

KAUTILYA AND THE LEGALIST CONCEPT OF STATE AND GOVERNMENT: A COMPARATIVE STUDY

HERMELINDO BANICO

THIS PAPER ATTEMPTS TO COMPARE THE CONCEPTS OF STATE AND government suggested by Kautilya of ancient India in his *Arthashastra*, and that of the Legalists, especially Han Fei Tzu, of China. *Arthashastras* are political treaties of ancient India. The one by Kautilya summarizes as he himself states in the opening chapter of his work, some *Arthashastras* of ancient India laid down by ancient teachers. Legalism, as perfected and articulated by Han Fei Tzu, is a philosophical tradition dealing on politics. The study is very interesting in the sense that one sees a trend of political thinking existing between two contiguous states aiming for the same political ends though differing in their political bases (means) in some ways. The traditional dates for the *Arthashastra* by Kautilya is set between 300-200 B. C.¹ Han Fei Tzu may also have written his works in the middle of the third century B. C. (He died in 233 B. C.).² Both persons culled their political ideas from their predecessors making a comprehensive work of otherwise scattered materials.

The historical background of Kautilya's *Arthashastra* and Legalism, especially that of Han Fei Tzu of which this paper is both concerned will be summarized briefly. The former is traditionally attributed to Canakya Kautilya (also known as Vishnugupta), a legendary chancellor of Candragupta of the Mauryan dynasty. Kautilya was a brahmin adventurer who after completing his studies, worked for the emperor of the Nanda dynasty at Pataliputra, the dynasty's capital. Having been insulted, he plotted against the Nanda emperor, and later succeeded to overthrow him. In the latter's throne, he placed Candragupta Maurya.³

Legalism flourished in China when Confucian orthodoxy declined in relevance. The Confucian principles of *li* and *hsing*⁴ to hold the state together could no longer support the state. The feudal system that maintained the Confucianist state disintegrated as the sway of the feudal king over the

¹ U. N. Ghosal, *A History of Indian Political Ideas*, London: Oxford University Press, 1959, p. XXI. R. Shamasastri puts the dates between 321-296 B. C.

² Bruce Watson (trans.), *Han Fei Tzu: basic writings*, New York: Columbia University Press, 1964, pp. 2-3.

³ T. N. Ramaswamy, *Essentials of Indian Statecraft*, Bombay: Asia: Publishing House, 1962, pp. 2-3.

⁴ *Li* consists of rituals, ceremonies, rules of conduct, mores, etc. *Hsing* are penalties and punishments. The former governs the conduct of aristocrats; the latter applies to people of ordinary birth.

feudal lords was weakened by those continuous attacks by the "barbarians." They exerted independence from the king. Some feudal leaders even usurped the prerogatives of the king and competed with each other for the control of the whole of China. As feudal leaders conquered other states, the latter grew in size. Traditional feudal system proved inadequate for the needs of administration over a vast territory. Control over the mass of peasant population was difficult vis-à-vis the central government. Against this backdrop, the Legalists came into being. Han Fei Tzu, as the perfecter of Legalist philosophy, saw this need. He wrote copiously about it, getting his ideas from other Legalists,⁵ combining and putting them into a "clear and comprehensive whole."⁶ His own writings were intended for his own king of the state of Han, but the latter failed him.⁷ Another king from the state of Ch'in, King Cheng, put them into good use, conquered Han Fei's home state, and later on, the whole of China.⁸

Both works have been associated with empires, one of Mauryan Empire, the other, the Ch'in Empire. A striking question thus naturally presents itself. The question arises as to the effectiveness of the ideas or concepts, as well as institutions implemented by each one vis-a-vis the empire. The Mauryan Empire lasted for a thousand years. The Ch'in Empire lasted for only fifteen years, however. It is for this interesting reason that this comparative study is being undertaken. What makes for the durability of the Mauryan Empire, on the one hand, and the short-lived character of the Ch'in Empire, on the other? At the outset, it must be stated here that this paper is just a preliminary survey on the subject. It has its limitations. For two things, external politics and military strategy are not included in its discussion.

The problem foremost in Kautilya's mind as well as in the Legalists', was how to preserve and strengthen the state. They believed that this could be realized if the state had considerable power not only within the state, but also vis-à-vis other states. The state must realize policies to that end. To achieve power, the state had to be wealthy and strong. They believed that wealth could be gotten from agriculture. The Legalists, though would prohibit other activities that are not agricultural like being scholars, merchants, artisans, etc. Kautilya, on the other hand, may condone the activities of merchants and artisans. In both cases, wealth is emphasized. Everything was done to maximize wealth from this agricultural pursuit for the state. Every effort was channeled to increase productivity. A strong state also manifested capacity in a powerful army to defend its cities as well as to expand its frontiers. But the strength of the army was dependent upon how much surplus productivity the state could manage to spare for the military under-

⁵ For example, Shen Pu-hai, Shen Tao, and Wei Yang of whom the *Book of Lord Shang* is attributed.

⁶ Watson, *op. cit.*, p. 4.

⁷ *Ibid.*, p. 11.

⁸ China was first united under the Ch'in Empire in the years 230-221 B. C.

takings.⁹ As far as the general purpose of the state is concerned, they matched. But in achieving these ends, they differ considerably.

The state as conceived by Kautilya existed for the people, for its happiness, and for its welfare. It follows, then, that the wealth and strength of the state should be applied to the realization of the above. The Legalists, however, considered the interests of the people secondary, if they ever mattered at all.¹⁰ They were not interested in the private individual, or their lives, except perhaps as they affected the ruling class.¹¹ The state, they visualized, existed for the king so that a line of policies were designed to subject the people in the higher interest of the state identified with the king. In the former, however, the state is identified with the people; the king and his ministers existed only as instruments for the welfare of society.¹²

Government provides the machinery to secure the ends of the state which is to achieve power. Kingship, the law, and administration will be discussed in connection with government.

How did they conceive of the role and function of the king in society? Kautilya conceives of the king as virtuous, well-educated in the "sciences," well-disciplined, as well as being brave. The qualities of a desirable king can be gleaned from the type of training the heir-apparent must undergo. The young prince acquires all these qualities through training.¹³ He acquires wisdom from his teachers who are well-versed in the four sciences namely, the Sacred Canon, Philosophy, Economics, and Politics.¹⁴ He takes lessons in the military arts to improve his skill in combat. He controls his senses for his personal discipline. The Legalists would disregard the first qualification as being Confucian. The other qualifications may not be important either. This is because the mechanistic and fixed system of laws the Legalists have conceived would operate regardless of whether the king is possessed of virtue or high intellect.¹⁵

The Kautilyan king is supposed to be the servant of the people. He looks after the interests of the people, administer justice, and in times of providential calamities "as fire, floods, pestilential diseases, famine, rats, tigers, serpents, and demons" he gives them aid.¹⁶ He makes his peoples' problems his own so that he is like a father looking after the interests of

⁹ R. Shamasastri (trans.), *Kautilya's Arthashastra*, 8th ed., Mysore: Mysore Printing and Publishing House, 1967, pp. 7-8, 293.

¹⁰ Derk Bodde, *China's First Unifier: Li Ssu*, Hongkong: Hongkong University Press, 1967, p. 191.

¹¹ Watson, *op. cit.*, pp. 6-7.

¹² A. S. Altekar, *State and Government in Ancient India*. 3rd ed., Delhi: Motilal Barnasidas, 1958, p. 160.

¹³ Ramasastry, *op. cit.*, pp. 9-12.

¹⁴ Ghosal, *op. cit.*, p. 121.

¹⁵ Fung Yu-lan, *A History of Chinese Philosophy*. Vol. I, Trans. by Derk Bodde, Princeton: Princeton University Press, 1952, p. 322.

¹⁶ Ramasastry, *op. cit.*, pp. 236-239.

his own children. The Legalist king would not care for his subjects. He would instead subject his people and keep them in fear of the king through his harsh regulations.¹⁷ The Legalists believe that charity would tantamount to subsidizing laziness and wastefulness which is not tolerated. It would, they say, amount to robbing other people of what they had gained through industry and thrift.¹⁸

But for all the virtues that Kautilya conceives for the king, the latter is still capable of force, fraud and deceit in the interest of the state. These are, however, levelled against the "anti-social elements of the population and clandestine public enemies and enemies of the state as well as the enemy outside."¹⁹ He is "harsh with his enemies and sinners."²⁰ In this regard, the king conceived by Kautilya is similar to the king conceived by the Legalists. Force, to the Legalists, is manifested in the fiat of the king and its rigorous implementation. It is the primary instrument by which the king of the Legalist venue is able to subject his people for his own self-interest—the pursuit of power. He keeps his subjects in a lowly position so that they could not be a threat to his position. In both Kautilyan and Legalist thought, the king is possessed of the power of life and death over his subjects. However, in the former this power is limited by "religious and spiritual sanctions, and sanctions of customs and usage."²¹ In the latter, the king is an absolute ruler who is not inhibited by moral considerations in his pursuit of absolute power.²² He is the law unto himself. If anything or any affair runs counter to the laws which the king himself promulgates, the king punishes lawbreakers severely. If they are not covered by law they can not proceed.²³ This discussion on the use of force to manifest power of the kings leads to the discussion of law in both systems of thought.

In the concept of law, they also differ considerably. The Kautilyan conceives of law "to promote individual security, happiness, as well as stability of the social order," the Legalist, to promote order through a mechanistic system of harsh laws. But the order the latter conceived of was a situation in which the king was supreme and his subjects kept in a lowly position and unable to resist him. The subjects just obey the laws and regulations of the king. In Kautilya, the king administers justice according to the four sources of law namely, the Sacred Canon (dharma), evidence (vyavalhara), history (charitra), and edicts of kings (rajasasana).²⁴ In a way, this limited his power. Punishments were neither too harsh nor too

¹⁷ Bodde, *op. cit.*, p. 190.

¹⁸ Fung Yu-lan, *op. cit.*, p. 328.

¹⁹ Ghosal, *op. cit.*, p. 154.

²⁰ *Ibid.*, p. 138.

²¹ Gokhale, *Ancient India: History and Culture*, 3rd ed. Bombay: Asia Phils. House, 1956, p. 103.

²² Bodde, *op. cit.*, p. 191.

²³ Fung Yu-lan, *op. cit.*, p. 322.

²⁴ Ramasastry, *op. cit.*, p. 172-173.

light. They were just proper to keep the people happy.²⁵ The laws in the Legalist thinking, however, are not designed to give justice. They are harsh. Penalties consist of physical mutilation, and capital punishment.²⁶ The laws apply equally among all people regardless of status or rank. They affect all spheres of activity. The basic idea being that greater crimes would be prevented if smaller ones are punished severely, and without exception. The Legalists' sinister view of human nature that he is inherently evil led them to implement harsh laws to restrain his inherent nature.

They also differ in their concept of administration. Both agree that a body of ministers and administrators were needed to run the machinery of government. However, they differ in the method of selection as well as the latter's role in the government. Both emphasized technical qualifications for their officials but they ascertained in different ways. In Kautilya, if a person thinks he has the experience in the affairs of state, he seeks the favor of the king through an influential friend.²⁷ Afterwards, his family background is sought into through his intimates. His dexterity is sought by experts in the field as well as through his associates. His colleagues are sought to determine his sociability, and other amiable qualities.²⁸ He must pass these several tests, and only then, is he appointed, i.e. if he has the wisdom, ability, loyalty, prestige, character, etc.²⁹

The Legalists have a different system of tapping the best man for an office. They are influenced by the Taoistic principle of *wu wei*,³⁰ and added to this, their system of law based primarily on rewards and punishments. Han Fei Tzu says:

"An enlightened ruler uses the law to select men for him, he does not choose them himself. He uses the law to weigh their merits; he does not attempt to judge them himself."³¹

By the principle of *wu wei*, the king does not do anything in the administration of the affairs of the state. The ministers does everything for him. They are appointed, however, according to their proposals to the king. After their proposals, an office is made that specifies the duties one is to perform in consonance with the name of the office. This minister must do exactly what his office (name) calls for. The "names" (proposals or names of offices) must correspond exactly with the "actualities" (actual performance or outcome) in order to be rewarded, either by promotion, or by emolu-

²⁵ Altekar, *op. cit.*, p. 1.

²⁶ Watson, *op. cit.*, p. 30.

²⁷ Ramasastry, *op. cit.*, p. 281.

²⁸ *Ibid.*, p. 12.

²⁹ Ghosal, *op. cit.*, p. 122.

³⁰ *Wu wei*, in the Taoistic sense, means non-action, or non-activity; doing nothing that is not natural.

³¹ Watson, *op. cit.*, p. 24.

ments. If the two do not correspond exactly, that is, if a minister (or any other person for that matter) who proposed to do something for the state does less, or more than his office (proposals) required him to do, he is punished severely. Rewards are not based on meritorious work alone. "His acts rather must correspond to the duties demanded of him by the state and which he has promised the state he would do."³² In this manner, many incompetents are weeded out because of the severe punishments that are imposed if one fails to match the duties he is supposed to do.

In Kautilya's Arthashastra, the minister plays a very important role in the government. Once appointed the group of ministers and administrators aid the king in the formulation of policies. The king consults his ministers on all matters of policy and seeks their advice. This is not mandatory, but he always heeds the advice of his ministers because of the latter's experience. Also, they reflected the popular will.³³

In the Legalist thinking, the king must not seek the advice of his ministers.³⁴ The latter are considered as personally interested in the position of the king so that they are regarded with suspicion. The king does not reveal his motives and desires to his ministers because if he does, they will "put on the mask that pleases him."³⁵ The king gives them titles, posts, or emoluments, but he does not give them the power to bestow rewards and punishments because that would undermine the position of the king. If his ministers possess this power, people would cuddle up to the ministers seeking favors or dispensations. The king's power and influence would diminish thereby.

In the discussion on kingship, law, and administration, the Legalist's king stands out prominently as a consummate despot. His power is never resisted and people are kept in subjection to perpetuate his despotic and absolute rule. He has no sympathy for the feelings and sentiments of his subjects. In Kautilya, the king is despotic only in the sense that he uses fraud, force and deceit against public enemies, etc. He could also be a despot in times of national crises, like financial chaos, but otherwise, he acts impartially and shows concern for his subjects which is lacking in the Legalist's kings. In terms of power, he shares this with his ministers. However, in the latter, the king alone wields the power because if other people shares it, this power might be used to overthrow him.

The Ch'in Empire applied the principles advocated by the Legalists. Partly, the cause of its early death was the tyranny of the government. The absoluteness of the ruler required the people to obey him whatever he ordered them to do. People were overstrained by the construction work of the king,

³² Bodde, *op. cit.*, p. 203.

³³ Gokhale, *op. cit.*, p. 104.

³⁴ H. G. Creel, *Chinese Thought from Confucius to Mao Tse-tung*, Chicago: Chicago University Press, 1967, p. 155.

³⁵ Watson. *op. cit.*, p. 16.

which included the building of the Great Walls among other things, as well as the military campaigns outside the state. The people could not resist these big orders. In both instances, people were forced to work on the king's construction projects, or were conscripted into the army.

In Kautilya, the people were to be allowed considerable freedom as long as they were not enemies of the state either from the inside or from the outside. As long as they acquiesce in the rule of the king, then they are always to be treated impartially. The Mauryan Empire lasted for quite some time.

In the two cases above, the amount of human freedom allowed is involved. Is it possible to conjecture that man always seeks freedom, and abhors regimentation?

BIBLIOGRAPHY

- Altekar, A. S. *State and Government in Ancient India*. 3rd ed. Delhi: Motilal Banarsidass, 1958.
- Bodde, Derk. *China's First Unifier: Li Ssu*. Hongkong: Hongkong University Press, 1967.
- Creel, H. C. *Chinese Thought from Confucius to Mao Tse-tung*. Chicago: University of Chicago Press, 1953.
- Fung Yu-lan. *A History of Chinese Philosophy*. Trans. by Derk Bodde. Princeton: Princeton University Press, 1952. 2 volumes.
- Ghosal, U. N. *A History of Ancient Indian Political Ideas*. London: Oxford University Press, 1959.
- Gokhale, Balkrisna Govind. *Ancient India: History and Culture*, 3rd ed. Bombay: Asia Publishing House, 1956.
- Ramaswamy, T. N. *Essentials of Indian Statecraft*. Bombay: Asia Publishing House, 1962.
- Shamasastri, R., trans., *Kautilya's Arthashastra*. 8th ed. Mysore: Printing and Publishing House, 1967.
- Watson, Bruce, trans., *Han Fei Tzu: basic writings*. New York: Columbia University Press, 1967.