comparison of Legalist Thoughts Between Shangyang and Hanfei and the Analysis of Ruling the Country by Law

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Abstract: Both Shangyang and Hanfei are famous representatives of pre-Qin dynasty legalists. Their legalist thoughts have both similarities and differences. They share the same viewpoints in such aspects as historical views, and the attitudes toward agricultural warfare. However, the differences of legalist thoughts between Shangyang and Hanfei are obviously. First of all, the legal thoughts by Shangyang put the emphasis on the rules of law; while the legal thoughts by Hanfei pay more attention to the combination among laws, authority and social prestige. Then, Shangyang states that the emperor and the ministers should work together to manage the whole country, while Hanfei states that emperor would guide the ministers to manage the administration in the whole country. Furthermore, Shangang advocates that the government should put the emphasis on the punishment rather than the rewards, whereas Hanfei advocates that punishment is as important as morality. Making the analysis of legalist thoughts between Shangyang and Hanfei and finding the advantages of their thoughts will benefit for the construction of modern legal state in our nation.

The idea of respecting the royal and managing the whole country by using the law has been established and implemented in pre-Qin era. The legalist thoughts by Shangyang and Hanfei has made a great achievements on the forming the strict and systematic thoughts of ruling by law, which was the combination among laws, authority and social prestige. Both Hanfei and Shangyang have rich ideas and thoughts in managing the whole country by using the law, and there are still many literature on it. Therefore, we can't talk about legalist thoughts without mentioning them, Mr. Hanfei and Shangyang. The paper will talk about the similarities and differences between Shangyang thoughts and Hanfei ideas to reveal the strength and weakness of the legal thoughts between Shang and Han. The author will make the clear understanding of legal theories, which will provide conference for current Chinese law construction.

1. The Similarities Between Shangyang Thoughts and Hanfei Ideas

1.1 The Historical Perspective between Shang and Han

The theory of legalists is the result of political conditions, economic conditions, and various aspects of development. The social period in which rules and regulations in Zhou dynasty were damaged, policies were made and implemented by dukes and princes under emperor. Each states

needs new policy to serve their political system in the purpose of making each state rich and forces powerful. Consequently, legalist thoughts have broken through the old social system, and have formed their own historical perspective of change, among which the thoughts by ShangYang and the ideas by Hanfei are the most representative. "The Book of Lord Shang, Changing Laws" said that: "There are many ritual and rules in previous dynasties, which should we obey and imitate? Different emperors followed different political thoughts, which political thoughts should we choose and follow? Fu Xi and Shen Nong advocated that education is much better than killing the people. The Hungdi, and the Yao as well as the Shun didn't advocate excessive killing. Wen wang and Wu wang in Zhou dynasty established the legal system and ritual based on the actual situation at that time. The legal system and ritual should be built keeping pace with the time. The institutions and orders should be consistent with reality and facts. All kinds of weapons should be used when it is necessary to use. Therefore, I advocated that we should use different strategies to manage the whole state without using the old policies. The period of the first king Tang in Shang dynasty and Wu wang in Zhou dynasty is booming, because they didn't follow the old policy. Keeping the old policy without changing it leads to the demise of Xia dynasty and Shang dynasty. Therefore, changing the old policy is not necessarily wrong, meanwhile, obeying the old policy is not absolutely right." "The Book of Han Fei, Wu Zhi" said that: "The people trilling wood for fire after Xia dynasty would be laughed at by such many people as Yu. The people who manage the floods by means of diversion after Shang and Zhou dynasty should be laughed at by the first king Tang in Shang dynasty and Wu wang in Zhou dynasty. Nowadays, if we obey the old policies made and followed by the Yao, the Shun, the Yu and the first king Tang in Shang dynasty as well as Wu wang in Zhou dynasty, we will be laughed at by the new sages. Many sages didn't want to learn the old political thoughts, and they advocated that many policies should be changed to adapt to the actual situation.

Once upon a time, there was a farmer in Song State. One day, while he was working in the fields, he saw a hare run into a tree stump accidentally and die of a broken neck. The farmer took the hare home and cooked a delicious meal for himself. That night he thought: "I needn't work so hard. All I have to do is to wait every day by the stump to pick up the hare that runs into it." So from then on he gave up farming, and stood by the tree stump waiting for the hare to come and run into it. But from then on, he never saw another hare run into the tree stump. The farmer in the story was laughed at by the people of the whole state.

1.2 The laws of Shang and Han

Compared with "Guangzi", the laws in Shang and Han didn't make any innovation in contents, which was different from "Guanzi" in the method and scope of implementation. First of all, national laws and regulations was widely publicized. Although publicity and education was involved in "Guanzi", "The Book of Shangjun" was more detailed and completed, which made everyone know the national laws and regulations, including civilians and officials. The officials daren't treat the people illegally, while the people dare not violate the laws. Even today, it is difficult for us to do so. Secondly, they used rewards and punishment as two handles to carry out the laws. The characteristic of thoughts of laws in Shang and Han was to use both rewards and punishments, rather than the equality of merits and fault. When mentioned rewards and punishment, there are differences between the thoughts of Shang and the thoughts of Han. Shang believed that the government needs more punishment than rewards when governing the country, whereas Han supposed that both rewards and punishments are important. In the political activities, the ultimate standard of measuring the people's behavior was laws rather than morality. Thirdly, making laws must be professional. The laws should be so specialized that the confusions must be avoided. Professional laws were the only standard in the political life of Shang and Han. The talks about the rights and

wrongs of state laws were forbidden, even intellectuals and other peoples cannot talk about it. “The Book of Shangjun” said the when the state was governed by the many interpretation of the laws and other private discussion, the country would be disordered. “The Book of Hanfei” also states that nothing was more valuable than good laws. Both the thoughts of Hanfei and the thoughts of Shang believed the uniqueness of the laws.

1.3 The peasant battle in the thoughts of Shang and Han

“The reason why the country is important and the Lord is respected is the strength and power.” “The Book of Shangjun, Cautious Law” Both Shang and Han believed that battles played an important role in governing the state. These thoughts were not originated from the thoughts of Shang and Han, but the characteristic of it. They swept away the nation's academic culture and transformed the country into a war machine. Shang and Han share the same theory of agricultural warfare that put the agriculture and war as the main modes of production. The whole country would get the great benefits from the war, and they discourage commerce and encourage agriculture, which was hold by many other schools of thoughts. Shang and Han hold different idea that all the people in the country were the soldiers no matter who is man, women, the old and the young. The spirit of advocating the war was so profound that Hanfei was unable to keep the pace with it.

2. The similarity and the differences between the thoughts of Han and Shang

As the famous representatives of pre-Qin dynasty legalists, the thoughts of Hanfei and the thoughts of Shangyang had many similarities. However, their thoughts of two legalists had different points, because they live in different times, they are faced with different social problems, and they are from different schooling of thoughts.

2.1 Shang pay more attention to the laws, while Han put the emphasis on the combination among laws, authority and social prestige.

The basic difference between legal thoughts by Shangyang and the legal thoughts by Hanfei was the identification toward authority and social prestige. Shangyang paid more attention to the states laws rather than authority and social prestige; whereas Hanfei put the emphasis on the Hanfei pay more attention to the combination among laws, authority and social prestige. Only a few statement about authority and social prestige appeared in the “The Book of Shangjun”. For example, in the “The Book of Shangjun, Authority”, it states that “the country would be governed in such three aspects as laws, faithfulness and power. At the beginning, both the Empire and the officials should obey the laws; then, the Empire and the officials should establish the faithfulness with each other; furthermore, the Empire had the absolute power to lead the whole country and the whole social system and officials.” Shangyang believed that the power of Empire refers to the authority and social prestige. He supposed that the power must be caught by the Empire, which may ensure his authority and social prestige. It is obvious that the legal thoughts of Shangyang contained authority and social prestige, which was covered by the state laws raised by Shangyang. When the legal thoughts by Hanfei inherited Shangyang’s legal thoughts, it pointed out the shortcomings of the thoughts by Shangyang. He supposed that the legal thoughts by Shangyang have ignored the importance of authority and social prestige. In “the Book of Hanfei”, two thirds of the content of the book has stated the importance of the authority. The thoughts of “authority” aroused by Hanfei have inherited the Shen’s thoughts, and have been developed a lot. Hanfei believed that the Empire had the authority to give the power to the officials, which had the authority to handle the matters of killing the people who violate the law and manage the whole officials. Actually, the thoughts of

“authority” referred to the method that the Empire would manage and rule the minister and other officials. Moreover, Hanfei had absorbed and developed the thoughts of “social prestige” aroused by Shendao. Hanfei believed that “social prestige” refers to the outstanding qualification that only the Empire would have it. He supposed that the reason why the Empire got the authority to control the whole country is his social prestige, rather than the personal outstanding morality. The royal are respected by other people because they had the superior social status. If they lost their social prestige, they would lost their power and authority, which was opposite to the thoughts of Confucius that the world would be ruled by virtue. The legal thoughts of Hanfei put the emphasis on the “social prestige” which would give the power to the Empire who would have the authority to make the laws and enforce the laws. Meanwhile, the Empire who had the social prestige would guarantee the power would not be subverted. The thoughts by Hanfei revealed that “it would be harmful to the officials without social prestige, and it would be harmful to the normal people without laws.” “The Book of Hanfei, Making Laws” According the statement of Hanfei, we might understand that both “laws” and “authority” were the tools of managing and governing the country. “Laws” were open to the whole states, while “authority” was the hidden policy, which was covered in the heart of the Empire. Therefore, the legal thoughts by Hanfei had made a set of ruling weapons for the feudal emperor in ancient China.

2.2 Shang states that the emperor and the ministers should work together to manage the whole country, while Han states that emperor would guide the ministers to manage the administration in the whole country.

Both Shangyang and Hanfei paid more attention to the laws, but they hold different opinions on social position of laws and laws enforcers. First, the social status of laws in their thoughts was different. Shangyang believed that all the people should obey the laws, even the royal would obey the rules, which would make sure the authority of laws. “The Book of Shangjun” has stated that all the officials should obey the laws rather than listening to the governors and all the normal people should be ruled by the laws rather than following the officials. Therefore, the legal thoughts by Shangyang displayed that the authority of laws was superior to the royal and governors. Hanfei believed that laws have played an important role in managing the whole country, which embodied the personal will of the royal. They are the derivative of the power of Empire. laws, as a tool of keeping absolute monarchy, could not be above the power of the Empire, and all the officials and the normal people should respect it and follow it. Furthermore, the law-executor in their thoughts was absolute different. The legal thoughts by Shangyang displayed that both Empire and officials are the law-executors. Therefore, Shangyang didn’t agree that the Empire might have a great power to manage the whole country, whereas he believed that both Empire and officials could govern the whole nation. However, Hanfei thought that both punishment and morality were hold by the Empire. in his opinion, the relationship between minister officials and Empire just like a kind of relation of exchanging benefits, so the power of the Empire could not fall into the hand of ministers. The legal thoughts by Hanfei revealed that the Empire could control the minister officials and the minister officials could control the normal people. In a word, the power of the laws only belonged to the Empire individually, which was essentially different from that of the legal thoughts of Shangyang.

2.3 Furthermore, Shang advocates that the government should put the emphasis on the punishment rather than the rewards, whereas Han advocates that punishment is as important as morality.

Both Shangyang and Hanfei advocated the punishment and reward, but there were differences in recognition of punishment and rewards between their thoughts. Shang advocated that the people

who have made little misdemeanors would get the heavy punishment so that they couldn't dare to commit more serious crime. "Heavy punishment would make people not dare to try." "The Book of Shangjun, strengthen" People would not dare to commit crimes, and the society would be relatively stable. The legal thoughts by Shang showed that heavy punishment would make society stable, and everybody would be too scared to obey the laws. At the same time, Shang believed that limited reward would be given to the people who had meritorious military service in the agricultural war and who supply the secret information against somebody. In the aspect of punishment and reward, Hanfei has developed a lot from the legal thoughts by Shangyang. His legal thoughts displayed that "virtue comes from punishment" emphasizing that punishment should be given first and then morality came, but it clearly showed that Hanfei attached more importance to the role of morality than Shang Yang. Hanfei stated that "there were two powers to govern the whole country, one is punishment, and the other is reward. Punishment refers to the right of killing, while reward refers to the morality and prize." From his statement, Hanfei's thoughts is the perfection and development of the thoughts of Shangjun, "heavy punishment and limited rewards". As the master of legalist, the legal thoughts by Hanfei eventually pushed legalist thoughts to a higher peak in the pre-Qin period and exerted a great influence on China's thousands of years of feudal rule.

3. The enlightenment of the thoughts by Shang and Han legalists on governing the country by operation the laws

Governing the country by operation the laws is not only an important symbol of a modern civilized country but also the politic target that China has been pursuing consistently since modern times. Nowadays, China vigorously promotes governing the country by operation the laws, emphasizing the management and governance of the national affairs would be brought into the track of the rules of laws. Although China has made great progress in the process of governing the country by law, the establishment of a socialist country under the rules of laws still needs the joint efforts of all the people. The political theory and the thoughts by Shang and Han legalists have been still put into practice for thousands of years. Although there are essential differences between today's idea of governing the country by law and that of ruling the country by law advocated by Shang and Han a thousand years ago, there are still some valuable lessons for our country in the process of ruling the country by law in the thoughts of Shang and Han legalists.

The legalists, Shang and Han, put great emphasis on the role of law in governing the state. As an objective measure, laws have its own fixed standard. If arbitrary assumption were made anywhere, the whole society would be disordered, and the whole country would be stable. Nowadays, governing the whole country by laws would be empathized by the government. Thousands years ago, Shangyang advocated that "the rich and powerful would accept the criminal laws" in the legal practice. Can the law enforcers really follow the laws to punish the bureau crates who broke the laws in the political practice and achieve the equality to everyone in front of laws? The law enforcers should put the emphasis on it.

Legalists advocated that the laws would be publicized so that officials and the people know the laws well to protect their legal rights and restrain the illegal behaviors, which would be benefit to the stability of the whole society. After making the modern laws, the publicity and popularization of citizens' understanding of the law need to be strengthened, so as to promote the process of legal society.

Legalist thinkers believed that with the history constantly changing and developing, and the overall environment of The times changing, the laws and the governing system would be changing accordingly. Although the stability of law is advocated, it would be changed according to the customs and other circumstances in order to adapt the new world.

As is known to all, the equality to everyone in front of laws was advocated. That is to say no matter who broke the laws, they would be punished by laws. The legalist thoughts would give us a lesson that we can find the real meaning of legal equality in modern time without the specific historical background.

References

- [1] Han Fei. *Annotation of Han Feizi's School* [M]. Yuelu Publishing House, 2006.
- [2] Shang Yang. *Commentary on Shang Jun's Calligraphy* [M]. Yuelu Publishing House, 2006.
- [3] Tang Xin, Zhang Xuemei, *succeed Legalists and Lost Legalists-Shang Yang and Han Fei's Ideas of Ruling by Law* [J]. *Journal of Hubei University (Philosophy and Social Sciences Edition)*, 2008, 35 (6): 101-105.
- [4] He Jianqiang. *A Comparative Study of Shang Yang's and Han Fei's Thoughts on Rule of Law* [D]. Zhengzhou University, 2007.
- [5] *A comparative study of Zhang Xiaoling, Shang Yang and Han Fei's "rule of law" thoughts* [D]. Chongqing University, 2008.