

On Han Fei Tzu's Thought of Crime Prevention

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Abstract

Crime prevention refers to the active intervention before the occurrence of crimes. Han Fei Tzu, a legalist during the pre-Qin period, viewed the suppression of criminal motives as the core of crime prevention, and brought out a series of measures to prevent crimes. In this paper, the author summarized his thoughts on crime prevention by analyzing his views on human nature, the causes of crimes, and crime prevention.

Keywords: Crime prevention, the Legalist School, Han Fei Tzu

Crime is a common social phenomenon at all times and all over the world. Crime prevention involves taking preventive measures before a crime occurs and making people give up their criminal intention to avoid a crime. In ancient China, crime had already appeared as early as the end of the primitive society. To punish and prevent crime and maintain social order, people created criminal penalties, commonly referred to as the five penalties of slavery--- "*Mo, Yi, Fei, Gong, Dapi*". (*Mo* was the penalty of tattooing on criminals' faces, necks, arms and behind ears. *Yi* was a penalty for cutting off criminals' noses. *Fei* was the penalty for amputating criminals' feet. *Gong* was the penalty of castration. *Dapi* was the capital punishment.) During the Spring and Autumn period (206BC- 220 AD), a hundred schools of thought contended for attention, and the thought of crime prevention appeared in many schools. Han Fei Tzu (280BC- 233BC) was the synthesizer of the legalist school. Although his theory of crime prevention has certain historical limitations, its shining spots are still of positive significance today.

1. Han Fei Tzu's Analysis of Human Nature

The legal system in the modern sense in the West originated from religion. Martin Luther, who liberated the Western legal philosophy from the enslavement of medieval theology, held the belief that human nature was completely evil. Without restraint, it would expose its cruel nature, and far surpass the fierce beasts. Based on the profound cognition of original sin in religion, the Western legal system and social organization structure are also based on the notion that human beings are evil and "*rational economic man*" (Hooker, 1979, p. 470).

When discussing the crime control theory, the ancient Chinese thinkers of various schools always came up with different strategies for crime control based on the analysis of good-or-evil of human nature. Confucianism holds that all individuals can be Yao and Shun, ancient sages (Yao, Shun, and Yu are the three leaders of the tribal confederation who possess both ability and political integrity and emerged successively in the Yellow River valley after the Yellow Emperor in ancient Chinese history).

Most Confucianists represented by Confucius believed that "*the nature of man is originally good*" (Feng, 2015, p. 2) and that moral education could consolidate and promote the very beginning of human nature, so that the good of human nature would be in order and stable. On the contrary, the legalists represented by Han Fei Tzu believed that human nature was evil and selfish. "Indolence is the nature of humans." (*Han-fei-tzu*, ch.54.) They also thought that seeking profits and avoiding hazards were the inevitable inferiority of human nature. "It is human nature to rush to do what is safe and profitable, and to hastily avoid what is dangerous and harmful." (*Han-fei-tzu*, ch.14.)

Human nature was equal and there was no distinction between the so-called gentlemen and villains. One might infringe the others' rights, break social order, and even violate the laws only for his good. Han Fei Tzu believed that there were no absolute distinctions between people, no matter how close they were. He thought that all social relations were based on certain demands of interests. "Doctors are good at sucking the pus out of the

wounds of their patients, which is not because they are blood relatives, but because of the drive of interests. Therefore, we can't say that the cart makers who wish everyone to become rich are kind but the coffin makers who hope people die early are vicious. When people get rich, they may buy carts, but only when people die, coffins are in need." (*Han-fei-tzu, ch.17.*) Not only the normal social relationships, but also the parents and their children were the bonds of interest. "If the children were sloppily raised, they would blame their parents when they grow up. If parents could not be well treated, they would become upset and would reprove their grown-up children for not taking good care of them." (*Han-fei-tzu, ch.32.*) A family was the most basic unit of society. Nationalities were born from the marriages, combinations, and merges between families in which people were blood relatives, and when it came to politics, a country was born. Whether or not being beneficial was a standard to judge how close family members could be to the monarch-subject relationship. "Where there are profits, people will come to it; where there manifest good fame, the scholars will fight for it." (*Han-fei-tzu, ch.32.*) Han Fei Tzu went beyond the abstract and vague conception of good and evil, analyzing and arguing about human nature through the interrelationship between history and reality, identifying the root causes of the phenomena, and exploring the motives behind people's behaviors. Han Fei Tzu believed that it was difficult to determine the standard of good or evil from nature, that common moral concepts couldn't be used as a yardstick to measure, and that people should understand the motives and triggers of people's behavior to look for the answers from the facts of historical experience and the objective existence of reality. This viewpoint reaffirms the utilitarian and practical character of the Legalists (a school of thought during the Spring and Autumn and Warring States Periods, 770-221 B.C.).

Scholars have traditionally studied behavior in two modes: one is normative and the other is a priori. The former means that in addition to the ancient ultimate concern of whether human nature is good or evil, they pay attention to what kind of behavioral patterns people should choose, thereby putting forward the concept of behavioral reform. The latter is a descriptive and empirical observation, which starts from the behavior itself and focuses on why people choose such behavioral patterns, and thus put forward the theory of their behavioral mastery. Han Fei Tzu adopted the latter model in his study of criminal behavior adopted the latter model, and his idea of severe punishment was based on the idea of behavioral management. Firstly, Han-fei-tzu believed that all human beings had the nature of pursuing interests. "Whenever people want to do something, it is either for the sake of fame or for the sake of profit." "If the king promises great benefits, then the people will submit to him; if the king promises to confer titles and honors, the famous men will give their lives in order to embrace him." (*Han-fei-tzu, ch.17.*)

Although Han Fei Tzu's views were a little extreme and seemed to ignore the positive aspects of human nature, he emphasized that different people had different subjective judgment of good and evil. Therefore, people couldn't judgments the nature of an act according to a unified moral standard. Governing a country with moral principles would lead to the chaos of flattering officials and disobedient citizens.

Through observing real life, Han Fei Tzu believed that in addition to the essential attribute of pursuing benefits, people's behavior was also constrained by the measurement of benefits. "All men, if they are not dull of intellect, have the instinct to seek advantages and avoid disadvantages." (*Han-fei-tzu, ch.20.*) Everyone "seeks comfort and profit, and avoids calamity and poverty." "After weighing interests, they approach favorable things and stay away from dangerous things." (*Han-fei-tzu, ch.49.*) Han Fei Tzu's idea of severe punishment is essentially to use people's instinct to seek advantages and avoid disadvantages to effectively harness, guide, and control people's profit-seeking attributes, thus effectively harnessing, guiding, and controlling people's behaviors to make their behaviors conform to the law, thereby preventing and governing crimes and illegal behaviors. When weighing the harms of punishment against the benefits of breaking the law and committing crimes, if the latter outweighs the former, people will be very likely to take risks and try to break the law. However, if the former outweighs the latter, then people will instinctively give up the intention of breaking the law and committing crimes. "A greedy thief doesn't go into the deep stream to pick up gold. If he goes into the deep stream, his personal safety will be difficult to protect. The vicious people are cautious, and the big thieves are honest, then the society will be just and peaceful, and the people's thoughts will be correct." (*Han-fei-tzu, ch.26.*)

2. Han Fei Tzu's Analysis of the Causes of Crimes

Based on the analysis of human nature, Han Fei Tzu classified the main reasons for crimes into three aspects. First, the lack of production means induction. Ancient Chinese scholars had always pursued the ideal political model in the era of Yao and Shun, but Han Fei Tzu thought that in the past, "there were few people but plenty of supplies, and therefore the people did not quarrel, But nowadays people do not consider a family of five children as large, and each child having again five children, before the death of the grandfather there may be twenty-five grandchildren, The result is that there are many people but few supplies, and that one has to work hard for a

meager return, So the people fall to quarreling.” (Feng, 2015, p. 293) In ancient times, the clear political environment and harmonious society were due to the great enrichment of means of production, rather than the nobleness of the ancient people. As the population increased, resources were deficient. When it came to competition, the dark side of human nature would seduce people to commit crimes in order to grab the means of production.

According to Han Fei Tzu, “For things that have form, the greater must develop from the lesser. For things that come from long experience, the more numerous must come from the less numerous.” (*Han-fei-tzu, ch.21.*) The same is true for crime because a person’s crime is usually not an accidental act, but a gradual evolution based on ordinary minor faults. If a minor evil isn’t stopped, it will eventually lead to a big mistake; if a minor crime isn’t stopped, it will eventually lead to a major offense. “Even a thousand miles of embankments will collapse because of ant burrows. A hundred-foot house will burn down because of a chimney crack.” (*Han-fei-tzu, ch.21.*) It is imperative to safeguard against any potential threats in the most minimal and simplest manner at an early stage. To prevent a crime from occurring in the first place is to take effective precautions as early as possible when there is evidence or signs of a crime so that it can be eliminated at an invisible stage. If a ruler wants to effectively prevent crimes and offenses, the best way is to see the slightest sign of them, so as to prohibit the commission of crimes before they occur. “A wise ruler is able to find out the smallest faults so as to mete out subtle punishments. Thus, people will not commit any major crimes.” (*Han-fei-tzu, ch.38.*) To prevent and control crime, it is especially important to prohibit adultery before it occurs.

Second, the imperfect legal institution leads to crime. “*A law is that which is recorded on the registers, set up in the government offices, and promulgated among the people.*” (Feng, 2015, p. 295) Laws should be open and compulsory. Law was the rule that the monarch set for his subjects: what could be done, what could not be done, and one would be punished for doing what was prohibited by law, and rewarded for doing what should be done by law. With laws, people could predict the outcomes of their behaviors, so that they might choose what to do to avoid being punished by laws. Therefore, if the legal institution was imperfect, people would choose to do what was beneficial only for themselves out of nature, which would easily violate others’ rights and break the social order.

Han Fei Tzu stressed the majesty of law while advocating the stability of law. Han Fei Tzu insisted that the law should be made known to the people and that people’s knowledge and understanding of the law were a prerequisite for observing the law so that people could build up a sense of respect for the law, thus achieving a better expected and practical effect when enforcing the law. Han Fei Tzu wanted the people to understand the law, thus establishing the majesty of the law. In this way, people wouldn’t dare and couldn’t challenge the law, and social order can be maintained only if the majority of people obey the law. Although the starting point of this kind of thinking is to make people fear the law, keep their peace, and maintain stability, Han Fei Tzu’s simple idea of promoting the law is formally the same as modern legal education. In addition, Han Fei Tzu firmly believed that laws should remain stable after enactment and shouldn’t be changed arbitrarily, and the modification of laws should be based on whether they are in line with reality and conform to the requirements of reality. If the law is not relatively stable, it will lose its credibility, and if there is no credibility, the law will be no more majestic, and people will no longer obey the law. Third, the disunity of employment standards caused crimes. Han Fei-Tzu did not agree with the sage politics advocated by Confucianism. He believed that the rhetoric scholars who praised the way of the former kings, lobbied everywhere and the knight-errants who gathered together boasted integrity and violated the nation deliberately could all affect the stability of the country. If the monarch took morality as the sole criterion for selecting his officials, the negative effects of bureaucracy would be revealed, such as selling official posts and titles. The officials were illegal, not to mention the general public who tended to break the law for their own benefit. Therefore, the society might become chaotic and the regime might become unstable.

3. Han Fei Tzu’s Analysis of Crime Prevention

After analyzing the causes of crimes, Han Fei Tzu proposed the following measures to prevent crimes: firstly, the encouragement of agricultural production. The economic base is the prerequisite to ensuring political stability. The primary task is to vigorously develop agricultural industries to promote economic development. “The reason why the granaries are full is that the farmers take agriculture as the basis of farming.” (*Han-fei-tzu, ch.45.*) Han Fei Tzu put forward many policies to develop agriculture. For example, agricultural production must conform to the laws of nature, protect the labor force, allow paid employment, and maximize economic utility. Economic development requires a balanced and coordinated industrial structure. Han Fei Tzu insisted that compared with agriculture, industry and commerce are “the branch” (Feng, 2015, p. 32). However, to promote the head of agriculture, it is not necessary to completely eradicate industry and commerce. Only by ensuring the relative

stability of industry and commerce could give full play to their functions, so that “the branch” would not affect the development of agriculture.

Secondly, the implementation of the rule of law. Comprehensively and effectively implementing the rule of law was the core of Han Fei Tzu’s theory of crime prevention. The laws must be made public, and the people could obey the laws and take the laws as their code of conduct. At the legislative level, the law should be legislated according to the objective laws, “Stick to the unchanging truth and conform to the objective natural laws.” (*Han-fei-tzu, ch.29.*) Legislation should also be tailored to the times, “There is no fixed routine of governing the people. Only the rule of law can govern the country well. The country will be governed well if the laws change with the times, and the measures of governing the country will be efficient if they adapt to the social condition.” (*Han-fei-tzu, ch.54.*) Of course, the laws must maintain their stability while keeping pace with the times. “The most important thing of the laws is stability and unity.” (*Han-fei-tzu, ch.49.*) The laws can’t be changed frequently, and if “the provisions of the new laws and the old laws contradict each other.” (*Han-fei-tzu, ch.43.*) The authority of the laws cannot be shown. At the judicial level, people should be equally treated without discrimination, “Ministers can’t avoid punishments for committing crimes, while ordinary people can also be rewarded for doing good things.” (*Han-fei-tzu, ch.6.*) In ancient Chinese society of feudal hierarchy, if the judiciary was not fair enough, the ordinary people would ignore the laws and disciplines, look for their leaks, break the laws, and escape the punishments of the laws. At the executive level, the law executors should be objective and cautious, “Severe punishments were used to implement orders and to punish disobedient liegemen.” (*Han-fei-tzu, ch.6.*) Strict law enforcement was an effective way to establish legal authority. Only when the rewards and punishments were clearly defined could the human nature of seeking profits and avoiding hazards be aroused so that the purpose of crime prevention could be achieved.

Han Fei Tzu discussed the law from the Way and talked about the prevention and management of offenses based on the law. Thus, his preventive management strategy everywhere seeks the form of “doing something”, and at the same time, it always doesn’t emphasize the purpose of “doing nothing”. Although Han Fei Tzu emphasized criminal laws, he firmly opposed harsh laws, which is shown in the sentence “In the most stable society, the law is like the morning dew, pure and not muddy. People have no grudges in their hearts and there is no indignation in their words.” (*Han-fei-tzu, ch.29.*) Han Fei Tzu said that the law included two paradigms: one is the law of reward, and the other is the law of punishment. The former is to encourage behavior, and the law of punishment is to stop faults. The law should not be too harsh, including the law of reward and the law of punishment. If the law of reward is too harsh, that is, the standard of obtaining rewards and honors is too high to make it difficult for people to be rewarded, then the law of reward will lose its purposeful normative effect and won’t be able to play its guiding and motivating role, so the function of exhorting people to perform will be impossible. If the law of punishment is too harsh, i.e., the act of punishment is too demanding and punishment is imposed at every turn, people can’t avoid it at all. In Han Fei Tzu’s view, this is not only not in line with the intention of prohibiting adultery and stopping excesses, but it is also very different from the original purpose of the law. The original purpose of the law is not to make people subject to legal sanctions but to love the people so that they will fear the law, forbid adulterous behavior, and avoid the consequences of violating the law. Even if the emphasis is severe penalties, the original intention of its establishment is also the deterrence of the law, so that the people weigh the pros and cons, don’t dare to break the law, don’t want to violate the law and stay away from the punishment. If the law is so harsh that people can’t avoid it, then it will naturally become a law that endangers the people. This is what Han Fei Tzu strongly opposed, “In the laws set up by a wise ruler, the people must be able to obtain their due rewards, and the violations must be avoidable.” (*Han-fei-tzu, ch.27.*)

The theory of severe punishment proposed by Han Fei Tzu doesn’t refer to extorting a confession by torture, but a utilitarian balance after the so-called severe punishment. “Crimes that can be stopped with severe punishment may not be stopped by light punishment. Crimes that can be stopped by light punishment can certainly be stopped by severe punishment, so what harm will it do to the people if the monarch sets up severe punishment and all crimes are nipped in the bud? The so-called use of severe penalties must be that the bad guys get a small benefit, while the punishment prescribed by the ruler for the bad guys engaging in illegal acts is severe. The people will then not be punished for their greed for small gains, and the unlawful acts will surely be stopped. The so-called light penalties must be that the bad guys get big benefits, while the penalties prescribed by the monarch for bad guys engaging in unlawful acts are small. The people will then envy the benefits gained from breaking the law and despise the punishment brought about by the offense, and the offense will not be stopped.” (*Han-fei-tzu, ch.46.*) Severe penalties mainly focus on the general prevention of offenses, and the main purpose of severe penalties is not only to punish the suspects but also to warn and deter people other than the offenders so that they can take the offenders who have been sentenced to imprisonment as a lesson for the past. Han Fei Tzu

believed that in terms of the efficacy of punishment, severe punishment should also be implemented instead of light punishment. The efficacy of severe punishment is greater than that of light punishment. If a light punishment can prevent a crime, a severe punishment can also prevent it. But the offenses that can be prevented by severe penalties can't be dealt with by light penalties. Therefore, severe punishment should be emphasized when setting penalties. Han Fei Tzu believed that severe punishment would not hurt the people, but it was the best way to love the people. Light punishment seems to love the people, but in essence, it hurts the people. If the penalty is light, the people's mind will be slack, and if the people's mind is slack, they will naturally despise the law, and if they despise the law, they will be prone to breaking the law and committing crimes, and if they commit crimes, they will be subjected to the consequences of the negative evaluation of the law. If there are severe penalties, the people will not dare to slack, always be careful to engage, and naturally follow the law, so that the penalty can't be added to their bodies. The essence of severe punishment is intended to achieve the crime with severe punishment, so that people fear punishment and dare not break the law, thereby achieving the purpose of not using punishment and realizing the essence of loving the people rather than hurting the people.

After deducing from the point of view that law-breaking must be punished, Han Fei Tzu concluded that the law should be applied equally, that is, no matter how noble or lowly, superior or inferior, close or distant, stupid or wise, as long as they violate the law, they will be brought to justice in strict accordance with the provisions of the law, and differential treatment won't be tolerated. "Measure the straightness of a line of ink and a bent piece of wood is to be chopped off. When weighing a balance, the heavier side will be reduced and the lighter side will be increased. So, if a country is governed by law as a standard, the law won't favor the powerful, and the rope won't accommodate the crooked wood. The wise man doesn't escape the consequences of the law by sophistry, and the brave man doesn't resist them by force. Punishment of crime doesn't avoid officials, and rewarding good deeds doesn't leave out the common people. There is nothing more useful than the law when correcting the wrongdoings of people with high social status, pursuing the crimes of people with low social status, ruling over chaos and making correct value judgments, correcting mistakes, eliminating unnecessary behavior, and unifying people's behavior so that it can conform to norms." (*Han-fei-tzu, ch.6.*)

Finally, the unification of employment standards. Since Xiaqi's reign time when the throne was changed from a system of abdication to a system of hereditary succession, until the unification of the whole country by Emperor Yingzheng of the Qin Dynasty, ancient Chinese society completed two major transformations, from the world as a commonwealth to the world as a family, and from a slave society to a feudal society. According to this social pattern, the principle system of employing individuals with hereditary status was denied, and the fundamental democratic principles of "advancing the virtuous and capable" and "appointing the virtuous and enabling the capable" were restored in the present circumstance. During the Spring and Autumn and the Warring States Periods, all the vassal states competed to recruit talents to compete for hegemony and defend the country against enemies. Han Fei Tzu, who was born in Han State at the end of the Warring States period, witnessed that his family and country were often bullied by the strong Qin State and knew the importance of talents to the construction of the country.

Han Fei Tzu put forward the principle of appointing officials according to the laws. First of all, the duties of officials should be clarified to lay a clear foundation for rewards and punishments. "An ancient monarch who was good at appointing officials must conform to both the nature and human feelings and could make clear distinctions between rewards and punishments." (*Han-fei-tzu, ch.27.*) Second, the rewards and punishments must be operable. With no operability, the legal provisions would become a dead letter, losing their value of existence. "A wise monarch set up rewards hard work and punishments that ordinary people could also avoid." (*Han-fei-tzu, ch.27.*) What's more, choosing officials should strictly abide by the laws. "In the best-governed countries, the implementation of punishments and rewards did not depend on the temper of its monarch." (*Han-fei-tzu, ch.27.*) A monarch also had the inferiority of the man who would choose his officials according to his own preference. If there was no strict and unified selection standard, then the subjects tended to please their monarch on purpose, in order to obtain their positions with false virtues. As a consequence, the laws of the state would be put on the shelf, and the monarch would be made a mere figurehead. The unification of employment standards could avoid the negative influence of human nature on the selection of officials and would set up the rules in the whole society, so the crimes would inevitably decrease and a virtuous circle could be formed.

When managing talents, Han Fei Tzu insisted on "seeking the actual content according to the name and becoming well-known and consistent with the truth". (*Han-fei-tzu, ch.43.*) He emphasized the assessment of performance according to the law. In response to the blind and wrong hiring practice of "appointing and dismissing officials based on reputation instead of merit" and "listening to the word of the close friends of the

monarch”, Han Fei Tzu said, “This will allow the untalented to dominate the court and stupid and dirty officials to steal positions.” (*Han-fei-tzu, ch.11.*) Then the country will inevitably collapse. Meanwhile, he stressed the need to detect and stop “people without real talent from mixing with insiders and passing them off as good.” (*Han-fei-tzu, ch.30.*) The best way to assess whether a cadre is competent or not is to put him into practice, not only focusing on his consistent behavior rather than rhetorical declarations but also on examining his process and results in the actual work. “When an official articulates his ideas, the monarch should assign him tasks according to his words and evaluate his performance based on his ability to fulfill them.” (*Han-fei-tzu, ch.7.*) “The wise ruler must pursue practical effects in listening to the words of his ministers, and he must seek efficacy in observing their behavior.” (*Han-fei-tzu, ch.46.*) Therefore, he will attentively listen to the words and scrutinize the deeds, examine the ends and observe the failures, test the work and examine and identify the deeds, and carefully assess them one by one based on the guidelines of the law. In this way, it is possible to distinguish the truly learned and talented from the mediocre, so that those without wisdom and talent can’t fish in troubled waters in the bureaucratic system. Han Fei Tzu generally put forward the method of identifying the advantages and disadvantages of theories and the practical value of the path.

Among the hundred schools of thought on talent, Han Fei Tzu inherited and innovated the idea of ruling the country according to the law put forward by the Mohist School based on criticizing the Confucian thought of the “rule of virtue”. (a school of thought in the Spring and Autumn and Warring States Periods, 770-221 B.C.), and insisted that “a country with a strict and clear legal system will be strong, while a country with a lax legal system will be weak.” (*Han-fei-tzu, ch.19.*) Keeping pace with the times, Han Fei Tzu put forward the idea of “rule of law” for talents, selecting people according to the law and appointing them according to their talents to realize the strength and prosperity of the country and the stability and peace of the society. The idea of selecting talents according to the rule of law was not only popular in the pre-Qin period but also remains a spiritual treasure for us today.

Han Fei Tzu used the theory of nature, evolution, and human nature as the three major theoretical foundations of his “law-based” thought to construct a strategy of governance centered on the enrichment of the country and the centralization of power. Han Fei Tzu had a unique set of views on the theory of crime prevention. He believed that human nature drew on advantages and avoided disadvantages and people had an innate desire for material wealth and status of honor. In this hypothetical context, crimes would be caused by a lack of material resources, an inadequate legal system, and an inconsistent employment guarantee. If a ruler wishes to govern the country well, stabilize the social order, and reduce crime, he must accumulate national wealth, improve the legal system, and construct a perfect mechanism for the selection and promotion of talents. Nowadays, to realize the rule of law, we cannot sever the relationship with traditional culture and ignore the positive factors in traditional culture. Correct treatment of traditional legal culture and making full use of the theory of crime prevention in the Legalist’s system of thought are of great practical significance to building a harmonious society.

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